

Enrolled
House Bill 2809

Sponsored by Representative KING, Senator YIH

CHAPTER

AN ACT

Relating to funeral plans as trusts; creating new provisions; amending ORS 65.860, 97.810, 97.825, 97.865, 128.400, 128.405, 128.407, 128.412, 128.414, 128.415, 128.421, 128.423, 128.425, 128.430, 128.435, 128.440, 128.991, 297.535, 692.180 and 692.375; repealing ORS 692.285; and limiting expenditures.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) A provider, as defined in ORS 128.400, 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 providers.**

(2) The fees described in this section shall be reasonable and shall defray the costs associated with the administration of ORS 128.400 to 128.440.

(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 128.400, employed by a certified provider is the direct responsibility of the certified provider.

SECTION 2. (1) A person may not operate as a master trustee, as defined in ORS 128.400, unless that 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) The director may conduct an annual audit of a master trustee. The director shall prescribe the form of audits under this section.

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

(4) 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.

SECTION 3. (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, including a review of sales contracts used by the certified provider, to determine whether the certified provider is complying with the requirements of ORS 128.400 to 128.440, the laws of this state and the rules of the director. The director may require certified providers 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 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.

SECTION 4. (1) The Director of the Department of Consumer and Business Services may discipline as provided in this section any certified provider, 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 to be in violation of one or more of the provisions of ORS 128.400 to 128.440.

(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 183.090.

(6) If the director takes disciplinary action under this section, the director shall send a notice of the action to the State Mortuary and Cemetery Board.

SECTION 5. (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 128.400 to 128.440, the director shall 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 128.400 to 128.440, 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 according to established procedures.

SECTION 6. Sections 1 to 5 of this 2001 Act are added to and made a part of ORS 128.400 to 128.440.

SECTION 7. ORS 128.400 is amended to read:

128.400. As used in ORS 128.400 to 128.440 and 128.991 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 [*person*] **provider**" means any person [*holding a certificate of registration or who is registered under ORS 692.285*] **certified under section 1 of this 2001 Act** 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**.

[5] (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.

[6] (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.

[(7)] **(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 128.423 who acts independently from any certified provider and who is not also a certified provider under ORS 128.400 to 128.440.

[(8)] **(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.

[(9)] *“Person” means any funeral service establishment, embalmer, funeral service practitioner, cemetery, crematorium, monument company, corporation, partnership, joint venture, business trust, voluntary organization or any other form of entity.*

[(10)] **(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.

[(11)] **(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.

[(12)] **(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 [person] **provider** under which any payment or payments made under the contract are required to be deposited in trust under ORS 128.423.

(15) “Salesperson” means an individual registered under ORS 128.414 and employed by a certified provider to engage in the sale of prearrangement or preconstruction sales contracts on behalf of the certified provider.

[(13)] **(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.

[(14)] **(17)** “Trust” means an express trust created under ORS 128.423 whereby a trustee has the duty to administer the amounts specified under ORS 128.423 received under a prearrangement sales contract or a preconstruction sales contract for the benefit of the purchaser of a prearrangement sales contract or preconstruction sales contract.

[(15)] *“Trustee” means the certified person who sold the prearrangement sales contract or preconstruction sales contract or any depository or successor trustee appointed by the original trustee as successor trustee under ORS 128.423.*

[(16)] **(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.

SECTION 8. ORS 128.412 is amended to read:

128.412. (1) The provisions of ORS 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [*and 692.285 shall not include*] **do not apply to:**

[(1)] (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.

[(2)] (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)] (A) Thirty-five percent of the sales price of each crypt or niche described in this [subsection] **paragraph** is deposited in accordance with the provisions of ORS 128.415; or

[(b)] (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 [subsection] **paragraph** that have been sold by the endowment care cemetery and that have not yet been completed.

