

Chapter 97

2003 EDITION

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

	GENERAL PROVISIONS		
97.010	Definitions	97.400	Disposal of newly created lots; disposition and use of proceeds from sale; failure of owner to perform duties
97.020	Exemption of certain organizations and cemeteries from certain sections of chapter	97.410	Right of adjacent lot owner upon vacation of way
97.030	Vested rights not acquired	97.420	Effect of failure to object
97.040	Private family burial grounds	97.430	Declaration of exercise of police power and right of eminent domain
	AUTOPSIES	97.440	Removal of dedication
97.082	Consent for certain autopsies; form	97.445	Vacating county interest in cemetery real property
	DISPOSITION OF HUMAN BODIES	97.450	Discontinuance of cemetery and removal of remains and markers
97.110	Human remains not to be attached	97.460	Approval required prior to establishment of cemetery or burial park
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		SALES AND RIGHTS IN RESPECT OF CEMETERY PLOTS
97.130	Right to control disposition of remains; delegation	97.510	Sale and conveyance of plots by cemetery authority
97.145	Liability for failure to conform to written instrument directing control of remains	97.520	Sale or offer to sell cemetery plot upon promise of resale at financial profit
97.150	Disposition of cremated remains; procedures; notice; actions against cemetery or funeral service providers	97.530	Commission, bonus or rebate for sale of plot or services
97.153	Diagnostic or therapeutic radioisotopes in body	97.540	Commission, bonus or rebate for recommendation of cemetery
97.160	Duty of hospital or sanitarium to notify before sending remains to undertaker; procedures	97.550	Plots are indivisible
97.170	Disposition of body of indigent or child in custody of Department of Human Services	97.560	Presumption of sole ownership in grantee of plot
97.180	Period within which indigent's body may not be used	97.570	Spouse has vested right of interment
97.190	Post-mortem examination of indigent's body	97.580	Divestiture of spouse's right of interment
97.200	Disposition of indigent's remains after educational use thereof	97.590	Transfer of plot or right of interment
97.210	Exceptions to application of ORS 97.170 to 97.200; rules	97.600	Descent of plot
97.220	Disinterment	97.610	Determining occupant of burial plot having coowners
	DEDICATION TO CEMETERY PURPOSES; PLATTINGS	97.620	Death of coowner; authorization to use plot under directions of surviving owners
97.310	Survey and subdivision of land; map or plat of mausoleum or columbarium; access easement	97.630	Family plots; order of occupation
97.320	Filing map or plat and declaration of dedication of land to cemetery purposes	97.640	Waiver or termination of vested right of interment
97.330	When dedication is complete	97.650	Limitations upon vested right of interment
97.340	Effect of dedication		CEMETERY MANAGEMENT
97.350	Dedication to cemetery purposes not invalid	97.710	Power of cemetery to make rules and regulations
97.360	Resurvey and alteration in shape or size; vacation of streets, walks, driveways and parks and replatting into lots	97.720	Record of interments and cremations; inspection
97.370	Fixing date of hearing; notice	97.730	Gifts and bequests in trust for cemeteries
97.380	Hearing; order allowing replatting		INDIAN GRAVES AND PROTECTED OBJECTS
97.390	Assessment of benefits and damages	97.740	Definitions for ORS 97.740 to 97.760
		97.745	Prohibited acts; application; notice
		97.750	Permitted acts; notice
		97.760	Civil action by Indian tribe or member; time for commencing action; venue; damages; attorney fees

PROPERTY RIGHTS AND TRANSACTIONS

OREGON COMMISSION ON HISTORIC CEMETERIES		97.935	Registration of master trustees; annual reports; annual audits; rules; fees
97.772	Definition of "historic cemetery"	97.937	Deposit of trust funds made by endowment care cemeteries
97.774	Oregon Commission on Historic Cemeteries; terms	97.939	Prearrangement or preconstruction sales contracts; contents; delivery
97.776	Commission members; nominations	97.941	Prearrangement or preconstruction trust fund deposits
97.778	Chairperson; quorum; meetings	97.943	Distributions from prearrangement trust fund deposits
97.780	Duties	97.944	Distributions from preconstruction trust fund deposits
97.782	Listing of historic cemeteries; form	97.945	Funeral and Cemetery Consumer Protection Trust Fund; fee; rules
97.784	Executive secretary; support services	97.946	Advertising and marketing prohibitions
CEMETERY CARE		97.947	Examination of providers and master trustees by director; subpoena power; depositions
97.810	Endowment care and nonendowed care cemeteries	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
97.820	Placing cemetery under endowed care; deposit; commingling endowment and special care funds; trustee or custodian of fund	97.949	Notification by director to appropriate federal, state or local law enforcement officer of violation of ORS 97.923 to 97.949
97.825	Suits to enforce endowed care statutes; attorney fees	ANATOMICAL GIFTS	
97.830	Investment and reinvestment of principal of endowed care funds; use and application of income	97.950	Definitions for ORS 97.950 to 97.964
97.835	Limitation of duties and liability of trustee	97.952	Personal authority to make anatomical gift; procedure; delegation
97.840	Cemetery authority authorized to receive and hold gifts of property; disposition of gifts	97.954	Authority to make anatomical gift of body of decedent; priority; procedure
97.850	Endowment and special care funds are charitable	97.956	Authority of medical examiner or local public health officer over body within examiner's jurisdiction or officer's custody; documentation
97.860	Agreements for care	97.958	Duties of hospital staff at or near time of patient's death; discussion with patient and family; search for document of gift
97.865	Application of ORS 97.810 to 97.865 to religious, county and city cemeteries	97.960	Delivery of document of anatomical gift; effect on validity of gift
97.870	Unused and uncared for portions of cemetery declared common nuisances	97.962	Rights of procurement organization accepting anatomical gift; autopsies
97.880	Resolution declaring a nuisance	97.964	Anatomical gift as authorization for examination to assure medical acceptability
97.890	Complaint	97.966	Liability of executor who carries out anatomical gift
97.900	Summons	97.968	Transplants not covered by implied warranty
97.910	Disuse as prima facie evidence of abandonment	FEDERAL AID FOR CEMETERIES	
97.920	Judgment declaring nuisance, authorizing abatement and creating and foreclosing lien	97.975	Department of Transportation use of federal moneys for cemetery care
PREARRANGEMENT SALES AND PRECONSTRUCTION SALES		PENALTIES	
97.923	Definitions for ORS 97.923 to 97.949	97.990	Penalties
97.925	Purpose	97.992	Penalties for ORS 97.937
97.927	Applicability of ORS 97.923 to 97.949	97.994	Penalties for ORS 97.931, 97.933 and 97.941
97.929	Exceptions to ORS 97.923 to 97.949		
97.931	Registration of salesperson for endowment care cemeteries, preconstruction sales and prearrangement sales; rules; background check; civil penalties		
97.933	Certification of provider of prearrangement or preconstruction sales; annual reports; audits; fees		

