

AN ACT

To amend sections 1111.19, 1721.211, 2101.24, 2106.20, 2108.50, 2109.02, 2111.13, 2113.031, 2113.37, 2117.25, 4511.451, 4717.21, and 4717.22 and to enact sections 2108.70 to 2108.90, and 2117.251 of the Revised Code regarding the assignment of the right to direct the disposition of an adult's remains after death and to make arrangements and purchase goods and services related to an adult's funeral, cremation, burial, or other manner of final disposition.

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

SECTION 1. That sections 1111.19, 1721.211, 2101.24, 2106.20, 2108.50, 2109.02, 2111.13, 2113.031, 2113.37, 2117.25, 4511.451, 4717.21, and 4717.22 be amended and sections 2108.70, 2108.71, 2108.72, 2108.73, 2108.74, 2108.75, 2108.76, 2108.77, 2108.78, 2108.79, 2108.80, 2108.81, 2108.82, 2108.83, 2108.84, 2108.85, 2108.86, 2108.87, 2108.88, 2108.89, 2108.90, and 2117.251 of the Revised Code be enacted to read as follows:

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 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 an endowment care fund is established or is exempt from establishment pursuant to section 1721.21 of the Revised Code.

(B)(1) 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.

(2) Every preneed funeral contract entered into on or after the effective date of this amendment shall include the following notices in substantially the following form:

NOTICE: Under Ohio law, the person holding the right of disposition of the remains of the beneficiary of this contract pursuant to section 2108.70 or 2108.81 of the Revised Code will have the right to make funeral arrangements inconsistent with the arrangements set forth in this contract. However, the beneficiary is encouraged to state his or her preferences as to funeral arrangements in a declaration of the right of disposition pursuant to section 2108.72 of the Revised Code, including that the arrangements set forth in this contract shall be followed.

NOTICE: You, as the purchaser of this contract, will be notified in writing when the trustee of this contract has received a deposit of the funds you paid the seller under this contract. If you do not receive the notice within sixty days of the date you paid the funds to the seller, you should contact the trustee.

(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 purchaser 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.

The trustee of a preneed funeral contract shall notify the purchaser of the contract in writing of the amount of any deposit with the trustee of a payment under the contract within fifteen days of receiving the deposit from the seller of the contract.

(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. 1721.211. (A) As used in this section, "preneed cemetery merchandise and services contract" means a written agreement, contract, or series of contracts to sell or otherwise provide an outer burial 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 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 or for whom so purchased. "Preneed 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 trust is established or is exempt from establishment pursuant to section 1721.21 of the Revised Code.

(B) Subject to the limitations and restrictions contained in Chapters 1101. to 1127. of the Revised Code, 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 the individuals described in division (C)(2) of this section have the power as trustee to receive and to hold and invest in accordance with sections 2109.37 and 2109.371 of the Revised Code moneys under a preneed cemetery merchandise and services contract.

(C)(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 contract is made or

the merchandise is delivered as set forth in division (K) of this section. However, any moneys held pursuant to this section shall be released upon demand of the person for whose benefit the contract was made or upon the demand of the seller for its share of the 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.

(3) Every preneed cemetery and merchandise contract entered into on or after the effective date of this amendment shall include a provision in substantially the following form:

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

(D) Within thirty days after the last business day of the month in which the seller of cemetery merchandise or services receives final contractual payment under a preneed cemetery merchandise and services contract, the seller shall 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 date of the contract to a trustee or to trustees as described in division (C)(2) of this section, and the moneys and accruals or income on the moneys shall be held in a fund and designated for the person for whose benefit the fund was established as a preneed cemetery merchandise and services contract fund.

(E) The moneys received from more than one preneed cemetery merchandise and services contract may, at the option of the persons for whose benefit the contracts are made, be placed in a common or pooled trust

fund in this state under a single trust instrument. If three individuals are designated as the trustees as provided in division (C)(2) of this section, they shall be bonded by a corporate surety or fidelity bond in an aggregate amount of not less than one hundred per cent of the funds held by them as trustees. The trustees or their agent shall, on a continuous basis, keep exact records as to the amount of funds under 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 of merchandise or services under a preneed cemetery merchandise and services contract shall annually submit to the 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) This division is subject to division (I) of this section.

Any person upon initially entering into a preneed 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 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 paid up to the time of cancellation; except that, if a preneed cemetery merchandise and services contract stipulates a firm or fixed or guaranteed price for the 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 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 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 moneys have been held pursuant to divisions (C) and (D) of this section, up to the time of

cancellation. Upon cancellation, after the moneys have been distributed to the beneficiary pursuant to this division, all remaining moneys 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 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 merchandise or performance of the services pursuant to division (K) or (L) of this section, the trustee described in division (C)(2) of this section or its agent, shall forthwith pay the fund and accumulated interest, if any, to the person entitled to them under the preneed cemetery merchandise and services contract. The payment of the fund and accumulated interest pursuant to this section, either to a seller or person making the payments, shall relieve the trustee of any further liability on the fund or accumulated interest.

(I) 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 cemetery merchandise and services contract that involves the payment of money shall be in writing and in compliance with the laws and rules of this state.

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

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

(2) The seller receives delivery of the merchandise on behalf of the beneficiary, and all of the following occur:

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

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

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

(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 that is regularly or usually charged for similar services rendered by the trustee described in division (C)(2) of this section when serving as a trustee.

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

(O) This section does not apply to the seller or provider of merchandise or services under a preneed cemetery merchandise and services contract if the contract pertains to a cemetery that is owned and operated entirely and exclusively by 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, an established fraternal organization, or a municipal corporation or other political subdivision of the state, to a cemetery that is a national cemetery, or to a cemetery that is a family cemetery as defined in section 4767.02 of the Revised Code; provided that, on a voluntary basis, rules and other measures are adopted to safeguard and secure all moneys received under a preneed 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. 2101.24. (A)(1) Except as otherwise provided by law, the probate court has exclusive jurisdiction:

(a) To take the proof of wills and to admit to record authenticated copies of wills executed, proved, and allowed in the courts of any other state, territory, or country. If the probate judge is unavoidably absent, any judge of the court of common pleas may take proof of wills and approve bonds to be given, but the record of these acts shall be preserved in the usual records of the probate court.