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

[(a)] (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 128.415;

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

[(A)] (i) A bond **in a form approved by the director** [*with the Secretary of State*] in the amount of \$10,000 [*with*] **issued by a corporate** [*or personal*] **surety authorized to do business in this state** [*. Such personal surety shall submit a sworn financial statement as of the date of the bond and annually thereafter as long as the bond is in effect to insure the availability of the total amount of the sale price when required*]; or

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

(2) **Any person having a claim against a certified provider, a master trustee or a salesperson under the provisions of ORS 128.400 to 128.440 or ORS chapter 692 shall have a right against the bond or letter of credit provided for in subsection (1)(b) and (c) of this section.**

SECTION 9. ORS 128.414 is amended to read:

128.414. (1) [*It is unlawful for any*] **A salesperson** [*to*] **may not** engage in prearrangement sales made by endowment care cemeteries under ORS 128.412 **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 [*required by*] **under** this subsection[.];

(b) Establish standards for determining whether a **salesperson** registration should be issued [*and*];

(c) Set [*a*] **renewal and salesperson** registration [*fee*] **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) Notwithstanding the provisions of this section, a salesperson employed to engage in prearrangement sales made by endowment care cemeteries may engage in prearrangement sales upon filing a completed application for registration with the State Mortuary and Cemetery Board. In the event that the State Mortuary and Cemetery Board refuses to issue a registration to the salesperson, the authority of the salesperson to engage in prearrangement sales ceases on the date that the State Mortuary and Cemetery Board issues its order refusing to issue the registration.]

[(4)] (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 *[this section or ORS 128.412]* **ORS 128.400 to 128.440 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 183.310 to 183.550. **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 Health Division Account.

SECTION 10. ORS 128.415 is amended to read:

128.415. (1) This section applies to trust deposits required to be made by endowment care cemeteries under ORS 128.412.

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

(3) All such trust funds shall be deposited by the *[trustee]* **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 *[depositor]* **provider** followed by the words "*[trustee of]* 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 *[depositor followed by the words "trustee of funeral plan trusts,"]* **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 *[such]* **the person for whom a prearranged funeral plan is made**, the financial institution shall release such trust fund to the *[trustee]* **provider**.

(b) Upon presentation of the written request of the *[trustor]* **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 *[trustee]* **provider** of a revocable trust, the financial institution shall release such trust fund to the *[trustor]* **purchaser**.

(d) Upon presentation of proof of the death, dissolution, insolvency or merger with another of the *[trustee]* **provider** of an irrevocable trust, the financial institution shall continue to hold such trust fund subject to the funeral plan trust, and upon appointment of a successor *[trustee]* **provider** by the *[trustor]* **purchaser**, the *[trustor's]* **purchaser's** legal representative, the *[Secretary of State]* **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 *[trustee]* **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 *[trustee]* **provider** shall maintain records showing the *[trustor]* **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 [trustee] **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 [Secretary of State] **director** may appoint a successor [trustee] **provider** upon a determination that the [trustee] **original provider** has ceased to provide the kinds of services and things which the [seller of the prearranged funeral plan] **original provider** agreed to provide, that the [trustor] **purchaser** or the [trustor's] **purchaser's** legal representative cannot be readily identified or contacted and that the appointment of a successor [trustee] **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 [trustee] **provider** upon receipt of written notice of the appointment from the [Secretary of State] **director**. Where the [Secretary of State] **director** proposes to take such action under this subsection, the [trustee] **provider** being replaced shall be accorded notice and an opportunity for hearing as provided in ORS 183.310 to 183.550.

SECTION 11. ORS 128.421 is amended to read:

128.421. (1) [Four] **Three** copies of a written sales contract shall be executed for each prearrangement sales contract or preconstruction sales contract sold by a certified [person] **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 certified person who sold the contract;]

[(c) The Secretary of State; and]

[(d) The trust depository]

(b) The depository or the master trustee, if applicable.

