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***Bill Analysis***  
*Legislative Service Commission*

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(As Passed by the Senate)

**Sens. Schaffer, Carey, Cates, Schuler, Austria, Fedor, Harris, Jacobson, Kearney, Mason, Mumper, Niehaus, Padgett, Roberts, Sawyer, Smith, Spada, Wagoner**

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**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- Prohibits any money deposited in a trust fund for an irrevocable preneed funeral contract from being withdrawn to purchase an insurance policy, except a trustee may use money in the trust fund to purchase a life insurance policy or annuity as an investment for the trust fund.
- 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.

- Allows insurance agents to sell, solicit, or negotiate the sale of an insurance policy or annuity that will be used to fund a preneed funeral contract, so long as the agent does not offer advice or make recommendations about funeral services or discuss the advantages or disadvantages of any funeral service.
- Allows the Superintendent of Insurance to enforce the Preneed Funeral Contracts Law to the extent the law applies to insurance companies and insurance agents, and otherwise allows the Board of Embalmers and Funeral Directors to administer and enforce the law.
- Permits the Board of Embalmers and Funeral Directors to file a complaint with the court of common pleas requesting appointment of a receiver to operate or liquidate a funeral home if the Board has clear and convincing evidence that a funeral home holding a suspended or revoked license or employing a funeral director holding a suspended or revoked license is insolvent or unable to perform its contractual obligation under the preneed funeral contracts to which it is a party.
- Permits a purchaser to cancel or rescind a preneed funeral contract provided the purchaser provides the notice specified in the bill.
- Requires trustees and insurance companies to notify purchasers when the trust or insurance policy that funds the preneed funeral contract has received any payment.
- Requires the Board of Embalmers and Funeral Directors to adopt rules specifying procedures and requirements for annual reporting of the sales of all preneed funeral contracts sold by every seller subject to the Preneed Funeral Contracts Law.
- Requires sellers of funeral goods or services under a preneed funeral contract to submit annually the reports the Board requires.
- Changes the criminal penalties for violations of the Preneed Funeral Contracts Law.
- Allows the seller to choose which amount will remain intact in the fund until the death of the contract beneficiary under a preneed cemetery merchandise and services contract between either 110% of the seller's actual cost or 30% of the seller's retail price of the merchandise plus 70%

of the seller's retail price of the services to be provided under the 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 to 4717.38, 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 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(T) (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. 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.

*Parties to preneed funeral contracts*

(R.C. 4717.01(C), (F), (U), (V), (W) and 4717.31(A), (B), and (C) (the bill))

Only a funeral director licensed pursuant to the Embalmers, Funeral Directors, and Crematories Law may sell a preneed funeral contract that includes funeral services. A "funeral director" means any person that engages in funeral directing and is licensed under that law. The definition of "funeral directing" has been changed by the bill to include, in addition to the definition provided in continuing law, the arrangement or sale of funeral services, and the filling out or execution of a funeral service contract. Additionally, the bill defines "seller" as any person that enters into a preneed funeral contract with a purchaser for the provision of funeral goods, funeral services, or both.

The seller enters into a contract with a purchaser, who may or may not be the contract beneficiary. The bill defines "purchaser" as the individual who has purchased and financed a preneed funeral contract. The "contract beneficiary" is the individual for whom funeral goods and funeral services are provided pursuant to a preneed funeral contract.

Under the bill, insurance agents licensed pursuant to the Insurance Producers Licensing Law (R.C. Chapter 3905.) may sell, solicit, or negotiate the sale of an insurance policy or annuity that will be used to fund a preneed funeral contract, but in so doing the insurance agent may not offer advice or make recommendations about funeral services and may not discuss the advantages or disadvantages of any funeral service. In selling, soliciting, or negotiating the sale of an insurance policy or annuity that will be used to fund a preneed funeral contract, the insurance agent may do any of the following:

- (1) Provide the person purchasing the insurance or annuity with price lists from one or more funeral homes and other materials that may assist the person in determining the cost of funeral goods and services.
- (2) Discuss the cost of funeral goods and services with the person in order to assist the person in selecting the appropriate amount of life insurance or annuity coverage.
- (3) Complete a worksheet or other record to calculate the estimated cost of a funeral.

