

AN ACT

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

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

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

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

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

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

(a) A burial ground for earth interments;

(b) A mausoleum for crypt entombments;

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

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

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

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

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

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

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

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

(C) Any person desiring to operate any cemetery that is organized or developed after July 1, 1970, before offering to sell or selling any burial lot, burial right, entombment right, or columbarium

right in that cemetery, shall first establish an endowment care trust, segregated from other assets, and place in that fund a minimum of fifty thousand dollars in cash or in bonds of the United States, this state, or any county or municipal corporation of this state.

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

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

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

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

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

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

(H) Except as provided in division (G) of this section, this section does not apply to a family cemetery as defined in section 4767.02 of the Revised Code, to any cemetery that is owned and operated entirely and exclusively by churches, religious societies, established fraternal organizations, municipal corporations, or other political subdivisions of the state, or to a national cemetery.

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

(J)(1) Annual reports of all the assets and investments of the endowment care trust shall be

prepared and maintained, and shall be available for inspection at reasonable times by any owner of interment rights in the cemetery.

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

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

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

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

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

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

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

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

(B) Subject to the limitations and restrictions contained in Chapters 1101. to 1127. of the Revised Code, a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that pledges securities in accordance with section 1111.04 of the Revised Code or the individuals described in division (C)(2) of this section have the power as trustee to receive 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 Revised Code ~~moneys under a preneed cemetery merchandise and services contract~~ or, if provided for in the instrument creating the trust, in accordance with the Ohio Uniform Prudent Investor Act.

(C)(1) The greater of one hundred ten per cent of the seller's actual cost or thirty per cent of the seller's retail price of the merchandise and seventy per cent of the seller's retail price of the services to be provided under a preneed cemetery merchandise and services contract shall remain

intact as a fund and held in a preneed cemetery merchandise and services trust until the death of the person for whose benefit the contract is made or the merchandise is delivered as set forth in division (K) of this section. However, any moneys held pursuant to this section shall be released upon demand of the person for whose benefit the contract was made or upon the demand of the seller for its share of the moneys held and earned interest if the contract has been canceled as set forth in division (G) of this section.

(2) The trustee of the ~~fund described in division (C)(1) of this section~~ preneed cemetery merchandise and services trust shall be a trust company licensed under Chapter 1111. of the Revised Code or a national bank or federal savings association that pledges securities in accordance with section 1111.04 of the Revised Code or at least three individuals who have been residents of the county in which the seller is located for at least one year, each of whom shall be bonded by a ~~corporate surety fidelity bond, or insured under an insurance policy less any deductible,~~ in an amount that is at least equal to the amount deposited in the ~~fund-trust~~ of which those persons serve as trustee. Amounts in the ~~fund-trust~~ shall be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to sections 2109.37 and 2109.371 of the Revised Code or, if provided for in the instrument creating the trust, in accordance with the Ohio Uniform Prudent Investor Act.

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

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

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

(E) The moneys received from more than one preneed cemetery merchandise and services contract may, at the option of the persons for whose benefit the contracts are made, be placed in a common or pooled trust fund in this state under a single trust instrument. If three individuals are designated as the trustees as provided in division (C)(2) of this section, they shall be bonded by a ~~corporate surety or fidelity bond, or insured under an insurance policy less any deductible,~~ in an aggregate amount of not less than one hundred per cent of the funds held by them as trustees. The trustees or their agent shall, on a continuous basis, keep exact records as to the amount of funds under

a single trust instrument being held for the individual beneficiaries showing the amount paid, the amount deposited and invested, and accruals and income.

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

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

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

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

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

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

(3) A licensed funeral director who sells preneed funeral contracts and who also sells merchandise or services under a preneed cemetery merchandise and services contract shall be deemed to have met the requirement in division (F)(~~1~~)(2) of this section by submitting the annual preneed cemetery merchandise and services contract affidavit to the board of embalmers and funeral directors along with or as part of the annual preneed funeral contract report required under divisions (I) and (J) of section 4717.31 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

(M) Notwithstanding any other provision of this chapter, any trust may be charged a trustee's fee, which is to be deducted from the earned income or accruals on that trust. The fee shall not

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

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

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

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

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

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

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

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

(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.

(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.

