

A-Engrossed
Senate Bill 944

Ordered by the Senate May 3
Including Senate Amendments dated May 3

Sponsored by COMMITTEE ON JUDICIARY (at the request of Carl Plass)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Makes certain sales practices by licensees or holders of certificates of authority from State Mortuary and Cemetery Board grounds for discipline by *[the]* board. **Directs board to refer trade practices complaints over which it lacks authority to Department of Justice or to state agency that has authority to address complaint.** Requires board to adopt rules related to certain sales practices.

A BILL FOR AN ACT

Relating to authority of State Mortuary and Cemetery Board; amending ORS 692.180 and 692.320.

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

SECTION 1. ORS 692.180 is amended to read:

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

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

(b) Fraudulent or dishonest conduct, when the conduct bears a demonstrable relationship to funeral service practice, embalming practice or the operation of cemeteries or crematoriums.

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (f) Sale or reuse of any casket or body container that has been previously utilized for the
2 placement of a deceased human body. This does not include use of a rental cover as defined in ORS
3 692.010.

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

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

7 (i) Conviction of a crime, when the crime bears a demonstrable relationship to funeral service
8 practice, embalming practice or the operation of cemeteries or crematoriums. A copy of the record
9 of the conviction certified to by the clerk of the court entering the conviction shall be conclusive
10 evidence of the conviction.

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

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

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

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

20 **(n) Sale of funeral or cemetery merchandise or services, including but not limited to the**
21 **sale of a plot or burial space, without informing the purchaser in writing prior to any sale**
22 **of all costs associated with placing and maintaining a gravestone, marker, memorial, plaque**
23 **or similar monument that is not purchased from the licensee or holder of a certificate of**
24 **authority on a grave, crypt, vault or niche.**

25 (2) All amounts recovered under this section shall be deposited in accordance with ORS 692.375.

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

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

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

32 **(6) When the board receives a complaint about the trade practices of a licensee or holder**
33 **of a certificate of authority that the board lacks the authority to address, the board shall**
34 **refer the complaint to the Department of Justice or to a state agency that has the authority**
35 **required to address the complaint.**

36 **SECTION 2.** ORS 692.320 is amended to read:

37 692.320. (1) The State Mortuary and Cemetery Board has the power to adopt and enforce for the
38 protection of the public health, safety and welfare reasonable rules relating to the following:

39 (a) The licensing of funeral service practitioners, embalmers, funeral establishments,
40 crematoriums and cemeteries.

41 (b) The registration of apprentices.

42 (c) The practice of funeral service practitioners and embalmers, and the operation of funeral
43 establishments, immediate disposition companies, crematoriums and cemeteries.

44 (d) Sanitary conditions of funeral establishments, crematoriums, cemeteries and any location in
45 which dead human bodies are stored or processed prior to final disposition.

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

2 **(2) The board shall adopt rules requiring a licensee or holder of a certificate of authority**
3 **that provides funeral or cemetery merchandise or services to place signs that inform, or to**
4 **provide written notification prior to any sale that informs, customers of all costs associated**
5 **with the placement and maintenance of a gravestone, marker, memorial, plaque or similar**
6 **monument that is not purchased from the licensee or holder of a certificate of authority.**

7 [(2)] (3) Other than areas used as living quarters, the board shall inspect not less than once
8 biennially the facilities and records of funeral establishments, cemeteries and crematoriums and
9 immediate disposition companies and any location in which dead human bodies may be stored, tem-
10 porarily held or processed prior to final disposition. The inspection of the records of such locations
11 shall be limited to those records required to comply with this chapter or ORS chapter 432 or rules
12 adopted pursuant thereto. The board may make random inspections at other times. The board shall
13 employ one or more persons to perform such inspections and aid in the enforcement of this chapter
14 and rules adopted thereunder. No person employed under this subsection may be a member of the
15 board or actively engaged in a practice regulated by this chapter.

16 [(3)] (4) The board may hold hearings, conduct investigations, subpoena witnesses, administer
17 oaths and take testimony in order to carry out the provisions of this chapter.

18 [(4)] (5) The board shall have a common seal and, subject to any applicable provision of the
19 State Personnel Relations Law, may employ necessary administrative staff, fix the compensation for
20 them and incur other necessary expenses.

21