

HEA 1821

I. CONTINUING EDUCATION

SECTION 17. IC 25-1-4-5, AS ADDED BY P.L.157-2006, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) Notwithstanding any other law, if the board determines that a practitioner has not complied with this chapter **or IC 25-1-8-6** at the time that the practitioner applies for license renewal **or reinstatement** or after an audit conducted under section 3 of this chapter, the board shall do the following:

(1) Send the practitioner notice of noncompliance by certified mail.

(2) As a condition of license renewal **or reinstatement**, require the practitioner to comply with subsection (b).

(3) **For license renewal**, issue a conditional license to the practitioner that is effective until the practitioner complies with subsection (b).

(b) Upon receipt of a notice of noncompliance under subsection (a), a practitioner shall do either of the following:

(1) If the practitioner believes that the practitioner has complied with this chapter **or IC 25-1-8-6, if applicable**, within twenty-one (21) days of receipt of the notice, send written notice to the board requesting a review so that the practitioner may submit proof of compliance.

(2) If the practitioner does not disagree with the board's determination of noncompliance, do the following:

(A) Except as provided in subsection (d), pay to the board a civil penalty not to exceed one thousand dollars (\$1,000) within twenty-one (21) days of receipt of the notice.

(B) Acquire, within six (6) months after receiving the notice, the number of credit hours needed to achieve full compliance.

(C) Comply with all other provisions of this chapter.

(c) If a practitioner fails to comply with subsection (b), the board shall immediately suspend **or refuse to reinstate** the license of the practitioner and send notice of the suspension **or refusal** to the practitioner by certified mail.

(d) If the board determines that a practitioner has knowingly or intentionally made a false or misleading statement to the board concerning compliance with the continuing education requirements, in addition to the requirements under this section the board may impose

a civil penalty of not more than five thousand dollars (\$5,000) under subsection (b)(2)(A).

(e) The board shall:

(1) reinstate a ~~practitioner suspended under subsection (e);~~ **practitioner's license;** or

(2) renew the practitioner's license in place of the conditional license issued under subsection (a)(3);

if the practitioner supplies proof of compliance with this chapter under subsection (b)(1) **or IC 25-1-8-6, if applicable.**

SECTION 18. IC 25-1-4-6, AS ADDED BY P.L.157-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) Notwithstanding any other law, if at the time a practitioner applies for license renewal **or reinstatement** or after an audit conducted under section 3 of this chapter, the board determines that the practitioner has failed to comply with this chapter **or IC 25-1-8-6, if applicable**, and the practitioner has previously received a notice of noncompliance under section 5(a) of this chapter during the preceding license period, the board shall do the following:

(1) Provide the practitioner notice of noncompliance by certified mail.

(2) Deny the practitioner's application for license renewal **or reinstatement**.

(b) The board shall reinstate a license not renewed under subsection (a) upon occurrence of the following:

(1) Payment by a practitioner to the board of a civil penalty determined by the board, but not to exceed one thousand dollars (\$1,000).

(2) Acquisition by the practitioner of the number of credit hours required to be obtained by the practitioner during the relevant license period.

(3) The practitioner otherwise complies with this chapter.

SECTION 20. IC 25-1-8-6, AS AMENDED BY SEA 490-2007, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this section, "board" means any of the following:

- (1) Indiana board of accountancy (IC 25-2.1-2-1).
- (2) Board of registration for architects, landscape architects, and registered interior designers (IC 25-4-1-2).
- (3) Indiana athletic trainers board (IC 25-5.1-2-1).
- (4) Indiana auctioneer commission (IC 25-6.1-2-1).
- (5) State board of barber examiners (IC 25-7-5-1).
- (6) State boxing commission (IC 25-9-1).
- (7) Board of chiropractic examiners (IC 25-10-1).
- (8) State board of cosmetology examiners (IC 25-8-3-1).
- (9) State board of dentistry (IC 25-14-1).
- (10) Indiana dietitians certification board (IC 25-14.5-2-1).
- (11) State board of registration for professional engineers (IC 25-31-1-3).
- (12) Board of environmental health specialists (IC 25-32-1).

