

CHAPTER 157

DISPOSITION OF HUMAN REMAINS

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NOTE: 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 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 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, 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; 1989 a. 31.

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, 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

In this section:

(a) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death of the donor.

(b) "Decedent" means a deceased individual.

(c) 2. "Document of gift" means a card, a statement attached to or imprinted on a license under s. 343.175 (2) or on an identification card under s. 343.50 (3), a will or another writing used to make an anatomical gift.

(d) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

(e) "Enucleator" means an individual who meets the requirements of sub. (8) (c) for authorization to remove donated eyes or parts of eyes.

(f) "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 subdivision of a state.

(g) "Part" means an organ, tissue, eye, bone, artery, blood, fluid or other body portion.

(h) "Physician" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(i) "Procurement organization" means a person licensed, accredited or approved under the laws of any state for procurement, distribution or storage of human bodies or parts of human bodies.

(2) MAKING, AMENDING, REVOKING AND REFUSING TO MAKE ANATOMICAL GIFTS BY THE DONOR (a) An individual who is at least 18 years of age may do any of the following:

1. Make an anatomical gift for any of the purposes stated in sub. (6) (a).

2. Limit an anatomical gift to one or more of the purposes stated in sub. (6) (a).

3. Refuse to make an anatomical gift.

(b) An anatomical gift under par. (a) may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift shall be signed by another individual and by 2 witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and the document of gift shall state that it has been so signed.

(c) 1. Before January 1, 1991, if a document of gift is attached to or imprinted on the donor's license to operate a motor vehicle or identification card issued by the department of transportation, the document of gift shall comply with par. (b) and s. 343.17 or 343.50. Revocation, suspension, expiration or cancellation of the license or identification card does not invalidate the anatomical gift.

2. After December 31, 1990, if a document of gift is attached to or imprinted on the donor's license under s. 343.175 (2) or identification card under s. 343.50 (3) issued by the department of transportation, the document of gift shall comply with par. (b) and s. 343.175 or 343.50. Revocation, suspension, expiration or cancellation of the license or identification card does not invalidate the anatomical gift.

(d) A document of gift may designate a particular 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 anatomical gift may employ or authorize any physician or enucleator to carry out the appropriate procedures.

(e) An anatomical gift under the circumstances in which the document of gift is by will takes effect upon death of the testator, whether or not the will is probated. If after the death of the testator the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift or a refusal to make an anatomical gift under par. (i) by doing any of the following:

1. Signing a statement of amendment or revocation.
2. Verbally amending or revoking in the presence of 2 individuals.

3. During the donor's terminal illness or injury making, by any form of communication that is addressed to a physician, an amendment or revocation.

4. Delivering a signed statement of amendment or revocation to a specified donee to whom a document of gift had been delivered.

5. b. Crossing out or amending the donor authorization or refusal in the space provided on his or her license as prescribed in s. 343.175 (2) or identification card as prescribed in s. 343.50 (3).

(g) In addition to the means specified in par. (f), an anatomical gift made by will may be amended or revoked in the manner provided for amendment or revocation of wills.

(h) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(i) An individual may refuse to make an anatomical gift of the individual's body or part of his or her body by doing any of the following:

1. Making a writing of refusal that is signed in the same manner as is required for a document of gift.

2. b. Attaching a statement of refusal to or imprinting a statement of refusal on his or her license under s. 343.175 (2) or identification card under s. 343.50 (3).

3. Making any other writing that is used to identify the individual as refusing to make an anatomical gift. During the individual's terminal illness or injury, he or she may make the refusal by an oral statement or other form of communication to another.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part of a human body is neither a refusal to give other parts of the body nor a limitation on an anatomical gift under sub. (3) or on a removal or release of other parts of the body under sub. (4).

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal under par. (i).

(3) MAKING, REVOKING AND OBJECTING TO ANATOMICAL GIFTS, BY PERSONS OTHER THAN THE DONOR (a) Any member of the following classes of individuals, in the order of priority listed, may make an anatomical gift of all or a part of a decedent's body for a purpose specified in sub. (6) (a), unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

1. The spouse of the decedent.

2. An adult son or daughter of the decedent.

3. Either parent of the decedent.

4. An adult brother or sister of the decedent.

5. A grandparent of the decedent.

6. A guardian of the person of the decedent at the time of death.

(b) An anatomical gift may not be made by an individual listed in par. (a) if any of the following applies:

1. An individual in a prior class is available at the time of death to make an anatomical gift and that individual objects to the making of an anatomical gift.

