

## HOUSE BILL No. 2172

By Committee on Commerce, Labor and Economic Development

1-30

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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 days following the end of each calendar month after the moneys  
43 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;~~ 10% of the  
 30 purchase price, but not less than \$100 per community mausoleum crypt;  
 31 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.