

As Reported by the Senate Finance Committee

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Sub. H. B. No. 168

Representative Stein

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

A BILL

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

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

Section 1. That sections 1721.21, 1721.211, 4717.03, 16
4717.13, 4717.14, 4717.36, 4767.01, 4767.02, 4767.03, 4767.04, 17
4767.05, 4767.06, 4767.07, and 4767.08 be amended and sections 18
4767.021, 4767.09, 4767.10, and 4767.11 of the Revised Code be 19
enacted to read as follows: 20

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

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

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

(a) A burial ground for earth interments; 27

(b) A mausoleum for crypt entombments; 28

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

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

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

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

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

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

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

alternative disposition. 43

(B) No person shall operate or continue to operate any 44
cemetery in this state unless an endowment care trust is 45
established and maintained as required by this section. 46

(C) Any person desiring to operate any cemetery that is 47
organized or developed after July 1, 1970, before offering to 48
sell or selling any burial lot, burial right, entombment right, 49
or columbarium right in that cemetery, shall first establish an 50
endowment care trust, segregated from other assets, and place in 51
that fund a minimum of fifty thousand dollars in cash or in 52
bonds of the United States, this state, or any county or 53
municipal corporation of this state. 54

Whenever any person described in this division has placed 55
another fifty thousand dollars in the endowment care trust out 56
of gross sales proceeds, in addition to the deposit required by 57
this division, that person, after submitting proof of this fact 58
to the trustees of the endowment care trust, may be paid a 59
distribution in the sum of fifty thousand dollars from the 60
endowment care trust. 61

(D) Any person desiring to operate or to continue to 62
operate any cemetery after July 1, 1970, shall place into the 63
endowment care trust as required by this section not less than 64
ten per cent of the gross sales proceeds received from the sale 65
of any burial lot, burial right, entombment right, or 66
columbarium right. This percentage shall be placed in the 67
endowment care trust no later than thirty days following the 68
month in which the entire gross sales are received. 69

(E) The trustees of the endowment care trust shall consist 70
of at least three individuals who have been residents of the 71

county in which the cemetery is located for at least one year, 72
or a trust company licensed under Chapter 1111. of the Revised 73
Code or a national bank or federal savings association that has 74
securities pledged in accordance with section 1111.04 of the 75
Revised Code. If the trustees are not a financial institution or 76
trust company, the trustees shall be bonded by a ~~corporate~~ 77
~~surety or fidelity bond, or insured under an insurance policy~~ 78
less any deductible, in an aggregate amount of not less than one 79
hundred per cent of the funds held by the trustees. The trustees 80
or their agent shall, on a continuous basis, keep exact records 81
as to the amount of funds under any joint account or trust 82
instrument being held for the individual beneficiaries showing 83
the amount paid, the amount deposited and invested, and accruals 84
and income. 85

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

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

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

(H) Except as provided in division (G) of this section, 101

this section does not apply to a family cemetery as defined in 102
section 4767.02 of the Revised Code, to any cemetery that is 103
owned and operated entirely and exclusively by churches, 104
religious societies, established fraternal organizations, 105
municipal corporations, or other political subdivisions of the 106
state, or to a national cemetery. 107

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

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

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

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

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

(c) That all principal and capital gains have remained in 130

the endowment care trust; 131

(d) That the endowment care trust has not been used to 132
collateralize or guarantee loans and has not otherwise been 133
subjected to any consensual lien; 134

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

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

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

established or is exempt from establishment pursuant to section 161
1721.21 of the Revised Code. 162

(B) Subject to the limitations and restrictions contained 163
in Chapters 1101. to 1127. of the Revised Code, a trust company 164
licensed under Chapter 1111. of the Revised Code or a national 165
bank or federal savings association that pledges securities in 166
accordance with section 1111.04 of the Revised Code or the 167
individuals described in division (C) (2) of this section have 168
the power as trustee to receive moneys under a preneed cemetery
merchandise and services contract and to hold and invest such
moneys in accordance with sections 2109.37 and 2109.371 of the 169
Revised Code ~~moneys under a preneed cemetery merchandise and~~ 170
~~services contract~~ or, if provided for in the instrument creating
the trust, in accordance with the Ohio Uniform Prudent Investor
Act. 171
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(C) (1) The greater of one hundred ten per cent of the 176
seller's actual cost or thirty per cent of the seller's retail 177
price of the merchandise and seventy per cent of the seller's 178
retail price of the services to be provided under a preneed 179
cemetery merchandise and services contract shall remain intact 180
as a fund and held in a preneed cemetery merchandise and
services trust until the death of the person for whose benefit 181
the contract is made or the merchandise is delivered as set 182
forth in division (K) of this section. However, any moneys held 183
pursuant to this section shall be released upon demand of the 184
person for whose benefit the contract was made or upon the 185
demand of the seller for its share of the moneys held and earned 186
interest if the contract has been canceled as set forth in 187
division (G) of this section. 188
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(2) The trustee of the ~~fund described in division (C) (1)~~ 190

