

Chapter 97

1991 EDITION

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

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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, 97.360 (1), 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 so-

ciety 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.

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

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

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

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

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

97.075 [1977 c.183 §6; repealed by 1983 c.526 §7]

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

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

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

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

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

DISPOSITION OF HUMAN BODIES

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

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

97.130 Right to control disposition of remains. (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 the death of the decedent.

(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 the lifetime of the decedent or from the decedent's papers after death; or

(2) Any person who, by sworn statement, purports 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 the knowledge of the signator 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 Disposition of cremated remains; procedures; notice; actions against cemetery authority or funeral service practitioners. (1) If the cemetery authority or the licensed funeral service practitioner has been authorized to cremate remains of a decedent pursuant to ORS 97.130 and 97.141, the authorization shall also contain further instructions to the cemetery authority or the licensed funeral service practitioner as to the final disposition of the cremated remains. If the cremated remains are left in the possession of the cemetery authority or the licensed funeral service practitioner and no such instructions are given to the cemetery authority or the licensed funeral service practitioner within 180 days after the date of cremation, the cemetery authority or the licensed funeral service practitioner shall make a reasonable effort to notify the person, pursuant to ORS 97.130, who has the right to control the disposition of the cremated remains. The notice shall state that the cemetery authority or the licensed funeral service practitioner intends to dispose of the cremated remains unless such person gives instructions to the contrary to the cemetery authority or the licensed funeral service practitioner within 30 days of the date of such notice from the cemetery authority or the licensed funeral service practitioner. Reasonable effort to notify shall include, but not be limited to, notice, personally or by certified mail, return receipt requested, to the person who has the right to control the disposition of the cremated remains at the address of such person in the records of the cemetery authority or the licensed funeral service practitioner. If disposition of the cremated remains has not been directed and authorized by such person within said 30-day period, the cemetery authority or the licensed funeral service practitioner may dispose of the cremated remains in a cemetery.

(2) Any cemetery authority or licensed funeral service practitioner shall not be liable, and no action shall lie against any cemetery authority or licensed funeral service practitioner relating to any cremated remains which have been left in its possession for a period of 180 days unless the cemetery authority or the licensed funeral service

practitioner has failed to make such reasonable effort to notify the person described in subsection (1) of this section or unless a written contract has been entered into with the cemetery authority or the licensed funeral service practitioner for their care or unless permanent interment has been made. [Amended by 1989 c.669 §1]

97.160 Duty of hospital or sanitarium to notify person chargeable with funeral expenses before sending remains to undertaker. (1) No hospital or sanitarium, or the employees, agents or representatives thereof, shall send or cause to be sent to any funeral service practitioner, undertaker, mortician or embalmer the remains of any decedent without 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 the officer 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 the deceased person 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 Oregon Health Sciences University, 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 the embalmer's own conveyance to the Oregon Health Sciences University, or any other school or college within the State of

Oregon qualifying applicants for examination in the fundamental sciences as required and specified in ORS 683.0010 to 683.335 and ORS chapters 676 to 681 and 684 to 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.

(5) When the deceased person is one for whom the county is responsible for disposition costs, and no relatives, friends or interested persons claim the body after notification is attempted under subsection (1) of this section, and after complying with this section and ORS 97.130 (2), the county shall authorize burial or cremation of the body without the consent of persons listed in ORS 97.130, in the least costly manner that complies with law. [Amended by 1973 c.842 §1; 1985 c.704 §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 ORS 146.045 (3)(e). [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 the body of the donor.

(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 the body of the individual 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 the death of the decedent.

(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]

97.268 Death in hospital of person who has not made anatomical gift; request by hospital administrator; exceptions; rules.

(1) When death occurs in a hospital to a person who has not made an anatomical gift, the hospital administrator or designated representative shall request the person described in ORS 97.265 (2), 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 indication by the decedent or one in a prior class, to consent to the gift of all or any part of the decedent's body as an anatomical gift.

(2) Where such request is made, pursuant to this section, the request and its disposition shall be noted in the patient's medical record and on the death certificate and shall be documented as provided in ORS 97.275 (5).

(3) Where, based on medical criteria, such request would not yield a donation which would be suitable for use, the Assistant Director for Health may, by rule, authorize an exception to the request required by this section.

