

OHIO CEMETERY DISPUTE RESOLUTION COMMISSION

General information (COM)

Duties

The Commission is vested with the authority to mediate and make recommendations on how to resolve complaints against registered cemeteries, to refer alleged violations of certain cemetery laws to a county prosecutor, or to refer matters to the Ohio Attorney General for possible violations of the Ohio Consumer Sales Practices Act. ORC 4767.08(A) permits the Commission to review the financial records of trust accounts required to be maintained pursuant to ORC Sections 1721.21 and 1721.211 to ensure compliance with the laws. Under ORC 4767.06(G), the Commission also reviews all proposed transfers of cemeteries that would transfer substantially all of the assets or stock of that cemetery. In addition, the Commission adopts and publishes suggested maintenance guidelines for all cemeteries registered in the state of Ohio.

Membership *(Current members, chairperson and other officers, and selection process.)*

Current members are: Chairperson Kirk Roberts, Vice Chairperson Rick E. Meade, Secretary Ronald Puff, Jimmie J. Blevins, Mark A. Funke, Ann Meyer, Robert Winter. There are two vacant positions.

Nine Ohioans serve on the Commission representing religious, government, non-profit/company cemetery groups and two members of the public. Members of the Commission may serve two consecutive four year terms. According to ORC 4767.05(A), one member shall be the management authority of a municipal, township, or union cemetery recommended by the Ohio Township Association and the Ohio Municipal League; four members shall be individuals employed in a management position by a cemetery company or cemetery association and recommended by the Ohio Cemetery Association; two members shall be employed in a management position by a cemetery that is owned or operated by a religious, fraternal, or benevolent society and recommended by the Ohio Cemetery Association and two members, at least one of whom shall be at least sixty-five years of age, shall be representatives of the public with no financial interest in the death care industry. Each member of the commission, except for the two members who represent the public, shall, at the time of appointment, have had a minimum of five consecutive years of experience in the active administration and management of a cemetery in this state. They are appointed by the Governor of the State of Ohio with the advice and consent of the Ohio Senate.

Budget *(Current budget, description of budgeting process, sources of funding, and expected increases or decreases in budget or funding in future years.)*

There are two sources of funding for the Commission. One source is from the cemetery registration and renewal fees. ORC 4767.03(A)(1) sets the amount of this fee as twenty-five dollars for one cemetery, forty dollars for two cemeteries, and fifty dollars for three or more cemeteries. Political subdivisions do not pay a fee to register. All registration and renewal fees collected are paid into the state treasury to the credit of the Division to be used by the Division and the Commission to carry out its powers and duties under Chapter 4767 of the Revised Code. [RC 4767.03(D)]. The Cemetery Operating fund is estimated to have \$200,000 in revenue. The revenue varies on burial permit fees filed each year.

The registration and renewal fees generate approximately \$19,000.00 per fiscal year.

The second source of funding comes from the issuance of burial permit fees. ORC 3705.17 provides that:

“[w]hen a funeral director or other person obtains a burial permit from a local registrar or sub-registrar, the registrar or subregistrar shall charge a fee of three dollars for the issuance of the burial permit. Two dollars and fifty cents of each fee collected for a burial permit shall be paid into the state treasury to the credit of the Division of Real Estate in the Department of Commerce to be used by the Division in discharging its duties prescribed in Chapter 4767 of the Revised Code and the Ohio Cemetery Dispute Resolution Commission created by section 4767.05 of the Revised Code.”

Burial permit fees generate to the operating fund approximately \$181,000.00 per fiscal year to the Division. The cemetery grant program receives one dollar of every two dollars and fifty cents of each burial permit fee collected. The cemetery grant fund is estimated in \$125,000 in revenue.

Workload *(Assess current, past, and anticipated workload. Has the workload increased or decreased significantly in the preceding six years?)*

The workload has been increasing over the years. The number of cemeteries that are actively registered has increased as has the number of complaints filed with the Commission. There are currently 4,176 registered cemeteries. As of October 7, 2022, the Division has received 47 cemetery complaints – compared to 38 complaints in all of 2021.

Additionally, in 2018, Sub. House Bill 168 added additional duties. The Division now audits the financial records of approximately 400 cemeteries to ensure compliance with sections 1721.21 and 1721.211 of the Revised Code at least every five years, or more often as the section deems necessary. Sub. House Bill 168 also included the Cemetery Grant Fund. The fund defrays the costs of exceptional cemetery maintenance or training cemetery personnel in the maintenance and operation of a cemetery. The program offers annual grants on a state fiscal year timeline. Staff also handles over 1,100 phone calls a year. There has been a sharp increase in the number of emails with over 2,000 received and responded to in 2021.

