



February 5, 2021

SENATE BILL No. 276

DIGEST OF SB 276 (Updated February 3, 2021 4:24 pm - DI 123)

Citations Affected: IC 23-14; IC 25-15; IC 29-2; IC 29-3.

Synopsis: Powers of guardian after death. Authorizes certain guardians to make certain arrangements and control the disposition of a decedent's body subsequent to the death of a protected person. Makes conforming amendments.

Effective: July 1, 2021.

Lanane, Glick

January 11, 2021, read first time and referred to Committee on Judiciary.
February 4, 2021, amended, reported favorably — Do Pass.

SB 276—LS 7196/DI 123



February 5, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 276

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

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

- 1 SECTION 1. IC 23-14-31-26, AS AMENDED BY P.L.190-2016,
2 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 26. (a) Except as provided in subsection (c), the
4 following persons, in the priority listed, have the right to serve as an
5 authorizing agent:
6 (1) A person:
7 (A) granted the authority to serve in a funeral planning
8 declaration executed by the decedent under IC 29-2-19; or
9 (B) named in a United States Department of Defense form
10 "Record of Emergency Data" (DD Form 93) or a successor
11 form adopted by the United States Department of Defense, if
12 the decedent died while serving in any branch of the United
13 States Armed Forces (as defined in 10 U.S.C. 1481) and
14 completed the form.
15 (2) **A guardian appointed by a court under IC 29-3-5-3.**
16 (2) **(3) An individual specifically granted the authority to serve in**
17 **a power of attorney or a health care power of attorney executed by**

SB 276—LS 7196/DI 123



- 1 the decedent under IC 30-5-5-16.
 2 ~~(3)~~ **(4)** The individual who was the spouse of the decedent at the
 3 time of the decedent's death, except when:
 4 (A) a petition to dissolve the marriage or for legal separation
 5 of the decedent and spouse is pending with a court at the time
 6 of the decedent's death, unless a court finds that the decedent
 7 and spouse were reconciled before the decedent's death; or
 8 (B) a court determines the decedent and spouse were
 9 physically and emotionally separated at the time of death and
 10 the separation was for an extended time that clearly
 11 demonstrates an absence of due affection, trust, and regard for
 12 the decedent.
 13 ~~(4)~~ **(5)** The decedent's surviving adult child or, if more than one
 14 (1) adult child is surviving, the majority of the adult children.
 15 However, less than half of the surviving adult children have the
 16 rights under this subdivision if the adult children have used
 17 reasonable efforts to notify the other surviving adult children of
 18 their intentions and are not aware of any opposition to the final
 19 disposition instructions by more than half of the surviving adult
 20 children.
 21 ~~(5)~~ **(6)** The decedent's surviving parent or parents. If one (1) of the
 22 parents is absent, the parent who is present has authority under
 23 this subdivision if the parent who is present has used reasonable
 24 efforts to notify the absent parent.
 25 ~~(6)~~ **(7)** The decedent's surviving sibling or, if more than one (1)
 26 sibling is surviving, the majority of the surviving siblings.
 27 However, less than half of the surviving siblings have the rights
 28 under this subdivision if the siblings have used reasonable efforts
 29 to notify the other surviving siblings of their intentions and are
 30 not aware of any opposition to the final disposition instructions by
 31 more than half of the surviving siblings.
 32 ~~(7)~~ **(8)** The individual in the next degree of kinship under
 33 IC 29-1-2-1 to inherit the estate of the decedent or, if more than
 34 one (1) individual of the same degree is surviving, the majority of
 35 those who are of the same degree. However, less than half of the
 36 individuals who are of the same degree of kinship have the rights
 37 under this subdivision if they have used reasonable efforts to
 38 notify the other individuals who are of the same degree of kinship
 39 of their intentions and are not aware of any opposition to the final
 40 disposition instructions by more than half of the individuals who
 41 are of the same degree of kinship.
 42 ~~(8)~~ **(9)** If none of the persons described in subdivisions (1)



1 through ~~(7)~~ **(8)** are available, or willing, to act and arrange for the
 2 final disposition of the decedent's remains, a stepchild (as defined
 3 in IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild
 4 survives the decedent, then a majority of the surviving
 5 stepchildren. However, less than half of the surviving stepchildren
 6 have the rights under this subdivision if they have used reasonable
 7 efforts to notify the other stepchildren of their intentions and are
 8 not aware of any opposition to the final disposition instructions by
 9 more than half of the stepchildren.

10 ~~(9)~~ **(10)** The person appointed to administer the decedent's estate
 11 under IC 29-1.

12 ~~(10)~~ **(11)** If none of the persons described in subdivisions (1)
 13 through ~~(9)~~ **(10)** are available, any other person willing to act and
 14 arrange for the final disposition of the decedent's remains,
 15 including a funeral home that:

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

19 (B) attests in writing that a good faith effort has been made to
 20 contact any living individuals described in subdivisions (1)
 21 through ~~(9)~~ **(10)**.

22 ~~(11)~~ **(12)** In the case of an indigent or other individual whose final
 23 disposition is the responsibility of the state or township, the
 24 following may serve as the authorizing agent:

25 (A) If none of the persons identified in subdivisions (1)
 26 through ~~(10)~~ **(11)** are available:

- 27 (i) a public administrator, including a responsible township
 28 trustee or the trustee's designee; or
 29 (ii) the coroner.

