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Bill Analysis
Legislative Service Commission

H.B. 282

127th General Assembly
(As Introduced)

Reps. Schlichter, Setzer, Webster, Huffman, Stebelton

BILL SUMMARY

- Relocates the Preneed Funeral Contracts Law from the Trust Companies Law to the Embalmers, Funeral Directors, and Crematories Law, and reorganizes the Preneed Funeral Contracts Law.
- Permits a preneed funeral contract to be funded by the purchase or assignment of an insurance policy in accordance with the requirements specified in the Insurance Producers Licensing Law.
- Adds disclosures and notices that must be included in a preneed funeral contract.
- Changes the list of persons or institutions eligible to be a trustee for a preneed funeral contract trust.
- Prohibits any money deposited in a trust fund for an irrevocable preneed funeral contract from being withdrawn to purchase an insurance policy.
- Permits a purchaser to transfer an irrevocable preneed funeral contract to a successor seller and specifies price and fee restrictions if the contract is transferred.
- Specifies that a seller is deemed to have delivered funeral goods pursuant to a preneed funeral contract only when the seller makes actual delivery of the goods to the beneficiary and eliminates the additional circumstances under which a seller is deemed to have delivered funeral goods under current law.
- Creates the Preneed Recovery Fund in the state treasury and specifies that it be used only to reimburse any purchaser of a preneed funeral contract who has incurred financial losses as a result of the malfeasance,

misfeasance, default, failure, or insolvency of any seller of a preneed funeral contract.

- Grants the Board of Funeral Directors and Embalmers complete discretion to determine the order and manner of payment of approved applications from the fund.
- Specifies that all payments from the fund are a matter of privilege and not a right, and no person has any right in the fund as a third-party beneficiary or otherwise.
- Specifies that, in the event reimbursement is made to an applicant under the bill, the Board is subrogated in the reimbursed amount and may bring any action it deems advisable against any person, including a seller of a preneed funeral contract.
- Places a deceased person's surviving grandchild, or if there is more than one surviving grandchild, all of the surviving grandchildren collectively sixth in the order of priority for the right of disposition.
- Adds, to the end of the order of priority for the right of disposition, the public officer or employee responsible for arranging the final disposition of the remains of the deceased person, if the deceased person was an indigent person or other person the final disposition of whose body is the responsibility of the state or a political subdivision of this state.

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CONTENT AND OPERATION

Overview of bill

(R.C. 1111.19 and 1111.99 (current law repealed by the bill); R.C. 1151.345, 1161.59, 1733.51, 2117.251, 3103.03, 3905.451, 4717.03, 4717.13, 4717.31, 4717.99, and 5747.02 (the bill))

The bill relocates the Preneed Funeral Contracts Law (R.C. 1111.19 and 1111.99) from the Trust Companies Law (R.C. Chapter 1111.) to the Embalmers, Funeral Directors, and Crematories Law (R.C. Chapter 4717.) and makes the corresponding cross-reference changes. The bill also creates the Preneed Recovery Fund (see "Preneed Recovery Fund," below) and makes changes to the list of priorities for the statutory right of disposition in the absence of a valid declaration or qualified representative (see "Priority for the statutory right of disposition," below).

Changes to the Preneed Funeral Contracts Law

(R.C. 1111.19(A)(2) (current law); R.C. 4717.01(U) and 4717.31(A) (the bill))

Under continuing law largely retained by the bill, a "preneed funeral contract" means a written agreement, contract, or series of contracts to sell or otherwise provide any funeral services, funeral goods, or any combination thereof, to be used in connection with the funeral or final disposition of a dead human body, where payment for the goods or services is made either outright or on an installment basis, prior to the death of the person purchasing them or for whom they are purchased. A preneed funeral contract that includes funeral services may be sold only by a funeral director licensed pursuant to the Embalmers, Funeral Directors, and Crematories Law. For the purpose of the definition of preneed funeral contract, "funeral goods" includes caskets. A preneed funeral contract does not include any preneed cemetery merchandise and services 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 fund is established or is exempt from establishment pursuant to the law governing the establishment of an endowment trust (R.C. 1721.21, not in the bill).

The bill largely retains this definition, except that the bill relocates from the definition the existing restriction that only licensed funeral directors may sell a preneed funeral contract that includes funeral services.

