

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~~ **2013**
2 Supp. 16-320, 16-321, 16-329, 17-1301c, 17-1311, 17-1312 ~~and~~, 17-
3 1312a **and 17-1366** 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~~ **2013** Supp. 16-320 is hereby amended to read
7 as 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 K.S.A. 2013 Supp. 17-1301c, and amendments
15 thereto, and "preneed burial products or services" as such term is defined
16 in subsection (f) shall not be 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 **or secretary of state contract fees**.

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

1 price of any preneed burial product or service, as defined in subsection (f)
2 of this section, including distributable earnings.

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

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

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

13 (i) "Trustee" means:

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

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

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

21 Sec. 2. K.S.A. ~~2012~~ 2013 Supp. 16-321 is hereby amended to read as
22 follows: 16-321. (a) Any cemetery corporation entering into any preneed
23 merchandise contract shall establish and maintain a cemetery merchandise
24 trust fund under K.S.A. 16-322, and amendments thereto. The primary
25 purpose of the cemetery merchandise trust fund is to maintain the corpus
26 of the trust fund with the goal that the growth of the corpus will be at least
27 equal to the wholesale costs of the preneed cemetery merchandise or
28 preneed burial products or services, at the time of delivery or need.

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

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

36 (d) *If a cemetery corporation enters into an installment preneed*
37 ~~*cemetery*~~ *merchandise contract that includes burial spaces, any payment*
38 *received from the purchaser shall be allocated first to the permanent*
39 *maintenance fund as required by K.S.A. ~~2012~~ 2013 Supp. 17-1301c and*
40 *K.S.A. 17-1311, and amendments thereto. Once the burial spaces have*
41 *been paid in full, then the preneed ~~merchandise and services products~~*
42 ***cemetery merchandise and preneed burial products or services shall be***
43 ***funded as required by subsection (c).***

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

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

9 (1) All sales of preneed cemetery merchandise, preneed burial
10 products and preneed services.

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

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

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

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

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

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

1 such fees collected shall be deposited in the cemetery maintenance and
2 merchandise fee fund in the state treasury.

3 Sec. 3. K.S.A. ~~2012~~ 2013 Supp. 16-329 is hereby amended to read as
4 follows: 16-329. No cemetery corporation shall enter into any preneed
5 merchandise contract until such corporation has filed with the secretary of
6 state a notification of its intention to sell and engage in such preneed
7 merchandise contracts. Such notice shall include the name of the cemetery
8 corporation, its principal place of business and the name and address of the
9 trustee or trustees to be utilized under the provisions of this act.

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

15 Sec. 4. K.S.A. ~~2012~~ 2013 Supp. 17-1301c is hereby amended to read
16 as follows: 17-1301c. The following definitions shall apply to this act:

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

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

24 (c) "Cemetery corporation" means any individual or entity required to
25 maintain permanent maintenance funds under the provisions of K.S.A. 17-
26 1312f, and amendments thereto.

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

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

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

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

43 ~~(e)~~ (h) "Permanent maintenance fund" means a certificate of deposit,

1 a business savings account, or an irrevocable trust fund whose proceeds
 2 are derived from not less than 15% of the purchase price of the following:
 3 ~~Grave lots, grave spaces, burial or interment rights, and developed or~~
 4 ~~existing lawn crypts, mausoleum spaces, or niches. The total amount of the~~
 5 ~~deposit shall not be less than \$25 per burial space~~ *the funding requirement*
 6 *as defined in subsection (e).*

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

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

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

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

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

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

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

26 Sec. 5. K.S.A. ~~2012~~ 2013 Supp. 17-1311 is hereby amended to read
 27 as follows: 17-1311. (a) A cemetery corporation shall maintain, *in* a
 28 permanent maintenance fund with a trustee, ~~or~~ a percentage of the
 29 purchase price of each burial space sold by it, or any payment on such
 30 burial space, not less than 15% of such purchase price, for the permanent
 31 maintenance of the cemetery within which the burial space lies, but the
 32 total amount set aside shall not be less than \$25 for each burial space at the
 33 time of conveyance of such space *based upon the funding requirement as*
 34 *such term is defined in ~~section 4~~ K.S.A. 2013 Supp. 17-1301c, and*
 35 *amendments thereto.* Deposits to the permanent maintenance fund shall be
 36 made within ~~15~~ 30 days following each calendar month end, after the
 37 moneys are received. Moneys placed in such fund under the provisions of
 38 K.S.A. 17-1308, and amendments thereto, shall be credited for the
 39 purposes of fulfilling such requirement. Moneys in such fund may be held
 40 and invested subject to the requirements of subsections (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. No part of the principal of the fund shall ever be used for any
2 purpose except for investment. In no event shall any loan of the funds be
3 made to any stockholder, officer or employee of such cemetery
4 corporation, or to any person related, by blood or marriage, to a
5 stockholder, officer or employee. The treasurer of such corporation may
6 deposit, to the credit of such fund, donations or bequests for the fund and
7 may retain property so acquired without limitation as to time and without
8 regard to its suitability for original purchase.

