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Thursday, February 14, 2013

TESTIMONY OF MICHAEL E. LAND
BEFORE THE KANSAS HOUSE OF REPRESENTATIVES
COMMITTEE ON LOCAL GOVERNMENT
THE HONORABLE STEVE HUEBERT-VALLEY CENTER
SUPPORT for HB 2172 AN ACT CONCERNING CEMETERY CORPORATIONS

Good afternoon, Chairman Huebert and members of the Committee. I would like to thank you for allowing me to testify here today. My name is Mike Land and I am President of the Kansas Cemetery Association. I am submitting this testimony to urge passage of the changes we have worked on during the past year with the Secretary of State's office, which are described in HB 2172.

KANSAS CEMETERY ASSOCIATION HAS BEEN WORKING OVER THE PAST YEAR WITH THE STAFF OF THE KANSAS SECRETARY STATE ON SOME CHANGES TO THE CURRENT STATUTES THAT GOVERN CEMETERIES. THE PROPOSED CHANGES ARE INTENDED TO CLARIFY AND/OR MODIFY CURRENT PRACTICES AS OUTLINED IN THE CURRENT STATUTES THAT WERE ENACTED IN 2011. I WOULD LIKE TO BRIEFLY ADDRESS THESE PROPOSED CHANGES.

DEPOSITS TO TRUST – THE CURRENT STATUTE REQUIRES THAT CEMETERIES DEPOSIT FUNDS, RECEIVED FROM THEIR CUSTOMERS ON CONTRACTS FOR SERVICES AND MERCHANDISE BEFORE NEED, INTO TRUST FUND ACCOUNTS WITHIN 15 DAYS FOLLOWING THE MONTH THE FUNDS WERE RECEIVED. THIS 15 DAY TIME FRAME IS VERY DIFFICULT TO MEET DUE TO THE TIME REQUIRED TO CLOSE THE CEMETERY BOOKS AT MONTH END, PROCESS THE NECESSARY CHECKS AND RECONCILE THE PAYMENTS TO MONTHLY TRUST STATEMENTS. IN ORDER TO COMPLY WITH THE DEPOSIT TIME FRAME AS SPECIFIED IN THE STATUTE, THE KCA IS REQUESTING, WITH THE SUPPORT OF THE KSOS, THE FUNDING REQUIREMENT BE EXTENDED FROM THE CURRENT 15 DAYS TO 30 DAYS.

PERMANENT MAINTENANCE FUNDING REQUIREMENTS- THE CURRENT STATUTE REQUIRES THAT 15% OF THE SALES PRICE OF GROUND BURIAL SPACES AND MAUSOLEUM CRYPTS AND NICHES BE DEPOSITED MONTHLY IN THE PERMANENT MAINTENANCE TRUST FUND. THE KCA BELIEVES THIS FUNDING IS EXTREMELY IMPORTANT FOR THE LONG TERM CARE OF THE CEMETERY. HOWEVER THE KCA ALSO BELIEVES THAT PRECENTAGE FUNDED SHOULD ALSO REFLECT THE VARIED LONG TERM MAINTENANCE REQUIREMENTS OF THE CEMETERY. THE KCA , WITH THE SUPPORT OF THE KSOS STAFF, IS REQUESTING THE PERCENTAGE FUNDING REQUIREMENT IN THE STATUTE BE CHANGED TO 10% OF THE PURCHASE PRICE FOR INDOOR MAUSLOEUM CRYPTS AND 5% FOR OUTDOOR MAUSOLEUM CRYPTS AND ALL NICHES. THE KCA BELIEVES THESE PERCENTAGES MORE CLEARLY REFLECT THE FUTURE MAINTENANCE REQUIREMENTS OF THESE STRUCTURES.

TAXES ON PERMANENT MAINTANCE FUND EARNINGS – THE CURRENT STATUTE REQUIRES THAT ANY ANNUAL TAX LIABILITY ON THE EARNINGS OF THE PERPETUAL CARE TRUST, BOTH ORDINARY INCOME AND CAPTIAL GAINS, BE PAID BE PAID FROM THE AVAILABLE ORDINARY INCOME ONLY. THE TOTAL AVAILABLE BEFORE TAX CAPITAL GAINS ARE THEN ADDED TO THE PRINCIPAL BALANCE OF THE TRUST WHICH IS NOT AVAILBLE FOR FUTURE DISTRIBUTION. IN ORDER TO MAXIMIZE THE AMOUNT OF THE AFTER TAX EARNINGS THAT ARE AVAILABLE FOR DISTRIBUTION TO THE CEMETERY FOR MAINTENANCE, THE KCA IS REQUESTING THE STATUTE BE CHANGED TO PERMIT ANY TAX LIABILITY RELATED TO ANY UNDISTRIBUTED CAPITAL GAINS IN THE PERPETUAL CARE TRUST BE PAID FROM THOSE GAINS BEFORE THEY ARE TRANSFERRED TO THE TRUST FUND PRINCIPAL . THE KSOS STAFF SUPPORTS THIS CHANGE

OTHER CHANGES - THE KCA IS ALSO REQUESTING ADDITIONAL MISCELLANEOUS CHANGES TO THE STATUTE. THE CHANGES ARE CLEANUP IN NATURE SUCH A SPECIFYING CLEARLY THE ORDER IN WHICH TRUSTS ARE FUNDED ON INSTALLMENT CONTRACTS; CLARIFYING WHICH REPORTS ARE TO BE FILED QUARTERLY AND EXPANDING DEFINITIONS OF WHAT CONSTITUTES CEMETERY MERCHANDISE AS OPPOSED TO FUNERAL MERCHANDISE. THE KSOS SUPPORTS THESE CHANGES.

In closing, I realize most of the changes that we have incorporated into this bill are minor, but will have a largely beneficial impact upon our industry as well as our ability to provide a valuable service to our customers as efficiently as possible. We therefore respectfully urge you to support this bill. Thank you very much for your time and consideration.