

B-Engrossed
Senate Bill 796

Ordered by the House June 16
Including Senate Amendments dated May 8 and House Amendments dated
June 16

Sponsored by Senator WALKER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires death care consultants to be licensed by State Mortuary and Cemetery Board.

Requires facilities for final disposition of human remains, other than cemeteries and crematoriums, to obtain certificate of authority from board.

Modifies procedures by which licensed funeral practitioner disposes of unclaimed body of deceased person, including procedures by which funeral practitioner transfers body to certain institutions for educational or research purposes.

Directs board to establish rules promoting environmentally sound death care practices and requires funeral service practitioners to dispose of unclaimed remains of indigent deceased persons in environmentally sound manner.

Imposes requirements relating to burials on private lands.

Expands definition of "cemetery" to include scattering gardens and **certain** cenotaphs.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to death care; creating new provisions; amending ORS 97.010, 97.170, 97.460, 432.312,
3 692.010, 692.025, 692.040, 692.160, 692.180, 692.260, 692.275, 692.320 and 692.375; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 692.010 is amended to read:

7 692.010. As used in this chapter:

8 (1) "Board" means the State Mortuary and Cemetery Board.

9 (2) "Cemetery" means any one, or a combination of more than one, of the following, in a place
10 used, or intended to be used, and dedicated, for cemetery purposes:

11 (a) A burial park, for earth interments;

12 (b) A mausoleum, for crypt interments; [*or*]

13 (c) A columbarium, for permanent cinerary interments[.];

14 **(d) A scattering garden or other designated area above or below ground where a person**
15 **may pay to establish a memorial of cremated remains; or**

16 **(e) A cenotaph, the primary purpose of which is to provide an area where a person may**
17 **pay to establish a memorial to honor a person whose remains may be interred elsewhere or**
18 **whose remains cannot be recovered.**

19 (3) "Exempt operating cemetery" means an operating cemetery that has 10 or fewer interments
20 annually.

21 **(4) "Final disposition" means the burial, interment, cremation, dissolution or other dis-**
22 **position of human remains authorized by the board by rule.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 [(4)] (5) “Holding room” means a room that is located in a licensed facility for the care, storage
2 or holding of dead human bodies prior to effecting disposition.

3 [(5) “Immediate disposition” means a direct method of disposition of dead human remains by way
4 of immediate burial or immediate cremation.]

5 (6) “Immediate disposition company” means any business licensed under this chapter, other than
6 a licensed funeral establishment, where a licensed funeral service practitioner operates the business
7 of immediate **final** disposition and where business records are kept.

8 (7) “Operating cemetery” means a cemetery that:

9 (a) Performs interments;

10 (b) Has fiduciary responsibility for endowment care, general care or special care funds; or

11 (c) Has outstanding preneed service contracts for unperformed services.

12 (8) “Rental cover” means a partial enclosure that appears similar to a casket that is utilized for
13 viewing purposes and surrounds the burial or cremation container.

14 **SECTION 2.** ORS 692.025 is amended to read:

15 692.025. (1) An individual may not practice as a funeral service practitioner unless the individual
16 is licensed as a funeral service practitioner under ORS 692.045. **Regardless of any title used by**
17 **the individual**, an individual practices as a funeral service practitioner if the individual [*for pay-*
18 *ment*] is engaged directly or indirectly in **offering funeral services for payment or** supervising or
19 otherwise controlling the transportation, care, preparation, processing and handling of dead human
20 bodies before the bodies undergo [*cremation, entombment or burial*] **final disposition**, or before the
21 bodies are transported out of the State of Oregon.

22 (2) An individual may not practice as an embalmer unless the individual is licensed as an
23 embalmer under ORS 692.105. **Regardless of any title used by the individual**, an individual prac-
24 tices as an embalmer if the individual is engaged or purports to be engaged in either of the follow-
25 ing:

26 (a) The practice of disinfecting or preserving from decay dead human bodies.

27 (b) Preparing human bodies dead of contagious or infectious disease for transportation by rail-
28 road, express company or common carrier.

29 **(3) An individual may not practice as a death care consultant unless the individual is li-**
30 **censed as a death care consultant under section 4 of this 2009 Act. Regardless of any title**
31 **used by the individual, an individual practices as a death care consultant if the individual**
32 **offers, for payment, consultations directly relating to the performance of funeral or final**
33 **disposition services.**

34 [(3)] (4) A person may not operate a funeral establishment unless the establishment meets the
35 requirements under this subsection. A place is a funeral establishment if the place is **customarily**
36 used for the care [*and*], preparation **or viewing** of dead human bodies before the bodies undergo
37 [*cremation, entombment or burial*] **final disposition**, or before the bodies are transported out of the
38 State of Oregon. A funeral establishment must:

39 (a) Be licensed by the State Mortuary and Cemetery Board under ORS 692.146;

40 (b) Be operated by a funeral service practitioner;

41 (c) Have on the premises embalming facilities or holding room facilities meeting requirements
42 established by the board; and

43 (d) Have access to hospital or mortuary refrigeration.

