

[As Amended by House Committee of the Whole]

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:

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

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

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

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

16 (e) "Trustee" means:

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

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

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

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

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

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

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

36 **[New Sec. 4. (a) There is hereby created the cemetery**
37 **maintenance and merchandise fee fund in the state treasury. The**
38 **secretary of state shall remit all moneys received from fees and**
39 **charges under this section, and amendments thereto, to the state**

1 **treasurer in accordance with the provisions of K.S.A. 75-4215, and**
2 **amendments thereto. Upon receipt of each such remittance, the**
3 **state treasurer shall deposit the entire amount in the state treasury**
4 **to the credit of the cemetery maintenance and merchandise fee**
5 **fund.]**

6 **[(b) All expenditures from the cemetery maintenance and**
7 **merchandise fee fund shall be in accordance with appropriations**
8 **acts upon warrants of the director of accounts and reports issued**
9 **pursuant to vouchers approved by the secretary of state or by a**
10 **person or persons designated by the secretary.]**

11 ~~Sec.-4. [5.]~~ K.S.A. 16-320 is hereby amended to read as follows:
12 16-320. The following definitions shall apply to this act:

13 (a) "*Preneed* cemetery merchandise" means burial vaults, grave
14 liners, grave boxes, urns, memorials, markers, vases, memorial vases,
15 tombstones, lawn crypts, niches and mausoleum spaces and ~~at~~ any
16 merchandise ~~commonly~~ sold, ~~or~~ used in, *or delivered to* cemeteries.
17 Caskets; grave lots, grave spaces; burial or interment rights; and
18 developed or existing lawn crypts, mausoleum spaces or niches are not
19 *preneed* cemetery merchandise.

20 (b) "Purchase price" means the gross amount, ~~less sales tax, if any,~~
21 to be paid for *preneed* cemetery merchandise, *preneed burial products*
22 *or services* under the provisions of a ~~prepaid~~ *preneed* merchandise
23 contract. The purchase price does not include finance charges, sales
24 tax, charges for real property interests or charges for credit life
25 insurance.

26 (c) "~~Prepaid~~ *Preneed* merchandise contract" means any agreement
27 for the sale of *preneed* cemetery merchandise *or preneed burial*
28 *products or services* by a cemetery corporation which requires payment
29 of the purchase price, in whole or in part, prior to delivery of the
30 *preneed* cemetery merchandise *or preneed burial products or services*,
31 which agreement is entered into from and after the effective date of this
32 act.

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

36 (e) "~~Minimum~~ Funding requirement" means that portion of the
37 purchase price equal to ~~10% of the wholesale~~ *50% of the retail cost*
38 *price* f.o.b. to the cemetery corporation of ~~the~~ *preneed* cemetery
39 merchandise, *as defined in subsection (a) of this section,* ~~covered~~

1 ~~described in a prepaid~~ *the preneed merchandise contract, and 100% of*
2 *the retail price of any preneed burial product; or service, as defined in*
3 *subsection (f) of this section, including distributable earnings.*
4 ~~Wholesale costs shall be determined by the cemetery corporation on the~~
5 ~~basis of such quotations and price lists as are available to the cemetery.~~

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

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

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

15 (i) *"Trustee" means:*

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

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

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

23 ~~Sec. 5. [6.]~~ *K.S.A. 16-321 is hereby amended to read as follows:*
24 *16-321. (a) Any cemetery corporation entering into any prepaid-*
25 *preneed merchandise contract shall establish and maintain a cemetery*
26 *merchandise trust fund under K.S.A. 16-322, and amendments thereto.*
27 ~~All prepaid merchandise contracts shall be in writing.~~ *The primary*
28 *purpose of the cemetery merchandise trust fund is to maintain the*
29 *corpus of the trust fund with the goal that the growth of the corpus will*
30 *be at least equal to the wholesale costs of the preneed cemetery*
31 *merchandise or preneed burial products or services, at the time of*
32 *delivery or need.*

33 (b) *All preneed cemetery merchandise contracts shall be in*
34 *writing.*

35 ~~(b)~~(c) *A cemetery corporation entering into a prepaid preneed*
36 *merchandise contract that allows the purchaser to make installment*
37 *payments shall be entitled to retain all purchaser payments until of the*
38 ~~purchase price under the prepaid merchandise contract until it has~~
39 ~~received~~ *an amount equal to 3525% of the purchase price is received,*

1 ~~and thereafter, shall deposit 100% of each payment into of the cemetery~~
2 ~~merchandise sold in a prepaid merchandise contract. trust fund until the~~
3 ~~funding requirement has been deposited.~~