Under the bill, if an insurance agent licensed pursuant to the Insurance Producers Licensing Law sells, solicits, or negotiates the sale of an insurance policy or annuity that will be used to fund a preneed funeral contract, those

activities do not constitute funeral directing, funeral arranging, the business of directing and supervising funerals for profit, or the sale of a preneed funeral contract.

**Administration of preneed funeral contract law**

(R.C. 3901.04 and 4717.31 (F) and (H) (the bill))

The Board of Embalmers and Funeral Directors must administer and enforce the Preneed Funeral Contracts Law (R.C. 4717.31 to 4717.38). The Superintendent of Insurance must enforce the Preneed Funeral Contracts Law to the extent the Preneed Funeral Contracts Law applies to insurance companies and insurance agents. Additionally, the Superintendent may adopt rules for purposes of administering and enforcing the Preneed Funeral Contracts Law as it applies to insurance companies and insurance agents. The Insurance Law (R.C. Chapter 3901.) provides that the Superintendent may enforce any laws of this state relating to insurance. The bill states that the Preneed Funeral Contracts Law constitutes law of this state relating to insurance. Therefore, the Superintendent may enforce those laws to the extent they deal with insurance.

**Authority of Board of Embalmers and Funeral Directors over licensees**

(R.C. 4714.14(D) (the bill))

Under continuing law the Board exercises authority over licensed funeral directors. Under the bill, if the Board suspends or revokes a license held by a funeral director or a funeral home for any reason identified in the provisions allowing the Board to suspend and revoke licenses, and the Board has clear and convincing evidence that the funeral home that holds the suspended or revoked license or the licensed funeral home that employs the funeral director that holds the suspended or revoked license is insolvent or is unable to perform its contractual obligation under the preneed funeral contracts to which it is a party, the Board may file a complaint with the court of common pleas in the county where the funeral home is located requesting appointment of a receiver to operate or liquidate such funeral home. If the court of common pleas is satisfied with the application for a receivership, the court may appoint a receiver.

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

### *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(G) (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 current law, a financial institution<sup>1</sup> may receive and hold on deposit moneys under a preneed funeral 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.

The bill permits a preneed funeral contract to be funded by the purchase or assignment of an insurance policy or annuity 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 or

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<sup>1</sup> Under current 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. 1111.19(A)(1), repealed by the bill).

annuity 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," 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. 4717.32 and 4717.34)

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 and address of the purchaser, and, if the contract beneficiary of the preneed funeral contract is someone other than the purchaser, the name and address of the beneficiary. If the contract involves the payment of money but not the purchase or assignment of an insurance policy or annuity, the social security number of the purchaser of the



contract must be included, or if the contract beneficiary is someone other than the purchaser, the social security number of the contract beneficiary must be included. 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 and information, 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 or annuities, disclosures identifying the name and address of the insurance company and any right the purchaser has regarding canceling or transferring the insurance policies or annuities;

(3) If the preneed funeral contract is funded by any means other than an insurance policy or policies, or annuity or annuities, 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 and that the seller may receive any excess funds remaining after all expenses for the funeral have been paid;
- If the preneed funeral contract is a non-guaranteed price contract, the contract must disclose (a) that the proceeds of the trust, insurance policy, or annuity must be applied to the current retail prices in effect at the time of the funeral for the funeral goods and services set forth in the contract and (b) that any excess funds remaining after all

expenses for the funeral have been paid must be paid to the estate of the decedent or the beneficiary named in the life insurance policy if the preneed funeral contract is funded by a life insurance policy, 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;

(9) If a preneed funeral contract is funded by any means other than an insurance policy or policies, or an annuity or annuities, the preneed funeral contract must include a disclosure that a purchaser of a preneed funeral contract that is irrevocable and that stipulates a firm or fixed or guaranteed price for the funeral services and goods to be provided under the preneed funeral contract may be charged a transfer fee if the purchaser wishes to transfer the contract to another seller;

(10) If a preneed funeral contract is funded by the purchase or assignment of one or more insurance policies or annuities, the preneed funeral contract must include each of the following unless these disclosures are provided in the application for a life insurance policy or annuity or in the life insurance policy or annuity:

(a) A description of the terms of payment for any remaining payments due if the funding is to be paid in installments.

