

Chapter 97

2017 EDITION

Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts

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GENERAL PROVISIONS

97.010 Definitions. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920, 97.923 to 97.949, 97.990 and 97.994:

(1) "Burial" means the placement of human remains in a grave or lawn crypt.

(2) "Burial park" means a tract of land for the burial of human remains, used, or intended to be used, and dedicated for cemetery purposes.

(3) "Burial right" means the right to use a grave, mausoleum, columbarium, ossuary or scattering garden for the interment or other disposition of human remains.

(4) "Cemetery" means a place:

(a) Dedicated to and used, or intended to be used, for a permanent memorial or the permanent interment of human remains; and

(b) That may contain a mausoleum, crypt or vault interment, a columbarium, an ossuary, a cenotaph, a scattering garden, any other structure or place used or intended to be used for the interment or disposition of human remains or any combination of these structures or places.

(5) "Cemetery association" means a corporation or association authorized by its articles of incorporation to conduct the business of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(6) "Cemetery authority" means a person who owns or controls cemetery lands or property, including but not limited to a cemetery corporation, association or corporation sole.

(7) "Cemetery business" and "cemetery purpose" are used interchangeably and mean any business or purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(8) "Cemetery merchandise" means personal property offered for sale or sold for use in connection with the final disposition, memorialization or interment of human remains. "Cemetery merchandise" includes, but is not limited to, an outer burial container and a memorial.

(9) "Cemetery services" means services provided by a cemetery authority for interment or scattering, and installation of cemetery merchandise.

(10) "Cenotaph" means a place, the primary purpose of which is to provide an area where a person may pay to establish a memorial to honor a person whose remains may

be interred elsewhere or whose remains cannot be recovered.

(11) "Columbarium" means a structure or room containing receptacles for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(12) "Cremated remains" means the remains of a cremated human body after completion of the cremation process.

(13) "Cremation" means the technical process, using direct flame and heat, that reduces human remains to bone fragments.

(14) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(15) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(16) "Directors" or "governing body" means the board of directors, board of trustees or other governing body of a cemetery association.

(17) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund.

(18) "Entombment" means the placement of human remains in a crypt or vault.

(19) "Funeral merchandise" means personal property offered for sale or sold for use in connection with funeral services. "Funeral merchandise" includes, but is not limited to, acknowledgment cards, alternative containers, caskets, clothing, cremation containers, cremation interment containers, flowers, memory folders, monuments, outer burial containers, prayer cards, register books and urns.

(20) "Funeral services" means services customarily provided by a funeral service practitioner including, but not limited to, care and preparation of human remains for final disposition, professional services relating to a funeral or an alternative to a funeral, transportation of human remains, limousine services, use of facilities or equipment for viewing human remains, visitation, memorial services or services that are used in connection with a funeral or alternative to a funeral, coordinating or conducting funeral rites or ceremonies, and other services provided in connection with a funeral, alternative to a funeral or final disposition of human remains.

(21) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(22) “Human remains” or “remains” means the body of a deceased person in any stage of decomposition or after cremation.

(23) “Interment” means the disposition of human remains by inurnment, entombment or burial.

(24) “Inurnment” means the placement of cremated remains in a receptacle and the deposit of the receptacle in a niche.

(25) “Lot,” “plot” or “burial space” means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(26) “Mausoleum” means a structure substantially exposed above ground for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(27) “Memorial” means a product, other than a mausoleum or columbarium, used for identifying an interment space or for commemoration of the life, deeds or career of a decedent including, but not limited to, an ossuary, monument, marker, niche plate, urn garden plaque, crypt plate, cenotaph, marker bench or vase.

(28) “Niche” means a recess usually in a columbarium used, or intended to be used, for the inurnment of the cremated remains of one or more persons.

(29) “Ossuary” means a receptacle used for the communal placement of cremated remains without benefit of an urn or any other container in which cremated remains may be commingled with other cremated remains and are nonrecoverable.

(30) “Plot owner” or “owner” means any person identified in the records of the cemetery authority as owner of the burial rights to a burial plot, or who holds a certificate of ownership conveyed from the cemetery authority of the burial rights in a particular lot, plot or space.

(31) “Scattering” means the lawful dispersion of cremated remains that need not be associated with an interment right or issuance of a deed, that may be recorded only as a service that has taken place and may not be recorded on the permanent records of the cemetery authority.

(32) “Scattering garden” means a location set aside within a cemetery that is used for the spreading or broadcasting of cremated remains that have been removed from their container and can be mixed with or placed on top of the soil or ground cover or buried

in an underground receptacle on a commingled basis and that are nonrecoverable.

(33) “Special care” means any care in excess of endowed care in accordance with the specific directions of a donor of funds. [Amended by 1955 c.545 §1; 1965 c.396 §1; 2007 c.661 §1; 2009 c.709 §10]

97.020 Exemption of certain organizations and cemeteries from certain sections of chapter. (1) The provisions of ORS 97.030, 97.120, 97.310 to 97.350, 97.360 (1), 97.510 and 97.550 relating to private cemeteries do not apply to:

(a) Any religious or eleemosynary corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination or any cemetery that such entity organizes, controls or operates.

(b) Any county or city cemetery.

(c) A historic cemetery, as defined in ORS 97.772, operated and maintained by a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2) The provisions of ORS 97.810 to 97.865 relating to private cemeteries do not apply to:

(a) Any religious or eleemosynary corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination or any cemetery that such entity organizes, controls or operates, unless the cemetery authority for an entity described in this paragraph elects to subject itself to ORS 97.810 to 97.865.

(b) Any county or city cemetery, unless the county or city elects to subject itself to ORS 97.810 to 97.865.

(c) A historic cemetery, as defined in ORS 97.772, operated and maintained by a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code. [Amended by 1955 c.473 §1; 1997 c.167 §1; 2011 c.162 §1]

97.030 Vested rights not acquired. No cemetery authority or person having a right of sepulture or any other right under ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 acquires any vested right by virtue thereof which the Legislative Assembly may not subsequently amend, alter or repeal.

97.040 Private family burial grounds. Except for ORS 97.730, 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 do not apply to private

family burial grounds where lots are not offered for sale.

97.050 [1977 c.183 §1; 1983 c.526 §4; 1985 c.747 §49; 1987 c.660 §16; 1989 c.1034 §8; renumbered 127.605 in 1989]

97.055 [1977 c.183 §2; 1979 c.211 §1; 1983 c.526 §5; renumbered 127.610 in 1989]

97.060 [1977 c.183 §3; renumbered 127.615 in 1989]

97.065 [1977 c.183 §4; renumbered 127.620 in 1989]

97.070 [1977 c.183 §5; renumbered 127.625 in 1989]

97.075 [1977 c.183 §6; repealed by 1983 c.526 §7]

97.080 [1977 c.183 §7; renumbered 127.630 in 1989]

AUTOPSIES

97.082 Consent for certain autopsies; form. (1) Except as provided in subsection (2) of this section, whenever a person dies and no autopsy is ordered by a medical examiner or district attorney pursuant to ORS 146.117, an autopsy may not be conducted without the prior written consent of a person within the first applicable class of the following listed classes:

- (a) The spouse of the decedent;
- (b) A son or daughter of the decedent 18 years of age or older;
- (c) Either parent of the decedent;
- (d) A brother or sister of the decedent 18 years of age or older;
- (e) A guardian of the decedent at the time of death;
- (f) A person in the next degree of kindred to the decedent;
- (g) The personal representative of the estate of the decedent; or
- (h) The person nominated as the personal representative of the decedent in the decedent's last will.

(2)(a) Consent required under subsection (1) of this section must be granted on a written autopsy consent form developed pursuant to subsection (3) of this section.

(b) If the person authorized by subsection (1) of this section to grant written consent to conduct an autopsy is not available to grant written consent in person, the authorized person may grant consent by completing the required consent form and returning the signed form, by facsimile or other electronic transmission, to the party requesting permission.

(3) The Public Health Officer, in consultation with the Chief Medical Examiner, shall develop and make available a standardized written autopsy consent form that:

(a) Grants the person specified in subsection (1) of this section the authority to:

(A) Grant permission to conduct an unlimited autopsy;

(B) Grant permission to conduct a limited autopsy and to specify what limitations are imposed upon the autopsy; or

(C) Refuse permission to conduct an autopsy.

(b) Provides a section for the person specified in subsection (1) of this section to submit specific instructions with respect to tests to be performed during the autopsy and to the disposition of organs and tissue removed for purposes of a limited autopsy.

(c) Provides that the consent signature be accompanied by the signature of a witness. [2003 c.416 §1; 2017 c.151 §1]

Note: 97.082 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.083 [1983 c.526 §1; renumbered 127.635 in 1989]

97.084 [1983 c.526 §2; renumbered 127.640 in 1989]

97.085 [1977 c.183 §§8,9,10; renumbered 127.645 in 1989]

97.090 [1977 c.183 §11; renumbered 127.650 in 1989]

DISPOSITION OF HUMAN BODIES

97.110 Human remains not to be attached. No person shall attach, detain or claim to detain any human remains for any debt or demand or upon any pretended lien or charge.

97.120 Human remains to be deposited in accordance with ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. A cemetery authority shall deposit or dispose of human remains as provided by ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990.

97.130 Right to control disposition of remains; delegation. (1) Any individual of sound mind who is 18 years of age or older, by completion of a written signed instrument or by preparing or prearranging with any funeral service practitioner licensed under ORS chapter 692, may direct any lawful manner of disposition of the individual's remains. Except as provided under subsection (6) of this section, disposition directions or disposition prearrangements that are prepaid or that are filed with a funeral service practitioner licensed under ORS chapter 692 are not subject to cancellation or substantial revision.

(2) A person within the first applicable listed class among the following listed classes that is available at the time of death, in the absence of actual notice of a contrary direction by the decedent as described under subsection (1) of this section or actual notice of opposition by completion of a written instrument by a member of the same class or

a member of a prior class, may direct any lawful manner of disposition of a decedent's remains by completion of a written instrument:

- (a) The spouse of the decedent.
- (b) A son or daughter of the decedent 18 years of age or older.
- (c) Either parent of the decedent.
- (d) A brother or sister of the decedent 18 years of age or older.
- (e) A guardian of the decedent at the time of death.
- (f) A person in the next degree of kindred to the decedent.
- (g) The personal representative of the estate of the decedent.
- (h) The person nominated as the personal representative of the decedent in the decedent's last will.
- (i) A public health officer.

(3)(a) The decedent or any person authorized in subsection (2) of this section to direct the manner of disposition of the decedent's remains may delegate such authority to any person 18 years of age or older.

(b) Delegation of the authority to direct the manner of disposition of remains must be made by completion of:

(A) The written instrument described in subsection (7) of this section; or

(B) A written instrument recognized by the Armed Forces of the United States, as that term is defined in ORS 348.282, if the decedent died while serving in the Armed Forces of the United States.

(c) The person to whom the authority is delegated has the same authority under subsection (2) of this section as the person delegating the authority.

(4) If a decedent or the decedent's designee issues more than one authorization or direction for the disposal of the decedent's remains, only the most recent authorization or direction is binding.

(5) A donation of anatomical gifts under ORS 97.951 to 97.982 takes priority over directions for the disposition of a decedent's remains under this section only if the person making the donation is of a priority under subsection (1) or (2) of this section the same as or higher than the priority of the person directing the disposition of the remains.

(6) If the decedent directs a disposition under subsection (1) of this section and those financially responsible for the disposition are without sufficient funds to pay for such disposition or the estate of the decedent has

insufficient funds to pay for the disposition, or if the direction is unlawful, the direction is void and disposition shall be in accordance with the direction provided by the person given priority in subsection (2) of this section and who agrees to be financially responsible.

(7) The signature of the individual delegating the authority to direct the manner of disposition is required for the completion of the written instrument required in subsection (3)(b)(A) of this section. The following form or a form substantially similar shall be used by all individuals:

**APPOINTMENT OF PERSON
TO MAKE DECISIONS
CONCERNING DISPOSITION
OF REMAINS**

I, _____, appoint _____, whose address is _____ and whose telephone number is (____) _____, as the person to make all decisions regarding the disposition of my remains upon my death for my burial or cremation. In the event _____ is unable to act, I appoint _____, whose address is _____ and whose telephone number is (____) _____, as my alternate person to make all decisions regarding the disposition of my remains upon my death for my burial or cremation.

It is my intent that this Appointment of Person to Make Decisions Concerning Disposition of Remains act as and be accepted as the written authorization presently required by ORS 97.130 (or its corresponding future provisions) or any other provision of Oregon Law, authorizing me to name a person to have authority to dispose of my remains.

DATED this ____ day of _____,

(Signature)

DECLARATION OF WITNESSES

We declare that _____ is personally known to us, that he/she signed this Appointment of Person to Make Decisions Concerning Disposition of Remains in our presence, that he/she appeared to be of sound mind and not acting under duress, fraud or undue influence, and that neither of us is the person so appointed by this document.

Witnessed By: _____ Date: _____
 Witnessed By: _____ Date: _____

(8) Subject to the provisions of ORS 97.951 to 97.982, if disposition of the remains of a decedent has not been directed and authorized under this section within 10 days after the date of the death of the decedent, a public health officer may direct and authorize disposition of the remains.

(9) Notwithstanding subsection (2) of this section, a person arrested for or charged with criminal homicide by reason of the death of the decedent may not direct the disposition of the decedent's remains. The disposition of the decedent's remains shall be made in accordance with the directions of an eligible person within the first applicable class established under subsection (2) of this section.

(10) Notwithstanding subsections (2) and (3) of this section, if the person who has the authority to direct the manner of disposition of cremated remains pursuant to subsection (1) or (2) of this section transfers any portion of the cremated remains to another person, the recipient of the cremated remains has the authority to direct the manner of disposition of the cremated remains in the recipient's possession. [Amended by 1969 c.175 §10; 1969 c.591 §279; 1973 c.823 §97; 1995 c.717 §10; 1997 c.472 §1; 1999 c.201 §5; 2007 c.373 §1; 2007 c.681 §24; 2011 c.154 §1; 2011 c.164 §1]

97.132 [1961 c.674 §1; repealed by 1969 c.175 §12]

97.134 [1961 c.674 §§2,3; repealed by 1969 c.175 §12]

97.140 [Repealed by 1957 c.423 §1 (97.141 and 97.145 enacted in lieu of 97.140)]

97.141 [1957 c.423 §2 (97.141 and 97.145 enacted in lieu of 97.140); repealed by 1997 c.472 §13]

97.145 Liability for failure to conform to written instrument directing control of remains. No cemetery authority, crematory operator or licensed funeral service practitioner interring or cremating remains pursuant to a written instrument signed by the decedent or a person described in ORS 97.130 (2) shall be liable for any failure to conform to the priority of control of remains provided in ORS 97.130, except when it shall have received two or more conflicting written instruments prior to interment or cremation of said remains. [1957 c.423 §3 (97.141 and 97.145 enacted in lieu of 97.140); 1997 c.472 §2]

97.150 Disposition of cremated remains; procedures; notice; limitations on liability of cemetery authority, crematory operator or funeral service provider. (1)(a) If the cemetery authority, crematory operator or licensed funeral service practitioner has been authorized to cremate remains of a

decedent pursuant to ORS 97.130, the authorization must also contain further instructions to the cemetery authority, crematory operator or licensed funeral service practitioner as to the final disposition of the cremated remains.

(b) If the cremated remains are left in the possession of the cemetery authority, crematory operator or licensed funeral service practitioner and no instructions for final disposition are given to the cemetery authority, crematory operator or licensed funeral service practitioner within 180 days after the date of cremation, the cemetery authority, crematory operator or licensed funeral service practitioner shall make a reasonable effort to notify the person who has the authority to direct disposition of the cremated remains under ORS 97.130 (2). The notice must state that the cemetery authority, crematory operator or licensed funeral service practitioner intends to dispose of the cremated remains unless the person who has the authority to direct disposition of the cremated remains gives instructions to the contrary to the cemetery authority, crematory operator or licensed funeral service practitioner within 30 days after the date of the notice.

(c) Reasonable effort to notify includes, but is not limited to, notice, delivered personally or by certified mail, return receipt requested, to the person who has the authority to direct disposition of the cremated remains at the address of the person in the records of the cemetery authority, crematory operator or licensed funeral service practitioner.

(d) If the person who has the authority to direct the disposition of the cremated remains has not given instructions for the disposition of the cremated remains within 30 days after the date of the notice, the cemetery authority, crematory operator or licensed funeral service practitioner may dispose of the cremated remains as is legally practicable.

(2) A cemetery authority, crematory operator or licensed funeral service practitioner is not liable in any civil or criminal proceeding relating to cremated remains that have been left in the possession of the cemetery authority, crematory operator or licensed funeral service practitioner for a period of 180 days or more unless:

(a) The cemetery authority, crematory operator or licensed funeral service practitioner has failed to make a reasonable effort to notify the person who has the authority to direct disposition of the cremated remains as described in subsection (1) of this section;

(b) A written contract has been entered into with the cemetery authority, crematory

operator or licensed funeral service practitioner for care of the cremated remains; or

(c) Permanent interment has been made.

(3) A cemetery authority is not liable in any civil or criminal proceeding relating to cremated remains that have been interred, scattered, placed in an ossuary or disposed of in any other manner within the cemetery if the person who physically possesses the cremated remains consents to the disposition.

(4) A cemetery authority is not liable in any civil or criminal proceeding relating to cremated remains that have been scattered within the cemetery without the knowledge of the cemetery authority. The cemetery authority may dispose of cremated remains that have been scattered within the cemetery without the knowledge of the cemetery authority as is legally practicable.