30 (B) A state appointed guardian.

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

36 ~~(12)~~ **(13)** In the absence of any person under subdivisions (1)
 37 through ~~(11)~~ **(12)**, any person willing to assume the responsibility
 38 as the authorizing agent, as specified in this article.

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

42 (c) If:



- 1 (1) the death of the decedent appears to have been the result of:
 2 (A) murder (IC 35-42-1-1);
 3 (B) voluntary manslaughter (IC 35-42-1-3); or
 4 (C) another criminal act, if the death does not result from the
 5 operation of a vehicle; and
 6 (2) the coroner, in consultation with the law enforcement agency
 7 investigating the death of the decedent, determines that there is a
 8 reasonable suspicion that a person described in subsection (a)
 9 committed the offense;
 10 the person referred to in subdivision (2) may not serve as the
 11 authorizing agent.
 12 (d) The coroner, in consultation with the law enforcement agency
 13 investigating the death of the decedent, shall inform the crematory
 14 authority of the determination referred to in subsection (c)(2).
 15 (e) If a person vested with a right under subsection (a) does not
 16 exercise that right not later than seventy-two (72) hours after the person
 17 receives notification of the death of the decedent, the person forfeits the
 18 person's right to determine the final disposition of the decedent's
 19 remains, and the right to determine final disposition passes to the next
 20 person described in subsection (a).
 21 (f) A crematory authority owner has the right to rely, in good faith,
 22 on the representations of a person listed in subsection (a) that any other
 23 individuals of the same degree of kinship have been notified of the
 24 final disposition instructions.
 25 (g) If there is a dispute concerning the disposition of a decedent's
 26 remains, a crematory authority is not liable for refusing to accept the
 27 remains of the decedent until the crematory authority receives:
 28 (1) a court order; or
 29 (2) a written agreement signed by the disputing parties;
 30 that determines the final disposition of the decedent's remains. If a
 31 crematory authority agrees to shelter the remains of the decedent while
 32 the parties are in dispute, the crematory authority may collect any
 33 applicable fees for storing the remains, including legal fees that are
 34 incurred.
 35 (h) Any cause of action filed under this section must be filed in the
 36 probate court in the county where the decedent resided, unless the
 37 decedent was not a resident of Indiana.
 38 (i) A spouse seeking a judicial determination under subsection
 39 ~~(a)(3)(A)~~ **(a)(4)(A)** that the decedent and spouse were reconciled
 40 before the decedent's death may petition the court having jurisdiction
 41 over the dissolution or separation proceeding to make this
 42 determination by filing the petition under the same cause number as the



1 dissolution or separation proceeding. A spouse who files a petition
2 under this subsection is not required to pay a filing fee.

3 SECTION 2. IC 23-14-55-2, AS AMENDED BY P.L.190-2016,
4 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2021]: Sec. 2. (a) Except as provided in subsection (c), the
6 owner of a cemetery is authorized to inter, entomb, or inurn the body
7 or cremated remains of a deceased human upon the receipt of a written
8 authorization of an individual who professes either of the following:

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

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

18 **(B) A guardian appointed by a court under IC 29-3-5-3.**

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

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

24 (i) a petition to dissolve the marriage or for legal separation
25 of the decedent and spouse is pending with a court at the
26 time of the decedent's death, unless a court finds that the
27 decedent and spouse were reconciled before the decedent's
28 death; or

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

34 ~~(D)~~ (E) The decedent's surviving adult child or, if more than
35 one (1) adult child is surviving, the majority of the adult
36 children. However, less than half of the surviving adult
37 children have the rights under this clause if the adult children
38 have used reasonable efforts to notify the other surviving adult
39 children of their intentions and are not aware of any opposition
40 to the final disposition instructions by more than half of the
41 surviving adult children.

42 ~~(E)~~ (F) The decedent's surviving parent or parents. If one (1)



1 of the parents is absent, the parent who is present has authority
 2 under this clause if the parent who is present has used
 3 reasonable efforts to notify the absent parent.

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

11 ~~(G)~~ **(H)** The individual in the next degree of kinship under
 12 IC 29-1-2-1 to inherit the estate of the decedent or, if more
 13 than one (1) individual of the same degree of kinship is
 14 surviving, the majority of those who are of the same degree.
 15 However, less than half of the individuals who are of the same
 16 degree of kinship have the rights under this clause if they have
 17 used reasonable efforts to notify the other individuals who are
 18 of the same degree of kinship of their intentions and are not
 19 aware of any opposition to the final disposition instructions by
 20 more than half of the individuals who are of the same degree
 21 of kinship.

22 ~~(H)~~ **(I)** If none of the persons described in clauses (A) through
 23 ~~(G)~~ **(H)** are available, or willing, to act and arrange for the
 24 final disposition of the decedent's remains, a stepchild (as
 25 defined in IC 6-4.1-1-3(f)) of the decedent. If more than one
 26 (1) stepchild survives the decedent, then a majority of the
 27 surviving stepchildren. However, less than half of the
 28 surviving stepchildren have the rights under this subdivision
 29 if they have used reasonable efforts to notify the other
 30 stepchildren of their intentions and are not aware of any
 31 opposition to the final disposition instructions by more than
 32 half of the stepchildren.

