

## **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:* The state archaeologist has the primary responsibility for investigating, preserving, and reintering discoveries of ancient human remains. For the purposes of this section, ancient human remains are those remains found within the state which are more than one hundred fifty years old. The state archaeologist shall make arrangements for the services of a forensic osteologist in studying and interpreting ancient burials and may designate other qualified archaeologists to assist the state archaeologist in recovering physical and cultural information about the ancient burials. The state archaeologist shall file with the Iowa department of public health a written report containing both physical and cultural information regarding the remains at the conclusion of each investigation.

*263B.8 Cemetery for ancient remains:* The state archaeologist shall establish, with the approval of the executive council, a cemetery on existing state lands for the reburial of ancient human remains found in the state. The cemetery shall not be open to the public. The state archaeologist in co-operation with the department of natural resources shall be responsible for co-ordinating interment in the cemetery.

*263B.9 Authority to deny permission to disinter human remains:* The state archaeologist shall have the authority to deny permission to disinter human remains that the state archaeologist determines have state and national significance from an historical or scientific standpoint for the inspiration and benefit of the people of the United States.

### **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 twelve 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. A portion of this chapter, 523I.316, incorporates sections from former Chapter 566 as well as new or modified sections; especially see the new section, 523I.316.6, requiring the reporting of the discovery of human remains.

### ***523I.316 PROTECTION OF CEMETERIES AND BURIAL SITES.***

#### **523I.316 Protection of cemeteries and burial sites.**

1. *Existence of cemetery or burial site — notification.* If a governmental subdivision is notified of the existence of a cemetery, or a marked burial site that is not located in a dedicated cemetery, within its jurisdiction and the cemetery or burial site is not otherwise provided for under [this chapter](#), the governmental subdivision shall, as soon as is practicable, notify the owner of the land upon which the cemetery or burial site is located of the cemetery's or burial site's existence and location. The notification shall include an explanation of the provisions of [this section](#). If there is a basis to believe that interment may have occurred more than one hundred fifty years earlier, the governmental subdivision shall also notify the state archaeologist.

2. *Disturbance of interment spaces — penalty.* A person who knowingly and without authorization damages, defaces, destroys, or otherwise disturbs an interment space commits criminal mischief in the third degree. Criminal mischief in the third degree is an aggravated misdemeanor.

#### *3. Duty to preserve and protect.*

a. A governmental subdivision having a cemetery, or a burial site that is not located within a dedicated cemetery, within its jurisdiction, for which preservation is not otherwise provided, shall preserve and protect the cemetery or burial site as necessary to restore or maintain its physical integrity as a cemetery or burial site. The governmental subdivision may enter into a written agreement to delegate the responsibility for the preservation and protection of the cemetery or burial site to the owner of the property on which the cemetery or burial site is located or to a public or private organization interested in historical preservation. The governmental subdivision shall not enter into an agreement with a public or private organization to preserve and protect the cemetery or burial site unless the property owner has been offered the opportunity to enter into such an agreement and has declined to do so.

b. A governmental subdivision is authorized to expend public funds, in any manner authorized by law, in connection with such a cemetery or burial site.

c. If a governmental subdivision proposes to enter into an agreement with a public or private organization pursuant to [this subsection](#) to preserve and protect a cemetery or burial site that is located on property owned by another person within the jurisdiction of the governmental subdivision, the proposed agreement shall be written, and the governmental subdivision shall provide written notice by ordinary mail of the proposed agreement to the property owner at least fourteen days prior to the date of the meeting at which such proposed agreement will be authorized. The notice shall include the location of the cemetery or burial site and a copy of the proposed agreement, and explain that the property owner is required to permit members of the public or private organization reasonable ingress and egress for the purposes of preserving and protecting the cemetery or burial site pursuant to the proposed agreement. The notice shall also include the date, time, and place of the meeting and a statement that the property owner has a right to attend the meeting and to comment regarding the proposed agreement.

d. Subject to [chapter 670](#), a governmental subdivision that enters into an agreement with a public or private organization pursuant to [this subsection](#) is liable for any personal injury or property damage that occurs in connection with the preservation or protection of the cemetery or burial site or access to the cemetery or burial site by the governmental subdivision or the public or private organization.