(5) If the cemetery authority, crematory operator or licensed funeral service practitioner has complied with this section, then the cemetery authority, crematory operator or licensed funeral service practitioner may dispose of the remains as is legally practicable. [Amended by 1989 c.669 §1; 1997 c.472 §3; 2011 c.164 §2]

97.153 Diagnostic or therapeutic radioisotopes in body. Notwithstanding section 14, chapter 653, Oregon Laws 1991, or ORS 469.525, diagnostic or therapeutic radioisotopes remaining inside the uncremated body of a deceased person may be buried, entombed or otherwise disposed of in a cemetery or other lawful place for the burial, entombment or other disposal of the uncremated body of the deceased person even though the body contains low-level radioactive waste as defined under 42 U.S.C. 2021(b) as of January 1, 1995, by-product material as defined under 42 U.S.C. 2014 as of January 1, 1995, or special nuclear material exempted by the United States Nuclear Regulatory Commission as of January 1, 1995, under authority of 42 U.S.C. 2077(d). [1995 c.252 §1]

Note: 97.153 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.160 Duty of hospital or sanitarium to notify before sending remains to undertaker; procedures. (1) No hospital or sanitarium, or the employees, agents or representatives thereof, shall send or cause to be sent to any funeral service practitioner, undertaker, mortician or embalmer the remains of any decedent without having complied with this section before final disposition of the remains.

(2) If the admitting record contains the name of a relative, friend or other person identified by the decedent in the admitting

record, or if the hospital or sanitarium is aware of the name of any other person chargeable with the funeral expenses of the decedent, the hospital or the sanitarium must notify the relative, friend or other person personally or by certified mail, return receipt requested.

(3) If a hospital or sanitarium is unable to give actual notice to a relative, friend or other person under the provisions of subsection (2) of this section, the hospital or sanitarium must publish a notice of death at least one time in a newspaper of general circulation in the county where the death occurred, or, if there is no such newspaper, in a newspaper most likely to give notice of the death to relatives and friends of the decedent. The notice must contain the name of the decedent and the address and phone number for the hospital or sanitarium.

(4) If the remains of the decedent are not claimed within 10 days after the giving of notice under subsection (2) of this section, or within 10 days after publication under subsection (3) of this section if publication is made under subsection (3) of this section, the hospital or sanitarium may arrange for the disposal of the remains of the decedent without further notice in the manner specified by ORS 97.170 to 97.200.

(5) Nothing in this section limits or governs the authority of any administrator or executor, trustee or other person having a fiduciary relationship with the deceased or to the state, counties, cities or towns in the disposition of the remains of a deceased person. [Amended by 1993 c.92 §1]

97.170 Disposition of unclaimed body of deceased person; rules. (1) As used in this section, "indigent person" means a deceased person who does not have a death or final expense benefit or insurance policy that pays for disposition of the deceased person's body or other means to pay for disposition of the deceased person's body and:

(a) Who does not have a relative or other person with the legal right to direct and the means to pay for disposition of the deceased person's body;

(b) Whose relative, or other person, with the legal right to direct the disposition of the deceased person's body does not pay or arrange to pay for, or refuses to direct, the disposition of the deceased person's body within 10 days of being notified of the death; or

(c) For whom no person other than a person described in paragraph (a) or (b) of this subsection wishes to direct and pay for the disposition of the deceased person's body.

(2) The State Mortuary and Cemetery Board shall maintain a list of institutions

that may accept or process bodies for education or research purposes.

(3)(a) A funeral establishment licensed under ORS 692.146 that takes custody of the unclaimed body of a deceased person shall, within five days after taking custody of the body:

(A) Submit a report of death under ORS 432.133;

(B) Obtain all contact information known to the medical examiner, a health care facility or law enforcement regarding persons listed in ORS 97.130;

(C) Attempt to locate and notify the persons listed in ORS 97.130;

(D) Arrange with any person listed in ORS 97.130 who will pay the expenses to make disposition of the body;

(E) If no person listed in ORS 97.130 can be located to pay the expenses to make disposition of the body, arrange with a person or institution not listed in ORS 97.130 that will pay the expenses to make disposition of the body;

(F) Determine whether the Department of State Lands or other person is appointed as the personal representative of the deceased person pursuant to ORS 113.085; and

(G) Contact the Department of Veterans' Affairs to determine whether the decedent is eligible for any state or federal benefits.

(b) If no one claims the body within 10 days after the funeral establishment takes custody of the body, or if the persons notified acquiesce, or if the decedent is not eligible for any benefits described in paragraph (a)(G) of this subsection, the funeral establishment may transfer the body to an institution on the list of institutions described in subsection (2) of this section that desires the body for education or research purposes.

(c) If no person or institution claims the body as provided in paragraphs (a) and (b) of this subsection, the funeral establishment may cremate or bury the body without the consent of persons listed in ORS 97.130 and is indemnified from any liability arising from having made such disposition. The method of disposition must be in the least costly and most environmentally sound manner that complies with law, and that does not conflict with known wishes of the deceased. If the deceased person is an indigent person, the board shall reimburse the funeral establishment for the costs of disposition under subsection (5) of this section.

(4) If the deceased person is a child over whom the Department of Human Services held guardianship at the time of death, the department shall promptly attempt to locate and notify the relatives of the deceased child

or any other person who has an interest in the deceased child and shall arrange with any person who will pay the expenses to make disposition of the body. If no relatives or interested persons claim the body, the department may transfer the body to an institution that is on the list maintained by the board under subsection (2) of this section that desires the body for education or research purposes, or may authorize burial or cremation of the body. The department shall pay expenses related to burial or cremation authorized by the department under this subsection.

(5) Upon receipt of a qualifying statement as required by the board by rule that the deceased person is an indigent person, the board shall reimburse a funeral establishment the reasonable costs for disposition of the body of any unclaimed deceased indigent person. The method of disposition must be in the least costly and most environmentally sound manner that complies with law. The board shall adopt rules establishing the requirements and process for reimbursement and setting the amount that may be reimbursed to a funeral establishment under this subsection. [Amended by 1973 c.842 §1; 1985 c.704 §1; 1993 c.345 §4; 1995 c.162 §62; 2009 c.709 §8; 2015 c.651 §1]

97.180 Period within which body may not be used or dismembered. An institution that receives a body pursuant to ORS 97.170 and that intends to use the body for ongoing research may properly preserve the body upon receipt for anatomical purposes, but may not use or dismember the body for at least 30 days after receipt. If a relative or friend of the deceased person claims the body within the 30 days specified in this section, the institution with custody of the body shall release the body to a funeral establishment licensed under ORS 692.146 on behalf of the relative or friend. [Amended by 2015 c.651 §2]

97.190 Post-mortem examination of body. Unless required by a medical examiner to determine the cause of death or specifically authorized and ordered by the superintendent of the hospital or institution in which any person coming under the provisions of ORS 97.170 may die, no such body as is mentioned in ORS 97.170 is subject to post-mortem examination, except by consent of the State Mortuary and Cemetery Board. [Amended by 1959 c.629 §43; 1965 c.221 §13; 1977 c.582 §1; 2015 c.651 §3]

97.200 Disposition of remains after use. (1) An institution that uses a body for ongoing research pursuant to ORS 97.170 shall bury respectfully or cremate the remains upon completion of use. If the institution cremates the remains, the institution shall deliver the ashes to a relative of the deceased person if a relative is known to the

institution. If no relative is known to the institution, the institution shall hold the ashes for three years after cremation and may then dispose of the ashes in a respectful manner. The institution shall pay burial, cremation, storage and delivery expenses for a body the institution used pursuant to ORS 97.170.

(2) Notwithstanding subsection (1) of this section, an institution that uses a body pursuant to ORS 97.170 only for instruction on preservation of a body shall, upon completion of use, return the body to the funeral establishment from where the institution received the body. [Amended by 2015 c.651 §4]

97.210 Exceptions to application of ORS 97.170 to 97.200; rules. The body of any person who died of smallpox, diphtheria, scarlet fever or other disease that the Oregon Health Authority, by rule, may prescribe, shall not be subject to the provisions of ORS 97.170 to 97.200. [Amended by 1977 c.582 §2; 2009 c.595 §62]

97.220 Disinterment. (1) The remains of a deceased person interred in a plot in a cemetery may be removed from the plot with the consent of the cemetery authority and written consent of:

(a) The person under ORS 97.130 (2)(a), (b) or (c) who has the authority to direct disposition of the remains of the deceased person; or

(b) If the remains are cremated remains, the person who had possession of the cremated remains and authorized the interment of the cremated remains.

(2) If the consent of a person described in subsection (1) of this section or of the cemetery authority cannot be obtained, permission by the county court of the county where the cemetery is situated is sufficient. Notice of application to the court for such permission must be given at least 60 days prior thereto, personally or by mail, to the cemetery authority, to the person not consenting and to every other person or authority on whom service of notice is required by the county court.

(3) If the payment for the purchase of an interment space is past due for a period of 90 days or more, this section does not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by the cemetery authority from a plot to some other suitable place.

(4) This section does not apply to the disinterment of remains upon order of court or if ordered under the provisions of ORS 146.045 (3)(e). [Amended by 1977 c.582 §3; 2007 c.661 §2; 2011 c.164 §3]

97.230 [Repealed by 1973 c.286 §1]

97.250 [1969 c.175 §1; repealed by 1995 c.717 §9]

97.255 [1969 c.175 §3; repealed by 1995 c.717 §9]

97.260 [1969 c.175 §2; repealed by 1995 c.717 §9]

97.265 [1969 c.175 §4; 1973 c.823 §§98,157; 1993 c.218 §1; repealed by 1995 c.717 §9]

97.268 [1985 c.379 §1; repealed by 1995 c.717 §9]

97.270 [1969 c.175 §5; repealed by 1995 c.717 §9]

97.275 [1969 c.175 §6; 1969 c.591 §278a; 1975 c.215 §1; repealed by 1995 c.717 §9]

97.280 [1969 c.175 §7; repealed by 1995 c.717 §9]

97.285 [1969 c.175 §8; repealed by 1995 c.717 §9]

97.290 [1969 c.175 §9; repealed by 1995 c.717 §9]

97.295 [Formerly 116.115; 1995 c.717 §11; renumbered 97.966 in 1995]

97.300 [1969 c.271 §1; 1995 c.717 §12; renumbered 97.968 in 1995]

DEDICATION TO CEMETERY PURPOSES; PLATTINGS

97.310 Survey and subdivision of land; map or plat of mausoleum or columbarium; access easement. (1) Every cemetery authority, from time to time as its property may require for cemetery purposes, shall:

(a) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks or other subdivisions and make a good and substantial map or plat showing them, with descriptive names or numbers. In all instances this shall be done in compliance with ORS 92.010 to 92.192 except that ORS 92.090 (2)(a) and (b) shall not be applicable to streets, alleys, ways and footpaths located wholly within a cemetery.

(b) In case of a mausoleum or columbarium, make a good substantial map or plat on which are delineated the sections, halls, rooms, corridors, elevation and other divisions, with descriptive names or numbers. In all instances this shall be done in compliance with the state building code.

(2) Every lot in a cemetery subdivision shall include an access easement across the lot for the benefit of adjacent lots. Designated areas between lots for the purpose of providing access to separate lots are not required to approve a subdivision under this section. A cemetery authority must disclose to a potential purchaser of a lot in the cemetery the existence of the access easement across the lot. [Amended by 1965 c.396 §2; 1979 c.57 §1; 1985 c.582 §3; 1999 c.381 §1]

97.320 Filing map or plat and declaration of dedication of land to cemetery purposes. In case of a cemetery lot, the cemetery authority shall file the map or plat in the office of the recording officer of the county in which all or a portion of the property is situated, and it forthwith shall file for record in that officer's office a written declaration dedicating the property delineated

on the plat or map exclusively to cemetery purposes.

97.330 When dedication is complete.

Upon the filing of the map or plat and of the declaration for record, the dedication is complete for all purposes, and thereafter the property shall be held, occupied and used exclusively for cemetery purposes.

97.340 Effect of dedication. After property is dedicated to cemetery purposes pursuant to ORS 97.310 to 97.330 and 97.360 (1), neither the dedication nor the title of a plot owner shall be affected by the dissolution of the cemetery authority by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution or otherwise, except as provided in ORS 97.310 to 97.350, 97.360 (2), 97.440, 97.510 to 97.650, 97.710, 97.720 and 97.810 to 97.865.

97.350 Dedication to cemetery purposes not invalid. Dedication to cemetery purposes pursuant to ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, and is deemed to be in respect for the dead, and is a provision for the interment of human remains and is a duty to, and for the benefit of, the general public.

97.360 Resurvey and alteration in shape or size; vacation of streets, walks, driveways and parks and replatting into lots. (1) Any part or subdivision of the property so mapped and platted may, by order of the directors and consent of the lot owners, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb any interred remains.

(2) Whenever a majority of the lots as platted or laid out in any cemetery established before March 3, 1927, or any part thereof, has been sold without the owners or persons in control of the cemetery having made provision for the establishment of an adequate endowment fund for the perpetual maintenance, upkeep and beautification of the cemetery and of the lots therein, the avenues, streets, alleys, walks, driveways and parks therein may be vacated or altered and replatted into lots which may be sold for burial purposes in the manner provided in this subsection and in ORS 97.370 to 97.430. Application for the vacation or alteration of any avenues, streets, alleys, walks, driveways or parks, and for the replatting of the same, or any portion thereof, for cemetery lots in any such cemetery shall be made to the county court or board of county commissioners in the county where the cemetery is situated. The application may be by the owners

or persons in control of the cemetery or by a group of 20 or more persons owning lots or having relatives buried therein. The application shall be verified and shall specify the lots owned by each petitioner in which are buried bodies of relatives in which the petitioner is interested and shall state the reason for the proposed change and what provisions have theretofore been made for the perpetual upkeep, maintenance and beautification of the cemetery, and there shall be presented therewith a plat of the cemetery, together with the proposed replat, which shall have clearly indicated thereon the proposed changes.

97.370 Fixing date of hearing; notice.

When any application mentioned in ORS 97.360 (2) is filed, the court or board shall fix the time for the hearing of it and notice of the time thereof shall be given by publication in a paper of general circulation published in the town in which the cemetery is situated or in the town to which it is nearest once a week for a period of six successive weeks prior to the date of the hearing and a copy of such notice shall be posted for a like period at three public and conspicuous places in the cemetery. Such notice shall be addressed to all persons owning lots or having an interest in the cemetery, but need not name them, and shall set forth in a general way the proposed changes, the reason stated in the application for making it, the time when the hearing of the application will be had, and shall state that a plat showing the proposed changes is on file with the county clerk of the county in which the cemetery is situated.

97.380 Hearing; order allowing replatting. At the hearing mentioned in ORS 97.370 the court or board shall consider and hear any evidence introduced in favor of the proposed change and all objections thereto and, after a full hearing thereon, may allow the proposed change and replat in whole or in part. If the proposed change is allowed, either in whole or in part, an order allowing it shall be made providing that title to any new lot created by the alteration or vacation of any avenues, streets, alleys, driveways, walks or parks, or any part thereof, shall be vested in the owner of the fee of the part of the cemetery sought to be vacated in trust for burial purposes, or vested in any association which may be formed for the purpose of taking over the cemetery and operating and maintaining it in accordance with the provisions of ORS 97.400. [Amended by 1985 c.582 §4; 1999 c.381 §2]

97.390 Assessment of benefits and damages. If any damages are claimed by the owner of any lot in any such cemetery as is mentioned in ORS 97.360 (2), which lot is

adjacent to the avenues, streets, alleys, driveways or parks vacated as provided in ORS 97.380, they shall be ascertained by the county court or board of county commissioners and offset against the benefits accruing to the lot owner on account of the upkeep and beautification of the cemetery in the manner provided in ORS 97.400. Any person feeling aggrieved at the amount of damages so assessed by the board may appeal from such order of allowance to the circuit court of the county in which the cemetery is situated in the same manner as is provided by statute for appeal from the assessment of damages by the exercise of eminent domain in locating a county road and on such appeal the jury, in assessing the amount of damages to be allowed to the appellant, shall offset against such damages the benefits accruing to the appellant as in this section above provided.

97.400 Disposal of newly created lots; disposition and use of proceeds from sale; failure of owner to perform duties. Any owner or association accepting the trust of handling and disposing of lots newly created pursuant to ORS 97.380 shall by the acceptance thereof agree to dispose of the lots only for burial purposes and at a price not less than that fixed by the county court or board of county commissioners. The net funds derived from the sale of the lots remaining after the payment of the reasonable expenses incident to the vacation and of the sale shall be placed in an irreducible and perpetual fund and the interest therefrom shall be used for the perpetual upkeep and beautification of the cemetery and the lots therein situated. The fund shall be placed in some reliable trust company specified by the court or board, which trust company shall invest the same and pay the income therefrom to the owner or association charged with the disposal of such lots. Any owner or association taking over the sale of the lots shall comply with such provisions as the court or board may require of it in the upkeep, beautification and care of the cemetery with the income thereof, and if such owner or association for any reason fails to perform such duties, the court or board may, on its own motion, from time to time, appoint some other association or individual to perform them. The restrictions of this section shall not apply to the sale of lots obtained by replatting cemeteries owned and maintained by any county.

97.410 Right of adjacent lot owner upon vacation of way. The vacation of an avenue, street, alley, driveway, walk or park adjacent to a cemetery lot shall vest in the owner of such lot no interest in the vacated portion thereof; but the adjacent owner shall,

for 30 days after the date of such an order of vacation, have the right to purchase any new lot adjacent to the lot of the owner at the price fixed by the court or board at which the lots are to be sold, and if there is more than one adjacent lot owner, the new lot shall be sold to the one offering the highest price therefor.

97.420 Effect of failure to object. Any owner of such cemetery as is mentioned in ORS 97.360 (2), or of any lot therein, or any relative or heir of any deceased person buried in such cemetery who fails to appear and file written objection to any proposed replat, alteration or vacation, authorized by ORS 97.360 (2), shall be deemed to have consented to the proposed change and shall be forever barred from claiming any right to use and have open for traffic or passageway any streets, alleys, driveways or parks vacated, or any right, title or interest therein, except as provided in ORS 97.360 (2) and 97.370 to 97.410.

97.430 Declaration of exercise of police power and right of eminent domain. The enactment of ORS 97.360 (2) and 97.370 to 97.430 is hereby declared to be a necessary exercise of the police powers of the state in order to preserve and keep existing cemeteries as resting places for the dead and to preserve old and historic cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are located. The taking of avenues, streets, alleys, walks, driveways and parks for the purpose and by the method specified in ORS 97.360 (2) and 97.370 to 97.420 is hereby declared an exercise of the right of eminent domain in behalf of the public health, safety, comfort, pleasure and historic instruction.

