

**As Reported by the Senate Insurance, Commerce and Labor
Committee**

**123rd General Assembly
Regular Session
1999-2000**

Am. Sub. H. B. No. 18

**Representatives Schuler, Allen, Buchy, Terwilleger, Taylor, Weston, Clancy,
Krebs, Ogg, Cates, Roman, Willamowski, Salerno, O'Brien, Mottley, Britton,
Pringle, James, Van Vyven, Jolivette, Krupinski, Verich, Corbin,
Householder, Vesper, Brading, Grendell, Ferderber, Jones, Winkler**

A B I L L

To amend sections 517.23, 517.24, 759.01, 1111.19, 1
1151.345, 1161.59, 1319.12, 1345.21, 1721.01, 2
1721.06, 1721.21, 1721.211, 1733.51, 2117.25, 3
2925.01, 4735.01, 4735.02, 4735.051, 4735.07, 4
4735.10, 4735.141, 4735.18, 4735.32, 4735.57, 5
4767.02, 4767.04, 4767.06, 4767.08, and 4767.99, 6
to enact section 4767.031, and to repeal sections 7
2117.251 and 4735.091 of the Revised Code to 8
revise laws dealing with the operation and 9
registration of cemeteries and with preneed burial 10
vault contracts. 11

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

Section 1. That sections 517.23, 517.24, 759.01, 1111.19, 12
1151.345, 1161.59, 1319.12, 1345.21, 1721.01, 1721.06, 1721.21, 13
1721.211, 1733.51, 2117.25, 2925.01, 4735.01, 4735.02, 4735.051, 14
4735.07, 4735.10, 4735.141, 4735.18, 4735.32, 4735.57, 4767.02, 15
4767.04, 4767.06, 4767.08, and 4767.99 be amended and section 16
4767.031 of the Revised Code be enacted to read as follows: 17

Sec. 517.23. (A) Subject to divisions (B), (D), and (E) of 18
this section, the board of township trustees, the trustees or 19
directors of a cemetery association, or the other officers having 20
control and management of a cemetery or the officer of a municipal 21
corporation who has control and management of a municipal cemetery 22
shall disinter or grant permission to disinter any remains buried 23
in the cemetery in either of the following circumstances: 24

(1) If the surviving spouse of the decedent is eighteen years 25
of age or older, ~~on~~ within thirty days after the filing of an 26
application of the surviving spouse made in accordance with 27
division (A) of section 517.24 of the Revised Code and payment by 28
the applicant of the reasonable costs and expense of disinterment; 29

(2) On order of a probate court issued under division (B) of 30
section 517.24 of the Revised Code and payment by the person who 31
applied for the order under that division of the reasonable costs 32
and expense of disinterment. 33

(B) No disinterment shall be made pursuant to this section 34
and section 517.24 of the Revised Code if the decedent died of a 35
contagious or infectious disease until a permit has been issued by 36
the board of health of a general health district or of a city 37
health district. 38

(C) Upon disinterment of remains under division (A)(1) or (2) 39
of this section, the involved board, trustees, directors, ~~or~~ other 40
officers, or officer of the municipal corporation shall deliver or 41
cause to be delivered the disinterred remains to the applicant 42
surviving spouse or, if the disinterment was pursuant to court 43
order issued under division (B) of section 517.24 of the Revised 44
Code, to the person who applied for the order under that division. 45

(D) The board of township trustees, the trustees or directors 46
47

of a cemetery association, or the other officers having control
and management of a cemetery or the officer of a municipal
corporation who has control and management of a municipal cemetery
may disinter or grant permission to disinter and, if appropriate,
may reinter or grant permission to reinter any remains buried in
the cemetery to correct an interment error in the cemetery if the
board, trustees, directors, ~~or~~ other officers, or officer of the
municipal corporation comply with the internal rules of the
cemetery pertaining to disinterments and if the board, trustees,
directors, ~~or~~ other officers, or officer of the municipal
corporation provide notice of the disinterment to the decedent's
last known next of kin. The board, trustees, directors, ~~or~~ other
officers, or officer of the municipal corporation may correct an
interment error under this division without a court order or an
application by a person.

(E)(1) A person who is an interested party and who is
eighteen years of age or older and of sound mind may apply to the
probate court of the county in which the decedent is buried for an
order to prevent the decedent's surviving spouse from having the
remains of the decedent disinterred. An application to prevent the
disinterment of the remains of the decedent shall be in writing,
subscribed and verified by oath, and include all of the following:

(a) If applicable, a statement that the applicant assumed
financial responsibility for the funeral and burial expenses of
the decedent;

(b) If division (E)(1)(a) of this section is inapplicable
relative to the applicant, a statement that the applicant did not
assume financial responsibility for the funeral and burial
expenses of the decedent;

(c) A statement that the applicant is eighteen years of age

48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78

or older and of sound mind;	79
(d) The relationship of the applicant to the decedent;	80
(e) A statement of the applicant's reasons to oppose the disinterment of the remains of the decedent.	81 82
(2) An applicant for an order to prevent the disinterment of the remains of the decedent under division (E) of this section promptly shall give notice of the filing of the application by certified mail, return receipt requested, to the decedent's surviving spouse. The notice shall indicate that the applicant has filed an application for an order to prevent the disinterment of the remains of the decedent.	83 84 85 86 87 88 89
(F) As used in this section and in section 517.24 of the Revised Code:	90 91
(1) "Cemetery" and "interment" have the same meanings as in section 1721.21 of the Revised Code.	92 93
(2) "Disinterment" means the recovery of human remains by exhumation, disentombment, or disinurnment. "Disinterment" does not include the raising and lowering of remains to accommodate two interments within a single grave and does not include the repositioning of an outside burial container that encroaches an adjoining burial space.	94 95 96 97 98 99
Sec. 517.24. (A) An application by a surviving spouse for disinterment under section 517.23 of the Revised Code shall be in writing and shall state that the applicant is the surviving spouse of the decedent, that the applicant is eighteen years of age or older and of sound mind, the disease of which the decedent died, and the place at which the remains shall be reinterred. The application shall be subscribed and verified by oath.	100 101 102 103 104 105 106
(B)(1) A person who is eighteen years of age or older and of sound mind and who is not the surviving spouse of the decedent	107 108

involved may obtain a court order under this division for the
disinterment of the remains of the decedent. Any person who is
eighteen years of age or older and of sound mind, including, but
not limited to, the person who assumed financial responsibility
for the funeral and burial expenses of the decedent, and who
wishes to obtain a court order for the disinterment of the remains
of the decedent may file an application in the probate court of
the county in which the decedent is buried requesting the court to
issue an order for the disinterment of the remains of the
decedent. The application shall be in writing, subscribed and
verified by oath, and include all of the following:

(a) If applicable, a statement that the applicant assumed
financial responsibility for the funeral and burial expenses of
the decedent;

(b) If division (B)(1)(a) of this section is inapplicable
relative to the applicant, a statement that the applicant did not
assume financial responsibility for the funeral and burial
expenses of the decedent;

(c) A statement that the applicant is eighteen years of age
or older and of sound mind;

(d) The relationship of the applicant to the decedent;

(e) A statement of the place at which the remains will be
reinterred;

(f) The name, the relationship to the decedent, and the
address of the decedent's surviving spouse, of all persons who
would have been entitled to inherit from the decedent under
Chapter 2105. of the Revised Code if the decedent had died
intestate, and, if the decedent had a will, of all legatees and
devisees named in the decedent's will.

(2)(a) Subject to division (B)(2)(b) of this section, upon

the filing of an application for an order for disinterment of
remains under division (B) of this section, the applicant promptly
shall give notice as described in this division by certified mail,
return receipt requested, to the decedent's surviving spouse~~;~~; to
all persons who would have been entitled to inherit from the
decedent under Chapter 2105. of the Revised Code if the decedent
had died intestate~~,~~; if the decedent had a will, to all
legatees and devisees named in the decedent's will; and to the
board of township trustees, the trustees or directors of a
cemetery association, or the other officers having control and
management of the cemetery in which the remains of the decedent
are interred or to the officer of a municipal corporation who has
control and management of a municipal cemetery in which the
remains of the decedent are interred. The notice shall indicate
that an application for disinterment of the remains of the
decedent has been filed.

(b) A person entitled to be given the notice described in
division (B)(2)(a) of this section may waive the right to receive
the notice by filing a written waiver of that right in the probate
court.

(c) The fact that the notice required by division (B)(2)(a)
of this section has been given, subject to division (B)(2)(d) of
this section, to all persons described in division (B)(2)(a) of
this section who have not waived their right to receive the notice
and, if applicable, the fact that certain persons described in
that division have waived their right to receive the notice in
accordance with division (B)(2)(b) of this section shall be
evidenced by an affidavit of the applicant for the order for
disinterment, and the applicant shall file the affidavit in the
probate court.

(d) An applicant for an order for disinterment is not
required to give a notice pursuant to division (B)(2)(a) of this

section to persons whose names or places of residence are unknown 171
and cannot with reasonable diligence be ascertained, and the 172
applicant shall file an affidavit in the probate court specifying 173
any persons who were not given notice pursuant to division 174
(B)(2)(a) of this section and the reason for not giving notice to 175
those persons. 176

(3)(a) Except as otherwise provided in division (B)(3)(b) of 177
this section, upon the filing of an application for disinterment 178
of remains and the giving of the required notice under division 179
(B)(2) of this section, the probate court promptly shall conduct a 180
hearing to determine whether to issue an order for disinterment of 181
the remains of the decedent. Except as otherwise provided in 182
division (B)(3)(a) of this section, at the hearing, the court, in 183
its discretion, may issue an order for disinterment of the 184
decedent's remains if good cause for disinterment is shown. If a 185
person who is an interested party and who is eighteen years of age 186
or older and of sound mind establishes by a preponderance of the 187
evidence at the hearing that the issuance of an order for 188
disinterment of the decedent's remains under division (B)(3) of 189
this section would be against the decedent's religious beliefs or 190
ascertainable desires, the court shall not issue the requested 191
order unless the court finds a compelling reason to issue it. If 192
the court is not so prohibited from issuing the requested order 193
and exercises its discretion to issue the requested order for 194
disinterment of the decedent's remains under in accordance with 195
division (B)(3) of this section, the court promptly shall deliver 196
the order to the applicant. An order of the court for disinterment 197
of the decedent's remains shall specify that the board of township 198
trustees, the trustees or board of the cemetery association, or 199
other officers having control and management of the cemetery or 200
the officer of a municipal corporation who has control and 201
management of the municipal cemetery shall have a period of at 202

least thirty days from the receipt of the order to perform the 203
ordered disinterment. 204

(b) The court is not required to conduct a hearing under 205
division (B)(3)(a) of this section if each person entitled to be 206
given the notice described in division (B)(2)(a) of this section 207
has waived that right by filing a written waiver of the right to 208
receive the notice in the probate court. 209

Sec. 759.01. Any municipal corporation may provide public 210
cemeteries and crematories for burial or incineration of the dead 211
and regulate public and private cemeteries and crematories. Any 212
cemetery established by a municipal corporation shall register 213
with the division of real estate in the department of commerce 214
pursuant to section 4767.03 of the Revised Code. Any cemetery of 215
that nature is subject to Chapter 4767. and to sections 517.23 to 216
517.25 and 1721.211 of the Revised Code in addition to being 217
subject to this chapter. 218

Sec. 1111.19. (A) As used in this section: 219

(1) "Financial institution" means a bank, savings bank, or 220
savings association located in this state and insured by the 221
federal deposit insurance corporation or a credit union authorized 222
to do business in this state. 223

(2) "Preneed funeral contract" means a written agreement, 224
contract, or series of contracts to sell or otherwise provide any 225
funeral services, funeral goods, or any combination thereof, to be 226
used in connection with the funeral or final disposition of a dead 227
human body, where payment for the goods or services is made either 228
outright or on an installment basis, prior to the death of the 229
person purchasing them or for whom they are purchased. A preneed 230
funeral contract that includes funeral services may be sold only 231
by a funeral director licensed pursuant to Chapter 4717. of the 232

Revised Code. For the purpose of this section, "funeral goods" 233
includes caskets. "Preneed funeral contract" does not include any 234
preneed ~~burial-vault~~ cemetery merchandise and services contract, 235
or any agreement, contract, or series of contracts pertaining to 236
the sale of any burial lot, burial or interment right, entombment 237
right, or columbarium right with respect to which ~~either~~ an 238
endowment care fund is established or is ~~not required to be~~ 239
~~established~~ exempt from establishment pursuant to section 1721.21 240
of the Revised Code, ~~or any agreement, contract, or series of~~ 241
~~contracts pertaining to the sale of cemetery interment rights made~~ 242
~~by a person licensed as a limited real estate broker or limited~~ 243
~~real estate salesman pursuant to section 4735.091 of the Revised~~ 244
Code. 245

(B) Any preneed funeral contract that involves the payment of 246
money shall be in writing and in compliance with the laws and 247
rules of this state. One hundred per cent of all payments for 248
funeral goods and services made under a preneed funeral contract 249
shall remain intact and held in trust for the benefit of the 250
person for whose benefit the contract is made. No money in a 251
preneed funeral contract trust shall be distributed from the trust 252
except as provided in this section. Any purchaser on initially 253
entering into a preneed funeral contract may, within seven days, 254
rescind the contract and request and receive from the seller one 255
hundred per cent of all payments made under the contract. 256

(C) Within thirty days after the seller of funeral goods or 257
services receives any payment under a preneed funeral contract, 258
the seller shall deliver the moneys received and not returned to 259
the purchaser as provided in division (B) of this section, to the 260
trustee designated in the preneed funeral contract or an amendment 261
to it. 262

(D) The trustee of each preneed funeral contract trust shall 263
be a financial institution or a natural person not required by 264

this chapter to be licensed to do trust business. A natural person 265
acting as trustee of a preneed funeral contract trust shall be 266
bonded by a corporate surety bond in an amount not less than one 267
hundred per cent of the funds in all of the preneed funeral 268
contract trusts the person serves as trustee. 269

(E)(1) A trustee shall establish a separate preneed funeral 270
contract trust for the moneys paid under each preneed funeral 271
contract, unless the purchaser under a preneed funeral contract 272
authorizes the trustee to place the moneys paid in a combined 273
preneed funeral contract trust. The trustee of a combined preneed 274
funeral contract trust shall keep exact records of the corpus, 275
income, expenses, and disbursements with regard to each 276
beneficiary of a preneed funeral contract for whom moneys are held 277
in the trust. The terms of a preneed funeral contract trust shall 278
be governed by this section. 279

(2) A trustee may charge a fee for managing a preneed funeral 280
contract trust. The fee shall not exceed the amount regularly or 281
usually charged for similar services rendered by the financial 282
institution when serving as a trustee, and shall be paid only from 283
the income on that trust. 284

(F) No preneed funeral contract shall restrict the purchaser 285
from making the contract irrevocable. On the purchase by an 286
individual of an irrevocable preneed funeral contract, the selling 287
funeral director assumes the legal obligation to provide for the 288
funeral of the individual pursuant to the terms of the contract. 289

(G) The purchaser of a preneed funeral contract that is not 290
irrevocable may, on not less than fifteen days' notice, cancel the 291
contract and request and receive from the trustee payments made 292
under the contract and any income earned up to the time of 293
cancellation, less fees, distributions, and expenses made pursuant 294
to this section; except, if a preneed funeral contract stipulates 295

a firm or fixed or guaranteed price for funeral services and goods 296
for future use at a time determined by the death of the 297
beneficiary of the preneed funeral contract, the purchaser, on not 298
less than fifteen days' notice, may cancel the contract and 299
receive from the trustee ninety per cent of the principal paid 300
pursuant to the preneed funeral contract, not less than eighty per 301
cent of any interest earned up to the time of cancellation, and 302
not less than eighty per cent of any income earned on the funds 303
since the funds were paid to the seller and up to the time of 304
cancellation less any fees, distributions, and expenses. On 305
cancellation, after the funds have been distributed to the 306
purchaser pursuant to this division, the trustee shall distribute 307
all remaining funds attributable to the canceled preneed funeral 308
contract to the seller. If more than one purchaser enters into the 309
contract, all of those purchasers must request cancellation for it 310
to be effective under this division, and the trustee shall refund 311
to each purchaser only those funds that purchaser has paid under 312
the contract and a proportionate amount of any income earned on 313
those funds, less any fees, distributions, and expenses. 314

(H) A certified copy of the certificate of death or other 315
evidence of death satisfactory to the trustee shall be furnished 316
to the trustee as evidence of death, and the trustee shall 317
promptly pay the accumulated payments and income, if any, 318
according to the preneed funeral contract. The payment of the 319
accumulated payments and income pursuant to this section and, when 320
applicable, the preneed funeral contract, shall relieve the 321
trustee of any further liability on the accumulated payments and 322
income. 323

(I) For purposes of this section, the seller is deemed to 324
have delivered funeral goods pursuant to a preneed funeral 325
contract when either of the following occurs: 326

(1) The seller makes actual delivery of the goods to the 327

beneficiary;	328
(2) The seller does all of the following:	329
(a) Receives delivery of the goods on behalf of the beneficiary;	330 331
(b) Stores the goods upon the real property of a funeral home licensed in this state;	332 333
(c) Notifies the beneficiary of receipt of the goods and identifies the specific location of the goods;	334 335
(d) At the time of the purchaser's final payment, provides the beneficiary with evidence of ownership in the beneficiary's name showing the goods to be free and clear of any liens or other encumbrances.	336 337 338 339
(J) The seller of funeral goods or services under a preneed funeral contract annually shall submit to the board of embalmers and funeral directors the reports the board requires.	340 341 342
(K) The general assembly intends this section to be construed as a limitation on the manner in which a person is permitted to accept funds in prepayment for funeral services to be performed in the future, or funeral goods to be used in connection with the funeral or final disposition of human remains, to the end that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need while at the same time providing all possible safeguards to ensure that prepaid funds cannot be dissipated, whether intentionally or not, but remain available for payment for funeral goods and services in connection with the funeral or final disposition of dead human bodies.	343 344 345 346 347 348 349 350 351 352 353 354
(L) This section does not apply when the seller of funeral goods or services under a preneed funeral contract is an established and legally cognizable church or denomination that is	355 356 357

exempt from federal income taxation under section 501(c)(3) of the
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501,
as amended, and the preneed funeral contract pertains to a
cemetery owned and operated entirely and exclusively by the church
or denomination; provided the church or denomination adopts, on a
voluntary basis, rules and other measures to safeguard and secure
all funds received under any preneed funeral contract.

