

CHAPTER 709

AN ACT

SB 796

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

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

SECTION 1. ORS 692.010 is amended to read: 692.010. As used in this chapter:

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

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

(a) A burial park, for earth interments;

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

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

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

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

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

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

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

[(5)] "*Immediate disposition*" means a direct method of disposition of dead human remains by way of immediate burial or immediate cremation.]

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

(7) "Operating cemetery" means a cemetery that:

(a) Performs interments;

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

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

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

SECTION 2. ORS 692.025 is amended to read:

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

(2) An individual may not practice as an embalmer unless the individual is licensed as an embalmer under ORS 692.105. **Regardless of any title used by the individual**, an individual practices as an embalmer if the individual is engaged or purports to be engaged in either of the following:

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

(b) Preparing human bodies dead of contagious or infectious disease for transportation by railroad, express company or common carrier.

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

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

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

(b) Be operated by a funeral service practitioner;

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

(d) Have access to hospital or mortuary refrigeration.

[(4)] (5) A person may not operate an immediate disposition company unless the immediate disposition company meets the requirements under this subsection. An immediate disposition company must:

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

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

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

business of an operating cemetery under ORS 692.275.

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

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

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

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

(1) Applies to the board for a death care consultant license on an application form provided by the board;

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

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

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

SECTION 5. ORS 692.275 is amended to read:

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

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

(3) **A person may not operate a crematorium unless the person has a certificate of authority**

to do so. A person may apply [The person who plans to operate a crematorium shall apply before operation] for a certificate of authority to operate a crematorium on a form provided by the board. The application [shall] **must** be accompanied by the application fee established under ORS 692.160.

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

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

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

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

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

SECTION 6. ORS 692.320 is amended to read:

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

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

(b) The registration of apprentices.

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

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

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

(2) Other than areas used as living quarters, the board shall inspect not less than once biennially the facilities and records of funeral establishments, cemeteries [and], crematoriums and immediate disposition companies, **other facilities for final disposition of human remains** and any location in which [dead human bodies] **human remains** may be

stored, temporarily held or processed prior to final disposition. The inspection of the records of such locations *[shall be]* is limited to those records required to comply with this chapter or ORS chapter 432 or rules adopted pursuant thereto. The board may make random inspections at other times. The board shall employ one or more persons to perform such inspections and aid in the enforcement of this chapter and rules adopted thereunder. *[No]* A person employed under this subsection may **not** be a member of the board or actively engaged in a practice regulated by this chapter.

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

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

SECTION 7. The State Mortuary and Cemetery Board shall adopt rules promoting environmentally sound death care practices.

SECTION 8. ORS 97.170 is amended to read:

97.170. *[(1) Except as set forth in subsection (4) of this section, any licensed funeral service practitioner having charge of the body of a deceased person thought to be an unclaimed indigent shall use all reasonable diligence promptly to notify the relatives of the deceased person or any other person having an interest in the deceased person and shall arrange with any relative who claims the body or with any friend of the deceased person who will pay the expenses to make disposition of the body. If no one claims the body within five days after death, or if those notified acquiesce, the funeral service practitioner shall notify, by telephone, the Demonstrator of Anatomy of the Oregon Health and Science University. The Demonstrator of Anatomy, who shall be appointed by the Oregon Health and Science University Board of Directors from the staff of the Oregon Health and Science University, shall immediately inform the funeral service practitioner whether the body is deemed to be in fit condition and is desired for medical instruction or the advancement of medical science. If the body is desired for these purposes, the funeral service practitioner shall arrange for a licensed embalmer to make such preparation as is necessary and shall, within 72 hours, deliver it to the Oregon Health and Science University, or any other school or college within the State of Oregon qualifying applicants for examination in the fundamental sciences as required and specified in ORS 683.010 to 683.335 and ORS chapters 676 to 681 and 684 to 686, as the Demonstrator of Anatomy directs. The expenses of embalming, transportation of the body to such school or college, filing fees and other related expenses shall be paid from the funds appropriated specifically for the purposes of this section. Such expenses shall not exceed the normal rates charged for such services to the general public.]*

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

(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 who 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.

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

(b) The Demonstrator of Anatomy 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) A licensed funeral service practitioner who 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, attempt to locate and notify relatives and interested persons and shall arrange with any person who will pay the expenses to make disposition of the body.

(c) If no one claims the body within five days after the funeral service practitioner takes custody of the body, or if the persons notified acquiesce, the funeral service practitioner may transfer the body to an institution approved by the Demonstrator of Anatomy under 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.

[3] (d) [When the body of a deceased person is deemed in unfit condition by the Demonstrator of Anatomy and disposition does not take place as set forth in subsections (1) and (2) of this section, and no relatives, friends or interested persons claim the body after notification is attempted] **If no relative, interested person or institution claims the body as provided in paragraphs (b) and (c) of this subsection, [then] the funeral service practitioner may [commence to] cremate or bury the body without the consent of persons listed in ORS 97.130 and is [furthermore] 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. [Reimbursement for costs of disposition shall be made as set forth in subsection (5) of this section.] If the deceased person is an indigent person, the Department of Human Services shall reimburse the funeral service practitioner for the costs of disposition under subsection (6) of this section.**

[4] (5) When 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. [and] If no relatives, friends or interested persons claim the body [after notification is attempted as set forth in subsection (1) of this section, the department may at its discretion notify the Demonstrator of Anatomy and proceed as set forth in subsection (1) of this section], the department may transfer the body to an institution that is on the list maintained by the Demonstrator of Anatomy 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 [shall be borne by the department].**

