

REVISION OF 3/20/01

**SENATE BILL No. 214**

By Committee on Public Health and Welfare

2-1

AN ACT concerning the Kansas state board of mortuary arts; regulating crematories; amending K.S.A. 65-1723 and 65-1732 and K.S.A. 2000 Supp. 65-1727 and repealing the existing sections.

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

New Section 1. As used in this act, unless the context clearly shows otherwise:

(a) "Alternative container" means a receptacle, other than a casket, in which human remains are transported to the crematory and placed in the cremation chamber for cremation. An alternative container shall be (1) composed of readily combustible materials suitable for cremation, (2) able to be closed in order to provide a complete covering for the human remains, (3) resistant to leakage or spillage, (4) rigid enough for handling with ease, and (5) able to provide protection for the health, safety and personal integrity of crematory personnel.

(b) "Authorizing agent" means a person legally entitled to authorize the cremation and final disposition of specific human remains as defined in K.S.A. 2000 Supp. 65-1734, and amendments thereto.

(c) "Board" means the state board of mortuary arts.

(d) "Cremated remains" means all human remains recovered after the completion of the cremation, which may possibly include the residue of any foreign matter including casket material, bridgework or eyeglasses, that was cremated with the human remains.

(e) "Cremation" means the reduction of a dead human body to essential elements through direct exposure to intense heat and flame and the repositioning of movement of the body during the process to facilitate reduction, the processing of the remains after removal from the cremation chamber, placement of the processed remains in a cremated remains container and release of the cremated remains to an appropriate party.

(f) "Cremation chamber" means the enclosed space within which the cremation of a dead human body is performed. Such chambers shall be used exclusively for the cremation of human remains.

(g) "Crematory" means a business premises that houses the cremation chamber and holding facility where dead human bodies are cremated. A crematory shall be maintained at a fixed and specific street

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1 address.

2 (h) "Funeral director" means a person known by the title of "funeral  
3 director" or "funeral director and embalmer" or other similar words or  
4 titles, licensed by the state to practice funeral directing or funeral di-  
5 recting and embalming.

6 (i) "Funeral establishment" means a building or separate portion of  
7 a building having a specific street address and location and devoted to  
8 activities relating to the shelter, care, custody and preparation of a de-  
9 ceased human body and may contain facilities for funeral or wake services.

10 (j) "Holding facility" means an area within or adjacent to a licensed  
11 crematory designated for the retention of human remains prior to the act  
12 of cremation that shall:

13 (1) Comply with any applicable public health statute, regulation or  
14 ordinance;

15 (2) preserve the dignity of the human remains;

16 (3) recognize the integrity, health and safety of the licensed crema-  
17 tory personnel operating the crematory; and

18 (4) be secure from access by anyone other than authorized personnel.

19 (k) "Potentially hazardous implant" means any device previously  
20 placed within the now deceased human body that would result in poten-  
21 tial harm at any time during the cremation process.

22 (l) "Professional incompetency" means one or more instances involv-  
23 ing: (1) Failure to adhere to the applicable standard of practice as a li-  
24 censee to a degree which constitutes gross negligence as determined by  
25 the board; (2) repeated instances involving failure to adhere to the ap-  
26 plicable standard of care to a degree which constitutes ordinary negli-  
27 gence as determined by the board; and (3) a pattern of practice or other  
28 behavior which demonstrates a manifest incapacity or incompetence to  
29 practice as a licensee.

30 (m) "Temporary container" means a receptacle for cremated re-  
31 mains, usually composed of cardboard, plastic or similar material, that can  
32 be closed in a manner that prevents the leakage or spillage of the cre-  
33 mated remains or the entrance of foreign material, and is a single con-  
34 tainer of sufficient size to hold the cremated remains.

35 (n) "Unprofessional or dishonorable conduct" means misrepresen-  
36 tation, fraud or an act of moral turpitude in the conduct of the licensee's  
37 business.

38 (o) "Urn" means a receptacle designed to encase the cremated  
39 remains.

40 New Sec. 2. (a) No person shall operate a crematory to cremate a  
41 dead human body or cause any dead human body to be cremated in this  
42 state without being licensed by the state board of mortuary arts.

