

Enrolled
House Bill 2088

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Consumer and Business Services)

CHAPTER

AN ACT

Relating to endowment care cemeteries; creating new provisions; amending ORS 97.810, 97.825 and 97.928; and declaring an emergency.

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

SECTION 1. Sections 2 to 5 of this 2019 Act are added to and made a part of ORS 97.810 to 97.920.

SECTION 2. (1) The Department of Consumer and Business Services may, if a cemetery authority responsible for an endowment care cemetery violates a provision of ORS 97.810 to 97.920 with respect to the endowment care cemetery:

(a) Issue an emergency order to suspend or restrict the operations of an endowment care cemetery; or

(b) Take other action deemed necessary by the Director of the Department of Consumer and Business Services.

(2) After taking an action described in subsection (1) of this section, the director shall promptly provide opportunity for a hearing pursuant to ORS chapter 183.

(3) An emergency order is:

(a) Effective upon issuance;

(b) Reviewable as provided in ORS 183.480; and

(c) Enforceable in the courts of this state.

SECTION 3. (1) The following may petition the circuit courts of this state for an appointment of receiver for an endowment care cemetery:

(a) The Department of Consumer and Business Services;

(b) The district attorney of the county where the endowment care cemetery is located; or

(c) A local government with jurisdiction over the county or municipality where the endowment care cemetery is located.

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

(a) To ensure the orderly and proper conduct of an endowment care cemetery's professional business and affairs during or after an administrative proceeding;

(b) To protect the public's interest and rights in the business, premises or activities of the endowment care cemetery;

(c) Upon a showing of serious and repeated violations of ORS 97.810 to 97.920 demonstrating an inability or unwillingness to comply with the provisions of ORS 97.810 to 97.920;

(d) To prevent loss, wasting, dissipation, theft or conversion of assets that should be marshaled and held available for the honoring of obligations under ORS 97.810 to 97.920; or

(e) When the court receives proof of other grounds that the court deems good and sufficient for instituting receivership action concerning the endowment care cemetery.

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

(b) Venue of receivership proceedings shall be in the county where the endowment care cemetery is located. The receiver shall be the petitioner or a person nominated by the petitioner and approved by the court.

SECTION 4. The Department of Consumer and Business Services, in collaboration with the State Mortuary and Cemetery Board, shall adopt rules relating to:

(1) Minimum standards of care for the maintenance and operation of endowment care cemeteries; and

(2) The ability of the public to access the premises of endowment care cemeteries.

SECTION 5. A person may not, in connection with operating an endowment care cemetery:

(1) Employ any device, scheme or artifice to defraud;

(2) Knowingly make any untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which the statements are made, not misleading;

(3) Engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon any person; or

(4) Make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services, a statement, report or document that is known to be false in any material respect or matter.

SECTION 6. ORS 97.810 is amended to read:

97.810. (1) As used in [this section] **ORS 97.810 to 97.920:**

(a) "Endowment care cemetery" means a cemetery that maintains an endowment care fund placed in an irrevocable trust fund.

(b) "Grave liner" means a burial receptacle designed to be installed in a grave, as defined in ORS 97.010, to assist in preventing the ground from collapsing.

(2) An endowment care cemetery shall deposit with the trustee or custodian of its endowment care fund the following amounts received from the sale of plots, niches, crypts or private mausoleums:

(a) At least 15 percent of the gross sales price with a minimum of \$5 for each grave sold without a grave liner installed at the time of sale or, when the gross sales price is paid in installments, at least 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 sold without a grave liner installed at the time of sale.

(b) At least nine percent of the gross sales price for each grave sold with a grave liner installed at the time of sale or, when the gross sales price is paid in installments, at least nine percent of each installment until at least nine percent of the gross sales price has been deposited.

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

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

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

(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 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.

(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.

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

(6) The director may 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.

(7) At the time of the filing of the statements of its endowment care fund each cemetery 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.

(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.

(9) A cemetery may not operate as an endowment care, permanent maintenance or free care cemetery until the provisions of this section are complied with.

(10) The head of all contracts and certificates of ownership or deeds referring to plots in an endowment care cemetery must contain the following statement: "This cemetery is an endowment care cemetery," in at least 10-point black type.

(11) All contracts and certificates of ownership or deeds referring to plots in an endowment care cemetery must contain the following statement: "Endowment care means the general care and maintenance of all developed portions of the cemetery and memorials erected thereon."

(12) A cemetery that otherwise complies with this section may be designated an endowment care cemetery even though it contains a small area that may be sold without endowed care, if it is separately set off from the remainder of the cemetery. The head of all contracts and certificates of ownership or deeds referring to plots in this area must contain the phrase "nonendowed care" in at least 10-point black type.

(13) A nonendowed care cemetery is a cemetery that does not deposit in an endowment care fund the minimum amounts specified in subsection (2) of this section.

(14) A cemetery authority may not in any way advertise or represent that it operates wholly or partially as an endowment 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, unless the provisions of this section are complied with.

SECTION 7. ORS 97.825 is amended to read:

97.825. (1)(a) If the cemetery authority fails to remit to the trustee or trustees, in accordance with the law, the funds herein provided for endowment and special care, or fails to expend 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. 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.*] **any of the following may bring an action for a mandatory injunction or for an appointment of a receiver to sue for, take charge of and expend the net income:**

(A) Any three lot owners, or a lot owner's next of kin, heir or personal representative whose lots are entitled to endowment care;

(B) Any one lot owner, or the lot owner's next of kin, heir or personal representative, whose lot is entitled to special care;

(C) The district attorney of the county where a lot described in this subsection is located;
or

(D) A local government with jurisdiction over the county or municipality where a lot described in this subsection is located.

(b) The suit may be filed in the circuit court of the county where the cemetery is located in order to compel the cemetery authority or the appointed receiver to make the expenditure of the net income from the 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 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 authority, the Attorney General of Oregon and the State Mortuary and Cemetery Board.

(3) Within 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.

(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.

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

SECTION 8. ORS 97.928 is amended to read:

97.928. A person may not, in connection with performing certified provider activities, [operating an endowment care cemetery,] providing services as a master trustee or providing related services:

(1) Employ any device, scheme or artifice to defraud;

(2) Knowingly make any untrue statement of a material fact or omit [to state] stating a material fact necessary in order to make the statements made, in the light of the circumstances under which the statements are made, not misleading;

(3) Engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person; or

(4) Make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document that is known to be false in any material respect or matter.

SECTION 9. (1) Sections 2 to 5 of this 2019 Act and the amendments to ORS 97.810, 97.825 and 97.928 by sections 6 to 8 of this 2019 Act become operative on January 1, 2020.

(2) The Department of Consumer and Business Services and the State Mortuary and Cemetery Board may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department and the board to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the department and the board by sections 2 to 5 of this 2019 Act and the amendments to ORS 97.810, 97.825 and 97.928 by sections 6 to 8 of this 2019 Act.

SECTION 10. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House January 31, 2019

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate March 18, 2019

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

.....
Secretary of State