

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 892
91ST GENERAL ASSEMBLY

Reported from the Committee on Miscellaneous Bill and Resolutions, May 8, 2002, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 892 Do Pass.

TED WEDEL, Chief Clerk

3739L.03C

AN ACT

To repeal sections 214.270 and 214.387, RSMo, and to enact in lieu thereof two new sections relating cemeteries.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 214.270 and 214.387, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 214.270 and 214.387, to read as follows:

214.270. As used in sections 214.270 to 214.410, the following terms mean:

2 (1) "Agent" or "authorized agent", any person empowered by the cemetery operator to
3 represent the operator in dealing with the general public, including owners of the burial space
4 in the cemetery;

5 (2) "Burial space", one or more than one plot, grave, mausoleum, crypt, lawn, surface
6 lawn crypt, niche or space used or intended for the interment of the human dead;

7 (3) "Cemetery", property restricted in use for the interment of the human dead by formal
8 dedication or reservation by deed but shall not include any of the foregoing held or operated by
9 the state or federal government or any political subdivision thereof, any incorporated city or
10 town, any county or any religious organization, cemetery association or fraternal society holding
11 the same for sale solely to members and their immediate families;

12 (4) "Cemetery association", any number of persons who shall have associated themselves
13 by articles of agreement in writing as a not-for-profit association or organization, whether
14 incorporated or unincorporated, formed for the purpose of ownership, preservation, care,

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 maintenance, adornment and administration of a cemetery. Cemetery associations shall be
16 governed by a board of directors. Directors shall serve without compensation;

17 (5) "Cemetery operator" or "operator", any person who owns, controls, operates or
18 manages a cemetery;

19 **(6) "Cemetery service", those services performed by a cemetery owner or operator**
20 **licensed pursuant to this chapter as an endowed care cemetery including setting a**
21 **monument, setting a tent, excavating a grave, or setting a vault;**

22 [(6)] (7) "Columbarium", a building or structure for the inurnment of cremated human
23 remains;

24 [(7)] (8) "Community mausoleum", a mausoleum containing a substantial area of
25 enclosed space and having either a heating, ventilating or air conditioning system;

26 [(8)] (9) "Department", department of economic development;

27 [(9)] (10) "Developed acreage", the area which has been platted into grave spaces and
28 has been developed with roads, paths, features, or ornamentations and in which burials can be
29 made;

30 [(10)] (11) "Director", director of the division of professional registration;

31 [(11)] (12) "Division", division of professional registration;

32 [(12)] (13) "Endowed care", the maintenance, repair and care of all burial space subject
33 to the endowment within a cemetery, including any improvements made for the benefit of such
34 burial space. Endowed care shall include the general overhead expenses needed to accomplish
35 such maintenance, repair, care and improvements. Endowed care shall include the terms
36 perpetual care, permanent care, continual care, eternal care, care of duration, or any like term;

37 [(13)] (14) "Endowed care cemetery", a cemetery, or a section of a cemetery, which
38 represents itself as offering endowed care and which complies with the provisions of sections
39 214.270 to 214.410;

40 [(14)] (15) "Endowed care fund", "endowed care trust", or "trust", any cash or cash
41 equivalent, to include any income therefrom, impressed with a trust by the terms of any gift,
42 grant, contribution, payment, devise or bequest to an endowed care cemetery, or its endowed care
43 trust, or funds to be delivered to an endowed care cemetery's trust received pursuant to a contract
44 and accepted by any endowed care cemetery operator or his agent. This definition includes the
45 terms endowed care funds, maintenance funds, memorial care funds, perpetual care funds, or any
46 like term;

47 [(15)] (16) "Family burial ground", a cemetery in which no burial space is sold to the
48 public and in which interments are restricted to persons related by blood or marriage;

49 [(16)] (17) "Fraternal cemetery", a cemetery owned, operated, controlled or managed by
50 any fraternal organization or auxiliary organizations thereof, in which the sale of burial space is

51 restricted solely to its members and their immediate families;

52 [(17)] (18) "Garden mausoleum", a mausoleum without a substantial area of enclosed
53 space and having its crypt and niche fronts open to the atmosphere. Ventilation of the crypts by
54 forced air or otherwise does not constitute a garden mausoleum as a community mausoleum;

55 [(18)] (19) "Government cemetery", or "municipal cemetery", a cemetery owned,
56 operated, controlled or managed by the federal government, the state or a political subdivision
57 of the state, including a county or municipality or instrumentality thereof;

58 [(19)] (20) "Grave" or "plot", a place of ground in a cemetery, used or intended to be
59 used for burial of human remains;

60 [(20)] (21) "Human remains", the body of a deceased person in any state of
61 decomposition, as well as cremated remains;

62 [(21)] (22) "Inurnment", placing an urn containing cremated remains in a burial space;

63 [(22)] (23) "Lawn crypt", a burial vault or other permanent container for a casket which
64 is permanently installed below ground prior to the time of the actual interment. A lawn crypt
65 may permit single or multiple interments in a grave space;

