

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2240

By Committee on Local Government

2-9

1 AN ACT concerning cemetery corporations; relating to cemetery
2 merchandise trust contracts; relating to the permanent maintenance
3 fund; amending K.S.A. 16-320, 16-321, 16-322, 16-323, 16-325, 16-
4 328, 16-329, 16-331, 16-332, 16-333, 16-334, 17-1311, 17-1311a,
5 17-1312, 17-1312a, 17-1312d, 17-1312e, 17-1312g and 17-1366 and
6 repealing the existing sections; also repealing K.S.A. 16-324.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 New Section 1. (a) Except as provided by this section, all
10 information which the secretary of state shall gather or record in
11 making an investigation and examination of any cemetery corporation,
12 or the reporting by the cemetery corporation or the trustee, shall be
13 deemed to be confidential information, and shall not be disclosed by
14 the secretary of state, any assistant, examiner or employee thereof,
15 except to: (1) Officers and the members of the board of directors of the
16 cemetery corporation being audited; (2) the attorney general, when in
17 the opinion of the secretary of state the same should be disclosed; and
18 (3) the appropriate official for the municipality in which the cemetery
19 resides when in the opinion of the secretary of state the same should be
20 disclosed.

21 (b) Upon request, the secretary of state may disclose to any person
22 whether a cemetery corporation maintains a cemetery merchandise trust
23 fund under K.S.A. 16-322, and amendments thereto, and whether such
24 funds are maintained in compliance with the provisions of such laws.

25 (c) The provisions of subsection (a) shall expire on July 1, 2016,
26 unless the legislature acts to reauthorize such provisions. The
27 provisions of subsection (a) shall be reviewed by the legislature prior to
28 July 1, 2016.

29 (d) This section shall be part of and supplemental to article 3 of
30 chapter 16 of the Kansas Statutes Annotated, and amendments thereto.

31 New Sec. 2. The following definitions shall apply to this act:

32 (a) "Cemetery corporation" means any individual or entity
33 required to maintain permanent maintenance funds under the provisions

1 of K.S.A. 17-1312f, and amendments thereto.

2 (b) "Funding requirement" means that portion of the purchase
3 price equal to 15% of the purchase price, but not less than \$25, of a
4 burial space, as defined in K.S.A. 17-1311, and amendments thereto.

5 (c) "Permanent maintenance fund" means a certificate of deposit, a
6 business savings account, or an irrevocable trust fund whose proceeds
7 are derived from not less than 15% of the purchase price of the
8 following: Grave lots, grave spaces, burial or interment rights, and
9 developed or existing lawn crypts, mausoleum spaces, or niches. The
10 total amount of the deposit shall not be less than \$25 per burial space.

11 (d) "Purchase price" means the gross amount, less sales tax, if any,
12 to be paid for cemetery burial space. The purchase price does not
13 include finance charges or charges for credit life insurance.

14 (e) "Trustee" means:

15 (1) A bank, savings and loan association, savings bank or credit
16 union organized under the laws of this state with the authority to
17 provide trust services;

18 (2) a federally chartered bank, savings and loan association,
19 savings bank or credit union having a physical location within the state
20 of Kansas and the authority to provide trust services; or

21 (3) a trust company organized under the laws of this state.

22 (f) "Trustor" means the cemetery corporation responsible for
23 making deposits in permanent maintenance fund, which is subject of a
24 trust.

25 (g) This section shall be part of and supplemental to article 13 of
26 chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

27 New Sec. 3. (a) All funds held in a permanent maintenance fund
28 shall not be subject to attachment, garnishment or other legal process,
29 nor be seized, taken, appropriated or applied to pay any debt or liability
30 of the cemetery corporation, buyer or beneficiary, by any legal or
31 equitable process or by operation of law.

32 (b) This section shall be part of and supplemental to article 13 of
33 chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

34 Sec. 4. K.S.A. 16-320 is hereby amended to read as follows: 16-
35 320. The following definitions shall apply to this act:

36 (a) "*Preneed* cemetery merchandise" means burial vaults, grave
37 liners, grave boxes, urns, memorials, markers, vases, memorial vases,
38 tombstones, lawn crypts, niches and mausoleum spaces and ~~all~~ *any*
39 merchandise ~~commonly~~ sold, ~~or~~ used in, *or delivered to* cemeteries.

1 Caskets; grave lots, grave spaces; burial or interment rights; and
2 developed or existing lawn crypts, mausoleum spaces or niches are not
3 *preneed* cemetery merchandise.

4 (b) "Purchase price" means the gross amount, ~~less sales tax, if any,~~
5 to be paid for *preneed* cemetery merchandise, *preneed burial products*
6 *or services* under the provisions of a ~~preneed~~ *preneed* merchandise
7 contract. The purchase price does not include finance charges, sales
8 tax, charges for real property interests or charges for credit life
9 insurance.

10 (c) "~~Prepaid~~ *Preneed* merchandise contract" means any agreement
11 for the sale of *preneed* cemetery merchandise *or preneed burial*
12 *products or services* by a cemetery corporation which requires payment
13 of the purchase price, in whole or in part, prior to delivery of the
14 *preneed* cemetery merchandise *or preneed burial products or services*,
15 which agreement is entered into from and after the effective date of this
16 act.

17 (d) "Cemetery corporation" means any individual or entity
18 required to maintain permanent maintenance funds under the provisions
19 of K.S.A. 17-1312f, and amendments thereto.