(b) A list of actions that constitute default under a preneed funeral contract and the consequences of a default.

(11) 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;

(12) 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, or annuity or annuities 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.

(13) The contract must include 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. 4717.34(B) (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 or annuity, except that a trustee may use money in the trust fund to purchase a life insurance policy or annuity as an investment for the trust fund.

### *Cancellation of a preneed funeral contract*

(R.C. 1111.19(B)(1) and (G) (current law); R.C. 4717.34(A), 4717.35, and 4717.36(E) (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 if the purchaser of a preneed funeral contract that is revocable and that is funded by an insurance policy or annuity elects to cancel the preneed funeral contract, the purchaser must provide a written notice to the seller and the insurance company designated in the contract stating that the purchaser intends to cancel that contract. Fifteen days after the purchaser provides the notice to the seller of the contract and the insurance company, the purchaser may cancel the preneed funeral contract and change the beneficiary of the insurance policy or annuity or reassign the benefits under the policy or annuity.

If the purchaser of a preneed funeral contract that is revocable and that is funded by any means other than an insurance policy or policies elects to cancel the contract, the purchaser must provide a written notice to the seller of the contract and the trustee of the preneed funeral contract trust stating that the purchaser intends to cancel the contract. Fifteen days after the purchaser provides that notice to the seller and trustee, the purchaser may cancel the contract. Upon canceling a preneed funeral contract, one of the following must occur, as applicable:

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

(2) If the preneed funeral contract does stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the contract, the purchaser may request and receive from the trustee all of the assets of the trust at the time of cancellation, less a cancellation fee that the original seller may collect from the trustee that is equal to or less than 10% of the value of the assets of the trust on the date the trust is cancelled and less any fees charged, distributions paid, and expenses incurred by the trustee.

If more than one purchaser enters into the contract, all of those purchasers must request cancellation of the contract for it to be effective, and the trustee must

refund to each purchaser only those funds that purchaser has paid under the contract and any income earned on those funds in an amount that is in direct proportion to the amount of funds that purchaser paid relative to the total amount of payments deposited in that trust, less any fees charged, distributions paid, and expenses incurred by the trustee, the amount of which are in direct proportion to the amount of funds that purchaser paid relative to the total amount of payments deposited in that trust.

### **Transfer of a preneed funeral contract**

(R.C. 4717.35 and 4717.36(F) and (G) (the bill))

The purchaser of a preneed funeral contract that is irrevocable and that is funded by an insurance policy or annuity may transfer the preneed funeral contract to a successor seller by notifying the original seller of the designation of a successor seller. Within 15 days after receiving the written notice of the designation of the successor seller from the purchaser, the original seller must assign the seller's rights to the proceeds of the policy to the successor seller. The insurance company must confirm the change of assignment by providing written notice to the policyholder.

The purchaser of a preneed funeral contract that is irrevocable and that is funded by any means other than an insurance policy or policies, or annuity or annuities, may transfer the preneed funeral contract to a successor seller. A purchaser who elects to make such a transfer must provide a written notice of the designation of a successor seller to the trustee and the original seller. Within fifteen days after receiving the written notice of the new designation from the purchaser, the trustee must list the successor seller as the seller of the preneed funeral contract and the original seller must relinquish and transfer all rights under the preneed funeral contract to the successor seller. The trustee must confirm the transfer by providing written notice of the transfer to the original seller, the successor seller, and the purchaser. If the preneed funeral contract stipulates a firm or fixed or guaranteed price for the funeral goods and funeral services to be provided under the preneed funeral contract, the original seller may collect from the trustee a transfer fee from the trust that equals up to 10% of the value of the assets of the trust on the date the trust is transferred. If the preneed funeral contract does not stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the preneed funeral contract, no transfer fee can be collected by the original seller.

