

AN ACT

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

Be it enacted by the General Assembly of the State of Ohio:

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

Sec. 517.23. (A) Subject to divisions (B), (D), and (E) of this section, the board of township trustees, the trustees or directors 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 shall disinter or grant permission to disinter any remains buried in the cemetery in either of the following circumstances:

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

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

ment.

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

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

(D) The board of township trustees, the trustees or directors 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 or older and of sound mind;

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

(e) A statement of the applicant's reasons to oppose the disinterment of the remains of the decedent.

(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.

(F) As used in this section and in section 517.24 of the Revised Code:

(1) "Cemetery" and "interment" have the same meanings as in section 1721.21 of the Revised Code.

(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.

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.

(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 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, ~~and;~~ 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 and cannot with reasonable diligence be ascertained, and the applicant shall file an affidavit in the probate court specifying any persons who were not given notice pursuant to division (B)(2)(a) of this section and the reason for not giving notice to those persons.

(3)(a) Except as otherwise provided in division (B)(3)(b) of this section,

upon the filing of an application for disinterment of remains and the giving of the required notice under division (B)(2) of this section, the probate court promptly shall conduct a hearing to determine whether to issue an order for disinterment of the remains of the decedent. Except as otherwise provided in division (B)(3)(a) of this section, at the hearing, the court, in its discretion, may issue an order for disinterment of the decedent's remains if good cause for disinterment is shown. If a person who is an interested party and who is eighteen years of age or older and of sound mind establishes by a preponderance of the evidence at the hearing that the issuance of an order for disinterment of the decedent's remains under division (B)(3) of this section would be against the decedent's religious beliefs or ascertainable desires, the court shall not issue the requested order unless the court finds a compelling reason to issue it. If the court is not so prohibited from issuing the requested order and exercises its discretion to issue the requested order for disinterment of the decedent's remains ~~under~~ in accordance with division (B)(3) of this section, the court promptly shall deliver the order to the applicant. An order of the court for disinterment of the decedent's remains shall specify that the board of township trustees, the trustees or board of the cemetery association, or other officers having control and management of the cemetery or the officer of a municipal corporation who has control and management of the municipal cemetery shall have a period of at least thirty days from the receipt of the order to perform the ordered disinterment.

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

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

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

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

(2) "Preneed funeral contract" means a written agreement, contract, or series of contracts to sell or otherwise provide any funeral services, funeral

goods, or any combination thereof, to be used in connection with the funeral or final disposition of a dead human body, where payment for the goods or services is made either outright or on an installment basis, prior to the death of the person purchasing them or for whom they are purchased. A preneed funeral contract that includes funeral services may be sold only by a funeral director licensed pursuant to Chapter 4717. of the Revised Code. For the purpose of this section, "funeral goods" includes caskets. "Preneed funeral contract" does not include any preneed ~~burial-vault~~ cemetery merchandise and services contract; or any agreement, contract, or series of contracts pertaining to the sale of any burial lot, burial or interment right, entombment right, or columbarium right with respect to which either an endowment care fund is established or is ~~not required to be established~~ exempt from establishment pursuant to section 1721.21 of the Revised Code, or any agreement, contract, or series of contracts pertaining to the sale of cemetery interment rights made by a person licensed as a limited real estate broker or limited real estate salesman pursuant to section 4735.091 of the Revised Code.

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

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

(D) The trustee of each preneed funeral contract trust shall be a financial institution or a natural person not required by this chapter to be licensed to do trust business. A natural person acting as trustee of a preneed funeral contract trust shall be bonded by a corporate surety bond in an amount not less than one hundred per cent of the funds in all of the preneed funeral contract trusts the person serves as trustee.

(E)(1) A trustee shall establish a separate preneed funeral contract trust for the moneys paid under each preneed funeral contract, unless the

haser under a preneed funeral contract authorizes the trustee to place the moneys paid in a combined preneed funeral contract trust. The trustee of a combined preneed funeral contract trust shall keep exact records of the corpus, income, expenses, and disbursements with regard to each beneficiary of a preneed funeral contract for whom moneys are held in the trust. The terms of a preneed funeral contract trust shall be governed by this section.

