

Enrolled
House Bill 2864

Sponsored by Representative GILMAN; Representatives BOONE, CLEM, KOMP (at the request of Oregon Cemetery Association)

CHAPTER

AN ACT

Relating to final disposition of human remains; creating new provisions; amending ORS 65.860, 97.010, 97.220, 97.510, 97.520, 97.810, 97.820, 97.825, 97.865, 97.870, 97.890, 97.900, 97.923, 97.925, 97.927, 97.933, 97.935, 97.937, 97.939, 97.941, 97.943, 97.944 and 646.551; and repealing ORS 59.660, 59.670, 59.680, 59.690 and 59.700.

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

SECTION 1. ORS 97.010 is amended to read:

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

[(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 97.865. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.]

[(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes.]

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

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

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

(4) **"Cemetery" means a place:**

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) "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.

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

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

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

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

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

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

(23) "Inurnment" means the placement of cremated remains in a receptacle and the deposit of the receptacle in a niche.

(24) "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.

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

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

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

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

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

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

(31) “Scattering garden” means a location set aside within a cemetery that is used for the spreading or broadcasting of cremated remains that have been removed from their container and can be mixed with or placed on top of the soil or ground cover or buried in an underground receptacle on a commingled basis and that are nonrecoverable.

(32) “Special care” means any care in excess of endowed care in accordance with the specific directions of a donor of funds.

SECTION 2. ORS 97.220 is amended to read:

97.220. (1) The remains of a deceased person interred in a plot in a cemetery may be removed *[therefrom]* **from the plot** with the consent of the cemetery authority and written consent of the person **under ORS 97.130 (2)(a), (b) or (c)** 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).

SECTION 3. ORS 97.510 is amended to read:

97.510. (1) After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect and subject to such other and further limitations, conditions and restrictions made a part of the declaration of dedication by reference or included in the instrument of conveyance of the plot.

(2) Scattering of cremated remains in a scattering garden is not a sale or conveyance.

SECTION 4. ORS 97.520 is amended to read:

97.520. *[No]* **A** person, firm or corporation *[shall]* **may not** sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit, except with the consent and approval of the *[Secretary of State]* **Director of the Department of Consumer and Business Services**. Each violation of this section constitutes a separate offense.

SECTION 5. ORS 97.810 is amended to read:

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

(1) As used in this section, “endowment care cemetery” means a cemetery that maintains an endowment care fund placed in an irrevocable trust fund.

(2) An endowment care cemetery shall deposit with the trustee or custodian of its endowment care fund not less than the following amounts received from the sale of plots, niches, crypts or private mausoleums:

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

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

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

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

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

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

(b) A payment for special care, gifts, grants, contributions, devises or bequests made with respect to the separate or special care of a particular plot, grave, niche, crypt, mausoleum, monument or marker or that of a particular family.

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

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

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

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

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

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

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

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

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

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

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

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

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

[8] (9) *[No]* **A cemetery** *[shall]* **may not** operate *[after July 5, 1955,]* as an endowment care, permanent maintenance or free care cemetery until the provisions of this section are complied with. There shall be printed or stamped at the head of all contracts and certificates of ownership or deeds

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

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

~~[(10)]~~ **(11)** A nonendowed care cemetery is ~~[one]~~ **a cemetery** that does not deposit in an endowment care fund the minimum specified in subsection (1) of this section.

~~[(11)]~~ **(12)** ~~[No]~~ **A** cemetery ~~[shall]~~ **authority may not** 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]~~ **unless** the provisions of this section are complied with.

