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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Cirino

Yosef Schiff, Attorney

### SUMMARY

#### Preneed funeral contracts

- Requires, whenever there are funds left over following performance of a preneed funeral contract, the holder of the funds to pay the remaining funds to the seller of the contract, who must then deposit those funds into a trust or purchase insurance or annuity policies to fund additional preneed funeral contracts.
- Adds the person with the right of disposition of the deceased person's body as a possible payee for purposes of the continuing requirement that, if funeral goods or services are provided by someone other than the seller of a preneed funeral contract that was funded by a trust, the seller direct the trustee to pay the money in trust to certain persons.
- Clarifies that except for filing an annual report with the Board of Embalmers and Funeral Directors (Board), a cemetery company or cemetery association that sells funeral goods, including caskets, pursuant to a preneed funeral contract is subject to all other requirements that apply to such sales.
- Authorizes a mistaken payee of funds intended to fund a preneed funeral contract to sign over the mistaken payment to the appropriate entity.
- Allows the \$10 preneed funeral contract fee to be paid by any method, including cash.
- Requires the Board to adopt rules governing preneed funeral contracts.

#### Funeral professionals

- Provides that a facility that is closing must give notice to various parties regarding any unclaimed cremated remains.
- Requires the Board to add the violation of specified license transfer requirements to its list of violations for which it establishes commensurate forfeitures.

- Increases the fee to reactivate an embalmer's or funeral director's license from \$140 to \$200.
- Requires the Board to issue reciprocal licenses if certain criteria are met.
- Requires, rather than permits, the Board to determine under what conditions a courtesy card permit is to be issued to funeral directors in bordering states.
- Permits the Board to take disciplinary action against a licensee who provided services to a person knowing that those services were sold to that person by another person who lacked a license.
- Eliminates the requirement that a funeral director, embalmer, or crematory operator conspicuously display their name at the primary entrance to their facility.
- Limits the requirement that an identification tag be provided for cremated remains to vessels that contain all the remains or more than ten cubic inches of remains.
- Changes the retention period for receipts for acceptance of a dead body and delivery of cremated remains to the shorter of ten years or the time the crematory remains in business.
- Provides a qualified immunity from civil liability for funeral professionals and facilities when a cremation was performed in accordance with the laws governing the disposition of cremated remains.
- Replaces the requirement that a writing designating a new cremation authorizing agent be acknowledged by a notary public with a requirement that the writing be signed by a witness.

## **Right of disposition**

- Disqualifies a person from serving as a decedent's representative to manage the decedent's final disposition (i.e., burial, cremation, and funeral arrangements) if either of following occur:
  - The person refuses to assume financial responsibility for the costs of the final disposition.
  - The person fails to exercise their rights as representative within 48 hours of being notified of the decedent's death (or 72 hours if there is no notification).
- Removes consideration of a person's willingness to assume financial responsibility for the costs of a decedent's final disposition from the factors that a probate court must consider when the court assigns the right of disposition.

## **Funeral vehicles**

- Authorizes a funeral hearse and a funeral escort vehicle to be equipped with and display a flashing, oscillating, or rotating purple light (in addition to an amber light authorized by current law).

## Fetal death certificates

- Allows a funeral director to apply for a fetal death certificate and burial permit.

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## DETAILED ANALYSIS

### Preneed funeral contracts

A preneed funeral contract is a contract for certain funeral services or goods to be used in connection with the funeral or final disposition of a dead person, where payment for the goods or services is made prior to the person's death. Only a funeral director may sell a preneed funeral contract that includes funeral services, but other entities, such as cemeteries, may sell preneed funeral contracts that do not include funeral services. The contract can be funded in a number of ways. The contract can be funded through an insurance policy or an annuity. Or the purchaser can pay the cost directly, either in a single payment or through installments; if this approach is used, the seller is required to place the money in a preneed funeral contract trust, with the trustee being a state-licensed trust company; a national bank, federal savings bank, or (sometimes) federal savings association; or a state-licensed credit union.<sup>1</sup>

The bill makes changes relating to how these funds must be used, certain reports, mistaken payees, and the collection of fees.

### Excess and unpaid funds

The bill provides that when there are funds left over after performance of a preneed funeral contract, the entity holding the excess funds must pay them directly to the seller of the preneed funeral contract. The seller then must deposit them into a trust or purchase insurance or annuity policies to fund additional preneed funeral contracts.<sup>2</sup>

Under current law, if the seller of a preneed funeral contract using a preneed funeral contract trust receives notice that the funeral goods and services have been provided by someone else, the seller must direct the trustee holding the funds to pay that provider, if still unpaid, or the beneficiary's estate all funds minus incurred costs. The bill adds a third option: paying the person with the right of disposition of the body. Thus, under the bill, that money must go to the provider, if still unpaid, the beneficiary's estate, *or the person with the right of disposition*. The person with the right of disposition is the person assigned by a court as described in "**Court assignment of the right of disposition**" below to direct the disposition of a decedent's remains.<sup>3</sup> (Also see "**Right of disposition**," below.)

