

FIRST REGULAR SESSION

# HOUSE BILL NO. 777

## 94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WASSON.

Read 1st time February 7, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2030L.011

### AN ACT

To repeal sections 214.275, 214.340, 333.011, 333.121, and 333.221, RSMo, and to enact in lieu thereof five new sections relating to crematoriums.

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

Section A. Sections 214.275, 214.340, 333.011, 333.121, and 333.221, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 214.275, 214.340,  
3 333.011, 333.121, and 333.221, to read as follows:

214.275. 1. No endowed care or nonendowed care cemetery shall be operated in this  
2 state unless the owner or operator thereof has a license issued by the division and complies with  
3 all applicable state, county or municipal ordinances and regulations.

4 2. It shall not be unlawful for a person who does not have a license to care for or  
5 maintain the cemetery premises, or to fulfill prior contractual obligations for the interment of  
6 human remains in burial spaces.

7 3. Applications for a license shall be in writing, submitted to the division on forms  
8 prescribed by the division. The application shall contain such information as the division deems  
9 necessary and be accompanied by the required fee.

10 4. Each license issued pursuant to sections 214.270 to 214.516 shall be renewed prior  
11 to the license renewal date established by the division. The division shall issue a new license  
12 upon receipt of a proper renewal application, **trust fund report as required by section 214.340,**  
13 and the required renewal fee. The required renewal fee shall be fifty dollars, plus an assessment  
14 for each interment, inurnment or other disposition of human remains at a cemetery for which a

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 charge is made, as the division shall by rule determine, not to exceed ten dollars per such  
16 disposition in the case of an endowed care cemetery, and six dollars for such disposition in the  
17 case of a nonendowed care cemetery. The division shall mail a renewal notice to the last known  
18 address of the holder of the license prior to the renewal date. The holder of a license shall keep  
19 the division advised of the holder's current address. The license issued to the owner or operator  
20 of a cemetery which is not renewed within three months after the license renewal date shall be  
21 suspended automatically, subject to the right of the holder to have the suspended license  
22 reinstated within nine months of the date of suspension if the person pays the required  
23 reinstatement fee. Any license suspended and not reinstated within nine months of the  
24 suspension shall expire and be void and the holder of such license shall have no rights or  
25 privileges provided to holders of valid licenses. Any person whose license has expired may,  
26 upon demonstration of current qualifications and payment of required fees, be reregistered or  
27 reauthorized under the person's original license number.

28         5. The division shall grant or deny each application for a license pursuant to this section  
29 within ninety days after it is filed, and no prosecution of any person who has filed an application  
30 for such license shall be initiated unless it is shown that such application was denied by the  
31 division and the owner was notified thereof.

32         6. Upon the filing of a completed application, as defined by rule, the applicant may  
33 operate the business until the application is acted upon by the division.

34         7. Within thirty days after the sale or transfer of ownership or control of a cemetery, the  
35 transferor shall return his or her license to the division. A prospective purchaser or transferee  
36 of a cemetery shall file an application for a license at least thirty days prior to the sale or transfer  
37 of ownership or control of a cemetery and shall be in compliance with sections 214.270 to  
38 214.516.

214.340. 1. Each operator of an endowed care cemetery shall maintain at an office in  
2 the cemetery or, if the cemetery has no office in the cemetery, at an office within a reasonable  
3 distance of the cemetery, the reports of the endowed care fund's operation for the preceding seven  
4 years. Each report shall contain, at least, the following information:

5         (1) Name and address of the trustee of the endowed care fund and the depository, if  
6 different from the trustee;

7         (2) Balance per previous year's report;

8         (3) Principal contributions received since previous report;

9         (4) Total earnings since previous report;

10        (5) Total distribution to the cemetery operator since the previous report;

11        (6) Current balance;

12 (7) A statement of all assets listing cash, real or personal property, stocks, bonds, and  
13 other assets, showing cost, acquisition date and current market value of each asset;

14 (8) Total expenses, excluding distributions to cemetery operator, since previous report;  
15 and

16 (9) A statement of the cemetery's total acreage and of its developed acreage.

17 2. Subdivisions (1) through (7) of the report described in subsection 1 above shall be  
18 certified to under oath as complete and correct by a corporate officer of the trustee. Subdivision  
19 (8) of such report shall be certified under oath as complete and correct by an officer of the  
20 cemetery operator. Both the trustee and cemetery operator or officer shall be subject to the  
21 penalty of making a false affidavit or declaration.

22 3. The report shall be placed in the cemetery's office within ninety days of the close of  
23 the trust's fiscal year. A copy of this report shall be filed by the cemetery operator with the  
24 division of professional registration [within ninety days of the close of the trust fund's fiscal year]  
25 **as condition of license renewal as required by subsection 4 of section 214.275.** The report  
26 shall not be sent to the state board of embalmers and funeral directors.

27 4. Each cemetery operator who establishes a segregated account pursuant to subsection  
28 1 of section 214.385 shall file with the report required under subsection 1 of this section a  
29 segregated account report that shall provide the following information:

30 (1) The number of monuments, markers and memorials that have been deferred for  
31 delivery by purchase designation;

32 (2) The aggregate wholesale cost of all such monuments, markers and memorials; and

33 (3) The amount on deposit in the segregated account established pursuant to section  
34 214.385, and the account number.