(2) Upon receiving a trust deposit under ORS 128.423, the [depository] **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; [and]

(e) Identify the purchaser and certified [person] provider who sold the contract;

[(c)] **(f) Specify whether the contract is a guaranteed contract or a nonguaranteed contract;**

[(d)] **(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**

[(e)] **(h) If a guaranteed contract, disclose that the certified [person] provider may retain 10 percent of the sales price.**

(4) Notwithstanding ORS 128.425 (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.

SECTION 12. ORS 128.423 is amended to read:

128.423. (1) Upon receiving anything of value under a prearrangement sales contract or preconstruction sales contract, the certified [*person*] **provider** who sold the contract shall [*be the trustee and shall*] deposit the following amounts into one or more trust funds maintained pursuant to ORS 128.400 to 128.440, 128.990, 128.991[,], **and** 692.180 [*and 692.285*]:

(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 [*certified person*] **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 128.400 to 128.440, 128.990, 128.991[,], **and** 692.180 [*and 692.285*] shall be made within five business days of their receipt.

(3) Trust deposits required under ORS 128.400 to 128.440, 128.990, 128.991[,], **and** 692.180 [*and 692.285*] shall be placed in a depository as defined in ORS 128.400. The trust deposits shall be maintained in a depository, except that the [*trustee*] **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 [*trustee*] **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 128.400 to 128.440. Prearrangement sales contract trust fund and preconstruction sales contract trust fund accounts shall be in the name of the [*certified person*] **provider** who sold the contract under ORS 128.400 to 128.440, 128.990, 128.991[,], **and** 692.180 [*and 692.285*].

(4) Funds deposited in the trust fund account shall be identified in the records of the [*trustee*] **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 [*trustee*] **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 [*trustee*] **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 allocating a lesser sales price to items which require a trust deposit.

[(7)] **(7)(a)** A [*trustee*] **provider** may appoint a successor [*depository*] **provider**. The [*original*] depository shall [*only*] release the trust funds deposited under ORS 128.400 to 128.440, 128.990, 128.991[,], **and** 692.180 [*and 692.285*] **only** to the successor [*depository*] **provider** as described in ORS 128.425 and 128.430 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)] **(8)(a)** [*An original trustee*] **A provider** may appoint a successor [*trustee*] **depository or a master trustee** that is a depository as defined in ORS 128.400.

(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 [certified person's] **provider's** bankruptcy, the funds shall not be available to any creditor as assets of the [certified person] **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 [trustee] **provider** is licensed under ORS chapter 692 and voluntarily surrenders the license to the State Mortuary and Cemetery Board, the original [trustee] **provider** shall transfer responsibility as [trustee] **provider** under this section to a successor [trustee] **provider** who holds a certificate [of registration or is registered under ORS 692.285] **issued by the director under section 1 of this 2001 Act.**

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

(c) If the original [trustee] **provider** is licensed under ORS chapter 692, upon proof of the death, insolvency or involuntary surrender of the license of the original [trustee] **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 [certified person] **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.

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

SECTION 13. ORS 128.425 is amended to read:

128.425. (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 [person] **provider** who sold the contract if the certified [person] **provider** who sold the contract [certifies by sworn affidavit to the depository that the purchaser or the beneficiary named in the prearrangement sales contract has deceased and that] **swears, by affidavit, that the** certified [person] **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 [trustee] **provider** is no longer qualified to serve as [trustee] **provider** under ORS 128.423 (10).

(4) Upon [receiving a sworn affidavit from the certified person who sold the contract that funeral and cemetery merchandise under the contract has been delivered] **completion by the certified provider of the actions described in subsection (2) of this section**, the depository shall pay to the certified [person] **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 [person] **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 [person] **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 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [*and 692.285*], and shall not be liable to any person for such reliance.

(7) If for any reason a certified [*person*] **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 [*person*] **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 [*person*] **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 [*Secretary of State*] **Director of the Department of Consumer and Business Services**. In the event a certified [*person*] **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 [*person*] **provider**, the certified [*person's*] **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 [*person*] **provider** who sold the contract as liquidated damages.

