# Chapter 97

## 1979 REPLACEMENT PART

# Rights and Duties Relating to Cemeteries, Human Bodies and Terminal Illness


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## SPECIAL PROVISIONS RELATING 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

**97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990.** 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 corporation 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 97.860. 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.** The provisions of ORS 97.030, 97.120, 97.310 to 97.350, subsection (1) of 97.360, ORS 97.510, 97.550 and 97.810 to 97.860 relating to private cemeteries do not apply to:

(1) 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 organized, controlled and operated by any of them.

(2) Any county, town or city cemetery.
[Amended by 1955 c.473 §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.

## RIGHTS WITH RESPECT TO TERMINAL ILLNESS

**97.050 Definitions for ORS 97.050 to 97.090.** As used in ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990:

(1) "Attending physician" means the physician with primary responsibility for the care and treatment of a patient.

(2) "Directive" means a written document voluntarily executed by a declarant in accordance with the requirements set forth in ORS 97.055.

(3) "Life-sustaining procedure" means any medical procedure or intervention that utilizes mechanical or other artificial means to sustain, restore or supplant a vital function of a qualified patient that is used to maintain the life of a person suffering from a terminal condition and serves only to artificially prolong the moment of death and when death is imminent whether or not such procedures are used. "Life-sustaining procedure" does not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(4) "Physician" means an individual licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

(5) "Qualified patient" means an individual, 18 years of age or older, whom the attending physician and one other physician, upon diagnostic examination of the patient, certify to be suffering from a terminal condition.

(6) "Terminal condition" means an incurable condition caused by injury, disease or illness which, regardless of the application of life-sustaining procedures would within reasonable medical judgment produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient. [1977 c.183 §1]

**97.055 Execution of directive; form; witness qualifications and responsibility; revocation of directive.** (1) An individual of sound mind and 18 years of age or older may at any time execute or reexecute a directive directing the withholding or withdrawal of life-sustaining procedures should the declarant become a qualified patient. The directive shall be in the following form:

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DIRECTIVE TO PHYSICIANS

Directive made this_____day of_____(month, year). I_____, being of sound mind, wilfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below and do hereby declare:

1. If at any time I should have an incurable injury, disease or illness certified to be a terminal condition by two physicians, one of whom is the attending physician, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treat-

ment and accept the consequences from such refusal.

3. I have been diagnosed and notified at least 14 days ago as having a terminal condition by_____, M.D._____, D.O. (check one), whose address is_____, and whose telephone number is_____. I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

4. This directive shall have no force or effect five years from the date filled in above.

5. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed_____

City, County and State of Residence_____

I hereby witness this directive and attest that:

(1) I personally know the Declarant and believe the Declarant to be of sound mind.

(2) To the best of my knowledge, at the time of the execution of this directive, I:

(a) Am not related to the Declarant by blood or marriage,

(b) Do not have any claim on the estate of the Declarant,

(c) Am not entitled to any portion of the Declarant's estate by any will or by operation of law, and

(d) Am not a physician attending the Declarant , a person employed by a physician attending the Declarant or a person employed by a health facility in which the Declarant is a patient.

(3) I understand that if I have not witnessed this directive in good faith I may be responsible for any damages that arise out of giving this directive its intended effect.

Witness_____

Witness_____

(2) A directive made pursuant to subsection (1) of this section is only valid if signed by the declarant in the presence of two attesting witnesses who, at the time the directive is executed, are not:

(a) Related to the declarant by blood or marriage; or

(b) Entitled to any portion of the estate of the declarant upon his decease under any will or codicil of the declarant or by operation of law at the time of the execution of the directive; or

(c) The attending physician or an employe of the attending physician or of a health facility in which the declarant is a patient; or

(d) Persons who at the time of the execution of the directive have a claim against any portion of the estate of the declarant upon the declarant's decease.

(3) One of the witnesses, if the declarant is a patient in a house for the aged licensed under ORS 442.015 to 442.450 at the time the directive is executed, shall be an individual designated by the Department of Human Resources for the purpose of determining that the declarant is not so insulated from the voluntary decision-making role that the declarant is not capable of wilfully and voluntarily executing a directive.