44 [(4)] (5) A person may not operate an immediate disposition company unless the immediate dis-
45 position company meets the requirements under this subsection. An immediate disposition company

1 must:

2 (a) Be licensed at a fixed location under ORS 692.146; and

3 (b) Be operated by a licensed funeral service practitioner.

4 [(5)] (6) [No] A person or city, county or other municipal corporation [shall] **may not** conduct
5 the business of an operating cemetery without first receiving a certificate of authority to conduct
6 the business of an operating cemetery under ORS 692.275.

7 [(6)] (7) A person may not operate a crematorium unless the crematorium meets the require-
8 ments of ORS 692.275.

9 [(7)] (8) [All applicants for licenses, certificates, or licensees under this section and all principals
10 of any] **An applicant for a license or certificate described in this section and a principal of a**
11 **licensed establishment described in this section** must consent to a background check, including
12 information solicited from the Department of State Police.

13 **SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS chapter 692.**

14 **SECTION 4. The State Mortuary and Cemetery Board shall issue a license to an individ-
15 ual to practice as a death care consultant if the individual:**

16 (1) **Applies to the board for a death care consultant license on an application form pro-
17 vided by the board;**

18 (2) **Passes an examination conducted by the board covering Oregon and federal laws and
19 rules relating to the care, preparation, disposition and transportation of dead human bodies;**

20 (3) **Pays fees required by the board by rule; and**

21 (4) **Meets other requirements established by the board by rule.**

22 **SECTION 5. ORS 692.275 is amended to read:**

23 692.275. (1) [The application for a certificate of authority to conduct the business of an operating
24 cemetery shall be made] **A person may not conduct the business of an operating cemetery un-
25 less the person has a certificate of authority to do so. A person may apply for a certificate
26 of authority** on a form provided by the State Mortuary and Cemetery Board. The application
27 [shall] **must** be accompanied by the application fee established under ORS 692.160. However, any
28 exempt operating cemetery is entitled to receive a certificate of authority to operate upon payment
29 of an initial fee not to exceed \$100 and a fee not to exceed \$50 for registration of all principals re-
30 gardless of the total number of principals. An exempt operating cemetery is not required to pay the
31 renewal fee or the fee for any change in principal other than the cemetery manager.

32 (2) A cemetery, other than an operating cemetery or a historic cemetery listed with the Oregon
33 Commission on Historic Cemeteries under ORS 97.782, [shall] **must** be registered with the board.
34 An owner of a cemetery, other than an operating cemetery or a historic cemetery listed with the
35 Oregon Commission on Historic Cemeteries under ORS 97.782, [shall] **must** register the cemetery
36 with the board on a form provided by the board. No fee [shall] **may** be required of a cemetery reg-
37 istrant.

38 (3) **A person may not operate a crematorium unless the person has a certificate of au-
39 thority to do so. A person may apply** [The person who plans to operate a crematorium shall apply
40 before operation] for a certificate of authority to operate a crematorium on a form provided by the
41 board. The application [shall] **must** be accompanied by the application fee established under ORS
42 692.160.

43 (4) For purposes of this section and ORS 692.025, each location of a cemetery or crematorium
44 is a separate location and must be licensed separately. Those cemeteries that are subject to regis-
45 tration [shall] **must** be registered separately.

1 (5) The *[recommendation of the Cremation Association of North America shall be used]* **board**
2 **may consider the recommendations of national associations related to cremation** in adopting
3 rules regulating crematoriums.

4 (6) **A person may not operate a facility for final disposition of human remains other than**
5 **a cemetery or a crematorium unless the person has a certificate of authority to do so. A**
6 **person may apply for a certificate of authority on a form provided by the board. The appli-**
7 **cation must be accompanied by an application fee established under ORS 692.160.**

8 [(6)] (7) This section applies to operating cemeteries or other cemeteries owned by any city,
9 county or other municipal corporation.

10 [(7)] (8) The board may not subject an exempt operating cemetery to random inspections.

11 **SECTION 6.** ORS 692.320 is amended to read:

12 692.320. (1) The State Mortuary and Cemetery Board *[has the power to]* **may** adopt and enforce
13 **rules** for the protection of the public health, safety and welfare *[reasonable rules]* relating to the
14 following:

15 (a) The licensing of **or issuance of certificates of authority for** funeral service practitioners,
16 embalmers, **death care consultants**, funeral establishments, crematoriums *[and]*, cemeteries **and**
17 **other facilities for final disposition of human remains.**

18 (b) The registration of apprentices.

