
BOARD OF EMBALMERS AND FUNERAL DIRECTORS

Board membership

- Modifies the membership criteria for the Board of Embalmers and Funeral Directors.

Permits and licenses

- Specifies that a crematory operator must operate with a permit and a crematory facility must operate with a license.
- Establishes criteria for a crematory operator permit, associated fees, and continuing education requirements.
- Eliminates the requirements that a funeral home be established under the name of the license holder and the license not include directional or geographical references in the name.
- Exempts courtesy card permit holders from continuing education requirements.
- Caps license reinstatement fees.
- Modifies the definition of "embalming" to include specified chemical treatments.
- Requires that a cremation chamber used for cremation of animals display a notice on the unit stating that it is used for animals only.

Dead human body and cremated remains

- Prohibits any person from knowingly refusing to promptly submit the custody of a dead human body or cremated remains upon the order of the person legally entitled to the body or cremated remains.
- Prohibits, with a few exceptions, a person from knowingly failing to carry out the final disposition of a dead human body within 30 days after taking custody of the body.
- Requires the Board to adopt rules related to the lawful disposition of unclaimed cremated remains held in a funeral home or crematory that has been closed.

Preneed funeral contracts

- Requires the Board to adopt rules regarding violations relating to the submission of sale reports for preneed funeral contracts.



- Requires a funeral home licensee for a funeral home that is closing to send written notice to the purchaser of every preneed funeral contract to which the funeral business is a party, containing the name of any funeral business that has been designated to assume the contract obligations.
- Requires, within 30 days of the closing of a funeral home, the funeral home licensee to transfer all preneed contracts to the funeral homes that have been designated to assume the obligation of the preneed contracts.
- Requires the Board to make designations for preneed contracts in the case of a closed funeral home, if the licensee fails to designate a successor.
- Requires that all preneed funeral contracts include a disclosure that any purchaser may be eligible for reimbursement of financial losses suffered as a result of malfeasance, misfeasance, default, failure, or insolvency of the licensee.
- Requires preneed contracts held in trust to contain a disclosure regarding whether the seller will charge an initial service, cancellation, or service fees.
- Requires payment for preneed contracts to be paid directly to an insurance company or, subject to certain exceptions, to the contract's trustee.
- Requires the seller of a preneed funeral contract, within 30 days of receiving payment made payable to the trustee, to remit the payment to the trustee, unless the purchaser rescinds the contract.
- Eliminates the requirement that taxes, expenses, and fees be paid only from the accumulated income on the preneed funeral contract trust.
- Establishes the Preneed Recovery Fund, a custodial fund to be used to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of malfeasance, misfeasance, default, failure, or insolvency in connection with the sale of a preneed funeral contract.
- Imposes a \$10 fee on the sale of preneed funeral contracts other than those funded by insurance policy assignment, and requires that those fees be deposited into the Fund.



Board membership

(R.C. 4717.02)

The act modifies the membership criteria for the Board of Embalmers and Funeral Directors. Under continuing law, unchanged by the act, the Board must consist of seven members. Prior law required that five members were both a licensed embalmer and a practicing funeral director. The act requires that five members be practicing funeral directors, but that only four of these five members need also be licensed embalmers. The act also adds the requirement that at least one of the five funeral director members of the Board must hold a crematory operator permit.

Crematory operator permit

(R.C. 4717.01, 4717.051, 4717.06, 4717.07, 4717.08, 4717.09, 4717.14, and 4717.15)

Permit criteria

The act specifies that a crematory operator must operate with a permit. To obtain a crematory operator permit, an applicant must provide evidence, verified under oath and satisfactory to the Board, that the applicant:

- (1) Is at least 18 years old and of good moral character;
- (2) Has a certificate showing completion of a crematory operation certification program.
- (3) If the applicant has pleaded guilty to, or has been found by a judge to be guilty of, or has had judicial finding of eligibility for treatment in lieu of conviction in Ohio for any of 11 specified offenses (*aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary*) or for a substantially equivalent offense, at least five years has elapsed since the applicant was released from incarceration, a community control sanction, a post-release control sanction, parole, or treatment program;

The Board must issue the crematory operator permit if it receives satisfactory evidence and determines that the applicant satisfies all of the requirements listed above. The Board can revoke or suspend a permit or subject the permit holder to discipline in the same way it can exercise enforcement with licensees under continuing law.



