

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2172

By Committee on Commerce, Labor and Economic Development

1-30

1 AN ACT concerning cemetery corporations; amending K.S.A. 2012 Supp.
2 16-320, 16-321, 16-329, 17-1301c, 17-1311, 17-1312 and 17-1312a
3 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 16-320 is hereby amended to read as
7 follows: 16-320. The following definitions shall apply to this act:

8 (a) "Preneed cemetery merchandise" means burial vaults, grave
9 liners, grave boxes, urns, memorials, markers, vases, memorial vases,
10 tombstones, *undeveloped* lawn crypts, niches and mausoleum spaces and
11 any merchandise sold, used in, or delivered to cemeteries. Caskets; ~~grave~~
12 ~~lots, grave spaces, burial or interment rights, and developed or existing~~
13 ~~lawn crypts, mausoleum spaces or niches are not, "burial spaces" as such~~
14 ~~term is defined in section 4, and amendments thereto, and "preneed burial~~
15 ~~products or services" as such term is defined in subsection (f) shall not be~~
16 *deemed to be preneed cemetery merchandise.*

17 (b) "Purchase price" means the gross amount, to be paid for preneed
18 cemetery merchandise, preneed burial products or services under the
19 provisions of a preneed merchandise contract. The purchase price does not
20 include finance charges, sales tax, charges for real property interests or
21 charges for credit life insurance.

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

28 (d) "Cemetery corporation" means any individual or entity required to
29 maintain permanent maintenance funds under the provisions of K.S.A. 17-
30 1312f, and amendments thereto.

31 (e) "Funding requirement" means that portion of the purchase price
32 equal to 50% of the retail price f.o.b. to the cemetery corporation of
33 preneed cemetery merchandise, as defined in subsection (a) of this section,
34 described in the preneed merchandise contract, and 100% of the retail
35 price of any preneed burial product or service, as defined in subsection (f)
36 of this section, including distributable earnings.

1 (f) "Preneed burial products or services" means any casket or service
2 incidental to the burial of a body or the placement of a memorial, marker,
3 vase, or tombstone.

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

7 (h) "Distributable earnings" means income and capital gains, less any
8 reasonable costs incurred in serving as trustee, including a reasonable fee
9 for services and applicable taxes and costs. *Distributable earnings shall be*
10 *allocated as required by K.S.A. 16-321, and amendments thereto.*

11 (i) "Trustee" means:

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

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

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

19 Sec. 2. K.S.A. 2012 Supp. 16-321 is hereby amended to read as
20 follows: 16-321. (a) Any cemetery corporation entering into any preneed
21 merchandise contract shall establish and maintain a cemetery merchandise
22 trust fund under K.S.A. 16-322, and amendments thereto. The primary
23 purpose of the cemetery merchandise trust fund is to maintain the corpus
24 of the trust fund with the goal that the growth of the corpus will be at least
25 equal to the wholesale costs of the preneed cemetery merchandise or
26 preneed burial products or services, at the time of delivery or need.

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

28 (c) A cemetery corporation entering into a preneed merchandise
29 contract that allows the purchaser to make installment payments shall be
30 entitled to retain all purchaser payments until an amount equal to 25% of
31 the purchase price of preneed cemetery merchandise is received, and
32 thereafter, shall deposit 100% of each payment into the cemetery
33 merchandise trust fund until the funding requirement has been deposited.

34 (d) *If a cemetery corporation enters into an installment preneed*
35 *cemetery merchandise contract that includes burial spaces, any payment*
36 *received from the purchaser shall be allocated first to the permanent*
37 *maintenance fund as required by K.S.A. 2012 Supp. 17-1301c and K.S.A.*
38 *17-1311, and amendments thereto. Once the burial spaces have been paid*
39 *in full, then the preneed merchandise and services products shall be*
40 *funded as required by subsection (c).*

41 (e) Deposits to the cemetery merchandise trust fund shall be made
42 within ~~15~~ **30** days following the end of each calendar month after the
43 moneys are received.