Staffing *(How many staff are currently employed by the Commission? What are their roles? Are staffing levels proportionate to the Commission's current and anticipated workload?)*

Two full-time staff members; a Section Chief who is also an attorney, and an external auditor; handle the day-to-day administration of the program, registrations and renewals, audits, consumer complaints and the grant program.

In addition to the cemetery program, the Section Chief also handles the land professional registration program, any cemetery public records requests, cemetery rule-review, public speaking at stakeholder events and heads the mediation program for real estate/appraiser/home inspector enforcement sections. The external auditor is a trained mediator and also helps handle mediations for the enforcement section.

With the current and anticipated workload for the cemetery program and other duties previously mentioned, the staffing levels are strained for this program

Administrative hearings and public complaints *(Describe the Commission's processes for administering discipline and addressing complaints. Assess the efficiency of the processes.)*

This Commission is a non-adjudicatory body. The dual purpose of the Commission is to assist in resolving complaints against registered cemeteries by using informal techniques of mediation, conciliation and persuasion and to audit cemetery trust accounts to ensure compliance with the laws created to protect consumer funds. ORC Section 1721.21 has trust requirements for endowment care money and Section 1721.211 has trust requirements for merchandise and services sold pre-need by cemeteries.

Complaints are opened within 7 days of receipt. Division staff then works with the parties to try and resolve the complaint. Complaints are heard by the Commission within one hundred eighty days after filing unless it has been resolved by the parties or has been continued upon the request of the parties.

The Commission uses informal mediation techniques to resolve complaints. The Commission is required to meet at least four times a year; typically scheduled in the months of March, June, October and December. Additional meetings may be called. In addition to resolving consumer complaints, they also advise cemetery operators on best practices in the industry. The Commission can also refer alleged criminal violations of certain cemetery laws to the appropriate county prosecutor or matters to the Ohio Attorney General for possible violations of the Ohio Consumer Sales Practices Act.

Cemetery registration and internment rights sales registration

Survey responses for cemetery registration (COM)

Description	
<p>According to ORC 4767.02(A), no person, church, religious society, established fraternal organization or political subdivision of the state shall own, operate or maintain a cemetery unless the cemetery is registered with the Ohio Department of Commerce, Division of Real Estate and Professional Licensing. The only two exceptions to the registration requirement are for cemeteries in which there has not been a burial in the previous 25 years and for family cemeteries. A family cemetery is defined as a cemetery "...containing the human remains of persons at least three fourths of whom have a common ancestor or who are the spouse or adopted child of that common ancestor."</p>	
Type <i>(License, specialty license for medical reimbursement, government certification, registration, bonding or insurance, inspection, or process regulation. See R.C. 4798.01 for relevant definitions.)</i>	
<p>The following are all registrations:</p> <p>CEO - cemetery operators</p> <p>CGR - governmental cemeteries</p> <p>CBR - religious/benevolent/established fraternal organization cemeteries</p> <p>CRC - cemetery associations</p>	
If the regulation is a registration, certification, or license requirement, please complete the following:	
Number issued annually	There are 2,100 active cemetery operators as of October 7, 2022. Those operators have a total of 4,176 registered cemeteries.
Number renewed annually	For the 2022 renewal, 772 operators received a renewal notice. They operate 1,148 cemeteries. The remaining operators are political subdivisions and their cemetery registrations do not expire.

If the regulation is a registration, certification, or license requirement, please complete the following:	
Have there been significant increases or decreases in active registrations, certifications or licenses in the preceding six years?	There has been a slight increase in active registrations.
Education or training requirements	N/A
Experience requirements	N/A
Examination requirements (<i>Who administers the exam? How is the exam and administrator selected? What fees are charged? Does the Commission receive any proceeds of those fees? If so, how are the proceeds used?</i>)	N/A
Continuing education requirements (<i>Including a description of the curriculum and the process of setting it.</i>)	N/A
Initial fee	ORC 4767.03(A)(1) sets the amount of this fee based on the number of cemeteries an operator has registered: twenty-five dollars for one cemetery, forty dollars for two cemeteries, and fifty dollars for three or more cemeteries. Political subdivisions do not pay a fee to register.
Duration	Political subdivisions' registration does not expire. Association cemeteries and religious/benevolent cemeteries renewal annually.