33 ~~(I)~~ **(J)** The person appointed to administer the decedent's estate
 34 under IC 29-1.

35 ~~(J)~~ **(K)** If none of the persons described in clauses (A) through
 36 ~~(I)~~ **(J)** are available, any other person willing to act and
 37 arrange for the final disposition of the decedent's remains,
 38 including a funeral home that:

39 (i) has a valid prepaid funeral plan executed under
 40 IC 30-2-13 that makes arrangements for the disposition of
 41 the decedent's remains; and
 42 (ii) attests in writing that a good faith effort has been made



- 1 to contact any living individuals described in clauses (A)
 2 through ~~(H)~~ (J).
- 3 (2) To have acquired by court order the right to control the
 4 disposition of the deceased human body or cremated remains.
 5 The owner of a cemetery may accept the authorization of an individual
 6 only if all other individuals of the same priority or a higher priority
 7 (according to the priority listing in this subsection) are deceased, are
 8 barred from authorizing the disposition of the deceased human body or
 9 cremated remains under subsection (c), or are physically or mentally
 10 incapacitated from exercising the authorization, and the incapacity is
 11 certified to by a qualified medical doctor.
- 12 (b) An action may not be brought against the owner of a cemetery
 13 relating to the remains of a human that have been left in the possession
 14 of the cemetery owner without permanent interment, entombment, or
 15 inurnment for a period of three (3) years, unless the cemetery owner
 16 has entered into a written contract for the care of the remains.
- 17 (c) If:
- 18 (1) the death of the decedent appears to have been the result of:
 19 (A) murder (IC 35-42-1-1);
 20 (B) voluntary manslaughter (IC 35-42-1-3); or
 21 (C) another criminal act, if the death does not result from the
 22 operation of a vehicle; and
 23 (2) the coroner, in consultation with the law enforcement agency
 24 investigating the death of the decedent, determines that there is a
 25 reasonable suspicion that a person described in subsection (a)
 26 committed the offense;
 27 the person referred to in subdivision (2) may not authorize the
 28 disposition of the decedent's body or cremated remains.
- 29 (d) The coroner, in consultation with the law enforcement agency
 30 investigating the death of the decedent, shall inform the cemetery
 31 owner of the determination referred to in subsection (c)(2).
- 32 (e) If a person vested with a right under subsection (a) does not
 33 exercise that right not less than seventy-two (72) hours after the person
 34 receives notification of the death of the decedent, the person forfeits the
 35 person's right to determine the final disposition of the decedent's
 36 remains and the right to determine final disposition passes to the next
 37 person described in subsection (a).
- 38 (f) A cemetery owner has the right to rely, in good faith, on the
 39 representations of a person listed in subsection (a) that any other
 40 individuals of the same degree of kinship have been notified of the
 41 final disposition instructions.
- 42 (g) If there is a dispute concerning the disposition of a decedent's



1 remains, a cemetery owner is not liable for refusing to accept the
2 remains of the decedent until the cemetery owner receives:

- 3 (1) a court order; or
4 (2) a written agreement signed by the disputing parties;

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

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

12 (i) A spouse seeking a judicial determination under subsection
13 ~~(a)(1)(C)(i)~~ **(a)(1)(D)(i)** that the decedent and spouse were reconciled
14 before the decedent's death may petition the court having jurisdiction
15 over the dissolution or separation proceeding to make this
16 determination by filing the petition under the same cause number as the
17 dissolution or separation proceeding. A spouse who files a petition
18 under this subsection is not required to pay a filing fee.

19 SECTION 3. IC 23-14-57-1, AS AMENDED BY P.L.113-2007,
20 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2021]: Sec. 1. (a) As used in this section, "removal" or
22 "removed" refers to the disinterment, disentombment, or disinurnment
23 of the remains of a deceased human.

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

- 27 (1) a written order:
28 (A) that is issued by the state department of health; and
29 (B) that authorizes the removal of the deceased's remains;
30 (2) the written consent of:
31 (A) the owner of the cemetery; or
32 (B) the owner's representative; and
33 (3) the written consent of a person or persons referred to in one
34 (1) of the following clauses, which are listed according to priority:
35 **(A) A guardian appointed by a court under IC 29-3-5-3.**
36 ~~(A)~~ **(B)** The individual who was the spouse of the deceased at
37 the time of the deceased's death.
38 ~~(B)~~ **(C)** The surviving adult child of the deceased. If there is
39 more than one (1) surviving adult child of the deceased, the
40 requirement for written consent under this subdivision is
41 satisfied if:
42 (i) any one (1) of the surviving adult children provides



