

Cemetery Corporations; Trust Funds and Related Fees

HB 2240 deals with cemetery corporations, the trust funds they maintain, and a new fee fund relative to these functions.

The bill does the following:

Cemetery Merchandise Trust Fund; Preneed Merchandise Contracts

- Adds a definition of “cemetery merchandise trust fund,” that being a special purpose trust fund required to administer payments received from the sale of preneed cemetery merchandise, preneed burial products or services.
- Establishes the primary purpose of this fund as maintaining the corpus of the trust fund, with the goal that the growth of the corpus will be at least equal to the wholesale costs of the preneed cemetery merchandise, burial products or services, at the time of delivery or need.
- Changes the defined term from “prepaid” to “preneed” merchandise contract, and revises the definition of “preneed merchandise contract” to include agreements for the sale of preneed burial products or services which requires either partial or full payment prior to delivery. The bill also requires that preneed cemetery merchandise contracts be in writing, and it makes conforming changes to reflect the term change.
- Revises the definition of “preneed cemetery merchandise” to include any of the listed merchandise delivered to cemeteries (in addition to that sold or used in the cemeteries).
- Adds definitions for the terms “distributable earnings” and “trustee.” “Trustee” includes any federally chartered bank, savings and loan association, savings bank or credit union having a physical location within the state and the authority to provide trust services.
- Increases the amount to be placed in trust from 110 percent of the wholesale cost to 50 percent of the retail price to the cemetery corporation of the preneed cemetery merchandise.
- Modifies the statute that stipulates payment actions regarding what would be termed “preneed” (previously “prepaid”) merchandise contracts as follows: The term is limited in its application to the contracts entered into by a cemetery corporation that allow the purchaser to make installment payments. Under

the bill, the cemetery corporation is entitled to retain all purchaser payments until 25 percent of the purchase price is received before it is required to deposit 100 percent of each payment into the cemetery merchandise trust fund. The bill also increases the amount of time before deposits to the cemetery merchandise trust fund must be made, from 10 business days after the money is received to 15 days following the end of each calendar month after the money is received.

- Requires the cemetery corporation to provide the trustee and the Secretary of State the following:
 - A quarterly report within 30 days following the end of each quarter. Details of the report's contents are specified in the bill.
 - A report of all deposits to and distributions from the cemetery merchandise trust fund.
- Requires the cemetery merchandise trust fund trustee to allocate at least annually, as of December 31, the distributable earnings to all preneed cemetery merchandise, preneed burial products or services for which funds are held in the trust fund. The bill authorizes the trustee to allocate distributable earnings on a regular basis more often than annually, at the request of the cemetery, and under this circumstance it would require quarterly filing of the distributable earnings calculation.
- Authorizes the cemetery merchandise trust fund trustee to appoint one or more agents to provide administrative or investment advisory services. The bill further states that its provisions may not be used to prohibit the trustee from entering into a co-trustee relationship with another trustee who does not independently satisfy the requirements set forth for the trustee, as long as the co-trustee is authorized to do business in Kansas and submits personally to the jurisdiction of Kansas courts. In both instances, the trustee is not allowed to assign or delegate the liability and fiduciary responsibilities to another financial institution or agent.
- Establishes stipulations for the trust instrument.
- Clarifies a criminal statute regarding misuse of the cemetery merchandise trust fund by specifically defining the crime of "misuse of the cemetery merchandise trust fund or any money belonging thereto" and increasing the penalty from a class A misdemeanor to a severity level 7, nonperson felony.
- Changes the statute authorizing the auditing of cemetery merchandise trusts by clarifying that the Secretary of State is authorized to obtain trust

accounting records from the trustee, and authorizing the Secretary of State to promulgate rules and regulations for the purpose of overseeing and auditing the cemetery merchandise trust fund.

Permanent Maintenance Fund

- Establishes the primary purpose of the permanent maintenance fund as maintaining the corpus of the fund. The bill permits the income earned from the fund to be distributed to the cemetery, and it requires all capital gains to be allocated to principal.
- Requires the cemetery corporation to obtain prior written approval from the Secretary of State before the trust instrument is terminated, transferred, or amended. The cemetery corporation further is required to provide the Secretary of State copies of any amendments to the trust instrument before they become effective.
- Makes definitional changes to the statute establishing the crime of “misuse of the permanent maintenance fund or any money belonging thereto.”
- Deletes language regarding in whose custody a trust must be held and what must be done with trusts depending on whether their market value is less than \$45,000, or greater than \$45,000. These stipulations would be replaced with the following:
 - Permanent maintenance fund with a value of less than \$100,000 – The bill allows the permanent maintenance fund to be held in a Kansas financial institution, in either certificates of deposit or a business savings account insured by the Federal Deposit Insurance Corporation, as long as the funds are maintained in a segregated account. The cemetery corporation is required to comply with the Act’s reporting requirements in this situation.
 - Permanent maintenance fund with a market value of \$100,000 or more – The bill requires the cemetery corporation to establish and maintain the permanent maintenance fund in an irrevocable trust with a trustee. Additional agents may be appointed to provide administrative or investment advisory services, as long as the trustee maintains liability and fiduciary responsibilities owed to the fund. Additional stipulations are made regarding permanent maintenance funds of this size.
 - Requires the cemetery corporation to provide the trustee and the Secretary of State the following:

- A report of all sales of burial spaces within 30 days following the end of each quarter. Details of the report's contents are specified in the bill.
- A report of all deposits to and distributions from the permanent maintenance fund.
- Requires the permanent maintenance fund trustee to determine, at least annually, the fund's income, less reasonable costs, taxes and fees, and pay the income to the cemetery corporation. The trustee is required to report this calculation to the Secretary of State within 30 days.

Confidentiality and Disclosure of Cemetery Corporation Records

- Deems all information involved in the Secretary of State's investigation and examination of a cemetery corporation, or reporting by the cemetery corporation or trustee, confidential. The only entities to which the information may be disclosed by the Secretary of State's Office are: (1) officers and members of the specific cemetery corporation board of directors; (2) the Attorney General if the Secretary of State determines this is necessary; and (3) the appropriate municipality official if the Secretary of State determines this is necessary. In accordance with the intent of the Kansas Open Records Act, this provision expires on July 1, 2016, unless the Legislature reviews the provision prior to that date and reauthorizes it.
- Allows the Secretary of State to disclose to anyone whether a cemetery corporation maintains a cemetery merchandise trust fund, or a permanent maintenance fund, and whether such funds are maintained in compliance with the law.

Cemetery Maintenance and Merchandise Fee Fund

The bill establishes the Cemetery and Merchandise Fee Fund in the State Treasury. Two related fees collected by the Secretary of State are authorized by the bill, and the bill requires that these fees be deposited in the Fund. The fees must be forwarded to the Secretary of State on a quarterly basis, and the Secretary of State is required to deposit any fees collected from both fee sources into the fund as of the effective date of the Act. The Secretary of State also is required to promulgate rules and regulations fixing the fees to be charged and collected. The fees are as follows:

- A fee not to exceed \$30 on each preneed merchandise contract for preneed cemetery merchandise, preneed burial products or services sold on or after January 1, 2011.
- A fee not to exceed \$30 on each interment sold as of January 1, 2011.

The bill is effective upon its publication in the statute book and January 1, 2012.