CHAPTER 157

DISPOSITION OF HUMAN REMAINS

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Cross−reference: See s. 69.18 for 1) registration of deaths; 2) medical certification; 3) disposition of corpse or stillbirth; and 4) disinterment and reinterment.

SUBCHAPTER I

CORPSES

157.01 Rules for preparation, transportation and disposition. The department of health services shall make, and delegate to the funeral directors examining board the enforcement of, rules not inconsistent with ch. 445 covering the control of communicable diseases and sanitary and health regulations in the preparation, transportation and disposition of dead human bodies.

History: 1975 c. 39; 1979 c. 175 s. 53; 1979 c. 221 ss. 658, 2202 (45); 1983 a. 485; 1985 a. 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.01; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

Cross−reference: See also chs. DHS 135 and 136, Wis. adm. code.

157.02 Disposal of unclaimed corpses. (1) NOTICE TO RELATIVES. When an inmate of any state, county or municipal institution dies, the superintendent or other person in charge of the institution shall immediately notify a relative of the decedent. A public officer having the possession or the disposition of a corpse shall immediately notify a relative of the decedent. If no relative is known, or discoverable by use of ordinary diligence, notice may be dispensed with. In addition, if the deceased had been an inmate of a state correctional institution, the department of corrections shall provide written notification to the relative informing him or her that the department of corrections, upon request, will provide a copy of any autopsy report or other report or information pertaining to the death. The department of corrections shall describe how the request may be made and shall promptly comply with any such request.

(2) TIME ALLOWED RELATIVE TO ACT. If a relative or friend fails to arrange for taking charge of the corpse within a reasonable time after death, the superintendent or other officer may proceed as provided in this section, but relatives or friends may claim the corpse at any time before it has been delivered pursuant to sub. (3).

(3) NOTICE TO UNIVERSITY OR SCHOOL. If the corpse is in the Mendota Mental Health Institute district, the University of Wisconsin shall be notified that it may have the corpse. If the corpse is in the Winnebago Mental Health Institute district, the Medical College of Wisconsin, Inc., or any accredited school of mortuary science at Milwaukee shall be notified that it may have the corpse. The university or school so notified shall immediately inform the superintendent or public officer whether it desires to have the corpse. If it does, the corpse shall be delivered accordingly, properly encased, to the most available facility for transportation to the consignee, the consignee to pay the cost of transportation.

(4) STANDING APPLICATIONS. If there are advance applications for such bodies, by the Medical College of Wisconsin, Inc., or any accredited school of mortuary science, the superintendent or public officer shall make an equitable distribution between them.

(5) OTHER DISPOSITION. If the corpse is not disposed of under subs. (1) to (4), the superintendent or public officer shall properly bury it.

History: 1971 c. 211; 1973 c. 90 s. 560 (3); 1985 a. 316 s. 14; Stats. 1985 s. 157.02; 1987 a. 27; 1989 a. 31; 2001 a. 103.

157.03 Restrictions on use of bodies for anatomical purposes; embalming such bodies; delivery of bodies to relatives. (1) The corpse of a person who died with smallpox, diphtheria or scarlet fever, or who in his or her last sickness shall request to be buried or cremated, and of a stranger or traveler who suddenly died, shall not be disposed of under s. 157.02 (3), and no person having charge of a corpse authorized to be so disposed of shall sell or deliver it to be used outside the state.

(2) Upon receipt of the corpse by a university or school pursuant to s. 157.02 (3) it shall be properly embalmed and retained for 3 months before being used or dismembered and shall be delivered to any relative claiming it upon satisfactory proof of relationship.

History: 1985 a. 316 ss. 14, 25; Stats. 1985 s. 157.03; 1993 a. 482.

157.04 Penalty. Any officer or person having a corpse in charge, and refusing to report and deliver it, when required by this subchapter, or violating the provisions forbidding sale or delivery thereof, to be used outside the state, shall be liable to the person, university or medical school aggrieved, in the sum of $50.

History: 1985 a. 316 s. 14; Stats. 1985 s. 157.04.

157.05 Autopsy. Consent for a licensed physician to conduct an autopsy on the body of a deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, domestic partner under ch. 770, or in the absence of any of the foregoing, a friend, or a person charged by law with the responsibility for burial. If 2 or more such persons assume custody of the body, the consent of one of them shall be deemed sufficient.

History: 1979 c. 110; 1985 a. 316 s. 14; Stats. 1985 s. 157.05; 2009 a. 28.

157.055 Disposal of human remains during state of emergency relating to public health. (1) In this section:

(a) "Funeral establishment" has the meaning given in s. 445.01 (6).

(b) "Public health authority" has the meaning given in s. 250.01 (6g).

(2) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3), (3m), and (4), 979.02, and 979.10, and subch. VII of ch. 440, during a period of a state of emergency related to public health declared by the governor under s. 323.10, a public health authority may do all of the following:

(a) Issue and enforce orders that are reasonable and necessary to provide for the safe disposal of human remains, including by embalming, burial, cremation, interment, disinterment, transportation, and other disposal.

(b) Take possession and control of any human remains.

(c) Order the disposal, through burial or cremation, of any human remains of an individual who has died of a communicable disease, within 24 hours after the individual's death and consider, to the extent feasible, the religious, cultural, or individual beliefs of the deceased individual or his or her family in disposing of the remains.

(d) If reasonable and necessary for emergency response, require a funeral establishment, as a condition of its permit under s. 445.105 (1), to accept human remains or provide the use of its business or facility, including by transferring the management and supervision of the funeral establishment to the public health authority, for a period of time not to exceed the period of the state of emergency.

(e) Require the labeling of all human remains before disposal with all available identifying information and information concerning the circumstances of death and, in addition, require that the human remains of an individual with a communicable disease be clearly tagged to indicate that remains contain a communicable disease and, if known, the specific communicable disease.

(f) Maintain or require the maintenance of a written or electronic record of all human remains that are disposed of, including all available identifying information and information concerning the circumstances of death and disposal. If it is impossible to identify human remains prior to disposal, the public health authority may require that a qualified person obtain any fingerprints, photographs, or identifying dental information, and collect a specimen of deoxyribonucleic acid from the human remains and transmit this information to the public health authority.

(g) Notwithstanding s. 59.34 (1) or 59.35 (1), authorize a county medical examiner or a county coroner to appoint emergency assistant medical examiners or emergency deputy coroners, whichever is applicable, if necessary to perform the duties of the office of medical examiner or coroner, and to prescribe the duties of the emergency assistant medical examiners or emergency deputy coroners. The term of any emergency appointment authorized under this paragraph may not exceed the period of the state emergency. A county medical examiner or county coroner may terminate an emergency appointment before the end of the period of the state emergency, if termination of the appointment will not impede the performance of the duties of his or her office.

History: 2001 a. 109; 2005 a. 31; 2009 a. 42, 282.

157.06 Anatomical gifts. (2) DEFINITIONS. In this section:

(a) "Agent" means a health care agent, as defined in s. 155.01 (4), or an individual who is expressly authorized in a record that is signed by a principal to make an anatomical gift of the principal's body or part.

(b) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death, as determined in accordance with s. 146.71, for the purpose of transplantation, therapy, research, or education.

(c) "Decedent" means a deceased individual.

(d) "Disinterested witness" means a witness who is not any of the following:

1. The spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift.

2. A person who exhibits special care and concern, except as a compensated health care provider, for the individual who makes, amends, revokes, or refuses to make an anatomical gift.

3. Any other person to whom the anatomical gift could pass under sub. (11).

(e) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(f) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(g) "Driver's license" means a license or permit to operate a vehicle, whether or not conditions are attached to the license or permit, that is issued by the department of transportation under ch. 343.

(h) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(i) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual, and does not include a guardian ad litem.

(j) "Hospital" means a facility approved as a hospital under s. 50.35 or a facility operated as a hospital by the federal government, a state, or a political subdivision of a state.

(k) "Identification card" means an identification card issued by the department of transportation under s. 343.50.

(L) "Organ procurement organization" means a person designated by the Secretary of the U.S. Department of Health and Human Services as an organ procurement organization.

(m) "Parent" has the meaning given under s. 48.02 (13).

(n) "Part" means a vascularized organ, eye, or tissue of a human being. "Part" does not mean a whole human body.

(o) "Physician" means an individual authorized to practice medicine or osteopathy under the laws of any state.

(p) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(q) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. An individual who has refused to make an anatomical gift as provided under sub. (7) is not a prospective donor.

(r) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(s) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

(t) "Record of gift" means a donor card or other record used to make an anatomical gift, including a statement or symbol on a driver's license or identification card or in a donor registry.

(u) "Record of refusal" means a record created under sub. (7) that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(v) "Sign" means to do any of the following with present intent to authenticate or adopt a record:

1. Execute or adopt a signature or tangible symbol.

2. Attach to or logically associate with the record an electronic symbol, sound, or process.

(w) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law and includes an enucleator.

(x) "Tissue" means a portion of the human body other than a vascularized organ or eye and does not include blood unless the blood is donated for the purpose of research or education.

(y) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(z) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(zm) "Vascularized organ" means a heart, lung, liver, pancreas, kidney, intestine, or other organ that requires the continuous circulation of blood to remain useful for purposes of transplantation.

(2m) SIGNING FOR A PERSON WHO IS PHYSICALLY UNABLE. If an individual who is physically unable to sign a record under sub. (5) (a) 4. or (b) 1., (6) (a) 1., (b) 1., (c) 1., or (d) 1., or (7) (a) 1. or (b) 1. directs another to sign the record on his or her behalf, the signature of the other individual authenticates the record as long as all of the following conditions are satisfied:

(a) The signature of the other individual is witnessed by at least two adults, at least one of whom is a disinterested witness.

(b) The witnesses sign the record at the request of the individual who is physically unable to sign.

(c) The record includes a statement that it was signed and witnessed at the request of the individual who is physically unable to sign.

(4) WHO MAY MAKE AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. Except as provided in subs. (7) and (8), any of the following may during the life of a donor make an anatomical gift of the donor's body or part in the manner provided in sub. (5):

(a) The donor, if he or she is at least 15 and one−half years of age or is an emancipated minor.

(b) An agent of the donor, unless the donor's power of attorney for health care instrument under ch. 155 or some other record prohibits the agent from making an anatomical gift.

(c) A parent of the donor, if the donor is an unemancipated minor and does not object to the making of the anatomical gift.

(d) A guardian of the donor unless a health care agent under ch. 155 has authority to make an anatomical gift of the donor's body or part.

(5) MANNER OF MAKING AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) A donor under sub. (4) (a) may make an anatomical gift by doing any of the following:

1. Affixing to, or authorizing a person to imprint on, the donor's driver's license or identification card a statement or symbol that indicates that the donor has made an anatomical gift.

2. Including an anatomical gift in his or her will.

3. If the donor has a terminal illness or injury, communicating the anatomical gift by any means to at least two adults, at least one of whom is a disinterested witness.

4. Signing a donor card or other record that includes an anatomical gift or, if physically unable to sign a record, by directing another individual to sign the record as provided in sub. (2m).

5. Authorizing a person to include in a donor registry a statement or symbol that indicates that the donor has made an anatomical gift.

(b) A person under sub. (4) (b) to (d) may make an anatomical gift of a donor's body or part during the donor's life by doing any of the following:

1. Signing a donor card or other record that includes an anatomical gift or, if physically unable to sign a record, by directing another to sign the record as provided in sub. (2m).

2. Authorizing another to include in a donor registry a statement or symbol that indicates that the person has made an anatomical gift of the donor's body or part.

(c) The revocation, suspension, expiration, or cancellation of a driver's license or identification card on which an anatomical gift has been made does not invalidate the anatomical gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the anatomical gift.

(6) AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) Subject to sub. (8), a donor may amend an anatomical gift of his or her body or part by doing any of the following:

1. Signing a record that amends the anatomical gift or, if physically unable to sign, directing another to sign the record as provided in sub. (2m).

2. Subsequently executing a record of gift that amends a previously executed anatomical gift or a portion of a previously executed anatomical gift either expressly or by inconsistency.

3. If the anatomical gift was not made in a will and the donor has a terminal illness or injury, communicating in any manner an amendment of the anatomical gift to at least two adults, at least one of whom is a disinterested witness.

4. If the anatomical gift was made in a will, amending the will.

(b) Subject to sub. (8), a donor may revoke an anatomical gift of his or her body or part by doing any of the following:

1. Signing a record that revokes the anatomical gift or, if physically unable to sign, directing another to sign the record as provided in sub. (2m).

2. Subsequently executing a record of gift that revokes a previously executed anatomical gift or a portion of a previously executed anatomical gift either expressly or by inconsistency.

3. If the anatomical gift was not made in a will and if the donor has a terminal illness or injury, communicating in any manner the revocation of the anatomical gift to at least two adults, at least one of whom is a disinterested witness.

4. If the anatomical gift was made in a will, amending or revoking the will.

5. If the anatomical gift was made in a record of gift, destroying or cancelling the record of gift, or the portion of the record of gift used to make the anatomical gift, with intent to revoke the anatomical gift.

(c) Subject to sub. (8), a person who is authorized to make an anatomical gift under sub. (4) (b) to (d) may amend an anatomical gift of a donor's body or part before the donor's death by doing any of the following:

1. Signing a record that amends the anatomical gift or, if physically unable to sign, directing another to sign the record as provided in sub. (2m).

2. Subsequently executing a record of gift that amends a previously executed anatomical gift or a portion of a previously executed anatomical gift either expressly or by inconsistency.

(d) Subject to sub. (8), a person who is authorized to make an anatomical gift under sub. (4) (b) to (d) may revoke an anatomical gift of a donor's body or part before the donor's death by doing any of the following:

1. Signing a record that revokes the anatomical gift or, if physically unable to sign, directing another to sign the record as provided in sub. (2m).

2. Subsequently executing a record of gift that revokes a previously executed anatomical gift or a portion of a previously executed anatomical gift either expressly or by inconsistency.

3. If the anatomical gift was made in a record of gift, destroying or cancelling the record of gift, or the portion of the record of gift used to make the anatomical gift, with intent to revoke the anatomical gift.

(7) REFUSAL TO MAKE AN ANATOMICAL GIFT; EFFECT OF REFUSAL. (a) An individual may refuse to make an anatomical gift of the individual's body or part by doing any of the following:

1. Signing a record refusing to make an anatomical gift or, if physically unable to sign, directing another to sign the record as provided in sub. (2m).

2. Including a refusal to make an anatomical gift in the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death.

3. If the individual has a terminal illness or injury, communicating in any manner a refusal to make an anatomical gift to at least two adults, at least one of whom is a disinterested witness.

(b) An individual who has made a refusal to make an anatomical gift under this subsection may amend or revoke the refusal to make an anatomical gift by doing any of the following:

1. Signing a record amending or revoking the refusal to make an anatomical gift or, if physically unable to sign, directing another to sign the record as provided in sub. (2m).

2. If the refusal to make an anatomical gift was made in the individual's will, amending or revoking the will, whether or not the will is admitted to probate or invalidated after the individual's death.

3. If the individual has a terminal illness or injury, communicating in any manner an amendment to or revocation of the refusal to make an anatomical gift to at least two adults, at least one of whom is a disinterested witness.

4. Subsequently making an anatomical gift as provided under sub. (5) (a) that is inconsistent with the refusal to make an anatomical gift.

