January 19, 2011

SENATE BILL No. 146

DIGEST OF SB 146 (Updated January 18, 2011 11:00 am - DI 106)

Citations Affected: IC 23-14; IC 25-15; IC 29-2; IC 30-2; IC 34-30; IC 36-2.

Synopsis: Disposition and interment of human remains. Makes changes to the priority of individuals who may determine the final disposition of the remains of a decedent. Provides that if a person does not exercise a right to determine final disposition within 72 hours of notification of the death of the decedent, the person forfeits the person's right to determine the final disposition of the decedent, and the right to determine final disposition passes to the next person listed in priority. Allows a crematory, cemetery, or funeral home that agrees to shelter the remains of a decedent while parties are in dispute as to the final disposition of the decedent to collect fees for storing the remains of the decedent. Requires that certain causes of action must be filed in the county where the decedent was a resident. Provides that a cemetery or funeral home that relies in good faith on a signed authorization for the cremation, interment, entombment, or inurnment of human remains is not liable for carrying out the disposition of the decedent in accordance with the instructions in the authorization. (Current law provides cemetery owners immunity for making a final disposition under a written authorization unless the cemetery owner has actual notice that the authorization is untrue.)

Effective: July 1, 2011.

Steele, Mishler

January 5, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 18, 2011, reported favorably — Do Pass.

C o p y

January 19, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 146

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-14-31-26, AS AMENDED BY P.L.101-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 26. (a) Except as provided in subsection (c), the following persons, in the priority listed, have the right to serve as an authorizing agent:

(1) ~~An individual~~ **A person:**

(A) granted the authority to serve in a funeral planning declaration executed by the decedent under IC 29-2-19; or ~~the person~~

(B) named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.

(2) An individual **specifically** granted the authority to serve in a **power of attorney or a** health care power of attorney executed by

the decedent under IC 30-5-5-16.

(3) The individual who was the spouse of the decedent at the time of the decedent's death, **except when:**

(A) a petition to dissolve the marriage or for legal separation of the decedent and spouse is pending with a court at the time of the decedent's death; or

(B) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(4) The decedent's surviving adult ~~children.~~ **child or,** if more than one (1) adult child is surviving, ~~any adult child who confirms in writing that~~ the **majority of the** ~~other~~ adult children. ~~have been notified, unless the crematory authority receives a written objection to the cremation from another adult child.~~ **However, less than half of the surviving adult children have the rights under this subdivision if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.**

(5) The decedent's surviving parent **or parents.** If **one (1) of** the ~~decedent is survived by both~~ parents ~~either~~ **is absent, the** parent ~~may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from the other~~ **who is present has authority under this subdivision if the parent who is present has used reasonable efforts to notify the absent** parent.

(6) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this subdivision if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.

~~(6)~~ **(7)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent **or,** if more than one (1) individual of the same degree is surviving, ~~any person of that~~ **the majority of those who have the same** degree. ~~may serve as the authorizing agent unless the crematory authority receives~~

C o p y

~~a written objection to the cremation from one (1) or more persons of the same degree.~~ **However, less than half of the individuals who have the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who have the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who have the same degree of kinship.**

(8) If none of the persons described in subdivisions (1) through (7) are available, any other person willing to act and arrange for the final disposition of the decedent, including a funeral home that:

(A) has a valid prepaid funeral plan executed under IC 30-2-13 that makes arrangements for the disposition of the decedent; and

(B) attests in writing that a good faith effort has been made to contact any living individuals described in subdivisions (1) through (7).

~~(7)~~ **(9)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through ~~(6)~~ **(8)** are available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

~~(8)~~ **(10)** In the absence of any person under subdivisions (1) through ~~(7),~~ **(9),** any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

C o p y

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not serve as the authorizing agent.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the crematory authority of the determination referred to in subsection (c)(2).

(e) If a person vested with a right under subsection (a) does not exercise that right not later than seventy-two (72) hours after the person receives notification of the death of the decedent, the person forfeits the person's right to determine the final disposition of the decedent, and the right to determine final disposition passes to the next person described in subsection (a).

(f) A crematory authority owner has the right to rely, in good faith, on the representations of a person listed in subsection (a) that any other individuals on the same degree of kinship have been notified of the final disposition instructions.

(g) If there is a dispute concerning the disposition of a decedent, a crematory authority is not liable for refusing to accept the remains of the decedent until the crematory authority receives:

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent. If a crematory authority agrees to shelter the remains of the decedent while the parties are in dispute, the crematory authority may collect any applicable fees for storing the remains, including legal fees that are incurred.

