

A Brief Overview of Sections of the Code of Iowa Concerning Burial Sites

Chapter 35B—County Commissions of Veteran Affairs

35B.17 Maintenance of graves: county boards of supervisors shall each year appropriate and pay to the owners of, or to the public board or officers having control of cemeteries within the state in which any such deceased service person is buried, a sum sufficient to pay for the care and maintenance of the lots on which they are buried....

Chapter 144—Vital Statistics

144.34 *Disinterment—permit*: details conditions under which disinterment of burials less than 150 years in age can occur (issued by state registrar, Vital Statistics, Department of Public Health)

Chapter 263B—State Archaeologist [Administrative Rules 685–11.1]

263B.7 *Ancient remains*: gives the state archaeologist the primary responsibility for investigating, preserving, and reintering discoveries of ancient human remains. “Ancient” is defined as more than 150 years old.

263B.8 *Cemetery for ancient remains*: provides for establishment of cemetery on state land for the reburial of ancient human remains.

263B.9 *Authority to deny permission to disinter human remains*: gives state archaeologist authority to deny permission for disinterment

Chapter 303—Department of Cultural Affairs

303.2(2)(a): specifies that a state agency which owns, manages, or administers a historic site must enter into an agreement with the Department of Cultural Affairs to insure proper management, maintenance, and development [Board of Regents exempt]

Chapter 314—Administrative Provisions for Highways

314.24 *Natural and Historic Preservation*: to the extent practicable, road planning, construction, and maintenance needs to preserve and protect the natural and historic heritage of the state

Chapter 331—County Home Rule Implementation

331.325 *Control and maintenance of pioneer cemeteries*: “pioneer cemetery” is defined as a cemetery where six or fewer burials have taken place in the past 50 years; gives county board of supervisors authority to assume jurisdiction and control (including maintenance and repair) of pioneer cemeteries, or create a cemetery commission to do this

331.424B *Cemetery levy*: gives county board of supervisors authority to levy tax to pay for maintenance and repair of pioneer cemeteries

Chapter 359—Township and Township Offices

359.28 *Condemnation*.

The township trustees are hereby empowered to condemn, or purchase and pay for out of the general fund, or the specific fund voted for such purpose, and enter upon and take, any lands within the territorial limits of such township for the use of cemeteries, a community center or juvenile playgrounds, in the same manner as is now provided for cities. However, the board of supervisors or a cemetery commission appointed by the board of supervisors shall control and maintain pioneer cemeteries as defined in section 331.325.

359.37 *Regulation*

359.39 *Ex officio police officers*

359.40 *Cemeteries—plats, records*

359.41 *Conveyance of lots*

Chapter 359A—Fences

Chapter 428A—Real Estate Transfer Tax

Chapter 476—Public Utility Regulation

Chapter 523I—Cemeteries [as of 2005, sections from former Chapter 566 have now been incorporated into this chapter as 523I.316]

Perpetual care cemeteries require permits from the Insurance Commissioner under this chapter. This chapter also contains elaborate provisions for the liquidation of cemeteries under certain conditions.

As of 2005, a new section has been added to the Code of Iowa:

523I.316.6 DISCOVERY OF HUMAN REMAINS. Any person discovering human remains shall notify the county or state medical examiner or a city, county, or state law enforcement agency as soon as is reasonably possible unless the person knows or has good reason to believe such notice has already been given or the discovery occurs in a cemetery. If there is reason to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision notified shall also notify the state archaeologist. A person who does not provide notice required pursuant to this subsection commits a serious misdemeanor.

Chapter 558—Conveyances

558.69 Reporting of private burial sites, wells, disposal sites, underground storage tanks, and hazardous waste: requires owner disclose this information with declaration of value submitted to county recorder under chapter 428A; if declaration of value not required, this information shall be submitted on separate form (“private burial sites” added to this section in 1999)

Chapter 566—Cemetery Management [as of 2005, the sections of this chapter have been incorporated into Chapter 523I.316]

566.1 Trustee appointed—trust funds: The owners of, or any party interested in, any cemetery may, by petition presented to the district court of the county where the cemetery is situated, have a trustee appointed with authority to receive any and all moneys or property that may be donated for and on account of said cemetery and to invest, manage, and control same under the direction of the court; but the trustee shall not be authorized to receive any gift, except with the understanding that the principal sum is to be a permanent fund, and only the net proceeds therefrom to be used in carrying out the purpose of the trust created, and all such funds shall be exempt from taxation.

566.20-.21 Abandoned lots: one can presume from the wording of these sections that a lot can be considered abandoned only if no one is buried in it or if it is not “occupied”

566.31 Burial sites: If a governmental subdivision or agency is notified of the existence of a marked burial site within its jurisdiction, and the burial site is not otherwise provided for under this chapter or chapter 263B or 566A, it shall as soon as practicable notify the owner of the land upon which the burial site is located of the site’s existence and location. The notification shall include an explanation of the provisions contained within section 566.32.

566.32 Disturbance of burial sites—penalty: A person who knowingly and without authorization removes, destroys, or otherwise disturbs a burial site for which the person received notification under section 566.31 commits a simple misdemeanor.