5. If the refusal to make an anatomical gift was made in a record of refusal, destroying or canceling the record of refusal, or the portion of the record of refusal, that evidenced the refusal to make an anatomical gift, with intent to revoke the refusal to make an anatomical gift.

(c) Except as provided in sub. (8) (h), in the absence of an express, contrary indication by an individual set forth in a refusal to make an anatomical gift under this subsection, the individual's unrevoked refusal to make an anatomical gift under this subsection of his or her body or part bars all other persons from making an anatomical gift of the individual's body or part.

(8) PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION. (a) Except as provided in par. (g) and subject to par. (f), in the absence of an express, contrary indication by the donor, a person other than the donor may not make, amend, or revoke an anatomical gift of the donor's body or part if the donor has made an unrevoked anatomical gift of his or her body or that part under sub. (5) (a) or an amendment to an anatomical gift of the donor's body or that part under sub. (6) (a).

(b) A donor's revocation of an anatomical gift of the donor's body or part under sub. (6) (b) is not a refusal to make an anatomical gift and does not bar another person authorized to make an anatomical gift under sub. (4) from making an anatomical gift of the donor's body or part under sub. (5) and does not bar a person who is authorized to make an anatomical gift under sub. (9) from making an anatomical gift under sub. (10).

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under sub. (5) (b) or an amendment to an anatomical gift of the donor's body or part under sub. (6) (c), another person may not amend or revoke the anatomical gift under sub. (10) or otherwise make an anatomical gift of the body or part under sub. (10).

(d) If a person other than the donor revokes an anatomical gift of the donor's body or part under sub. (6) (d), the revocation does not bar another person from making an anatomical gift of the donor's body or part under sub. (5) or (10).

(e) An anatomical gift of a part of a donor's body that is made under sub. (5) or in an amendment under sub. (6), absent an express, contrary indication by the donor or other person who made the anatomical gift, is not a refusal by the donor to make an anatomical gift of another part of the donor's body or a limitation on a later anatomical gift of another part of the donor's body.

(f) An anatomical gift of a part that is made under sub. (5) or in an amendment under sub. (6) for a specified purpose for which an anatomical gift may be made, absent an express, contrary indication by the person who made the anatomical gift, does not limit a person from making an anatomical gift of the part under sub. (5), (6), or (10) for any of the other purposes for which an anatomical gift may be made.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who has made a refusal to make an anatomical gift under sub. (7) dies, a reasonably available parent of the minor may revoke the minor's refusal to make an anatomical gift.

(9) WHO MAY MAKE AN ANATOMICAL GIFT NEAR OR UPON THE DONOR'S DEATH. (a) Except as provided in subs. (7) and (8) and subject to pars. (b) and (c), any member of the following classes of persons, in the order of priority listed, who is reasonably available may, in the manner provided in sub. (10), make an anatomical gift of the body or part of an individual who is near death or has died:

1. A person who is the individual's agent near or at the time of the individual's death and has authority under sub. (4) (b) to make an anatomical gift of the decedent's body or part.

2. The spouse or domestic partner under ch. 770 of the individual.

3. The adult children of the individual.

4. The parents of the individual.

5. The adult siblings of the individual.

6. The adult grandchildren of the individual.

7. The grandparents of the individual.

8. Adults who exhibited special care and concern, except as a compensated health care provider, for the individual.

9. Persons who were guardians of the individual near or at the time of the individual's death.

10. Any other persons who have authority to dispose of the individual's body.

(b) If the members of a class of persons under par. (a) 1., 3., 4., 5., 6., 7., or 9. have priority to make an anatomical gift of an individual's body or part under par. (a) and the class consists of more than one member, any member of the class may make an anatomical gift unless that member or the person to whom the anatomical gift will pass under sub. (11) has actual knowledge of an objection by another member of the class, in which case the anatomical gift may be made only by a majority of members of the class who are reasonably available.

(c) A person may not make an anatomical gift of an individual's body or part under this subsection if a person who is a member of a class with higher priority under par. (a) is reasonably available.

(10) MANNER OF MAKING, AMENDING, OR REVOKING AN ANATOMICAL GIFT NEAR OR UPON DONOR'S DEATH. (a) A person authorized under sub. (9) to make an anatomical gift of an individual's body or part may do so by doing any of the following:

1. Signing a record of gift.

2. Subject to sub. (25m) (c), making an oral communication of an anatomical gift that is electronically recorded.

3. Subject to sub. (25m) (c), making an oral communication of an anatomical gift that is contemporaneously reduced to a record and that is signed by the individual receiving the oral communication.

(b) A member of a class of persons that has higher priority to make an anatomical gift under sub. (9) than the person who made an anatomical gift under par. (a) and who is reasonably available may amend the anatomical gift in the manner provided in par. (d), except that if more than one member of the class with higher priority is reasonably available, the agreement of a majority of the reasonably available members is required to amend the anatomical gift.

(c) 1. Subject to subd. 2., a member of a class of persons that has higher priority to make an anatomical gift under sub. (9) than the person who made an anatomical gift under par. (a) may revoke the anatomical gift in the manner provided in par. (d), except that if more than one member of the class with higher priority is reasonably available, the agreement of at least one−half of the reasonably available members is required to revoke the anatomical gift.

2. A revocation of an anatomical gift under subd. 1. is effective only if before an incision is made to remove a part from the donor's body or before invasive procedures have been begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician has actual knowledge of the revocation.

(d) A person who is authorized to amend or revoke an anatomical gift under par. (b) or (c) may do so orally or by including the amendment or revocation in a record.

(11) PERSONS THAT MAY RECEIVE ANATOMICAL GIFTS; PURPOSE OF GIFTS. (a) An anatomical gift may be made to any of the following persons:

1. For the purpose of research or education, a hospital, accredited medical school, dental school, college, university, organ procurement organization, or other appropriate person.

2. Subject to par. (b) 1., an individual designated by the person making the anatomical gift into which individual's body a part is intended to be transplanted.

3. An eye bank or tissue bank.

4. An organ procurement organization, as custodian of a part for transplant or therapy.

(b) 1. If a part that is the subject of an anatomical gift made to an individual under par. (a) 2. cannot be transplanted into the individual, the part passes as provided in par. (f) absent an express, contrary indication by the person making the anatomical gift.

2. If tissue that is the subject of an anatomical gift made to an organ procurement organization is unsuitable for transplantation or therapy, the organ procurement organization may give the tissue to an appropriate person for research or education if authorized to do so by the person who made the anatomical gift.

(c) If an anatomical gift of one or more parts does not name a person under par. (a) 1. to 4. as the person to whom the anatomical gift is made, but identifies the purpose of the anatomical gift, all of the following apply:

1. If the purpose of the anatomical gift is transplantation or therapy, the part passes as provided in par. (f).

2. If the purpose of the anatomical gift is research or education, the part passes to the appropriate procurement organization.

3. If an anatomical gift is for more than one purpose, but the purposes are not set forth in any priority, the part shall be used for transplantation or therapy, if suitable, and if the part cannot be used for transplantation or therapy, may be used for research or education.

(d) If an anatomical gift of one or more parts does not name a person under par. (a) 1. to 4. as the person to whom the anatomical gift is made and does not identify the purpose of the anatomical gift, the parts may be used only for transplantation or therapy, and the parts pass as provided in par. (f).

(e) If an anatomical gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar meaning, the anatomical gift may be used only for the purpose of transplantation or therapy, and the parts pass as provided in par. (f).

(f) If par. (b) 1., (c) 1., (d), or (e) applies, all of the following apply:

1. If the part is an eye, the part passes to the appropriate eye bank.

2. If the part is tissue, the part passes to the appropriate tissue bank.

3. If the part is an organ, the part passes to the appropriate organ procurement organization as custodian of the organ.

(g) If a body or part that is the subject of an anatomical gift does not pass pursuant to pars. (a) to (e) or is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person who is obligated to dispose of the body or part.

(h) A person may not accept an anatomical gift of a decedent's body or part if the person has actual knowledge that the anatomical gift was not made as provided in sub. (5), (6), or (10) or if the person has actual knowledge that the decedent made a refusal to make an anatomical gift under sub. (7) that was not revoked.

(i) Except as provided under par. (a) 2., nothing in this section affects the allocation of organs for transplantation or therapy.

(12) SEARCH AND NOTIFICATION. (a) If any of the following persons reasonably believes an individual to be dead or near death, the person shall make a reasonable search of the individual for a record of gift or a record of refusal or other information identifying the individual as a donor or as an individual who has refused to make an anatomical gift:

1. A law enforcement officer, fire fighter, emergency medical technician, first responder, or ambulance service provider.

2. If no other source of information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a record of gift or record of refusal is located by a search under par. (a) 1., and the individual or deceased individual to whom the record or gift or record of refusal relates is taken to a hospital, the person responsible for conducting the search shall send the record of gift or record of refusal to the hospital.

(c) A person is immune from any criminal or civil liability for failure to discharge the duties imposed under this subsection but may be subject to an administrative sanction for such failure.

(13) DELIVERY OF RECORD OF GIFT NOT REQUIRED; RIGHT TO EXAMINE. (a) A record of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person who has possession of a record of gift or a record of refusal relating to the individual's body or part shall allow any person who is authorized to revoke, make, or object to the making of an anatomical gift of the individual's body or part, and any person to whom the body or part could pass under sub. (11), to examine and copy the record of gift or record of refusal.

(14) RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS. (a) A procurement organization shall do all of the following when a hospital refers an individual who is near death or who is deceased to the procurement organization:

1. If the individual is a prospective donor, make a reasonable search for any person under sub. (9) having priority to make an anatomical gift of the individual's body or part.

2. If the individual referred is a minor who is a donor or who made an unrevoked refusal to make an anatomical gift, unless the procurement organization has actual knowledge that the minor

was emancipated, conduct a reasonable search for the parents of the minor and provide the parents an opportunity to revoke or amend the anatomical gift or refusal relating to the minor.

3. If the procurement organization receives information about an anatomical gift of the individual's body or part that under sub. (11) passes to a person other than the procurement organization, promptly advise the other person of relevant information regarding the anatomical gift.

4. If procurement organization personnel make a request of a family member of a potential donor to make an anatomical gift of organs, tissues, or eyes, ensure that the personnel make the request with discretion and sensibility with respect to the circumstances, views, and beliefs of the family of the potential donor.

(b) When a hospital refers an individual at or near death to a procurement organization, the procurement organization may conduct any reasonable examination to determine whether a part of the individual that is or could be the subject of an anatomical gift is medically suitable for transplantation, therapy, research, or education. Unless otherwise prohibited by law, an examination under this paragraph may include an examination of all of the individual's medical or dental records. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization has actual knowledge that the individual expressed a contrary intent.

(c) Unless otherwise prohibited by law, at any time after a donor's death, the person to whom the donor's body or part passes under sub. (11) may conduct any reasonable examination, including an examination of all of the donor's medical or dental records, to determine the medical suitability of the donor's body or part for its intended purpose.

(d) Subject to subs. (11) (g), (22m), and (23m), the rights of the person to whom an anatomical gift of a part passes under sub. (11) are superior to the rights of all others with respect to a part. The person may accept or reject an anatomical gift in whole or in part. A person who accepts an anatomical gift of a part shall cause the part to be removed from the donor's body after the death of the donor and before embalming, burial, or cremation and without unnecessary mutilation.

(e) A person who accepts an anatomical gift of an entire body may, subject to the terms of an anatomical gift and this section, allow embalming, burial, cremation, or use of the remains of the body in a funeral service.

(f) A physician who attends a decedent at death or determines the time of death may not participate in the procedures for removing or transplanting a part from the decedent.

(g) A physician or technician may remove from the body of a donor a donated part that the physician or technician is qualified to remove.

(14m) COORDINATION OF PROCUREMENT AND USE; DUTIES OF HOSPITALS. Each hospital shall do all of the following:

(a) Enter into agreements or affiliations with procurement organizations for coordination of procurement and use of bodies and parts that are the subject of anatomical gifts, including the following:

1. An agreement with an organ procurement organization to notify the organ procurement organization or its designee in a timely manner of individuals whose death is imminent or who have died in the hospital.

2. Agreements with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to assure that all usable tissues and eyes are obtained from potential donors, as long as such agreements do not interfere with the procurement of organs.

(b) Ensure, in collaboration with the organ procurement organization with which the hospital has an agreement under par. (a) 1. that the family of each potential donor is informed of its options to donate organs, tissues, or eyes or to refuse to donate organs, tissues, or eyes.

(c) Ensure that the individual who requests family members of potential donors to make anatomical gifts of organs, tissues, or eyes is either an organ procurement representative or has completed a course on the methodology for approaching persons to request that they make anatomical gifts, which course is designed in conjunction with the tissue and eye bank community and offered or approved by the organ procurement organization with which the hospital has an agreement under par. (a) 1.

(d) Ensure that hospital personnel who make requests of family members of potential donors to make anatomical gifts of organs, tissues, or eyes make the requests with discretion and sensibility with respect to the circumstances, views, and beliefs of the families of potential donors.

(e) Ensure that the hospital works cooperatively with the procurement organizations with which it has agreements under par. (a) in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place.

(17) PROHIBITED ACTS RELATED TO RECORDS. Any person who intentionally falsifies, forges, conceals, defaces, or obliterates a record of gift, an amendment or revocation of a record of gift, or a record of refusal for pecuniary gain is guilty of a Class H felony, except that notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $50,000.

(18) IMMUNITY. (a) A person who acts, or in good faith attempts to act, in accordance with this section or with the applicable anatomical gift law of another state is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) A person who makes an anatomical gift and the person's estate are not liable for any injury or damage that results from the making of the anatomical gift or the use of the body or any part that is the subject of the anatomical gift.

(c) A person may rely on a representation made by an individual purporting to be an individual listed under sub. (9) (a) 2., 3., 4., 5., 6., 7., or 8. as to the individual's relation to a donor or prospective donor in determining whether an anatomical gift of the donor's or prospective donor's body or part has been made, amended, or revoked.

(19) LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO MAKING OF ANATOMICAL GIFT; PRESUMPTION OF VALIDITY. (a) An anatomical gift is valid if made in accordance with any of the following:

1. This section.

2. The laws of the state or country where it was made.

3. The laws of the state or country where the individual making the anatomical gift was domiciled, had a place of residence, or was a national at the time the anatomical gift was made.

(b) If an anatomical gift is valid under this subsection, the law of this state governs the interpretation of the anatomical gift.

(c) A person may presume that an anatomical gift or an amendment of an anatomical gift is valid unless the person has actual knowledge that it was not validly made or was revoked.

(20) DONOR REGISTRY. The department of health services may establish a donor registry. If the department of health services establishes a donor registry under this subsection, the department of transportation shall cooperate with the department of health services in establishing the donor registry. The department of health services shall promulgate administrative rules governing any donor registry established under this subsection.

(21) EFFECT OF ANATOMICAL GIFT ON ADVANCE HEALTH CARE DIRECTIVE. If a prospective donor executed a declaration, as defined in s. 154.02 (1), or a power of attorney for health care instrument under ch. 155, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor unless the

declaration or power of attorney for health care instrument expressly provides to the contrary.

(22m) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; NO EVIDENCE OF ANATOMICAL GIFT. (ag) If a decedent is within the custody of a coroner or medical examiner and if there is no evidence that an anatomical gift of the decedent's body or part has been made or that the decedent has refused to make an anatomical gift, the coroner or medical examiner shall contact by telephone the organ procurement organization designated for the region in which the death occurs. The coroner or medical examiner shall provide the organ procurement organization with information, if known to the coroner or medical examiner, concerning the decedent's age, the cause of the decedent's death and, if available, the decedent's medical history.