Permit fees and enforcement

The fee for the initial or biennial renewal of a crematory operator permit is \$100. The act subjects the crematory operator permit renewal requirement to the same requirements under continuing law for licensees, including that the permit expires on the last day of December of each even-numbered year. If the permit is not renewed by this time, it is considered "lapsed," which can be cured by paying the lapsed fee to the Board. The reinstatement of a lapsed crematory operator permit is \$100 plus \$50 for each month or portion of a month the permit is lapsed, but the Board may not charge more than \$500.

The Board may refuse to grant or renew, or may suspend or revoke any permit, or issue a notice of violation to any permit holder without an adjudication hearing.

Crematory operator continuing education

The holder of a crematory operator permit must maintain active certification from a crematory operator certification program as a condition to renew the permit. The Board is prohibited from renewing the crematory operator permit of an individual who fails to satisfy this certification requirement.

Funeral home, embalming and crematory facility licenses

(R.C. 4717.06, 4717.07, 4717.09, 4717.11, and 4717.30)

Name

The act makes a few changes regarding the license requirements for funeral home, embalming, and crematory facilities. It requires that the name of the person licensed (funeral director, embalmer, or crematory operator) to operate either a funeral home, embalming facility, or crematory facility be conspicuously displayed immediately on the outside or the inside of the primary entrance of the home or facility used by the public. In addition, it eliminates the requirement that a funeral home be established and named only under the name of the license holder and the requirement that the license not include directional or geographical references in the name.

Immunity

Continuing law provides a qualified immunity to a number of persons in relation to specified actions in relation to funerals, embalming, cremation, and the disposition of human and cremated remains. The act makes this list of persons uniform to provide parallel immunities for crematory operators, crematory facilities, funeral directors, and funeral homes.



Embalmer and funeral director continuing education

Under the act, a person licensed in another state holding a courtesy card permit is not required to satisfy the continuing education requirements that licensed embalmers and funeral directors must meet in order to renew the permit.

Reinstatement fee cap

The act also caps the fees the Board may charge to reinstate a lapsed license to operate a funeral home or embalming facility at \$1,000, and a crematory facility at \$500.

Change of location, management, or ownership

The act revises procedures for when there has been a change of location, management, or ownership of a funeral home or embalming facility, and establishes them for crematory facilities. It requires the licensee to surrender the license within 30 days after a change in:

(1) The location of the crematory facility (continuing law for funeral homes and embalming facilities);

(2) The person who is actually in charge and ultimately responsible for the crematory facility (new);

(3) The ownership of the business entity that owns the home or facility that results in a majority of the ownership of the business entity being held by one or more persons who alone or in combination with others did not own a majority of the business entity immediately prior to the change in ownership (continuing law for funeral homes and embalming facilities).

Within 30 days after a change described above occurs, the person who will actually be in charge and ultimately responsible for the home or facility after the change must apply for a new license. The home or facility may continue to operate until the Board denies the application.

The act eliminates the provision permitting a funeral home to continue to operate under the name of a licensee who ceases to operate the home if the name of the new person licensed to operate the funeral home is added to the license within 24 months after the previous license holder ceases to operate the funeral home.

Crematory facility used for animals

The act requires that cremation chambers used for cremation of animals have conspicuously displayed on the unit a notice that the unit is to be used only for animals.



Dead human body and cremated remains

(R.C. 4717.04, 4717.13, and 4717.27)

The act specifies that, when required to do so under continuing law, a crematory facility or funeral home holding unclaimed cremated remains may dispose of the cremated remains by scattering them in any dignified manner, including in a memorial garden, at sea, by air, or at any scattering grounds, or in any other lawful manner. Under continuing law, unchanged by the act, the cremated remains can also be disposed of in a grave, crypt, or niche.