97.440 Removal of dedication. (1) Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes until the dedication is removed from all or any part of it by an order and decree of the county court or board of county commissioners of the county in which the property is situated in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court that:

(a) The portion of the property from which dedication is sought to be removed is not being used for interment of human remains; or

(b) The Oregon Commission on Historic Cemeteries has received notice of and had the opportunity to comment on the removal from the dedicated property of all human remains and markers dated prior to February 14, 1909.

(2) The notice of hearing required by this section must:

(a) Be given by publication once a week for at least four consecutive weeks in a newspaper of general circulation in the county where the cemetery is located and by publication twice in a newspaper with statewide circulation;

(b) Be posted in three conspicuous places on that portion of the property from which the dedication is to be removed;

(c) Describe the portion of the cemetery property sought to be removed from dedication;

(d) State that all remains and markers have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication; and

(e) Specify the time and place of the hearing. [Amended by 2003 c.237 §1]

97.445 Vacating county interest in cemetery real property. Consistent with the provisions of ORS 368.326 to 368.366, a county may vacate any real property interests the county may own in a cemetery. Consistent with ORS 368.366 (2), the county may vacate its real property interests in favor of a private nonprofit organization provided the organization states its intent to provide for the continuing maintenance and care of the cemetery and associated facilities. [1997 c.747 §2]

97.450 Discontinuance of cemetery and removal of remains and markers. (1)(a) Whenever any cemetery that is within the limits of any county, city or town has been abandoned, or it is desirable to abandon such cemetery, the governing body of any county, if the cemetery is owned by the county, or the corporate authorities of the city or town, if the cemetery is owned by the city or town, or the trustees or directors, if the cemetery is owned by an association or corporation, may order that such burial ground be discontinued, have the remains of all persons interred in the cemetery moved to some other suitable place and provide for the removal and reerection of all stones and monuments marking said graves. Each removal must be made in an appropriate manner and in accordance with the directions of the Director of the Oregon Health Authority. Prior to any removal authorized under this section, written notice must be given to the family, or next of kin of the deceased, if known, and if unknown, notice of the removal shall be published for at least four successive weeks in a newspaper of general circulation in the county in which the cemetery is located and twice in a newspaper with statewide circulation.

(b) Any removal and the costs of the proceedings under this section shall be at the expense of the county, city or town, individual, corporation or association owning the cemetery to be moved.

(2) Notwithstanding subsection (1)(a) of this section, a cemetery or burial ground containing human remains that were interred before February 14, 1909, may not be discontinued or declared abandoned or have remains removed from the burial ground or cemetery without prior notice to and comment by the Oregon Commission on Historic Cemeteries. When commenting on a request to discontinue or declare abandoned a cemetery or burial ground, the commission shall consider:

(a) The listing of the cemetery or burial ground under ORS 97.782;

(b) The historic significance of the cemetery or graves included in the request; and

(c) The findings of any archaeological survey of the cemetery or burial ground. [Amended by 1955 c.472 §1; 2003 c.237 §2; 2009 c.595 §63]

97.460 Requirements for establishment of cemetery or burial park. (1) A person may not lay out, open up or use any property for cemetery or burial park purposes unless the person:

(a) Is the owner of the property;

(b) Has the written consent of the planning commission of the county or city having jurisdiction under ORS 92.042 or, if there is no such commission in such county or city, the governing body of such county or city;

(c) Agrees to maintain records of the disposition of human remains on the property as required by the planning commission or governing body of the county or city having jurisdiction under ORS 92.042; and

(d) Agrees to disclose the disposition of human remains upon sale of the property. Failure to disclose the disposition of human remains does not invalidate the sale of the property.

(2) A planning commission of a county or city or, if there is no planning commission in a county or city, the governing body of the county or city, shall provide to the State Mortuary and Cemetery Board a list of the requirements for laying out, opening up or using property in the county or city for cemetery or burial park purposes. [Formerly 64.060; 1965 c.396 §3; 2009 c.709 §9]

SALES AND RIGHTS IN RESPECT OF CEMETERY PLOTS

97.510 Sale and conveyance of plots by cemetery authority. (1) After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and

convey plots subject to such rules and regulations as may be then in effect and subject to such other and further limitations, conditions and restrictions made a part of the declaration of dedication by reference or included in the instrument of conveyance of the plot.

(2) Scattering of cremated remains in a scattering garden is not a sale or conveyance. [Amended by 2007 c.661 §3]

97.520 Sale or offer to sell cemetery plot upon promise of resale at financial profit. A person, firm or corporation may not sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit, except with the consent and approval of the Director of the Department of Consumer and Business Services. Each violation of this section constitutes a separate offense. [Amended by 1989 c.171 §13; 2007 c.661 §4]

97.530 Commission, bonus or rebate for sale of plot or services. No cemetery authority shall pay or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, a commission, bonus, rebate or other thing of value for the sale of a plot or services. This does not apply to a person regularly employed by the cemetery authority for such purpose. Each violation of this section constitutes a separate offense.

97.540 Commission, bonus or rebate for recommendation of cemetery. No person shall pay, cause to be paid or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, except as provided in ORS 97.530, any commission, bonus, rebate or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any cemetery. Each violation of this section constitutes a separate offense.

97.550 Plots are indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law.

97.560 Presumption of sole ownership in grantee of plot. All plots conveyed to individuals are presumed to be solely and separately owned by the person named in the instrument of conveyance.

97.570 Spouse has vested right of interment. (1) The spouse of an owner of any plot containing more than one interment space has a vested right of interment of the remains of the spouse in the plot, and any person thereafter becoming the spouse of the owner has a vested right of interment of the remains of the person in the plot if more than one interment space is unoccupied at

the time the person becomes the spouse of the owner.

(2) The purchase by a married person of more than one interment space shall create in the spouse a right of interment therein.

97.580 Divestiture of spouse's right of interment. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of the vested right of interment, except that a judgment of divorce between them terminates the right unless otherwise provided in the judgment. [Amended by 2003 c.576 §357]

97.590 Transfer of plot or right of interment. No transfer of any plot, heretofore or hereafter made, or any right of interment is complete or effective until recorded on the books of the cemetery authority.

97.600 Descent of plot. Upon the death of the owner, unless the owner has disposed of the plot either by specific direction in the will of the owner or by a written declaration filed and recorded in the office of the cemetery authority, if no interment has been made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred are lawfully removed, the plot descends to the heirs at law of the owner, subject to the rights of interment of the decedent and the surviving spouse of the decedent.

97.610 Determining occupant of burial plot having co-owners. When there are two or more owners of a burial plot or of rights of interment therein, such owners may designate one or more persons to designate the burials to be made in the plot and file written notice of such designation with the cemetery association. In the absence of such notice or of written objection to its so doing, the cemetery association is not liable to any owner for interring or permitting an interment therein upon the request or direction of any registered co-owner of the plot.

97.620 Death of co-owner; authorization to use plot under directions of surviving owners. An affidavit by any person having knowledge of the fact, setting forth the fact of the death of one owner and establishing the identity of the surviving owners named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving owners or their successors in interest.

97.630 Family plots; order of occupation. (1) Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner, or of the remains of the record owner, is made in a plot transferred by deed or certificate of ownership to an individual owner, and the owner dies without making disposition of the plot, either by direction in the owner's will, or by a written declaration filed and recorded in the office of the cemetery authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner, and occupied in the following order:

(a) One grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if there is one, who by ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 has a vested right of interment in it; and in those remaining, if any, the children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

(b) If no child survives, the right of interment goes in order of death to the spouse of any child of the record owner.

(2) Any surviving spouse, child or child's spouse who has a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of either the deceased owner or of the deceased owner's spouse, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

(3) Notwithstanding subsection (1) of this section, the personal representative of the deceased owner of a family plot may sell unoccupied interment spaces in the plot as property of the estate of the deceased owner when there are no existing rights of interment in those spaces or all existing rights of interment in those spaces have been waived and thereby terminated.

(4) Whenever a plot is transferred by deed or certificate of ownership to an individual owner and the transfer is recorded on the books of the cemetery authority, the cemetery authority shall provide to the individual owner a written statement, in a form approved by the State Mortuary and Cemetery Board, containing a clear explanation of the provisions of subsections (1) and (2) of this section and of the rights of interment established thereby. [Amended by 1985 c.652 §1]

97.640 Waiver or termination of vested right of interment. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

97.650 Limitations upon vested right of interment. No vested right of interment gives to any person the right to have the remains of the person interred in any interment space in which the remains of any deceased person having equal or prior vested right of interment have been interred; nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located.

NONPROFIT CORPORATIONS

97.660 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purposes by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. Lands held for the purposes described in this section shall be exempt from taxation as provided in ORS 307.150. [Formerly 65.855]

Note: 97.660 to 97.680 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.665 Revenues; restrictions on uses of revenue. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its by-laws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall con-

stitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund, the bank or trust company shall be governed by ORS 130.750 to 130.775 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Director of the Department of Consumer and Business Services on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (4) regarding endowment care funds. The director may require the corporation to file, as often as the director considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purposes of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the members. [Formerly 65.860]

Note: See note under 97.660.

97.670 Selling land unsuited for burials. If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 97.660 to 97.680. [Formerly 65.865]

Note: See note under 97.660.

97.675 Burial lots or space; use; exemption from taxation, execution and liens; lien for purchase price of gravestone. Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or the assigns or representatives of the purchaser, exclusively for burial purposes, and in no wise with a view to profit. Such lots or space shall be exempt from taxation as provided in ORS 307.150. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the judgment therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. [Formerly 65.870]

Note: See note under 97.660.

97.680 Recording plan; power to improve and regulate grounds. (1) As used in this section, “plan” means a document indicating the placement of lots or burial spaces, and of the niches or inurnment spaces in the buildings erected thereon, as established and authorized by the cemetery authority.

(2) A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or spaces to be numbered by regular consecutive numbers. Such corporation may enclose, improve, and adorn the grounds, buildings, and avenues, prescribe rules for the designation, improvement and adorning of lots and burial spaces and for erecting monuments, and prohibit any use, division, improvement or adornment of a lot or burial space which it may deem improper. [Formerly 65.875]

Note: See note under 97.660.

CEMETERY MANAGEMENT

97.710 Power of cemetery to make rules and regulations. (1) The cemetery authority may make and enforce rules and regulations for:

- (a) The use, care, control, management, restriction and protection of its cemetery;
- (b) Restricting and limiting the use of all property within its cemetery;
- (c) Regulating the uniformity, class and kind of all markers, monuments and other structures within its cemetery;
- (d) Prohibiting the erection of monuments, markers or other structures in or upon any portion of its property;
- (e) Regulating or preventing the erection of monuments, effigies and structures within any portion of the cemetery grounds and for the removal thereof;
- (f) Regulating the care or preventing the introduction of plants or shrubs within such grounds;
- (g) Preventing the interment in any part thereof of a body not entitled to interment therein;
- (h) Preventing the use of burial plots for purposes violative of its restrictions;
- (i) Regulating the conduct of persons and preventing improper assemblages therein; and
- (j) All other purposes deemed necessary by the cemetery authority for the proper

conduct of its business and the protection and safeguarding of the premises and the principles, plans and ideals on which the cemetery was organized.

(2) The cemetery authority from time to time may amend, add to, revise, change or modify such rules and regulations.

(3) Such rules and regulations shall be plainly printed or typewritten and maintained, subject to inspection, in the office of the cemetery authority.

97.720 Record of interments and cremations; inspection. (1) The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under the person’s charge, in each case stating the name of each deceased person, the date of interment or cremation, and the name and address of the funeral service practitioner. The interment records shall be open to inspection by survivors of the decedent during the customary office hours of the cemetery authority.

(2) A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery.

97.725 Disposal of unclaimed burial spaces; notice; form of notice; claims. (1) As used in this section, “unclaimed burial space” means a burial space in a cemetery:

- (a) That has not been used for purposes of interment for at least 75 years by the record owner of the burial space or by a party claiming through the record owner of the burial space; and
- (b) For which the cemetery authority has no record of any verbal or written contact for a period of at least 75 years with the record owner of the burial space or with a party claiming through the record owner of the burial space.

(2) Notwithstanding ORS 97.630 or 97.810 to 97.920, a cemetery authority may dispose of unclaimed burial spaces as described in subsections (3) to (7) of this section.

(3) The cemetery authority shall prepare an inventory describing the unclaimed burial spaces, including the purchase date and record owner of each unclaimed burial space as shown in the records of the cemetery.

(4) The governing body of the cemetery authority shall adopt a predisposition resolution approving the inventory prepared under subsection (3) of this section and directing the officers of the cemetery authority to dispose of the unclaimed burial spaces as provided in this section.

(5) The cemetery authority shall:

97.730 Gifts and bequests in trust for cemeteries. Gifts, grants and bequests of personal property in trust for the purpose of providing perpetual care and maintenance, improvement or embellishment of private burial lots in or outside of cemeteries and of the walks, fences, monuments, structures or tombs thereon, are permitted and shall be deemed to be for perpetual and benevolent uses. They are not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument creating the trust; nor are they invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing in this section affects any existing authority or cause to pass upon the reasonableness of the amount of such gift, grant or bequest. Any cemetery association may act as trustee of and execute any such trust with respect to lots, walks, fences, monuments, structures or tombs, both within or outside its own cemetery limits, but within the county where such cemetery association has its principal office and place of business, whether such power is otherwise included in its corporate powers or not.

INDIAN GRAVES AND PROTECTED OBJECTS

97.740 Definitions for ORS 97.740 to 97.760. For the purposes of ORS 97.740 to 97.760:

(1) "Burial" has the meaning given that term in ORS 358.905.

(2) "Funerary object" has the meaning given that term in ORS 358.905.

(3) "Human remains" has the meaning given that term in ORS 358.905.

(4) "Indian tribe" means any tribe of Indians recognized by the Secretary of the Interior or listed in the Klamath Termination Act, 25 U.S.C. 3564 et seq., or listed in the Western Oregon Indian Termination Act, 25 U.S.C. 3691 et seq., if the traditional cultural area of the tribe includes Oregon lands.

(5) "Object of cultural patrimony" has the meaning given that term in ORS 358.905.

(6) "Professional archaeologist" means a person who has extensive formal training and experience in systematic, scientific archaeology.

(7) "Sacred object" has the meaning given that term in ORS 358.905. [1977 c.647 §1; 1981 c.442 §3; 1985 c.198 §2; 1993 c.459 §9; 1997 c.249 §34]

97.745 Prohibited acts; application; notice. (1) Except as provided in ORS 97.750, no person shall willfully remove, mutilate, deface, injure or destroy any cairn, burial,

human remains, funerary object, sacred object or object of cultural patrimony of any native Indian. Persons disturbing native Indian cairns or burials through inadvertence, including by construction, mining, logging or agricultural activity, shall at their own expense reinter the human remains or funerary object under the supervision of the appropriate Indian tribe.

(2) Except as authorized by the appropriate Indian tribe, no person shall:

(a) Possess any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial in a manner other than that authorized under ORS 97.750.

(b) Publicly display or exhibit any native Indian human remains, funerary object, sacred object or object of cultural patrimony.

(c) Sell any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial or sell any sacred object or object of cultural patrimony.

(3) This section does not apply to:

(a) The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or burials; or

(b) Actions taken in the performance of official law enforcement duties.

(4) Any discovered human remains suspected to be native Indian shall be reported to the state police, the State Historic Preservation Officer, the appropriate Indian tribe and the Commission on Indian Services. [1977 c.647 §2; 1979 c.420 §1; 1981 c.442 §4; 1985 c.198 §1; 1993 c.459 §10]

97.750 Permitted acts; notice. (1) Any proposed excavation by a professional archaeologist of a native Indian cairn or burial shall be initiated only after prior written notification to the State Historic Preservation Officer and the state police, as defined in ORS 358.905, and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All associated material objects, funerary objects and human remains removed during such an excavation shall be reinterred at the archaeologist's expense under the supervision of the Indian tribe.

(2) In order to determine the appropriate Indian tribe under this section and ORS 97.745, a professional archaeologist or other person shall consult with the Commission on Indian Services which shall designate the appropriate tribe. [1977 c.647 §3; 1979 c.420 §2; 1981 c.442 §5; 1993 c.459 §11]

97.760 Civil action by Indian tribe or member; time for commencing action; venue; damages; attorney fees. (1) Apart from any criminal prosecution, an Indian tribe or enrolled member thereof shall have a civil action to secure an injunction, damages or other appropriate relief against any person who is alleged to have violated ORS 97.745. The action must be brought within two years of the discovery of the violation by the plaintiff. The action may be filed in the circuit court of the county in which the subject grave, cairn, remains or artifacts are located, or within which the defendant resides.

(2) Any conviction pursuant to ORS 97.990 (5) shall be prima facie evidence of a violation of ORS 97.745 in an action brought under this section.

(3) If the plaintiff prevails:

(a) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as it sees fit, including the reinterment of any human remains in accordance with ORS 97.745 (1);

(b) The plaintiff shall recover imputed damages in an amount not to exceed \$10,000 or actual damages, whichever is greater. Actual damages include special and general damages, which include damages for emotional distress;

(c) The plaintiff may recover punitive damages upon proof that the violation was willful. Punitive damages may be recovered without proof of actual damages. All punitive damages shall be paid by the defendant to the Commission on Indian Services for the purposes of Indian historic preservation; and

(d) An award of imputed or punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(4) The court may award reasonable attorney fees to the prevailing party in an action under this section. [1981 c.442 §2; 1995 c.543 §1; 1995 c.618 §55]

97.770 [1995 c.457 §7; repealed by 1999 c.731 §14]

97.771 [1995 c.457 §1; 1997 c.632 §1; repealed by 1999 c.731 §14]

OREGON COMMISSION ON HISTORIC CEMETERIES

97.772 Definition of “historic cemetery.” For purposes of ORS 97.772 to 97.784, “historic cemetery” means any burial place that contains the remains of one or more

persons who died before February 14, 1909. [1999 c.731 §1; 2003 c.173 §1]

Note: 97.772 to 97.784 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.773 [1995 c.457 §3; repealed by 1999 c.731 §14]

97.774 Oregon Commission on Historic Cemeteries; terms. (1) There is established within the State Parks and Recreation Department the Oregon Commission on Historic Cemeteries consisting of seven members appointed by the State Parks and Recreation Director.

