

S. B. No. 224
As Introduced

_____ moved to amend as follows:

- In line 1 of the title, after "sections" insert "1721.211," 1
- In line 4 of the title, delete ", 4717.31" 2
- In line 7 of the title, delete "and" 3
- In line 8 of the title, after "contracts" insert ", and preneed cemetery merchandise and services contracts" 4
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- In line 9, after "sections" insert "1721.211," 6
- In line 11, delete ", 4717.31" 7
- After line 12, insert: 8
- "**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 9
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customarily sold by cemeteries, or opening and closing services 17
is made either outright or on an installment basis, prior to the 18
death of the person so purchasing or for whom so purchased. 19
"Preneed cemetery merchandise and services contract" does not 20
include any preneed funeral contract or any agreement, contract, 21
or series of contracts pertaining to the sale of any burial lot, 22
burial or interment right, entombment right, or columbarium 23
right with respect to which an endowment care trust is 24
established or is exempt from establishment pursuant to section 25
1721.21 of the Revised Code. 26

(B) Subject to the limitations and restrictions contained 27
in Chapters 1101. to 1127. of the Revised Code, a trust company 28
licensed under Chapter 1111. of the Revised Code or a national 29
bank or federal savings association that pledges securities in 30
accordance with section 1111.04 of the Revised Code or the 31
individuals described in division (C) (2) of this section have 32
the power as trustee to receive moneys under a preneed cemetery 33
merchandise and services contract and to hold and invest such 34
moneys in accordance with sections 2109.37 and 2109.371 of the 35
Revised Code or, if provided for in the instrument creating the 36
trust, in accordance with the Ohio Uniform Prudent Investor Act. 37

(C) (1) ~~The greater of one hundred ten per cent of the 38
seller's actual cost or thirty per cent of the seller's retail 39
price of the merchandise and seventy per cent of the seller's 40
retail price of the services to be provided under a preneed 41
cemetery merchandise and services contract following amounts 42
shall remain intact as a fund and held in a preneed cemetery 43
merchandise and services trust until the death of the person for 44
whose benefit the contract is made or the merchandise is 45
delivered as set forth in division (K) of this section.;~~ 46

(a) One hundred per cent of the seller's retail price of a casket if the preneed cemetery merchandise and services contract stipulates a price other than a firm or fixed or guaranteed price; 47
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(b) The seller's retail price of a casket if the preneed cemetery merchandise and services contract stipulates a firm or fixed or guaranteed price, less any initial service fee charged pursuant to division (C) (4) of this section; 51
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(c) 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 all cemetery merchandise other than a casket to be provided under the preneed cemetery merchandise and services contract; 55
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(d) Seventy per cent of the seller's current retail price as of the date of the contract of the cemetery services to be provided under the preneed cemetery merchandise and services contract. 60
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However, any moneys held pursuant to this section shall be released upon demand of the purchaser or 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. 64
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(2) The trustee of the 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 70
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for at least one year, each of whom shall be bonded by a 76
fidelity bond, or insured under an insurance policy less any 77
deductible, in an amount that is at least equal to the amount 78
deposited in the trust of which those persons serve as trustee. 79
Amounts in the trust shall be held and invested in the manner in 80
which trust funds are permitted to be held and invested pursuant 81
to sections 2109.37 and 2109.371 of the Revised Code or, if 82
provided for in the instrument creating the trust, in accordance 83
with the Ohio Uniform Prudent Investor Act. 84

(3) Every preneed cemetery and merchandise contract 85
entered into on or after October 12, 2006, shall include a 86
provision in substantially the following form: 87

NOTICE: Under Ohio law, the person holding the right of 88
disposition of the remains of the beneficiary of this contract 89
pursuant to section 2108.70 or 2108.81 of the Revised Code will 90
have the right to purchase cemetery merchandise and services 91
inconsistent with the merchandise and services set forth in this 92
contract. However, the beneficiary is encouraged to state his or 93
her preferences as to the manner of final disposition in a 94
declaration of the right of disposition pursuant to section 95
2108.72 of the Revised Code, including that the arrangements set 96
forth in this contract shall be followed. 97

(4) A seller of a preneed cemetery merchandise and 98
services contract that stipulates a fixed or firm or guaranteed 99
price for a casket may charge an initial service fee not to 100
exceed ten per cent of the total amount of all payments to be 101
paid for the casket. 102

