

**As Passed by the House**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. H. B. No. 168**

**Representative Stein**

**Cosponsors: Representatives Boccieri, Brenner, Hambley, LaTourette, Seitz, Arndt, Carfagna, O'Brien, Blessing, Antonio, Boyd, Brown, Craig, Cupp, Edwards, Galonski, Ginter, Green, Greenspan, Hill, Holmes, Howse, Ingram, Lang, Leland, Manning, Patterson, Ramos, Reineke, Retherford, Riedel, Sprague, Sweeney, West**

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**A BILL**

To amend sections 1721.21, 1721.211, 4717.03, 1  
4717.13, 4717.14, 4717.36, 4767.01, 4767.02, 2  
4767.03, 4767.04, 4767.05, 4767.06, 4767.07, and 3  
4767.08 and to enact sections 4767.021, 4767.09, 4  
4767.10, and 4767.11 of the Revised Code to 5  
modify duties of the Division of Real Estate in 6  
the Department of Commerce regarding cemetery 7  
registration, to specify cemetery owners must 8  
reasonably maintain cemeteries, to establish the 9  
Cemetery Grant Program, to allow the Board of 10  
Embalmers and Funeral Directors to review and 11  
vote upon certain license suspensions by 12  
telephone, to make various other changes to the 13  
embalmers, funeral directors, and crematory 14  
licensing laws, and to make an appropriation. 15

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1721.21, 1721.211, 4717.03, 16

4717.13, 4717.14, 4717.36, 4767.01, 4767.02, 4767.03, 4767.04, 17  
4767.05, 4767.06, 4767.07, and 4767.08 be amended and sections 18  
4767.021, 4767.09, 4767.10, and 4767.11 of the Revised Code be 19  
enacted to read as follows: 20

**Sec. 1721.21.** (A) As used in this section: 21

(1) "Person" means any corporation, company, partnership, 22  
individual, or other entity owning or operating a cemetery for 23  
the disposition of human remains. 24

(2) "Cemetery" means any one or a combination of more than 25  
one of the following: 26

(a) A burial ground for earth interments; 27

(b) A mausoleum for crypt entombments; 28

(c) A columbarium for the deposit of cremated remains; 29

(d) A scattering ground for the spreading of cremated 30  
remains. 31

(3) "Interment" means the disposition of human remains by 32  
earth burial, entombment, or inurnment. 33

(4) "Burial right" means the right of earth interment. 34

(5) "Entombment right" means the right of entombment in a 35  
mausoleum. 36

(6) "Columbarium right" means the right of inurnment in a 37  
columbarium for cremated remains. 38

(7) "Human remains" means any part of the body of a 39  
deceased human being, in any stage of decomposition or state of 40  
preservation, or the remaining bone fragments from the body of a 41  
deceased human being that has been reduced by cremation or 42  
alternative disposition. 43

(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.

(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.

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

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

(E) The trustees of the endowment care trust shall consist of at least three individuals who have been residents of the county in which the cemetery is located for at least one year, or a trust company licensed under Chapter 1111. of the Revised

Code or a national bank or federal savings association that has 74  
securities pledged in accordance with section 1111.04 of the 75  
Revised Code. If the trustees are not a financial institution or 76  
trust company, the trustees shall be bonded by a ~~corporate~~ 77  
~~surety or fidelity bond, or insured under an insurance policy~~ 78  
less any deductible, in an aggregate amount of not less than one 79  
hundred per cent of the funds held by the trustees. The trustees 80  
or their agent shall, on a continuous basis, keep exact records 81  
as to the amount of funds under any joint account or trust 82  
instrument being held for the individual beneficiaries showing 83  
the amount paid, the amount deposited and invested, and accruals 84  
and income. 85

The funds of the endowment care trust shall be held and 86  
invested in the manner in which trust funds are permitted to be 87  
held and invested pursuant to sections 2109.37 and 2109.371 of 88  
the Revised Code or, if provided for in the instrument creating 89  
the trust, pursuant to the Ohio Uniform Prudent Investor Act. 90

(F) Any person offering to sell or selling any burial lot, 91  
burial right, entombment right, or columbarium right shall give 92  
to the purchaser of the lot or right, at the time of sale, a 93  
written agreement that identifies and unconditionally guarantees 94  
to the purchaser the specific location of the lot or the 95  
specific location to which the right applies. 96

(G) No person shall open or close any grave, crypt, or 97  
niche for the interment of human remains in a cemetery without 98  
the permission of the cemetery association or other entity 99  
having control and management of the cemetery. 100

(H) Except as provided in division (G) of this section, 101  
this section does not apply to a family cemetery as defined in 102  
section 4767.02 of the Revised Code, to any cemetery that is 103

owned and operated entirely and exclusively by churches, 104  
religious societies, established fraternal organizations, 105  
municipal corporations, or other political subdivisions of the 106  
state, or to a national cemetery. 107

(I) The dividend and interest income from the endowment 108  
care trust shall be used only for the cost and expenses incurred 109  
to establish, manage, and administer the trust and for the 110  
maintenance, supervision, improvement, and preservation of the 111  
grounds, lots, buildings, equipment, statuary, and other real 112  
and personal property of the cemetery. 113

(J) (1) Annual reports of all the assets and investments of 114  
the endowment care trust shall be prepared and maintained, and 115  
shall be available for inspection at reasonable times by any 116  
owner of interment rights in the cemetery. 117

(2) Every cemetery required to establish and maintain an 118  
endowment care trust shall ~~file an affidavit annually with the~~ 119  
~~division of real estate of the department of commerce, in a form~~ 120  
~~prescribed by the division, certifying under oath ensure~~ each of 121  
the following: 122

(a) That the cemetery has deposited, at the time specified 123  
in division (D) of this section, the amounts required by that 124  
division in the cemetery's endowment care trust; 125

(b) That only dividend and interest income have been paid 126  
from the endowment care trust, and the cemetery used the amounts 127  
withdrawn only for the purposes specified in division (I) of 128  
this section; 129

(c) That all principal and capital gains have remained in 130  
the endowment care trust; 131

(d) That the endowment care trust has not been used to 132

collateralize or guarantee loans and has not otherwise been 133  
subjected to any consensual lien; 134

(e) That the endowment care trust is invested in 135  
compliance with the investing standards set forth in sections 136  
2109.37 and 2109.371 of the Revised Code, or, if provided for in 137  
the instrument creating the trust, the Ohio Uniform Prudent 138  
Investor Act. 139

(3) Every cemetery required to establish and maintain an 140  
endowment care trust shall file an affidavit annually with the 141  
division of real estate of the department of commerce, in a form 142  
prescribed by the division, certifying under oath the cemetery 143  
satisfied division (J) (2) of this section. 144

**Sec. 1721.211.** (A) As used in this section, "preneed 145  
cemetery merchandise and services contract" means a written 146  
agreement, contract, or series of contracts to sell or otherwise 147  
provide an outer burial container, monument, marker, urn, other 148  
type of merchandise customarily sold by cemeteries, or opening 149  
and closing services to be used or provided in connection with 150  
the final disposition of a dead human body, where payment for 151  
the container, monument, marker, urn, other type of merchandise 152  
customarily sold by cemeteries, or opening and closing services 153  
is made either outright or on an installment basis, prior to the 154  
death of the person so purchasing or for whom so purchased. 155  
"Preneed cemetery merchandise and services contract" does not 156  
include any preneed funeral contract or any agreement, contract, 157  
or series of contracts pertaining to the sale of any burial lot, 158  
burial or interment right, entombment right, or columbarium 159  
right with respect to which an endowment care trust is 160  
established or is exempt from establishment pursuant to section 161  
1721.21 of the Revised Code. 162

(B) Subject to the limitations and restrictions contained 163  
in Chapters 1101. to 1127. of the Revised Code, a trust company 164  
licensed under Chapter 1111. of the Revised Code or a national 165  
bank or federal savings association that pledges securities in 166  
accordance with section 1111.04 of the Revised Code or the 167  
individuals described in division (C) (2) of this section have 168  
the power as trustee to receive moneys under a preneed cemetery 169  
merchandise and services contract and to hold and invest such 170  
moneys in accordance with sections 2109.37 and 2109.371 of the 171  
Revised Code ~~moneys under a preneed cemetery merchandise and~~ 172  
~~services contract~~ or, if provided for in the instrument creating 173  
the trust, in accordance with the Ohio Uniform Prudent Investor 174  
Act. 175

(C) (1) The greater of one hundred ten per cent of the 176  
seller's actual cost or thirty per cent of the seller's retail 177  
price of the merchandise and seventy per cent of the seller's 178  
retail price of the services to be provided under a preneed 179  
cemetery merchandise and services contract shall remain intact 180  
as a fund and held in a preneed cemetery merchandise and 181  
services trust until the death of the person for whose benefit 182  
the contract is made or the merchandise is delivered as set 183  
forth in division (K) of this section. However, any moneys held 184  
pursuant to this section shall be released upon demand of the 185  
person for whose benefit the contract was made or upon the 186  
demand of the seller for its share of the moneys held and earned 187  
interest if the contract has been canceled as set forth in 188  
division (G) of this section. 189

(2) The trustee of the ~~fund described in division (C) (1)~~ 190  
~~of this section~~ preneed cemetery merchandise and services trust 191  
shall be a trust company licensed under Chapter 1111. of the 192  
Revised Code or a national bank or federal savings association 193

that pledges securities in accordance with section 1111.04 of 194  
the Revised Code or at least three individuals who have been 195  
residents of the county in which the seller is located for at 196  
least one year, each of whom shall be bonded by a ~~corporate-~~ 197  
~~surety-fidelity bond,~~ or insured under an insurance policy less 198  
any deductible, in an amount that is at least equal to the 199  
amount deposited in the ~~fund-trust~~ of which those persons serve 200  
as trustee. Amounts in the ~~fund-trust~~ shall be held and invested 201  
in the manner in which trust funds are permitted to be held and 202  
invested pursuant to sections 2109.37 and 2109.371 of the 203  
Revised Code or, if provided for in the instrument creating the 204  
trust, in accordance with the Ohio Uniform Prudent Investor Act. 205

(3) Every preneed cemetery and merchandise contract 206  
entered into on or after ~~the effective date of this amendment-~~ 207  
October 12, 2006, shall include a provision in substantially the 208  
following form: 209

NOTICE: Under Ohio law, the person holding the right of 210  
disposition of the remains of the beneficiary of this contract 211  
pursuant to section 2108.70 or 2108.81 of the Revised Code will 212  
have the right to purchase cemetery merchandise and services 213  
inconsistent with the merchandise and services set forth in this 214  
contract. However, the beneficiary is encouraged to state his or 215  
her preferences as to the manner of final disposition in a 216  
declaration of the right of disposition pursuant to section 217  
2108.72 of the Revised Code, including that the arrangements set 218  
forth in this contract shall be followed. 219

(D) Within thirty days after the last business day of the 220  
month in which the seller of cemetery merchandise or services 221  
receives final contractual payment under a preneed cemetery 222  
merchandise and services contract, the seller shall deliver the 223

greater of one hundred ten per cent of the seller's actual cost 224  
or thirty per cent of the seller's retail price of the 225  
merchandise and seventy per cent of the seller's current retail 226  
price of the services as of the date of the contract to a 227  
trustee or to trustees as described in division (C) (2) of this 228  
section, and the moneys and accruals or income on the moneys 229  
shall be held in a fund in a preneed cemetery merchandise and 230  
services trust and designated for the person for whose benefit 231  
the fund was established as a preneed cemetery merchandise and 232  
services contract fund. 233

