

1 332. Any cemetery corporation entering into a ~~prepaid~~ *preneed cemetery*
2 merchandise contract shall provide in such contract that:

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

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

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

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

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

38 Sec. 15. **K.S.A. 17-1311** is hereby amended to read as follows: 17-
39 1311. (a) A cemetery corporation shall maintain, ~~in a trust company~~
40 ~~located within the state of Kansas, a state or national bank located within~~
41 ~~the state of Kansas, a state or federally chartered savings and loan~~
42 ~~association located within the state of Kansas or a federally chartered~~
43 ~~savings bank located within the state of Kansas~~ *a permanent maintenance*

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

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

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

41 Sec. 16. K.S.A. 17-1311a is hereby amended to read as follows: 17-
42 1311a. (a) Misuse of the permanent maintenance fund or any money
43 belonging thereto is *knowingly* using, lending or permitting another to

1 use; moneys in the fund in a manner not authorized by law; by a custodian
2 or other person having charge or control of such fund or moneys by virtue
3 of his position. .

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

6 Sec. 17. K.S.A. 17-1312 is hereby amended to read as follows: 17-
7 1312. (a) ~~The permanent maintenance fund required to be established by~~
8 ~~K.S.A. 17-1311, and amendments thereto, shall at all times be in the~~
9 ~~eustody of a trust company located within the state of Kansas, a state or~~
10 ~~national bank located within the state of Kansas, a state or federally~~
11 ~~chartered savings and loan association located within the state of Kansas~~
12 ~~or a federally chartered savings bank located within the state of Kansas.~~
13 ~~Each cemetery corporation shall establish a trust for moneys deposited in~~
14 ~~the permanent maintenance fund in accordance with this section. If the~~
15 ~~market value of the trust permanent maintenance fund is less than~~
16 ~~\$45,000 \$100,000, the trust permanent maintenance fund may have an~~
17 ~~individual trustee so long as the trust's assets be held in a Kansas~~
18 ~~financial institution, in either certificates of deposit or a business savings~~
19 ~~account which is insured by the federal deposit insurance corporation,~~
20 ~~provided that the fund assets are maintained in a segregated account. If~~
21 ~~the cemetery's permanent maintenance fund has a market value of less~~
22 ~~than \$100,000, the cemetery corporation shall comply with the reporting~~
23 ~~requirements of this act.~~

24 (b) (1) ~~Unless otherwise authorized by subsection (a), each~~
25 ~~cemetery corporation shall establish and maintain a permanent~~
26 ~~maintenance fund. If the market value of the trust permanent~~
27 ~~maintenance fund is \$45,000 \$100,000 or more, the trustee shall be a trust~~
28 ~~company located within the state of Kansas, a state or national bank~~
29 ~~located within the state of Kansas, a state or federally chartered savings~~
30 ~~and loan association located within the state of Kansas or a federally~~
31 ~~chartered savings bank located within the state of Kansas. Any such trust~~
32 ~~company, bank, savings and loan association or federally chartered~~
33 ~~savings bank with which the custody of a permanent maintenance fund~~
34 ~~has been entrusted may invest, reinvest, exchange, retain, sell and manage~~
35 ~~the moneys within such fund. If the treasurer of any cemetery corporation~~
36 ~~shall entrust the custody of the permanent maintenance fund to a savings~~
37 ~~and loan association or associations or federally chartered savings bank~~
38 ~~or banks, the amount of moneys in the custody of any such association or~~
39 ~~savings bank shall not exceed the amount for which deposits in such~~
40 ~~savings and loan association or savings bank are insured by the federal~~
41 ~~savings and loan insurance corporation or other insurer approved by the~~
42 ~~state commissioner of insurance. If the treasurer of any cemetery~~
43 ~~corporation shall entrust the custody of the permanent maintenance fund~~

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

35 (2) The trustee may recover from the earnings of the permanent
36 maintenance fund for all reasonable costs incurred in serving as trustee,
37 including a reasonable fee for its services. The taxes and costs may be
38 paid from earnings of the fund prior to the distribution of the income. If
39 all income is exhausted, any remaining capital gains tax liability may be
40 paid out of the realized capital gains before the balance reverts to
41 principal.