(am) The coroner or medical examiner may release and permit the removal of a part from a decedent specified in par. (ag) within that official's custody, for transplantation or therapy, including to a tissue bank under the requirements of sub. (24m), if all of the following apply:

1. The official has received a request for the part from a hospital, physician, or organ procurement organization.

2. The official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and, subject to sub. (25m), inform persons listed in sub. (9) of their option to make, or object to making, an anatomical gift.

3. The official does not have actual knowledge of a refusal to make an anatomical gift or contrary indication by the decedent or of an objection by a person having priority to act as listed in sub. (9).

4. The removal will be by a physician, except for the following:

a. In the case of eyes, the removal may be by a physician or by an enucleator.

b. In the case of tissue or bone, the removal may be by a physician or by a technician.

5. The removal will not interfere with any autopsy or investigation.

6. The removal will be in accordance with accepted medical standards.

7. Cosmetic restoration will be done to the decedent's body, if appropriate.

(b) A coroner or medical examiner who releases, and permits the removal of a part under this subsection shall maintain a permanent record of the name of the decedent, the name of the person making the request, the date and purpose of the request, the part requested, and the name of the person to whom it was released.

(23m) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; POTENTIAL DONATIONS OF ORGANS AND TISSUE. (a) Subject to par. (b), for a decedent who meets the criteria for a determination of death under s. 146.71, who is a donor, and who is within the jurisdiction of a coroner or medical examiner under ch. 979, any vascularized organ that is the subject of an anatomical gift may be removed by a physician, within a time period compatible with preservation of the organ for purposes of transplantation or therapy, if all of the following take place:

1. Immediately after the hospital in which the donor or potential donor is located contacts the organ procurement organization designated for the region of which the hospital is a part concerning the potential donation, the organ procurement organization shall, by oral conversation, provide notice to the coroner or medical examiner or his or her designee of the referral of the donor or potential donor and shall provide notice of the referral to the district attorney or his or her designee.

2. The coroner or medical examiner or his or her designee has the opportunity to be present during the scheduled removal of the vascularized organ if, in the judgment of the coroner, medical examiner, or designee, the organ may be necessary in determining the cause of death.

(b) If, in the judgment of the coroner, medical examiner, or designee specified in par. (a) the vascularized organ may be necessary in determining the cause of death, the coroner, medical examiner, or designee may order a biopsy of the vascularized organ or, if the coroner, medical examiner, or designee is present during the scheduled removal, he or she may deny removal of the vascularized organ. If denial of removal is a possibility, the organ procurement organization shall make a good faith effort to consult with a forensic pathologist designated by the coroner, medical examiner, or designee as to the pathologist's opinion concerning the necessity of the vascularized organ in determining the cause of death. If the biopsy is ordered or the removal is denied, the coroner, medical examiner, or designee shall specify, in writing as part of any death report required under ch. 979, any reasons for determining that the vascularized organ may be involved in the cause of death.

(c) For a decedent specified under par. (a), as authorized under the requirements of this section by the coroner, medical examiner, or designee with jurisdiction over the decedent, any part other than a vascularized organ that is a subject of an anatomical gift may be removed by a physician and any part that is tissue or bone may be removed by a technician or tissue bank employee, within a time period compatible with preservation of the part for purposes of transplantation or therapy.

(d) A physician, technician, or tissue bank employee who removes cardiovascular tissue from a decedent under this subsection shall, upon request of the coroner or medical examiner, file with the coroner or medical examiner with jurisdiction over the decedent a report detailing the condition of the cardiovascular tissue and its relationship to the cause of death. The report may include a biopsy or medically approved sample, if available, from the part.

(e) 1. A physician who removes an organ from a decedent under this subsection shall complete a form, as specified in sub. (26m) (a).

2. A physician, technician, or tissue bank employee who removes tissue, other than cardiovascular tissue, from a decedent under this subsection shall complete a form, as specified in sub. (26m) (b).

3. After completing a form under this paragraph, the physician, technician, or tissue bank employee shall transmit the form to the coroner or medical examiner with jurisdiction over the decedent.

(24m) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; TISSUE BANKS. (a) 1. If a decedent is within the custody of a coroner or medical examiner, and the death occurred in a hospital, any release of the decedent for potential donation of tissue shall be to the tissue bank with which the hospital has an agreement under sub. (14m) (a) 2. However, if such a tissue bank is unwilling to receive the tissue donation, the tissue bank shall so notify the coroner or medical examiner.

2. Upon receipt of a notification under subd. 1., the coroner or medical examiner may notify any other tissue bank with which the coroner or medical examiner has an agreement under par. (b) of the availability of the decedent as a potential tissue donor.

3. Upon receipt of a notification under subd. 2., the tissue bank so notified, if willing to receive the tissue donation, shall contact a reasonably available person, under the priority established in sub. (9), to request that the person make an anatomical gift of all or a part of the decedent's tissue.

4. If the coroner or medical examiner informs the hospital that subds. 2. and 3. apply and that consent has been given for an anatomical gift, the hospital shall transfer the decedent to the coroner or medical examiner.

(b) When a decedent is within the custody of a coroner or medical examiner, the death occurred outside a hospital or the dece-

dent was transferred to the coroner or medical examiner under par. (a) 4., and the coroner or medical examiner refers the decedent as a potential tissue donor, any such referral shall be made under the following conditions:

1. Subject to subds. 2., 3., and 4., the coroner or medical examiner, after considering a tissue bank's history, services, traditional referral patterns, geographic service area, and tissue distribution record and any other criteria required for consideration by the corporation counsel of the applicable county, enters into a written, general referral agreement with one or more tissue banks to which the coroner or medical examiner shall refer decedents for potential donation of tissue.

2. Any agreement under subd. 1. is subject to review and approval by all of the following:

a. The corporation counsel of the applicable county.

b. The county board of the applicable county. Within 60 days after any approval by the corporation counsel and transmittal of the agreement to the county board, the county board may approve or disapprove the agreement. If the county board takes no action, the agreement is approved.

3. A tissue bank under this paragraph is accredited by the American Association of Tissue Banks or audited at least once every 2 years by an organization that is accredited by the American Association of Tissue Banks.

4. All of the following applies to an agreement by a coroner or medical examiner with one or more tissue banks to which the coroner or medical examiner refers decedents for potential donation of tissue:

a. Any such agreement that is entered into after April 13, 2006, shall conform to the requirements of subds. 1. to 3.

b. Any such agreement that exists on April 13, 2006, shall conform to the requirements of subds. 1. to 3. by October 1, 2007, unless the agreement expires before that date and is not renegotiated or renewed under subd. 4. a.

(25m) CONSENT FOR OR LIMITATION ON CERTAIN USES OF BONES OR TISSUE; REQUIREMENTS. (a) A hospital, organ procurement organization, tissue bank, coroner, or medical examiner that provides a record of gift to a person who may make an anatomical gift under sub. (4) or (9) shall include in the record of gift the following sentences: "I understand that donated bones or tissues, including skin, may have numerous uses, including for reconstructive and cosmetic purposes, and that multiple organizations, including nonprofit and for−profit organizations, may recover, process, or distribute the donations. I further understand that I may, by this record, limit the use of the bones or tissues, including skin, that are donated or types of organizations that recover, process, or distribute the donation."

(b) The record of gift under par. (a) shall include, following the 2nd sentence required in par. (a), all of the following:

1. A line or space for the person who may make an anatomical gift to sign to acknowledge that he or she has read the sentences specified in par. (a) or that the sentences have been read aloud to him or her. Except in cases in which an anatomical gift is executed by means that do not require the person making the anatomical gift to sign a record of gift, failure of the person making the anatomical gift to sign in the line or space is a refusal to make or an objection to making an anatomical gift of bones or tissues.

2. A line or space for the person making the anatomical gift to sign and specify a limitation, if any, on the use of bones or tissues or on the types of organizations that recover, process, or distribute the donation.

(c) If a person makes an anatomical gift in the manner provided in sub. (10) (a) 2. or 3., the individual receiving the oral communication shall read aloud to the person the sentences required under par. (a). If the anatomical gift is made in the manner provided in sub. (10) (a) 3., the individual who reduces the anatomical gift to a record shall note on the record that the person making the anatomical gift has been read the sentences required under par. (a) and note any limitations that the person making the anatomical gift imposes on the use of any bones or tissues that are the subject of the anatomical gift or any limitations on the types of organizations that recover, process, or distribute such bones or tissues.

(d) If a person who may make an anatomical gift under sub. (4) or (9) makes an anatomical gift under this subsection, the hospital, organ procurement organization, tissue bank, coroner, or medical examiner that provides to the person a record of gift under par. (a) shall also provide the person with the telephone number and address of the agency or organization that recovers the anatomical gift.

(e) The requester under par. (a) shall provide the person who may make an anatomical gift under sub. (4) or (9) with a copy of any record of gift executed under the requirements of this subsection.

(26m) FORMS FOR REMOVAL OF ORGANS AND CERTAIN TISSUES; RULES. The department of health services shall promulgate rules prescribing all of the following:

(a) A form for removal of organs for use under sub. (23m) (e) 1. and 3.

(b) A form for removal of tissue, other than cardiovascular tissue, for use under sub. (23m) (e) 2. and 3.

(27m) PENALTY. Whoever fails to comply with the requirement to provide sentences under sub. (25m) (a) or (c) may be subject to a forfeiture of not less than $500 nor more than $1,000 for each violation.

(28m) EFFECT OF PRIOR DOCUMENT OF GIFT. Notwithstanding the requirements of this section, a document of gift that was made under the requirements of s. 157.06, 1987 stats., or s. 157.06, 2005 stats., is deemed to comply with the requirements of this section.

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103; 2005 a. 229, 230; 2007 a. 20 s. 9121 (6) (a); 2007 a. 106; 2009 a. 28, 177, 180; 2011 a. 258; 2011 a. 260 s. 81; 2013 a. 151 s. 28; 2015 a. 195 s. 83.

Cross−reference: See also ch. DHS 137, Wis. adm. code.

Chapters 69 and 157 are not alternatives to the requirement in s. 979.10 that anyone cremating a corpse must first obtain a cremation permit from the coroner. University medical schools or anyone else qualified to receive a corpse can receive a corpse for research without first obtaining a permit. 77 Atty. Gen. 218.

SUBCHAPTER II

CEMETERIES

157.061 Definitions. Except as otherwise provided, in this subchapter:

(1) "Burial" means entombment, inurnment or interment.

(1g) "Business day" has the meaning given in s. 421.301 (6).

(1m) "Care fund" means one or more accounts or other investments established for the care of a cemetery.

(1p) "Cemetery" means any land, including any mausoleum on the land, that is used or intended to be used, exclusively for the burial of human remains.

(1r) "Cemetery association" means an association formed under s. 157.062.

(2) "Cemetery authority" means any person who owns or operates a cemetery specified in s. 157.065 (1).

(2g) "Cemetery board" means the board created in s. 15.405 (3m).

(2m) "Cemetery lot" means a grave or 2 or more contiguous graves and, when used in reference to the sale, purchase or ownership of a cemetery lot, includes the right to bury human remains in that cemetery lot.

(3) "Cemetery services and merchandise" means goods associated with the burial of human remains, including monuments, markers, nameplates, vases, and urns, and any services that are associated with supplying or delivering those goods or with the burial of human remains, including the burial or entombment, and

that may be lawfully provided by a cemetery authority. The term does not include caskets or outer burial containers.

(4) "Dedicated" means platted as a cemetery.

(7m) "Grave" means a piece of land that is used or intended to be used for an underground burial of human remains, other than a burial in an underground mausoleum space.

(8) "Human remains" means the body of a deceased individual that is in any stage of decomposition or has been cremated.

(9) "Mausoleum" means a building, structure or part of a building or structure that is used or intended to be used for the burial of human remains.

(10) "Mausoleum space" means a niche, crypt or specific place in a mausoleum that contains or is intended to contain human remains.

(11) "Municipality" means town, village or city.

(11g) "Outer burial container" means any container that is placed or intended to be placed into the burial excavation of a grave and into which a casket is placed or intended to be placed at the time of burial.

(11r) "Payment of principal" means the portion of a payment for the purchase of a cemetery lot, cemetery services and merchandise, or a mausoleum space that represents the principal amount owed by the purchaser for the cemetery lot, cemetery services and merchandise, or mausoleum space, and does not include any portion of the payment that represents any taxes, finance or interest charges, administrative fees, or insurance premiums.

(12) "Preneed sales contract" means an agreement for the sale of cemetery services and merchandise that is to be delivered after the date of the initial payment for the cemetery services and merchandise, or for the sale of an undeveloped space.

Note: Sub. (12) was renumbered sub. (3g) by 2015 Wis. Act 237 but was renumbered back to sub. (12) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(13) "Preneed trust fund" means an account or other investment in which a portion of the cemetery services and merchandise received under a preneed sales contract is deposited.

Note: Sub. (13) was renumbered sub. (3r) by 2015 Wis. Act 237 but was renumbered back to sub. (13) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(13m) "Professional land surveyor" means a professional land surveyor licensed under ch. 443.

(14) "Public mausoleum" means a mausoleum in which at least one mausoleum space is offered for sale to the general public.

(15) "Religious association" means any church, synagogue, or mosque; any religious society organized under ch. 187; and any corporation whose articles of organization provide, subject to s. 182.030, that it shall be under the supervision and control of a church, synagogue, mosque, or religious society.

(16) "Sale" means a transfer for consideration of any interest in ownership, title or right to use.

(17) "Undeveloped space" means a mausoleum space that is not ready for the burial of human remains on the date of the sale of the mausoleum space.

History: 1983 a. 189; 1985 a. 316 s. 18; Stats. 1985 s. 157.061; 1989 a. 307; 1991 a. 269; 1997 a. 188; 1999 a. 32; 2005 a. 25; 2011 a. 32; 2013 a. 358; 2015 a. 237; s. 13.92 (1) (bm) 2.

157.062 Cemetery associations; creation; powers and duties. (1) ORGANIZATION. Seven or more residents of the same county may form a cemetery association. They shall meet, select a chairperson and secretary, choose a name, fix the annual meeting date, and elect by ballot not less than 3 nor more than 9 trustees whom the chairperson and secretary shall immediately divide by lot into 3 classes, who shall hold their offices for 1, 2, and 3 years, respectively. Within 3 days, the chairperson and secretary shall certify the corporate name, the names, home addresses, and business addresses of the organizers and of the trustees, and their classification, and the annual meeting date acknowledged by them, and, except as provided in sub. (9), deliver the certification to the cemetery board. The association then has the powers of a corporation.

(2) AMENDMENTS. The association may change its name, the number of trustees, or the annual meeting date by resolution at an annual meeting, or special meeting called for such purpose, by a majority vote of the members present, and, except as provided in sub. (9), by delivering to the cemetery board a copy of the resolution, with the date of adoption, certified by the president and secretary or corresponding officers.

(3) VALIDATION. When there shall have been a bona fide attempt to organize a cemetery association, but a failure to record a properly drawn and executed certificate of organization, and it has in good faith bought and platted grounds and conveyed cemetery lots and carried on business for over 25 years, the same shall be a body corporate from the date of conveyance to it of real estate, and its transfers and other transactions are validated.