(E) The moneys received from more than one preneed 234  
cemetery merchandise and services contract may, at the option of 235  
the persons for whose benefit the contracts are made, be placed 236  
in a common or pooled trust fund in this state under a single 237  
trust instrument. If three individuals are designated as the 238  
trustees as provided in division (C) (2) of this section, they 239  
shall be bonded by a ~~corporate surety or fidelity bond, or~~ 240  
insured under an insurance policy less any deductible, in an 241  
aggregate amount of not less than one hundred per cent of the 242  
funds held by them as trustees. The trustees or their agent 243  
shall, on a continuous basis, keep exact records as to the 244  
amount of funds under a single trust instrument being held for 245  
the individual beneficiaries showing the amount paid, the amount 246  
deposited and invested, and accruals and income. 247

(F) (1) ~~Except as provided in division (F) (2) of this~~ 248  
~~section, the~~ The seller of merchandise or services under a 249  
preneed cemetery merchandise and services contract shall 250  
~~annually submit to the division of real estate of the department~~ 251  
~~of commerce an affidavit in a form prescribed by the division,~~ 252  
~~sworn under oath, specifying~~ ensure each of the following: 253

(a) That, within the time specified in division (D) of 254  
this section, the amounts required by that division were 255  
deposited in an appropriate fund in a preneed cemetery 256  
merchandise and services trust; 257

(b) That the ~~fund~~ preneed cemetery merchandise and 258  
services trust has not been used to collateralize or guarantee 259  
loans and has not otherwise been subjected to any consensual 260  
lien; 261

(c) That the ~~fund~~ preneed cemetery merchandise and 262  
services trust is invested in compliance with the investing 263  
standards set forth in sections 2109.37 and 2109.371 of the 264  
Revised Code or, if provided for in the instrument creating the 265  
trust, in accordance with the Ohio Uniform Prudent Investor Act; 266

(d) That no moneys have been removed from the ~~fund~~ preneed 267  
cemetery merchandise and services trust, except as provided for 268  
in this section. 269

(2) Except as provided in division (F) (3) of this section, 270  
the seller of merchandise or services under a preneed cemetery 271  
merchandise and services contract shall annually submit to the 272  
division of real estate of the department of commerce an 273  
affidavit in a form prescribed by the division, certifying under 274  
oath the seller satisfied division (F) (1) of this section. 275

(3) A licensed funeral director who sells preneed funeral 276  
contracts and who also sells merchandise or services under a 277  
preneed cemetery merchandise and services contract shall be 278  
deemed to have met the requirement in division (F) ~~(1)~~ (2) of 279  
this section by submitting the annual preneed cemetery 280  
merchandise and services contract affidavit to the board of 281  
embalmers and funeral directors along with or as part of the 282

annual preneed funeral contract report required under divisions 283  
(I) and (J) of section 4717.31 of the Revised Code. 284

(G) This division is subject to division (I) of this 285  
section. 286

Any person upon initially entering into a preneed cemetery 287  
merchandise and services contract may, within seven days, cancel 288  
the contract and request and receive from the seller one hundred 289  
per cent of all payments made under the contract. After the 290  
expiration of the above period, any person who has entered into 291  
a preneed cemetery merchandise and services contract may, on not 292  
less than fifteen days' notice, cancel the contract and request 293  
and receive from the seller sixty per cent of the payments made 294  
under the contract which have been paid up to the time of 295  
cancellation; except that, if a preneed cemetery merchandise and 296  
services contract stipulates a firm or fixed or guaranteed price 297  
for the merchandise or services for future use at a time 298  
determined by the death of the person on behalf of whom payments 299  
are made, the person who has entered into the contract may, if 300  
the merchandise has not been delivered or the services have not 301  
been performed as set forth in division (K) or (L) of this 302  
section, on not less than fifteen days' notice, cancel the 303  
contract and receive from the seller sixty per cent of the 304  
principal paid pursuant to the contract and not less than eighty 305  
per cent of any interest paid, up to the time of cancellation, 306  
and not less than eighty per cent of any accrual or income 307  
earned while the moneys have been held pursuant to divisions (C) 308  
and (D) of this section, up to the time of cancellation. Upon 309  
cancellation, after the moneys have been distributed to the 310  
beneficiary pursuant to this division, all remaining moneys 311  
being held pursuant to divisions (C) and (D) of this section 312  
shall be paid to the seller. If more than one person enters into 313

the contract, all of those persons must request cancellation for 314  
it to be effective under this division. In such a case, the 315  
seller shall refund to each person only those moneys that each 316  
person has paid under the contract. 317

(H) Upon receipt of a certified copy of the certificate of 318  
death or evidence of delivery of the merchandise or performance 319  
of the services pursuant to division (K) or (L) of this section, 320  
the trustee described in division (C) (2) of this section or its 321  
agent, shall forthwith pay the fund and accumulated interest, if 322  
any, to the person entitled to them under the preneed cemetery 323  
merchandise and services contract. The payment of the fund and 324  
accumulated interest pursuant to this section, either to a 325  
seller or person making the payments, shall relieve the trustee 326  
of any further liability on the fund or accumulated interest. 327

(I) Notwithstanding any other provision of this section, 328  
any preneed cemetery merchandise and services contract may 329  
specify that it is irrevocable. All irrevocable preneed cemetery 330  
merchandise and services contracts shall include a clear and 331  
conspicuous disclosure of irrevocability in the contract and any 332  
person entering into an irrevocable preneed cemetery merchandise 333  
and services contract shall sign a separate acknowledgment of 334  
the person's waiver of the right to revoke. If a contract 335  
satisfies the requirements of this division, division (G) of 336  
this section does not apply to that contract. 337

(J) Any preneed cemetery merchandise and services contract 338  
that involves the payment of money shall be in writing and in 339  
compliance with the laws and rules of this state. 340

(K) For purposes of this section, the seller is considered 341  
to have delivered merchandise pursuant to a preneed cemetery 342  
merchandise and services contract when either of the following 343

occur:	344
(1) The seller makes actual delivery of the merchandise to the beneficiary, or the seller pays for the merchandise and identifies it as being stored for the benefit of the beneficiary at a manufacturer's warehouse.	345 346 347 348
(2) The seller receives delivery of the merchandise on behalf of the beneficiary, and all of the following occur:	349 350
(a) The merchandise is permanently affixed to or stored upon the real property of a cemetery located in this state.	351 352
(b) The seller notifies the beneficiary of receipt of the merchandise and identifies the specific location of the merchandise.	353 354 355
(c) The seller at the time of the beneficiary's final payment provides the beneficiary with evidence of ownership in the beneficiary's name showing the merchandise to be free and clear of any liens or other encumbrances.	356 357 358 359
(L) For purposes of this section, a seller is considered to have performed services pursuant to a preneed cemetery merchandise and services contract when the beneficiary's next of kin signs a written statement that the services have been performed or, if no next of kin of the beneficiary can be located through reasonable diligence, when the owner or other person responsible for the operation of the cemetery signs a statement of that nature.	360 361 362 363 364 365 366 367
(M) Notwithstanding any other provision of this chapter, any trust may be charged a trustee's fee, which is to be deducted from the earned income or accruals on that trust. The fee shall not exceed the amount that is regularly or usually charged for similar services rendered by the trustee described	368 369 370 371 372

in division (C) (2) of this section when serving as a trustee. 373

(N) The general assembly intends that this section be 374  
construed as a limitation upon the manner in which a person is 375  
permitted to accept moneys in prepayment for merchandise and 376  
services to be delivered or provided in the future, or 377  
merchandise and services to be used or provided in connection 378  
with the final disposition of human remains, to the end that at 379  
all times members of the public may have an opportunity to 380  
arrange and pay for merchandise and services for themselves and 381  
their families in advance of need while at the same time 382  
providing all possible safeguards whereunder the prepaid moneys 383  
cannot be dissipated, whether intentionally or not, so as to be 384  
available for the payment for merchandise and services and the 385  
providing of merchandise and services used or provided in 386  
connection with the final disposition of dead human bodies. 387

(O) This section does not apply to the seller or provider 388  
of merchandise or services under a preneed cemetery merchandise 389  
and services contract if the contract pertains to a cemetery 390  
that is owned and operated entirely and exclusively by an 391  
established and legally cognizable church or denomination that 392  
is exempt from federal income taxation under section 501(c) (3) 393  
of the "Internal Revenue Code of 1954," 26 U.S.C.A. 501, an 394  
established fraternal organization, or a municipal corporation 395  
or other political subdivision of the state, to a cemetery that 396  
is a national cemetery, or to a cemetery that is a family 397  
cemetery as defined in section 4767.02 of the Revised Code; 398  
provided that, on a voluntary basis, rules and other measures 399  
are adopted to safeguard and secure all moneys received under a 400  
preneed cemetery merchandise and services contract. 401

(P) This section does not prohibit persons other than 402

cemetery corporations or associations from selling outer burial 403  
containers, monuments, markers, urns, or other types of 404  
merchandise customarily sold by cemeteries pursuant to a preneed 405  
cemetery merchandise and services contract; however all sellers 406  
of merchandise pursuant to a preneed cemetery merchandise and 407  
services contract shall comply with this section unless the 408  
seller is specifically exempt from this section. 409

(Q) Any contract for preneed services or merchandise 410  
entered into with a cemetery not registered under section 411  
4767.03 of the Revised Code is voidable. 412

**Sec. 4717.03.** (A) Members of the board of embalmers and 413  
funeral directors shall annually in July, or within thirty days 414  
after the senate's confirmation of the new members appointed in 415  
that year, meet and organize by selecting from among its members 416  
a president, vice-president, and secretary-treasurer. The board 417  
may hold other meetings as it determines necessary. A quorum of 418  
the board consists of four members, of whom at least three shall 419  
be members who are ~~embalmers and~~ funeral directors. The 420  
concurrence of at least four members is necessary for the board 421  
to take any action. The president and secretary-treasurer shall 422  
sign all licenses issued under this chapter and affix the 423  
board's seal to each license. 424

(B) The board may appoint an individual who is not a 425  
member of the board to serve as executive director of the board. 426  
The executive director serves at the pleasure of the board and 427  
shall do all of the following: 428

- (1) Serve as the board's chief administrative officer; 429
- (2) Act as custodian of the board's records; 430
- (3) Execute all of the board's orders; 431

(4) Employ staff who are not members of the board and who 432  
serve at the pleasure of the executive director to provide any 433  
assistance that the board considers necessary. 434

(C) In executing the board's orders as required by 435  
division (B) (3) of this section, the executive director may 436  
enter the premises, establishment, office, or place of business 437  
of any embalmer, funeral director, or crematory operator in this 438  
state. The executive director may serve and execute any process 439  
issued by any court under this chapter. 440

(D) The executive director may employ necessary 441  
inspectors, who shall be licensed embalmers and funeral 442  
directors. An inspector employed by the executive director may 443  
enter the premises, establishment, office, or place of business 444  
of any embalmer, funeral director, or crematory operator, 445  
embalming facility, funeral home, or crematory facility in this 446  
state, for the purposes of inspecting the facility and premises; 447  
the license, permit, and registration of embalmers, funeral 448  
directors, and crematory operators operating in the facility; 449  
and the license of the funeral home, embalming facility, or 450  
crematory facility and perform any other duties delegated to the 451  
inspector by the board or assigned to the inspector by the 452  
executive director. The executive director may enter the 453  
facility or premises of a funeral home, embalming facility, or 454  
crematory for the purpose of an inspection if accompanied by an 455  
inspector or, if an inspector is not available, when a situation 456  
presents a danger of immediate and serious harm to the public. 457

