

## HOUSE BILL No. 2712

By Committee on Federal and State Affairs

2-25

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9 AN ACT relating to cemetery corporations; concerning cemetery mer-  
10 chandise contracts; relating to the permanent maintenance fund;  
11 amending K.S.A. 16-320, 16-321, 16-322, 16-323, 16-325, 16-329, 16-  
12 331, 16-332, 16-333, 16-334, 17-1311, 17-1311a, 17-1312, 17-1312a,  
13 17-1312d, 17-1312e, 17-1312g and 17-1366 and repealing the existing  
14 sections; also repealing K.S.A. 16-324.  
15

16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. The provisions of K.S.A. 16-320 through 16-334, and  
18 sections 1 through 3, and amendments thereto, may be cited as the pre-  
19 need cemetery merchandise contract act.

20 New Sec. 2. A cemetery corporation that accepts payment under any  
21 agreement, contract or plan governed by K.S.A. 16-320 et seq., and  
22 amendments thereto, shall:

23 (a) Maintain commercial insurance providing minimum coverage of  
24 \$100,000 against employee dishonesty or purchase a fidelity bond for the  
25 individual designated by the cemetery corporation as the financial officer  
26 in charge of supervising preneed transactions. Evidence of the commer-  
27 cial insurance maintained for compliance with this section shall be pro-  
28 vided to the secretary of state within 10 days of a written request.

29 (b) Each cemetery corporation which sells preneed cemetery mer-  
30 chandise, preneed burial products or preneed services governed by this  
31 act shall provide evidence of the commercial insurance maintained for  
32 compliance with this section. If such insurance lapses, is canceled or oth-  
33 erwise ceases to be maintained by the cemetery corporation, the insur-  
34 ance carrier shall immediately notify the secretary of state.

35 New Sec. 3. (a) Except as provided by this section, all information  
36 which the secretary of state shall gather or record in making an investi-  
37 gation and examination of any cemetery corporation, or the reporting by  
38 the cemetery corporation or the trustee, shall be deemed to be confiden-  
39 tial information, and shall not be disclosed by the secretary of state, any  
40 assistant, examiner or employee thereof, except to: (1) Officers and the  
41 members of the board of directors of the cemetery corporation being  
42 audited; (2) the attorney general, when in the opinion of the secretary of  
43 state the same should be disclosed; and (3) the appropriate official for

1 the municipality in which the cemetery is located, when in the opinion  
2 of the secretary of state the same should be disclosed.

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

7 (c) The provisions of subsection (a) shall expire on July 1, 2015, unless  
8 the legislature acts to reauthorize such provisions. The provisions of sub-  
9 section (a) shall be reviewed by the legislature prior to July 1, 2015.

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

12 (a) “*Preneed cemetery merchandise*” means burial vaults, grave lin-  
13 ers, grave boxes, urns, memorials, markers, vases, memorial vases, tomb-  
14 stones, lawn crypts, niches and mausoleum spaces and ~~all~~ *any* merchan-  
15 dises ~~commonly~~ sold or used in cemeteries. Caskets; grave lots, grave  
16 spaces; burial or interment rights; and developed or existing lawn crypts,  
17 mausoleum spaces or niches are not *preneed* cemetery merchandise.

18 (b) “*Preneed burial products or preneed services*” means any casket  
19 or service incidental to the burial of a body or the placement of a me-  
20 morial, marker, vase or tombstone or any other service provided by a  
21 cemetery corporation.

22 (c) “*Cemetery merchandise trust fund*” means a special purpose trust  
23 fund required to administer payments received from the sale of *preneed*  
24 cemetery merchandise, *preneed burial products or preneed services*.

25 ~~(b)~~ (d) “*Purchase price*” means the gross amount, less sales tax, if  
26 any, to be paid for *preneed* cemetery merchandise, *preneed burial prod-*  
27 *ucts or preneed services* under the provisions of a ~~prepaid~~ *preneed* mer-  
28 chandise contract, *including the cost of shipping*. The purchase price does  
29 not include finance charges, sales tax, ~~charges for real property interests~~  
30 *the purchase price of existing grave spaces, burial or interment rights or*  
31 charges for credit life insurance.

32 ~~(c)~~ (e) “*Prepaid Preneed merchandise contract*” means any agree-  
33 ment for the sale of *preneed* cemetery merchandise, *preneed burial prod-*  
34 *ucts or preneed services* by a cemetery corporation which requires pay-  
35 ment of the purchase price, in whole or in part, prior to delivery of the  
36 *preneed* cemetery merchandise, *preneed burial products or preneed serv-*  
37 *ices*, which agreement is entered into from and after the effective date of  
38 this act.

39 ~~(d)~~ (f) “*Cemetery corporation*” means any individual or entity re-  
40 quired to maintain permanent maintenance ~~funds~~ *fund* under the provi-  
41 sions of K.S.A. 17-1312f, and amendments thereto.