(4) MEETINGS; ELECTIONS. (a) An annual election shall be held during the annual meeting. The annual meeting, and any special meeting described in sub. (2), shall be held at a place in the county chosen by the trustees upon public notice as required by the bylaws. Trustees chosen after the first election shall be proprietors of cemetery lots in the cemetery, residents of the state, and hold office for 3 years. Election shall be by ballot and a plurality shall elect. Each owner of one or more cemetery lots is entitled to one vote, and one of several owners of a cemetery lot, designated by the majority of them, shall cast the vote.

(b) If the annual election is not held on the day fixed for the annual meeting, the trustees may appoint another day, not more than 60 days after the annual meeting, and give public notice of time and place, and if an election is not so held 5 members may apply to the judge of a court of record in the county for an order granting power to hold an election, by publishing in the county a class 2 notice, under ch. 985, of the application and the judge shall grant the application, and election shall then be held upon like notice. The terms of trustees expire on the date of the annual meeting in the year in which they are scheduled to expire, except that if no election is held at the annual meeting the terms expire on the date of the next election held under this paragraph.

(5) TRUSTEES; DUTIES, REPORT. The trustees may fill vacancies for the unexpired term. One shall be chosen president, and they shall appoint a secretary and treasurer, and may require security of the treasurer. The trustees shall manage the affairs and property of the association and control and beautify the cemetery, and may establish regulations for those purposes. The trustees shall make and file written reports as required in s. 157.62 (1) and (2).

(6) DISSOLUTION; REORGANIZATION. (a) The association is dissolved by failure to hold an annual election for 3 successive years.

(b) If an association that has been dissolved under par. (a), or any group that was never properly organized as a cemetery association, has cemetery grounds and human remains are buried in the cemetery grounds, 5 or more members, or persons interested as determined by order of the circuit judge under par. (c), may publish a class 3 notice, under ch. 985, in the municipality in which the cemetery is located, of the time, place, and object of the meeting, assemble and reorganize by the election of trustees and divide them into classes as provided in sub. (1), the commencement of the terms to be computed from the next annual meeting date. The secretary shall enter the proceedings of the meeting on the records. The association is reorganized upon delivery of a copy of the proceedings to the cemetery board, except as provided in sub. (9). Upon reorganization, the title to the cemetery grounds, trust funds, and all other property of the association or group vests in the reorganized association, under the control of the trustees. The reorganized association may continue the name of the dissolved association or may adopt a new name.

(c) If an association is dissolved under par. (a) or any group has never been properly organized as cemetery association, and there are fewer than 5 members living or residing in the county where the cemetery is located, the circuit judge for the county shall upon

the petition of any person interested, make an order determining who are persons interested in the cemetery. Any adult person who owns an interest in any cemetery lot in the cemetery, who is related to any person buried in the cemetery, or who is a descendant, brother, sister, nephew, niece or surviving spouse of a member of the dissolved association, is an interested person. The circuit judge may make the order upon evidence he or she deems sufficient, with or without hearing. The order need not contain the names of all persons interested, but shall contain the names of at least 5 such persons.

(6m) FORMS. The cemetery board may prescribe and furnish forms for providing the information required under subs. (1) to (6).

(7) TAX FOR MAINTENANCE. When a cemetery association having control of a cemetery in a town, village or city of the third or fourth class has insufficient maintenance funds it may certify in writing to the clerk of such town, city or village the amount deemed necessary during the next ensuing year, the amount the association has therefor, and the deficiency, and the governing body of such town, city or village may levy and collect a tax therefor and pay the same to the association. If the cemetery is in more than one such municipality the deficiency shall be equitably distributed. If a cemetery located wholly within a town, village or city of the third or fourth class has also buried therein decedents from an adjoining municipality, the association having insufficient funds, the association may certify in writing to its municipal clerk and to the clerk of such other municipality, the amount deemed necessary for the ensuing year, the amount the association has therefor, the amount of the deficiency and the equitable amount that each municipality should contribute; whereupon the governing body of each such municipality may levy and collect a tax therefor and pay the same to the association.

(8) LIMITED LIABILITY OF TRUSTEES AND OFFICERS. (a) Except as provided in pars. (b) to (d), a trustee or officer of a cemetery association organized under this section is not liable to the association, its members or creditors, or any person asserting rights on behalf of the association, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a trustee or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

1. A willful failure to deal fairly with the association or its members in connection with a matter in which the trustee or officer has a material conflict of interest.

2. A violation of criminal law, unless the trustee or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the trustee or officer derived an improper personal profit.

4. Willful misconduct.

(b) Except as provided in par. (c), this subsection does not apply to any of the following:

1. A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

2. A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

3. The liability of a trustee or officer arising from a breach of, or failure to perform, any duty relating to the receipt, handling, investment or other use of care funds or any other funds made in trust.

4. The liability of a trustee or officer for violating s. 157.12.

(c) Paragraph (b) 1. and 2. does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

(d) This subsection does not apply to a cemetery association organized under this section if any part of the association's income is distributable among its members, trustees or officers.

(9) EXEMPTIONS FOR CERTAIN CEMETERIES. In lieu of delivering a certification, resolution, or copy of proceedings to the cemetery board under sub. (1), (2), or (6) (b), a cemetery association that is not required to be licensed under s. 440.91 (1) or registered under s. 440.91 (1m) shall deliver the certification, resolution, or copy of proceedings to the office of the register of deeds of the county in which the cemetery is located.

History: 1977 c. 449 ss. 233, 497; 1983 a. 192; 1985 a. 316 s. 18; Stats. 1985 s. 157.062; 1989 a. 31, 307; 1991 a. 269; 1995 a. 27; 1997 a. 254; 2007 a. 174; 2015 a. 237.

Under sub. (4), cemetery association voters must be lot owners. Heirs of deceased lot owners are entitled to vote in cemetery association elections. 69 Atty. Gen. 132.

157.064 Cemetery associations and religious associations; holding property; change of ownership. (1) A cemetery or religious association authorized to hold lands for cemetery purposes may take and hold not more than 80 acres of land, to be used exclusively for burial of the dead, and personal property not exceeding $250,000 in value, to promote the objects of the association; and if the cemetery is near to or within a 3rd class city the association may so take and hold not more than 160 acres of land; and if near to or within a 1st or 2nd class city, not more than 240 acres.

(2) A cemetery or religious association incorporated in this state and having a cemetery in or near a 1st or 2nd class city and any cemetery described under s. 157.065 (3m) (d) may acquire by gift or purchase up to 30 acres of adjoining lands for cemetery purposes, and may pay for it wholly or partly from its cemetery lot sales.

(3) When it is necessary to enlarge a cemetery owned by a cemetery or religious association, and adjoining lands cannot be acquired or can be acquired only at an exorbitant price, application may be made in writing to the circuit judge by 12 or more resident freeholders of the municipality in which the cemetery is located describing the land and setting forth the facts and the price asked, whereupon the judge shall appoint 3 resident freeholders of the county, but not of the municipality, to appraise the damages of each owner, not to exceed the price asked, but, except in cities or incorporated villages, no lands may be taken within 330 feet of a residence owned by the occupant without the occupant's written consent. The appraisers shall hear all parties upon 10 days' notice and file a report in writing with the judge within 10 days after determination. Upon payment into court of the amount appraised, the lands shall be taken. Either party may appeal as provided in s. 32.06 (10). The commissioners shall be paid, by the party seeking to take the land, $3 for each day actually employed and 6 cents for each mile necessarily traveled.

(5) Whenever a cemetery association votes to convey cemetery property and all trust funds pertaining to the cemetery property to a city, village or town, the trustees of the association shall have the power to transfer the property upon the acceptance of the transfer by resolution of the governing body of the city, village or town. A conveyance under this subsection is subject to s. 157.08 (2).

(6) Whenever the majority of the members of a cemetery association, or of a religious association authorized to hold lands for cemetery purposes, present at an annual meeting or special meeting called for such purpose vote to convey all of the cemetery association's or religious association's cemetery property, trust funds and other property used for cemetery purposes to another cemetery association or religious association, the trustees of the association shall transfer the property upon the acceptance of the transfer by the other association by affirmative vote of a majority of its members present at an annual meeting or special meeting called for that purpose. Upon such acceptance, the title to the

cemetery property, trust funds and other property of the transferring association vests in the accepting association under the control of the trustees of the accepting association. A conveyance under this subsection is subject to s. 157.08 (2).

(7) Not more than 30 days after a transfer under sub. (6), the transferring association shall notify the cemetery board in writing of the transfer, including the name and address of the accepting association or its treasurer. The cemetery board may prescribe and furnish forms for providing the information required under this subsection.

History: 1977 c. 449 s. 497; 1985 a. 316 s. 18; Stats. 1985 s. 157.064; 1987 a. 190; 1989 a. 307 ss. 19, 21 to 24; 1995 a. 27; 2015 a. 237.

157.065 Location and ownership of cemeteries. (1) No cemetery may be used for burials except any of the following:

(a) A cemetery in use on April 4, 1864.

(b) A cemetery organized and operated by any of the following:

1. A municipality.
2. A religious association.
3. A fraternal or benevolent society.
4. An incorporated college of a religious order.
5. A cemetery association created under s. 157.062.
6. A corporation organized under ch. 180 or 181.
7. A limited liability company organized under ch. 183.

(2) (a) Except as provided in sub. (3), no cemetery may be established:

1. Within a recorded plat or recorded addition to a plat of any city or village, if the cemetery is within one mile of a building in the plat;

2. Outside a recorded plat or recorded addition to a plat of any city or village if the cemetery is within 3,300 feet of an inhabited dwelling that is located within a recorded plat or addition, unless the city or village consents;

3. Within 250 feet of any habitable dwelling, publicly owned building or school, unless the cemetery is establishing an extension on property it has owned continually since June 18, 1929; or

4. Within 3,300 feet of any of the following state facilities, without the consent of the state:

a. Any institution for the deaf or the blind;

b. Any mental health institute, as defined in s. 51.01;

c. A Type 1 juvenile correctional facility, as defined in s. 938.02 (19);

d. Any center for the developmentally disabled; or

e. Any state reformatory.

(b) Paragraph (a) does not apply to enlargements under sub. (3m) or s. 157.064 (2) or (3).

(3) (a) Any incorporated college of a religious order in a 4th class city may establish a private cemetery within the city on land the college owns to bury members of the religious order, if the common council consents and if each person owning a private building within 825 feet of the proposed cemetery consents.

(b) Any private military academy that provides an educational program for grades 7 to 12 in a 4th class city may establish a private cemetery within the city on land that the military academy owns, if the common council consents. No mausoleum within a cemetery established under this paragraph may exceed 3,500 square feet in area.

(3m) Any of the following cemeteries may enlarge only in the following manner:

(a) Any cemetery in a village may enlarge with the consent of the village board and of the owners of each building within 250 feet of the addition.

(b) Any cemetery in a 3rd or 4th class city may enlarge with the consent of the common council.

(c) Notwithstanding pars. (a) and (d), any cemetery established before April 30, 1887, in a village and located within 100 feet of the village limits may extend to the village limits with the consent of the village board.

(d) Notwithstanding pars. (a) to (c), any cemetery established before April 30, 1887, may expand as provided in s. 157.064.

(5) Any violation of this section is a public nuisance.

History: 1975 c. 39, 106; 1975 c. 189 s. 99 (2); 1975 c. 200, 422, 430; 1977 c. 83; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 20; 1985 a. 316 ss. 18, 25; Stats. 1985 s. 157.065; 1987 a. 190; 1989 a. 43, 307; 1993 a. 98, 112; 1995 a. 77; 1999 a. 9; 2001 a. 103, 107; 2005 a. 344.

157.067 Connection with funeral establishment prohibited. (1) In this section, "funeral establishment" has the meaning given in s. 445.01 (6), except that "funeral establishment" does not include a building or part of a building that is erected under s. 157.11 (1) for holding or conducting funeral services if dead human bodies are not embalmed, cared for, or prepared for burial or transportation, in the building.

(2) No cemetery authority may permit a funeral establishment to be located in the cemetery. No cemetery authority may have or permit an employee or agent of the cemetery to have any ownership, operation or other financial interest in a funeral establishment. Except as provided in sub. (2m), no cemetery authority or employee or agent of a cemetery may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from a funeral establishment or from an owner, employee or agent of a funeral establishment.

(2m) A cemetery authority may accept a fee or remuneration from a funeral establishment or from an owner, employee or agent of a funeral establishment if all of the following requirements are satisfied:

(a) The fee or remuneration is a payment to the cemetery authority for a burial in the cemetery authority's cemetery.

(b) The fee or remuneration payment is made on behalf of the person who is responsible for paying for the funeral establishment's services.

(c) The funeral establishment will be reimbursed for the fee or remuneration by charging the person who is responsible for paying the funeral expenses an amount that is identical to the amount of the fee or remuneration paid by the funeral establishment to the cemetery authority.

History: 1993 a. 100, 386; 2005 a. 266.

If subsidiary corporations have prohibited financial connections, their corporate structure will not save them from the prohibitions of ss. 157.067 (2) and 445.12 (6). Those statutes are not unconstitutionally vague. Cemetery Services, Inc. v. Department of Regulation and Licensing, 221 Wis. 2d 817, 586 N.W.2d 191 (Ct. App. 1998), 97−2115.

157.07 Platting. (1) A cemetery authority shall cause to be surveyed and platted by a professional land surveyor those portions of the lands that are from time to time required for burial, into cemetery lots, drives, and walks, and record a plat or map of the land in the office of the register of deeds.

(2) The location of the lands shall be indicated on the plat or map by bearing and distance from a boundary line of a government lot, quarter section, recorded private claim, or federal reservation in which the subdivision is located. The monumentation at the ends of the boundary line shall be described and the bearing and distance between them shown, and the plat or map shall show a small scale drawing of the section or government subdivision of the section in which the cemetery plat is situated, with the cemetery plat indicated. The plat or map shall include the certificate of the professional land surveyor containing the name of the cemetery authority, the date of the survey, the professional land surveyor's stamp or seal and signature, and the professional land surveyor's statement that the survey is true and correct to the professional land surveyor's best knowledge and belief.

(3) The plat or map shall be made on a durable white media that is 22 inches wide by 30 inches long, or on any other media that is acceptable to the register of deeds, with a permanent nonfading black image. Seals or signatures that are reproduced on images

that comply with this subsection have the force and effect of original seals and signatures. When more than one sheet is used for any one plat or map, they shall be numbered consecutively and each sheet shall contain a notation showing the whole number of sheets in the plat, and its relation to the other sheets. The sheets may be provided by the county through the register of deeds on terms determined by the county board. The professional land surveyor shall leave a binding margin of one inch on all sides.

(4) The cemetery authority shall cause the plat or map to be recorded. For failure to do so, the plat shall be void, and no sale of a cemetery lot or mausoleum space may be made before the plat is recorded.

(5) The cemetery authority may vacate or replat any portion of its cemetery upon the filing of a petition with the circuit court describing the portion and setting forth the facts and reasons therefor. The court shall fix a time for hearing and direct publication of a class 3 notice, under ch. 985, and the court shall order a copy of the notice to be mailed to at least one interested person, as to each separate parcel involved, whose post−office address is known or can be ascertained with reasonable diligence, at least 20 days before such hearing. If the court finds that the proposed vacating or replatting is for the best interest of the cemetery authority and that the rights of none to whom cemetery lots have been conveyed will be injured, it shall enter an order reciting the jurisdictional facts and its findings and authorizing the vacating or replatting of the lands of the cemetery. The order shall be effective when recorded by the register of deeds.