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 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

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

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

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

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

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

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

(11) "Burial" means the placement of human remains in a grave.

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

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

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corpo-

ration sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and 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.

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

(19) "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.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "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 established and maintained pursuant to the provisions of ORS 97.810 to 97.865. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. [Amended by 1955 c.545 §1; 1965 c.396 §1]

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.

(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. [Amended by 1955 c.473 §1; 1997 c.167 §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 State 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]

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 shall not be 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 or, 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) 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. Such delegation shall be made by completion of the written instrument described in subsection (7) of this section. The person to whom the authority is delegated shall have 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 shall be binding.

(5) A donation of anatomical gifts under ORS 97.952 or 97.954 shall take 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 shall be void and disposition shall be in accordance with the direction provided by those persons given priority in subsection (2) of this section and who agree to be financially responsible.

(7) The signature of the individual shall be required for the completion of the written instrument required in subsection (3) 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 per-

son 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 97.950 to 97.964, 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. [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]

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; actions against cemetery or funeral service providers. (1) 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 shall also contain further instructions to the cemetery au-

thority, crematory operator or licensed funeral service practitioner as to the final disposition of the cremated remains. If the cremated remains are left in the possession of the cemetery authority, crematory operator or licensed funeral service practitioner and no such instructions 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, pursuant to ORS 97.130, who has the right to control the disposition of the cremated remains. The notice shall state that the cemetery authority, crematory operator or licensed funeral service practitioner intends to dispose of the cremated remains unless such person gives instructions to the contrary to the cemetery authority, crematory operator or licensed funeral service practitioner within 30 days of the date of such notice from the cemetery authority, crematory operator or licensed funeral service practitioner. Reasonable effort to notify shall include, but not be limited to, notice, personally or by certified mail, return receipt requested, to the person who has the right to control the disposition of the cremated remains at the address of such person in the records of the cemetery authority, crematory operator or licensed funeral service practitioner. If disposition of the cremated remains has not been directed and authorized by such person within said 30-day period, the cemetery authority, crematory operator or licensed funeral service practitioner may dispose of the cremated remains as is legally practicable.

(2) No cemetery authority, crematory operator or licensed funeral service practitioner shall be liable, and no action shall lie against any cemetery authority, crematory operator or licensed funeral service practitioner relating to any cremated remains that have been left in its possession for a period of 180 days unless the cemetery authority, crematory operator or licensed funeral service practitioner has failed to make such reasonable effort to notify the person described in subsection (1) of this section or unless a written contract has been entered into with the cemetery authority, crematory operator or licensed funeral service practitioner for their care or unless permanent interment has been made. 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]

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 with-

out 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 body of indigent or child in custody of Department of Human Services. (1) Except as set forth in subsection (4) of this section, any licensed funeral service practitioner having charge of the body of a deceased person thought to be an unclaimed indigent shall use all reasonable diligence promptly to notify the relatives of the deceased person or any other person having an interest in the deceased person and shall arrange with any relative who claims the body or with any friend of the deceased person who will pay the expenses to make disposition of the body. If no one claims the body within five days after death, or if those notified acquiesce, the funeral service practitioner shall notify, by telephone, the Demonstrator of Anatomy of the Oregon Health and Science University. The Demonstrator of Anatomy, who shall be appointed by the Oregon Health and Science University Board of Directors from the staff of the Oregon Health and Science University, shall immediately inform the funeral service practitioner whether the body is deemed to be in fit condition and is desired for medical instruction or the advancement of medical science. If the body is desired for these purposes, the funeral service practitioner shall arrange for a licensed embalmer to make such preparation as is necessary and shall, within 72 hours, deliver it to the Oregon Health and Science University, or any other school or college within the State of Oregon qualifying applicants for examination in the fundamental sciences as required and specified in ORS 683.010 to 683.335 and ORS chapters 676 to 681 and 684 to 686, as the Demonstrator of Anatomy directs. The expenses of embalming, transportation of the body to such school or college, filing fees and other related expenses shall be paid from the funds appropriated specifically for the purposes of this section. Such expenses shall not exceed the normal rates charged for such services to the general public.

(2) If the Demonstrator of Anatomy does not require any such body for instruction or research, it may be assigned, on request, to any other properly authorized institution within this state or to any qualified physician for instruction or research.