4 ~~(e) (d) Deposits to the cemetery merchandise trust fund shall be~~
5 ~~made within 15 days following the end of each calendar month after~~
6 ~~the moneys are received. After the cemetery corporation has received~~
7 ~~the amounts it is entitled to receive under subsection (b) of this section,~~
8 ~~all payments of the purchase price to the cemetery corporation under a~~
9 ~~prepaid merchandise contract shall be deposited by the cemetery~~
10 ~~corporation in a cemetery merchandise trust fund until such time as the~~
11 ~~requirements of subsection (d) of this section have been satisfied or~~
12 ~~delivery is made of the cemetery merchandise. Thereafter, all~~
13 ~~payments of the purchase price in excess of the minimum funding~~
14 ~~requirements may be retained by the cemetery corporation. Deposits~~
15 ~~shall be made within 10 business days after the moneys are received.~~

16 ~~(d) (e) Within 30 days following the end of each quarter, the~~
17 ~~cemetery corporation shall provide the trustee and the secretary of~~
18 ~~state a report detailing the transactions of the previous quarter. The~~
19 ~~report shall be in a form and manner approved by the secretary of state~~
20 ~~and shall include the following:~~

21 ~~(1) All sales of preneed cemetery merchandise, preneed burial~~
22 ~~products and preneed services.~~

23 ~~(2) All verified deliveries of preneed cemetery merchandise,~~
24 ~~preneed burial products and preneed services along with any request~~
25 ~~for distribution from the trustee.~~

26 ~~(3) If no sales or deliveries transpired during the reporting~~
27 ~~quarter, the report shall be filed showing zero sales or zero deliveries. ;~~
28 ~~as of December 31, each cemetery corporation shall determine the~~
29 ~~wholesale cost for all cemetery merchandise covered by a prepaid~~
30 ~~merchandise contract for which funds are then held in a cemetery~~
31 ~~merchandise trust or in an individual merchandise account. If the~~
32 ~~amounts held with respect to a prepaid merchandise contract exceed the~~
33 ~~minimum funding requirement the excess shall be paid by the trustee of~~
34 ~~the cemetery merchandise trust to the cemetery corporation. In such~~
35 ~~event, no further deposit shall be required with respect to the prepaid~~
36 ~~merchandise contract until such time as the amounts held no longer~~
37 ~~exceed the minimum funding requirement. If the minimum funding~~
38 ~~requirement is not satisfied, no amount shall be paid to or withdrawn~~
39 ~~by the cemetery corporation and the cemetery corporation shall~~

1 ~~continue or shall resume, as the case may be, making the deposits~~
2 ~~required by subsection (c) of this section.~~

3 *(f) Within 30 days following the end of each quarter, the trustee*
4 *shall provide the secretary of state a report of all deposits to and*
5 *distributions from the cemetery merchandise trust fund. The report*
6 *shall be in a form and manner approved by the secretary of state and*
7 *shall include the total amount of the deposits, distributions and the*
8 *name and contact information of the trust officer in charge of the*
9 *account.*

10 *(g) At least annually, as of December 31, the trustee of the*
11 *merchandise trust fund shall allocate the distributable earnings to all*
12 *preneed cemetery merchandise, preneed burial products or services for*
13 *which funds are then held in a cemetery merchandise trust fund. The*
14 *trustee may, at the request of the cemetery, allocate the distributable*
15 *earnings on a regular basis more often than annually and in which*
16 **case the calculation of the distributable earnings shall be filed**
17 *quarterly on December 31, March 31, June 30 and September 30 of*
18 *each year. The trustee shall report to the secretary of state the*
19 *calculation of the distributable earnings within 30 days of the*
20 *allocation, in a form and manner approved by the secretary of state.*

21 *(h) The cemetery corporation shall provide the secretary of state a*
22 *copy of all trust instruments. The cemetery corporation shall obtain*
23 *prior written approval from the secretary of state before the trust*
24 *instrument shall be terminated, transferred or amended. The cemetery*
25 *corporation shall provide the secretary of state copies of any*
26 *amendments to the trust instrument before the amendments shall*
27 *become effective.*

28 **[(i) Fees not to exceed \$30 may be charged and collected by the**
29 **secretary of state on each preneed merchandise contract for**
30 **preneed cemetery merchandise, preneed burial products or services**
31 **sold on or after January 1, 2011. Any such fees shall be forwarded**
32 **on a quarterly basis to the secretary of state, in a form and manner**
33 **approved by the secretary. The secretary of state shall promulgate**
34 **rules and regulations fixing the fees to be charged and collected.**
35 **On and after the effective date of this act any such fees collected**
36 **shall be deposited in the cemetery maintenance and merchandise**
37 **fee fund in the state treasury.]**