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

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

(G) The purchaser of a preneed funeral contract that is not irrevocable may, on not less than fifteen days' notice, cancel the contract and request and receive from the trustee payments made under the contract and any income earned up to the time of cancellation, less fees, distributions, and expenses made pursuant to this section; except, if a preneed funeral contract stipulates a firm or fixed or guaranteed price for funeral services and goods for future use at a time determined by the death of the beneficiary of the preneed funeral contract, the purchaser, on not less than fifteen days' notice, may cancel the contract and receive from the trustee ninety per cent of the principal paid pursuant to the preneed funeral contract, not less than eighty per cent of any interest earned up to the time of cancellation, and not less than eighty per cent of any income earned on the funds since the funds were paid to the seller and up to the time of cancellation less any fees, distributions, and expenses. On cancellation, after the funds have been distributed to the purchaser pursuant to this division, the trustee shall distribute all remaining funds attributable to the canceled preneed funeral contract to the seller. If more than one purchaser enters into the contract, all of those purchasers must request cancellation for it to be effective under this division, and the trustee shall refund to each purchaser only those funds that purchaser has paid under the contract and a proportionate amount of any income earned on those funds, less any fees, distributions, and expenses.

(H) A certified copy of the certificate of death or other evidence of death satisfactory to the trustee shall be furnished to the trustee as evidence of death, and the trustee shall promptly pay the accumulated payments and

income, if any, according to the preneed funeral contract. The payment of the accumulated payments and income pursuant to this section and, when applicable, the preneed funeral contract, shall relieve the trustee of any further liability on the accumulated payments and income.

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

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

(2) The seller does all of the following:

(a) Receives delivery of the goods on behalf of the beneficiary;

(b) Stores the goods upon the real property of a funeral home licensed in this state;

(c) Notifies the beneficiary of receipt of the goods and identifies the specific location of the goods;

(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.

(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.

(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.

(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 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:

(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;

(b) Any real estate broker, or 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;

(c) Any retail seller collecting its own accounts;

(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;

(e) Any public officer or judicial officer acting under order of a court;

(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;

(g) Any public utility;

(h) Any person registered to sell interment rights under section 4767.031 of the Revised Code.

(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.

(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:

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

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

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

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

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

(E) No collection agency shall commence any litigation authorized by this section unless the agency appears by an attorney admitted to the practice of law in this state.

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

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

433, as amended.

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

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

(A) "Home solicitation sale" means a sale of consumer goods or services in which the seller or a person acting for ~~him~~ the seller engages in a personal solicitation of the sale at a residence of the buyer, including solicitations in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for ~~him~~ the seller, or in which the buyer's agreement or offer to purchase is made at a place other than the seller's place of business. It does not include a transaction or transactions in which:

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

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

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

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

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

(5) The buyer initiates the contact between the parties, the goods or

services are needed to meet a bona fide immediate personal emergency of the buyer which will jeopardize the welfare, health, or safety of natural persons, or endanger property which the buyer owns or for which ~~he~~ the buyer is responsible, and the buyer furnishes the seller with a separate, dated, and signed statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

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

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

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

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

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

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

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

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

(2) The sale of securities or commodities by a broker-dealer registered with the securities and exchange commission;

(3) The sale of securities or commodities by a securities dealer or ~~salesman~~ salesperson licensed by the division of securities under Chapter 1707. of the Revised Code;

(4) The sale of insurance by a person licensed by the superintendent of insurance;

(5) Goods sold or services provided by automobile dealers and ~~salesmen~~ salespersons licensed by the registrar of motor vehicles under Chapter 4517.

of the Revised Code;

(6) The sale of property at an auction by an auctioneer licensed by the department of commerce under Chapter 4707. of the Revised Code.

(G) "Purchase price" means the total cumulative price of the consumer goods or services, including all interest and service charges.

(H) "Place of business" means the main office, or a permanent branch office or permanent local address of a seller.

(I) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's day, ~~Washington's birthday~~ Presidents' day, Memorial day, Independence day, Labor day, Columbus day, ~~Veteran's~~ Veterans day, Thanksgiving day, and Christmas day.

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

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

The appropriating agency shall serve upon the officers or agents having control of a cemetery a written notice that a specifically designated area of the cemetery may be needed for highway purposes. No such notice may be

served more than once.

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

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.

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.

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.

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.

Sec. 1721.06. After paying for its land, a cemetery company or association shall apply all its receipts and income, whether from sale of lots, from donations, or otherwise, exclusively to laying out, preserving, protecting, and embellishing the cemetery and avenues within it or leading to it, to the erection of buildings necessary or appropriate for cemetery purposes, and to paying the necessary expenses of the cemetery company or association. No debts shall be incurred by ~~such~~ the cemetery company or association except for purchasing, laying out, inclosing, and embellishing the ground, buildings necessary or appropriate for cemetery purposes, and avenues, for which purposes it may contract debts to be paid out of future receipts. For purposes of this section, buildings appropriate for cemetery

purposes include, but are not limited to, buildings for crematory facilities, funeral homes, and other buildings intended to produce income for the cemetery company or association.

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

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

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

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

- (a) A burial ground for earth interments;
- (b) A mausoleum for crypt entombments;
- (c) A columbarium for the deposit of cremated remains;
- (d) A scattering ground for the spreading of cremated remains.