(2) The term of office of each member is four years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1999 c.731 §2; 2003 c.173 §2]

Note: See note under 97.772.

97.775 [1995 c.457 §4; repealed by 1999 c.731 §14]

97.776 Commission members; nominations. The members of the Oregon Commission on Historic Cemeteries must be citizens of this state who are well informed on the restoration and maintenance of historic cemeteries. The State Parks and Recreation Director shall select members from nominations made by organizations of local historic cemeteries, organizations of non-profit cemeteries, the State Mortuary and Cemetery Board and statewide cemetery associations. The director shall try to appoint individuals to the commission who represent or are knowledgeable concerning Native American burial places, rural cemeteries, family burial places and metropolitan cemeteries. [1999 c.731 §4; 2003 c.173 §3]

Note: See note under 97.772.

97.777 [1995 c.457 §5; repealed by 1999 c.731 §14]

97.778 Chairperson; quorum; meetings. (1) The Oregon Commission on Historic Cemeteries shall select one of its members as chairperson and another as vice chairperson for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every three months at a place, day and hour determined by the commission. The commission also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission. [1999 c.731 §5; 2003 c.173 §4]

Note: See note under 97.772.

97.779 [1995 c.457 §6; repealed by 1999 c.731 §14]

97.780 Duties. The Oregon Commission on Historic Cemeteries shall:

(1) Maintain a listing of all historic cemeteries in this state.

(2) Assist in coordination of restoration, renovation and maintenance of Oregon's historic cemeteries.

(3) Make recommendations to the State Parks and Recreation Director for projects and funding to help maintain and improve Oregon's historic cemeteries.

(4) Obtain grant funding and seek legislative appropriations for individual historic cemeteries and groups of historic cemeteries.

(5) Make recommendations to the Legislative Assembly for changes in law that will help protect historic cemeteries as part of Oregon's heritage.

(6) Assist the director in locating and listing historic cemeteries.

(7) Assist cemeteries listed as historic cemeteries with the commission to rehabilitate and maintain those cemeteries and to promote public education relating to historic cemeteries.

(8) Establish a process to obtain advice from authorities on the subject of the care of old grave markers and graveyards as part of any restoration process. [1999 c.731 §6; 2003 c.173 §5]

Note: See note under 97.772.

97.782 Listing of historic cemeteries; form. A historic cemetery that is not an operating cemetery, as defined in ORS 692.010, shall be listed with the Oregon Commission on Historic Cemeteries. An owner or any other person or association of individuals that maintains such a historic cemetery shall list the historic cemetery with the Oregon Commission on Historic Cemeteries on a form provided by the commission. No fee shall be required from a historic cemetery for listing. [1999 c.731 §7; 2003 c.173 §6]

Note: See note under 97.772.

97.784 Executive secretary; support services. The State Parks and Recreation Department shall provide support services to the Oregon Commission on Historic Cemeteries. One staff person of the department shall be the executive secretary of the commission. [1999 c.731 §8; 2003 c.173 §7]

Note: See note under 97.772.

CEMETERY CARE

97.810 Endowment care and nonendowed care cemeteries. (1) As used in this section:

(a) "Endowment care cemetery" means a cemetery that maintains an endowment care fund placed in an irrevocable trust fund.

(b) "Grave liner" means a burial receptacle designed to be installed in a grave, as defined in ORS 97.010, to assist in preventing the ground from collapsing.

(2) An endowment care cemetery shall deposit with the trustee or custodian of its endowment care fund the following amounts received from the sale of plots, niches, crypts or private mausoleums:

(a) At least 15 percent of the gross sales price with a minimum of \$5 for each grave sold without a grave liner installed at the time of sale or, when the gross sales price is paid in installments, at least 15 percent of each installment until at least 15 percent of the gross sales price has been deposited, with a minimum of \$5 for each grave sold without a grave liner installed at the time of sale.

(b) At least nine percent of the gross sales price for each grave sold with a grave liner installed at the time of sale or, when the gross sales price is paid in installments, at least nine percent of each installment until at least nine percent of the gross sales price has been deposited.

(c) At least five percent of the gross sales price for each niche or, when the gross sales price is paid in installments, at least five percent of each installment until at least five percent of the gross sales price has been deposited.

(d) At least five percent of the gross sales price for each crypt or, when the gross sales price is paid in installments, at least five percent of each installment until at least five percent of the gross sales price has been deposited.

(e) At least five percent of the gross sales price for each private mausoleum or, when the gross sales price is paid in installments, at least five percent of each installment until at least five percent of the gross sales price has been deposited.

(3) The cemetery authority shall, within 30 days from the receipt of a payment, deposit with the trustee or custodian of its endowment care fund any payment received by the cemetery authority that is:

(a) Required by subsection (2) of this section to be paid into the fund; or

(b) A payment for special care, gifts, grants, contributions, devises or bequests

made with respect to the separate or special care of a particular plot, grave, niche, crypt, mausoleum, monument or marker or that of a particular family.

(4) Within 75 days of the end of its fiscal year, each endowment care cemetery, except one owned by a city or a county, shall file with the Director of the Department of Consumer and Business Services a statement containing the following information pertaining to the endowment care fund:

(a) The total amount invested in bonds, securities, mortgages and other investments;

(b) The total amount of cash on hand not invested at the close of the previous calendar or fiscal year;

(c) The income earned by investments in the preceding calendar or fiscal year;

(d) The amounts of such income expended for maintenance in the preceding calendar or fiscal year;

(e) The amount paid into the fund in the preceding calendar or fiscal year; and

(f) Such other items as the director may from time to time require to show accurately the complete financial condition of the trust on the date of the statement.

(5) All of the information appearing on the statement must be verified by an owner or officer of the cemetery authority, and the cemetery authority shall maintain a copy of the statement in the business office of the cemetery authority.

(6) The director may require, as often as the director deems necessary, the cemetery authority to make under oath a detailed report of the condition and assets of any cemetery endowment care fund.

(7) At the time of the filing of the statements of its endowment care fund each cemetery authority shall pay to the director an annual fee as follows:

(a) Up to 100 interments per year, \$40.

(b) Over 100 interments per year, \$100.

(8) All fees received by the director under this section shall be immediately turned over to the State Treasurer who shall deposit the moneys in the Consumer and Business Services Fund created under ORS 705.145.

(9) A cemetery may not operate as an endowment care, permanent maintenance or free care cemetery until the provisions of this section are complied with.

(10) The head of all contracts and certificates of ownership or deeds referring to plots in an endowment care cemetery must contain the following statement: "This cemetery is an endowment care cemetery," in at least 10-point black type.

(11) All contracts and certificates of ownership or deeds referring to plots in an endowment care cemetery must contain the following statement: "Endowment care means the general care and maintenance of all developed portions of the cemetery and memorials erected thereon."

(12) A cemetery that otherwise complies with this section may be designated an endowment care cemetery even though it contains a small area that may be sold without endowed care, if it is separately set off from the remainder of the cemetery. The head of all contracts and certificates of ownership or deeds referring to plots in this area must contain the phrase "nonendowed care" in at least 10-point black type.

(13) A nonendowed care cemetery is a cemetery that does not deposit in an endowment care fund the minimum amounts specified in subsection (2) of this section.

(14) A cemetery authority may not in any way advertise or represent that it operates wholly or partially as an endowment care cemetery, or otherwise advertise or represent that it provides general care or maintenance of all or portions of the cemetery or memorials erected thereon, unless the provisions of this section are complied with. [Amended by 1955 c.545 §2; 1965 c.396 §4; 1967 c.213 §1; 1987 c.295 §1; 1995 c.144 §4; 1999 c.66 §1; 2001 c.796 §23; 2007 c.661 §5; 2011 c.163 §1]

97.820 Placing cemetery under endowment care; deposit; commingling endowment and special care funds; trustee or custodian of fund. (1) Every cemetery authority that operates a cemetery may place its cemetery under endowed care and establish, maintain and operate an endowment care fund. All endowed care funds shall be deposited with and held solely by the trustee or custodian appointed by the cemetery authority.

(2) Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The income of the endowment care fund may be used only to finance the care of the cemetery.

(3) The cemetery authority shall appoint as sole trustee of the endowment care fund a trust company as defined in ORS 706.008 that is authorized to transact trust business in this state, or an insured institution as defined in ORS 706.008 that is authorized to accept deposits in this state. Such trust company or insured institution shall receive and accept the fund, including any accumulated endowment care fund in existence at the time of its appointment and perform such

duties as are agreed upon in the agreement between it and the cemetery authority. An insured institution not qualified to transact trust business in this state may act as custodian of such endowment care fund provided:

(a) The duties of the insured institution are essentially custodial or ministerial in nature; and

(b) The insured institution invests the funds from such plan only in its own time or savings deposits.

(4) The trustee or custodian may resign upon written notice to the cemetery authority or the cemetery authority may remove the trustee or custodian by written notice to it. In case of the resignation or removal of the trustee or custodian, the cemetery authority forthwith shall appoint a successor trustee or custodian and provide for the direct transfer of all endowed care funds and earnings thereon from the former trustee or custodian to the successor trustee or custodian. [Amended by 1955 c.545 §3; 1965 c.396 §5; 1985 c.450 §1; 1987 c.295 §2; 1993 c.18 §19; 1993 c.229 §22; 1993 c.318 §11; 1997 c.167 §2; 1997 c.631 §395; 2007 c.661 §6]

97.825 Suits to enforce endowed care statutes; attorney fees. (1) If the cemetery authority fails to remit to the trustee or trustees, in accordance with the law, the funds herein provided for endowment and special care, or fails to expend the net income from the funds and generally care for and maintain any portion of a cemetery entitled to endowment care, any three lot owners whose lots are entitled to endowment care, or any one lot owner whose lot is entitled to special care, or the next of kin, heirs at law or personal representatives of such lot owners, shall have the right, or the district attorney of any county wherein is situated such lots, shall have the power, by suit for mandatory injunction or for appointment of a receiver, to sue for, to take charge of, and to expend such net income. The suit may be filed in the circuit court of the county in which said cemetery is located, to compel the expenditure either by the cemetery authority or by any receiver so appointed by the court, of the net income from such endowment care fund for the purposes set out in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990.

(2) When the Director of the Department of Consumer and Business Services has reason to believe that a cemetery endowment care fund does not conform to the requirement of law, or when the director has reason to believe that any cemetery is operating in violation of ORS 97.810 or 97.820, or when the director has sent an endowment care cemetery a notice of delinquency to make any report to the director required by ORS

97.810, the director shall, as soon thereafter as reasonable, give notice of the foregoing to the trustee or trustees of the cemetery endowment care fund, the cemetery authority, the Attorney General of Oregon and the State Mortuary and Cemetery Board.

(3) Within 120 days after the receipt of such notice, the Attorney General shall institute suit in the circuit court of any county of this state in which such cemetery is located, for a mandatory injunction against further sales of graves, plots, crypts, niches, burial vaults, markers or other cemetery merchandise by such cemetery or for the appointment of a receiver to take charge of the cemetery, unless the Attorney General shall prior to that time be notified by the director that such failure to conform to the requirements of the law or to report has been corrected.

(4) The Attorney General may delay instituting any suit brought under subsection (3) of this section for no more than an additional 30 days if, in the discretion of the Attorney General after consulting with the director, it appears to the Attorney General:

(a) That the failure to conform to the requirements of the law or to report will be corrected; and

(b) That no harm to the public will occur during the additional 30 days.

(5) If a trustee fails to perform the duties of the trustee under ORS 97.810 to 97.920, the trustee shall be liable for any damage resulting from that failure to any lot owners or the next of kin, heirs at law or personal representatives of such lot owners.

(6) The court may award reasonable attorney fees, costs and disbursements to the prevailing party in an action under this section. [1955 c.545 §5; 1965 c.396 §6; 1985 c.450 §2; 1999 c.67 §1; 2001 c.796 §24; 2007 c.661 §7]

97.830 Investment and reinvestment of principal of endowed care funds; use and application of income. (1) The principal of all funds for endowed care shall be invested, from time to time reinvested and kept invested. If a trust agreement imposes upon the trustee or custodian the duty to direct the investment or reinvestment of endowed care funds, the trustee or custodian shall perform this duty governed by ORS 130.750 to 130.775. Otherwise, the cemetery authority, governed by ORS 130.750 to 130.775, shall direct the investment and reinvestment of endowed care funds in the time or savings deposits of the custodian bank or savings association.

(2) The principal of invested endowed care funds shall never be voluntarily reduced, but shall be maintained separate and distinct by the trustee or custodian from all

other funds except that it shall be proper to commingle endowment care funds with special care funds. The payment of charges chargeable against principal under ORS chapter 129 or of other expenses necessarily incurred in the administration of the trust in accordance with subsection (1) of this section shall not constitute a voluntary reduction of principal. The net income earned shall be used solely for the general care and maintenance of the cemetery property entitled to endowment care, as stipulated in the resolution, bylaw and other action or instrument by which the fund was established, and in such manner as the cemetery authority may from time to time determine to be in the best interests of such endowed property. Such net income shall never be used for the improvement or embellishment of undeveloped property offered for sale. [Amended by 1955 c.545 §4; 1985 c.450 §3; 1987 c.295 §3; 1995 c.157 §24; 1995 c.297 §1; 2003 c.279 §32; 2005 c.348 §125]

97.835 Limitation of duties and liability of trustee. The trustee shall have no duty whatsoever to operate, maintain or to supervise the general maintenance of any endowment fund cemetery, and the trustee shall have no duty whatsoever to enforce collection of any of the trust funds either from the purchasers of lots, or from the cemetery authority, and the trustee shall have no duty whatsoever to see to the application of the net income after payment of the net income to the cemetery authority. The trustee shall be entitled to rely without liability upon the affidavit of the cemetery authority showing the amount payable to the trustee as endowment care funds. [1955 c.545 §6]

97.840 Cemetery authority authorized to receive and hold gifts of property; disposition of gifts. A cemetery authority which has established an endowment care fund may take, receive and hold any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund. Within 30 days of the receipt of such contributions, the cemetery authority shall deposit, with the trustee or custodian of the fund to which the property was contributed, all moneys and all documents or instruments of title or conveyance evidencing the contribution. As soon as practicable, the cemetery authority shall provide for the sale of all property for fair market value and, within 30 days of the receipt of the proceeds thereof, shall deposit the proceeds with the trustee or custodian. The trustee or custodian shall execute all documents necessary to effect the sale, consistent with the purposes of this section. [Amended by 1987 c.295 §4]

97.850 Endowment and special care funds are charitable. The endowment and special care funds and all payments or contributions to them are expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated.

97.860 Agreements for care. (1) Upon payment of the purchase price, including the amount fixed as a proportionate contribution for endowed care, there may be included in the deed of conveyance, or by separate instrument, an agreement to care, in accordance with the plan adopted, for the cemetery and its appurtenances to the proportionate extent the income received by the cemetery authority from the contribution permits.

(2) Upon the application of an owner of any plot, and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowed care, a cemetery authority may enter into an agreement with the owner for the care of the plot of the owner and its appurtenances.

97.865 Application of ORS 97.810 to 97.865 to religious, county and city cemeteries. (1) A cemetery authority that operates a cemetery for any religious or eleemosynary corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination and any county or city may make an irrevocable election to have ORS 97.810 to 97.865 apply to any cemetery controlled or operated by the cemetery authority, county or city by filing a written statement indicating such action with the Director of the Department of Consumer and Business Services. The statement shall be in the form prescribed by the director and shall contain the information specified by the director.

(2)(a) When a cemetery authority, county or city files a statement described in this section with the director, ORS 97.810 to 97.865 applies to a cemetery controlled or operated by the cemetery authority, county or city beginning on the first day of the fiscal year next following the filing of the statement.

(b) ORS 294.035 does not apply to funds held by a county or city under ORS 97.810 to 97.865. [1997 c.167 §4; 2001 c.796 §25; 2007 c.661 §8]

97.870 Unused and uncared for portions of cemetery declared common nuisances.

(1) In all cases where a cemetery authority has owned a site for a cemetery for more than 40 years and has during that period sold lots, subdivisions of lots, pieces or parcels of the cemetery for burial purposes and the grantee or party claiming through the grantee has not used portions of such lots, subdivisions of lots, pieces or parcels of the cemetery for purposes of burial and has not kept them free of weeds or brush, but has allowed them to remain entirely unused for more than 40 years or uncared for and unused for more than 20 years prior to the adoption of the resolution provided for in ORS 97.880, and such lots, subdivisions of lots, pieces and parcels of the cemetery are adjacent to improved parts thereof, and by reason of their uncared-for condition detract from the appearance of the cemetery and interfere with the harmonious improvement thereof, and furnish a place for the propagation of weeds and brush, thereby becoming a menace to adjacent property, such lots, subdivisions of lots, pieces and parcels of such cemetery, which are unused and uncared for as aforesaid, hereby are declared to be a common nuisance and contrary to public policy.

(2) The provisions of this section are not applicable to portions of cemeteries which have been or are sold with agreements between the cemetery authority or its successor in interest, or both, and the grantee providing for endowment care, permanent maintenance or free care. [Amended by 1965 c.396 §7; 2007 c.661 §9]

97.880 Resolution declaring a nuisance. The governing board of a cemetery authority described in ORS 97.870 may adopt a resolution declaring such unused and unimproved portion of its cemetery as is described in ORS 97.870 a common nuisance and an abandoned and unused portion of such cemetery, and may direct its officers to file the complaint described in ORS 97.890. [Amended by 1983 c.740 §9]

97.890 Complaint. (1) Upon the adoption of the resolution described in ORS 97.880 the officers of the cemetery authority may file a complaint in the circuit court for the county in which the cemetery is located against the owners, holders or parties interested in such abandoned portion of its cemetery demanding that the court require such owners, holders or interested parties to keep the premises clear of weeds and brush and in condition in harmony with other lots and, if the owners, holders, or interested parties fail to appear in court and comply with the order of the court, demanding that the court make a judgment declaring such portions of the cemetery a common nuisance, directing the

governing board to abate the nuisance by clearing the premises and keeping them clear of weeds and brush, creating a lien upon such lots and parcels in favor of the cemetery authority, providing that the lien be foreclosed and the lots and parcels be sold in the same manner as other sales upon execution are made and authorizing the governing board to become a purchaser thereof on behalf of the cemetery authority.