38 ~~Sec. 6. [7.] K.S.A. 16-322 is hereby amended to read as follows:~~
39 ~~16-322. (a) The cemetery corporation shall establish and maintain a~~

1 cemetery merchandise trust fund ~~must be maintained with a bank, trust~~
2 ~~company or savings and loan association having trust powers. with a~~
3 ~~trustee as defined in K.S.A. 16-320, and amendments thereto. A copy~~
4 ~~of each contract or a written notice containing all relevant information~~
5 ~~regarding such prepaid merchandise contract for which deposits are~~
6 ~~made shall be furnished financial institutions. The institutions shall~~
7 ~~serve as trustees for the purposes of this act. The trustee may appoint~~
8 ~~one or more agents to provide administrative or investment advisory~~
9 ~~services, provided the trustee shall not assign or delegate the liability~~
10 ~~and fiduciary responsibilities owed to the cemetery merchandise trust~~
11 ~~fund to another financial institution or agent. Nothing in this act shall~~
12 ~~prohibit a trustee, as defined in K.S.A. 16-320, and amendments~~
13 ~~thereto, from entering into a co-trustee relationship with another~~
14 ~~trustee, who would not independently satisfy the requirements of that~~
15 ~~section provided the co-trustee: (1) Is authorized to do business in~~
16 ~~Kansas; and (2) submits personally to the jurisdiction of the courts of~~
17 ~~this state. Under no circumstances shall any trustee assign or delegate~~
18 ~~their liability or fiduciary responsibilities under the cemetery~~
19 ~~merchandise trust act. Both trustees and co-trustees are jointly and~~
20 ~~severally liable for the actions of the trustee. All contractual~~
21 ~~agreements shall be subject to, governed by, and construed according~~
22 ~~to the laws of the state of Kansas. Deposits to such fund shall be~~
23 ~~carried in the name of the cemetery corporation and the amounts~~
24 ~~deposited therein may be commingled, but provided that the accounting~~
25 ~~records shall establish a separate account for each prepaid item of~~
26 ~~preneed merchandise. contract. and shall show the amounts deposited,~~
27 ~~and the income or loss accruing thereon, with respect to each prepaid~~
28 ~~merchandise contract. Subject to the requirements of subsections (a)~~
29 ~~through (f) of K.S.A. 58-24a02, and amendments thereto, the trustee~~
30 ~~shall invest the trust funds. The trustee shall reimburse the cemetery~~
31 ~~corporation for all income taxes and costs incurred with respect to the~~
32 ~~operation of such fund, and the trustee may recover shall be reimbursed~~
33 ~~from the earnings of such the cemetery merchandise trust fund for all~~
34 ~~reasonable costs incurred in serving as trustee, including a reasonable~~
35 ~~fee for its services. The taxes and costs shall may be paid from~~
36 ~~earnings of the fund prior to the allocation of earnings to the individual~~
37 ~~accounts: preneed cemetery merchandise or preneed burial products or~~
38 ~~services.~~

39 (b) No part of the moneys required by K.S.A. 16-321, and

1 amendments thereto, to be held under a ~~prepaid~~ *preneed* merchandise
2 contract shall ever be used for any purpose other than investment as
3 ~~authorized by K.S.A. 16-324, and amendments thereto,~~ until delivery of
4 the merchandise is made. With respect to any cemetery merchandise
5 which is not affixed to real property, delivery shall occur when physical
6 possession is tendered to the purchaser, and a bill of sale, *storage* or
7 similar instrument of title is delivered to the purchaser. With respect to
8 cemetery merchandise which is affixed to realty, delivery shall occur
9 when construction or permanent installation of the merchandise has
10 been completed. Upon delivery of the *preneed* cemetery merchandise,
11 *or preneed burial products or services*, the cemetery corporation shall
12 present the trustee with a verified statement, *in a form and manner*
13 *approved by the secretary of state under subsection (e) of K.S.A. 16-*
14 *321, and amendments thereto*, that delivery has been made. Upon such
15 presentation the trustee shall pay to the cemetery corporation ~~the~~ *an*
16 ~~amount of any funds equal to the market value allocated to preneed~~
17 *cemetery merchandise or preneed burial products or services held in*
18 ~~trust with respect to the cemetery merchandise delivered, and no further~~
19 ~~deposits shall be made with respect to such cemetery merchandise.~~

