

H. B. No. 464
As Introduced

_____ moved to amend as follows:

- In line 1 of the title, after "sections" insert "1721.21," 1
- In line 9 of the title, after "judge" insert ", and to make changes 2
to the law regarding cemetery endowment care trusts" 3
- In line 10, after "sections" insert "1721.21," 4
- After line 12, insert: 5
- "Sec. 1721.21.** (A) As used in this section: 6
- (1) "Person" means any corporation, company, partnership, 7
individual, or other entity owning or operating a cemetery for 8
the disposition of human remains. 9
- (2) "Cemetery" means any one or a combination of more than 10
one of the following: 11
- (a) A burial ground for earth interments; 12
- (b) A mausoleum for crypt entombments; 13
- (c) A columbarium for the deposit of cremated remains; 14
- (d) A scattering ground for the spreading of cremated 15



remains.	16
(3) "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.	17 18
(4) "Burial right" means the right of earth interment.	19
(5) "Entombment right" means the right of entombment in a mausoleum.	20 21
(6) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.	22 23
(7) "Human remains" means any part of the body of a deceased human being, in any stage of decomposition or state of preservation, or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition.	24 25 26 27 28
(B) No person shall operate or continue to operate any cemetery in this state unless an endowment care trust is established and maintained as required by this section.	29 30 31
(C) Any person desiring to operate any cemetery that is organized or developed after July 1, 1970, before offering to sell or selling any burial lot, burial right, entombment right, or columbarium right in that cemetery, shall first establish an endowment care trust, segregated from other assets, and place in that fund a minimum of fifty thousand dollars in cash or in bonds of the United States, this state, or any county or municipal corporation of this state.	32 33 34 35 36 37 38 39
Whenever any person described in this division has placed another fifty thousand dollars in the endowment care trust out of gross sales proceeds, in addition to the deposit required by this division, that person, after submitting proof of this fact	40 41 42 43

to the trustees of the endowment care trust, may be paid a 44
distribution in the sum of fifty thousand dollars from the 45
endowment care trust. 46

(D) Any person desiring to operate or to continue to 47
operate any cemetery after July 1, 1970, shall place into the 48
endowment care trust as required by this section not less than 49
ten per cent of the gross sales proceeds received from the sale 50
of any burial lot, burial right, entombment right, or 51
columbarium right. This percentage shall be placed in the 52
endowment care trust no later than thirty days following the 53
month in which the entire gross sales are received. 54

(E) The trustees of the endowment care trust shall consist 55
of at least three individuals who have been residents of the 56
county in which the cemetery is located for at least one year, 57
or a trust company licensed under Chapter 1111. of the Revised 58
Code or a national bank or federal savings association that has 59
securities pledged in accordance with section 1111.04 of the 60
Revised Code. If the trustees are not a financial institution or 61
trust company, the trustees shall be bonded by a fidelity bond, 62
or insured under an insurance policy less any deductible, in an 63
aggregate amount of not less than one hundred per cent of the 64
funds held by the trustees. The trustees or their agent shall, 65
on a continuous basis, keep exact records as to the amount of 66
funds under any joint account or trust instrument being held for 67
the individual beneficiaries showing the amount paid, the amount 68
deposited and invested, and accruals and income. 69

The funds of the endowment care trust shall be held and 70
invested in the manner in which trust funds are permitted to be 71
held and invested pursuant to sections 2109.37 and 2109.371 of 72
the Revised Code or, if provided for in the instrument creating 73

the trust, pursuant to the Ohio Uniform Prudent Investor Act. 74

(F) Any person offering to sell or selling any burial lot, 75
burial right, entombment right, or columbarium right shall give 76
to the purchaser of the lot or right, at the time of sale, a 77
written agreement that identifies and unconditionally guarantees 78
to the purchaser the specific location of the lot or the 79
specific location to which the right applies. 80

(G) No person shall open or close any grave, crypt, or 81
niche for the interment of human remains in a cemetery without 82
the permission of the cemetery association or other entity 83
having control and management of the cemetery. 84

(H) Except as provided in division (G) of this section, 85
this section does not apply to a family cemetery as defined in 86
section 4767.02 of the Revised Code, to any cemetery that is 87
owned and operated entirely and exclusively by churches, 88
religious societies, established fraternal organizations, 89
municipal corporations, or other political subdivisions of the 90
state, or to a national cemetery. 91

(I) ~~The dividend and interest income distribution~~ from the 92
endowment care trust shall be used only to pay for the both of 93
the following: 94

(1) The cost and expenses incurred to establish, manage, 95
invest, and administer the records and the trust and for the ; 96

(2) The maintenance, supervision, improvement, and 97
preservation of the grounds, lots, buildings, equipment, 98
statuary, and other real and personal property of the cemetery. 99

(J) (1) Annual reports of all the assets and investments of 100
the endowment care trust shall be prepared and maintained, and 101

shall be available for inspection at reasonable times by any 102
owner of interment rights in the cemetery. 103

(2) Every cemetery required to establish and maintain an 104
endowment care trust shall ensure each of the following: 105