SECTION 6. ORS 97.820 is amended to read:

97.820. (1) Every cemetery authority that operates a cemetery may place its cemetery under endowed care and establish, maintain and operate an endowment care fund. All endowed care funds shall be deposited with and held solely by the trustee or custodian appointed by the cemetery authority. ~~[The provisions of this subsection shall not apply to a city or county-owned cemetery, unless the city or county has elected to subject itself to ORS 97.810 to 97.865.]~~

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

(3) The cemetery authority shall appoint as sole trustee of the endowment care fund a trust company as defined in ORS 706.008 that is authorized to transact trust business in this state, or an insured institution as defined in ORS 706.008 that is authorized to accept deposits in this state. Such trust company or insured institution shall receive and accept the fund, including any accumulated endowment care fund in existence at the time of its appointment and perform such duties as are agreed upon in the agreement between it and the cemetery authority. An insured institution not qualified to transact trust business in this state may act as custodian of such endowment care fund provided:

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

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

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

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

SECTION 7. ORS 97.825 is amended to read:

97.825. (1) ~~[Should]~~ **If** the cemetery authority ~~[fail]~~ **fails** to remit to the trustee or trustees, in accordance with the law, the funds herein provided for endowment and special care, or ~~[fail]~~ **fails** to expend ~~[all such funds]~~ **the net income from the funds** and generally care for and maintain any portion of a cemetery entitled to endowment care, any three lot owners whose lots are entitled to endowment care, or any one lot owner whose lot is entitled to special care, or the next of kin, heirs at law or personal representatives of such lot owners, shall have the right, or the district attorney of any county wherein is situated such lots, shall have the power, by suit for mandatory injunction

or for appointment of a receiver, to sue for, to take charge of, and to expend such net income. [Such] **The** suit may be filed in the circuit court of the county in which said cemetery is located, to compel the expenditure either by the cemetery authority or by any receiver so appointed by the court, of the net income from such endowment care fund for the purposes set out in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990.

(2) When the Director of the Department of Consumer and Business Services has reason to believe that a cemetery endowment care fund does not conform to the requirement of law, or when the director has reason to believe that any cemetery is operating in violation of ORS 97.810 or 97.820, or when **the director has sent** an endowment care cemetery [fails after 30 days'] a notice of delinquency to make any report to the director required by ORS 97.810, the director shall, **as soon thereafter as reasonable**, give notice of the foregoing to the trustee or trustees of the cemetery endowment care fund, the cemetery [for the benefit of which the fund is established] **authority**, the Attorney General of Oregon and the State Mortuary and Cemetery Board.

(3) Within [90] **120** days after the receipt of such notice, the Attorney General shall institute suit in the circuit court of any county of this state in which such cemetery is located, for a mandatory injunction against further sales of graves, plots, crypts, niches, burial vaults, markers or other cemetery merchandise by such cemetery or for the appointment of a receiver to take charge of the cemetery, unless the Attorney General shall prior to that time be notified by the director that such failure to conform to the requirements of the law or to report has been corrected.

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

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

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

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

[4] (6) The court may award reasonable attorney fees, costs and disbursements to the prevailing party in an action under this section.

SECTION 8. ORS 97.865 is amended to read:

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

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

(b) **ORS 294.035 does not apply to funds held by a county or city under ORS 97.810 to 97.865.**

SECTION 9. ORS 97.870 is amended to read:

97.870. (1) In all cases where a cemetery authority has owned a site for a cemetery for more than 40 years and has during that period sold lots, subdivisions of lots, pieces or parcels of the cemetery for burial purposes and the grantee or party claiming through the grantee has not used portions of such lots, subdivisions of lots, pieces or parcels of the cemetery for purposes of burial and has not kept them free of weeds or brush, but has allowed them to remain entirely unused for more than 40 years or uncared for and unused for more than 20 years prior to the adoption of the resolution provided for in ORS 97.880, and such lots, subdivisions of lots, pieces and parcels of the

cemetery are adjacent to improved parts thereof, and by reason of their uncared-for condition detract from the appearance of the cemetery and interfere with the harmonious improvement thereof, and furnish a place for the propagation of weeds and brush, thereby becoming a menace to adjacent property, such lots, subdivisions of lots, pieces and parcels of such cemetery, which are unused and uncared for as aforesaid, hereby are declared to be a common nuisance and contrary to public policy.