- (13) State board of funeral and cemetery service (IC 25-15-9).
- (14) Indiana state board of health facility administrators (IC 25-19-1).
- (15) Committee on hearing aid dealer examiners (IC 25-20-1-1.5).
- (16) Home inspectors licensing board (IC 25-20.2-3-1).
- (17) Indiana hypnotist committee (IC 25-20.5-1-7).
- (18) State board of registration for land surveyors (IC 25-21.5-2-1).
- (19) Manufactured home installer licensing board (IC 25-23.7).
- (20) Medical licensing board of Indiana (IC 25-22.5-2).
- (21) Indiana state board of nursing (IC 25-23-1).
- (22) Occupational therapy committee (IC 25-23.5).
- (23) Indiana optometry board (IC 25-24).
- (24) Indiana board of pharmacy (IC 25-26).
- (25) Indiana physical therapy committee (IC 25-27).
- (26) Physician assistant committee (IC 25-27.5).
- (27) Indiana plumbing commission (IC 25-28.5-1-3).
- (28) Board of podiatric medicine (IC 25-29-2-1).
- (29) Private detectives licensing board (IC 25-30-1-5.1).
- (30) State psychology board (IC 25-33).
- (31) Indiana real estate commission (IC 25-34.1-2).
- (32) Real estate appraiser licensure and certification board (IC 25-34.1-8).
- (33) Respiratory care committee (IC 25-34.5).
- (34) Social worker, marriage and family therapist, and mental health counselor board (IC 25-23.6).

(35) Speech-language pathology and audiology board (IC 25-35.6-2).

(36) Indiana board of veterinary medical examiners (IC 15-5-1.1).

(b) This section does not apply to a license, certificate, or registration that has been revoked or suspended.

(c) Notwithstanding any other law regarding the reinstatement of a delinquent or lapsed license, certificate, or registration **and except as provided in section 8 of this chapter**, the holder of a license, certificate, or registration that was issued by the board that is three (3) years or less delinquent must be reinstated upon meeting the following requirements:

(1) Submission of the holder's completed renewal application.

(2) Payment of the current renewal fee established by the board under section 2 of this chapter.

(3) Payment of a reinstatement fee established by the Indiana professional licensing agency.

(4) If a law requires the holder to complete continuing education as a condition of renewal, the holder:

(A) shall provide the board with a sworn statement, signed by the holder, that the holder has fulfilled the continuing education requirements required by the board; ~~for the current renewal period.~~ or

(B) shall, if the holder has not complied with the continuing education requirements, meet any requirements imposed under IC 25-1-4-5 and IC 25-1-4-6.

(d) Notwithstanding any other law regarding the reinstatement of a delinquent or lapsed license, certificate, or registration **and except as provided in section 8 of this chapter**, unless a statute specifically does not allow a license, certificate, or registration to be reinstated if it has lapsed for more than three (3) years, the holder of a license, certificate, or registration that was issued by the board that is more than three (3) years delinquent must be reinstated upon meeting the following requirements:

(1) Submission of the holder's completed renewal application.

(2) Payment of the current renewal fee established by the board under section 2 of this chapter.

(3) Payment of a reinstatement fee equal to the current initial application fee.

(4) If a law requires the holder to complete continuing education as a condition of renewal, the holder:

(A) shall provide the board with a sworn statement, signed by the holder, that the holder has fulfilled the continuing education requirements required by the board; ~~for the current renewal period.~~ or

(B) shall, if the holder has not complied with the continuing education requirements, meet any requirements imposed under IC 25-1-4-5 and IC 25-1-4-6.

(5) Complete such remediation and additional training as deemed appropriate by the board given the lapse of time involved.

(6) Any other requirement that is provided for in statute or rule that is not related to fees

II. REINSTATEMENT PROCEDURES

SECTION 21. IC 25-1-8-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) As used in this section, "board" has the meaning set forth in section 6(a) of this chapter.

(b) The licensing agency may delay reinstating a license, certificate, or registration for not more than ninety (90) days after the date the applicant applies for reinstatement of a license, certificate, or registration to permit the board to investigate information received by the licensing agency that the applicant for reinstatement may have committed an act for which the applicant may be disciplined. If the licensing agency delays reinstating a license,

certificate, or registration, the licensing agency shall notify the applicant that the applicant is being investigated. Except as provided in subsection (c), the board shall do one (1) of the following before the expiration of the ninety (90) day period:

(1) Deny reinstatement of the license, certificate, or registration following a personal appearance by the applicant before the board.

(2) Reinstatement of the license, certificate, or registration upon satisfaction of all other requirements for reinstatement.

(3) Reinstatement of the license and file a complaint under IC 25-1-7.

(4) Request the office of the attorney general to conduct an investigation under subsection (d) if, following a personal appearance by the applicant before the board, the board has good cause to believe that the applicant engaged in activity described in IC 25-1-9-4 or IC 25-1-11-5.

(5) Upon agreement of the applicant and the board and following a personal appearance by the applicant before the board, reinstate the license, certificate, or registration and place the applicant on probation status under IC 25-1-9-9 or IC 25-1-11-12.