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

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

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

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

(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.

(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.

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.

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

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

The funds of the endowment care trust shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to sections 2109.37 and 2109.371 of the Revised Code.

~~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.~~

~~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.~~

(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.

(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.

(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.

(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.

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

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

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

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

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

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

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

Sec. 1721.211. (A) As used in this section, "preneed burial vault

cemetery merchandise and services contract" means a written agreement, contract, or series of contracts to sell or otherwise provide a an outer burial vault container, monument, marker, urn, other type of merchandise customarily sold by cemeteries, or opening and closing services to be used or provided in connection with the final disposition of a dead human body, where payment for the ~~vault container, monument, marker, urn, other type of merchandise customarily sold by cemeteries, or opening and closing services~~ is made either outright or on an installment basis, prior to the death of the person so purchasing it or for whom it is so purchased. "Preneed ~~burial vault cemetery merchandise and services~~ contract" does not include any preneed funeral contract; or any agreement, contract, or series of contracts pertaining to the sale of any burial lot, burial or interment right, entombment right, or columbarium right with respect to which an endowment care fund is established or is exempt from establishment pursuant to section 1721.21 of the Revised Code; ~~or any agreement, contract, or series of contracts pertaining to the sale of cemetery interment rights made by a person licensed as a limited real estate broker or limited real estate salesman pursuant to section 4735.091 of the Revised Code.~~

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

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

(C) ~~Sixty per cent of all payments for burial vaults made under a preneed burial vault~~ (1) The greater of one hundred ten per cent of the seller's actual cost or thirty per cent of the seller's retail price of the merchandise and seventy per cent of the seller's retail price of the services to be provided under a preneed cemetery merchandise and services contract shall remain intact as a fund until the death of the person for whose benefit the agreement contract is made or the burial vaults are merchandise is delivered as set forth in division (K) of this section. However, any deposit made moneys held pursuant to this section shall be released upon demand of

the person for whose benefit ~~such deposit~~ the contract was made or upon the demand of the seller for its share of the ~~deposited funds~~ moneys held and earned interest if the contract has been canceled as set forth in division (G) of this section.

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

(D) ~~Within thirty days of~~ after the last business day of the month in which the seller of ~~burial vaults~~ cemetery merchandise or services receives final contractual payment under a preneed ~~burial vault~~ cemetery merchandise and services contract, the seller shall ~~deposit the funds in a financial institution~~ deliver the greater of one hundred ten per cent of the seller's actual cost or thirty per cent of the seller's retail price of the merchandise and seventy per cent of the seller's current retail price of the services as of the time the final contractual payment is received to a trustee or to trustees as described in division (C)(2) of this section, and the funds moneys and accruals or income thereon on the moneys shall be held in an account a fund and designated for the person for whose benefit the fund was established as a preneed burial vault cemetery merchandise and services contract account fund.

(E) ~~The funds to be deposited~~ moneys received from more than one preneed ~~burial vault~~ cemetery merchandise and services contract may, at the option of the persons for whose benefit the ~~deposits~~ contracts are made, be placed in a common or pooled trust fund in this state under a single trust instrument ~~or in a joint account provided that if the funds are placed in a common or pooled trust fund, a financial institution, if designated as trustee, shall have previously qualified for and received trust powers from the comptroller of the currency or the superintendent of financial institutions if the trustee is a bank, or from the federal home loan bank board or the superintendent of financial institutions if the trustee is a savings and loan association. If a person or entity other than a financial institution is~~ three individuals are designated as trustee the trustees as provided in division (C)(2) of this section, the person or entity they shall be bonded by a

corporate surety bond in an amount not less than one hundred per cent of the funds held by ~~the trustee~~ them as trustees. The trustee or its agent shall, on a continuous basis, keep exact records as to the amount of funds under ~~any joint account or a single~~ trust instrument being held for the individual beneficiaries showing the amount paid, the amount deposited and invested, and accruals and income.

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

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

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

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

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

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

Any person upon initially entering into a preneed burial vault cemetery merchandise and services contract may, within seven days, cancel the contract and request and receive from the seller one hundred per cent of all payments made under the contract. After the expiration of the above period, any person who has entered into a preneed burial vault cemetery merchandise and services contract may, on not less than fifteen days' notice, cancel the contract and request and receive from the seller sixty per cent of the payments made under the contract which have been deposited in a fund pursuant to divisions (C) and (D) of this section paid up to the time of cancellation; except that, if a preneed burial vault cemetery merchandise and services contract stipulates a firm or fixed or guaranteed price for the burial vault merchandise or services for future use at a time determined by the death of the person on behalf of whom payments are made, the person who has entered into the contract may, if the burial vault merchandise has not been delivered or the services have not been performed as set forth in division (K) or (L) of this section, on not less than fifteen days' notice, cancel the contract and receive from the seller sixty per cent of the principal paid pursuant to division (C) of this section the contract and not less than eighty per cent of any interest paid, up to the time of cancellation, and not