~~of this section~~ preneed cemetery merchandise and services trust 191
shall be a trust company licensed under Chapter 1111. of the 192
Revised Code or a national bank or federal savings association 193
that pledges securities in accordance with section 1111.04 of 194
the Revised Code or at least three individuals who have been 195
residents of the county in which the seller is located for at 196
least one year, each of whom shall be bonded by a ~~corporate-~~ 197
~~surety fidelity bond, or insured under an insurance policy less~~ 198
any deductible, in an amount that is at least equal to the 199
amount deposited in the ~~fund-trust~~ of which those persons serve 200
as trustee. Amounts in the ~~fund-trust~~ shall be held and invested 201
in the manner in which trust funds are permitted to be held and 202
invested pursuant to sections 2109.37 and 2109.371 of the 203
Revised Code or, if provided for in the instrument creating the 204
trust, in accordance with the Ohio Uniform Prudent Investor Act. 205

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

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

(D) Within thirty days after the last business day of the 220

month in which the seller of cemetery merchandise or services 221
receives final contractual payment under a preneed cemetery 222
merchandise and services contract, the seller shall deliver the 223
greater of one hundred ten per cent of the seller's actual cost 224
or thirty per cent of the seller's retail price of the 225
merchandise and seventy per cent of the seller's current retail 226
price of the services as of the date of the contract to a 227
trustee or to trustees as described in division (C) (2) of this 228
section, and the moneys and accruals or income on the moneys 229
shall be held in a fund in a preneed cemetery merchandise and 230
services trust and designated for the person for whose benefit 231
the fund was established as a preneed cemetery merchandise and 232
services contract fund. 233

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

~~(F) (1) Except as provided in division (F) (2) of this~~ 248
~~section, the~~ The seller of merchandise or services under a 249
preneed cemetery merchandise and services contract shall 250
~~annually submit to the division of real estate of the department~~ 251

~~of commerce an affidavit in a form prescribed by the division,~~ 252
~~sworn under oath, specifying~~ ensure each of the following: 253

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

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

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

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

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

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

merchandise and services contract affidavit to the board of 281
embalmers and funeral directors along with or as part of the 282
annual preneed funeral contract report required under divisions 283
(I) and (J) of section 4717.31 of the Revised Code. 284

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

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

being held pursuant to divisions (C) and (D) of this section 312
shall be paid to the seller. If more than one person enters into 313
the contract, all of those persons must request cancellation for 314
it to be effective under this division. In such a case, the 315
seller shall refund to each person only those moneys that each 316
person has paid under the contract. 317

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

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

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

(K) For purposes of this section, the seller is considered 341

to have delivered merchandise pursuant to a preneed cemetery 342
merchandise and services contract when either of the following 343
occur: 344

(1) The seller makes actual delivery of the merchandise to 345
the beneficiary, or the seller pays for the merchandise and 346
identifies it as being stored for the benefit of the beneficiary 347
at a manufacturer's warehouse. 348

(2) The seller receives delivery of the merchandise on 349
behalf of the beneficiary, and all of the following occur: 350

(a) The merchandise is permanently affixed to or stored 351
upon the real property of a cemetery located in this state. 352

(b) The seller notifies the beneficiary of receipt of the 353
merchandise and identifies the specific location of the 354
merchandise. 355

(c) The seller at the time of the beneficiary's final 356
payment provides the beneficiary with evidence of ownership in 357
the beneficiary's name showing the merchandise to be free and 358
clear of any liens or other encumbrances. 359

(L) For purposes of this section, a seller is considered 360
to have performed services pursuant to a preneed cemetery 361
merchandise and services contract when the beneficiary's next of 362
kin signs a written statement that the services have been 363
performed or, if no next of kin of the beneficiary can be 364
located through reasonable diligence, when the owner or other 365
person responsible for the operation of the cemetery signs a 366
statement of that nature. 367

(M) Notwithstanding any other provision of this chapter, 368
any trust may be charged a trustee's fee, which is to be 369
deducted from the earned income or accruals on that trust. The 370

fee shall not exceed the amount that is regularly or usually 371
charged for similar services rendered by the trustee described 372
in division (C) (2) of this section when serving as a trustee. 373

