

Enrolled
House Bill 3243

Sponsored by COMMITTEE ON BUSINESS AND LABOR

CHAPTER

AN ACT

Relating to deceased persons; creating new provisions; amending ORS 97.170, 97.180, 97.190, 97.200, 97.990, 413.825 and 692.040; and declaring an emergency.

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

SECTION 1. ORS 97.170 is amended to read:

97.170. (1) As used in this section, “indigent person” means a deceased person who does not have a death or final expense benefit or insurance policy that pays for disposition of the deceased person’s body or other means to pay for disposition of the deceased person’s body and:

(a) Who **does not have a** *[has no]* relative or other person with the legal right to direct and the means to pay for disposition of the deceased person’s body;

(b) **Whose relative, or other person, with the legal right to direct the disposition of the deceased person’s body does not pay or arrange to pay for, or refuses to direct, the disposition of the deceased person’s body within 10 days of being notified of the death; or**

(c) **For whom no person other than a person described in paragraph (a) or (b) of this subsection wishes to direct and pay for the disposition of the deceased person’s body.**

[(2)(a) The Oregon Health and Science University shall appoint a Demonstrator of Anatomy from the staff of the university.]

[(b)] (2) The *[Demonstrator of Anatomy]* **State Mortuary and Cemetery Board** shall maintain a list of institutions that may accept or process bodies for education or research purposes.

[(3) A medical examiner as defined in ORS 146.003 or a health care facility as defined in ORS 442.015 that has charge of an unclaimed body of a deceased person shall promptly attempt to locate and notify the relatives of the deceased person or other persons who have an interest in the deceased person and shall arrange with any person who will pay the expenses to make disposition of the body. If the medical examiner or health care facility cannot locate a person who will pay the expenses of disposition of the body, the medical examiner or health care facility may transfer the body to a licensed funeral service practitioner.]

[(4)(a)] (3)(a) A *[licensed funeral service practitioner who]* **funeral establishment licensed under ORS 692.146 that** takes custody of the unclaimed body of a deceased person shall *[promptly verify that a medical examiner or health care facility attempted to locate relatives and interested persons as provided in subsection (3) of this section.]*

[(b) If a medical examiner or health care facility has not attempted to locate relatives and interested persons as provided in subsection (3) of this section, the funeral service practitioner shall], within five days after taking custody of the body[,]:

(A) **Submit a report of death under ORS 432.133;**

(B) Obtain all contact information known to the medical examiner, a health care facility or law enforcement regarding persons listed in ORS 97.130;

(C) Attempt to locate and notify [relatives and interested persons and shall] the persons listed in ORS 97.130;

(D) Arrange with any person listed in ORS 97.130 who will pay the expenses to make disposition of the body;

(E) If no person listed in ORS 97.130 can be located to pay the expenses to make disposition of the body, arrange with a person or institution not listed in ORS 97.130 that will pay the expenses to make disposition of the body;

(F) Determine whether the Department of State Lands or other person is appointed as the personal representative of the deceased person pursuant to ORS 113.085; and

(G) Contact the Department of Veterans' Affairs to determine whether the decedent is eligible for any state or federal benefits.

[(c)] (b) If no one claims the body within [five] 10 days after the funeral [service practitioner] establishment takes custody of the body, or if the persons notified acquiesce, or if the decedent is not eligible for any benefits described in paragraph (a)(G) of this subsection, the funeral [service practitioner] establishment may transfer the body to an institution [approved by the Demonstrator of Anatomy under] on the list of institutions described in subsection (2) of this section that desires the body for education or research purposes. [The funeral service practitioner shall arrange with an institution that desires the body to pay for care, preparation and transportation of the body to the institution.]

[(d)] (c) If no [relative, interested] person or institution claims the body as provided in paragraphs [(b) and (c)] (a) and (b) of this subsection, the funeral [service practitioner] establishment may cremate or bury the body without the consent of persons listed in ORS 97.130 and is indemnified from any liability arising from having made such disposition. The method of disposition must be in the least costly and most environmentally sound manner that complies with law, and that does not conflict with known wishes of the deceased. If the deceased person is an indigent person, the [Department of Human Services] board shall reimburse the funeral [service practitioner] establishment for the costs of disposition under subsection [(6)] (5) of this section.