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<sup>1</sup> R.C. 4717.31 and 4717.36(D); R.C. 4717.01(T) and 4717.32(B), not in the bill.

<sup>2</sup> R.C. 4717.35 and 4717.36(K).

<sup>3</sup> R.C. 4717.36(J); R.C. 2108.81 and 2108.70, not in the bill.

## **Cemeteries subject to preneed funeral contract requirements**

Current law requires the seller of a preneed funeral contract to report its preneed sales on an annual basis to the Board of Embalmers and Funeral Directors (Board). Current law also requires a cemetery company or association to submit certain documents annually to the Department of Commerce's Division of Real Estate. However, a cemetery company or association that sells both preneed cemetery merchandise and services contracts and preneed funeral contracts meets the first requirement if it instead submits the preneed sales report to the Division of Real Estate along with its other annual submissions. The bill clarifies that although a cemetery company or association need not file the annual report with the Board, a cemetery company or association that sells funeral goods, including caskets, pursuant to a preneed funeral contract is still subject to all other requirements that apply to such sales. In other words, just because it is not required to submit its report to the Board does not mean it is exempt from other requirements.<sup>4</sup>

### **Purchase of preneed funeral contract**

#### **Mistaken payee**

As noted above, a preneed funeral contract made by direct purchase requires the seller to create a preneed funeral contract trust for the funds. Current law generally requires all payments by a purchaser of a preneed funeral contract made through direct purchase to be made payable only to the trustee of the preneed funeral contract trust or to the trustee's depository. If the direct purchaser mistakenly makes payment in the form of a check made payable to the seller, the seller may, within five business days of receiving the check, sign over and forward the check to the trustee or the trustee's designated depository.

Similarly, if a preneed funeral contract is to be funded by the purchase of an insurance policy, existing law requires the insurance agent selling the policy to require the purchaser to make payment in a form payable only to the insurance company. Under the bill, if the purchaser made payment in the form of a check made payable to the seller, the seller may, within five business days of receiving the check, sign over and forward the check to the insurance company designated in the contract.<sup>5</sup>

#### **Preneed funeral contract fee**

Under continuing law, the Board must charge and collect a \$10 fee for each preneed funeral contract except for those funded by the assignment of an existing insurance policy; in other words, preneed funeral contracts funded by an annuity or through direct purchase are subject to this \$10 fee. Current law requires all payments by a purchaser of a preneed funeral contract made through direct purchase, *except for the initial service fee or sales tax*, to be made by 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 depository. The bill expands the list of

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<sup>4</sup> R.C. 4717.31(K); R.C. 4717.01, not in the bill.

<sup>5</sup> R.C. 4717.35 and 4717.36(C)(1).

exceptions to include the \$10 fee. In other words, the \$10 fee, along with the initial service fee and sales tax, may be paid by any method, including cash.<sup>6</sup>

### **Rules relating to preneed funeral contracts**

The bill requires the Board to adopt rules to include requirements for the sale of preneed funeral services and preneed funeral goods, the content and funding of preneed funeral contracts, and the payment and administration of preneed funeral funds.<sup>7</sup>

### **Funeral professionals**

The bill makes a number of changes to the law regarding embalmers, funeral directors, and crematory operators (funeral professionals) relating to the closure of facilities, transfer of licenses or locations, licenses, disposal of cremated remains, recordkeeping, and a qualified immunity for funeral professionals and facilities.

#### **Requirements for a facility that is closing**

If a facility requiring a license under the funeral professionals law is going out of business, the bill imposes requirements on the person in charge of the facility in relation to unclaimed cremated remains the facility possesses. Under the bill, within 30 days prior to closure, the person must send a written notice to the last known address of the person who executed the cremation authorization form or who is designated to receive the cremated remains. The notice must contain all of the following:

- A statement that the funeral business is going out of business and will close;
- The expected date of closure;
- The manner in which the unclaimed cremated remains will be disposed and, if applicable, the location from which the cremated remains can be retrieved.

If the person in charge cannot comply with the notice requirement or locate the required last known address, the person in charge may seek a declaratory judgment to dispose of the remains from the probate court in the county in which the facility is located.

Within 30 days prior to closing, the person who held the license for the facility must dispose of all unclaimed cremated remains as designated in the notice. If the remains are unclaimed for longer than 60 days the licensee must dispose of the remains, in a manner consistent with the laws governing disposition of cremated remains.

Under the bill, within 30 days prior to the closure, the person who holds the license must submit to the Board of Embalmers and Funeral Directors a clearly enumerated account of any unclaimed cremated remains the facility possesses and a copy of the above notice. The bill prohibits a licensee from negligently failing to comply with this requirement.