(b) To grant and revoke letters testamentary and of administration;

(c) To direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates;

(d) To appoint the attorney general to serve as the administrator of an estate pursuant to section 2113.06 of the Revised Code;

(e) To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;

(f) To grant marriage licenses;

(g) To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;

(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;

(i) To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;

(j) To authorize the completion of real estate contracts on petition of executors and administrators;

(k) To construe wills;

(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;

(m) To direct and control the conduct of fiduciaries and settle their accounts;

(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;

(o) To terminate a testamentary trust in any case in which a court of equity may do so;

(p) To hear and determine actions to contest the validity of wills;

(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;

(r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;

(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;

(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;

(u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;

(v) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;

(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;

(x) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;

(y) To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;

(z) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;

(aa) To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337.16 or 2133.12 of the Revised Code;

(bb) To hear and determine applications for an order relieving an estate from administration under section 2113.03 of the Revised Code;

(cc) To hear and determine applications for an order granting a summary release from administration under section 2113.031 of the Revised Code;

(dd) To hear and determine actions relating to the exercise of the right of disposition, in accordance with section 2108.90 of the Revised Code;

(ee) To hear and determine actions relating to the disinterment and reinterment of human remains under section 517.23 of the Revised Code.

(2) In addition to the exclusive jurisdiction conferred upon the probate court by division (A)(1) of this section, the probate court shall have exclusive jurisdiction over a particular subject matter if both of the following apply:

(a) Another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court.

(b) No section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.

(B)(1) The probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine actions as follows:

(a) If jurisdiction relative to a particular subject matter is stated to be concurrent in a section of the Revised Code or has been construed by judicial decision to be concurrent, any action that involves that subject matter;

(b) Any action that involves an inter vivos trust; a trust created pursuant to section 1339.51 of the Revised Code; a charitable trust or foundation; subject to divisions (A)(1)(u) and (z) of this section, a power of attorney, including, but not limited to, a durable power of attorney; the medical treatment of a competent adult; or a writ of habeas corpus.

(2) Any action that involves a concurrent jurisdiction subject matter and that is before the probate court may be transferred by the probate court, on its order, to the general division of the court of common pleas.

(C) The probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code.

(D) The jurisdiction acquired by a probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law.

Sec. 2106.20. A surviving spouse or a person with the right of disposition under section 2108.70 or 2108.81 of the Revised Code is entitled

to a reimbursement from the estate of the ~~deceased spouse~~ decedent for funeral and burial expenses, if paid by the surviving spouse or person with the right of disposition, to the extent that the rights of other creditors of the estate will not be prejudiced by the reimbursement.

Sec. 2108.50. (A) Subject to section 2108.521 of the Revised Code, an autopsy or post-mortem examination may be performed upon the body of a deceased person by a licensed physician or surgeon if consent has been given ~~in the order named by one of the following persons of sound mind and eighteen years of age or older in a written instrument executed by the person or on the person's behalf at the person's express direction:~~

- ~~(1) The deceased person during the deceased person's lifetime;~~
- ~~(2) The decedent's spouse;~~
- ~~(3) If there is no surviving spouse, if the address of the surviving spouse is unknown or outside the United States, if the surviving spouse is physically or mentally unable or incapable of giving consent, or if the deceased person was separated and living apart from such surviving spouse, then a person having the first named degree of relationship in the following list in which a relative of the deceased person survives and is physically and mentally able and capable of giving consent may execute consent:~~
 - ~~(a) Children;~~
 - ~~(b) Parents;~~
 - ~~(c) Brothers or sisters.~~
- ~~(4) If there are no surviving persons of any degree of relationship listed in division (A)(3) of this section, any other relative or person who assumes custody of the body for burial;~~
- ~~(5) A person authorized by written instrument executed by the deceased person to make arrangements for burial;~~
- ~~(6) A person who, at the time of death of the deceased person, was serving as guardian of the person for the deceased person by the person who has the right of disposition under section 2108.70 or 2108.81 of the Revised Code.~~

(B) Consent to an autopsy or post-mortem examination given under this section may be revoked only by the person executing the consent and in the same manner as required for execution of consent under this section.

~~(C) As used in this section, "written instrument" includes a telegram or cablegram.~~

Sec. 2108.70. (A) As used in this section and sections 2108.71 to 2108.90 of the Revised Code:

- (1) "Adult" means an individual who is eighteen years of age or older.
- (2) "Declarant" means an adult who has executed a written declaration

described in division (B) of this section.

(3) "Representative" means an adult or a group of adults, collectively, to whom a declarant has assigned the right of disposition.

(4) "Right of disposition" means one or more of the rights described in division (B) of this section that a declarant chooses to assign to a representative in a written declaration executed under that division or all of the rights described in division (B) of this section that are assigned to a person pursuant to section 2108.81 of the Revised Code.

(5) "Successor representative" means an adult or group of adults, collectively, to whom the right of disposition for a declarant has been reassigned because the declarant's representative is disqualified from exercising the right under section 2108.75 of the Revised Code. Each successor representative shall be considered in the order the representative is designated by the declarant.

(B) An adult who is of sound mind may execute at any time a written declaration assigning to a representative one or more of the following rights:

(1) The right to direct the disposition, after death, of the declarant's body or any part of the declarant's body that becomes separated from the body before death. This right includes the right to determine the location, manner, and conditions of the disposition of the declarant's bodily remains.

(2) The right to make arrangements and purchase goods and services for the declarant's funeral. This right includes the right to determine the location, manner, and condition of the declarant's funeral.

(3) The right to make arrangements and purchase goods and services for the declarant's burial, cremation, or other manner of final disposition. This right includes the right to determine the location, manner, and condition of the declarant's burial, cremation, or other manner of final disposition.

(C)(1) Subject to division (C)(2) of this section, a declarant may designate a successor representative.

(2) If a representative is a group of persons and not all of the persons in the group meet at least one criterion to be disqualified from serving as the representative, as described in section 2108.75 of the Revised Code, the persons in the group who are not disqualified shall remain the representative who has the right of disposition.

(D) The assignment or reassignment of a right of disposition to a representative and a successor representative supercedes an assignment of a right of disposition under section 2108.81 of the Revised Code.

Sec. 2108.71. The assignment or reassignment of a right of disposition by a declarant under section 2108.70 of the Revised Code vests in a representative or a successor representative at the time of the declarant's

death.