(4) A witness who does not attest a directive in good faith shall be liable for any damages that arise from giving effect to an invalid directive.

(5) A directive made pursuant to ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 may be revoked at any time by the declarant without regard to his mental state or competency by any of the following methods:

(a) By being burned, torn, canceled, obliterated or otherwise destroyed by the declarant or by some person in his presence and by his direction.

(b) By a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant.

(c) By a verbal expression by the declarant of his intent to revoke the directive.

(6) Unless revoked, a directive shall be effective for five years from the date of execution. If the declarant has executed more than one directive, such time shall be determined from the date of execution of the last directive known to the attending physician. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders him able to communicate with the attending physician. [1977 c.183 §2; 1979 c.211 §1]

**97.060 Validity of directive as to physician.** A directive that is valid on its face is valid as to any physician for the purposes of

ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 unless the physician has actual knowledge of facts that render the directive invalid or is under the direction of a court not to give effect to the directive. [1977 c 183 §3]

**97.065 Effect of directive.** (1) It shall be lawful for an attending physician or a licensed health professional under the direction of an attending physician, acting in good faith and in accordance with the requirements of ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990, to withhold or withdraw life-sustaining procedures from a qualified patient who has properly executed a directive in accordance with the requirements of ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990.

(2) A physician or licensed health professional or health facility under the direction of a physician who, acting in good faith and in accordance with the requirements of ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990, causes the withholding or withdrawal of life-sustaining procedures shall not be guilty of any criminal offense, shall not be subject to civil liability and shall not be in violation of any professional oath, affirmation or standard of care.

(3) A physician or licensed health professional or health facility shall not be guilty of any criminal offense, shall not be subject to civil liability and shall not be in violation of any professional oath, affirmation or standard of care for failing to assume the duties created by or for failing to give effect to any directive or revocation made pursuant to ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 unless that physician has actual knowledge of the directive or revocation. [1977 c.183 §4]

**97.070 Duties created by directive.** (1) Except as provided in this section, no physician, licensed health professional or medical facility shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the withdrawal or withholding of life-sustaining procedures.

(2) (a) An attending physician shall make a directive or a copy of a directive made pursuant to ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 part of the patient's medical record.

(b) An attending physician shall record in the patient's medical record the time, date, place and manner of a revocation and the time, date, place and manner, if different, of when he received notification of the revocation. If the revocation is written, the attending physician shall make the revocation or a copy of the revocation a part of the patient's medical record.

(3) A physician or medical facility electing for any reason not to participate in the withholding or withdrawal of life-sustaining procedures in accord with a directive made pursuant to ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 shall:

(a) Make a reasonable effort to locate a physician or medical facility that will give effect to a qualified patient's directive and shall have a duty to transfer the qualified patient to that physician or facility; or

(b) At the request of a patient or of the patient's family, a physician or medical facility shall transfer the patient to another physician or medical facility that will reconsider circumstances which might make ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 applicable to the patient. [1977 c.183 §5]

**97.075 Procedure prior to withdrawal of life-sustaining procedures.** (1) Before withdrawing or withholding life-sustaining procedures from a qualified patient who is mentally competent in the opinion of the attending physician, the attending physician shall determine that the directive is valid under the requirements of ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 and shall determine that all steps proposed to be taken are in accord with the desires of the qualified patient.

(2) Before withdrawing or withholding life-sustaining procedures from a qualified patient who is not mentally competent in the opinion of the attending physician, the attending physician shall determine that the directive is valid under the requirements of ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 and shall weigh the directive with other surrounding circumstances such as information from the affected family or the nature of the patient's illness, injury or disease to determine if the steps proposed to be taken are, in the opinion of the attending physician, in accord with the known desires of the qualified patient. If the declarant was a qualified patient at least 14 days before executing or reexecuting the directive, the directive shall be conclusively presumed, unless revoked, to be in accord with the desires of the qualified patient for the purposes of this subsection. [1977 c.183 §6]

**97.080 Effect of directive on insurance.** (1) Except as provided in subsection (2) of this section, the making of a directive pursuant to ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of insurance, nor shall it be deemed to modify the terms of an existing policy of insurance.