(2) In such suit any number of owners of different lots, subdivisions of lots, pieces or parcels of the cemetery may be included in the one suit.

(3) It is a sufficient designation of the property so abandoned and unimproved to give the lot number or portion thereof, or a description of the piece or parcel having no lot number, together with the name of the owner thereof, as appears on the record of the cemetery authority.

(4) In addition to the names of the persons that appear on the records of the cemetery authority as the record owners of such unused and unimproved portions of the cemetery, the plaintiff shall include as a defendant in a complaint the following: "Also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint." [Amended by 2003 c.576 §358; 2007 c.661 §10]

97.900 Summons. (1) Summons shall be served upon all owners or holders who are residents of this state in like manner as in service of summons in a civil action if such owners and holders are known to the sheriff in the county in which the cemetery is located. If the defendants are not known to the sheriff, it is sufficient to serve the owners and holders whose names appear on the tax rolls of the county for the year previous to that in which the suit is started. The plaintiff is not required to mail a copy of the summons or complaint to nonresident defendants.

(2) All owners and holders of such unimproved lots whose names do not appear on the tax rolls as aforesaid as shown by the return of the sheriff may be served by publication in any legal newspaper published in the county in which the cemetery is located for four consecutive weeks upon return of the sheriff that such owners and holders are not known and cannot be served in the jurisdiction of the sheriff.

(3) The published summons shall contain the names of the record owners, as shown by the records of the cemetery authority, and "also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint," together

with a brief description of the lot, or subdivisions of lots, pieces or parcels of the cemetery and a statement setting forth the order and judgment described in ORS 97.890 (1) for which the plaintiff has applied to the court in the complaint. Such summons shall require all parties defendant to appear and show cause why an order should not be made declaring the unused and unimproved portions of the cemeteries to be a common nuisance, directing the cemetery authority to abate the nuisance, creating a lien thereon, providing that it be foreclosed and directing that the unused and unimproved portion of the cemetery be sold within four weeks from and after the date of the first publication thereof. [Amended by 2003 c.576 §359; 2007 c.661 §11]

97.910 Disuse as prima facie evidence of abandonment. In all cases arising under ORS 97.870 to 97.900, the fact that the owner, holder or interested party, of the unused and unimproved portion of the cemetery has not, for a term of 20 years or more, used the plot and has failed to keep it clear of weeds or brush is prima facie evidence that the owner, holder or interested party has abandoned it.

97.920 Judgment declaring nuisance, authorizing abatement and creating and foreclosing lien. Upon the failure of the owner of the premises to comply with the order of the court requiring proper care of the premises or upon the failure of any of the defendants to appear and answer the complaint or upon the trial of the cause, if the court finds that the allegations of the complaint are supported by the evidence and that the summons has been served as provided in ORS 97.900, the court may enter a judgment in accordance with the allegations of the complaint and the provisions of ORS 97.890 (1). [Amended by 2003 c.576 §360]

PREARRANGEMENT SALES AND PRECONSTRUCTION SALES

97.923 Definitions for ORS 97.923 to 97.949. As used in ORS 97.923 to 97.949 and 97.994 unless the context requires otherwise:

(1) “Beneficiary” means the person who is to receive the funeral and cemetery merchandise, funeral and cemetery services or completed interment spaces.

(2) “Certified provider” means an entity certified under ORS 97.933 to:

(a) Sell or offer for sale prearrangement sales contracts or preconstruction sales contracts;

(b) Administer prearrangement sales contracts or preconstruction sales contracts; or

(c) Provide merchandise or services to fulfill prearrangement sales contracts or preconstruction sales contracts.

(3) “Delivery” occurs when:

(a) Physical possession of the funeral or cemetery merchandise is transferred to the purchaser; or

(b) If authorized by a purchaser under a purchase agreement:

(A) The title to the funeral or cemetery merchandise has been transferred to the purchaser, has been paid for, and is in the possession of the seller, who has documented the sale in the purchaser’s records through use of a serial or other identifying number and placed the merchandise, until needed, for storage on the seller’s premises; or

(B) The merchandise has been identified for the purchaser or the beneficiary as documented by the manufacturer’s receipt placed by the seller in the purchaser’s records and held by the manufacturer for future delivery.

(4) “Depository” means a financial institution or trust company, as those terms are defined in ORS 706.008, that is authorized to accept deposits in this state or to transact trust business in this state and is not registered as a master trustee.

(5) “Guaranteed contract” means a written preconstruction sales contract or prearrangement sales contract that guarantees the beneficiary the specific undeveloped space or spaces or funeral and cemetery merchandise or funeral and cemetery services contained in the contract and under which no charges other than the sales price contained in the contract are required upon delivery or performance of the funeral or cemetery merchandise or services, if:

(a) Required payments have been made as specified in the contract; and

(b) The balance of payment required by the contract is paid before the death of the beneficiary.

(6) “Joint trust fund account” means trust funds received by a certified provider from two or more beneficiaries.

(7)(a) “Master trustee” means an entity that is not a certified provider under ORS 97.923 to 97.949 and that has fiduciary responsibility for the uniform administration of funds including, but not limited to, acceptance, custodianship, investment and accounting, delivered to it by a certified provider for the benefit of purchasers of preconstruction sales contracts or prearrangement sales contracts.

(b) “Master trustee” does not include a financial institution, as defined in ORS 706.008, that acts solely as a depository under ORS 97.923 to 97.949.

(8) “Nonguaranteed contract” means a written preconstruction sales contract or

prearrangement sales contract that guarantees the beneficiary the specific undeveloped space or spaces or funeral or cemetery merchandise or services contained in the contract, when the price of the merchandise and services selected has not been fixed and will be determined by existing prices at the time the merchandise and services are delivered or provided.

(9) “Prearrangement sales” or “prearrangement sales contract” means any sale, excluding the sale and contemporaneous or subsequent assignment of a life insurance policy or an annuity contract, made to a purchaser, that has as its purpose the furnishing of funeral or cemetery merchandise or services in connection with the final disposition or commemoration of the memory of a dead human body, for use at a time determinable by the death of the person or persons whose body or bodies are to be disposed and where the sale terms require payment or payments to be made at a currently determinable time.

(10) “Preconstruction sale” or “preconstruction sales contract” means a sale made to a purchaser, for the purpose of furnishing undeveloped interment spaces and when the sale terms require payment or payments to be made at a currently determinable time.

(11) “Purchaser” means a beneficiary or a person acting on behalf of a beneficiary who enters into a prearrangement sales contract or a preconstruction sales contract with a certified provider under which any payment or payments made under the contract are required to be deposited in trust under ORS 97.941.

(12) “Salesperson” means an individual registered under ORS 97.931 and employed by a certified provider to engage in the sale of prearrangement or preconstruction sales contracts on behalf of the certified provider.

(13) “Sales price” means the gross amount paid by a purchaser for a prearrangement sales contract or preconstruction sales contract, excluding sales taxes, credit life insurance premiums and finance charges.

(14) “Trust” means an express trust created under ORS 97.941 whereby a trustee has the duty to administer the amounts specified under ORS 97.941 received under a prearrangement sales contract or a preconstruction sales contract for the benefit of the purchaser of a prearrangement sales contract or preconstruction sales contract.

(15) “Undeveloped interment spaces” or “undeveloped spaces” means any space to be used for the reception of human remains that is not completely constructed or developed at the time of initial payment. [Formerly 128.400; 2003 c.362 §1; 2007 c.661 §12; 2012 c.7 §1]

Note: 97.923 to 97.949 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.925 Purpose. It is the purpose of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 to ensure funds for performance to purchasers who contract through prearrangement sales contracts for the purchase of funeral or cemetery merchandise or services, and through preconstruction sales contracts for undeveloped interment spaces. It is also the purpose of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 to provide for the certification or registration of entities selling, offering for sale, administering or providing merchandise or services to fulfill prearrangement sales contracts and preconstruction sales contracts, the creation and administration of prearrangement sales contract and preconstruction sales contract trust funds, the disbursement and allocation of trust funds upon the certified provider’s performance of its contractual obligations and the protection for the purchaser upon the certified provider’s default. [Formerly 128.405; 2007 c.661 §13; 2012 c.7 §2]

Note: See note under 97.923.

97.926 Rulemaking authority. The Director of the Department of Consumer and Business Services may adopt rules that are necessary or appropriate to:

(1) Protect purchasers of prearrangement sales contracts and preconstruction sales contracts and the public; and

(2) Administer ORS 97.923 to 97.949. [2007 c.661 §25]

Note: See note under 97.923.

97.927 Applicability of ORS 97.923 to 97.949. (1) ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 do not apply to a nonprofit memorial society charging less than a \$100 membership fee.

(2) Notwithstanding subsection (1) of this section, ORS 97.937 applies to a nonprofit memorial society charging less than a \$100 membership fee. [Formerly 128.407; 2003 c.362 §2; 2007 c.661 §14; 2012 c.7 §3]

Note: See note under 97.923.

97.928 Prohibitions. A person may not, in connection with performing certified provider activities, operating an endowment care cemetery, providing services as a master trustee or providing related services:

(1) Employ any device, scheme or artifice to defraud;

(2) Knowingly make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circum-

stances under which the statements are made, not misleading;

(3) Engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person; or

(4) Make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document that is known to be false in any material respect or matter. [2012 c.7 §13]

Note: See note under 97.923.

97.929 Exceptions to ORS 97.923 to 97.949. (1) The provisions of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 do not apply to:

(a) Agreements to sell or sales of graves, crypts or niches where such graves, crypts or niches are in existence at the time of the sale or agreement to sell and are located in an endowment care cemetery as defined in ORS 97.810.

(b) Agreements to sell or sales of crypts or niches where such crypts or niches are not in existence at the time of the sale or agreement to sell and are to be located in an endowment care cemetery, provided that:

(A) Thirty-five percent of the sales price of each crypt or niche described in this paragraph is deposited in accordance with the provisions of ORS 97.937; or

(B) Such endowment care cemetery deposits a bond with a corporate surety authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. The bond or letter of credit shall be in an amount equal to 35 percent of the total sales price of all crypts or niches described in this paragraph that have been sold by the endowment care cemetery and that have not yet been completed.

(c) Agreements to sell or sales of burial vaults or markers for installation in an endowment care cemetery, provided that:

(A) Sixty-six and two-thirds percent of the sale price of such vaults or markers is deposited in accordance with the provisions of ORS 97.937;

(B) Such endowment care cemetery is at the time of the sale or agreement to sell and for not less than 24 months before such sale or agreement has been in continuous operation as an endowment care cemetery and has assumed the obligation to supply and install the vault or marker and maintain it as part of its endowment care program; and

(C) Such endowment care cemetery deposits with the Director of the Department of Consumer and Business Services:

(i) A bond in a form approved by the director in the amount of \$10,000 issued by a corporate surety authorized to do business in this state; or

(ii) An irrevocable letter of credit in a form approved by the director in the amount of \$10,000 issued by an insured institution, as defined in ORS 706.008.

(2) Notwithstanding the exception provided in subsection (1) of this section, a person who would otherwise have a claim against a certified provider, a master trustee or a salesperson under the provisions of ORS 97.923 to 97.949 or ORS chapter 692 shall have a right against the bond or letter of credit described in subsection (1)(b) and (c) of this section. [Formerly 128.412; 2003 c.271 §1]

Note: Section 2, chapter 68, Oregon Laws 1999, provides:

Sec. 2. (1) The amendments to ORS 128.412 [renumbered 97.929] by section 1 of this 1999 Act apply only to agreements to sell crypts or niches entered into on or after the effective date of this 1999 Act [October 23, 1999], and sales of crypts and niches made on or after the effective date of this 1999 Act.

(2) An endowment care cemetery that deposited a bond or an irrevocable letter of credit under the provisions of ORS 128.412 (2)(b) (1997 Edition) before the effective date of this 1999 Act must continue to maintain the bond or irrevocable letter of credit in the amount provided by ORS 128.412 (2)(b) (1997 Edition) until such time as all the crypts and niches that were part of the development covered by the bond or letter of credit are completed. Any endowment care cemetery that maintains a bond or letter of credit pursuant to this subsection is not required to maintain a bond or letter of credit in the amount required by ORS 128.412 (2)(b) [renumbered 97.929 (2)(b)], as amended by section 1 of this 1999 Act, for the purpose of crypts and niches located in the development covered by the bond or letter of credit maintained under the provisions of this subsection, but the endowment care cemetery must maintain a bond or letter of credit in the amount required by ORS 128.412 (2)(b) [renumbered 97.929 (2)(b)], as amended by section 1 of this 1999 Act, for sales of, and agreements to sell, crypts or niches located in any development commenced on or after the effective date of this 1999 Act. [1999 c.68 §2]

Note: 97.929 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.930 [1977 c.715 §§2,3; renumbered 97.975 in 2001]

97.931 Registration of salesperson for endowment care cemeteries, preconstruction sales and prearrangement sales; rules; background check; civil penalties. (1) A salesperson may not engage in prearrangement sales made by endowment care cemeteries under ORS 97.929 or in preconstruction sales or prearrangement sales unless the salesperson is registered with the State Mortuary and Cemetery Board or holds a current funeral service practitioner license, embalmer license, funeral service practitioner trainee registration or embalmer trainee registration. The board by rule shall:

(a) Establish procedures for issuing salesperson registrations under this subsection;

(b) Establish standards for determining whether a salesperson registration should be issued;

(c) Set renewal and salesperson registration fees; and

(d) Require biennial renewal of salesperson registrations.

(2) The board may conduct a background check of any salesperson applying for registration under subsection (1) of this section. The background check may include information solicited from the Department of State Police. After consideration of information obtained from any background check and any other information in its possession, the board shall determine whether to register the salesperson.

(3)(a) The board may impose a civil penalty of up to \$1,000 per violation or suspend, revoke or refuse to issue or renew the registration of a salesperson described in subsection (1) of this section upon a determination that the applicant or holder has not complied with the provisions of ORS 97.923 to 97.949 or ORS chapter 692, or any rules adopted thereunder. When the board proposes to take such action, the person affected by the action shall be accorded notice and an opportunity for hearing as provided by ORS chapter 183. The board shall notify the Director of the Department of Consumer and Business Services of its intent to take action against a salesperson or person acting as a salesperson.

(b) The board shall suspend, revoke or refuse to issue or renew the registration of a salesperson if the director requests the board to take such action.

(4) Fees and other moneys received by the board under this section shall be deposited into the State Mortuary and Cemetery Board Account established in ORS 692.375. [Formerly 128.414; 2005 c.726 §2; 2015 c.367 §12]

Note: See note under 97.923.

97.933 Certification of provider of prearrangement or preconstruction sales; annual reports; rules; audits; fees. (1) An entity may not engage in prearrangement sales or preconstruction sales, administer prearrangement sales or preconstruction sales or provide merchandise or services to fulfill prearrangement sales or preconstruction sales unless the entity is certified by the Director of the Department of Consumer and Business Services. Each location at which an entity engages in prearrangement sales or preconstruction sales, administers prearrangement sales or preconstruction sales or provides merchandise or services to fulfill

prearrangement sales or preconstruction sales must be separately certified. The director shall:

(a) Establish procedures for issuing certificates required by this section.

(b) Establish standards for determining whether a certificate should be issued.

(c) Set certification and renewal fees.

(d) Require annual renewal of certification.

(e) Establish standards for rules of conduct of certified providers.

(2) The fees described in this section must be sufficient to meet the costs associated with the administration of ORS 97.923 to 97.949 and to maintain a reasonable emergency fund.

(3)(a) A certified provider shall file an annual report with the director on forms prescribed by the director by rule. The annual report must contain any information reasonably considered necessary by the director, including but not limited to:

(A) A disclosure of deposits and withdrawals of trust funds;

(B) The number of consecutively numbered prearrangement or preconstruction sales contracts sold during the reporting period;

(C) A complete inventory of the funeral merchandise and cemetery merchandise delivered in lieu of trust fund requirements under ORS 97.941, including:

(i) The location of the merchandise;

(ii) Merchandise serial numbers or warehouse receipt numbers identified by the name of the purchaser or the beneficiary; and

(iii) The statement of the certified provider that each item of merchandise is in the seller's possession at the specified location; and

(D) The number of withdrawals from or terminations of any trusts.

(b) If the annual report is not filed or is filed and shows any material discrepancy, the director may take appropriate action and send notification of the matter to the State Mortuary and Cemetery Board.

(c) The director may relieve a certified provider of the duty to file the annual report upon a determination that the certified provider has performed all obligations under the prearrangement sales contract or preconstruction sales contract, or that such obligations lawfully have been assumed by another certified provider or have been discharged or canceled.

(4) The director may audit the records of a certified provider that relate to prear-

rangement sales or preconstruction sales, as the director may consider appropriate. The director may refer any matter outside of normal auditing procedures to the office of the Attorney General for investigation and send notification of the referral to the State Mortuary and Cemetery Board.

(5) The conduct of individuals, including salespersons as defined in ORS 97.923, employed by a certified provider is the direct responsibility of the certified provider.

(6) Authority to operate as a certified provider is not transferable. An entity that seeks to purchase or otherwise acquire control of a cemetery or funeral establishment shall first apply to the director to become a certified provider. [2001 c.796 §1; 2003 c.362 §3; 2007 c.661 §15; 2012 c.7 §4]

Note: See note under 97.923.

97.935 Registration of master trustees; annual reports; rules; annual audits; fees.

(1) An entity may not operate as a master trustee unless the entity is registered with the Director of the Department of Consumer and Business Services. The director shall:

(a) Establish procedures for registering master trustees under this section.

(b) Establish standards for master trustees.

(c) Set registration and renewal fees.

(d) Establish standards for rules of conduct of master trustees.

(2)(a) A master trustee shall file an annual report with the director on forms prescribed by the director by rule. The annual report must contain any information reasonably considered necessary by the director, including but not limited to:

(A) A disclosure of changes in trust deposits; and

(B) A list of all certified providers for which the master trustee holds funds and the total amount of funds held for each certified provider.

(b) The director may take appropriate action under ORS 97.948 and 97.949 if a master trustee fails to file the annual report or the report contains any material discrepancy.