(3) When the body of a deceased person is deemed in unfit condition by the Demon-

strator of Anatomy and disposition does not take place as set forth in subsections (1) and (2) of this section, and no relatives, friends or interested persons claim the body after notification is attempted, then the funeral service practitioner may commence to cremate or bury the body without the consent of persons listed in ORS 97.130 and is furthermore indemnified from any liability arising from having made such disposition. The method of disposition must be in the least costly manner that complies with law, and that does not conflict with known wishes of the deceased. Reimbursement for costs of disposition shall be made as set forth in subsection (5) of this section.

(4) When the deceased person is a child over whom the Department of Human Services held guardianship at the time of death, and no relatives, friends or interested persons claim the body after notification is attempted as set forth in subsection (1) of this section, the department may at its discretion notify the Demonstrator of Anatomy and proceed as set forth in subsection (1) of this section, or may authorize burial or cremation of the body. Expenses related to burial or cremation authorized by the department under this subsection shall be borne by the department.

(5) Upon receipt of an itemized statement of expenses, the department shall reimburse the funeral service practitioner within 30 days the reasonable costs for disposition of any unclaimed deceased person who has insufficient assets and for whom no one takes responsibility. The method of disposition must be in the least costly manner and shall not exceed \$450 per disposition. [Amended by 1973 c.842 §1; 1985 c.704 §1; 1993 c.345 §4; 1995 c.162 §62]

97.180 Period within which indigent's body may not be used. Upon receipt of any body by a school or college pursuant to ORS 97.170, it shall be properly embalmed for anatomical purposes, but shall be retained 30 days before being used or dismembered. If it is claimed by any relative or friend within that period, it shall be delivered to the claimant.

97.190 Post-mortem examination of indigent's 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 Demonstrator of Anatomy. [Amended by 1959 c.629 §43; 1965 c.221 §13; 1977 c.582 §1]

97.200 Disposition of indigent's remains after educational use thereof. The remains of any corpse used for the purposes authorized by ORS 97.170 shall, upon completion of such use, be decently buried or cremated and the ashes, in case of cremation, shall be delivered to any relative who claims them, after establishing relationship. All expenses incident to burial and cremation and the delivery of ashes to any relative shall be borne by the educational institution which used the body for educational purposes.

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 Department of Human Services, by rule, may prescribe, shall not be subject to the provisions of ORS 97.170 to 97.200. [Amended by 1977 c.582 §2]

97.220 Disinterment. (1) The remains of a deceased person interred in a plot in a cemetery may be removed therefrom with the consent of the cemetery authority and written consent of the person who has the right to control the disposition of the remains of the deceased person. If the consent of any such person or of the cemetery authority cannot be obtained, permission by the county court or the board of county commissioners 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 or the board of county commissioners.

(2) If the payment for the purchase of an interment space becomes past due and so remains for a period of 90 days, 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.

(3) 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]

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 92.190 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 Human Services. 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 inter-

red 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]

97.460 Approval required prior to establishment of cemetery or burial park. No association, corporation, cemetery authority, or person shall after February 24, 1903, lay out, open up or use any property for cemetery or burial park purposes, without the approval 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. [Formerly 64.060; 1965 c.396 §3]

SALES AND RIGHTS IN RESPECT OF CEMETERY PLOTS

97.510 Sale and conveyance of plots by cemetery authority. 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.

97.520 Sale or offer to sell cemetery plot upon promise of resale at financial profit. No person, firm or corporation shall 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 Secretary of State. Each violation of this section constitutes a separate offense. [Amended by 1989 c.171 §13]

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 coowners. 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 coowner of the plot.

97.620 Death of coowner; 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.

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.

97.730 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 non-endowed care cemeteries. (1) An endowment care cemetery is one which after July 5, 1955, deposits with the trustee or custodian of its endowment care fund not less than the following amounts for plots sold after that date:

(a) Fifteen percent of the gross sales price with a minimum of \$5 for each grave or, when the gross sales price is paid in installments, 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.

(b) Five percent of the gross sales price for each niche or, when the gross sales price is paid in installments, five percent of each

installment until at least five percent of the gross sales price has been deposited.

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

(2) The cemetery authority shall deposit with the trustee or custodian of its endowment care fund any payment received by it and required by subsection (1) of this section to be paid into such fund, within 30 days from the receipt of such payment.

(3) 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: The total amount invested in bonds, securities, mortgages and other investments, the total amount of cash on hand not invested at the close of the previous calendar or fiscal year, the income earned by investments in the preceding calendar or fiscal year, the amounts of such income expended for maintenance in the preceding calendar or fiscal year, the amount paid into the fund in the preceding calendar or fiscal year and 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.

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

(5) The director shall have authority to 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.

(6) At the time of the filing of the statements of its endowment care fund each cemetery filing 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.

(7) 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.

(8) No cemetery shall operate after July 5, 1955, as an endowment care, permanent maintenance or free care cemetery until the provisions of this section are complied with. There shall be printed or stamped at the

head of all contracts and certificates of ownership or deeds referring to plots in an endowment care cemetery, the following statement: "This cemetery is an endowment care cemetery," in lettering equivalent to at least 10-point No. 2 black type, and there shall be printed in the body of or stamped upon the above-described instruments the following statement: "Endowment care means the general care and maintenance of all developed portions of the cemetery and memorials erected thereon."

(9) A cemetery which otherwise complies with this section may be designated an endowment care cemetery even though it contains a small area which may be sold without endowed care, if it is separately set off from the remainder of the cemetery. There shall be printed or stamped at the head of all contracts and certificates of ownership or deeds referring to plots in this area the phrase "nonendowed care" in lettering equivalent to at least 10-point No. 2 black type.