1 ~~(e)~~ (f) Within 30 days following the end of each quarter, the cemetery
2 corporation shall provide the trustee and the secretary of state a report
3 detailing the transactions of the previous quarter. The report shall be in a
4 form and manner approved by the secretary of state and shall include the
5 following:

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

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

11 (3) If no sales or deliveries transpired during the reporting quarter, the
12 report shall be filed showing zero sales or zero deliveries.

13 ~~(f)~~ (g) Within 30 days following the end of each quarter, the trustee
14 shall provide the secretary of state a report of all deposits to and
15 distributions from the cemetery merchandise trust fund. The report shall be
16 in a form and manner approved by the secretary of state and shall include
17 the total amount of the deposits, distributions and the name and contact
18 information of the trust officer in charge of the account.

19 ~~(g)~~ (h) At least annually, as of December 31, the trustee of the
20 merchandise trust fund shall allocate the distributable earnings to all
21 preneed cemetery merchandise, preneed burial products or services for
22 which funds are then held in a cemetery merchandise trust fund. The
23 trustee may, at the request of the cemetery, allocate the distributable
24 earnings on a regular basis more often than annually and in which case the
25 calculation of the distributable earnings shall be filed quarterly on
26 December 31, March 31, June 30 and September 30 of each year in a form
27 and manner approved by the secretary of state.

28 ~~(h)~~ (i) The cemetery corporation shall provide the secretary of state a
29 copy of all trust instruments. The cemetery corporation shall obtain prior
30 written approval from the secretary of state before the trust instrument
31 shall be terminated, transferred or amended. The cemetery corporation
32 shall provide the secretary of state copies of any amendments to the trust
33 instrument before the amendments shall become effective.

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

43 Sec. 3. K.S.A. 2012 Supp. 16-329 is hereby amended to read as

1 follows: 16-329. No cemetery corporation shall enter into any preneed
2 merchandise contract until such corporation has filed with the secretary of
3 state a notification of its intention to sell and engage in such preneed
4 merchandise contracts. Such notice shall include the name of the cemetery
5 corporation, its principal place of business and the name and address of the
6 trustee or trustees to be utilized under the provisions of this act.

7 Accounting records and information required by this act shall be
8 maintained in a form and manner approved by the secretary of state. A
9 report of the merchandise trust fund shall be required as part of the
10 corporation's ~~monthly~~ quarterly report on a form provided or approved by
11 the secretary of state.

12 Sec. 4. K.S.A. 2012 Supp. 17-1301c is hereby amended to read as
13 follows: 17-1301c. The following definitions shall apply to this act:

14 (a) *"Burial lot" shall mean any space designated for the interment of*
15 *remains such as grave lots, grave spaces, burial or interment rights, and*
16 *developed or existing lawn crypts.*

17 (b) *"Burial space" shall mean any space designated for the*
18 *interment, entombment or inurnment of remains such as burial lots, burial*
19 *or interment rights, mausoleum crypts or niches and developed or existing*
20 *lawn crypts.*

21 (c) "Cemetery corporation" means any individual or entity required to
22 maintain permanent maintenance funds under the provisions of K.S.A. 17-
23 1312f, and amendments thereto.

24 (d) *"Community mausoleum" means a mausoleum containing a*
25 *substantial area of enclosed space and having either a heating, ventilating*
26 *or air conditioning system.*

27 ~~(b)~~ (e) "Funding requirement" means that portion of the purchase
28 price equal to 15% of the purchase price, but not less than \$25, of a burial
29 ~~space, as defined in K.S.A. 17-1311, and amendments thereto~~ lot; 10% of
30 the purchase price, but not less than \$100 per community mausoleum
31 crypt; or 5% of the purchase price, but not less than \$50 for each garden
32 mausoleum crypt or niche set aside in the permanent maintenance fund.