20 (e) "~~Minimum~~ Funding requirement" means that portion of the
21 purchase price equal to ~~110% of the wholesale~~ *50% of the retail cost*
22 *price* f.o.b. to the cemetery corporation of ~~the~~ *preneed* cemetery
23 merchandise, *as defined in subsection (a) of this section, covered*
24 *described in a prepaid the preneed* merchandise contract, and *100% of*
25 *the retail price of any preneed burial product; or service, as defined in*
26 *subsection (f) of this section, including distributable earnings.*
27 ~~Wholesale costs shall be determined by the cemetery corporation on the~~
28 ~~basis of such quotations and price lists as are available to the cemetery.~~

29 (f) "*Preneed burial products or services*" means any casket or
30 service incidental to the burial of a body or the placement of a
31 memorial, marker, vase, or tombstone.

32 (g) "*Cemetery merchandise trust fund*" means a special purpose
33 trust fund required to administer payments received from the sale of
34 *preneed* cemetery merchandise, *preneed burial products or services*.

35 (h) "*Distributable earnings*" means income and capital gains, less
36 any reasonable costs incurred in serving as trustee, including a
37 reasonable fee for services and applicable taxes and costs.

38 (i) "*Trustee*" means:

39 (1) *A bank, savings and loan association, savings bank or credit*

1 *union organized under the laws of this state with the authority to*
2 *provide trust services;*

3 *(2) a federally chartered bank, savings and loan association,*
4 *savings bank or credit union having a physical location within the state*
5 *of Kansas and the authority to provide trust services; or*

6 *(3) a trust company organized under the laws of this state.*

7 Sec. 5. K.S.A. 16-321 is hereby amended to read as follows: 16-

8 321. (a) Any cemetery corporation entering into any ~~prepaid preneed~~
9 merchandise contract shall establish and maintain a cemetery
10 merchandise trust fund under K.S.A. 16-322, ~~and amendments thereto.~~
11 ~~All prepaid merchandise contracts shall be in writing. The primary~~
12 ~~purpose of the cemetery merchandise trust fund is to maintain the~~
13 ~~corpus of the trust fund with the goal that the growth of the corpus will~~
14 ~~be at least equal to the wholesale costs of the preneed cemetery~~
15 ~~merchandise or preneed burial products or services, at the time of~~
16 ~~delivery or need.~~

17 *(b) All preneed cemetery merchandise contracts shall be in*
18 *writing.*

19 ~~(b)(c)~~ *(c)* A cemetery corporation entering into a ~~prepaid preneed~~
20 merchandise contract ~~that allows the purchaser to make installment~~
21 ~~payments shall be entitled to retain all purchaser payments until of the~~
22 ~~purchase price under the prepaid merchandise contract until it has~~
23 ~~received an amount equal to 35.25% of the purchase price is received,~~
24 ~~and thereafter, shall deposit 100% of each payment into of the cemetery~~
25 ~~merchandise sold in a prepaid merchandise contract. trust fund until the~~
26 ~~funding requirement has been deposited.~~

27 ~~(e)~~ *(d)* ~~Deposits to the cemetery merchandise trust fund shall be~~
28 ~~made within 15 days following the end of each calendar month after~~
29 ~~the moneys are received. After the cemetery corporation has received~~
30 ~~the amounts it is entitled to receive under subsection (b) of this section,~~
31 ~~all payments of the purchase price to the cemetery corporation under a~~
32 ~~prepaid merchandise contract shall be deposited by the cemetery~~
33 ~~corporation in a cemetery merchandise trust fund until such time as the~~
34 ~~requirements of subsection (d) of this section have been satisfied or~~
35 ~~delivery is made of the cemetery merchandise. Thereafter, all~~
36 ~~payments of the purchase price in excess of the minimum funding~~
37 ~~requirements may be retained by the cemetery corporation. Deposits~~
38 ~~shall be made within 10 business days after the moneys are received.~~

39 ~~(d)~~ *(e)* ~~Within 30 days following the end of each quarter, the~~

1 *cemetery corporation shall provide the trustee and the secretary of*
2 *state a report detailing the transactions of the previous quarter. The*
3 *report shall be in a form and manner approved by the secretary of state*
4 *and shall include the following:*

5 (1) *All sales of preneed cemetery merchandise, preneed burial*
6 *products and preneed services.*

7 (2) *All verified deliveries of preneed cemetery merchandise,*
8 *preneed burial products and preneed services along with any request*
9 *for distribution from the trustee.*

10 (3) *If no sales or deliveries transpired during the reporting*
11 *quarter, the report shall be filed showing zero sales or zero deliveries. ;*
12 ~~*as of December 31, each cemetery corporation shall determine the*~~
13 ~~*wholesale cost for all cemetery merchandise covered by a prepaid*~~
14 ~~*merchandise contract for which funds are then held in a cemetery*~~
15 ~~*merchandise trust or in an individual merchandise account. If the*~~
16 ~~*amounts held with respect to a prepaid merchandise contract exceed the*~~
17 ~~*minimum funding requirement the excess shall be paid by the trustee of*~~
18 ~~*the cemetery merchandise trust to the cemetery corporation. In such*~~
19 ~~*event, no further deposit shall be required with respect to the prepaid*~~
20 ~~*merchandise contract until such time as the amounts held no longer*~~
21 ~~*exceed the minimum funding requirement. If the minimum funding*~~
22 ~~*requirement is not satisfied, no amount shall be paid to or withdrawn*~~
23 ~~*by the cemetery corporation and the cemetery corporation shall*~~
24 ~~*continue or shall resume, as the case may be, making the deposits*~~
25 ~~*required by subsection (c) of this section.*~~