(10) A nonendowed care cemetery is one that does not deposit in an endowment care fund the minimum specified in subsection (1) of this section.

(11) No cemetery shall in any way advertise or represent that it operates wholly or partially as an endowment care, permanent maintenance or free 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, until 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]

97.820 Placing cemetery under endowed 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. The provisions of this subsection shall not apply to a city or county-owned cemetery, unless the city or county has elected to subject itself to ORS 97.810 to 97.865.

(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.

(5) ORS 294.035 does not apply to funds held by a county or city under ORS 97.810 to 97.865. [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]

97.825 Suits to enforce endowed care statutes; attorney fees. (1) Should the cemetery authority fail to remit to the trustee or trustees in accordance with the law, the funds herein provided for endowment and special care, or fail to expend all such 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. Such 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 an endowment care cemetery fails after 30 days' notice of delinquency to make any report to the director required by ORS 97.810, the director shall give notice of the foregoing to the trustee or trustees of the cemetery endowment care fund, the cemetery for the benefit of which the fund is established, the Attorney General of Oregon and the State Mortuary and Cemetery Board. Within 90 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.

(3) 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.

(4) 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]

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 the provisions of ORS 128.194 to 128.218. Otherwise, the cemetery authority, governed by the provisions of ORS 128.194 to 128.218, 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]

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) The 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) When a cemetery authority, county or city files a statement described in this section with the director, ORS 97.810 to 97.865 will apply 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. [1997 c.167 §4; 2001 c.796 §25]

97.870 Unused and uncared for portions of cemetery declared common nuisances. In all cases where a cemetery authority has owned a site for a cemetery for more than 40 years and has during that pe-

riod 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. 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 care, maintenance or free care. [Amended by 1965 c.396 §7]

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 association 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 association or other proprietor, 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 association or the proprietor.

(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 association.

(4) In addition to the names of the persons that appear on the records of the cemetery association 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]

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 association, 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 association or other proprietor 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]

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, if known, who is to receive the funeral and cemetery merchandise, funeral and cemetery services or completed interment, entombment or cremation spaces.

(2) “Certified provider” means any person certified under ORS 97.933 to sell or offer for sale prearrangement sales contracts or preconstruction sales contracts.

(3) “Delivery” occurs when:

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

(b) Title to the funeral and cemetery merchandise has been transferred to the purchaser, has been paid for, and is in the possession of the seller, who has placed it,

until needed, for storage on the seller’s premises; or

(c) The merchandise has been identified for the purchaser or the beneficiary and held by the manufacturer for future delivery.

(4) “Depository” means a financial institution or trust company, as those terms are defined ORS 706.008, that is authorized to accept deposits in this state or to transact trust business in this state.

(5) “Director” means the Director of the Department of Consumer and Business Services.

(6) “Funeral and cemetery merchandise” includes nonperishable items of personal property customarily sold by funeral service establishments, cemeteries, crematoriums and monument companies, including, but not limited to, caskets, burial vaults, memorials, markers and foundations, but shall not include rights of interment or entombment in a cemetery section, lawn crypt section, mausoleum or columbarium that is in existence at the time of initial payment on the contract.

(7) “Funeral and cemetery services” includes all services customarily performed:

(a) By a funeral service practitioner, embalmer, funeral service establishment, cemetery or crematorium licensed under ORS chapter 692;

(b) In conjunction with an interment, entombment or cremation; and

(c) In conjunction with the sale, installation or erection of a memorial, marker, monument or foundation.

(8) “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 shall be required upon delivery or performance of the funeral and cemetery services.

(9) “Master trustee” means an entity appointed by a certified provider to administer moneys received from the certified provider under ORS 97.941 who acts independently from any certified provider and who is not also a certified provider under ORS 97.923 to 97.949. “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.

(10) “Nonguaranteed 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 additional charges other than the sales price contained in the contract may be required at the time of delivery or performance of the funeral and cemetery services.

(11) "Preconstruction sales" or "preconstruction sales contract" means any sale made to a purchaser, which has as its purpose the furnishing of undeveloped interment, entombment or cremation spaces and where the sale terms require payment or payments to be made at a currently determinable time.

(12) "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 and cemetery merchandise or funeral and cemetery 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.

(13) "Provider" means any entity that sells and offers for sale funeral and cemetery merchandise or funeral and cemetery services.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

(18) "Undeveloped interment, entombment or cremation 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]

Note: 97.923 to 97.949 (formerly 128.400 to 128.440) 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 assure funds for performance to those purchasers who contract through prearrangement sales contracts for the purchase of funeral and cemetery merchandise and funeral and cemetery services, and through preconstruction sales contracts for undeveloped interment, entombment or cremation 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 persons selling or offering for sale 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 to provide protection for the purchaser upon the certified provider's default. [Formerly 128.405]

Note: See note under 97.923.

97.927 Applicability of ORS 97.923 to 97.949. (1) Except as provided in this section, ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 apply to all certified providers, master trustees and salespersons who sell or offer for sale prearrangement sales contracts or preconstruction sales contracts.

(2) ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 do not apply to:

(a) Agreements to sell or sales made by endowment care cemeteries under ORS 97.929; or

(b) Any nonprofit memorial society charging less than a \$100 membership fee. [Formerly 128.407; 2003 c.362 §2]

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 apprentice registration or embalmer apprentice 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 State Mortuary and Cemetery 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 State Mortuary and Cemetery Board shall determine whether to register the salesperson.

(3)(a) The State Mortuary and Cemetery 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 State Mortuary and Cemetery Board under this section shall be paid into the General Fund and placed to the credit of the Public Health Account. [Formerly 128.414]

Note: See note under 97.923.