2. The individual proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent.

3. The individual proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the individual's class or a prior class.

(c) An individual authorized under par. (a) shall make an anatomical gift of all or a part of the decedent's body by doing one of the following:

1. Executing a document of gift that is signed by the individual.

2. Making a telegraphic, recorded telephonic or other recorded message, or other form of communication to another that is reduced to writing and signed by the recipient at the time it is received.

(d) Any member of the same class as or a prior class to an individual authorized under par. (a) who has made an anatomical gift under par. (a) may revoke the gift if, before procedures have begun for the removal of a part from the body of the decedent, the member so informs the physician or enucleator who will remove the part of the revocation.

(e) A failure to make an anatomical gift under par. (a) is not an objection to the making of an anatomical gift unless the failure is accompanied by an objection to the making of an anatomical gift.

(4) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER (a) The coroner or medical examiner may release and permit the removal of a part from, a decedent within that official's custody, for transplantation or therapy, if all of the following apply:

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

2. The official has made a reasonable effort, taking into account the useful life of the part of the body, to locate and examine the decedent's medical records and inform individuals listed in sub. (3) (a) of their option to make, or object to making, an anatomical gift.

3. The official does not know of a refusal or contrary indication by the decedent or of an objection by an individual having priority to act as listed in sub. (3) (a).

4. The removal will be by a physician, except that in the case of eyes, by a physician or by an enucleator.

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) An official releasing, and permitting the removal of a part of, a human body 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 of the body requested and the name of the person to whom it was released.

(5) POLICIES; REQUIRED REQUEST; SEARCH AND NOTIFICATION (a) Each hospital shall develop and adopt written policies for providing information to individuals on how to become part donors and shall make available to individuals informational brochures that discuss donation of parts.

(b) If at the time of death of a patient there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss with an available individual, under the priority established in sub. (3) (a), the option to make or refuse to make an anatomical gift and request that the individual make an anatomical gift of all or a part of the decedent's body. The administrator or representative shall make the request with reasonable discretion and sensitivity to the circumstances of the family. A request need not be made if the gift is not suitable, based upon accepted medical standards, for a purpose specified in sub. (6) (a) or if the requester knows that the patient, or the member of the class of individuals to whom the request would be directed under sub. (3) (a), has a cultural or religious objection or any other objection to the making of an anatomical gift. An entry shall be made in the medical record of the patient, in accordance with the rules promulgated under par. (f), stating the name and affiliation of the individual making the request and the name, response and relationship to the patient of the individual to whom the request was made.

(c) All of the following persons, under the following circumstances, shall make a reasonable search for a document of gift or other information identifying the individual as a donor or as an individual who has revoked or refused to make an anatomical gift:

1. A law enforcement officer, fire fighter, emergency medical technician — paramedic, ambulance service provider or emergency medical technician — basic who finds an individual whom the person believes is dead or near death.

2. A hospital, upon the admission of an individual who is at or near the time of death, if there is not immediately available any other source of that information.

(d) If a document of gift, revocation of a document of gift or evidence of refusal to make an anatomical gift is located by the search required by par. (c) 1. and the individual or decedent to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the person locating the document, revocation or other evidence shall send it to the hospital.

(e) If at or near the time of death of a patient a hospital knows that an anatomical gift of all or a part of the patient's body has been made under sub. (3) (a), that a release and removal of a part of the patient's body has been permitted under sub. (4) or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital. If a donee is neither named nor known to the hospital, the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part of the body of the patient or individual.

(f) The department of health and social services shall promulgate rules that do all of the following:

1. Set forth policies and procedures to be followed for discussing the anatomical gift donation process with members of the patient's family in situations under par. (b) in which there is or is not a document of gift.

2. Prescribe the manner in which information obtained under par. (b) regarding anatomical gift donations, objections and refusals shall be placed in the patient's medical record so that it is readily accessible to hospital and other medical personnel in the event of the death of the patient.

(6) DONEES; PURPOSES OF ANATOMICAL GIFTS (a) Any of the following persons may become donees of anatomical gifts for the purposes stated:

1. A hospital, physician or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.

2. An accredited medical or dental school, college or university for education, research or advancement of medical or dental science.

3. A designated individual for transplantation or therapy needed by that individual.

(b) A donor may make an anatomical gift to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, any hospital may accept the anatomical gift.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under sub. (3) (a), the donee may not accept the anatomical gift.