(4) The Assistant Director for Health shall establish rules concerning the training of hospital employees who may be designated to perform the request, and the procedures to be employed in making it. In addition, the assistant director shall establish such rules as are necessary to implement appropriate

procedures to facilitate the delivery of donations from receiving hospitals to potential recipients.

(5) The Assistant Director for Health shall establish such additional rules as are necessary for the implementation of this section. [1985 c.379 §1]

Note: 97.268 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.270 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 the individual. [1969 c.175 §5]

97.275 Manner of executing anatomical gifts. (1) A gift of all or part of the body under ORS 97.265 (1) 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 ORS 97.265 (1) 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 the presence of the donor. If the donor cannot sign, the document may be signed for the donor at the direction of the donor and in the presence of the donor in the presence of two witnesses who must sign the document in the presence of the donor. 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 ORS 97.290 (2), the donor may designate in the will, card, or other document of gift of the donor 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 ORS 97.265 (2) shall be made by a document signed by the person or made by the telegraphic, recorded telephonic, or other recorded message of the person. [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 the person or in the effects of the person.

(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, the donee 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 the death of the donor, 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 the act of the person.

(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, process-

ing, 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 92.190 except that ORS 92.090 (2)(a) and (b) shall not be applicable to streets, alleys, ways and footpaths located wholly within a cemetery. No plat shall be approved unless each lot has at least one adequate means of ingress and egress by an easement, avenue, street, alley, walk, driveway or park.

(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; 1985 c.582 §3]

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

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

97.340 Effect of dedication. After property is dedicated to cemetery purposes pursuant to ORS 97.310 to 97.330 and 97.360 (1), neither the dedication nor the title of a plot

owner shall be affected by the dissolution of the cemetery authority by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution or otherwise, except as provided in ORS 97.310 to 97.350, 97.360 (2), 97.440, 97.510 to 97.650, 97.710, 97.720 and 97.810 to 97.860.

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 the petitioner is interested and shall state the reason for the proposed change and what provisions have theretofore been made for the perpetual upkeep, maintenance and beautification of the cemetery, and there shall be presented therewith a plat of the cemetery, together with the proposed replat,

which shall have clearly indicated thereon the proposed changes.

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

97.380 Hearing; order allowing replatting. (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 easement, avenue, street, alley, walk, driveway or park. [Amended by 1985 c.582 §4]

97.390 Assessment of benefits and damages. If any damages are claimed by the owner of any lot in any such cemetery as is mentioned in ORS 97.360 (2), which lot is adjacent to the avenues, streets, alleys, driveways or parks vacated as provided in ORS 97.380, they shall be ascertained by the county court or board of county commissioners and offset against the benefits accruing to the lot owner on account of the upkeep and beautification of the cemetery in the manner provided in ORS 97.400. Any person

feeling aggrieved at the amount of damages so assessed by the board may appeal from such order of allowance to the circuit court of the county in which the cemetery is situated in the same manner as is provided by statute for appeal from the assessment of damages by the exercise of eminent domain in locating a county road and on such appeal the jury, in assessing the amount of damages to be allowed to the appellant, shall offset against such damages the benefits accruing to the appellant as in this section above provided.

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

97.410 Right of adjacent lot owner upon vacation of way. The vacation of an avenue, street, alley, driveway, walk or park adjacent to a cemetery lot shall vest in the owner of such lot no interest in the vacated portion thereof; but the adjacent owner shall, for 30 days after the date of such an order of vacation, have the right to purchase any new lot adjacent to the lot of the owner at the price fixed by the court or board at which the lots are to be sold, and if there is more than one adjacent lot owner, the new lot shall be sold to the one offering the highest price therefor.

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

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

97.440 Removal of dedication. 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 Secretary of State. Each violation of this section constitutes a separate offense. [Amended by 1989 c.171 §13]

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

Note: Section 1, chapter 394, Oregon Laws 1991, is repealed July 1, 1993. See section 2, chapter 394, Oregon Laws 1991. The text is set forth for the user's convenience.