26 (f) *Within 30 days following the end of each quarter, the trustee*
27 *shall provide the secretary of state a report of all deposits to and*
28 *distributions from the cemetery merchandise trust fund. The report*
29 *shall be in a form and manner approved by the secretary of state and*
30 *shall include the total amount of the deposits, distributions and the*
31 *name and contact information of the trust officer in charge of the*
32 *account.*

33 (g) *At least annually, as of December 31, the trustee of the*
34 *merchandise trust fund shall allocate the distributable earnings to all*
35 *preneed cemetery merchandise, preneed burial products or services for*
36 *which funds are then held in a cemetery merchandise trust fund. The*
37 *trustee may, at the request of the cemetery, allocate the distributable*
38 *earnings on a regular basis more often than annually and in which*
39 **case the calculation of the distributable earnings shall be filed**

1 *quarterly on December 31, March 31, June 30 and September 30 of*
2 *each year. The trustee shall report to the secretary of state the*
3 *calculation of the distributable earnings within 30 days of the*
4 *allocation, in a form and manner approved by the secretary of state.*

5 *(h) The cemetery corporation shall provide the secretary of state a*
6 *copy of all trust instruments. The cemetery corporation shall obtain*
7 *prior written approval from the secretary of state before the trust*
8 *instrument shall be terminated, transferred or amended. The cemetery*
9 *corporation shall provide the secretary of state copies of any*
10 *amendments to the trust instrument before the amendments shall*
11 *become effective.*

12 Sec. 6. K.S.A. 16-322 is hereby amended to read as follows: 16-
13 322. (a) ~~The cemetery corporation shall establish and maintain a~~
14 ~~cemetery merchandise trust fund must be maintained with a bank, trust~~
15 ~~company or savings and loan association having trust powers. with a~~
16 ~~trustee as defined in K.S.A. 16-320, and amendments thereto. A copy~~
17 ~~of each contract or a written notice containing all relevant information~~
18 ~~regarding such prepaid merchandise contract for which deposits are~~
19 ~~made shall be furnished financial institutions. The institutions shall~~
20 ~~serve as trustees for the purposes of this act. The trustee may appoint~~
21 ~~one or more agents to provide administrative or investment advisory~~
22 ~~services, provided the trustee shall not assign or delegate the liability~~
23 ~~and fiduciary responsibilities owed to the cemetery merchandise trust~~
24 ~~fund to another financial institution or agent. Nothing in this act shall~~
25 ~~prohibit a trustee, as defined in K.S.A. 16-320, and amendments~~
26 ~~thereto, from entering into a co-trustee relationship with another~~
27 ~~trustee, who would not independently satisfy the requirements of that~~
28 ~~section provided the co-trustee: (1) Is authorized to do business in~~
29 ~~Kansas; and (2) submits personally to the jurisdiction of the courts of~~
30 ~~this state. Under no circumstances shall any trustee assign or delegate~~
31 ~~their liability or fiduciary responsibilities under the cemetery~~
32 ~~merchandise trust act. Both trustees and co-trustees are jointly and~~
33 ~~severally liable for the actions of the trustee. All contractual~~
34 ~~agreements shall be subject to, governed by, and construed according~~
35 ~~to the laws of the state of Kansas. Deposits to such fund shall be~~
36 ~~carried in the name of the cemetery corporation and the amounts~~
37 ~~deposited therein may be commingled, but provided that the accounting~~
38 ~~records shall establish a separate account for each prepaid item of~~
39 ~~preneed merchandise. contract. and shall show the amounts deposited,~~

1 ~~and the income or loss accruing thereon, with respect to each prepaid~~
2 ~~merchandise contract. Subject to the requirements of subsections (a)~~
3 ~~through (f) of K.S.A. 58-24a02, and amendments thereto, the trustee~~
4 ~~shall invest the trust funds. The trustee shall reimburse the cemetery~~
5 ~~corporation for all income taxes and costs incurred with respect to the~~
6 ~~operation of such fund, and the trustee may recover shall be reimbursed~~
7 ~~from the earnings of such the cemetery merchandise trust fund for all~~
8 ~~reasonable costs incurred in serving as trustee, including a reasonable~~
9 ~~fee for its services. The taxes and costs shall may be paid from~~
10 ~~earnings of the fund prior to the allocation of earnings to the individual~~
11 ~~accounts: preneed cemetery merchandise or preneed burial products or~~
12 ~~services.~~

13 (b) No part of the moneys required by K.S.A. 16-321, and
14 amendments thereto, to be held under a ~~prepaid~~ *preneed* merchandise
15 contract shall ever be used for any purpose other than investment as
16 ~~authorized by K.S.A. 16-324, and amendments thereto,~~ until delivery of
17 the merchandise is made. With respect to any cemetery merchandise
18 which is not affixed to real property, delivery shall occur when physical
19 possession is tendered to the purchaser, and a bill of sale, *storage* or
20 similar instrument of title is delivered to the purchaser. With respect to
21 cemetery merchandise which is affixed to realty, delivery shall occur
22 when construction or permanent installation of the merchandise has
23 been completed. Upon delivery of the *preneed* cemetery merchandise,
24 *or preneed burial products or services*, the cemetery corporation shall
25 present the trustee with a verified statement, *in a form and manner*
26 *approved by the secretary of state under subsection (e) of K.S.A. 16-*
27 *321, and amendments thereto*, that delivery has been made. Upon such
28 presentation the trustee shall pay to the cemetery corporation ~~the an~~
29 ~~amount of any funds equal to the market value allocated to preneed~~
30 ~~cemetery merchandise or preneed burial products or services held in~~
31 ~~trust with respect to the cemetery merchandise delivered, and no further~~
32 ~~deposits shall be made with respect to such cemetery merchandise.~~