20 (c) *The trust instrument shall be effective upon written approval*
21 *by the secretary of state and compliance with this section, unless it is*
22 *determined by a court of law that the underlying trust instrument is in*
23 *conflict with Kansas statutes, then that portion of the underlying trust*
24 *instrument becomes null and void and shall be of no further force or*
25 *effect. The trust instrument is in compliance with this section if the*
26 *following is provided to the secretary of state:*

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

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

32 (A) *Deposits;*

33 (B) *withdrawals;*

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

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

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

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

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

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

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

14 Sec. ~~7.~~ **[8.]** K.S.A. 16-323 is hereby amended to read as follows:

15 ~~16-323. Any person who violates any provision of this act shall be~~
16 ~~deemed guilty of a class A misdemeanor.~~ (a) *Misuse of the cemetery*
17 *merchandise trust fund or any money belonging thereto is knowingly*
18 *using, investing, lending or permitting another to use moneys in the*
19 *fund in a manner not authorized by law.*

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

22 Sec. ~~8.~~ **[9.]** K.S.A. 16-325 is hereby amended to read as follows:

23 16-325. (a) The secretary of state, or the secretary's representative,
24 shall, while auditing each cemetery corporation, pursuant to K.S.A. 17-
25 1312a, and amendments thereto, audit the cemetery merchandise trusts
26 required by this act, and approve the ~~cemetery's trustee's~~ determination
27 of the ~~wholesale costs distributable earnings period.~~ ~~under subsection~~
28 ~~(d) of K.S.A. 16-321, and amendments thereto.~~ For such purposes, the
29 secretary of state or the secretary's representative, is authorized to
30 administer oaths and to examine under oath the directors, officers,
31 employees and agents of any cemetery corporation. Such examination
32 may be reduced to writing by the person taking it and the examiner may
33 make findings as to the condition of each trust fund examined. For the
34 purposes of such audits, the secretary of state may ~~also require any~~
35 ~~officer of a cemetery corporation~~ *the trustee* to furnish and submit the
36 books, records, papers and instruments of such cemetery corporation. ~~to~~
37 ~~the examination.~~ *The secretary of state shall be authorized to obtain*
38 *trust accounting records from the trustee.*

39 (b) *The secretary of state shall promulgate rules and regulations*

1 *for the purpose of oversight and audit of the cemetery merchandise*
2 *trust fund.*

3 ~~Sec. 9.~~ **[10.]** K.S.A. 16-328 is hereby amended to read as follows:
4 16-328. ~~In the absence of fraud,~~ All funds held in a cemetery
5 merchandise trust shall not be subject to attachment, garnishment or
6 other legal process, nor be seized, taken, appropriated or applied to pay
7 any debt or liability of the cemetery corporation, buyer or beneficiary,
8 by any legal or equitable process or by operation of law.

9 ~~Sec. 10.~~ **[11.]** K.S.A. 16-329 is hereby amended to read as follows:
10 16-329. No cemetery corporation shall enter into any ~~prepaid~~ *preneed*
11 merchandise contract until such corporation has filed with the secretary
12 of state a notification of its intention to sell and engage in such ~~prepaid~~
13 *preneed* merchandise contracts. Such notice shall include the name of
14 the cemetery corporation, its principal place of business and the name
15 and address of the trustee or trustees to be utilized under the provisions
16 of this act.

17 Accounting records and information required by this act shall be
18 maintained in a ~~format~~ *form and manner* approved by the secretary of
19 state. A report of the merchandise trust ~~account~~ *fund* shall be required
20 ~~of the cemetery corporation annually~~ as part of the corporation's ~~annual~~
21 *monthly* report on a form provided or approved by the secretary of
22 state.

23 ~~Sec. 11.~~ **[12.]** K.S.A. 16-331 is hereby amended to read as follows:
24 16-331. Any cemetery corporation which refuses or neglects to
25 establish or maintain a cemetery merchandise trust fund, in accordance
26 with the requirements of this act for a period of ~~90~~ *60* days after *written*
27 demand to do so is made upon it by the secretary of state, shall be
28 deemed to have forfeited its ~~corporate franchise.~~ *cemetery corporation.*
29 The attorney general, upon the request of the secretary of state, shall
30 then begin an action for the appointment of a receiver for such
31 cemetery corporation and to dissolve the same.