Sec. 2108.72. (A) The written declaration described in section 2108.70 of the Revised Code shall include all of the following:

(1) The declarant's legal name and present address;

(2) A statement that the declarant, an adult being of sound mind, willfully and voluntarily appoints a representative to have the declarant's right of disposition for the declarant's body upon the declarant's death;

(3) A statement that all decisions made by the declarant's representative with respect to the right of disposition are binding;

(4) The name, last known address, and last known telephone number of the representative or, if the representative is a group of persons, the name, last known address, and last known telephone number of each person in the group;

(5) If the declarant chooses to have a successor representative, a statement that if any person or group of persons named as the declarant's representative is disqualified from serving in such position as described in section 2108.75 of the Revised Code, the declarant appoints a successor representative;

(6) If applicable, the name, last known address, and last known telephone number of the successor representative or, if the successor representative is a group of persons, the name, last known address, and last known telephone number of each person in the group;

(7) A space where the declarant may indicate the declarant's preferences regarding how the right of disposition should be exercised, including any religious observances the declarant wishes the person with the right of disposition to consider;

(8) A space where the declarant may indicate one or more sources of funds that may be used to pay for goods and services associated with the exercise of the right of disposition;

(9) A statement that the declarant's written declaration becomes effective on the declarant's death;

(10) A statement that the declarant revokes any written declaration that the declarant executed, in accordance with section 2108.70 of the Revised Code, prior to the execution of the present written declaration.

(11) A space where the declarant can sign and date the written declaration;

(12) A space where a notary public or two witnesses can sign and date the written declaration as described in section 2108.73 of the Revised Code.

(B) A written declaration may take the following form:

APPOINTMENT OF REPRESENTATIVE FOR DISPOSITION OF

BODILY REMAINS, FUNERAL ARRANGEMENTS, AND BURIAL OR
CREMATION GOODS AND SERVICES:

I, (legal name and present address of declarant), an adult
being of sound mind, willfully and voluntarily appoint my representative,
named below, to have the right of disposition, as defined in section 2108.70
of the Revised Code, for my body upon my death. All decisions made by my
representative with respect to the right of disposition shall be binding.

REPRESENTATIVE:

(If the representative is a group of persons, indicate the name, last
known address, and telephone number of each person in the group.)

Name(s):

Address(es):

Telephone Number(s):

SUCCESSOR REPRESENTATIVE:

If my representative is disqualified from serving as my representative as
described in section 2108.75 of the Revised Code, then I hereby appoint the
following person or group of persons to serve as my successor
representative.

(If the successor representative is a group of persons, indicate the name,
last known address, and telephone number of each person in the group.)

Name(s):

Address(es):

Telephone Number(s):

PREFERENCES REGARDING HOW THE RIGHT OF DISPOSITION
SHOULD BE EXERCISED, INCLUDING ANY RELIGIOUS
OBSERVANCES THE DECLARANT WISHES A REPRESENTATIVE
OR A SUCCESSOR REPRESENTATIVE TO CONSIDER:

.....
.....
.....
.....

ONE OR MORE SOURCES OF FUNDS THAT COULD BE USED
TO PAY FOR GOODS AND SERVICES ASSOCIATED WITH AN
EXERCISE OF THE RIGHT OF DISPOSITION:

.....
.....
.....
.....

DURATION:

The appointment of my representative and, if applicable, successor

representative, becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any written declaration that I executed in accordance with section 2108.70 of the Ohio Revised Code prior to the date of execution of this written declaration indicated below.

AUTHORIZATION TO ACT:

I hereby agree that any of the following that receives a copy of this written declaration may act under it:

- Cemetery organization;
- Crematory operator;
- Business operating a columbarium;
- Funeral director;
- Embalmer;
- Funeral home;
- Any other person asked to assist with my funeral, burial, cremation, or other manner of final disposition.

MODIFICATION AND REVOCATION - WHEN EFFECTIVE:

Any modification or revocation of this written declaration is not effective as to any party until that party receives actual notice of the modification or revocation.

LIABILITY:

No person who acts in accordance with a properly executed copy of this written declaration shall be liable for damages of any kind associated with the person's reliance on this declaration.

Signed this day of

.....

(Signature of declarant)

ACKNOWLEDGMENT OF ASSUMPTION OF OBLIGATIONS AND COSTS:

By signing below, the representative, or successor representative, if applicable, acknowledges that he or she, as representative or successor representative, assumes the right of disposition as defined in section 2108.70 of the Revised Code, and understands that he or she is liable for the reasonable costs of exercising the right, including any goods and services that are purchased.

ACCEPTANCE (OPTIONAL):

The undersigned hereby accepts this appointment as representative or successor representative, as applicable, for the right of disposition as defined in section 2108.70 of the Revised Code.

Signed this day of

Signature of representative (if
representative is a group of
persons, each person in the
group shall sign)

Signed this day of

Signature of successor
representative (if successor
representative is a group of
persons, each person in the
group shall sign)

WITNESSES:

I attest that the declarant signed or acknowledged this assignment of the
right of disposition under section 2108.70 of the Revised Code in my
presence and that the declarant is at least eighteen years of age and appears
to be of sound mind and not under or subject to duress, fraud, or undue
influence. I further attest that I am not the declarant's representative or
successor representative, I am at least eighteen years of age, and I am not
related to the declarant by blood, marriage, or adoption.

First witness:

Name (printed):

Residing at: _____

Signature:

Date:

Second witness:

Name (printed):

Residing at: _____

Signature:

Date:

OR

NOTARY ACKNOWLEDGMENT:

State of Ohio

County of SS.

On, before me, the undersigned notary public, personally
appeared, known to me or satisfactorily proven to be the person

whose name is subscribed as the declarant, and who has acknowledged that he or she executed this written declaration under section 2108.70 of the Revised Code for the purposes expressed in that section. I attest that the declarant is at least eighteen years of age and appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

Signature of notary public

.....

My commission expires on:

Sec. 2108.73. A written declaration executed by a declarant under section 2108.70 of the Revised Code shall be signed and dated by the declarant in the presence of either of the following:

(A) A notary public who shall make the certification described in section 147.53 of the Revised Code.

(B) Two witnesses who are adults and who are not related by blood, marriage, or adoption to the declarant.

Sec. 2108.74. A declarant who executes a written declaration in accordance with section 2108.73 of the Revised Code warrants the truthfulness of the entire content of the declaration.

Sec. 2108.75. (A) A person shall be disqualified from serving as a representative or successor representative, or from having the right of disposition for a deceased adult pursuant to section 2108.81 of the Revised Code, if any of the following occurs:

(1) The person dies.

(2) A probate court declares or determines that the person is incompetent.

(3) The person resigns or declines to exercise the right as described in section 2108.88 of the Revised Code.

(4) The person refuses to exercise the right within two days after notification of the declarant's death.

(5) The person cannot be located with reasonable effort.

(6) The person meets the criteria described in section 2108.76 or 2108.77 of the Revised Code.

(B) No owner, employee, or agent of a funeral home, cemetery, or crematory providing funeral, burial, or cremation services for a declarant shall serve as a representative or successor representative for the declarant unless the owner, employee, or agent is related to the declarant by blood, marriage, or adoption.