42 (3) The trustee shall be solely responsible for the investment of the
43 moneys held under a cemetery permanent maintenance fund. The trust

1 instrument must state that control of the trust funds by the trustor is
2 prohibited.

3 (c) The trust instrument shall be effective upon written approval by
4 the secretary of state and compliance with this section, unless it is
5 determined by a court of law that the underlying trust instrument is in
6 conflict with Kansas statutes, then that portion of the underlying trust
7 instrument becomes null and void and shall be of no further force or
8 effect. The trust instrument is in compliance with this section if the
9 following is provided to the secretary of state:

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

12 (2) The trustee shall submit a quarterly report to the secretary of
13 state. The report shall be in a form and manner approved by the
14 secretary of state and shall contain the following:

15 (A) Deposits to principal;

16 (B) any withdrawals from principal;

17 (C) all interest, dividends, and income earned;

18 (D) interest withdrawn;

19 (E) capital gains or capital losses; and

20 (F) capital gains taxes paid from capital gains.

21 (3) The trustee shall use deposit and withdrawal forms approved by
22 the secretary of state.

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

27 (5) By accepting the trusteeship of the permanent maintenance fund,
28 the trustee submits personally to the jurisdiction of the courts of this
29 state. All contractual agreements shall be subject to, governed by, and
30 construed according to the laws of the state of Kansas.

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

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

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

38 Sec. 18. K.S.A. 17-1312a is hereby amended to read as follows: 17-
39 1312a. (a) Each cemetery corporation formed under the laws of the state
40 of Kansas and each foreign corporation granted a certificate of authority
41 to own or operate a cemetery within the state of Kansas shall register with
42 the secretary of state before commencing business in Kansas. Each
43 cemetery corporation shall prepare and forward to the secretary of state at

1 the time it is required to make ~~an annual~~ a quarterly report under the
2 provisions of this act. ~~Kansas general corporation code, or if no such~~
3 ~~report is required then on January 1 in each year, a statement verified by~~
4 ~~the treasurer of said corporation describing the corpus and any~~
5 ~~accumulated income on the preceding December 31, or on the last day of~~
6 ~~its fiscal year if it does not use the calendar year in its accounts, in each~~
7 ~~permanent maintenance fund established by said corporation, the cost and~~
8 ~~the market value on said date of each security then held in each such~~
9 ~~fund, and the income of and disbursements from each such fund during~~
10 ~~the calendar or fiscal year then ended. This statement shall otherwise be~~
11 ~~in such form as the secretary of state shall prescribe.~~

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

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

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

36 (e) Whenever the secretary of state shall determine that any
37 cemetery corporation required by this act to be registered has failed or
38 refused to do so, the secretary of state may notify the county attorney or
39 district attorney of the county in which such cemetery corporation is
40 located, and such county attorney or district attorney shall commence
41 prosecution against such cemetery corporation. Any cemetery corporation
42 which fails to register with the secretary of state shall be liable for a civil
43 penalty of not to exceed \$1,000.

1 ~~(b)~~ (f) Whenever and as often as deemed necessary, the secretary of
2 state, or an employee designated by the secretary of state, may audit or
3 otherwise examine any cemetery corporation books and accounts.
4 Whenever such an audit or examination is so made, the cemetery
5 corporation shall pay such expenses as shall be assessed by the secretary
6 of state pursuant to K.S.A. 75-442, *and amendments thereto*.

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

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

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

34 (c) *The provisions of subsection (a) shall expire on July 1, 2016,*
35 *unless the legislature acts to reauthorize such provisions. The provisions*
36 *of subsection (a) shall be reviewed by the legislature prior to July 1,*
37 *2016.*

38 Sec. 21. K.S.A. 17-1312g is hereby amended to read as follows: 17-
39 1312g. (a) Cemetery corporations subject to an audit by the secretary of
40 state pursuant to K.S.A 17-1312a, and amendments thereto, shall file, in
41 the office of the secretary of state, a copy of the agreement or document
42 which establishes the trust between the cemetery corporation and the
43 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 for*
5 *the purpose of oversight and audit of the permanent maintenance fund.*

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

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

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

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

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

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

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