(6) This section does not apply to a religious association or a cemetery authority of a cemetery that is affiliated with a religious association.

History: 1983 a. 473; 1989 a. 307 ss. 29, 30, 34; 1993 a. 490; 1995 a. 110; 2005 a. 41; 2013 a. 358; 2015 a. 237.

157.08 Conveyances. (1) After the plat or map is recorded under s. 157.07, the cemetery authority may sell and convey cemetery lots. Conveyances shall be signed by the chief officer of the cemetery authority, and by the secretary or clerk of the cemetery authority, if any. Before delivering the conveyance to the grantee, the cemetery authority shall enter on records kept for that purpose, the date and consideration and the name and residence of the grantee. The conveyances may be recorded with the register of deeds.

(2) (a) If a cemetery lot or mausoleum space is sold by a cemetery authority and used or intended to be used for the burial of the human remains of the purchaser or the purchaser's family members, the purchaser's interests in the ownership of, title to or right to use the cemetery lot or mausoleum space are not affected or limited by any claims or liens of other persons against the cemetery authority.

(b) Before a cemetery authority sells or encumbers any cemetery land, except for a sale described in par. (a), the cemetery authority shall notify the cemetery board in writing of the proposed sale or encumbrance. If within 90 days after the cemetery board is notified of the proposed sale or encumbrance the cemetery board notifies the cemetery authority in writing that the cemetery board objects to the sale or encumbrance the cemetery authority may not sell or encumber the cemetery land unless the cemetery board subsequently notifies the cemetery authority in writing that the objection is withdrawn. The cemetery board may object to a sale or encumbrance only if it determines that the cemetery authority will not be financially solvent or that the rights and interests of owners of cemetery lots and mausoleum spaces will not be adequately protected if the sale or encumbrance occurs. The cemetery board may, before the expiration of the 90−day period, notify the cemetery authority in writing that the cemetery board approves of the sale or encumbrance. Upon receipt of the cemetery board's written approval, the cemetery authority may sell or encumber the cemetery land and is released of any liability under this paragraph. The cemetery board shall make every effort to make determinations under this paragraph in an expeditious manner.

(c) A preneed sales contract is enforceable against the successor in interest of the cemetery authority that made the sale.

(3) A cemetery authority may sell its personal property at its discretion.

(5) Subsections (1) and (2) (b) do not apply to a religious association or a cemetery authority of a cemetery that is affiliated with a religious association, and sub. (2) (b) does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) or registered under s. 440.91 (1m).

History: 1977 c. 449 s. 497; 1989 a. 307; 1991 a. 269; 2005 a. 25; 2007 a. 174; 2015 a. 237.

157.10 Alienation, disposition, and use of cemetery lots and mausoleum spaces. (1) In this section, "owner" means a person named in the records of the cemetery authority who has an ownership interest in a cemetery lot or mausoleum space and a right to bury human remains in the cemetery lot or mausoleum space.

(2) (a) While any person is buried in a cemetery lot or mausoleum space, the cemetery lot or mausoleum space shall be inalienable, without the consent of the cemetery authority, and on the death of the last owner, full ownership of the cemetery lot or mausoleum space shall descend as follows:

1. To the owner's surviving spouse or domestic partner under ch. 770.

2. If there is no living member of the class designated in subd. 1., to that owner's children, including by adoption.

3. If there is no living member of the class designated in subd. 1. or 2., to the owner's grandchildren, including by adoption.

4. If there is no living member of the class designated in subd. 1., 2., or 3., to the cemetery authority for the cemetery in which the cemetery lot or mausoleum space is located.

(b) A cemetery lot or mausoleum space is not part of a decedent's net estate for purposes of s. 852.01.

(3) If ownership of a cemetery lot or mausoleum space descends to the cemetery authority under sub. (2) (a), the cemetery authority shall comply with s. 157.115 (2) (c) to (h) for any grave in the cemetery lot or mausoleum space in which human remains are not buried.

(4) Any one or more persons under sub. (2) (a) 1. to 3. may, only with the consent of the cemetery authority, convey to any other person under sub. (2) (a) 1. to 3. his or her interest in the cemetery lot or mausoleum space.

(5) No human remains may be buried in a cemetery lot or mausoleum space except the human remains of an owner of the cemetery lot or mausoleum space, or a relative, or the spouse of an owner, or his or her relative, except by the consent of a majority of the owners of the cemetery lot or mausoleum space.

(6) The cemetery authority shall be held harmless for any decision made by a majority of the owners of a cemetery lot or mausoleum space.

(7) A cemetery authority that is a religious association or that is the cemetery authority of a cemetery affiliated with a religious association may adopt a written policy for the disposition of cemetery lots and mausoleum spaces in a cemetery organized and operated by, or affiliated with, the religious association that is different from sub. (2) (a).

History: 1989 a. 307; 2015 a. 237.

157.11 Improvement and care of cemetery lots and grounds. (1) FENCE; FUNERAL BUILDING. A cemetery authority may enclose the grounds of its cemetery with a suitable fence, and may erect thereon a building for funeral services.

(2) REGULATIONS. The cemetery authority may make regulations for management and care of the cemetery. No person may plant, in the cemetery, trees or shrubs, nor erect wooden fences or

structures or offensive or dangerous structures or monuments, nor maintain them if planted or erected in violation of the regulations. The cemetery authority may require any person owning or controlling a cemetery lot to do anything necessary to comply with the regulations by giving reasonable personal notice in writing if the person is a resident of the state, otherwise by publishing a class 1 notice, under ch. 985, in the county. If the person fails to comply within 20 days thereafter, the cemetery authority may cause it to be done and recover from the person the expense. The cemetery authority may also impose a forfeiture not exceeding $100 for violation of the regulations posted in 3 conspicuous places in the cemetery, recoverable under ch. 778. Each employee and agent of the cemetery authority shall have constable powers in enforcing the regulations.

(3) CONTRACTS. The cemetery authority may contract with persons who own or are interested in a cemetery lot for its care. The contract shall be in writing, may provide that the cemetery lot shall be forever exempt from taxes, assessments or charges for its care and the care and preservation of the grounds, shall express the duty of the cemetery authority, be recorded in a book kept for that purpose, and be effective when the consideration is paid or secured.

(4) ASSOCIATIONS OF RELATIVES. Persons owning a cemetery lot or having relatives buried in a cemetery may incorporate an association to hold and occupy a previously constituted cemetery, and to preserve and care for the same. Section 157.062 shall apply to the association. Nothing in this subsection shall give rights of burial. A municipality may lease a municipal cemetery to a cemetery association for preservation and may contract to permit the association to use cemetery funds therefor. Such leases and contracts may be revoked at will by the municipal board.

(5) SUM REQUIRED. The cemetery authority shall annually fix the sum necessary for the care of cemetery lots and care and improvement of the cemetery, or to produce a sufficient income for those purposes.

(7) ASSESSMENTS. (a) The cemetery authority may annually assess upon the cemetery lots amounts not to exceed the amounts reasonably required for actual and necessary costs for cleaning and care of cemetery lots and care and improvement of the cemetery. Notice of the assessment, along with a copy of this section, shall be mailed to each owner or person having charge of a cemetery lot, at the owner's or person's last−known post−office address, directing payment to the cemetery authority within 30 days and specifying that such assessments are a personal liability of the owner or person.

(b) The cemetery authority may fix and determine the sum reasonably necessary for the care of the grave or cemetery lot in reasonable and uniform amounts, which amounts shall be subject to the approval of the court, and may collect those amounts as part of the funeral expenses.

(c) Before ordering distribution of the estate of a deceased person, the court shall order paid any assessment under this section, or the sum so fixed for the care of the cemetery lot or grave of the deceased.

(d) When uniform care of a cemetery lot has been given for 2 consecutive years or more, for which assessments are unpaid, after notice as provided in sub. (2), right to burial is forfeited until delinquent assessments are paid. When uniform care has been given for 5 consecutive years or more and the assessments are unpaid, upon like notice, title to all unoccupied parts of the cemetery lot shall pass to the cemetery authority and may be sold, the payment of principal to be deposited into the care fund. Before depositing the payment of principal into the care fund, the cemetery authority may retain an amount necessary to cover the cemetery authority's administrative and other expenses related to the sale, but the amount retained may not exceed 50 percent of the proceeds.

(8) GIFTS. The cemetery authority shall take, hold and use any gifts, or the income and proceeds of any gifts, as may be made in trust or otherwise, for the improvement, maintenance, repair, preservation or ornamentation of any cemetery lot or structure in the cemetery, according to the terms of the gift and regulations by the cemetery authority.

(9) HANDLING OF PROPERTY RECEIVED AS GIFT. (a) Before a cemetery authority receives a gift, the surety bonds of the cemetery authority shall be increased to cover such amount if it does not then do so. If the bonds are not filed, or the cemetery authority fails to do anything required by this subsection, the judge may appoint a trustee, and all property and money so given and evidences of title and securities shall be delivered to the trustee.

(9g) CARE FUND FOR CEMETERY LOTS. (a) 1. Except as provided in ss. 66.0603 (1m) (c) and 157.19 (5) (b), funds that are received by a cemetery authority for the care of a cemetery lot shall be invested in one or more of the following manners:

a. Deposited and invested as provided in s. 157.19.

c. If not invested as provided in subd. 1. a., otherwise deposited by the cemetery authority in an investment approved by the cemetery board if the care funds are segregated and invested separately from all other moneys held by the cemetery authority.

2. The manner in which the care funds are invested may not permit the cemetery authority to withdraw the care fund's principal amount. The income from the investment of a care fund for the care of cemetery lots may be used only to maintain the cemetery lots and grounds, except that if the amount of income exceeds the amount necessary to maintain the cemetery lots or grounds properly, the excess amount may be used to maintain any other portion of the cemetery, including mausoleums.

(b) Anyone having in custody or control any cemetery care trust fund received other than by testament shall, upon demand, deliver it to the cemetery authority to be handled as provided in this subsection.

(c) Except as provided in sub. (11), any cemetery authority that sells a cemetery lot on or after November 1, 1991, shall deposit 15 percent of each payment of principal into a care fund under par. (a) within 30 business days after the last day of the month in which the payment is received, except as provided in sub. (7) (d) and s. 157.115 (2) (f). The total amount deposited must equal 15 percent of the total amount of all payments of principal that have been received, but not less than $25.

(9m) ACTION BY DISTRICT ATTORNEY. If any money or property is not turned over when required by this section, or default occurs under a bond, the district attorney, upon the request of the cemetery board, shall bring action to recover.

(9r) TAX AND OTHER EXEMPTIONS. Gifts and trusts under this section shall be exempt from taxation and the law against perpetuities, accumulations and mortmain.

(10) EXEMPTION FOR RELIGIOUS ASSOCIATIONS. Subsections (1) to (9), (9g) (a) and (b), (9m) and (9r) do not apply, but sub. (9g) (c) does apply, to a religious association or a cemetery authority of a cemetery that is affiliated with a religious association, for that cemetery.

(11) EXEMPTION FOR CERTAIN NONPROFIT CEMETERIES. Subsection (9g) does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1971 c. 41 s. 12; 1977 c. 449 ss. 234, 497; 1979 c. 32 s. 92 (8); 1979 c. 110 s. 60 (13); 1985 a. 200; 1985 a. 316 s. 25; 1987 a. 190; 1989 a. 307; 1991 a. 269; 1999 a. 150 s. 672; 2001 a. 30; 2005 a. 25; 2007 a. 174; 2011 a. 32; 2015 a. 237.

Cross−reference: See s. 863.09 (2) for court order concerning care of graves.

Cross−reference: See also chs. CB 4 and 5, Wis. adm. code.

Sub. (9) (e) [now sub. (9g) (b)] neither requires nor authorizes payment to entities other than ch. 157 cemetery associations. Krawczyk v. Bank of Sun Prairie, 161 Wis. 2d 792, 468 N.W.2d 773 (Ct. App. 1991).

157.111 Opening and closing of burial places. If a grave, mausoleum space or other place used or intended to be used for the burial of human remains is located in a cemetery owned or operated by a cemetery authority, only the cemetery authority or a person designated by the cemetery authority may open or close the grave, mausoleum space or other place used or intended to be used for the burial of human remains.

History: 1993 a. 386.

157.112 Reburial of human remains by a cemetery authority. (1) In this section, "rebury" means to disentomb, disinurn or disinter human remains that are buried in a cemetery and reentomb, reinurn or reinter the human remains in another grave, mausoleum space or other place used or intended to be used for the burial of human remains that is located in the same cemetery.

(2) A cemetery authority may rebury human remains that are buried in a cemetery owned or operated by the cemetery authority for the purpose of correcting an error made by the cemetery authority in the burial of those human remains.

(3) A cemetery authority may rebury human remains under sub. (2) without first obtaining an authorization under s. 69.18 (4), but the cemetery authority shall do all of the following:

(a) No later than 30 days after reburying human remains under sub. (2), provide written notice of the reburial to the coroner or medical examiner of the county in which the reburial occurs.

(b) Notify one of the following by registered mail of the reburial:

1. The decedent's spouse.

2. If the person specified in subd. 1. is not available, an adult son or daughter of the decedent.

3. If the persons specified in subds. 1. and 2. are not available, either parent of the decedent.

4. If the persons specified in subds. 1., 2. and 3. are not available, an adult brother or sister of the decedent.

(3m) If none of the persons specified in sub. (3) (b) 1. to 4. are available for notification under sub. (3) (b), the cemetery authority shall maintain a record of its attempt to provide notification under sub. (3) (b) as a part of the cemetery authority's permanent records.

(4) (a) A cemetery authority is immune from civil liability for an error that is corrected by a reburial of human remains under sub. (2).

(b) The immunity under par. (a) does not apply if the error was the result of reckless, wanton or intentional misconduct.

History: 1995 a. 357; 2015 a. 237.

157.113 Permission to place cremated human remains in a cemetery. No person may deposit any cremated human remains in a cemetery, including in the casket of another person, without the permission of the cemetery authority.

History: 2015 a. 237 s. 125; 2015 157.113 Stats.

157.114 Duty to provide for burials. (1) In this section, "cemetery authority" does not include a municipality that takes control of a cemetery under s. 157.115 (1) (b).

(2) A cemetery authority shall, insofar as practicable, provide for burials during each season, including winter. Nothing in this subsection may be construed to prohibit a cemetery authority from charging a reasonable fee to recover the costs related to providing for a burial during difficult weather conditions.

History: 2001 a. 16.

157.115 Abandonment of cemeteries and cemetery lots. (1) ABANDONMENT OF CEMETERIES. (a) If any cemetery located on property not subject to condemnation under ch. 32 is abandoned, the circuit court for the county in which the cemetery is located may authorize the removal of bodies from the cemetery to another cemetery upon the petition of 6 or more residents of the municipality in which the cemetery is located. Prior to authorizing the removal, the court shall publish a notice to all interested parties as provided in s. 879.05 (4). The court may not authorize the removal unless suitable arrangements have been made to reinter the bodies.

(b) 1. When a cemetery authority fails to care for the cemetery for a period of one or more years, the municipality in which the cemetery is located may take control of the cemetery, manage and care for the cemetery and collect and manage all trust funds connected with the cemetery other than trust funds received by a will.