(c) If an applicant fails to appear before the board under subsection (b), the board may take action as provided in subsection (b)(1), (b)(2), or (b)(3).

(d) If the board makes a request under subsection (b)(4), the office of the attorney general shall conduct an investigation. Upon completion of the investigation, the office of the attorney general may file a petition alleging that the applicant has engaged in activity described in IC 25-1-9-4 or IC 25-1-11-5. If the office of the attorney general files a petition, the board shall set the matter for a public hearing. If, after a public hearing, the board finds that the applicant violated IC 25-1-9-4 or IC 25-1-11-5, the board may impose sanctions under IC 25-1-9-9 or IC 25-1-11-12. The board may delay reinstating a license, certificate, or registration beyond ninety (90) days after the date the applicant files an application for reinstatement of a license, certificate, or registration until a final

determination is made by the board.

(e) The license, certificate, or registration of the applicant for license reinstatement remains invalid during the ninety (90) day period unless:

(1) the license, certificate, or registration is reinstated following a personal appearance by the applicant before the board before the end of the ninety (90) day period;

(2) the board issues a conditional license to the practitioner that is effective until the reinstatement is denied or the license is reinstated; or

(3) the reinstatement is denied.

If the ninety (90) day period expires without action by the board, the license, certificate, or registration shall be automatically reinstated at the end of the ninety (90) day period.

III. ADDITIONAL ACTS SUBJECT TO DISCIPLINE

SECTION 24. IC 25-1-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A practitioner shall comply with the standards established by the board regulating a profession. A practitioner is subject to the exercise of the disciplinary sanctions under section 12 of this chapter if, after a hearing, the board finds that:

(1) a practitioner has:

(A) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;

(B) engaged in fraud or material deception in the course of professional services or

activities; or

(C) advertised services or goods in a false or misleading manner; or

(D) been convicted of a crime or assessed a civil penalty involving fraudulent billing practices;

(2) a practitioner has been convicted of a crime that:

(A) has a direct bearing on the practitioner's ability to continue to practice competently;

or

(B) is harmful to the public;

(3) a practitioner has knowingly violated a state statute or rule or federal statute or regulation regulating the profession for which the practitioner is licensed;

(4) a practitioner has continued to practice although the practitioner has become unfit to practice due to:

(A) professional incompetence, **including undertaking professional activities that the practitioner is not qualified by training or experience to undertake;**

(B) failure to keep abreast of current professional theory or practice;

(C) physical or mental disability; or

(D) addiction to, abuse of, or severe dependency on alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;

(5) a practitioner has engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;

(6) a practitioner has allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual or business who renders services beyond the scope of that individual's or business's training, experience, or competence;

(7) a practitioner has had disciplinary action taken against the practitioner or the practitioner's license to practice in ~~another~~ **any** state or jurisdiction on grounds similar to those under this chapter;

(8) a practitioner has assisted another person in committing an act that would constitute a ground for disciplinary sanction under this chapter; or

(9) a practitioner has allowed a license issued by a board to be:

(A) used by another person; or

(B) displayed to the public when the license has expired, is inactive, or has been revoked or suspended; or

(10) a practitioner has failed to comply with an order imposing a sanction under section 12 of this chapter.

(b) If an applicant or a practitioner has engaged in or knowingly cooperated in fraud or material deception to obtain a license to practice, including cheating on the licensing examination, the board may rescind the license if it has been granted, void the examination or other fraudulent or deceptive material, and prohibit the applicant from reapplying for the license for a length of time established by the board. An applicant who is aggrieved by a decision of the board under this section is entitled to hearing and appeal rights under the Indiana administrative rules and procedures act (IC 4-21.5).

~~(e) The board may deny licensure to an applicant who has had disciplinary action taken against the applicant or the applicant's license to practice in another state or jurisdiction or who has practiced without a license in violation of the law.~~

~~(d) (c) A certified copy of the record of disciplinary action is conclusive evidence of the other jurisdiction's disciplinary action under subsection (a)(7). or subsection (e).~~

IV. ADDITIONAL RESPONSIBILITIES REGARDING SUMMARY SUSPENSIONS

SECTION 25. IC 25-1-11-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) The board may summarily suspend a practitioner's license for ninety (90) days before a final adjudication or during the appeals process if the board finds that a practitioner represents a clear and immediate danger to the public's health, safety, or property if the practitioner is allowed to continue to practice. The summary suspension may be renewed upon a hearing before the board, and each renewal may be for not more than ninety (90) days.