(M) This section does not prohibit persons who are not
licensed funeral directors from selling funeral goods pursuant to
a preneed funeral contract; however, all sellers of funeral goods
pursuant to a preneed funeral contract shall comply with this
section unless the seller is specifically exempt from compliance
by this section.

Sec. 1151.345. A savings and loan association ~~may~~, in
accordance with sections 1111.19 and 1721.211 of the Revised Code,
may receive and hold on deposit moneys under a preneed funeral
contract or a preneed ~~burial~~ cemetery merchandise and services
contract.

Sec. 1161.59. In accordance with sections 1111.19 and
1721.211 of the Revised Code, a savings bank may receive and hold
on deposit moneys under a preneed funeral contract or a preneed
~~burial~~ cemetery merchandise and services contract.

Sec. 1319.12. (A)(1) As used in this section, "collection
agency" means any person who, for compensation, contingent or
otherwise, or for other valuable consideration, offers services to
collect an alleged debt asserted to be owed to another.

(2) "Collection agency" does not mean a person whose
collection activities are confined to and directly related to the
operation of another business, including, but not limited to, the

following:	387
(a) Any bank, including the trust department of a bank, trust company, savings and loan association, savings bank, credit union, or fiduciary as defined in section 1339.03 of the Revised Code, except those that own or operate a collection agency;	388 389 390 391
(b) Any real estate broker, <u>or</u> real estate salesperson, limited real estate broker, or limited real estate salesperson, as these persons are defined in section 4735.01 of the Revised Code;	392 393 394
(c) Any retail seller collecting its own accounts;	395
(d) Any insurance company authorized to do business in this state under Title XXXIX of the Revised Code or a health insuring corporation authorized to operate in this state under Chapter 1751. of the Revised Code;	396 397 398 399
(e) Any public officer or judicial officer acting under order of a court;	400 401
(f) Any licensee as defined either in section 1321.01 or 1321.71 of the Revised Code, or any registrant as defined in section 1321.51 of the Revised Code;	402 403 404
(g) Any public utility;	405
(h) <u>Any person registered to sell interment rights under section 4767.031 of the Revised Code.</u>	406 407
(B) A collection agency with a place of business in this state may take assignment of another person's accounts, bills, or other evidences of indebtedness in its own name for the purpose of billing, collecting, or filing suit in its own name as the real party in interest.	408 409 410 411 412
(C) No collection agency shall commence litigation for the collection of an assigned account, bill, or other evidence of indebtedness unless it has taken the assignment in accordance with all of the following requirements:	413 414 415 416

(1) The assignment was voluntary, properly executed, and 417
acknowledged by the person transferring title to the collection 418
agency. 419

(2) The collection agency did not require the assignment as a 420
condition to listing the account, bill, or other evidence of 421
indebtedness with the collection agency for collection. 422

(3) The assignment was manifested by a written agreement 423
separate from and in addition to any document intended for the 424
purpose of listing the account, bill, or other evidence of 425
indebtedness with the collection agency. The written agreement 426
~~must~~ shall state the effective date of the assignment and the 427
consideration paid or given, if any, for the assignment, and ~~must~~ 428
shall expressly authorize the collection agency to refer the 429
assigned account, bill, or other evidence of indebtedness to an 430
attorney admitted to the practice of law in this state for the 431
commencement of litigation. The written agreement ~~must~~ also shall 432
disclose that the collection agency may consolidate, for purposes 433
of filing an action, ~~consolidate~~ the assigned account, bill, or 434
other evidence of indebtedness with those of other creditors 435
against an individual debtor or co-debtors. 436

(4) Upon the effective date of the assignment to the 437
collection agency, the creditor's account maintained by the 438
collection agency in connection with the assigned account, bill, 439
or other evidence of indebtedness was canceled. 440

(D) A collection agency shall commence litigation for the 441
collection of an assigned account, bill, or other evidence of 442
indebtedness in a court of competent jurisdiction located in the 443
county in which the debtor resides, or in the case of co-debtors, 444
a county in which at least one of the co-debtors resides. 445

(E) No collection agency shall commence any litigation 446
authorized by this section unless the agency appears by an 447

attorney admitted to the practice of law in this state. 448

(F) This section does not affect the powers and duties of any 449
person described in division (A)(2) of this section. 450

(G) Nothing in this section relieves a collection agency from 451
complying with the "Fair Debt Collection Practices Act," 91 Stat. 452
874 (1977), 15 U.S.C. 1692, as amended, or deprives any debtor of 453
the right to assert defenses as provided in section 1317.031 of 454
the Revised Code and 16 C.F.R. 433, as amended. 455

(H) For purposes of filing an action, a collection agency 456
that has taken an assignment or assignments pursuant to this 457
section may consolidate the assigned accounts, bills, or other 458
evidences of indebtedness of one or more creditors against an 459
individual debtor or co-debtors. Each separate assigned account, 460
bill, or evidence of indebtedness must be separately identified 461
and pled in any consolidated action authorized by this section. If 462
a debtor or co-debtor raises a good faith dispute concerning any 463
account, bill, or other evidence of indebtedness, the court shall 464
separate each disputed account, bill, or other evidence of 465
indebtedness from the action and hear the disputed account, bill, 466
or other evidence of indebtedness on its own merits in a separate 467
action. The court shall charge the filing fee of the separate 468
action to the losing party. 469

Sec. 1345.21. As used in sections 1345.21 to 1345.28 of the 470
Revised Code: 471

(A) "Home solicitation sale" means a sale of consumer goods 472
or services in which the seller or a person acting for ~~him~~ the 473
seller engages in a personal solicitation of the sale at a 474
residence of the buyer, including solicitations in response to or 475
following an invitation by the buyer, and the buyer's agreement or 476
offer to purchase is there given to the seller or a person acting 477

for ~~him~~ the seller, or in which the buyer's agreement or offer to 478
purchase is made at a place other than the seller's place of 479
business. It does not include a transaction or transactions in 480
which: 481

(1) The total purchase price to be paid by the buyer, whether 482
under single or multiple contracts, is less than twenty-five 483
dollars; 484

(2) The transaction was conducted and consummated entirely by 485
mail or by telephone if initiated by the buyer, and without any 486
other contact between the seller or ~~his~~ the seller's 487
representative prior to the delivery of goods or performance of 488
the service; 489

(3) The final agreement is made pursuant to prior 490
negotiations in the course of a visit by the buyer to a retail 491
business establishment having a fixed permanent location where the 492
goods are exhibited or the services are offered for sale on a 493
continuing basis; 494

(4) The buyer initiates the contact between the parties for 495
the purpose of negotiating a purchase and the seller has a 496
business establishment at a fixed location in this state where the 497
goods or services involved in the transaction are regularly 498
offered or exhibited for sale; 499

Advertisements by such a seller in newspapers, magazines, 500
catalogues, radio, or television do not constitute the seller 501
initiation of the contact. 502

(5) The buyer initiates the contact between the parties, the 503
goods or services are needed to meet a bona fide immediate 504
personal emergency of the buyer which will jeopardize the welfare, 505
health, or safety of natural persons, or endanger property which 506
the buyer owns or for which ~~he~~ the buyer is responsible, and the 507
buyer furnishes the seller with a separate, dated, and signed 508

statement in the buyer's handwriting describing the situation 509
requiring immediate remedy and expressly acknowledging and waiving 510
the right to cancel the sale within three business days; 511

(6) The buyer has initiated the contact between the parties 512
and specifically requested the seller to visit ~~his~~ the buyer's 513
home for the purpose of repairing or performing maintenance upon 514
the buyer's personal property. If, in the course of such a visit, 515
the seller sells the buyer additional services or goods other than 516
replacement parts necessarily used in performing the maintenance 517
or in making the repairs, the sale of those additional goods or 518
services does not fall within this exclusion. 519

(7) The buyer is accorded the right of rescission by the 520
"Consumer Credit Protection Act," (1968) 82 Stat. 152, 15 U.S.C. 521
1635, or regulations adopted pursuant to it. 522

(B) "Sale" includes a lease or rental. 523

(C) "Seller" includes a lessor or ~~any one~~ anyone offering 524
goods for rent. 525

(D) "Buyer" includes a lessee or anyone who gives a 526
consideration for the privilege of using goods. 527

(E) "Consumer goods or services" means goods or services 528
purchased, leased, or rented primarily for personal, family, or 529
household purposes, including courses or instruction or training 530
regardless of the purpose for which they are taken. 531

(F) "Consumer goods or services" ~~do~~ does not include goods or 532
services pertaining to any of the following: 533

(1) Sales or rentals of real property by a real estate broker 534
or ~~salesman, other than limited real estate brokers or salesmen~~ 535
salesperson, or by a foreign real estate dealer or ~~salesman~~ 536
salesperson, who is licensed by the Ohio real estate commission 537
under Chapter 4735. of the Revised Code; 538

(2) The sale of securities or commodities by a broker-dealer registered with the securities and exchange commission;	539 540
(3) The sale of securities or commodities by a securities dealer or salesman <u>salesperson</u> licensed by the division of securities under Chapter 1707. of the Revised Code;	541 542 543
(4) The sale of insurance by a person licensed by the superintendent of insurance;	544 545
(5) Goods sold or services provided by automobile dealers and salesmen <u>salespersons</u> licensed by the registrar of motor vehicles under Chapter 4517. of the Revised Code;	546 547 548
(6) The sale of property at an auction by an auctioneer licensed by the department of commerce under Chapter 4707. of the Revised Code.	549 550 551
(G) "Purchase price" means the total cumulative price of the consumer goods or services, including all interest and service charges.	552 553 554
(H) "Place of business" means the main office, or a permanent branch office or permanent local address of a seller.	555 556
(I) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's day, Washington's birthday <u>Presidents' day</u> , Memorial day, Independence day, Labor day, Columbus day, Veteran's <u>Veterans</u> day, Thanksgiving day, and Christmas day.	557 558 559 560 561
Sec. 1721.01. A company or association incorporated for cemetery purposes may appropriate or otherwise acquire, and may hold, not more than six hundred forty acres of land <u>at any one location</u> , which shall be exempt from execution, from being appropriated for any public purpose, except as otherwise provided in this section, and from taxation, if held exclusively for cemetery or burial purposes, and with no view to profit. <u>A company</u>	562 563 564 565 566 567 568

or association of that nature may own land at multiple locations, 569
and as many as six hundred forty acres owned at each location in 570
accordance with this section are entitled to the exemptions 571
specified in this section. 572

Lands of cemetery associations not containing graves or not 573
containing graves that are in use as such on the date a written 574
notice, as provided in this section, is served upon the officers 575
of a cemetery, shall be subject to appropriation for highway or 576
street purposes if an appropriation commences within four years of 577
the serving of the notice. For such purposes said lands shall be 578
subject to the exercise of the right of eminent domain by the 579
municipal corporation in which such lands are located, by the 580
board of county commissioners of the county in which such lands 581
are located, or by the director of transportation under the same 582
conditions and in the same manner as any private property; and, if 583
any burial occurs within the area specifically designated in the 584
written notice, the appropriating agency shall have the same 585
powers with respect to such burial as are given to a board of 586
township trustees by section 517.21 of the Revised Code and shall 587
pay any costs resulting from the exercise of these powers. This 588
section shall not be construed as authorizing an appropriating 589
agency to exercise the powers specified by section 517.21 of the 590
Revised Code in any part of a cemetery other than the area 591
specifically designated in the written notice. 592

The appropriating agency shall serve upon the officers or 593
agents having control of a cemetery a written notice that a 594
specifically designated area of the cemetery may be needed for 595
highway purposes. No such notice may be served more than once. 596

Such appropriation proceedings shall be made in the manner 597
provided for in sections 163.01 to 163.22 of the Revised Code or, 598
if by the director of transportation, as otherwise provided by 599

law.

600

The board of trustees of such company or association,
whenever in its opinion any portion of such lands is unsuitable
for burial purposes, may sell and convey by deed in fee simple, in
such manner, and upon such terms, as are provided by resolution of
such board, any such portion of said lands, and apply the proceeds
thereof to the general purposes of the company or association; but
on such sale being made, the lands so sold shall be returned by
the board to the auditor of the proper county and placed by ~~him~~
that auditor upon the grand duplicate for taxation.

601

602

603

604

605

606

607

608

609

Such company or association may also take, set aside, or hold
any personal property received by it from any source for cemetery
purposes; and if such company or association is incorporated not
for profit, all personal property, including the income therefrom,
owned or held by it, or for its use, for cemetery purposes and
with no view to profit, shall be exempt from execution, from being
appropriated for any public purpose, and from taxation, and no tax
shall be assessed upon any personal property or the income
therefrom expressly exempted under this section.

610

611

612

613

614

615

616

617

618

This chapter does not authorize the exemption of real
property used for a funeral home or any other activity not
permitted to be conducted by a cemetery association exempt from
taxation under section 501(c)(13) of the "Internal Revenue Code of
1954," 26 U.S.C.A. 501, or any successor provision.

619

620

621

622

623

All exemptions from taxation provided for in this section
shall be in addition to such other exemptions from taxation as a
company or association incorporated for cemetery purposes, or its
real or personal property, has under any other provisions of the
Revised Code.