(9) Notwithstanding ORS 128.423 (4) and subsection (5) of this section, upon receiving a sworn affidavit from the [*trustee*] **provider** stating that qualifying expenses, taxes or fees have been incurred, a depository shall allow a [*trustee*] **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 [*trustee*] **provider** to comply with the reporting required by ORS 128.400 to 128.440, and to perform other services for the trust as may be authorized by ORS 128.400 to 128.440. 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 [*trustee*] **provider** in consideration for services rendered as [*trustee*] **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.

SECTION 14. ORS 128.430 is amended to read:

128.430. (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 [*person*] **provider** who sold the preconstruction sales contract shall give written notice including a description of the project to the [*Secretary of State*] **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 [person] **provider** shall extend the time of such completion by the length of such delay.

(3) Except as otherwise authorized by this section, every certified [person] **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 aboveground 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 interest attributable to such amount while in trust.

(4) If the certified [person] **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 [person] **provider** shall provide the depository with a delivery certificate and all sums deposited under the preconstruction sales contract shall be paid to the certified [person] **provider**.

(5) During the construction or development of interment, entombment or cremation spaces, upon receiving the sworn certification by the certified [person] **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 128.400 to 128.440[, 128.990, 128.991,] **and** 692.180 [and 692.285].

(6) Upon completion of the phase of construction or development, section or sections of the project as certified to the depository by the certified [person] **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 [person] **provider** who sold the preconstruction sales contract.

(7) Upon the payment to a certified [person] **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 [person] **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 [person] **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 [person] **provider**. The depository may rely on the certification and affidavits made to it under the provisions of ORS 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [and 692.285] and shall not be liable to any person for such reliance.

(9) This section and the trust fund requirements in ORS 128.423 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.

SECTION 15. ORS 128.435 is amended to read:

128.435. (1) Every prearrangement sales contract or preconstruction sales contract seller shall pay to the [Secretary of State] **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 [Secretary of State] **director** semiannually within 30 days after the end of June and December for all contracts that have been entered into during the six-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 [Secretary of State] **director** for the payment of restitution under this section and the payment of expenses incurred in performing the duties and functions of the [Secretary of State] **director** required under ORS 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [and 692.285].

(3) The [Secretary of State] **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 [Secretary of State] **director** where the [secretary] **director** determines that the obligation is noncollectible from the certified [person] **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 the effective date of ORS 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [and 692.285].

(6) The fund shall not be allocated for any purpose other than that specified in ORS 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [and 692.285].

(7) If the [Secretary of State] **director** proposes to deny an application for restitution from the fund, the [secretary] **director** shall accord an opportunity for a hearing as provided in ORS 183.310 to 183.550.

(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 [Secretary of State] **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 [Secretary of State] **director**.

SECTION 16. ORS 128.405 is amended to read:

128.405. It is the purpose of ORS 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [and 692.285] 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 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [and 692.285] 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 [person's] **provider's** performance of its contractual obligations and to provide protection for the purchaser upon the certified [person's] **provider's** default.

SECTION 17. ORS 128.407 is amended to read:

128.407. Except as provided in this section, ORS 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [and 692.285] apply to all [persons] **certified providers and salespersons** who sell or offer for sale prearrangement sales contracts or preconstruction sales contracts. ORS 128.400 to 128.440, 128.990, 128.991[,] **and** 692.180 [and 692.285] do not apply to:

- (1) Agreements to sell or sales made by endowment care cemeteries under ORS 128.412; or
- (2) Any nonprofit memorial society charging less than a \$100 membership fee.

SECTION 18. ORS 128.440 is amended to read:

128.440. (1) *[No person or individual shall]* **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 *[shall]* **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).

SECTION 19. ORS 128.991 is amended to read:

128.991. Any certified *[person]* **provider or salesperson** violating ORS 128.414[,] **or** 128.423 *[or 692.285 (1) or (2)]* **or section 1 of this 2001 Act** is guilty of a Class C misdemeanor.