If a seller of a preneed funeral contract elects to transfer a preneed funeral contract trust from one institution to a different institution, the trustee of the original trust must notify the purchaser of the preneed funeral contract of that transfer in writing within 30 days after the transfer occurred, and must provide the

purchaser with the name of, and the contact information for, the institution where the new trust is maintained. Upon receipt of the trust, the trustee of the transferred trust must notify the purchaser of the receipt of the trust (see "Handling of funds," below).

### **Different provider of services**

(R.C. 4717.36(H) (the bill))

Under the bill, if a seller receives a notice that the contract beneficiary has died and that funeral goods and funeral services have been provided by a provider other than the seller, the seller must direct the trustee, within 30 days after receiving that notice, to pay to the contract beneficiary all funds held by the trustee, less any fees charged, distributions paid, and expenses incurred by the trustee. In the event the preneed funeral contract stipulates a firm or fixed or guaranteed price for funeral goods and funeral services that were to be provided under the preneed funeral contract, the seller may collect from the trustee a cancellation fee not exceeding 10% of the value of the assets of the trust on the date the trust is transferred. If the preneed funeral trust does not stipulate a firm or fixed or guaranteed price for funeral goods and funeral services to be provided under the preneed funeral contract, no cancellation fees may be collected by the original seller.

### **Preneed funeral contract trusts**

#### **Trustees of a preneed funeral contract trust**

(R.C. 1111.19(D) (current law); R.C. 4717.36(B), (C), and (D) (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 to eliminate the option for a natural person to function as a trustee. Under the bill, the seller must establish a preneed funeral contract trust at one of the following types of institutions and must designate that institution as the trustee of the preneed funeral contract trust:

- (1) A trust company licensed under the Trust Companies Law;
- (2) A national bank, federal savings bank, or federal savings association that pledges securities in accordance with the Trust Companies Law;

(3) A credit union authorized to conduct business in this state pursuant to the Credit Union Law (R.C. Chapter 1733.).

The bill requires moneys deposited in a preneed funeral contract trust fund to be held and invested in the manner in which trust funds are permitted to be held and invested pursuant to the Trust Companies Law.

A trustee of a preneed funeral contract trust may pay taxes and expenses for a preneed funeral contract trust and may charge a fee for managing a preneed funeral contract trust. The fee must not exceed the amount regularly or usually charged for similar services rendered by the institutions described above when serving as a trustee. The taxes, expenses, and fees must be paid only from the accumulated income on that trust.

### **Handling of funds**

(R.C. 1111.19(C) and (E) (current law); R.C. 4717.33, 4717.35, 4717.36(A), and 4717.38 (the bill))

Continuing law specifies a trustee's duties with regard to setting up and charging fees for a preneed funeral contract trust. Those requirements include that a trustee must establish a separate preneed funeral contract trust for the moneys paid under each preneed funeral contract, unless the purchaser under a preneed funeral contract authorizes the trustee to place the moneys paid in a combined 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 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. The bill also requires the seller, not the trustee as under current law, to establish separate preneed funeral contract trusts unless otherwise authorized. Additionally, the bill adds the following requirements for contracts:

- If a preneed funeral contract contains a provision stating that the preneed funeral contract will be funded by the purchase of an insurance policy, the insurance agent who sold the policy that will fund that preneed funeral contract must remit the application for insurance and the premium paid to the insurance company designated in the preneed funeral contract within the time period specified in the Insurance Producers Licensing Law, unless the purchaser rescinds the preneed funeral contract in accordance with "**Cancellation of a preneed funeral contract,**" above.