Sec. 1. ORS 97.530 does not apply to a person, firm, corporation or other entity, other than an establishment or company licensed under ORS 692.025 or a person licensed under ORS 692.025 and employed by an establishment or company licensed under ORS 692.025, that contracts with the cemetery authority of an endowment care cemetery to sell graves, crypts, niches, burial vaults or markers subject to ORS 128.412. The conduct of any person, firm, corporation or other entity described in this section shall be the direct responsibility of the cemetery authority of the endowment care cemetery. [1991 c.394 §1]

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

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

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

97.570 Spouse has vested right of interment. (1) The spouse of an owner of any plot containing more than one interment space has a vested right of interment of the

remains of the spouse in the plot, and any person thereafter becoming the spouse of the owner has a vested right of interment of the remains of the person in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner.

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

97.580 Divestiture of spouse's right of interment. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of the vested right of interment, except that a 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 the owner has disposed of the plot either by specific direction in the will of the owner or by a written declaration filed and recorded in the office of the cemetery authority, if no interment has been made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred are lawfully removed, the plot descends to the heirs at law of the owner, subject to the rights of interment of the decedent and the surviving spouse of the decedent.

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

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

the plot in accordance with the directions of the surviving owners or their successors in interest.

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

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

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

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

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

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

97.640 Waiver or termination of vested right of interment. A vested right of interment may be waived and is termi-

nated upon the interment elsewhere of the remains of the person in whom it is vested.

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

CEMETERY MANAGEMENT

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

(a) The use, care, control, management, restriction and protection of its cemetery;

(b) Restricting and limiting the use of all property within its cemetery;

(c) Regulating the uniformity, class and kind of all markers, monuments and other structures within its cemetery;

(d) Prohibiting the erection of monuments, markers or other structures in or upon any portion of its property;

(e) Regulating or preventing the erection of monuments, effigies and structures within any portion of the cemetery grounds and for the removal thereof;

(f) Regulating the care or preventing the introduction of plants or shrubs within such grounds;

(g) Preventing the interment in any part thereof of a body not entitled to interment therein;

(h) Preventing the use of burial plots for purposes violative of its restrictions;

(i) Regulating the conduct of persons and preventing improper assemblages therein; and

(j) All other purposes deemed necessary by the cemetery authority for the proper conduct of its business and the protection and safeguarding of the premises and the principles, plans and ideals on which the cemetery was organized.

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

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

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

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

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

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 97.990 (5):

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

(2) "Indian tribe" means any tribe of Indians recognized by the Secretary of the Interior or listed in the Klamath Termination Act, 25 U.S.C. 3564 et seq., or listed in the Western Oregon Indian Termination Act, 25 U.S.C. 3691 et seq., if the traditional cultural area of the tribe includes Oregon lands. [1977 c.647 §1; 1981 c.442 §3; 1985 c.198 §2]

97.745 Prohibited acts. (1) Except as provided in ORS 97.750, no person shall willfully 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 the appropriate Indian tribe.

(2) No person shall:

(a) Possess any native Indian artifacts or any human remains, such artifacts or remains having been 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 any human remains, such artifacts or remains having been taken from a native Indian cairn or grave.

(3) This section does not apply to:

(a) The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or graves or artifacts that were removed from cairns or graves by other than human action; or

(b) Actions taken in the performance of official law enforcement duties. [1977 c.647 §2; 1979 c.420 §1; 1981 c.442 §4; 1985 c.198 §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 the appropriate Indian tribe 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 tribe.

(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 the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All 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 tribe.

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

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

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

(3) If the plaintiff prevails:

(a) The court may award reasonable attorney fees to the plaintiff;

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

(c) The plaintiff shall recover imputed damages of \$500 or actual damages, whichever is greater. Actual damages include special and general damages, which include damages for emotional distress;

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

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

(4) If the defendant prevails, the court may award reasonable attorney fees to the defendant. [1981 c.442 §2]

CEMETERY CARE

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

(a) Fifteen percent of the gross sales price with a minimum of \$5 for each grave; or, when the gross sales price is paid in installments, 15 percent of each installment until at least 15 percent of the gross sales price has been deposited, with a minimum of \$5 for each grave.

(b) Five dollars for each niche.

(c) Fifteen dollars for each crypt.

The cemetery authority shall deposit with the trustee or custodian of 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) Within 75 days of the end of its fiscal year, each endowment care cemetery, except one owned by a city or a county, shall file with the Secretary of State a statement containing the following information pertaining to the endowment care fund: The total amount invested in bonds, securities, mortgages and other investments, the total amount of cash on hand not invested at the close of the previous calendar or fiscal year, the income earned by investments in the preceding calendar or fiscal year, the amounts of such income expended for maintenance in the preceding calendar or fiscal year, the amount paid into the fund in the preceding calendar or fiscal year and such other items as the Secretary of State 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 the Secretary of State deems necessary, the cemetery authority to make under oath a detailed report of the condition and assets of any cemetery endowment care 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, \$20.