(2) The provisions of this section are not applicable to portions of cemeteries which have been or are sold with agreements between the cemetery authority or its successor in interest, or both, and the grantee providing for endowment care, permanent [*care,*] maintenance or free care.

SECTION 10. ORS 97.890 is amended to read:

97.890. (1) Upon the adoption of the resolution described in ORS 97.880 the officers of the cemetery [*association*] **authority** may file a complaint in the circuit court for the county in which the cemetery is located against the owners, holders or parties interested in such abandoned portion of its cemetery demanding that the court require such owners, holders or interested parties to keep the premises clear of weeds and brush and in condition in harmony with other lots and, if the owners, holders, or interested parties fail to appear in court and comply with the order of the court, demanding that the court make a judgment declaring such portions of the cemetery a common nuisance, directing the governing board to abate the nuisance by clearing the premises and keeping them clear of weeds and brush, creating a lien upon such lots and parcels in favor of the cemetery [*association or other proprietor*] **authority**, providing that the lien be foreclosed and the lots and parcels be sold in the same manner as other sales upon execution are made and authorizing the governing board to become a purchaser thereof on behalf of the [*association or the proprietor*] **cemetery authority**.

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

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

(4) In addition to the names of the persons that appear on the records of the cemetery [*association*] **authority** as the record owners of such unused and unimproved portions of the cemetery, the plaintiff shall include as a defendant in a complaint the following: "Also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint."

SECTION 11. ORS 97.900 is amended to read:

97.900. (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*] **authority**, and "also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint," together with a brief description of the lot, or subdivisions of lots, pieces or parcels of the cemetery and a statement setting forth the order and judgment described in ORS 97.890 (1) for which the plaintiff has applied to the court in the complaint. Such summons shall re-

quire 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] **authority** to abate the nuisance, creating a lien thereon, providing that it be foreclosed and directing that the unused and unimproved portion of the cemetery be sold within four weeks from and after the date of the first publication thereof.

SECTION 12. ORS 97.923 is amended to read:

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

(1) “Beneficiary” means the person, if known, who is to receive the funeral and cemetery merchandise, funeral and cemetery services or completed interment[, *entombment or cremation*] spaces.

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

(3) “Delivery” occurs when:

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

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

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

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

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

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

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

[(7)] “*Funeral and cemetery services*” includes *all services customarily performed.*]

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

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

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

[(8)] (6) “Guaranteed contract” means a written preconstruction sales contract or prearrangement sales contract that guarantees the beneficiary the specific undeveloped space or spaces or funeral and cemetery merchandise or funeral and cemetery services contained in the contract and under which no charges other than the sales price contained in the contract shall be required upon delivery or performance of the funeral [and] **or** cemetery **merchandise or** services.

[(9)] (7) “Master trustee” means an entity [appointed by a certified provider to administer moneys received from the certified provider under ORS 97.941 who acts independently from any certified provider and who] **that** is not [also] a certified provider under ORS 97.923 to 97.949 **and that has fiduciary responsibility for the uniform administration of funds including, but not limited to, acceptance, custodianship, investment and accounting, delivered to it by a certified provider for the benefit of purchasers of preconstruction sales contracts or prearrangement sales contracts.** “Master trustee” does not include a financial institution, as defined in ORS 706.008, that acts solely as a depository under ORS 97.923 to 97.949.

[(10)] (8) “Nonguaranteed contract” means a written preconstruction sales contract or prearrangement sales contract that guarantees the beneficiary the specific undeveloped space or spaces or funeral [and] **or** cemetery merchandise or [*funeral and cemetery*] services contained in the con-

tract [and under which additional charges other than the sales price contained in the contract may be required at the time of delivery or performance of the funeral and cemetery services], **when the price of the merchandise and services selected has not been fixed and will be determined by existing prices at the time the merchandise and services are delivered or provided.**

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

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

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

[(13)] **(11)** “Provider” means any entity that sells and offers for sale funeral [and] **or** cemetery merchandise or [funeral and cemetery] services.

