

CHAPTER 157

DISPOSITION OF HUMAN REMAINS

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SUBCHAPTER I

CORPSES

157.01 Rules for preparation, transportation and disposition. The department of health and social 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.

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 shall provide written notification to the relative informing him or her that the department, upon request, will provide a copy of any autopsy report or other report or information pertaining to the death. The department 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, 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 medical college of Wisconsin, inc. or

any accredited school of mortuary science, such 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.

157.03 Restrictions on use of bodies for anatomical purposes; embalming such bodies; delivery of bodies to relatives. (1) The corpse of one who died with smallpox, diphtheria or scarlet fever, or who in his 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.

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, 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.

157.06 Uniform anatomical gift act. (1) DEFINITIONS. (a) "Anatomical research" means a gift of the entire body to a medical or dental school anatomy department for purposes of dissection or other like purpose.

(am) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the U.S. government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(e) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(f) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(2) PERSONS WHO MAY EXECUTE AN ANATOMICAL GIFT. (a) Except as provided in this paragraph, any individual of sound mind may give all or any part of his or her body for any purpose specified in sub. (3), the gift to take effect upon death. If a decedent has given his or her entire body to any donee for the purpose of anatomical research, a parent of an unmarried decedent under 18 years of age may revoke the gift. If a decedent has given his or her entire body to any donee for the purpose of anatomical research, unless the surviving spouse gave consent to the donation in writing prior to the donor's death, the surviving spouse of the decedent may revoke the gift.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in sub. (3):

1. The spouse.
2. An adult son or daughter.
3. Either parent.
4. An adult brother or sister.
5. A guardian of the person of the decedent at the time of his death.
6. Any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by par. (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by subs. (2) (a) and (7) (d).

(2m) HOSPITAL POLICY. (a) Each hospital shall have a policy based on accepted medical standards that requires, except as provided in par. (b), when a patient who is a suitable candidate for the gift of all or part of his or her body dies in the hospital, that the persons specified in sub. (2) (b) in the order and according to the procedure stated in sub. (2) (b) be requested to consider consenting to the gift of all or any part of the decedent's body, which has not already been given under sub. (2), for the purposes specified in sub. (3).

(b) The policy required under par. (a) does not have to require a request to consider consenting to a gift if the hospital has actual notice of contrary indications by the decedent or actual notice that a gift by a member of a class is opposed by a member of the same or a prior class under sub. (2) (b).

(c) If a gift is requested under par. (a), the hospital shall include in the decedent's medical records a statement that a request to consider consent to an anatomical gift has been

made and the name of the person of whom the request is made, the person's relationship to the decedent and whether the person consented to or refused the request.

(3) PERSONS WHO MAY BECOME DONEES; PURPOSES FOR WHICH ANATOMICAL GIFTS MAY BE MADE. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(a) Any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(b) Any accredited medical or dental school, college or university, for education, research, advancement of medical or dental science or therapy; or

(c) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(d) Any specified individual for therapy or transplantation needed by him.

(4) MANNER OF EXECUTING ANATOMICAL GIFTS. (a) A gift of all or part of the body under sub. (2) (a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under sub. (2) (a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of 2 witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of 2 witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding sub. (7) (b), the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in sub. (2) (b) shall be made by a document signed by him or made by his telegraphic, recorded telephonic or other recorded message.

(5) DELIVERY OF DOCUMENT OF GIFT. If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the

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person in possession shall produce the document for examination.

(6) AMENDMENT OR REVOCATION OF THE GIFT. (a) If the will, card or other document, or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

1. The execution and delivery to the donee of a signed statement; or
2. An oral statement made in the presence of 2 persons and communicated to the donee; or
3. A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or
4. A signed card or document found on his or her person or in his or her effects; or
5. Crossing out the donor authorization in the space provided on the driver's license as prescribed in s. 343.17 (1) (c).

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in par. (a), or by destruction, cancellation or mutilation of the document and all executed copies of the document or by crossing out the authorization in the space provided on the license as prescribed in s. 343.17 (1) (c).

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in par. (a).