(b) The board may summarily suspend the license of a real estate appraiser for ninety (90) days before a final adjudication or during the appeals process if the board finds that the licensed real estate appraiser has engaged in material and intentional

misrepresentations or omissions in the preparation of at least three (3) written appraisal reports that were submitted by a person to obtain a loan. The summary suspension may be renewed upon a hearing before the board. Each renewal of a summary suspension may not be for more than ninety (90) days.

(c) Before the board may summarily suspend a license under this section, the consumer protection division of the attorney general's office shall make a reasonable attempt to notify a practitioner of a hearing by the board to suspend a practitioner's license and of information regarding the allegation against the practitioner. The consumer protection division of the attorney general's office shall also notify the practitioner that the practitioner may provide a written or an oral statement to the board on the practitioner's behalf before the board issues an order for summary suspension. A reasonable attempt to notify the practitioner is made if the consumer protection division of the attorney general's office attempts to notify the practitioner by telephone or facsimile at the last telephone number or facsimile number of the practitioner on file with the board.

V. DENYING ISSUANCE OF A LICENSE OR ISSUANCE OF A LICENSE ON PROBATION

SECTION 26. IC 25-1-11-19, AS ADDED BY P.L.194-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) The board may refuse to issue a license or may issue a probationary license to an applicant for licensure if:

(1) the applicant has:

(A) been disciplined by a licensing entity of another state or jurisdiction; or

(B) committed an act that would have subjected the applicant to the disciplinary process if the applicant had been licensed in Indiana when the act occurred; and

(2) the violation for which the applicant was or could have been disciplined has a bearing on the applicant's ability to competently perform or practice the profession in Indiana.

(b) The board may:

(1) refuse to issue a license; or

(2) issue a probationary license;

to an applicant for licensure if the applicant practiced without a license in violation of the law.

~~(b)~~ (c) Whenever the board issues a probationary license, the board may require a licensee to do any of the following:

(1) Report regularly to the board upon the matters that are the basis of the discipline of the other state or jurisdiction.

- (2) Limit practice to the areas prescribed by the board.
 - (3) Continue or renew professional education requirements.
 - (4) Engage in community restitution or service without compensation for the number of hours specified by the board.
 - (5) Perform or refrain from performing an act that the board considers appropriate to the public interest or to the rehabilitation or treatment of the applicant.
- (e) (d) The board shall remove any limitations placed on a probationary license under this section if the board finds after a public hearing that the deficiency that required disciplinary action has been remedied.

SEA 562

I. ORDER OF RIGHT OF INTERMENT, ENTOMBMENT OR INURNMENT

SECTION 1. IC 23-14-41-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) In a family burial plot:

- (1) one (1) grave, crypt, or niche may be used for the record owner's interment, entombment, or inurnment;
- (2) after the record owner's interment, entombment, or inurnment, one (1) grave, crypt, or niche may be used for the surviving spouse of the record owner; and
- (3) in the spaces remaining, if any, the parents and children of the deceased record owner, in order of need, may be interred, entombed, or inurned without the consent of any person claiming an interest in the family burial plot.

(b) If there is no parent or child who survives the deceased record owner, the right of interment, entombment, or inurnment in a family burial plot shall go

- ~~(1) first, in order of need, to the spouse of any child of the deceased record owner; and~~
- ~~(2) second, in order of need to:~~
 - ~~(A) (1) the heirs at law of the deceased record owner, or the spouse of the heir if the heir is already interred, entombed, or inurned, as specified by the statutes of descent; or~~
 - ~~(B) (2) the spouse of any heir at law of the deceased record owner.~~

II. FAMILY BURIAL PLOT

SECTION 2. IC 23-14-41-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. **If a family burial plot has been established under section 3 of this chapter and all the living children and parents of the deceased record owner consent in writing, the status as a family burial plot may be terminated and the remaining lots may be transferred, conveyed, or sold to the cemetery owner or any other person designated in the agreement.**

III. CEMETERY CHARGES FOR SERVICES

SECTION 3. IC 23-14-47-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. The fee that a cemetery owner charges for services in connection with the installation or use of commodities in the cemetery shall be the same to all regardless of who furnishes the commodities. ~~However, a cemetery owner may reserve for itself the exclusive right to furnish services in connection with the installation or use of commodities in the cemetery.~~

IV. PERPETUAL CARE FUND

SECTION 4. IC 23-14-48-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) Except as provided in subsections (b) and (c), a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who makes a false or fraudulent representation as to the existence, amount, investment, control, or condition of a perpetual care fund of a cemetery for the purpose of inducing another to purchase any burial right commits a Class C infraction.