- 1 written consent to the removal of the deceased's remains;
 2 (ii) the consent provided under item (i) confirms that all
 3 other surviving adult children of the deceased have been
 4 notified of the proposed removal of the deceased's remains;
 5 and
 6 (iii) the state department of health does not receive a written
 7 objection to the proposed removal from any of the
 8 deceased's surviving adult children.
- 9 ~~(C)~~ **(D)** The surviving parent of the deceased. If the deceased
 10 is survived by both parents, the requirement for written
 11 consent under this subdivision is satisfied if:
 12 (i) either surviving parent provides written consent to the
 13 removal of the deceased's remains; and
 14 (ii) the state department of health does not receive a written
 15 objection to the proposed removal from the other surviving
 16 parent.
- 17 ~~(D)~~ **(E)** The individual in the next degree of kinship to the
 18 deceased under IC 29-1-2-1. If more than one (1) individual of
 19 the same degree of kinship is surviving, the requirement for
 20 written consent under this subdivision is satisfied if:
 21 (i) any individual of that degree of kinship provides written
 22 consent to the removal of the deceased's remains; and
 23 (ii) the state department of health does not receive a written
 24 objection to the proposed removal from any other surviving
 25 individual in the same degree of kinship.
- 26 (c) Before issuing a written authorization under subsection (b), the
 27 state department of health shall do the following:
 28 (1) Obtain written evidence that a licensed funeral director has
 29 agreed to:
 30 (A) be present at the removal and at the reinterment,
 31 reentombment, or reinurnment of the remains; and
 32 (B) cause the completed order of the state department of health
 33 to be recorded in the office of the county recorder of the
 34 county where the removal occurs.
 35 (2) Obtain a copy of:
 36 (A) the written consent required under subsection (b)(3); or
 37 (B) a court order obtained by a person under subsection (d).
 38 (d) If the written consent of an individual authorized under
 39 subsection (b)(3) to give consent is not available, a person who has
 40 made a request under this section to the state department of health may
 41 petition a court to determine whether to waive the consent requirement
 42 of subsection (b)(3). In determining whether to waive the requirement,



1 the court shall consider the viewpoint of any issue (as defined in
 2 IC 29-1-1-3) of the deceased. In a proceeding under this subsection, the
 3 court may not order the disinterment, disentombment, or disinurnment
 4 of the remains of a deceased human.

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

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

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

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

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

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

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

30 (5) That the coal company has caused a notice of the proposed
 31 removal to be published at least five (5) days before the hearing
 32 in a newspaper of general circulation in the county where the
 33 removal will occur.

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

38 (f) A:

39 (1) licensed funeral director; or

40 (2) cemetery owner;

41 is not liable in an action brought by any person because of the removal
 42 of a deceased's remains under a written consent described in subsection



1 (b)(3) or (e)(2) unless the licensed funeral director or the cemetery
2 owner had actual notice before or at the time of the removal that a
3 representation made in the consent described in subsection (b)(3) or
4 (e)(2) was untrue.

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

7 SECTION 4. IC 25-15-9-18, AS AMENDED BY P.L.190-2016,
8 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2021]: Sec. 18. (a) Except as provided in subsection (b), the
10 following persons, in the order of priority indicated, have the authority
11 to designate the manner, type, and selection of the final disposition of
12 human remains, to make arrangements for funeral services, and to
13 make other ceremonial arrangements after an individual's death:

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

23 **(2) A guardian appointed by a court under IC 29-3-5-3.**
24 ~~(2)~~ **(3)** An individual specifically granted the authority in a power
25 of attorney or a health care power of attorney executed by the
26 decedent under IC 30-5-5-16.

27 ~~(3)~~ **(4)** The individual who was the spouse of the decedent at the
28 time of the decedent's death, except when:
29 (A) a petition to dissolve the marriage or for legal separation
30 of the decedent and spouse is pending with a court at the time
31 of the decedent's death, unless a court finds that the decedent
32 and spouse were reconciled before the decedent's death; or
33 (B) a court determines the decedent and spouse were
34 physically and emotionally separated at the time of death and
35 the separation was for an extended time that clearly
36 demonstrates an absence of due affection, trust, and regard for
37 the decedent.

38 ~~(4)~~ **(5)** The decedent's surviving adult child or, if more than one
39 (1) adult child is surviving, the majority of the adult children.
40 However, less than half of the surviving adult children have the
41 rights under this subdivision if the adult children have used
42 reasonable efforts to notify the other surviving adult children of