97.933 Certification of provider of prearrangement or preconstruction sales; annual reports; audits; fees. (1) A provider may not engage in prearrangement sales or preconstruction sales unless the provider is certified by the Director of the Department of Consumer and Business Services. 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 shall be reasonable and shall defray the costs associated with the administration of ORS 97.923 to 97.949.

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

(A) A disclosure of changes in trust deposits;

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

(C) 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 or have been discharged or canceled.

(4) The director may audit the records of a certified provider that relate to prearrangement 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. [2001 c.796 §1; 2003 c.362 §3]

Note: See note under 97.923.

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

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

(a) Establish procedures for registering persons 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) Every master trustee shall file an annual report with the director on forms provided by the director. The annual report shall 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 person 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.

(4) A master trustee who is audited under this section shall pay all expenses and costs incurred by the director in conducting the audit.

(5) The director shall adopt rules necessary to administer this section. The rules shall identify the specific trust provisions that are the subject of an audit conducted under this section. [2001 c.796 §2; 2003 c.362 §4]

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 such trust fund to the provider.

(b) Upon presentation of the written request of the purchaser of a revocable trust, the financial institution shall release such trust fund 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 such trust fund to the 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 suc-

cessor 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.

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

(6) The financial institution shall in no way be 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]

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 a trust deposit under ORS 97.941, the master trustee shall sign a copy of the contract received under subsection (1) of this section 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 and cemetery merchandise, funeral and cemetery services or undeveloped interment, entombment or cremation spaces included and not included in the contract; and
- (h) If a guaranteed contract, disclose that the certified provider may retain 10 percent of the sales price.

(4) Notwithstanding ORS 97.943 (8), in the case of a prearrangement sales contract, if at the time of completion of the contract, the beneficiary of the contract is a recipient of public assistance or reasonably anticipates becoming a recipient of public assistance, the contract may provide that the contract is irrevocable. 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. [Formerly 128.421]

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) Ninety percent of the amount received in payment of a guaranteed prearrangement sales contract or guaranteed

preconstruction sales contract. The remaining 10 percent shall be paid to the provider who sold the contract; or

(b) One hundred percent of the amount received in payment of a nonguaranteed prearrangement sales contract or nonguaranteed preconstruction sales contract.

(2) All trust deposits required by ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 shall be made within five business days of their receipt.

(3) Trust deposits required under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 shall be placed in a depository as defined in ORS 97.923. The trust deposits shall be maintained in a depository, except that the provider of a prearrangement sales contract or preconstruction sales contract may invest the trust funds in a manner that is, in the opinion of the provider, reasonable and prudent under the circumstances, provided that all investments are certificates of deposit, U.S. Treasuries, issues of U.S. government agencies, guaranteed investment contracts, banker's acceptances or corporate bonds rated A or better by Standard & Poor's Corporation or Moody's Investors Service, and provided that all investments shall be placed in the custody of the depository in which the trust funds were originally deposited or any other depository that may qualify under ORS 97.923 to 97.949. Prearrangement sales contract trust fund and preconstruction sales contract trust fund accounts shall be in the name of the provider who sold the contract under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180.

(4) Funds deposited in the trust fund account shall be identified in the records of the provider by the name of the purchaser and beneficiary and adequate records shall be maintained to allocate all earnings to each prearrangement sales contract or preconstruction sales contract. Nothing shall prevent the provider from commingling the deposits in any such trust fund account for purposes of managing and investing the funds. A common trust fund account shall be identified by the name of the provider.

(5) When a prearrangement sales contract or preconstruction sales contract includes rights of interment, entombment or cremation, funeral or cemetery merchandise or funeral or cemetery services, the application of payments received under the contract shall be clearly provided in the contract.

(6) Any person engaging in prearrangement sales or preconstruction sales who enters into a combination sale which involves the sale of items subject to trust and any item not subject to trust shall be prohibited from increasing the sales price of those items not subject to trust with the purpose of allo-

cating a lesser sales price to items which require a trust deposit.

(7)(a) A provider may appoint a successor provider. The depository shall release the trust funds deposited under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 only to the successor provider as described in ORS 97.943 and 97.944 or upon presentation of the written request of the purchaser.

(b) If appointing a successor provider under this subsection, the original provider shall notify the Director of the Department of Consumer and Business Services of the proposed change at least 30 days prior to the appointment.

(8)(a) A provider may appoint a successor depository or a master trustee that is a depository as defined in ORS 97.923.

(b) If appointing a successor depository or master trustee under this subsection, the provider, the successor depository and the master trustee must notify the director of the proposed change at least 30 days prior to the appointment.

(9) The trust fund accounts shall be a single purpose fund. In the event of the provider's bankruptcy, the funds shall not be available to any creditor as assets of the provider, but shall be distributed to the purchasers or managed for their benefit by the trustee in bankruptcy, receiver or assignee.

(10)(a) If the original provider is licensed under ORS chapter 692 and voluntarily surrenders the license to the State Mortuary and Cemetery Board, the original provider shall transfer responsibility as provider under this section to a successor provider who holds a certificate issued by the director under ORS 97.933.

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

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

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

(12) A provider who has not appointed a master trustee shall have an annual audit of

all trust account funds performed by an independent certified public accountant in accordance with generally accepted audit procedures. The provider shall make the audit results available to the director if requested.

(13) As used in this section, "common trust fund account" means trust funds received by a provider from two or more purchasers. [Formerly 128.423]

Note: See note under 97.923.

97.943 Distributions from prearrangement trust fund deposits. (1) A depository shall make no distributions from prearrangement sales contract trust 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 required under the prearrangement sales contract and delivers to the depository one of the following:

(a) A certified death certificate 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 shall be paid to the purchaser if the original provider is no longer qualified to serve as provider under ORS 97.941 (10).