If the regulation is a registration, certification, or license requirement, please complete the following:	
Renewal fee <i>(If different from initial fee, please explain why.)</i>	Same as initial fee.
Does the Commission recognize uniform licensure requirements or allow for reciprocity?	N/A
Are there any similar national registrations, certifications, or licenses? Could they be used as a substitute for the state regulation?	No.
Are there any circumstances in which an individual may practice elements of the occupation without being regulated by the Commission?	N/A
Is the Commission permitted to exercise discretion in determining whether to register, certify, or license an individual?	<p>If an applicant files a complete application pursuant to ORC Chapter 4767 there is no discretion in determining whether to register a cemetery operator.</p> <p>Pursuant to OAC1301:13-5-02, if a registered cemetery operator loses their registration due to a conviction under the trust laws found in ORC 1721.21 and/or 1721.211; they may attempt to reapply for registration and must prove that the operator is honest, truthful and of good reputation. However, the Division is not aware of a circumstance that this has occurred in at least 15 years.</p>
Other information <i>(Significant attributes or prerequisites to licensure not addressed in this chart.)</i>	N/A

Oversight and disciplinary authority of the Commission respecting individuals engaged in the occupation.

This Commission is a non-adjudicatory body.

How much revenue is derived from fees charged by the Commission to individuals engaged in the occupation (such as license and renewal fees)? How is that revenue used?

Please see budget answer above. The revenue received is used to cover the costs of labor and materials necessary for the administration of the program.

Describe any federal regulations that apply to the occupation. Does federal law require the state to regulate the occupation?

N/A

What is the harm that the regulation seeks to prevent? (See, R.C. 4798.02(B).)

The Commission was created in 1993 due, in part, to a rash of fraud and theft by cemetery operators around the Nation. The Commission works to assist in resolving complaints against registered cemeteries by using informal techniques of mediation, conciliation and persuasion and to audit cemetery trust accounts to ensure compliance with the laws created to protect consumer funds. ORC Section 1721.21 has trust requirements for endowment care money and Section 1721.211 has trust requirements for merchandise and services sold pre-need by cemeteries.

Is the regulation effective at preventing the harm described above? Are there other, less restrictive ways to prevent the harm?

The Commission's work helps to reduce and prevent theft and fraud in the Ohio cemetery industry. The Commission is also an important forum for the public and cemetery operators to air out grievances before a panel of cemetery experts and public advocates. The dispute resolution process is a valuable resource for Ohio cemetery operators to receive advice from the Commission regarding standard industry practices and procedures and provides both consumers and cemetery operators with an alternative to costly litigation.

This body has been highly successful in resolving disputes between the public and Ohio cemetery operators regarding the activities, practices, policies, and procedures of Ohio cemeteries. As a result of the complaint process, consumers have received full refunds, discounted services or merchandise for no cost. In addition, multiple consumers have seen monuments and memorials placed after they had suffered through year-long delays and minimal communication from the cemeteries; burial locations of loved ones were verified; many gravestones have been repaired or replaced; and there is improved overall maintenance at cemeteries around Ohio. The Commission frequently, because of complaints filed, advises cemetery operators about best cemetery practices including cemetery maintenance, drainage options to prevent flooding, decoration policies, rules and regulations, contracts and much more. Additionally, criminal referrals to county prosecutors have resulted in cemeteries coming back into compliance with cemetery laws and in criminal convictions related to the theft of trust money.

Are there any changes the Commission would like to see implemented?

Not at this time. Please see Division response.

Survey responses for interment rights sales registration (COM)

Description

Pursuant to ORC 4767.031, a cemetery operator is responsible for providing to the Division a list of names and residence addresses of all people employed or authorized by that operator to sell interment rights. This form must be updated within the calendar quarter immediately following a change in the list of persons authorized to sell interment rights.

Type *(License, specialty license for medical reimbursement, government certification, registration, bonding or insurance, inspection, or process regulation. See R.C. 4798.01 for relevant definitions.)*

No registration is issued to the people listed on an operator's list.

