



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Alyssa Bethel

Sub. H.B. 168

132nd General Assembly
(As Passed by the General Assembly)

Reps. Stein, Boccieri, Brenner, Hambley, LaTourette, Seitz, Arndt, Carfagna, O'Brien, Blessing, Antonio, Boyd, Brown, Craig, Cupp, Edwards, Galonski, Ginter, Green, Greenspan, Hill, Holmes, Howse, Ingram, Lang, Leland, Manning, Patterson, Ramos, Reineke, Retherford, Riedel, Sprague, Sweeney, West

Sens. Beagle, Tavares, Hackett, Hoagland, Manning, Oelslager, Peterson, Terhar

Effective date: October 29, 2018; appropriations effective July 30, 2018

ACT SUMMARY

Cemetery Law

- Establishes the Cemetery Grant Program to be administered by the Division of Real Estate in the Department of Commerce provide funds to cemeteries to defray the costs of exceptional maintenance or training cemetery personnel in cemetery maintenance and operation.
- Creates the Cemetery Grant Fund to be used for the Grant Program, appropriates \$100,000 to the Fund, and requires the Division to deposit into the Fund \$1 of each \$2.50 burial permit fee the Division receives.
- Requires a cemetery to provide reasonable maintenance of cemetery property and of all lots, graves, mausoleums, scattering grounds, and columbaria in the cemetery.
- Requires a cemetery to maintain electronic or paper records about interment, entombment, or inurnment right owners and records indicating a deceased's name, place of death, and date and location of interment, entombment, or inurnment.

* This version updates the effective date.

- Requires a cemetery to submit, with its annual registration application with the Division, its rules and regulations, a copy of its endowment care trust fund agreement and preneed cemetery merchandise and services trust fund agreement, and proof that individual trustees are bonded or insured.
- Modifies the annual expiration of each cemetery's registration to now occur on September 30 each year rather than June 30 as under prior law.
- Requires a cemetery to place in trust the funds that continuing law requires it to retain under a preneed cemetery merchandise and services contract.
- Requires individual trustees for endowment care trusts and preneed cemetery merchandise and services trusts to be bonded by a fidelity bond rather than a corporate surety, or insured under an insurance policy.
- Requires trustees to hold and invest funds in an endowment care trust or preneed cemetery merchandise and services trust in accordance with the Ohio Uniform Prudent Investor Act, if the instrument that creates the trust so provides.
- Requires the Superintendent of the Division of Real Estate to maintain an Investigation and Audit Section to conduct investigations of cemeteries, and requires the Section to audit a cemetery's financial records for compliance with endowment care trusts and preneed cemetery merchandise and services trusts.
- Requires the Investigation and Audit Section to maintain confidentiality of information and documents it obtains or creates, and provides the information and documents are not public records.
- Allows the Superintendent to issue a registration to the purchaser of an existing cemetery if the purchaser submits the purchaser's agreement with the seller (required under continuing law) that provides for the continued preservation of the endowment care trust funds and preneed contract moneys.
- Requires the Superintendent generally to administer the Cemetery Registration Law, and eliminates the requirement that the Superintendent adopt rules under the Administrative Procedure Act to carry out the Law.
- Allows the Division to investigate a cemetery that has ceased operation in order to appoint a temporary receiver or trustee.
- Expands the subpoena authority of the Superintendent and Cemetery Dispute Resolution Commission.



- Allows any person adversely affected by the unlawful action of a cemetery that is not registered but that is required to be registered to file a complaint with the Division, whereas prior law allows complaints only for registered cemeteries.
- Defines "human remains" for purposes of the law governing cemetery associations and cemetery registration.

Board of Embalmers and Funeral Directors

- Notwithstanding Ohio's Open Meetings Law to allow the Board of Embalmers and Funeral Directors to suspend a license or permit, if the licensee or permit holder presents a danger of immediate and serious harm to the public, by holding a telephone conference call to review the allegations and vote.
- Prohibits any person from engaging in cremation unless the person holds an Ohio crematory operator permit.
- Prohibits any person from engaging in the business or profession of funeral directing, engaging in embalming, or operating a crematory or performing cremation with a lapsed license.
- Changes the degree of mental culpability from purposely to recklessly for violations of the embalmers, funeral directors, and crematory licensing laws for which the Board may suspend, revoke, refuse to grant or renew a license or permit, or may require the license or permit holder to take corrective action.
- Allows a coroner to order a funeral home to hold a body rather than make disposition of it within 30 days after taking custody, as required under continuing law.
- Specifies that a preneed funeral contract seller may collect the initial service fee from a purchaser who is paying installments only after all the installments have been paid.
- Specifies that a quorum of the Board, which consists of four members under continuing law, must contain three members who are funeral directors rather than three members who are funeral directors *and embalmers* as under prior law.