less than eighty per cent of any accrual or income earned while the ~~funds~~ moneys have ~~remained on deposit~~ been held pursuant to divisions (C) and (D) of this section, up to the time of cancellation. Upon cancellation, after the ~~funds~~ moneys have been distributed to the beneficiary pursuant to this division, all ~~funds~~ moneys remaining ~~on deposit~~ being held pursuant to divisions (C) and (D) of this section shall be paid to the seller. If more than one person enters into the contract, all of those persons must request cancellation for it to be effective under this division. In such a case, the seller shall refund to each person only those ~~funds~~ moneys that each person has paid under the contract.

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

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

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

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

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

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

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

(c)(b) The seller notifies the beneficiary of receipt of the ~~vault~~ merchandise and identifies the specific location of the ~~vault~~ merchandise; ~~and~~.

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

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

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

(N)(N) The general assembly intends that this section be construed as a limitation upon the manner in which a person is permitted to accept ~~funds~~ moneys in prepayment for ~~burial-vaults~~ merchandise and services to be delivered or provided in the future, or ~~burial-vaults~~ merchandise and services to be used or provided in connection with the 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 ~~burial-vaults~~ merchandise and services for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder the prepaid ~~funds~~ moneys cannot be dissipated, whether intentionally or not, so as to be available for the payment of ~~burial-vaults~~ for merchandise and services and the providing of ~~burial-vaults~~ merchandise and services used or provided in connection with the final disposition of dead human bodies.

(O)(O) This section does not apply when the seller or provider of ~~burial-vaults~~ merchandise or services under a preneed ~~burial-vault~~ cemetery merchandise and services contract is an established and legally cognizable church or denomination that is exempt from federal income taxation under

section 501(c)(3) of the "Internal Revenue Code of 1954," 26 U.S.C.A. 501, and the preneed ~~burial-vault~~ cemetery merchandise and services contract pertains to a cemetery ~~which~~ that is owned and operated entirely and exclusively by the church or denomination; provided that the church or denomination adopts, on a voluntary basis, rules and other measures to safeguard and secure all ~~funds~~ moneys received under a preneed ~~burial-vault~~ cemetery merchandise and services contract.

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

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

Sec. 1733.51. A credit union may, subject to sections 1111.19 and 1721.211 of the Revised Code, receive and hold on deposit moneys under a preneed funeral contract or preneed ~~burial~~ cemetery merchandise and services contract.

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

(A) Costs and expenses of administration;

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

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

- (1) The purchase of a place of interment;
- (2) Monuments or other markers;
- (3) The outer burial container;
- (4) The cost of opening and closing the place of interment;
- (5) The urn.

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

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

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

(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 of a motion or application to revive an action pending against the decedent at the date of death shall be equivalent to the presentation of a claim to the executor or administrator for the purpose of determining the order of payment of any judgment rendered or decree entered in such an action.

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

If it appears at any time that the assets have been exhausted in paying

rior or preferred charges, allowances, or claims, such payments shall be a bar to an action on any claim not entitled to such priority or preference.

Sec. 2925.01. As used in this chapter:

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

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

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

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

(1) For any compound, mixture, preparation, or substance included in schedule I, schedule II, or schedule III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (D)(2) or (5) of this section, whichever of the following is applicable:

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

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

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

(d) 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 II opiate or opium derivative;

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

(f) 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 II stimulant that is in a final dosage form manufactured by a person authorized by the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the federal drug abuse control laws, as defined in 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.

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

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

(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;

(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;

(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;

(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.

(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.

(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 induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes, but is not limited to, any of the following:

(1) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

(2) Any aerosol propellant;

(3) Any fluorocarbon refrigerant;

(4) Any anesthetic gas.

(J) "Manufacture" means to plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

(K) "Possess" or "possession" means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

(L) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(M) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of any of the following reference works:

- (1) "The National Formulary";
- (2) "The United States Pharmacopeia," prepared by authority of the United States Pharmacopeial Convention, Inc.;
- (3) Other standard references that are approved by the state board of pharmacy.

(N) "Juvenile" means a person under eighteen years of age.

(O) "Counterfeit controlled substance" means any of the following:

(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;

(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;

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance;

(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.

(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.

(Q) "School" means any school operated by a board of education or any school for which the state board of education 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.

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

(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;

(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,

acurricular 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.

(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.

(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.