9 (b) The primary purpose of the permanent maintenance fund is to
10 maintain the corpus of the fund. The income earned from the permanent
11 maintenance fund may be dispersed to the cemetery. All capital gains shall
12 be allocated to principal *after liability for any capital gains tax has been*
13 *paid as allowed by ~~section 6~~ K.S.A. 17-1312, and amendments thereto.*

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

19 Sec. 6. K.S.A. ~~2012~~ 2013 Supp. 17-1312 is hereby amended to read
20 as follows: 17-1312. (a) If the market value of the permanent maintenance
21 fund is less than \$100,000, the permanent maintenance fund may be held
22 in a Kansas financial institution, in either certificates of deposit or a
23 business savings account which is insured by the federal deposit insurance
24 corporation, provided that the fund assets are maintained in a segregated
25 account. If the cemetery's permanent maintenance fund has a market value
26 of less than \$100,000, the cemetery corporation shall comply with the
27 reporting requirements of this act.

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

1 prohibit a trustee, as defined in K.S.A. 16-320, and amendments thereto,
2 from entering into a co-trustee relationship with another trustee, who
3 would not independently satisfy the requirements of that section provided
4 the co-trustee: (A) Is authorized to do business in Kansas; and (B) submits
5 personally to the jurisdiction of the courts of this state. Under no
6 circumstances shall any trustee assign or delegate their liability or
7 fiduciary responsibilities under the provisions of this act. Both trustees and
8 co-trustees are jointly and severally liable for the actions of the trustee. All
9 contractual agreements shall be subject to, governed by, and construed
10 according to the laws of the state of Kansas.

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

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

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

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

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

- 35 (A) Deposits to principal;
- 36 (B) any withdrawals from principal;
- 37 (C) all interest, dividends, and income earned;
- 38 (D) ~~interest income~~ withdrawn;
- 39 (E) capital gains or capital losses; and
- 40 (F) capital gains taxes paid from capital gains.

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

43 (4) The trustee shall invest the trust funds subject to the requirements

1 of subsections (a) through (f) of K.S.A. 58-24a02, and amendments
2 thereto. Control of the trust funds by the trustor is prohibited.

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

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

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

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

14 Sec. 7. K.S.A. ~~2012~~ **2013** Supp. 17-1312a is hereby amended to read
15 as follows: 17-1312a. (a) Each cemetery corporation formed under the
16 laws of the state of Kansas and each foreign corporation granted a
17 certificate of authority to own or operate a cemetery within the state of
18 Kansas shall register with the secretary of state before commencing
19 business in Kansas. Each cemetery corporation shall prepare and forward
20 to the secretary of state at the time it is required to make a quarterly report
21 under the provisions of this act.

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

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

40 (d) At least annually, the trustee of the permanent maintenance fund
41 shall determine the income for the permanent maintenance fund, less
42 reasonable costs, taxes and fees, and pay the income to the cemetery
43 corporation. The trustee shall report to the secretary of state the calculation

1 of the income paid to the cemetery within 30 days, in a form and manner
2 approved by the secretary of state.

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

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

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

25 ***Sec. 8. K.S.A. 2013 Supp. 17-1366 is hereby amended to read as***
26 ***follows: 17-1366. As used in this act: (a) "Abandoned cemetery" means:***

27 ***(1) Any cemetery owned by a corporation, as defined in K.S.A. 17-***
28 ***1312f, and amendments thereto, in which, for a period of at least one***
29 ***year, there has been a failure to cut grass or weeds or care for graves,***
30 ***grave markers, walls, fences, driveways and buildings; and or***

31 ***(2) any cemetery owned by a corporation, as defined in K.S.A. 17-***
32 ***1312f, and amendments thereto, in which for a period of 180 days which,***
33 ***proper records have not been maintained and annual or quarterly***
34 ***reports have not been made to the secretary of state, pursuant to the***
35 ***provisions of K.S.A. 17-1312a et seq., and amendments thereto.***

36 ***(b) "Municipality" means the cemetery district in which all or any***
37 ***portion of an abandoned cemetery is located. If no portion of such***
38 ***cemetery is located within a cemetery district, the term shall mean the***
39 ***city in which all or any portion of an abandoned cemetery is located***
40 ***unless such cemetery is not within the corporate limits of a city, in which***
41 ***case such term shall mean the county in which such cemetery is located.***

42 ***Sec. ~~8~~ 9. K.S.A. ~~2012~~ 2013 Supp. 16-320, 16-321, 16-329, 17-1301c,***
43 ***17-1311, 17-1312 ~~and~~, 17-1312a and 17-1366 are hereby repealed.***

1 Sec. ~~9~~ **10**. This act shall take effect and be in force from and after its
2 publication in the statute book.