- If a preneed funeral contract is funded by any means other than an insurance policy or policies, or an annuity or annuities, the trustee of the trust created must notify the purchaser of the preneed funeral contract in writing, within 15 days after the trustee receives any payment to be deposited into the trust, that the trustee has received payment. The notice must include all of the following information:
  - The amount the trustee received.
  - The name and address of the institution where the trust is being held.
  - The name of the beneficiary of that trust.
- If a preneed funeral contract is funded by the purchase or assignment of one or more insurance policies or annuities, the insurance company must notify the purchaser of the preneed funeral contract in writing within 60 days after the insurance company receives an initial premium payment applicable to that preneed funeral contract. The notice must include all of the following information that is pertinent to that preneed funeral contract:
  - The amount the insurance company received.
  - The name and address of the insurance company
  - The name of the insured.
  - The amount of the death benefit.
  - The policy or contract number of the insurance policy, annuity, or contract.

Delivery of an insurance policy, certificate, annuity, or contract to the purchaser will satisfy the notice requirement specified for preneed funeral contracts that are funded by the purchase or assignment of one or more insurance policies or annuities.

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. 4717.37 (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 considered to have delivered funeral goods pursuant to a preneed funeral contract when the seller makes actual delivery of the goods to the contract beneficiary.

### **Reports submitted to the Board of Embalmers and Funeral Directors**

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

Under continuing law, the seller of funeral goods or services under a preneed funeral contract annually must submit to the Board the reports the Board requires.

The bill specifically requires the Board to adopt rules specifying the procedures and requirements for annual reporting of the sales of all preneed funeral contracts sold by every seller who is subject to the Preneed Funeral Contracts Law.

### **Criminal penalties**

(R.C. 1111.99 (current law); R.C. 4717.99 (the bill))

Under current law, whoever purposefully violates the Preneed Funeral Contracts Law is guilty of a fourth degree misdemeanor.

The bill modifies the criminal penalties by prohibiting any seller from failing to comply with the requirements and duties specified in the Preneed Funeral Contracts Law. The bill also prohibits any trustee of a preneed funeral contract trust from failing to comply with the applicable portions of that law. Whoever purposely violates either of these prohibitions is guilty of a third degree misdemeanor. If the purpose of that violation is to commit or facilitate the commission of a felony, whoever violates those prohibitions is guilty of a fourth degree felony.

### **Preneed cemetery merchandise and services contracts**

(R.C. 1721.211 (the bill))

Current law provides that the greater of 110% of the seller's actual cost or 30% of the seller's retail price of the merchandise and 70% of the seller's retail price of the services to be provided under a preneed cemetery merchandise and services contract<sup>2</sup> must remain intact as a fund until the death of the person for whose benefit the contract is made or the merchandise is delivered. The seller must deliver the greater of those amounts to the trustee of the fund for the preneed cemetery and merchandise contract within 30 days after the last business day of the month in which the seller receives final contractual payment under the contract. The bill allows either 110% of the seller's actual cost or 30% of the seller's retail price of the merchandise and 70% of the seller's retail price of the services to be provided under a preneed cemetery merchandise and services

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<sup>2</sup> "Preneed cemetery merchandise and services contract" means a written agreement, contract, or series of contracts to sell or otherwise provide an outer burial container, monument, marker, urn, other type of merchandise customarily sold by cemeteries, or opening and closing services to be used or provided in connection with the final disposition of a dead human body, where payment for the container, monument, marker, urn, other type of merchandise customarily sold by cemeteries, or opening and closing services is made either outright or on an installment basis, prior to the death of the person so purchasing or for whom so purchased. "Preneed cemetery merchandise and services contract" does not include any preneed funeral contract or any agreement, contract, or series of contracts pertaining to the sale of any burial lot, burial or interment right, entombment right, or columbarium right with respect to which an endowment care trust is established or is exempt from establishment pursuant to continuing law.

contract to remain intact as a fund until the death of the person for whose benefit the contract is made or the merchandise is delivered and either of those amounts to be delivered to the trustee.

The bill adds federal savings banks to the list of entities that may serve as a trustee of a preneed cemetery merchandise and services contract.

**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 financial and statutory 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.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	06-27-07
Reported, S. Insurance, Commerce, and Labor	05-21-08
Passed Senate (32-0)	05-22-08

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