33 (c) *The trust instrument shall be effective upon written approval*
34 *by the secretary of state and compliance with this section, unless it is*
35 *determined by a court of law that the underlying trust instrument is in*
36 *conflict with Kansas statutes, then that portion of the underlying trust*
37 *instrument becomes null and void and shall be of no further force or*
38 *effect. The trust instrument is in compliance with this section if the*
39 *following is provided to the secretary of state:*

1 (1) *The names of the trustee and the cemetery corporation as*
2 *trustor.*

3 (2) *The trustee shall submit a quarterly report to the secretary of*
4 *state. The report shall be in a form and manner prescribed by the*
5 *secretary of state and shall contain the following:*

6 (A) *Deposits;*

7 (B) *withdrawals;*

8 (C) *all interest, dividends, and income earned; and*

9 (D) *capital gains or capital losses.*

10 (3) *Within 60 days following December 31 of each year, the*
11 *trustee shall report the allocation of distributable earnings to the*
12 *secretary of state in a form and manner prescribed by the secretary of*
13 *state.*

14 (4) *The trustee shall use deposit and withdrawal forms approved*
15 *by the secretary of state.*

16 (5) *The trustee shall invest the trust funds subject to the*
17 *requirements of subsections (a) through (f) of K.S.A. 58-24a02, and*
18 *amendments thereto. Control of the trust funds by the trustor is*
19 *prohibited.*

20 (6) *By accepting the trusteeship of the cemetery merchandise trust*
21 *fund, the trustee submits personally to the jurisdiction of the courts of*
22 *this state. All contractual agreements shall be subject to, governed by,*
23 *and construed according to the laws of the state of Kansas.*

24 (7) *The trustee shall sign an affirmation under penalty of perjury,*
25 *declaring the trustee has read, understands, and agrees to comply with*
26 *the requirements of K.S.A. 16-320 et seq., and amendments thereto.*

27 Sec. 7. K.S.A. 16-323 is hereby amended to read as follows: 16-
28 ~~323. Any person who violates any provision of this act shall be deemed~~
29 ~~guilty of a class A misdemeanor.~~(a) *Misuse of the cemetery*
30 *merchandise trust fund or any money belonging thereto is knowingly*
31 *using, investing, lending or permitting another to use moneys in the*
32 *fund in a manner not authorized by law.*

33 (b) *Misuse of the cemetery merchandise trust fund is a severity*
34 *level 7, nonperson felony.*

35 Sec. 8. K.S.A. 16-325 is hereby amended to read as follows: 16-
36 325. (a) *The secretary of state, or the secretary's representative, shall,*
37 *while auditing each cemetery corporation, pursuant to K.S.A. 17-*
38 *1312a, and amendments thereto, audit the cemetery merchandise trusts*
39 *required by this act, and approve the cemetery's trustee's determination*

1 of the ~~wholesale costs distributable earnings period. under subsection~~
2 ~~(d) of K.S.A. 16-321, and amendments thereto.~~ For such purposes, the
3 secretary of state or the secretary's representative, is authorized to
4 administer oaths and to examine under oath the directors, officers,
5 employees and agents of any cemetery corporation. Such examination
6 may be reduced to writing by the person taking it and the examiner may
7 make findings as to the condition of each trust fund examined. For the
8 purposes of such audits, the secretary of state may *also* require ~~any~~
9 ~~officer of a cemetery corporation~~ *the trustee* to furnish and submit the
10 books, records, papers and instruments of such cemetery corporation. ~~to~~
11 ~~the examination.~~ *The secretary of state shall be authorized to obtain*
12 *trust accounting records from the trustee.*

13 *(b) The secretary of state shall promulgate rules and regulations*
14 *for the purpose of oversight and audit of the cemetery merchandise*
15 *trust fund.*

16 Sec. 9. K.S.A. 16-328 is hereby amended to read as follows: 16-
17 328. ~~In the absence of fraud,~~ All funds held in a cemetery merchandise
18 trust shall not be subject to attachment, garnishment or other legal
19 process, nor be seized, taken, appropriated or applied to pay any debt or
20 liability of the cemetery corporation, buyer or beneficiary, by any legal
21 or equitable process or by operation of law.

22 Sec. 10. K.S.A. 16-329 is hereby amended to read as follows: 16-
23 329. No cemetery corporation shall enter into any ~~prepaid~~ *preneed*
24 merchandise contract until such corporation has filed with the secretary
25 of state a notification of its intention to sell and engage in such ~~prepaid~~
26 *preneed* merchandise contracts. Such notice shall include the name of
27 the cemetery corporation, its principal place of business and the name
28 and address of the trustee or trustees to be utilized under the provisions
29 of this act.

30 Accounting records and information required by this act shall be
31 maintained in a ~~format~~ *form and manner* approved by the secretary of
32 state. A report of the merchandise trust ~~account~~ *fund* shall be required
33 ~~of the cemetery corporation~~ *annually* as part of the corporation's ~~annual~~
34 *monthly* report on a form provided or approved by the secretary of
35 state.