2. When a cemetery authority abandons or fails to manage or care for the cemetery for a period of 5 or more years, the municipality in which the cemetery is located shall take control of the cemetery, manage and care for the cemetery and collect and manage all trust funds connected with the cemetery other than trust funds received by a will.

(c) Whenever any cemetery in a town is falling into disuse, or is abandoned or neglected, and by reason of the removal or death of the persons interested in its upkeep there exists no association or group with authority to transfer ownership and operation of the cemetery to the town, the town board, at the expense of the town, shall take charge of the cemetery and manage and care for it, and if the town board fails to take charge of the cemetery, the circuit judge may upon petition by 6 or more persons interested in the upkeep of the cemetery order its transfer to the town, including the transfer of all assets. Cemeteries so transferred shall be managed as provided for other town cemeteries.

(2) ABANDONMENT OF CEMETERY LOTS. (a) In this subsection:

1. "Abandoned lot" means any grave or mausoleum space of a cemetery lot that is not owned by the cemetery authority of the cemetery in which the cemetery lot is located if that grave or that mausoleum space has not been used for the burial of human remains and if, according to the records of the cemetery authority, all of the following apply during the 50−year period immediately preceding the date on which the notice requirement under par. (c) is satisfied:

a. No owner has transferred any ownership interest in the cemetery lot to any other person.

b. No owner has purchased or sold another cemetery lot or a mausoleum space in the cemetery.

c. No other grave in that cemetery lot or adjoining cemetery lot or adjoining mausoleum space that is owned or partially owned by an owner has been used for the burial of human remains.

d. No grave marker, monument or other memorial has been installed on the cemetery lot.

e. No grave marker, monument or other memorial has been installed on any other cemetery lot, in the same cemetery, that is owned or partially owned by an owner.

f. No nameplate, monument or other memorial has been installed to identify the human remains that are buried within a mausoleum space, in the same cemetery, that is owned or partially owned by an owner.

g. The cemetery authority has not been contacted by an owner or assignee or received any other notice or evidence to suggest that an owner or assignee intends to use the cemetery lot for a future burial of human remains.

2. "Assignee" means a person who has been assigned in the deceased owner's will or in any other legally binding written agreement, or who is entitled to receive under ch. 852, an ownership interest in the abandoned cemetery lot.

3. "Owner" has the meaning given in s. 157.10 (1).

(b) No cemetery authority may resell an abandoned lot unless the cemetery authority complies with the requirements in this subsection.

(c) The cemetery authority shall mail to each owner, at each owner's last−known address, a notice of the cemetery authority's intent to resell the abandoned lot as provided in this subsection. If an owner is buried in the cemetery in which the abandoned lot is located or if the cemetery authority has any other evidence that

reasonably supports a determination by the cemetery authority that the owner is deceased, no notice is required under this paragraph.

(d) If no notice is required under par. (c) or if, within 60 days after notice is mailed under par. (c), no owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the cemetery authority shall publish in a newspaper of general circulation in the county in which the abandoned lot is located, a class 3 notice under ch. 985 that includes all of the following:

1. The location of the abandoned lot.

2. The name and last−known address of each owner.

3. A statement that, unless an owner or assignee contacts the cemetery authority within the period specified in par. (e), the cemetery authority intends to resell the abandoned lot as provided in this subsection.

(e) If within 60 days after notice is published under par. (d) no owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the cemetery authority shall bring an action in the circuit court of the county in which the abandoned lot is located for a judgment that the cemetery lot is an abandoned lot and an order transferring ownership of the abandoned lot to the cemetery authority.

(f) If within one year after the circuit court enters a judgment and order under par. (e) no owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the cemetery authority may resell the abandoned lot, except as provided in par. (g). The payment of principal shall be deposited into the care fund. Before depositing the payment of principal into the care fund, the cemetery authority may retain an amount necessary to cover the cemetery authority's administrative and other expenses related to the sale, but the amount retained may not exceed 50 percent of the proceeds.

(g) If at any time before an abandoned lot is resold under par. (f) an owner or assignee contacts the cemetery authority to express an intent to use the abandoned lot for a future burial of human remains, the authority may not resell the abandoned lot, and ownership of the abandoned lot shall be transferred to the owner or assignee. The cemetery authority shall pay all costs of transferring ownership under this paragraph.

(h) Nothing in this subsection prohibits a cemetery authority from seeking the authority to resell more than one abandoned lot by publishing a single class 3 notice under par. (d) or bringing a single action under par. (e) that applies to all of the abandoned lots for which such authority is sought.

History: 1989 a. 307 ss. 18m, 20, 28, 45; 2013 a. 151; 2015 a. 237.

157.12 Mausoleums. (2) CONSTRUCTION OF MAUSOLEUMS. (a) Any person who constructs a mausoleum or converts a building or other structure to a mausoleum shall comply with the rules of the cemetery board and shall receive the cemetery board's approval in writing of the plans and specifications prior to construction or conversion. No person may modify plans or specifications that have been approved under this paragraph without approval in writing from the cemetery board, unless such modifications are cosmetic in nature. The cemetery board shall promulgate rules providing reasonable requirements governing the location, material, and construction of a mausoleum, in accordance with the requirements in par. (d). Any municipality may enact ordinances governing mausoleums at least as stringent as this section.

(b) The cemetery board shall supervise construction of any public mausoleum and conversion of any building to a public mausoleum. Within 30 days after receiving written notice from the cemetery authority that the construction or conversion has been completed, the cemetery board shall inspect the public mausoleum and provide the cemetery authority with a written certification as to whether the construction or conversion complies with approved plans. If the cemetery board determines that, except for certain minor defects, the construction or conversion complies with the approved plans, the cemetery board may provide the cemetery authority with a written temporary certification of compliance that is contingent on the correction of those minor defects. A temporary certification is valid for a period designated by the cemetery board, not to exceed 6 months. No person may sell a mausoleum space, except an undeveloped space that is sold in accordance with s. 440.92, or bury human remains in a public mausoleum unless a care fund has been established for the mausoleum under sub. (3) and the cemetery board has provided the cemetery authority with a certification or a temporary certification under this paragraph. If a cemetery authority that has been provided with a temporary certification notifies the cemetery board in writing before the date on which the temporary certification expires that the defects in the construction or conversion of the public mausoleum have been corrected, the cemetery board shall, within 30 days after receiving the notice, reinspect the public mausoleum and provide the cemetery authority with a written certification as to whether the construction or conversion complies with the approved plans. If a cemetery authority that has been provided with a temporary certification does not receive a written certification from the cemetery board before the date on which the temporary certification expires that the construction or conversion complies with the approved plans, then, beginning on the date on which the certification expires, no person may sell a mausoleum space, except an undeveloped space that is sold in accordance with s. 440.92, or bury human remains in the public mausoleum until the defects are corrected and the cemetery board subsequently inspects the public mausoleum and provides the cemetery authority with a certification that the construction or conversion complies with the approved plans. The cemetery board may charge a reasonable fee to the cemetery authority for each inspection and certification provided under this paragraph if the inspection and certification are provided within the applicable 30−day period prescribed under this paragraph.

(bm) If a municipality in which a mausoleum is located requires the owner or operator of the mausoleum to obtain from the municipality a permit for the use or occupancy of the mausoleum, the municipality shall issue that permit to the owner or operator if the owner or operator has been provided with a certification or temporary certification for the mausoleum under par. (b). The permit shall be valid for a period equal to or longer than the period for which the certification or temporary certification under par. (b) is valid.

(c) 1. Except as provided in subd. 2., no person may establish or use a public mausoleum unless the mausoleum is located inside a cemetery of 20 acres or more that has been in existence for 10 years or more.

2. A person may establish or use a public mausoleum in a cemetery consisting of less than 20 acres in a municipality that has enacted an ordinance under s. 157.129 (2) if the cemetery meets the minimum acreage requirement specified in that ordinance.

(d) A mausoleum shall be constructed to last as long as possible, taking into consideration the technology and economics applicable to mausoleum construction at the time of construction.

(3) CARE FUND FOR MAUSOLEUMS. (a) Any person who operates a public mausoleum shall establish a care fund as follows:

1. If the mausoleum has been in existence since June 15, 1933, and is covered by the care fund of the cemetery in which the mausoleum is located, the cemetery shall deposit at least 15 percent of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equals 10 percent of the cost of constructing the mausoleum.

2. Except as provided in subd. 1., the operator of the mausoleum shall deposit at least 25 percent of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equals 25 percent of the cost of constructing the mausoleum.

3. The operator shall make deposits required under subds. 1. and 2. within 30 days after the last day of the month in which the payment is received. The municipality in which the mausoleum is located may, by ordinance, require a larger fund, but only if the cemetery board notifies the municipality in writing that the cemetery board approves of the requirement. The cemetery board may promulgate rules establishing uniform standards for approvals under this subdivision.

(b) The cemetery's treasurer is the custodian of the fund. The treasurer shall file with the cemetery, at the cemetery's expense, a bond with sureties approved by the cemetery board to indemnify the cemetery against loss if the treasurer fails to maintain the fund. No indemnity is required if the terms of sale of a mausoleum space require the purchaser to pay directly to a trust company in the state, designated by the cemetery as custodian of the fund. The fund shall be invested as provided in s. 157.19. Income from investment may be used only to maintain the mausoleum, except that if the amount of income exceeds the amount necessary to properly maintain the mausoleum the excess amount may be used to maintain any portion of the cemetery.

History: 1971 c. 41 s. 12; 1971 c. 164; 1977 c. 449; 1979 c. 221; 1981 c. 20; 1989 a. 307; 1991 a. 269; 1995 a. 27 ss. 4402, 9116 (5); 1999 a. 150 s. 672; 2011 a. 32, 146; 2015 a. 237.

157.123 Columbaria maintained by religious associations. (1) DEFINITION. In this section, "columbarium" has the meaning given in s. 440.70 (4).

(2) EXEMPTION. A columbarium that is established and used by a religious association is not subject to any requirement under this subchapter applicable to a mausoleum or cemetery if all of the following requirements are satisfied:

(a) The columbarium shall be located on property owned by the religious association and on which is located the religious association's church building or other place of worship.

(b) The religious association shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter.

(c) If the religious association ceases to use or occupy the church building or other place of worship where the columbarium is located, the religious association shall relocate all of the urns in the columbarium containing cremated remains.

(d) The religious association shall deposit, within 30 days after receipt of the payment, at least 25 percent of each payment of principal received from the sale of a niche in the columbarium into a care fund, until the care fund equals 25 percent of the cost of constructing the columbarium. The care fund and any income from investment of the care fund may be used only to maintain the columbarium.

(e) 1. Annually, the religious association shall file a certification with the department on a form prescribed and furnished by the department that includes all of the following:

a. The name and address of the religious association and the address where the columbarium is located.

b. A notarized statement of an authorized agent of the religious association that the religious association is in full compliance with par. (d).

2. A certification under this paragraph is effective for a 12−month period, beginning on the date the certification is filed with the department.

3. During the effective period specified under subd. 2., the department may not audit the care fund or any records or accounts of the religious association relating to the care fund for the columbarium to which the certification applies.

4. The religious association is liable for the damages of any person resulting from the failure of the religious association to fully comply with par. (d) during the effective period specified under subd. 2.

(3) APPLICATION. (a) Except as provided under par. (b), this section applies to all columbaria, including columbaria for which initial construction was commenced prior to November 13, 2015.

(b) This section does not apply to a columbarium for which initial construction was commenced during the period beginning on November 13, 2015, and ending on November 30, 2016.

History: 2015 a. 95.

157.125 Trustees for the care of cemeteries or cemetery lots. (1) If a trust is created for the care of a burial place or grave but no trustee is named in the will to administer the trust, the circuit court having jurisdiction may name the county treasurer of the county in which the burial place or grave is situated as trustee, except as provided in sub. (2). If not contrary to the terms of the trust, the county treasurer may contract with the person in charge of the burial place or grave for its care and pay to that person the income from the trust property or the part of the income that may be necessary for that purpose. If there is no person in charge of the burial place or grave, then the income shall be paid to the city, village, or town, in which the burial place or grave is situated, and for the purposes of this subsection, the governing body of that municipality has the duty of caring for the burial place or grave to the extent of money received for that purpose. The county treasurer shall annually render an account to the circuit court as provided in ch. 701 and the person or municipality receiving money for such care shall also render an annual accounting to the circuit court and the cemetery board as provided in s. 157.62 (2) (b) 3. to 7.

(2) If the burial place or grave is located in a cemetery owned and operated by, or affiliated with, a religious association, the court shall name the religious association as the trustee unless the religious association petitions the court to name the county treasurer as the trustee.

History: 1971 c. 41 s. 11; 1979 c. 175 s. 50; 1989 a. 307; 2015 a. 237.

157.128 Minimum acreage requirement for cemetery established on or after November 1, 1991. (1) Except as provided in subs. (2) and (3), no cemetery may be dedicated on or after November 1, 1991, unless the cemetery consists of at least 20 contiguous acres.

(2) A cemetery consisting of less than 20 contiguous acres may be dedicated on or after November 1, 1991, if all of the following apply:

(a) The cemetery is owned by a religious association.

(b) The religious association is responsible for all liabilities of the cemetery.

(c) The total acreage of all other cemeteries owned by the religious association exceeds 20 acres.

(3) (a) A cemetery consisting of less than 20 contiguous acres may be dedicated in a municipality that has enacted an ordinance under s. 157.129 if the cemetery meets the minimum acreage requirement specified in that ordinance.

(b) A cemetery consisting of less than 20 contiguous acres may be dedicated by a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1989 a. 307; 1991 a. 269; 1999 a. 150 s. 672; 2005 a. 25.

157.129 Minimum acreage of cemeteries; local ordinance. A city, village or town may enact and enforce an ordinance that does any of the following:

(1) Allows a cemetery consisting of less than the minimum acreage specified in s. 157.128 (1) to be dedicated, as defined in s. 157.061 (4), in that city, village or town.

(2) Allows a person to establish and use a public mausoleum in a cemetery consisting of less than the minimum acreage specified in s. 157.12 (2) (c).

History: 1991 a. 269; 1999 a. 150 s. 157; Stats. s. 157.129.

157.19 Deposit and investment of care funds and preneed trust funds. (1) In this section, "financial institution" has the meaning given in s. 705.01 (3), but, except with respect to the deposit of preneed trust funds, also includes a broker−dealer registered under s. 551.401 (1) or exempt from registration under s. 551.401 (2).

(2) (a) Except as provided in sub. (5) and the rules promulgated under sub. (4), the cemetery authority may deposit care funds under s. 157.11 (9g), and shall deposit care funds under s. 157.12 (3) and preneed trust funds under s. 440.92, with a financial institution located in this state. The financial institution shall be the trustee of the care funds and preneed trust funds. A bank need not comply with s. 221.0316 (1) or (2) or ch. 223 to accept or disburse deposits under this section. The trustee shall invest the care funds and preneed trust funds as provided under s. 881.01, except as provided in sub. (5) and the rules promulgated under sub. (4).

(b) The cemetery authority may not change the trustee of a care fund under s. 157.11 (9g) that is deposited under this section or of a care fund under s. 157.12 (3), and the financial institution may not release any portion of the principal amount of the care fund, without the cemetery board's written approval.