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

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

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

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

[(18)] **(16)** “Undeveloped interment[, entombment or cremation] spaces” or “undeveloped spaces” means any space to be used for the reception of human remains that is not completely constructed or developed at the time of initial payment.

SECTION 13. ORS 97.925 is amended to read:

97.925. It is the purpose of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 to assure funds for performance to those purchasers who contract through prearrangement sales contracts for the purchase of funeral [and] **or** cemetery merchandise [and funeral and cemetery] **or** services, and through preconstruction sales contracts for undeveloped interment[, entombment or cremation] spaces. It is also the purpose of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 to provide for the certification or registration of persons selling or offering for sale prearrangement sales contracts and preconstruction sales contracts, the creation and administration of prearrangement sales contract and preconstruction sales contract trust funds, the disbursement and allocation of trust funds upon the certified provider’s performance of its contractual obligations and to provide protection for the purchaser upon the certified provider’s default.

SECTION 14. ORS 97.927 is amended to read:

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

- (2) ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 do not apply to:
- (a) Agreements to sell or sales made by endowment care cemeteries under ORS 97.929; or
 - (b) Any nonprofit memorial society charging less than a \$100 membership fee.
- (3) Notwithstanding subsection (2) of this section, ORS 97.937 applies to:**
- (a) Agreements to sell or sales made by endowment care cemeteries under ORS 97.929;**

or

- (b) Any nonprofit memorial society charging less than a \$100 membership fee.**

SECTION 15. ORS 97.933 is amended to read:

97.933. (1) A provider may not engage in prearrangement sales or preconstruction sales unless the provider is certified by the Director of the Department of Consumer and Business Services. The director shall:

- (a) Establish procedures for issuing certificates required by this section.
- (b) Establish standards for determining whether a certificate should be issued.
- (c) Set certification and renewal fees.
- (d) Require annual renewal of certification.
- (e) Establish standards for rules of conduct of certified providers.

(2) The fees described in this section shall be reasonable and shall defray the costs associated with the administration of ORS 97.923 to 97.949.

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

(A) A disclosure of changes in trust deposits;

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

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

(i) The location of the merchandise;

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

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

[(C)] **(D) The number of withdrawals from or terminations of any trusts.**

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

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

(4) The director may audit the records of a certified provider that relate to prearrangement sales or preconstruction sales, as the director may consider appropriate. The director may refer any matter outside of normal auditing procedures to the office of the Attorney General for investigation and send notification of the referral to the State Mortuary and Cemetery Board.

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

(6) A certificate issued to a provider is not transferable. A person that seeks to purchase or otherwise acquire control of a cemetery or funeral establishment that is a certified provider shall first apply to the director and obtain approval of the purchase or change in control.

(7) A certificate issued to a provider becomes inactive when the certificate is surrendered to the director. The director retains jurisdiction over the provider as long as trust funds

remain on deposit for prearrangement sales contracts or preconstruction sales contracts. While the certificate is inactive, the provider shall:

- (a) Cease all prearrangement sales to the public;**
- (b) Collect and deposit into trust all installment funds paid toward contracts sold prior to becoming inactive;**
- (c) Seek disbursal of trust funds only in accordance with the requirements of the written contracts and ORS 97.923 to 97.949 until the funds have been exhausted; and**
- (d) Continue to submit required annual reports and renewal fees until no trust funds remain on deposit.**

SECTION 16. ORS 97.935 is amended to read:

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

- (a) Establish procedures for registering persons under this section.
 - (b) Establish standards for master trustees.
 - (c) Set registration and renewal fees.
 - (d) Establish standards for rules of conduct of master trustees.
- (2)(a) Every master trustee shall file an annual report with the director on forms provided by the director. The annual report shall contain any information reasonably considered necessary by the director, including but not limited to:
- (A) A disclosure of changes in trust deposits; and
 - (B) A list of all certified providers for which the master trustee holds funds and the total amount of funds held for each certified provider.
- (b) The director may take appropriate action under ORS 97.948 and 97.949 if a master trustee fails to file the annual report or the report contains any material discrepancy.
- (c) The director may relieve a master trustee of the duty to file the annual report upon a determination that the master trustee has performed all obligations under the trust agreement with each certified provider, or that the master trustee's obligations have been lawfully assumed by another person or have been discharged or canceled.
- (3) The director may conduct an annual audit of a master trustee. The director shall prescribe the form of audits under this section.
- (4) A master trustee who is audited under this section shall pay all expenses and costs incurred by the director in conducting the audit.
- [(5) The director shall adopt rules necessary to administer this section. The rules shall identify the specific trust provisions that are the subject of an audit conducted under this section.]*

SECTION 17. ORS 97.937 is amended to read:

- 97.937. (1) This section applies to trust deposits required to be made by endowment care cemeteries under ORS 97.929.
- (2) As used in this section, "common trust account" means trust funds received by a provider from two or more purchasers.
- (3) All such trust funds shall be deposited by the provider with a financial institution in the State of Oregon carrying deposit insurance, within 15 days after receipt thereof. A trust fund shall be held in a separate account in the name of the provider followed by the words "funeral plan trust account," in trust for the person for whom such prearranged funeral plan is made, or in a common trust account in the name of the provider in trust for each person for whom such prearranged funeral plan is made, until a trust fund is released under any of the following conditions:
- (a) Upon presentation of proof of the death of the person for whom a prearranged funeral plan is made, the financial institution shall release *[such trust fund]* **the principal and accrued income allocable to that person's account** to the provider.
 - (b) Upon presentation of the written request of the purchaser of a revocable trust, the financial institution shall release *[such trust fund]* **the principal and accrued income allocable to the purchaser's account** as directed in such request.

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

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

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

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

(6) The financial institution [*shall in no way be*] **is not** responsible for the fulfillment of any prearranged funeral plan, excepting only such financial institution shall release a trust fund as provided in this section.

(7) The director may appoint a successor provider upon a determination that the original provider has ceased to provide the kinds of services and things which the original provider agreed to provide, that the purchaser or the purchaser's legal representative cannot be readily identified or contacted and that the appointment of a successor provider is appropriate in order to protect the interests of the trust beneficiaries. Financial institutions holding deposits of such trust funds shall change their records to reflect such appointment of a successor provider upon receipt of written notice of the appointment from the director. Where the director proposes to take such action under this subsection, the provider being replaced shall be accorded notice and an opportunity for hearing as provided in ORS chapter 183.

SECTION 18. ORS 97.939 is amended to read:

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

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

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

(3) Each completed contract shall:

- (a) Comply with the plain language standards described in ORS 180.545 (1);
- (b) Be consecutively numbered;
- (c) Have a corresponding consecutively numbered receipt;
- (d) Be preprinted or, if the certified provider uses a master trustee, be obtained from the master trustee;
- (e) Identify the purchaser and certified provider who sold the contract;
- (f) Specify whether the contract is a guaranteed contract or a nonguaranteed contract;
- (g) Specify the specific funeral [*and*] **or** cemetery merchandise[, *funeral and cemetery*] **or** services or undeveloped interment[, *entombment or cremation*] spaces included and not included in the contract; and
- (h) If a guaranteed contract, disclose that the certified provider may retain 10 percent of the sales price.

(4)(a) Notwithstanding ORS 97.943 (8), in the case of a prearrangement sales contract, if at the time of [*completion of*] **entering into** the contract, the beneficiary of the contract is a recipient of

public assistance or reasonably anticipates becoming a recipient of public assistance, the contract may provide that the contract is irrevocable.