42 ~~(e)~~ (g) “*Minimum Funding requirement*” means that portion of the  
43 purchase price equal to ~~110%~~ *110%* of the wholesale cost f.o.b. to the cemetery

1 ~~corporation~~ 50% of the retail price of the *preneed* cemetery merchandise  
2 ~~covered described in a prepaid~~ the *preneed* merchandise contract. ~~Whole-~~  
3 ~~sale costs shall be determined by the cemetery corporation on the basis~~  
4 ~~of such quotations and price lists as are available to the cemetery and~~  
5 ~~100% of the retail price of any preneed burial product or preneed service,~~  
6 ~~including distributable earnings.~~

7 (h) “Distributable earnings” means income and capital gains, less any  
8 reasonable costs incurred by the trustee, including a reasonable fee for  
9 services and applicable taxes and costs.

10 (i) The trustee means:

11 (1) A Kansas financial institution with the authority to provide trust  
12 services; or

13 (2) a federally chartered institution that has a physical location within  
14 the state of Kansas and the authority to provide trust services.

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

16 ~~(a) Any cemetery corporation entering into any prepaid merchandise con-~~  
17 ~~tract shall establish and maintain a cemetery merchandise trust fund un-~~  
18 ~~der K.S.A. 16-322. All prepaid merchandise contracts shall be in writing.~~

19 ~~—(b)— A cemetery corporation entering into a prepaid merchandise con-~~  
20 ~~tract shall be entitled to retain all of the purchase price under the prepaid~~  
21 ~~merchandise contract until it has received an amount equal to 35% of the~~  
22 ~~purchase price of the cemetery merchandise sold in a prepaid merchan-~~  
23 ~~dise contract.~~

24 ~~—(c)— After the cemetery corporation has received the amounts it is~~  
25 ~~entitled to receive under subsection (b) of this section, all payments of~~  
26 ~~the purchase price to the cemetery corporation under a prepaid mer-~~  
27 ~~chandise contract shall be deposited by the cemetery corporation in a~~  
28 ~~cemetery merchandise trust fund until such time as the requirements of~~  
29 ~~subsection (d) of this section have been satisfied or delivery is made of~~  
30 ~~the cemetery merchandise. Thereafter, all payments of the purchase price~~  
31 ~~in excess of the minimum funding requirements may be retained by the~~  
32 ~~cemetery corporation. Deposits shall be made within 10 business days~~  
33 ~~after the moneys are received.~~

34 ~~—(d)— Annually, as of December 31, each cemetery corporation shall~~  
35 ~~determine the wholesale cost for all cemetery merchandise covered by a~~  
36 ~~prepaid merchandise contract for which funds are then held in a cemetery~~  
37 ~~merchandise trust or in an individual merchandise account. If the~~  
38 ~~amounts held with respect to a prepaid merchandise contract exceed the~~  
39 ~~minimum funding requirement the excess shall be paid by the trustee of~~  
40 ~~the cemetery merchandise trust to the cemetery corporation. In such~~  
41 ~~event, no further deposit shall be required with respect to the prepaid~~  
42 ~~merchandise contract until such time as the amounts held no longer ex-~~  
43 ~~ceed the minimum funding requirement. If the minimum funding re-~~

1 ~~requirement is not satisfied, no amount shall be paid to or withdrawn by~~  
2 ~~the cemetery corporation and the cemetery corporation shall continue or~~  
3 ~~shall resume, as the case may be, making the deposits required by sub-~~  
4 ~~section (c) of this section.~~

5 (a) *Any cemetery corporation entering into any preneed merchandise*  
6 *contract shall establish and maintain a cemetery merchandise trust fund*  
7 *under K.S.A. 16-322, and amendments thereto. The primary purpose of*  
8 *the cemetery merchandise trust fund is to maintain the corpus of the trust*  
9 *fund with the goal that the growth of the corpus will be at least equal to*  
10 *the wholesale costs of the preneed cemetery merchandise, preneed burial*  
11 *products or preneed services, at the time of delivery or need.*

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

13 (c) *A cemetery corporation entering into a preneed merchandise in-*  
14 *stallment contract that allows the purchaser to make installment pay-*  
15 *ments, shall be entitled to retain all purchaser payments until an amount*  
16 *equal to 25% of the purchase price is received, and thereafter, shall de-*  
17 *posit at least  $\frac{2}{3}$  of each payment into the cemetery merchandise trust fund*  
18 *and the cemetery corporation may retain the balance of each such*  
19 *payment.*

20 (d) *An administrative fee shall be charged for each preneed merchan-*  
21 *dise contract for preneed cemetery merchandise, preneed burial products*  
22 *or preneed services and forwarded on a monthly basis to the secretary of*  
23 *state, in a form and manner approved by the secretary of state. The sec-*  
24 *retary of state shall promulgate rules and regulations to establish the ad-*  
25 *ministrative fee.*

26 (e) *Deposits to the cemetery merchandise trust fund shall be made*  
27 *within 30 days following the calendar month after the moneys are*  
28 *received.*

29 (f) *Within 30 days following the end of each calendar month, the*  
30 *cemetery corporation shall provide the trustee and the secretary of state*  
31 *a report of all sales of preneed cemetery merchandise, preneed burial*  
32 *products and preneed services. The report shall be in a form and manner*  
33 *approved by the secretary of state. If the cemetery did not make a sale*  
34 *within 30 days following the end of each calendar month, the cemetery*  
35 *corporation shall provide the trustee and the secretary of state a report*  
36 *indicating no sales to record. The report shall be in a form and manner*  
37 *approved by the secretary of state.*

