

## HB3242: Allow burial in unlicensed cemetery in certain cases.

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**Problem:** It is illegal to inter in a cemetery that does not have a valid license to operate (when the facility otherwise meets the definition of an operating cemetery). Unlike other death care facilities such as funeral homes and crematories **that already have** laws in place to address similar situations and protect consumers, there was no way in existing law to allow consumers to utilize pre-existing interment rights and preneed plans.

**History:** This topic was discussed in detail at the 2014 community planning session, and throughout the year at board meetings as these situations have increased. OMCB, OHCC and DCBS—as the three primary State Agencies/Commissions in this area—identified the need for statutory changes as the only recourse. OFDA promoted the issue with the Legislature, which resulted in the introduction of this bill.

The initial bill language introduced by legislative counsel was too far reaching. OFDA, CAO, OMCB and OHCC all collaborated on proposed changes to the language; first and foremost in that proposal was the creation of an advisory committee to further review and identify an appropriate long term solution for use of pre-existing rights in cemeteries that no longer hold a valid license either through loss of license, abandonment or other means. Unfortunately, the Committee did not introduce all the requested changes, and the final bill only allowed for an immediate “fix” to allow a temporary permit case by case. They did leave in the sunset date on this law, which means they expect the community to propose a longer term solution to ultimately replace or augment the permit process.

### **Scope of Changes/Authority: New Authority**

(1) The State Mortuary and Cemetery Board may grant a **temporary operating permit** for a cemetery that does not hold a valid license to operate for the purpose of performing an interment. The board may grant the temporary operating permit to:

- a person that holds a license, certificate of authority or registration issued by the board, or
- to a person who works in the cemetery industry and who the board determines is qualified.

(2) The board may grant the temporary operating permit described in subsection (1) of this section only if:

- a death that necessitates interment has occurred, and,
- there is an existing prearrangement sales contract, as defined in ORS 97.923, to which the cemetery is a party.

(3) The board shall adopt rules regarding temporary operating permits. The rules adopted under this subsection must require:

- (a) That the person granted the temporary operating permit maintain records; and
- (b) That the plot location stated in the existing prearrangement sales contract is verified before the interment.

This authority is valid only from January 1, 2016 to January 1, 2018.

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## Rulemaking Worksheet: Guiding Your Discussion

Bill Language: Statute	How to Implement: Rule
<p>(1) The State Mortuary and Cemetery Board may grant a <b>temporary operating permit</b> for a cemetery that does not hold a valid license to operate for the purpose of performing an interment. The board may grant the temporary operating permit to:</p> <ul style="list-style-type: none"> <li>• a person that holds a license, certificate of authority or registration issued by the board, or</li> <li>• to a person who works in the cemetery industry and who the board determines is qualified.</li> </ul>	<p>Determining who can apply for a permit—how will the Board determine who is qualified? What is the criteria?</p>
<p>(2) The board may grant the temporary operating permit described in subsection (1) of this section only if:</p> <ul style="list-style-type: none"> <li>• a death that necessitates interment has occurred, and,</li> <li>• there is an existing prearrangement sales contract, as defined in ORS 97.923, to which the cemetery is a party.</li> </ul>	<p>How will this be verified? What needs to be submitted as part of the permit process?</p>
<p>(3) The board shall adopt rules regarding temporary operating permits. The rules adopted under this subsection must require:</p> <p>(a) That the person granted the temporary operating permit maintain records; and</p> <p>(b) That the plot location stated in the existing prearrangement sales contract is verified before the interment.</p>	<p>What records need to be created? Maintained where?</p> <p>How will plot location be determined/verified?</p> <p>How will permit holder gain access to cemetery records?</p> <p>What else do the rules need to address specifically? Who is impacted?</p>
<p>This authority is valid only from January 1, 2016 to January 1, 2018.</p>	<p>What else needs to happen before the law expires?</p> <p>The rules will also require auto-repeal language.</p>