(7) RIGHTS AND DUTIES AT DEATH. (a) The donee may accept or reject the gift. If the entire body is given for the purpose of anatomical research, it shall not be delivered to the donee or his agent if the surviving spouse or other person who assumes custody of the body requests a funeral service or other last rites for the deceased. If such a request is made, the body shall not be delivered until after the rites have been conducted. If the entire body is given for any purpose other than anatomical research or if the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause any parts given which it intends to remove to be removed without unnecessary mutilation. After removal of any such parts, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

(b) The medical certification of death under s. 69.18 (2) shall be determined by a physician who tends the donor at his or her death or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this section or with the anatomical gift laws of another state (or a foreign country) is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) This section is subject to the laws of this state prescribing powers and duties of the coroner, medical examiner and other physicians licensed to perform autopsies with respect to autopsies and the reporting of certain deaths under ch. 979.

(e) Except as expressly provided in this section, nothing in this section affects rights or obligations of next of kin of a decedent.

(7m) REMOVAL OF EYES BY FUNERAL DIRECTORS AND PERSONS ACTING UNDER DIRECTION OF PHYSICIAN. In addition to any physician licensed to practice medicine and surgery under ch. 448, any person acting under the direction of a physician or any funeral director licensed under ch. 445, who has completed a course in eye enucleation and holds a valid certificate of competence from a medical college approved by the medical examining board under s. 448.05 (2), may enucleate the eyes of a deceased donor under this section. A

certificate of competence shall be valid for 3 years. No licensed funeral director so certified and no funeral establishment with which such a funeral director is affiliated shall be liable for damages resulting from such enucleation.

(8) UNIFORMITY OF INTERPRETATION. This section shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(9) SHORT TITLE. This act may be cited as the uniform anatomical gift act.

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.

Revisor's Note, 1969: Although this section is labeled the "Uniform Anatomical Gifts Act," it does vary from the Uniform Act in that subs. (1) (a) and (7) (e) were not in the Uniform Act and subs. (2) (a) and (e) and (7) (a) and (d) were amended. Care should be used in adapting the suggested document of gift forms.

Constitutionality of (7) (c) upheld. *Williams v. Hofmann*, 66 W (2d) 145, 223 NW (2d) 844.

Training and certification requirements under (7m) apply both to persons acting under direction of physician and to funeral directors. OAG 47-88.

SUBCHAPTER II**CEMETERIES**

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

(1) "Board" means board of trustees of a cemetery association, having charge of a cemetery.

(2) "Corporation" means the cemetery association having charge of a cemetery.

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

History: 1983 a. 189; 1985 a. 316 s. 18; Stats. 1985 s. 157.061.

157.062 Cemetery association. (1) ORGANIZATION. Not less than 7 persons residing in the same county may form a cemetery association. They shall meet, select a chairman and secretary, choose a name, fix the annual election date, and elect by ballot not less than 3 nor more than 9 trustees whom the chairman and secretary shall immediately divide by lot into 3 classes, who shall hold their offices for one, 2 and 3 years, respectively. Within 3 days, this time limit being directory, the chairman and secretary shall certify the corporate name, the names of the organizers and of the trustees, and their classification, and the annual election date acknowledged by them, and record it in the office of the register of deeds. The association shall then have the powers of a corporation.

(2) AMENDMENTS. The association may change its name, the number of trustees or the annual election date by resolution at an annual meeting, or special meeting called for such purpose, by majority vote of the members present, and by recording in the office where the certificate of organization is recorded, copy of the resolution, with the date of adoption, certified by the president and secretary or corresponding officers. The register of deeds shall note on the margin of the original record the volume and page where the amendment is recorded.

(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 lots and carried on business for over twenty-five 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) ELECTIONS. (a) Annual election shall be held at such place in the county as the trustees direct upon such public notice as the by-laws prescribe. Trustees chosen after the first shall be proprietors of lots in the cemetery, residents of the

state, and hold office for three years. Election shall be by ballot, and a plurality shall elect. Each owner of one or more lots shall be entitled to one vote, and such one of several owners of a lot as the majority of them designate shall cast the vote.

(b) If the annual election is not held on the day fixed the trustees may appoint another day, not more than 60 days thereafter, 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 whenever elected shall expire at the same time as though elected on the regular date.

(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, control the cemetery and beautify the same, and may establish regulations respecting it. At each annual meeting the trustees shall make a written report of their transactions and the condition of the association, giving a particular account of receipts and expenditures.