38 (g) *Within 30 days following the end of each calendar month, the*  
39 *cemetery corporation shall provide the trustee and the secretary of state*  
40 *a report of all verified deliveries of preneed cemetery merchandise, pre-*  
41 *need burial products and preneed services along with any request for*  
42 *distribution from the trustee. The report shall be in a form and manner*  
43 *approved by the secretary of state. If the cemetery did not make a delivery*

1 *within 30 days following the end of each calendar month, the cemetery*  
2 *corporation shall provide the trustee and the secretary of state a report*  
3 *indicating there were no deliveries to record. The report shall be in a form*  
4 *and manner approved by the secretary of state.*

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

11 (i) *Annually, as of December 31, the trustee of the merchandise trust*  
12 *fund shall apply the distributable earnings to all preneed cemetery mer-*  
13 *chandise, preneed burial products and preneed services for which funds*  
14 *are then held in a cemetery merchandise trust fund. The trustee shall*  
15 *report to the secretary of state the calculation of the distributable earnings*  
16 *within 30 days from December 31, in a form and manner approved by*  
17 *the secretary of state.*

18 (j) *The cemetery corporation shall obtain prior written approval from*  
19 *the secretary of state before the trust instrument shall be terminated,*  
20 *transferred or amended. The cemetery corporation shall provide the sec-*  
21 *retary of state a copy of the new or amended trust instrument before the*  
22 *new or amended trust instrument shall become effective.*

23 Sec. 6. K.S.A. 16-322 is hereby amended to read as follows: 16-322.

24 (a) *Unless otherwise authorized by the preneed cemetery merchandise*  
25 *contract act, the cemetery corporation shall establish and maintain a cem-*  
26 *etery merchandise trust fund with a bank, trust company or savings and*  
27 *loan association having trust powers. A copy of each contract or a written*  
28 *notice containing all relevant information regarding such prepaid mer-*  
29 *chandise contract for which deposits are made shall be furnished financial*  
30 *institutions. The institutions shall serve as trustees for the purposes of*  
31 *this act trustee. The trustee may appoint one or more agents to provide*  
32 *administrative or investment advisory services, provided the trustee shall*  
33 *not assign or delegate the liability and fiduciary responsibilities owed to*  
34 *the cemetery merchandise trust fund to another financial institution or*  
35 *agent. Deposits to such fund shall be carried in the name of the cemetery*  
36 *corporation and the purchasers of the preneed cemetery merchandise con-*  
37 *tracts, amounts deposited therein may be commingled, but the account-*  
38 *ing records shall establish a separate account for each prepaid merchan-*  
39 *dise contract and shall show the amounts deposited, and the income or*  
40 *loss accruing thereon, with respect to each prepaid merchandise contract.*  
41 *The trustee shall invest the trust funds subject to the requirements of*  
42 *subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto.*  
43 *The trustee shall reimburse the cemetery corporation for all income taxes*

1 ~~and costs incurred with respect to the operation of such fund, and the~~  
2 ~~trustee shall be reimbursed~~ *may recover* from the earnings of ~~such the~~  
3 *cemetery merchandise trust* fund for all reasonable costs incurred in serv-  
4 ing as trustee, including a reasonable fee for its services. The taxes and  
5 costs ~~shall may~~ be paid from earnings of the fund prior to the allocation  
6 of earnings to the ~~individual accounts~~ *preneed cemetery merchandise,*  
7 *preneed burial products or preneed services.*

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

28 (c) *The trustee shall sign an affirmation, in a form and manner pre-*  
29 *scribed by the secretary of state, declaring that the trustee has read, un-*  
30 *derstands and agrees to abide by the provisions of this act. The statement*  
31 *shall be signed under penalty of perjury and shall contain the following:*

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

34 (2) *If determined by a court of law that the underlying trust instru-*  
35 *ment is in conflict with Kansas statutes, that portion of the underlying*  
36 *trust instrument is null and void.*

37 (3) *The trust instrument shall comply with the requirements found in*  
38 *K.S.A. 16-320 et seq., and amendments thereto.*

39 (4) *The trust instrument shall be effective upon written approval of*  
40 *the secretary of state.*

41 (5) *The trustee shall submit monthly reports to the secretary of state*  
42 *that shall be in a form and manner prescribed by the secretary of state*  
43 *and include the following:*