Funding for preneed funeral contracts

(R.C. 1111.19, 1151.345, 1161.59, 1733.51, and 3905.451 (current law); R.C. 1151.345, 1161.59, 1733.51, 3905.451, and 4717.31(B) (the bill))

Continuing law establishes requirements for preneed funeral contracts that involve the payment of money (see **Requirements for the terms of a preneed funeral contract**," below). Additionally, under continuing law, a financial institution¹ may receive and hold on deposit moneys under a preneed funeral contract or a preneed crematory merchandise and services contract in accordance with the Preneed Funeral Contracts Law.

The Insurance Producers Licensing Law (R.C. Chapter 3905.) specifies that if an insurance policy has been issued, sold, or assigned for the purpose of purchasing any funeral or burial goods or services, the insurer must not pay the benefits of the insurance policy, including the cash surrender value, to any provider of such goods or services, unless the insurer, as a condition to paying the benefits of the insurance policy, receives from the provider a certified copy of the certificate of death of the insured, or other evidence of death satisfactory to the insurer, and a certificate of completion. The certificate of completion must be signed by the provider and must certify that the provider has delivered all the goods and performed all the services contracted for, by, or on behalf of the insured. A provider of funeral or burial goods or services must not pledge, assign, transfer, borrow from, or otherwise encumber such an insurance policy prior to delivering all the goods and performing all the services contracted for, by, or on behalf of the insured. However, a provider may assign or otherwise transfer such a policy to another provider of funeral or burial goods or services in conjunction with the assumption by the other provider of the contractual obligation to provide the goods or services (R.C. 3905.45, not in the bill).

Current law exempts a life insurance policy that is issued, sold, or assigned for the purpose of purchasing funeral or burial goods or services, and the contractual obligation to provide the goods or services, from the requirements of the Preneed Funeral Contracts Law.

¹ Under continuing law, "financial institution" means a bank, savings bank, or savings association located in Ohio and insured by the Federal Deposit Insurance Corporation or a credit union authorized to do business in Ohio (R.C. 4717.01(T) (the bill) and R.C. 1111.19(A)(1), repealed by the bill).

The bill permits a preneed funeral contract to be funded by the purchase or assignment of an insurance policy in accordance with the requirements described above in the Insurance Producers Licensing Law. Preneed funeral contracts that are funded by the purchase or assignment of an insurance policy in accordance with those requirements are not subject to the requirements specified under "Trustees of a preneed funeral contract trust," "Deposit of funds into a trust," "Payments from a trust," or "Transfer of a preneed funeral contract," that relate to a preneed funeral contract trust.

Requirements for the terms of a preneed funeral contract

Current law

(R.C. 1111.19(B))

Current law requires any preneed funeral contract that involves the payment of money to be in writing and in compliance with the laws and rules of Ohio. Additionally, every preneed funeral contract entered into on or after October 12, 2006, must include the following notices 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 make funeral arrangements inconsistent with the arrangements set forth in this contract. However, the beneficiary is encouraged to state his or her preferences as to funeral arrangements 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 must be followed.

NOTICE: You, as the purchaser of this contract, will be notified in writing when the trustee of this contract has received a deposit of the funds you paid the seller under this contract. If you do not receive the notice within sixty days of the date you paid the funds to the seller, you should contact the trustee.

The bill

(R.C. 4717.31(B) and (D))

The bill requires a preneed funeral contract to be in writing and include the name, address, and phone number of the seller and the name, address, and social

security number of the purchaser, and, if the beneficiary of the preneed funeral contract is for someone other than the purchaser, the name, address, and social security number of the beneficiary. The contract also must include a statement of the funeral goods and funeral services purchased, which disclosure may be made by attaching a copy of the completed statement of funeral goods and services selected to the preneed funeral contract. The contract also must contain the following disclosures, as applicable:

(1) If the preneed funeral contract is funded by any means other than an insurance policy or policies, disclosures identifying the name and address of the trustee, indicating whether fees, expenses, or taxes will be deducted from the trust, and a statement of who will be responsible for the taxes owed on the trust earnings;

(2) If the preneed funeral contract is funded by the purchase or assignment of one or more insurance policies, disclosures identifying the name and address of the insurance company and any right the purchaser has regarding canceling or transferring the insurance policies;

(3) A disclosure explaining the form in which the purchase price must be paid and, if the price is to be paid in installments, a disclosure to the purchaser regarding what constitutes a default under the preneed funeral contract and the consequences of the default;

(4) A disclosure informing the purchaser whether the contract is either a guaranteed price preneed funeral contract or a non-guaranteed price preneed funeral contract, and, if guaranteed only in part, the funeral goods or funeral services included in the guarantee must be specified;

- If the preneed funeral contract is a guaranteed price contract, the contract must disclose that the seller, in exchange for all of the proceeds of the trust or insurance policy, must provide the funeral goods and services set forth in the preneed funeral contract without regard to the actual cost of such funeral goods and services prevailing at the time of performance;
- If the preneed funeral contract is a non-guaranteed price contract, the contract must disclose (a) that the proceeds of the trust or insurance policy must be applied to the current retail prices of the funeral goods and services set forth in the contract and (b) that any surplus funds must be paid to the estate of the purchaser and, in the event of an insufficiency in funds, the seller must not be required to perform until payment arrangements satisfactory to the seller have been made.