(c) A person who knowingly or intentionally uses funds in a perpetual care fund or an endowment care fund established under this chapter for purposes other than the perpetual care of the cemetery for which the perpetual care fund or endowment fund was established commits a Class C felony.

SECTION 14. [EFFECTIVE JULY 1, 2007] IC 23-14-48-9, IC 30-2-9-7, and IC 30-2-10-9, all as amended by this act, apply only to acts committed after June 30, 2007.

V. DISINTERMENT, DISENTOMBMENT, OR DISINURNMENT

SECTION 5. IC 23-14-57-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: 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. or

(B) the parents of the deceased in the case of a deceased minor child; authorizing the disinterment, disentombment, or disinurnment.

(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 of the legal ownership of the property from which the remains will be removed.

(2) Send written notice to the department of natural resources, division of historic preservation and archeology, of the time, date, and place from which the remains will be removed.

(3) (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 occurred: occurs.

(4) Obtain written evidence that a notice of the proposed removal has been published at least five (5) days before a written order is issued by the state department of health in a newspaper of general circulation in the county where the removal will occur.

(5) (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

(1) the spouse of the deceased; or

(2) the parents of the deceased in the case of a deceased minor;

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

(A) the spouse of the deceased; or

~~(B) the parents of the deceased in the case of a deceased minor child;~~
authorizing the disinterment, disentombment, or disinurnment: **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 ~~occurred.~~ **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)~~ **(g)** The state department of health may adopt rules under IC 4-22-2 to implement this section.

SECTION 6. IC 23-14-57-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: 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

~~(A) the surviving spouse in the case of a deceased married person; or~~

~~(B) the surviving parents in the case of a deceased minor child.~~

an individual authorized to give consent under section 1(b)(3) of this chapter.

(b) If the consent of:

(1) the owner of the cemetery; or

(2) a person from whom consent is required under subsection (a)(2);

~~can not~~ **cannot** be obtained, 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.

VI. ABANDONED BURIAL SPACES

SECTION 7. IC 23-14-58.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 58.5. Disposition of Abandoned Burial Spaces

Sec. 1. (a) Subject to this chapter, if a burial space in a cemetery that is subject to IC 23-14-41 or any other Indiana law:

(1) has remained unused for a period of at least fifty (50) years from the date of sale or last recorded designation or transfer; and

(2) has no improvements on the burial space, including the placement of a monument, memorial, or other permanent appurtenance;

the person or entity having jurisdiction over the cemetery may terminate the rights and interests of the owner of the burial space.

(b) After July 1, 2007, a contract for the purchase of a burial space must include notice that the contract is subject to termination as provided in subsection (a).

Sec. 2. (a) If the person or entity having jurisdiction over the cemetery:

(1) desires to terminate the rights and interests of the owner of the burial space; and

(2) determines that the conditions specified in section 1 of this chapter have been met; the person or entity must send to the owner a notice of the intent to terminate the owner's rights to the burial space.

(b) The notice required under subsection (a) must be sent by certified mail with return receipt requested to the owner's last known address.

Sec. 3. (a) An owner who has received a termination notice under section 2 of this chapter may inform the person or entity having jurisdiction over the cemetery of the owner's continued intent to use the burial space. If the person or entity having jurisdiction over the cemetery has been informed of the owner's intent, the person or entity having jurisdiction over the cemetery may not terminate the rights and interests of the owner of the burial space.

(b) An owner who has received a termination notice under section 2 of this chapter may request the person or entity having jurisdiction over the cemetery to purchase the burial space for the amount originally paid for the burial space.

Sec. 4. (a) If the person or entity having jurisdiction over the cemetery has not received a response from the owner of the burial space within sixty (60) days after sending the notice required in section 2 of this chapter, the person or entity having jurisdiction over the cemetery shall advertise in a newspaper of general circulation in the county of the owner's last known address seeking the owner's current address.

(b) If a new address for the owner of the burial space is obtained after the advertising required in subsection (a), the notice requirement under section 2 of this chapter must be repeated.

(c) If the person or entity having jurisdiction over the cemetery has not received a response regarding the owner of the burial space within sixty (60) days after placing the advertisement required in subsection (a), the owner's rights and interests in the burial space are terminated. After the rights and interests in a burial space are terminated under this chapter, the person or entity having jurisdiction over the cemetery may sell a burial space to a new owner.

(d) If the owner of a burial space contacts the person or entity having jurisdiction over the cemetery after the owner's rights and interests in the burial space are terminated under this chapter, the owner is entitled to select one (1) of the following remedies:

(1) The original burial space, if it has not been resold.