19 (c) The practice of funeral service practitioners *[and]*, embalmers **and death care**
20 **consultants**, and the operation of funeral establishments, immediate disposition companies,
21 crematoriums *[and]*, cemeteries **and other facilities for final disposition of human remains.**

22 (d) Sanitary conditions of funeral establishments, crematoriums, cemeteries, **other facilities for**
23 **final disposition of human remains** and any location in which *[dead human bodies]* **human re-**
24 **remains** are stored or processed prior to final disposition.

25 (e) Matters necessary to carry out the provisions of this chapter.

26 (2) Other than areas used as living quarters, the board shall inspect not less than once
27 biennially the facilities and records of funeral establishments, cemeteries *[and]*, crematoriums and
28 immediate disposition companies, **other facilities for final disposition of human remains** and any
29 location in which *[dead human bodies]* **human remains** may be stored, temporarily held or pro-
30 cessed prior to final disposition. The inspection of the records of such locations *[shall be]* **is** limited
31 to those records required to comply with this chapter or ORS chapter 432 or rules adopted pursuant
32 thereto. The board may make random inspections at other times. The board shall employ one or
33 more persons to perform such inspections and aid in the enforcement of this chapter and rules
34 adopted thereunder. *[No]* **A** person employed under this subsection may **not** be a member of the
35 board or actively engaged in a practice regulated by this chapter.

36 (3) The board may hold hearings, conduct investigations, subpoena witnesses, administer oaths
37 and take testimony in order to carry out the provisions of this chapter.

38 (4) The board shall have a common seal and, subject to any applicable provision of the State
39 Personnel Relations Law, may employ necessary administrative staff, fix the compensation for them
40 and incur other necessary expenses.

41 **SECTION 7.** The State Mortuary and Cemetery Board shall adopt rules promoting envi-
42 **ronmentally sound death care practices.**

43 **SECTION 8.** ORS 97.170 is amended to read:

44 97.170. [(1) *Except as set forth in subsection (4) of this section, any licensed funeral service prac-*
45 *titioner having charge of the body of a deceased person thought to be an unclaimed indigent shall use*

1 *all reasonable diligence promptly to notify the relatives of the deceased person or any other person*
 2 *having an interest in the deceased person and shall arrange with any relative who claims the body or*
 3 *with any friend of the deceased person who will pay the expenses to make disposition of the body. If*
 4 *no one claims the body within five days after death, or if those notified acquiesce, the funeral service*
 5 *practitioner shall notify, by telephone, the Demonstrator of Anatomy of the Oregon Health and Science*
 6 *University. The Demonstrator of Anatomy, who shall be appointed by the Oregon Health and Science*
 7 *University Board of Directors from the staff of the Oregon Health and Science University, shall im-*
 8 *mediately inform the funeral service practitioner whether the body is deemed to be in fit condition and*
 9 *is desired for medical instruction or the advancement of medical science. If the body is desired for these*
 10 *purposes, the funeral service practitioner shall arrange for a licensed embalmer to make such prepa-*
 11 *ration as is necessary and shall, within 72 hours, deliver it to the Oregon Health and Science Univer-*
 12 *sity, or any other school or college within the State of Oregon qualifying applicants for examination*
 13 *in the fundamental sciences as required and specified in ORS 683.010 to 683.335 and ORS chapters*
 14 *676 to 681 and 684 to 686, as the Demonstrator of Anatomy directs. The expenses of embalming,*
 15 *transportation of the body to such school or college, filing fees and other related expenses shall be paid*
 16 *from the funds appropriated specifically for the purposes of this section. Such expenses shall not exceed*
 17 *the normal rates charged for such services to the general public.]*

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

21 **(1) As used in this section, “indigent person” means a deceased person who does not have**
 22 **a death or final expense benefit or insurance policy that pays for disposition of the deceased**
 23 **person’s body or other means to pay for disposition of the deceased person’s body and who**
 24 **has no relative or other person with the legal right to direct and the means to pay for dis-**
 25 **position of the deceased person’s body.**

26 **(2)(a) The Oregon Health and Science University shall appoint a Demonstrator of Anat-**
 27 **omy from the staff of the university.**

28 **(b) The Demonstrator of Anatomy shall maintain a list of institutions that may accept**
 29 **or process bodies for education or research purposes.**

30 **(3) A medical examiner as defined in ORS 146.003 or a health care facility as defined in**
 31 **ORS 442.015 that has charge of an unclaimed body of a deceased person shall promptly at-**
 32 **tempt to locate and notify the relatives of the deceased person or other persons who have**
 33 **an interest in the deceased person and shall arrange with any person who will pay the ex-**
 34 **penditures to make disposition of the body. If the medical examiner or health care facility cannot**
 35 **locate a person who will pay the expenses of disposition of the body, the medical examiner**
 36 **or health care facility may transfer the body to a licensed funeral service practitioner.**