(E) The president of the board shall designate three of 458  
the board's members to serve on the crematory review board, 459  
which is hereby created, for such time as the president finds 460  
appropriate to carry out the provisions of this chapter. Those 461

members of the crematory review board designated by the 462  
president to serve and three members designated by the cemetery 463  
dispute resolution commission shall designate, by a majority 464  
vote, one person who holds a crematory operator permit, who is 465  
experienced in the operation of a crematory facility, and who is 466  
not affiliated with a cemetery or a funeral home to serve on the 467  
crematory review board for such time as the crematory review 468  
board finds appropriate. Members serving on the crematory review 469  
board shall not receive any additional compensation for serving 470  
on the board, but may be reimbursed for their actual and 471  
necessary expenses incurred in the performance of official 472  
duties as members of the board. Members of the crematory review 473  
board shall designate one from among its members to serve as a 474  
chairperson for such time as the board finds appropriate. Costs 475  
associated with conducting an adjudicatory hearing in accordance 476  
with division (F) of this section shall be paid from funds 477  
available to the board of embalmers and funeral directors. 478

(F) Upon receiving written notice from the board of 479  
embalmers and funeral directors of any of the following, the 480  
crematory review board shall conduct an adjudicatory hearing on 481  
the matter in accordance with Chapter 119. of the Revised Code, 482  
except as otherwise provided in this section or division (C) of 483  
section 4717.14 of the Revised Code: 484

(1) Notice provided under division (I) of this section of 485  
an alleged violation of any provision of this chapter or any 486  
rules adopted under this chapter governing or in connection with 487  
crematory operators, crematory facilities, or cremation; 488

(2) Notice provided under division (B) of section 4717.14 489  
of the Revised Code that the board of embalmers and funeral 490  
directors proposes to refuse to grant or renew, or to suspend or 491

revoke, a license to operate a crematory facility; 492

(3) Notice provided under division (C) of section 4717.14 493  
of the Revised Code that the board of embalmers and funeral 494  
directors has issued an order summarily suspending a crematory 495  
operator permit or a license to operate a crematory facility; 496

(4) Notice provided under division (B) of section 4717.15 497  
of the Revised Code that the board of embalmers and funeral 498  
directors proposes to issue a notice of violation and order 499  
requiring payment of a forfeiture for any violation described in 500  
divisions (A) (9) (a) to (g) of section 4717.04 of the Revised 501  
Code alleged in connection with a crematory operator, crematory 502  
facility, or cremation. 503

Nothing in division (F) of this section precludes the 504  
crematory review board from appointing an independent examiner 505  
in accordance with section 119.09 of the Revised Code to conduct 506  
any adjudication hearing required under division (F) of this 507  
section. 508

The crematory review board shall submit a written report 509  
of findings and advisory recommendations, and a written 510  
transcript of its proceedings, to the board of embalmers and 511  
funeral directors. The board of embalmers and funeral directors 512  
shall serve a copy of the written report of the crematory review 513  
board's findings and advisory recommendations on the party to 514  
the adjudication or the party's attorney, by certified mail, 515  
within five days after receiving the report and advisory 516  
recommendations. A party may file objections to the written 517  
report with the board of embalmers and funeral directors within 518  
ten days after receiving the report. No written report is final 519  
or appealable until it is issued as a final order by the board 520  
of embalmers and funeral directors and entered on the record of 521

the proceedings. The board of embalmers and funeral directors 522  
shall consider objections filed by the party prior to issuing a 523  
final order. After reviewing the findings and advisory 524  
recommendations of the crematory review board, the written 525  
transcript of the crematory review board's proceedings, and any 526  
objections filed by a party, the board of embalmers and funeral 527  
directors shall issue a final order in the matter. Any party may 528  
appeal the final order issued by the board of embalmers and 529  
funeral directors in a matter described in divisions (F) (1) to 530  
(4) of this section in accordance with section 119.12 of the 531  
Revised Code, except that the appeal may be made to the court of 532  
common pleas in the county in which is located the crematory 533  
facility to which the final order pertains, or in the county in 534  
which the party resides. 535

(G) On its own initiative or on receiving a written 536  
complaint from any person whose identity is made known to the 537  
board of embalmers and funeral directors, the board shall 538  
investigate the acts or practices of any person holding or 539  
claiming to hold a license, permit, or registration under this 540  
chapter that, if proven to have occurred, would violate this 541  
chapter or any rules adopted under it. The board may compel 542  
witnesses by subpoena to appear and testify in relation to 543  
investigations conducted under this chapter and may require by 544  
subpoena duces tecum the production of any book, paper, or 545  
document pertaining to an investigation. If a person does not 546  
comply with a subpoena or subpoena duces tecum, the board may 547  
apply to the court of common pleas of any county in this state 548  
for an order compelling the person to comply with the subpoena 549  
or subpoena duces tecum, or for failure to do so, to be held in 550  
contempt of court. 551

(H) If, as a result of its investigation conducted under 552

division (G) of this section, the board of embalmers and funeral 553  
directors has reasonable cause to believe that the person 554  
investigated is violating any provision of this chapter or any 555  
rules adopted under this chapter governing or in connection with 556  
embalming, funeral directing, cremation, funeral homes, 557  
embalming facilities, or cremation facilities, or the operation 558  
of funeral homes, embalming facilities, or crematory facilities, 559  
it may, after providing the opportunity for an adjudicatory 560  
hearing, issue an order directing the person to cease the acts 561  
or practices that constitute the violation. The board shall 562  
conduct the adjudicatory hearing in accordance with Chapter 119. 563  
of the Revised Code except that, notwithstanding the provisions 564  
of that chapter, the following shall apply: 565

(1) The board shall send the notice informing the person 566  
of the person's right to a hearing by certified mail. 567

(2) The person is entitled to a hearing only if the person 568  
requests a hearing and if the board receives the request within 569  
thirty days after the mailing of the notice described in 570  
division (H) (1) of this section. 571

(3) A stenographic record shall be taken, in the manner 572  
prescribed in section 119.09 of the Revised Code, at every 573  
adjudicatory hearing held under this section, regardless of 574  
whether the record may be the basis of an appeal to a court. 575

(I) If, as a result of its investigation conducted under 576  
division (G) of this section, the board of embalmers and funeral 577  
directors has reasonable cause to believe that the person 578  
investigated is violating any provision of this chapter or any 579  
rules adopted under this chapter governing or in connection with 580  
crematory operators, crematory facilities, or cremation, the 581  
board shall send written notice of the alleged violation to the 582

crematory review board. If, after the conclusion of the 583  
adjudicatory hearing in the matter conducted under division (F) 584  
of this section, the board of embalmers and funeral directors 585  
finds that a person is in violation of any provision of this 586  
chapter or any rules adopted under this chapter governing or in 587  
connection with crematory operators, crematory facilities, or 588  
cremation, the board may issue a final order under that division 589  
directing the person to cease the acts or practices that 590  
constitute the violation. 591

(J) The board of embalmers and funeral directors may bring 592  
a civil action to enjoin any violation or threatened violation 593  
of sections 4717.01 to 4717.15 of the Revised Code or a rule 594  
adopted under any of those sections; division (A) or (B) of 595  
section 4717.23; division (B) (1) or (2), (C) (1) or (2), (D), 596  
(E), or (F) (1) or (2), or divisions (H) to (K) of section 597  
4717.26; division (D) (1) of section 4717.27; divisions (A) to 598  
(C) of section 4717.28, or division (D) or (E) of section 599  
4717.31 of the Revised Code. The action shall be brought in the 600  
county where the violation occurred or the threatened violation 601  
is expected to occur. At the request of the board, the attorney 602  
general shall represent the board in any matter arising under 603  
this chapter. 604

(K) The board of embalmers and funeral directors and the 605  
crematory review board may issue subpoenas for any person 606  
holding a license or permit under this chapter or persons 607  
holding themselves out as such, or for any other person whose 608  
testimony, in the opinion of either board, is necessary. The 609  
subpoena shall require the person to appear before the 610  
appropriate board or any designated member of either board, upon 611  
any hearing conducted under this chapter. The penalty for 612  
disobedience to the command of such a subpoena is the same as 613

for refusal to answer such a process issued under authority of 614  
the court of common pleas. 615

(L) Except as provided in section 4717.41 of the Revised 616  
Code, all moneys received by the board of embalmers and funeral 617  
directors from any source shall be deposited in the state 618  
treasury to the credit of the occupational licensing and 619  
regulatory fund created in section 4743.05 of the Revised Code. 620

(M) The board of embalmers and funeral directors shall 621  
submit a written report to the governor on or before the first 622  
Monday of July of each year. This report shall contain a 623  
detailed statement of the nature and amount of the board's 624  
receipts and the amount and manner of its expenditures. 625

**Sec. 4717.13.** (A) No person shall do any of the following: 626

(1) Engage in the business or profession of funeral 627  
directing unless the person is licensed as a funeral director 628  
under this chapter, is certified as an apprentice funeral 629  
director in accordance with rules adopted under section 4717.04 630  
of the Revised Code and under the supervision of a funeral 631  
director licensed under this chapter, or is a student in a 632  
college of mortuary sciences approved by the board of embalmers 633  
and funeral directors and is under the direct supervision of a 634  
funeral director licensed by the board; 635

(2) Engage in embalming unless the person is licensed as 636  
an embalmer under this chapter, is certified as an apprentice 637  
embalmer in accordance with rules adopted under section 4717.04 638  
of the Revised Code and is under the supervision of an embalmer 639  
licensed under this chapter, or is a student in a college of 640  
mortuary science approved by the board and is under the direct 641  
supervision of an embalmer licensed by the board; 642

(3) Advertise or otherwise offer to provide or convey the 643  
impression that the person provides funeral directing services 644  
unless the person is licensed as a funeral director under this 645  
chapter and is employed by or under contract to a licensed 646  
funeral home and performs funeral directing services for that 647  
funeral home in a manner consistent with the advertisement, 648  
offering, or conveyance; 649

(4) Advertise or otherwise offer to provide or convey the 650  
impression that the person provides embalming services unless 651  
the person is licensed as an embalmer under this chapter and is 652  
employed by or under contract to a licensed funeral home or a 653  
licensed embalming facility and performs embalming services for 654  
the funeral home or embalming facility in a manner consistent 655  
with the advertisement, offering, or conveyance; 656

(5) Operate a funeral home without a license to operate 657  
the funeral home issued by the board under this chapter; 658

(6) Practice the business or profession of funeral 659  
directing from any place except from a funeral home that a 660  
person is licensed to operate under this chapter; 661

(7) Practice embalming from any place except from a 662  
funeral home or embalming facility that a person is licensed to 663  
operate under this chapter; 664

(8) Operate a crematory or perform cremation without a 665  
license to operate the crematory issued under this chapter; 666

(9) Cremate animals in a cremation chamber in which dead 667  
human bodies or body parts are cremated or cremate dead human 668  
bodies or human body parts in a cremation chamber in which 669  
animals are cremated; 670

(10) Hold a dead human body, before final disposition, for 671

more than forty-eight hours after the time of death unless the 672  
dead human body is embalmed or placed into refrigeration and 673  
maintained at a constant temperature of less than forty degrees; 674