(5) A disclosure that the purchaser has the right to make the contract irrevocable and that if the preneed funeral contract is irrevocable, the purchaser does not have a right to revoke the contract;

(6) A disclosure informing the purchaser of the initial right to cancel the preneed funeral contract within seven days as provided in the bill (see "**Cancellation of contract**" below) and the right to revoke a revocable preneed funeral contract in accordance with the bill (see "**Irrevocability of contracts**" below);

(7) A disclosure that the seller may substitute funeral goods or services of equal quality, value, and workmanship if those specified in the preneed funeral contract are unavailable at the time of need;

(8) A disclosure that any purchaser of funeral goods and services is entitled to receive price information prior to making that purchase in accordance with the Federal Trade Commission's funeral industry practices revised rule, 16 C.F.R. Part 453.

If a preneed funeral contract is funded by means other than an insurance policy, the contract must include the second notice quoted under **Current law**" above in boldfaced print. If the preneed funeral contract is funded by the purchase of one or more insurance policies, the following notice in boldface print and in substantially the following form must be included in the contract:

NOTICE: You, as the purchaser of this contract, will be notified in writing by any insurance company when the insurance policy or policies that will fund this contract have been issued. If you do not receive the notice within sixty days of the date you paid the funds to the seller, you should contact the insurance company identified in the contract.

All preneed funeral contracts must include the first notice quoted under "**Current law**" above in boldfaced print and include the following notice in boldface print and in substantially the following form:

NOTICE: Under Ohio law, you, as the purchaser of this contract, may rescind it and receive a refund of all payments you made under the contract. To rescind the contract, you must notify the seller within seven days of signing the contract.

Irrevocability of a preneed funeral contract

(R.C. 1111.19(F) (current law); R.C. 4717.31(H) (the bill))

Under continuing law, a preneed funeral contract cannot restrict the purchaser from making the contract irrevocable. On the purchase by an individual of an irrevocable preneed funeral contract, the selling funeral director assumes the legal obligation to provide for the funeral of the individual pursuant to the terms of the contract. The bill adds a provision that prohibits any money deposited in a trust fund for an irrevocable preneed contract from being withdrawn to purchase an insurance policy.

Cancellation of a preneed funeral contract

(R.C. 1111.19(B)(1) and (G) (current law); R.C. 4717.31(D), (E)(3), and (I)(1) (the bill))

Under continuing law, any purchaser on initially entering into a preneed funeral contract may, within seven days, rescind the contract and request and receive from the seller 100% of all payments made under the contract. Continuing law also specifies procedures a trustee must follow if a purchaser of a contract that is not irrevocable decides to cancel that contract.

The bill adds that the purchaser of a preneed funeral contract that is not irrevocable and that is funded by an insurance policy may, on not less than 15 days' notice, cancel the preneed funeral contract and change the beneficiary of the insurance policy or reassign the benefits under the policy.

Transfer of a preneed funeral contract

(R.C. 4717.31(E)(4) and (I)(2) (the bill))

The bill permits the purchaser of a preneed funeral contract that is irrevocable to transfer the preneed funeral contract to a successor seller. Within 15 days of receiving the written notice of the new designation from the purchaser, the bill requires the trustee to list the successor seller as the seller of the preneed funeral contract and the original seller to relinquish and transfer all rights under the preneed funeral contract to the successor seller, unless the contract is funded by an insurance policy, in which case the original seller must notify the insurance company to transfer all rights under the insurance policy to the successor seller. The trustee or insurance company, as applicable, must confirm the transfer to the original seller, the successor seller, and the purchaser by written notice to each.

If the preneed funeral contract stipulates a firm or fixed or guaranteed price for the funeral services and goods to be provided under the preneed funeral

contract, the original seller may collect from the trustee a cancellation fee not exceeding 10% of the principal paid pursuant to the preneed funeral contract and 20% of any interest or income earned on the funds since the time the funds were paid to the seller up to the time of transfer. The bill prohibits the collection of a cancellation fee by the original seller if the preneed funeral contract does not stipulate a firm or fixed or guaranteed price for funeral services and goods to be provided under the preneed funeral contract.