32 ~~Sec. 12.~~ **[13.]** K.S.A. 16-332 is hereby amended to read as follows:
33 16-332. Any cemetery corporation entering into a ~~prepaid~~ *preneed*
34 *cemetery* merchandise contract shall provide in such contract that:

35 (a) A purchaser, under a ~~prepaid~~ *preneed cemetery* merchandise
36 contract covered in this act who permanently moves to another state in
37 the United States, may direct that the merchandise, so long as the same
38 is not a part of nor affixed to real estate, be delivered to a cemetery in
39 the state of the purchaser's residence, except that the purchaser may be

1 required to pay the additional transportation costs which exceed those
 2 the cemetery would have incurred to provide and deliver the
 3 merchandise to the seller cemetery; or

4 (b) a purchaser who has entered into a ~~prepaid~~ *preneed cemetery*
 5 merchandise contract covered by this act may, upon the purchaser
 6 permanently changing residence to a place more than 150 miles from
 7 the cemetery, cancel the contract upon written notice to the cemetery,
 8 which notice shall then be forwarded by the cemetery to the trustee of
 9 the cemetery merchandise trust fund. Upon receipt of such notice, the
 10 ~~prepaid~~ *preneed cemetery* merchandise contract shall be cancelled, and
 11 the trustee, after deducting that contract's share of applicable costs and
 12 taxes provided for in K.S.A. 16-322, *and amendments thereto*, shall pay
 13 to the purchaser not less than 85% of the funds held in trust for the
 14 contract pursuant to this act. The balance shall be paid to the cemetery
 15 corporation and the trustee shall be discharged from further obligation
 16 as to such contract.

17 ~~Sec. 13.~~ **[14.]** K.S.A. 16-333 is hereby amended to read as follows:
 18 16-333. Sales of *preneed cemetery merchandise contracts or preneed*
 19 *burial products or services* subject to this act shall be exempt from the
 20 provisions of K.S.A. 16-301 through 16-309, inclusive, and ~~any~~
 21 ~~amendments thereto~~.

22 ~~Sec. 14.~~ **[15.]** K.S.A. 16-334 is hereby amended to read as follows:
 23 16-334. (a) Cemetery corporations subject to ~~an audit by the secretary~~
 24 ~~of state pursuant to K.S.A. 16-325, and amendments thereto~~, *this act*
 25 shall file, in the office of the secretary of state, a copy of the agreement
 26 or document which establishes the trust between the cemetery
 27 corporation and the trustee.

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

31 ~~Sec. 15.~~ **[16.]** K.S.A. 17-1311 is hereby amended to read as
 32 follows: 17-1311. (a) A cemetery corporation shall maintain, ~~in a trust~~
 33 ~~company located within the state of Kansas, a state or national bank~~
 34 ~~located within the state of Kansas, a state or federally chartered savings~~
 35 ~~and loan association located within the state of Kansas or a federally~~
 36 ~~chartered savings bank located within the state of Kansas~~ *a permanent*
 37 *maintenance fund with a trustee*, a percentage of the purchase price of
 38 each burial ~~lot space~~ sold by it, or any payment on such burial ~~lot~~
 39 *space*, not less than 15% of such purchase price, for the permanent

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

30 *(b) The primary purpose of the permanent maintenance fund is to*
31 *maintain the corpus of the fund. The income earned from the*
32 *permanent maintenance fund may be dispersed to the cemetery. All*
33 *capital gains shall be allocated to principal.*

34 *(c) The cemetery corporation shall obtain prior written approval*
35 *from the secretary of state before the trust instrument shall be*
36 *terminated, transferred, or amended. The cemetery corporation shall*
37 *provide the secretary of state copies of any amendments to the trust*
38 *instrument before the amendments shall become effective.*

39 ~~Sec. 16.~~ [17.] K.S.A. 17-1311a is hereby amended to read as

1 follows: 17-1311a. (a) Misuse of the permanent maintenance fund or
 2 any money belonging thereto is *knowingly* using, lending or permitting
 3 another to use; moneys in the fund in a manner not authorized by law;
 4 ~~by a custodian or other person having charge or control of such fund or~~
 5 ~~moneys by virtue of his position.~~