(11) Knowingly refuse to promptly submit the custody of a 675  
dead human body or cremated remains upon the oral or written 676  
order of the person legally entitled to the body or cremated 677  
remains; 678

(12) Except as ordered by the coroner or the person 679  
holding the right of disposition under section 2108.70 or 680  
2108.81 of the Revised Code, knowingly fail to carry out the 681  
final disposition of a dead human body within thirty days after 682  
taking custody of the body; 683

(13) Engage in cremation as defined in section 4717.01 of 684  
the Revised Code unless the person holds a crematory operator 685  
permit under this chapter; 686

(14) Engage in the business or profession of funeral 687  
directing, engage in embalming, or operate a crematory or 688  
perform cremation with a lapsed license as defined under section 689  
4717.01 of the Revised Code. 690

(B) No funeral director or other person in charge of the 691  
final disposition of a dead human body shall fail to do one of 692  
the following prior to the interment of the body: 693

(1) Affix to the ankle or wrist of the deceased a tag 694  
encased in a durable and long-lasting material that contains the 695  
name, date of birth, date of death, and social security number 696  
of the deceased; 697

(2) Place in the casket a capsule containing a tag bearing 698  
the information described in division (B)(1) of this section; 699

(3) If the body was cremated, place in the vessel 700  
containing the cremated remains a tag bearing the information 701  
described in division (B) (1) of this section. 702

(C) No person who holds a funeral home license for a 703  
funeral home that is closed, or that is owned by a funeral 704  
business in which changes in the ownership of the funeral 705  
business result in a majority of the ownership of the funeral 706  
business being held by one or more persons who solely or in 707  
combination with others did not own a majority of the funeral 708  
business immediately prior to the change in ownership, shall 709  
fail to submit to the board within thirty days after the closing 710  
or such change of ownership of the funeral business owning the 711  
funeral home, a clearly enumerated account of all of the 712  
following from which the licensee, at the time of the closing or 713  
change of ownership of the funeral business and in connection 714  
with the funeral home, was to receive payment for providing the 715  
funeral services, funeral goods, or any combination of those in 716  
connection with the funeral or final disposition of a dead human 717  
body: 718

(1) Preneed funeral contracts governed by sections 4717.31 719  
to 4717.38 of the Revised Code; 720

(2) Life insurance policies or annuities the benefits of 721  
which are payable to the provider of funeral or burial goods or 722  
services; 723

(3) Accounts at banks or savings banks insured by the 724  
federal deposit insurance corporation, savings and loan 725  
associations insured by the federal savings and loan insurance 726  
corporation or the Ohio deposit guarantee fund, or credit unions 727  
insured by the national credit union administration or a credit 728  
union share guaranty corporation organized under Chapter 1761. 729

of the Revised Code that are payable upon the death of the 730  
person for whose benefit deposits into the accounts were made. 731

(D) (1) No person who holds a funeral home license for a 732  
funeral home that is closed shall negligently fail to send 733  
written notice to the purchaser of every preneed funeral 734  
contract to which the funeral business is a party via first 735  
class United States mail. Such notice shall be addressed to the 736  
purchaser's last known address and shall explain that the 737  
funeral business is being closed and the name of any funeral 738  
business that has been designated to assume the obligations of 739  
the preneed contract. 740

(2) Within thirty days of the closing of a funeral home, 741  
no person who held the funeral home license for the closed 742  
funeral home shall negligently fail to transfer all preneed 743  
contracts to the funeral home or funeral homes that have been 744  
designated to assume the obligation of the preneed contracts. If 745  
the person who holds a funeral home license for a funeral home 746  
that is closed fails to designate a successor funeral home or 747  
funeral homes to assume the obligations of the preneed funeral 748  
contracts, the board shall make such designations and order the 749  
transfer of the preneed funeral contracts to the designated 750  
funeral home or funeral homes. 751

**Sec. 4717.14.** (A) The board of embalmers and funeral 752  
directors may refuse to grant or renew, or may suspend or 753  
revoke, any license or permit issued under this chapter or may 754  
require the holder of a license or permit to take corrective 755  
action courses for any of the following reasons: 756

(1) The holder of a license or permit obtained the license 757  
or permit by fraud or misrepresentation either in the 758  
application or in passing the examination. 759

(2) The applicant, licensee, or permit holder has been 760  
convicted of or has pleaded guilty to a felony or of any crime 761  
involving moral turpitude. 762

(3) The applicant, licensee, or permit holder has 763  
~~purposely~~recklessly violated any provision of sections 4717.01 764  
to 4717.15 or a rule adopted under any of those sections; 765  
division (A) or (B) of section 4717.23; division (B)(1) or (2), 766  
(C)(1) or (2), (D), (E), or (F)(1) or (2), or divisions (H) to 767  
(K) of section 4717.26; division (D)(1) of section 4717.27; or 768  
divisions (A) to (C) of section 4717.28 of the Revised Code; or 769  
any provisions of sections 4717.31 to 4717.38 of the Revised 770  
Code; any rule or order of the department of health or a board 771  
of health of a health district governing the disposition of dead 772  
human bodies; or any other rule or order applicable to the 773  
applicant or licensee. 774

(4) The applicant, licensee, or permit holder has 775  
committed immoral or unprofessional conduct. 776

(5) The applicant or licensee knowingly permitted an 777  
unlicensed person, other than a person serving an 778  
apprenticeship, to engage in the profession or business of 779  
embalming or funeral directing under the applicant's or 780  
licensee's supervision. 781

(6) The applicant, licensee, or permit holder has been 782  
habitually intoxicated, or is addicted to the use of morphine, 783  
cocaine, or other habit-forming or illegal drugs. 784

(7) The applicant, licensee, or permit holder has refused 785  
to promptly submit the custody of a dead human body or cremated 786  
remains upon the express order of the person legally entitled to 787  
the body or cremated remains. 788

(8) The licensee or permit holder loaned the licensee's 789  
own license or the permit holder's own permit, or the applicant, 790  
licensee, or permit holder borrowed or used the license or 791  
permit of another person, or knowingly aided or abetted the 792  
granting of an improper license or permit. 793

(9) The applicant, licensee, or permit holder misled the 794  
public by using false or deceptive advertising. As used in this 795  
division, "false and deceptive advertising" includes, but is not 796  
limited to, any of the following: 797

(a) Using the names of persons who are not licensed to 798  
practice funeral directing in a way that leads the public to 799  
believe that such persons are engaging in funeral directing; 800

(b) Using any name for the funeral home other than the 801  
name under which the funeral home is licensed; 802

(c) Using in the funeral home's name the surname of an 803  
individual who is not directly, actively, or presently 804  
associated with the funeral home, unless such surname has been 805  
previously and continuously used by the funeral home. 806

(B) (1) The board of embalmers and funeral directors shall 807  
refuse to grant or renew, or shall suspend or revoke a license 808  
or permit only in accordance with Chapter 119. of the Revised 809  
Code. 810

(2) The board shall send to the crematory review board 811  
written notice that it proposes to refuse to issue or renew, or 812  
proposes to suspend or revoke, a license to operate a crematory 813  
facility. If, after the conclusion of the adjudicatory hearing 814  
on the matter conducted under division (F) of section 4717.03 of 815  
the Revised Code, the board of embalmers and funeral directors 816  
finds that any of the circumstances described in divisions (A) 817

(1) to (9) of this section apply to the person named in its 818  
proposed action, the board may issue a final order under 819  
division (F) of section 4717.03 of the Revised Code refusing to 820  
issue or renew, or suspending or revoking, the person's license 821  
to operate a crematory facility. 822

(C) If the board of embalmers and funeral directors 823  
determines that there is clear and convincing evidence that any 824  
of the circumstances described in divisions (A) (1) to (9) of 825  
this section apply to the holder of a license or permit issued 826  
under this chapter and that the licensee's or permit holder's 827  
continued practice presents a danger of immediate and serious 828  
harm to the public, the board may suspend the licensee's license 829  
or permit holder's permit without a prior adjudicatory hearing. 830  
The executive director of the board shall prepare written 831  
allegations for consideration by the board. 832

The board, after reviewing the written allegations, may 833  
suspend a license or permit without a prior hearing. 834

Notwithstanding section 121.22 of the Revised Code, the 835  
board may suspend a license or permit under this division by 836  
utilizing a telephone conference call to review the allegations 837  
and to take a vote. 838

The board shall issue a written order of suspension by a 839  
delivery system or in person in accordance with section 119.07 840  
of the Revised Code. Such an order is not subject to suspension 841  
by the court during the pendency of any appeal filed under 842  
section 119.12 of the Revised Code. If the licensee or permit 843  
holder requests an adjudicatory hearing by the board, the date 844  
set for the hearing shall be within fifteen days, but not 845  
earlier than seven days, after the licensee or permit holder has 846  
requested a hearing, unless the board and the licensee or permit 847

holder agree to a different time for holding the hearing. 848

Upon issuing a written order of suspension to the holder 849  
of a license to operate a crematory facility, the board of 850  
embalmers and funeral directors shall send written notice of the 851  
issuance of the order to the crematory review board. The 852  
crematory review board shall hold an adjudicatory hearing on the 853  
order under division (F) of section 4717.03 of the Revised Code 854  
within fifteen days, but not earlier than seven days, after the 855  
issuance of the order, unless the crematory review board and the 856  
licensee agree to a different time for holding the adjudicatory 857  
hearing. 858

Any summary suspension imposed under this division shall 859  
remain in effect, unless reversed on appeal, until a final 860  
adjudicatory order issued by the board of embalmers and funeral 861  
directors pursuant to this division and Chapter 119. of the 862  
Revised Code, or division (F) of section 4717.03 of the Revised 863  
Code, as applicable, becomes effective. The board of embalmers 864  
and funeral directors shall issue its final adjudicatory order 865  
within sixty days after the completion of its hearing or, in the 866  
case of the summary suspension of a license to operate a 867  
crematory facility, within sixty days after completion of the 868  
adjudicatory hearing by the crematory review board. A failure to 869  
issue the order within that time results in the dissolution of 870  
the summary suspension order, but does not invalidate any 871  
subsequent final adjudicatory order. 872

(D) If the board of embalmers and funeral directors 873  
suspends or revokes a funeral director's license or a license to 874  
operate a funeral home for any reason identified in division (A) 875  
of this section, the board may file a complaint with the court 876  
of common pleas in the county where the violation occurred 877

requesting appointment of a receiver and the sequestration of 878  
the assets of the funeral home that held the suspended or 879  
revoked license or the licensed funeral home that employs the 880  
funeral director that held the suspended or revoked license. If 881  
the court of common pleas is satisfied with the application for 882  
a receivership, the court may appoint a receiver. 883

The board or a receiver may employ and procure whatever 884  
assistance or advice is necessary in the receivership or 885  
liquidation and distribution of the assets of the funeral home, 886  
and, for that purpose, may retain officers or employees of the 887  
funeral home as needed. All expenses of the receivership or 888  
liquidation shall be paid from the assets of the funeral home 889  
and shall be a lien on those assets, and that lien shall be a 890  
priority to any other lien. 891