(h) Any cause of action filed under this section must be filed in the probate court in the county where the decedent resided, unless the decedent was not a resident of Indiana.

SECTION 2. IC 23-14-55-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. **(a)** An individual who signs an authorization for the **cremation,** interment, entombment, or inurnment of any human remains:

(1) is considered to warrant the truthfulness of:

(A) any fact set forth in the authorization;

(B) the identity of the person for whose remains **cremation,** interment, entombment, or inurnment is sought; and

C o p y

(C) the individual's authority to order the **cremation,** interment, entombment, or inurnment; and

(2) is personally and individually liable to pay damages in compensation for harm that:

(A) is caused by; or

(B) results from;

the signing of the authorization for **cremation,** interment, entombment, or inurnment.

(b) A cemetery or crematory that relies in good faith on a signed authorization for the cremation, interment, entombment, or inurnment of human remains is not civilly or criminally liable or subject to disciplinary actions for carrying out the disposition of the decedent in accordance with the instructions in the authorization.

SECTION 3. IC 23-14-55-2, AS AMENDED BY P.L.101-2010, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as provided in subsection ~~(d),~~ **(c),** the owner of a cemetery is authorized to inter, entomb, or inurn the body or cremated remains of a deceased human upon the receipt of a written authorization of an individual who professes either of the following:

(1) To be (in the priority listed) one (1) of the following:

(A) An individual granted the authority to serve in a funeral planning declaration executed by the decedent under IC 29-2-19, or the person named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.

(B) An individual **specifically** granted the authority in a **power of attorney or a** health care power of attorney executed by the decedent under IC 30-5-5-16.

(C) The individual who was the spouse of the decedent at the time of the decedent's death, **except when:**

(i) a petition to dissolve the marriage or for legal separation of the decedent and spouse is pending with a court at the time of the decedent's death; or

(ii) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and

C o p y

regard for the decedent.

(D) The decedent's surviving adult child **or,** if more than one (1) adult child is surviving, ~~any adult child who confirms in writing that~~ the **majority of the** ~~other~~ adult children. ~~have been notified, unless the owner of the cemetery receives a written objection to the disposition from another adult child.~~ **However, less than half of the surviving adult children have the rights under this clause if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.**

(E) The decedent's surviving parent **or parents.** If **one (1) of** the ~~decedent is survived by both~~ parents ~~either~~ **is absent, the** parent ~~unless the cemetery owner receives a written objection to the disposition from the other~~ **who is present has authority under this clause if the parent who is present has used reasonable efforts to notify the absent** parent.

(F) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this clause if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.

~~(F)~~ **(G)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent **or,** if more than one (1) individual of the same degree of kinship is surviving, ~~any person of that~~ **the majority of those who have the same** degree. ~~unless the cemetery owner receives a written objection to the disposition from one (1) or more persons of the same degree of kinship.~~ **However, less than half of the individuals who have the same degree of kinship have the rights under this clause if they have used reasonable efforts to notify the other individuals who have the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who have the same degree of kinship.**

(H) If none of the persons described in clauses (A) through (G) are available, any other person willing to act and

C o p y

arrange for the final disposition of the decedent, including a funeral home that:

(i) has a valid prepaid funeral plan executed under IC 30-2-13 that makes arrangements for the disposition of the decedent; and

(ii) attests in writing that a good faith effort has been made to contact any living individuals described in clauses (A) through (G).

(2) To have acquired by court order the right to control the disposition of the deceased human body or cremated remains.

The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection ~~(d),~~ **(c),** or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

~~(b) A cemetery owner is not liable in any action for making an interment, entombment, or inurnment under a written authorization described in subsection (a) unless the cemetery owner had actual notice that the representation made under subsection (a) by the individual who issued the written authorization was untrue.~~

~~(c)~~ **(b)** An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

~~(d)~~ **(c)** If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

~~(e)~~ **(d)** The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the

C o p y

cemetery owner of the determination referred to in subsection ~~(d)(2).~~ **(c)(2).**

(e) If a person vested with a right under subsection (a) does not exercise that right not less than seventy-two (72) hours after the person receives notification of the death of the decedent, the person forfeits the person's right to determine the final disposition of the decedent and the right to determine final disposition passes to the next person described in subsection (a).

(f) A cemetery owner has the right to rely, in good faith, on the representations of a person listed in subsection (a) that any other individuals on the same degree of kinship have been notified of the final disposition instructions.

(g) If there is a dispute concerning the disposition of a decedent, a cemetery owner is not liable for refusing to accept the remains of the decedent until the cemetery owner receives:

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent. If a cemetery agrees to shelter the remains of the decedent while the parties are in dispute, the cemetery may collect any applicable fees for storing the remains, including legal fees that are incurred.