(2) No physician, health facility, health care service plan, insurer issuing disability insurance, self-insured employe welfare benefit plan, nonprofit hospital service plan or other direct or indirect health service provider shall require any person to execute a directive as a condition for being insured for, or receiving, health care services.

(3) No policy of insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient. [1977 c.183 §7]

**97.085 Construction of ORS 97.050 to 97.090 concerning mercy killing, exclusiveness and suicide.** (1) Nothing in ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 shall be construed to condone, authorize or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990.

(2) Nothing in ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 are cumulative.

(3) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of ORS 97.050 to 97.090 and subsections (5) to (7) of 97.990 shall not, for any purpose, constitute a suicide. [1977 c.183 §§8, 9, 10]

**97.090 Prohibited acts.** (1) No person shall by wilfully concealing or destroying a revocation or by wilfully falsifying or forging a directive cause the withdrawal or withholding of life-sustaining procedures.

(2) No person shall by wilfully concealing or destroying a directive or by wilfully falsifying or forging a revocation cause an individual's intent with respect to the withholding or withdrawal of life-sustaining procedures not to be given effect. [1977 c.183 §11]

## 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.** (1) Subject to the provisions of ORS 97.250 to 97.290, any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of opposition by a member of the same or a prior class, shall have the right to control the disposition of the remains of a decedent:

(a) The spouse.

(b) A son or daughter 18 years of age or older.

(c) Either parent.

(d) A brother or sister 18 years of age or older.

(e) A guardian of the decedent at the time of his death.

(f) A person in the next degree of kindred.

(2) Subject to the provisions of ORS 97.250 to 97.290, if disposition of the remains of a decedent has not been directed and authorized under subsection (1) of this section within 10 days after the date of the death of the decedent, a public health officer, the special administrator or the personal representative of the estate of the decedent may direct and authorize disposition of the remains. [Amended by 1969 c.175 §10; 1969 c 591 §279; 1973 c.823 §97]

**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 Authorization of cemetery authority to inter or cremate remains.** Any cemetery authority may inter or cremate remains of a decedent without liability therefor upon receipt of a written authorization from the following persons in the order named:

(1) The decedent, in his lifetime or from his papers after death; or

(2) Any person who, by sworn statement, represents himself to be:

(a) The surviving spouse.

(b) A surviving child or adopted child over the age of 21 years.

(c) A surviving parent or adoptive parent.

(d) A next of kin.

(e) Any other person who has acquired the right to control disposition of the remains.

The sworn statement signed by any person mentioned in this subsection shall contain a further affirmation by the signator that to the best of his knowledge there is no other existing person having a prior right to the control of the remains or that any person having such a prior right has given to the signator written or telegraphic permission to sign such authorization to the cemetery authority. If any signator is acting under written or telegraphic permission from a person having a prior right, the original of such written or telegraphic permission shall be filed with the cemetery authority. [1957 c.423 §2 (97.141 and 97.145 enacted in lieu of 97.140)]

**97.145 Liability of cemetery authority for failure to conform to priority of control of remains.** Any cemetery authority interring or cremating remains pursuant to ORS 97.141 shall not 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 authorizations prior to interment or cremation of said remains. [1957 c.423 §3 (97.141 and 97.145 enacted in lieu of 97 140)]

**97.150 Actions against cemetery authority or funeral directors.** No action lies against any cemetery authority or licensed funeral director relating to any cremated remains which have been left in its possession for a period of five years unless a written contract has been entered into with the cemetery authority for their care or unless permanent interment has been made.

**97.160 Duty of hospital or sanitorium to notify person chargeable with funeral expenses before sending remains to undertaker.** (1) No hospital or sanitorium, or the employes, agents or representatives thereof, shall send or cause to be sent to any funeral director, undertaker, mortician or embalmer the remains of any decedent without first having made a reasonable effort to inform a relative, friend or person chargeable with the funeral expenses of such decedent, of the death of such decedent.

(2) 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.