624

625

626

627

628

Sec. 1721.06. After paying for its land, a cemetery company

629

or association shall apply all its receipts and income, whether 630
from sale of lots, from donations, or otherwise, exclusively to 631
laying out, preserving, protecting, and embellishing the cemetery 632
and avenues within it or leading to it, to the erection of 633
buildings necessary or appropriate for cemetery purposes, and to 634
paying the necessary expenses of the cemetery company or 635
association. No debts shall be incurred by ~~such~~ the cemetery 636
company or association except for purchasing, laying out, 637
inclosing, and embellishing the ground, buildings necessary or 638
appropriate for cemetery purposes, and avenues, for which purposes 639
it may contract debts to be paid out of future receipts. For 640
purposes of this section, buildings appropriate for cemetery 641
purposes include, but are not limited to, buildings for crematory 642
facilities, funeral homes, and other buildings intended to produce 643
income for the cemetery company or association. 644

No part of the funds of a cemetery company or association, or 645
of the proceeds of land sold by it, shall ever be divided among 646
its stockholders or lot owners, and all its funds ~~must~~ shall be 647
used exclusively for the purposes of the company or association as 648
specified in this section, or invested in a fund the income of 649
which shall be so used and appropriated. 650

Sec. 1721.21. (A) As used in this section: 651

(1) "Person" means any corporation, company, partnership, 652
individual, or other entity owning or operating a cemetery for the 653
disposition of human remains. 654

(2) "Cemetery" means any one or a combination of more than 655
one of the following: 656

(a) A burial ground for earth interments; 657

(b) A mausoleum for crypt entombments; 658

(c) A columbarium for the deposit of cremated remains; 659

(d) A scattering ground for the spreading of cremated remains. 660
661

(3) "Interment" means the disposition of human remains by earth burial, entombment, or inurnment. 662
663

(4) "Burial right" means the right of earth interment. 664

(5) "Entombment right" means the right of entombment in a mausoleum. 665
666

(6) "Columbarium right" means the right of inurnment in a columbarium for cremated remains. 667
668

(B) No person shall operate or continue to operate any cemetery in Ohio unless an endowment care ~~fund~~ trust is established and maintained as required by this section. 669
670
671

(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 ~~fund~~ 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. 672
673
674
675
676
677
678
679

Whenever any person described in this division has placed another fifty thousand dollars in the endowment care ~~fund~~ trust out of gross sales proceeds, in addition to the deposit required by this division, that person, after submitting proof of this fact to ~~its trustee~~ the trustees of the endowment care trust, may ~~withdraw~~ be paid a distribution in the sum of fifty thousand dollars from the endowment care ~~fund~~ trust. 680
681
682
683
684
685
686

(D) Any person desiring to operate or to continue to operate any cemetery after July 1, 1970, shall place into the endowment care ~~fund~~ trust as required by this section not less than ten per 687
688
689

cent of the gross sales proceeds received from the sale of any 690
burial lot, burial right, entombment right, or columbarium right. 691
This percentage shall be placed in the endowment care ~~fund~~ trust 692
no later than thirty days following the month in which the entire 693
gross sales are received, ~~except that in the event that a cemetery~~ 694
~~receives installment payments from any purchaser of a burial lot,~~ 695
~~burial right, entombment right, or columbarium right, during any~~ 696
~~six month period, which would require a deposit of one thousand~~ 697
~~dollars or more under this section had the full purchase price~~ 698
~~been paid, then the cemetery shall forthwith place the amount~~ 699
~~required under this section in its limited real estate broker's~~ 700
~~escrow fund. Upon receipt of the final installment payment, the~~ 701
~~cemetery shall transfer the total amount required under this~~ 702
~~section to the endowment care fund no later than thirty days~~ 703
~~following the month in which the final payment is received.~~ 704

(E) The ~~custodians~~ trustees of the endowment care ~~fund~~ trust 705
shall consist of at least three individuals who have been 706
residents of the county in which the cemetery is located for at 707
least one year, or a ~~bank located in the state~~ trust company 708
licensed under Chapter 1111. of the Revised Code or a national 709
bank or federal savings association that has securities pledged in 710
accordance with section 1111.04 of the Revised Code. If a person 711
or entity other than a financial institution is designated as 712
trustee, the person or entity shall be bonded by a corporate 713
surety bond in an amount not less than one hundred per cent of the 714
funds held by the trustee. The trustee or its agent shall, on a 715
continuous basis, keep exact records as to the amount of funds 716
under any joint account or trust instrument being held for the 717
individual beneficiaries showing the amount paid, the amount 718
deposited and invested, and accruals and income. 719

The funds of the endowment care trust shall be held and 720
invested in the manner in which trust funds are permitted to be 721

held and invested pursuant to sections 2109.37 and 2109.371 of the
Revised Code.

722
723

~~The income from the endowment care fund shall be used only
for the maintenance, supervision, improvement, and preservation of
the grounds, lots, buildings, equipment, statuary, and other real
and personal property of the cemetery.~~

724
725
726
727

~~Annual reports of all the assets and investments of the
endowment care fund shall be prepared and maintained and shall be
available for inspection at reasonable times by any owner of
interment rights in the cemetery.~~

728
729
730
731

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

732
733
734
735
736
737

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

738
739
740
741

(H) Except as provided in division (G) of this section, this
section does not apply to any cemetery that is owned and operated
entirely and exclusively by churches, religious societies,
established fraternal organizations, municipal corporations, or
other political subdivisions of the state or to a national
cemetery.

742
743
744
745
746
747

(I) The dividend and interest income from the endowment care
trust shall be used only for the maintenance, supervision,
improvement, and preservation of the grounds, lots, buildings,
equipment, statuary, and other real and personal property of the
cemetery.

748
749
750
751
752

(J)(1) Annual reports of all the assets and investments of 753
the endowment care trust shall be prepared and maintained, and 754
shall be available for inspection at reasonable times by any owner 755
of interment rights in the cemetery. 756

(2) Every cemetery required to establish and maintain an 757
endowment care trust shall file an affidavit annually with the 758
division of real estate of the department of commerce, in a form 759
prescribed by the division, certifying under oath each of the 760
following: 761

(a) That the cemetery has deposited, at the time specified in 762
division (D) of this section, the amounts required by that 763
division in the cemetery's endowment care trust; 764

(b) That only dividend and interest income have been paid 765
from the endowment care trust, and the cemetery used the amounts 766
withdrawn only for the purposes specified in division (I) of this 767
section; 768

(c) That all principal and capital gains have remained in the 769
endowment care trust; 770

(d) That the endowment care trust has not been used to 771
collateralize or guarantee loans and has not otherwise been 772
subjected to any consensual lien; 773

(e) That the endowment care trust is invested in compliance 774
with the investing standards set forth in sections 2109.37 and 775
2109.371 of the Revised Code. 776

Sec. 1721.211. (A) As used in this section, "preneed ~~burial~~ 777
~~vault~~ cemetery merchandise and services contract" means a written 778
agreement, contract, or series of contracts to sell or otherwise 779
provide a an outer burial vault container, monument, marker, urn, 780
other type of merchandise customarily sold by cemeteries, or 781
opening and closing services to be used or provided in connection 782

with the final disposition of a dead human body, where payment for 783
the ~~vault container, monument, marker, urn, other type of~~ 784
~~merchandise customarily sold by cemeteries, or opening and closing~~ 785
~~services~~ is made either outright or on an installment basis, prior 786
to the death of the person so purchasing ~~it~~ or for whom ~~it is so~~ 787
purchased. "Preneed ~~burial-vault cemetery merchandise and services~~ 788
contract" does not include any preneed funeral contract, ~~or~~ any 789
agreement, contract, or series of contracts pertaining to the sale 790
of any burial lot, burial or interment right, entombment right, or 791
columbarium right with respect to which an endowment care fund is 792
established or is exempt from establishment pursuant to section 793
1721.21 of the Revised Code, ~~or any agreement, contract, or series~~ 794
~~of contracts pertaining to the sale of cemetery interment rights~~ 795
~~made by a person licensed as a limited real estate broker or~~ 796
~~limited real estate salesman pursuant to section 4735.091 of the~~ 797
~~Revised Code.~~ 798

~~As used in this section, "financial institution" means a bank 799
in this state insured by the federal deposit insurance 800
corporation, or a savings and loan association in this state 801
insured by the federal deposit insurance corporation, or a credit 802
union authorized to do business in this state. 803~~

(B) Subject to the limitations and restrictions contained in 804
Chapters 1101. to 1127. of the Revised Code, a ~~financial~~ 805
~~institution has~~ trust company licensed under Chapter 1111. of the 806
Revised Code or a national bank or federal savings association 807
that pledges securities in accordance with section 1111.04 of the 808
Revised Code or the individuals described in division (C)(2) of 809
this section have the power as trustee to receive and to hold ~~on~~ 810
deposit and invest in accordance with sections 2109.37 and 811
2109.371 of the Revised Code moneys under a preneed ~~burial-vault~~ 812
~~cemetery merchandise and services~~ contract. 813

(C) ~~Sixty per cent of all payments for burial vaults made~~ 814
~~under a preneed burial vault (1) The greater of one hundred ten~~ 815
~~per cent of the seller's actual cost or thirty per cent of the~~ 816
~~seller's retail price of the merchandise and seventy per cent of~~ 817
~~the seller's retail price of the services to be provided under a~~ 818
~~preneed cemetery merchandise and services contract shall remain~~ 819
intact as a fund until the death of the person for whose benefit 820
the ~~agreement~~ contract is made or the ~~burial vaults are~~ 821
merchandise is delivered as set forth in division (K) of this 822
section. However, any ~~deposit made~~ moneys held pursuant to this 823
section shall be released upon demand of the person for whose 824
benefit ~~such deposit~~ the contract was made or upon the demand of 825
the seller for its share of the ~~deposited funds~~ moneys held and 826
earned interest if the contract has been canceled as set forth in 827
division (G) of this section. 828

(2) The trustee of the fund described in division (C)(1) of 829
this section shall be a trust company licensed under Chapter 1111. 830
of the Revised Code or a national bank or federal savings 831
association that pledges securities in accordance with section 832
1111.04 of the Revised Code or at least three individuals who have 833
been residents of the county in which the seller is located for at 834
least one year, each of whom shall be bonded by a corporate surety 835
in an amount that is at least equal to the amount deposited in the 836
fund of which those persons serve as trustee. Amounts in the fund 837
shall be held and invested in the manner in which trust funds are 838
permitted to be held and invested pursuant to sections 2109.37 and 839
2109.371 of the Revised Code. 840

(D) Within thirty days ~~of~~ after the last business day of the 841
month in which the seller of ~~burial vaults~~ cemetery merchandise or 842
services receives final contractual payment under a preneed ~~burial~~ 843
~~vault~~ cemetery merchandise and services contract, the seller shall 844
~~deposit the funds in a financial institution~~ deliver the greater 845

of one hundred ten per cent of the seller's actual cost or thirty 846
per cent of the seller's retail price of the merchandise and 847
seventy per cent of the seller's current retail price of the 848
services as of the time the final contractual payment is received 849
to a trustee or to trustees as described in division (C)(2) of 850
this section, and the ~~funds~~ moneys and accruals or income ~~thereon~~ 851
on the moneys shall be held in ~~an account~~ a fund and designated 852
for the person for whose benefit the fund was established as a 853
~~preneed~~ ~~burial vault~~ cemetery merchandise and services contract 854
~~account~~ fund. 855

(E) The ~~funds to be deposited~~ moneys received from more than 856
one ~~preneed~~ ~~burial vault~~ cemetery merchandise and services 857
contract may, at the option of the persons for whose benefit the 858
~~deposits~~ contracts are made, be placed in a common or pooled trust 859
fund in this state under a single trust instrument ~~or in a joint~~ 860
~~account provided that if the funds are placed in a common or~~ 861
~~pooled trust fund, a financial institution, if designated as~~ 862
~~trustee, shall have previously qualified for and received trust~~ 863
~~powers from the comptroller of the currency or the superintendent~~ 864
~~of financial institutions if the trustee is a bank, or from the~~ 865
~~federal home loan bank board or the superintendent of financial~~ 866
~~institutions if the trustee is a savings and loan association. If~~ 867
~~a person or entity other than a financial institution is~~ three 868
individuals are designated as trustee the trustees as provided in 869
division (C)(2) of this section, the person or entity they shall 870
be bonded by a corporate surety bond in an amount not less than 871
one hundred per cent of the funds held by ~~the trustee~~ them as 872
trustees. The trustee or its agent shall, on a continuous basis, 873
keep exact records as to the amount of funds under ~~any joint~~ 874
~~account or~~ a single trust instrument being held for the individual 875
beneficiaries showing the amount paid, the amount deposited and 876
invested, and accruals and income. 877

(F) ~~The seller or provider of burial vaults merchandise or~~ 878
~~services~~ under a preneed ~~burial vault cemetery merchandise and~~ 879
~~services~~ contract shall annually submit to the ~~Ohio real estate~~ 880
~~commission such reports as the commission requires~~ division of 881
real estate of the department of commerce an affidavit in a form 882
prescribed by the division, sworn under oath, specifying each of 883
the following: 884

(1) That within the time specified in division (D) of this 885
section, the amounts required by that division were deposited in 886
an appropriate fund; 887

(2) That the fund has not been used to collateralize or 888
guarantee loans and has not otherwise been subjected to any 889
consensual lien; 890

(3) That the fund is invested in compliance with the 891
investing standards set forth in sections 2109.37 and 2109.371 of 892
the Revised Code; 893

(4) That no moneys have been removed from the fund, except as 894
provided for in this section. 895

(G) ~~Any~~ This division is subject to division (I) of this 896
section. 897

Any person upon initially entering into a preneed ~~burial~~ 898
~~vault cemetery merchandise and services~~ contract may, within seven 899
days, cancel the contract and request and receive from the seller 900
one hundred per cent of all payments made under the contract. 901
After the expiration of the above period, any person who has 902
entered into a preneed ~~burial vault cemetery merchandise and~~ 903
~~services~~ contract may, on not less than fifteen days' notice, 904
cancel the contract and request and receive from the seller sixty 905
per cent of the payments made under the contract which have been 906
~~deposited in a fund pursuant to divisions (C) and (D) of this~~ 907
~~section~~ paid up to the time of cancellation; except that, if a 908

preneed ~~burial vault~~ cemetery merchandise and services contract 909
stipulates a firm or fixed or guaranteed price for the ~~burial~~ 910
~~vault merchandise or services~~ for future use at a time determined 911
by the death of the person on behalf of whom payments are made, 912
the person who has entered into the contract may, if the ~~burial~~ 913
~~vault merchandise~~ has not been delivered or the services have not 914
been performed as set forth in division (K) or (L) of this 915
section, on not less than fifteen days' notice, cancel the 916
contract and receive from the seller sixty per cent of the 917
principal paid pursuant to ~~division (C) of this section~~ the 918
contract and not less than eighty per cent of any interest paid, 919
up to the time of cancellation, and not less than eighty per cent 920
of any accrual or income earned while the ~~funds moneys~~ have 921
~~remained on deposit~~ been held pursuant to divisions (C) and (D) of 922
this section, up to the time of cancellation. Upon cancellation, 923
after the ~~funds moneys~~ have been distributed to the beneficiary 924
pursuant to this division, all ~~funds~~ remaining ~~on deposit~~ moneys 925
being held pursuant to divisions (C) and (D) of this section shall 926
be paid to the seller. If more than one person enters into the 927
contract, all of those persons must request cancellation for it to 928
be effective under this division. In such a case, the seller shall 929
refund to each person only those ~~funds moneys~~ that each person has 930
paid under the contract. 931

(H) Upon receipt of a certified copy of the certificate of 932
death or evidence of delivery of the ~~burial vaults~~ merchandise or 933
performance of the services pursuant to division (K) or (L) of 934
this section, the ~~financial institution~~ trustee described in 935
division (C)(2) of this section or its agent, shall forthwith pay 936
the ~~funds~~ fund and accumulated interest, if any, to the person 937
entitled ~~thereto~~ to them under the preneed ~~burial vault~~ cemetery 938
merchandise and services contract. The payment of ~~such funds~~ the 939
fund and accumulated interest pursuant to this section, either to 940
a ~~provider~~ seller or person making the payments, shall relieve the 941

~~financial institution trustee~~ of any further liability on ~~such~~ 942
~~funds the fund~~ or accumulated interest. 943

(I) ~~No preneed burial vault contract shall restrict any~~ 944
~~contract buyer from making his contract irrevocable~~ 945
notwithstanding any other provision of this section, any preneed 946
cemetery merchandise and services contract may specify that it is 947
irrevocable. All irrevocable preneed cemetery merchandise and 948
services contracts shall include a clear and conspicuous 949
disclosure of irrevocability in the contract and any person 950
entering into an irrevocable preneed cemetery merchandise and 951
services contract shall sign a separate acknowledgment of the 952
person's waiver of the right to revoke. If a contract satisfies 953
the requirements of this division, division (G) of this section 954
does not apply to that contract. 955

(J) Any preneed ~~burial vault~~ cemetery merchandise and 956
services contract that involves the payment of money ~~must~~ shall be 957
in writing and in compliance with the laws and rules of this 958
state. 959

(K) For purposes of this section, the seller is ~~deemed~~ 960
considered to have delivered ~~burial vaults~~ merchandise pursuant to 961
a preneed ~~burial vault~~ cemetery merchandise and services contract 962
when either of the following occur: 963

(1) The seller makes actual delivery of the ~~vault~~ merchandise 964
to the beneficiary or the seller pays for the merchandise and 965
identifies it as being stored for the benefit of the beneficiary 966
at a manufacturer's warehouse; or 967

(2)~~(a)~~ The seller receives delivery of the ~~vault~~ merchandise 968
on behalf of the beneficiary~~;~~ and all of the following occur: 969