333.011. As used in this chapter, unless the context requires otherwise, the following  
2 terms have the meanings indicated:

3 (1) "Board", the state board of embalmers and funeral directors created by this chapter;

4 (2) "Embalmer", any individual licensed to engage in the practice of embalming;

5 (3) "Funeral director", any individual licensed to engage in the practice of funeral  
6 directing;

7 (4) "Funeral establishment", a building, place, **crematory**, or premises devoted to or  
8 used in the care and preparation for burial or transportation of the human dead and includes every  
9 building, place or premises maintained for that purpose or held out to the public by advertising  
10 or otherwise to be used for that purpose;

11 (5) "Person" includes a corporation, partnership or other type of business organization;

12 (6) "Practice of embalming", the work of preserving, disinfecting and preparing by  
13 arterial embalming, or otherwise, of dead human bodies for funeral services, transportation,  
14 burial or cremation, or the holding of oneself out as being engaged in such work;

15 (7) "Practice of funeral directing", engaging by an individual in the business of  
16 preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state  
17 of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging  
18 in the general control, supervision or management of the operations of a funeral establishment.

333.121. 1. The board may refuse to issue any certificate of registration or authority,  
2 permit or license required pursuant to this chapter for one or any combination of causes stated  
3 in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for  
4 the refusal and shall advise the applicant of his right to file a complaint with the administrative  
5 hearing commission as provided by chapter 621, RSMo.

6 2. The board may cause a complaint to be filed with the administrative hearing  
7 commission as provided by chapter 621, RSMo, against any holder of any certificate of  
8 registration or authority, permit or license required by this chapter or any person who has failed  
9 to renew or has surrendered his certificate of registration or authority, permit or license for any  
10 one or any combination of the following causes:

11 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic  
12 beverage to an extent that such use impairs a person's ability to perform the work of any  
13 profession licensed or regulated by this chapter;

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty  
15 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,  
16 for any offense reasonably related to the qualifications, functions or duties of any profession  
17 licensed or regulated under this chapter, for any offense an essential element of which is fraud,  
18 dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not  
19 sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of  
21 registration or authority, permit or license issued pursuant to this chapter or in obtaining  
22 permission to take any examination given or required pursuant to this chapter;

23 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by  
24 fraud, deception or misrepresentation;

25 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty  
26 in the performance of the functions or duties of any profession licensed or regulated by this  
27 chapter;

28 (6) Violation of, or assisting or enabling any person to violate, any provision of this  
29 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

30 (7) Impersonation of any person holding a certificate of registration or authority, permit  
31 or license or allowing any person to use his or her certificate of registration or authority, permit,  
32 license or diploma from any school;

33 (8) Disciplinary action against the holder of a license or other right to practice any  
34 profession regulated by this chapter granted by another state, territory, federal agency or country  
35 upon grounds for which revocation or suspension is authorized in this state;

36 (9) A person is finally adjudged insane or incompetent by a court of competent  
37 jurisdiction;

38 (10) Assisting or enabling any person to practice or offer to practice any profession  
39 licensed or regulated by this chapter who is not registered and currently eligible to practice under  
40 this chapter;

41 (11) Issuance of a certificate of registration or authority, permit or license based upon  
42 a material mistake of fact;

43 (12) Failure to display a valid certificate or license if so required by this chapter or any  
44 rule promulgated hereunder;

45 (13) Violation of any professional trust or confidence;

46 (14) Use of any advertisement or solicitation which is false, misleading or deceptive to  
47 the general public or persons to whom the advertisement or solicitation is primarily directed;

48 (15) Violation of any of the provisions of chapter 193, RSMo, chapter 194, RSMo, or  
49 chapter 436, RSMo;

50 (16) Presigning a death certificate or signing a death certificate on a body not embalmed  
51 by, or under the personal supervision of, the licensee;

52 (17) Obtaining possession of or embalming a dead human body without express  
53 authority to do so from the person entitled to the custody or control of the body;

54 (18) Failure to execute and sign the [reverse side of a] death certificate on a body  
55 embalmed by, or under the personal supervision of, a licensee;

56 (19) Failure or refusal to properly guard against contagious, infectious or communicable  
57 diseases or the spread thereof;

58 (20) Willfully and through undue influence selling a funeral;

59 (21) Refusing to surrender a dead human body upon request by the next of kin, legal  
60 representative or other person entitled to the custody and control of the body.

61 3. After the filing of such complaint, the proceedings shall be conducted in accordance  
62 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing  
63 commission that the grounds, provided in subsection 2, for disciplinary action are met, the board  
64 may, singly or in combination, censure or place the person named in the complaint on probation  
65 on such terms and conditions as the board deems appropriate for a period not to exceed five

66 years, or may suspend, for a period not to exceed three years, or revoke the license, certificate,  
67 or permit.

333.221. 1. Each member of the board shall receive as compensation an amount set by  
2 the board not to exceed [fifty] **seventy** dollars for each day devoted to the affairs of the board,  
3 and shall be entitled to reimbursement of his expenses necessarily incurred in the discharge of  
4 his official duties.

5 2. The board may employ such board personnel, [as defined in subdivision (4) of  
6 subsection 16 of section 620.010, RSMo, as is necessary for the administration of this chapter]  
7 **as may be necessary to carry out the provisions of this chapter. Board personnel shall**  
8 **include an executive secretary or comparable position, inspectors, investigators, attorneys,**  
9 **and secretarial support staff for these positions. The board may retain legal services by**  
10 **agreement with other agencies, including the attorney general, by employment of such**  
11 **personnel, or by agreement with private parties.**

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