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

(b) If an association which has been dissolved under par. (a), or any group which was never properly organized as a cemetery association, has cemetery grounds and interments remain therein, 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, of the time, place and object of the meeting, assemble and reorganize by the election of trustees, the same as the regular time, and divide them into classes as provided in sub. (1), the commencement to be computed from the next annual election date, and the proceedings of such meeting shall be entered by the secretary on the records, and thereby the association shall be reorganized. Upon such reorganization, the title to the cemetery grounds, trust funds and all other property of the association or group shall vest 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 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.

(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.

History: 1977 c. 449 ss. 233, 497; 1983 a. 192; 1985 a. 316 s. 18; Stats. 1985 s. 157.062.

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

157.063 Change of ownership. (1) When a cemetery association abandons or fails to manage or care for the cemetery for a period of 5 or more years, and is not reorganized in the meantime, the municipality wherein the cemetery is becomes vested with the control of the property, and shall manage and care for it, and collect and manage all trust funds connected therewith received other than by a will.

(2) Whenever a cemetery association shall vote to convey cemetery property and all trust funds pertaining thereto to a city, village or town, the trustees of the association shall have the power to transfer such property upon the acceptance thereof by resolution of the governing body of the city, village or town.

(3) 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 cemetery property, trust funds and other property of the association to another association, the trustees of the association shall transfer such property upon the acceptance thereof by the other association by affirmative vote of a majority of its members present at an annual meeting or special meeting called for such purpose. Upon such acceptance, the title to all cemetery property, trust funds and other property of the transferring association shall vest in the accepting association under the control of the trustees of the accepting association.

(4) 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 such 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 do so, having notice thereof, 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.

History: 1977 c. 449 s. 497; 1983 a. 297; 1985 a. 316 s. 18; Stats. 1985 s. 157.063.

157.064 Holding property. (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

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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 the 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 such municipality, to appraise the damages of each owner, not to exceed the price asked, but, except in cities or incorporated villages, no lands shall be taken within 20 rods of a residence owned by the occupant without his written consent. The appraisers shall hear all parties upon 10 days' notice and file 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.

History: 1977 c. 449 s. 497; 1985 a. 316 s. 18; Stats. 1985 s. 157.064; 1987 a. 190.

157.065 Location of cemeteries. (1) No cemetery may be used for burials except:

- (a) Any cemetery in use on April 4, 1864; or
- (b) Any cemetery organized and operated by:

1. Any municipality;
2. Any church;
3. Any fraternal or benevolent society;
4. Any incorporated college of a religious order;
5. Any cemetery association created under s. 157.062; or
6. A corporation organized under ch. 180 or 181 operating a cemetery on April 30, 1980.

(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 200 rods of an inhabited dwelling that is located within a recorded plat or addition, unless the city or village consents;
3. Within 15 rods 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 200 rods 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. The Ethan Allen school;
 - 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) 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 inter members of the religious order, if the common council consents and if each person owning a

private building within 50 rods of the proposed cemetery consents.

(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 15 rods 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 an incorporated 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.

(4) 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.

(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.

The restrictions on the location of cemeteries do not apply to the enlargement of cemeteries existing prior to 1933. The 2nd set of requirements under (1) (a) through (e) (1969 stats.) do apply to the extension of existing cemeteries. Highland Memorial Park, Inc. v. New Berlin, 67 W (2d) 363, 227 NW (2d) 72.

157.07 Platting. The board of trustees shall cause to be surveyed and platted by a land surveyor registered in this state such portions of the lands as may from time to time be required for burial, into lots, drives and walks, and record map thereof in the office of the register of deeds. No such plat or map shall be recorded unless laid out and platted to the satisfaction of the county board of such county, and the town board of the town in which such land is situated, or, if such land is situated within a city of the first class, then only by the common council of such city. The plat shall show the exact location of the tract being subdivided with reference to a corner or corners established in the United States public land survey by bearings and distances, and 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 thereon. The plat shall include the certificate of the surveyor containing the name of the board of trustees, the date of the survey, the surveyor's stamp or seal and signature and the surveyor's statement that the survey is true to the surveyor's best knowledge and belief. The plat shall be made on one or more sheets of durable white paper so pasted on muslin that they cannot be detached therefrom. To facilitate the binding of such sheets into volumes, as provided by s. 236.25, such sheets shall be of uniform width of 22 inches and length of 30 inches. When more than one sheet is used for any one plat, 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. Such sheets may be provided by the county through the register of deeds on such terms as the county board shall determine. The surveyor shall leave a binding margin of 1 1/2 inches on the left side of the 30-inch length and a one-inch margin on all other sides. The board of trustees shall cause the same to be recorded within 30 days of the date of such approval, together