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

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

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

(2) Notice provided under division (B) of section 4717.14 of the Revised Code that the board of embalmers and funeral directors proposes to refuse to grant or renew, or to suspend or revoke, a license to operate a crematory facility;

(3) Notice provided under division (C) of section 4717.14 of the Revised Code that the board of embalmers and funeral directors has issued an order summarily suspending a crematory operator

permit or a license to operate a crematory facility;

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

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

The crematory review board shall submit a written report of findings and advisory recommendations, and a written transcript of its proceedings, to the board of embalmers and funeral directors. The board of embalmers and funeral directors shall serve a copy of the written report of the crematory review board's findings and advisory recommendations on the party to the adjudication or the party's attorney, by certified mail, within five days after receiving the report and advisory recommendations. A party may file objections to the written report with the board of embalmers and funeral directors within ten days after receiving the report. No written report is final or appealable until it is issued as a final order by the board of embalmers and funeral directors and entered on the record of the proceedings. The board of embalmers and funeral directors shall consider objections filed by the party prior to issuing a final order. After reviewing the findings and advisory recommendations of the crematory review board, the written transcript of the crematory review board's proceedings, and any objections filed by a party, the board of embalmers and funeral directors shall issue a final order in the matter. Any party may appeal the final order issued by the board of embalmers and funeral directors in a matter described in divisions (F)(1) to (4) of this section in accordance with section 119.12 of the Revised Code, except that the appeal may be made to the court of common pleas in the county in which is located the crematory facility to which the final order pertains, or in the county in which the party resides.

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

(H) If, as a result of its investigation conducted under division (G) of this section, the board of embalmers and funeral directors has reasonable cause to believe that the person investigated is violating any provision of this chapter or any rules adopted under this chapter governing or in connection with embalming, funeral directing, cremation, funeral homes, embalming facilities, or cremation facilities, or the operation of funeral homes, embalming facilities, or crematory facilities, it may, after providing the opportunity for an adjudicatory hearing, issue an order directing the person to cease the acts or practices that constitute the violation. The board shall conduct the adjudicatory

hearing in accordance with Chapter 119. of the Revised Code except that, notwithstanding the provisions of that chapter, the following shall apply:

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

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

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

(I) If, as a result of its investigation conducted under division (G) of this section, the board of embalmers and funeral directors has reasonable cause to believe that the person investigated is violating any provision of this chapter or any rules adopted under this chapter governing or in connection with crematory operators, crematory facilities, or cremation, the board shall send written notice of the alleged violation to the crematory review board. If, after the conclusion of the adjudicatory hearing in the matter conducted under division (F) of this section, the board of embalmers and funeral directors finds that a person is in violation of any provision of this chapter or any rules adopted under this chapter governing or in connection with crematory operators, crematory facilities, or cremation, the board may issue a final order under that division directing the person to cease the acts or practices that constitute the violation.

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

(K) The board of embalmers and funeral directors and the crematory review board may issue subpoenas for any person holding a license or permit under this chapter or persons holding themselves out as such, or for any other person whose testimony, in the opinion of either board, is necessary. The subpoena shall require the person to appear before the appropriate board or any designated member of either board, upon any hearing conducted under this chapter. The penalty for disobedience to the command of such a subpoena is the same as for refusal to answer such a process issued under authority of the court of common pleas.

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

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

expenditures.

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

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

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

(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;

(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;

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

(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;

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

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

(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;

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

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

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

(13) Engage in cremation as defined in section 4717.01 of the Revised Code unless the

person holds a crematory operator permit under this chapter:

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

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

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

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

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

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

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

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

(3) Accounts at banks or savings banks insured by the federal deposit insurance corporation, savings and loan associations insured by the federal savings and loan insurance corporation or the Ohio deposit guarantee fund, or credit unions insured by the national credit union administration or a credit union share guaranty corporation organized under Chapter 1761. of the Revised Code that are payable upon the death of the person for whose benefit deposits into the accounts were made.