~~(b)~~(a) The ~~vault~~ merchandise is permanently affixed to or 970
stored upon the real property of a cemetery located in this state~~;~~ 971
and. 972

~~(e)~~(b) The seller notifies the beneficiary of receipt of the 973
vault merchandise and identifies the specific location of the 974
vault merchandise; and. 975

~~(d)~~(c) The seller at the time of the beneficiary's final 976
payment, provides the beneficiary with evidence of ownership in 977
the beneficiary's name showing the ~~burial vaults~~ merchandise to be 978
free and clear of any liens or other encumbrances. 979

(L) For purposes of this section, a seller is considered to 980
have performed services pursuant to a preneed cemetery merchandise 981
and services contract when the beneficiary's next of kin signs a 982
written statement that the services have been performed or, if no 983
next of kin of the beneficiary can be located through reasonable 984
diligence, when the owner or other person responsible for the 985
operation of the cemetery signs a statement of that nature. 986

(M) Notwithstanding any other provision of this chapter, any 987
trust may be charged a trustee's fee, which is to be deducted from 988
the earned income or accruals on that trust. The fee shall not 989
exceed the amount ~~which~~ that is regularly or usually charged for 990
similar services rendered by the ~~financial institution~~ trustee 991
described in division (C)(2) of this section when serving as a 992
trustee. 993

~~(M)~~(N) The general assembly intends that this section be 994
construed as a limitation upon the manner in which a person is 995
permitted to accept ~~funds~~ moneys in prepayment for ~~burial vaults~~ 996
merchandise and services to be delivered or provided in the 997
future, or ~~burial vaults~~ merchandise and services to be used or 998
provided in connection with the final disposition of human 999
remains, to the end that at all times members of the public may 1000
have an opportunity to arrange and pay for ~~burial vaults~~ 1001
merchandise and services for themselves and their families in 1002
advance of need while at the same time providing all possible 1003

safeguards whereunder the prepaid ~~funds~~ moneys cannot be 1004
dissipated, whether intentionally or not, so as to be available 1005
for the payment ~~of burial vaults~~ for merchandise and services and 1006
the providing of ~~burial vaults~~ merchandise and services used or 1007
provided in connection with the final disposition of dead human 1008
bodies. 1009

~~(N)~~(O) This section does not apply when the seller or 1010
provider of ~~burial vaults~~ merchandise or services under a preneed 1011
~~burial vault~~ cemetery merchandise and services contract is an 1012
established and legally cognizable church or denomination that is 1013
exempt from federal income taxation under section 501(c)(3) of the 1014
"Internal Revenue Code of 1954," 26 U.S.C.A. 501, and the preneed 1015
~~burial vault~~ cemetery merchandise and services contract pertains 1016
to a cemetery ~~which~~ that is owned and operated entirely and 1017
exclusively by the church or denomination; provided that the 1018
church or denomination adopts, on a voluntary basis, rules and 1019
other measures to safeguard and secure all ~~funds~~ moneys received 1020
under a preneed ~~burial vault~~ cemetery merchandise and services 1021
contract. 1022

(P) This section does not prohibit persons other than 1023
cemetery CORPORATIONS or associations from selling outer burial 1024
containers, monuments, markers, urns, or other types of 1025
merchandise customarily sold by cemeteries pursuant to a preneed 1026
cemetery merchandise and services contract; however all sellers of 1027
merchandise pursuant to a preneed cemetery merchandise and 1028
services contract shall comply with this section unless the seller 1029
is specifically exempt from this section. 1030

(Q) Any contract for preneed services or merchandise entered 1031
into with a cemetery not registered under section 4767.03 of the 1032
Revised Code is voidable. 1033

Sec. 1733.51. A credit union may, subject to sections 1111.19 1034

and 1721.211 of the Revised Code, receive and hold on deposit 1035
moneys under a preneed funeral contract or preneed ~~burial cemetery~~ 1036
merchandise and services contract. 1037

Sec. 2117.25. Every executor or administrator shall proceed 1038
with diligence to pay the debts of the decedent, and shall apply 1039
the assets in the following order: 1040

(A) Costs and expenses of administration; 1041

(B) ~~Except as provided in section 2117.251 of the Revised~~ 1042
~~Code, an~~ An amount, not exceeding two thousand dollars, for 1043
funeral ~~and burial~~ expenses that are included in the bill of a 1044
funeral director, ~~and~~ funeral expenses other than those in the 1045
bill of a funeral director that are approved by the probate 1046
court~~+~~, and an amount, not exceeding two thousand dollars, for 1047
burial and cemetery expenses, including that portion of the 1048
funeral director's bill allocated to cemetery expenses that have 1049
been paid to the cemetery by the funeral director. 1050

For purposes of this division, burial and cemetery expenses 1051
shall be limited to the following: 1052

(1) The purchase of a place of interment; 1053

(2) Monuments or other markers; 1054

(3) The outer burial container; 1055

(4) The cost of opening and closing the place of interment; 1056

(5) The urn. 1057

(C) The allowance for support made to the surviving spouse, 1058
minor children, or both under section 2106.13 of the Revised Code; 1059

(D) Debts entitled to a preference under the laws of the 1060
United States; 1061

(E) Expenses of the last sickness of the decedent; 1062

(F) ~~Except as provided in section 2117.251 of the Revised Code, if~~ If the total bill of a funeral director for funeral ~~and burial~~ expenses exceeds two thousand dollars, then, in addition to the amount described in division (B) of this section, an amount, not exceeding one thousand dollars, for funeral ~~and burial~~ expenses that are included in the bill and that exceed two thousand dollars;

(G) Personal property taxes and obligations for which the decedent was personally liable to the state or any of its subdivisions;

(H) Debts for manual labor performed for the decedent within twelve months preceding the decedent's death, not exceeding three hundred dollars to any one person;

(I) ~~Except as provided in section 2117.251 of the Revised Code, other~~ Other debts for which claims have been presented and finally allowed.

The part of the bill of a funeral director that exceeds the total of three thousand dollars as described in divisions (B) and (F) of this section, and the part of a claim included in division (H) of this section that exceeds three hundred dollars shall be included as a debt under division (I) ~~or (J)~~ of this section, depending upon the time when the claim for the additional amount is presented.

Chapters 2113. to 2125. of the Revised Code, relating to the manner in which and the time within which claims shall be presented, shall apply to claims set forth in divisions (B), (F), and (H) of this section. Claims for an expense of administration or for the allowance for support need not be presented. The executor or administrator shall pay debts included in divisions (D) and (G) of this section, of which ~~he~~ the executor or administrator has knowledge, regardless of presentation.

The giving of written notice to an executor or administrator 1094
of a motion or application to revive an action pending against the 1095
decedent at the date of death shall be equivalent to the 1096
presentation of a claim to the executor or administrator for the 1097
purpose of determining the order of payment of any judgment 1098
rendered or decree entered in such an action. 1099

No payments shall be made to creditors of one class until all 1100
those of the preceding class are fully paid or provided for. If 1101
the assets are insufficient to pay all the claims of one class, 1102
the creditors of that class shall be paid ratably. 1103

If it appears at any time that the assets have been exhausted 1104
in paying prior or preferred charges, allowances, or claims, such 1105
payments shall be a bar to an action on any claim not entitled to 1106
such priority or preference. 1107

Sec. 2925.01. As used in this chapter: 1108

(A) "Administer," "controlled substance," "dispense," 1109
"distribute," "hypodermic," "manufacturer," "official written 1110
order," "person," "pharmacist," "pharmacy," "sale," "schedule I," 1111
"schedule II," "schedule III," "schedule IV," "schedule V," and 1112
"wholesaler" have the same meanings as in section 3719.01 of the 1113
Revised Code. 1114

(B) "Drug dependent person" and "drug of abuse" have the same 1115
meanings as in section 3719.011 of the Revised Code. 1116

(C) "Drug," "dangerous drug," "licensed health professional 1117
authorized to prescribe drugs," and "prescription" have the same 1118
meanings as in section 4729.01 of the Revised Code. 1119

(D) "Bulk amount" of a controlled substance means any of the 1120
following: 1121

(1) For any compound, mixture, preparation, or substance 1122
included in schedule I, schedule II, or schedule III, with the 1123

exception of marihuana, cocaine, L.S.D., heroin, and hashish and 1124
except as provided in division (D)(2) or (5) of this section, 1125
whichever of the following is applicable: 1126

(a) An amount equal to or exceeding ten grams or twenty-five 1127
unit doses of a compound, mixture, preparation, or substance that 1128
is or contains any amount of a schedule I opiate or opium 1129
derivative; 1130

(b) An amount equal to or exceeding ten grams of a compound, 1131
mixture, preparation, or substance that is or contains any amount 1132
of raw or gum opium; 1133

(c) An amount equal to or exceeding thirty grams or ten unit 1134
doses of a compound, mixture, preparation, or substance that is or 1135
contains any amount of a schedule I hallucinogen other than 1136
tetrahydrocannabinol or lysergic acid amide, or a schedule I 1137
stimulant or depressant; 1138

(d) An amount equal to or exceeding twenty grams or five 1139
times the maximum daily dose in the usual dose range specified in 1140
a standard pharmaceutical reference manual of a compound, mixture, 1141
preparation, or substance that is or contains any amount of a 1142
schedule II opiate or opium derivative; 1143

(e) An amount equal to or exceeding five grams or ten unit 1144
doses of a compound, mixture, preparation, or substance that is or 1145
contains any amount of phencyclidine; 1146

(f) An amount equal to or exceeding one hundred twenty grams 1147
or thirty times the maximum daily dose in the usual dose range 1148
specified in a standard pharmaceutical reference manual of a 1149
compound, mixture, preparation, or substance that is or contains 1150
any amount of a schedule II stimulant that is in a final dosage 1151
form manufactured by a person authorized by the "Federal Food, 1152
Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as 1153
amended, and the federal drug abuse control laws, as defined in 1154

section 3719.01 of the Revised Code, that is or contains any
amount of a schedule II depressant substance or a schedule II
hallucinogenic substance;

(g) An amount equal to or exceeding three grams of a
compound, mixture, preparation, or substance that is or contains
any amount of a schedule II stimulant, or any of its salts or
isomers, that is not in a final dosage form manufactured by a
person authorized by the Federal Food, Drug, and Cosmetic Act and
the federal drug abuse control laws.

(2) An amount equal to or exceeding one hundred twenty grams
or thirty times the maximum daily dose in the usual dose range
specified in a standard pharmaceutical reference manual of a
compound, mixture, preparation, or substance that is or contains
any amount of a schedule III or IV substance other than an
anabolic steroid or a schedule III opiate or opium derivative;

(3) An amount equal to or exceeding twenty grams or five
times the maximum daily dose in the usual dose range specified in
a standard pharmaceutical reference manual of a compound, mixture,
preparation, or substance that is or contains any amount of a
schedule III opiate or opium derivative;

(4) An amount equal to or exceeding two hundred fifty
milliliters or two hundred fifty grams of a compound, mixture,
preparation, or substance that is or contains any amount of a
schedule V substance;

(5) An amount equal to or exceeding two hundred solid dosage
units, sixteen grams, or sixteen milliliters of a compound,
mixture, preparation, or substance that is or contains any amount
of a schedule III anabolic steroid.

(E) "Unit dose" means an amount or unit of a compound,
mixture, or preparation containing a controlled substance that is
separately identifiable and in a form that indicates that it is

the amount or unit by which the controlled substance is separately administered to or taken by an individual. 1186
1187

(F) "Cultivate" includes planting, watering, fertilizing, or tilling. 1188
1189

(G) "Drug abuse offense" means any of the following: 1190

(1) A violation of division (A) of section 2913.02 that constitutes theft of drugs, or a violation of section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code; 1191
1192
1193
1194
1195

(2) A violation of an existing or former law of this or any other state or of the United States that is substantially equivalent to any section listed in division (G)(1) of this section; 1196
1197
1198
1199

(3) An offense under an existing or former law of this or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element; 1200
1201
1202
1203
1204
1205
1206

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit any offense under division (G)(1), (2), or (3) of this section. 1207
1208
1209

(H) "Felony drug abuse offense" means any drug abuse offense that would constitute a felony under the laws of this state, any other state, or the United States. 1210
1211
1212

(I) "Harmful intoxicant" does not include beer or intoxicating liquor but means any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can 1213
1214
1215

induce intoxication, excitement, giddiness, irrational behavior,	1216
depression, stupefaction, paralysis, unconsciousness,	1217
asphyxiation, or other harmful physiological effects, and	1218
includes, but is not limited to, any of the following:	1219
(1) Any volatile organic solvent, plastic cement, model	1220
cement, fingernail polish remover, lacquer thinner, cleaning	1221
fluid, gasoline, or other preparation containing a volatile	1222
organic solvent;	1223
(2) Any aerosol propellant;	1224
(3) Any fluorocarbon refrigerant;	1225
(4) Any anesthetic gas.	1226
(J) "Manufacture" means to plant, cultivate, harvest,	1227
process, make, prepare, or otherwise engage in any part of the	1228
production of a drug, by propagation, extraction, chemical	1229
synthesis, or compounding, or any combination of the same, and	1230
includes packaging, repackaging, labeling, and other activities	1231
incident to production.	1232
(K) "Possess" or "possession" means having control over a	1233
thing or substance, but may not be inferred solely from mere	1234
access to the thing or substance through ownership or occupation	1235
of the premises upon which the thing or substance is found.	1236
(L) "Sample drug" means a drug or pharmaceutical preparation	1237
that would be hazardous to health or safety if used without the	1238
supervision of a licensed health professional authorized to	1239
prescribe drugs, or a drug of abuse, and that, at one time, had	1240
been placed in a container plainly marked as a sample by a	1241
manufacturer.	1242
(M) "Standard pharmaceutical reference manual" means the	1243
current edition, with cumulative changes if any, of any of the	1244
following reference works:	1245

(1) "The National Formulary";	1246
(2) "The United States Pharmacopeia," prepared by authority of the United States Pharmacopeial Convention, Inc.;	1247 1248
(3) Other standard references that are approved by the state board of pharmacy.	1249 1250
(N) "Juvenile" means a person under eighteen years of age.	1251
(O) "Counterfeit controlled substance" means any of the following:	1252 1253
(1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to that trademark, trade name, or identifying mark;	1254 1255 1256 1257
(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it;	1258 1259 1260 1261
(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance;	1262 1263 1264
(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.	1265 1266 1267 1268 1269
(P) An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.	1270 1271 1272 1273
(Q) "School" means any school operated by a board of education or any school for which the state board of education	1274 1275

prescribes minimum standards under section 3301.07 of the Revised Code, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed. 1276
1277
1278
1279

(R) "School premises" means either of the following: 1280

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed; 1281
1282
1283
1284

(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed. 1285
1286
1287
1288
1289
1290
1291
1292
1293

(S) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed. 1294
1295
1296
1297
1298
1299

(T) "Disciplinary counsel" means the disciplinary counsel appointed by the board of commissioners on grievances and discipline of the supreme court under the Rules for the Government of the Bar of Ohio. 1300
1301
1302
1303

(U) "Certified grievance committee" means a duly constituted and organized committee of the Ohio state bar association or of one or more local bar associations of the state of Ohio that 1304
1305
1306

complies with the criteria set forth in Rule V, section 6 of the
Rules for the Government of the Bar of Ohio.

(V) "Professional license" means any license, permit,
certificate, registration, qualification, admission, temporary
license, temporary permit, temporary certificate, or temporary
registration that is described in divisions (W)(1) to (35) of this
section and that qualifies a person as a professionally licensed
person.