(D) Within thirty days after the last business day of the 103
month in which the seller of cemetery merchandise or services 104
receives final contractual payment under a preneed cemetery 105

merchandise and services contract, the seller shall deliver ~~the~~ 106
~~greater of one hundred ten per cent of the seller's actual cost~~ 107
~~or thirty per cent of the seller's retail price of the~~ 108
~~merchandise and seventy per cent of the seller's current retail~~ 109
~~price of the services as of the date of the contract~~ all amounts 110
required to be placed in a preneed cemetery merchandise and 111
services trust by division (C) (1) of this section, less any 112
initial service fee charged pursuant to division (C) (4) of this 113
section, to a trustee or to trustees as described in division 114
(C) (2) of this section, and the moneys and accruals or income on 115
the moneys shall be held in a fund in a preneed cemetery 116
merchandise and services trust and designated for the person for 117
whose benefit the fund was established as a preneed cemetery 118
merchandise and services contract fund. 119

(E) The moneys received from more than one preneed 120
cemetery merchandise and services contract may, at the option of 121
the persons for whose benefit the contracts are made, be placed 122
in a common or pooled trust fund in this state under a single 123
trust instrument. If three individuals are designated as the 124
trustees as provided in division (C) (2) of this section, they 125
shall be bonded by a fidelity bond, or insured under an 126
insurance policy less any deductible, in an aggregate amount of 127
not less than one hundred per cent of the funds held by them as 128
trustees. The trustees or their agent shall, on a continuous 129
basis, keep exact records as to the amount of funds under a 130
single trust instrument being held for the individual 131
beneficiaries showing the amount paid, the amount deposited and 132
invested, and accruals and income. 133

(F) (1) The seller of merchandise or services under a 134
preneed cemetery merchandise and services contract shall ensure 135
each of the following: 136

(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 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 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 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) (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. 166

(G) This division is subject to division (I) of this 167
section. 168

(1) Any person upon initially entering into a preneed 169
cemetery merchandise and services contract may, within seven 170
days, cancel the contract and request and receive from the 171
seller one hundred per cent of all payments made under the 172
contract. After the expiration of the above period, any person 173
who has entered into a preneed cemetery merchandise and services 174
contract may, on not less than fifteen days' notice, cancel the 175
contract and request and receive from the seller ~~sixty-the~~ 176
following: 177

(a) For funds placed into trust for the sale of a casket: 178

(i) If the contract does not stipulate a firm or fixed or 179
guaranteed price for the casket, one hundred per cent of the 180
assets of the trust attributable to the casket that exist at the 181
time of cancellation, less any fees charged and distributions 182
paid by the trustee pursuant to this section that are 183
attributable to the casket; 184

(ii) If the contract does stipulate a firm or fixed or 185
guaranteed price for the casket, all of the assets of the trust 186
attributable to the casket at the time of cancellation, less a 187
cancellation fee that the original seller may collect from the 188
trustee that is equal to or less than ten per cent of the value 189
of the assets of the trust attributable to the casket on the 190
date the trust is cancelled, provided, however, that to the 191
extent the original seller took an initial service fee as 192
permitted by division (C) (4) of this section, the aggregate 193
amount of the cancellation fee and the initial service fee may 194

not exceed ten per cent of the value of those assets 195
attributable to the casket. In addition to any cancellation fee, 196
there may also be deducted any fees charged and distributions 197
paid by the trustee pursuant to this section that are 198
attributable to the casket. 199

~~(b) For all other funds, per cent of the payments made~~ 200
~~under the contract which have been paid up to the time of~~ 201
~~cancellation~~the amounts required to be placed into trust 202
pursuant to division (C) of this section; except that, if a 203
preneed cemetery merchandise and services contract stipulates a 204
firm or fixed or guaranteed price for the merchandise or 205
services for future use at a time determined by the death of the 206
person on behalf of whom payments are made, the person who has 207
entered into the contract may, if the merchandise has not been 208
delivered or the services have not been performed as set forth 209
in division (K) or (L) of this section, on not less than fifteen 210
days' notice, cancel the contract and receive from the seller 211
~~sixty per cent of the principal paid pursuant to the contract~~ 212
~~the amounts required to be placed into trust pursuant to~~ 213
~~division (C) of this section~~ and not less than eighty per cent 214
of any interest paid, up to the time of cancellation, and not 215
less than eighty per cent of any accrual or income earned while 216
the moneys have been held pursuant to divisions (C) and (D) of 217
this section, up to the time of cancellation. ~~Upon~~ 218

(2) Upon cancellation, after the moneys have been 219
distributed to the beneficiary pursuant to this division, all 220
remaining moneys being held pursuant to divisions (C) and (D) of 221
this section shall be paid to the seller. If more than one 222
person enters into the contract, all of those persons must 223
request cancellation for it to be effective under this division. 224
In such a case, the seller shall refund to each person only 225

those moneys that each person has paid under the contract. 226

(H) Upon receipt of a ~~certified~~ copy of the certificate of 227
death or evidence or certification by the seller of delivery or 228
storage of the merchandise or performance of the services 229
pursuant to division (K) or (L) of this section, or notification 230
of a request to cancel the contract pursuant to division (G) of 231
this section, the trustee described in division (C) (2) of this 232
section or its agent, shall forthwith pay the fund and 233
accumulated interest, if any, to the person entitled to them 234
under the preneed cemetery merchandise and services contract. 235
The payment of the fund and accumulated interest pursuant to 236
this section, either to a seller or person making the payments, 237
shall relieve the trustee of any further liability on the fund 238
or accumulated interest. 239