37 **(4)(a) A licensed funeral service practitioner who takes custody of the unclaimed body**
 38 **of a deceased person shall promptly verify that a medical examiner or health care facility**
 39 **attempted to locate relatives and interested persons as provided in subsection (3) of this**
 40 **section.**

41 **(b) If a medical examiner or health care facility has not attempted to locate relatives and**
 42 **interested persons as provided in subsection (3) of this section, the funeral service practi-**
 43 **tioner shall, within five days after taking custody of the body, attempt to locate and notify**
 44 **relatives and interested persons and shall arrange with any person who will pay the expenses**
 45 **to make disposition of the body.**

1 (c) If no one claims the body within five days after the funeral service practitioner takes
 2 custody of the body, or if the persons notified acquiesce, the funeral service practitioner may
 3 transfer the body to an institution approved by the Demonstrator of Anatomy under sub-
 4 section (2) of this section that desires the body for education or research purposes. The fu-
 5 neral service practitioner shall arrange with an institution that desires the body to pay for
 6 care, preparation and transportation of the body to the institution.

7 [(3)] (d) [When the body of a deceased person is deemed in unfit condition by the Demonstrator of
 8 Anatomy and disposition does not take place as set forth in subsections (1) and (2) of this section, and
 9 no relatives, friends or interested persons claim the body after notification is attempted] If no relative,
 10 interested person or institution claims the body as provided in paragraphs (b) and (c) of this
 11 subsection, [then] the funeral service practitioner may [commence to] cremate or bury the body
 12 without the consent of persons listed in ORS 97.130 and is [furthermore] indemnified from any li-
 13 ability arising from having made such disposition. The method of disposition must be in the least
 14 costly and most environmentally sound manner that complies with law, and that does not conflict
 15 with known wishes of the deceased. [Reimbursement for costs of disposition shall be made as set forth
 16 in subsection (5) of this section.] If the deceased person is an indigent person, the Department
 17 of Human Services shall reimburse the funeral service practitioner for the costs of disposi-
 18 tion under subsection (6) of this section.

19 [(4)] (5) When the deceased person is a child over whom the department [of Human Services]
 20 held guardianship at the time of death, the department shall promptly attempt to locate and
 21 notify the relatives of the deceased child or any other person who has an interest in the
 22 deceased child and shall arrange with any person who will pay the expenses to make dispo-
 23 sition of the body. [and] If no relatives[, friends] or interested persons claim the body [after notifi-
 24 cation is attempted as set forth in subsection (1) of this section, the department may at its discretion
 25 notify the Demonstrator of Anatomy and proceed as set forth in subsection (1) of this section], the
 26 department may transfer the body to an institution that is on the list maintained by the
 27 Demonstrator of Anatomy under subsection (2) of this section that desires the body for ed-
 28 ucation or research purposes, or may authorize burial or cremation of the body. The department
 29 shall pay expenses related to burial or cremation authorized by the department under this sub-
 30 section [shall be borne by the department].

31 [(5)] (6) Upon receipt of an itemized statement of expenses and proof as required by the de-
 32 partment by rule that the deceased person is an indigent person, the department shall reim-
 33 burse [the] a funeral service practitioner [within 30 days] the reasonable costs for disposition of the
 34 body of any unclaimed deceased indigent person [who has insufficient assets and for whom no one
 35 takes responsibility]. The method of disposition must be in the least costly [manner and shall not
 36 exceed \$450 per disposition] and most environmentally sound manner that complies with law.
 37 The department may adopt rules establishing the process for reimbursement and setting the
 38 maximum amount that may be reimbursed to a funeral service practitioner under this sub-
 39 section.

40 **SECTION 9.** ORS 97.460 is amended to read:

41 97.460. (1) [No association, corporation, cemetery authority, or person shall after February 24,
 42 1903,] A person may not lay out, open up or use any property for cemetery or burial park
 43 purposes[, without the approval] unless the person:

44 (a) Is the owner of the property;

45 (b) Has the written consent of the planning commission of the county or city having jurisdic-

1 tion under ORS 92.042 or, if there is no such commission in such county or city, the governing body
2 of such county or city[.];

3 **(c) Agrees to maintain records of the disposition of human remains on the property as**
4 **required by the planning commission or governing body of the county or city having juris-**
5 **isdiction under ORS 92.042; and**

6 **(d) Agrees to disclose the disposition of human remains upon sale of the property. Failure**
7 **to disclose the disposition of human remains does not invalidate the sale of the property.**

8 **(2) A planning commission of a county or city or, if there is no planning commission in**
9 **a county or city, the governing body of the county or city, shall provide to the State**
10 **Mortuary and Cemetery Board a list of the requirements for laying out, opening up or using**
11 **property in the county or city for cemetery or burial park purposes.**

12 **SECTION 10.** ORS 97.010 is amended to read:

13 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
14 to 97.949, 97.990 and 97.994:

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

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

18 (3) "Burial right" means the right to use a grave, mausoleum, columbarium, ossuary or scatter-
19 ing garden for the interment or other disposition of human remains.