(W) "Professionally licensed person" means any of the
following:

(1) A person who has obtained a license as a manufacturer of
controlled substances or a wholesaler of controlled substances
under Chapter 3719. of the Revised Code;

(2) A person who has received a certificate or temporary
certificate as a certified public accountant or who has registered
as a public accountant under Chapter 4701. of the Revised Code and
who holds an Ohio permit issued under that chapter;

(3) A person who holds a certificate of qualification to
practice architecture issued or renewed and registered under
Chapter 4703. of the Revised Code;

(4) A person who is registered as a landscape architect under
Chapter 4703. of the Revised Code or who holds a permit as a
landscape architect issued under that chapter;

(5) A person licensed as an auctioneer or apprentice
auctioneer or licensed to operate an auction company under Chapter
4707. of the Revised Code;

(6) A person who has been issued a certificate of
registration as a registered barber under Chapter 4709. of the
Revised Code;

(7) A person licensed and regulated to engage in the business

of a debt pooling company by a legislative authority, under	1337
authority of Chapter 4710. of the Revised Code;	1338
(8) A person who has been issued a cosmetologist's license,	1339
manicurist's license, esthetician's license, managing	1340
cosmetologist's license, managing manicurist's license, managing	1341
esthetician's license, cosmetology instructor's license,	1342
manicurist instructor's license, esthetician instructor's license,	1343
or tanning facility permit under Chapter 4713. of the Revised	1344
Code;	1345
(9) A person who has been issued a license to practice	1346
dentistry, a general anesthesia permit, a conscious intravenous	1347
sedation permit, a limited resident's license, a limited teaching	1348
license, a dental hygienist's license, or a dental hygienist's	1349
teacher's certificate under Chapter 4715. of the Revised Code;	1350
(10) A person who has been issued an embalmer's license, a	1351
funeral director's license, a funeral home license, or a crematory	1352
license, or who has been registered for an embalmer's or funeral	1353
director's apprenticeship under Chapter 4717. of the Revised Code;	1354
(11) A person who has been licensed as a registered nurse or	1355
practical nurse, or who has been issued a certificate for the	1356
practice of nurse-midwifery under Chapter 4723. of the Revised	1357
Code;	1358
(12) A person who has been licensed to practice optometry or	1359
to engage in optical dispensing under Chapter 4725. of the Revised	1360
Code;	1361
(13) A person licensed to act as a pawnbroker under Chapter	1362
4727. of the Revised Code;	1363
(14) A person licensed to act as a precious metals dealer	1364
under Chapter 4728. of the Revised Code;	1365
(15) A person licensed as a pharmacist, a pharmacy intern, a	1366

wholesale distributor of dangerous drugs, or a terminal	1367
distributor of dangerous drugs under Chapter 4729. of the Revised	1368
Code;	1369
(16) A person who is authorized to practice as a physician	1370
assistant under Chapter 4730. of the Revised Code;	1371
(17) A person who has been issued a certificate to practice	1372
medicine and surgery, osteopathic medicine and surgery, a limited	1373
branch of medicine, or podiatry under Chapter 4731. of the Revised	1374
Code;	1375
(18) A person licensed as a psychologist or school	1376
psychologist under Chapter 4732. of the Revised Code;	1377
(19) A person registered to practice the profession of	1378
engineering or surveying under Chapter 4733. of the Revised Code;	1379
(20) A person who has been issued a license to practice	1380
chiropractic under Chapter 4734. of the Revised Code;	1381
(21) A person licensed to act as a real estate broker, <u>or</u>	1382
real estate salesperson, limited real estate broker, or limited	1383
real estate salesperson under Chapter 4735. of the Revised Code;	1384
(22) A person registered as a registered sanitarian under	1385
Chapter 4736. of the Revised Code;	1386
(23) A person licensed to operate or maintain a junkyard	1387
under Chapter 4737. of the Revised Code;	1388
(24) A person who has been issued a motor vehicle salvage	1389
dealer's license under Chapter 4738. of the Revised Code;	1390
(25) A person who has been licensed to act as a steam	1391
engineer under Chapter 4739. of the Revised Code;	1392
(26) A person who has been issued a license or temporary	1393
permit to practice veterinary medicine or any of its branches, or	1394
who is registered as a graduate animal technician under Chapter	1395

4741. of the Revised Code;	1396
(27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under Chapter 4747. of the Revised Code;	1397 1398 1399
(28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under Chapter 4749. of the Revised Code;	1400 1401 1402
(29) A person licensed and registered to practice as a nursing home administrator under Chapter 4751. of the Revised Code;	1403 1404 1405
(30) A person licensed to practice as a speech-language pathologist or audiologist under Chapter 4753. of the Revised Code;	1406 1407 1408
(31) A person issued a license as an occupational therapist or physical therapist under Chapter 4755. of the Revised Code;	1409 1410
(32) A person who is licensed as a professional clinical counselor or professional counselor, licensed as a social worker or independent social worker, or registered as a social work assistant under Chapter 4757. of the Revised Code;	1411 1412 1413 1414
(33) A person issued a license to practice dietetics under Chapter 4759. of the Revised Code;	1415 1416
(34) A person who has been issued a license or limited permit to practice respiratory therapy under Chapter 4761. of the Revised Code;	1417 1418 1419
(35) A person who has been issued a real estate appraiser certificate under Chapter 4763. of the Revised Code.	1420 1421
(X) "Cocaine" means any of the following:	1422
(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;	1423 1424

(2) Coca leaves or a salt, compound, derivative, or 1425
preparation of coca leaves, including ecgonine, a salt, isomer, or 1426
derivative of ecgonine, or a salt of an isomer or derivative of 1427
ecgonine; 1428

(3) A salt, compound, derivative, or preparation of a 1429
substance identified in division (X)(1) or (2) of this section 1430
that is chemically equivalent to or identical with any of those 1431
substances, except that the substances shall not include 1432
decocainized coca leaves or extraction of coca leaves if the 1433
extractions do not contain cocaine or ecgonine. 1434

(Y) "L.S.D." means lysergic acid diethylamide. 1435

(Z) "Hashish" means the resin or a preparation of the resin 1436
contained in marihuana, whether in solid form or in a liquid 1437
concentrate, liquid extract, or liquid distillate form. 1438

(AA) "Marihuana" has the same meaning as in section 3719.01 1439
of the Revised Code, except that it does not include hashish. 1440

(BB) An offense is "committed in the vicinity of a juvenile" 1441
if the offender commits the offense within one hundred feet of a 1442
juvenile or within the view of a juvenile, regardless of whether 1443
the offender knows the age of the juvenile, whether the offender 1444
knows the offense is being committed within one hundred feet of or 1445
within view of the juvenile, or whether the juvenile actually 1446
views the commission of the offense. 1447

(CC) "Presumption for a prison term" or "presumption that a 1448
prison term shall be imposed" means a presumption, as described in 1449
division (D) of section 2929.13 of the Revised Code, that a prison 1450
term is a necessary sanction for a felony in order to comply with 1451
the purposes and principles of sentencing under section 2929.11 of 1452
the Revised Code. 1453

(DD) "Major drug offender" has the same meaning as in section 1454

2929.01 of the Revised Code.	1455
(EE) "Minor drug possession offense" means either of the following:	1456
	1457
(1) A violation of section 2925.11 of the Revised Code as it existed prior to July 1, 1996;	1458
	1459
(2) A violation of section 2925.11 of the Revised Code as it exists on and after July 1, 1996, that is a misdemeanor or a felony of the fifth degree.	1460
	1461
	1462
(FF) "Mandatory prison term" has the same meaning as in section 2929.01 of the Revised Code.	1463
	1464
(GG) "Crack cocaine" means a compound, mixture, preparation, or substance that is or contains any amount of cocaine that is analytically identified as the base form of cocaine or that is in a form that resembles rocks or pebbles generally intended for individual use.	1465
	1466
	1467
	1468
	1469
Sec. 4735.01. As used in this chapter:	1470
(A) "Real estate broker" includes any person, partnership, association, or corporation, foreign or domestic, who for another, whether pursuant to a power of attorney or otherwise, and who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:	1471
	1472
	1473
	1474
	1475
	1476
(1) Sells, exchanges, purchases, rents, or leases, or negotiates the sale, exchange, purchase, rental, or leasing of any real estate;	1477
	1478
	1479
(2) Offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of any real estate;	1480
	1481
(3) Lists, or offers, attempts, or agrees to list, or auctions, or offers, attempts, or agrees to auction, any real	1482
	1483

estate;	1484
(4) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate;	1485
	1486
(5) Operates, manages, or rents, or offers or attempts to operate, manage, or rent, other than as custodian, caretaker, or janitor, any building or portions of buildings to the public as tenants;	1487
	1488
	1489
	1490
(6) Advertises or holds self out as engaged in the business of selling, exchanging, purchasing, renting, or leasing real estate;	1491
	1492
	1493
(7) Directs or assists in the procuring of prospects or the negotiation of any transaction, other than mortgage financing, which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate;	1494
	1495
	1496
	1497
(8) Is employed by or on behalf of the owner of lots, or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission basis or otherwise, to sell such real estate, or any parts of it, in lots or other parcels, and who sells, exchanges, or offers, attempts, or agrees to negotiate the sale or exchange of any such lot or parcel of real estate;	1498
	1499
	1500
	1501
	1502
	1503
	1504
(9) Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the broker undertakes primarily to promote the sale, exchange, purchase, rental, or leasing of real estate through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both, except that this division does not apply to a publisher of listings or compilations of sales of real estate by their owners;	1505
	1506
	1507
	1508
	1509
	1510
	1511
	1512
	1513

(10) Collects rental information for purposes of referring 1514
prospective tenants to rental units or locations of such units and 1515
charges the prospective tenants a fee. 1516

(B) "Real estate" includes leaseholds as well as any and 1517
every interest or estate in land situated in this state, whether 1518
corporeal or incorporeal, whether freehold or nonfreehold, and the 1519
improvements on the land, but does not include cemetery interment 1520
rights. 1521

(C) "Real estate salesperson" means any person associated 1522
with a licensed real estate broker to do or to deal in any acts or 1523
transactions set out or comprehended by the definition of a real 1524
estate broker, for compensation or otherwise. 1525

~~(D) "Limited real estate broker" includes any person, 1526
partnership, association, or corporation, foreign or domestic, who 1527
for another and for a fee, commission, or other valuable 1528
consideration, or who with the intention or in the expectation or 1529
upon the promise of receiving or collecting a fee, commission, or 1530
other valuable consideration engages in the sale of cemetery 1531
interment rights and whose license is limited to the sale of 1532
cemetery interment rights. 1533~~

~~(E) "Limited real estate salesperson" means any person 1534
associated with a licensed real estate broker or a licensed 1535
limited real estate broker to do or to deal in any acts or 1536
transactions set out or comprehended by the definition of a 1537
limited real estate broker, for compensation or otherwise. 1538~~

~~(F) "Institution of higher education" means either of the 1539
following: 1540~~

(1) A nonprofit institution as defined in section 1713.01 of 1541
the Revised Code that actually awards, rather than intends to 1542
award, degrees for fulfilling requirements of academic work beyond 1543
high school; 1544

(2) An institution operated for profit that otherwise 1545
qualifies under the definition of an institution in section 1546
1713.01 of the Revised Code and that actually awards, rather than 1547
intends to award, degrees for fulfilling requirements of academic 1548
work beyond high school. 1549

~~(G)~~(E) "Foreign real estate" means real estate not situated 1550
in this state and any interest in real estate not situated in this 1551
state. 1552

~~(H)~~(F) "Foreign real estate dealer" includes any person, 1553
partnership, association, or corporation, foreign or domestic, who 1554
for another, whether pursuant to a power of attorney or otherwise, 1555
and who for a fee, commission, or other valuable consideration, or 1556
with the intention, or in the expectation, or upon the promise of 1557
receiving or collecting a fee, commission, or other valuable 1558
consideration, does or deals in any act or transaction specified 1559
or comprehended in division (A) of this section with respect to 1560
foreign real estate. 1561

~~(I)~~(G) "Foreign real estate salesperson" means any person 1562
associated with a licensed foreign real estate dealer to do or 1563
deal in any act or transaction specified or comprehended in 1564
division (A) of this section with respect to foreign real estate, 1565
for compensation or otherwise. 1566

~~(J)~~(H) Any person, partnership, association, or corporation, 1567
who, for another, in consideration of compensation, by fee, 1568
commission, salary, or otherwise, or with the intention, in the 1569
expectation, or upon the promise of receiving or collecting a fee, 1570
does, or offers, attempts, or agrees to engage in, any single act 1571
or transaction contained in the definition of a real estate broker 1572
or foreign real estate dealer, whether an act is an incidental 1573
part of a transaction, or the entire transaction, shall be 1574
constituted a real estate broker or real estate salesperson or a 1575

foreign real estate dealer or foreign real estate salesperson 1576
under this chapter. 1577

~~(K)~~(I) The terms "real estate broker," "real estate 1578
salesperson," "foreign real estate dealer," and "foreign real 1579
estate salesperson" do not include a person, partnership, 1580
association, or corporation, or the regular employees thereof ~~or~~ 1581
~~limited real estate broker or limited real estate salesperson~~, who 1582
~~performs~~ perform any of the acts or transactions specified or 1583
comprehended in division (A) of this section, whether or not for, 1584
or with the intention, in expectation, or upon the promise of 1585
receiving or collecting a fee, commission, or other valuable 1586
consideration: 1587

(1) With reference to real estate situated in this state or 1588
any interest in it owned by such person, partnership, association, 1589
or corporation, or acquired on its own account in the regular 1590
course of, or as an incident to the management of the property and 1591
the investment in it; 1592

(2) As receiver or trustee in bankruptcy, as guardian, 1593
executor, administrator, trustee, assignee, commissioner, or any 1594
person doing the things mentioned in this section, under authority 1595
or appointment of, or incident to a proceeding in, any court, or 1596
as a public officer, or as executor, trustee, or other bona fide 1597
fiduciary under any trust agreement, deed of trust, will, or other 1598
instrument creating a like bona fide fiduciary obligation; 1599

(3) As a public officer while performing the officer's 1600
official duties; 1601

(4) As an attorney at law in the performance of the 1602
attorney's duties. 1603

~~(L)~~(J) "Physically handicapped licensee" means a person 1604
licensed pursuant to this chapter who is under a severe physical 1605
disability which is of such a nature as to prevent the person from 1606

being able to attend any classroom instruction lasting at least 1607
three hours in duration. 1608

~~(M)~~(K) "Division of real estate" may be used interchangeably 1609
with, and for all purposes has the same meaning as, "division of 1610
real estate and professional licensing." 1611

~~(N)~~(L) "Superintendent" or "superintendent of real estate" 1612
means the superintendent of the division of real estate and 1613
professional licensing of this state. Whenever the division or 1614
superintendent of real estate is referred to or designated in any 1615
statute, rule, contract, or other document, the reference or 1616
designation shall be deemed to refer to the division or 1617
superintendent of real estate and professional licensing, as the 1618
case may be. 1619

Sec. 4735.02. No person, partnership, association, or 1620
corporation shall act as a real estate broker, or real estate 1621
~~salesman, limited real estate broker, or limited real estate~~ 1622
~~salesman~~ salesperson, or advertise or assume to act as such, 1623
without first being licensed as provided in this chapter. Nothing 1624
contained in this chapter shall be construed as authorizing a real 1625
estate broker or ~~salesman~~ salesperson to perform any service 1626
constituting the practice of law. 1627

No partnership, association, or corporation holding a real 1628
estate license shall employ as an officer, director, manager, or a 1629
principal employee any person previously holding a license as a 1630
real estate broker, real estate ~~salesman, limited real estate~~ 1631
~~broker, limited real estate salesman~~ salesperson, foreign real 1632
estate dealer, or foreign real estate ~~salesman~~ salesperson, whose 1633
license has ~~been terminated~~ BEEN TERMINATED by failure to file a 1634
certificate of continuation, by revocation, or by suspension, and 1635
who has not thereafter been relicensed. 1636

Sec. 4735.051. (A) Within five business days after a person 1637
files a signed written complaint against a licensed real estate 1638
broker, or licensed real estate salesperson, ~~licensed limited real~~ 1639
~~estate broker, or licensed limited real estate salesperson~~ with 1640
the division of real estate, the superintendent of real estate 1641
shall acknowledge receipt of the complaint and send a notice to 1642
the licensee describing the acts complained of. The acknowledgment 1643
to the complainant and the notice to the licensee shall state that 1644
an informal meeting will be held with the complainant, the 1645
licensee, and an investigator from the investigation and audit 1646
section of the division if the complainant and licensee both file 1647
a request for such a meeting within ten business days thereafter 1648
on a form provided by the superintendent. 1649

(B) If the complainant and licensee both file with the 1650
division requests for an informal meeting, the superintendent 1651
shall notify the complainant and licensee of the date of the 1652
meeting, which shall be within twenty business days thereafter, 1653
except that any party may request an extension of up to fifteen 1654
business days for good cause shown. If the parties reach an 1655
accommodation at an informal meeting, the investigator shall so 1656
report to the superintendent and the parties and the complaint 1657
file shall be closed, unless, based upon the investigator's 1658
report, the superintendent finds evidence that the licensee has 1659
violated section 4735.18 of the Revised Code. 1660

(C) If the parties fail to agree to an informal meeting or 1661
fail to reach an accommodation, or if the superintendent finds 1662
evidence of a violation of section 4735.18 of the Revised Code, 1663
the superintendent shall, within five business days of such 1664
determination, so notify the parties and shall investigate the 1665
conduct of the licensee against whom the complaint is filed. 1666

(D) Within sixty business days after receipt of the 1667

complaint, or, if an informal meeting is held, within sixty days
of such meeting, the investigator shall file a written report of
the results of the investigator's investigation with the
superintendent. Within ten business days thereafter, the
superintendent shall review the report and determine whether there
exists reasonable and substantial evidence of a violation of
section 4735.18 of the Revised Code by the licensee. If the
superintendent finds such evidence exists, within five business
days of the determination, the superintendent shall notify the
parties of the date of a hearing to be held by a hearing examiner
pursuant to Chapter 119. of the Revised Code within fifteen days
but not prior to seven days thereafter, except that any party may
request an extension of up to thirty business days for good cause
shown. If the superintendent finds that such evidence does not
exist, within five business days thereafter, the superintendent
shall so notify the parties of the superintendent's determination
and the basis for the determination. Within fifteen business days
after the superintendent notifies the parties that such evidence
does not exist, the complainant may file with the division a
request that the commissioners review the determination. If the
complainant files such request, the commissioners shall review the
determination at the next regularly scheduled meeting held at
least fifteen business days after the request is filed. The
commission shall hear the testimony of either party at such
meeting upon the request of the party. If the commissioners affirm
the determination of the superintendent, the superintendent shall
so notify the complainant and the licensee within five business
days thereafter. If the commissioners reverse the determination of
the superintendent, a hearing shall be held and the parties
notified as provided in this division.