with the evidence of the town and county board's or common council's approval, which shall be a copy of the resolution adopted by such county board and by such town board, or by such common council, certified by the county clerk and the town clerk, respectively, or city clerk, and affixed to such map or plat. For failure to do so, the plat shall be void and of no effect and each trustee of an association shall forfeit \$25 to the county or city.

History: 1983 a. 473.

157.08 Conveyances. (1) After the map is so recorded, the board may sell and convey platted lots, expressly restricting the use to burials, and upon such other terms, conditions and restrictions as the board directs. Conveyances shall be signed by the chief officer of the board, and the secretary or clerk, and before delivering the secretary or clerk shall enter in a book 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) The trustees of a cemetery association may sell and convey for other than burial purposes any portion of its cemetery in which there shall have been no lots sold or conveyed and no burials made. A majority of the trustees shall file with the circuit court their verified petition describing the portion and setting forth the facts and reasons for conveyance. The court shall fix a time for hearing and direct publication of a class 3 notice, under ch. 985, of the hearing. If the court find that the proposed sale is for the best interest of the association and that the rights of none to whom lots have been conveyed will be injured it shall enter an order reciting the jurisdictional facts and its finding and authorizing the conveyance. The order shall be effective when recorded by the register of deeds.

(3) The board may sell personal property at discretion.

(4) The board may vacate or replat any portion of its cemetery upon the filing of a verified petition by a majority of the trustees 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 replating is for the best interest of the association and that the rights of none to whom lots have been conveyed will be injured, it shall enter an order reciting the jurisdictional facts and its findings and authorizing the vacating or replating of the lands of the cemetery. The order shall be effective when recorded by the register of deeds.

History: 1977 c. 449 s. 497.

157.09 Use of proceeds. The proceeds of sales shall be used only to apply on the purchase of the grounds, the care and improvement of the cemetery and avenues leading thereto, and operating expenses.

157.10 Alienation and use of lots. While any person is buried therein a lot shall be inalienable without the consent of a majority of the board and on the death of the owner shall descend to his heirs; but any one or more of such heirs may convey to any other heir his interest therein. No corpse shall be interred in a lot except the corpse of one having an interest therein, or a relative, or the husband, or wife of such person, or his or her relative; except by the consent of all persons having an interest in the lot.

157.11 Improvement and care. (1) FENCE; FUNERAL BUILDING. The board may enclose the grounds with a suitable fence, and may erect thereon a building for funeral services.

(2) REGULATIONS. The board may make regulations for management and care of the cemetery. No person shall 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; and the board may require any person owning or controlling a lot to do anything necessary to comply with the regulations by giving reasonable personal notice in writing if he is a resident of the county, otherwise by publishing a class 3 notice, under ch. 985, in the county; and if he fails to comply within 20 days thereafter the board may cause it to be done and recover from him the expense. The board may also impose a forfeiture not exceeding \$10 for violation of the regulations posted in 3 conspicuous places in the cemetery, recoverable under ch. 778. Each member of the board and the superintendent or sexton shall have constable powers in enforcing the regulations.

(3) CONTRACTS. The trustees of a cemetery association may contract with individuals who own or are interested in a lot for its care; the contract shall be in writing, may provide that the 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 association, be recorded in a book kept for that purpose, and be effective when the consideration is paid or secured.

(4) ASSOCIATIONS. Persons owning a 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; s. 157.062 shall apply to such association. Nothing in this section 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 board shall fix the sum necessary, annually for care of lots and care and improvement of the cemetery, or to produce a sufficient income therefor.

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

(b) The board or any organization having a cemetery under its control may fix and determine the sum reasonably necessary for perpetual care of the grave or lot in reasonable and uniform amounts, which amounts shall be subject to the approval of the court, and may collect the same 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 lot or grave of the deceased.