(b) The contract may provide for an election by the beneficiary, or by the purchaser on behalf of the beneficiary, to make the contract thereafter irrevocable if after the contract is entered into, the beneficiary becomes eligible or seeks to become eligible for public assistance.

SECTION 19. ORS 97.941 is amended to read:

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

(a) Ninety percent of the amount received in payment of a guaranteed prearrangement sales contract or guaranteed preconstruction sales contract. The remaining 10 percent shall be paid to the provider who sold the contract; or

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

(2) All trust deposits required by ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 shall be [made] **placed in a depository or delivered to a master trustee** within five business days of their receipt.

(3)(a) **The** trust deposits [required under ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 shall be placed in a depository as defined in ORS 97.923. The trust deposits] **of a provider that does not use the services of a master trustee** shall be maintained in a depository, except that the provider [of a prearrangement sales contract or preconstruction sales contract] may invest the trust funds in a manner that is, in the opinion of the provider, reasonable and prudent under the circumstances[, provided that all investments are].

(b) A provider that invests trust funds may invest the funds only in:

(A) Certificates of deposit[,];

(B) U.S. Treasuries[,];

(C) Issues of U.S. government agencies[,];

(D) Guaranteed investment contracts[,]; **or**

(E) Banker's acceptances or corporate bonds rated A or better by Standard & Poor's Corporation or Moody's Investors Service[, and provided that]

(c) All investments **made under paragraph (b) of this subsection** shall be placed in the custody of the depository in which the trust funds were originally deposited or any other depository that may qualify under ORS 97.923 to 97.949.

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

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

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

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

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

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

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

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

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

(A) The original certified provider has ceased to provide the services and merchandise that the original certified provider agreed to provide;

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

(C) The appointment of a successor certified provider is appropriate in order to protect the interests of the purchasers and beneficiaries of prearrangement sales contracts or pre-construction sales contracts.

(b) Depositories or master trustees holding deposits of trust funds by the original certified provider shall change their records to reflect the appointment of a successor certified provider upon receipt of written notice of the appointment from the director.

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

[(10)(a)] **(11)(a)** If the original provider is licensed under ORS chapter 692 and voluntarily surrenders the license to the State Mortuary and Cemetery Board, the original provider shall transfer responsibility as provider under this section to a successor provider who holds a certificate issued by the director under ORS 97.933.

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

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

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

[(12)] **(13)** A provider who has not appointed a master trustee shall have an annual audit of all trust account funds performed by an independent certified public accountant in accordance with generally accepted [*audit*] **accounting** procedures. The provider shall make the audit results available to the director if requested.

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

SECTION 20. ORS 97.943 is amended to read:

97.943. (1) A depository [*shall make no*] **may not make any** distributions from prearrangement sales contract trust deposits except as provided in this section.

(2) The principal of a trust created pursuant to a prearrangement sales contract shall be paid to the certified provider who sold the contract if the certified provider who sold the contract swears, by affidavit, that the certified provider has delivered all merchandise and performed all services required under the prearrangement sales contract and delivers to the depository one of the following:

- (a) A certified death certificate of the beneficiary; or
- (b) A sworn affidavit signed by the certified provider and by:
 - (A) One member of the beneficiary's family; or
 - (B) The executor of the beneficiary's estate.

(3) The principal of a trust created pursuant to a prearrangement sales contract shall be paid to the purchaser if the original provider is no longer qualified to serve as provider under ORS 97.941 (10).

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

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

- (a) The certified provider who sold the contract if the contract is a guaranteed contract; or
- (b) The contract purchaser, or the purchaser's estate, if the contract is a nonguaranteed contract.