**97.170 Disposition of the body of an indigent or child in custody of Children's Services Division.** (1) Except as set forth in subsection (4) of this section, any public officer having charge of the body of a deceased person required to be buried at public expense shall, if he knows or can with reasonable diligence ascertain any of them, promptly notify the relatives of such deceased person or any other person having an interest in him and shall deliver the body to any relative who claims it or to any friend of the deceased person who will pay the expense of burying or cremating the body. If no one claims the body within 72 hours after death, or if those notified acquiesce, the officer, at the expense of the recipient of the body shall notify, by telegraph or telephone, the Demonstrator of Anatomy of the State Department of Higher Education. The Demonstrator of Anatomy, who shall be appointed by the State Board of Higher Education from the staff of the University of Oregon Health Sciences Center, shall immediately inform the officer 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 officer shall deliver it to a licensed embalmer who, after such preparation as is necessary for transportation, shall, within 72 hours, deliver it in his own conveyance to the University of Oregon Health Sciences Center, 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

chapter 676 to chapter 686, as the Demonstrator of Anatomy directs, or shall deliver it to the agent of the express company at the nearest railroad station, consigned as instructed by the demonstrator. The expenses of transportation of the body to such school or college and return of the container to the embalmer making the shipment shall be borne by the institution receiving the body. Such expenses shall not exceed the public carrier rates for such services between the points of shipment and destination.

(2) The educational institution receiving the body shall pay the licensed embalmer handling it such fee as shall be established from time to time by the State Board of Higher Education.

(3) 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.

(4) When the deceased person is a child over whom the Children's Services Division 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 division 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 division under this subsection shall be borne by the division. [Amended by 1973 c.842 §1]

**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.** The body of any person who died of smallpox, diphtheria, scarlet fever or other disease that the Health Division, 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 paragraph (e) of subsection (3) of ORS 146.045. [Amended by 1977 c 582 §3]

**97.230** [Repealed by 1973 c.286 §1]

## ANATOMICAL GIFTS

**97.250 Short title for ORS 97.250 to 97.290.** ORS 97.250 to 97.290 may be cited as the Uniform Anatomical Gift Act. [1969 c.175 §1]

**97.255 Definitions for ORS 97.250 to 97.290.** As used in ORS 97.250 to 97.290, unless the context requires otherwise:

(1) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(2) "Decedent" includes a deceased individual, stillborn infant or fetus.

(3) "Donor" means an individual who makes a gift of all or part of his body.

(4) "Hospital" includes a hospital licensed, accredited or approved under the laws of any state or a hospital operated by the United States Government, a state or a subdivision thereof, although not required to be licensed under state laws.

(5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(6) "Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(7) "Physician" or "surgeon" includes a physician or surgeon licensed or authorized to practice under the laws of any state.

(8) "State" includes any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America. [1969 c.175 §3]

**97.260 Construction of ORS 97.250 to 97.290.** ORS 97.250 to 97.290 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact the Uniform Anatomical Gift Act. [1969 c.175 §2]

**97.265 Authority to make anatomical gift; rights of donee.** (1) Any individual of sound mind and 18 years of age or older may give all or any part of his body for any purpose specified in ORS 97.270, the gift to take effect upon death.

(2) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of a decedent's body for any purpose specified in ORS 97.270:

(a) The spouse.

(b) A son or daughter 18 years of age or older.

(c) Either parent.

(d) A brother or sister 18 years of age or older.

(e) A guardian of the decedent at the time of his death.

(f) Any other person authorized or under obligation to dispose of the body.

(3) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (2) of this section may make the gift after or immediately before death.