36 Sec. 11. K.S.A. 16-331 is hereby amended to read as follows: 16-
37 331. Any cemetery corporation which refuses or neglects to establish or
38 maintain a cemetery merchandise trust fund, in accordance with the
39 requirements of this act for a period of ~~90~~ *60* days after *written* demand

1 to do so is made upon it by the secretary of state, shall be deemed to
2 have forfeited its ~~corporate franchise~~. *cemetery corporation*. The
3 attorney general, upon the request of the secretary of state, shall then
4 begin an action for the appointment of a receiver for such cemetery
5 corporation and to dissolve the same.

6 Sec. 12. K.S.A. 16-332 is hereby amended to read as follows: 16-
7 332. Any cemetery corporation entering into a ~~prepaid~~ *preneed*
8 *cemetery* merchandise contract shall provide in such contract that:

9 (a) A purchaser, under a ~~prepaid~~ *preneed cemetery* merchandise
10 contract covered in this act who permanently moves to another state in
11 the United States, may direct that the merchandise, so long as the same
12 is not a part of nor affixed to real estate, be delivered to a cemetery in
13 the state of the purchaser's residence, except that the purchaser may be
14 required to pay the additional transportation costs which exceed those
15 the cemetery would have incurred to provide and deliver the
16 merchandise to the seller cemetery; or

17 (b) a purchaser who has entered into a ~~prepaid~~ *preneed cemetery*
18 merchandise contract covered by this act may, upon the purchaser
19 permanently changing residence to a place more than 150 miles from
20 the cemetery, cancel the contract upon written notice to the cemetery,
21 which notice shall then be forwarded by the cemetery to the trustee of
22 the cemetery merchandise trust fund. Upon receipt of such notice, the
23 ~~prepaid~~ *preneed cemetery* merchandise contract shall be cancelled, and
24 the trustee, after deducting that contract's share of applicable costs and
25 taxes provided for in K.S.A. 16-322, *and amendments thereto*, shall pay
26 to the purchaser not less than 85% of the funds held in trust for the
27 contract pursuant to this act. The balance shall be paid to the cemetery
28 corporation and the trustee shall be discharged from further obligation
29 as to such contract.

30 Sec. 13. K.S.A. 16-333 is hereby amended to read as follows: 16-
31 333. Sales of *preneed* cemetery merchandise *contracts or preneed*
32 *burial products or services* subject to this act shall be exempt from the
33 provisions of K.S.A. 16-301 through 16-309, inclusive, and ~~any~~
34 amendments thereto.

35 Sec. 14. K.S.A. 16-334 is hereby amended to read as follows: 16-
36 334. (a) Cemetery corporations subject to ~~an audit by the secretary of~~
37 ~~state pursuant to K.S.A. 16-325, and amendments thereto~~, *this act* shall
38 file, in the office of the secretary of state, a copy of the agreement or
39 document which establishes the trust between the cemetery corporation

1 and the trustee.

2 (b) *The trust agreement shall acknowledge all contractual*
3 *agreements and shall be subject to, governed by, and construed*
4 *according to K.S.A. 16-320 et seq., and amendments thereto.*

5 Sec. 15. K.S.A. 17-1311 is hereby amended to read as follows: 17-

6 1311. (a) A cemetery corporation shall maintain, ~~in a trust company~~
7 ~~located within the state of Kansas, a state or national bank located~~
8 ~~within the state of Kansas, a state or federally chartered savings and~~
9 ~~loan association located within the state of Kansas or a federally~~
10 ~~chartered savings bank located within the state of Kansas~~ *a permanent*
11 *maintenance fund with a trustee*, a percentage of the purchase price of
12 each burial ~~lot~~ *space* sold by it, or any payment on such burial ~~lot~~
13 *space*, not less than 15% of such purchase price, for the permanent
14 maintenance of the cemetery within which the burial ~~lot~~ *space* lies, but
15 the total amount set aside shall not be less than \$25 for each burial ~~lot~~
16 *space* at the time of conveyance of such ~~lot~~ *space*. Deposits to the
17 permanent maintenance fund shall be made within ~~45~~ *15* days ~~of receipt~~
18 ~~of moneys following each calendar month end, after the moneys are~~
19 ~~received. for which deposits are required to be made.~~ Moneys placed in
20 such fund under the provisions of K.S.A. 17-1308, and amendments
21 thereto, shall be credited for the purposes of fulfilling such
22 requirement. Moneys in such fund may be held and invested *subject* to
23 the ~~same extent as is provided in requirements of subsections (a)~~
24 ~~through (f) of K.S.A. 58-24a02, and amendments thereto, but the total~~
25 ~~amount of money invested in any mortgage upon real property shall not~~
26 ~~exceed an amount equal to 75% of the market value of such property at~~
27 ~~the time of such investment. The income of the permanent maintenance~~
28 ~~fund shall be used exclusively for the maintenance of the cemetery.~~ No
29 part of the principal of the fund shall ever be used for any purpose
30 except for ~~such~~ investment. In no event shall any loan of the funds be
31 made to any stockholder, officer or employee of such cemetery
32 corporation, or to any person related, by blood or marriage, to a
33 stockholder, officer or employee. The treasurer of such corporation may
34 deposit, to the credit of such fund, donations or bequests for the fund
35 and may retain property so acquired without limitation as to time and
36 without regard to its suitability for original purchase. ~~As used in this~~
37 ~~section, the term "burial lot" means a plotted space for one grave. Such~~
38 ~~maintenance shall include, but not be limited to, mowing, road~~
39 ~~maintenance and landscaping, but shall not include administrative~~

1 ~~costs, expense of audits or the portion of any capital expense for~~
2 ~~equipment used to maintain portions of a cemetery not sold for burial~~
3 ~~purposes or in use for grave sites.~~