(7) DELIVERY OF DOCUMENT OF GIFT (a) Delivery of a document of gift during the donor's lifetime to another is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after the donor's death. The document of gift, or a copy, may be deposited in any hospital, procurement organization or registry office that accepts it for safekeeping or for

facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

(8) RIGHTS AND DUTIES AT DEATH. (a) Rights of a donee created by an anatomical gift are superior to rights of others except for autopsies under sub. (10) (b). A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body for a purpose other than transplantation or therapy, the body may not be delivered to the donee or the donee's 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 may not be delivered until after the funeral or rites have been conducted. If the entire body is given for transplantation or therapeutic purposes or if the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part of the body, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at death or, if none, the physician who certifies the death. Neither the physician who attends the donor at death nor the physician who determines the time of death may participate in the procedures for removing or transplanting a part of the donor's body unless the document of gift designates a particular physician under sub. (2) (d).

(c) If there has been an anatomical gift, a physician may remove any donated parts of the body and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician. Any individual acting under the direction of a physician and any funeral director licensed under ch. 445 may perform the functions of an enucleator under this section if he or she has completed a course in eye enucleation and holds a valid certification of competence from a medical college approved by the medical examining board under s. 448.05 (2). A certificate of competence shall be valid for 3 years.

(9) COORDINATION OF PROCUREMENT AND USE. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts of human bodies.

(10) EXAMINATION, AUTOPSY, LIABILITY. (a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) 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.

(c) A hospital, physician, coroner, medical examiner, enucleator or other person, who acts in accordance with this section or with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so, is not liable for that act in a civil action or criminal proceeding.

(d) A person who makes an anatomical gift under sub. (2) or (3) and the person's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.

(e) A person who fails to discharge the duties imposed by sub. (5) (c) and (d) is not liable for that act or inaction in a civil action or criminal proceeding.

(11) 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.

(11m) 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., is deemed to comply with the requirements of this section.

(12) SHORT TITLE. This section 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; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32.

See note to 979.10, citing 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.

(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).

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

(4) "Dedicated" means platted for use exclusively as a cemetery and qualified for the exemption from general property taxes under s. 70.11 (13).

(5) "Department" means the department of regulation and licensing.

(7) "Family member" means a spouse or an individual related by blood, marriage or adoption within the 3rd degree of kinship as computed under s. 852.03 (2).

(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 merchandise or a mausoleum space that represents the principal amount owed by the purchaser for the cemetery lot, cemetery merchandise or mausoleum space, and does not include any portion of the payment that represents any taxes, finance or interest charges or insurance premiums.

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

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

(14) "Public mausoleum" means a mausoleum that holds or is intended to hold more than 10 human remains or 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 or any religious society organized under ch. 187.

(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.

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 secretary of state. 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 secretary of state 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 annual election for three 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 secretary of state, 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 secretary of state 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 wilful 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. Wilful 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 NONPROFIT CEMETERIES. In lieu of delivering a certification, resolution or copy of proceedings to the secretary of state under sub. (1), (2) or (6) (b), a cemetery association that is not required to be registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit 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

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.

157.064 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). This subsection does not apply to a religious society organized under ch. 187.

(7) Not more than 30 days after a transfer under sub. (6), the transferring association shall notify the secretary of state in writing of the transfer, including the name and address of the accepting association or its treasurer. The secretary of state 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.

157.065 Location and ownership 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 religious association;
 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.
 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 secured correctional facility, as defined in s. 48.02 (15m).
 - 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 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.

(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 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.

(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

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.

157.067 Connection with funeral establishment prohibited. (1) In this section, "funeral establishment" has the meaning given in s. 445.01 (6).

(2) No cemetery authority may permit a funeral establishment to be located in the cemetery. No cemetery authority may have or permit an employe 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 employe 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, employe or agent of a funeral establishment.

(2m) A cemetery authority may accept a fee or remuneration from a funeral establishment or from an owner, employe 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.

157.07 Platting. (1) A cemetery authority shall cause to be surveyed and platted by a land surveyor registered in this state 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. The plat or map may not be recorded unless laid out and platted to the satisfaction of the county board of the county, and the town board of the town in which the land is situated, or, if the land is situated within a 1st class city, then only by the common council of that city.

(2) The plat or map 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. The plat or map shall include the certificate of the surveyor containing the name of the cemetery authority, 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.

(3) The plat or map shall be made on one or more sheets of durable white paper pasted on muslin so that they cannot be detached. To facilitate the binding of the sheets into volumes, as provided by s. 236.25, the 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 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 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.