(4) Upon completion by the certified provider of the actions described in subsection (2) of this section, 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 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 nonguaranteed contract.

(6) 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 shall not be liable to any person for such reliance.

(7) If for any reason a certified provider who sold the prearrangement sales contract has refused to comply, or cannot or 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 shall have 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 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 contract 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 shall be extended by the length of such delay.

(8) 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 shall be entitled to a 100 percent refund of the entire amount paid on the contract including undistributed earnings attributable to such amount, but excluding any amount paid for merchandise already delivered, which amount shall be retained by the certified provider who sold the contract as liquidated damages.

(9) Notwithstanding ORS 97.941 (4) and subsection (5) of this section, upon receiving a sworn affidavit from the provider stating that qualifying expenses, taxes or fees have been incurred, a depository shall allow a provider to pay from earnings of trust fund deposits any expenses, accounting fees, taxes, depository fees, investment manager fees and other fees as may be necessary to enable the provider to comply with the reporting required by ORS 97.923 to 97.949, and to perform other services for the trust as may be authorized by ORS 97.923 to 97.949. Any payment of expenses or fees from earnings of a trust fund deposit under this subsection shall not:

(a) Exceed an amount equal to 25 percent per calendar year of the earnings of the trust fund deposit in the calendar year;

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

(c) Reduce, diminish or in any other way lessen the value of the trust fund deposit so that the services or merchandise provided for under the contract are reduced, diminished or in any other way lessened. [Formerly 128.425]

Note: See note under 97.923.

97.944 Distributions from preconstruction trust fund deposits. (1) A depository shall make no distributions from preconstruction sales contract trust deposits except as provided in this section.

(2) The construction or development of undeveloped interment, entombment or cremation 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. 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. 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. However, any delay caused by strike, shortage of materials, civil disorder, natural disaster or any like occurrence beyond the control of the certified provider shall extend the time of such completion by the length of such delay.

(3) Except as otherwise authorized by this section, every certified provider selling undeveloped spaces shall provide facilities for temporary interment or entombment or for cremation 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 above-ground entombment or cremation 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 in-

terest 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 shall be paid to the certified provider.

(5) During the construction or development of interment, entombment or cremation spaces, upon receiving the sworn certification by 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. 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 nonguaranteed 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 liquidating 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.

(9) This section and the trust fund requirements in ORS 97.941 shall not apply to the sale of undeveloped spaces if there has been any such sale in the same phase of construction or development or the section or sections of the project prior to September 27, 1987. [Formerly 128.430]

Note: See note under 97.923.

97.945 Funeral and Cemetery Consumer Protection Trust Fund; fee; rules.

(1) Every prearrangement sales contract or preconstruction sales contract seller 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 moneys 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 shall not exceed the amount of the sales price paid plus interest at the statutory rate.

(5) The fund shall 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 shall 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 shall be a matter of grace and not of right and no purchaser shall have vested rights in the fund as a beneficiary or otherwise.

(9) The status of the fund shall be reviewed annually by the director. If the review 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 shall be adjusted accordingly at the discretion of the director. [Formerly 128.435; 2003 c.362 §5]

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) Each certified provider or master trustee is subject to the examination of the Director of the Department of Consumer and Business Services. The director may conduct examinations of the conditions and resources of each certified provider or master trustee, including a review of sales contracts used by the certified provider or master trustee, to determine whether the certified provider or master trustee is complying with the requirements of ORS 97.923 to 97.949, the laws of this state and the rules of the director. The director may require certified providers or master trustees 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, subpoena witnesses and compel their attendance, 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 or master trustee 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]

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 as provided in this section any certified provider or master trustee, or person acting as a certified provider or master trustee without a certification or registration, who has been found by an audit or examination conducted by the director:

(a) To be in violation of one or more of the provisions of ORS 97.923 to 97.949;

(b) To be insolvent because the certified provider's or master trustee's liabilities exceed the certified provider's or master trustee's assets;

(c) The certified provider or master trustee cannot meet obligations as they come due; or

(d) The certified provider or master trustee is in such financial condition that the certified provider or master trustee cannot adequately protect the interests of the certified provider's or master trustee's customers.

(2) In disciplining a certified provider, master trustee or person acting as a certified provider or master trustee without a certification or registration as authorized by subsection (1) of this section, the director may take any or all of 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) Take such other disciplinary action as the director in the director's discretion 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 suspended 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]

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 person acting as a certified provider or master trustee without a registration or certification, 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]

Note: See note under 97.923.

ANATOMICAL GIFTS

97.950 Definitions for ORS 97.950 to 97.964. As used in ORS 97.950 to 97.964:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Capable" has the meaning given in ORS 127.505 (13).

(3) "Decedent" means an individual who is dead as defined under ORS 432.300. "Decedent" includes a stillborn infant or fetus.

(4) "Document of anatomical gift" means a driver license or identification card endorsed with an appropriate code, a will, an advance directive or other signed document used to make an anatomical gift.

(5) "Donor" means an individual who makes an anatomical gift of all or part of that individual's body.

(6) "Enucleator" means a licensed embalmer, apprentice embalmer or eye bank technician that has completed a course in eye enucleation and has a certificate of competence from an agency or organization designated by the Board of Medical Examiners for the purpose of providing the training.

(7) "Hospital" means a facility licensed, accredited or approved as a hospital under the laws of any state or a facility operated as a hospital by the United States Government, a state or a subdivision of a state.

(8) "Identification card" means the card described in ORS 807.400 or a comparable provision of the motor vehicle laws of another state.