~~(I)~~ (I) (1) Notwithstanding any other provision of this 240
section, any preneed cemetery merchandise and services contract 241
may specify that it is irrevocable. All irrevocable preneed 242
cemetery merchandise and services contracts shall include a 243
clear and conspicuous disclosure of irrevocability in the 244
contract and any person entering into an irrevocable preneed 245
cemetery merchandise and services contract shall sign a separate 246
acknowledgment of the person's waiver of the right to revoke. If 247
a contract satisfies the requirements of this division, division 248
(G) of this section does not apply to that contract. 249

(2) If an irrevocable preneed cemetery merchandise and 250
services contract includes the sale of a casket, the purchaser 251
may transfer the funding that was placed into trust for the 252
purchase of the casket, plus any interest or income earned 253
thereon, to a successor seller. A purchaser who elects to make 254
such a transfer shall provide a written notice of the 255

designation of a successor seller to the trustee and the 256
original seller. Within fifteen days after receiving the written 257
notice of the new designation from the purchaser, the trustee 258
shall transfer the trust assets attributable to the casket to 259
the designated trustee of the successor seller, and the original 260
seller shall relinquish and transfer all rights to those trust 261
assets to the successor seller. If the preneed cemetery 262
merchandise and services contract stipulates a firm or fixed or 263
guaranteed price for the casket, the original seller may collect 264
from the trustee a transfer fee from the trust that equals up to 265
ten per cent of the trust assets attributable to the casket, 266
provided, however, that to the extent the original seller took 267
an initial service fee as permitted by division (C) (4) of this 268
section, the aggregate amount of the transfer fee and the 269
initial service fee shall not exceed ten per cent of the value 270
of the trust assets attributable to the casket. If the preneed 271
cemetery merchandise and services contract does not stipulate a 272
firm or fixed or guaranteed price for the casket, no transfer 273
fee shall be collected by the original seller. 274

(J) Any preneed cemetery merchandise and services contract 275
that involves the payment of money shall be in writing and in 276
compliance with the laws and rules of this state. 277

(K) For purposes of this section, the seller is considered 278
to have delivered merchandise pursuant to a preneed cemetery 279
merchandise and services contract when ~~either~~ any of the 280
following occur: 281

(1) ~~The~~ For merchandise other than a casket, the seller 282
makes actual delivery of the merchandise to the beneficiary, or 283
the seller pays for the merchandise and identifies it as being 284
stored for the benefit of the beneficiary at a manufacturer's 285

warehouse.	286
(2) The <u>For merchandise other than a casket, the seller</u>	287
receives delivery of the merchandise on behalf of the	288
beneficiary, and all of the following occur:	289
(a) The merchandise is permanently affixed to or stored	290
upon the real property of a cemetery located in this state.	291
(b) The seller notifies the beneficiary of receipt of the	292
merchandise and identifies the specific location of the	293
merchandise.	294
(3) <u>For a casket, the seller makes actual delivery to the</u>	295
<u>beneficiary.</u>	296
(c) The seller at the time of the beneficiary's final	297
payment provides the beneficiary with evidence of ownership in	298
the beneficiary's name showing the merchandise to be free and	299
clear of any liens or other encumbrances.	300
(L) For purposes of this section, a seller is considered	301
to have performed services pursuant to a preneed cemetery	302
merchandise and services contract when the beneficiary's next of	303
kin signs a written statement that the services have been	304
performed or, if no next of kin of the beneficiary can be	305
located through reasonable diligence, when the owner or other	306
person responsible for the operation of the cemetery signs a	307
statement of that nature.	308
(M) Notwithstanding any other provision of this chapter,	309
any trust may be charged a trustee's fee, which is to be	310
deducted from the earned income or accruals on that trust. The	311
fee shall not exceed the amount that is regularly or usually	312
charged for similar services rendered by the trustee described	313

in division (C) (2) of this section when serving as a trustee. 314

(N) The general assembly intends that this section be 315
construed as a limitation upon the manner in which a person is 316
permitted to accept moneys in prepayment for merchandise and 317
services to be delivered or provided in the future, or 318
merchandise and services to be used or provided in connection 319
with the final disposition of human remains, to the end that at 320
all times members of the public may have an opportunity to 321
arrange and pay for merchandise and services for themselves and 322
their families in advance of need while at the same time 323
providing all possible safeguards whereunder the prepaid moneys 324
cannot be dissipated, whether intentionally or not, so as to be 325
available for the payment for merchandise and services and the 326
providing of merchandise and services used or provided in 327
connection with the final disposition of dead human bodies. 328