The act prohibits a person from (1) knowingly refusing to promptly submit the custody of a dead human body or cremated remains, after an order, to the person legally entitled to the body or cremated remains or (2) knowingly failing to carry out the final disposition of a dead human body within 30 days after taking custody of the body, unless ordered otherwise by the person holding the right of disposition.

The act also requires the Board to adopt rules related to the lawful disposition of unclaimed cremated remains held in a funeral home or crematory that has been closed.

Preneed funeral contracts

(R.C. 4717.04, 4717.07, 4717.13, 4717.32, 4717.35, and 4717.36)

Preneed Recovery Fund fee and contract reports

The act makes changes to the law regarding the administration and regulation of preneed funeral contracts. It requires that \$10 of each preneed funeral contract sold in Ohio, other than those funded by the assignment of an existing insurance policy, must be provided to the Board. The Board must deposit this fee into the Preneed Recovery Fund (see "**Preneed Recovery Fund**," below).

In addition, the act prohibits any person from failing to forward to the Board on or before its due date the required annual report of preneed funeral sales. If the report is sent to the Board by mail, then it should be postmarked on or before the due date to be considered timely filed. Mail that is not postmarked is considered filed on the date the Board receives it.

Procedures for contracts from closed funeral homes

When a funeral home closes, the act requires the person who holds the license for the closed funeral home to send a written notice to the purchaser of *every* preneed funeral contract to which the funeral business is a party. The notice must explain that the funeral business is being closed and the name of any funeral business that has been



designated to assume the obligations of the preneed contract. Within 30 days of the closing, the person who holds the license for the closed funeral home must not negligently fail to transfer all preneed contracts to the funeral homes designated to assume the obligation of the contracts. If the person who holds the license for a funeral home that is closed fails to designate a successor funeral home, the Board must make this designation and order the contracts' transfer to the designated funeral homes.

Contract disclosures and directives

The act requires that preneed funeral contracts include a disclosure that the purchaser of funeral goods or funeral services may be eligible for reimbursement of financial losses suffered as a result of malfeasance, misfeasance, default, failure, or insolvency of the licensee. Also, the contract must include a directive that any payment made by the purchaser of the preneed funeral contract must be made directly to the insurance company if it is funded by an insurance policy or annuity.

If a preneed funeral contract is funded by any means other than an insurance policy or policies, or an annuity or annuities, the contract must include (1) a disclosure that directs any payments by the purchaser of the contract to be made directly to the trustee identified in the contract and (2) a disclosure of whether the seller will charge any initial service or cancellation fee.

Fees and payment

The act requires that any payments made by the purchaser of a preneed funeral contract funded by the purchase of an insurance policy or policies, or an annuity or annuities, be made in the form of a check, cashier's check, money order, or debit or credit card payable to the insurance company. Under continuing law, the insurance agent must remit the application for insurance and the premium paid to the insurance company designated in the preneed contract within a time period specified under continuing law, unless the purchaser rescinds the contract.

Similarly, in the case of a preneed funeral contract funded by any means other than an insurance policy or annuity, the act requires that all payments (except the initial service fee permitted under the act and any sales tax) be made by the contract purchaser in form of a check, cashier's check, money order, or debit or credit card, payable only to the trustee of the contract trust. Within 30 days of receiving payment, the seller must remit the payment to the trustee, unless the purchaser rescinds the contract. The funds deposited with the trustee must remain intact and held in trust for the contract beneficiary.

In regards to a preneed funeral contract that is funded by any means other than an insurance policy or an annuity and that stipulates a fixed or firm or guaranteed price



for the services and goods provided under the contract, the seller may charge an initial service fee not more than 10% of the total amount of all payments to be made under the contract. If the amount is paid by the purchaser in installments, no more than half of any payment may be applied to the initial service fee. If the purchaser revokes the contract, any portion of the initial service fee that has not been paid is no longer due and payable to the seller.