(9) "Part" means an organ or part thereof, tissue, eye or part thereof, bone, artery, blood, fluid or other portion of a human body.

(10) "Physician" means an individual licensed or otherwise authorized to practice medicine under the laws of any state.

(11) "Procurement organization" means an agency licensed, accredited or approved under the laws of any state for the acceptance, procurement, distribution or storage of human bodies or parts.

(12) "Technician" means an individual who is employed and authorized by a procurement organization to remove or process a part. [1995 c.717 §1; 1997 c.472 §4; 1999 c.201 §1]

Note: 97.950 to 97.964 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 Personal authority to make anatomical gift; procedure; delegation. (1) A capable individual who is at least 18 years of age may be the donor of an anatomical gift.

(2) An anatomical gift may be made by a document of anatomical gift signed by the donor. If the donor cannot sign, the document of anatomical gift must be signed by another individual and two witnesses, all of whom have signed at the direction and in presence of the donor and of each other and state that it has been so signed.

(3) An anatomical gift may be made by a designation to be provided on the driver license and identification card of an individual who is at least 18 years of age. The holder of a driver license or identification card desiring to be designated as a donor on the license or card must furnish a statement at the time of application for granting or renewing the license or card in the manner provided by the Department of Transportation. Signature of the license or card shall validate it as a document of anatomical gift. Revocation, cancellation or suspension of a driver license shall not invalidate the anatomical gift. Cancellation of a card or lapse of a license revokes the anatomical gift in whole, which must be reinstated upon the reinstatement of the license or card. The form prepared by the Department of Transportation and incorporated in its application shall be in all respects a valid document of anatomical gift.

(4) An anatomical gift by will takes effect upon death of the testator, whether the will is probated or not probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(5) A donor may amend or revoke an anatomical gift not made by will only by:

(a) A signed statement;

(b) An oral statement made in the presence of two individuals;

(c) Any form of communication during a terminal illness or injury addressed to a physician or surgeon;

(d) In the case of an anatomical gift made by driver license or identification card application, lapse of the license or lapse or cancellation of the card or by a statement made and delivered in the manner specified by the Department of Transportation; or

(e) Destruction, cancellation or mutilation of the document of anatomical gift in the case of an anatomical gift not made by driver license or identification card.

(6) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (5) of this section.

(7) An anatomical gift that is not revoked by the donor before death is irrevocable and:

(a) Does not require the consent or concurrence of any person after the death of the donor.

(b) Shall not be subject to cancellation or substantial revision by persons described in ORS 97.954 (1).

(8) In the absence of contrary indications by the donor, an anatomical gift of a part is not a refusal to give other parts or a limitation on an anatomical gift under ORS 97.954 or on a removal or release of other parts under ORS 97.956.

(9) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make an anatomical gift of a different part.

(10) If an individual has amended or revoked an anatomical gift made by driver license or identification card, the Department of Transportation shall issue a replacement license upon payment by the individual of the department's fee for reissuance of the license or card.

(11) Notwithstanding any other requirement of this section, a license, card or document purporting to evidence the creation of a valid anatomical gift under the laws of another state shall be valid in this state absent evidence of revocation.

(12) Any anatomical gift validly made under ORS 97.275 (1993 Edition) prior to September 9, 1995, and not revoked shall continue in effect for its original period of validity.

(13) An individual described in subsection (1) of this section or any person authorized in ORS 97.954 (1) to make an anatomical gift of all or any part of a decedent's body may delegate such authority to any person 18 years of age or older. Such delegation shall be in writing and signed by the person delegating the authority. The person to whom the authority is delegated shall have the same priority under ORS 97.954 (1) as the person delegating the authority.

(14) If the individual described in subsection (1) of this section issues more than one authorization or donation of anatomical gift for all or any part of the individual's body, only the most recent authorization or donation shall be binding. [1995 c.717 §2; 1997 c.472 §5]

Note: See note under 97.950.

97.954 Authority to make anatomical gift of body of decedent; priority; procedure. (1) A person within the first applicable listed class among the following listed classes that is available at the time of death or, in the absence of actual notice of a contrary direction by the decedent or actual notice of opposition by a member of the same class or a member of a prior class, may make

an anatomical gift of all or a part of the body of a decedent for any authorized purpose:

- (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; or
- (i) A public health officer.

(2) No person, hospital or procurement organization shall accept a gift made by an individual under subsection (1) of this section if:

- (a) An individual in a prior class is available at the time of death to make an anatomical gift;
- (b) The individual proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or
- (c) The individual proposing to make an anatomical gift knows of an objection to making an anatomical gift by another member of the individual's class or a member of a prior class.

(3) An anatomical gift by an individual authorized under subsection (1) of this section must be made by a document of anatomical gift signed by the individual or the individual's telegraphic, recorded telephonic or other recorded message, or other form of communication from the individual that is contemporaneously put in written form and signed by the recipient of the communication.

(4) An anatomical gift by an individual authorized under subsection (1) of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, technician or enucleator removing the part knows of the revocation. [1995 c.717 §3; 1997 c.472 §6; 1999 c.201 §2]

Note: See note under 97.950.

97.956 Authority of medical examiner or local public health officer over body within examiner's jurisdiction or officer's custody; documentation. (1) A medical examiner may release and permit the removal of a part from a body within the examiner's

jurisdiction for transplantation, therapy or research if:

- (a) The examiner has received a request for the part from a hospital, physician or procurement organization;
- (b) The examiner does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in ORS 97.954 (1);
- (c) The person requesting the part has made a reasonable effort to contact the person having priority to act as listed in ORS 97.954 (1);
- (d) The removal of the part is by a physician or technician or, in the case of eyes, by an enucleator, physician or technician;
- (e) The removal does not interfere with any autopsy or investigation;
- (f) The removal is performed in accordance with accepted medical standards; and
- (g) The person performing the removal also performs a restoration of the removed part, if appropriate.