- 1 their intentions and are not aware of any opposition to the final
 2 disposition instructions by more than half of the surviving adult
 3 children.
- 4 ~~(5)~~ **(6)** The decedent's surviving parent or parents. If one (1) of the
 5 parents is absent, the parent who is present has the rights under
 6 this subdivision if the parent who is present has used reasonable
 7 efforts to notify the absent parent.
- 8 ~~(6)~~ **(7)** The decedent's surviving sibling or, if more than one (1)
 9 sibling is surviving, the majority of the surviving siblings.
 10 However, less than half of the surviving siblings have the rights
 11 under this subdivision if the siblings have used reasonable efforts
 12 to notify the other surviving siblings of their intentions and are
 13 not aware of any opposition to the final disposition instructions by
 14 more than half of the surviving siblings.
- 15 ~~(7)~~ **(8)** The individual in the next degree of kinship under
 16 IC 29-1-2-1 to inherit the estate of the decedent or, if more than
 17 one (1) individual of the same degree survives, the majority of
 18 those who are of the same degree of kinship. However, less than
 19 half of the individuals who are of the same degree of kinship have
 20 the rights under this subdivision if they have used reasonable
 21 efforts to notify the other individuals who are of the same degree
 22 of kinship of their intentions and are not aware of any opposition
 23 to the final disposition instructions by more than half of the
 24 individuals who are of the same degree of kinship.
- 25 ~~(8)~~ **(9)** If none of the persons described in subdivisions (1)
 26 through ~~(7)~~ **(8)** are available, or willing, to act and arrange for the
 27 final disposition of the decedent's remains, a stepchild (as defined
 28 in IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild
 29 survives the decedent, then a majority of the surviving
 30 stepchildren. However, less than half of the surviving stepchildren
 31 have the rights under this subdivision if they have used reasonable
 32 efforts to notify the other stepchildren of their intentions and are
 33 not aware of any opposition to the final disposition instructions by
 34 more than half of the stepchildren.
- 35 ~~(9)~~ **(10)** The person appointed to administer the decedent's estate
 36 under IC 29-1.
- 37 ~~(10)~~ **(11)** If none of the persons identified in subdivisions (1)
 38 through ~~(9)~~ **(10)** are available, any other person willing to act and
 39 arrange for the final disposition of the decedent's remains,
 40 including a funeral home that:
 41 (A) has a valid prepaid funeral plan executed under IC 30-2-13
 42 that makes arrangements for the disposition of the decedent's



- 1 remains; and
- 2 (B) attests in writing that a good faith effort has been made to
- 3 contact any living individuals described in subdivisions (1)
- 4 through ~~(9)~~ **(10)**.
- 5 ~~(11)~~ **(12)** In the case of an indigent or other individual whose final
- 6 disposition is the responsibility of the state or township, the
- 7 following:
- 8 (A) If none of the persons identified in subdivisions (1)
- 9 through ~~(10)~~ **(11)** is available:
- 10 (i) a public administrator, including a responsible township
- 11 trustee or the trustee's designee; or
- 12 (ii) the coroner.
- 13 (B) A state appointed guardian.
- 14 (b) If:
- 15 (1) the death of the decedent appears to have been the result of:
- 16 (A) murder (IC 35-42-1-1);
- 17 (B) voluntary manslaughter (IC 35-42-1-3); or
- 18 (C) another criminal act, if the death does not result from the
- 19 operation of a vehicle; and
- 20 (2) the coroner, in consultation with the law enforcement agency
- 21 investigating the death of the decedent, determines that there is a
- 22 reasonable suspicion that a person described in subsection (a)
- 23 committed the offense;
- 24 the person referred to in subdivision (2) may not authorize or designate
- 25 the manner, type, or selection of the final disposition of human
- 26 remains.
- 27 (c) The coroner, in consultation with the law enforcement agency
- 28 investigating the death of the decedent, shall inform the cemetery
- 29 owner or crematory authority of the determination under subsection
- 30 (b)(2).
- 31 (d) If the decedent had filed a protection order against a person
- 32 described in subsection (a) and the protection order is currently in
- 33 effect, the person described in subsection (a) may not authorize or
- 34 designate the manner, type, or selection of the final disposition of
- 35 human remains.
- 36 (e) A law enforcement agency shall determine if the protection order
- 37 is in effect. If the law enforcement agency cannot determine the
- 38 existence of a protection order that is in effect, the law enforcement
- 39 agency shall consult the protective order registry established under
- 40 IC 5-2-9-5.5.
- 41 (f) If a person vested with a right under subsection (a) does not
- 42 exercise that right not later than seventy-two (72) hours after the person



1 receives notification of the death of the decedent, the person forfeits the
 2 person's right to determine the final disposition of the decedent's
 3 remains and the right to determine final disposition passes to the next
 4 person described in subsection (a).

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

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

- 12 (1) a court order; or
 - 13 (2) a written agreement signed by the disputing parties;
- 14 that determines the final disposition of the decedent's remains. If a
 15 funeral home agrees to shelter the remains of the decedent while the
 16 parties are in dispute, the funeral home may collect any applicable fees
 17 for storing the remains, including legal fees that are incurred.

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

21 (j) A spouse seeking a judicial determination under subsection
 22 ~~(a)(3)(A)~~ **(a)(4)(A)** that the decedent and spouse were reconciled
 23 before the decedent's death may petition the court having jurisdiction
 24 over the dissolution or separation proceeding to make this
 25 determination by filing the petition under the same cause number as the
 26 dissolution or separation proceeding. A spouse who files a petition
 27 under this subsection is not required to pay a filing fee.

28 SECTION 5. IC 29-2-16.1-8, AS ADDED BY P.L.147-2007,
 29 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2021]: Sec. 8. (a) Subject to subsections (b) and (c), unless
 31 barred by section 6 or 7 of this chapter, an anatomical gift of a
 32 decedent's body or part for the purpose of transplantation, therapy,
 33 research, or education may be made by any member of the following
 34 classes of persons who are reasonably available, in the order of priority
 35 listed:

- 36 (1) An agent of the decedent at the time of death who could have
 37 made an anatomical gift under section 3(2) of this chapter
 38 immediately before the decedent's death.
- 39 **(2) A guardian appointed by a court under IC 29-3-5-3.**
- 40 ~~(2)~~ **(3)** The spouse of the decedent.
- 41 ~~(3)~~ **(4)** Adult children of the decedent.
- 42 ~~(4)~~ **(5)** Parents of the decedent.