(b) Over 100 interments per year, \$50.

(6) All fees received by the Secretary of State under this section shall be by the Secretary of State 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; 1987 c.295 §1]

97.820 Placing cemetery under endowed care; deposit; commingling endowment and special care funds; trustee or custodian of fund. (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 deposited with and held solely by the trustee or custodian appointed by the cemetery authority. The provisions of this subsection shall not apply to a city or county-owned cemetery.

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

(3) The cemetery authority shall appoint as sole trustee of the endowment care fund a trust company qualified to engage in the trust business or as sole custodian of the endowment care fund, a bank or a savings association. Such trust company, bank or savings association shall receive and accept the fund, including any accumulated endowment care fund in existence at the time of its appointment and perform such duties as are agreed upon in the agreement between it and the cemetery authority. A bank or savings association not qualified to engage in the trust business may act as custodian of such endowment care fund provided:

(a) The duties of the bank or savings association are essentially custodial or ministerial in nature; and

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

(4) The trustee or custodian may resign upon written notice to the cemetery authority or the cemetery authority may remove the trustee or custodian by written notice to it. In case of the resignation or removal of the trustee or custodian, the cemetery authority forthwith shall appoint a successor trustee or custodian and provide for the direct transfer of all endowed care funds and earnings thereon from the former trustee or custodian to the successor trustee or custodian.

(5) As used in this section:

(a) "Bank" means a banking institution, as defined in ORS 706.005 (6), or a national bank, as defined in ORS 706.005 (16).

(b) "Savings association" means a savings association as defined in ORS 722.004 (16) or a federal association, as defined in ORS 722.004 (8). [Amended by 1955 c.545 §3; 1965 c.396 §5; 1985 c.450 §1; 1987 c.295 §2]

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 ex-

pend 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. Within 90 days after the receipt of such notice, the Attorney General shall institute suit in the circuit court of any county of this state in which such cemetery is located, for a mandatory injunction against further sales of graves, plots, crypts, niches, burial vaults, markers or other cemetery merchandise by such cemetery or for the appointment of a receiver to take charge of the cemetery, unless the Attorney General shall prior to that time be notified by the Secretary of State that such failure to conform to the requirements of the law or to report has been corrected.

(3) If a trustee fails to perform the duties of the trustee under ORS 97.810 to 97.920, the trustee shall be liable for any damage resulting from that failure to any lot owners or the next of kin, heirs at law or personal representatives of such lot owners. [1955 c.545 §5; 1965 c.396 §6; 1985 c.450 §2]

97.830 Investment and reinvestment of principal of endowed care funds; use and application of income. (1) The principal of all funds for endowed care shall be invested, from time to time reinvested and kept invested. If a trust agreement imposes

upon the trustee or custodian the duty to direct the investment or reinvestment of endowed care funds, the trustee or custodian shall perform this duty governed by the provisions of ORS 128.057. Otherwise, the cemetery authority, governed by the provisions of ORS 128.057, shall direct the investment and reinvestment of endowed care funds in the time or savings deposits of the custodian bank or savings association.

(2) The principal of invested endowed care funds shall never be voluntarily reduced, but shall be maintained separate and distinct by the trustee or custodian from all other funds except that it shall be proper to commingle endowment care funds with special care funds. The net income earned shall be used solely for the general care and maintenance of the cemetery property entitled to endowment care, as stipulated in the resolution, bylaw and other action or instrument by which the fund was established, and in such manner as the cemetery authority may from time to time determine to be in the best interests of such endowed property. Such net income shall never be used for the improvement or embellishment of undeveloped property offered for sale. [Amended by 1955 c.545 §4; 1985 c.450 §3; 1987 c.295 §3]

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

97.840 Cemetery authority authorized to receive and hold gifts of property; disposition of gifts. A cemetery authority which has established an endowment care fund may take, receive and hold any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund. Within 30 days of the receipt of such contributions, the cemetery authority shall deposit, with the trustee or custodian of the fund to which the property was contributed, all moneys and all documents or instruments of title or conveyance evidencing the contribution. As soon as practicable, the cemetery authority shall provide for the sale of all property for fair market value and, within