(2) If the body is not within the jurisdiction of the medical examiner, the local public health officer may release and permit the removal of a part from a body in the local public health officer's custody for transplantation, therapy or research, if the requirements of subsection (1)(a) to (g) of this section are met.

(3) An official releasing and permitting the removal of a part shall retain, in the permanent death record of the decedent, documentation of the person making the request, the date and purpose of the request, and the person to whom it was released.

(4) For purposes of this section, "reasonable effort" means:

- (a) The person requesting the part has attempted to contact the person having priority to act as listed in ORS 97.954 (1), following notification of the death by the medical examiner or other authority or medical facility, and to obtain that person's consent or objection to the removal of the part requested;
- (b) Unless the elapsed time from the notification of death would render the part useless for the purpose intended, any attempt described in paragraph (a) of this subsection that was unsuccessful has been repeated at least two additional times by telephone; and

(c) The attempts shall be documented by the person requesting the part, and the documentation shall be maintained in that person's permanent file. [1995 c.717 §4; 1997 c.472 §7; 1999 c.201 §3]

Note: See note under 97.950.

97.958 Duties of hospital staff at or near time of patient's death; discussion with patient and family; search for document of gift. (1) If, at or near the time of death of a hospitalized patient, there is no medical record that the patient has authorized an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss with the patient and family members the option to make or refuse to make an anatomical gift. The administrator or representative may request the making of an anatomical gift under ORS 97.952 or 97.954. The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards. An entry must be made in the medical record of the patient, stating the name and affiliation of the person making the request and the name, response and relationship to the patient of the individual to whom the request was made. The Department of Human Services shall adopt rules to implement this subsection.

(2) The following persons shall, circumstances permitting, make a reasonable search for a document of anatomical gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(a) A law enforcement officer, firefighter, paramedic or other emergency rescuer who finds an individual whom the rescuer believes to be dead or near death; and

(b) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(3) If a document of anatomical gift is located by the search required by subsection (2)(a) of this section, and the individual is taken to a hospital, the hospital must be notified of the contents of the document, if any, and the document must be sent to the hospital.

(4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been authorized under ORS 97.952 or 97.954, or a release and removal of a part has been permitted under ORS 97.956, or that a patient or an individual in transit to the hospital is identified as a donor, the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(5) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability. [1995 c.717 §5; 1997 c.472 §8; 1999 c.201 §4]

Note: See note under 97.950.

97.960 Delivery of document of anatomical gift; effect on validity of gift. Delivery of a document of anatomical gift during the lifetime of a donor is not required for the validity of an anatomical gift. If delivery of a document of anatomical gift is desired, it may be deposited in any hospital, procurement organization or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the death of a donor, the person in possession shall allow the interested person to examine or copy the document of anatomical gift. [1995 c.717 §6; 1997 c.472 §9]

Note: See note under 97.950.

97.962 Rights of procurement organization accepting anatomical gift; autopsies. (1) Rights of a procurement organization accepting an anatomical gift are superior to rights of others except with respect to autopsies required by law. A procurement organization may accept or reject an anatomical gift. If a procurement organization accepts an anatomical gift of an entire body, the organization, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the procurement organization, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician who attends the donor at death or, if none, the physician who certifies the death. Neither the physician who attends the donor at death nor the physician who determines the time of death may participate in the procedures for removing or transplanting a part.

(3) If there has been an anatomical gift, a technician may remove any donated parts other than eyes and an enucleator may remove any donated eyes after determination of death by a physician. [1995 c.717 §7]

Note: See note under 97.950.

97.964 Anatomical gift as authorization for examination to assure medical acceptability. (1) An anatomical gift authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended, including but not limited to access to the decedent's medical chart and permission to test a sample of the decedent's blood for communicable diseases.

(2) ORS 97.950 to 97.964 are subject to the laws of this state governing autopsies.

(3) A hospital, physician, medical examiner, enucleator, technician or other person

who acts or makes a good faith effort to act in accordance with ORS 97.950 to 97.964 shall not be liable thereby in a civil action or criminal proceeding.

(4) An individual who makes an anatomical gift under ORS 97.952 or 97.954 and the individual's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift. [1995 c.717 §8]

Note: See note under 97.950.

97.966 Liability of executor who carries out anatomical gift. A person named executor who carries out the gift of the testator made under the provisions of ORS 97.950 to 97.964 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 97.295]

97.968 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 97.300]

FEDERAL AID FOR CEMETERIES

97.975 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 97.930]

PENALTIES

97.990 Penalties. (1) Violation of ORS 97.160 is a misdemeanor and upon conviction is punishable by a fine not exceeding \$100.

(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 Demonstrator of Anatomy 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, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$50 for each offense.

(3) Violation of ORS 97.520, 97.530 or 97.540 is 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 is guilty of maintaining a nuisance and, upon conviction, is punishable by a fine not exceeding \$500 or by imprisonment in the county jail for not more than six months, or both.

(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 equipment 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) renumbered 127.990 in 1991; subsection (5)(b) of 1995 Edition enacted as 1995 c.543 §3]

97.992 Penalties for ORS 97.937. Violation of any of the provisions of ORS 97.937 is punishable, upon conviction, by a fine not exceeding \$1,000, or imprisonment in the

county jail not exceeding one year, or both.
[Formerly 128.990]

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 and 97.941. Violation of any of the pro-

visions 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.