Under continuing law, if the preneed funeral contract does stipulate a firm or fixed or guaranteed price, the purchaser may request and receive from the trustee all of the trust assets at the time of cancellation, less a cancellation fee. The original seller may collect a cancellation fee that is equal to or less than 10% of the value of the trust assets on the date the trust is cancelled. The act provides, however, that to the extent the original seller took an initial service fee as permitted, the aggregate amount of the cancellation fee and the initial service fee may not exceed 10% of the value of those assets. Similarly, under continuing law when the purchaser of a preneed funeral contract transfers the contract to a successor seller, the original seller may collect a transfer fee from the trust that equals up to 10% of the value of the trust assets on the date the trust is transferred. The act provides, however, that to the extent the original seller took an initial service fee, the aggregate amount of the transfer fee and the initial service fee may not exceed 10% of the value of those assets.

Under continuing law, a trustee of a preneed funeral contract is permitted to pay taxes and expenses for a preneed funeral contract trust and may charge a fee for managing the trust. Prior law required that these taxes, expenses, and fees be paid only from the accumulated income on the trust. The act eliminates this requirement.

Preneed Recovery Fund

(R.C. 4717.03(L), 4717.07, and 4717.41)

The act establishes the Preneed Recovery Fund as a custodial fund (in the Treasury of State's custody, but not part of the state treasury) to be administered by the Board. The \$10 fee collected in regards to preneed funeral contracts sold in Ohio, described above under "**Preneed Recovery Fund fee and contract reports**," must be deposited into the Fund. The Fund must be used to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of malfeasance, misfeasance, default, failure, or insolvency in connection with the sale of a preneed funeral contract by any licensee, regardless of whether the sale occurred before or after the Fund's establishment. If at the end of Ohio's fiscal year, the Fund balance exceeds \$2 million, the fee required from the preneed funeral contracts for the upcoming fiscal year must be reduced to \$5. If the balance at the end of a fiscal year exceeds \$3 million, payment of this fee must be suspended for the upcoming fiscal year.



The Board must adopt rules governing the Fund's management and the presentation and processing of applications for reimbursement, subrogation, or assignment of the rights of any reimbursed applicant.

The Board may spend moneys in the Fund to pay reimbursements on approved applications, purchase insurance to cover losses as it considers appropriate and consistent with the Fund's purposes, and invest portions of the Fund that are not currently needed to reimburse losses and maintain adequate reserves, as permitted by fiduciaries. The Board can also pay its expenses for administering the Fund, including employment of local counsel to prosecute subrogation claims.

Reimbursements from the Fund may be made only to the extent those losses are not bonded or otherwise covered, protected, or reimbursed, and only after the applicant has complied with the Board's rules. The Board must investigate all applications, and may reject or allow claims in whole or in part to the extent that money is available in the Fund. The Board has complete discretion to determine the order and manner of payment of approved applications. All payments from the Fund are a matter of privilege and not of right, and no person has any right in the Fund as a third-party beneficiary or otherwise. Attorneys may not be compensated by the Board for prosecuting an application for reimbursement.

If an applicant receives reimbursement from the Fund, the Board is considered subrogated in the reimbursement amount and may bring any action it considers advisable against any person. The Board may also enforce any claims it has for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants, and other persons it considers appropriate.

Embalming

(R.C. 4717.01)

The act modifies the definition of "embalming" to include specified chemical treatments, such as arterial injection, cavity treatment, and hypodermic tissue injection, to reduce the presence and growth of microorganisms, to temporarily slow organic decomposition, and to restore acceptable physical appearance.

False and deceptive advertising

(R.C. 4717.14)

The act provides examples of what constitutes "false and deceptive advertising," which is prohibited under continuing law. Under the act, "false and deceptive advertising" includes, but is not limited to:



(1) Using the names of persons who are not licensed to practice funeral directing in a way that leads the public to believe that those persons are engaging in funeral directing;

(2) Using any name for the funeral home other than the name under which the funeral home is licensed; or

(3) Using in the funeral home's name the surname of an individual who is not directly, actively, or presently associated with the funeral home, unless the surname has been previously and continuously used by the funeral home.

