

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 443
101ST GENERAL ASSEMBLY

1359H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 214.160 and 214.270, RSMo, and to enact in lieu thereof two new sections relating to cemeteries.

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

Section A. Sections 214.160 and 214.270, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 214.160 and 214.270, to read as follows:

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

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

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.

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

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

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

28 (4) Give appropriate consideration to those facts and circumstances that the investment
29 fiduciary knows or should know are relevant to the particular investment or investment course
30 of action involved, including the role the investment or investment course of action plays in that
31 portion of the investments for which the investment fiduciary has responsibility. For purposes
32 of this subdivision, "appropriate consideration" shall include, but is not limited to, a
33 determination by the investment fiduciary that a particular investment or investment course of
34 action is reasonably designed to further the purposes of supporting, maintaining, and beautifying
35 any public or private cemetery or any particular part thereof, which may be designated by the
36 person, persons, or firm or association making said gift or bequest, while considering the risk of
37 loss and the opportunity for gain or other return associated with the investment or investment
38 course of action and considering the following factors as they relate to the investment or
39 investment course of action:

40 (a) The diversification of the investments;

41 (b) The liquidity and current return of the investments relative to the anticipated cash
42 flow requirements; and

43 (c) The projected return of the investments relative to the funding objectives; and

44 (5) Give appropriate consideration to investments that would enhance the general welfare
45 of this state and its citizens if those investments offer the safety and rate of return comparable
46 to other investments available to the investment fiduciary at the time the investment decision is
47 made.

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

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 merchandise", a monument, marker, memorial, tombstone, headstone, urn,
6 outer burial container, or similar article ~~[which]~~ **that** may contain specific lettering, shape, color,
7 or design as specified by the purchaser;

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

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

15 (5) "Cemetery association", any number of persons who shall have associated themselves
16 by articles of agreement in writing as a not-for-profit association or organization, whether
17 incorporated or unincorporated, formed for the purpose of ownership, preservation, care,
18 maintenance, adornment and administration of a cemetery. Cemetery associations shall be
19 governed by a board of directors. Directors shall serve without compensation;

20 (6) "Cemetery operator" or "operator", any person who owns, controls, operates or
21 manages a cemetery;

22 (7) "Cemetery prearranged contract", any contract with a cemetery or cemetery operator
23 for burial merchandise or burial services covered by sections 214.270 to 214.410 ~~[which]~~ **that**
24 is entered into before the death of the individual for whom the burial merchandise or burial
25 services are intended;

26 (8) "Cemetery service" or "burial service", those services performed by a cemetery owner
27 or operator licensed as an endowed care or nonendowed cemetery including setting a monument
28 or marker, setting a tent, excavating a grave, interment, entombment, inurnment, setting a vault,
29 or other related services within the cemetery;

30 (9) "Columbarium", a building or structure for the inurnment of cremated human
31 remains;

32 (10) "Community mausoleum", a mausoleum containing a substantial area of enclosed
33 space and having either a heating, ventilating, or air conditioning system;

34 (11) "Department", department of commerce and insurance;

35 (12) "Developed acreage", the area ~~[which]~~ **that** has been platted into grave spaces and
36 has been developed with roads, paths, features, or ornamentations and in which burials can be
37 made;

38 (13) "Director", director of the division of professional registration;

39 (14) "Division", division of professional registration;

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

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

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

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

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

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

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

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

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

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

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

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

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

85 ~~[(27)]~~ (28) "Inurnment", placing an urn containing cremated remains in a burial space;

86 ~~[(28)]~~ (29) "Lawn crypt", a burial vault or other permanent container for a casket ~~[which]~~
87 **that** is permanently installed below ground prior to the time of the actual interment. A lawn
88 crypt may permit single or multiple interments in a grave space;

89 ~~[(29)]~~ (30) "Mausoleum", a structure or building for the entombment of human remains
90 in crypts;

91 ~~[(30)]~~ (31) "Niche", a space in a columbarium used or intended to be used for inurnment
92 of cremated remains;

93 ~~[(31)]~~ (32) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or a
94 section of a cemetery for which no endowed care trust fund has been established in accordance
95 with sections 214.270 to 214.410;

96 ~~[(32)]~~ (33) "Office", the office of endowed care cemeteries within the division of
97 professional registration;

98 ~~[(33)]~~ (34) "Owner of burial space", a person to whom the cemetery operator or ~~[his]~~ **the**
99 **operator's** authorized agent has transferred the right of use of burial space;

100 ~~[(34)]~~ (35) "Person", an individual, corporation, partnership, joint venture, association,
101 trust, or any other legal entity;

102 ~~[(35)]~~ (36) "Registry", the list of cemeteries maintained in the division office for public
103 review. The division may charge a fee for copies of the registry;

104 ~~[(36)]~~ (37) "Religious cemetery", a cemetery owned, operated, controlled, or managed
105 by any church, convention of churches, religious order, or affiliated auxiliary thereof in which
106 the sale of burial space is restricted solely to its members and their immediate families;

107 ~~[(37)]~~ (38) "Surface lawn crypt", a sealed burial chamber whose lid protrudes above the
108 land surface;

109 ~~[(38)]~~ (39) "Total acreage", the entire tract ~~[which]~~ **that** is dedicated to or reserved for
110 cemetery purposes;

111 [~~(39)~~] **(40)** "Trustee of an endowed care fund", the separate legal entity qualified under
112 section 214.330 appointed as trustee of an endowed care fund.

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