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

8 ~~Sec. 17-1312. [18.]~~ K.S.A. 17-1312 is hereby amended to read as
 9 follows: 17-1312. (a) ~~The permanent maintenance fund required to be~~
 10 ~~established by K.S.A. 17-1311, and amendments thereto, shall at all~~
 11 ~~times be in the custody of a trust company located within the state of~~
 12 ~~Kansas, a state or national bank located within the state of Kansas, a~~
 13 ~~state or federally chartered savings and loan association located within~~
 14 ~~the state of Kansas or a federally chartered savings bank located within~~
 15 ~~the state of Kansas. Each cemetery corporation shall establish a trust~~
 16 ~~for moneys deposited in the permanent maintenance fund in accordance~~
 17 ~~with this section. If the market value of the trust permanent~~
 18 ~~maintenance fund is less than \$45,000 \$100,000, the trust permanent~~
 19 ~~maintenance fund may have an individual trustee so long as the trust's~~
 20 ~~assets be held in a Kansas financial institution, in either certificates of~~
 21 ~~deposit or a business savings account which is insured by the federal~~
 22 ~~deposit insurance corporation, provided that the fund assets are~~
 23 ~~maintained in a segregated account. If the cemetery's permanent~~
 24 ~~maintenance fund has a market value of less than \$100,000, the~~
 25 ~~cemetery corporation shall comply with the reporting requirements of~~
 26 ~~this act.~~

27 (b) (1) *Unless otherwise authorized by subsection (a), each*
 28 *cemetery corporation shall establish and maintain a permanent*
 29 *maintenance fund. If the market value of the trust permanent*
 30 *maintenance fund is \$45,000 \$100,000 or more, the trustee shall be a*
 31 ~~trust company located within the state of Kansas, a state or national~~
 32 ~~bank located within the state of Kansas, a state or federally chartered~~
 33 ~~savings and loan association located within the state of Kansas or a~~
 34 ~~federally chartered savings bank located within the state of Kansas.~~
 35 ~~Any such trust company, bank, savings and loan association or~~
 36 ~~federally chartered savings bank with which the custody of a permanent~~
 37 ~~maintenance fund has been entrusted may invest, reinvest, exchange,~~
 38 ~~retain, sell and manage the moneys within such fund. If the treasurer of~~
 39 ~~any cemetery corporation shall entrust the custody of the permanent~~

1 ~~maintenance fund to a savings and loan association or associations or~~
2 ~~federally chartered savings bank or banks, the amount of moneys in the~~
3 ~~custody of any such association or savings bank shall not exceed the~~
4 ~~amount for which deposits in such savings and loan association or~~
5 ~~savings bank are insured by the federal savings and loan insurance~~
6 ~~corporation or other insurer approved by the state commissioner of~~
7 ~~insurance. If the treasurer of any cemetery corporation shall entrust the~~
8 ~~custody of the permanent maintenance fund to a bank or banks or~~
9 ~~federally chartered savings bank or banks, the amount of money in the~~
10 ~~custody of any such bank or savings bank shall not exceed the amount~~
11 ~~for which deposits in such bank or savings bank are insured by the~~
12 ~~federal deposit insurance corporation or other insurer approved by the~~
13 ~~state bank commissioner. Such trust company, bank, savings and loan~~
14 ~~association, federally chartered savings bank or individual trustee may~~
15 ~~serve without bond and may be reasonably compensated for its services~~
16 ~~out of the income of the fund. It shall be a provision of any such trust~~
17 ~~agreement that no moneys, other than income from the trust, shall be~~
18 ~~paid over to the cemetery corporation by the trustee, except upon the~~
19 ~~written permission of the secretary of state. cemetery corporation shall~~
20 ~~establish and maintain the permanent maintenance fund in an~~
21 ~~irrevocable trust with a trustee. The trustee may appoint one or more~~
22 ~~agents to provide administrative or investment advisory services,~~
23 ~~provided the trustee shall not assign or delegate the liability and~~
24 ~~fiduciary responsibilities owed to the permanent maintenance fund to~~
25 ~~another financial institution or agent. The trustee may invest, reinvest,~~
26 ~~exchange, retain, sell, and manage the moneys within such fund,~~
27 ~~pursuant to subsections (a) through (f) of K.S.A. 58-24a02, and~~
28 ~~amendments thereto. Such trustee may be reasonably compensated for~~
29 ~~its services out of the income of the fund. It shall be a provision of any~~
30 ~~such trust agreement that no moneys, other than income from the trust,~~
31 ~~shall be paid over to the cemetery corporation by the trustee, except~~
32 ~~upon the written permission of the secretary of state. Nothing in this~~
33 ~~act shall prohibit a trustee, as defined in K.S.A. 16-320, and~~
34 ~~amendments thereto, from entering into a co-trustee relationship with~~
35 ~~another trustee, who would not independently satisfy the requirements~~
36 ~~of that section provided the co-trustee: (A) Is authorized to do business~~
37 ~~in Kansas; and (B) submits personally to the jurisdiction of the courts~~
38 ~~of this state. Under no circumstances shall any trustee assign or~~
39 ~~delegate their liability or fiduciary responsibilities under the provisions~~