For the purposes of this paragraph, “*liable*” means liability for every civil wrong which results in wrongful death or injury to a person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty; or denial or impairment of any right under any constitutional provision, statute, or rule of law.

e. A property owner who is required to permit members of a public or private organization reasonable ingress and egress for the purpose of preserving or protecting a cemetery or burial site on that owner’s property and who acts in good faith and in a reasonable manner pursuant to [this subsection](#) is not liable for any personal injury or property damage that occurs in connection with the preservation or protection of the cemetery or burial site or access to the cemetery or burial site.

f. For the purposes of [this subsection](#), reasonable ingress and egress to a cemetery or burial site shall include the following:

(1) A member of a public or private organization that has entered into a written agreement with the governmental subdivision who desires to visit such a cemetery or burial site shall give the property owner at least ten days’ written notice of the intended visit.

(2) If the property owner cannot provide reasonable access to the cemetery or burial site on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access to the member.

(3) A property owner is not required to make any improvements to that person’s property to satisfy the requirement to provide reasonable access to a cemetery or burial site pursuant to [this subsection](#).

4. *Confiscation and return of memorials.* A law enforcement officer having reason to believe that a memorial or memorialization is in the possession of a person without authorization or right to possess the memorial or memorialization may take possession of the memorial or memorialization from that person and turn it over to the officer’s law enforcement agency. If a law enforcement agency determines that a memorial or memorialization the agency has taken possession of rightfully belongs on an interment space, the agency shall return the memorial or memorialization to the interment space, or make arrangements with the person having jurisdiction over the interment space for its return.

5. *Burial sites located on private property.* If a person notifies a governmental subdivision that a burial site of the person’s relative is located on property owned by another person within the jurisdiction of the governmental subdivision, the governmental subdivision shall notify the property owner of the location of the burial site and that the property owner is required to permit the person reasonable ingress and egress for the purposes of visiting the burial site of the person’s relative.

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 that 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.

7. *Adverse possession.* A cemetery or a pioneer cemetery is exempt from seizure, appropriation, or acquisition of title under any claim of adverse possession, unless it is shown that all remains in the cemetery or pioneer cemetery have been disinterred and removed to another location.

2005 Acts, ch [128. §38](#); 2006 Acts, ch [1117. §123](#); 2009 Acts, ch [179. §144](#)

## **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 and Chapter 566A—Cemetery Regulation:** [*as of 2005, the sections of this chapter have been incorporated into Chapter 523I.316*]

## **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)

Lara Noldner, Bioarchaeology Program Director  
Office of State Archaeologist  
700 Clinton Street Building  
University of Iowa  
Iowa City IA 52242  
phone: (319) 384-0740  
fax: (319) 384-0768  
e-mail: [lara-noldner@uiowa.edu](mailto:lara-noldner@uiowa.edu)  
<https://archaeology.uiowa.edu>

### DISINTERMENTS (UNDER 150 YEARS)

State Registrar of Vital Statistics  
Iowa Department of Public Health  
Lucas Building, 1<sup>st</sup> 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  
Dan Higginbottom, Archaeologist (phone: 515-281-8744; e-mail: [daniel.higginbottom@iowa.gov](mailto:daniel.higginbottom@iowa.gov))

### HISTORIC CEMETERY PRESERVATION ISSUES

State Association for the Preservation of Iowa Cemeteries  
Steve Story, President  
18883 250<sup>th</sup> St  
Hawkeye, IA 52147  
563-427-5354  
[dstory@netins.net](mailto:dstory@netins.net) <http://www.rootsweb.ancestry.com/~iasapc/>

### PERPETUAL CARE CEMETERIES

Dennis Britson, Director  
Regulated Industries Unit  
Iowa Securities Bureau  
340 Maple Street  
Des Moines IA 50319-0066  
515-281-5705 or 877-955-1212 (toll free, in state only)

## FUNERAL HOME REGULATION

Mortuary Science Board of Examiners  
Public Health, Professional Licensure  
Lucas State Office Building, 4<sup>th</sup> Floor  
521 East 12<sup>th</sup>  
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 States Attorney (complaints)

U.S. Courthouse Annex

10 East Court

Des Moines IA 50309

phone: (515) 284-6257

Archaeology and Ethnology Program

National Park Service

U.S. Department of Interior

1849 C Street, NW Suite 210

Washington DC 20240

<http://www.cr.nps.gov/archeology/sites/FEDARCH.HTM>