(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 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 authority of Chapter 4710. of the Revised Code;

(8) A person who has been issued a cosmetologist's license, manicurist's license, esthetician's license, managing cosmetologist's license, managing manicurist's license, managing esthetician's license, cosmetology instructor's license, manicurist instructor's license, esthetician instructor's license, or tanning facility permit under Chapter 4713. of the Revised Code;

(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under Chapter 4715. of the Revised Code;

(10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been registered for an embalmer's or funeral director's apprenticeship under Chapter 4717. of the Revised Code;

(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under Chapter 4723. of the Revised Code;

(12) A person who has been licensed to practice optometry or to engage in optical dispensing under Chapter 4725. of the Revised Code;

(13) A person licensed to act as a pawnbroker under Chapter 4727. of the Revised Code;

(14) A person licensed to act as a precious metals dealer under Chapter 4728. of the Revised Code;

(15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under Chapter 4729. of the Revised Code;

(16) A person who is authorized to practice as a physician assistant under Chapter 4730. of the Revised Code;

(17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under Chapter 4731. of the Revised Code;

(18) A person licensed as a psychologist or school psychologist under Chapter 4732. of the Revised Code;

(19) A person registered to practice the profession of engineering or surveying under Chapter 4733. of the Revised Code;

(20) A person who has been issued a license to practice chiropractic

under Chapter 4734. of the Revised Code;

(21) A person licensed to act as a real estate broker; or real estate salesperson, ~~limited real estate broker, or limited real estate salesperson~~ under Chapter 4735. of the Revised Code;

(22) A person registered as a registered sanitarian under Chapter 4736. of the Revised Code;

(23) A person licensed to operate or maintain a junkyard under Chapter 4737. of the Revised Code;

(24) A person who has been issued a motor vehicle salvage dealer's license under Chapter 4738. of the Revised Code;

(25) A person who has been licensed to act as a steam engineer under Chapter 4739. of the Revised Code;

(26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under Chapter 4741. of the Revised Code;

(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;

(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;

(29) A person licensed and registered to practice as a nursing home administrator under Chapter 4751. of the Revised Code;

(30) A person licensed to practice as a speech-language pathologist or audiologist under Chapter 4753. of the Revised Code;

(31) A person issued a license as an occupational therapist or physical therapist under Chapter 4755. of the Revised Code;

(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;

(33) A person issued a license to practice dietetics under Chapter 4759. of the Revised Code;

(34) A person who has been issued a license or limited permit to practice respiratory therapy under Chapter 4761. of the Revised Code;

(35) A person who has been issued a real estate appraiser certificate under Chapter 4763. of the Revised Code.

(X) "Cocaine" means any of the following:

(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(2) Coca leaves or a salt, compound, derivative, or preparation of coca

leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine;

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

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

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

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

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

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

(DD) "Major drug offender" has the same meaning as in section 2929.01 of the Revised Code.

(EE) "Minor drug possession offense" means either of the following:

(1) A violation of section 2925.11 of the Revised Code as it existed prior to July 1, 1996;

(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.

(FF) "Mandatory prison term" has the same meaning as in section 2929.01 of the Revised Code.

(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.

Sec. 4735.01. As used in this chapter:

(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:

(1) Sells, exchanges, purchases, rents, or leases, or negotiates the sale, exchange, purchase, rental, or leasing of any real estate;

(2) Offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of any real estate;

(3) Lists, or offers, attempts, or agrees to list, or auctions, or offers, attempts, or agrees to auction, any real estate;

(4) Buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate;

(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;

(6) Advertises or holds self out as engaged in the business of selling, exchanging, purchasing, renting, or leasing real estate;

(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;

(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;

(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;

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

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

(C) "Real estate salesperson" means any person associated with a

licensed real estate broker to do or to deal in any acts or transactions set out or comprehended by the definition of a real estate broker, for compensation or otherwise.

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

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

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

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

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

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

~~(H)(F) "Foreign real estate dealer" 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, does or deals in any act or transaction specified or comprehended in division (A) of this section with respect to foreign real estate.~~

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

~~(J)(H) Any person, partnership, association, or corporation, who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, does, or offers, attempts, or agrees to engage~~

in, any single act or transaction contained in the definition of a real estate broker or foreign real estate dealer, whether an act is an incidental part of a transaction, or the entire transaction, shall be constituted a real estate broker or real estate salesperson or a foreign real estate dealer or foreign real estate salesperson under this chapter.

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

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

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

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

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

~~(L)~~(J) "Physically handicapped licensee" means a person licensed pursuant to this chapter who is under a severe physical disability which is of such a nature as to prevent the person from being able to attend any classroom instruction lasting at least three hours in duration.