SECTION 20. ORS 297.535 is amended to read:

297.535. (1) All moneys received by the Secretary of State under ORS 297.210, 297.230, 297.425 and 297.445 shall be immediately turned over to the State Treasurer who shall deposit the moneys in the General Fund to the credit of an account to be known as the Division of Audits Account.

(2) The moneys received under subsection (1) of this section and deposited in the Division of Audits Account hereby are appropriated for use in payment of salaries and other expenses or costs of the Division of Audits.

(3) The moneys received under ORS 297.545 and deposited in the Division of Audits Account hereby are appropriated for use in payment of salaries and other expenses or costs incurred by the Division of Audits of the Office of the Secretary of State in connection with the carrying out of the provisions of ORS 297.020, 297.230, 297.405 to 297.740 and 297.990.

[(4) The moneys received under ORS 692.285 and deposited in the Division of Audits Account hereby are appropriated for use in payment of salaries and other expenses or costs incurred by the Secretary of State in connection with the carrying out of the provisions of ORS 692.285.]

[(5) The moneys received under ORS 97.810 and deposited in the Division of Audits Account hereby are appropriated for use in payment of salaries and other expenses or costs incurred by the Division of Audits of the Office of the Secretary of State in connection with the carrying out of the provisions of ORS 97.810.]

[(6)] **(4)** The Secretary of State may use the moneys to the credit of the Division of Audits Account, or any part thereof, for cash advances for travel expenses necessary in carrying out the provisions of ORS 297.020 to 297.555 and 297.990. Any moneys received in reimbursement of these cash advances shall be deposited in the Division of Audits Account.

[(7)] **(5)** The Secretary of State shall keep a record of all moneys deposited in the Division of Audits Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

SECTION 21. ORS 692.180 is amended to read:

692.180. (1) Upon complaint or upon its own motion, the State Mortuary and Cemetery Board may investigate any complaint concerning any person, licensee or holder of a certificate of authority made by any person or by the board. If the board finds any of the causes described in this section in regard to any person, licensee or applicant or the holder of a certificate of authority, the board may impose a civil penalty of not more than \$1,000 for each violation, suspend or revoke a license to practice or to operate under this chapter or refuse to grant or renew a license. The causes are as follows:

- (a) Misrepresentation in the conduct of business or in obtaining a license.
- (b) Fraudulent or dishonest conduct, when the conduct bears a demonstrable relationship to funeral service practice, embalming practice or the operation of cemeteries or crematoriums.
- (c) Except as provided in this paragraph, solicitation of human dead bodies by the licensee or any agent, assistant or employee of the licensee, either before or after death. This paragraph does not apply to:

- (A) Activities permissible under ORS 128.400 to 128.440 [and 692.285]; or
- (B) The sale, in accordance with provisions of the Insurance Code, of prearranged funeral or cemetery merchandise or services, or any combination thereof, to be funded by the contemporaneous or subsequent assignment of a life insurance policy or an annuity contract.
- (d) Offensive treatment of dead human bodies or a body in the person's custody has been disposed of in violation of ORS chapter 432 or rules adopted pursuant thereto.
- (e) Aiding or abetting a person who is not a licensee or an apprentice in any act involving the disposition of dead human bodies before the bodies undergo cremation, entombment or burial or before the bodies are transported out of the State of Oregon.
- (f) Sale or reuse of any casket or body container that has been previously utilized for the placement of a deceased human body. This does not include use of a rental cover as defined in ORS 692.010.
- (g) Violation of any of the provisions of this chapter or any rules adopted under this chapter.
- (h) Violation of any provision of ORS 128.412 or 128.415 or regulations adopted by the Federal Trade Commission regulating funeral industry practices.
- (i) Conviction of a crime, when the crime bears a demonstrable relationship to funeral service practice, embalming practice or the operation of cemeteries or crematoriums. A copy of the record of the conviction certified to by the clerk of the court entering the conviction shall be conclusive evidence of the conviction.
- (j) Violation of ORS chapter 97 as it relates to disposition of human bodies and to cemeteries.
- (k) Refusing to surrender promptly the custody of a dead human body, upon the express order of the person lawfully entitled to the custody of the body.
- (L) Acting as the legal representative of any deceased person for whom the licensee has rendered services governed by this chapter. This subsection does not prohibit a licensee from acting as the legal representative of a deceased relative or a deceased licensee if the deceased licensee was a partner, employee or employer in the licensee's practice.
- (m) Failure to pay any civil penalty imposed by the board within 10 days after the order is entered or, if appealed, within 10 days after the order is sustained on appeal.
- (2) All amounts recovered under this section shall be deposited in accordance with ORS 692.375.
- (3) Civil penalties under this section shall be imposed as provided in ORS 183.090.
- (4) Upon receipt of a complaint, the board shall conduct an investigation as described under ORS 676.165.
- (5) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