(2) If a person or an entity having jurisdiction over the cemetery has resold the burial

space, reimbursement for the amount for which the burial space was resold minus the following:

(A) The costs paid by the person or entity having jurisdiction over the cemetery in providing notice and advertising as required under this chapter.

(B) The sales commission costs in the resale of the burial space.

(3) A comparable burial space in the cemetery.

Sec. 5. A person who:

(1) knowingly terminates an owner's rights and interests in a burial space;

(2) knows or should have known the identity of the owner; and

(3) fails to give the owner notice as required under this chapter;

commits a Class A misdemeanor.

SECTION 13. [EFFECTIVE JULY 1, 2007] IC 23-14-58.5-5, as added by this act, applies only to acts committed after June 30, 2007.

VII. FRAUDULENT USE OF FUNDS IN A FUNERAL TRUST

SECTION 8. IC 30-2-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) Except as provided in subsection (b), a person who violates this chapter or makes any false and fraudulent report required under this chapter commits a Class B misdemeanor.

(b) A person who knowingly or intentionally uses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

SECTION 9. IC 30-2-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) Except as provided in subsection (b), a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who knowingly or intentionally uses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

SECTION 14. [EFFECTIVE JULY 1, 2007] IC 23-14-48-9, IC 30-2-9-7, and IC 30-2-10-9, all as amended by this act, apply only to acts committed after June 30, 2007.

VIII. IMMUNITY FROM CIVIL ACTION

SECTION 10. IC 34-30-2-91.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 91.2. IC 23-14-57-1 (Concerning licensed funeral directors and cemetery owners for the removal of human remains performed upon authorization of next of kin).

SECTION 11. IC 34-30-2-91.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 91.3. IC 23-14-57-3 (Concerning cemetery owners for the removal of human remains from a plot, building, or structure for which the purchase price is past due and unpaid).

SECTION 12. IC 34-30-2-91.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 91.4. IC 23-14-57-8 (Concerning cemetery owners for the removal or reinterment, reentombment, or reinurnment of human remains).

HEA 1305

I. PERPETUAL CARE FUNDS

SECTION 1. IC 23-14-48-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) A perpetual care fund shall be established under this chapter as follows:

(1) In the case of a cemetery for earth burials, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) fifteen percent (15%) of the sale price; or

(B) eighty cents (\$0.80) per square foot of area;

of each burial plot sold or transferred, whichever is greater.

(2) In the case of a community or public mausoleum, or community or public garden crypt, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) eight percent (8%) of the sale price; or

(B) one hundred dollars (\$100) per crypt sold or transferred;

whichever is greater.

(3) In the case of a community columbarium, by the application and payment to the perpetual care fund of an amount at least equal to twenty dollars (\$20) per niche sold or transferred.

(b) From the sale price, any payment on the sale price, or in a nonmonetary transfer, the owner shall pay an amount in proportion to the requirements of subsection (a)(1) through (a)(3) to the care fund.

The payment must be in cash and shall be deposited with the custodian or trustee of the fund:

(1) not more than thirty (30) days after the end of the month in which payments on the sale are received; or

(2) not more than thirty (30) days after the end of the month in which there was a transfer which did not involve a sale.

(c) The payments required by this section are required to be paid only on the original sale or transfer and not again for any subsequent resale or transfer of the same ground interment rights, crypt, or niche.

(d) The custodian or trustee of a fund established under this chapter must keep the fund segregated from any other fund or account belonging to the owner of the cemetery.

SECTION 2. IC 23-14-48-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) Not more than ninety (90) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian or trustee of the perpetual care fund of the cemetery shall prepare and file with the owner of the cemetery a detailed accounting and report of the perpetual care fund for the preceding fiscal year. The report:

(1) must include, among other things, a properly itemized listing of the securities in which the funds are invested; and

(2) shall be available for inspection and copying at all times by any owner of or holder of a burial right in the cemetery at the usual place at which the regular business of the cemetery is

transacted.

(b) Not more than one hundred five (105) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian or trustee of the perpetual care fund of the cemetery shall file the report required under subsection (a) with the state board of funeral and cemetery service.

(c) The state board of funeral and cemetery service may audit or order an audit of the perpetual care fund of a cemetery if the state board of funeral and cemetery service determines that the custodian or trustee of the perpetual care fund is not complying with the requirements set forth in subsections (a) and (b). The cemetery that is the subject of the audit shall pay all costs associated with the audit.