- 1 (A) Deposits;
- 2 (B) withdrawals;
- 3 (C) all interest, dividends and income earned; and
- 4 (D) capital gains or capital losses.
- 5 (6) Within 30 days following December 31 of each year, the trustee
- 6 shall report the allocation of distributable earnings to the secretary of
- 7 state in a form and manner prescribed by the secretary of state.
- 8 (7) The trustee shall use deposit and withdrawal forms in a form and
- 9 manner prescribed by the secretary of state.
- 10 (8) The trustee shall invest the trust funds subject to the requirements
- 11 of subsections (a) through (f) of K.S.A. 58-24a02, and amendments
- 12 thereto. Control of the trust funds by the trustor is prohibited.
- 13 (9) By accepting the trusteeship of the cemetery merchandise trust
- 14 fund, the trustee submits personally to the jurisdiction of the courts of
- 15 this state. The laws of the state of Kansas shall control.
- 16 (10) The trustee shall retain all liability and fiduciary responsibility
- 17 for managing and administering the cemetery merchandise trust fund in
- 18 accordance with the provisions of the preneed cemetery merchandise con-
- 19 tract act.
- 20 Sec. 7. K.S.A. 16-323 is hereby amended to read as follows: 16-323.
- 21 ~~Any person who violates any provision of this act shall be deemed guilty~~
- 22 ~~of a class A misdemeanor.~~
- 23 (a) Misuse of the cemetery merchandise trust fund or any money be-
- 24 longing thereto is using, investing, lending or permitting another to use
- 25 moneys in the fund in a manner not authorized by law.
- 26 (b) Misuse of the cemetery merchandise trust fund is a severity level
- 27 7, nonperson felony.
- 28 Sec. 8. K.S.A. 16-325 is hereby amended to read as follows: 16-325.
- 29 (a) The secretary of state, or the secretary's representative, shall, while
- 30 auditing each cemetery corporation, pursuant to K.S.A. 17-1312a, and
- 31 amendments thereto, audit the cemetery merchandise trusts required by
- 32 this act, and approve the cemetery's trustee's determination of the whole-
- 33 ~~sale costs under subsection (d) of K.S.A. 16-321, and amendments thereto~~
- 34 *distributable earnings*. For such purposes, the secretary of state or the
- 35 secretary's representative, is authorized to administer oaths and to ex-
- 36 amine under oath the directors, officers, employees and agents of any
- 37 cemetery corporation. Such examination may be reduced to writing by
- 38 the person taking it and the examiner may make findings as to the con-
- 39 dition of each trust fund examined. For the purposes of such audits, the
- 40 secretary of state may *also* require any officer of a cemetery corporation
- 41 *or the trustee* to furnish and submit the books, records, papers and in-
- 42 ~~struments of such cemetery corporation to the examination.~~ *The secretary*
- 43 *of state shall be authorized to obtain trust accounting records from the*

1 trustee.

2 (b) *The secretary of state shall adopt rules and regulations for the*  
3 *purpose of providing oversight and auditing of the cemetery merchandise*  
4 *trust fund.*

5 Sec. 9. K.S.A. 16-329 is hereby amended to read as follows: 16-329.

6 No cemetery corporation shall enter into any ~~prepaid~~ *preneed* merchan-  
7 dised contract until such corporation has filed with the secretary of state a  
8 notification of its intention to sell and engage in such ~~prepaid~~ *preneed*  
9 merchandise contracts. Such notice shall include the name of the ceme-  
10 tery corporation, its principal place of business and the name and address  
11 of the trustee or trustees to be utilized under the provisions of this act.

12 Accounting records and information required by ~~this the~~ *preneed cem-*  
13 *etary merchandise contract* act shall be maintained in a ~~format~~ *form and*  
14 *manner* approved by the secretary of state. A report of the merchandise  
15 trust ~~account~~ *fund* shall be required of the cemetery corporation ~~annually~~  
16 *monthly* as part of the corporation's ~~annual~~ *monthly* report on a form  
17 provided or approved by the secretary of state.

18 Sec. 10. K.S.A. 16-331 is hereby amended to read as follows: 16-331.

19 Any cemetery corporation which refuses or neglects to establish or main-  
20 tain a cemetery merchandise trust fund in accordance with the require-  
21 ments of this act for a period of ~~90~~ *60* days after *written* demand to do  
22 so is made upon it by the secretary of state shall be deemed to have  
23 forfeited its ~~corporate franchise~~ *cemetery corporation*. The attorney gen-  
24 eral, upon the request of the secretary of state, shall then begin an action  
25 for the appointment of a receiver for such cemetery corporation and to  
26 dissolve the same.

27 Sec. 11. K.S.A. 16-332 is hereby amended to read as follows: 16-332.

28 Any cemetery corporation entering into a ~~prepaid~~ *preneed cemetery* mer-  
29 chandise contract shall provide in such contract that:

30 (a) A purchaser, under a ~~prepaid~~ *preneed cemetery* merchandise con-  
31 tract covered in this act who permanently moves to another state in the  
32 United States, may direct that the merchandise, so long as the same is  
33 not a part of nor affixed to real estate, be delivered to a cemetery in the  
34 state of the purchaser's residence, except that the purchaser may be re-  
35 quired to pay the additional transportation costs which exceed those the  
36 cemetery would have incurred to provide and deliver the merchandise to  
37 the seller cemetery; or

38 (b) a purchaser who has entered into a ~~prepaid~~ *preneed cemetery*  
39 merchandise contract covered by this act may, upon the purchaser per-  
40 manently changing residence to a place more than 150 miles from the  
41 cemetery, cancel the contract upon written notice to the cemetery, which  
42 notice shall then be forwarded by the cemetery to the trustee of the  
43 cemetery merchandise trust fund. Upon receipt of such notice, the ~~pre-~~



1 ~~paid~~ *preneed cemetery* merchandise contract shall be ~~cancelled~~ *canceled*,  
2 and the trustee, after deducting that contract's share of applicable costs  
3 and taxes provided for in K.S.A. 16-322, *and amendments thereto*, shall  
4 pay to the purchaser not less than 85% of the funds held in trust for the  
5 contract pursuant to this act. The balance shall be paid to the cemetery  
6 corporation and the trustee shall be discharged from further obligation  
7 as to such contract.