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

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

Sec. 4735.02. No person, partnership, association, or corporation shall act as a real estate broker; or real estate salesman, ~~limited real estate broker,~~

~~or limited real estate salesman~~ salesperson, or advertise or assume to act as such, without first being licensed as provided in this chapter. Nothing contained in this chapter shall be construed as authorizing a real estate broker or ~~salesman~~ salesperson to perform any service constituting the practice of law.

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

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

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

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

(D) Within sixty business days after receipt of the 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, the commission, and the parties.

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

(G) The commission shall decide whether to impose disciplinary sanctions upon a licensee for a violation of section 4735.18 of the Revised Code. The commission shall decide within sixty days of the filing of the hearing examiner's report or within sixty days of the filing of an Ohio civil rights commission complaint. The commission shall maintain a transcript of the proceedings and issue a written opinion to all the parties, citing its findings and grounds for any action taken. The commission shall notify the

complainant and any other party who may have suffered financial loss because of the licensee's violations, that the complainant or other party may sue for recovery under section 4735.12 of the Revised Code.

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

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

- (1) Revoke a license issued under Chapter 4735. of the Revised Code;
- (2) Suspend a license for a term set by the commission;
- (3) Impose a fine, not exceeding two thousand five hundred dollars per violation;

(4) Issue a public reprimand;

(5) Require the completion of additional continuing education course work. Any continuing education course work imposed pursuant to this section shall not count toward the continuing education requirements set forth in section 4735.14 of the Revised Code.

All fines imposed pursuant to division (I)(3) of this section shall be credited to the real estate operating fund, which is created in the state treasury under section 4735.211 of the Revised Code.

Sec. 4735.07. (A) The superintendent of real estate, with the consent of the Ohio real estate commission, may enter into agreements with recognized national testing services to administer the real estate broker's examination under ~~his~~ the superintendent's supervision and control, consistent with the requirements of this chapter as to the contents of such examination.

(B) No person shall take the broker's examination who has not established to the satisfaction of the superintendent that ~~he~~ the person:

(1) Is honest, truthful, and of good reputation;

(2)(a) Has not been convicted of a felony or crime of moral turpitude, or if ~~he~~ the person has been so convicted, the superintendent has disregarded the conviction because the applicant has proven to the superintendent, by a preponderance of the evidence, that ~~his~~ the applicant's activities and employment record since the conviction 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 again will violate the laws involved;

(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:

(i) Thirty hours of classroom instruction in real estate practice;

(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.

(iii) Thirty hours of classroom instruction in real estate appraisal;

(iv) Thirty hours of classroom instruction in real estate finance;

(v) Three quarter hours, or its equivalent in semester hours, in financial management;

(vi) Three quarter hours, or its equivalent in semester hours, in human

resource or personnel management;

(vii) Three quarter hours, or its equivalent in semester hours, in applied business economics;

(viii) Three quarter hours, or its equivalent in semester hours, in business law.

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

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

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

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

(D) Examinations shall be given entirely in writing, except that they shall be administered orally or in braille to the blind, as defined in section 5109.15 of the Revised Code, or orally to an individual whose physical disability, as supported by a physician's statement, renders it impossible to take a written 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 twelve months, the license of the real estate broker is suspended automatically without the taking of any action by the commission. The broker then shall have one year after the date of the suspension of ~~his~~ the broker's license to successfully complete the instruction required under this division, and ~~his~~ the broker's license shall not be reinstated by the superintendent until it is established, to the satisfaction of the superintendent, that the requirements of this division have been met.

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

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

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

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

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

- (a) The form and manner of filing applications for license;
- (b) Times and form of examination for license;
- (c) Placing an existing broker's license in escrow for an indefinite period upon good cause shown.

(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:

- (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;

- (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.

- (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.

- (d) Requirements for trust accounts and property management accounts. The rules shall specify that:

- (i) Brokerages engaged in the management of property for another may, pursuant to a written contract with the property 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.

- (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.

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

(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:

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

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

(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;

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

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

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

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

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

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

Sec. 4735.141. (A) Except as otherwise provided in this division, on or before January 31, 1983, and on or before the thirty-first day of January of every third year thereafter, each licensee who was licensed by the state prior to January 1, 1980, as a real estate broker or salesperson shall submit proof satisfactory to the superintendent of real estate that the licensee has

satisfactorily completed, during the preceding three years, thirty classroom hours of continuing education as prescribed by the Ohio real estate commission pursuant to section 4735.10 of the Revised Code. Persons licensed as real estate salespersons within the state on or after January 1, 1980, shall submit the proof to the superintendent on or before the last day of the month of the third year directly following the filing of the certificate prescribed in division (G) of section 4735.09 of the Revised Code, and every third year thereafter. Persons licensed as real estate salespersons who subsequently become licensed real estate brokers, shall continue to submit proof of continuing education on the schedule established when they were licensed real estate salespersons. The requirements of this section shall not apply to ~~persons licensed under section 4735.091 of the Revised Code or to~~ any physically handicapped licensee as provided in division (E) of this section.