566.33 Protection and preservation of burial sites: A governmental subdivision or agency having a burial site within its jurisdiction, for which protection or preservation is not otherwise provided, shall preserve and protect the burial site as necessary to restore or maintain its physical integrity as a burial site. The governmental subdivision or agency may enter into an agreement with a public or private organization interested in historical preservation to delegate to the organization the responsibility for the protection and preservation of the burial site.

566.34 Confiscation and return of memorials: authorizes law enforcement officials to confiscate and return memorials taken without permission

566.35 Burial sites located on private property: provides access to descendants to burial sites located on private property (new section passed in 1999)

Chapter 566A—Cemetery Regulation

This chapter imposes additional regulation on cemeteries owned by entities other than counties. Townships and other political subdivisions are subject to the chapter's requirements relating to perpetual care and to the required contents for the sale of interment rights, but are not subject to the chapter's requirements for annual reporting if not a perpetual care cemetery. Violation of a provision of this chapter is a simple misdemeanor.

Chapter 716—Damage and Trespass to Property

716.5 Criminal mischief in the third degree: makes it an aggravated misdemeanor to intentionally disturb human remains no matter what the age, whether on public or private land

716.8: penalties for trespassing, ranging from a simple misdemeanor to an aggravated misdemeanor

Chapter 729A—Infringement of Individual Rights—Hate Crimes

Chapter 903—Misdemeanors

903.1 Maximum sentence for misdemeanants: maximum penalty for an aggravated misdemeanor (or criminal mischief in the third degree) is imprisonment not to exceed two years; also there is a fine of at least \$500 but not to exceed \$5000; for a simple misdemeanor, the penalty is either imprisonment not to exceed thirty days, or a fine of at least fifty dollars but not to exceed one hundred dollars. A criminal penalty surcharge required by section 911.2 shall be added to any fine imposed on a misdemeanant.

Chapter 910—Restitution

Chapter 911—Surcharge Added to Criminal Penalties

Contacts for Cemetery or Burial Site Information

ANCIENT HUMAN REMAINS (OVER 150 YEARS)

Shirley Schermer, Burials Program Director
Office of State Archaeologist
700 Clinton Street Building
University of Iowa
Iowa City IA 52242
phone: (319) 384-0740 or 384-0732
fax: (319) 384-0768
e-mail: shirley-schermer@uiowa.edu
<http://www.uiowa.edu/~osa/archaeology.htm>

DISINTERMENTS (UNDER 150 YEARS)

State Registrar of Vital Statistics
Iowa Department of Public Health
Lucas Building, 1st Floor
Des Moines IA 50319
phone: (515) 281-4944

CODE OF IOWA

<http://www.legis.state.ia.us/>

STATE HISTORIC PRESERVATION OFFICE

State Historic Preservation Office
Community Programs Bureau
State Historical Society of Iowa
600 E Locust
Des Moines IA 50319-0290
fax: (515) 282-0502
Doug Jones, Archaeologist (phone: 515-281-4358; e-mail: Doug.Jones@dca.state.ia.us)
Dan Higginbottom, Archaeologist (phone: 515-281-8744; e-mail: Daniel.Higginbottom@dca.state.ia.us)

HISTORIC CEMETERY PRESERVATION ISSUES

State Association for the Preservation of Iowa Cemeteries
Joyce Wiese, President
2160 310th St.
Toledo, IA 52342
641-484-2599
<http://www.rootsweb.com/~iasapc/>

PERPETUAL CARE CEMETERIES

Dennis Britson, Director
Regulated Industries Unit
Iowa Securities Bureau
340 Maple Street
Des Moines IA 50319-0066
515-281-4441

FUNERAL HOME REGULATION

Mortuary Science Board of Examiners
Public Health, Professional Licensure
Lucas State Office Building, 4th Floor
521 East 12th
Des Moines IA 50319-0075
phone: (515) 281-4287

IOWA ATTORNEY GENERAL'S OFFICE

The Divisions which advise on related issues are listed below:

Archaeology—Environmental and Agricultural Law Division (515) 281-5351

Consumer—Consumer Protection Division (515) 281-5926

Crime Victim's Compensation—Crime Victims Assistance Program (515) 281-5044

Criminal—Criminal Appeals Division (515) 281-5976

Fences—Environmental and Agricultural Law Division (515) 281-5351

Historic Preservation—Licensing and Administrative Law (515) 281-8760

Local Government—Licensing and Administrative Law (515) 281-8760

Mortuary Examiners—Licensing and Administrative Law (515) 282-8760

Securities (pre-need sales and perpetual care)—Licensing and Administrative Law (515) 281-8760

FEDERAL LAWS PROTECTING ARCHAEOLOGICAL OR CULTURAL RESOURCES

United State Attorney (complaints)
U.S. Courthouse Annex
10 East Court
Des Moines IA 50309
phone: (515) 284-6257

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U.S. Department of Interior
1849 C Street, NW Suite 210
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<http://www.cr.nps.gov/archeology/sites/FEDARCH.HTM>