8 Sec. 12. K.S.A. 16-333 is hereby amended to read as follows: 16-333.  
9 Sales of *preneed cemetery merchandise, preneed burial products or pre-*  
10 *need services* subject to this act shall be exempt from the provisions of  
11 K.S.A. 16-301 through 16-309, ~~inclusive~~, and ~~any~~ amendments thereto.

12 Sec. 13. K.S.A. 16-334 is hereby amended to read as follows: 16-334.  
13 (a) Cemetery corporations subject to ~~an audit by the secretary of state~~  
14 ~~pursuant to K.S.A. 16-325, and amendments thereto~~ *the preneed ceme-*  
15 *tery merchandise contract act*, shall file, in the office of the secretary of  
16 state, a copy of the agreement or document which establishes the trust  
17 between the cemetery corporation and the trustee.

18 (b) *The trust agreement shall acknowledge all contractual agreements*  
19 *subject to, governed by and construed accordingly to K.S.A. 16-320 et*  
20 *seq., and amendments thereto.*

21 New Sec. 14. (a) A cemetery corporation that accepts payment under  
22 any agreement or contract governed by K.S.A. 17-1308 et seq., and  
23 amendments thereto, shall maintain commercial insurance providing  
24 minimum coverage of \$100,000 against employee dishonesty or purchase  
25 a fidelity bond for the individual designated by the cemetery corporation  
26 as the financial officer responsible for the administration of the perma-  
27 nent maintenance fund. Evidence of the commercial insurance main-  
28 tained for compliance with this section shall be provided to the secretary  
29 of state.

30 (b) Each cemetery corporation governed by K.S.A. 17-1308 et seq.,  
31 and amendments thereto, shall provide evidence of the commercial in-  
32 surance maintained for compliance with this section. If such insurance  
33 lapses, is canceled or otherwise ceases to be maintained by the cemetery  
34 corporation, the insurance carrier shall immediately notify the secretary  
35 of state.

36 New Sec. 15. As used in K.S.A. 17-1308 through 17-1317 and sec-  
37 tions 15 and 16, and amendments thereto, the following definitions shall  
38 apply to this act:

39 (a) "Burial space" means a grave lot, grave space, burial or interment  
40 right and developed or existing lawn crypts, mausoleum spaces or niches.

41 (b) "Cemetery corporation" means any individual or entity required  
42 to maintain a permanent maintenance fund under the provisions of K.S.A.  
43 17-1312f, and amendments thereto.

1 (c) "Funding requirement" means that portion of the purchase price  
 2 equal to 15% of the purchase price, but not less than \$25 of a burial  
 3 space.

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

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

13 (f) "Trustee" means:

14 (1) A Kansas financial institution with the authority to provide trust  
 15 services; or

16 (2) a federally chartered institution that has a physical location within  
 17 the state of Kansas and the authority to provide trust services.

18 (g) "Trustor" means the cemetery corporation responsible for making  
 19 deposits in a permanent maintenance fund, which is subject of a trust.

20 Sec. 16. K.S.A. 17-1311 is hereby amended to read as follows: 17-  
 21 1311. *(a)* A cemetery corporation shall maintain, ~~in a trust company lo-~~  
 22 ~~ated within the state of Kansas, a state or national bank located within~~  
 23 ~~the state of Kansas, a state or federally chartered savings and loan asso-~~  
 24 ~~ciation located within the state of Kansas or a federally chartered savings~~  
 25 ~~bank located within the state of Kansas~~ *with a trustee*, a percentage of  
 26 the purchase price of each burial ~~lot~~ *space* sold by it, or any payment on  
 27 such burial ~~lot~~ *space*, not less than 15% of such purchase price, for the  
 28 permanent maintenance of the cemetery within which the burial ~~lot~~ *space*  
 29 lies, but the total amount set aside shall not be less than \$25 for each  
 30 burial ~~lot~~ *space* at the time of conveyance of such ~~lot~~ *burial space*. *If the*  
 31 *cemetery corporation allows the purchaser of the burial space to make*  
 32 *installment payments, not less than 15% of such installment payment shall*  
 33 *be deposited into the permanent maintenance fund.* Deposits to the per-  
 34 manent maintenance fund shall be made within ~~45 days of receipt of~~  
 35 ~~moneys for which deposits are required to be made~~ *30 days following the*  
 36 *end of each calendar month after the moneys are received.* Moneys placed  
 37 in such fund under the provisions of K.S.A. 17-1308, and amendments  
 38 thereto, shall be credited for the purposes of fulfilling such requirement.  
 39 Moneys in such fund may be held and invested ~~to the same extent as is~~  
 40 ~~provided in~~ *subject to the requirements of subsection (a) through (f) of*  
 41 *K.S.A. 58-24a02, and amendments thereto, but the total amount of money*  
 42 *invested in any mortgage upon real property shall not exceed an amount*  
 43 *equal to 75% of the market value of such property at the time of such*