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

(7) If for any reason a certified provider who sold the prearrangement sales contract has refused to comply, or cannot or does not comply with the terms of the prearrangement sales contract within a reasonable time after the certified provider is required to do so, the purchaser or heirs or assigns or duly authorized representative of the purchaser or the beneficiary shall have the right to a refund in the amount equal to the sales price paid for undelivered merchandise and unperformed services plus undistributed earnings amounts held in trust attributable to such contract, within 30 days of the filing of a sworn affidavit with the certified provider who sold the contract and the depository setting forth the existence of the contract and the fact of breach. A copy of this affidavit shall be filed with the Director of the Department of Consumer and Business Services. In the event a certified provider who has sold a prearrangement sales contract is prevented from performing by strike, shortage of materials, civil disorder, natural disaster or any like occurrence beyond the control of the certified provider, the certified provider's time for performance shall be extended by the length of such delay.

(8) **Except for an irrevocable contract described in ORS 97.939 (4)**, at any time prior to the death of the beneficiary of a prearrangement sales contract, the purchaser of the prearrangement sales contract may cancel the contract and shall be entitled to a **refund of all amounts paid on the contract, all amounts in trust including earnings allocated to the contract that are in excess of all amounts paid on the contract and unallocated earnings on trust contract amounts from the date of the last allocation to the date of the refund request, less any amounts paid for merchandise already delivered or services already performed, which amounts may be retained by the certified provider as compensation.** *[100 percent refund of the entire amount paid on the contract including undistributed earnings attributable to such amount, but excluding any amount paid for merchandise already delivered, which amount shall be retained by the certified provider who sold the contract as liquidated damages.]*

(9) Notwithstanding ORS 97.941 (4) and subsection (5) of this section, upon receiving a sworn affidavit from the **master trustee or** provider stating that qualifying expenses, taxes or fees have been incurred, a depository shall allow a **master trustee or** provider to pay from earnings of trust fund deposits any expenses, accounting fees, taxes, depository fees, investment manager fees and other fees as may be necessary to enable the provider to comply with the reporting required by ORS

97.923 to 97.949, and to perform other services for the trust as may be authorized by ORS 97.923 to 97.949. Any payment of expenses or fees from earnings of a trust fund deposit under this subsection shall not:

(a) Exceed an amount equal to two percent per calendar year of the value of the trust as determined on the first day of January of each calendar year;

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

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

SECTION 21. ORS 97.944 is amended to read:

97.944. (1) A depository [*shall make no*] **may not make any** distributions from preconstruction sales contract trust deposits except as provided in this section.

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

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

(c) If construction or development is not commenced or completed within the times specified, any contract purchaser may surrender and cancel the contract and upon cancellation shall be entitled to a refund of the actual amounts paid toward the purchase price, **together with interest accrued on the amount deposited to the trust.** [*However, any delay caused by strike, shortage of materials, civil disorder, natural disaster or any like occurrence beyond the control of the certified provider shall extend the time of such completion by the length of such delay.*]

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

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

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

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

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

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

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

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

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

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

SECTION 22. Sections 23, 24 and 25 of this 2007 Act are added to and made a part of ORS 97.923 to 97.949.

SECTION 23. (1) In addition to other actions authorized under ORS 97.948 (2), the Director of the Department of Consumer and Business Services may:

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

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

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

(3) Emergency orders are:

(a) Effective when issued;

(b) Reviewable as provided in ORS 183.480; and

(c) Enforceable in the courts of this state.

SECTION 24. (1) The Attorney General, on behalf of the Director of the Department of Consumer and Business Services, may petition the circuit courts of this state for appointment of a receiver for a certified provider or person acting as a certified provider without certification.

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

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

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

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

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

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

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

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

(c) The director may expend money from budgeted funds or the Funeral and Cemetery Consumer Protection Trust Fund to implement a receivership. Any expenditures are a claim against the estate in the receivership proceedings.

SECTION 25. The Director of the Department of Consumer and Business Services may adopt rules that are necessary or appropriate to:

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

(2) Administer ORS 97.923 to 97.949.