43 (b) Any building used as a crematory shall comply with all applicable

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1 local and state building codes, zoning laws, ordinances and environmental  
2 standards. A crematory shall have, on site, a motorized mechanical device  
3 for processing cremated remains either in the building or adjacent to it,  
4 a holding facility for the retention of human remains awaiting cremation.  
5 The holding facility shall be secure from access by anyone except au-  
6 thorized personnel of the crematory, shall preserve the dignity of the  
7 remains and shall protect the health and safety of the crematory  
8 personnel.

9 (c) All applications for licensure as a crematory shall be on forms  
10 furnished and prescribed by the state board of mortuary arts.

11 (d) An application to operate a crematory in existence prior to the  
12 effective date of this act or to operate a new crematory shall be made by  
13 the crematory operator in charge of the crematory and provided to the  
14 state board of mortuary arts.

15 New Sec. 3. No crematory or crematory operator in charge shall cre-  
16 mate or cause to be cremated any dead body until it has received:

17 (a) A cremation authorization form signed by an authorizing agent.  
18 The written authorization shall include:

19 (1) The identity of the human remains and the time and date of death;

20 (2) the name of the funeral director or assistant funeral director and  
21 the funeral establishment or branch establishment, or the authorizing  
22 agent if self motivated, that obtained the cremation authorization;

23 (3) notification as to whether the cause of death occurred from a  
24 disease declared by the department of health and environment to be  
25 infectious, contagious, communicable or dangerous to the public health;

26 (4) the name of the authorizing agent and the relationship between  
27 the authorizing agent and the decedent;

28 (5) authorization for the crematory to cremate the human remains;

29 (6) a representation that the human remains do not contain a pace-  
30 maker or any other material or implant that may be potentially hazardous  
31 or cause damage to the cremation chamber or the person performing the  
32 cremation;

33 (7) the name of the person authorized to receive the cremated re-  
34 mains from the crematory operator; and

35 (8) the signature of the authorizing agent, attesting to the accuracy  
36 of all representations contained on the cremation authorization form.

37 (b) A completed and executed coroner's permit to cremate, as is pro-  
38 vided in K.S.A. 65-2426a and amendments thereto, indicating that the  
39 human remains are to be cremated.

40 New Sec. 4. (a) No body shall be cremated with a pacemaker or  
41 other potentially hazardous implant in place. The authorizing agent for  
42 the cremation of the human remains shall be responsible for informing  
43 the licensed funeral director, assistant funeral director or embalmer about

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1 a pacemaker or other potentially hazardous implant. The authorizing  
2 agent shall be ultimately responsible for ensuring that any pacemakers or  
3 hazardous implants are removed before delivery of the human remains  
4 to the crematory. Bodies with pacemakers or hazardous implants in the  
5 custody of a crematory operator shall have pacemakers or hazardous im-  
6 plants removed by an embalmer at a funeral establishment or branch  
7 establishment with an embalming preparation room unless the removal  
8 is to take place at a medical facility by the appropriate medical personnel.

9 (b) A crematory shall hold human remains, prior to their cremation,  
10 according to the following provisions of this subsection:

11 (1) Whenever a crematory is unable to cremate the human remains  
12 immediately upon taking custody thereof, the crematory operator in  
13 charge shall place the human remains in a refrigeration facility at 40  
14 degrees fahrenheit or less, unless the human remains have been em-  
15 balmed, or shall store the human remains in a cremation container at a  
16 funeral establishment or branch establishment that is inspected and li-  
17 censed by the state board of mortuary arts; and

18 (2) a crematory operator shall not be required to accept for holding  
19 a cremation container from which there is any evidence of leakage of  
20 body fluids from the human remains therein.

21 (c) No unauthorized person shall be permitted in the crematory area  
22 while any human remains are in the crematory area awaiting cremation,  
23 being cremated or being removed from the cremation chamber.

24 (d) The simultaneous cremation of more than one dead human body  
25 within the same cremation chamber is prohibited without specific written  
26 authorization to do so from all authorizing agents for the human remains  
27 to be so cremated. Such written authorization shall exempt the crematory  
28 operator in charge from all liability for the comingling of the cremated  
29 remains during the cremation process.

30 (e) The crematory shall maintain an identification system that will  
31 insure that the remains can be identified, as indicated on the cremation  
32 authorization form, throughout all phases of the cremation process.