(E) Any holder of a license or permit issued under this 892  
chapter who has pleaded guilty to, has been found by a judge or 893  
jury to be guilty of, or has had a judicial finding of 894  
eligibility for treatment in lieu of conviction entered against 895  
the individual in this state for aggravated murder, murder, 896  
voluntary manslaughter, felonious assault, kidnapping, rape, 897  
sexual battery, gross sexual imposition, aggravated arson, 898  
aggravated robbery, or aggravated burglary, or who has pleaded 899  
guilty to, has been found by a judge or jury to be guilty of, or 900  
has had a judicial finding of eligibility for treatment in lieu 901  
of conviction entered against the individual in another 902  
jurisdiction for any substantially equivalent criminal offense, 903  
is hereby suspended from practice under this chapter by 904  
operation of law, and any license or permit issued to the 905  
individual under this chapter is hereby suspended by operation 906  
of law as of the date of the guilty plea, verdict or finding of 907  
guilt, or judicial finding of eligibility for treatment in lieu 908

of conviction, regardless of whether the proceedings are brought 909  
in this state or another jurisdiction. The board shall notify 910  
the suspended individual of the suspension of the individual's 911  
license or permit by the operation of this division by a 912  
delivery system or in person in accordance with section 119.07 913  
of the Revised Code. If an individual whose license or permit is 914  
suspended under this division fails to make a timely request for 915  
an adjudicatory hearing, the board shall enter a final order 916  
revoking the license. 917

(F) No person whose license or permit has been suspended 918  
or revoked under or by the operation of this section shall 919  
knowingly practice embalming, funeral directing, or cremation, 920  
or operate a funeral home, embalming facility, or crematory 921  
facility until the board has reinstated the person's license or 922  
permit. 923

**Sec. 4717.36.** (A) This section applies only to preneed 924  
funeral contracts that are funded by any means other than an 925  
insurance policy or policies, or an annuity or annuities. 926

No money in a preneed funeral contract trust shall be 927  
distributed from the trust except as provided in this section. 928

(B) A seller of a preneed funeral contract that stipulates 929  
a fixed or firm or guaranteed price for funeral services and 930  
funeral goods to be provided under a preneed funeral contract 931  
may charge an initial service fee not to exceed ten per cent of 932  
the total amount of all payments to be paid under the preneed 933  
funeral contract for such guaranteed price funeral services and 934  
funeral goods. If the amount to be paid by the purchaser is to 935  
be paid in installments, ~~not more than one half of any payment~~ 936  
~~may be applied to the seller may collect~~ the initial service fee 937  
only after all of the installments have been paid. ~~If the~~ 938

~~preneed funeral contract is revoked by the purchaser, any~~ 939  
~~portion of the initial service fee that has not been paid under~~ 940  
~~the preneed funeral contract is no longer due and payable to the~~ 941  
~~seller.~~ 942

(C) All payments made by the purchaser of a preneed 943  
funeral contract, except for the initial service fee permitted 944  
by division (B) of this section and any applicable sales tax, 945  
shall be made in the form of a check, cashier's check, money 946  
order, or debit or credit card, payable only to the trustee of 947  
the preneed funeral contract trust or to the trustee's 948  
designated depository. Within thirty days of the seller 949  
receiving any form of payment made payable to the trustee or the 950  
trustee's designee, the seller shall remit the payment to the 951  
trustee or the trustee's designee unless the purchaser rescinds 952  
the preneed funeral contract in accordance with division (A) of 953  
section 4717.34 of the Revised Code. The funds deposited with 954  
the trustee shall remain intact and held in trust for the 955  
contract beneficiary. 956

(D) The seller shall establish a preneed funeral contract 957  
trust at one of the following types of institutions and shall 958  
designate that institution as the trustee of the preneed funeral 959  
contract trust: 960

(1) A trust company licensed under Chapter 1111. of the 961  
Revised Code; 962

(2) A national bank, federal savings bank, or federal 963  
savings association that pledges securities in accordance with 964  
section 1111.04 of the Revised Code; 965

(3) A credit union authorized to conduct business in this 966  
state pursuant to Chapter 1733. of the Revised Code. 967

(E) Moneys deposited in a preneed funeral contract trust 968  
fund shall be held and invested in the manner in which trust 969  
funds are permitted to be held and invested pursuant to Chapter 970  
1111. of the Revised Code. 971

(F) The seller shall establish a separate preneed funeral 972  
contract trust for the moneys paid under each preneed funeral 973  
contract, unless the purchaser or purchasers of a preneed 974  
funeral contract or contracts authorize the seller to place the 975  
moneys paid for that contract or those contracts in a combined 976  
preneed funeral contract trust. The trustee of a combined 977  
preneed funeral contract trust shall keep exact records of the 978  
corpus, income, expenses, and disbursements with regard to each 979  
purchaser and contract beneficiary for whom moneys are held in 980  
the trust. The terms of a preneed funeral contract trust are 981  
governed by this section and the payments from that trust are 982  
governed by Chapter 1111. of the Revised Code, except as 983  
otherwise provided in this section. 984

A trustee of a preneed funeral contract trust may pay 985  
taxes and expenses for a preneed funeral contract trust and may 986  
charge a fee for managing a preneed funeral contract trust. The 987  
fee shall not exceed the amount regularly or usually charged for 988  
similar services rendered by the institutions described in 989  
division (D) of this section when serving as a trustee. 990

(G) If the purchaser of a preneed funeral contract that is 991  
revocable elects to cancel the contract, the purchaser shall 992  
provide a written notice to the seller of the contract and the 993  
trustee of the preneed funeral contract trust stating that the 994  
purchaser intends to cancel the contract. Fifteen days after the 995  
purchaser provides that notice to the seller and trustee, the 996  
purchaser may cancel the contract. Upon canceling a preneed 997

funeral contract pursuant to this division, one of the following 998  
shall occur, as applicable: 999

(1) If the preneed funeral contract does not stipulate a 1000  
firm or fixed or guaranteed price for funeral goods and funeral 1001  
services to be provided under the preneed funeral contract, the 1002  
trustee shall give to the purchaser all of the assets of the 1003  
trust that exist at the time of cancellation, less any fees 1004  
charged, distributions paid, and expenses incurred by the 1005  
trustee pursuant to division (F) of this section. 1006

(2) If the preneed funeral contract does stipulate a firm 1007  
or fixed or guaranteed price for funeral goods and funeral 1008  
services to be provided under the contract, the purchaser may 1009  
request and receive from the trustee all of the assets of the 1010  
trust at the time of cancellation, less a cancellation fee that 1011  
the original seller may collect from the trustee that is equal 1012  
to or less than ten per cent of the value of the assets of the 1013  
trust on the date the trust is cancelled, provided, however, 1014  
that to the extent the original seller took an initial service 1015  
fee as permitted by division (B) of this section, the aggregate 1016  
amount of the cancellation fee and the initial service fee may 1017  
not exceed ten per cent of the value of those assets. In 1018  
addition to any cancellation fee, there may also be deducted any 1019  
fees charged, distributions paid, and expenses incurred by the 1020  
trustee pursuant to division (F) of this section. 1021

If more than one purchaser enters into the contract, all 1022  
of those purchasers must request cancellation of the contract 1023  
for it to be effective under this division, and the trustee 1024  
shall refund to each purchaser only those funds that purchaser 1025  
has paid under the contract and any income earned on those funds 1026  
in an amount that is in direct proportion to the amount of funds 1027

that purchaser paid relative to the total amount of payments 1028  
deposited in that trust, less any fees charged, distributions 1029  
paid, and expenses incurred by the trustee pursuant to division 1030  
(F) of this section, the amount of which are in direct 1031  
proportion to the amount of funds that purchaser paid relative 1032  
to the total amount of payments deposited in that trust. 1033

(H) The purchaser of a preneed funeral contract that is 1034  
irrevocable may transfer the preneed funeral contract to a 1035  
successor seller. A purchaser who elects to make such a transfer 1036  
shall provide a written notice of the designation of a successor 1037  
seller to the trustee and the original seller. Within fifteen 1038  
days after receiving the written notice of the new designation 1039  
from the purchaser, the trustee shall list the successor seller 1040  
as the seller of the preneed funeral contract and the original 1041  
seller shall relinquish and transfer all rights under the 1042  
preneed funeral contract to the successor seller. The trustee 1043  
shall confirm the transfer by providing written notice of the 1044  
transfer to the original seller, the successor seller, and the 1045  
purchaser. If the preneed funeral contract stipulates a firm or 1046  
fixed or guaranteed price for the funeral goods and funeral 1047  
services to be provided under the preneed funeral contract, the 1048  
original seller may collect from the trustee a transfer fee from 1049  
the trust that equals up to ten per cent of the value of the 1050  
assets of the trust on the date the trust is transferred, 1051  
provided, however, that to the extent the original seller took 1052  
an initial service fee as permitted by division (B) of this 1053  
section, the aggregate amount of the transfer fee and the 1054  
initial service fee may not exceed ten per cent of the value of 1055  
those assets. If the preneed funeral contract does not stipulate 1056  
a firm or fixed or guaranteed price for funeral goods and 1057  
funeral services to be provided under the preneed funeral 1058

contract, no transfer fee shall be collected by the original 1059  
seller. 1060

(I) If a seller of a preneed funeral contract elects to 1061  
transfer a preneed funeral contract trust from an institution 1062  
listed in divisions (D) (1) to (3) of this section to a different 1063  
institution, the trustee of the original trust shall notify the 1064  
purchaser of the preneed funeral contract of that transfer in 1065  
writing within thirty days after the transfer occurred and shall 1066  
provide the purchaser with the name of and the contact 1067  
information for the institution where the new trust is 1068  
maintained. Upon receipt of the trust, the trustee of the 1069  
transferred trust shall notify the purchaser of the receipt of 1070  
the trusts in accordance with division (A) of section 4717.33 of 1071  
the Revised Code. 1072

(J) If a seller receives a notice that the contract 1073  
beneficiary has died and that funeral goods and funeral services 1074  
have been provided by a provider other than the seller, except 1075  
as otherwise specified in this section, the seller shall direct 1076  
the trustee, within thirty days after receiving that notice, to 1077  
pay to the provider that provided the funeral goods and 1078  
services, if still unpaid, or the estate of the contract 1079  
beneficiary all funds held by the trustee, less any fees 1080  
charged, distributions paid, and expenses incurred by the 1081  
trustee pursuant to division (F) of this section. In the event 1082  
the preneed funeral contract stipulates a firm or fixed or 1083  
guaranteed price for funeral goods and funeral services that 1084  
were to be provided under the preneed funeral contract, the 1085  
seller may collect from the trustee a cancellation fee not 1086  
exceeding ten per cent of the value of the assets of the trust 1087  
on the date the trust is transferred, provided, however, that to 1088  
the extent the original seller took an initial service fee as 1089

permitted by division (B) of this section, the aggregate amount 1090  
of the transfer fee and the initial service fee shall not exceed 1091  
ten per cent of the value of those assets. If the preneed 1092  
funeral trust does not stipulate a firm or fixed or guaranteed 1093  
price for funeral goods and funeral services to be provided 1094  
under the preneed funeral contract, no cancellation fees shall 1095  
be collected by the original seller. 1096

(K) A certified copy of the certificate of death or other 1097  
evidence of death satisfactory to the trustee shall be furnished 1098  
to the trustee as evidence of death, and the trustee shall 1099  
promptly pay the accumulated payments and income, if any, 1100  
according to the preneed funeral contract. Such payment of the 1101  
accumulated payments and income pursuant to this section and, 1102  
when applicable, the preneed funeral contract, relieves the 1103  
trustee of any further liability on the accumulated payments and 1104  
income. 1105

**Sec. 4767.01.** As used in sections 4767.01 to ~~4767.08~~ 1106  
4767.11 of the Revised Code: 1107

(A) "Cemetery," "interment," "burial right," "entombment 1108  
right," ~~and~~ "columbarium right," and "human remains" have the 1109  
same meanings as in section 1721.21 of the Revised Code. 1110