4 (b) *The primary purpose of the permanent maintenance fund is to*
5 *maintain the corpus of the fund. The income earned from the*
6 *permanent maintenance fund may be dispersed to the cemetery. All*
7 *capital gains shall be allocated to principal.*

8 (c) *The cemetery corporation shall obtain prior written approval*
9 *from the secretary of state before the trust instrument shall be*
10 *terminated, transferred, or amended. The cemetery corporation shall*
11 *provide the secretary of state copies of any amendments to the trust*
12 *instrument before the amendments shall become effective.*

13 Sec. 16. K.S.A. 17-1311a is hereby amended to read as follows:
14 17-1311a. (a) Misuse of the permanent maintenance fund or any money
15 belonging thereto is *knowingly* using, lending or permitting another to
16 use; moneys in the fund in a manner not authorized by law; ~~by a~~
17 ~~eustodian or other person having charge or control of such fund or~~
18 ~~moneys by virtue of his position.~~

19 (b) Misuse of the permanent maintenance fund is a severity level
20 7, nonperson felony.

21 Sec. 17. K.S.A. 17-1312 is hereby amended to read as follows: 17-
22 1312. (a) ~~The permanent maintenance fund required to be established~~
23 ~~by K.S.A. 17-1311, and amendments thereto, shall at all times be in the~~
24 ~~custody of a trust company located within the state of Kansas, a state or~~
25 ~~national bank located within the state of Kansas, a state or federally~~
26 ~~chartered savings and loan association located within the state of~~
27 ~~Kansas or a federally chartered savings bank located within the state of~~
28 ~~Kansas. Each cemetery corporation shall establish a trust for moneys~~
29 ~~deposited in the permanent maintenance fund in accordance with this~~
30 ~~section. If the market value of the trust permanent maintenance fund is~~
31 ~~less than \$45,000 \$100,000, the trust permanent maintenance fund may~~
32 ~~have an individual trustee so long as the trust's assets be held in a~~
33 ~~Kansas financial institution, in either certificates of deposit or a~~
34 ~~business savings account which is insured by the federal deposit~~
35 ~~insurance corporation, provided that the fund assets are maintained in~~
36 ~~a segregated account. If the cemetery's permanent maintenance fund~~
37 ~~has a market value of less than \$100,000, the cemetery corporation~~
38 ~~shall comply with the reporting requirements of this act.~~

39 (b) (1) *Unless otherwise authorized by subsection (a), each*

1 *cemetery corporation shall establish and maintain a permanent*
2 *maintenance fund. If the market value of the trust permanent*
3 *maintenance fund is \$45,000 \$100,000 or more, the trustee shall be a*
4 *trust company located within the state of Kansas, a state or national*
5 *bank located within the state of Kansas, a state or federally chartered*
6 *savings and loan association located within the state of Kansas or a*
7 *federally chartered savings bank located within the state of Kansas.*
8 *Any such trust company, bank, savings and loan association or*
9 *federally chartered savings bank with which the custody of a permanent*
10 *maintenance fund has been entrusted may invest, reinvest, exchange,*
11 *retain, sell and manage the moneys within such fund. If the treasurer of*
12 *any cemetery corporation shall entrust the custody of the permanent*
13 *maintenance fund to a savings and loan association or associations or*
14 *federally chartered savings bank or banks, the amount of moneys in the*
15 *custody of any such association or savings bank shall not exceed the*
16 *amount for which deposits in such savings and loan association or*
17 *savings bank are insured by the federal savings and loan insurance*
18 *corporation or other insurer approved by the state commissioner of*
19 *insurance. If the treasurer of any cemetery corporation shall entrust the*
20 *custody of the permanent maintenance fund to a bank or banks or*
21 *federally chartered savings bank or banks, the amount of money in the*
22 *custody of any such bank or savings bank shall not exceed the amount*
23 *for which deposits in such bank or savings bank are insured by the*
24 *federal deposit insurance corporation or other insurer approved by the*
25 *state bank commissioner. Such trust company, bank, savings and loan*
26 *association, federally chartered savings bank or individual trustee may*
27 *serve without bond and may be reasonably compensated for its services*
28 *out of the income of the fund. It shall be a provision of any such trust*
29 *agreement that no moneys, other than income from the trust, shall be*
30 *paid over to the cemetery corporation by the trustee, except upon the*
31 *written permission of the secretary of state. cemetery corporation shall*
32 *establish and maintain the permanent maintenance fund in an*
33 *irrevocable trust with a trustee. The trustee may appoint one or more*
34 *agents to provide administrative or investment advisory services,*
35 *provided the trustee shall not assign or delegate the liability and*
36 *fiduciary responsibilities owed to the permanent maintenance fund to*
37 *another financial institution or agent. The trustee may invest, reinvest,*
38 *exchange, retain, sell, and manage the moneys within such fund,*
39 *pursuant to subsections (a) through (f) of K.S.A. 58-24a02, and*

1 *amendments thereto. Such trustee may be reasonably compensated for*
2 *its services out of the income of the fund. It shall be a provision of any*
3 *such trust agreement that no moneys, other than income from the trust,*
4 *shall be paid over to the cemetery corporation by the trustee, except*
5 *upon the written permission of the secretary of state. Nothing in this*
6 *act shall prohibit a trustee, as defined in K.S.A. 16-320, and*
7 *amendments thereto, from entering into a co-trustee relationship with*
8 *another trustee, who would not independently satisfy the requirements*
9 *of that section provided the co-trustee: (A) Is authorized to do business*
10 *in Kansas; and (B) submits personally to the jurisdiction of the courts*
11 *of this state. Under no circumstances shall any trustee assign or*
12 *delegate their liability or fiduciary responsibilities under the provisions*
13 *of this act. Both trustees and co-trustees are jointly and severally liable*
14 *for the actions of the trustee. All contractual agreements shall be*
15 *subject to, governed by, and construed according to the laws of the*
16 *state of Kansas.*