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

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

(B) The continuing education requirements of this section shall be completed in schools, seminars, and educational institutions approved by the commission. Such approval shall be given according to rules established by the commission under the procedures of Chapter 119. of the Revised Code, and shall not be limited to institutions providing two-year or four-year degrees. Each school, seminar, or educational institution approved under this division shall be open to all licensees on an equal basis.

(C) If the requirements of this section are not met by a licensee within

the period specified, the licensee's license shall be suspended automatically without the taking of any action by the superintendent. The superintendent shall notify the licensee of the license suspension. Any license so suspended shall remain suspended until it is reinstated by the superintendent. No such license shall be reinstated until it is established, to the satisfaction of the superintendent, that the requirements of this section have been met. If the requirements of this section are not met within two years from the date the license was suspended, the license shall be revoked automatically without the taking of any action by the commission. A person whose license has been revoked and whose revoked license was issued prior to January 1, 1980, may have the person's license reinstated by the superintendent at any time after it has been revoked upon submitting proof satisfactory to the superintendent that the person has satisfactorily completed during the period since the revocation of the person's license thirty classroom hours of continuing education as prescribed by the commission pursuant to section 4735.10 of the Revised Code. Upon reinstatement of the person's license, the licensee shall comply with the educational requirements of division (A) of this section.

(D) If the license of a real estate broker is suspended pursuant to division (C) of this section, the license of a real estate salesperson associated with that broker correspondingly is 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 to the division no later than one month prior to the end of the licensee's three-year continuing education reporting period, unless the physical disability did not arise until the last month of the three-year reporting period, in which event the licensee shall request the extension and provide the physician's statement as soon as practical after the occurrence of the physical disability. A licensee granted an extension pursuant to this division who is no longer a physically handicapped licensee and who submits proof of completion of the continuing education during the extension period, shall submit, for future continuing education reporting periods, proof of completion of the continuing education requirements according to the schedule established in division (A) of this section.

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

- (1) Knowingly making any misrepresentation;
- (2) Making any false promises with intent to influence, persuade, or induce;
- (3) A continued course of misrepresentation or the making of false promises through agents, salespersons, advertising, or otherwise;
- (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;
- (5) Failure within a reasonable time to account for or to remit any money coming into the licensee's possession which belongs to others;
- (6) Dishonest or illegal dealing, gross negligence, incompetency, or

misconduct;

(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;

(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 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 and undisclosed principal, or real estate salesperson and undisclosed principal, in any transaction;

(16) Having guaranteed, authorized, or permitted any person to guarantee future profits which may result from the resale of real property or cemetery interment rights;

(17) Having placed a sign on any property offering it for sale or for rent without the consent of the owner or the owner's authorized agent;

(18) Having induced any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu of it a new contract with another principal;

(19) Having negotiated the sale, exchange, or lease of any real property directly with an owner, purchaser, lessor, or tenant knowing that such owner, purchaser, lessor, or tenant had a written outstanding contract granting exclusive agency in connection with such property to another real estate broker;

(20) Having offered real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on any terms other than those authorized by the owner or the owner's authorized agent;

(21) Having published advertising, whether printed, radio, display, or of any other nature, which was misleading or inaccurate in any material particular, or in any way having misrepresented any properties, terms, values, policies, or services of the business conducted;

(22) Having knowingly withheld from or inserted in any statement of account or invoice any statement that made it inaccurate in any material particular;

(23) Having published or circulated unjustified or unwarranted threats of legal proceedings which tended to or had the effect of harassing competitors or intimidating their customers;

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

(25) Failure of a real estate broker or salesperson to furnish all parties involved in a real estate transaction true copies of all listings and other

reements to which they are a party, at the time each party signs them;

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

(27) Failure to maintain at all times a special or trust bank account in a depository in this state, to be used exclusively for the deposit and maintenance of all rents, security deposits, escrow funds, and other moneys received by the broker in a fiduciary capacity in the course of managing real property. This account shall be separate and distinct from any other account maintained by the broker. The name, account number, and location of the depository shall be submitted in writing to the superintendent. This account may earn interest, which shall be paid to the property owners on a pro rata basis.

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

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

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

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

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

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

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

(34) Having been adjudicated incompetent for the purpose of holding the license by a court, as provided in section 5122.301 of the Revised Code. A license revoked or suspended under this division shall be reinstated upon proof to the commission of the removal of the disability.