- 1 ~~(5)~~ **(6)** Adult siblings of the decedent.
- 2 ~~(6)~~ **(7)** Adult grandchildren of the decedent.
- 3 ~~(7)~~ **(8)** Grandparents of the decedent.
- 4 ~~(8)~~ **(9)** An adult who exhibited special care and concern for the
- 5 decedent.
- 6 ~~(9)~~ **A person acting as the guardian of the decedent at the time of**
- 7 ~~death.~~
- 8 (10) Any other person having the authority to dispose of the
- 9 decedent's body.
- 10 (b) If there is more than one (1) member of a class listed in
- 11 subsection (a)(1), ~~(a)(3)~~, ~~(a)(4)~~, ~~(a)(5)~~, ~~(a)(6)~~, ~~(a)(7)~~, ~~or (a)(9)~~ **(a)(4)**,
- 12 **(a)(5), (a)(6), (a)(7), or (a)(8)** entitled to make an anatomical gift, an
- 13 anatomical gift may be made by a member of the class unless that
- 14 member or a person to whom the gift may pass under section 10 of this
- 15 chapter knows of an objection by another member of the class. If an
- 16 objection is known, the gift may be made only by a majority of the
- 17 members of the class who are reasonably available.
- 18 (c) A person may not make an anatomical gift if, at the time of the
- 19 decedent's death, a person in a prior class under subsection (a) is
- 20 reasonably available to make or to object to the making of an
- 21 anatomical gift.
- 22 SECTION 6. IC 29-2-16.1-17, AS ADDED BY P.L.147-2007,
- 23 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 24 JULY 1, 2021]: Sec. 17. (a) A person who acts in accordance with this
- 25 chapter is not liable for the act in a civil action or administrative
- 26 proceeding.
- 27 (b) Neither the person making an anatomical gift nor the donor's
- 28 estate is liable for any injury or damage that results from the making or
- 29 use of the gift.
- 30 (c) In determining whether an anatomical gift has been made,
- 31 amended, or revoked under this chapter, a person may rely upon
- 32 representations of an individual listed in section ~~8(a)(2)~~, ~~8(a)(3)~~,
- 33 ~~8(a)(4)~~, ~~8(a)(5)~~, ~~8(a)(6)~~, ~~8(a)(7)~~, ~~or 8(a)(8)~~ **8(a)(3), 8(a)(4), 8(a)(5),**
- 34 **8(a)(6), 8(a)(7), 8(a)(8), or 8(a)(9)** of this chapter relating to the
- 35 individual's relationship to the donor or prospective donor unless the
- 36 person knows that the representation is untrue.
- 37 (d) A health care provider is immune from civil liability for
- 38 following a donor's unrevoked anatomical gift directive under this
- 39 chapter or IC 9-24-17.
- 40 (e) A hospital or a recovery agency is immune from civil liability for
- 41 determining in good faith and in compliance with this section that:
- 42 (1) an individual made a written anatomical gift; or



- 1 (2) an individual subsequently made a written revocation of an
- 2 anatomical gift.
- 3 (f) A person who, in good faith reliance upon a will, card, or other
- 4 document of gift, and without actual notice of the amendment,
- 5 revocation, or invalidity of the will, card, or document:
- 6 (1) takes possession of a decedent's body or performs or causes to
- 7 be performed surgical operations upon a decedent's body; or
- 8 (2) removes or causes to be removed organs, tissues, or other
- 9 parts from a decedent's body;
- 10 is not liable in damages in any civil action brought against the donor
- 11 for that act.
- 12 SECTION 7. IC 29-2-19-17, AS AMENDED BY P.L.190-2016,
- 13 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 14 JULY 1, 2021]: Sec. 17. The right to control the disposition of a
- 15 decedent's body, to make arrangements for funeral services, and to
- 16 make other ceremonial arrangements after an individual's death
- 17 devolves on the following, in the priority listed:
- 18 (1) A person:
- 19 (A) granted the authority to serve in a funeral planning
- 20 declaration executed by the decedent under this chapter; or
- 21 (B) named in a United States Department of Defense form
- 22 "Record of Emergency Data" (DD Form 93) or a successor
- 23 form adopted by the United States Department of Defense, if
- 24 the decedent died while serving in any branch of the United
- 25 States Armed Forces (as defined in 10 U.S.C. 1481) and
- 26 completed the form.
- 27 **(2) A guardian appointed by a court under IC 29-3-5-3.**
- 28 ~~(2)~~ **(3)** An individual specifically granted the authority in a power
- 29 of attorney or a health care power of attorney executed by the
- 30 decedent under IC 30-5-5-16.
- 31 ~~(3)~~ **(4)** The decedent's surviving spouse.
- 32 ~~(4)~~ **(5)** A surviving adult child of the decedent or, if more than
- 33 one (1) adult child is surviving, the majority of the other adult
- 34 children. However, less than half of the surviving adult children
- 35 have the rights under this subdivision if the adult children have
- 36 used reasonable efforts to notify the other surviving adult children
- 37 of their intentions and are not aware of any opposition to the final
- 38 disposition instructions by more than half of the surviving adult
- 39 children.
- 40 ~~(5)~~ **(6)** The surviving parent or parents of the decedent. If one (1)
- 41 of the parents is absent, the parent who is present has the rights
- 42 under this subdivision if the parent who is present has used



1 reasonable efforts to notify the absent parent.