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

(2) Within thirty days of the closing of a funeral home, no person who held the funeral home license for the closed funeral home shall negligently fail to transfer all preneed contracts to the funeral home or funeral homes that have been designated to assume the obligation of the preneed contracts. If the person who holds a funeral home license for a funeral home that is closed fails to designate a successor funeral home or funeral homes to assume the obligations of the preneed funeral

contracts, the board shall make such designations and order the transfer of the preneed funeral contracts to the designated funeral home or funeral homes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The board shall send to the crematory review board written notice that it proposes to

refuse to issue or renew, or proposes to suspend or revoke, a license to operate a crematory facility. If, after the conclusion of the adjudicatory hearing on the matter conducted under division (F) of section 4717.03 of the Revised Code, the board of embalmers and funeral directors finds that any of the circumstances described in divisions (A)(1) to (9) of this section apply to the person named in its proposed action, the board may issue a final order under division (F) of section 4717.03 of the Revised Code refusing to issue or renew, or suspending or revoking, the person's license to operate a crematory facility.

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

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

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

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

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

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

(D) If the board of embalmers and funeral directors suspends or revokes a funeral director's license or a license to operate a funeral home for any reason identified in division (A) of this section,

the board may file a complaint with the court of common pleas in the county where the violation occurred requesting appointment of a receiver and the sequestration of the assets of the funeral home that held the suspended or revoked license or the licensed funeral home that employs the funeral director that held the suspended or revoked license. If the court of common pleas is satisfied with the application for a receivership, the court may appoint a receiver.

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

(E) Any holder of a license or permit issued under this chapter who has pleaded guilty to, has been found by a judge or jury to be guilty of, or has had a judicial finding of eligibility for treatment in lieu of conviction entered against the individual in this state for aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or who has pleaded guilty to, has been found by a judge or jury to be guilty of, or has had a judicial finding of eligibility for treatment in lieu of conviction entered against the individual in another jurisdiction for any substantially equivalent criminal offense, is hereby suspended from practice under this chapter by operation of law, and any license or permit issued to the individual under this chapter is hereby suspended by operation of law as of the date of the guilty plea, verdict or finding of guilt, or judicial finding of eligibility for treatment in lieu of conviction, regardless of whether the proceedings are brought in this state or another jurisdiction. The board shall notify the suspended individual of the suspension of the individual's license or permit by the operation of this division by a delivery system or in person in accordance with section 119.07 of the Revised Code. If an individual whose license or permit is suspended under this division fails to make a timely request for an adjudicatory hearing, the board shall enter a final order revoking the license.

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

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

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

(B) A seller of a preneed funeral contract that stipulates a fixed or firm or guaranteed price for funeral services and funeral goods to be provided under a preneed funeral contract may charge an initial service fee not to exceed ten per cent of the total amount of all payments to be paid under the preneed funeral contract for such guaranteed price funeral services and funeral goods. If the amount to be paid by the purchaser is to be paid in installments, ~~not more than one-half of any payment may be applied to the seller may collect the initial service fee only after all of the installments have been paid.~~ only after all of the installments have been paid. ~~If the preneed funeral contract is revoked by the purchaser, any portion of the initial service fee that has not been paid under the preneed funeral contract is no longer due and payable to the seller.~~

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

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

- (1) A trust company licensed under Chapter 1111. of the Revised Code;
- (2) A national bank, federal savings bank, or federal savings association that pledges securities in accordance with section 1111.04 of the Revised Code;
- (3) A credit union authorized to conduct business in this state pursuant to Chapter 1733. of the Revised Code.

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

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

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

(G) If the purchaser of a preneed funeral contract that is revocable elects to cancel the contract, the purchaser shall provide a written notice to the seller of the contract and the trustee of the preneed funeral contract trust stating that the purchaser intends to cancel the contract. Fifteen days after the purchaser provides that notice to the seller and trustee, the purchaser may cancel the contract. Upon canceling a preneed funeral contract pursuant to this division, one of the following shall occur, as applicable:

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

(2) If the preneed funeral contract does stipulate a firm or fixed or guaranteed price for

funeral goods and funeral services to be provided under the contract, the purchaser may request and receive from the trustee all of the assets of the trust at the time of cancellation, less a cancellation fee that the original seller may collect from the trustee that is equal to or less than ten per cent of the value of the assets of the trust on the date the trust is cancelled, provided, however, that to the extent the original seller took an initial service fee as permitted by division (B) of this section, the aggregate amount of the cancellation fee and the initial service fee may not exceed ten per cent of the value of those assets. In addition to any cancellation fee, there may also be deducted any fees charged, distributions paid, and expenses incurred by the trustee pursuant to division (F) of this section.