20 (4) "Cemetery" means a place:

21 (a) Dedicated to and used, or intended to be used, for *[the]* a permanent **memorial or the per-**
22 **manent** interment of human remains; and

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

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

30 (6) "Cemetery authority" means a person who owns or controls cemetery lands or property, in-
31 cluding but not limited to a cemetery corporation, association or corporation sole.

32 (7) "Cemetery business" and "cemetery purpose" are used interchangeably and mean any busi-
33 ness or purpose requisite or incident to, or necessary for establishing, maintaining, operating, im-
34 proving or conducting a cemetery, interring human remains, and the care, preservation and
35 embellishment of cemetery property.

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

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

41 **(10) "Cenotaph" means a place, the primary purpose of which is to provide an area where**
42 **a person may pay to establish a memorial to honor a person whose remains may be interred**
43 **elsewhere or whose remains cannot be recovered.**

44 *[(10)]* (11) "Columbarium" means a structure or room containing receptacles for permanent
45 inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery

1 purposes.

2 [(11)] (12) "Cremated remains" means the remains of a cremated human body after completion
3 of the cremation process.

4 [(12)] (13) "Cremation" means the technical process, using direct flame and heat, that reduces
5 human remains to bone fragments.

6 [(13)] (14) "Crematory" means a structure containing a retort for the reduction of bodies of de-
7 ceased persons to cremated remains.

8 [(14)] (15) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended
9 to be used, to entomb uncremated human remains.

10 [(15)] (16) "Directors" or "governing body" means the board of directors, board of trustees or
11 other governing body of a cemetery association.

12 [(16)] (17) "Endowment care" means the general care and maintenance of developed portions of
13 a cemetery and memorials erected thereon financed from the income of a trust fund.

14 [(17)] (18) "Entombment" means the placement of human remains in a crypt or vault.

15 [(18)] (19) "Funeral merchandise" means personal property offered for sale or sold for use in
16 connection with funeral services. "Funeral merchandise" includes, but is not limited to, acknowl-
17 edgment cards, alternative containers, caskets, clothing, cremation containers, cremation interment
18 containers, flowers, memory folders, monuments, outer burial containers, prayer cards, register
19 books and urns.

20 [(19)] (20) "Funeral services" means services customarily provided by a funeral service practi-
21 tioner including, but not limited to, care and preparation of human remains for final disposition,
22 professional services relating to a funeral or an alternative to a funeral, transportation of human
23 remains, limousine services, use of facilities or equipment for viewing human remains, visitation,
24 memorial services or services that are used in connection with a funeral or alternative to a funeral,
25 coordinating or conducting funeral rites or ceremonies, and other services provided in connection
26 with a funeral, alternative to a funeral or final disposition of human remains.

27 [(20)] (21) "Grave" means a space of ground in a burial park used, or intended to be used, for
28 burial of the remains of one person.

29 [(21)] (22) "Human remains" or "remains" means the body of a deceased person in any stage of
30 decomposition or after cremation.

31 [(22)] (23) "Interment" means the disposition of human remains by inurnment, entombment or
32 burial.

33 [(23)] (24) "Inurnment" means the placement of cremated remains in a receptacle and the deposit
34 of the receptacle in a niche.

35 [(24)] (25) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more in-
36 dividuals, an association or fraternal or other organization and used, or intended to be used, for the
37 permanent interment therein of the remains of one or more deceased persons. Such terms include
38 and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

39 [(25)] (26) "Mausoleum" means a structure substantially exposed above ground for the
40 entombment of human remains in crypts or vaults in a place used, or intended to be used, and ded-
41 icated for cemetery purposes.

42 [(26)] (27) "Memorial" means a product, other than a mausoleum or columbarium, used for
43 identifying an interment space or for commemoration of the life, deeds or career of a decedent in-
44 cluding, but not limited to, an ossuary, monument, marker, niche plate, urn garden plaque, crypt
45 plate, cenotaph, marker bench or vase.

1 [(27)] (28) “Niche” means a recess usually in a columbarium used, or intended to be used, for
2 the inurnment of the cremated remains of one or more persons.

3 [(28)] (29) “Ossuary” means a receptacle used for the communal placement of cremated remains
4 without benefit of an urn or any other container in which cremated remains may be commingled
5 with other cremated remains and are nonrecoverable.

6 [(29)] (30) “Plot owner” or “owner” means any person identified in the records of the cemetery
7 authority as owner of the burial rights to a burial plot, or who holds a certificate of ownership
8 conveyed from the cemetery authority of the burial rights in a particular lot, plot or space.