SECTION 22. ORS 65.860 is amended to read:

65.860. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund, the bank or trust company shall be governed by the provisions of ORS 128.194 to 128.218 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the [Secretary of State] **Director of the Department of Consumer and Business Services** on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (3) regarding endowment care funds. The [Secretary of

State] **director** may require the corporation to file, as often as the [*Secretary of State*] **director** considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

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

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

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

SECTION 23. ORS 97.810 is amended to read:

97.810. (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 [*Secretary of State*] **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 [*Secretary of State*] **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 [Secretary of State] **director** shall have authority to require, as often as the [Secretary of State] **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 [Secretary of State] **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 [Secretary of State] **director** under this section shall be [by the Secretary of State] immediately turned over to the State Treasurer who shall deposit the moneys in the [Division of Audits Account] **Consumer and Business Services Fund** created under ORS [297.535] **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.

SECTION 24. ORS 97.825 is amended to read:

97.825. (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 [Secretary of State] **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 [Secretary of State] **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 [Secretary of State] **director** required by ORS 97.810, the [Secretary of State] **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 [Secretary of State] **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.

SECTION 25. ORS 97.865 is amended to read:

97.865. (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 [Secretary of State] **Director of the Department of Consumer and Business Services**. The statement shall be in the form prescribed by the [Secretary of State] **director** and shall contain the information specified by the [Secretary of State] **director**.

(2) When a cemetery authority, county or city files a statement described in this section with the [Secretary of State] **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.

SECTION 26. ORS 692.375 is amended to read:

692.375. All moneys received by the Health Division under this chapter shall be paid into the General Fund in the State Treasury and placed to the credit of the Health Division Account. The moneys are appropriated continuously and shall be used only for the administration and enforcement of this chapter, **for the administration and enforcement of ORS 128.414** and for the purpose of education of funeral service practitioners and embalmers.

SECTION 27. Notwithstanding any other law, the limitation on expenditures established by section 1, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 5507), for the biennium beginning July 1, 2001, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, including federal funds, collected or received by the Department of Consumer and Business Services, is increased by \$114,709 for the purposes of carrying out the provisions of sections 1 to 5 of this 2001 Act and the amendments to statutes by sections 7, 8 and 10 to 25 of this 2001 Act.

SECTION 28. Notwithstanding any other law, the limitation on expenditures established by section 5, chapter 105, Oregon Laws 2001 (Enrolled Senate Bill 5522), for the biennium beginning July 1, 2001, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the State Mortuary and Cemetery Board, is increased by \$16,415 for the purposes of carrying out the provisions of the amendments to ORS 128.414 by section 9 of this 2001 Act.

SECTION 29. ORS 692.285 is repealed.

Passed by House June 13, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate June 20, 2001

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President of Senate

Received by Governor:

.....M,....., 2001

Approved:

.....M,....., 2001

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Governor

Filed in Office of Secretary of State:

.....M,....., 2001

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Secretary of State