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

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

(P) This section does not prohibit persons other than 402
cemetery corporations or associations from selling outer burial 403
containers, monuments, markers, urns, or other types of 404
merchandise customarily sold by cemeteries pursuant to a preneed 405
cemetery merchandise and services contract; however all sellers 406
of merchandise pursuant to a preneed cemetery merchandise and 407
services contract shall comply with this section unless the 408
seller is specifically exempt from this section. 409

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

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

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

(1) Serve as the board's chief administrative officer; 429

(2) Act as custodian of the board's records; 430

(3) Execute all of the board's orders;	431
(4) Employ staff who are not members of the board and who serve at the pleasure of the executive director to provide any assistance that the board considers necessary.	432 433 434
(C) In executing the board's orders as required by division (B) (3) of this section, the executive director may enter the premises, establishment, office, or place of business of any embalmer, funeral director, or crematory operator in this state. The executive director may serve and execute any process issued by any court under this chapter.	435 436 437 438 439 440
(D) The executive director may employ necessary inspectors, who shall be licensed embalmers and funeral directors. An inspector employed by the executive director may enter the premises, establishment, office, or place of business of any embalmer, funeral director, or crematory operator, embalming facility, funeral home, or crematory facility in this state, for the purposes of inspecting the facility and premises; the license, permit, and registration of embalmers, funeral directors, and crematory operators operating in the facility; and the license of the funeral home, embalming facility, or crematory facility and perform any other duties delegated to the inspector by the board or assigned to the inspector by the executive director. The executive director may enter the facility or premises of a funeral home, embalming facility, or crematory for the purpose of an inspection if accompanied by an inspector or, if an inspector is not available, when a situation presents a danger of immediate and serious harm to the public.	441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457
(E) The president of the board shall designate three of the board's members to serve on the crematory review board, which is hereby created, for such time as the president finds	458 459 460

appropriate to carry out the provisions of this chapter. Those 461
members of the crematory review board designated by the 462
president to serve and three members designated by the cemetery 463
dispute resolution commission shall designate, by a majority 464
vote, one person who holds a crematory operator permit, who is 465
experienced in the operation of a crematory facility, and who is 466
not affiliated with a cemetery or a funeral home to serve on the 467
crematory review board for such time as the crematory review 468
board finds appropriate. Members serving on the crematory review 469
board shall not receive any additional compensation for serving 470
on the board, but may be reimbursed for their actual and 471
necessary expenses incurred in the performance of official 472
duties as members of the board. Members of the crematory review 473
board shall designate one from among its members to serve as a 474
chairperson for such time as the board finds appropriate. Costs 475
associated with conducting an adjudicatory hearing in accordance 476
with division (F) of this section shall be paid from funds 477
available to the board of embalmers and funeral directors. 478

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

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

(2) Notice provided under division (B) of section 4717.14 489
of the Revised Code that the board of embalmers and funeral 490

directors proposes to refuse to grant or renew, or to suspend or 491
revoke, a license to operate a crematory facility; 492

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

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

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

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

of embalmers and funeral directors and entered on the record of 521
the proceedings. The board of embalmers and funeral directors 522
shall consider objections filed by the party prior to issuing a 523
final order. After reviewing the findings and advisory 524
recommendations of the crematory review board, the written 525
transcript of the crematory review board's proceedings, and any 526
objections filed by a party, the board of embalmers and funeral 527
directors shall issue a final order in the matter. Any party may 528
appeal the final order issued by the board of embalmers and 529
funeral directors in a matter described in divisions (F) (1) to 530
(4) of this section in accordance with section 119.12 of the 531
Revised Code, except that the appeal may be made to the court of 532
common pleas in the county in which is located the crematory 533
facility to which the final order pertains, or in the county in 534
which the party resides. 535

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

(H) If, as a result of its investigation conducted under 552
division (G) of this section, the board of embalmers and funeral 553
directors has reasonable cause to believe that the person 554
investigated is violating any provision of this chapter or any 555
rules adopted under this chapter governing or in connection with 556
embalming, funeral directing, cremation, funeral homes, 557
embalming facilities, or cremation facilities, or the operation 558
of funeral homes, embalming facilities, or crematory facilities, 559
it may, after providing the opportunity for an adjudicatory 560
hearing, issue an order directing the person to cease the acts 561
or practices that constitute the violation. The board shall 562
conduct the adjudicatory hearing in accordance with Chapter 119. 563
of the Revised Code except that, notwithstanding the provisions 564
of that chapter, the following shall apply: 565