66 [(23)] (24) "Mausoleum", a structure or building for the entombment of human remains
67 in crypts;

68 [(24)] (25) "Niche", a space in a columbarium used or intended to be used for inurnment
69 of cremated remains;

70 [(25)] (26) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or a
71 section of a cemetery for which no endowed care fund has been established in accordance with
72 sections 214.270 to 214.410;

73 [(26)] (27) "Owner of burial space", a person to whom the cemetery operator or his
74 authorized agent has transferred the right of use of burial space;

75 [(27)] (28) "Person", an individual, corporation, partnership, joint venture, association,
76 trust or any other legal entity;

77 [(28)] (29) "Registry", the list of cemeteries maintained in the division office for public
78 review. The division may charge a fee for copies of the registry;

79 [(29)] (30) "Religious cemetery", a cemetery owned, operated, controlled or managed
80 by any church, convention of churches, religious order or affiliated auxiliary thereof in which the
81 sale of burial space is restricted solely to its members and their immediate families;

82 [(30)] (31) "Surface lawn crypt", a sealed burial chamber whose lid protrudes above the
83 land surface;

84 [(31)] (32) "Total acreage", the entire tract which is dedicated to or reserved for cemetery
85 purposes;

86 [(32)] (33) "Trustee of an endowed care fund", the separate legal entity appointed as

87 trustee of an endowed care fund.

214.387. 1. Upon written instructions from the purchaser of a monument, marker or
2 memorial, a cemetery may defer delivery of such property to a date designated by the purchaser,
3 provided the cemetery operator, within forty-five days of the date the property is paid in full,
4 deposits from its own funds an amount equal to one hundred ten percent of such property's
5 wholesale cost into a segregated account. Funds deposited in a segregated account pursuant to
6 this section and section 214.385 shall be maintained in such account until delivery of the
7 property is made or the contract for the purchase of such property is canceled. No withdrawals
8 may be made from the cemetery operator's segregated account established pursuant to this
9 section and section 214.385 except as provided herein. The cemetery operator shall not
10 commingle any other of its funds with the deposits made to the segregated account. Money in
11 this account shall be invested utilizing the "prudent man theory" and is subject to audit by the
12 division. Names and addresses of depositories of such money shall be submitted with the annual
13 report.

14 2. If at the end of a calendar year the market value of the cemetery operator's segregated
15 account exceeds the then current wholesale cost of all paid-in-full property which has not been
16 delivered, the cemetery operator may withdraw from the segregated account all realized income
17 earned by such account. If at the end of a calendar year the market value of the cemetery
18 operator's segregated account is less than the then current wholesale cost of all paid-in-full
19 property which has not been delivered, the cemetery operator shall only withdraw the realized
20 income in excess of (i) the segregated account's market value at year end, plus (ii) all realized
21 income accrued to the segregated account minus (iii) the wholesale cost of all paid-in-full
22 property which has not been delivered.

23 3. Upon the delivery of a monument, marker or memorial sold by the cemetery or its
24 agent, or the cancellation of the contract for the purchase of such property, the cemetery operator
25 may withdraw from the segregated account an amount equal to (i) the market value of the
26 segregated account based on the most recent account statement issued to the cemetery operator,
27 times (ii) the ratio the delivered property's deposit in the account bears to the aggregate deposit
28 of all property which is paid in full but not delivered. The segregated account may be inspected
29 or audited by the division.

30 **4. Upon written instructions from the purchaser of an interment, entombment, or**
31 **inurnment cemetery service, a cemetery may defer performance of such service to a date**
32 **designated by the purchaser, provided the cemetery operator, within forty-five days of the**
33 **date the agreement is paid in full, deposits from its own funds an amount equal to forty**
34 **percent of the published retail price into a trustee account. Funds deposited in a trustee**
35 **account pursuant to this section and section 214.385 shall be maintained in such account**

36 until delivery of the service is made or the agreement for the purchase of the service is
37 canceled. No withdrawals may be made from the trustee account established pursuant
38 to this section and section 214.385 except as provided herein. Money in this account shall
39 be invested utilizing the "prudent man theory" and is subject to audit by the division.
40 Names and addresses of depositories of such money shall be submitted with the annual
41 report.

42 **5. Upon the delivery of the internment, entombment, or inurnment cemetery service**
43 **agreed upon by the cemetery or its agent, or the cancellation of the agreement for the**
44 **purchase of such service, the cemetery operator may withdraw from the trustee account**
45 **an amount equal to (i) the market value of the trustee account based on the most recent**
46 **account statement issued to the cemetery operator, times (ii) the ratio the service's deposit**
47 **in the account bears to the aggregate deposit of all services which are paid in full but not**
48 **delivered. The trustee account may be inspected or audited by the division.**

49 **6. The provisions of this section shall apply to all agreements entered into after**
50 **August 28, 2002.**