1 investment. ~~The income of the permanent maintenance fund shall be~~  
2 ~~used exclusively for the maintenance of the cemetery.~~ No part of the  
3 principal of the fund shall ever be used for any purpose except for ~~such~~  
4 investment. In no event shall any loan of the funds be made to any stock-  
5 holder, officer or employee of such cemetery corporation, or to any per-  
6 son related, by blood or marriage, to a stockholder, officer or employee.  
7 The treasurer of such corporation may deposit, to the credit of such fund,  
8 donations or bequests for the fund and may retain property so acquired  
9 without limitation as to time and without regard to its suitability for orig-  
10 inal purchase. ~~As used in this section, the term "burial lot" means a plot-~~  
11 ~~ted space for one grave. Such maintenance shall include, but not be lim-~~  
12 ~~ited to, mowing, road maintenance and landscaping, but shall not include~~  
13 ~~administrative costs, expense of audits or the portion of any capital ex-~~  
14 ~~penditure for equipment used to maintain portions of a cemetery not sold for~~  
15 ~~burial purposes or in use for grave sites.~~

16 *(b) The primary purpose of the permanent maintenance fund is to*  
17 *maintain the corpus of the fund. The income earned from the permanent*  
18 *maintenance fund may be dispersed to the cemetery. All capital gains shall*  
19 *be allocated to principal.*

20 *(c) The cemetery corporation shall obtain prior written approval from*  
21 *the secretary of state before any trust instrument shall be terminated,*  
22 *transferred or amended. The cemetery corporation shall provide the sec-*  
23 *retary of state a copy of the new or amended trust instrument before the*  
24 *new or amended trust instrument shall become effective.*

25 *(d) An administrative fee shall be charged for each burial space sold*  
26 *and forwarded on a monthly basis to the secretary of state, in a form and*  
27 *manner approved by the secretary of state. The secretary of state shall*  
28 *promulgate rules and regulations to establish the administrative fee.*

29 Sec. 17. K.S.A. 17-1311a is hereby amended to read as follows: 17-  
30 1311a. (a) Misuse of the permanent maintenance fund or any money  
31 belonging thereto is using, lending or permitting another to use, moneys  
32 in the fund in a manner not authorized by law, ~~by a custodian or other~~  
33 ~~person having charge or control of such fund or moneys by virtue of his~~  
34 ~~position.~~

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

37 Sec. 18. K.S.A. 17-1312 is hereby amended to read as follows: 17-  
38 1312. ~~The permanent maintenance fund required to be established by~~  
39 ~~K.S.A. 17-1311, and amendments thereto, shall at all times be in the~~  
40 ~~eustody of a trust company located within the state of Kansas, a state or~~  
41 ~~national bank located within the state of Kansas, a state or federally char-~~  
42 ~~tered savings and loan association located within the state of Kansas or a~~  
43 ~~federally chartered savings bank located within the state of Kansas. Each~~

1 ~~cemetary corporation shall establish a trust for moneys deposited in the~~  
2 ~~permanent maintenance fund in accordance with this section. If the mar-~~  
3 ~~ket value of the trust is less than \$45,000, the trust may have an individual~~  
4 ~~trustee so long as the trust's assets are maintained in a segregated account.~~  
5 ~~If the market value of the trust is \$45,000 or more, the trustee shall be a~~  
6 ~~trust company located within the state of Kansas, a state or national bank~~  
7 ~~located within the state of Kansas, a state or federally chartered savings~~  
8 ~~and loan association located within the state of Kansas or a federally char-~~  
9 ~~tered savings bank located within the state of Kansas. Any such trust~~  
10 ~~company, bank, savings and loan association or federally chartered savings~~  
11 ~~bank with which the custody of a permanent maintenance fund has been~~  
12 ~~entrusted may invest, reinvest, exchange, retain, sell and manage the~~  
13 ~~moneys within such fund. If the treasurer of any cemetery corporation~~  
14 ~~shall entrust the custody of the permanent maintenance fund to a savings~~  
15 ~~and loan association or associations or federally chartered savings bank or~~  
16 ~~banks, the amount of moneys in the custody of any such association or~~  
17 ~~savings bank shall not exceed the amount for which deposits in such sav-~~  
18 ~~ings and loan association or savings bank are insured by the federal savings~~  
19 ~~and loan insurance corporation or other insurer approved by the state~~  
20 ~~commissioner of insurance. If the treasurer of any cemetery corporation~~  
21 ~~shall entrust the custody of the permanent maintenance fund to a bank~~  
22 ~~or banks or federally chartered savings bank or banks, the amount of~~  
23 ~~money in the custody of any such bank or savings bank shall not exceed~~  
24 ~~the amount for which deposits in such bank or savings bank are insured~~  
25 ~~by the federal deposit insurance corporation or other insurer approved~~  
26 ~~by the state bank commissioner. Such trust company, bank, savings and~~  
27 ~~loan association, federally chartered savings bank or individual trustee~~  
28 ~~may serve without bond and may be reasonably compensated for its serv-~~  
29 ~~ices out of the income of the fund. It shall be a provision of any such~~  
30 ~~trust agreement that no moneys, other than income from the trust, shall~~  
31 ~~be paid over to the cemetery corporation by the trustee, except upon the~~  
32 ~~written permission of the secretary of state.~~

33 *(a) If the market value of the permanent maintenance fund is less*  
34 *than \$100,000, the permanent maintenance funds may be held in certifi-*  
35 *icates of deposit or in a business savings account which is insured by the*  
36 *federal deposit insurance corporation, in a Kansas financial institution*  
37 *providing the fund assets are maintained in a segregated account. If the*  
38 *cemetery's permanent maintenance fund has a market value of less than*  
39 *\$100,000, the cemetery corporation shall comply with the reporting*  
40 *requirements of this act.*