(4) The cemetery authority shall cause the plat or map to be recorded within 30 days of the date of its 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 the county board and by the town board, or by the common council, certified by the county clerk and the town clerk, respectively, or city clerk, and affixed to the map or plat. For failure to do so, the plat shall be void.

(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 society organized under ch. 187.

History: 1983 a. 473; 1989 a. 307 ss. 29, 30, 34; 1993 a. 490

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 department in writing of the proposed sale or encumbrance. If within 60 days after the department is notified of the proposed sale or encumbrance the department notifies the cemetery authority in writing that the department objects to the sale or encumbrance the cemetery authority may not sell or encumber the cemetery land unless the department subsequently notifies the cemetery authority in writing that the objection is

withdrawn. The department 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 department may, before the expiration of the 60-day period, notify the cemetery authority in writing that the department approves of the sale or encumbrance. Upon receipt of the department's written approval, the cemetery authority may sell or encumber the cemetery land and is released of any liability under this paragraph. The department 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 society organized under ch. 187, and sub. (2) (b) does not apply to a cemetery authority that is not required to be registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1977 c 449 s. 497; 1989 a 307; 1991 a 269.

157.10 Alienation and use of cemetery lots. While any person is buried in a cemetery lot, the cemetery lot shall be inalienable, without the consent of the cemetery authority, and on the death of the owner, ownership of the cemetery lot shall descend to the owner's heirs; but any one or more of such heirs may convey to any other heir his or her interest in the cemetery lot. No human remains may be buried in a cemetery lot except the human remains of one having an interest in the cemetery lot, 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 cemetery lot.

History: 1989 a 307

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 3 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 \$10 for violation of the regulations posted in 3 conspicuous places in the cemetery, recoverable under ch. 778. Each employe 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 ceme-

tery 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% 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. 66.04(2)(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.

b. Deposited with the treasurer of the county or city in which the cemetery is located if the governing body of the county or city accepts such deposits.

c. If not invested as provided in subd. 1. a. or b., otherwise deposited by the cemetery authority in an investment approved by the department 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. If the care funds are deposited with a city or county, or previously deposited with a village, there shall be paid to the cemetery authority annually interest on funds 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 funds deposited by a cemetery authority, and that cemetery authority shall accept the returned funds within 30 days after receiving written notice of that action. If the cemetery authority is dissolved or becomes inoperative, the county or city shall use the interest on the funds for the care and upkeep of the 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 cemetery authority and one given to the person making the deposit. Deposits shall be in the amount of \$5 or a multiple thereof. Records and receipts shall specify the cemetery lot for the care of which the deposit is made. Reports of money received for care and of money and property received as gifts shall be made annually as provided in s. 157.62 (2).

(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% of each payment of principal into a care fund under par. (a) within 30 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% 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 department of regulation and licensing, 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 SOCIETIES Subsections (1) to (9), (9g) (a) and (b), (9m) and (9r) do not apply, but sub. (9g) (c) does apply, to a religious society organized under ch. 187.

(11) EXEMPTION FOR CERTAIN NONPROFIT CEMETERIES Subsection (9g) does not apply to a cemetery authority that is not required to be registered 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.

Cross-references: See s. 863.09 (2) for court order concerning care of graves. See s. 701.11 (3) for authorization to distribute small trusts to cemeteries.

Sub. (9) (e) neither requires nor authorizes payment to entities other than ch. 157 cemetery associations. *Krawczyk v. Bank of Sun Prairie*, 161 W (2d) 792, 468 NW (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.

157.115 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 one or more graves of a cemetery lot that is not owned by the cemetery authority of the cemetery in which the cemetery lot is located if those graves have 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" means a person who, according to the records of the cemetery authority of the cemetery in which an abandoned cemetery lot is located, owns or partially owns the abandoned cemetery lot.

(b) No cemetery authority may resell an abandoned cemetery 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 cemetery lot as provided in this subsection. If an owner is buried in the cemetery in which the aban-

doned cemetery 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 cemetery 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. (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 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% 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

157.12 Mausoleums and crematoriums. (1) DEFINITION. Notwithstanding s. 157.061 (5), in this section, "department" means the department of industry, labor and human relations.