30 days of the receipt of the proceeds thereof, shall deposit the proceeds with the trustee or custodian. The trustee or custodian shall execute all documents necessary to effect the sale, consistent with the purposes of this section. [Amended by 1987 c.295 §4]

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

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

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

97.870 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 the grantee has not used portions of such lots, subdivisions of lots, pieces or parcels of the cemetery for purposes of burial and has not kept them free of weeds or brush, but has allowed them to remain entirely unused for more than 40 years or uncared for and unused for more than 20 years prior to the adoption of the resolution provided for in ORS 97.880, and such lots, subdivisions of lots, pieces and parcels of the cemetery are adjacent to improved parts thereof, and by reason of their uncared-for condition detract from the appearance of the cemetery and interfere with the harmonious improvement thereof, and furnish a place for the propagation of weeds and brush, thereby becoming a menace to adjacent property, such lots,

subdivisions of lots, pieces and parcels of such cemetery, which are unused and uncared for as aforesaid, hereby are declared to be a common nuisance and contrary to public policy. The provisions of this section are not applicable to portions of cemeteries which have been or are sold with agreements between the cemetery authority or its successor in interest, or both, and the grantee providing for endowment care, permanent care, maintenance or free care. [Amended by 1965 c.396 §7]

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

97.890 Complaint. (1) Upon the adoption of the resolution described in ORS 97.880 the officers of the cemetery association may file a complaint in the circuit court for the county in which the cemetery is located against the owners, holders or parties interested in such abandoned portion of its cemetery demanding that the court require such owners, holders or interested parties to keep the premises clear of weeds and brush and in condition in harmony with other lots and, if the owners, holders, or interested parties fail to appear in court and comply with the order of the court, demanding that the court make a 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 execution are made and authorizing the governing board to become a purchaser thereof on behalf of the association or the proprietor.

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

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

(4) In addition to the names of the persons that appear on the records of the cemetery association as the record owners of such

unused and unimproved portions of the cemetery, the plaintiff shall include as a defendant in a complaint the following: "Also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint."

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

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

(3) The published summons shall contain the names of the record owners, as shown by the records of the cemetery association, and "also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint," together with a brief description of the lot, or subdivisions of lots, pieces or parcels of the cemetery and a statement setting forth the order and decree described in ORS 97.890 (1) for which the plaintiff has applied to the court in the complaint. Such summons shall require all parties defendant to appear and show cause why an order should not be made declaring the unused and unimproved portions of the cemeteries to be a common nuisance, directing the cemetery association or other proprietor to abate the nuisance, creating a lien thereon, 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 ORS 97.890 (1).

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 employee of this state or of any county, city or any other municipal subdivision thereof who willfully neglects to notify the Demonstrator of Anatomy of the existence of a body as required by ORS 97.170 to 97.210 or who refuses to deliver possession of such body according to the provisions of ORS 97.170 to 97.210 or who mutilates or permits any such body to be mutilated so that it is not valuable for anatomical purposes or who refuses or neglects to perform any of the duties enjoined upon the officer, agent or employee by ORS 97.170 to 97.210, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$50 for each offense.

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

(4) Any person, association or corporation who operates a cemetery, mausoleum or columbarium contrary to the provisions of ORS 97.020 to 97.040, 97.110 to 97.130, 97.141 to 97.150, 97.220, 97.310 to 97.360 (1), 97.440, 97.510 to 97.560, 97.710, 97.720, 97.810, 97.820, 97.830 and 97.840 to 97.860 is guilty of maintaining a nuisance and, upon conviction, is punishable by a fine not exceeding \$500 or by imprisonment in the county jail for not more than six months, or both.

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

(6) In addition to the penalty of subsection (5) of this section, any native Indian artifacts or human remains taken by, or in possession of, any person sentenced under subsection (5) of this section and all equipment used in the violation may be ordered forfeited by the court in which conviction occurs, and may be disposed of as the court directs. [Subsections (5) to (7) enacted as 1977 c.183 §12; subsection (8) enacted as 1977 c.647 §4; 1979 c.420 §3; 1983 c.526 §6; 1985 c.198 §5; subsections (5) to (7) renumbered 127.990 in 1991]