TABLE OF CONTENTS

Cemetery Grant Program.....	4
Cemetery maintenance requirement	4
Registration.....	5
Funds held in trust	6



Investigation and Audit Section	6
Transfer of cemetery ownership	7
Superintendent of Division of Real Estate	7
Receiver or trustee when cemetery ceases operation	8
Subpoena power	8
Miscellaneous	9
Board of Embalmers and Funeral Directors	10

CONTENT AND OPERATION

Cemetery Grant Program

The act establishes the Cemetery Grant Program to be administered by the Division of Real Estate in the Department of Commerce. The program is to provide grants to registered cemeteries to defray the costs of exceptional cemetery maintenance or training cemetery personnel in cemetery maintenance and operation. For-profit cemeteries are not eligible to receive grants under the Program. The Division must advance grants under rules the Ohio Cemetery Dispute Resolution Commission adopts under the Administrative Procedure Act.¹

The Cemetery Grant Fund the act creates initially is appropriated \$100,000, and the act requires the Division to deposit into the Fund \$1 of each \$2.50 burial permit fee the Division receives. The Division may provide grants each fiscal year totaling up to 80% of the amount appropriated to the Fund in that fiscal year. The Director of Commerce can increase this percentage by rule if the total amount generated exceeds the amount the Division needs to administer the Program. The Director may later decrease the percentage, but not below 80%.²

Cemetery maintenance requirement

The act requires cemeteries to provide reasonable maintenance of cemetery property and of all lots, graves, mausoleums, scattering grounds, and columbaria in the cemetery. The Division and Commission determine whether a cemetery is reasonably maintained by considering the size and type of cemetery; the extent and use of available financial resources; the contractual obligations for care and maintenance of the cemetery; the standard of maintenance of similarly situated cemeteries; and the suggested maintenance guidelines the Commission publishes under continuing law.³ A cemetery that is dedicated as a nature preserve must provide reasonable maintenance in

¹ R.C. Chapter 119.

² R.C. 3705.17, not in the act, 4767.10, 4767.02(B)(3), and Sections 3 and 4.

³ R.C. 4767.06(H).



accordance with the cemetery's regulations or master plan. The act specifies that a cemetery may not provide maintenance in a way that precludes 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 or other agreement of the cemetery.

The act also requires cemeteries to maintain electronic or paper records in the cemetery's office about 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. Electronic records must be true copies of original documents.⁴

A cemetery that violates the reasonable maintenance requirement may be subject to investigation by the Division and Commission under the existing process for investigating violations.⁵

Registration

The act requires a cemetery to submit to the Division additional items with its annual registration application. A cemetery must submit general information including its location and financial information under continuing law and must update that information within 30 days of any change. The act requires that a cemetery additionally submit its rules, a copy of its endowment care trust fund agreement and preneed cemetery merchandise and services trust fund agreement, and proof that individual trustees are bonded or insured. Under the act, a cemetery must provide any revision to the additional items required under the act with the cemetery's annual registration renewal. And, rather than requiring a cemetery to provide its most recent annual report as under prior law, the act requires a cemetery to provide its financial statement for the previous fiscal year.⁶

A cemetery's annual registration expired on June 30 under prior law. The act changes the annual expiration date to September 30.⁷

The act expressly requires the Commission to adopt rules to establish procedures for cemetery registration and annual renewal.⁸

⁴ R.C. 4767.09.

⁵ R.C. 4767.05(C)(5), 4767.07, and 4767.08(A).

⁶ R.C. 4767.04.

⁷ R.C. 4767.03(C).



Funds held in trust

Continuing law requires cemeteries to retain a certain amount of moneys received under preneed cemetery merchandise and services contracts (110% of the seller's actual cost, or 30% of the seller's retail price of merchandise and 70% of the retail price of services to be provided under the contract). The act requires that these moneys be held in a trust,⁹ as is the case under continuing law for the funds a cemetery maintains in its endowment care trust.¹⁰ Prior law required an individual who served as trustee for an endowment care trust or preneed contract funds being retained to be bonded by a corporate surety for at least the amount for which the individual was responsible. The act modifies this to require a trustee to be bonded by a fidelity bond instead of a corporate surety, or to be insured under an insurance policy.¹¹ And, the act requires the trustees to hold and invest funds in an endowment care trust or preneed cemetery merchandise and services trust in accordance with the Ohio Uniform Prudent Investor Act,¹² if the instrument creating the trust so provides.¹³ Continuing law requires that the funds otherwise be held and invested in accordance with Ohio law generally governing trust investments by a fiduciary.¹⁴ Finally, the act expressly requires the Commission to adopt rules for conducting audits of a cemetery's financial records to ensure the cemetery complies with Ohio law regarding endowment care trusts and preneed cemetery merchandise and services trusts.¹⁵