(E) Within twenty-five business days after the conclusion of
formal hearings, the hearing examiner shall file a report of

findings of fact and conclusions of law with the superintendent, 1700
the commission, and the parties. 1701

(F) The commissioners shall review the hearing examiner's 1702
report and the parties' evidence at the next regularly scheduled 1703
commission meeting held at least fifteen business days after 1704
receipt of the hearing examiner's report. The commission shall 1705
hear the testimony of any party upon request. If the complainant 1706
is the Ohio civil rights commission, the complaint shall be 1707
reviewed by the commissioners directly upon request. 1708

(G) The commission shall decide whether to impose 1709
disciplinary sanctions upon a licensee for a violation of section 1710
4735.18 of the Revised Code. The commission shall decide within 1711
sixty days of the filing of the hearing examiner's report or 1712
within sixty days of the filing of an Ohio civil rights commission 1713
complaint. The commission shall maintain a transcript of the 1714
proceedings and issue a written opinion to all the parties, citing 1715
its findings and grounds for any action taken. The commission 1716
shall notify the complainant and any other party who may have 1717
suffered financial loss because of the licensee's violations, that 1718
the complainant or other party may sue for recovery under section 1719
4735.12 of the Revised Code. 1720

(H) An investigation under this section is subject to section 1721
4735.32 of the Revised Code. 1722

(I) The commission may impose the following sanctions upon a 1723
licensee for a violation of section 4735.18 of the Revised Code: 1724

(1) Revoke a license issued under Chapter 4735. of the 1725
Revised Code; 1726

(2) Suspend a license for a term set by the commission; 1727

(3) Impose a fine, not exceeding two thousand five hundred 1728
dollars per violation; 1729

(4) Issue a public reprimand;	1730
(5) Require the completion of additional continuing education	1731
course work. Any continuing education course work imposed pursuant	1732
to this section shall not count toward the continuing education	1733
requirements set forth in section 4735.14 of the Revised Code.	1734
	1735
All fines imposed pursuant to division (I)(3) of this section	1736
shall be credited to the real estate operating fund, which is	1737
created in the state treasury under section 4735.211 of the	1738
Revised Code.	1739
Sec. 4735.07. (A) The superintendent of real estate, with the	1740
consent of the Ohio real estate commission, may enter into	1741
agreements with recognized national testing services to administer	1742
the real estate broker's examination under his <u>the</u>	1743
<u>superintendent's</u> supervision and control, consistent with the	1744
requirements of this chapter as to the contents of such	1745
examination.	1746
(B) No person shall take the broker's examination who has not	1747
established to the satisfaction of the superintendent that he <u>the</u>	1748
<u>person</u> :	1749
(1) Is honest, truthful, and of good reputation;	1750
(2)(a) Has not been convicted of a felony or crime of moral	1751
turpitude, or if he <u>the person</u> has been so convicted, the	1752
superintendent has disregarded the conviction because the	1753
applicant has proven to the superintendent, by a preponderance of	1754
the evidence, that his <u>the applicant's</u> activities and employment	1755
record since the conviction show that he <u>the applicant</u> is honest,	1756
truthful, and of good reputation, and there is no basis in fact	1757
for believing that he <u>the applicant</u> again will violate the laws	1758
involved;	1759

(b) Has not been finally adjudged by a court to have violated any municipal, state, or federal civil rights laws relevant to the protection of purchasers or sellers of real estate or, if ~~he~~ the person has been so adjudged, at least two years have passed since the court decision and the superintendent has disregarded the adjudication because the applicant has proven, by a preponderance of the evidence, that ~~his~~ the applicant's activities and employment record since the adjudication show that ~~he~~ the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that ~~he~~ the applicant will again violate the laws involved~~+~~.

(3) Has not, during any period in which ~~he~~ the person was licensed under this chapter, violated any provision of, or any rule adopted pursuant to, this chapter, or, if ~~he~~ the person has violated any such provision or rule, has established to the satisfaction of the superintendent that ~~he~~ the person will not again violate such provision or rule;

(4) Is at least eighteen years of age;

(5) Has been a licensed real estate broker or ~~salesman~~ salesperson for at least two years; during at least two of the five years preceding ~~his~~ application, has worked as a licensed real estate broker or ~~salesman~~ salesperson for an average of at least thirty hours per week; and has completed one of the following:

(a) At least twenty real estate transactions, in which property was sold for another by the applicant while acting in ~~his~~ the capacity ~~as~~ of a real estate broker or ~~salesman~~ salesperson;

(b) Such equivalent experience as is defined by rules adopted by the commission~~+~~.

(6)(a) If licensed as a real estate ~~salesman~~ salesperson prior to January 1, 1990, successfully has completed at an

institution of higher education all of the following:	1791
(i) Thirty hours of classroom instruction in real estate practice;	1792 1793
(ii) Thirty hours of classroom instruction that includes the subjects of Ohio real estate law, municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination. If feasible, the classroom instruction in Ohio real estate law shall be taught by a member of the faculty of an accredited law school. If feasible, the classroom instruction in municipal, state, and federal civil rights law, new case law on housing discrimination, desegregation issues, and methods of eliminating the effects of prior discrimination shall be taught by a staff member of the Ohio civil rights commission who is knowledgeable with respect to those subjects. The requirements of this division do not apply to an applicant who is admitted to practice before the supreme court.	1794 1795 1796 1797 1798 1799 1800 1801 1802 1803 1804 1805 1806 1807
(iii) Thirty hours of classroom instruction in real estate appraisal;	1808 1809
(iv) Thirty hours of classroom instruction in real estate finance;	1810 1811
(v) Three quarter hours, or its equivalent in semester hours, in financial management;	1812 1813
(vi) Three quarter hours, or its equivalent in semester hours, in human resource or personnel management;	1814 1815
(vii) Three quarter hours, or its equivalent in semester hours, in applied business economics;	1816 1817
(viii) Three quarter hours, or its equivalent in semester hours, in business law.	1818 1819
(b) Division (B)(6)(a) of this section does not apply to any	1820

applicant who holds a valid real estate ~~salesman's~~ salesperson's 1821
license issued prior to January 2, 1972, ~~or to applicants for a~~ 1822
~~limited real estate broker's or salesman's license~~. Divisions 1823
(B)(6)(a)(v), (vi), (vii), and (viii) of this section do not apply 1824
to any applicant who holds a valid real estate ~~salesman's~~ 1825
salesperson's license issued prior to January 3, 1984. 1826

(7) If licensed as a real estate ~~salesman~~ salesperson on or 1827
after January 3, 1984, satisfactorily has completed a minimum of 1828
two years of post-secondary education, or its equivalent in 1829
semester or quarter hours, at an institution of higher education, 1830
and has fulfilled the requirements of division (B)(6)(a) of this 1831
section. The requirements of division (B)(6)(a) of this section 1832
may be included in the two years of post-secondary education, or 1833
its equivalent in semester or quarter hours, that is required by 1834
this division. 1835

(C) Each applicant for a broker's license shall be examined 1836
in the principles of real estate practice, Ohio real estate law, 1837
and financing and appraisal, and as to the duties of real estate 1838
brokers and real estate ~~salesmen~~ salespersons, the applicant's 1839
knowledge of real estate transactions and instruments relating to 1840
them, and the canons of business ethics pertaining to them. The 1841
commission from time to time shall promulgate such canons and 1842
cause them to be published in printed form. 1843

~~Each applicant for a limited real estate broker's or limited~~ 1844
~~real estate salesman's license shall be examined only in the areas~~ 1845
~~specified in section 4735.091 of the Revised Code.~~ 1846

(D) Examinations shall be given entirely in writing, except 1847
that they shall be administered orally or in braille to the blind, 1848
as defined in section 5109.15 of the Revised Code, or orally to an 1849
individual whose physical disability, as supported by a 1850
physician's statement, renders it impossible to take a written 1851

examination. The contents of an examination shall be consistent
with the requirements of division (B)(6)(a) of this section and
with the other specific requirements of this section. An applicant
who has completed the requirements of division (B)(6)(a) of this
section at the time of application may be examined at the next
regularly scheduled examination after ~~he~~ the applicant is notified
of ~~his~~ admission to the examination.

(E) The superintendent may waive the requirement of
examination in the case of an application from a nonresident real
estate broker of a state having similar requirements and under the
laws of which similar recognition is extended to licensed real
estate brokers and real estate ~~salesmen~~ salespersons of this
state.

(F) There shall be no limit placed on the number of times an
applicant may retake the examination.

(G) The superintendent in ~~his~~ the superintendent's discretion
may waive the requirement of examination if the applicant has been
licensed as a real estate broker by the superintendent or
commission at some time during the two-year period immediately
preceding the date of the current application.

(H)(1) Within twelve months from the date of issuance of any
real estate broker's license issued on or after January 1, 1990,
the licensee successfully shall complete, at an institution of
higher education or any other institution that is approved by the
commission, ten hours of classroom instruction in real estate
brokerage. That instruction shall include, but not be limited to,
current issues in managing a real estate company or office. Upon
completion of the instruction, the licensee shall cause to be
filed with the superintendent a certificate from the institution
showing that ~~he~~ the licensee successfully has completed the
requirements of this division.

If the instruction is not successfully completed within 1883
twelve months, the license of the real estate broker is suspended 1884
automatically without the taking of any action by the commission. 1885
The broker then shall have one year after the date of the 1886
suspension of ~~his~~ the broker's license to successfully complete 1887
the instruction required under this division, and ~~his~~ the broker's 1888
license shall not be reinstated by the superintendent until it is 1889
established, to the satisfaction of the superintendent, that the 1890
requirements of this division have been met. 1891

(2) If the license of a real estate broker is suspended 1892
pursuant to division (H)(1) of this section, the license of a real 1893
estate ~~salesman~~ salesperson associated with that broker 1894
correspondingly is suspended pursuant to division (B) of section 1895
4735.20 of the Revised Code. However, the suspended license of the 1896
associated real estate ~~salesman~~ salesperson shall be reinstated 1897
and no fee shall be charged or collected for that reinstatement if 1898
all of the following occur: 1899

(a) That broker subsequently submits satisfactory proof to 1900
the superintendent that ~~he~~ the broker has complied with the 1901
requirements of division (H)(1) of this section and requests that 1902
~~his~~ the broker's license as a real estate broker be reinstated; 1903

(b) The superintendent then reinstates ~~his~~ the broker's 1904
license as a real estate broker; 1905

(c) The associated real estate ~~salesman~~ salesperson intends 1906
to continue to be associated with that broker and otherwise is in 1907
compliance with this chapter. 1908

Sec. 4735.10. (A)(1) The Ohio real estate commission may 1909
adopt reasonable rules in accordance with Chapter 119. of the 1910
Revised Code, necessary for implementing the provisions of this 1911
chapter relating, but not limited to, the following: 1912

(a) The form and manner of filing applications for license;	1913
(b) Times and form of examination for license;	1914
(c) Placing an existing broker's license in escrow for an indefinite period upon good cause shown.	1915 1916
(2) The commission shall adopt reasonable rules in accordance with Chapter 119. of the Revised Code, for implementing the provisions of this chapter relating to the following:	1917 1918 1919
(a) The issuance, renewal, suspension, revocation of licenses, other sanctions that may be imposed for violations of this chapter, and the conduct of hearings related to these actions;	1920 1921 1922 1923
(b) Standards for the approval of courses of study required for licenses, or offered in preparation for license examinations, or required as continuing education for licenses. The rules shall specify that no standard for the approval of a course of study required as continuing education for licensees shall require that licensees pass an examination as a condition for the successful completion of a continuing education requirement. A person providing a continuing education course may administer examinations for the purpose of evaluating the effectiveness of the course.	1924 1925 1926 1927 1928 1929 1930 1931 1932 1933
(c) Guidelines to ensure that continuing education classes are open to all persons licensed under this chapter. The rules shall specify that an organization that sponsors a continuing education class may offer its members a reasonable reduction in the fees charged for the class.	1934 1935 1936 1937 1938
(d) Requirements for trust accounts and property management accounts. The rules shall specify that:	1939 1940
(i) Brokerages engaged in the management of property for another may, pursuant to a written contract with the property	1941 1942

owner, exercise signatory authority for withdrawals from property
management accounts maintained in the name of the property owner.
The exercise of authority for withdrawals does not constitute a
violation of any provision of division (A) of section 4735.18 of
the Revised Code.

1943
1944
1945
1946
1947

(ii) The interest earned on property management trust
accounts maintained in the name of the property owner or the
broker shall be payable to the property owner unless otherwise
specified in a written contract.

1948
1949
1950
1951

(e) Annual certificates of continuation in business and
filing deadlines based on a staggered system of renewal with
deadlines distributed throughout the year.