9 [(30)] (31) “Scattering” means the lawful dispersion of cremated remains that need not be asso-
10 ciated with an interment right or issuance of a deed, that may be recorded only as a service that
11 has taken place and may not be recorded on the permanent records of the cemetery authority.

12 [(31)] (32) “Scattering garden” means a location set aside within a cemetery that is used for the
13 spreading or broadcasting of cremated remains that have been removed from their container and can
14 be mixed with or placed on top of the soil or ground cover or buried in an underground receptacle
15 on a commingled basis and that are nonrecoverable.

16 [(32)] (33) “Special care” means any care in excess of endowed care in accordance with the
17 specific directions of a donor of funds.

18 **SECTION 11.** ORS 692.040 is amended to read:

19 692.040. This chapter does not apply to any of the following:

20 (1) A public institution, medical college, county medical society, anatomical association, college
21 of embalming[, or any officer thereof, or to any other recognized person carrying out the statutes of the
22 State of Oregon prescribing the conditions under which indigent dead human bodies are held subject
23 for scientific or anatomical study.] **or institution approved by the Demonstrator of Anatomy to**
24 **accept bodies for education or research purposes under ORS 97.170.**

25 (2) The customs or rites of any religious sect except as to the burial or other disposition of their
26 dead.

27 (3) A person who picks up dead human bodies under the direction of a **licensed** funeral service
28 practitioner for delivery to a **licensed** funeral service practitioner, **a licensed** funeral establishment,
29 **an authorized** cemetery [or], **an authorized** crematorium **or another authorized facility for final**
30 **disposition of human remains** pursuant to an agreement with the funeral service practitioner, if
31 the person is not otherwise engaged in any of the activities of a funeral service practitioner, an
32 embalmer, a funeral establishment, **a death care consultant**, a cemetery or a crematorium as de-
33 scribed in ORS 692.025 **or another authorized facility for final disposition of human remains**
34 **as described in ORS 692.275.**

35 (4) A person who picks up dead human bodies under the direction of a licensed funeral service
36 practitioner employed by a funeral establishment registered under ORS 692.270 for transportation
37 out of the state or for delivery **out of the state** to a funeral service practitioner, funeral estab-
38 lishment, cemetery or crematorium pursuant to an agreement with the funeral service practitioner,
39 if the person is not otherwise engaged in any of the activities of a funeral service practitioner, an
40 embalmer, a funeral establishment, **a death care consultant**, a cemetery or a crematorium as de-
41 scribed in ORS 692.025 **or another authorized facility for final disposition of human remains**
42 **as described in ORS 692.275.**

43 **SECTION 12.** ORS 692.160 is amended to read:

44 692.160. (1) The fees that may be charged under this chapter are:

45 (a) A fee covering requests for applications for a **funeral service practitioner license, an**

1 **embalmer license, a death care consultant license, a funeral establishment license, an immediate**
 2 **disposition company license, a certificate of authority for a cemetery, a certificate of authority for**
 3 **a crematorium, a certificate of authority for any other facility for final disposition of human**
 4 **remains, registration as a funeral service practitioner apprentice, registration as an embalmer ap-**
 5 **prentice, a certificate of removal registration, a license as a reciprocal funeral service practitioner**
 6 **or a license as a reciprocal embalmer. The application fee shall be accompanied by an additional fee**
 7 **for each principal of a funeral establishment, immediate disposition company, cemetery, [or]**
 8 **crematorium or other facility for final disposition of human remains.**

9 (b) A fee covering the renewal of a license for a funeral establishment, a license for an imme-
 10 diate disposition company, [or] a certificate of authority for a crematorium **or a certificate of au-**
 11 **thority for any other facility for final disposition of human remains.**

12 (c) A fee covering the renewal of a funeral service practitioner license [or], an embalmer license
 13 **or a death care consultant license.**

14 (d) A fee for renewal of a combination funeral service practitioner and embalmer license.

15 (e) A fee for renewal of the registration of a funeral service practitioner apprentice or an
 16 embalmer apprentice.

17 (f) An examination fee for a funeral service practitioner license [or], an embalmer license **or a**
 18 **death care consultant license.**

19 (g) A fee covering the renewal of a certificate of authority for a cemetery.

20 (h) A fee covering the reinstatement of a lapsed license or certificate of authority.

21 (i) A fee for reissuing a license, registration or certificate of authority as provided in ORS
 22 692.148.

23 (j) Fees for copying any public record maintained by the State Mortuary and Cemetery Board,
 24 for documents distributed by the board and postage for mailing any copies or documents.

25 (2) All licenses granted under this chapter to funeral service practitioners [and], embalmers **and**
 26 **death care consultants [shall]** expire on January 1 in even-numbered years or on such date as may
 27 be specified by rule of the State Mortuary and Cemetery Board. All licenses or certificates of au-
 28 thority granted under this chapter to operators of funeral establishments, to operators of immediate
 29 disposition companies, to operators of cemeteries, [or] to operators of crematoriums [shall] **or to**
 30 **operators of other facilities for final disposition of human remains** expire on January 1 in
 31 odd-numbered years or on such date as may be specified by board rule.