(a) That the cemetery has deposited, at the time specified 106
in division (D) of this section, the amounts required by that 107
division in the cemetery's endowment care trust; 108

(b) That ~~only dividend and interest income have been paid~~ 109
~~from the endowment care trust, and~~ the cemetery used the amounts 110
withdrawn only for the purposes specified in division (I) of 111
this section; 112

(c) ~~That~~ Subject to division (K) (5) of this section, that 113
all principal and capital gains, less any payment of taxes 114
associated with such gains, have remained in the endowment care 115
trust; 116

(d) That the endowment care trust has not been used to 117
collateralize or guarantee loans and has not otherwise been 118
subjected to any consensual lien; 119

(e) That the endowment care trust is invested in 120
compliance with the investing standards set forth in sections 121
2109.37 and 2109.371 of the Revised Code, or, if provided for in 122
the instrument creating the trust, the Ohio Uniform Prudent 123
Investor Act. 124

(3) Every cemetery required to establish and maintain an 125
endowment care trust shall ~~file~~ do both of the following: 126

(a) File an affidavit annually with the division of real 127
estate of the department of commerce, in a form prescribed by 128
the division, certifying under oath the cemetery satisfied 129

division (J) (2) of this section;	130
<u>(b) Notify the division of real estate of the department</u>	131
<u>of commerce, in a form prescribed by the division, the</u>	132
<u>percentage of the unitrust distribution from the endowment care</u>	133
<u>trust, as described in division (K) (2) (a) (ii) and (b) of this</u>	134
<u>section.</u>	135
<u>(K) (1) Every cemetery shall choose the distribution of</u>	136
<u>either of the following from the endowment care trust:</u>	137
<u>(a) All net ordinary income, which includes collected</u>	138
<u>dividends, interest, and other income earned by the trust,</u>	139
<u>reduced by any expenses, including, but not limited to, taxes on</u>	140
<u>income, fees, commissions, and costs;</u>	141
<u>(b) A unitrust disbursement not exceeding five per cent of</u>	142
<u>the fair market value of the endowment care fund. "Fair market</u>	143
<u>value," for the purpose of division (K) (1) (b) of this section,</u>	144
<u>means the average of the net fair market value of the assets of</u>	145
<u>the endowment care trust as of the last trading day for each of</u>	146
<u>the three preceding fiscal year ends.</u>	147
<u>(2) (a) A cemetery that selects the unitrust disbursement</u>	148
<u>distribution method, as provided in division (K) (1) (b) of this</u>	149
<u>section, shall do both of the following:</u>	150
<u>(i) Deliver to the trustees of the endowment care trust</u>	151
<u>written instructions, including the disbursement percentage</u>	152
<u>selected, not later than sixty days prior to the beginning of a</u>	153
<u>calendar year;</u>	154
<u>(ii) Deliver to the division of real estate of the</u>	155
<u>department of commerce notification that the cemetery selected</u>	156
<u>the unitrust disbursement method and the percentage selected, in</u>	157

compliance with division (J)(3)(b) of this section. 158

(b) The distribution method and, if a unitrust 159
disbursement, the disbursement percentage selected shall remain 160
in effect unless the cemetery notifies the trustees and the 161
division of real estate of the department of commerce of its 162
desire to effect a change. The trustees shall ensure that an 163
investment policy is in place whose goals and objectives are 164
supportive of the growth of the endowment care trust. 165

(3) Distributions from the endowment care trust shall be 166
made on a monthly, quarterly, semiannual, or annual basis, as 167
agreed upon by the cemetery and the trustees. If the trustees do 168
not receive written instructions from the cemetery informing the 169
trustees of the method of calculation and distribution chosen, 170
the trustees shall calculate and distribute the net income, as 171
earned, on a monthly basis. 172

(4) In order to withdraw a unitrust disbursement, the fair 173
market value of the endowment care trust after the disbursement 174
shall be greater than eighty per cent of the aggregate fair 175
market value of the endowment care trust as of the end of the 176
immediate preceding calendar year. Should this not be the case, 177
disbursement shall be limited for that year to net ordinary 178
income. 179

(5) The trustees shall pay reasonable operating expenses 180
and taxes of the endowment care trust itself. If the operating 181
expenses and taxes paid are greater than two and one-half per 182
cent of the fair market value for the preceding calendar year- 183
end and the cemetery has selected a unitrust disbursement, the 184
trustees shall reduce the unitrust disbursement by the amount 185
exceeding two and one-half per cent." 186

In line 465, after "sections" insert "1721.21," 187

The motion was _____ agreed to.

<u>SYNOPSIS</u>	188
Cemetery endowment care trusts	189
R.C. 1721.21	190
Modifies the law regarding cemetery endowment care trusts	191
to:	192
-Establish minimum balance requirements and distribution caps for unitrust distributions.	193 194
-Require cemetery operators to report unitrust distribution percentages to the Division of Real Estate.	195 196
-Require trustees to maintain an investment policy for trust assets.	197 198
-Expand the list of allowable trust expenses to which a trust distribution can be directed.	199 200
-Allow, with some limitation, capital gains taxes to be paid from the capital gains themselves.	201 202