1952
1953
1954

(B) The commission shall adopt rules in accordance with
Chapter 119. of the Revised Code establishing standards and
guidelines with which the superintendent of real estate shall
comply in the exercise of the following powers:

1955
1956
1957
1958

(1) Appointment and recommendation of ancillary trustees
under section 4735.05 of the Revised Code;

1959
1960

(2) Rejection of names proposed to be used by partnerships,
associations, and corporations, under division (A) of section
4735.06 of the Revised Code;

1961
1962
1963

(3) Acceptance and rejection of applications to take the
broker and ~~salesman~~ salesperson examinations and licensure, with
waiver of examination, under sections 4735.07 and 4735.09 of the
Revised Code;

1964
1965
1966
1967

(4) Approval of applications of brokers to place their
licenses on deposit and to become salespersons under section
4735.13 of the Revised Code;

1968
1969
1970

(5) Appointment of hearing examiners under section 119.09 of
the Revised Code;

1971
1972

(6) Acceptance and rejection of applications to take the 1973
foreign real estate dealer and salesperson examinations and 1974
licensure, with waiver of examination, under sections 4735.27 and 1975
4735.28 of the Revised Code; 1976

(7) Qualification of foreign real estate under section 1977
4735.25 of the Revised Code. 1978

If at any time there is no rule in effect establishing a 1979
guideline or standard required by this division, the 1980
superintendent shall adopt a rule in accordance with Chapter 119. 1981
of the Revised Code for such purpose. 1982

(C) The commission or superintendent may hear testimony in 1983
matters relating to the duties imposed upon them, and the 1984
president of the commission and superintendent may administer 1985
oaths. The commission or superintendent may require other proof of 1986
the honesty, truthfulness, and good reputation of any person named 1987
in an application for a real estate broker's, or real estate 1988
salesperson's, ~~limited real estate broker's, or limited real~~ 1989
~~estate salesperson's~~ license before admitting the applicant to the 1990
examination or issuing a license. 1991

Sec. 4735.141. (A) Except as otherwise provided in this 1992
division, on or before January 31, 1983, and on or before the 1993
thirty-first day of January of every third year thereafter, each 1994
licensee who was licensed by the state prior to January 1, 1980, 1995
as a real estate broker or salesperson shall submit proof 1996
satisfactory to the superintendent of real estate that the 1997
licensee has satisfactorily completed, during the preceding three 1998
years, thirty classroom hours of continuing education as 1999
prescribed by the Ohio real estate commission pursuant to section 2000
4735.10 of the Revised Code. Persons licensed as real estate 2001
salespersons within the state on or after January 1, 1980, shall 2002
submit the proof to the superintendent on or before the last day 2003

of the month of the third year directly following the filing of 2004
the certificate prescribed in division (G) of section 4735.09 of 2005
the Revised Code, and every third year thereafter. Persons 2006
licensed as real estate salespersons who subsequently become 2007
licensed real estate brokers, shall continue to submit proof of 2008
continuing education on the schedule established when they were 2009
licensed real estate salespersons. The requirements of this 2010
section shall not apply to ~~persons licensed under section 4735.091~~ 2011
~~of the Revised Code or to~~ any physically handicapped licensee as 2012
provided in division (E) of this section. 2013

Each licensee who is seventy years of age or older on ~~the~~ 2014
~~effective date of this amendment~~ June 13, 1996, and each licensee 2015
who will be seventy years of age or older within three years after 2016
~~the effective date of this amendment~~ June 13, 1996, shall submit 2017
proof satisfactory to the superintendent that the licensee has 2018
satisfactorily completed during the three-year period commencing 2019
on ~~the effective date of this amendment~~ June 13, 1996, and every 2020
three-year period thereafter, a total of nine classroom hours of 2021
continuing education, including instruction in Ohio real estate 2022
law; recently enacted state and federal laws affecting the real 2023
estate industry; municipal, state, and federal civil rights law; 2024
and canons of ethics for the real estate industry as adopted by 2025
the commission. The commission shall adopt reasonable rules in 2026
accordance with Chapter 119. of the Revised Code to carry out the 2027
purposes of this paragraph. 2028

A person providing any course of continuing education may 2029
administer examinations to licensees for the purpose of evaluating 2030
the effectiveness of the course, but passage of an examination by 2031
a licensee shall not be a condition for successful completion of 2032
the continuing education requirements of this section. 2033

(B) The continuing education requirements of this section 2034

shall be completed in schools, seminars, and educational 2035
institutions approved by the commission. Such approval shall be 2036
given according to rules established by the commission under the 2037
procedures of Chapter 119. of the Revised Code, and shall not be 2038
limited to institutions providing two-year or four-year degrees. 2039
Each school, seminar, or educational institution approved under 2040
this division shall be open to all licensees on an equal basis. 2041

(C) If the requirements of this section are not met by a 2042
licensee within the period specified, the licensee's license shall 2043
be suspended automatically without the taking of any action by the 2044
superintendent. The superintendent shall notify the licensee of 2045
the license suspension. Any license so suspended shall remain 2046
suspended until it is reinstated by the superintendent. No such 2047
license shall be reinstated until it is established, to the 2048
satisfaction of the superintendent, that the requirements of this 2049
section have been met. If the requirements of this section are not 2050
met within two years from the date the license was suspended, the 2051
license shall be revoked automatically without the taking of any 2052
action by the commission. A person whose license has been revoked 2053
and whose revoked license was issued prior to January 1, 1980, may 2054
have the person's license reinstated by the superintendent at any 2055
time after it has been revoked upon submitting proof satisfactory 2056
to the superintendent that the person has satisfactorily completed 2057
during the period since the revocation of the person's license 2058
thirty classroom hours of continuing education as prescribed by 2059
the commission pursuant to section 4735.10 of the Revised Code. 2060
Upon reinstatement of the person's license, the licensee shall 2061
comply with the educational requirements of division (A) of this 2062
section. 2063

(D) If the license of a real estate broker is suspended 2064
pursuant to division (C) of this section, the license of a real 2065
estate salesperson associated with that broker correspondingly is 2066

suspended pursuant to division (B) of section 4735.20 of the
Revised Code. However, the suspended license of the associated
real estate salesperson shall be reinstated and no fee shall be
charged or collected for that reinstatement if all of the
following occur:

(1) That broker subsequently submits proof to the
superintendent that the broker has complied with the requirements
of this section and requests that the broker's license as a real
estate broker be reinstated;

(2) The superintendent then reinstates the broker's license
as a real estate broker;

(3) The associated real estate salesperson intends to
continue to be associated with that broker, has complied with the
requirements of this section, and otherwise is in compliance with
this chapter.

(E) Any licensee who is a physically handicapped licensee at
any time during the last three months of the third year of the
licensee's continuing education reporting period may receive an
extension of time to submit proof to the superintendent that the
licensee has satisfactorily completed the required thirty hours of
continuing education. To receive an extension of time, the
licensee shall submit a request to the division of real estate for
the extension and proof satisfactory to the commission that the
licensee was a physically handicapped licensee at some time during
the last three months of the three-year reporting period. The
proof shall include, but is not limited to, a signed statement by
the licensee's attending physician describing the physical
disability, certifying that the licensee's disability is of such a
nature as to prevent the licensee from attending any classroom
instruction lasting at least three hours in duration, and stating
the expected duration of the physical disability. The licensee

shall request the extension and provide the physician's statement 2098
to the division no later than one month prior to the end of the 2099
licensee's three-year continuing education reporting period, 2100
unless the physical disability did not arise until the last month 2101
of the three-year reporting period, in which event the licensee 2102
shall request the extension and provide the physician's statement 2103
as soon as practical after the occurrence of the physical 2104
disability. A licensee granted an extension pursuant to this 2105
division who is no longer a physically handicapped licensee and 2106
who submits proof of completion of the continuing education during 2107
the extension period, shall submit, for future continuing 2108
education reporting periods, proof of completion of the continuing 2109
education requirements according to the schedule established in 2110
division (A) of this section. 2111

Sec. 4735.18. (A) Subject to section 4735.32 of the Revised 2112
Code, the superintendent of real estate, upon the superintendent's 2113
own motion, may investigate the conduct of any licensee. Subject 2114
to section 4735.32 of the Revised Code, the Ohio real estate 2115
commission shall, pursuant to section 4735.051 of the Revised 2116
Code, impose disciplinary sanctions upon any licensee who, whether 2117
or not acting in the licensee's capacity as a real estate broker 2118
or salesperson, ~~or limited real estate broker or salesperson,~~ or 2119
in handling the licensee's own property, is found to have been 2120
convicted of a felony or a crime of moral turpitude, and shall, 2121
pursuant to section 4735.051 of the Revised Code, impose 2122
disciplinary sanctions upon any licensee who, in the licensee's 2123
capacity as a real estate broker or salesperson, ~~or limited real~~ 2124
~~estate broker or salesperson,~~ or in handling the licensee's own 2125
property, is found guilty of: 2126

(1) Knowingly making any misrepresentation; 2127

(2) Making any false promises with intent to influence, 2128

persuade, or induce;	2129
(3) A continued course of misrepresentation or the making of false promises through agents, salespersons, advertising, or otherwise;	2130 2131 2132
(4) Acting for more than one party in a transaction except as permitted by and in compliance with section 4735.71 of the Revised Code-;j	2133 2134 2135
(5) Failure within a reasonable time to account for or to remit any money coming into the licensee's possession which belongs to others;	2136 2137 2138
(6) Dishonest or illegal dealing, gross negligence, incompetency, or misconduct;	2139 2140
(7)(a) By final adjudication by a court, a violation of any municipal or federal civil rights law relevant to the protection of purchasers or sellers of real estate or, by final adjudication by a court, any unlawful discriminatory practice pertaining to the purchase or sale of real estate prohibited by Chapter 4112. of the Revised Code, provided that such violation arose out of a situation wherein parties were engaged in bona fide efforts to purchase, sell, or lease real estate, in the licensee's practice as a licensed real estate broker or salesperson;	2141 2142 2143 2144 2145 2146 2147 2148 2149
(b) A second or subsequent violation of any unlawful discriminatory practice pertaining to the purchase or sale of real estate prohibited by Chapter 4112. of the Revised Code or any second or subsequent violation of municipal or federal civil rights laws relevant to purchasing or selling real estate whether or not there has been a final adjudication by a court, provided that such violation arose out of a situation wherein parties were engaged in bona fide efforts to purchase, sell, or lease real estate. For any second offense under this division, the commission shall suspend for a minimum of two months or revoke the license of	2150 2151 2152 2153 2154 2155 2156 2157 2158 2159

the broker or salesperson. For any subsequent offense, the
commission shall revoke the license of the broker or salesperson.

(8) Procuring a license under this chapter, for the licensee
or any salesperson by fraud, misrepresentation, or deceit;

(9) Having violated or failed to comply with any provision of
sections 4735.51 to 4735.74 of the Revised Code or having
willfully disregarded or violated any other provisions of this
chapter;

(10) As a real estate broker ~~or limited real estate broker~~,
having demanded, without reasonable cause, other than from a
broker licensed under this chapter, a commission to which the
licensee is not entitled, or, as a real estate salesperson ~~or~~
~~limited real estate salesperson~~, having demanded, without
reasonable cause, a commission to which the licensee is not
entitled;

(11) Having paid commissions or fees to, or divided
commissions or fees with, anyone not licensed as a real estate
broker or salesperson;

(12) Having falsely represented membership in any real estate
professional association of which the licensee is not a member;

(13) Having accepted, given, or charged any undisclosed
commission, rebate, or direct profit on expenditures made for a
principal;

(14) Having offered anything of value other than the
consideration recited in the sales contract as an inducement to a
person to enter into a contract for the purchase or sale of real
estate or having offered real estate or the improvements on real
estate as a prize in a lottery or scheme of chance;

(15) Having acted in the dual capacity of real estate broker	2190
and undisclosed principal, or real estate salesperson and	2191
undisclosed principal, in any transaction;	2192
(16) Having guaranteed, authorized, or permitted any person	2193
to guarantee future profits which may result from the resale of	2194
real property or cemetery interment rights;	2195
(17) Having placed a sign on any property offering it for	2196
sale or for rent without the consent of the owner or the owner's	2197
authorized agent;	2198
(18) Having induced any party to a contract of sale or lease	2199
to break such contract for the purpose of substituting in lieu of	2200
it a new contract with another principal;	2201
(19) Having negotiated the sale, exchange, or lease of any	2202
real property directly with an owner, purchaser, lessor, or tenant	2203
knowing that such owner, purchaser, lessor, or tenant had a	2204
written outstanding contract granting exclusive agency in	2205
connection with such property to another real estate broker;	2206
(20) Having offered real property for sale or for lease	2207
without the knowledge and consent of the owner or the owner's	2208
authorized agent, or on any terms other than those authorized by	2209
the owner or the owner's authorized agent;	2210
(21) Having published advertising, whether printed, radio,	2211
display, or of any other nature, which was misleading or	2212
inaccurate in any material particular, or in any way having	2213
misrepresented any properties, terms, values, policies, or	2214
services of the business conducted;	2215
(22) Having knowingly withheld from or inserted in any	2216
statement of account or invoice any statement that made it	2217
inaccurate in any material particular;	2218
(23) Having published or circulated unjustified or	2219

unwarranted threats of legal proceedings which tended to or had 2220
the effect of harassing competitors or intimidating their 2221
customers; 2222

(24) Having failed to keep complete and accurate records of 2223
all transactions for a period of three years from the date of the 2224
transaction, such records to include copies of listing forms, 2225
earnest money receipts, offers to purchase and acceptances of 2226
them, and records of receipts and disbursements of all funds 2227
received by the licensee as broker and incident to the licensee's 2228
transactions as such, and any other instruments or papers related 2229
to the performance of any of the acts set forth in the definition 2230
of a real estate broker; 2231

(25) Failure of a real estate broker or salesperson to 2232
furnish all parties involved in a real estate transaction true 2233
copies of all listings and other agreements to which they are a 2234
party, at the time each party signs them; 2235

(26) Failure to maintain at all times a special or trust bank 2236
account in a depository located in this state. The account shall 2237
be noninterest-bearing, separate and distinct from any personal or 2238
other account of the broker, and, except as provided in division 2239
(A)(27) of this section, shall be used for the deposit and 2240
maintenance of all escrow funds, security deposits, and other 2241
moneys received by the broker in a fiduciary capacity. The name, 2242
account number, if any, and location of the depository wherein 2243
such special or trust account is maintained shall be submitted in 2244
writing to the superintendent. Checks drawn on such special or 2245
trust bank accounts are deemed to meet the conditions imposed by 2246
section 1349.21 of the Revised Code. 2247

(27) Failure to maintain at all times a special or trust bank 2248
account in a depository in this state, to be used exclusively for 2249
the deposit and maintenance of all rents, security deposits, 2250

escrow funds, and other moneys received by the broker in a 2251
fiduciary capacity in the course of managing real property. This 2252
account shall be separate and distinct from any other account 2253
maintained by the broker. The name, account number, and location 2254
of the depository shall be submitted in writing to the 2255
superintendent. This account may earn interest, which shall be 2256
paid to the property owners on a pro rata basis. 2257

Division (A)(27) of this section does not apply to brokers 2258
who are not engaged in the management of real property on behalf 2259
of real property owners. 2260

(28) Having failed to put definite expiration dates in all 2261
written agency agreements to which the broker is a party; 2262

(29) Having an unsatisfied final judgment in any court of 2263
record against the licensee arising out of ~~his~~ the licensee's 2264
conduct as a licensed broker or ~~salesman~~ salesperson; 2265

(30) Failing to render promptly upon demand a full and 2266
complete statement of the expenditures by the broker or 2267
salesperson of funds advanced by or on behalf of a party to a real 2268
estate transaction to the broker or salesperson for the purpose of 2269
performing duties as a licensee under this chapter in conjunction 2270
with the real estate transaction; 2271

(31) Failure within a reasonable time, after the receipt of 2272
the commission by the broker, to render an accounting to and pay a 2273
real estate salesperson the salesperson's earned share of it; 2274

(32) Failure to notify the real estate salesperson that the 2275
licensee does not intend to list such salesperson on the 2276
continuation in business form; 2277

(33) Performing any service for another constituting the 2278
practice of law, as determined by any court of law; 2279

(34) Having been adjudicated incompetent for the purpose of 2280

holding the license by a court, as provided in section 5122.301 of 2281
the Revised Code. A license revoked or suspended under this 2282
division shall be reinstated upon proof to the commission of the 2283
removal of the disability. 2284

(35) Having authorized or permitted a person to act as an 2285
agent in the capacity of a real estate broker ~~or limited real~~ 2286
~~estate broker~~, or a real estate salesperson ~~or limited real estate~~ 2287
~~salesperson~~, who was not then licensed as a real estate broker, 2288
~~limited real estate broker, or~~ real estate salesperson, ~~or limited~~ 2289
~~real estate salesperson~~ under this chapter. 2290

(B) Whenever the commission, pursuant to section 4735.051 of 2291
the Revised Code, imposes disciplinary sanctions for any violation 2292
of this section, the commission also may impose such sanctions 2293
upon the broker with whom the salesperson is affiliated if the 2294
commission finds that the broker had knowledge of the 2295
salesperson's actions that violated this section. 2296

(C) The commission shall, pursuant to section 4735.051 of the 2297
Revised Code, impose disciplinary sanctions upon any foreign real 2298
estate dealer or salesperson who, in that capacity or in handling 2299
the dealer's or salesperson's own property, is found guilty of any 2300
of the acts or omissions specified or comprehended in division (A) 2301
of this section insofar as the acts or omissions pertain to 2302
foreign real estate. If the commission imposes such sanctions upon 2303
a foreign real estate salesperson for a violation of this section, 2304
the commission also may suspend or revoke the license of the 2305
foreign real estate dealer with whom the salesperson is affiliated 2306
if the commission finds that the dealer had knowledge of the 2307
salesperson's actions that violated this section. 2308

(D) The commission may suspend, in whole or in part, the 2310
imposition of the penalty of suspension of a license under this 2311

section. 2312

(E) The commission immediately shall notify the real estate 2313
appraiser board of any disciplinary action taken under this 2314
section against a licensee who also is a state-certified real 2315
estate appraiser under Chapter 4763. of the Revised Code. 2316