(c) Upon request of the financial institution, the preneed seller, as defined in s. 440.90 (8), shall furnish the financial institution with a copy of the preneed sales contract. Except as provided in s. 440.92 (2) (c), (f) and (j) and (5), preneed trust funds, and any interest or dividends that have accumulated on the preneed trust funds, may not be withdrawn until all obligations under the preneed sales contract have been fulfilled. The financial institution is not responsible for the fulfillment of any part of the preneed sales contract, except that the financial institution shall release the preneed trust funds, and any interest or dividends that have accumulated on the preneed trust funds, as provided by the terms of the preneed sales contract. The trustee of a preneed trust fund may not be changed without the cemetery board's written approval. If the trustee or account number of a preneed trust fund is changed, the cemetery authority shall notify the cemetery board in writing within 30 days after the change.

(d) The cemetery board shall promulgate rules establishing reasonable requirements and standards for the approval of changes under pars. (b) and (c). For approval of changes under par. (b), the rules shall require the cemetery authority to submit evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. For approval of changes under par. (c), the rules shall require the trustee to submit evidence that the rights and interests of the purchaser under the preneed sales contract will be adequately protected if the change is approved.

(4) The cemetery board may promulgate rules allowing funds invested under this section to be deposited with a financial institution located outside this state.

(5) (a) This section does not apply to care funds of a cemetery for which a certification under s. 157.63 is effective, to preneed trust funds of a cemetery for which a certification under s. 440.92 (9) is effective, or to care funds or preneed trust funds of a cemetery authority that is not required to be licensed under s. 440.91 (1) or registered under s. 440.91 (1m).

(b) If the cemetery board determines that care funds under s. 157.11 (9g) are not being properly segregated from other moneys held by the cemetery authority or that those care funds are not being properly invested as required in s. 157.11 (9g) (a), the cemetery board may require the cemetery authority to deposit those care funds with a financial institution for investment under this section.

(6) Nothing in this section prevents a cemetery authority from combining its care funds and preneed trust funds for investment under this section if the cemetery authority maintains separate accountings for each fund.

(7) Except as provided in sub. (5) (a), this section applies to every care fund and every preneed trust fund of a cemetery authority, regardless of when the care fund or preneed trust fund was established.

History: 1989 a. 307; 1991 a. 74, 269; 1995 a. 336; 2005 a. 25; 2007 a. 174; 2015 a. 110, 237.

Cross−reference: See also ch. CB 4, Wis. adm. code.

157.50 Municipal cemeteries. (1) Municipalities may acquire by gift, purchase or condemnation land for cemeteries within or without their boundaries. In the case of towns acquisition and price must be authorized by the town meeting.

(2) The governing body of every municipality acquiring a cemetery shall by ordinance determine the system of management and operation. Any municipality may proceed under s. 157.07, 157.08 or 157.11 (7), or otherwise as provided by ordinance.

(3) Upon organization of a cemetery association to take over a municipal cemetery, the municipality may convey real property and all funds and other personal property to the association. In towns the conveyance must be authorized by the town meeting.

(4) When a town cemetery becomes embraced within a city or village, it shall be managed as though acquired thereby.

(5) The town meeting may authorize the town board to appropriate up to $500 in any year for the improvement of the town cemetery, under supervision of the town board.

(6) Any municipality that creates a care fund shall invest the money received for care as provided by ch. 881. The municipality may terminate the care fund, transferring the money to its general fund, if the municipality owns the cemetery and provides all maintenance expenses in perpetuity for those graves in the cemetery at the time of termination.

History: 1971 c. 41 s. 12; 1979 c. 254; 1983 a. 532; 1989 a. 307.

157.60 Public easement in cemetery. Any person who opens or makes any highway, town way, or private way or constructs any railroad, turnpike, or canal or anything in the nature of a public easement over, through, in, or upon such part of any enclosure, being the property of any municipality, religious association, or private proprietor, as may be used for burial, unless an authority for that purpose is specially granted by law or unless the consent of such municipality, religious association, or private proprietor is first obtained by the person, shall be punished by imprisonment in the county jail not more than one year and by fine not exceeding $3,000.

History: 2015 a. 237.

157.62 Reporting; record keeping; audits. (1) CEMETERY ASSOCIATIONS. (a) Except as provided in par. (b) and s. 157.625, every cemetery association shall file an annual report with the cemetery board. The report shall be made on a calendar−year basis unless the cemetery board, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period. The annual report shall include all of the following:

1. The name of the cemetery association and the address of its principal office.

2. The name, residence address and business address of each officer, director and trustee of the cemetery association.

3. The name, residence address and business address of each shareholder who beneficially owns, holds or has the power to vote 5 percent or more of any class of securities issued by the cemetery association.

4. The dates and places of all meetings and elections.

5. A statement of whether the cemetery association engaged in the operation of a cemetery during the previous calendar year.

(b) Paragraph (a) does not apply to any person required to file a report under s. 180.1622 or 181.1622.

(c) The cemetery board may prescribe and furnish forms for reports required under this subsection. If the cemetery board prescribes forms under this paragraph, the cemetery board shall mail the forms to cemetery associations required to file under par. (a) no later than 60 days before the reports are due.

(2) CEMETERY AUTHORITIES. (a) Except as provided in ss. 157.625 and 157.63 (1), every cemetery authority shall file an annual report with the cemetery board. The report shall be made on a form prescribed and furnished by the cemetery board. The report shall be made on a calendar−year basis unless the cemetery board, by rule, provides for other reporting periods. The report is due on the 60th day after the last day of the reporting period.

(b) The cemetery authority shall include all of the following in the annual report required under par. (a):

1. A copy of any report required under sub. (1) (a) or s. 180.1622 or 181.1622.

2. If the cemetery authority is required to file a report under s. 180.1622 or 181.1622, the information specified in sub. (1) (a) 3.

3. An accounting of amounts deposited in, amounts withdrawn from, income accruing to and the balance at the close of the reporting period of any preneed trust funds of the cemetery.

4. An accounting of amounts deposited in, amounts withdrawn from, other income accruing to and the balance at the end of the reporting period of care funds of the cemetery, including the funds in ss. 157.11 (9g) (a), 157.12 (3) and 157.125.

5. An accounting of all gifts received, income from gifts deposited in accounts not accounted for under subd. 4., amounts expended from those accounts and the balance of those accounts at the end of the reporting period.

6. The name and address of each trustee for the funds under subds. 3. to 5. and of the financial institution holding those accounts at the close of the reporting period.

6m. The names of the officers of the cemetery authority.

7. The information specified in sub. (1) (a), to the extent applicable, if the cemetery is not required to file a report under sub. (1) (a) or s. 180.1622 or 181.1622.

(c) All records relating to accountings of trust funds described under par. (b) 3. to 7. and maintained by the department and by the cemetery board are confidential and are not available for inspection or copying under s. 19.35 (1).

(d) The board shall review each report filed under par. (a) to determine whether the cemetery authority is complying with this subchapter.

(3) RECORDS; INSPECTION. (a) Every cemetery authority shall keep a copy of the report required under sub. (2) (a) at its principal place of business and, except for those records relating to accountings of trust funds described under sub. (2) (b) 3. to 7., shall make the report available for inspection, upon reasonable notice, by any person with an interest in a cemetery lot or a mausoleum space in a cemetery owned or operated by the cemetery authority.

(b) Every cemetery authority shall maintain all of the following:

1. The records needed to prepare the reports required under sub. (2) (a).

2g. All records supporting the accounting under sub. (2) (b) 3., including records that show, for each deposit, the name of the purchaser or beneficiary of the contract relating to the deposit and the item purchased.

2r. All records supporting the accounting under sub. (2) (b) 4., including records that show, for each deposit, the name of the purchaser or beneficiary of the contract relating to the deposit and the item purchased.

3. A copy of each contract for the sale of a cemetery lot, mausoleum space or cemetery merchandise.

(4) RECORDS MAINTENANCE. The records under sub. (3) (b) 1. shall be permanently maintained by the cemetery authority or licensee. Each record under sub. (3) (b) 2g. shall be maintained for not less than 15 years after the date of the deposit. Each record under sub. (3) (b) 2r. shall be permanently maintained by the cemetery authority or licensee. Each copy of a contract under sub. (3) (b) 3. shall be maintained for not less than 3 years after all of the obligations of the contract have been fulfilled. The cemetery board may promulgate rules to establish longer time periods for maintaining records under sub. (3) (b) 2g. and 3.

(5) RULES; RECORDS. The cemetery board shall promulgate rules requiring cemetery authorities and licensees to maintain other records and establishing minimum time periods for the maintenance of those records. The records shall include detailed information for each deceased person buried in a cemetery, including all of the following:

(a) The name of the deceased.

(b) The last−known address of the deceased.

(c) The date of birth of the deceased.

(d) The date of death.

(e) The date of burial.

(f) The exact location in the cemetery where the deceased is buried.

(g) The name of the person authorizing the burial and his or her relationship to the deceased.

(h) The name of the funeral establishment, as defined in s. 445.01 (6).

(i) The type of burial vault used, if any.

(j) The type and style of the grave marker, monument, or other memorial used.

(6) AUDIT. Except as provided in ss. 157.625, 157.63 (5), and 440.92 (9) (e), the cemetery board may audit, at reasonable times and frequency, the records, trust funds, and accounts of any cemetery authority, including records, trust funds, and accounts pertaining to services provided by a cemetery authority that are not otherwise subject to the requirements under this chapter. The cemetery board may conduct audits under this subsection on a random basis, and shall conduct all audits under this subsection without providing prior notice to the cemetery authority.

(7) RULES; FILING FEE. The cemetery board may promulgate rules establishing a filing fee to accompany the report required under sub. (2) (a). The filing fee shall be based on the approximate cost of regulating cemetery authorities.

History: 1989 a. 307; 1991 a. 16, 32, 269; 1995 a. 27; 1997 a. 79; 2007 a. 174; 2015 a. 237.

Cross−reference: See also ch. CB 2, Wis. adm. code.

157.625 Reporting exemption for certain cemeteries. **(1)** A cemetery authority that is not required under this chapter or under s. 440.92 to maintain any care funds or preneed trust funds is not required to file an annual report under s. 157.62 (2).

(3) Section 157.62 does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) or registered under s. 440.91 (1m).

History: 1991 a. 269; 2005 a. 25; 2007 a. 174; 2015 a. 237.

157.63 Reporting and auditing exemptions; certification of compliance of cemetery organized and operated by, or affiliated with, a religious association. **(1)** In lieu of filing an annual report under s. 157.62 (2), a religious association or a cemetery authority of a cemetery that is affiliated with a religious association, or that religious association, may file an annual certification with the cemetery board as provided in this section.

(2) A certification under this section shall be made on a form prescribed and furnished by the cemetery board and include all of the following:

(a) The name and address of each cemetery to which the certification applies.

(b) A notarized statement of a person who is legally authorized to act on behalf of the religious association under this section that, during the reporting period under s. 157.62, each cemetery and the cemetery authority of each cemetery specified under par. (a) have either fully complied or have substantially complied with ss. 157.11 (9g) (c) and 157.12 (3).

(3) If the statement under sub. (2) (b) includes a statement of substantial compliance, the statement under sub. (2) (b) must also specify those instances when the cemetery or cemetery authority did not fully comply with s. 157.11 (9g) or 157.12 (3).

(4) A certification under this section is effective for the 12−month period immediately following the reporting period under s. 157.62 (2) for which the cemetery authority is certified under this section to have fully or substantially complied with ss. 157.11 (9g) and 157.12 (3).

(5) During the effective period specified under sub. (4), the cemetery board may not audit the care funds or any records or accounts relating to the care funds of a cemetery to which a certification under this section applies.

(6) The religious society that is affiliated with a cemetery to which a certification under this section applies is liable for the damages of any person that result from the failure of the cemetery or cemetery authority to fully comply with s. 157.11 (9g) or 157.12 (3) during the reporting period under s. 157.62 (2) for which such compliance has been certified under this section.

History: 1989 a. 307; 1991 a. 269; 2015 a. 237.

Cross−reference: See also ch. CB 2, Wis. adm. code.

157.635 Regulations of cemetery organized and operated by, or affiliated with, a religious association. Nothing in this subchapter prohibits a religious association or a cemetery authority of a cemetery that is affiliated with a religious association from prohibiting the burial of the human remains of an individual in the cemetery if the individual was in a class of individuals who are prohibited under regulations adopted by the cemetery authority or religious association from being buried in the cemetery.

History: 1989 a. 307; 2015 a. 237.

157.637 Veteran burials. A cemetery authority of a cemetery, other than a cemetery that is organized and operated by, or affiliated with, a religious association, may not prohibit the burial of the human remains of a person specified in s. 45.61 (2) at the cemetery if the cemetery authority is paid in its usual and customary manner for the burial.

History: 2003 a. 70; 2005 a. 22; 2015 a. 237.

157.64 Penalties. (1) In addition to or in lieu of other remedies provided by law, any person who violates this subchapter or any rule promulgated under this subchapter may be required to forfeit not more than $200 for each separate offense. Each day of continued violation constitutes a separate offense.

(2) Any person who intentionally does any of the following may be fined not more than $5,000 or imprisoned for not more than 90 days, or both, for the first offense and may be fined not more than $10,000 or imprisoned for not more than 9 months, or both, for each subsequent offense:

(a) Violates s. 157.08 (2) (b), 157.11 (9g), or 157.12 (2) (b), (c), or (d).

(b) Fails to handle funds for the improvement and care of a cemetery as required in s. 157.11 or 157.125.

(c) Fails to deposit or invest care funds or preneed trust funds as required in s. 157.19.

(d) Fails to file a report or files an incomplete, false or misleading report under s. 157.62 (1) or (2).

(e) Fails to maintain records as required in s. 157.62 (3) and (4).

(f) Files a false or misleading certification under s. 157.63.

(g) Violates s. 157.111.

(3) Any person who intentionally commits an act specified under sub. (2) (a) to (f) with intent to defraud may be punished for theft under s. 943.20.

History: 1989 a. 307; 1991 a. 269; 1993 a. 386; 2015 a. 237.

157.65 Enforcement. (1) (a) If the cemetery board has reason to believe that any person is violating or has violated this subchapter or any rule promulgated under this subchapter and that the continuation of that activity might cause injury to the public interest, the cemetery board may investigate.

(b) If the cemetery board has reason to believe that any person is violating s. 157.12 or any rule promulgated under s. 157.12 and that the continuation of that activity might cause injury to the public interest, the cemetery board may investigate.

(2) The department of justice or any district attorney, upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this subchapter. The court may, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, if proof of such loss is submitted to the satisfaction of the court. The department of justice may subpoena persons and require the production of books and other documents, and may request the cemetery board to exercise its authority under sub. (1) to aid in the investigation of alleged violations of this subchapter.

(3) In lieu of instituting or continuing an action under this section, the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this subchapter from the person who has engaged in the act or practice. An assurance entered into under this subsection shall not be considered evidence of a violation of this subchapter, but a violation of the assurance shall be treated as a violation of this subchapter.

History: 1989 a. 307; 1995 a. 27 ss. 4405, 4406, 9116 (5); 2005 a. 25; 2011 a. 32; 2015 a. 237.

SUBCHAPTER III

BURIAL SITES PRESERVATION

157.70 Burial sites preservation. (1) DEFINITIONS. In this section:

(a) "Board" means the burial sites preservation board.

(b) "Burial site" means any place where human remains are buried.

(c) "Cataloged" means recorded under sub. (2) (a), (4) (e) or (6) (c).

(cm) "Dedicated" has the meaning given in s. 157.061 (4).