Investigation and Audit Section

The act requires the Superintendent of the Division of Real Estate in the Department of Commerce to establish and maintain an Investigation and Audit Section to conduct investigations of cemeteries;¹⁶ the Division has authority to conduct

⁸ R.C. 4767.06(A)(10).

⁹ R.C. 1721.211(C)(1).

¹⁰ R.C. 1721.21(C).

¹¹ R.C. 1721.21(E) and 1721.211(C)(2) and (E). The insurance policy must cover the individual for at least the amount for which the individual is responsible, less any deductible. For instance, if the individual is responsible for \$1 million, and the insurance policy deductible is \$100,000, the individual must be insured for at least \$1.1 million.

¹² R.C. Chapter 5809.

¹³ R.C. 1721.21(E) and 1721.211(B).

¹⁴ R.C. 2109.37 and 2109.371, not in the act.

¹⁵ R.C. 4767.06(A)(9).

¹⁶ R.C. 4767.02(B)(11).



investigations under continuing law.¹⁷ The Investigation and Audit Section also must audit the financial records of a cemetery at least once every five years to determine compliance with the requirements for endowment care trusts and preneed cemetery merchandise and services trusts.¹⁸ The investigators, auditors, and other personnel must keep confidential any information obtained during an investigation, inspection, audit, or other inquiry, and any report, documents, or work product the Division creates. The information and other items are not subject to disclosure as public records under the Public Records Act.¹⁹

Transfer of cemetery ownership

When cemetery ownership is transferred from one party to another, continuing law requires: (1) an audit of the cemetery's funds held in the endowment care trust and the moneys retained under a preneed cemetery merchandise and services contract, and (2) the buyer and seller to formulate an agreement providing for the continued funding of the cemetery's endowment care trust and preneed cemetery merchandise and services contract retained funds.²⁰ Under prior law, the Superintendent could not issue a registration certificate to the buyer of the cemetery until the Superintendent received financial statements audited by a CPA (certified public accountant) showing that the cemetery had properly deposited and maintained funds for its endowment care trust and the preneed cemetery merchandise and services contracts as required. The act provides that the Superintendent may issue a registration if the Superintendent receives *either* the financial statements, as under prior law, or the buyer and seller's agreement regarding the maintenance of the endowment care trust and preneed cemetery merchandise and services contract funds.²¹

Superintendent of Division of Real Estate

Rather than prior law that required the Superintendent to adopt, amend, and rescind rules under the Administrative Procedure Act²² to carry out the Cemetery

¹⁷ R.C. 4767.07.

¹⁸ R.C. 4767.02(B)(11). Public cemeteries are subject to audit by the Auditor of State at least once every two fiscal years. R.C. 117.11, not in the act.

¹⁹ R.C. 149.43, not in the act, and 4767.02(C).

²⁰ R.C. 4767.06(G).

²¹ R.C. 4767.02(B)(10).

²² R.C. Chapter 119.



Registration Law, the act requires the Superintendent generally to administer the Law, and to issue orders necessary to implement the Law.²³

Receiver or trustee when cemetery ceases operation

The act allows the Division, upon receipt of information that a cemetery's owner or person responsible for its operation has ceased operation of that cemetery, to investigate to determine 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 its management, 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 must order the trustee or trustees of the cemetery's endowment care trust to make distributions to the receiver or trustee.

The receiver is paid only from the income of interest and dividends in the endowment care trust; the receiver may not invade the principal or capital gains of the trust.²⁴

Subpoena power

The act elaborates on the subpoena authority of the Superintendent and Commission. Continuing law allows the Commission chairperson or vice-chairperson to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other forms of evidence.²⁵ When investigating complaints and conducting investigations, the Superintendent could under prior law issue subpoenas and compel the production of books, papers, records, and other forms of evidence after consulting with a majority of the Commission members.²⁶ Finally, with the Commission's advice and consent, the Division could under prior law subpoena cemetery personnel to attend hearings before the Commission.²⁷ The act eliminates the latter two items, and provides general subpoena power to the Superintendent and Commission as described below.