33 (f) Upon completion of the cremation, and insofar as practicable, all  
34 of the recoverable residue of the cremation process shall be removed  
35 from the cremation chamber. If possible, the noncombustible materials  
36 or items shall be separated from the cremated remains and disposed of,  
37 in a lawful manner, by the crematory. The cremated remains shall be  
38 reduced by motorized mechanical device to granulated appearance ap-  
39 propriate for final disposition.

40 (g) Cremated remains shall be packed as follows:

41 (1) The cremated remains with proper identification shall be placed  
42 in a temporary container or urn, unless specific written authorization has  
43 been received from the authorizing agent or as provided in paragraph (2)

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1 of this subsection. The temporary container or urn contents shall be  
2 packed with clean packing materials;

3 (2) if the cremated remains will not fit within the dimensions of a  
4 temporary container or urn, the remainder of the cremated remains shall  
5 be returned to the authorizing agent or its representative in a separate  
6 container attached to the first container or urn identifying such containers  
7 as belonging together;

8 (3) when a temporary container is used to return the cremated re-  
9 mains, that container shall be, at a minimum, a cardboard box with all  
10 seams taped closed to increase the security and integrity of that container.  
11 The outside of the container shall be clearly identified with the name of  
12 the crematory and an indication that the container is a temporary con-  
13 tainer; and

14 (4) if the cremated remains are to be shipped, the temporary con-  
15 tainer or designated receptacle ordered by the authorizing agent shall be  
16 securely packed in a suitable, sturdy, non-fragile container and sealed  
17 properly. Cremated remains shall be shipped only by a method which has  
18 an internal tracing system available and which provides a receipt signed  
19 by the person accepting delivery.

20 New Sec. 5. (a) An authorizing agent signing a cremation authori-  
21 zation form shall be deemed to warrant the truthfulness of any facts set  
22 forth in such cremation authorization form, including the identity of the  
23 deceased whose remains are sought to be cremated and such authoriza-  
24 tion agent's authority to order such cremation. Any person signing a cre-  
25 mation authorization form as an authorizing agent shall be personally and  
26 individually liable for all damage occasioned thereby and resulting there-  
27 from. A crematory operator and a funeral director may rely upon the  
28 representations of the authorizing agent in the cremation authorization  
29 form.

30 (b) A funeral director or assistant funeral director shall have the au-  
31 thority to arrange the cremation of human remains upon the receipt of a  
32 cremation authorization form signed by an authorizing agent. A crematory  
33 operator shall have authority to cremate human remains upon the receipt  
34 of a cremation authorization form signed by an authorizing agent. A fu-  
35 neral director, assistant funeral director or crematory operator who pur-  
36 suant to a cremation authorization arranges a cremation, cremates human  
37 remains then releases or disposes of the cremated remains shall not be  
38 liable for such acts.

39 (c) A funeral director or assistant funeral director who refuses to ar-  
40 range a cremation and a crematory operator who refuses to accept a body  
41 or to perform a cremation shall not be liable for refusing to accept the  
42 body or to perform the cremation until they receive a court order or other  
43 suitable confirmation that the cause of the refusal has been settled. Cir-

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1 cumstances causing such a refusal may include:

2 (1) Awareness of a dispute concerning the cremation of the human  
3 remains; or

4 (2) a reasonable basis for questioning any of the representations made  
5 by the authorizing agent; or

6 (3) any other lawful reason.

7 New Sec. 6. If an authorizing agent informs the funeral director or  
8 assistant funeral director and the crematory operator on the cremation  
9 authorization form of the presence of a pacemaker in the human remains,  
10 then the funeral director or assistant funeral director shall also be re-  
11 sponsible for ensuring that all necessary steps have been taken to remove  
12 the pacemaker before delivering the human remains to the crematory.  
13 Should the funeral director or assistant funeral director who delivers the  
14 human remains to the crematory fail to ensure that the pacemaker has  
15 been removed from the human remains pursuant to subsection (a) of  
16 section 3 and amendments thereto, prior to delivery, and should the hu-  
17 man remains be cremated with the pacemaker, then the funeral director  
18 or assistant funeral director who delivered the human remains to the  
19 crematory shall also be liable for all resulting damages along with the  
20 authorizing agent.