If more than one purchaser enters into the contract, all of those purchasers must request cancellation of the contract for it to be effective under this division, and the trustee shall refund to each purchaser only those funds that purchaser has paid under the contract and any income earned on those funds in an amount that is in direct proportion to the amount of funds that purchaser paid relative to the total amount of payments deposited in that trust, less any fees charged, distributions paid, and expenses incurred by the trustee pursuant to division (F) of this section, the amount of which are in direct proportion to the amount of funds that purchaser paid relative to the total amount of payments deposited in that trust.

(H) The purchaser of a preneed funeral contract that is irrevocable may transfer the preneed funeral contract to a successor seller. A purchaser who elects to make such a transfer shall provide a written notice of the designation of a successor seller to the trustee and the original seller. Within fifteen days after receiving the written notice of the new designation from the purchaser, the trustee shall list the successor seller as the seller of the preneed funeral contract and the original seller shall relinquish and transfer all rights under the preneed funeral contract to the successor seller. The trustee shall confirm the transfer by providing written notice of the transfer to the original seller, the successor seller, and the purchaser. If the preneed funeral contract stipulates a firm or fixed or guaranteed price for the funeral goods and funeral services to be provided under the preneed funeral contract, the original seller may collect from the trustee a transfer fee from the trust that equals up to ten per cent of the value of the assets of the trust on the date the trust is transferred, provided, however, that to the extent the original seller took an initial service fee as permitted by division (B) of this section, the aggregate amount of the transfer fee and the initial service fee may not exceed ten per cent of the value of those assets. If the preneed funeral contract does not stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the preneed funeral contract, no transfer fee shall be collected by the original seller.

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

(J) If a seller receives a notice that the contract beneficiary has died and that funeral goods and funeral services have been provided by a provider other than the seller, except as otherwise specified in this section, the seller shall direct the trustee, within thirty days after receiving that

notice, to pay to the provider that provided the funeral goods and services, if still unpaid, or the estate of the contract beneficiary all funds held by the trustee, less any fees charged, distributions paid, and expenses incurred by the trustee pursuant to division (F) of this section. In the event the preneed funeral contract stipulates a firm or fixed or guaranteed price for funeral goods and funeral services that were to be provided under the preneed funeral contract, the seller may collect from the trustee a cancellation fee not exceeding ten per cent of the value of the assets of the trust on the date the trust is transferred, provided, however, that to the extent the original seller took an initial service fee as permitted by division (B) of this section, the aggregate amount of the transfer fee and the initial service fee shall not exceed ten per cent of the value of those assets. If the preneed funeral trust does not stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the preneed funeral contract, no cancellation fees shall be collected by the original seller.

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

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

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

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

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

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

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

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

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

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

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

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

~~(3)-(5)~~ Review applications for registration and issue registration certificates to cemeteries that meet the qualifications for registration pursuant to sections 4767.03 and 4767.04 of the Revised Code;

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

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

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

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

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

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

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

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

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

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

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

Sec. 4767.021. The Ohio cemetery dispute resolution commission or the superintendent of

the division of real estate in the department of commerce may compel, by order or subpoena, the production of any book, paper, or document in relation to any matter over which the commission or superintendent has jurisdiction and which is the subject of inquiry and investigation by the commission or superintendent. The commission or superintendent may also compel, by order or subpoena, the attendance of witnesses to testify in a hearing held under section 4767.07 of the Revised Code.