(C) Subject to divisions (C)(2) and (D)(2) of section 2108.70 of the Revised Code, if a person is disqualified from serving as the declarant's representative or successor representative, or from having the right of

disposition for a deceased adult pursuant to section 2108.81 of the Revised Code, as described in division (A) of this section, the right is automatically reassigned to, and vests in, the next person who has the right pursuant to the declarant's written declaration or pursuant to the order of priority in section 2108.81 of the Revised Code.

Sec. 2108.76. (A) Except as provided in division (B) of this section, if the person named as the declarant's representative or successor representative in a written declaration was the declarant's spouse at the time the declaration was executed, but is not the declarant's spouse at the time of the declarant's death, the former spouse shall no longer be qualified to serve as the declarant's representative or successor representative.

(B) Division (A) of this section shall not apply and a former spouse is qualified to serve as a declarant's representative or successor representative if the declarant signs and dates, after the termination of the marriage, a document stating the declarant's intent that the former spouse be the declarant's representative or successor representative. The document must be notarized or witnessed in accordance with the procedures described in section 2108.73 of the Revised Code.

Sec. 2108.77. If the person named as the declarant's representative or successor representative in a written declaration, or the person who has a deceased adult's right of disposition pursuant to section 2108.81 of the Revised Code, meets any of the following criteria, the person shall be disqualified from serving as the representative or successor representative, or from having the right:

(A)(1) Subject to division (A)(2) of this section, the person has been charged with murder, aggravated murder, or voluntary manslaughter.

(2) If the charges against the person described in division (A)(1) of this section are dismissed or if the person is acquitted of such charges, the right is restored to the person.

(B)(1) Subject to division (B)(2) of this section, the person has been charged with an act of domestic violence under section 2919.25 of the Revised Code and it has been alleged in the charging instrument or accompanying papers that the act resulted in or contributed to the declarant's death.

(2) If the charges against the person described in division (B)(1) of this section are dismissed or if the person is acquitted of such charges, the right is restored to the person.

(C) The person and the declarant or deceased adult are spouses and an action to terminate the marriage pursuant to Chapter 3105. of the Revised Code was pending at the time of the declarant's or deceased adult's death.

(D) The person and the declarant or deceased adult are spouses and a probate court, on the motion of any other person or its own motion, determines that the declarant's or deceased adult's spouse and the declarant were estranged at the time of the declarant's or deceased adult's death. As used in this division, "estranged" means that a declarant's or a deceased adult's spouse and the declarant or deceased adult were physically and emotionally separated from each other, at the time of the declarant's or deceased adult's death, and had been separated for a period of time that clearly demonstrates an absence of due affection, trust, and regard between spouse and the declarant or deceased adult.

Sec. 2108.78. If a declarant or deceased adult has made a valid declaration of an anatomical gift by will or any other document or means described in section 2108.04 of the Revised Code, any person to whom the declarant has assigned the right of disposition under section 2108.70 of the Revised Code, or who has the right as described in section 2108.81 of the Revised Code, is bound by the declaration of the anatomical gift and must follow the instructions associated with the gift before making any decisions or taking any other actions associated with the right.

Sec. 2108.79. (A) Subject to divisions (B) and (C) of this section, if a declarant's representative or successor representative is a group of people in whom the right of disposition has vested as described in section 2108.71 of the Revised Code, or if a class of persons has the right as described in section 2108.81 of the Revised Code, and the persons in the group or class disagree regarding how the right is to be exercised, the decisions of the majority of the persons in the group or class shall prevail.

(B) If, after reasonable efforts, less than all of the persons in a group or class described in division (A) of this section have been located, the decisions of the majority of the persons in the group or class who have been located prevail.

(C) If a majority of persons cannot reach a decision under division (A) or (B) of this section, the probate court of the county in which the declarant or deceased person resided at the time of death shall make the decision in accordance with the criteria set forth in division (B) of section 2108.82 of the Revised Code.

Sec. 2108.80. A declarant may revoke a written declaration executed under section 2108.70 of the Revised Code by indicating the declarant's desire to revoke the declaration in a document signed and dated by the declarant in the presence of either of the following:

(A) A notary public who shall make the certification described in section 147.53 of the Revised Code.

(B) Two witnesses who are adults and are not related by blood, marriage, or adoption to the declarant.

Sec. 2108.81. (A) If either of the following is true, division (B) of this section shall apply:

(1) An adult has not executed a written declaration pursuant to sections 2108.70 to 2108.73 of the Revised Code that remains in force at the time of the adult's death.

(2) Each person to whom the right of disposition has been assigned or reassigned pursuant to a written declaration is disqualified from exercising the right as described in section 2108.75 of the Revised Code.

(B) Subject to division (A) of this section and sections 2108.75 and 2108.79 of the Revised Code, the right of disposition is assigned to the following persons, if mentally competent adults who can be located with reasonable effort, in the order of priority stated:

(1) The deceased person's surviving spouse;

(2) The sole surviving child of the deceased person or, if there is more than one surviving child, all of the surviving children, collectively.

(3) The deceased person's surviving parent or parents;

(4) The deceased person's surviving sibling, whether of the whole or of the half blood or, if there is more than one sibling of the whole or of the half blood, all of the surviving siblings, collectively;

(5) The deceased person's surviving grandparent or grandparents;

(6) The lineal descendants of the deceased person's grandparents, as described in division (I) of section 2105.06 of the Revised Code;

(7) The person who was the deceased person's guardian at the time of the deceased person's death, if a guardian had been appointed;

(8) Any other person willing to assume the right of disposition, including the personal representative of the deceased person's estate or the licensed funeral director with custody of the deceased person's body, after attesting in writing that a good faith effort has been made to locate the persons in divisions (B)(1) to (7) of this section.

Sec. 2108.82. (A) Notwithstanding section 2108.81 of the Revised Code and in accordance with division (B) of this section, the probate court for the county in which the declarant or deceased person resided at the time of death may, on its own motion or the motion of another person, assign to any person the right of disposition for a declarant or deceased person.

(B) In making a determination for purposes of division (A) of this section and division (C) of section 2108.79 of the Revised Code, the court shall consider the following:

(1) Whether evidence presented to, or in the possession of the court,

demonstrates that the person who is the subject of the motion and the declarant or deceased person had a close personal relationship;

(2) The reasonableness and practicality of any plans that the person who is the subject of the motion may have for the declarant's or deceased person's funeral, burial, cremation, or final disposition, including the degree to which such plans allow maximum participation by all persons who wish to pay their final respects to the deceased person;

(3) The willingness of the person who is the subject of the motion to assume the responsibility to pay for the declarant's or deceased person's funeral, burial, cremation, or final disposition and the desires of that person;

(4) The convenience and needs of other families and friends wishing to pay their final respects to the declarant or deceased person;

(5) The express written desires of the declarant or deceased person.