21 New Sec. 7. (a) The state board of mortuary arts shall adopt rules  
22 and regulations for the administration and implementation of this act.  
23 Such rules and regulations shall include the conditions under which hu-  
24 man remains of persons dying from an infectious, contagious, commu-  
25 nicable or dangerous disease can be transported from any place in the  
26 state to a crematory for the purpose of cremation; shall establish minimal  
27 standards of sanitation, required equipment and fire protection for all  
28 crematories as deemed necessary for the protection of the public; shall  
29 define, construe and interpret the provisions of this act.

30 (b) A crematory operator in charge may enact reasonable policies,  
31 not inconsistent with this act or rules and regulations adopted by the  
32 board, for the management and operation of a crematory, the types of  
33 cremation containers it will accept, authorization forms required, author-  
34 ized personnel who may be witnesses to a cremation and similar provi-  
35 sions. Nothing in this provision shall prevent a crematory operator from  
36 enacting policies which are more stringent than the provisions contained  
37 in this act.

38 (c) The state board of mortuary arts may refuse to issue or renew a  
39 license, revoke or suspend a license or publicly or privately censure a  
40 licensee, upon a finding that a licensee or applicant for a license:

41 (1) Has maintained or operated a building or structure within the  
42 state as a crematory in violation of the provisions of this act or the rules  
43 and regulations adopted by the board of mortuary arts;

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- 1 (2) has held oneself out to the public as a crematory operator in  
2 charge without being licensed under this act;
- 3 (3) has performed a cremation without a cremation authorization  
4 form signed by an authorizing agent;
- 5 (4) has made any misleading, deceptive, untrue or fraudulent state-  
6 ments in applying for or securing an original or renewal license;
- 7 (5) has been convicted of a felony or an offense of moral turpitude,  
8 and has not demonstrated to the board's satisfaction that such licensee  
9 or applicant has been sufficiently rehabilitated to warrant the public trust;
- 10 (6) has committed an act of unprofessional or dishonorable conduct  
11 or professional incompetency;
- 12 (7) has violated any law, ordinance or rule and regulation affecting  
13 the handling, custody, care or transportation of dead human bodies or  
14 cremated remains;
- 15 (8) has been rendered unfit to operate a crematory by reason of ill-  
16 ness, alcohol, chemicals or other types of substances, or as a result of any  
17 mental or physical condition;
- 18 (9) has failed or refused to properly protect or guard against conta-  
19 gious, communicable or infectious disease, or the spreading thereof;
- 20 (10) has or such person's agent, employee or representative has ad-  
21 vertised, solicited or sold merchandise or services in a manner which is  
22 fraudulent, deceptive or misleading in form or content;
- 23 (11) has been found by a court of competent jurisdiction to be men-  
24 tally ill, mentally disabled, not guilty by reason of insanity or incompetent  
25 to stand trial by a court of competent jurisdiction;
- 26 (12) has failed to furnish the board, its investigators or representa-  
27 tives, information requested by the board;
- 28 (13) has failed to report to the board any adverse action taken against  
29 the licensee by another state or licensing jurisdiction, professional asso-  
30 ciation or society, governmental agency, law enforcement agency or a  
31 court for acts or conduct which would constitute grounds for disciplinary  
32 action under this section;
- 33 (14) has an adverse judgment, award or settlement against the li-  
34 censee resulting from the practice of cremation which relate to acts or  
35 conduct which would constitute grounds for disciplinary action under this  
36 section or has failed to report such matter to the board;
- 37 (15) has knowingly submitted any misleading, deceptive, untrue or  
38 fraudulent representation on a claim form, bill, statement or similar in-  
39 formation to an authorizing agent, consumer or representative of the  
40 board;
- 41 (16) has had a license to operate a crematory revoked or suspended,  
42 been censured or had other disciplinary action taken against oneself or  
43 had an application for a license denied by the proper licensing authority

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1 of another state, territory, District of Columbia or other country. A cer-  
2 tified copy of the record of the action of the other jurisdiction being  
3 conclusive evidence thereof;

4 (17) has violated any rules and regulations adopted by the board or  
5 any state or federal law related to the practice of operating a crematory;  
6 or

7 (18) has failed to pay any fee required under this act.