32 (3) The board shall mail to each licensed funeral service practitioner, to each licensed embalmer,
 33 **to each licensed death care consultant,** to each licensed operator of a funeral establishment or
 34 immediate disposition company and to each cemetery, [and] crematorium **and other facility for**
 35 **final disposition of human remains** holding a certificate of authority under ORS 692.275, ad-
 36 dressed to the licensee or certificate holder at the licensee's or certificate holder's last-known ad-
 37 dress, a notice that the renewal fee is due and payable and that if the fee is not paid by the renewal
 38 date the license or certificate of authority shall lapse. [The notice shall be mailed] **The board shall**
 39 **mail the notice** [to each licensed funeral service practitioner and to each licensed embalmer at least
 40 60 days before the license expires. The notice shall be mailed to each licensed operator of a funeral
 41 establishment or immediate disposition company and to each cemetery and crematorium holding a cer-
 42 tificate of authority under ORS 692.275] at least 60 days before the license or certificate of authority
 43 expires. The board may impose continuing education requirements as a prerequisite for relicensure.

44 (4) Subject to prior approval of the Oregon Department of Administrative Services and a report
 45 to the Emergency Board prior to adopting the fees and charges, the fees and charges established

1 under this section shall not exceed the cost of administering the regulatory program of the State
2 Mortuary and Cemetery Board pertaining to the purpose for which the fee or charge is established,
3 as authorized by the Legislative Assembly within the board's budget, as the budget may be modified
4 by the Emergency Board.

5 **SECTION 13.** ORS 692.180 is amended to read:

6 692.180. (1) Upon complaint or upon its own motion, the State Mortuary and Cemetery Board
7 may investigate [*any*] a complaint [*concerning any person, licensee or holder of a certificate of au-*
8 *thority*] made by any person or by the board. If the board finds any of the causes described in this
9 section in regard to any person, licensee or applicant or the holder of a certificate of authority, the
10 board may impose a civil penalty of not more than \$1,000 for each violation, suspend or revoke a
11 license to practice or to operate under this chapter or refuse to grant or renew a license. The
12 causes are as follows:

13 (a) Misrepresentation in the conduct of business or in obtaining a license.

14 (b) Fraudulent or dishonest conduct, when the conduct bears a demonstrable relationship to fu-
15 neral service practice, embalming practice or the operation of cemeteries, [*or*] crematoriums **or**
16 **other facilities for final disposition of human remains.**

17 (c) Except as provided in this paragraph, solicitation of [*human dead bodies*] **human remains**
18 by the licensee or any agent, assistant or employee of the licensee, either before or after death. This
19 paragraph does not apply to:

20 (A) Activities permissible under ORS 97.923 to 97.949; or

21 (B) The sale, in accordance with provisions of the Insurance Code, of prearranged funeral or
22 cemetery merchandise or services, or any combination thereof, to be funded by the contemporaneous
23 or subsequent assignment of a life insurance policy or an annuity contract.

24 (d) Offensive treatment of dead human bodies or **evidence that** a body in the person's custody
25 has been disposed of in violation of ORS chapter 432 or rules adopted pursuant thereto.

26 (e) Aiding or abetting a person who is not a licensee or an apprentice in any act involving the
27 disposition of dead human bodies before the bodies undergo [*cremation, entombment or burial*] **final**
28 **disposition** or before the bodies are transported out of the State of Oregon.

29 (f) Sale or reuse of any casket or body container that has been previously utilized for the
30 placement of a deceased human body. This does not include use of a rental cover as defined in ORS
31 692.010.

32 (g) Violation of any of the provisions of this chapter or any rules adopted under this chapter.

33 (h) Violation of any provision of ORS 97.929 or 97.937 or regulations adopted by the Federal
34 Trade Commission regulating funeral industry practices.

35 (i) Conviction of a crime, when the crime bears a demonstrable relationship to funeral service
36 practice, embalming practice [*or*], **death care consultant practice or** the operation of cemeteries,
37 [*or*] crematoriums **or other facilities for final disposition of human remains.** A **certified** copy
38 of the [*record of the conviction certified to by the clerk of the court entering the*] conviction [*shall be*]
39 **is** conclusive evidence of the conviction.

40 (j) Violation of ORS chapter 97 as it relates to disposition of human bodies and to cemeteries.

41 (k) Refusing to surrender promptly the custody of a dead human body, upon the express order
42 of the person lawfully entitled to the custody of the body.

43 (L) Acting as the legal representative of any deceased person for whom the licensee has ren-
44 dered services governed by this chapter. This subsection does not prohibit a licensee from acting
45 as the legal representative of a deceased relative or a deceased licensee if the deceased licensee

1 was a partner, employee or employer in the licensee's practice.