1 *of this act. Both trustees and co-trustees are jointly and severally liable*
2 *for the actions of the trustee. All contractual agreements shall be*
3 *subject to, governed by, and construed according to the laws of the*
4 *state of Kansas.*

5 *(2) The trustee may recover from the earnings of the permanent*
6 *maintenance fund for all reasonable costs incurred in serving as*
7 *trustee, including a reasonable fee for its services. The taxes and costs*
8 *may be paid from earnings of the fund prior to the distribution of the*
9 *income. If all income is exhausted, any remaining capital gains tax*
10 *liability may be paid out of the realized capital gains before the*
11 *balance reverts to principal.*

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

16 *(c) The trust instrument shall be effective upon written approval*
17 *by the secretary of state and compliance with this section, unless it is*
18 *determined by a court of law that the underlying trust instrument is in*
19 *conflict with Kansas statutes, then that portion of the underlying trust*
20 *instrument becomes null and void and shall be of no further force or*
21 *effect. The trust instrument is in compliance with this section if the*
22 *following is provided to the secretary of state:*

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

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

28 *(A) Deposits to principal;*

29 *(B) any withdrawals from principal;*

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

31 *(D) interest withdrawn;*

32 *(E) capital gains or capital losses; and*

33 *(F) capital gains taxes paid from capital gains.*

34 *(3) The trustee shall use deposit and withdrawal forms approved*
35 *by the secretary of state.*

36 *(4) The trustee shall invest the trust funds subject to the*
37 *requirements of subsections (a) through (f) of K.S.A. 58-24a02, and*
38 *amendments thereto. Control of the trust funds by the trustor is*
39 *prohibited.*

1 (5) *By accepting the trusteeship of the permanent maintenance*
2 *fund, the trustee submits personally to the jurisdiction of the courts of*
3 *this state. All contractual agreements shall be subject to, governed by,*
4 *and construed according to the laws of the state of Kansas.*

5 (6) *The trustee acknowledges the primary purpose of the*
6 *permanent maintenance fund is to maintain the corpus of the trust.*

7 (7) *The trustee shall retain all liability and fiduciary responsibility*
8 *for managing and administering the permanent maintenance fund.*

9 (8) *The trustee shall sign an affirmation under penalty of perjury,*
10 *declaring the trustee has read, understands and agrees to comply with*
11 *the requirements of K.S.A. 17-1308 et seq., and amendments thereto.*

12 ~~Sec. 18.~~ **[19.]** K.S.A. 17-1312a is hereby amended to read as
13 follows: 17-1312a. (a) Each cemetery corporation formed under the
14 laws of the state of Kansas and each foreign corporation granted a
15 certificate of authority to own or operate a cemetery within the state of
16 Kansas shall register with the secretary of state before commencing
17 business in Kansas. Each cemetery corporation shall prepare and
18 forward to the secretary of state at the time it is required to make ~~an~~
19 ~~annual~~ *a quarterly* report under the *provisions of this act.* ~~Kansas~~
20 ~~general corporation code, or if no such report is required then on~~
21 ~~January 1 in each year, a statement verified by the treasurer of said~~
22 ~~corporation describing the corpus and any accumulated income on the~~
23 ~~preceding December 31, or on the last day of its fiscal year if it does~~
24 ~~not use the calendar year in its accounts, in each permanent~~
25 ~~maintenance fund established by said corporation, the cost and the~~
26 ~~market value on said date of each security then held in each such fund,~~
27 ~~and the income of and disbursements from each such fund during the~~
28 ~~calendar or fiscal year then ended. This statement shall otherwise be in~~
29 ~~such form as the secretary of state shall prescribe.~~

30 (b) *Within 30 days following each end of the quarter, the cemetery*
31 *corporation shall provide the trustee and the secretary of state a report*
32 *of all sales of burial spaces. The report shall be in a form and manner*
33 *approved by the secretary of state and shall contain the name of each*
34 *purchaser, contract number, a brief description of the preneed burial*
35 *space, including the purchase price, the name and address of the*
36 *trustee where the permanent maintenance fund is located, and the*
37 *amount deposited into the permanent maintenance fund. If the*
38 *cemetery corporation did not make a sale, within 30 days following*
39 *each quarter end, the cemetery corporation shall provide to both the*

1 trustee and the secretary of state a report indicating no sales to record.
2 The report shall be in a form and manner approved by the secretary of
3 state.