(B) "Political subdivision" means one or more municipal 1111  
corporations, townships, or other bodies corporate and politic 1112  
authorized to operate and maintain a cemetery under the law of 1113  
this state. 1114

(C) "Division of real estate" may be used interchangeably 1115  
with, and for all purposes has the same meaning as, "division of 1116  
real estate and professional licensing." 1117

(D) "Superintendent" or "superintendent of the division of 1118

real estate" means the superintendent of the division of real 1119  
estate and professional licensing of this state. Whenever the 1120  
division or superintendent of real estate is referred to or 1121  
designated in any statute, rule, contract, or other document, 1122  
the reference or designation shall be deemed to refer to the 1123  
division or superintendent of real estate and professional 1124  
licensing, as the case may be. 1125

**Sec. 4767.02.** (A) Except as otherwise provided in division 1126  
~~(C)~~(D) of this section, no person, church, religious society, 1127  
established fraternal organization, or political subdivision of 1128  
the state shall own, operate, or maintain a cemetery unless the 1129  
cemetery is registered pursuant to section 4767.03 of the 1130  
Revised Code. 1131

(B) The superintendent of the division of real estate in 1132  
the department of commerce shall perform all of the following 1133  
duties: 1134

(1) ~~Adopt, amend, and rescind rules in accordance with~~ 1135  
~~Chapter 119. of the Revised Code to carry out sections 4767.02-~~ 1136  
~~to 4767.04 of the Revised Code governing the registration of~~ 1137  
~~cemeteries;~~Administer this chapter; 1138

(2) Issue orders necessary to implement this chapter; 1139

(3) Administer the cemetery grant program established 1140  
under section 4767.10 of the Revised Code; 1141

(4) Prescribe the form and content of all applications to 1142  
be used for registration and renewal of registration pursuant to 1143  
section 4767.03 of the Revised Code; 1144

~~(3)~~(5) Review applications for registration and issue 1145  
registration certificates to cemeteries that meet the 1146  
qualifications for registration pursuant to sections 4767.03 and 1147

4767.04 of the Revised Code; 1148

~~(4)~~ (6) Collect all fees related to the registration and 1149  
renewal of registration certificates for cemeteries; 1150

~~(5)~~ (7) Maintain a written record of each cemetery 1151  
registered with the division, which shall include such 1152  
documentation as required in division (A) of section 4767.04 of 1153  
the Revised Code. The record shall be available for inspection 1154  
by the public and copies shall be made available pursuant to 1155  
division (B) of section 149.43 of the Revised Code. 1156

~~(6)~~ (8) Revoke the registration of any cemetery owner or 1157  
operator convicted of a violation of section 1721.21 or 1721.211 1158  
of the Revised Code immediately upon receipt of notice of the 1159  
conviction pursuant to section 119.06 of the Revised Code; 1160

~~(7)~~ (9) Hire all division personnel necessary to implement 1161  
this chapter; 1162

~~(8)~~ Prohibit the sale of the assets or stock of a cemetery 1163  
~~by refusing~~ (10) Refuse to issue a registration certificate to 1164  
the purchaser of management rights, assets, or stock of a 1165  
cemetery until the dispute resolution commission has received 1166  
audited financial either of the following: 1167

(a) Financial statements audited by a certified public 1168  
accountant showing to the commission's satisfaction that all 1169  
current funds required to be deposited and maintained pursuant 1170  
to sections 1721.21 and 1721.211 of the Revised Code have been 1171  
deposited and maintained; 1172

~~(9)~~ With the dispute resolution commission's advice and 1173  
consent, subpoena cemetery personnel to attend hearings before 1174  
the commission; or 1175

(b) A plan agreed to by the parties and approved by the 1176  
commission in accordance with division (G) of section 4767.06 of 1177  
the Revised Code. 1178

(11) Establish and maintain an investigation and audit 1179  
section within the division of real estate in the department of 1180  
commerce to conduct investigations pursuant to division (A) of 1181  
section 4767.08 of the Revised Code and to audit the financial 1182  
records of a cemetery to ensure compliance with sections 1721.21 1183  
and 1721.211 of the Revised Code at least every five years, or 1184  
more often as the section deems necessary. The investigators or 1185  
auditors of the section may review and audit the business 1186  
records of cemeteries during normal business hours. 1187

(C) Investigators, auditors, and other personnel of the 1188  
division or commission shall maintain the confidentiality of 1189  
information obtained from cemeteries, complainants, or other 1190  
persons during an investigation or while conducting an 1191  
inspection, audit, and other inquiry under division (B)(11) of 1192  
this section, and of all other reports, documents, and work 1193  
product that result from that information and that are prepared 1194  
by the investigators, auditors, or other personnel of the 1195  
division or commission. Such information and other reports, 1196  
documents, and work product are not a public record for purposes 1197  
of section 149.43 of the Revised Code. 1198

(D) Sections 4767.02 to 4767.04 of the Revised Code do not 1199  
apply to or affect a family cemetery or a cemetery in which 1200  
there have been no interments during the previous twenty-five 1201  
calendar years. As used in this division, "family cemetery" 1202  
means a cemetery containing the human remains of persons, at 1203  
least three-fourths of whom have a common ancestor or who are 1204  
the spouse or adopted child of that common ancestor. 1205

Sec. 4767.021. The Ohio cemetery dispute resolution 1206  
commission or the superintendent of the division of real estate 1207  
in the department of commerce may compel, by order or subpoena, 1208  
the production of any book, paper, or document in relation to 1209  
any matter over which the commission or superintendent has 1210  
jurisdiction and which is the subject of inquiry and 1211  
investigation by the commission or superintendent. The 1212  
commission or superintendent may also compel, by order or 1213  
subpoena, the attendance of witnesses to testify in a hearing 1214  
held under section 4767.07 of the Revised Code. 1215

For such purpose, the commission or superintendent shall 1216  
have the same power as judges of county courts to administer 1217  
oaths, compel the attendance of witness, and compel the 1218  
production of any book, paper, or document. Service of the 1219  
subpoena may be made by sheriffs or constables, or by certified 1220  
mail, return receipt requested, and the subpoena shall be deemed 1221  
served on the date delivery is made or the date the person 1222  
refused to accept delivery. Witnesses shall receive, after their 1223  
appearance before the commission or superintendent, the fees and 1224  
mileage provided for under section 119.094 of the Revised Code. 1225  
If two or more witnesses travel together in the same vehicle, 1226  
the mileage fee shall be paid to only one of those witnesses, 1227  
but the witnesses may agree to divide the fee among themselves 1228  
in any manner. 1229

In addition to the powers granted to the commission and 1230  
superintendent under this section, in case any person fails to 1231  
file any statement or report, obey any subpoena, give testimony, 1232  
answer questions, or produce any books, records, or papers as 1233  
required by the commission or superintendent under this chapter, 1234  
the court of common pleas of any county in the state, upon 1235  
application made to it by the commission or superintendent 1236

setting forth such failure, may make an order awarding process 1237  
of subpoena or subpoena duces tecum for the person to appear and 1238  
testify before the commission or superintendent, and may order 1239  
any person to give testimony and answer questions, and to 1240  
produce books, records, or papers, as required by the commission 1241  
or superintendent. Upon the filing of such order in the office 1242  
of the clerk of the court of common pleas, the clerk, under the 1243  
seal of the court, shall issue process of subpoena for the 1244  
person to appear before the commission or superintendent at a 1245  
time and place named in the subpoena, and each day thereafter 1246  
until the examination of such person is completed. The subpoena 1247  
may contain a direction that the witness bring with the witness 1248  
to the examination any books, records, or papers mentioned in 1249  
the subpoena. The clerk shall also issue, under the seal of the 1250  
court, such other orders, in reference to the examination, 1251  
appearance, and production of books, records, or papers, as the 1252  
court directs. If any person so summoned by subpoena fails to 1253  
obey the subpoena, to give testimony, to answer questions as 1254  
required, or to obey an order of the court, the court, on motion 1255  
supported by proof, may order an attachment for contempt to be 1256  
issued against the person charged with disobedience of any order 1257  
or injunction issued by the court under this chapter. If the 1258  
person is brought before the court by virtue of the attachment, 1259  
and if upon a hearing the disobedience appears, the court may 1260  
order the offender to be committed and kept in close custody. 1261

**Sec. 4767.03.** (A) (1) The owner or the person responsible 1262  
for the operation and maintenance of a cemetery shall apply to 1263  
the division of real estate in the department of commerce to 1264  
register the cemetery on forms prescribed by the division. With 1265  
the application, the applicant shall submit the documentation 1266  
required in division (A) of section 4767.04 of the Revised Code 1267

and a registration fee of twenty-five dollars for one cemetery, 1268  
forty dollars for two cemeteries, and fifty dollars for three or 1269  
more cemeteries, except that no fee shall be required of any 1270  
political subdivision. 1271

(2) The director of commerce, by rule adopted in 1272  
accordance with Chapter 119. of the Revised Code, may reduce the 1273  
amount of the registration fee required by this section in any 1274  
year if the director determines that the total amount of funds 1275  
the fee is generating at the amount specified by this section 1276  
exceeds the amount of funds the division of real estate and the 1277  
Ohio cemetery dispute resolution commission created by section 1278  
4767.05 of the Revised Code need to carry out their powers and 1279  
duties under this chapter. If the director so reduces the amount 1280  
of the registration fee, the director shall reduce it for all 1281  
owners or other persons required to pay the fee under division 1282  
(A) (1) of this section and shall require that the reduced fee be 1283  
paid according to the number of cemeteries owned, operated, or 1284  
maintained as required under that division. If the director has 1285  
reduced the fee under division (A) (2) of this section, the 1286  
director may later raise it up to the amounts specified in 1287  
division (A) (1) of this section if, in any year, the director 1288  
determines that the total amount of funds the fee is generating 1289  
at the reduced amount is insufficient for the division of real 1290  
estate and the Ohio cemetery dispute resolution commission to 1291  
carry out their powers and duties under this chapter. 1292

(B) Upon receipt of the completed application form, 1293  
documentation, and, if required, registration fee, the division 1294  
of real estate shall issue a certificate of registration to the 1295  
applicant. The applicant shall display the certificate in a 1296  
conspicuous place on the premises of the cemetery for which the 1297  
registration was obtained, except that, if the applicant is the 1298

governing body of a political subdivision or person acting on 1299  
behalf of that governing body, the certificate shall be kept on 1300  
file and be available for public inspection at the office of the 1301  
governing body. 1302

(C) Except as otherwise provided in this division, each 1303  
registration issued pursuant to this section shall expire 1304  
annually on the thirtieth day of ~~June~~ September and ~~may shall be~~ 1305  
renewed by the owner or the person responsible for the operation 1306  
and maintenance of the cemetery for the continued operation of 1307  
the cemetery. The renewal fee shall be the same as the initial 1308  
registration fees prescribed in division (A) of this section. 1309

The registration of a cemetery operated and maintained by 1310  
a political subdivision shall not expire unless the political 1311  
subdivision ceases to operate and maintain the cemetery. A 1312  
political subdivision operating and maintaining a cemetery is 1313  
not required to renew or update the registration of that 1314  
cemetery unless there is a change in the information required 1315  
under division (A) of section 4767.04 of the Revised Code or 1316  
unless additional land is acquired to increase the size of the 1317  
cemetery. 1318