(c) The director may relieve a master trustee of the duty to file the annual report upon a determination that the master trustee has performed all obligations under the trust agreement with each certified provider, or that the master trustee's obligations have been lawfully assumed by another master trustee or have been discharged or canceled.

(3) The director may conduct an annual audit of a master trustee. The director shall

prescribe the form of audits under this section by rule.

(4) A master trustee who is audited under this section shall pay all expenses and costs incurred by the director in conducting the audit. [2001 c.796 §2; 2003 c.362 §4; 2007 c.661 §16; 2012 c.7 §5]

Note: See note under 97.923.

97.936 Emergency orders of suspension or restriction. (1) In addition to other actions authorized under ORS 97.948 (2), the Director of the Department of Consumer and Business Services may:

(a) Issue an emergency order suspending or restricting a certificate or registration or ordering a certified provider or master trustee or an entity acting as a certified provider or master trustee to cease and desist from specified conduct; or

(b) Take other action deemed necessary by the director in the circumstances.

(2) The director shall promptly provide opportunity for hearing pursuant to ORS chapter 183.

(3) Emergency orders are:

(a) Effective when issued;

(b) Reviewable as provided in ORS 183.480; and

(c) Enforceable in the courts of this state. [2007 c.661 §23; 2012 c.7 §6]

Note: See note under 97.923.

97.937 Deposit of trust funds made by endowment care cemeteries. (1) This section applies to trust deposits required to be made by endowment care cemeteries under ORS 97.929.

(2) As used in this section, "common trust account" means trust funds received by a provider from two or more purchasers.

(3) All such trust funds shall be deposited by the provider with a financial institution in the State of Oregon carrying deposit insurance, within 15 days after receipt thereof. A trust fund shall be held in a separate account in the name of the provider followed by the words "funeral plan trust account," in trust for the person for whom such prearranged funeral plan is made, or in a common trust account in the name of the provider in trust for each person for whom such prearranged funeral plan is made, until a trust fund is released under any of the following conditions:

(a) Upon presentation of proof of the death of the person for whom a prearranged funeral plan is made, the financial institution shall release the principal and accrued income allocable to that person's account to the provider.

(b) Upon presentation of the written request of the purchaser of a revocable trust, the financial institution shall release the principal and accrued income allocable to the purchaser's account as directed in such request.

(c) Upon presentation of proof of the death, dissolution, insolvency or merger with another of the provider of a revocable trust, the financial institution shall release the principal and accrued income allocable to each purchaser's account to that purchaser.

(d) Upon presentation of proof of the death, dissolution, insolvency or merger with another of the provider of an irrevocable trust, the financial institution shall continue to hold such trust fund subject to the funeral plan trust, and upon appointment of a successor provider by the purchaser, the purchaser's legal representative, the Director of the Department of Consumer and Business Services or a court of competent jurisdiction, the financial institution shall release such trust fund to the successor provider only as provided in paragraph (a) of this subsection.

(4) If trust funds are held in a common trust account under subsection (3) of this section, the provider shall maintain records showing the purchaser and beneficiary of each individual trust fund in the account and the allocation to each individual trust fund of interest earned by the account. The records concerning allocation of interest must be updated at least annually.

(5) The provider may appoint a successor depository. The original depository shall only release the trust funds to the successor depository as described in subsections (1) to (4) of this section.

(6) The financial institution is not responsible for the fulfillment of any prearranged funeral plan, excepting only such financial institution shall release a trust fund as provided in this section.

(7) The director may appoint a successor provider upon a determination that the original provider has ceased to provide the kinds of services and things which the original provider agreed to provide, that the purchaser or the purchaser's legal representative cannot be readily identified or contacted and that the appointment of a successor provider is appropriate in order to protect the interests of the trust beneficiaries. Financial institutions holding deposits of such trust funds shall change their records to reflect such appointment of a successor provider upon receipt of written notice of the appointment from the director. Where the director proposes to take such action under this subsection, the provider being replaced shall be accorded notice and

an opportunity for hearing as provided in ORS chapter 183. [Formerly 128.415; 2007 c.661 §17]

Note: Section 16, chapter 813, Oregon Laws 1987, provides:

Sec. 16. Notwithstanding the repeal of ORS 128.410 by section 17 of this Act and the amendments to ORS 128.415 [renumbered 97.937] by section 12 of this Act, ORS 128.410 and ORS 128.415 (1985 Replacement Part) shall continue to apply to any prearranged funeral plan entered into prior to the effective date of this Act [September 27, 1987]. [1987 c.813 §16]

Note: 97.937 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.939 Prearrangement or preconstruction sales contracts; contents; delivery. (1) Three copies of a written sales contract shall be executed for each prearrangement sales contract or preconstruction sales contract sold by a certified provider. The certified provider shall retain one copy of the contract and a copy of the completed contract shall be given to:

- (a) The purchaser; and
- (b) The depository or the master trustee, if applicable.

(2) Upon receiving trust funds under ORS 97.941, the master trustee shall sign a copy of the contract received under subsection (1) of this section, retain a copy for its files and return the contract to the purchaser.

(3) Each completed contract shall:

- (a) Comply with the plain language standards described in ORS 180.545 (1);
- (b) Be consecutively numbered;
- (c) Have a corresponding consecutively numbered receipt;
- (d) Be preprinted or, if the certified provider uses a master trustee, be obtained from the master trustee;
- (e) Identify the purchaser and certified provider who sold the contract;
- (f) Specify whether the contract is a guaranteed contract or a nonguaranteed contract;

(g) Specify the specific funeral or cemetery merchandise or services or undeveloped interment spaces included and not included in the contract; and

(h) If a guaranteed contract, disclose that the certified provider is entitled to receive 10 percent of the sales price.

(4)(a) Notwithstanding ORS 97.943 (8), in the case of a prearrangement sales contract, if at the time of entering into the contract, the beneficiary of the contract is a recipient of public assistance or medical assistance, as defined in ORS 414.025, or reasonably anticipates becoming a recipient of public assist-

ance or medical assistance, the contract may provide that the contract is irrevocable.

(b) The contract may provide for an election by the beneficiary, or by the purchaser on behalf of the beneficiary, to make the contract thereafter irrevocable if after the contract is entered into, the beneficiary becomes eligible or seeks to become eligible for public assistance or medical assistance. [Formerly 128.421; 2007 c.661 §18; 2012 c.7 §7; 2013 c.688 §11]

Note: See note under 97.923.

97.941 Prearrangement or preconstruction trust fund deposits. (1) Upon receiving anything of value under a prearrangement sales contract or preconstruction sales contract, the certified provider who sold the contract shall deposit the following amounts into one or more trust funds maintained pursuant to ORS 97.923 to 97.949, 97.992, 97.994 and 692.180:

(a) If the amount received is in payment of a guaranteed prearrangement sales contract or guaranteed preconstruction sales contract, 90 percent of the amount received. The certified provider who sold the contract is entitled to receive the remaining 10 percent.

(b) If the amount received is in payment of a nonguaranteed prearrangement sales contract or nonguaranteed preconstruction sales contract, 100 percent of the amount received.

(2) A certified provider shall pay all trust funds required by ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 directly to a master trustee or depository within five business days after the certified provider receives the funds from the purchaser.

(3)(a) If a certified provider places trust funds in a depository, the funds may be invested only in:

- (A) Certificates of deposit;
- (B) United States Treasury bills;
- (C) Issues of United States government agencies;
- (D) Guaranteed investment contracts; or
- (E) Banker's acceptances or corporate bonds rated A or better by Standard & Poor's Corporation or Moody's Investors Service.

(b) Prearrangement sales contract trust fund and preconstruction sales contract trust fund accounts must be in the name of the certified provider who sold the contract under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180.

(4) A certified provider shall identify funds deposited in the trust fund account in the records of the certified provider by the name of the purchaser and beneficiary. The certified provider shall maintain records that

specify the allocation of all earnings to each prearrangement sales contract or preconstruction sales contract. Nothing prohibits the certified provider from directing a master trustee or a depository to commingle the deposits in a trust fund account for purposes of managing and investing the funds. A joint trust fund account must be identified by the name of the certified provider.

(5) When a prearrangement sales contract or preconstruction sales contract includes rights of interment and funeral or cemetery merchandise or services, the terms of the contract must clearly provide for the application of payments received under the contract.

(6) An entity engaging in prearrangement sales or preconstruction sales that involve the sale of items subject to trust and any item not subject to trust may not increase the sales price of those items not subject to trust with the purpose of allocating a lesser sales price to items that require a deposit of trust funds.

(7)(a) Except when the Director of the Department of Consumer and Business Services has made the determination described in subsection (9)(a) of this section, a certified provider may appoint a successor certified provider. The master trustee or depository shall release the trust funds deposited under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 and accrued income only to the successor certified provider as described in ORS 97.943 and 97.944.

(b) If appointing a successor certified provider under this subsection, the original certified provider shall notify the director of the proposed change at least 30 days before the appointment.

(8) A certified provider may appoint a successor depository or a master trustee and shall notify the director of the proposed change at least 30 days before the appointment.

(9)(a) The director may appoint a successor certified provider upon a determination that:

(A) The original certified provider has failed to perform the duties of a certified provider;

(B) The certificate issued to the original certified provider has been revoked or surrendered; and

(C) The appointment of a successor certified provider is necessary to protect the interests of the purchasers and beneficiaries of prearrangement sales contracts or preconstruction sales contracts.

(b) Depositories or master trustees holding deposits of trust funds by the original

certified provider shall change their records to reflect the appointment of a successor certified provider upon receipt of written notice of the appointment from the director.

(10) A trust fund account must be a single purpose fund. In the event of the certified provider's bankruptcy, the funds and accrued income are not available to any creditor as assets of the certified provider, but must be distributed to the purchasers or managed for the purchasers' benefit by the trustee in bankruptcy, receiver or assignee.

(11)(a) If the original certified provider is licensed under ORS chapter 692 and voluntarily surrenders the license to the State Mortuary and Cemetery Board, prearrangement sales contracts and preconstruction sales contracts must be transferred to the successor certified provider appointed by the director.

(b) If the original certified provider is not licensed under ORS chapter 692, upon presentation of proof of the dissolution or insolvency, or merger with another certified provider, of the original certified provider, the depository shall release the prearrangement trust fund deposits or preconstruction trust fund deposits to the purchaser.

(c) If the original certified provider is licensed under ORS chapter 692, upon proof of the insolvency or involuntary surrender of the license of the original certified provider, the depository shall release the prearrangement trust fund deposits or preconstruction trust fund deposits to the purchaser.

(12) The purchaser or beneficiary of a prearrangement sales contract or preconstruction sales contract may be named cotrustee with the certified provider with the written consent of the purchaser or beneficiary.

(13) A certified provider who has not appointed a master trustee and is placing funds with a depository shall have an annual audit of all trust account funds performed by an independent certified public accountant in accordance with generally accepted accounting procedures. The certified provider shall provide the audit results to the director as part of the annual report required under ORS 97.933. [Formerly 128.423; 2007 c.661 §19; 2012 c.7 §8]

Note: See note under 97.923.

97.942 Appointment of receiver; criteria. (1) The Attorney General, on behalf of the Director of the Department of Consumer and Business Services, may petition the circuit courts of this state for appointment of a receiver for a certified provider or entity acting as a certified provider without certification.

(2) If the court determines that a receivership is necessary or advisable, the court shall appoint a receiver:

(a) When a receiver would ensure the orderly and proper conduct of a certified provider's professional business and affairs during or in the aftermath of an administrative proceeding to revoke or suspend the certified provider;

(b) When a receiver would protect the public's interest and rights in the business, premises or activities of the certified provider or entity sought to be placed in receivership;

(c) Upon a showing of serious and repeated violations of ORS 97.923 to 97.949 demonstrating an inability or unwillingness to comply with the provisions of ORS 97.923 to 97.949;

(d) When a receiver would prevent loss, wasting, dissipation, theft or conversion of assets that should be marshaled and held available for the honoring of obligations under ORS 97.923 to 97.949; or

(e) When the court receives proof of other grounds that the court deems good and sufficient for instituting receivership action concerning the certified provider or entity sought to be placed in receivership.

(3)(a) A receivership under this section may be temporary or for the winding up and dissolution of a business, as the director may request and the court determines to be necessary or advisable in the circumstances.

(b) Venue of receivership proceedings may be, at the director's request, in Marion County or the county where the subject of the receivership is located. The appointed receiver shall be the director or a person that the director nominates and that the court approves.

(c) The director may expend money from budgeted funds or the Funeral and Cemetery Consumer Protection Trust Fund to implement a receivership. Any expenditures are a claim against the estate in the receivership proceedings. [2007 c.661 §24; 2012 c.7 §9]

Note: See note under 97.923.

97.943 Distributions from prearrangement trust fund deposits. (1) A master trustee or a depository may not make any distributions from prearrangement sales contract trust fund deposits except as provided in this section.

(2) The principal of a trust created pursuant to a prearrangement sales contract shall be paid to the certified provider who sold the contract if the certified provider who sold the contract swears, by affidavit, that the certified provider has delivered all merchandise and performed all services re-

quired under the prearrangement sales contract and delivers to the master trustee or the depository one of the following:

(a) A certified copy of a death record of the beneficiary; or

(b) A sworn affidavit signed by the certified provider and by:

(A) One member of the beneficiary's family; or

(B) The executor of the beneficiary's estate.

(3) The principal of a trust created pursuant to a prearrangement sales contract must be paid to the purchaser if the original certified provider is no longer qualified to serve as the certified provider under ORS 97.941 (11).

(4) Upon completion by the certified provider of the actions described in subsection (2) of this section, the master trustee or the depository shall pay to the certified provider from the prearrangement sales contract trust fund an amount equal to the sales price of the merchandise delivered.

(5) Upon the final payment to the certified provider of the principal in trust under subsection (2) of this section, the undistributed earnings of the trust must be paid to:

(a) The certified provider who sold the contract if the contract is a guaranteed contract; or

(b) The contract purchaser, or the purchaser's estate, if the contract is a non-guaranteed contract.

(6) The master trustee or the depository may rely upon the certifications and affidavits made to it under the provisions of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180, and is not liable to any person for such reliance.

(7) If a certified provider who sold a prearrangement sales contract does not comply with the terms of the prearrangement sales contract within a reasonable time after the certified provider is required to do so, the purchaser or heirs or assigns or duly authorized representative of the purchaser or the beneficiary has the right to a refund in the amount equal to the sales price paid for undelivered merchandise and unperformed services plus undistributed earnings amounts held in trust attributable to such contract, within 30 days of the filing of a sworn affidavit with the certified provider who sold the contract and the master trustee or the depository setting forth the existence of the contract and the fact of breach. A copy of this affidavit shall be filed with the Director of the Department of Consumer and Business Services. In the event a certified provider who has sold a prearrangement sales con-

tract is prevented from performing by strike, shortage of materials, civil disorder, natural disaster or any like occurrence beyond the control of the certified provider, the certified provider's time for performance is extended by the length of such delay.

(8) Except for an irrevocable contract described in ORS 97.939 (4), at any time prior to the death of the beneficiary of a prearrangement sales contract, the purchaser of the prearrangement sales contract may cancel the contract and is entitled to a refund of all amounts paid on the contract, all amounts in trust including earnings allocated to the contract that are in excess of all amounts paid on the contract and unallocated earnings on trust contract amounts from the date of the last allocation to the date of the refund request, less any amounts paid for merchandise already delivered or services already performed, which amounts may be retained by the certified provider as compensation.

(9) Notwithstanding ORS 97.941 (4) and subsection (5) of this section, a master trustee or certified provider may pay accounting fees, taxes, depository fees, investment manager fees and master trustee fees from earnings of trust fund deposits. Any payment of expenses or fees from earnings of a trust fund deposit under this subsection must not:

(a) Exceed an amount equal to two percent per calendar year of the value of the trust as determined at least once every six months as prescribed by the director by rule;

(b) Include the payment of any fee to the certified provider in consideration for services rendered as certified provider; or

(c) Reduce, diminish or in any other way lessen the value of the trust fund deposit so that the merchandise or services provided for under the contract are reduced, diminished or in any other way lessened. [Formerly 128.425; 2005 c.66 §1; 2007 c.661 §20; 2012 c.7 §10; 2013 c.366 §53]

Note: See note under 97.923.

97.944 Distributions from preconstruction trust fund deposits. (1) A depository may not make any distributions from preconstruction sales contract trust deposits except as provided in this section.

(2)(a) The construction or development of undeveloped interment spaces shall be commenced on the phase of construction or development, or the section or sections of spaces in which sales are made within five years of the date of the first sale. The certified provider who sold the preconstruction sales contract shall give written notice including a description of the project to the Director of the Department of Consumer and Business Services no later than 30 days after the first sale.

(b) Once commenced, construction or development shall be pursued diligently to completion. The first phase of construction must be completed within seven years of the first sale. However, any delay caused by strike, shortage of materials, civil disorder, natural disaster or any similar occurrence beyond the control of the certified provider extends the time of completion by the length of a delay.

(c) If construction or development is not commenced or completed within the times specified, any contract purchaser may surrender and cancel the contract and upon cancellation shall be entitled to a refund of the actual amounts paid toward the purchase price, together with interest accrued on the amount deposited to the trust.

(3) Except as otherwise authorized by this section, every certified provider selling undeveloped spaces shall provide facilities for temporary interment for purchasers or beneficiaries of contracts who die prior to completion of the space. Such temporary facilities shall be constructed of permanent materials, and, insofar as practical, be landscaped and groomed to the extent customary in that community. The heirs, assigns or personal representative of a purchaser or beneficiary shall not be required to accept temporary underground interment space where undeveloped space contracted for was an aboveground entombment or inurnment space. In the event that temporary facilities as described in this subsection are not made available upon the death of a purchaser or beneficiary, the heirs, assigns or personal representative is entitled to a refund of the entire sales price paid plus undistributed interest attributable to such amount while in trust.

(4) If the certified provider who sold the preconstruction sales contract delivers a completed space acceptable to the heirs, assigns or personal representative of a purchaser or beneficiary, other than a temporary facility, in lieu of the undeveloped space purchased, the certified provider shall provide the depository with a delivery certificate and all sums deposited under the preconstruction sales contract and income allocable to that contract shall be paid to the certified provider.