2 ~~(6)~~ (7) The decedent's surviving sibling or, if more than one (1)
3 sibling is surviving, the majority of the surviving siblings.
4 However, less than half of the surviving siblings have the rights
5 under this subdivision if the siblings have used reasonable efforts
6 to notify the other surviving siblings of their intentions and are
7 not aware of any opposition to the final disposition instructions by
8 more than half of the surviving siblings.

9 ~~(7)~~ (8) An individual in the next degree of kinship under
10 IC 29-1-2-1 to inherit the estate of the decedent or, if more than
11 one (1) individual of the same degree survives, the majority of
12 those who are of the same degree of kinship. However, less than
13 half of the individuals who are of the same degree of kinship have
14 the rights under this subdivision if they have used reasonable
15 efforts to notify the other individuals who are of the same degree
16 of kinship of their intentions and are not aware of any opposition
17 to the final disposition instructions by more than half of the
18 individuals who are of the same degree of kinship.

19 ~~(8)~~ (9) If none of the persons described in subdivisions (1)
20 through ~~(7)~~ (8) are available, or willing, to act and arrange for the
21 final disposition of the decedent's remains, a stepchild (as defined
22 in IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild
23 survives the decedent, then a majority of the surviving
24 stepchildren. However, less than half of the surviving stepchildren
25 have the rights under this subdivision if they have used reasonable
26 efforts to notify the other stepchildren of their intentions and are
27 not aware of any opposition to the final disposition instructions by
28 more than half of the stepchildren.

29 ~~(9)~~ (10) The person appointed to administer the decedent's estate
30 under IC 29-1.

31 ~~(10)~~ (11) If none of the persons described in subdivisions (1)
32 through ~~(9)~~ (10) are available, any other person willing to act and
33 arrange for the final disposition of the decedent's remains,
34 including a funeral home that:

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

38 (B) attests in writing that a good faith effort has been made to
39 contact any living individuals described in subdivisions (1)
40 through ~~(9)~~ (10).

41 SECTION 8. IC 29-3-12-1, AS AMENDED BY P.L.240-2017,
42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

SB 276—LS 7196/DI 123



1 JULY 1, 2021]: Sec. 1. (a) Except as provided in section 6 or 7 of this
2 chapter, the court shall terminate the guardianship of a minor upon:

- 3 (1) the minor's attaining eighteen (18) years of age; or
4 (2) the minor's death.

5 The court may terminate the guardianship of a minor upon the minor's
6 adoption or marriage.

7 (b) The court shall terminate the guardianship of an incapacitated
8 person upon:

- 9 (1) adjudication by the court that the protected person is no longer
10 an incapacitated person; or
11 (2) the death of the protected person.

12 (c) The court may terminate any guardianship if:

- 13 (1) the guardianship property does not exceed the value of three
14 thousand five hundred dollars (\$3,500);
15 (2) the guardianship property is reduced to three thousand five
16 hundred dollars (\$3,500);
17 (3) the domicile or physical presence of the protected person is
18 changed to another state and a guardian has been appointed for
19 the protected person and the protected person's property in that
20 state; or
21 (4) the guardianship is no longer necessary for any other reason.

22 (d) When a guardianship terminates otherwise than by the death of
23 the protected person, the powers of the guardian cease, except that the
24 guardian may pay the claims and expenses of administration that are
25 approved by the court and exercise other powers that are necessary to
26 complete the performance of the guardian's trust, including payment
27 and delivery of the remaining property for which the guardian is
28 responsible:

- 29 (1) to the protected person;
30 (2) in the case of an unmarried minor, to a person having care and
31 custody of the minor with whom the minor resides;
32 (3) to a trust approved by the court, including a trust created by
33 the guardian, in which:
34 (A) the protected person is the sole beneficiary of the trust;
35 and
36 (B) the terms of the trust satisfy the requirements of Section
37 2503(c) of the Internal Revenue Code and the regulations
38 under that Section;
39 (4) to a custodian under the Uniform Transfers to Minors Act
40 (IC 30-2-8.5); or
41 (5) to another responsible person as the court orders.