17 *(2) The trustee may recover from the earnings of the permanent*
18 *maintenance fund for all reasonable costs incurred in serving as*
19 *trustee, including a reasonable fee for its services. The taxes and costs*
20 *may be paid from earnings of the fund prior to the distribution of the*
21 *income. If all income is exhausted, any remaining capital gains tax*
22 *liability may be paid out of the realized capital gains before the*
23 *balance reverts to principal.*

24 *(3) The trustee shall be solely responsible for the investment of the*
25 *moneys held under a cemetery permanent maintenance fund. The trust*
26 *instrument must state that control of the trust funds by the trustor is*
27 *prohibited.*

28 *(c) The trust instrument shall be effective upon written approval*
29 *by the secretary of state and compliance with this section, unless it is*
30 *determined by a court of law that the underlying trust instrument is in*
31 *conflict with Kansas statutes, then that portion of the underlying trust*
32 *instrument becomes null and void and shall be of no further force or*
33 *effect. The trust instrument is in compliance with this section if the*
34 *following is provided to the secretary of state:*

35 *(1) The names of the trustee, the cemetery corporation as trustor*
36 *and the date the trust instrument shall become effective.*

37 *(2) The trustee shall submit a quarterly report to the secretary of*
38 *state. The report shall be in a form and manner approved by the*
39 *secretary of state and shall contain the following:*

- 1 (A) *Deposits to principal;*
2 (B) *any withdrawals from principal;*
3 (C) *all interest, dividends, and income earned;*
4 (D) *interest withdrawn;*
5 (E) *capital gains or capital losses; and*
6 (F) *capital gains taxes paid from capital gains.*
7 (3) *The trustee shall use deposit and withdrawal forms approved*
8 *by the secretary of state.*
9 (4) *The trustee shall invest the trust funds subject to the*
10 *requirements of subsections (a) through (f) of K.S.A. 58-24a02, and*
11 *amendments thereto. Control of the trust funds by the trustor is*
12 *prohibited.*
13 (5) *By accepting the trusteeship of the permanent maintenance*
14 *fund, the trustee submits personally to the jurisdiction of the courts of*
15 *this state. All contractual agreements shall be subject to, governed by,*
16 *and construed according to the laws of the state of Kansas.*
17 (6) *The trustee acknowledges the primary purpose of the*
18 *permanent maintenance fund is to maintain the corpus of the trust.*
19 (7) *The trustee shall retain all liability and fiduciary responsibility*
20 *for managing and administering the permanent maintenance fund.*
21 (8) *The trustee shall sign an affirmation under penalty of perjury,*
22 *declaring the trustee has read, understands and agrees to comply with*
23 *the requirements of K.S.A. 17-1308 et seq., and amendments thereto.*
24 Sec. 18. K.S.A. 17-1312a is hereby amended to read as follows:
25 17-1312a. (a) Each cemetery corporation formed under the laws of the
26 state of Kansas and each foreign corporation granted a certificate of
27 authority to own or operate a cemetery within the state of Kansas shall
28 register with the secretary of state before commencing business in
29 Kansas. Each cemetery corporation shall prepare and forward to the
30 secretary of state at the time it is required to make ~~an annual a~~
31 *quarterly* report under the *provisions of this act.* ~~Kansas general~~
32 ~~corporation code, or if no such report is required then on January 1 in~~
33 ~~each year, a statement verified by the treasurer of said corporation~~
34 ~~describing the corpus and any accumulated income on the preceding~~
35 ~~December 31, or on the last day of its fiscal year if it does not use the~~
36 ~~calendar year in its accounts, in each permanent maintenance fund~~
37 ~~established by said corporation, the cost and the market value on said~~
38 ~~date of each security then held in each such fund, and the income of~~
39 ~~and disbursements from each such fund during the calendar or fiscal~~

1 ~~year then ended. This statement shall otherwise be in such form as the~~
2 ~~secretary of state shall prescribe.~~

3 (b) *Within 30 days following each end of the quarter, the cemetery*
4 *corporation shall provide the trustee and the secretary of state a report*
5 *of all sales of burial spaces. The report shall be in a form and manner*
6 *approved by the secretary of state and shall contain the name of each*
7 *purchaser, contract number, a brief description of the preneed burial*
8 *space, including the purchase price, the name and address of the*
9 *trustee where the permanent maintenance fund is located, and the*
10 *amount deposited into the permanent maintenance fund. If the*
11 *cemetery corporation did not make a sale, within 30 days following*
12 *each quarter end, the cemetery corporation shall provide to both the*
13 *trustee and the secretary of state a report indicating no sales to record.*
14 *The report shall be in a form and manner approved by the secretary of*
15 *state.*

16 (c) *Within 30 days following the end of each quarter, the trustee*
17 *shall provide the secretary of state a report of all deposits to, and*
18 *distributions from, the permanent maintenance fund. The report shall*
19 *be in a form and manner approved by the secretary of state and shall*
20 *contain the total amount of the deposits, distributions, and the name*
21 *and contact information of the trust officer in charge of the account.*