(D) All registration and renewal fees collected pursuant 1319  
to this section shall be paid into the state treasury to the 1320  
credit of the division of real estate in the department of 1321  
commerce to be used by the division to carry out its powers and 1322  
duties under this chapter and by the Ohio cemetery dispute 1323  
resolution commission created by section 4767.05 of the Revised 1324  
Code. 1325

**Sec. 4767.04.** (A) To qualify a cemetery for a certificate 1326  
of registration, the applicant shall submit to the division of 1327  
real estate the following information: 1328

- (1) The name of the cemetery; 1329
- (2) The street address, city, village, or township, and 1330  
county where the cemetery is located, and the mailing address if 1331  
different from the street address; 1332
- (3) The name and address of the person who owns the 1333  
cemetery; 1334
- (4) The name and address of the person responsible for the 1335  
operation and maintenance of the cemetery; 1336
- (5) A copy of the ~~most recent annual report of the~~ 1337  
~~cemetery if required by the division of real estate pursuant to~~ 1338  
~~section 1721.211 of the Revised Code or cemetery's financial~~ 1339  
statement, including account statements, for the previous fiscal 1340  
year if required by the Ohio cemetery dispute resolution 1341  
commission division of real estate pursuant to section 1721.211 1342  
of the Revised Code. If the cemetery is owned by a cemetery 1343  
company or association, a copy of the ~~annual report financial~~ 1344  
statement, including account statements, for the previous fiscal 1345  
year of all of the assets and investments of the endowment care 1346  
trust of the company or association as prepared pursuant to 1347  
division (J)(1) of section 1721.21 of the Revised Code shall be 1348  
submitted to the division. 1349
- (6) A copy of the cemetery's current rules and regulations 1350  
provided in written or electronic format; 1351
- (7) A copy of the cemetery's endowment care trust fund 1352  
agreement required under section 1721.21 of the Revised Code and 1353  
preneed cemetery merchandise and services trust fund agreement 1354  
required under section 1721.211 of the Revised Code; 1355
- (8) If required under section 1721.21 or 1721.211 of the 1356  
Revised Code, proof that trustees who are individuals are bonded 1357

or insured as required. 1358

(B) If any of the information required in ~~division~~ 1359  
divisions (A) (1) to (A) (5) of this section changes at any time, 1360  
the owner or the person responsible for the operation and 1361  
maintenance of the cemetery shall submit written notification of 1362  
the change to the division within thirty days of the change 1363  
occurring. The owner or the person responsible for the operation 1364  
and maintenance of the cemetery shall submit to the division 1365  
annually with the cemetery's registration renewal any revised 1366  
rules and regulations, revised trust agreements, or revised 1367  
proof of bonding or insurance. 1368

(C) In addition to satisfying the requirements set forth 1369  
in divisions (A) and (B) of this section, if a political 1370  
subdivision intends to acquire additional land to increase the 1371  
size of an existing cemetery that it is operating and 1372  
maintaining or intends to open a new cemetery, its governing 1373  
body shall notify the division at least thirty days before the 1374  
acquisition or opening to renew the registration of the existing 1375  
cemetery or to register the new cemetery. 1376

**Sec. 4767.05.** (A) There is hereby created the Ohio 1377  
cemetery dispute resolution commission, which shall consist of 1378  
nine members to be appointed by the governor with the advice and 1379  
consent of the senate as follows: 1380

(1) One member shall be the management authority of a 1381  
municipal, township, or union cemetery and shall be selected 1382  
from a list of four names submitted to the governor. Two of the 1383  
four names shall be submitted by the Ohio township association 1384  
and two names shall be submitted by the Ohio municipal league. 1385

(2) Four members shall be individuals employed in a 1386

management position by a cemetery company or cemetery 1387  
association. ~~Two of the four members shall be~~ selected from a 1388  
list of ~~four~~ names submitted to the governor by the Ohio 1389  
cemetery association of cemeteries and ~~two shall be selected~~ 1390  
~~from a list of four names submitted by the Ohio association of~~ 1391  
~~cemetery superintendents and officials.~~ 1392

(3) Two members shall be employed in a management position 1393  
by a cemetery that is owned or operated by a religious, 1394  
fraternal, or benevolent society and shall be selected from a 1395  
list of four names submitted by the Ohio cemetery association of 1396  
~~cemetery superintendents and officials.~~ 1397

(4) Two members, at least one of whom shall be at least 1398  
sixty-five years of age, shall be representatives of the public 1399  
with no financial interest in the death care industry. 1400

Each member of the commission, except for the two members 1401  
who represent the public, shall, at the time of appointment, 1402  
have had a minimum of five consecutive years of experience in 1403  
the active administration and management of a cemetery in this 1404  
state. 1405

(B) Within ninety days after ~~the effective date of this~~ 1406  
~~section~~ July 1, 1993, the governor shall make initial 1407  
appointments to the commission. Of the initial appointments, two 1408  
shall be for terms ending ~~one year after the effective date of~~ 1409  
~~this section~~ July 1, 1994, two shall be for terms ending ~~two~~ 1410  
~~years after that date~~ July 1, 1995, two shall be for terms ending 1411  
~~three years after that date~~ July 1, 1996, and three shall be for 1412  
terms ending ~~four years after that date~~ July 1, 1997. Thereafter, 1413  
terms of office shall be for four years, with each term ending 1414  
on the same day of the same month as did the term that it 1415  
succeeds. Each member shall hold office from the date of 1416

appointment until the end of the term for which the member was 1417  
appointed. Vacancies shall be filled in the manner provided for 1418  
original appointments, with each appointee, other than a 1419  
representative of the public, being appointed from a list of two 1420  
names submitted to the governor by the association or 1421  
organization that was required to nominate candidates for 1422  
initial appointment to the position that has become vacant. Any 1423  
member appointed to fill a vacancy occurring prior to the 1424  
expiration date of the term for which the member's predecessor 1425  
was appointed shall hold office for the remainder of that term. 1426  
A member shall continue in office subsequent to the expiration 1427  
date of the member's term until the member's successor takes 1428  
office or until a period of sixty days has elapsed, whichever 1429  
occurs first. No person shall serve as a member of the 1430  
commission for more than two consecutive terms, excluding any 1431  
term served to fill an initial appointment to a term of less 1432  
than four years or an unexpired term caused by a vacancy. 1433

(C) The commission annually shall elect from among its 1434  
members a chairperson, vice-chairperson, and secretary, each of 1435  
whom shall serve a term of one year in that office. The 1436  
commission shall meet at least four times a year. Additional 1437  
meetings may be called by the chairperson, or by the vice- 1438  
chairperson when the chairperson is disabled, or by a majority 1439  
of the members of the commission. A majority of the members 1440  
constitutes a quorum to transact and vote on business of the 1441  
commission. 1442

The chairperson or vice-chairperson may: 1443

- (1) Administer oaths; 1444
- (2) Issue subpoenas; 1445

(3) Summon witnesses;	1446
(4) Compel the production of books, papers, records, and other forms of evidence;	1447 1448
(5) Fix the time and place for hearing any matter related to compliance with sections 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, <del>and 4767.02,</del> <u>and 4767.09</u> of the Revised Code.	1449 1450 1451
The chairperson shall designate three members of the commission to serve on the crematory review board in accordance with section 4717.03 of the Revised Code for such time as the chairperson finds appropriate. Members designated to serve on the crematory review board shall perform all functions necessary to carry out the duties of the board as described in section 4717.03 of the Revised Code. Members who serve on the crematory review board shall receive no compensation for such service.	1452 1453 1454 1455 1456 1457 1458 1459
(D) Before entering upon the duties of office, each member of the commission shall take the oath pursuant to section 3.22 of the Revised Code. The governor may remove any member for misconduct, neglect of duty, incapacity, or malfeasance in accordance with section 3.04 of the Revised Code.	1460 1461 1462 1463 1464
(E) Members of the commission shall receive no compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the commission.	1465 1466 1467 1468
(F) The division of real estate in the department of commerce shall provide the commission with meeting space, staff services, and other technical assistance required by the commission in carrying out its duties pursuant to sections 4767.05 to 4767.08 of the Revised Code.	1469 1470 1471 1472 1473
<b>Sec. 4767.06.</b> The Ohio cemetery dispute resolution	1474

commission shall perform all of the following duties: 1475

(A) Adopt, amend, and rescind such rules in accordance 1476  
with Chapter 119. of the Revised Code as are necessary in 1477  
carrying out sections ~~4767.05-4767.02~~ to ~~4767.08-4767.11~~ of the 1478  
Revised Code, including rules relative to the following: 1479

(1) Transacting the commission's business and managing its 1480  
affairs; 1481

(2) Establishing procedures for receiving, reviewing, and 1482  
responding to complaints filed pursuant to section 4767.07 of 1483  
the Revised Code; 1484

(3) Conducting investigations in response to complaints 1485  
filed pursuant to division (A) of section 4767.07 of the Revised 1486  
Code; 1487

(4) Resolving complaints by using informal techniques of 1488  
mediation, conciliation, and persuasion, including requiring the 1489  
parties involved in a complaint to be given prompt notice of any 1490  
offers to resolve disputes and responses thereto; 1491

(5) Advising all parties making a complaint, or who are 1492  
the subject of a complaint, of any recommendations or findings 1493  
of fact made by the commission with respect to the complaint; 1494

(6) Requesting the party who has filed a complaint or is 1495  
the subject of a complaint, and is affected by recommendations 1496  
of the commission made with respect to the complaint, to notify 1497  
the commission within a time specified by the commission of any 1498  
action the party has taken in response to the commission's 1499  
recommendations; 1500

(7) Conducting nonpublic hearings and maintaining 1501  
commission proceedings and records as confidential, 1502

notwithstanding sections 121.22 and 149.43 of the Revised Code 1503  
when the commission determines that the nature of the complaints 1504  
merits that action; 1505

(8) Determining the method to be used in serving notices 1506  
as required by section 4767.07 of the Revised Code; 1507

(9) Conducting audits of financial records of a cemetery 1508  
to ensure compliance with sections 1721.21 and 1721.211 of the 1509  
Revised Code; 1510

(10) Establishing procedures for registrations and 1511  
renewals. 1512

(B) Publicize information concerning the existence and 1513  
duties of the commission and the procedure for filing complaints 1514  
pursuant to section 4767.07 of the Revised Code; 1515

(C) Conduct hearings on complaints pursuant to section 1516  
4767.07 of the Revised Code; 1517

(D) Submit at least annually by the thirty-first day of 1518  
March a report on the commission's activities of the immediately 1519  
preceding calendar year to the governor and the majority and 1520  
minority leaders of the senate and house of representatives. The 1521  
report shall indicate the total number of complaints received, 1522  
initiated, and investigated under sections 4767.07 and 4767.08 1523  
of the Revised Code; the total number of complaints for which 1524  
hearings were held; and the total number of referrals made to 1525  
prosecuting attorneys, the attorney general, and the real estate 1526  
commission pursuant to section 4767.08 of the Revised Code. 1527

(E) Review, at least once each year, all actions taken by 1528  
the prosecuting attorneys, the attorney general, and the real 1529  
estate commission in response to referrals made to them by the 1530  
cemetery dispute resolution commission or by the superintendent 1531

of the division of real estate in the department of commerce. 1532  
The commission shall include in the report required in division 1533  
(D) of this section information regarding the nature of the 1534  
inappropriate conduct alleged in each referral and the status or 1535  
disposition made of each referral occurring during the preceding 1536  
two years. 1537