(5) During the construction or development of interment spaces, upon receiving the sworn certification of the certified provider who sold the preconstruction sales contract and the contractor, the depository shall disburse from the trust fund the amount equivalent to the cost of performed labor or delivered materials as certified, not to exceed the amounts deposited and income allocable to those contracts. A person who executes

and delivers a completion certificate with actual knowledge of a falsity contained therein shall be considered in violation of ORS 97.923 to 97.949 and 692.180.

(6) Upon completion of the phase of construction or development, section or sections of the project as certified to the depository by the certified provider and the contractor, the trust requirements shall terminate and all funds held in the preconstruction sales contract trust fund attributable to the completed phase, section or sections shall be paid to the certified provider who sold the preconstruction sales contract.

(7) Upon the payment to a certified provider of preconstruction sales contract trust funds under subsection (4) or (6) of this section, the undistributed income of the trust shall be paid to:

(a) The certified provider who sold the contract if the contract is a guaranteed contract; or

(b) The contract purchaser, or the purchaser's estate, if the contract is a non-guaranteed contract.

(8) If the preconstruction sales contract purchaser defaults in making payments under an installment preconstruction sales contract, and default continues for at least 30 days after the purchaser has received written notice of default, the certified provider who sold the contract may cancel the contract and withdraw from the trust fund the entire balance of the defaulting purchaser's account as liquidated damages. Upon certification of the default, the depository shall deliver the balance to the certified provider. The depository may rely on the certification and affidavits made to it under the provisions of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 and shall not be liable to any person for such reliance. [Formerly 128.430; 2007 c.661 §21]

Note: See note under 97.923.

97.945 Funeral and Cemetery Consumer Protection Trust Fund; fee; rules; maximum balance. (1) A certified provider shall pay to the Director of the Department of Consumer and Business Services a \$5 fee for each prearrangement sales contract or preconstruction sales contract entered into, to be paid into a special income earning fund in the State Treasury, separate from the General Fund, known as the Funeral and Cemetery Consumer Protection Trust Fund. The fees shall be remitted to the director annually within 30 days after the end of December for all contracts that have been entered into during the 12-month period.

(2) Except as provided in this section, the fund shall be used solely for the purpose of providing restitution to purchasers who have

suffered pecuniary loss arising out of prearrangement sales contracts or preconstruction sales contracts. The fund may be used for payment of actual administrative expenses incurred in administering the fund. All monies in the Funeral and Cemetery Consumer Protection Trust Fund are appropriated continuously to the director for the payment of restitution under this section and the payment of expenses incurred in performing the duties and functions of the director required under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180.

(3) The director shall administer the fund and shall adopt rules governing the payment of restitution from the fund.

(4) Payments for restitution shall be made only upon order of the director where the director determines that the obligation is noncollectible from the certified provider. Restitution must not exceed the amount of the sales price paid plus interest at the statutory rate.

(5) The fund must not be applied toward any restitution for losses on a prearrangement sales contract or preconstruction sales contract entered into prior to September 27, 1987.

(6) The fund must not be allocated for any purpose other than that specified in ORS 97.923 to 97.949, 97.992, 97.994 and 692.180.

(7) If the director proposes to deny an application for restitution from the fund, the director shall accord an opportunity for a hearing as provided in ORS chapter 183.

(8) Notwithstanding any other provision of this section, the payment of restitution from the fund is a matter of grace and not of right and no purchaser has vested rights in the fund as a beneficiary or otherwise.

(9)(a) The director shall annually review the status of the fund. If the director determines that the fund together with all accumulated income earned on the fund is sufficient to cover costs of potential claims against the fund and that the total number of outstanding claims filed against the fund is less than 10 percent of the fund's current balance, then payments to the fund may be adjusted accordingly at the discretion of the director.

(b) If the fund's balance falls below acceptable levels to meet future obligations, the director by rule may increase the fee or impose an assessment on certified providers.

(c) The balance of the fund may not exceed \$2 million. The director is authorized to adjust the fee or assessment as necessary to comply with this paragraph. [Formerly 128.435; 2003 c.362 §5; 2012 c.7 §11]

Note: See note under 97.923.

97.946 Advertising and marketing prohibitions. (1) A person may not engage in unsolicited door to door or telephone advertising and marketing of prearrangement sales contracts or preconstruction sales contracts. The costs of advertising and marketing may not be paid from trust funds.

(2) Advertising and marketing a prearrangement sales contract or a preconstruction sales contract by a funeral service practitioner, embalmer or funeral service establishment licensed under ORS chapter 692 does not constitute a violation of ORS 692.180 (1)(c). [Formerly 128.440]

Note: See note under 97.923.

97.947 Examination of providers and master trustees by director; subpoena power; depositions. (1)(a) The Director of the Department of Consumer and Business Services may examine the conditions and resources, including sales contracts, of a certified provider, master trustee or entity acting as a certified provider or master trustee without certification or registration to determine whether the certified provider, master trustee or entity acting as a certified provider or master trustee without certification or registration is complying with ORS 97.923 to 97.949, the rules of the director and any other laws of this state applicable to a certified provider or master trustee.

(b) In addition to the authority conferred by ORS 97.948, the director may require a certified provider, master trustee or entity acting as a certified provider or master trustee without certification or registration to pay the actual and reasonable costs of the examination.

(2) For the purpose of an examination under this section, the director may administer oaths and affirmations, compel the attendance of witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director considers relevant or material to the examination.

(3) If a certified provider, master trustee or entity acting as a certified provider or master trustee without certification or registration fails to comply with a subpoena issued under this section or a party or witness refuses to testify on any matter, the judge of the circuit court for any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify on a matter before the court.

(4) Each witness who appears before the director under a subpoena issued under this section shall receive the fees and mileage

provided for witnesses in ORS 44.415 (2), except that a witness subpoenaed at the instance of parties other than the director or an examiner may not be compensated for attendance or travel unless the director certifies that the testimony of the witness was material to the matter investigated.

(5) During the course of any examination, the director may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil suits in the circuit court. [2001 c.796 §3; 2003 c.362 §6; 2005 c.338 §1; 2012 c.7 §14]

Note: See note under 97.923.

97.948 Grounds for discipline by director for violation of ORS 97.923 to 97.949; suspension and revocation of certificate or registration; civil penalties; notification of board. (1) The Director of the Department of Consumer and Business Services may discipline a certified provider, master trustee or entity acting as a certified provider or master trustee without certification or registration who has been found by an audit or examination conducted by the director:

(a) To be in violation of ORS 97.923 to 97.949;

(b) To have liabilities that exceed assets;

(c) To be unable to meet obligations as they come due; or

(d) To be in a financial condition that fails to adequately protect the interests of customers.

(2) In disciplining a certified provider, master trustee or entity acting as a certified provider or master trustee without certification or registration under subsection (1) of this section, the director may take the following actions:

(a) Impose probation.

(b) Suspend the certificate or registration.

(c) Revoke the certificate or registration.

(d) Place limitations on the certificate or registration.

(e) Refuse to issue or renew a certificate or registration.

(f) Issue an order to cease and desist from the activities that support the discipline.

(g) Take any other disciplinary action that the director finds proper, including assessment of the costs of the investigation and disciplinary proceedings and assessment of a civil penalty not to exceed \$10,000 per violation.

(3) If the certificate or registration of a certified provider or master trustee is sus-

pended under this section, the holder of the certificate or registration may not engage in the activities allowed by the certificate or registration during the term of suspension. Upon the expiration of the term of suspension, the director shall reinstate the certificate or registration if the conditions for which the certificate or registration was suspended no longer exist.

(4) The director shall enter each case of disciplinary action on the records of the Department of Consumer and Business Services.

(5) Civil penalties under this section may be imposed as provided in ORS 183.745.

(6) If the director takes disciplinary action under this section, the director may send a notice of the action to the State Mortuary and Cemetery Board and to the Attorney General. [2001 c.796 §4; 2003 c.362 §7; 2005 c.338 §2; 2012 c.7 §15]

Note: See note under 97.923.

97.949 Notification by director to appropriate federal, state or local law enforcement officer of violation of ORS 97.923 to 97.949. (1) If the Director of the Department of Consumer and Business Services has reason to believe that a person has violated any provision of ORS 97.923 to 97.949, the director may give the information relative to the violation to the appropriate federal, state or local law enforcement officer having jurisdiction over the violation.

(2) If the director, in the course of taking an action against a certified provider, master trustee or entity acting as a certified provider or master trustee without certification or registration, finds that a salesperson or person acting as a salesperson has violated any provision of ORS 97.923 to 97.949, the director shall provide the State Mortuary and Cemetery Board with a copy of the findings and the order of the director. The board shall, upon receipt of such information, discipline the salesperson or person acting as a salesperson as required by law. [2001 c.796 §5; 2003 c.362 §8; 2005 c.338 §3; 2012 c.7 §16]

Note: See note under 97.923.

97.950 [1995 c.717 §1; 1997 c.472 §4; 1999 c.201 §1; 2005 c.505 §1; repealed by 2007 c.681 §31]

REVISED UNIFORM ANATOMICAL GIFT ACT

97.951 Short title. ORS 97.951 to 97.982 may be cited as the Revised Uniform Anatomical Gift Act. [2007 c.681 §1]

Note: 97.951 to 97.982 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.952 [1995 c.717 §2; 1997 c.472 §5; 2005 c.505 §2; repealed by 2007 c.681 §31]

97.953 Definitions for ORS 97.951 to 97.982. As used in ORS 97.951 to 97.982:

- (1) “Adult” means an individual who is 18 years of age or older.
- (2) “Agent” means an:
 - (a) Attorney-in-fact as that term is defined in ORS 127.505; or
 - (b) Individual expressly authorized to make an anatomical gift on the principal’s behalf by any record signed by the principal.
- (3) “Anatomical gift” means a donation of all or part of a human body to take effect after the donor’s death for the purpose of transplantation, therapy, research or education.
- (4) “Body part” means an organ, an eye or tissue of a human being. The term does not include the whole body.
- (5) “Decedent” means a deceased individual whose body or body part is or may be the source of an anatomical gift, and includes a stillborn infant or a fetus.
- (6)(a) “Disinterested witness” means a witness other than:
 - (A) A spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who makes, amends, revokes or refuses to make an anatomical gift; or
 - (B) An adult who exhibited special care and concern for the individual.
- (b) “Disinterested witness” does not include a person to whom an anatomical gift could pass under ORS 97.969.
- (7) “Document of gift” means a donor card or other record used to make an anatomical gift. The term includes a statement, symbol or designation on a driver license, identification card or donor registry.
- (8) “Donor” means an individual whose body or body part is the subject of an anatomical gift.
- (9) “Donor registry” means a centralized database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- (10) “Driver license” means a license or permit issued under ORS 807.021, 807.040, 807.200, 807.280 or 807.730, regardless of whether conditions are attached to the license or permit.
- (11) “Eye bank” means an organization licensed, accredited or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or portions of human eyes.
- (12) “Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health or welfare of an individual. “Guardian” does not include a guardian ad litem.
- (13) “Hospital” means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state or a subdivision of a state.
- (14) “Identification card” means the card issued under ORS 807.021, 807.400 or 807.730, or a comparable provision of the motor vehicle laws of another state.
- (15) “Know” means to have actual knowledge.
- (16) “Minor” means an individual who is under 18 years of age.
- (17) “Organ procurement organization” means an organization designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.
- (18) “Parent” means a parent whose parental rights have not been terminated.
- (19) “Physician” means an individual authorized to practice medicine under the law of any state.
- (20) “Procurement organization” means an eye bank, organ procurement organization or tissue bank.
- (21) “Prospective donor” means an individual who is dead or near death and has been determined by a procurement organization to have a body part that could be medically suitable for transplantation, therapy, research or education. The term does not include an individual who has made a refusal.
- (22) “Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.
- (23) “Recipient” means an individual into whose body a decedent’s body part has been or is intended to be transplanted.
- (24) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (25) “Refusal” means a record that expressly states an intent to prohibit other persons from making an anatomical gift of an individual’s body or body part.
- (26) “Sign” means, with the present intent to authenticate or adopt a record:
 - (a) To execute or adopt a tangible symbol; or
 - (b) To attach to or logically associate with the record an electronic symbol, sound or process.

(27) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(28) “Technician” means an individual determined to be qualified to remove or process body parts by an appropriate organization that is licensed, accredited or regulated under federal or state law. The term includes an enucleator.

(29) “Tissue” means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(30) “Tissue bank” means a person that is licensed, accredited or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of tissue.

(31) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients. [2007 c.681 §2; 2008 c.1 §33; 2017 c.409 §2]

Note: See note under 97.951.

97.954 [1995 c.717 §3; 1997 c.472 §6; 1999 c.201 §2; 2005 c.505 §3; repealed by 2007 c.681 §31]

97.955 Purpose of anatomical gift; persons authorized to make gift. (1) Subject to ORS 97.963, a donor may make an anatomical gift of a donor’s body or body part during the life of the donor for the purpose of transplantation, therapy, research or education.

(2) An anatomical gift may be made in the manner provided in ORS 97.957 by:

(a) The donor, if the donor is an adult or if the donor is a minor and is:

(A) Emancipated; or

(B) Authorized under ORS 807.280 to apply for an instruction driver permit because the donor is at least 15 years of age;

(b) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(c) A parent of the donor, if the donor is an unemancipated minor; or

(d) The donor’s guardian. [2007 c.681 §3]

Note: See note under 97.951.

97.956 [1995 c.717 §4; 1997 c.472 §7; 1999 c.201 §3; repealed by 2007 c.681 §31]

97.957 Methods of making anatomical gift before death of donor. (1) A donor may make an anatomical gift:

(a) By a designation on the donor’s driver license or identification card;

(b) In a will;

(c) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness;

(d) By a donor card or other record signed by the donor or other person making the gift; or

(e) By authorizing that a statement, symbol or designation indicating that the donor has made an anatomical gift is to be included on a donor registry.

(2) If the donor or other person authorized to make an anatomical gift under ORS 97.955 is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as provided in paragraph (a) of this subsection.

(3) Revocation, suspension, expiration or cancellation of a driver license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(4) An anatomical gift made by will takes effect upon the donor’s death whether or not the will is probated. Invalidation of the will after the donor’s death does not invalidate the gift.

(5) An anatomical gift made by a designation on the donor’s driver license or identification card is conclusively presumed valid. [2007 c.681 §4; 2009 c.106 §1]

Note: See note under 97.951.

97.958 [1995 c.717 §5; 1997 c.472 §8; 1999 c.201 §4; 2005 c.505 §4; repealed by 2007 c.681 §31]

97.959 Revocation or amendment of anatomical gift by donor or agent or guardian of donor. (1) Except as provided in subsection (7) or (8) of this section, an anatomical gift made under ORS 97.957 may be amended or revoked only by the donor in accordance with the provisions of this section and may not be amended or revoked by any other person otherwise authorized to make, amend or revoke a gift under ORS 97.963 or 97.967.

(2) A donor or other person authorized to amend or revoke an anatomical gift under subsection (7) or (8) of this section may amend or revoke an anatomical gift by:

(a) A record signed by:

(A) The donor;

(B) The other person; or

(C) Subject to subsection (3) of this section, another individual acting at the direc-

tion of the donor or the other person if the donor or other person is physically unable to sign; or

(b) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(3) A record signed pursuant to subsection (2)(a)(C) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) State that it has been signed and witnessed as required in this subsection.

(4) A donor or other person authorized to revoke an anatomical gift under subsection (7) or (8) of this section may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(5) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(6) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (4) of this section.

(7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or body part.

(8) An agent or guardian of a donor may amend or revoke an anatomical gift only if:

(a) The agent or guardian made the gift under ORS 97.955 (2)(b) or (d); or

(b) The power of attorney for health care or other record appointing the agent expressly authorizes the agent to amend or revoke anatomical gifts. [2007 c.681 §5; 2009 c.106 §2; 2011 c.61 §1]

Note: See note under 97.951.

97.960 [1995 c.717 §6; 1997 c.472 §9; repealed by 2007 c.681 §31]

97.961 Refusal to make anatomical gift; effect of refusal. (1) An individual may refuse to make an anatomical gift of the individual's body or body part by:

(a) A record signed by:

(A) The individual; or

(B) Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(b) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(c) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(2) A record signed under subsection (1)(a)(B) of this section must:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(b) State that it has been signed and witnessed as provided in this subsection.

(3) An individual who has made a refusal may amend or revoke the refusal:

(a) In the manner provided in subsection (1) of this section for making a refusal;

(b) By subsequently making an anatomical gift pursuant to ORS 97.957 that is inconsistent with the refusal; or

(c) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, provided that the destruction or cancellation is done with the intent to revoke the refusal.

(4) Except as otherwise provided in subsection (5) of this section, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or body part prohibits all other persons from making an anatomical gift of the individual's body or body part.

(5) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal. [2007 c.681 §6; 2009 c.106 §3]

Note: See note under 97.951.

97.962 [1995 c.717 §7; repealed by 2007 c.681 §31]

97.963 Effect of making, amending or revoking anatomical gift. (1) An anatomical gift of a donor's body or body part, if the donor or another person made an anatomical gift of the donor's body or body part under ORS 97.957 or an amendment to an anatomical gift of the donor's body or body part under ORS 97.959, may not be revoked except in accordance with ORS 97.959.

(2) A donor's revocation of an anatomical gift of the donor's body or body part under ORS 97.959 is not a refusal and does not prohibit another person specified in ORS 97.955 or 97.965 from making an anatomical gift of the donor's body or body part under ORS 97.957 or 97.967.

(3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or body part under ORS 97.957 or an amendment to an anatomical gift of the donor's body or body part under ORS 97.959, another person may not make, amend or revoke the gift of the donor's body or body part under ORS 97.967.

(4) A revocation of an anatomical gift of a donor's body or body part under ORS 97.959 by a person other than the donor does not prohibit another person from making an anatomical gift of the body or body part under ORS 97.957 or 97.967.

(5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under ORS 97.955, an anatomical gift of a body part is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another body part at a later time by the donor or other person.

(6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under ORS 97.955, an anatomical gift of a body part for one or more of the purposes set forth in ORS 97.955 is not a limitation on the making of an anatomical gift of the body part for any of the other purposes by the donor or other person under ORS 97.957 or 97.967. [2007 c.681 §7; 2009 c.106 §4; 2011 c.61 §2]

Note: See note under 97.951.