II. CONSUMER PROTECTION FUND FOR CEMETERY MAINTENANCE

SECTION 3. IC 23-14-48.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 48.5. Consumer Protection Fund for Cemetery Maintenance

Sec. 1. (a) Except as provided in subsection (b), this chapter does not apply to:

- (1) a cemetery owned by a municipal corporation or other governmental unit;**
- (2) a religious cemetery; or**
- (3) a cemetery:**
 - (A) that is ten (10) acres or less in size;**
 - (B) that is owned and operated entirely and exclusively by a nonprofit mutual association in existence on June 14, 1939; and**
 - (C) in which burials took place before June 14, 1939.**

(b) This chapter applies to the whole of a cemetery described in subsection (a)(3) if, directly or indirectly:

- (1) any structure is constructed above or below ground in the cemetery and interment rights in the structure are offered for sale to the general public; or**
- (2) the acquisition of:**
 - (A) additional land; or**
 - (B) an interest in additional land;****causes the cemetery to exceed ten (10) acres in size.**

Sec. 2. As used in this chapter, "board" means the state board of funeral and cemetery service established by IC 25-15-9-1.

Sec. 3. As used in this chapter, "fund" refers to the consumer protection fund for cemetery maintenance established by section 4 of this chapter.

Sec. 4. (a) The consumer protection fund for cemetery maintenance is established. The board shall administer the fund and shall deposit contributions remitted under section 5 of this chapter in the fund.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The money in the fund and the interest accruing to the fund remain in the fund and do not revert to the state general fund.

(d) Money in the fund is continuously appropriated for the purposes of this chapter.

Sec. 5. (a) The owner of a cemetery shall contribute the following to the fund:

(1) In the case of a cemetery for earth burials, an amount equal to one percent (1%) of the sale price of each burial plot sold or transferred.

(2) In the case of a community or public mausoleum or a community or public garden crypt, an amount equal to one

percent (1%) of the sale price of each sale of entombment or inurnment rights.

(3) In the case of a community columbarium, an amount equal to two dollars (\$2) per niche sold or transferred.

The owner shall remit the contributions required under this subsection to the board for deposit in the fund.

(b) In the case of a payment to a cemetery owner of part of the sale price for a burial plot, entombment or inurnment rights, or a niche, the cemetery owner shall pay to the fund an amount proportional to the amount required by subsection (a)(1) through (a)(3). In the case of a nonmonetary transfer in the sale of a burial plot, entombment or inurnment rights, or a niche, the cemetery owner shall pay to the fund the cash equivalent of the amount that would be required by subsection (a)(1) through (a)(3) if the sale were for cash. The payment by the cemetery owner under this section must be in cash and shall be remitted to the board:

(1) not later than March 1 of each year for payments received in the preceding calendar year; or

(2) not later than March 1 of each year for nonmonetary transfers in the preceding calendar year.

(c) Payments are required under this section only on the original sale or transfer and are not required for any subsequent resale or transfer of the same plot, rights, or niche.

Sec. 6. Money in the fund may be used to provide cemetery maintenance when the board finds that:

(1) the owner of a cemetery is unable to maintain the cemetery;

(2) money in the perpetual care fund of the cemetery is depleted, subject to a dispute that prevents distribution of the money, or otherwise unavailable for the purposes of the perpetual care fund; and

(3) interested persons are unable to take over the management, care, and general supervision of the cemetery under IC 23-14-48-10.

Sec. 7. (a) The:

(1) owner of a cemetery; or

(2) if the owner of a cemetery is unable to be determined:

(A) the owner of a lot in the cemetery;

(B) the next of kin of an owner of a lot in the cemetery; or

(C) another interested person;

may request maintenance assistance from the fund by filing a verified complaint with the board.

(b) The board shall investigate each verified complaint. Within thirty (30) days after a verified complaint is filed, the board shall complete its investigation and issue findings of fact. If the board makes the findings required under section 6 of this chapter concerning a cemetery, the board may enter into a contract with any suitable person to provide maintenance at the cemetery until a responsible person is able to provide care and maintenance for the cemetery.

(c) If the cost of maintaining a cemetery is paid from the fund, the fund is entitled to recover the amount paid from the owner of the cemetery, and the board shall ask the attorney general to take all reasonable steps to collect that amount from the cemetery owner. Any amount collected from a cemetery owner under this subsection shall be deposited in the fund.

(d) The board shall annually review the status of the fund. If the board determines during its annual review that the fund balance equals or exceeds two hundred fifty thousand dollars (\$250,000), the board shall suspend the requirement to make payments to

the fund under section 5 of this chapter until after the next annual review in which the board determines that the fund balance is less than two hundred fifty thousand dollars (\$250,000).