22 (d) *At least annually, the trustee of the permanent maintenance*
23 *fund shall determine the income for the permanent maintenance fund,*
24 *less reasonable costs, taxes and fees, and pay the income to the*
25 *cemetery corporation. The trustee shall report to the secretary of state*
26 *the calculation of the income paid to the cemetery within 30 days, in a*
27 *form and manner approved by the secretary of state.*

28 (e) *Whenever the secretary of state shall determine that any*
29 *cemetery corporation required by this act to be registered has failed or*
30 *refused to do so, the secretary of state may notify the county attorney or*
31 *district attorney of the county in which such cemetery corporation is*
32 *located, and such county attorney or district attorney shall commence*
33 *prosecution against such cemetery corporation. Any cemetery*
34 *corporation which fails to register with the secretary of state shall be*
35 *liable for a civil penalty of not to exceed \$1,000.*

36 ~~(b)~~ (f) *Whenever and as often as deemed necessary, the secretary*
37 *of state, or an employee designated by the secretary of state, may audit*
38 *or otherwise examine any cemetery corporation books and accounts.*
39 *Whenever such an audit or examination is so made, the cemetery*

1 corporation shall pay such expenses as shall be assessed by the
 2 secretary of state pursuant to K.S.A. 75-442, *and amendments thereto.*

3 Sec. 19. K.S.A. 17-1312d is hereby amended to read as follows:
 4 17-1312d. Any cemetery corporation which shall refuse or neglect to
 5 establish or maintain a permanent maintenance fund in accordance with
 6 the requirements of this act for each cemetery owned by it for a period
 7 of ~~ninety (90)~~ 60 days after demand to do so is made upon it by the
 8 secretary of state shall be deemed to have forfeited its ~~franchise-~~
 9 *cemetery corporation.* The attorney general, upon the request of the
 10 secretary of state, shall then begin action for the appointment of a
 11 receiver for such cemetery corporation and to dissolve the same.

12 Sec. 20. K.S.A. 17-1312e is hereby amended to read as follows:
 13 17-1312e. (a) Except as provided by this section, all information which
 14 the secretary of state shall gather or record in making an investigation
 15 and examination of any cemetery corporation, *or the reporting by the*
 16 *cemetery corporation or the trustee,* shall be deemed to be confidential
 17 information, and shall not be disclosed by the secretary of state, any
 18 assistant, examiner or employee thereof, except to: (1) *Officers and the*
 19 *members of the board of directors* of the cemetery corporation being
 20 audited; ~~and~~ (2) the attorney general, when in the opinion of the
 21 secretary of state the same should be disclosed; *and (3) the appropriate*
 22 *official for the municipality in which the cemetery resides when in the*
 23 *opinion of the secretary of state the same should be disclosed.*

24 (b) Upon request, the secretary of state may disclose to any person
 25 whether a cemetery corporation maintains a ~~cemetery merchandise trust~~
 26 ~~fund under K.S.A. 16-322, and amendments thereto,~~ or a permanent
 27 maintenance fund under K.S.A. 17-1311, and amendments thereto, and
 28 whether such funds are maintained in compliance with the provisions
 29 of such laws.

30 (c) *The provisions of subsection (a) shall expire on July 1, 2016,*
 31 *unless the legislature acts to reauthorize such provisions. The*
 32 *provisions of subsection (a) shall be reviewed by the legislature prior*
 33 *to July 1, 2016.*

34 Sec. 21. K.S.A. 17-1312g is hereby amended to read as follows:
 35 17-1312g. (a) Cemetery corporations subject to an audit by the
 36 secretary of state pursuant to K.S.A. 17-1312a, and amendments thereto,
 37 shall file, in the office of the secretary of state, a copy of the agreement
 38 or document which establishes the trust between the cemetery
 39 corporation and the trustee.

1 (b) *The trust agreement shall acknowledge all contractual*
2 *agreements shall be subject to and governed by K.S.A. 17-1308 et seq.,*
3 *and amendments thereto.*

4 (c) *The secretary of state shall promulgate rules and regulations*
5 *for the purpose of oversight and audit of the permanent maintenance*
6 *fund.*

7 Sec. 22. K.S.A. 17-1366 is hereby amended to read as follows: 17-
8 1366. As used in this act: (a) "Abandoned cemetery" means:

9 (1) *Any cemetery owned by a corporation, as defined in K.S.A.*
10 *17-1312f, and amendments thereto, in which, for a period of at least*
11 *one year, there has been a failure to cut grass or weeds or care for*
12 *graves, grave markers, walls, fences, driveways and buildings; ~~or~~ and*

13 *(2) for a period of 180 days which proper records have not been*
14 *maintained and ~~annual~~ annual or quarterly reports have not been made*
15 *to the secretary of state, pursuant to the provisions of K.S.A. 17-1312a*
16 *et seq., and amendments thereto; ~~and~~.*

17 (b) "Municipality" means the cemetery district in which all or any
18 portion of an abandoned cemetery is located. If no portion of such
19 cemetery is located within a cemetery district, the term shall mean the
20 city in which all or any portion of an abandoned cemetery is located
21 unless such cemetery is not within the corporate limits of a city, in
22 which case such term shall mean the county in which such cemetery is
23 located.

24 Sec. 23. K.S.A. 16-320, 16-321, 16-322, 16-323, 16-324, 16-325,
25 16-328, 16-329, 16-331, 16-332, 16-333, 16-334, 17-1311, 17-1311a,
26 17-1312, 17-1312a, 17-1312d, 17-1312e, 17-1312g and 17-1366 are
27 hereby repealed.

28 Sec. 24. This act shall take effect and be in force from and after
29 January 1, 2012, and its publication in the statute book.

30