(h) Any cause of action filed under this section must be filed in the probate court in the county where the decedent resided, unless the decedent was not a resident of Indiana.

SECTION 4. IC 25-15-9-18, AS AMENDED BY P.L.101-2010, SECTION 3, AND AS AMENDED BY P.L.94-2010, SECTION 8, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 18. (a) Except as provided in subsection (b), the following persons, in the order of priority indicated, have the authority to designate the manner, type, and selection of the final disposition ~~and interment~~ of human remains, **to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death:**

(1) ~~*An individual*~~ **A person:**

(A) *granted the authority to serve in a funeral planning declaration executed by the decedent under IC 29-2-19; or* ~~*the person*~~

(B) *named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and*

C o p y

completed the form.

~~*(1) An individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19.*~~

(2) An individual **specifically** granted the authority in a **power of attorney or a** health care power of attorney executed by the decedent under IC 30-5-5-16.

(3) The individual who was the spouse of the decedent at the time of the decedent's death, **except when:**

(A) a petition to dissolve the marriage or for legal separation of the decedent and spouse is pending with a court at the time of the decedent's death; or

(B) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(4) The decedent's surviving adult child **or,** if more than one (1) adult child is surviving, ~~any adult child who confirms in writing that~~ the ~~other~~ **majority of the** adult children. ~~have been notified, unless the licensed funeral director or licensed funeral home receives a written objection from another adult child.~~ **However, less than half of the surviving adult children have the rights under this subdivision if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.**

(5) The decedent's surviving parent **or parents.** If **one (1) of** the ~~decedent is survived by both~~ parents ~~either~~ **is absent, the** parent **who is present** has the ~~authority unless the licensed funeral director or licensed funeral home receives a written objection from the other~~ **rights under this subdivision if the parent who is present has used reasonable efforts to notify the absent** parent.

(6) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this subdivision if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.

C o p y

~~(6)~~ **(7)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent **or,** if more than one (1) individual of the same degree survives, ~~any person of that degree has the authority unless the licensed funeral director or licensed funeral home receives a written objection from one (1) or more persons of the same degree.~~ **the majority of those who have the same degree of kinship. However, less than half of the individuals who have the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who have the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who have the same degree of kinship.**

(8) If none of the persons identified in subdivisions (1) through (7) are available, any other person willing to act and arrange for the final disposition of the decedent, including a funeral home that:

(A) has a valid prepaid funeral plan executed under IC 30-2-13 that makes arrangements for the disposition of the decedent; and

(B) attests in writing that a good faith effort has been made to contact any living individuals described in subdivisions (1) through (7).

~~(7)~~ **(9)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following:

(A) If none of the persons identified in subdivisions (1) through ~~(6)~~ **(8)** is available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

(b) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

C o p y

the person referred to in subdivision (2) may not authorize or designate the manner, type, or selection of the final disposition ~~and interment~~ of human remains.

(c) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2).

(d) If the decedent had filed a protection order against a person described in subsection (a) and the protection order is currently in effect, the person described in subsection (a) may not authorize or designate the manner, type, or selection of the final disposition ~~and interment~~ of human remains.

(e) A law enforcement agency shall determine if the protection order is in effect. If the law enforcement agency cannot determine the existence of a protection order that is in effect, the law enforcement agency shall consult the protective order registry established under IC 5-2-9-5.5.

(f) If a person vested with a right under subsection (a) does not exercise that right not later than seventy-two (72) hours after the person receives notification of the death of the decedent, the person forfeits the person's right to determine the final disposition of the decedent and the right to determine final disposition passes to the next person described in subsection (a).

(g) A funeral home has the right to rely, in good faith, on the representations of a person listed in subsection (a) that any other individuals on the same degree of kinship have been notified of the final disposition instructions.

(h) If there is a dispute concerning the disposition of a decedent, a funeral home is not liable for refusing to accept the remains of the decedent until the funeral home receives:

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent. If a funeral home agrees to shelter the remains of the decedent while the parties are in dispute, the funeral home may collect any applicable fees for storing the remains, including legal fees that are incurred.

(i) Any cause of action filed under this section must be filed in the probate court in the county where the decedent resided, unless the decedent was not a resident of Indiana.