If the regulation is a registration, certification, or license requirement, please complete the following:

Number issued annually	N/A
Number renewed annually	N/A

If the regulation is a registration, certification, or license requirement, please complete the following:

Have there been significant increases or decreases in active registrations, certifications or licenses in the preceding six years?	N/A
Education or training requirements	N/A
Experience requirements	N/A
Examination requirements (<i>Who administers the exam? How is the exam and administrator selected? What fees are charged? Does the Commission receive any proceeds of those fees? If so, how are the proceeds used?</i>)	N/A
Continuing education requirements (<i>Including a description of the curriculum and the process of setting it.</i>)	N/A
Initial fee	N/A
Duration	N/A
Renewal fee (<i>If different from initial fee, please explain why.</i>)	N/A

If the regulation is a registration, certification, or license requirement, please complete the following:

<p>Does the Commission recognize uniform licensure requirements or allow for reciprocity?</p>	<p>N/A</p>
<p>Are there any similar national registrations, certifications, or licenses? Could they be used as a substitute for the state regulation?</p>	<p>N/A</p>
<p>Are there any circumstances in which an individual may practice elements of the occupation without being regulated by the Commission?</p>	<p>N/A</p>
<p>Is the Commission permitted to exercise discretion in determining whether to register, certify, or license an individual?</p>	<p>N/A</p>
<p>Other information (<i>Significant attributes or prerequisites to licensure not addressed in this chart.</i>)</p>	<p>N/A</p>

Oversight and disciplinary authority of the Commission respecting individuals engaged in the occupation.

N/A. Any complaints filed must be filed against a registered cemetery or a cemetery that should be registered.

How much revenue is derived from fees charged by the Commission to individuals engaged in the occupation (such as license and renewal fees)? How is that revenue used?

N/A

Describe any federal regulations that apply to the occupation. Does federal law require the state to regulate the occupation?

N/A

What is the harm that the regulation seeks to prevent? (See, R.C. 4798.02(B).)

N/A

Is the regulation effective at preventing the harm described above? Are there other, less restrictive ways to prevent the harm?

N/A

Are there any changes the Commission would like to see implemented?

N/A

Surrounding state comparison (LSC)

Cemetery Registration (Cemetery Registration and Internment-Rights Sales Registration)						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Type of regulation	Registration required to own a cemetery and to sell internment rights (<i>R.C. 4767.02 and 4767.031</i>).	Registration required to own a cemetery (<i>Ind. Code 25-15-9-17</i>).	Registration required to sell internment rights (<i>Ky. Rev. Stat. 367.946</i>).	Permit required to establish a cemetery; registration required to operate a cemetery (<i>Mich.</i>	Registration required to sell internment rights (<i>9 Pa. Cons. Stat. 304; 63 Pa. Stat. 455.301</i>).	Registration required to own a cemetery and to sell internment rights (<i>W. Va. Code 35-5B-2</i>).

Cemetery Registration (Cemetery Registration and Internment-Rights Sales Registration)

	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
				<i>Comp. Laws 456.532).</i>		
Education or training	N/A	N/A	N/A	N/A	N/A	N/A
Experience	N/A	N/A	N/A	N/A	N/A	N/A
Exam	N/A	N/A	N/A	N/A	N/A	N/A
Continuing education	N/A	N/A	N/A	N/A	N/A	N/A
Initial licensure fee	One cemetery: \$25; two cemeteries: \$40; three or more cemeteries: \$50 (R.C. 4767.03).	\$100 (<i>Ind. Professional Licensing Agency, "Application for Cemetery Registration," Cemetery Applications</i>).	\$50 (<i>Ky. Rev. Stat. 367.946</i>).	\$20 for registration; \$1,500 for permit (<i>Mich. Comp. Laws 456.531 and 456.533</i>).	\$25 (<i>9 Pa. Cons. Stat. 304</i>).	\$200 (<i>W. Va. State Tax Dept., Business Registration – Cemeteries</i>).
License duration	One year (<i>R.C. 4767.03</i>).	One year (<i>see Ind. Code 30-2-13-31</i>).	One year (<i>Ky. Rev. Stat. 367.946</i>).	One year (registration only) (<i>Mich. Comp. Laws 456.531</i>).	Two years (<i>9 Pa. Cons. Stat. 304</i>).	One year (<i>W. Va. State Tax Dept., Business Registration – Cemeteries</i>).

Cemetery Registration (Cemetery Registration and Internment-Rights Sales Registration)

	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Renewal fee	One cemetery: \$25; two cemeteries: \$40; three or more cemeteries: \$50 (R.C. 4767.03).	\$10 (<i>Ind. Professional Licensing Agency, "Annual Report Pursuant to IC 30-2-13," Other Forms</i>).	\$10 (<i>Ky. Rev. Stat. 367.946</i>).	\$20 (registration only) (<i>Mich. Comp. Laws 456.531</i>).	\$25 (<i>9 Pa. Cons. Stat. 304</i>).	\$200 (<i>W. Va. State Tax Dept., Business Registration – Cemeteries</i>).