(d) "Director" means the director of the historical society or his or her formally appointed designee.

(e) "Disturb" includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in any way.

(f) "Human remains" means any part of the body of a deceased person in any stage of decomposition.

(g) "Interest" means an interest based on any of the following:

1. Direct kinship.
2. A cultural, tribal or religious affiliation.
3. A scientific, environmental or educational purpose.
4. Land use.
5. A commercial purpose not related to land use which is consistent with the purposes of this section.
6. Any other interest which the board deems to be in the public interest.

(h) "Owner" means a person who owns or leases land on which a burial site is located.

(hm) "Person" includes the state.

(i) "Qualified archaeologist" means an individual who has a graduate degree in archaeology, anthropology or a closely related field and at least one year of full−time professional experience or equivalent specialized training in archaeological or physical anthropological research, administration or management, at least 4 months of supervised field and analytic experience in general North American archaeology or physical anthropology and a demonstrated ability to carry research to completion.

(1m) APPLICABILITY. This section does not apply to the disturbance of cataloged land contiguous to a cataloged burial site if the cataloged burial site was recorded under sub. (2) (i) before August 9, 1989.

(2) DIRECTOR'S DUTIES. The director shall:

(a) Under a special inspection warrant as required under s. 66.0119, identify and record in a catalog burial sites in this state and, for burial sites which are not dedicated, sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site or of such land so recorded and any county or local historical society in the county where the burial site or the land is located. Any information in the catalog related to the location of any burial site, the disclosure of which would be likely to result in the disturbance of the burial site or the cataloged land contiguous to the burial site, is not subject to s. 19.35 (1). The notice shall include information about the permit required under sub. (5) and the toll free number the owner may call for more information. In this paragraph, "sufficient contiguous land" means land that is within at least 5 feet from any part of a burial site.

(b) Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial sites. Any information in the catalog related to the location of any burial site likely to be of archaeological interest or of any area likely to contain a burial site, the disclosure of which would be likely to result in the disturbance of the burial site or the cataloged land contiguous to a cataloged burial site, is not subject to s. 19.35 (1).

(c) Make recommendations concerning burial sites on private property for acquisition by the state or other public agencies to preserve the burial sites.

(d) Provide for and publicize a telephone service which allows any person in this state to call, without charge, the director to report a discovery or disturbance of a burial site.

(e) Establish a registry for any person whom the board determines to have an interest in a cataloged burial site or class of cataloged burial sites under sub. (2m) (b) or (c). The registry shall include the name of every person whom the board determines to have an interest in the preservation of a burial site or in providing for the reinterment of the human remains and objects related to burial in the burial site if the burial site is disturbed and identify the burial site in which the person is determined to have an interest. Any information in the registry related to the location of any burial site, the disclosure of which would be likely to result in disturbance of the burial site, is not subject to disclosure under s. 19.35 (1).

(f) Assist owners in identifying persons to be notified under sub. (5) (b) 2.

(g) Assist Indian tribes, state agencies and other persons in any negotiation with any federal agency for the preservation of burial sites and human remains.

(h) Mediate, upon application of any owner or person in the registry under par. (e), any dispute related to the disturbance or proposed disturbance of a burial site.

(i) Cause a cataloged burial site to be recorded by the register of deeds of the county in which the burial site is located. The historical society shall reimburse the county for the cost of recording under this paragraph from the appropriation under s. 20.245 (1) (a).

(2m) BOARD DUTIES. The board shall:

(a) Meet at least every 3 months.

(b) Determine which Indian tribes in this state have an interest in any cataloged burial site or class of cataloged burial sites and notify the director for entry in the registry under sub. (2) (e).

(c) Determine which applicants for entry in the registry under sub. (2p) have an interest in a cataloged burial site or class of cataloged burial sites.

(d) As it deems necessary, review determinations of the director and the division of hearings and appeals in the department of administration under sub. (5).

(e) As it deems necessary, review disposition actions taken by the director under sub. (6).

(f) As it deems appropriate, approve transfers of burial sites under sub. (6m) (b) 2.

(2p) APPLICATION FOR REGISTRY. Any person may apply to the board for entry in the registry and shall indicate in which burial site she or he is claiming an interest.

(2r) SITE DISTURBANCE PROHIBITED. Except as provided under subs. (4) and (5) and ss. 157.111 and 157.112, no person may intentionally cause or permit the disturbance of a burial site or cataloged land contiguous to a cataloged burial site. This subsection does not prohibit normal agricultural or silvicultural practices which do not disturb the human remains in a burial site or the surface characteristics of a burial site.

(3) REPORT OF DISTURBED BURIAL SITES. (a) Except as provided under s. 979.01, a person shall immediately notify the director if the person knows or has reasonable grounds to believe that a burial site or the cataloged land contiguous to a cataloged burial site is being disturbed or may be disturbed contrary to the requirements of subs. (4) and (5).

(b) Upon receipt of any notice under par. (a), the director shall determine if the burial site which is the subject of the notice has been cataloged under sub. (2) (a).

(4) PROCEDURE FOR UNCATALOGED BURIAL SITES. (a) If the director determines that a burial site reported under sub. (3) is not cataloged under sub. (2) (a), he or she shall immediately notify the owner of the burial site of the procedure under this subsection and of the liabilities and penalties which apply for failure to comply with the procedure. If the director deems it appropriate, he or she may give notice to the board, and to any person who has or may have an interest in the burial site, that a burial site has been reported under sub. (3).

(b) No owner who has received notice under par. (a) may in any way intentionally cause or permit any activity which would disturb the burial site which is the subject of the notice unless authorized by the director under par. (c) 2. or (d).

(c) 1. Using information available concerning the burial site and the proposed activity, the director shall determine whether the proposed activity will disturb the burial site and whether the registry under sub. (2) (e) shows that any person has an interest in the burial site.

2. If the director determines that the proposed activity will not disturb the burial site or will disturb a burial site in which no person is shown on the registry under sub. (2) (e) to have an interest, he or she shall notify the owner of the owner's right to cause or permit the activity.

3. If the director determines that the proposed activity will disturb a burial site in which any other person who is not the owner is shown on the registry under sub. (2) (e) to have an interest and that the interest is substantial, the director shall notify the owner that the owner may not cause or permit the activity unless the owner does one of the following:

a. Subject to s. 157.111, authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove and analyze any human remains and objects related to the burial in the burial site from the burial site within a reasonable

time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6).

b. Changes the proposed activity so as not to disturb any burial site.

(d) If the director determines that an owner has satisfied the requirements under par. (c) 3., he or she shall notify the owner of the owner's right to cause or permit any activity which is in keeping with the owner's action under par. (c) 3.

(e) If under par. (c) 3. a. all human remains and objects related to the burial in a burial site reported under sub. (3) (a) are not removed from the burial site, the director shall enter the burial site into the record prepared under sub. (2) (a).

(f) The director shall submit a written report to the board of any determination which he or she makes under this subsection.

(5) PROCEDURE FOR CATALOGED BURIAL SITES. (a) No person may intentionally cause or permit the disturbance of a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit from the director issued under this subsection.

(b) Any person who intends to cause or permit any activity on a cataloged burial site or on cataloged land contiguous to a cataloged burial site which in any way might disturb the burial site or the land shall:

1. Apply to the director for a permit to disturb the burial site or the land. The application shall include the purpose of the disturbance and the names and addresses of any persons notified under subd. 2. The director shall send the applicant the names of any person in the registry with an interest in the burial site.

2. On a form provided by the director, notify any person whose name the director has sent under subd. 1. of the proposed disturbance. The notice to any person under this subdivision shall include information on the notified person's right to a hearing on whether the director should grant a permit to disturb the burial site or the land.

(c) 1. Upon request of the applicant or any person notified under par. (b), or if the director determines that a hearing is necessary, the director shall request the division of hearings and appeals in the department of administration to conduct a hearing on whether a permit should be issued to disturb the burial site or the land which is the subject of the request. If in any part of the hearing the location of a burial site is the subject of the testimony, such part of the hearing shall be conducted in a session closed to the public and the record of such part of the hearing shall be exempt from disclosure under s. 19.35 (1).

1m. If a hearing is not requested or determined to be necessary under subd. 1., the director shall determine whether a permit should be issued to disturb the burial site or the land which is the subject of the application under par. (b) 1. If the director determines that the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land, the director shall grant a permit to disturb the burial site or the land. In making the determination, the director shall consider the interest of the public in addition to any other interests. If the director determines that any of the following classes of interest are represented, the director shall weight the interests in the following order of priority:

a. Direct kinship.

b. A cultural, tribal or religious affiliation.

c. A scientific, environmental or educational purpose.

cm. Historical and aesthetic significance of the burial site.

d. Land use.

e. A commercial purpose not related to land use which is consistent with the purposes of this section.

f. Any other interest which the director deems to be in the public interest.

2. If a hearing is requested or determined to be necessary under subd. 1., the division of hearings and appeals in the department of administration shall conduct a hearing to determine whether the benefits to the permit applicant in disturbing the burial site or the land outweigh the benefits to all other persons shown on the registry under sub. (2) (e) to have an interest in not disturbing the burial site or the land. If the division finds in favor of the applicant, the division shall issue a determination in favor of granting a permit to disturb a burial site or the land which is the subject of the hearing under this paragraph. In making the determination, the division shall consider the interest of the public in addition to the interests of the parties. If any of the following classes of interest are represented in the hearing, the division shall weight the interests in the following order of priority:

a. Direct kinship.

b. A cultural, tribal or religious affiliation.

c. A scientific, environmental or educational purpose.

cm. Historical and aesthetic significance of the burial site.

d. Land use.

e. A commercial purpose not related to land use which is consistent with the purposes of this section.

f. Any other interest which the board deems to be in the public interest.

2m. If the division makes a determination for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the division may determine the person to whom the human remains and objects related to the burial in the burial site should be transferred for analysis and reinterment or other appropriate disposition when the burial site is disturbed. In making such a determination, the division shall follow the order of priority prescribed in sub. (6) (a).

3. If the determination under subd. 1m. or 2. is for granting a permit to disturb a burial site which is the subject of the hearing under this paragraph, the director shall grant the permit if the owner authorizes the director or a qualified archaeologist approved by the director to excavate the burial site to remove, within a reasonable time, beginning within 30 days of when ground conditions permit, for disposition under sub. (6), any human remains and objects related to the burial in the burial site to be disturbed under the permit.

4. A permit issued under this subsection shall be subject to s. 157.111 and may be subject to any other condition or exemption deemed necessary to limit the disturbance of a burial site or the land or to minimize any other burden on any person affected by granting the permit.

5. Any party in a hearing under this paragraph may appeal the determination under subd. 1m. or 2. to the board.

(d) 1. The director may charge a fee to recover the cost of excavation of a cataloged burial site under par. (c) 3. on the basis of the historical society's assessment of the costs associated with excavation of the cataloged site.

2. The director may charge a fee to recover costs incurred by the historical society to analyze and reinter or otherwise dispose of human remains and other material under par. (c) 2m.

(6) DISPOSITION OF HUMAN REMAINS REMOVED FROM BURIAL SITES. (a) If human remains and objects related to the burial in the site are removed from a burial site under sub. (4) (c) 3. a. or (5) (c) 3. and the division has not determined under sub. (5) (c) 2m. the person to whom such remains and objects should be transferred for analysis and reinterment or other appropriate disposition, the director shall notify any person in the registry under sub. (2) (e) with an interest in the analysis and reinterment or appropriate disposition of such human remains and objects. The director shall transfer the remains and objects to such person for appropriate reinterment or other appropriate disposition upon receipt of a written application by any person with an interest in the analysis and reinterment or other appropriate disposition based on the following, in the order of priority stated, when persons in prior classes are not available at the time of application and in the absence of actual notice of opposition by a member of the same or a prior class:

1. Direct kinship.

2. A cultural, tribal or religious affiliation.

3. A scientific, environmental or educational purpose.

4. Any other interest which the board deems to be in the public interest.

(b) If the director cannot identify any person with an interest in reinterring the human remains and objects received under par. (a), the director shall provide for reinterment or other disposition of the human remains and objects in an appropriate manner.

(c) The director shall enter into the catalog prepared under sub. (2) (a) the site of any reinterment under par. (a) or (b).

(d) The director shall submit to the board a written report of any disposition action taken under this subsection.

(e) The board may review and modify any disposition action taken by the director under this subsection.

(6m) BURIAL SITES ON PUBLIC LANDS. (a) In this subsection, "municipality" has the meaning given under s. 66.0621 (1) (a) and includes the state.

(b) Notwithstanding any other provision of this section, a municipality:

2. May not transfer any burial site to any person who is not a municipality unless the transfer provides for preservation of the burial site from any disturbance by any person and unless the transfer is approved by the board.

3. Shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves.

(7) ACTION BY ATTORNEY GENERAL. Upon request of the board, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing or trial had under the provisions of this section and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same. The attorney general or district attorney so requested shall report to or confer with the board regarding the request within 30 days after receipt of the request.

(8) REMEDIES. Any person who intentionally disturbs, without the authorization of the director under sub. (4) (c) 2. or (d), a burial site which is not cataloged or who intentionally disturbs, without a permit issued under sub. (5), a cataloged burial site or the cataloged land contiguous to a cataloged burial site is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial site or in reinterring the human remains and objects related to the burial in the burial site. Any person with an interest in preserving a burial site or in reinterring the human remains in the burial site may bring an action for an injunction to prevent disturbance to the burial site or the cataloged land contiguous to a cataloged burial site or to obtain the human remains and objects related to the burial in the burial site for appropriate reinterment, in the order of priority specified in sub. (6) (a).

(9) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties of any person under this section.

(10) PENALTIES. (a) Any person who fails to report the disturbance of a burial site or the cataloged land contiguous to a cataloged burial site as required under sub. (3) shall forfeit not less than $100 nor more than $1,000.

(b) Any person who intentionally disturbs a burial site which is not cataloged without the authorization of the director under sub. (4) (c) 2. or (d) shall forfeit not less than $500 nor more than $2,000 if the burial site is not dedicated or shall forfeit not less than $1,000 nor more than $10,000 if the burial site is dedicated.

(c) Any owner who intentionally causes or permits any activity which disturbs a burial site after receiving notice from the director under sub. (4) (a) without the authorization required under sub. (4) (c) 2. or (d) shall forfeit not less than $1,000 nor more than $10,000.

(d) Any person who intentionally causes or permits any activity which disturbs a cataloged burial site or the cataloged land contiguous to a cataloged burial site without a permit issued under sub. (5) shall forfeit not less than $1,000 nor more than $10,000.

(e) Any person who disturbs a burial site for commercial gain not related to use of the land where a burial site is located or who disturbs a cataloged burial site for commercial gain related to use of the land where a burial site is located in violation of this section may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or imprisoned for not more than one year in the county jail or both. In calculating the amount of the fine based on personal injury, any measurement of pain and suffering shall be excluded.

History: 1985 a. 316; 1987 a. 27; 1989 a. 3, 31, 359; 1991 a. 39; 1993 a. 386; 1995 a. 357; 1999 a. 83; 1999 a. 150 s. 672; 2001 a. 16; s. 35.17 correction in (1) (a).

Cross−reference: See also ch. HS 1, Wis. adm. code.

Note: 1985 Wis. Act 316, which created this section, contains extensive notes. Also, Section 1 of the Act is entitled "Legislative findings and purpose".