(C) Except to the extent considered under division (B)(3) of this section, the following persons do not have a greater claim to the right of disposition than such persons otherwise have pursuant to law:

(1) A person who is willing to assume the responsibility to pay for the declarant's or deceased person's funeral, burial, cremation, or final disposition;

(2) The personal representative of the declarant or deceased person.

Sec. 2108.83. In the event of a dispute regarding the right of disposition, a funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a declarant's or deceased person's funeral, burial, cremation, or other manner of final disposition shall not be liable for damages of any kind for refusing to accept the remains, refusing to inter, cremate, or otherwise dispose of the remains, or refusing to complete funeral or other arrangements pertaining to final disposition until such funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person receives a court order or a written document that is executed by a person that the funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person reasonably believes has the right of disposition and that clearly expresses how the right of disposition is to be exercised.

Sec. 2108.84. If a funeral home, funeral director, crematory operator, or other person asked to assist with a declarant's or deceased person's funeral, burial, cremation, or other manner of final disposition is in possession of a declarant's or deceased person's remains while a dispute described in section 2108.83 of the Revised Code is pending, the funeral home, funeral director, crematory operator, or other person may embalm or refrigerate and shelter the remains to preserve them and may add the cost of embalming.

refrigeration, and sheltering to the final disposition costs to be charged.

Sec. 2108.85. (A) If a funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a declarant's or deceased person's funeral, burial, cremation, or other manner of final disposition brings a legal action for purposes of section 2108.83 or 2108.84 of the Revised Code, the funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person may add to the costs the person charges for the goods and services the person provided the legal fees, if reasonable, and the court costs that the person incurred.

(B) The right created by division (A) of this section shall neither be construed to require, nor impose a duty on, a funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a declarant's or deceased person's funeral, burial, cremation, or other manner of final disposition, to bring a legal action and such person shall not be held criminally or civilly liable for not bringing an action.

Sec. 2108.86. (A) A funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a declarant's funeral, burial, cremation, or other manner of final disposition has the right to rely on the content of a written declaration and the instructions of the person or group of persons whom the funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person reasonably believes has the right of disposition.

(B) If the circumstances described in division (A) of section 2108.81 of the Revised Code apply, a funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a deceased person's funeral, burial, cremation, or other manner of final disposition has the right to rely on the instructions of the person or group of persons the funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person reasonably believes has the right of disposition pursuant to section 2108.81 of the Revised Code.

(C) No funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a deceased person's funeral, burial, cremation, or other manner of final disposition, who relies, pursuant to divisions (A) and (B) of this section, in good faith on the contents of a written declaration or the instructions of the person or group of persons the funeral home, funeral director, crematory

operator, cemetery operator, cemetery organization, or other person reasonably believes has the right of disposition, shall be subject to criminal or civil liability or subject to disciplinary action for taking an action or not taking an action in reliance on such contents or instructions and for otherwise complying with sections 2108.70 to 2108.90 of the Revised Code.

Sec. 2108.87. (A) A funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a deceased person's funeral, burial, cremation, or other manner of final disposition may independently investigate the existence of, or locate or contact, the following persons:

(1) A representative or successor representative named in a written declaration;

(2) A person listed in section 2108.81 of the Revised Code.

(B) In no circumstances shall a funeral home, funeral director, crematory operator, cemetery operator, cemetery organization, or other person asked to assist with a deceased person's funeral, burial, cremation, or other manner of final disposition have a duty to independently investigate the existence of, or locate or contact, the persons described in division (A) of this section.

Sec. 2108.88. (A) A person to whom a declarant's or deceased person's right of disposition has been assigned or reassigned pursuant to section 2108.70 or 2108.81 of the Revised Code may decline to exercise the right or resign after beginning to exercise the right.

(B) A person described in division (A) of this section who resigns after beginning to exercise the right shall be subject to section 2108.89 of the Revised Code.

Sec. 2108.89. The following persons shall be liable for the reasonable costs of any goods or services purchased in connection with the exercise of the right of disposition for a declarant or deceased person:

(A) A representative or successor who assumes liability for the cost of such goods and services by signing a written declaration that states that such an assumption is made;

(B) A person to whom the right of disposition is assigned pursuant to section 2108.81 of the Revised Code and who has purchased goods or services associated with an exercise of the right.

Sec. 2108.90. Pursuant to division (A) of section 2101.24 of the Revised Code, the probate court for the county in which the declarant or deceased person resided at the time of death or the county in which a living person whose post-death arrangements are the subject of dispute resides shall have exclusive jurisdiction over any action that results from sections 2108.70 to

2108.89 of the Revised Code.

Sec. 2109.02. Every fiduciary, before entering upon the execution of a trust, shall receive letters of appointment from a probate court having jurisdiction of the subject matter of the trust.

The duties of a fiduciary shall be those required by law, and such additional duties as the court orders. Letters of appointment shall not issue until a fiduciary has executed a written acceptance of ~~his~~ the fiduciary's duties, acknowledging that ~~he~~ the fiduciary is subject to removal for failure to perform ~~his~~ the fiduciary's duties, and that ~~he~~ the fiduciary is subject to possible penalties for conversion of property ~~he~~ the fiduciary holds as a fiduciary. The written acceptance may be filed with the application for appointment.

No act or transaction by a fiduciary is valid prior to the issuance of letters of appointment to ~~him~~ the fiduciary. This section does not prevent an executor named in a will, ~~or~~ an executor nominated pursuant to a power as described in section 2107.65 of the Revised Code, or a person with the right of disposition under section 2108.70 or 2108.81 of the Revised Code from paying funeral expenses, or prevent necessary acts for the preservation of the trust estate prior to the issuance of such letters.

Sec. 2111.13. (A) When a guardian is appointed to have the custody and maintenance of a ward, and to have charge of the education of the ward if the ward is a minor, the guardian's duties are as follows:

- (1) To protect and control the person of the ward;
- (2) To provide suitable maintenance for the ward when necessary, which shall be paid out of the estate of such ward upon the order of the guardian of the person;
- (3) To provide such maintenance and education for such ward as the amount of the ward's estate justifies when the ward is a minor and has no father or mother, or has a father or mother who fails to maintain or educate the ward, which shall be paid out of such ward's estate upon the order of the guardian of the person;
- (4) To obey all the orders and judgments of the probate court touching the guardianship.