SECTION 5. IC 25-15-9-19 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 19. (a) An individual who signs an authorization for**

C o p y

the cremation, interment, entombment, or inurnment of human remains:

(1) is considered to warrant the truthfulness of:

(A) any fact set forth in the authorization;

(B) the identity of the person for whose remains cremation, interment, entombment, or inurnment is sought; and

(C) the individual's authority to order the cremation, interment, entombment, or inurnment; and

(2) is personally and individually liable to pay damages in compensation for harm that:

(A) is caused by; or

(B) results from;

the signing of the authorization for cremation, interment, entombment, or inurnment.

(b) A funeral home that relies in good faith on a signed authorization for the cremation, interment, entombment, or inurnment of human remains is not civilly or criminally liable or subject to disciplinary actions for carrying out the disposition of the decedent in accordance with the instructions in the authorization.

SECTION 6. IC 29-2-19-15, AS ADDED BY P.L.143-2009, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. Except as otherwise expressly provided in a declaration, a subsequent:

(1) dissolution of marriage;

(2) annulment of marriage; ~~or~~

(3) legal separation of the declarant and the declarant's spouse; **or**

(4) court determination that the declarant and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the declarant;

automatically revokes a delegation of authority in a declaration to the declarant's spouse to direct the disposition of the declarant's body or to make all arrangements concerning funeral services and other ceremonies after the declarant's death.

SECTION 7. IC 29-2-19-17, AS AMENDED BY P.L.101-2010, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17. The right to control the disposition of a decedent's body, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death devolves on the following, in the priority listed:

C o p y

(1) ~~An individual~~ **A person:**

(A) granted the authority to serve in a funeral planning declaration executed by the decedent under this chapter; or ~~the person~~

(B) named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.

(2) An individual **specifically** granted the authority in a **power of attorney or a** health care power of attorney executed by the decedent under IC 30-5-5-16.

(3) The decedent's surviving spouse.

(4) A surviving adult child of the decedent **or, if more than one (1) adult child is surviving, the majority of the other adult children. However, less than half of the surviving adult children have the rights under this subdivision if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.**

(5) ~~A~~ **The** surviving parent **or parents** of the decedent. **If one (1) of the parents is absent, the parent who is present has the rights under this subdivision if the parent who is present has used reasonable efforts to notify the absent parent.**

(6) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this subdivision if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.

~~(6)~~ **(7)** An individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent **or, if more than one (1) individual of the same degree survives, the majority of those who have the same degree of kinship. However, less than half of the individuals who have the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who have the same degree of kinship of their intentions and are not aware**

C o p y

of any opposition to the final disposition instructions by more than half of the individuals who have the same degree of kinship.

(8) If none of the persons described in subdivisions (1) through (7) are available, any other person willing to act and arrange for the final disposition of the decedent, including a funeral home that:

(A) has a valid prepaid funeral plan executed under IC 30-2-13 that makes arrangements for the disposition of the decedent; and

(B) attests in writing that a good faith effort has been made to contact any living individuals described in subdivisions (1) through (7).

SECTION 8. IC 30-2-13-9, AS AMENDED BY P.L.101-2010, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. ~~(a) Except as provided in subsection (b),~~ As used in this chapter, "purchaser" means a person or firm contracting with a seller for services or merchandise to be provided or delivered for a named individual.

~~(b) As used in section 13(b) of this chapter, "purchaser" means:~~

~~(1) the person named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.~~

~~(2) an individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19;~~

~~(3) An individual described in subsection (a).~~

~~(4) The attorney in fact, appointed under IC 30-5, of an individual described in subsection (a).~~

~~(5) The guardian, appointed under IC 29-3, of an individual described in subsection (a). or~~

~~(6) If an individual described in subsection (a) is deceased:~~

~~(A) the surviving spouse of the individual;~~

~~(B) if there is no surviving spouse, the adult children of the individual;~~

~~(C) if there is no surviving spouse or surviving adult child, the surviving parent or parents of the individual; or~~

~~(D) if there is neither a surviving spouse nor adult children, nor a surviving parent, the personal representative (as defined in IC 29-1-1-3) of the individual.~~

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SECTION 9. IC 30-2-13-23, AS AMENDED BY P.L.102-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 23. (a) A contract is invalid if the contract allows the purchaser the right to:

(1) convert, substitute, or exchange the purchase of burial rights for the purchase of services or merchandise;

(2) free services or merchandise in exchange for the purchase of other services or merchandise; or

(3) receive cash or gifts, other than burial rights and services and merchandise, with a value of more than fifty dollars ($50) as an inducement to purchase a contract.

(b) A contract is unenforceable if:

(1) the contract obligates the seller to provide prepaid services or merchandise for a named individual in conjunction with the death, burial, or final disposition of the individual;

(2) the purchaser under the contract is ~~described in section 9(b)(4) of this chapter,~~ **the attorney in fact, appointed under IC 30-5, of the purchaser.**

(3) the death of the named individual appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(4) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that the purchaser referred to in subdivision (2) committed the offense.