8 (d) All administrative proceedings taken by the board pursuant to this  
9 section shall be conducted in accordance with the provisions of the Kansas  
10 administrative procedure act.

11 (e) A violation of any other provision of this act is hereby declared to  
12 be a class A nonperson misdemeanor.

13 New Sec. 8. This act shall be construed and interpreted as a com-  
14 prehensive cremation statute, and the provisions of this act shall take  
15 precedence over any existing laws that govern dead human bodies and  
16 human remains that do not specifically address cremation.

17 New Sec. 9. (a) The crematory operator in charge of a crematory,  
18 located or doing business within the state, shall apply for and obtain a  
19 crematory license from the board for each crematory.

20 (b) An application for a new license is required if the crematory has  
21 a change in ownership, name, location or a change in the crematory op-  
22 erator in charge. Such application shall be made to the board at least 30  
23 days prior to the change of ownership, name or location or change in the  
24 crematory operator in charge.

25 (c) The crematory license fee and crematory license renewal fee shall  
26 be fixed by the board under K.S.A. 65-1727 and amendments thereto.  
27 The disposition of all funds collected under the provisions of this act shall  
28 be in accordance with the provisions of K.S.A. 65-1718 and amendments  
29 thereto.

30 (d) A crematory license shall expire every two years on a date estab-  
31 lished by the board. To continue operation of a crematory, a crematory  
32 operator in charge shall submit a biennial renewal application form and  
33 the crematory license renewal fee to the board before the expiration date  
34 of such license.

35 (e) A crematory license shall be judged delinquent on midnight of  
36 the expiration date and may only be renewed after that day by payment  
37 of a renewal fee and a reinstatement fee in an amount equal to the re-  
38 newal fee.

39 (f) It is unlawful for any person who does not hold a crematory license  
40 to operate, offer to operate, advertise or hold oneself out as operating a  
41 crematory.

42 (g) The Kansas university medical center shall be exempt from this  
43 statute for the purpose of cremating remains donated for dissecting, dem-



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1 onstrating or teaching purposes.

2 Section 10. K.S.A. 65-1723 is hereby amended to read as follows: 65-  
3 1723. The state board of mortuary arts shall have the power to adopt and  
4 enforce all necessary rules and regulations not inconsistent with this act  
5 for examining and licensing funeral directors and assistant funeral direc-  
6 tors, issuing licenses by reciprocity, establishing ethical standards and  
7 practices and regulating the general practice of funeral directing and cre-  
8 mation. The board shall have the power to inspect funeral establishments,  
9 including branch establishments and crematories, and to require that fu-  
10 neral establishments, including branch establishments and crematories,  
11 be maintained, operated and kept in a clean and sanitary condition in  
12 accordance with the provisions of this act, rules and regulations of the  
13 board and the any applicable rules and regulations of the secretary of  
14 health and environment. If a person applies for a funeral director's license  
15 for the purpose of opening a new funeral establishment or branch estab-  
16 lishment, or for the purpose of operating a funeral establishment or,  
17 branch establishment or crematory which has not been heretofore in-  
18 spected and approved by the board, or if a licensed funeral director or  
19 crematory operator makes structural alterations or additions to an existing  
20 funeral establishment or, branch establishment or crematory, the board  
21 shall have the right to withhold the issuance or renewal of any license  
22 until any such funeral establishment or, branch establishment or crema-  
23 tory has been inspected and approved by the board or its representatives.  
24 All references herein to "board" shall refer to the state board of mortuary  
25 arts of the state of Kansas unless otherwise clearly indicated. The board  
26 is hereby authorized and empowered to do all things necessary and proper  
27 in the administration of all the provisions of this act. Members of the state  
28 board of mortuary arts shall be allowed the same fees and expenses as  
29 are allowed for administering the embalmers' license law.