III. ADOPT RULES TO IMPLEMENT IC 23-14-48.5

SECTION 4. IC 25-15-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. The board shall do the following:

- (1) Adopt rules under IC 4-22-2 to do the following:
 - (A) Establish standards for the sale and payment of funeral or burial services or merchandise in advance of need.
 - (B) Establish the terms of contracts authorized under IC 30-2-13.
 - (C) Implement IC 30-2-13.
 - (D) Implement IC 23-14-48.5.**
- (2) Register and issue certificates to sellers of merchandise or services under IC 30-2-13.
- (3) Determine compliance with this article by persons engaged in the sale and payment of funeral or burial services or merchandise in advance of need under IC 30-2-13.
- (4) Investigate any complaint alleging a violation of IC 30-2-13.
- (5) Set fees under IC 25-1-8.
- (6) For a violation of this article or IC 30-2-13 by a person engaged in the sale and payment of funeral or burial services or merchandise in advance of need under IC 30-2-13, if necessary, take any combination of the following actions:
 - (A) Issue an appropriate order to correct the violation.
 - (B) Suspend the seller's certificate of authority.
 - (C) Permanently revoke the seller's certificate of authority.
 - (D) Censure the seller.
 - (E) Issue a letter of reprimand to the seller.
 - (F) Place the seller on probation.
 - (G) Assess a civil penalty against the seller in an amount not to exceed one thousand dollars (\$1,000) for each violation, except for a finding of incompetency due to a physical or mental disability. When imposing a civil penalty, the board shall consider the seller's ability to pay the amount assessed. If the seller fails to pay the civil penalty within the time specified by the board, the board may suspend the seller's certificate of authority without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the seller's inability to pay a civil penalty.
 - (H) Refer the matter to the attorney general or prosecuting attorney for enforcement.
- (7) In addition to any actions taken under subdivision (6), permanently revoke a seller's certificate of authority, if the seller demonstrates a pattern or practice of violating the following provisions:
 - (A) The requirement under IC 30-2-13-12 that all property paid or delivered to fund a contract for prepaid services or merchandise be irrevocably deposited to trust or escrow thirty (30) days after the contract is signed.
 - (B) The prohibition against knowingly inducing a purchaser to breach an existing contract under IC 30-2-13-13(e).

IV. CONSUMER PROTECTION FUND

SECTION 5. IC 30-2-13-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 29. (a) Money in the fund may be used to provide restitution to a seller who performs a defaulted contract, to a purchaser, or to a purchaser's estate for pecuniary loss arising from a

trust or an escrow required by:

- (1) this chapter;
- (2) IC 23-14-49-1;
- (3) IC 30-2-9; or
- (4) IC 30-2-10.

The repeal of a statute cited in this subsection does not terminate the ability of a party to a contract made under the repealed statute to receive restitution under this chapter.

(b) The purchaser, seller, or other interested person must request restitution by filing a verified complaint with the board.

(c) The board may investigate any verified complaint. Within sixty (60) days after a verified complaint is filed, the board shall determine if a seller has defaulted on a contract. If the seller's obligation to perform under the contract cannot be collected from the seller, the board shall order the auditor of state to make restitution from the fund.

(d) The amount of restitution may not exceed the gross amount of the original contract plus interest, compounded annually, on the gross amount that is figured, for each year or part of a year for which restitution is owed, using the lesser of:

(1) the rate set forth in IC 24-4.6-1-101 in effect on January 1 of each year; or

(2) the monthly average yield on United States Treasury Securities for the month of January of each year, adjusted to a constant maturity of one (1) year, as published by the Federal Reserve. The fund may not be charged with court costs or the payment of legal or other fees. In computing the amount of restitution, the board shall give credit for:

(1) merchandise delivered; and

(2) resources still existing in trust.

(e) When restitution is paid from the fund, the fund is subrogated to the amount of the restitution, and the board shall ask the attorney general to take all reasonable steps to collect the subrogated amount from the seller. Any amount collected shall be deposited in the fund.

(f) Money in the fund may only be used for a purpose that is specified in this section.

(g) The payment of restitution from the fund is not a right, and a purchaser does not have a vested right in the fund as a beneficiary of the fund.

(h) The status of the fund shall be annually reviewed by the board. If the board determines during its annual review that the fund balance equals or exceeds ~~one~~ **two** million five hundred thousand dollars (~~\$1,500,000~~), (**\$2,500,000**), the board shall suspend payments to the fund until after the next annual review that the board determines that the fund balance is less than ~~one~~ **two** million five hundred thousand dollars (~~\$1,500,000~~), (**\$2,500,000**).