(4) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(5) The rights of the donee created by the gift are paramount to the rights of others except as provided by ORS 146.117. [1969 c.175 §4; 1973 c.823 §§98, 157]

**97.270 Who may be donee of anatomical gift.** The following persons may become donees of organs, tissues or parts of bodies for the purposes stated:

(1) Any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

(3) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) Any specified individual for therapy or transplantation needed by him. [1969 c.175 §5]

**97.275 Manner of executing anatomical gifts.** (1) A gift of all or part of the body under subsection (1) of ORS 97.265 may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) A gift of all or part of the body under subsection (1) of ORS 97.265 may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(3) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(4) Notwithstanding subsection (2) of ORS 97.290, the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose. If the part of the body that is the gift is an eye, the donee may authorize or the person authorized to accept the gift may employ or authorize a qualified embalmer licensed under ORS chapter 692 or a qualified eye bank technician to perform the appropriate procedures. The embalmer or technician must have completed a course in eye enucleation and have a certificate of competence from an agency or organization designated by the Board of Medical Examiners for the State of Oregon for the purpose of providing such training.

(5) Any gift by a person designated in subsection (2) of ORS 97.265 shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message. [1969 c.175 §6; 1969 c.591 §278a; 1975 c 215 §1]

**97.280 Delivery, deposit and examination of document of anatomical gift.** If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or county clerk's office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination. [1969 c.175 §7]

**97.285 Amendment or revocation of anatomical gift.** (1) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) The execution and delivery to the donee of a signed statement; or

(b) An oral statement made in the presence of two persons and communicated to the donee; or

(c) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(d) A signed card or document found on his person or in his effects.

(2) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) of this section or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (1) of this section. [1969 c 175 §8]

**97.290 Authority of donee who accepts gift; time of death; liability of one acting with probable cause; autopsies.** (1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to 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 surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(3) A person who acts with probable cause in accord with the terms of ORS 97.250 to 97.290 or the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(4) The provisions of ORS 97.250 to 97.290 are subject to the laws of this state prescribing powers and duties with respect to autopsies. [1969 c.175 §9]

**97.295 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 97.250 to 97.290 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 116.115]

**97.300 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, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body. [1969 c 271 §1]

## DEDICATION TO CEMETERY PURPOSES; PLATTINGS

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

(1) 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 92.160 except that paragraphs (a) and (b) of subsection (2) of ORS 92.090 shall not be applicable to streets, alleys, ways and footpaths located wholly within a cemetery.

(2) 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. [Amended by 1965 c.396 §2; 1979 c.57 §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 subsection (1) of 97.360, 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, subsection (2) of 97.360, ORS 97.440, 97.510 to 97.650, 97.710, 97.720 and 97.810 to 97.860.

**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 he 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 subsection (2) of ORS 97.360 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.** (1) 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.

(2) No such replat shall be approved unless each lot is left at least one adequate means of ingress and egress by an avenue, street, alley, walk, driveway or park.

**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 subsection (2) of ORS 97.360, 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 accru-

ing 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 his lot 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 subsection (2) of ORS 97.360, 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 subsection (2) of ORS 97.360, 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 subsection (2) of ORS 97.360 and ORS 97.370 to 97.410.

**97.430 Declaration of exercise of police power and right of eminent domain.** The enactment of subsection (2) of ORS 97.360 and ORS 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 subsection (2) of ORS 97.360 and ORS 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.** Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes unless and 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 the following conditions exist:

(1) That the portion of the property from which dedication is sought to be removed is

not being used for interment of human remains.

(2) That notice of hearing provided in this section shall 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 posting copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. The notice shall:

(a) Describe the portion of the cemetery property sought to be removed from dedication.

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

(c) Specify the time and place of the hearing.

**97.450 Discontinuance of cemetery and removal of remains and markers.** Whenever any cemetery which is within the limits of any county, city or town has been abandoned, or it is desirable to abandon such cemetery, or such cemetery has been allowed to remain in a dilapidated condition for a period of five years or longer, 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, cause the remains of all persons interred therein to be moved to some other suitable place and provide for the removal and reerection of all stones and monuments marking said graves. However, such removal shall be made in an appropriate manner and in accordance with the directions of the Assistant Director for Health, and written notice shall first 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. Such removal and the costs of the proceedings under this section shall be at the expense of the county, city or town, party, corporation or association owning the cemetery to be moved. [Amended by 1955 c.472 §1]

**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 Corporation Commissioner. Each violation of this section constitutes a separate offense.