(O) This section does not apply to the seller or provider 329
of merchandise or services under a preneed cemetery merchandise 330
and services contract if the contract pertains to a cemetery 331
that is owned and operated entirely and exclusively by an 332
established and legally cognizable church or denomination that 333
is exempt from federal income taxation under section 501(c) (3) 334
of the "Internal Revenue Code of 1954," 26 U.S.C.A. 501, an 335
established fraternal organization, or a municipal corporation 336
or other political subdivision of the state, to a cemetery that 337
is a national cemetery, or to a cemetery that is a family 338
cemetery as defined in section 4767.02 of the Revised Code; 339
provided that, on a voluntary basis, rules and other measures 340
are adopted to safeguard and secure all moneys received under a 341
preneed cemetery merchandise and services contract. 342

(P) This section does not prohibit persons other than 343

cemetery corporations or associations from selling outer burial 344
containers, monuments, markers, urns, or other types of 345
merchandise customarily sold by cemeteries pursuant to a preneed 346
cemetery merchandise and services contract; however all sellers 347
of merchandise pursuant to a preneed cemetery merchandise and 348
services contract shall comply with this section unless the 349
seller is specifically exempt from this section. 350

(Q) Any contract for preneed services or merchandise 351
entered into with a cemetery not registered under section 352
4767.03 of the Revised Code is voidable." 353

Delete lines 1381 through 1479 354

In line 1731, after "sections" insert "1721.211," 355

In line 1733, delete ", 4717.31" 356

The motion was _____ agreed to.

SYNOPSIS 357

Preneed cemetery merchandise and services contracts 358
involving caskets 359

R.C. 1721.211 and 4717.31 360

Preneed cemetery merchandise and services trusts 361

Requires a seller to place the following amounts in trust: 362

-100% of the retail price of a casket, if the preneed 363
cemetery merchandise and services contract stipulates a price 364
other than a firm or fixed or guaranteed price; 365

-The seller's retail price of a casket, if the preneed cemetery merchandise and services contract stipulates a firm or fixed or guaranteed price, less any initial service fee charged.

Initial service fee

Permits a seller of a preneed cemetery merchandise and services contract that stipulates a fixed or firm or guaranteed price to charge an initial service fee not to exceed 10% of the total contract amount.

Refunds

-Caskets

If a purchaser cancels a contract involving the sale of a casket more than seven days after entering the contract, requires the seller to refund the following amounts:

-For a contract that does not stipulate a firm price, 100% of trust assets attributable to the casket less any fees charged and distributions paid by the trustee that are attributable to the casket;

-For a contract that does stipulate a firm price, all trust assets attributable to the casket less the following:

--A cancellation fee that, together with the initial service fee, does not exceed 10% of the value of the trust assets attributable to the casket;

--Any fees charged and distributions paid by the trustee that are attributable to the casket.

-Other contracts

If a purchaser cancels any other contract, requires the seller to refund the following amounts:

-If the contract stipulates a price other than a firm or fixed or guaranteed price, the amounts required to be placed into trust, instead of 60% of payments made under current law;	393 394 395
-If the contract stipulates a firm or fixed or guaranteed price, the amounts required to be placed into trust, instead of 60% of the principal paid under current law, plus at least 80% of interest paid and 80% of any accrual or income earned.	396 397 398 399
-Who can request refund	400
Allows the purchaser, in addition to the beneficiary under current law, to request a refund.	401 402
Contract transfer	403
Allows a purchaser to transfer to a successor seller the funding for an irrevocable contract that involves the sale of a casket.	404 405 406
Requires a purchaser to provide written notice to the trustee and the original seller of the transfer.	407 408
Requires the trustee to transfer the trust assets attributable to the casket to the designated trustee of the successor seller within 15 days of the notice.	409 410 411
Requires the original seller to relinquish and transfer all rights to the trust assets to the successor seller within 15 days of the notice.	412 413 414
For contracts stipulating a firm price, permits the original seller to collect a transfer fee from the trust that, together with any initial service fee, does not exceed 10% of the trust assets attributable to the casket.	415 416 417 418
For contracts that do not stipulate a firm price,	419

prohibits the original seller from collecting a transfer fee. 420

Delivery of caskets 421

States that a seller is considered to have made delivery 422

of a casket only if the seller makes actual delivery to the 423

beneficiary. 424