²³ R.C. 4767.02(B)(1) and (2).

²⁴ R.C. 4767.11.

²⁵ R.C. 4767.05(C).

²⁶ R.C. 4767.08(D).

²⁷ R.C. 4767.02(B)(9), under prior law.



Under the act, the Commission or Superintendent 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 that is the subject of inquiry and investigation by the Commission or Superintendent, and may compel the attendance of witnesses to testify during complaint hearings.²⁸ They may administer oaths, compel the attendance of witnesses, and compel the production of any book, paper, or document in the same manner a county judge may. A sheriff or constable may serve the subpoena or service may be made by certified mail, return receipt requested; the subpoena is considered served on the date delivery is made or the date the recipient refuses to accept delivery. Witnesses who appear before the Commission or Superintendent receive a daily amount of \$6 (half day) or \$12 (full day) and mileage reimbursement at 50.5¢ per mile.²⁹ If any person does not comply with a subpoena, the Commission or Superintendent may ask the court of common pleas to order the person to comply. If any person does not comply with the court's request, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person. 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.³⁰

Miscellaneous

Continuing law allows any person adversely affected by the unlawful action of a *registered* cemetery to file a complaint with the Division. The act expands this to include any cemetery that is not registered but that is required to be registered.³¹

The act provides a definition for "human remains," a term used in various provisions governing cemetery associations and cemetery registration. The definition is "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."³²

²⁸ R.C. 4767.07(C).

²⁹ R.C. 119.094, not in the act.

³⁰ R.C. 4767.021.

³¹ R.C. 4767.07(A).

³² R.C. 1721.21(A)(7) and 4767.01(A).



The act updates a reference to the former Ohio Association of Cemetery Superintendents and Officials to reflect the Association's merger into what is now the Ohio Cemetery Association.³³

Board of Embalmers and Funeral Directors

The act notwithstanding Ohio's Open Meetings Law to allow the Board of Embalmers and Funeral Directors to suspend a license or permit, in cases where the licensee's or permit holder's continued practice presents a danger of immediate and serious harm to the public, by utilizing a telephone conference call to review the allegations and vote.³⁴ Under Open Meetings Law, all meetings of a public body, including the Board, must be open to the public and members must be present in person to be considered present and to vote. And, any formal action taken by a public body is invalid unless adopted in an open meeting.³⁵

The act prohibits any person from engaging in cremation unless the person holds an Ohio crematory operator permit,³⁶ and specifies that no person may engage in the business or profession of funeral directing, engage in embalming, or operate a crematory or perform cremation with a lapsed license.³⁷

The act changes the degree of mental culpability from purposely to recklessly for violations of the embalmers, funeral directors, and crematory licensing laws for which the Board may suspend, revoke, refuse to grant or renew a license or permit, or may require the license or permit holder to take corrective action.³⁸

Continuing law requires a funeral home to make disposition of a dead body not later than 30 days after taking custody of the body unless the person with the right of disposition orders otherwise. The act allows a coroner to order otherwise as well.³⁹

The act specifies that a preneed funeral contract seller may collect the initial service fee from a purchaser who is paying installments only after all the installments have been paid, and removes two prior law restrictions: (1) that only one-half of any

³³ R.C. 4767.05(A)(2).

³⁴ R.C. 4717.14(C).

³⁵ R.C. 121.22(C) and (H), not in the act.

³⁶ R.C. 4717.13(A)(13).

³⁷ R.C. 4717.13(A)(14).

³⁸ R.C. 4717.14(A)(3).

³⁹ R.C. 4717.13(A)(12).



installments could be applied to the initial service fee and (2) that if a contract was revoked by the purchaser, the remaining due portion of the initial service fee was no longer due and payable to the seller.⁴⁰ The act also specifies that payments intended to a trustee of a preneed funeral contract trust alternatively may be made by payment to the trustee's designated depository.⁴¹

The act provides that a quorum of the Board, which consists of four members under continuing law, must contain three members who are funeral directors rather than three members who are funeral directors *and embalmers* as under prior law.⁴²

HISTORY

ACTION	DATE
Introduced	03-29-17
Reported, H. State & Local Gov't	06-06-17
Reported, H. Finance	09-21-17
Passed House (91-3)	10-24-17
Reported, S. Finance	02-28-18
Passed Senate (32-0)	06-27-18

18-HB168-UPDATED-132.docx/ts

⁴⁰ R.C. 4717.36(B).

⁴¹ R.C. 4717.36(C).

⁴² R.C. 4717.03(A).