97.964 [1995 c.717 §8; 2005 c.505 §5; repealed by 2007 c.681 §31]

97.965 Persons authorized to make anatomical gift of body or body part of decedent. (1) Subject to subsections (2) and (3) of this section and unless prohibited by ORS 97.961 or 97.963, an anatomical gift of a decedent's body or body part for purpose of transplantation, therapy, research or education may be made by any member of the following classes of persons who is reasonably available, in the following order:

(a) An agent of the decedent at the time of death who could have made an anatomical gift under ORS 97.955 (2)(b) immediately before the decedent's death;

(b) The spouse of the decedent;

(c) An adult child of the decedent;

(d) A parent of the decedent;

(e) An adult sibling of the decedent;

(f) An adult grandchild of the decedent;

(g) A grandparent of the decedent;

(h) An adult who exhibited special care and concern for the decedent;

(i) A guardian of the decedent at the time of death; or

(j) Any other person having the authority to dispose of the decedent's body.

(2) If there is more than one member of a class listed in subsection (1) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under ORS 97.969 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift. [2007 c.681 §8]

Note: See note under 97.951.

97.966 [Formerly 97.295; 2007 c.681 §30; renumbered 97.984 in 2007]

97.967 Methods for making, amending or revoking anatomical gift of body or body part of decedent by authorized person. (1) A person authorized to make an anatomical gift under ORS 97.965 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(2) Subject to subsection (3) of this section, an anatomical gift by a person authorized under ORS 97.965 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under ORS 97.965 may be:

(a) Amended only if a majority of the reasonably available members agree to amendment of the gift; or

(b) Revoked only if a majority of the reasonably available members agree to the revocation of the gift or if they are equally divided as to whether to revoke the gift.

(3) A revocation under subsection (2) of this section is effective only if, before an incision has been made to remove a body part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, physician or technician knows of the revocation. [2007 c.681 §9]

Note: See note under 97.951.

97.968 [Formerly 97.300; renumbered 97.985 in 2007]

97.969 Authorized recipients of anatomical gifts; purposes for which gift may be used. (1) An anatomical gift may be

made to the following persons named in the document of gift:

(a) A hospital, accredited medical school, dental school, college, university, organ procurement organization or other appropriate person, for research or education;

(b) Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the body part; or

(c) An eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) of this section cannot be transplanted into the individual, the body part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific body parts or of all body parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the body part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the body part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the body part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the body part is an organ, an eye or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purposes of subsection (3) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific body parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(6) If a document of gift specifies only a general intent to make an anatomical gift by

words such as “donor,” “organ donor” or “body donor” or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(7) For purposes of subsections (2), (5) and (6) of this section, the following rules apply:

(a) If the body part is an eye, the gift passes to the appropriate eye bank.

(b) If the body part is tissue, the gift passes to the appropriate tissue bank.

(c) If the body part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b) of this section, passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) to (8) of this section or the decedent’s body or body part is not used for transplantation, therapy, research or education, custody of the body or body part passes to the person under obligation to dispose of the body or body part.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under ORS 97.957 or 97.967 or if the person knows that the decedent made a refusal under ORS 97.961 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b) of this section, ORS 97.951 to 97.982 do not affect the allocation of organs for transplantation or therapy. [2007 c.681 §10]

Note: See note under 97.951.

97.970 Search for document of anatomical gift or refusal; duty to send document or refusal to hospital. (1) The following persons shall make a reasonable search of an individual who the persons reasonably believe is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(a) A law enforcement officer, firefighter, emergency medical services provider or other emergency rescuer finding the individual; and

(b) If no other source of the information is immediately available, a hospital, as soon

as practicable after the individual's arrival at the hospital.

(2) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (1)(a) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or the refusal to the hospital.

(3) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions. [2007 c.681 §11; 2011 c.703 §22]

Note: See note under 97.951.

97.971 Delivery of document of gift or refusal not required; right to examine. (1) A document of gift need not be delivered during the donor's lifetime to be effective.

(2) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or the refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to whom the gift could pass under ORS 97.969. [2007 c.681 §12]

Note: See note under 97.951.

97.972 Rights and duties of procurement organizations and others; authorized examinations. (1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Transportation and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization must be allowed reasonable access to information in the records of the Department of Transportation to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift for transplantation, therapy, research or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the body part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4)(a) Unless otherwise prohibited by law, at any time after a donor's death, the person to whom a body part passes under ORS 97.969 may conduct any reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

(b) A transplant hospital may not deny a recipient from receiving an anatomical gift exclusively on the basis that the recipient is a registry identification cardholder as defined in ORS 475B.791.

(5) Unless otherwise prohibited by law, an examination under subsection (3) or (4)(a) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in ORS 97.965 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to ORS 97.969 (9) and 97.980, the rights of the person to whom a body part passes under ORS 97.969 are superior to the rights of all others with respect to the body part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and ORS 97.951 to 97.982, a person who accepts an anatomical gift of an entire body may allow embalming, burial or cremation and use of remains in a funeral service. If the gift is of a body part, the person to whom the body part passes under ORS 97.969, upon the death of the donor and before embalming, burial or cremation, shall cause the body part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a body part from the decedent.

(10) A physician or technician may remove from the body of a donor a donated body part that the physician or technician is

qualified to remove. [2007 c.681 §13; subsection (4)(b) of 2015 Edition enacted as 2015 c.844 §8]

Note: See note under 97.951.

97.973 Coordination of procurement and use of anatomical gifts. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. [2007 c.681 §14]

Note: See note under 97.951.

97.974 Immunity of persons acting in accordance with ORS 97.951 to 97.982. (1) A person who acts in accordance with ORS 97.951 to 97.982 or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution or administrative proceeding.

(2) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(3) In determining whether an anatomical gift has been made, amended or revoked under ORS 97.951 to 97.982, a person may rely upon representations of an individual listed in ORS 97.965 (1)(b), (c), (d), (e), (f), (g) or (h) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue. [2007 c.681 §15]

Note: See note under 97.951.

97.975 [Formerly 97.930; renumbered 97.987 in 2007]

97.976 Law governing validity of document of gift; presumption of validity. (1) A document of gift is valid if executed in accordance with:

(a) ORS 97.951 to 97.982;

(b) The laws of the state or country where it was executed; or

(c) The laws of the state or country where the person making the anatomical gift was domiciled, had a place of residence or was a national at the time the document of gift was executed.

(2) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(3) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked. [2007 c.681 §16]

Note: See note under 97.951.

97.977 Donor registry; duty of Department of Transportation to cooperate with donor registry. (1)(a) The Oregon Health Authority may allow an organ procurement organization to establish a donor registry.

(b) Only one donor registry may be established within this state.

(c) The donor registry shall comply with subsections (3) and (4) of this section.

(2) The Department of Transportation shall:

(a) Cooperate with a person who administers the donor registry established under subsection (1) of this section for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amending or revoking an anatomical gift.

(b) When requested by the organ procurement organization that has established the donor registry in this state, the department shall electronically transfer to the organ procurement organization the name, address, birthdate and donor designation listed on the driver license or identification card of a person designated as a donor. The organ procurement organization shall treat the information transferred from the department as confidential and may use the information only to expedite the making of anatomical gifts authorized by the donor.

(3) The donor registry must:

(a) Allow a donor or other person authorized under ORS 97.955 to include on the donor registry a statement or symbol that the donor has made, amended or revoked an anatomical gift;

(b) Be accessible to a procurement organization to allow the procurement organization to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift; and

(c) Be accessible for purposes of this subsection seven days a week on a 24-hour basis.

(4) Personally identifiable information on the donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor or person who made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift. [2007 c.681 §17; 2009 c.595 §64]

Note: See note under 97.951.

97.978 Resolution of conflict between potential anatomical gift and advance directive. (1) As used in this section:

(a) "Advance directive" has the meaning given that term in ORS 127.505.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support sys-

tem may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision regarding the health care of a prospective donor.

(2) If a prospective donor has a declaration or advance directive and the terms of the declaration or advance directive and the express or implied terms of a potential anatomical gift are in conflict regarding administration of measures necessary to ensure the medical suitability of a body part for transplantation, therapy, research or education, the prospective donor and the prospective donor's attending physician shall confer to resolve the conflict.

(3) If the prospective donor is incapable of resolving the conflict, one of the following persons shall act for the prospective donor to resolve the conflict:

(a) An agent acting under the prospective donor's declaration or advance directive; or

(b) If an agent is not named in the declaration or advance directive or the agent is not reasonably available, another person authorized by law, other than in ORS 97.951 to 97.982, to make health care decisions for the prospective donor.

(4) The conflict must be resolved as expeditiously as possible.

(5) Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any person authorized under ORS 97.965 to make an anatomical gift for the prospective donor.

(6) During the resolution of the conflict, measures necessary to ensure the medical suitability of the body part may not be withheld or withdrawn from the prospective donor unless withholding or withdrawing the measures is medically indicated by appropriate end of life care. [2007 c.681 §18]

Note: See note under 97.951.

97.979 Cooperation between medical examiner and procurement organization.

(1) A medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research or education.

(2) Subject to ORS 97.980, if a medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the medical examiner and a post-mortem examination is going to be performed, the medical examiner or designee shall conduct a post-mortem examination of the body or the body part in a manner and

within a period compatible with its preservation for the purposes of the gift.

(3) A body part may not be removed from the body of a decedent under the jurisdiction of a medical examiner for transplantation, therapy, research or education unless the body part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a medical examiner from performing the medicolegal investigation upon the body or body parts of a decedent under the jurisdiction of the medical examiner. [2007 c.681 §19]

Note: See note under 97.951.

97.980 Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.

(1) Upon request of a procurement organization, a medical examiner shall release to the procurement organization the name, contact information and available medical and social history of a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's body or body part is medically suitable for transplantation, therapy, research or education, the medical examiner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner only if relevant to transplantation, therapy, research or education.

(2) The medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, X-rays, other diagnostic results and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner that the medical examiner determines may be relevant to the investigation.

(3) A person who has any information requested by a medical examiner pursuant to subsection (2) of this section shall provide that information as expeditiously as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of body parts for the purpose of transplantation, therapy, research or education.

(4) If an anatomical gift has been or might be made of a body part of a decedent whose body is under the jurisdiction of the medical examiner and a post-mortem examination is not required, or the medical examiner determines that a post-mortem examination is required but that the recovery of the body part that is the subject of an

anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely removal of the body part from the decedent for the purpose of transplantation, therapy, research or education.

(5) If an anatomical gift of a body part from the decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner initially believes that the recovery of the body part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the medical examiner shall consult with the procurement organization, or physician or technician designated by the procurement organization, about the proposed recovery. The procurement organization shall provide the medical examiner with all of the information that the procurement organization possesses that could relate to the decedent's cause or manner of death.

(6)(a) The medical examiner and the procurement organization may enter into an agreement establishing protocols and procedures governing their relationship when:

(A) An anatomical gift of a body part from a decedent whose body is under the jurisdiction of the medical examiner has been or might be made; and

(B) The medical examiner believes that the recovery of the body part could interfere with the post-mortem investigation into the decedent's cause or manner of death or the documentation or preservation of evidence.

(b) A decision regarding the recovery of the body part from the decedent shall be made in accordance with the agreement.

(c) The medical examiner and the procurement organization shall evaluate the effectiveness of the agreement at regular intervals but not less frequently than every two years.

(7)(a) In the absence of an agreement establishing protocols and procedures governing the relationship between the medical examiner and the procurement organization when an anatomical gift of an eye or tissue from a decedent whose body is under the jurisdiction of the medical examiner has been or might be made, and following the consultation under subsection (5) of this section, the medical examiner may delay the recovery of the eye or tissue until after the collection of evidence or the post-mortem examination, in order to preserve and collect evidence, to maintain a proper chain of custody and to allow an accurate determination of the decedent's cause or manner of death.

(b) When a determination to delay the recovery of an eye or tissue is made, every effort possible shall be made by the medical

examiner to complete the collection of evidence or the post-mortem examination in a timely manner compatible with the preservation of the eye or tissue for the purpose of transplantation, therapy, research or education.

(c) The collection of evidence or the post-mortem examination shall occur during the normal business hours of the medical examiner and, when possible and practicable, at times other than the normal business hours of the medical examiner.

(d) If the collection of evidence or the post-mortem examination occurs at times other than the normal business hours of the medical examiner, the procurement organization shall reimburse the medical examiner a mutually agreed-upon reasonable fee.

(8) If the medical examiner denies or delays recovery under subsection (6) or (7) of this section, the medical examiner shall:

(a) Explain in a record the specific reasons for not allowing or for delaying recovery of the body part;

(b) Include the specific reasons in the records of the medical examiner; and

(c) Provide a record with the specific reasons to the procurement organization.

(9) If the medical examiner allows recovery of a body part, the procurement organization shall cooperate with the medical examiner in any documentation of injuries and the preservation and collection of evidence prior to and during the recovery of the body part and, upon request of the medical examiner, shall cause the physician or technician who removes the body part to provide the medical examiner with a record describing the condition of the body part, a photograph and any other information and observations that would assist in the post-mortem examination. [2007 c.681 §20]

Note: See note under 97.951.

97.981 Purchase or sale of body parts prohibited. (1) Except as otherwise provided in subsection (3) of this section, a person commits the crime of purchase or sale of a body part for transplantation or therapy if the person, for valuable consideration, knowingly purchases or sells a body part for transplantation or therapy if removal of the body part from an individual is intended to occur after the individual's death.

(2) Purchase or sale of a body part for transplantation or therapy is a Class C felony.

(3) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation or disposal of a body part. [2007 c.681 §21]

Note: See note under 97.951.

97.982 Alteration of document of anatomical gift prohibited. (1) A person commits the crime of alteration of a document of gift if the person, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces or obliterates a document of gift, an amendment or revocation of a document of gift or a refusal.

(2) Alteration of a document of gift is a Class C felony. [2007 c.681 §22]

Note: See note under 97.951.

97.983 Relation to Electronic Signatures in Global and National Commerce Act. The provisions of ORS 97.951 to 97.982 modify, limit and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit or supersede section 101(a) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7003(b) as in effect January 1, 2008. [2007 c.681 §23]

Note: 97.983 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ANATOMICAL GIFTS

97.984 Liability of executor who carries out anatomical gift. A person named executor who carries out an anatomical gift of the testator made under the provisions of ORS 97.957 before issuance of letters testamentary or under a will which is not admitted to probate shall not be liable to the surviving spouse or next of kin for performing acts necessary to carry out the gift of the testator. [Formerly 97.966]

97.985 Transplants not covered by implied warranty. (1) The procuring, processing, furnishing, distributing, administering or using of any part of a human body for the purpose of injecting, transfusing or transplanting that part into a human body is not a sales transaction covered by an implied warranty under the Uniform Commercial Code or otherwise.

(2) As used in this section, "part" means organs or parts of organs, tissues, eyes or parts of eyes, bones, arteries, blood, other fluids and any other portions of a human body. [Formerly 97.968]

FEDERAL AID FOR CEMETERIES

97.987 Department of Transportation use of federal moneys for cemetery care.

(1) In addition to any other duties of the Department of Transportation, the department may apply for, accept and expend, use or dispose of moneys and property received from the federal government for the purpose of establishing any program of restoration, care, maintenance and preservation of cemeteries. The department shall administer any funds received pursuant to this section in accordance with the conditions established by the federal government.

(2) In carrying out the provisions of subsection (1) of this section the Department of Transportation may contract or consult with any nonprofit corporation established for the purpose of promoting cemetery care and maintenance. [Formerly 97.975]

PENALTIES

97.990 Penalties. (1) Violation of ORS 97.160 is a Class A misdemeanor.

(2) Every officer, agent or employee of this state or of any county, city or any other municipal subdivision thereof who willfully neglects to notify the State Mortuary and Cemetery Board of the existence of a body as required by ORS 97.170 to 97.210 or who refuses to deliver possession of such body according to the provisions of ORS 97.170 to 97.210 or who mutilates or permits any such body to be mutilated so that it is not valuable for anatomical purposes or who refuses or neglects to perform any of the duties enjoined upon the officer, agent or employee by ORS 97.170 to 97.210, commits a Class A misdemeanor.

(3) Violation of ORS 97.520, 97.530 or 97.540 is a Class A misdemeanor.

(4) Any person, association or corporation who operates a cemetery, mausoleum or columbarium contrary to the provisions of ORS 97.020 to 97.040, 97.110 to 97.130, 97.145, 97.150, 97.220, 97.310 to 97.360 (1), 97.440, 97.510 to 97.560, 97.710, 97.720, 97.810, 97.820, 97.830 and 97.840 to 97.860 commits a Class B misdemeanor.

(5)(a) Violation of ORS 97.745 is a Class C felony.

(b) In addition to any other sentence provided by law for criminal violations of ORS 97.745, the judge shall impose a penalty not to exceed \$10,000 on any person convicted of a criminal violation of ORS 97.745.

(6) In addition to the penalty of subsection (5) of this section, any native Indian artifacts or human remains taken by, or in possession of, any person sentenced under subsection (5) of this section and all equip-

ment used in the violation may be ordered forfeited by the court in which conviction occurs, and may be disposed of as the court directs. [Subsections (5) to (7) enacted as 1977 c.183 §12; subsection (8) enacted as 1977 c.647 §4; 1979 c.420 §3; 1983 c.526 §6; 1985 c.198 §5; subsections (5) to (7) re-numbered 127.990 in 1991; subsection (5)(b) of 1995 Edition enacted as 1995 c.543 §3; 2011 c.597 §156; 2015 c.651 §5]

97.992 Penalties for ORS 97.937. Violation of any of the provisions of ORS 97.937 is a Class A misdemeanor. [Formerly 128.990; 2011 c.597 §157]

Note: 97.992 was enacted into law by the Legislative Assembly but was not added to or made a part of

ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.994 Penalties for ORS 97.931, 97.933, 97.941 and 97.943. Violation of any of the provisions of ORS 97.931, 97.933, 97.941 or 97.943 is punishable as a Class A misdemeanor. [Formerly 128.991; 2003 c.362 §9]

Note: 97.994 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.