(d) When uniform care of a lot has been given for two consecutive years or more, for which assessments are unpaid, after notice as provided in sub. (2), right to interment is forfeited until delinquent assessments are paid. When uniform care has been given for five consecutive years or more and the assessments are unpaid, upon like notice, title to all unoccupied part of the lot shall pass to the association or

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municipality and may be sold, the proceeds to be a fund for perpetual care of the occupied portion.

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

(9) HANDLING OF PROPERTY. (a) Before the trustees of an association receive a gift, the surety bonds of the secretary and treasurer shall be increased to cover such amount if it does not then do so. If the bonds are not filed, or any officer 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 him.

(b) Except as hereinafter provided in respect of funds for the perpetual care of public mausoleums and columbariums, money received by an association for perpetual care shall be invested as provided in ch. 881, or in such other manner as may be approved either by the circuit judge of the county in which the principal office of the association is located, or the circuit judge of the county in which the cemetery is located, or it may be deposited with the treasurer of the county or city in which such cemetery is located, and the governing body of such county or city may determine to accept such deposits. In the case of all deposits hitherto or hereafter deposited with a city or county, or previously deposited with a village, there shall be paid to said association annually interest on sums so deposited of not less than 2% per year. The governing body of any city or county, or any village or town in the case of previous deposits, may determine to return all or a part of any sum deposited by an association, and such association shall accept such sum within 30 days after receiving written notice of such action. If such association is dissolved or becomes inoperative such county or city shall use the interest on such fund for the care and upkeep of such cemetery. Deposit shall be made and the income paid over from time to time, not less frequently than once each year, and receipts in triplicate shall be given, one filed with the county clerk, one with the association and one given to the person making the deposit. Deposits shall be of \$5 or multiple thereof. Records and receipts shall specify the lot for the care of which the deposit is made. Reports of money received for perpetual care shall be made annually by the trustees of such association to the circuit judge of the county in which the principal office of the association is located, or the circuit judge of the county in which the cemetery is located on July 1 of each year. All funds received by an association for perpetual care and now held by the treasurer or trustees of such association may be transferred to said county or city treasurer. Failure to file such report for 60 days shall subject such trustees to a forfeiture of not less than \$10 nor more than \$20, to be enforced as provided in ch. 778. Such trustees may also be cited to file such report by such judge and the expense of serving the citation shall be paid by such trustees and disobedience of such citation may be enforced as a contempt. This paragraph shall apply to all organizations that maintain cemeteries except municipalities.

(d) The officer in charge of the gifts shall on the first secular day in January of each year make written report to the county treasurer showing in detail the amount of money and value of property received and its disposition. The treasurer shall audit the accounts and examine investments and securities. Whenever, from his or her examination or audit of any report required by this section, the county treasurer has reason to believe that any officer or trustee of any association or perpetual care fund failed to comply with the laws of this state

or misappropriated or improperly invested any perpetual care funds, the treasurer shall transmit the information and the reports of the cemetery association to the district attorney who shall conduct an investigation and take appropriate action.

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

(f) If any money or property is not turned over when required by this section, or default occurs under a bond, the district attorney, when directed by the circuit judge, shall bring action to recover.

(g) Gifts and trusts hereunder shall be exempt from taxation and the law against perpetuities, accumulations and mortmain.

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.

Cross References: See 863.09 (2) for court order concerning perpetual care of graves.

See 701.11 (3) for authorization to distribute small trusts to cemeteries.

157.12 Cemetery vaults. (1) DEFINITIONS. In this section:

(a) "Department" means the department of industry, labor and human relations.

(b) "Vault" includes any cemetery vault, columbarium, crematorium, mausoleum or other structure wholly or partly above ground and used to store or dispose of corpses.

(2) CONSTRUCTION OF VAULTS. (a) Any person who constructs a vault or converts a building to a vault shall comply with the rules of the department and shall receive department approval in writing of the plans and specifications prior to construction or conversion. The department may adopt rules governing the location, material and construction of any vault. Any municipality may enact ordinances governing vaults at least as stringent as this section.

(b) The department shall supervise construction of any public or community vault and conversion of any building to a public or community vault. No person may modify departmental construction requirements without written approval of the department. No person may operate a public or community vault unless the department certifies in writing that construction or conversion complied with approved plans and that a maintenance fund under sub. (3) exists.