33 (f) *"Garden mausoleum" means a mausoleum without a substantial*
34 *area of enclosed space and having its crypt fronts open to the atmosphere.*
35 *Ventilation of the crypts by forced air or otherwise does not constitute a*
36 *garden mausoleum as a community mausoleum.*

37 (g) *"Niche" means a space used or intended to be used for inurnment*
38 *of cremated remains, but not including burial lots, lawn crypts or*
39 *community or garden mausoleums.*

40 ~~(e)~~ (h) "Permanent maintenance fund" means a certificate of deposit,
41 a business savings account, or an irrevocable trust fund whose proceeds
42 are derived from not less than 15% of the purchase price of the following:
43 ~~Grave lots, grave spaces, burial or interment rights, and developed or~~

1 existing lawn crypts, mausoleum spaces, or niches. The total amount of the
2 deposit shall not be less than \$25 per burial space *the funding requirement*
3 *as defined in subsection (e).*

4 (d) (i) "Purchase price" means the gross amount, less sales tax, if any,
5 less any amount included in the total for permanent maintenance to be
6 paid for cemetery burial space. The purchase price does not include
7 finance charges or charges for credit life insurance. *The purchase price*
8 *stated in the contract may include the amount of the funding requirement*
9 *specified in subsection (e).*

10 (e) (j) "Trustee" means:

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

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

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

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

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

23 Sec. 5. K.S.A. 2012 Supp. 17-1311 is hereby amended to read as
24 follows: 17-1311. (a) A cemetery corporation shall maintain; a permanent
25 maintenance fund with a trustee; ~~or a percentage of the purchase price of~~
26 ~~each burial space sold by it, or any payment on such burial space, not less~~
27 ~~than 15% of such purchase price, for the permanent maintenance of the~~
28 ~~cemetery within which the burial space lies, but the total amount set aside~~
29 ~~shall not be less than \$25 for each burial space at the time of conveyance~~
30 ~~of such space based upon the funding requirement as such term is defined~~
31 ~~in section 4, and amendments thereto.~~ Deposits to the permanent
32 maintenance fund shall be made within ~~15~~ 30 days following each
33 calendar month end, after the moneys are received. Moneys placed in such
34 fund under the provisions of K.S.A. 17-1308, and amendments thereto,
35 shall be credited for the purposes of fulfilling such requirement. Moneys in
36 such fund may be held and invested subject to the requirements of
37 subsections (a) through (f) of K.S.A. 58-24a02, and amendments thereto,
38 but the total amount of money invested in any mortgage upon real property
39 shall not exceed an amount equal to 75% of the market value of such
40 property at the time of such investment. No part of the principal of the
41 fund shall ever be used for any purpose except for investment. In no event
42 shall any loan of the funds be made to any stockholder, officer or
43 employee of such cemetery corporation, or to any person related, by blood

1 or marriage, to a stockholder, officer or employee. The treasurer of such
2 corporation may deposit, to the credit of such fund, donations or bequests
3 for the fund and may retain property so acquired without limitation as to
4 time and without regard to its suitability for original purchase.

5 (b) The primary purpose of the permanent maintenance fund is to
6 maintain the corpus of the fund. The income earned from the permanent
7 maintenance fund may be dispersed to the cemetery. All capital gains shall
8 be allocated to principal *after liability for any capital gains tax has been*
9 *paid as allowed by section 6, and amendments thereto.*

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

15 Sec. 6. K.S.A. 2012 Supp. 17-1312 is hereby amended to read as
16 follows: 17-1312. (a) If the market value of the permanent maintenance
17 fund is less than \$100,000, the permanent maintenance fund may be held
18 in a Kansas financial institution, in either certificates of deposit or a
19 business savings account which is insured by the federal deposit insurance
20 corporation, provided that the fund assets are maintained in a segregated
21 account. If the cemetery's permanent maintenance fund has a market value
22 of less than \$100,000, the cemetery corporation shall comply with the
23 reporting requirements of this act.

