

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Bill No. 161, Page 1, Section A, Line 2, by inserting after all of said section and
2 line the following:

3
4 "214.160. 1. Under sections 214.140 to 214.180, and as otherwise not prohibited under
5 Article VI, Section 23 of the Constitution of Missouri, the county commission may invest or loan
6 said trust fund or funds in United States government, state, county or municipal bonds, certificates
7 of deposit, first real estate mortgages, or deeds of trust and may utilize investment managers to
8 invest, reinvest, and manage assets, subject to the terms, conditions, and limitations provided in this
9 section and Article IV, Section 15 of the Constitution of Missouri. [They] When sufficient, the
10 commission shall use the net income from said trust fund or funds or such investments or so much
11 thereof as is necessary to support and maintain and beautify any public or private cemetery or any
12 particular part thereof which may be designated by the person, persons or firm or association
13 making said gift or bequest. If the net income from said trust fund or funds is not sufficient to
14 support and maintain and beautify a cemetery, the commission may also use as much of the
15 principal thereof as the commission deems necessary for such purposes. In maintaining or
16 supporting the cemetery or any particular part or portion thereof the commission shall as nearly as
17 possible follow the expressed wishes of the creator of said trust fund.

18 2. An investment manager shall discharge his or her duties in the interest of the public or
19 private cemetery and the interest of the person, persons, or firm making the gift or bequest and shall:

20 (1) Act with the same care, skill, prudence, and diligence under the circumstances then
21 prevailing that a prudent person acting in a similar capacity and familiar with those matters would
22 use in the conduct of a similar enterprise with similar aims;

23 (2) Act with due regard for the management, reputation, and stability of the issuer and the
24 character of the particular investments being considered;

25 (3) Make investments for the purpose of supporting, maintaining, and beautifying any
26 public or private cemetery or any particular part thereof, which may be designated by the person,
27 persons, or firm or association making said gift or bequest, and of defraying reasonable expenses of
28 investing the assets;

29 (4) Give appropriate consideration to those facts and circumstances that the investment
30 fiduciary knows or should know are relevant to the particular investment or investment course of
31 action involved, including the role the investment or investment course of action plays in that
32 portion of the investments for which the investment fiduciary has responsibility. For purposes of
33 this subdivision, "appropriate consideration" shall include, but is not limited to, a determination by
34 the investment fiduciary that a particular investment or investment course of action is reasonably
35 designed to further the purposes of supporting, maintaining, and beautifying any public or private
36 cemetery or any particular part thereof, which may be designated by the person, persons, or firm or

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1 association making said gift or bequest, while considering the risk of loss and the opportunity for
 2 gain or other return associated with the investment or investment course of action and considering
 3 the following factors as they relate to the investment or investment course of action:

- 4 (a) The diversification of the investments;
- 5 (b) The liquidity and current return of the investments relative to the anticipated cash flow
 6 requirements; and
- 7 (c) The projected return of the investments relative to the funding objectives; and
- 8 (5) Give appropriate consideration to investments that would enhance the general welfare of
 9 this state and its citizens if those investments offer the safety and rate of return comparable to other
 10 investments available to the investment fiduciary at the time the investment decision is made.

11 3. As used in this section, "invest" or "investment" means utilization of moneys in the
 12 expectation of future returns in the form of income or capital gain.

13 214.270. As used in sections 214.270 to 214.410, the following terms mean:

- 14 (1) "Agent" or "authorized agent", any person empowered by the cemetery operator to
 15 represent the operator in dealing with the general public, including owners of the burial space in the
 16 cemetery;
- 17 (2) "Burial merchandise", a monument, marker, memorial, tombstone, headstone, urn, outer
 18 burial container, or similar article ~~[which]~~ that may contain specific lettering, shape, color, or design
 19 as specified by the purchaser;
- 20 (3) "Burial space", one or more than one plot, grave, mausoleum, crypt, lawn, surface lawn
 21 crypt, niche, or space used or intended for the interment of the human dead;
- 22 (4) "Cemetery", property restricted in use for the interment of the human dead by formal
 23 dedication or reservation by deed but shall not include any of the foregoing held or operated by the
 24 state or federal government or any political subdivision thereof, any incorporated city or town, any
 25 county, or any religious organization, cemetery association, or fraternal society holding the same for
 26 sale solely to members and their immediate families;
- 27 (5) "Cemetery association", any number of persons who shall have associated themselves by
 28 articles of agreement in writing as a not-for-profit association or organization, whether incorporated
 29 or unincorporated, formed for the purpose of ownership, preservation, care, maintenance, adornment
 30 and administration of a cemetery. Cemetery associations shall be governed by a board of directors.
 31 Directors shall serve without compensation;
- 32 (6) "Cemetery operator" or "operator", any person who owns, controls, operates or manages
 33 a cemetery;
- 34 (7) "Cemetery prearranged contract", any contract with a cemetery or cemetery operator for
 35 burial merchandise or burial services covered by sections 214.270 to 214.410 ~~[which]~~ that is entered
 36 into before the death of the individual for whom the burial merchandise or burial services are
 37 intended;
- 38 (8) "Cemetery service" or "burial service", those services performed by a cemetery owner or
 39 operator licensed as an endowed care or nonendowed cemetery including setting a monument or
 40 marker, setting a tent, excavating a grave, interment, entombment, inurnment, setting a vault, or
 41 other related services within the cemetery;
- 42 (9) "Columbarium", a building or structure for the inurnment of cremated human remains;
- 43 (10) "Community mausoleum", a mausoleum containing a substantial area of enclosed
 44 space and having either a heating, ventilating, or air conditioning system;
- 45 (11) "Department", department of commerce and insurance;
- 46 (12) "Developed acreage", the area ~~[which]~~ that has been platted into grave spaces and has
 47 been developed with roads, paths, features, or ornamentations and in which burials can be made;
- 48 (13) "Director", director of the division of professional registration;
- 49 (14) "Division", division of professional registration;