4 (c) Within 30 days following the end of each quarter, the trustee
5 shall provide the secretary of state a report of all deposits to, and
6 distributions from, the permanent maintenance fund. The report shall
7 be in a form and manner approved by the secretary of state and shall
8 contain the total amount of the deposits, distributions, and the name
9 and contact information of the trust officer in charge of the account.

10 (d) At least annually, the trustee of the permanent maintenance
11 fund shall determine the income for the permanent maintenance fund,
12 less reasonable costs, taxes and fees, and pay the income to the
13 cemetery corporation. The trustee shall report to the secretary of state
14 the calculation of the income paid to the cemetery within 30 days, in a
15 form and manner approved by the secretary of state.

16 (e) Whenever the secretary of state shall determine that any
17 cemetery corporation required by this act to be registered has failed or
18 refused to do so, the secretary of state may notify the county attorney or
19 district attorney of the county in which such cemetery corporation is
20 located, and such county attorney or district attorney shall commence
21 prosecution against such cemetery corporation. Any cemetery
22 corporation which fails to register with the secretary of state shall be
23 liable for a civil penalty of not to exceed \$1,000.

24 (b) (f) Whenever and as often as deemed necessary, the secretary
25 of state, or an employee designated by the secretary of state, may audit
26 or otherwise examine any cemetery corporation books and accounts.
27 Whenever such an audit or examination is so made, the cemetery
28 corporation shall pay such expenses as shall be assessed by the
29 secretary of state pursuant to K.S.A. 75-442, and amendments thereto.

30 **[(g) Fees not to exceed \$30 may be charged and collected by**
31 **the secretary of state on each interment sold on or after January 1,**
32 **2011. Any such fees shall be forwarded on a quarterly basis to the**
33 **secretary of state, in a form and manner approved by the secretary.**
34 **The secretary of state shall promulgate rules and regulations fixing**
35 **the fees to be charged and collected. On and after the effective date**
36 **of this act any such fees collected shall be deposited in the cemetery**
37 **maintenance and merchandise fee fund in the state treasury.]**

38 Sec.—19: [20.] K.S.A. 17-1312d is hereby amended to read as
39 follows: 17-1312d. Any cemetery corporation which shall refuse or

1 neglect to establish or maintain a permanent maintenance fund in
2 accordance with the requirements of this act for each cemetery owned
3 by it for a period of ~~ninety (90)~~ 60 days after demand to do so is made
4 upon it by the secretary of state shall be deemed to have forfeited its
5 ~~franchise: cemetery corporation~~. The attorney general, upon the request
6 of the secretary of state, shall then begin action for the appointment of a
7 receiver for such cemetery corporation and to dissolve the same.

8 ~~Sec. 20:~~ **[21.]** K.S.A. 17-1312e is hereby amended to read as
9 follows: 17-1312e. (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; ~~and~~ (2) the attorney general, when
17 in the opinion of the secretary of state the same should be disclosed;
18 *and (3) the appropriate official for the municipality in which the*
19 *cemetery resides when in the opinion of the secretary of state the same*
20 *should be 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, or a permanent~~
24 maintenance fund under K.S.A. 17-1311, and amendments thereto, and
25 whether such funds are maintained in compliance with the provisions
26 of such laws.

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

31 ~~Sec. 21:~~ **[22.]** K.S.A. 17-1312g is hereby amended to read as
32 follows: 17-1312g. (a) Cemetery corporations subject to an audit by the
33 secretary of state pursuant to K.S.A. 17-1312a, and amendments thereto,
34 shall file, in the office of the secretary of state, a copy of the agreement
35 or document which establishes the trust between the cemetery
36 corporation and the trustee.

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

1 (c) *The secretary of state shall promulgate rules and regulations*
2 *for the purpose of oversight and audit of the permanent maintenance*
3 *fund.*

4 ~~Sec.-22.~~ **[23.]** K.S.A. 17-1366 is hereby amended to read as
5 follows: 17-1366. As used in this act: (a) "Abandoned cemetery"
6 means:

7 (1) *Any cemetery owned by a corporation, as defined in K.S.A.*
8 *17-1312f, and amendments thereto, in which, for a period of at least*
9 *one year, there has been a failure to cut grass or weeds or care for*
10 *graves, grave markers, walls, fences, driveways and buildings; ~~or~~ and*

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

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

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

26 ~~Sec.-24.~~ **[25.]** This act shall take effect and be in force from and
27 after January 1, 2012, and its publication in the statute book.

28