41 *(b) (1) Unless otherwise authorized by subsection (a), each cemetery*  
42 *corporation shall establish and maintain a permanent maintenance fund.*  
43 *If the market value of the permanent maintenance fund is more than*

1 \$100,000, the cemetery corporation shall establish and maintain the per-  
2 manent maintenance fund in an irrevocable trust with a trustee. The trus-  
3 tee may appoint one or more agents to provide administrative or invest-  
4 ment advisory services, provided the trustee shall not assign or delegate  
5 the liability and fiduciary responsibilities owed to the permanent main-  
6 tenance fund to another financial institution or agent. The trustee may  
7 invest, reinvest, exchange, retain, sell and manage the moneys within such  
8 fund, pursuant to subsections (a) through (f) of K.S.A. 58-24a01, and  
9 amendments thereto. Such trustee may be reasonably compensated for its  
10 services out of the income of the fund. It shall be a provision of any such  
11 trust agreement that no moneys, other than income from the trust, shall  
12 be paid over to the cemetery corporation by the trustee, except upon the  
13 written permission of the secretary of state.

14 (2) The trustee may recover from the earnings of the permanent main-  
15 tenance fund for all reasonable costs incurred in serving as trustee, in-  
16 cluding a reasonable fee for its services. The taxes and costs may be paid  
17 from earnings of the fund prior to the distribution of the income. If all  
18 income is exhausted, any remaining capital gains tax liability may be paid  
19 out of the realized capital gains before the balance reverts to principal.

20 (3) The trustee shall be solely responsible for the investment of the  
21 moneys held under a cemetery permanent maintenance fund. The trust  
22 instrument must state that control of the trust funds by the trustor is  
23 prohibited.

24 (4) The trustee shall sign an affirmation, in a form and manner pre-  
25 scribed by the secretary of state, declaring that the trustee has read, un-  
26 derstands and agrees to abide by the provisions in this act. The statement  
27 shall be signed under penalty of perjury and shall contain the following:

28 (A) The names of the trustee, the cemetery corporation as trustor, and  
29 the date the trust instrument shall become effective.

30 (B) If determined by a court of law that the underlying trust instru-  
31 ment is in conflict with Kansas statutes, that portion of the underlying  
32 trust instrument is null and void.

33 (C) The trust instrument shall comply with the requirements found  
34 in K.S.A. 17-1308 et seq., and amendments thereto.

35 (D) The trust instrument shall be effective upon written approval of  
36 the secretary of state.

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

40 (i) Deposits to principal;

41 (ii) any withdrawals from principal;

42 (iii) all interest, dividends, and income earned;

43 (iv) interest withdrawn;

- 1     (v) *capital gains or capital losses; and*  
2     (vi) *capital gains taxes paid from capital gains.*  
3     (F) *The trustee shall provide deposit and withdrawal forms in a form*  
4 *and manner prescribed by the secretary of state.*  
5     (G) *The trustee shall invest the trust funds subject to the requirements*  
6 *of subsections (a) through (f) of K.S.A. 58-24a02, and amendments*  
7 *thereto. Control of the trust funds by the trustor is prohibited.*  
8     (H) *By accepting the trusteeship of the permanent maintenance fund,*  
9 *the trustee submits personally to the jurisdiction of the courts of this state.*  
10 *The laws of the state of Kansas shall control.*  
11     (I) *The trustee acknowledges the primary purpose of the permanent*  
12 *maintenance fund is to maintain the corpus of the trust.*  
13     (J) *The trustee shall retain all liability and fiduciary responsibility for*  
14 *managing and administering the permanent maintenance fund.*  
15     Sec. 19. K.S.A. 17-1312a is hereby amended to read as follows: 17-  
16 1312a. (a) Each cemetery corporation formed under the laws of the state  
17 of Kansas and each foreign corporation granted a certificate of authority  
18 to own or operate a cemetery within the state of Kansas shall register  
19 with the secretary of state before commencing business in Kansas. Each  
20 cemetery corporation shall prepare and forward to the secretary of state  
21 at the time it is required to make ~~an annual~~ *a monthly* report under the  
22 ~~Kansas general corporation code, or if no such report is required then on~~  
23 ~~January 1 in each year, a statement verified by the treasurer of said cor-~~  
24 ~~poration describing the corpus and any accumulated income on the pre-~~  
25 ~~ceding December 31, or on the last day of its fiscal year if it does not use~~  
26 ~~the calendar year in its accounts, in each permanent maintenance fund~~  
27 ~~established by said corporation, the cost and the market value on said~~  
28 ~~date of each security then held in each such fund, and the income of and~~  
29 ~~disbursements from each such fund during the calendar or fiscal year~~  
30 ~~then ended. This statement shall otherwise be in such form as the sec-~~  
31 ~~retary of state shall prescribe provisions of this act.~~  
32     (b) *Within 30 days following the end of each calendar month, the*  
33 *cemetery corporation shall provide the trustee and the secretary of state*  
34 *a report of all sales of burial spaces. The report shall be in a form and*  
35 *manner approved by the secretary of state. If the cemetery did not make*  
36 *a sale, within 30 days following the end of each calendar month, the*  
37 *cemetery corporation shall provide the trustee and the secretary of state*  
38 *a report indicating no sales to record. The report shall be in a form and*  
39 *manner approved by the secretary of state.*  
40     (c) *Within 30 days following the end of each calendar month, the*  
41 *trustee shall provide the secretary of state a report of all deposits to and*  
42 *distributions from the permanent maintenance fund. The report shall be*  
43 *in a form and manner approved by the secretary of state and shall include*