**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 his remains in the plot, and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains 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 his vested right of interment, except that a final decree of divorce between them terminates the right unless otherwise provided in the decree.

**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 he has disposed of the plot either by specific direction in his will 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 his surviving spouse.

**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 his 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, first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law.

(2) Any surviving spouse, child or heir 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 his spouse, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

**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 his remains 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 his 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 director. 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.

## PROTECTION OF INDIAN GRAVES

**97.740 Definitions for ORS 97.740 to 97.750.** For the purposes of ORS 97.740 to 97.750 and subsection (8) of 97.990, "professional archaeologist" means a person who has extensive formal training and experience in systematic, scientific archaeology. [1977 c 647 §1]

**97.745 Prohibited acts.** (1) Except as provided in ORS 97.750, no person shall wilfully remove, mutilate, deface, injure or destroy any cairn or grave of any native Indian. Persons disturbing native Indian graves through inadvertence, including by construction, mining, logging or agricultural activity, shall at their own expense reinter the human remains under the supervision of an appropriate Indian organization.

(2) No person shall:

(a) Possess any native Indian artifacts or human remains taken from a native Indian cairn or grave on or after October 3, 1979, in a manner other than that authorized under ORS 97.750.

(b) Publicly display or exhibit any native Indian human remains.

(c) Sell any native Indian artifacts or human remains taken from a native Indian cairn or grave.

(3) This section does not apply to the possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or graves or artifacts that were removed from cairns or graves by other than human action. [1977 c 647 §2; 1979 c 420 §1]

**97.750 Permitted acts; notice.** (1) If such action is necessary to protect the burial from imminent destruction, and upon prior notification to the State Historic Preservation Office and to an appropriate Indian organization in the vicinity of the intended action, a professional archaeologist may excavate a native Indian cairn or grave and remove material objects and human remains for subsequent reinterment under the supervision of the Indian organization.

(2) Except as provided in subsection (1) of this section, any proposed excavation by a professional archaeologist of a native Indian cairn or grave shall be initiated only after prior written notification to the State Historic Preservation Office and with the prior written consent of an appropriate Indian organization in the vicinity of the intended action. All material objects and human remains removed during such an excavation shall, following scientific study, be reinterred at the archaeologist's expense under the supervision of the Indian organization.

(3) A professional archaeologist who is unable to determine which Indian organization is appropriate shall, in order to comply with this section, consult with the State Historic Preservation Office for assistance. [1977 c 647 §3; 1979 c.420 §2]

## CEMETERY CARE

**97.810 Endowment care and nonendowed care cemeteries.** (1) An endowment care cemetery is one which after July 5, 1955, deposits in 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 instalments, 15 percent of each instalment until at least 15 percent of the gross sales price has been deposited, with a minimum of $5 for each grave.

(b) Five dollars for each niche.

(c) Fifteen dollars for each crypt.

The cemetery authority shall deposit in its endowment care fund any payment received by it and required by this subsection to be paid into such fund, within 30 days from the receipt of such payment.

(2) On or before April 15 of each year, beginning with April 15, 1966, each endowment care cemetery, except one owned by a city or a county, shall file with the Secretary of State a statement in duplicate 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 may from time to time require to show accurately the complete financial condition of the trust on the date of the statement.

(3) 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.

(4) The Secretary of State shall have authority to require, as often as he deems necessary, the custodian of any cemetery endowment care fund to make under oath a detailed report of the condition and assets of such fund.

(5) At the time of the filing of the statements of its endowment care fund each cemetery filing shall pay to the Secretary of State an annual fee as follows:

(a) Up to 100 interments per year, $10.

(b) Over 100 interments per year, $25.

(6) All fees received by the Secretary of State under this section shall be by him 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 Cemetery Trust Review Account. The moneys in the Cemetery Trust Review 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 carrying out the provisions of this section.

(7) 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."

(8) 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.