Different provider of services

(R.C. 4717.31(I)(3) (the bill))

Under the bill, within 30 days after a seller receives notice that the beneficiary of a preneed funeral contract has died and that funeral services and goods have been provided by a different provider, the seller must notify the trustee to pay to the estate of the beneficiary of the preneed funeral contract all funds held by the trustee, less fees, distributions, and expenses made pursuant to the bill subject to the same price and fee restrictions described under "**Transfer of a preneed funeral contract**" above.

Preneed funeral contract trusts

Trustees of a preneed funeral contract trust

(R.C. 1111.19(D) (current law); R.C. 4717.31(F) (the bill))

Under current law, a trustee of a preneed funeral contract trust must be either (1) a financial institution or (2) a natural person who is not required by the Trust Companies Law to be licensed to do trust business and who is bonded by a corporate surety bond in an amount not less than 100% of the funds in all of the preneed funeral contract trusts the person serves as trustee.

The bill changes who may serve as a trustee of a preneed funeral contract trust. Under the bill, any of the following may serve as trustee:

- (1) A trust company licensed under the Trust Companies Law;
- (2) A national bank or federal savings association that pledges securities in accordance with the requirements of the Trust Companies Law (R.C. 1111.04, not in the bill);
- (3) 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 must be bonded by a corporate surety in an amount that is at least equal to the amount deposited in the fund of which those persons serve as trustee.

Amounts in the fund must be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to continuing law that governs the investment of funds by a fiduciary (R.C. 2109.37 and 2109.371, not in the bill).

Deposit of funds into a trust

(R.C. 1111.19(C) and (E) (current law); R.C. 4717.31(C), (E), and (P) (the bill))

Continuing law specifies a trustee's duties with regard to setting up and charging fees for a preneed funeral contract trust. Additionally, within 30 days after the seller of funeral goods or services receives any payment under a preneed funeral contract, the seller must deliver the moneys received and not returned to the purchaser as provided under **"Payments from a trust"** below, to the trustee designated in the preneed funeral contract or an amendment to it.

The bill removes the reference to making payments pursuant to an amendment to a preneed funeral contract. Additionally, the bill adds the following requirements for contracts funded by an insurance policy:

- The seller, within 30 days after receiving any payment under the preneed funeral contract, must deliver the money received and not returned to the purchaser because the purchaser rescinded the contract, to the insurance company designated in the preneed funeral contract;
- The insurance company receiving payment from a preneed funeral contract seller for an insurance policy to fund the preneed funeral contract must notify the purchaser of the contract in writing of the amount of any payment received within 15 days of the receipt of the payment.

The bill exempts any money, insurance policies, or other items delivered in payment of a preneed funeral contract, and any funds held in trust pursuant to the bill, from levy, attachment, or sale to satisfy a judgment or order.

Delivery of goods

(R.C. 1111.19(I) (current law); R.C. 4717.31(K) (the bill))

Under current law, the seller is deemed to have delivered funeral goods pursuant to a preneed funeral contract when either of the following occurs:

- (1) The seller makes actual delivery of the goods to the beneficiary;

(2) The seller does all of the following:

- Receives delivery of the goods on behalf of the beneficiary;
- Stores the goods upon the real property of a funeral home licensed in Ohio;
- Notifies the beneficiary of receipt of the goods and identifies the specific location of the goods;
- At the time of the purchaser's final payment, provides the beneficiary with evidence of ownership in the beneficiary's name showing the goods to be free and clear of any liens or other encumbrances.

Under the bill, the seller is deemed to have delivered funeral goods pursuant to a preneed funeral contract only when the seller makes actual delivery of the goods to the beneficiary.

Reports submitted to the Board of Embalmers and Funeral Directors

(R.C. 1111.19(J) (current law); R.C. 4717.04(A)(12) and 4717.31(L) (the bill))

Under current law, the seller of funeral goods or services under a preneed funeral contract annually must submit to the Board of Embalmers and Funeral Directors the reports the Board requires. The bill specifically requires the Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) that require all sellers of funeral goods or services under a preneed funeral contract, whether funded by insurance or otherwise, to submit a report. The Board also must adopt rules that include requirements and procedures for annual reporting of preneed sales by all preneed sellers.