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<sup>6</sup> R.C. 4717.36(C)(1).

<sup>7</sup> R.C. 4717.04(A)(15).

Under continuing law, the penalty for failing to comply with these requirements is a fine of \$100 to \$5,000, imprisonment for not more than one year, or both, for the first offense. For each subsequent offense the penalty is a fine of \$100 to \$10,000, imprisonment for not more than one year, or both.<sup>8</sup>

### **Requirements relating to transfers of licenses and locations**

Under current law, the Board must adopt rules that list actions that violate the funeral professionals law, as well as commensurate forfeitures. One action is transferring a license to another owner, or transferring the facility's location, without notifying the Board. In addition to transfer without notice, the bill requires that the actions also include failure to timely surrender a license upon the transfer and the failure of the funeral professional who will be in charge after the change to apply for a new license.<sup>9</sup>

### **Licenses and courtesy cards**

The bill increases the fee to reactivate an embalmer's or funeral director's license from \$140 to \$200.<sup>10</sup>

Current law *permits* the Board to issue an embalmer's or funeral director's license to an applicant upon presentation by the applicant of an embalmer's or funeral director's license from another state, proof that the applicant in obtaining that license has complied with requirements substantially equal to Ohio's requirements, and the requisite fee. Under the bill, if the applicant does this and presents evidence of good standing in that other state, the bill *requires* the Board to issue the license.<sup>11</sup>

Continuing law permits the Board to issue courtesy card permits, which permit the holder to perform limited actions related to death certificates, funeral ceremonies, interments, and entombments. The bill requires, rather than permits as under existing law, the Board to determine under what conditions a courtesy card permit is to be issued to funeral directors in bordering states.<sup>12</sup>

Lastly, under the bill, the Board may take disciplinary action, such as license suspension or other corrective action, against a licensee or permit holder who provided services to a person knowing that those services were sold to that person by another person who lacked a license or permit.<sup>13</sup>

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<sup>8</sup> R.C. 4717.13(E) through (H); R.C. 4717.27 and 4717.99, not in the bill.

<sup>9</sup> R.C. 4717.04(A)(9)(f); R.C. 4717.11, not in the bill.

<sup>10</sup> R.C. 4717.05(G)(3) and 4717.07(A)(1).

<sup>11</sup> R.C. 4717.10(A).

<sup>12</sup> R.C. 4717.10(B) and (C).

<sup>13</sup> R.C. 4717.14(A)(10).

## **Display of name at facility entrance**

The bill eliminates the requirement that a funeral director, embalmer, or crematory operator conspicuously display their name at the primary entrance to the funeral home, embalming facility, or crematory facility.<sup>14</sup>

## **ID tag for cremated remains**

If a body is cremated, current law requires the funeral director or other person in charge of the final disposition of the body to place a tag identifying the person who died in any vessel containing the cremated remains. The bill requires a tag only if the vessel contains all of the cremated remains or more than ten cubic inches of cremated remains.<sup>15</sup> Under continuing law, the penalty for failing to comply with this requirement is a fine of \$100 to \$5,000, imprisonment for not more than one year, or both, for the first offense. For each subsequent offense the penalty is a fine of \$100 to \$10,000, imprisonment for not more than one year, or both.<sup>16</sup>

## **Retention of crematory receipts**

The bill changes the time periods required for the retention of certain documents by a crematory. Under current law, a crematory must retain a copy of each receipt issued upon acceptance of a dead body and a copy of each receipt issued by the crematory for delivery of cremated remains for as long as the crematory is in business. The bill changes this time period to the shorter of the time it remains in business or ten years following the date of cremation.<sup>17</sup>

## **Civil immunity of funeral professionals and facilities**

Under current law, a crematory operator, crematory facility, funeral director, or funeral home has civil immunity for certain actions or omissions, unless the actions or omissions were reckless or certain other conditions are met. These protected actions or omissions include cremating a person or disposing of the cremated remains when done in accordance with a cremation authorization form. The bill also provides immunity if the cremation was performed in accordance with the laws governing the disposition of cremated remains, which apply generally when the authorization form does not direct disposition of the remains or when the remains remain unclaimed.<sup>18</sup>

## **Replacement of notary requirement with witness requirement**

Current law allows an authorizing agent (the person entitled to order the cremation of a decedent or body parts and to order the final disposition of the cremated remains of a

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<sup>14</sup> R.C. 4717.06.

<sup>15</sup> R.C. 4717.13(B)(3).

<sup>16</sup> R.C. 4717.99, not in the bill.

<sup>17</sup> R.C. 4717.28(C) and (E).