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

In addition to the powers granted to the commission and superintendent under this section, in case any person fails to file any statement or report, obey any subpoena, give testimony, answer questions, or produce any books, records, or papers as required by the commission or superintendent under this chapter, the court of common pleas of any county in the state, upon application made to it by the commission or superintendent setting forth such failure, may make an order awarding process of subpoena or subpoena duces tecum for the person to appear and testify before the commission or superintendent, and may order any person to give testimony and answer questions, and to produce books, records, or papers, as required by the commission or superintendent. Upon the filing of such order in the office of the clerk of the court of common pleas, the clerk, under the seal of the court, shall issue process of subpoena for the person to appear before the commission or superintendent at a time and place named in the subpoena, and each day thereafter until the examination of such person is completed. The subpoena may contain a direction that the witness bring with the witness to the examination any books, records, or papers mentioned in the subpoena. The clerk shall also issue, under the seal of the court, such other orders, in reference to the examination, appearance, and production of books, records, or papers, as the court directs. If any person so summoned by subpoena fails to obey the subpoena, to give testimony, to answer questions as required, or to obey an order of the court, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person charged with disobedience of any order or injunction issued by the court under this chapter. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.

Sec. 4767.03. (A)(1) The owner or the person responsible for the operation and maintenance of a cemetery shall apply to the division of real estate in the department of commerce to register the cemetery on forms prescribed by the division. With the application, the applicant shall submit the documentation required in division (A) of section 4767.04 of the Revised Code and a registration fee of twenty-five dollars for one cemetery, forty dollars for two cemeteries, and fifty dollars for three or more cemeteries, except that no fee shall be required of any political subdivision.

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

(B) Upon receipt of the completed application form, documentation, and, if required, registration fee, the division of real estate shall issue a certificate of registration to the applicant. The applicant shall display the certificate in a conspicuous place on the premises of the cemetery for which the registration was obtained, except that, if the applicant is the governing body of a political subdivision or person acting on behalf of that governing body, the certificate shall be kept on file and be available for public inspection at the office of the governing body.

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

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

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

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

- (1) The name of the cemetery;
- (2) The street address, city, village, or township, and county where the cemetery is located, and the mailing address if different from the street address;
- (3) The name and address of the person who owns the cemetery;
- (4) The name and address of the person responsible for the operation and maintenance of the cemetery;

(5) ~~A copy of the most recent annual report of the cemetery if required by the division of real estate pursuant to section 1721.211 of the Revised Code or cemetery's financial statement, including account statements, for the previous fiscal year if required by the Ohio cemetery dispute resolution commission division of real estate pursuant to section 1721.211 of the Revised Code. If the cemetery is owned by a cemetery company or association, a copy of the annual report financial statement, including account statements, for the previous fiscal year of all of the assets and investments of the endowment care trust of the company or association as prepared pursuant to division (J)(1) of section 1721.21 of the Revised Code shall be submitted to the division.~~

(6) A copy of the cemetery's current rules and regulations provided in written or electronic format;

(7) A copy of the cemetery's endowment care trust fund agreement required under section 1721.21 of the Revised Code and preneed cemetery merchandise and services trust fund agreement required under section 1721.211 of the Revised Code;

(8) If required under section 1721.21 or 1721.211 of the Revised Code, proof that trustees who are individuals are bonded or insured as required.

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

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

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

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

(2) Four members shall be individuals employed in a management position by a cemetery company or cemetery association. ~~Two of the four members shall be selected from a list of four names submitted to the governor by the Ohio cemetery association of cemeteries and two shall be selected from a list of four names submitted by the Ohio association of cemetery superintendents and officials.~~

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

(4) Two members, at least one of whom shall be at least sixty-five years of age, shall be

representatives of the public with no financial interest in the death care industry.

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

(B) Within ninety days after ~~the effective date of this section~~ July 1, 1993, the governor shall make initial appointments to the commission. Of the initial appointments, two shall be for terms ending ~~one year after the effective date of this section~~ July 1, 1994, two shall be for terms ending ~~two years after that date~~ July 1, 1995, two shall be for terms ending ~~three years after that date~~ July 1, 1996, and three shall be for terms ending ~~four years after that date~~ July 1, 1997. Thereafter, terms of office shall be for four years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the manner provided for original appointments, with each appointee, other than a representative of the public, being appointed from a list of two names submitted to the governor by the association or organization that was required to nominate candidates for initial appointment to the position that has become vacant. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first. No person shall serve as a member of the commission for more than two consecutive terms, excluding any term served to fill an initial appointment to a term of less than four years or an unexpired term caused by a vacancy.

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

The chairperson or vice-chairperson may:

- (1) Administer oaths;
- (2) Issue subpoenas;
- (3) Summon witnesses;
- (4) Compel the production of books, papers, records, and other forms of evidence;
- (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~~, and 4767.09 of the Revised Code.

