

SECOND REGULAR SESSION

# HOUSE BILL NO. 2672

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WEST.

5608H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 214.270 and 214.389, RSMo, and to enact in lieu thereof three new sections relating to cemeteries.

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

Section A. Sections 214.270 and 214.389, RSMo, are repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 214.270, 214.272, and 214.389, to read as  
3 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  
3 to represent the operator in dealing with the general public, including owners of the burial  
4 space 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,  
7 color, 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  
11 formal dedication or reservation by deed but shall not include any of the foregoing held or  
12 operated by the state or federal government or any political subdivision thereof, any  
13 incorporated city or town, any county, or any religious organization, cemetery association, or  
14 fraternal society holding the same for sale solely to members and their immediate families;

15 (5) "Cemetery association", any number of persons who shall have associated  
16 themselves by articles of agreement in writing as a not-for-profit association or organization,

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.

17 whether incorporated or unincorporated, formed for the purpose of ownership, preservation,  
18 care, maintenance, adornment, and administration of a cemetery. Cemetery associations shall  
19 be 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  
23 operator for burial merchandise or burial services covered by sections 214.270 to 214.410  
24 ~~[which]~~ **that** is entered into before the death of the individual for whom the burial  
25 merchandise or burial services are intended;

26 (8) "Cemetery service" or "burial service", those services performed by a cemetery  
27 owner or operator licensed as an endowed care or nonendowed cemetery including setting a  
28 monument or marker, setting a tent, excavating a grave, interment, entombment, inurnment,  
29 setting a vault, 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  
33 enclosed 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  
36 and has been developed with roads, paths, features, or ornamentations and in which burials  
37 can be 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  
41 the endowment within a cemetery, including any improvements made for the benefit of such  
42 burial space. Endowed care shall include the general overhead expenses needed to  
43 accomplish such maintenance, repair, care, and improvements. Endowed care shall include  
44 the terms perpetual care, permanent care, continual care, eternal care, care of duration, or any  
45 like term;

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

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

54 This definition includes the terms endowed care funds, maintenance funds, memorial care  
55 funds, perpetual care funds, or any like term;

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

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

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

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

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

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

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

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

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

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

84 [~~27~~] (28) "Inurnment", placing an urn containing cremated remains in a burial  
85 space;

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

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

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

93           ~~[(31)]~~ (32) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or  
94 a section of a cemetery for which no endowed care trust fund has been established in  
95 accordance 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]~~  
99 **the operator's** authorized agent has transferred the right of use of burial space;

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

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

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

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

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

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

**214.272. A human and pet cemetery shall be treated as a cemetery under  
2 sections 214.270 to 214.410 for purposes of licensing and endowed care.**

214.389. 1. The division may direct a trustee, financial institution, or escrow agent to  
2 suspend distribution from an endowed care trust fund or escrow account if the cemetery  
3 operator does not have a current and active cemetery operator license, has failed to file an  
4 annual report, or if, after an audit or examination, the division determines there is a deficiency  
5 in an endowed care trust fund or escrow account maintained under section 214.330 and the  
6 cemetery operator has failed to file a corrective action plan detailing how the deficiency shall  
7 be remedied. For purposes of this section, a deficiency shall only be deemed to exist if, after  
8 an audit or examination, the division determines a cemetery operator has failed to deposit the  
9 total aggregate of funds required to be deposited in trust or an escrow account pursuant to  
10 section 214.320 or subsection 1 of section 214.335, or has received disbursements from the  
11 trust or escrow account in excess of what is permitted under section 214.330. No deficiency

12 shall be deemed to be created by fluctuations in the value of investments held in trust or  
13 escrow.

14       2. The division shall provide written notification to the cemetery operator and the  
15 trustee, financial institution, or escrow agent within fourteen days of discovering a potential  
16 violation as described in this section. Upon receipt of written notification from the division,  
17 the cemetery operator shall have sixty days to cure any alleged violations or deficiencies cited  
18 in the notification without a suspension of distribution. If, after the sixty-day time period, the  
19 division ~~[feels]~~ **finds** the cemetery **operator** has not cured the alleged violations or  
20 deficiencies cited in the notification, the division may send a notice of suspension to the  
21 cemetery operator that the division is ordering a suspension of distribution as described in this  
22 section. In the event of a suspension of distribution, the amount of any distribution suspended  
23 shall become principal, with credit against the deficiency, unless the cemetery operator files  
24 an appeal with a court of competent jurisdiction or with the administrative hearing  
25 commission, as provided herein. In the event of an appeal, a cemetery operator may request  
26 the court or administrative hearing commission stay the suspension of distribution after a  
27 showing of necessity and good cause or authorize payment from the endowed care trust fund  
28 or escrow account for necessary expenses from any amount subject to distribution.

29       3. Upon receipt of an order from the division suspending distribution pursuant to this  
30 section, a trustee, financial institution, or escrow agent shall immediately suspend distribution  
31 as required by the order. A trustee, financial institution, or escrow agent shall be exempt from  
32 liability for failure to distribute funds as ordered by the division.

33       4. A cemetery operator may appeal an order suspending distribution pursuant to this  
34 section to the administrative hearing commission. The administrative hearing commission  
35 shall receive notice of such appeal within thirty days from the date the notice of suspension  
36 was mailed by certified mail. Failure of a person whose license was suspended to notify the  
37 administrative hearing commission of his or her intent to appeal waives all rights to appeal the  
38 suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the  
39 administrative hearing commission pursuant to chapter 621.

40       5. A cemetery operator may apply for reinstatement of distributions upon  
41 demonstration that the deficiencies or other problems have been cured or that the operator  
42 has otherwise come into compliance.

43       6. The division may promulgate rules to implement the provisions of this section.  
44 Any rule or portion of a rule, as that term is defined in section 536.010, that is created under  
45 the authority delegated in this section shall become effective only if it complies with and is  
46 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section  
47 and chapter 536 are nonseverable and if any of the powers vested with the general assembly  
48 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a

49 rule are subsequently held unconstitutional, then the grant of rulemaking authority and any  
50 rule proposed or adopted after August 28, 2010, shall be invalid and void.

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