(B) Except as provided in section 2111.131 of the Revised Code, no part of the ward's estate shall be used for the support, maintenance, or education of such ward unless ordered and approved by the court.

(C) A guardian of the person may authorize or approve the provision to the ward of medical, health, or other professional care, counsel, treatment, or services unless the ward or an interested party files objections with the probate court, or the court, by rule or order, provides otherwise.

(D) ~~A~~ Unless a person with the right of disposition for a ward under section 2108.70 or 2108.81 of the Revised Code has made a decision regarding whether or not consent to an autopsy or post-mortem examination on the body of the deceased ward under section 2108.50 of the Revised Code shall be given, a guardian of the person of a ward who has died may consent to ~~an~~ the autopsy or post-mortem examination ~~upon the body of the deceased ward under section 2108.50 of the Revised Code and, if the,~~

(E) If a deceased ward did not have a guardian of the estate and, the estate is not required to be administered by a probate court, and a person with the right of disposition for a ward, as described in section 2108.70 or 2108.81 of the Revised Code, has not made a decision regarding the disposition of the ward's body or remains, the guardian of the person of the ward may authorize the burial or cremation of the ~~deceased~~ ward. ~~A~~

(F) ~~A~~ A guardian who gives consent or authorization as described in this division ~~divisions (D) and (E) of this section~~ shall notify the probate court as soon as possible after giving the consent or authorization.

Sec. 2113.031. (A) As used in this section:

(1) "Financial institution" has the same meaning as in section 5725.01 of the Revised Code. "Financial institution" also includes a credit union and a fiduciary that is not a trust company but that does trust business.

(2) "Funeral and burial expenses" means whichever of the following applies:

(a) The funeral and burial expenses of the decedent that are included in the bill of a funeral director;

(b) The funeral expenses of the decedent that are not included in the bill of a funeral director and that have been approved by the probate court;

(c) The funeral and burial expenses of the decedent that are described in divisions (A)(2)(a) and (b) of this section.

(3) "Surviving spouse" means either of the following:

(a) The surviving spouse of a decedent who died leaving the surviving spouse and no minor children;

(b) The surviving spouse of a decedent who died leaving the surviving spouse and minor children, all of whom are children of the decedent and the surviving spouse.

(B)(1) If the value of the assets of the decedent's estate does not exceed the lesser of ~~two~~ five thousand dollars or the amount of the decedent's funeral and burial expenses, any person who is not a surviving spouse and who has paid or is obligated in writing to pay the decedent's funeral and burial expenses, including a person described in section 2108.89 of the Revised Code, may apply to the probate court for an order granting a

summary release from administration in accordance with this section.

(2) If either of the following applies, the decedent's surviving spouse may apply to the probate court for an order granting a summary release from administration in accordance with this section:

(a) The decedent's funeral and burial expenses have been prepaid, and the value of the assets of the decedent's estate does not exceed the total of the following items:

(i) The allowance for support that is made under division (A) of section 2106.13 of the Revised Code to the surviving spouse and, if applicable, to the decedent's minor children and that is distributable in accordance with division (B)(1) or (2) of that section;

(ii) An amount, not exceeding ~~two~~ five thousand dollars, for the decedent's funeral and burial expenses referred to in division (A)(2)(c) of this section.

(b) The decedent's funeral and burial expenses have not been prepaid, the decedent's surviving spouse has paid or is obligated in writing to pay the decedent's funeral and burial expenses, and the value of the assets of the decedent's estate does not exceed the total of the items referred to in divisions (B)(2)(a)(i) and (ii) of this section.

(C) A probate court shall order a summary release from administration in connection with a decedent's estate only if the court finds that all of the following are satisfied:

(1) A person described in division (B)(1) of this section is the applicant for a summary release from administration, and the value of the assets of the decedent's estate does not exceed the lesser of ~~two~~ five thousand dollars or the amount of the decedent's funeral and burial expenses, or the applicant for a summary release from administration is the decedent's surviving spouse, and the circumstances described in division (B)(2)(a) or (b) of this section apply.

(2) The application for a summary release from administration does all of the following:

(a) Describes all assets of the decedent's estate that are known to the applicant;

(b) Is in the form that the supreme court prescribes pursuant to its powers of superintendence under Section 5 of Article IV, Ohio Constitution, and is consistent with the requirements of this division;

(c) Has been signed and acknowledged by the applicant in the presence of a notary public or a deputy clerk of the probate court;

(d) Sets forth the following information if the decedent's estate includes a described type of asset:

(i) If the decedent's estate includes a motor vehicle, the motor vehicle's year, make, model, body type, manufacturer's vehicle identification number, certificate of title number, and date of death value;

(ii) If the decedent's estate includes an account maintained by a financial institution, that institution's name and the account's complete identifying number and date of death balance;

(iii) If the decedent's estate includes one or more shares of stock or bonds, the total number of the shares and bonds and their total date of death value and, for each share or bond, its serial number, the name of its issuer, its date of death value, and, if any, the name and address of its transfer agent.

(3) The application for a summary release from administration is accompanied by all of the following that apply:

(a) A receipt, contract, written declaration as defined in section 2108.70 of the Revised Code, or other document that confirms the applicant's payment or obligation to pay the decedent's funeral and burial expenses or, if applicable in the case of the decedent's surviving spouse, the prepayment of the decedent's funeral and burial expenses;

(b) An application for a certificate of transfer as described in section 2113.61 of the Revised Code, if an interest in real property is included in the assets of the decedent's estate;

(c) The fee required by division (A)(59) of section 2101.16 of the Revised Code.

(4) At the time of its determination on the application, there are no pending proceedings for the administration of the decedent's estate and no pending proceedings for relief of the decedent's estate from administration under section 2113.03 of the Revised Code.

(5) At the time of its determination on the application, there are no known assets of the decedent's estate other than the assets described in the application.

(D) If the probate court determines that the requirements of division (C) of this section are satisfied, the probate court shall issue an order that grants a summary release from administration in connection with the decedent's estate. The order has, and shall specify that it has, all of the following effects:

(1) It relieves the decedent's estate from administration.

(2) It directs the delivery to the applicant of the decedent's personal property together with the title to that property.

(3) It directs the transfer to the applicant of the title to any interests in real property included in the decedent's estate.

(4) It eliminates the need for a financial institution, corporation, or other entity or person referred to in any provision of divisions (A) to (F) of section 5731.39 of the Revised Code to obtain, as otherwise would be required by any of those divisions, the written consent of the tax commissioner prior to the delivery, transfer, or payment to the applicant of an asset of the decedent's estate.