1 *the total amount of the deposits, distributions and the name and contact*  
 2 *information of the trust officer in charge of the account.*

3 (d) *Annually, as of December 31, the trustee of the permanent main-*  
 4 *tenance fund shall determine and disperse to the cemetery corporation,*  
 5 *the income for the permanent maintenance fund, less reasonable costs,*  
 6 *taxes and fees. The trustee shall report to the secretary of state the cal-*  
 7 *culatation of the dispersed income within 30 days from December 31, in a*  
 8 *form and manner approved by the secretary of state.*

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

17 ~~(b)~~ (f) Whenever and as often as deemed necessary, the secretary of  
 18 state, or an employee designated by the secretary of state, may audit or  
 19 otherwise examine any cemetery corporation books and accounts. When-  
 20 ever such an audit or examination is so made, the cemetery corporation  
 21 shall pay such expenses as shall be assessed by the secretary of state  
 22 pursuant to K.S.A. 75-442, *and amendments thereto.*

23 Sec. 20. K.S.A. 17-1312d is hereby amended to read as follows: 17-  
 24 1312d. Any cemetery corporation which shall refuse or neglect to estab-  
 25 lish or maintain a permanent maintenance fund in accordance with the  
 26 requirements of this act for each cemetery owned by it for a period of  
 27 ~~ninety (90)~~ 60 days after demand to do so is made upon it by the secretary  
 28 of state shall be deemed to have forfeited its ~~franchise~~ *cemetery corpo-*  
 29 *ration.* The attorney general, upon the request of the secretary of state,  
 30 shall then begin action for the appointment of a receiver for such cem-  
 31 etery corporation and to dissolve the same.

32 Sec. 21. K.S.A. 17-1312e is hereby amended to read as follows: 17-  
 33 1312e. (a) Except as provided by this section, all information which the  
 34 secretary of state shall gather or record in making an investigation and  
 35 examination of any cemetery corporation, *or the reporting by the ceme-*  
 36 *tery corporation or trustee,* shall be deemed to be confidential informa-  
 37 tion, and shall not be disclosed by the secretary of state, any assistant,  
 38 examiner or employee thereof, except to: (1) *Officers and the members*  
 39 *of the board of directors* of the cemetery corporation being audited; ~~and~~  
 40 (2) the attorney general, when in the opinion of the secretary of state the  
 41 same should be disclosed; *and* (3) *the appropriate official for the munic-*  
 42 *ipality in which the cemetery is located when in the opinion of the sec-*  
 43 *retary of state the same should be disclosed.*

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

7 (c) *The provisions of subsection (a) shall expire on July 1, 2015, unless*  
8 *the legislature acts to reauthorize such provisions. The provisions of sub-*  
9 *section (a) shall be reviewed by the legislature prior to July 1, 2015.*

10 Sec. 22. K.S.A. 17-1312g is hereby amended to read as follows: 17-  
11 1312g. (a) Cemetery corporations subject to an audit by the secretary of  
12 state pursuant to K.S.A. 17-1312a, and amendments thereto, shall file, in  
13 the office of the secretary of state, a copy of the agreement or document  
14 which establishes the trust between the cemetery corporation and the  
15 trustee.

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

19 (c) *The secretary of state shall promulgate rules and regulations for*  
20 *the purpose of providing oversight and auditing of the permanent main-*  
21 *tenance fund.*

22 Sec. 23. K.S.A. 17-1366 is hereby amended to read as follows: 17-  
23 1366. As used in this act: (a) “Abandoned cemetery” means any cemetery  
24 owned by a corporation, as defined in K.S.A. 17-1312f, *and amendments*  
25 *thereto*, in which: (1) For a period of at least one year, there has been a  
26 failure to cut grass or weeds or care for graves, grave markers, walls,  
27 fences, driveways and buildings; or ~~for~~ (2) *for a period of 60 days* which  
28 proper records have not been maintained and ~~annual~~ *monthly* reports  
29 *have not been* made to the secretary of state, pursuant to the provisions  
30 of K.S.A. 17-1312a et seq., and amendments thereto; and

31 (b) “municipality” means the cemetery district in which all or any  
32 portion of an abandoned cemetery is located. If no portion of such cem-  
33 etery is located within a cemetery district, the term shall mean the city  
34 in which all or any portion of an abandoned cemetery is located unless  
35 such cemetery is not within the corporate limits of a city, in which case  
36 such term shall mean the county in which such cemetery is located.

37 Sec. 24. K.S.A. 16-320, 16-321, 16-322, 16-323, 16-324, 16-325, 16-  
38 329, 16-331, 16-332, 16-333, 16-334, 17-1311, 17-1311a, 17-1312, 17-  
39 1312a, 17-1312d, 17-1312e, 17-1312g and 17-1366 are hereby repealed.

40 Sec. 25. This act shall take effect and be in force from and after  
41 January 1, 2011, and its publication in the statute book.