The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the seller of the determination of the purchaser described in subdivision (4).

SECTION 10. IC 34-30-2-91 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 91. ~~IC 23-14-55-2~~ **IC 23-14-55-1** (Concerning owners of cemeteries for **cremations and** interments made upon authorization of next of kin).

SECTION 11. IC 34-30-2-98.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 98.5. IC 25-15-9-19 (Concerning a funeral home for actions taken in reliance on a signed authorization for cremation, interment, entombment, or inurnment).**

SECTION 12. IC 36-2-14-6, AS AMENDED BY P.L.225-2007,

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SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Whenever the coroner is notified that a person in the county:

(1) has died from violence;

(2) has died by casualty;

(3) has died when apparently in good health;

(4) has died in an apparently suspicious, unusual, or unnatural manner; or

(5) has been found dead;

the coroner shall, before the scene of the death is disturbed, notify a law enforcement agency having jurisdiction in that area. The agency shall assist the coroner in conducting an investigation of how the person died and a medical investigation of the cause of death. The coroner may hold the remains of the decedent until the investigation of how the person died and the medical investigation of the cause of death are concluded.

(b) The coroner:

(1) shall file a certificate of death with the county health department, or, if applicable, a multiple county health department, of the county in which the individual died, within seventy-two (72) hours after the completion of the death investigation;

(2) shall complete the certificate of death utilizing all verifiable information establishing the time and date of death; and

(3) may file a pending investigation certificate of death before completing the certificate of death, if necessary.

(c) If this section applies, the body and the scene of death may not be disturbed until:

(1) the coroner has photographed them in the manner that most fully discloses how the person died; and

(2) law enforcement and the coroner have finished their initial assessment of the scene of death.

However, a coroner or law enforcement officer may order a body to be moved before photographs are taken if the position or location of the body unduly interferes with activities carried on where the body is found, but the body may not be moved from the immediate area and must be moved without substantially destroying or altering the evidence present.

(d) When acting under this section, if the coroner considers it necessary to have an autopsy performed, is required to perform an autopsy under subsection (f), or is requested by the prosecuting attorney of the county to perform an autopsy, the coroner shall employ a:

C o p y

(1) physician certified by the American Board of Pathology; or
(2) pathology resident acting under the direct supervision of a physician certified in anatomic pathology by the American Board of Pathology;

to perform the autopsy. The physician performing the autopsy shall be paid a fee of at least fifty dollars ($50) from the county treasury.

(e) If:

(1) at the request of:

(A) the decedent's spouse;
(B) a child of the decedent, if the decedent does not have a spouse;
(C) a parent of the decedent, if the decedent does not have a spouse or children;
(D) a brother or sister of the decedent, if the decedent does not have a spouse, children, or parents; or
(E) a grandparent of the decedent, if the decedent does not have a spouse, children, parents, brothers, or sisters;

(2) in any death, two (2) or more witnesses who corroborate the circumstances surrounding death are present; and
(3) two (2) physicians who are licensed to practice medicine in the state and who have made separate examinations of the decedent certify the same cause of death in an affidavit within twenty-four (24) hours after death;

an autopsy need not be performed. The affidavits shall be filed with the circuit court clerk.

(f) A county coroner may not certify the cause of death in the case of the sudden and unexpected death of a child who is less than three (3) years old unless an autopsy is performed at county expense. However, a coroner may certify the cause of death of a child described in this subsection without the performance of an autopsy if subsection (e) applies to the death of the child.

(g) After consultation with the law enforcement agency investigating the death of a decedent, the coroner shall do the following:

(1) Inform a crematory authority if a person is barred under IC 23-14-31-26(c) from serving as the authorizing agent with respect to the cremation of the decedent's body because the coroner made the determination under IC 23-14-31-26(c)(2) in connection with the death of the decedent.
(2) Inform a cemetery owner if a person is barred under ~~IC 23-14-55-2(d)~~ **IC 23-14-55-2(c)** from authorizing the disposition of the body or cremated remains of the decedent

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because the coroner made the determination under ~~IC 23-14-55-2(d)(2)~~ **IC 23-14-55-2(c)(2)** in connection with the death of the decedent.

(3) Inform a seller of prepaid services or merchandise if a person's contract is unenforceable under IC 30-2-13-23(b) because the coroner made the determination under IC 30-2-13-23(b)(4) in connection with the death of the decedent.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 146, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 146 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 1.

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