(E) A certified copy of an order that grants a summary release from administration together with a certified copy of the application for that order constitutes sufficient authority for a financial institution, corporation, or other entity or person referred to in divisions (A) to (F) of section 5731.39 of the Revised Code or for a clerk of a court of common pleas to transfer title to an asset of the decedent's estate to the applicant for the summary release from administration.

(F) This section does not affect the ability of qualified persons to file an application to relieve an estate from administration under section 2113.03 of the Revised Code or to file an application for the grant of letters testamentary or letters of administration in connection with the decedent's estate.

Sec. 2113.37. The probate court, in settlement of an ~~executor's or administrator's~~ account, may allow as a credit to ~~the executor or administrator~~ the following persons a just amount expended by ~~him~~ the person for a tombstone or monument for the deceased and a just amount paid by ~~him~~ the person to a cemetery association or corporation as a perpetual fund for caring for and preserving the lot on which the deceased is buried. ~~It~~:

(A) An executor;

(B) An administrator;

(C) A person with the right of disposition under section 2108.70 or 2108.81 of the Revised Code.

~~It~~ is not incumbent on ~~an executor or administrator~~ such a person to procure a tombstone or monument or to pay any sum into such fund.

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

(1) Costs and expenses of administration;

(2) An amount, not exceeding ~~two~~ four thousand dollars, for funeral expenses that are included in the bill of a funeral director, 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~~ three 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:

- (a) The purchase of a ~~place~~ right of interment;
- (b) Monuments or other markers;
- (c) The outer burial container;
- (d) The cost of opening and closing the place of interment;
- (e) The urn.

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

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

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

(6) If the total bill of a funeral director for funeral expenses exceeds ~~two~~ four thousand dollars, then, in addition to the amount described in division (A)(2) of this section, an amount, not exceeding ~~one~~ two thousand dollars, for funeral expenses that are included in the bill and that exceed ~~two~~ four thousand dollars;

(7) Personal property taxes, claims made under the estate recovery program instituted pursuant to section 5111.11 of the Revised Code, and obligations for which the decedent was personally liable to the state or any of its subdivisions;

(8) 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;

(9) Other debts for which claims have been presented and finally allowed.

(B) The part of the bill of a funeral director that exceeds the total of ~~three~~ six thousand dollars as described in divisions (A)(2) and (6) of this section, and the part of a claim included in division (A)(8) of this section that exceeds three hundred dollars shall be included as a debt under division (A)(9) of this section, depending upon the time when the claim for the additional amount is presented.

(C) Any natural person or fiduciary who pays a claim of any creditor described in division (A) of this section shall be subrogated to the rights of that creditor proportionate to the amount of the payment and shall be entitled to reimbursement for that amount in accordance with the priority of payments set forth in that division.

(D)(1) 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 (A)(2), (6), and (8) 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 (A)(4) and (7) of this section, of which the executor or administrator has knowledge, regardless of presentation.

(2) 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.

(E) 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.

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

Sec. 2117.251. A claim under the bill of a funeral director pursuant to section 2117.25 of the Revised Code arises subsequent to the death of the decedent and is not in satisfaction of a personal obligation of the individual during the individual's lifetime. If a decedent during the decedent's lifetime has purchased an irrevocable preneed funeral contract pursuant to section 1111.19 of the Revised Code, then those provisions of section 2117.25 of the Revised Code that relate to the bill of a funeral director, including divisions (A) and (B) of that section, do not apply to the estate of the decedent and the estate is not liable for the funeral expenses of the decedent.

Sec. 4511.451. (A) As used in this section, "funeral procession" means two or more vehicles accompanying the cremated remains or the body of a deceased person in the daytime when each of the vehicles has its headlights lighted and is displaying a purple and white or an orange and white pennant attached to each vehicle in such a manner as to be clearly visible to traffic approaching from any direction.

(B) Excepting public safety vehicles proceeding in accordance with section 4511.45 of the Revised Code or when directed otherwise by a police officer, pedestrians and the operators of all vehicles, street cars, and trackless trolleys shall yield the right of way to each vehicle that is a part of a funeral procession. Whenever the lead vehicle in a funeral procession lawfully enters an intersection, the remainder of the vehicles in the procession may continue to follow the lead vehicle through the intersection

notwithstanding any traffic control devices or right of way provisions of the Revised Code, provided that the operator of each vehicle exercises due care to avoid colliding with any other vehicle or pedestrian.

(C) No person shall operate any vehicle as a part of a funeral procession without having the headlights of the vehicle lighted and without displaying a purple and white or an orange and white pennant in such a manner as to be clearly visible to traffic approaching from any direction.

~~(C)(D)~~ Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

Sec. 4717.21. (A) Any person, on an antemortem basis, may serve as the person's own authorizing agent, authorize the person's own cremation, and specify the arrangements for the final disposition of the person's own cremated remains by executing an antemortem cremation authorization form. A guardian, custodian, or other personal representative who is authorized by law or contract to do so on behalf of a person, on an antemortem basis, may authorize the cremation of the person and specify the arrangements for the final disposition of the person's cremated remains by executing an antemortem cremation authorization form on the person's behalf. Any such antemortem cremation authorization form also shall be signed by one witness. The original copy of the executed authorization form shall be sent to the operator of the crematory facility being authorized to conduct the cremation, and a copy shall be retained by the person who executed the authorization form. The person who executed an antemortem cremation authorization form may revoke the authorization at any time by providing written notice of the revocation to the operator of the crematory facility named in the authorization form. The person who executed the authorization form may transfer the authorization to another crematory facility by providing written notice to the operator of the crematory facility named in the original authorization of the revocation of the authorization and, in accordance with this division, executing a new antemortem cremation authorization form authorizing the operator of another crematory facility to conduct the cremation.

(B)(1) Each antemortem cremation authorization form shall specify the final disposition that is to be made of the cremated remains.

(2) Every antemortem cremation authorization form entered into on or after the effective date of this amendment shall specify the final disposition that is to be made of the remains and shall include a provision in substantially the following form:

NOTICE: Upon the death of the person who is the subject of this antemortem cremation authorization, the person holding the right of disposition under section 2108.70 or 2108.81 of the Revised Code may cancel the cremation arrangements, modify the arrangements for the final disposition of the cremated remains, or make alternative arrangements for the final disposition of the decedent's body. However, the person executing this antemortem cremation authorization is encouraged to state his or her preferences as to the manner of final disposition in a declaration of the right of disposition pursuant to section 2108.72 of the Revised Code, including that the arrangements set forth in this form shall be followed.