[(5)] (4) [When] If the deceased person is a child over whom the Department of Human Services held guardianship at the time of death, the department shall promptly attempt to locate and notify the relatives of the deceased child or any other person who has an interest in the deceased child and shall arrange with any person who will pay the expenses to make disposition of the body. If no relatives or interested persons claim the body, the department may transfer the body to an institution that is on the list maintained by the [Demonstrator of Anatomy] board under subsection (2) of this section that desires the body for education or research purposes, or may authorize burial or cremation of the body. The department shall pay expenses related to burial or cremation authorized by the department under this subsection.

[(6)] (5) Upon receipt of [an itemized statement of expenses and proof] a qualifying statement as required by the [department] board by rule that the deceased person is an indigent person, the [department] board shall reimburse a funeral [service practitioner] establishment the reasonable costs for disposition of the body of any unclaimed deceased indigent person. The method of disposition must be in the least costly and most environmentally sound manner that complies with law. The [department may] board shall adopt rules establishing the requirements and process for reimbursement and setting the [maximum] amount that may be reimbursed to a funeral [service practitioner] establishment under this subsection.

SECTION 2. ORS 97.180 is amended to read:

97.180. *[Upon receipt of any body by a school or college pursuant to ORS 97.170, it shall be properly embalmed for anatomical purposes, but shall be retained 30 days before being used or dismembered. If it is claimed by any relative or friend within that period, it shall be delivered to the claimant.] An institution that receives a body pursuant to ORS 97.170 and that intends to use the body for ongoing research may properly preserve the body upon receipt for anatomical*

purposes, but may not use or dismember the body for at least 30 days after receipt. If a relative or friend of the deceased person claims the body within the 30 days specified in this section, the institution with custody of the body shall release the body to a funeral establishment licensed under ORS 692.146 on behalf of the relative or friend.

SECTION 3. ORS 97.190 is amended to read:

97.190. Unless required by a medical examiner to determine the cause of death or specifically authorized and ordered by the superintendent of the hospital or institution in which any person coming under the provisions of ORS 97.170 may die, no such body as is mentioned in ORS 97.170 is subject to post-mortem examination, except by consent of the *[Demonstrator of Anatomy]* **State Mortuary and Cemetery Board.**

SECTION 4. ORS 97.200 is amended to read:

97.200. (1) *[The remains of any corpse used for the purposes authorized by ORS 97.170 shall, upon completion of such use, be decently buried or cremated and the ashes, in case of cremation, shall be delivered to any relative who claims them, after establishing relationship. All expenses incident to burial and cremation and the delivery of ashes to any relative shall be borne by the educational institution which used the body for educational purposes.]* **An institution that uses a body for ongoing research pursuant to ORS 97.170 shall bury respectfully or cremate the remains upon completion of use. If the institution cremates the remains, the institution shall deliver the ashes to a relative of the deceased person if a relative is known to the institution. If no relative is known to the institution, the institution shall hold the ashes for three years after cremation and may then dispose of the ashes in a respectful manner. The institution shall pay burial, cremation, storage and delivery expenses for a body the institution used pursuant to ORS 97.170.**

(2) **Notwithstanding subsection (1) of this section, an institution that uses a body pursuant to ORS 97.170 only for instruction on preservation of a body shall, upon completion of use, return the body to the funeral establishment from where the institution received the body.**

SECTION 5. ORS 97.990 is amended to read:

97.990. (1) Violation of ORS 97.160 is a Class A misdemeanor.

(2) Every officer, agent or employee of this state or of any county, city or any other municipal subdivision thereof who willfully neglects to notify the *[Demonstrator of Anatomy]* **State Mortuary and Cemetery Board** of the existence of a body as required by ORS 97.170 to 97.210 or who refuses to deliver possession of such body according to the provisions of ORS 97.170 to 97.210 or who mutilates or permits any such body to be mutilated so that it is not valuable for anatomical purposes or who refuses or neglects to perform any of the duties enjoined upon the officer, agent or employee by ORS 97.170 to 97.210, commits a Class A misdemeanor.