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

(10) 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]

**97.820 Placing cemetery under endowed care; deposit and withdrawal; commingling endowment and special care funds.** (1) Every cemetery authority which 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 held in the name of the trustee or trustees appointed by the cemetery authority. All new investments of money deposited in the endowment care fund after July 5, 1947, shall be in securities in classes and amounts approved by the State Treasurer. The State Treasurer shall from time to time publish a list of approved securities and the maximum percentage of the total endowment care fund which may be invested in each class of approved security. All endowed care fund securities purchased under the provisions of this subsection shall be deposited with a bank or trust company authorized to do business in this state or some other depository approved by the State Treasurer. Any endowment fund securities withdrawn from any depository by a cemetery authority shall be immediately reinvested and redeposited or otherwise used in accordance with the provisions of ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. The provisions of this subsection shall not apply to a city or county-owned cemetery.

(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 in-

come of the endowment care fund may be used only to finance the care of the cemetery.

(3) In lieu of the appointment of a board of trustees of its endowment care fund, any cemetery authority may appoint as sole trustee thereof any bank or trust company qualified to engage in the trust business. Such bank or trust company shall be authorized to receive and accept the fund, including any accumulated endowment care fund in existence at the time of its appointment. [Amended by 1955 c.545 §3; 1965 c.396 §5]

**97.825 Suits to enforce statutes.** (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 has reason to believe that a cemetery endowment care fund does not conform to the requirement of law, or when the Secretary of State 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 required by ORS 97.810, the Secretary of State 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, and the Attorney General of Oregon. It shall be the duty of the Attorney General within 90 days after the receipt of such notice to 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 he shall prior to that time be notified by the Secretary of State that such failure to conform to the requirements of the law or to report has been corrected. [1955 c.545 §5; 1965 c.396 §6]

**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. The principal of such funds shall never be voluntarily reduced, but shall be maintained separate and distinct by the trustee or trustees from all other funds except it shall be proper to commingle endowment care funds with special care funds. Any bank or trust company qualified to engage in the trust business shall be governed by the provisions of ORS 128.057 and shall not be required to secure the approval of the State Treasurer as to the types of investment and the manner of holding such trust funds. The net income earned shall be used solely for the general care and maintenance of the property entitled to endowment care in a cemetery for which such fund is established, and shall be applied to such general care and maintenance in such manner as the cemetery authority may from time to time determine to be for 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.

(2) Endowment care funds shall not be used for any purpose other than to provide through income only for the care stipulated in the resolution, bylaw or other action or instrument by which the fund was established. [Amended by 1955 c.545 §4]

**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.** A cemetery authority which has established an endowment care fund may take, receive and hold as a part of or incident to the fund any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund.

**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 him of the amount fixed as a reasonable and proportionate contribution for endowed care, a cemetery authority may enter into an agreement with him for the care of his plot and its appurtenances.

**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 period sold lots, subdivisions of lots, pieces or parcels of the cemetery for burial purposes and the grantee or party claiming through him 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 such incorporated association, company, religious society, lodge, municipality or other organized society 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.

**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 decree 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, decreeing that the lien be foreclosed and the lots and parcels be sold in the same manner as other sales upon execu-

tion 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 his 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."

**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 his jurisdiction.

(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 decree described in subsection (1) of ORS 97.890 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, decreeing 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.

**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 Decree 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 decree in accordance with the allegations of the complaint and the provisions of subsection (1) of ORS 97.890.

## FEDERAL AID FOR CEMETERIES

**97.930 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. [1977 c.715 §§2, 3]

## 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 employe of this state or of any county, city or any other municipal subdivision thereof who wilfully 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 him 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, 97.141 to 97.150, 97.220, 97.310 to subsection (1) of 97.360, ORS 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) Violation of subsection (1) of ORS 97.090 is a Class A felony.

(6) Violation of subsection (2) of ORS 97.090 is a Class A misdemeanor.

(7) Failure to perform the duties prescribed in ORS 97.070 and 97.075 shall constitute unprofessional conduct for purposes of ORS 677.190.

(8) Violation of subsection (1) or (2) of ORS 97.745 is a Class A misdemeanor.

(9) In addition to the penalty of subsection (8) of this section, any native Indian artifacts or human remains taken by, or in possession of, any person sentenced under subsection (8) 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]

### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979

Thomas G. Clifford
Legislative Counsel