

IC 23-14-57

Chapter 57. Disinterment, Disentombment, and Disinurnment

IC 23-14-57-1

Requirements for disinterment

Sec. 1. (a) As used in this section, "removal" or "removed" refers to the disinterment, disentombment, or disinurnment of the remains of a deceased human.

(b) Except as provided in subsection (e) and sections 4 and 5 of this chapter, the remains, either cremated or uncremated, of a deceased human shall not be removed from a cemetery without:

(1) a written order:

(A) that is issued by the state department of health; and

(B) that authorizes the removal of the deceased's remains;

(2) the written consent of:

(A) the owner of the cemetery; or

(B) the owner's representative; and

(3) the written consent of a person or persons referred to in one

(1) of the following clauses, which are listed according to priority:

(A) The individual who was the spouse of the deceased at the time of the deceased's death.

(B) The surviving adult child of the deceased. If there is more than one (1) surviving adult child of the deceased, the requirement for written consent under this subdivision is satisfied if:

(i) any one (1) of the surviving adult children provides written consent to the removal of the deceased's remains;

(ii) the consent provided under item (i) confirms that all other surviving adult children of the deceased have been notified of the proposed removal of the deceased's remains; and

(iii) the state department of health does not receive a written objection to the proposed removal from any of the deceased's surviving adult children.

(C) The surviving parent of the deceased. If the deceased is survived by both parents, the requirement for written consent under this subdivision is satisfied if:

(i) either surviving parent provides written consent to the removal of the deceased's remains; and

(ii) the state department of health does not receive a written objection to the proposed removal from the other surviving parent.

(D) The individual in the next degree of kinship to the deceased under IC 29-1-2-1. If more than one (1) individual of the same degree of kinship is surviving, the requirement for written consent under this subdivision is satisfied if:

(i) any individual of that degree of kinship provides written consent to the removal of the deceased's remains; and

(ii) the state department of health does not receive a written objection to the proposed removal from any other surviving individual in the same degree of kinship.

(c) Before issuing a written authorization under subsection (b), the state department of health shall do the following:

(1) Obtain written evidence that a licensed funeral director has agreed to:

(A) be present at the removal and at the reinterment, reentombment, or reinurnment of the remains; and

(B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal occurs.

(2) Obtain a copy of:

(A) the written consent required under subsection (b)(3); or

(B) a court order obtained by a person under subsection (d).

(d) If the written consent of an individual authorized under subsection (b)(3) to give consent is not available, a person who has made a request under this section to the state department of health may petition a court to determine whether to waive the consent requirement of subsection (b)(3). In determining whether to waive the requirement, the court shall consider the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased. In a proceeding under this subsection, the court may not order the disinterment, disentombment, or disinurnment of the remains of a deceased human.

(e) This subsection applies only if the human remains are on property owned or leased by a coal company. The remains, either cremated or uncremated, of a deceased human may be removed from a cemetery by a coal company if the coal company obtains a court order authorizing the disinterment, disentombment, or disinurnment. Before issuing a court order under this subsection, a court must conduct a hearing and be satisfied as to the following:

(1) That the property is owned or leased by the coal company.

(2) That the coal company has obtained the written consent of an individual authorized to give consent under subsection (b)(3). If the consent of an individual authorized to give consent under subsection (b)(3) is not available, the court may waive the requirement after considering the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased.

(3) That the department of natural resources, division of historic preservation and archeology, has received at least five (5) days written notice of the time, date, and place of any hearing under this subsection. The notice must describe the proposed place from which the remains will be removed.

(4) That a licensed funeral director has agreed to:

(A) be present at the removal and at the reinterment, reentombment, or reinurnment of the remains; and

(B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal occurs.

(5) That the coal company has caused a notice of the proposed

removal to be published at least five (5) days before the hearing in a newspaper of general circulation in the county where the removal will occur.

(6) That the coal company will notify the department of natural resources, division of historic preservation and archeology, after the hearing of the proposed time and date when the remains will be removed.