SECTION 26. ORS 65.860 is amended to read:

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

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund, the bank or trust company shall be governed by ORS 130.750 to 130.775 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Director of the Department of Consumer and Business Services on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 [(3)] (4) regarding endowment care funds. The director may require the corporation to file, as often as the director considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

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

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

as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

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

SECTION 27. ORS 646.551 is amended to read:

646.551. As used in ORS 646.551 to 646.557, unless the context requires otherwise:

(1) "Telephonic seller" means a person who, on the person's own behalf, or on behalf of another person, causes or attempts to cause a telephone solicitation to be made under the following circumstances:

(a) The person initiates telephonic contact with a prospective purchaser and represents or implies any of the following:

(A) That a prospective purchaser who buys one or more goods or services unit will receive additional units, whether or not of the same type as purchased, without further cost. As used in this subparagraph, "further cost" does not include actual postage or common carrier delivery charges, if any;

(B) That a prospective purchaser will receive a prize or gift if the person also encourages the prospective purchaser to do either of the following:

(i) Purchase or rent any goods or services; or

(ii) Pay any money, including, but not limited to a delivery or handling charge;

(C) That a prospective purchaser who buys goods or services, because of some unusual event or imminent price increase, will be able to buy these items at prices which are below those usually charged or will be charged for those items;

(D) That the seller is a person other than the actual seller;

(E) That the items for sale or rent are manufactured or supplied by a person other than the actual manufacturer or supplier; or

(F) That the items for sale are gold, silver or other precious metals, diamonds, rubies, sapphires or other precious stones or any interest in oil, gas or mineral fields, wells or exploration sites; or

(b) The telephone solicitation is made by the person in response to inquiries from prospective purchasers generated by advertisement, on behalf of the person and the solicitation is conducted as described in paragraph (a) of this subsection.

(2) "Telephonic seller" does not include any of the following:

(a) A person selling a security as defined in ORS 59.015, or securities which are exempt under ORS 59.025.

(b) A person licensed pursuant to ORS chapter 696 when the transaction is governed by that chapter.

(c) A person licensed pursuant to ORS 701.055 when the solicited transaction is governed by ORS chapter 701.

(d) A person licensed pursuant to ORS chapter 744 when the solicited transaction is governed by the Insurance Code.

(e) A person soliciting the sale of a franchise when the solicited transaction is governed by ORS 650.005 to 650.100.

(f) A person primarily soliciting the sale of a subscription to or advertising in a newspaper of general circulation.

(g) A person primarily soliciting the sale of a magazine or periodical, or contractual plans, including book or record clubs:

(A) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise, and which is regulated by the Federal Trade

Commission trade regulation concerning “Use of Negative Option Plans by Sellers in Commerce”;
or

(B) Using arrangements such as continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

(h) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

(i) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sale presentation at a later face-to-face meeting between the solicitor and the prospective purchaser, unless at that later meeting the solicitor collects or attempts to collect payment for delivery of items purchased.

(j) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this paragraph, “supervised financial institution” means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or the United States.

(k) A person soliciting the sale of funeral or burial services regulated [by ORS 59.670 and 59.680 or] by ORS chapter 692.

(L) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit issued by a governmental agency of this state, or subdivision thereof.

(m) A person or affiliate of a person whose business is regulated by the Public Utility Commission, or a telecommunications utility with access lines of 15,000 or less or a cooperative telephone association.

(n) A person soliciting the sale of a farm product, as defined in ORS 79.0102, if the solicitation does not result in a sale which costs the purchaser in excess of \$100.

(o) An issuer or a subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) of subsection (g) of that section.

(p) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person’s employer.

(q) A person registered under the Charitable Solicitations Act.

SECTION 28. ORS 59.660, 59.670, 59.680, 59.690 and 59.700 are repealed.

Passed by House May 8, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 6, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State