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

(4) Any person, association or corporation who operates a cemetery, mausoleum or columbarium contrary to the provisions of ORS 97.020 to 97.040, 97.110 to 97.130, 97.145, 97.150, 97.220, 97.310 to 97.360 (1), 97.440, 97.510 to 97.560, 97.710, 97.720, 97.810, 97.820, 97.830 and 97.840 to 97.860 commits a Class B misdemeanor.

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

(b) In addition to any other sentence provided by law for criminal violations of ORS 97.745, the judge shall impose a penalty not to exceed \$10,000 on any person convicted of a criminal violation of ORS 97.745.

(6) In addition to the penalty of subsection (5) of this section, any native Indian artifacts or human remains taken by, or in possession of, any person sentenced under subsection (5) of this section and all equipment used in the violation may be ordered forfeited by the court in which conviction occurs, and may be disposed of as the court directs.

SECTION 6. ORS 413.825 is amended to read:

413.825. (1) The *[Oregon Health Authority]* **State Mortuary and Cemetery Board** shall impose and collect a filing fee of \$20 for each report of death **and shall deposit the total amount of the**

fee collected to the credit of the State Mortuary and Cemetery Board Account established under ORS 692.375. Of the fee, [*\$6 shall be deposited to the credit of the Public Health Account and used to carry out the purposes of ORS 97.170 (6) and \$14 shall be deposited to the credit of the State Mortuary and Cemetery Board Account and used*] at least \$6 must be used by the board to carry out the purposes of ORS 97.170 (5). The board shall use the remainder of the fee in the same manner as other funds credited to the account under ORS 692.375.

(2) The board shall adopt rules regarding the use of the fee described in subsection (1) of this section and shall consider historical data related to expenditures made for the purposes of carrying out [*The expenditures under*] ORS 97.170 [(6)] (5) and 692.375 [*may not exceed the funds collected under subsection (1) of this section, and in no event may expenditure on the administration of the funds exceed five percent of the moneys collected*]. Expenditures relating to the administration of the fee may not exceed five percent of the moneys collected.

SECTION 7. ORS 692.040 is amended to read:

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

(1) A public institution, medical college, county medical society, anatomical association, college of embalming or institution approved by the [*Demonstrator of Anatomy*] **State Mortuary and Cemetery Board** to accept bodies for education or research purposes under ORS 97.170.

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

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

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

SECTION 8. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1, chapter 192, Oregon Laws 2015 (Enrolled House Bill 5023), as modified by legislative or Emergency Board action, for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the State Mortuary and Cemetery Board, is increased by \$378,000 for the purposes of administering the amendments to ORS 97.170, 97.180, 97.190, 97.200, 97.990, 413.825 and 692.040 by sections 1 to 7 of this 2015 Act.

SECTION 9. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (1), chapter ___, Oregon Laws 2015 (Enrolled Senate Bill 5526), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, tobacco tax receipts, provider taxes, Medicare receipts and federal funds for indirect cost recovery, Supplemental Security Income recoveries, Women, Infants and Children Program food rebates, the Coordinated School Health Program, the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program, homeland security and emergency preparedness and response services, but excluding lottery funds and federal funds not described in section 2,

chapter __, Oregon Laws 2015 (Enrolled Senate Bill 5526), collected or received by the Oregon Health Authority, is decreased by \$378,000.

SECTION 10. (1) The amendments to ORS 97.170, 97.180, 97.190, 97.200, 97.990, 413.825 and 692.040 by sections 1 to 7 of this 2015 Act become operative on January 1, 2016.

(2) The State Mortuary and Cemetery Board may take action before the operative date specified in subsection (1) of this section that is necessary to enable the board to exercise, on or after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board by the amendments to ORS 97.170, 97.180, 97.190, 97.200, 97.990, 413.825 and 692.040 by sections 1 to 7 of this 2015 Act.

SECTION 11. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House April 30, 2015

Received by Governor:

Repassed by House June 25, 2015

.....M.,....., 2015

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2015

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 24, 2015

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State