(c) No person may establish or use a public or community vault unless the vault is located inside a cemetery of 20 acres or more that has been in existence for 10 years or more.

(d) The underground portion of any vault shall be waterproof, weatherproof, airtight, of permanent construction and capable of being sealed permanently. The aboveground portion of any vault shall be weatherproof and of permanent construction.

(3) MAINTENANCE FUND. (a) Any person who operates a public or community vault shall establish a fund for the perpetual maintenance of the vault, in compliance with either subd. 1 or 2.

1. If the vault has been in existence since June 15, 1933, and is covered by the perpetual care fund of the cemetery in which the vault is located, the cemetery shall deposit at least 15% of the proceeds received by sale of cemetery lots into the fund, until the fund equals 10% of the cost of constructing the vault.

2. Except as provided in subd. 1, the operator of the vault shall apply at least 25% of all proceeds received from sales of mausoleum rooms or crypts and columbarium niches, until the fund equals 25% of the cost of constructing the vault. The municipality in which the vault is located may require a larger fund.

(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 plus sureties approved by the county clerk to indemnify the cemetery against loss if the treasurer fails to maintain the fund. No indemnity is required if the terms of sale of the vault 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 ch. 881. Income from investment may be used only to maintain the vault.

(4) **PENALTY.** Any person, including a member of a firm or officer or director of a corporation, who violates this section is personally liable and shall be fined not less than \$100 nor more than \$500 or imprisoned not less than 10 days nor more than 6 months or both.

History: 1971 c. 41 s. 12; 1971 c. 164; 1977 c. 449; 1979 c. 221; 1981 c. 20.

157.125 Trustees for the care of cemeteries or cemetery lots. Where a trust is created for the perpetual care of a burial place or grave but no trustee is named in the will to administer the trust, the circuit court having jurisdiction thereof may name the county treasurer of the county in which the burial place or grave is situated as such trustee. 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 such person the income from the trust property or such part of the income that may be necessary for such purpose, and if there is no person in charge of the burial place or grave then such 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 section the governing body of such municipality shall have the duty of such care to the extent of money received for such 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 showing the amount received and in detail the purposes for which expended.

History: 1971 c. 41 s. 11; 1979 c. 175 s. 50.

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 having created a perpetual care fund shall invest the money received for perpetual care as provided by ch. 881. The municipality may terminate the perpetual care fund, transferring the money to its general fund, if the municipality owns the cemetery and provides all maintenance expenses in perpetuity for those grave sites in the cemetery at the time of termination.

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

157.60 Public easement in cemetery. Any person who shall open or make any highway, town way or private way or shall construct 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 town, city, village or religious society or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall be specially granted by law or unless the consent of such town, city, village, religious society or private proprietors, respectively, shall be first obtained, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$300.

SUBCHAPTER III

BURIAL SITES PRESERVATION

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

(a) "Board" means the burial site 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).

(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.

(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.

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

(a) Under a special inspection warrant as required under s. 66.122, identify and record in a catalog burial sites in this state, together with sufficient contiguous land necessary to protect the burial site from disturbance, and notify in writing every owner of a burial site so recorded and any county or local historical society in the county where the burial site 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, 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.

(b) Identify and record in a catalog burial sites likely to be of archaeological interest or areas likely to contain burial

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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, 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 to 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 (6) (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), no person may intentionally cause or permit the disturbance of a 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 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. 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 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 which in any way might disturb the burial site shall:

1. Apply to the director for a permit to disturb the burial site. 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.

(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 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 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 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, the director shall grant a permit to disturb the burial site. 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.
- 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 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. 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 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.
- 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 may be subject to any condition or exemption deemed necessary to limit the disturbance of a burial site 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) 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.

(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 reintering 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. 66.066 (1) (a) and includes the state.

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

1. May not intentionally cause or permit the disturbance of any burial site on land it owns.
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

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management including but not limited to appropriate multi-use 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 is liable for attorney fees and damages or other appropriate relief to any person with an interest in preserving the burial site or in reintering 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 reintering the human remains in the burial site may bring an action for an injunction to prevent disturbance to the 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 as required under sub. (3) shall forfeit not less than \$100 nor more than \$500.

(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 \$1,000.

(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 \$5,000.

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

(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.

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