(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 department and shall receive department approval in writing of the plans and specifications prior to construction or conversion. No person may modify plans or specifications which have been approved under this paragraph without approval in writing from the department, unless such modifications are cosmetic in nature. The department 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 department 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 com-

pleted, the department 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 department determines that, except for certain minor defects, the construction or conversion complies with the approved plans, the department 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 department, 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 department 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 department 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 department 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 department 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 department subsequently inspects the public mausoleum and provides the cemetery authority with a certification that the construction or conversion complies with the approved plans. The department 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. 66.057 (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% of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equals 10% of the cost of constructing the mausoleum.

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

until the care fund equals 25% 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 department notifies the municipality in writing that the department approves of the requirement. The department 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 department of regulation and licensing 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.

(4) CONSTRUCTION OF CREMATORIUMS (a) Any person who constructs a crematorium or converts a building or other structure to a crematorium 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 promulgate rules governing the location, material and construction of any crematorium. Any municipality may enact ordinances governing crematoriums at least as stringent as this subsection.

(b) The department shall supervise construction of any crematorium and conversion of any building or other structure to a crematorium. No person may modify departmental construction or conversion requirements without written approval of the department. No person may operate a crematorium unless the department certifies in writing that construction or conversion complied with approved plans.

History: 1971 c. 41 s. 12; 1971 c. 164; 1977 c. 449; 1979 c. 221; 1981 c. 20; 1989 a. 307; 1991 a. 269

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, and 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 department 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 a religious society organized under ch. 187, the court shall name the religious society as the trustee unless the religious society 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

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

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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. 66.057 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 registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1989 a. 307; 1991 a. 269

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).

(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. 221.04 (6) 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 department'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 department's written approval. If the trustee or account number of a preneed trust fund is changed, the cemetery authority shall notify the department in writing within 30 days after the change.

(d) The department 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 department 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 under s. 157.11 (9g) that are deposited with a city or county as provided

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under s. 157.11 (9g) (a), 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 registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

(b) If the department determines that care funds under s. 157.11 (9g) that have not been deposited with a city or county as provided in s. 157.11 (9g) (a) 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 department 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

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 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.

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 secretary of state. The report shall be made on a calendar-year basis unless the secretary of state, 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% 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 181.651.

(c) The secretary of state may prescribe and furnish forms for reports required under this subsection. If the secretary of state prescribes forms under this paragraph, he or she 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 department. The report shall be made on a form prescribed and furnished by the department. The report shall be made on a calendar-year basis unless the department, 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 181.651.

2. If the cemetery authority is required to file a report under s. 180.1622 or 181.651, 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.

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 181.651.

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

(d) The department 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).

2. Records that show, for each deposit in a trust fund or account specified in sub. (2) (b) 3 or 4., 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) 2. shall be maintained for not less than 3 years after the date of the deposit. 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 department may promulgate rules to establish longer time periods for maintaining records under sub. (3) (b) 2. and 3.

(5) **RULES; RECORDS.** The department may promulgate rules requiring cemetery authorities and licensees to maintain other records and establishing minimum time periods for the maintenance of those records.

(6) **AUDIT.** Except as provided in ss. 157.625, 157.63 (5) and 440.92 (9) (e), the department 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 which are not otherwise subject to the requirements under this chapter. The department 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 department 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.

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).

(2) A cemetery authority whose annual operating budget for the cemetery is \$2,500 or less 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 registered under s. 440.91 (1) and that is not organized or conducted for pecuniary profit.

History: 1991 a 269.

157.63 Reporting and auditing exemptions; certification of compliance of cemetery affiliated with religious society. (1) In lieu of filing an annual report under s. 157.62 (2), a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 or that religious society may file an annual certification with the department as provided in this section.

(2) A certification under this section shall be made on a form prescribed and furnished by the department 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 society 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) 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 department 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.

157.635 Regulations of cemetery affiliated with religious society. Nothing in this subchapter prohibits a cemetery authority of a cemetery that is affiliated with a religious society organized under ch. 187 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 society from being buried in the cemetery.

History: 1989 a 307.

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 \$1,000 or imprisoned for not more than 90 days or both:

(a) Violates s. 157.08 (2) (b), 157.11 (9g) or 157.12 (2) (b), (c) or (d) or (4) (b).

(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.

157.65 Enforcement. (1) (a) If the department of regulation and licensing 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 department of regulation and licensing may investigate.

(b) If the department of industry, labor and human relations 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 department of industry, labor and human relations 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 department of regulation and licensing or the department of industry, labor and human relations 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.

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).
- (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. 66.122, 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 (3) (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 s. 157.111, 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 appro-

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 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:

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. (a) 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 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 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.

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