(f) A:

(1) licensed funeral director; or

(2) cemetery owner;

is not liable in an action brought by any person because of the removal of a deceased's remains under a written consent described in subsection (b)(3) or (e)(2) unless the licensed funeral director or the cemetery owner had actual notice before or at the time of the removal that a representation made in the consent described in subsection (b)(3) or (e)(2) was untrue.

(g) The state department of health may adopt rules under IC 4-22-2 to implement this section.

As added by P.L.52-1997, SEC.31. Amended by P.L.155-2002, SEC.11; P.L.113-2007, SEC.5.

IC 23-14-57-2

Orders authorizing removal of human remains

Sec. 2. (a) When the state department of health issues a written order authorizing the removal of human remains from a cemetery, it shall issue the order in duplicate.

(b) The state department of health shall deliver one (1) copy of the order to the cemetery from which the human remains are removed and the other copy of the order to the cemetery to which the human remains are delivered for reinterment, reentombment, or reinurnment.

(c) Each cemetery to which a copy of an order is delivered under subsection (b) shall retain the copy of the order permanently.

As added by P.L.52-1997, SEC.31.

IC 23-14-57-3

Removal of human remains for nonpayment; liability of owner

Sec. 3. (a) This chapter does not prohibit:

(1) the removal of human remains by a cemetery owner from a plot, building, or structure for which the purchase price is past due and unpaid; and

(2) the reinterment, reentombment, or reinurnment of the remains in some other suitable plot in the cemetery.

(b) For a removal and reinterment, reentombment, or reinurnment (at the discretion of the cemetery owner) referred to in subsection (a), the cemetery owner is not liable in any action unless the owner fails to exercise reasonable care in the removal or reinterment, reentombment, or reinurnment. There is a rebuttable presumption that the owner exercised reasonable care in the removal or reinterment, reentombment, or reinurnment.

As added by P.L.52-1997, SEC.31.

IC 23-14-57-4

Applicability of chapter

Sec. 4. This chapter does not apply to the following:

- (1) The disinterment, disentombment, or disurnment of remains upon the written order of the coroner of the county in which the cemetery is situated.
- (2) The removal of human remains under a plan approved by the division of historic preservation and archeology under IC 14-21-1.

As added by P.L.52-1997, SEC.31. Amended by P.L.26-2008, SEC.18.

IC 23-14-57-5

Removal for autopsy or reinterment

Sec. 5. (a) The remains of a deceased human interred, entombed, or inurned in a plot in a cemetery may be removed from the plot for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery with:

- (1) the consent of the owner of the cemetery; and
- (2) the written consent of an individual authorized to give consent under section 1(b)(3) of this chapter.

(b) If the:

- (1) consent of the owner of the cemetery cannot be obtained; or
- (2) identity of a person from whom consent is required under subsection (a)(2) cannot be determined;

the remains of a deceased human can be removed for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery only under a judgment of the circuit or superior court with jurisdiction in the county in which the cemetery is located.

As added by P.L.52-1997, SEC.31. Amended by P.L.113-2007, SEC.6; P.L.132-2011, SEC.1.

IC 23-14-57-6

Payment of costs and expenses

Sec. 6. Before any disinterment, disentombment, or disinurnment may take place under this chapter, the reasonable costs and expenses of the disinterment, disentombment, or disinurnment, including attorney's fees, must be paid by the person or persons applying for the disinterment, disentombment, or disinurnment.

As added by P.L.52-1997, SEC.31.

IC 23-14-57-7

Violation of chapter; Class B misdemeanor

Sec. 7. A person who knowingly violates this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.31.

IC 23-14-57-8

Liability of cemetery owner

Sec. 8. The owner of a cemetery is not liable in any action for a

removal or reinterment, reentombment, or reinurnment described in this chapter unless the owner fails to exercise reasonable care in the removal or reinterment, reentombment, or reinurnment. There is a rebuttable presumption that the owner exercised reasonable care in the removal or reinterment, reentombment, or reinurnment.

As added by P.L.52-1997, SEC.31.