(F) Perform all functions as are necessary in 1538  
administering and enforcing sections 4767.05 to 4767.08 of the 1539  
Revised Code, including the rendering of all advice necessary 1540  
under divisions ~~(B)(6)~~ (B)(8) to ~~(12)~~ (10) of section 4767.02 of 1541  
the Revised Code; 1542

(G) Review all proposed transfers that would transfer 1543  
substantially all of the assets or stock of a cemetery, require 1544  
an audit of the cemetery's funds on deposit under sections 1545  
1721.21 and 1721.211 of the Revised Code, and formulate an 1546  
agreed plan pursuant to which the buyer and the seller of the 1547  
cemetery will cause those funds to be properly funded; 1548

(H) Adopt and publish suggested maintenance guidelines for 1549  
all cemeteries registered in the state of Ohio under Chapter 1550  
4767. of the Revised Code. 1551

**Sec. 4767.07.** (A) Any person may file a complaint 1552  
regarding the activity, practice, policy, or procedure of, or 1553  
regarding an alleged violation of section 1721.19, 1721.20, 1554  
1721.21, 1721.211, 4735.02, ~~or 4767.02,~~ or 4767.09 of the 1555  
Revised Code by, any person operating or maintaining a cemetery 1556  
registered, or a cemetery that is not registered but is required 1557  
to be registered pursuant to section 4767.03 of the Revised Code 1558  
that adversely affects or may adversely affect the interest of 1559  
an owner or family member of the owner of a cemetery lot or 1560  
burial, entombment, or columbarium right. All complaints shall 1561

be in writing and submitted to the division of real estate in 1562  
the department of commerce on forms provided by the division. 1563

(B) With respect to complaints filed pursuant to division 1564  
(A) of this section, the division of real estate shall do all of 1565  
the following: 1566

(1) Acknowledge receipt of the complaint by sending 1567  
written notice to the person who filed the complaint not more 1568  
than twenty days after receipt of the complaint; 1569

(2) Send written notice of the complaint within seven days 1570  
after receipt of the complaint to the person responsible for the 1571  
operation and maintenance of the cemetery that is the subject of 1572  
the complaint; 1573

(3) Before taking further action, allow the owner or the 1574  
person responsible for the operation and maintenance of the 1575  
cemetery that is the subject of a complaint thirty days after 1576  
the date the division sends notice of the complaint to respond 1577  
to the division with respect to the complaint. 1578

(C) The cemetery dispute resolution commission shall hear 1579  
each complaint filed pursuant to division (A) of this section 1580  
within one hundred eighty days after its filing, unless it has 1581  
been resolved by the parties to the complaint. 1582

**Sec. 4767.08.** (A) The superintendent of the division of 1583  
real estate in the department of commerce or the Ohio cemetery 1584  
dispute resolution commission, on ~~its~~ the superintendent's or 1585  
commission's own motion or as a result of a complaint received 1586  
pursuant to section 4767.07 of the Revised Code and with good 1587  
cause shown, shall investigate or cause to be investigated 1588  
alleged violations of sections 1721.19, 1721.20, 1721.21, 1589  
1721.211, 4735.02, 4767.02, ~~and~~ 4767.03, and 4767.09 of the 1590

Revised Code. If the commission or the superintendent ~~of the~~ 1591  
~~division of real estate in the department of commerce~~ believes 1592  
that a violation has occurred, the commission or superintendent 1593  
shall do all of the following: 1594

(1) Review the financial records of the cemetery to ensure 1595  
compliance with sections 1721.21 and 1721.211 of the Revised 1596  
Code; 1597

(2) Request the prosecuting attorney of the county in 1598  
which the alleged violation occurred to initiate such 1599  
proceedings as are appropriate. 1600

(B) If, as a result of an investigation, the commission or 1601  
the superintendent believes that a person has violated Chapter 1602  
1345. of the Revised Code, the commission or superintendent 1603  
shall report the findings to the attorney general. 1604

(C) The commission, at any time, may dismiss a complaint 1605  
if it determines there is not good cause shown for the 1606  
complaint. If the commission dismisses a complaint, it shall 1607  
notify the person who filed the complaint within twenty days of 1608  
reaching its decision and identify the reason why the complaint 1609  
was dismissed. 1610

~~(D) When necessary for the division of real estate to~~ 1611  
~~perform the duties required by sections 4767.07 and 4767.08 of~~ 1612  
~~the Revised Code, the superintendent of the division, after~~ 1613  
~~consultation with at least a majority of the members of the~~ 1614  
~~cemetery dispute resolution commission, may issue subpoenas and~~ 1615  
~~compel the production of books, papers, records, and other forms~~ 1616  
~~of evidence.~~ 1617

Sec. 4767.09. (A) The owner or person responsible for the 1618  
operation of a cemetery registered with the division of real 1619

estate in the department of commerce shall provide reasonable 1620  
maintenance of the cemetery property and of all lots, graves, 1621  
mausoleums, scattering grounds, and columbaria in the cemetery 1622  
based on the type and size of the cemetery, topographic 1623  
limitation, and contractual commitments with consumers. 1624

(B) In determining whether the owner or person responsible 1625  
for the operation of a cemetery registered with the division 1626  
provides reasonable maintenance of the cemetery property, the 1627  
division or the cemetery dispute resolution commission may 1628  
consider all of the following: 1629

(1) The size of the cemetery; 1630

(2) The type of cemetery; 1631

(3) The extent and use of available financial resources; 1632

(4) The contractual obligations for care and maintenance 1633  
of the owner or person responsible for the operation of the 1634  
registered cemetery; 1635

(5) The standard of maintenance of one or more similarly 1636  
situated cemeteries. In determining whether a cemetery is 1637  
similarly situated, the division shall consider the cemetery's 1638  
size, type, location, topography, and financial resources. 1639

(6) The suggested maintenance guidelines the commission 1640  
publishes under division (H) of section 4767.06 of the Revised 1641  
Code; 1642

(7) Other sections of the Revised Code related to cemetery 1643  
maintenance. 1644

(C) The owner or person responsible for the operation of 1645  
the cemetery registered with the division, in the course of 1646  
providing reasonable maintenance, may not preclude the exercise 1647

of lawful rights by the owner of an interment, inurnment, or 1648  
entombment right, or by the decedent's immediate family or other 1649  
heirs in accordance with the rules and regulations of the 1650  
cemetery or other agreement of the cemetery authority. 1651

(D) In the case of a cemetery or any portion of a cemetery 1652  
dedicated as a nature preserve, reasonable maintenance by the 1653  
owner or person responsible for the operation of the cemetery 1654  
shall be in accordance with the regulations of the cemetery or 1655  
the master plan governing the cemetery. 1656

(E) A cemetery shall maintain electronic or paper cemetery 1657  
records pertaining to interment, entombment, or inurnment right 1658  
owners and interment, entombment, or inurnment records 1659  
indicating the deceased's name, place of death, and date and 1660  
location of the interment, entombment, or inurnment in the 1661  
cemetery's office. Records may be maintained in an electronic 1662  
formation only if the electronic copies are true copies of the 1663  
original documents. 1664

**Sec. 4767.10.** (A) The cemetery grant fund is created in 1665  
the state treasury. The division of real estate in the 1666  
department of commerce shall deposit into the fund one dollar of 1667  
each two dollars and fifty cents portion of the burial permit 1668  
fee received under section 3705.17 of the Revised Code. The 1669  
division shall use moneys in the fund to advance grants to 1670  
cemeteries registered with the division to defray the costs of 1671  
exceptional cemetery maintenance or training cemetery personnel 1672  
in the maintenance and operation of cemeteries. The division may 1673  
not provide a grant to a corporation or association that 1674  
operates a cemetery for profit. In each fiscal year, the 1675  
division may not advance grants totaling more than eighty per 1676  
cent of the appropriation to the cemetery grant fund for that 1677

fiscal year. The division shall advance grants from the fund in 1678  
accordance with rules adopted by the Ohio cemetery dispute 1679  
resolution commission under Chapter 119. of the Revised Code. 1680

(B) The director of commerce may increase, by rule adopted 1681  
under Chapter 119. of the Revised Code, the amount of total 1682  
grants the division may advance in a fiscal year if the director 1683  
determines the total amount of funds generated exceeds the 1684  
amount of funds the division needs to carry out its powers and 1685  
duties under this section. If the director determines the 1686  
increased amount depletes the amount of funds the division needs 1687  
to carry out its powers and duties under this section, the 1688  
director may decrease the amount not below the amount specified 1689  
in division (A) of this section. 1690

Sec. 4767.11. Upon receipt of information that the owner 1691  
or person responsible for the operation of a registered cemetery 1692  
or a cemetery that was required to be registered has ceased 1693  
operation of that cemetery, the division of real estate in the 1694  
department of commerce may investigate for purposes of 1695  
determining the cemetery's current status. 1696

If the division finds evidence that the cemetery has 1697  
ceased operation and a municipal corporation or township has not 1698  
assumed day-to-day management of the cemetery, the division may 1699  
apply to the court of common pleas of the county in which the 1700  
cemetery is located for appointment of a temporary receiver or 1701  
trustee. The order appointing the temporary receiver or trustee 1702  
shall order the trustee or trustees of the endowment care trust 1703  
of the cemetery to make distributions to the receiver or trustee 1704  
in accordance with section 1721.21 of the Revised Code. 1705

The receiver shall only be paid from the income of 1706  
interest and dividends in the endowment care trust being held 1707

pursuant to section 1721.21 of the Revised Code. The receiver 1708  
may not invade the principal or capital gains of the trust. 1709

**Section 2.** That existing sections 1721.21, 1721.211, 1710  
4717.03, 4717.13, 4717.14, 4717.36, 4767.01, 4767.02, 4767.03, 1711  
4767.04, 4767.05, 4767.06, 4767.07, and 4767.08 of the Revised 1712  
Code are hereby repealed. 1713

**Section 3.** All items in this section are hereby 1714  
appropriated as designated out of any moneys in the state 1715  
treasury to the credit of the designated fund. For all 1716  
appropriations made in this act, those in the first column are 1717  
for fiscal year 2018 and those in the second column are for 1718  
fiscal year 2019. The appropriations made in this act are in 1719  
addition to any other appropriations made for the FY 2018-FY 1720  
2019 biennium. 1721

COM DEPARTMENT OF COMMERCE 1722

Dedicated Purpose Fund Group 1723

5SE0 800648	Cemetery Grant Program	\$100,000	\$0	1724
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TOTAL DPF Dedicated Purpose Fund Group		\$100,000	\$0	1725
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TOTAL ALL BUDGET FUND GROUPS		\$100,000	\$0	1726
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CEMETERY GRANT PROGRAM 1727

The foregoing appropriation item 800648, Cemetery Grant 1728  
Program, shall be used by the Department of Commerce to award 1729  
grants under section 4767.10 of the Revised Code. 1730

**Section 4.** Within the limits set forth in this act, the 1731  
Director of Budget and Management shall establish accounts 1732  
indicating the source and amount of funds for each appropriation 1733  
made in this act, and shall determine the form and manner in 1734  
which appropriation accounts shall be maintained. Expenditures 1735  
from appropriations contained in this act shall be accounted for 1736

as though made in H.B. 49 of the 132nd General Assembly. 1737

The appropriations made in this act are subject to all 1738  
provisions of H.B. 49 of the 132nd General Assembly that are 1739  
generally applicable to such appropriations. 1740