30 Sec. 11. K.S.A. 2000 Supp. 65-1727 is hereby amended to read as  
31 follows: 65-1727. (a) On or before October 15 of each year, the state  
32 board of mortuary arts shall determine the amount of funds that will be  
33 required during the next ensuing two years to properly administer the  
34 laws which the board is directed to enforce and administer under the  
35 provisions of article 17 of chapter 65 of the Kansas Statutes Annotated,  
36 and acts amendatory of the provisions thereof and supplemental thereto,  
37 and by rules and regulations shall fix fees in such reasonable sums as may  
38 be necessary for such purposes within the following limitations:

39 Embalmers examination fee, not more than.....	600 300
40 Embalmers endorsement application fee, not more than.....	400
41 Embalmers reciprocity application fee, not more than.....	600 400
42 Funeral directors examination fee, not more than.....	200 300
43 Funeral directors reciprocity application fee, not more than.....	600 400

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1	Embalmer/funeral directors reciprocity application fee, not more than...	400
2	Assistant funeral directors application fee, not more than .....	<del>100</del> 300
3	Embalmer's license and renewal fee, not more than .....	<del>150</del> 250
4	Funeral directors license and renewal fee, not more than .....	<del>250</del> 350
5	Assistant funeral directors license and renewal fee, not more than .....	<del>300</del> 300
6	Apprentice embalmers registration fee, not more than .....	<del>100</del> 150
7	Funeral establishment license fee, not more than .....	<del>500</del> 800
8	Branch establishment license fee, not more than .....	<del>600</del> 800
9	Crematory license fee, not more than .....	800
10	Crematory renewal fee, not more than .....	500
11	Funeral establishment/crematory license fee, not more than .....	1000
12	Branch establishment/crematory license fee, not more than .....	1000
13	Duplicate licenses .....	20
14	Rulebooks .....	20
15	Continuing education program sponsor applications .....	25
16	Continuing education program licensee applications .....	25
17	At least 30 days prior to the expiration date of any license issued by the	
18	board, the board shall notify the licensee of the applicable renewal fee	
19	therefor.	

20 (b) The fees established by the board under this section immediately  
 21 prior to the effective date of this act shall continue in effect until such  
 22 fees are fixed by the board by rules and regulations as provided in this  
 23 section.

24 (c) The state board of mortuary arts may license embalmers via en-  
 25 dorsement from another state: (1) if the individual has been licensed for  
 26 at least five years and has completed at least five consecutive years of  
 27 active practice in embalming; (2) has passed the national examination  
 28 written by the international conference of funeral service examining  
 29 boards; and (3) has not had any adverse action taken against such licensee  
 30 by the state board in which licensure is held. The original fee for such  
 31 endorsement license and the renewal fee shall be in the amounts fixed by  
 32 the board in accordance with the provisions of this section.

33 (e)(d) Fees paid to the board are not refundable.

34 Sec. 12. K.S.A. 65-1732 is hereby amended to read as follows: 65-  
 35 1732. With respect to the cremation of dead bodies, as such term is  
 36 defined in subsection (4) (5) of K.S.A. 65-2401 and amendments thereto,  
 37 if after a period of ~~100~~ 90 days from the time of cremation the cremated  
 38 remains have not been claimed, the funeral establishment, branch estab-  
 39 lishment or crematory may dispose of the cremated remains: (a) If the  
 40 funeral establishment, branch establishment or crematory has sent by  
 41 certified mail, return receipt requested, at least 30 days prior to the end  
 42 of such period of time to the last known address of the responsible person  
 43 who directed and provided for the method of final disposition of the dead

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1 ~~human remains~~ *authorizing agent*, a notice that such remains will be  
 2 disposed of in accordance with the provisions of this section unless  
 3 claimed prior to the end of the ~~one-hundred-twenty-day~~ *90-day* period  
 4 of time; and (b) if the remains have not been claimed prior to the end of  
 5 such period of time. Such disposal shall include *burial by* placing the  
 6 remains in a *church or cemetery plot, scatter garden, or pond, or church*  
 7 *columbarium or otherwise disposing of the remains as provided by rule*  
 8 *and regulation of the board of mortuary arts; and (c) this disposition may*  
 9 *include the commingling of the cremated remains with other cremated*  
 10 *remains and thus the cremated remains would not be recoverable.*

11 Sec. 13. K.S.A. 65-1723 and 65-1732 and K.S.A. 2000 Supp. 65-1727  
 12 are hereby repealed.

13 Sec. 14. This act shall take effect and be in force from and after  
 14 January 1, 2002, and its publication in the statute book.

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