Preneed Recovery Fund

(R.C. 4717.04(A)(13) and 4717.32 (the bill))

The bill creates in the state treasury the Preneed Recovery Fund, which must be used to reimburse any purchaser of a preneed funeral contract who has incurred financial losses as a result of the malfeasance, misfeasance, default, failure, or insolvency of any seller of a preneed funeral contract. All investment earnings of the fund must be credited to the fund.

The bill requires a seller of a preneed funeral contract that is funded by the payment of money or by an insurance policy to collect from each purchaser of a preneed funeral contract a fee of \$10. The sellers of preneed funeral contracts

annually must remit the fees collected to the Board quarterly within 30 days after the end of March, June, September, and December for all preneed funeral contracts that have been entered into during the three-month period. The Board must deposit one-half of the fees collected into the preneed recovery fund, to be expended only for the following purposes:

- (1) To make reimbursements on approved applications;
- (2) To purchase insurance to cover losses as deemed appropriate by the Board and not inconsistent with the purposes of the fund;
- (3) To invest such portions of the fund as are not currently needed to reimburse losses and maintain adequate reserves as are permitted to be made by fiduciaries under state law.

The remaining one-half of the fees remitted to the Board must be used by the Board to administer the preneed recovery fund and to monitor the preneed annual reports filed by sellers of preneed funeral contracts. The Board must adopt rules governing management of the fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

The bill specifies that reimbursements from the fund can be made only to the extent to which such losses are not bonded or otherwise covered, protected, or reimbursed, and only after the applicant has complied with all applicable rules of the Board. The Board, under the bill, must investigate all applications made and may reject or allow such claims in whole or in part to the extent that the moneys are available in the fund. The bill grants the Board complete discretion to determine the order and manner of payment of approved applications and specifies that all payments are a matter of privilege and not a right, and no person has any right in the fund as a third-party beneficiary or otherwise. The bill prohibits an attorney from being compensated by the Board for prosecuting an application for reimbursement.

The fund must not be applied toward any reimbursement on losses on a preneed funeral contract that was entered into prior to the bill's effective date. In the event reimbursement is made to an applicant under the bill, the Board is subrogated in the reimbursed amount and may bring any action it deems advisable against any person, including a seller of a preneed funeral contract. The Board may enforce any claims it may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants, and any other person it deems appropriate.

If, at the end of any fiscal year for the state, the balance in the fund exceeds \$2 million, the amount collected from purchasers of preneed funeral contracts during the next fiscal year must be reduced from \$10 to \$5, with all such proceeds to be used by the Board in accordance with the bill.

Priority for the statutory right of disposition

(R.C. 2108.81 (current law and the bill))

Continuing law establishes an order of priority for the right of disposition when a person has not executed a written declaration that remains in force or when each person to whom the right of disposition has been assigned or reassigned pursuant to a written declaration is disqualified from exercising the right. In such cases, subject to the preceding provision and the laws governing the disqualification of representatives and disagreement among group representatives (R.C. 2108.75 and 2108.79, not in the bill), the right of disposition is assigned to the following persons, if they are mentally competent adults who can be located with reasonable effort, in the following order of priority:

- (1) The deceased person's surviving spouse;
- (2) The sole surviving child of the deceased person or, if there is more than one surviving child, all of the surviving children, collectively;
- (3) The deceased person's surviving parent or parents;
- (4) The deceased person's surviving sibling, whether of the whole or of the half blood or, if there is more than one sibling of the whole or of the half blood, all of the surviving siblings, collectively;
- (5) The deceased person's surviving grandparent or grandparents;
- (6) The lineal descendants of the deceased person's grandparents, as described in the requirements for intestate succession (R.C. 2105.06(I), not in the bill));
- (7) The person who was the deceased person's guardian at the time of the deceased person's death, if a guardian had been appointed;
- (8) Any other person willing to assume the right of disposition, including the personal representative of the deceased person's estate or the licensed funeral director with custody of the deceased person's body, after attesting in writing that a good faith effort has been made to locate the persons listed in paragraphs (1) through (7) above.

The bill adds the deceased person's surviving grandchild, or if there is more than one surviving grandchild, all of the surviving grandchildren collectively to the list of priority, and places these persons sixth in the line of priority. The bill adds that if the deceased person was an indigent person or other person the final disposition of whose body is the responsibility of the state or a political subdivision of this state, the public officer or employee responsible for arranging the final disposition of the remains of the deceased person. The public officer or employee is the last person in the order of priority.

HISTORY

ACTION	DATE
Introduced	06-27-07

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