2 (m) Failure to pay any civil penalty imposed by the board within 10 days after the order is en-
3 tered or, if appealed, within 10 days after the order is sustained on appeal.

4 (2) All amounts recovered under this section shall be deposited in [*accordance with*] **the State**
5 **Mortuary and Cemetery Board Account established under** ORS 692.375.

6 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

7 (4) Upon receipt of a complaint, the board shall conduct an investigation as described under
8 ORS 676.165.

9 (5) Information that the board obtains as part of an investigation into licensee or applicant
10 conduct or as part of a contested case proceeding, consent order or stipulated agreement involving
11 licensee or applicant conduct is confidential as provided under ORS 676.175.

12 **SECTION 14.** ORS 692.260 is amended to read:

13 692.260. The State Mortuary and Cemetery Board may revoke, suspend or refuse to renew a li-
14 cense issued to a funeral establishment or immediate disposition company if the board finds any of
15 the following in regard to the establishment or company or its operation:

16 (1) Any of the causes specified in ORS 692.180.

17 (2) Violation of ORS 692.025 [(3)] (4).

18 (3) Failure to comply with the rules of the board.

19 **SECTION 15.** ORS 692.375 is amended to read:

20 692.375. The State Mortuary and Cemetery Board Account is established in the State Treasury,
21 separate and distinct from the General Fund. All moneys received by the State Mortuary and Cem-
22 etery Board under this chapter shall be paid into the account and are appropriated continuously to
23 be used only for the administration and enforcement of this chapter, for the administration and
24 enforcement of ORS 97.931 and for the purpose of education of funeral service practitioners [*and*],
25 embalmers **and death care consultants**. Any interest or other income from moneys in the account
26 shall be credited to the account.

27 **SECTION 16.** ORS 432.312 is amended to read:

28 432.312. (1) The Department of Human Services shall impose and collect a filing fee of \$7 for
29 each certificate of death. Of the fee, \$2 shall be deposited to the credit of the Public Health Account
30 and used to carry out the purposes of ORS 97.170 [(5)] (6) and \$5 shall be deposited to the credit
31 of the State Mortuary and Cemetery Board Account and used in the same manner as funds credited
32 to the account under ORS 692.375.

33 (2) The expenditures under ORS 97.170 [(5)] (6) and 692.375 [*shall*] **may** not exceed the funds
34 collected under subsection (1) of this section, and in no event [*shall*] **may** expenditure on the ad-
35 ministration of the funds exceed five percent of the moneys collected.

36 **SECTION 17.** (1) **Section 4 of this 2009 Act and the amendments to ORS 692.010, 692.025,**
37 **692.040, 692.160, 692.180, 692.260, 692.275 and 692.320 by sections 1, 2, 5, 6 and 11 to 14 of this**
38 **2009 Act become operative on March 31, 2010.**

39 (2) **The State Mortuary and Cemetery Board may take any action before the operative**
40 **date specified in subsection (1) of this section that is necessary to enable the board to exer-**
41 **cise, on and after the operative date specified in subsection (1) of this section, all the duties,**
42 **functions and powers conferred on the board by section 4 of this 2009 Act and the amend-**
43 **ments to ORS 692.010, 692.025, 692.040, 692.160, 692.180, 692.260, 692.275 and 692.320 by sections**
44 **1, 2, 5, 6 and 11 to 14 of this 2009 Act.**

45 **SECTION 18.** **Section 4 of this 2009 Act and the amendments to ORS 692.025, 692.040,**

1 692.160, 692.180 and 692.320 by sections 2, 6 and 11 to 13 of this 2009 Act apply to persons
2 practicing as death care consultants on or after the operative date specified in section 17 of
3 this 2009 Act.

4 SECTION 19. The amendments to ORS 692.010, 692.160, 692.180, 692.275 and 692.320 by
5 sections 1, 5, 6, 12 and 13 of this 2009 Act apply to facilities used for final disposition of hu-
6 man remains, other than cemeteries and crematoriums, on or after the operative date
7 specified in section 17 of this 2009 Act.

8 SECTION 20. The amendments to ORS 97.460 by section 9 of this 2009 Act apply to laying
9 out or opening up property for cemetery or burial park purposes on or after the effective
10 date of this 2009 Act.

11 SECTION 21. The amendments to ORS 97.010 by section 10 of this 2009 Act apply to
12 cenotaphs established on or after the effective date of this 2009 Act.

13 SECTION 22. The amendments to ORS 97.170 and 432.312 by sections 8 and 16 of this 2009
14 Act apply to bodies of deceased persons who die on or after the effective date of this 2009
15 Act.

16 SECTION 23. This 2009 Act being necessary for the immediate preservation of the public
17 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
18 on its passage.
19 _____