~~(C) When (1) Except as provided in division (C)(2) of this section, when the operator of a crematory facility is in possession of a cremation authorization form that has been executed on an antemortem basis in accordance with this section, the other conditions set forth in division (A) of section 4717.23 of the Revised Code have been met, the crematory facility has possession of the decedent to which the antemortem authorization pertains, and the crematory facility has received payment for the cremation of the decedent and the final disposition of the cremated remains of the decedent or is otherwise assured of payment for those services, the crematory facility shall cremate the decedent and dispose of the cremated remains in accordance with the instructions contained in the antemortem cremation authorization form, unless a person identified as being entitled to act as the authorizing agent for the cremation of the decedent in the absence of the antemortem authorization under divisions (A)(1) or (A)(4) to (8) of section 4717.22 of the Revised Code has modified, in writing, the arrangements for the final disposition of the cremated remains of the decedent or has canceled the cremation and made alternative arrangements for the final disposition of the decedent's body.~~

(2) A person with the right of disposition for a decedent under section 2108.70 of the Revised Code who is not disqualified under section 2108.75 of the Revised Code may cancel the arrangements for the decedent's cremation, modify the arrangements for the final disposition of the decedent's cremated remains, or make alternative arrangements for the final disposition of the decedent's body. If a person with the right takes any such action, the operator shall disregard the instructions contained in the cremation authorization form and follow the instructions of the person with

the right.

(D) An antemortem cremation authorization form executed under division (A) of this section does not constitute a contract for conducting the cremation of the person named in the authorization form or for the final disposition of the person's cremated remains. Despite the existence of such an antemortem cremation authorization, a person identified under ~~divisions (A)(1) or (A)(4) to (8)~~ division (A) of section 4717.22 of the Revised Code as being entitled to act as the authorizing agent for the cremation of the decedent named in the antemortem authorization, in the descending order of priority in which they are listed, may modify, in writing, the arrangements for the final disposition of the cremated remains of the decedent set forth in the authorization form or may cancel the cremation and claim the decedent's body for purposes of making alternative arrangements for the final disposition of the decedent's body. The revocation of an antemortem cremation authorization form executed under division (A) of this section, or the cancellation of the cremation of the person named in the antemortem authorization or modification of the arrangements for the final disposition of the person's cremated remains as authorized by this division, does not affect the validity or enforceability of any contract entered into for the cremation of the person named in the antemortem authorization or for the final disposition of the person's cremated remains.

(E) Nothing in this section applies to any antemortem cremation authorization form executed prior to the effective date of this section. Any cemetery, funeral home, crematory facility, or other party may specify, with the written approval of the person who executed the antemortem authorization, that such an antemortem authorization is subject to sections 4717.21 to 4717.30 of the Revised Code.

Sec. 4717.22. (A) ~~The following persons, in the descending order of priority listed below, person who has the right of disposition under section 2108.70 or 2108.81 of the Revised Code~~ may serve as an authorizing agent for the cremation of a dead human body, including, without limitation, a dead human body that was donated to science for purposes of medical education or research:

- ~~(1) The spouse of the decedent at the time of the decedent's death;~~
- ~~(2) Any person acting on the instructions of a decedent who authorized the decedent's own cremation by executing an antemortem cremation authorization form in accordance with section 4717.21 of the Revised Code;~~
- ~~(3) A person serving as the executor or legal representative of the decedent's estate who is acting in accordance with the decedent's written instructions for the final disposition of the decedent's body;~~

~~(4) The decedent's surviving adult children. If the decedent is survived by more than one adult child, any of them who states on the cremation authorization form authorizing the cremation of the decedent executed in accordance with section 4717.24 of the Revised Code that all of the decedent's other adult children have been notified of the decedent's death and of the plans to cremate the decedent and that none of them have expressed an objection to the cremation may serve as the authorizing agent.~~

~~(5) The decedent's surviving parent or, if the decedent was under eighteen years of age at death, a surviving parent or the guardian or custodian of the decedent. If the decedent is survived by both parents, either of them may serve as the authorizing agent by stating on the cremation authorization form authorizing the cremation of the decedent executed in accordance with section 4717.24 of the Revised Code that the other parent has been notified of the decedent's death and of the plans to cremate the decedent and that the other parent expressed no objection to the cremation.~~

~~(6) The person in the next degree of kinship to the decedent in the order named in section 2105.06 of the Revised Code to inherit the estate of the decedent if the decedent had died intestate. If there is more than one person of that degree of kinship, any of them may serve as the authorizing agent.~~

~~(7) If the decedent was an indigent person or other person the final disposition of whose body is the responsibility of this state or a political subdivision of this state, the public officer or employee responsible for arranging the final disposition of the decedent's body;~~

~~(8) In the case of an individual who has donated the individual's body to science for purposes of medical education or research, or whose death occurred in a nursing home, rest home, or home for the aging licensed under Chapter 3721. of the Revised Code, an adult care facility licensed under Chapter 3722. of the Revised Code, or a hospital registered under section 3701.07 of the Revised Code, and who has executed an antemortem cremation authorization form in accordance with section 4717.21 of the Revised Code in which the medical education or research facility, nursing home, rest home, home for the aging, adult care facility, or hospital is designated to make arrangements for the final disposition of the decedent's body, a representative of that facility or institution;~~

~~(9) In the absence of any of the parties named in divisions (A)(1) to (8) of this section, any person willing to assume the responsibility of an authorizing agent under sections 4717.23 to 4717.30 of the Revised Code.~~

~~(B) If body parts were removed from a living person, the person from whom the body parts were removed or the guardian, custodian, or other personal representative of the person from whom the body parts were~~

~~removed who is authorized by law or contract to arrange for the disposition of the body parts~~ the person who has the right of disposition under section 2108.70 or 2108.81 of the Revised Code may serve as the authorizing agent for the cremation of the body parts.

(C) If body parts were removed from a decedent whose body was donated to science for purposes of medical education or research, the person who has the right of disposition under section 2108.70 or 2108.81 of the Revised Code may serve as the authorizing agent for the cremation of the body parts. In the absence of any action by the person with the right of disposition with respect to the cremation of such body parts, the medical education or research facility to which the decedent's body was donated may serve as the authorizing agent for the cremation of ~~the body~~ such parts.

SECTION 2. That existing sections 1111.19, 1721.211, 2101.24, 2106.20, 2108.50, 2109.02, 2111.13, 2113.031, 2113.37, 2117.25, 4511.451, 4717.21, and 4717.22 of the Revised Code are hereby repealed.

SECTION 3. Section 4511.451 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 322 and Am. Sub. S.B. 123 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in 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 _____