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

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

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

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

board shall send written notice of the alleged violation to the 582
crematory review board. If, after the conclusion of the 583
adjudicatory hearing in the matter conducted under division (F) 584
of this section, the board of embalmers and funeral directors 585
finds that a person is in violation of any provision of this 586
chapter or any rules adopted under this chapter governing or in 587
connection with crematory operators, crematory facilities, or 588
cremation, the board may issue a final order under that division 589
directing the person to cease the acts or practices that 590
constitute the violation. 591

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

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

disobedience to the command of such a subpoena is the same as 613
for refusal to answer such a process issued under authority of 614
the court of common pleas. 615

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

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

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

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

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

supervision of an embalmer licensed by the board;	642
(3) Advertise or otherwise offer to provide or convey the impression that the person provides funeral directing services unless the person is licensed as a funeral director under this chapter and is employed by or under contract to a licensed funeral home and performs funeral directing services for that funeral home in a manner consistent with the advertisement, offering, or conveyance;	643 644 645 646 647 648 649
(4) Advertise or otherwise offer to provide or convey the impression that the person provides embalming services unless the person is licensed as an embalmer under this chapter and is employed by or under contract to a licensed funeral home or a licensed embalming facility and performs embalming services for the funeral home or embalming facility in a manner consistent with the advertisement, offering, or conveyance;	650 651 652 653 654 655 656
(5) Operate a funeral home without a license to operate the funeral home issued by the board under this chapter;	657 658
(6) Practice the business or profession of funeral directing from any place except from a funeral home that a person is licensed to operate under this chapter;	659 660 661
(7) Practice embalming from any place except from a funeral home or embalming facility that a person is licensed to operate under this chapter;	662 663 664
(8) Operate a crematory or perform cremation without a license to operate the crematory issued under this chapter;	665 666
(9) Cremate animals in a cremation chamber in which dead human bodies or body parts are cremated or cremate dead human bodies or human body parts in a cremation chamber in which animals are cremated;	667 668 669 670

(10) Hold a dead human body, before final disposition, for 671
more than forty-eight hours after the time of death unless the 672
dead human body is embalmed or placed into refrigeration and 673
maintained at a constant temperature of less than forty degrees; 674

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4767.04 of the Revised Code; 1148

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or insured as required. 1358

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

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

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

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

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

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

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

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

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

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

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

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

The chairperson or vice-chairperson may: 1443

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

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

commission shall perform all of the following duties: 1475

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

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

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

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

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

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

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

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

notwithstanding sections 121.22 and 149.43 of the Revised Code	1503
when the commission determines that the nature of the complaints	1504
merits that action;	1505
(8) Determining the method to be used in serving notices	1506
as required by section 4767.07 of the Revised Code;	1507
<u>(9) Conducting audits of financial records of a cemetery</u>	1508
<u>to ensure compliance with sections 1721.21 and 1721.211 of the</u>	1509
<u>Revised Code;</u>	1510
<u>(10) Establishing procedures for registrations and</u>	1511
<u>renewals.</u>	1512
(B) Publicize information concerning the existence and	1513
duties of the commission and the procedure for filing complaints	1514
pursuant to section 4767.07 of the Revised Code;	1515
(C) Conduct hearings on complaints pursuant to section	1516
4767.07 of the Revised Code;	1517
(D) Submit at least annually by the thirty-first day of	1518
March a report on the commission's activities of the immediately	1519
preceding calendar year to the governor and the majority and	1520
minority leaders of the senate and house of representatives. The	1521
report shall indicate the total number of complaints received,	1522
initiated, and investigated under sections 4767.07 and 4767.08	1523
of the Revised Code; the total number of complaints for which	1524
hearings were held; and the total number of referrals made to	1525
prosecuting attorneys, the attorney general, and the real estate	1526
commission pursuant to section 4767.08 of the Revised Code.	1527
(E) Review, at least once each year, all actions taken by	1528
the prosecuting attorneys, the attorney general, and the real	1529
estate commission in response to referrals made to them by the	1530
cemetery dispute resolution commission or by the superintendent	1531

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The size of the cemetery; 1630

(2) The type of cemetery; 1631

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COM DEPARTMENT OF COMMERCE 1722

Dedicated Purpose Fund Group				1723
5SE0 800648	Cemetery Grant Program	\$100,000	\$0	1724
TOTAL DPF	Dedicated Purpose Fund Group	\$100,000	\$0	1725
TOTAL ALL BUDGET	FUND GROUPS	\$100,000	\$0	1726

CEMETERY GRANT PROGRAM 1727

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

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

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

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