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

(16) "Endowed care cemetery", a cemetery, or a section of a cemetery, ~~[which]~~ that represents itself as offering endowed care and ~~[which]~~ that complies with the provisions of sections 214.270 to 214.410;

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

(18) "Escrow account", an account established in lieu of an endowed care fund as provided under section 214.330 or an account used to hold deposits under section 214.387;

(19) "Escrow agent", an attorney, title company, certified public accountant, or other person authorized by the division to exercise escrow powers under the laws of this state;

(20) "Escrow agreement", an agreement subject to approval by the office between an escrow agent and a cemetery operator or its agent or related party with common ownership~~[;]~~ to receive and administer payments under cemetery prearranged contracts sold by the cemetery operator;

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

(22) "Fraternal cemetery", a cemetery owned, operated, controlled, or managed by any fraternal organization or auxiliary organizations thereof, in which the sale of burial space is restricted solely to its members and their immediate families;

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

(24) "Government cemetery", or "municipal cemetery", a cemetery owned, operated, controlled, or managed by the federal government, the state, or a political subdivision of the state, including a county or municipality or instrumentality thereof;

(25) "Grave" or "plot", a place of ground in a cemetery, used or intended to be used for burial of human remains;

(26) "Human and pet cemetery", a tract of real estate separate from a cemetery in which both human remains and the remains of creatures other than human may be interred and memorialized at the discretion of the lot holder and subject to the rules of the human and pet cemetery. Burial space in a human and pet cemetery shall have the same meaning as defined in this section but be applicable to pets as well as human dead. A human and pet cemetery shall be treated as a cemetery under sections 214.270 to 214.410 for purposes of licensing and endowed care;

(27) "Human remains", the body of a deceased person in any state of decomposition, as well as cremated remains;

~~[(27)]~~ (28) "Inurnment", placing an urn containing cremated remains in a burial space;

~~[(28)]~~ (29) "Lawn crypt", a burial vault or other permanent container for a casket ~~[which]~~ that is permanently installed below ground prior to the time of the actual interment. A lawn crypt may permit single or multiple interments in a grave space;

~~[(29)]~~ (30) "Mausoleum", a structure or building for the entombment of human remains in crypts;

1 ~~[(30)]~~ (31) "Niche", a space in a columbarium used or intended to be used for inurnment of
 2 cremated remains;

3 ~~[(31)]~~ (32) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or a
 4 section of a cemetery for which no endowed care trust fund has been established in accordance with
 5 sections 214.270 to 214.410;

6 ~~[(32)]~~ (33) "Office", the office of endowed care cemeteries within the division of
 7 professional registration;

8 ~~[(33)]~~ (34) "Owner of burial space", a person to whom the cemetery operator or ~~[his]~~ the
 9 operator's authorized agent has transferred the right of use of burial space;

10 ~~[(34)]~~ (35) "Person", an individual, corporation, partnership, joint venture, association, trust,
 11 or any other legal entity;

12 ~~[(35)]~~ (36) "Registry", the list of cemeteries maintained in the division office for public
 13 review. The division may charge a fee for copies of the registry;

14 ~~[(36)]~~ (37) "Religious cemetery", a cemetery owned, operated, controlled, or managed by
 15 any church, convention of churches, religious order, or affiliated auxiliary thereof in which the sale
 16 of burial space is restricted solely to its members and their immediate families;

17 ~~[(37)]~~ (38) "Surface lawn crypt", a sealed burial chamber whose lid protrudes above the land
 18 surface;

19 ~~[(38)]~~ (39) "Total acreage", the entire tract ~~[which]~~ that is dedicated to or reserved for
 20 cemetery purposes;

21 ~~[(39)]~~ (40) "Trustee of an endowed care fund", the separate legal entity qualified under
 22 section 214.330 appointed as trustee of an endowed care fund."; and

23
 24 Further amend said bill by amending the title, enacting clause, and intersectional references
 25 accordingly.