Sec. 4735.32. (A)(1) The Ohio real estate commission or the 2317
superintendent of real estate may commence, at any time within 2318
three years from the date on which an alleged violation of a 2319
provision of this or another chapter of the Revised Code occurred, 2320
any investigation that relates to the conduct of a licensed real 2321
estate broker, real estate ~~salesman, limited real estate broker,~~ 2322
~~limited real estate salesman~~ salesperson, foreign real estate 2323
dealer, or foreign real estate ~~salesman~~ salesperson, that is 2324
authorized pursuant to section 1349.11, 4735.051, or 4735.18, or 2325
any other section of the Revised Code, and that is for purposes of 2326
determining whether the licensee has violated a provision of this 2327
or another chapter of the Revised Code and whether, as a 2328
consequence, ~~his~~ the licensee's license should be suspended or 2329
revoked, or other disciplinary action taken, as provided in this 2330
or another chapter of the Revised Code. If such an investigation 2331
is not commenced within the three-year period, it shall be barred, 2332
and neither the commission nor the superintendent shall suspend or 2333
revoke the license of any licensee, or take other disciplinary 2334
action against any licensee, because of the alleged violation of a 2335
provision of this or another chapter of the Revised Code that 2336
could have been the subject of the barred investigation. 2337

(2) For purposes of division (A)(1) of this section, if an 2338
investigation that is authorized by section 4735.051 of the 2339
Revised Code is involved, it shall be considered to be commenced 2340
as of the date on which a person files a complaint with the 2341
division of real estate pursuant to division (A) of that section. 2342

(B) This section does not affect any criminal or civil 2343
liability that a licensed real estate broker, real estate 2344
~~salesman, limited real estate broker, limited real estate salesman~~ 2345
salesperson, foreign real estate dealer, or foreign real estate 2346
~~salesman~~ salesperson, or any unlicensed person, may have under 2347
this or another chapter of the Revised Code or under the common 2348
law of this state. 2349

Sec. 4735.57. (A) The superintendent of real estate, with the 2350
approval of the Ohio real estate commission, shall establish by 2351
rule the agency disclosure statement, which shall specify the 2352
duties of a licensee in a real estate transaction pursuant to this 2353
chapter. The agency disclosure statement shall contain a place for 2354
the licensee and the parties to the transaction to sign and date 2355
the statement and shall contain sections for the disclosure or 2356
explanation of all of the following: 2357

(1) The permissible agency relationships a licensee may 2358
establish under section 4735.53 of the Revised Code and an 2359
explanation of the duties the licensee owes the client in each 2360
type of relationship; 2361

(2) Whether the brokerage may act as a dual agent and if so, 2362
the possibility that different licensees affiliated with the 2363
brokerage might represent the separate interests of a purchaser or 2364
a seller in the same transaction. The disclosure shall contain an 2365
explanation that when different licensees affiliated with the same 2366
brokerage represent both the purchaser and seller in a 2367
transaction, each licensee represents only the interests of that 2368
licensee's client. The disclosure shall contain an explanation 2369
that when different licensees affiliated with the same brokerage 2370
represent different clients in a transaction, the brokerage and 2371
the management level licensees in the brokerage are dual agents of 2372
both the seller and purchaser and have supervisory duties and 2373

limitations as dual agents. The disclosure also shall state that
the broker shall take steps to preserve the confidential
information of the client.

(3) Unless confidential, the names of all parties the
licensee represents in the transaction;

(4) That the signature of the client indicates the client
consents to the agency relationship and that if the client does
not understand the agency disclosure statement, the client should
consult an attorney.

(B) The agency disclosure statement prescribed under division
(A) of this section does not limit the duties of a real estate
agent to those listed in division (A) of this section, and the
agent is obligated to perform all duties imposed on a real estate
agent at common law except to the extent the duties are
inconsistent with the duties prescribed in this chapter or are
otherwise modified by agreement.

(C) The disclosure requirements of this section do not apply
in any of the following situations:

(1) The rental or leasing of residential premises as defined
in section 5321.01 of the Revised Code, if the rental or lease
agreement can be performed in eighteen months or less;

(2) The referral of a prospective buyer, tenant, seller, or
landlord to another licensee;

(3) Transactions involving the sale, lease, or exchange of
foreign real estate as defined in division ~~(C)~~(E) of section
4735.01 of the Revised Code;

(4) Transactions involving the sale of a cemetery lot or a
cemetery interment right.

Sec. 4767.02. (A) Except as otherwise provided in division

(C) of this section, no person, church, religious society, 2403
established fraternal organization, or political subdivision of 2404
the state shall own, operate, or maintain a cemetery unless the 2405
cemetery is registered pursuant to section 4767.03 of the Revised 2406
Code. 2407

(B) The division of real estate in the department of commerce 2408
shall perform all of the following duties: 2409

(1) Adopt, amend, and rescind rules in accordance with 2410
Chapter 119. of the Revised Code to carry out sections 4767.02 to 2411
4767.04 of the Revised Code governing the registration of 2412
cemeteries; 2413

(2) Prescribe the form and content of all applications to be 2414
used for registration and renewal of registration pursuant to 2415
section 4767.03 of the Revised Code; 2416

(3) Review applications for registration and issue 2417
registration certificates to cemeteries that meet the 2418
qualifications for registration pursuant to sections 4767.03 and 2419
4767.04 of the Revised Code; 2420

(4) Collect all fees related to the registration and renewal 2421
of registration certificates for cemeteries; 2422

(5) Maintain a written record of each cemetery registered 2423
with the division, which shall include such documentation as 2424
required in division (A) of section 4767.04 of the Revised Code. 2425
The record shall be available for inspection by the public and 2426
copies shall be made available pursuant to division (B) of section 2427
149.43 of the Revised Code. 2428

(6) Revoke the registration of any cemetery owner or operator 2429
convicted of a violation of section 1721.21 or 1721.211 of the 2430
Revised Code immediately upon receipt of notice of the conviction 2431
pursuant to section 119.06 of the Revised Code; 2432

(7) Hire all division personnel necessary to implement this 2433
chapter; 2434

(8) prohibit the sale of the assets or stock of a cemetery by 2435
refusing to issue a registration certificate to the purchaser 2436
until the dispute resolution commission has received audited 2437
financial statements audited by a certified public accountant 2438
showing to the commission's satisfaction that all current funds 2439
required to be deposited and maintained pursuant to sections 2440
1721.21 and 1721.211 of the Revised Code have been deposited and 2441
maintained; 2442

(9) with the dispute resolution commission's advice and 2443
consent, subpoena cemetery personnel to attend hearings before the 2444
commission. 2445

(C) Sections 4767.02 to 4767.04 of the Revised Code do not 2446
apply to or affect a family cemetery or a cemetery in which there 2447
have been no interments during the previous twenty-five calendar 2448
years. As used in this division, "family cemetery" means a 2449
cemetery containing the human remains of persons, at least 2450
three-fourths of whom have a common ancestor or who are the spouse 2451
or adopted child of that common ancestor. 2452

Sec. 4767.031. (A) the owner or the person responsible for 2453
the operation of each cemetery required to register under section 2454
4767.03 of the Revised Code shall provide the division of real 2455
estate in the department of commerce, on a form prescribed by the 2456
division, at the same time the owner or other person applies for 2457
registration or renewal of registration as required by section 2458
4767.03 of the Revised Code, a list of the names and residence 2459
addresses of all persons employed or otherwise engaged by the 2460
cemetery to sell interment rights. The provision of this 2461
information constitutes the registration of these persons to sell 2462
interment rights. 2463

In order for an independent contractor to sell interment rights for a cemetery, the cemetery shall sponsor and register the independent contractor with the division. More than one cemetery may sponsor and register the same independent contractor. 2464
2465
2466
2467

(B) the owner or the person responsible for the operation of each cemetery required to register under section 4767.03 of the Revised Code shall provide the division with a revised list of the names and residence addresses of all persons employed or otherwise engaged by the cemetery to sell interment rights within the calendar quarter immediately following the date of the termination of the cemetery's relationship with an existing salesperson or the commencement of a relationship with a new salesperson. As used in this division, "calendar quarter" means the three-month period that commences on the first day of each January, April, July, and October. 2468
2469
2470
2471
2472
2473
2474
2475
2476
2477
2478

Sec. 4767.04. (A) To qualify a cemetery for a certificate of registration, the applicant shall submit to the division of real estate the following information: 2479
2480
2481

(1) The name of the cemetery; 2482

(2) The street address, city, village, or township, and county where the cemetery is located and the mailing address if different from the street address; 2483
2484
2485

(3) The name and address of the person who owns the cemetery; 2486
2487

(4) The name and address of the person responsible for the operation and maintenance of the cemetery; 2488
2489

~~(5) A list of persons, if any, employed by or otherwise affiliated with the owner or operator of the cemetery who hold a limited real estate broker's license or a limited real estate salesman's license pursuant to section 4735.091 of the Revised~~ 2490
2491
2492
2493

Code:	2494
(6) A copy of the most recent annual report of the cemetery	2495
if required by the Ohio real estate commission pursuant to section	2496
1721.211 of the Revised Code. If the cemetery is owned by a	2497
cemetery company or association, a copy of the annual report for	2498
the previous year of all of the assets and investments of the	2499
endowment care funds of the association as prepared pursuant to	2500
section 1721.21 of the Revised Code shall be submitted to the	2501
division.	2502
(B) If any of the information required in division (A) of	2503
this section changes at any time, the person responsible for the	2504
operation and maintenance of the cemetery shall submit written	2505
notification of the change to the division within thirty days of	2506
the change occurring.	2507
Sec. 4767.06. The Ohio cemetery dispute resolution commission	2508
shall perform all of the following duties:	2509
(A) Adopt, amend, and rescind such rules in accordance with	2510
Chapter 119. of the Revised Code as are necessary in carrying out	2511
sections 4767.05 to 4767.08 of the Revised Code, including rules	2512
relative to the following:	2513
(1) Transacting the commission's business and managing its	2514
affairs;	2515
(2) Establishing procedures for receiving, reviewing, and	2516
responding to complaints filed pursuant to section 4767.07 of the	2517
Revised Code;	2518
(3) Conducting investigations in response to complaints filed	2519
pursuant to division (A) of section 4767.07 of the Revised Code;	2520
	2521
(4) Resolving complaints by using informal techniques of	2522
mediation, conciliation, and persuasion, including requiring the	2523

parties involved in a complaint to be given prompt notice of any	2524
offers to resolve disputes and responses thereto;	2525
(5) Advising all parties making a complaint, or who are the	2526
subject of a complaint, of any recommendations or findings of fact	2527
made by the commission with respect to the complaint;	2528
(6) Requesting the party who has filed a complaint or is the	2529
subject of a complaint, and is affected by recommendations of the	2530
commission made with respect to the complaint, to notify the	2531
commission within a time specified by the commission of any action	2532
the party has taken in response to the commission's	2533
recommendations;	2534
(7) Conducting nonpublic hearings and maintaining commission	2535
proceedings and records as confidential, notwithstanding sections	2536
121.22 and 149.43 of the Revised Code when the commission	2537
determines that the nature of the complaints merits that action;	2538
(8) Determining the method to be used in serving notices as	2539
required by section 4767.07 of the Revised Code.	2540
(B) Publicize information concerning the existence and duties	2541
of the commission and the procedure for filing complaints pursuant	2542
to section 4767.07 of the Revised Code;	2543
(C) Conduct hearings on complaints pursuant to section	2544
4767.07 of the Revised Code;	2545
(D) Submit at least annually by the thirty-first day of March	2546
a report on the commission's activities of the immediately	2547
preceding calendar year to the governor and the majority and	2548
minority leaders of the senate and house of representatives. The	2549
report shall indicate the total number of complaints received,	2550
initiated, and investigated under sections 4767.07 and 4767.08 of	2551
the Revised Code; the total number of complaints for which	2552
hearings were held; and the total number of referrals made to	2553

prosecuting attorneys, the attorney general, and the real estate 2554
commission pursuant to section 4767.08 of the Revised Code. 2555

(E) Review, at least once each year, all actions taken by the 2556
prosecuting attorneys, the attorney general, and the real estate 2557
commission in response to referrals made to them by the cemetery 2558
dispute resolution commission or by the superintendent of the 2559
division of real estate in the department of commerce. The 2560
commission shall include in the report required in division (D) of 2561
this section information regarding the nature of the inappropriate 2562
conduct alleged in each referral and the status or disposition 2563
made of each referral occurring during the preceding two years. 2564

(F) Perform all functions as are necessary in administering 2565
and enforcing sections 4767.05 to 4767.08 of the Revised Code, 2566
including the rendering of all advice necessary under divisions 2567
(B)(6) to (12) of section 4767.02 of the Revised Code; 2568

(G) review all proposed transfers that would transfer 2569
substantially all of the assets or stock of a cemetery, require an 2570
audit of the cemetery's funds on deposit under sections 1721.21 2571
and 1721.211 of the Revised Code, and formulate an agreed plan 2572
pursuant to which the buyer and the seller of the cemetery will 2573
cause those funds to be properly funded; 2574

(H) Adopt and publish suggested maintenance guidelines for 2575
all cemeteries registered in the state of Ohio under Chapter 4767. 2576
of the Revised Code. 2577

Sec. 4767.08. (A) The cemetery dispute resolution commission, 2578
on its own motion or as a result of a complaint received pursuant 2579
to section 4767.07 of the Revised Code and with good cause shown, 2580
shall investigate or cause to be investigated alleged violations 2581
of sections 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, 4735.22, 2582
and 4765.03 of the Revised Code. If the commission or the 2583

superintendent of the division of real estate in the department of 2584
commerce believes that a violation has occurred, the commission or 2585
superintendent shall ~~request~~ do all of the following: 2586

(1) Review the financial records of the cemetery to ensure 2588
compliance with sections 1721.21 and 1721.211 of the Revised Code; 2589

(2) Request the prosecuting attorney of the county in which 2590
the alleged violation occurred to initiate such proceedings as are 2591
appropriate. 2592

(B) If, as a result of an investigation, the commission or 2593
the superintendent believes that a person has violated Chapter 2594
1345. of the Revised Code, the commission or superintendent shall 2595
report the findings to the attorney general. 2596

~~(C) If, as a result of an investigation, the commission or 2597~~
~~the superintendent believes that a limited real estate broker or 2598~~
~~limited real estate salesman has violated Chapter 4735. of the 2599~~
~~Revised Code, the commission or superintendent shall report the 2600~~
~~findings to the real estate commission, which may initiate such 2601~~
~~proceedings as are appropriate. 2602~~

~~(D)~~ The commission, at any time, may dismiss a complaint if 2603
it determines there is not good cause shown for the complaint. If 2604
the commission dismisses a complaint, it shall notify the person 2605
who filed the complaint within twenty days of reaching its 2606
decision and identify the reason why the complaint was dismissed. 2607

~~(E)~~(D) When necessary for the division of real estate in the 2608
department of commerce to perform the duties required by sections 2609
4767.07 and 4767.08 of the Revised Code, the superintendent of the 2610
division, after consultation with at least a majority of the 2611
members of the cemetery dispute resolution commission, may issue 2612
subpoenas and compel the production of books, papers, records, and 2613

other forms of evidence. 2614

Sec. 4767.99. Whoever violates division (A) of section 2615
4767.02 of the Revised Code is guilty of a misdemeanor of the 2616
~~fourth~~ third degree. 2617

Section 2. That existing sections 517.23, 517.24, 759.01, 2618
1111.19, 1151.345, 1161.59, 1319.12, 1345.21, 1721.01, 1721.06, 2619
1721.21, 1721.211, 1733.51, 2117.25, 2925.01, 4735.01, 4735.02, 2620
4735.051, 4735.07, 4735.10, 4735.141, 4735.18, 4735.32, 4735.57, 2621
4767.02, 4767.04, 4767.06, 4767.08, and 4767.99 and sections 2622
2117.251 and 4735.091 of the Revised Code are hereby repealed. 2623

Section 3. Not more than two years after the effective date 2624
of this act the Cemetery Dispute Resolution Commission shall 2625
provide a written report to the Governor, the Speaker of the House 2626
of Representatives, and the President of the Senate on the 2627
effectiveness of the Ohio cemetery law. The report shall include 2628
recommendations for modification of the Ohio cemetery law in light 2629
of consumer complaints and industry problems. 2630

Section 4. Section 2925.01 of the Revised Code is presented 2631
in this act as a composite of the section as amended by both Sub. 2632
H.B. 606 and Sub. S.B. 200 of the 122nd General Assembly, with the 2633
new language of neither of the acts shown in capital letters. This 2634
is in recognition of the principle stated in division (B) of 2635
section 1.52 of the Revised Code that such amendments are to be 2636
harmonized where not substantively irreconcilable and constitutes 2637
a legislative finding that such is the resulting version in effect 2638
prior to the effective date of this act. 2639