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.

(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.

(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.

(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.

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

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

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

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

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

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

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

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

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

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

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

(10) Establishing procedures for registrations and renewals.

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

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

(D) Submit at least annually by the thirty-first day of March a report on the commission's activities of the immediately preceding calendar year to the governor and the majority and minority leaders of the senate and house of representatives. The report shall indicate the total number of complaints received, initiated, and investigated under sections 4767.07 and 4767.08 of the Revised

Code; the total number of complaints for which hearings were held; and the total number of referrals made to prosecuting attorneys, the attorney general, and the real estate commission pursuant to section 4767.08 of the Revised Code.

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

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

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

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

Sec. 4767.07. (A) Any person may file a complaint regarding the activity, practice, policy, or procedure of, or regarding an alleged violation of section 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, ~~or 4767.02, or 4767.09~~ of the Revised Code by, any person operating or maintaining a cemetery registered, or a cemetery that is not registered but is required to be registered pursuant to section 4767.03 of the Revised Code that adversely affects or may adversely affect the interest of an owner or family member of the owner of a cemetery lot or burial, entombment, or columbarium right. All complaints shall be in writing and submitted to the division of real estate in the department of commerce on forms provided by the division.

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

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

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

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

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

Sec. 4767.08. (A) The superintendent of the division of real estate in the department of commerce or the Ohio cemetery dispute resolution commission, on its—the superintendent's or commission's own motion or as a result of a complaint received pursuant to section 4767.07 of the

Revised Code and with good cause shown, shall investigate or cause to be investigated alleged violations of sections 1721.19, 1721.20, 1721.21, 1721.211, 4735.02, 4767.02, ~~and 4767.03, and 4767.09~~ of the Revised Code. If the commission or the superintendent ~~of the division of real estate in the department of commerce~~ believes that a violation has occurred, the commission or superintendent shall do all of the following:

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

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

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

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

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

Sec. 4767.09. (A) The owner or person responsible for the operation of a cemetery registered with the division of real estate in the department of commerce shall provide reasonable maintenance of the cemetery property and of all lots, graves, mausoleums, scattering grounds, and columbaria in the cemetery based on the type and size of the cemetery, topographic limitation, and contractual commitments with consumers.

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

(1) The size of the cemetery;

(2) The type of cemetery;

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

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

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

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

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

(C) The owner or person responsible for the operation of the cemetery registered with the division, in the course of providing reasonable maintenance, may not preclude the exercise of lawful rights by the owner of an interment, inurnment, or entombment right, or by the decedent's immediate

family or other heirs in accordance with the rules and regulations of the cemetery or other agreement of the cemetery authority.

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

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

Sec. 4767.10. (A) The cemetery grant fund is created in the state treasury. The division of real estate in the department of commerce shall deposit into the fund one dollar of each two dollars and fifty cents portion of the burial permit fee received under section 3705.17 of the Revised Code. The division shall use moneys in the fund to advance grants to cemeteries registered with the division to defray the costs of exceptional cemetery maintenance or training cemetery personnel in the maintenance and operation of cemeteries. The division may not provide a grant to a corporation or association that operates a cemetery for profit. In each fiscal year, the division may not advance grants totaling more than eighty per cent of the appropriation to the cemetery grant fund for that fiscal year. The division shall advance grants from the fund in accordance with rules adopted by the Ohio cemetery dispute resolution commission under Chapter 119. of the Revised Code.

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

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

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

The receiver shall only be paid from the income of interest and dividends in the endowment care trust being held pursuant to section 1721.21 of the Revised Code. The receiver may not invade the principal or capital gains of the trust.

SECTION 2. That existing sections 1721.21, 1721.211, 4717.03, 4717.13, 4717.14, 4717.36, 4767.01, 4767.02, 4767.03, 4767.04, 4767.05, 4767.06, 4767.07, and 4767.08 of the Revised Code

are hereby repealed.

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

COM DEPARTMENT OF COMMERCE

Dedicated Purpose Fund Group

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

CEMETERY GRANT PROGRAM

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

SECTION 4. Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in this act shall be accounted for as though made in H.B. 49 of the 132nd General Assembly.

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____