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

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

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

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

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

Sec. 4735.32. (A)(1) The Ohio real estate commission or the superintendent of real estate may commence, at any time within three years from the date on which an alleged violation of a provision of this or another chapter of the Revised Code occurred, any investigation that relates to the conduct of a licensed real estate broker, real estate ~~salesman, limited real estate broker, limited real estate salesman~~ salesperson, foreign real estate dealer, or foreign real estate ~~salesman~~ salesperson, that is authorized pursuant to section 1349.11, 4735.051, or 4735.18, or any other section of the Revised Code, and that is for purposes of determining whether the

licensee has violated a provision of this or another chapter of the Revised Code and whether, as a consequence, ~~his~~ the licensee's license should be suspended or revoked, or other disciplinary action taken, as provided in this or another chapter of the Revised Code. If such an investigation is not commenced within the three-year period, it shall be barred, and neither the commission nor the superintendent shall suspend or revoke the license of any licensee, or take other disciplinary action against any licensee, because of the alleged violation of a provision of this or another chapter of the Revised Code that could have been the subject of the barred investigation.

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

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

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

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

(2) Whether the brokerage may act as a dual agent and if so, the possibility that different licensees affiliated with the brokerage might represent the separate interests of a purchaser or a seller in the same transaction. The disclosure shall contain an explanation that when different licensees affiliated with the same brokerage represent both the purchaser and seller in a transaction, each licensee represents only the interests of that licensee's client. The disclosure shall contain an explanation that when different licensees affiliated with the same brokerage represent different clients in a transaction, the brokerage and the management level licensees in the brokerage are dual agents of both the seller and purchaser and have

ervisory duties and 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 ~~(G)~~(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, established fraternal organization, or political subdivision of the state shall own, operate, or maintain a cemetery unless the cemetery is registered pursuant to section 4767.03 of the Revised Code.

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

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

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

(3) Review applications for registration and issue registration certificates to cemeteries that meet the qualifications for registration

pursuant to sections 4767.03 and 4767.04 of the Revised Code;

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

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

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

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

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

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

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

Sec. 4767.031. (A) 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 of real estate in the department of commerce, on a form prescribed by the division, at the same time the owner or other person applies for registration or renewal of registration as required by section 4767.03 of the Revised Code, a list of the names and residence addresses of all persons employed or otherwise engaged by the cemetery to sell interment rights. The provision of this information constitutes the registration of these persons to sell interment rights.

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.

(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.

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:

- (1) The name of the cemetery;
- (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;
- (3) The name and address of the person who owns the cemetery;
- (4) The name and address of the person responsible for the operation and maintenance of the cemetery;
- (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 Code;~~
- (6) A copy of the most recent annual report of the cemetery if required by the Ohio real estate commission pursuant to section 1721.211 of the Revised Code. If the cemetery is owned by a cemetery company or association, a copy of the annual report for the previous year of all of the assets and investments of the endowment care funds of the association as prepared pursuant to section 1721.21 of the Revised Code shall be submitted to the division.

(B) If any of the information required in division (A) of this section changes at any time, the person responsible for the operation and maintenance of the cemetery shall submit written notification of the change to the division within thirty days of the change occurring.

Sec. 4767.06. The Ohio cemetery dispute resolution commission shall perform all of the following duties:

- (A) Adopt, amend, and rescind such rules in accordance with Chapter 119. of the Revised Code as are necessary in carrying out sections 4767.05 to 4767.08 of the Revised Code, including rules relative to the following:
- (1) Transacting the commission's business and managing its affairs;

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

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

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

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

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

(7) Conducting nonpublic hearings and maintaining commission proceedings and records as confidential, notwithstanding sections 121.22 and 149.43 of the Revised Code when the commission determines that the nature of the complaints merits that action;

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

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

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

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

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

commerce. The commission shall include in the report required in division (D) of this section information regarding the nature of the inappropriate conduct alleged in each referral and the status or disposition made of each referral occurring during the preceding two years.

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

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

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

Sec. 4767.08. (A) The cemetery dispute resolution commission, on its own motion or as a result of a complaint received pursuant to section 4767.07 of the Revised Code and with good cause shown, shall investigate or cause to be investigated alleged violations of sections 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, 4735.22, and 4765.03 of the Revised Code. If the commission or the superintendent of the division of real estate in the department of commerce believes that a violation has occurred, the commission or superintendent shall ~~request~~ do all of the following:

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

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

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

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

~~(D)~~ The commission, at any time, may dismiss a complaint if it determines there is not good cause shown for the complaint. If the commission dismisses a complaint, it shall notify the person who filed the

complaint within twenty days of reaching its decision and identify the reason why the complaint was dismissed.

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

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

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

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

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

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____