<sup>18</sup> R.C. 4717.30(A).

decedent or body parts) who cannot execute a cremation authorization form in person to designate another individual to serve as the authorizing agent. To do so, the original authorizing agent must provide the crematory facility a written designation, acknowledged before a notary public or other person authorized to administer oaths, authorizing the other individual to serve as the new authorizing agent. The bill eliminates the requirement that the written designation be acknowledged before a notary public or other person authorized to administer oaths, and instead requires it to be signed by the original authorizing agent and by a witness who observed the authorizing agent execute the designation.<sup>19</sup>

## **Right of disposition**

### **Background**

Ohio law authorizes a person to designate one or more people to manage that person's final disposition after that person dies (i.e., the person's burial, cremation, and funeral arrangements). The person (declarant) can do so through a written declaration that assigns the right of disposition to the specified person or persons (representative). The right of disposition includes:

1. The right to determine the location, manner, and conditions of the disposition of the declarant's bodily remains.
2. The right to make arrangements and purchase goods and services for the declarant's funeral.
3. The right to make arrangements and purchase goods and services for the declarant's burial, cremation, or other manner of final disposition.<sup>20</sup>

### **Disqualification of named representative**

Under current law, there are a number of ways that a person named as a representative can be disqualified (e.g., if the named representative dies, declines to serve, or cannot be located).<sup>21</sup> The bill adds that a person refusing to assume liability for the costs of the disposition is disqualified from serving as the representative.<sup>22</sup> Further, it clarifies that if a funeral director serves as the representative (when no other relative or person is capable of assuming the right of disposition or no other relative or interested person can be located), the funeral director is not liable for the costs of that disposition.<sup>23</sup>

Finally, the bill specifies that a person is disqualified if the person fails to exercise the rights as the representative within 48 hours of being notified that the declarant has died. The

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<sup>19</sup> R.C. 4717.24(C).

<sup>20</sup> R.C. 2108.70(B) and 2108.72, not in the bill.

<sup>21</sup> R.C. 2108.75(A).

<sup>22</sup> R.C. 2108.75(A)(7).

<sup>23</sup> R.C. 2108.75(C).



bill adds that if there is no notification, the time period for disqualification is 72 hours after the declarant's death. Under current law, a person that refuses to exercise their rights as a representative within two days of the death notification is disqualified. Thus, the bill eliminates the requirement that the representative formally refuse to serve.<sup>24</sup>

### **Court assignment of the right of disposition**

If a person does not have a written declaration or all representatives and successor representatives are disqualified from serving, the law specifies a default order for who has the right of disposition.<sup>25</sup> In some cases, the probate court with jurisdiction must make the determination of who has the right of disposition (generally because either there is a disagreement over who has the right or no one has claimed the right). In assigning the right of disposition to a person, the court must consider several factors (e.g., the relationship between the decedent and the person, the practicality of the funeral plans desired by the person, and any express written desires by the decedent).<sup>26</sup>

The bill removes consideration of a person's willingness to assume financial responsibility for the costs of the final disposition as a factor for consideration by the probate court.<sup>27</sup> As such, a person's willingness or lack thereof to pay for the final arrangements will not be a factor the court considers in making its assignment of the right of disposition.

### **Funeral vehicles**

The bill authorizes a funeral hearse and a funeral escort vehicle to be equipped with and display a flashing, oscillating, or rotating purple light while traveling down a street or highway as part of a funeral procession.<sup>28</sup> Current law authorizes the similar display and use of an amber light.<sup>29</sup> Generally, most vehicles are prohibited from using flashing lights, except as a turn signal or hazard light. Exceptions to the general prohibition include funeral hearses, funeral escort vehicles, emergency vehicles, highway maintenance vehicles, and certain farm machinery. The color of the light displayed on the vehicle and the times the light may flash generally are specified by statute.<sup>30</sup>

### **Fetal death certificates**

Continuing law allows the fetal death of the product of human conception of less than 20 weeks gestation to be registered on a fetal death certificate upon application by either

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<sup>24</sup> R.C. 2108.75(A)(4).

<sup>25</sup> R.C. 2108.81, not in the bill.

<sup>26</sup> R.C. 2108.82.

<sup>27</sup> R.C. 2108.82(B)(3) and (C)(1).

<sup>28</sup> R.C. 4513.17(C)(2)(d); Ohio Administrative Code 4501-11-06, not in the bill.

<sup>29</sup> R.C. 4513.17(C)(1).

<sup>30</sup> R.C. 4513.17(C).

parent. Continuing law also allows a burial permit for the product of such a fetal death to be issued by the local Registrar of Vital Statistics if either parent files a fetal death certificate with the Registrar. The bill allows a funeral director to apply for the fetal death certificate and burial permit as well as either parent.<sup>31</sup>

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## HISTORY

Action	Date
Introduced	09-08-21

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S0224-I-134/ar

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<sup>31</sup> R.C. 3705.20.