24 (b) (1) Unless otherwise authorized by subsection (a), each cemetery
25 corporation shall establish and maintain a permanent maintenance fund. If
26 the market value of the permanent maintenance fund is \$100,000 or more,
27 the cemetery corporation shall establish and maintain the permanent
28 maintenance fund in an irrevocable trust with a trustee. The trustee may
29 appoint one or more agents to provide administrative or investment
30 advisory services, provided the trustee shall not assign or delegate the
31 liability and fiduciary responsibilities owed to the permanent maintenance
32 fund to another financial institution or agent. The trustee may invest,
33 reinvest, exchange, retain, sell, and manage the moneys within such fund,
34 pursuant to subsections (a) through (f) of K.S.A. 58-24a02, and
35 amendments thereto. Such trustee may be reasonably compensated for its
36 services out of the income of the fund. It shall be a provision of any such
37 trust agreement that no moneys, other than income from the trust, shall be
38 paid over to the cemetery corporation by the trustee, except upon the
39 written permission of the secretary of state. Nothing in this act shall
40 prohibit a trustee, as defined in K.S.A. 16-320, and amendments thereto,
41 from entering into a co-trustee relationship with another trustee, who
42 would not independently satisfy the requirements of that section provided
43 the co-trustee: (A) Is authorized to do business in Kansas; and (B) submits

1 personally to the jurisdiction of the courts of this state. Under no
2 circumstances shall any trustee assign or delegate their liability or
3 fiduciary responsibilities under the provisions of this act. Both trustees and
4 co-trustees are jointly and severally liable for the actions of the trustee. All
5 contractual agreements shall be subject to, governed by, and construed
6 according to the laws of the state of Kansas.

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

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

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

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

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

- 31 (A) Deposits to principal;
- 32 (B) any withdrawals from principal;
- 33 (C) all interest, dividends, and income earned;
- 34 (D) ~~interest~~ *income* withdrawn;
- 35 (E) capital gains or capital losses; and
- 36 (F) capital gains taxes paid from capital gains.

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

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

42 (5) By accepting the trusteeship of the permanent maintenance fund,
43 the trustee submits personally to the jurisdiction of the courts of this state.

1 All contractual agreements shall be subject to, governed by, and construed
2 according to the laws of the state of Kansas.

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

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

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

10 Sec. 7. K.S.A. 2012 Supp. 17-1312a is hereby amended to read as
11 follows: 17-1312a. (a) Each cemetery corporation formed under the laws
12 of the state of Kansas and each foreign corporation granted a certificate of
13 authority to own or operate a cemetery within the state of Kansas shall
14 register with the secretary of state before commencing business in Kansas.
15 Each cemetery corporation shall prepare and forward to the secretary of
16 state at the time it is required to make a quarterly report under the
17 provisions of this act.

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

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

36 (d) At least annually, the trustee of the permanent maintenance fund
37 shall determine the income for the permanent maintenance fund, less
38 reasonable costs, taxes and fees, and pay the income to the cemetery
39 corporation. The trustee shall report to the secretary of state the calculation
40 of the income paid to the cemetery within 30 days, in a form and manner
41 approved by the secretary of state.

42 (e) Whenever the secretary of state shall determine that any cemetery
43 corporation required by this act to be registered has failed or refused to do

1 so, the secretary of state may notify the county attorney or district attorney
2 of the county in which such cemetery corporation is located, and such
3 county attorney or district attorney shall commence prosecution against
4 such cemetery corporation. Any cemetery corporation which fails to
5 register with the secretary of state shall be liable for a civil penalty of not
6 to exceed \$1,000.

7 (f) Whenever and as often as deemed necessary, the secretary of state,
8 or an employee designated by the secretary of state, may audit or
9 otherwise examine any cemetery corporation books and accounts.
10 Whenever such an audit or examination is so made, the cemetery
11 corporation shall pay such expenses as shall be assessed by the secretary
12 of state pursuant to K.S.A. 75-442, and amendments thereto.

13 (g) Fees not to exceed \$30 may be charged and collected by the
14 secretary of state on each interment sold on or after January 1, 2011. Any
15 such fees shall be forwarded on a quarterly basis to the secretary of state,
16 in a form and manner approved by the secretary. The secretary of state
17 shall promulgate rules and regulations fixing the fees to be charged and
18 collected. On and after the effective date of this act any such fees collected
19 shall be deposited in the cemetery maintenance and merchandise fee fund
20 in the state treasury.

21 Sec. 8. K.S.A. 2012 Supp. 16-320, 16-321, 16-329, 17-1301c, 17-
22 1311, 17-1312 and 17-1312a are hereby repealed.

23 Sec. 9. This act shall take effect and be in force from and after its
24 publication in the statute book.