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

SECTION 9. ORS 97.460 is amended to read:

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

(a) **Is the owner of the property;**
 (b) **Has the written consent** of the planning commission of the county or city having jurisdiction under ORS 92.042 or, if there is no such commission in such county or city, the governing body of such county or city[.];
 (c) **Agrees to maintain records of the disposition of human remains on the property as required by the planning commission or governing body of the county or city having jurisdiction under ORS 92.042; and**

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

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

SECTION 10. 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, 97.990 and 97.994:

(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] a permanent **memorial or the permanent** interment of human remains; and

(b) That may contain a mausoleum, crypt or vault interment, a columbarium, **an** ossuary, **a cenotaph, a** scattering garden [or], **any** other structure or place used or intended to be used for the interment or disposition of [cremated] **human** 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) "Cenotaph" means a place, the primary purpose of which is to provide an area where a person may pay to establish a memorial to honor a person whose remains may be interred elsewhere or whose remains cannot be recovered.

[(10)] (11) "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)] (12) "Cremated remains" means the remains of a cremated human body after completion of the cremation process.

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

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

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

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

[(16)] (17) "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)] (18) "Entombment" means the placement of human remains in a crypt or vault.

[(18)] (19) "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, acknowledgment cards, alternative containers, caskets, clothing, cremation containers, cremation interment containers, flowers, memory folders, monuments, outer burial containers, prayer cards, register books and urns.

[(19)] (20) "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 re-

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

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

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

[(24)] (25) "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)] (26) "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)] (27) "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)] (28) "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)] (29) "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)] (30) "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)] (31) "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)] (32) "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)] **(33)** "Special care" means any care in excess of endowed care in accordance with the specific directions of a donor of funds.

SECTION 11. 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 any officer thereof, or to any other recognized person carrying out the statutes of the State of Oregon prescribing the conditions under which indigent dead human bodies are held subject for scientific or anatomical study.*] **or institution approved by the Demonstrator of Anatomy 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 [or], **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 12. ORS 692.160 is amended to read: 692.160. (1) The fees that may be charged under this chapter are:

(a) A fee covering requests for applications for **a funeral service practitioner license, an embalmer license, a death care consultant license, a funeral establishment license, an immediate disposition company license, a certificate of author-**

ity for a cemetery, a certificate of authority for a crematorium, a certificate of authority for any other facility for final disposition of human remains, registration as a funeral service practitioner apprentice, registration as an embalmer apprentice, a certificate of removal registration, a license as a reciprocal funeral service practitioner or a license as a reciprocal embalmer. The application fee shall be accompanied by an additional fee for each principal of a funeral establishment, immediate disposition company, cemetery, [or] crematorium **or other facility for final disposition of human remains.**

(b) A fee covering the renewal of a license for a funeral establishment, a license for an immediate disposition company, [or] a certificate of authority for a crematorium **or a certificate of authority for any other facility for final disposition of human remains.**

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

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

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

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

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

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

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

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

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

(3) The board shall mail to each licensed funeral service practitioner, to each licensed embalmer, **to each licensed death care consultant**, to each licensed operator of a funeral establishment or immediate disposition company and to each cemetery, [and] crematorium **and other facility for final disposition of human remains** holding a certificate of authority under ORS 692.275, addressed to the licensee or certificate holder at the licensee's or certificate holder's last-known address, a notice that the renewal fee is due and payable and that if the

fee is not paid by the renewal date the license or certificate of authority shall lapse. *[The notice shall be mailed]* **The board shall mail the notice** *[to each licensed funeral service practitioner and to each licensed embalmer at least 60 days before the license expires. The notice shall be mailed to each licensed operator of a funeral establishment or immediate disposition company and to each cemetery and crematorium holding a certificate of authority under ORS 692.275]* at least 60 days before the license or certificate of authority expires. The board may impose continuing education requirements as a prerequisite for relicensure.

(4) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges, the fees and charges established under this section shall not exceed the cost of administering the regulatory program of the State Mortuary and Cemetery Board pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the board's budget, as the budget may be modified by the Emergency Board.

SECTION 13. ORS 692.180 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) Acting as the legal representative of any deceased person for whom the licensee has rendered services governed by this chapter. This subsection does not prohibit a licensee from acting as the legal representative of a deceased relative or a deceased licensee if the deceased licensee was a partner, employee or employer in the licensee's practice.

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

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

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

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

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

SECTION 14. ORS 692.260 is amended to read:

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

- (1) Any of the causes specified in ORS 692.180.
- (2) Violation of ORS 692.025 [(3)] (4).
- (3) Failure to comply with the rules of the board.

SECTION 15. ORS 692.375 is amended to read:

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

SECTION 16. ORS 432.312 is amended to read:

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

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

SECTION 17. (1) Section 4 of this 2009 Act and the amendments to ORS 692.010, 692.025, 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 2009 Act become operative on March 31, 2010.

(2) 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 board to exercise, on and after the operative date specified in subsec-

tion (1) of this section, all the duties, functions and powers conferred on the board by section 4 of this 2009 Act and the amendments to ORS 692.010, 692.025, 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 2009 Act.

SECTION 18. Section 4 of this 2009 Act and the amendments to ORS 692.025, 692.040, 692.160, 692.180 and 692.320 by sections 2, 6 and 11 to 13 of this 2009 Act apply to persons practicing as death care consultants on or after the operative date specified in section 17 of this 2009 Act.

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

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

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

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

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

Approved by the Governor July 14, 2009
Filed in the office of Secretary of State July 14, 2009
Effective date July 14, 2009