42 (e) When a guardianship terminates by reason of the death of the



- 1 protected person, the powers of the guardian cease, except as follows:
 2 (1) The guardian may do the following:
 3 (A) Pay the expenses of administration that are approved by
 4 the court. ~~and exercise other powers that are necessary to~~
 5 ~~complete the performance of the guardian's trust.~~
 6 **(B) Exercise all other powers that are necessary to**
 7 **complete the performance of the guardian's trust.**
 8 **Permitted performances under this clause include the**
 9 **following:**
 10 (i) **The power to control the disposition of the deceased**
 11 **protected person's body.**
 12 (ii) **The power to make anatomical gifts.**
 13 (iii) **The power to request an autopsy.**
 14 (iv) **The power to make arrangements for funeral**
 15 **services.**
 16 (v) **The power to make other ceremonial arrangements**
 17 **as provided under IC 29-2-19-17.**
 18 ~~(B)~~ (C) Deliver the remaining property for which the guardian
 19 is responsible to the protected person's personal representative
 20 or to a person who presents the guardian with an affidavit
 21 under IC 29-1-8-1 or IC 29-2-1-2.
 22 ~~(C)~~ (D) Request the health records of the protected person
 23 under IC 16-39-1-3(c)(4), except as provided in
 24 IC 16-39-1-3(d), if the protected person was an incapacitated
 25 person. The power of a guardian under this clause terminates
 26 sixty (60) days after the date of the protected person's death.
 27 (2) If approved by the court, the guardian may pay directly the
 28 following:
 29 (A) Reasonable funeral and burial expenses of the protected
 30 person.
 31 (B) Reasonable expenses of the protected person's last illness.
 32 (C) The protected person's federal and state taxes.
 33 (D) Any statutory allowances payable to the protected person's
 34 surviving spouse or surviving children.
 35 (E) Any other obligations of the protected person.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 276, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 23-14-31-26, AS AMENDED BY P.L.190-2016, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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) A person:

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

(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) A guardian appointed by a court under IC 29-3-5-3.

~~(2)~~ **(3)** 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)~~ **(4)** 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, unless a court finds that the decedent and spouse were reconciled before 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)~~ **(5)** The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the 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)~~ **(6)** The decedent's surviving parent or parents. If one (1) of the parents is absent, the parent who is present has authority under this subdivision if the parent who is present has used reasonable efforts to notify the absent parent.

~~(6)~~ **(7)** 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.

~~(7)~~ **(8)** 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, the majority of those who are of the same degree. However, less than half of the individuals who are of the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who are of 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 are of the same degree of kinship.

~~(8)~~ **(9)** If none of the persons described in subdivisions (1) through ~~(7)~~ **(8)** are available, or willing, to act and arrange for the final disposition of the decedent's remains, a stepchild (as defined in IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild survives the decedent, then a majority of the surviving stepchildren. However, less than half of the surviving stepchildren have the rights under this subdivision if they have used reasonable efforts to notify the other stepchildren of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the stepchildren.

~~(9)~~ **(10)** The person appointed to administer the decedent's estate under IC 29-1.

~~(10)~~ **(11)** If none of the persons described in subdivisions (1) through ~~(9)~~ **(10)** are available, any other person willing to act and arrange for the final disposition of the decedent's remains, 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's



remains; and

(B) attests in writing that a good faith effort has been made to contact any living individuals described in subdivisions (1) through ~~(9)~~ **(10)**.

~~(11)~~ **(12)** 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 ~~(10)~~ **(11)** 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.

~~(12)~~ **(13)** In the absence of any person under subdivisions (1) through ~~(11)~~ **(12)**, 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) 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's remains, 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 of 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's remains, 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's remains. 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.

(i) A spouse seeking a judicial determination under subsection ~~(a)(3)(A)~~ **(a)(4)(A)** that the decedent and spouse were reconciled before the decedent's death may petition the court having jurisdiction over the dissolution or separation proceeding to make this determination by filing the petition under the same cause number as the dissolution or separation proceeding. A spouse who files a petition under this subsection is not required to pay a filing fee.

SECTION 2. IC 23-14-55-2, AS AMENDED BY P.L.190-2016, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) Except as provided in subsection (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) A guardian appointed by a court under IC 29-3-5-3.

~~(B)~~ **(C)** 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)~~ **(D)** 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, unless a court finds that the decedent and spouse were reconciled before 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 regard for the decedent.

~~(D)~~ **(E)** The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the adult children. 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)~~ **(F)** The decedent's surviving parent or parents. If one (1) of the parents is absent, the parent who is present has authority under this clause if the parent who is present has used reasonable efforts to notify the absent parent.

~~(F)~~ **(G)** 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.

~~(G)~~ **(H)** 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, the majority of those who are of the same degree. However, less than half of the individuals who are of the same degree of kinship have the rights under this clause if they have used reasonable efforts to notify the other individuals who are



of 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 are of the same degree of kinship.

~~(H)~~ **(I)** If none of the persons described in clauses (A) through ~~(G)~~ **(H)** are available, or willing, to act and arrange for the final disposition of the decedent's remains, a stepchild (as defined in IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild survives the decedent, then a majority of the surviving stepchildren. However, less than half of the surviving stepchildren have the rights under this subdivision if they have used reasonable efforts to notify the other stepchildren of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the stepchildren.

~~(I)~~ **(J)** The person appointed to administer the decedent's estate under IC 29-1.

~~(J)~~ **(K)** If none of the persons described in clauses (A) through ~~(I)~~ **(J)** are available, any other person willing to act and arrange for the final disposition of the decedent's remains, 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's remains; and

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

(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 (c), or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(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.

(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.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner 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 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's remains 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 of 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's remains, 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's remains. 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.

(i) A spouse seeking a judicial determination under subsection ~~(a)(1)(C)(i)~~ **(a)(1)(D)(i)** that the decedent and spouse were reconciled before the decedent's death may petition the court having jurisdiction over the dissolution or separation proceeding to make this determination by filing the petition under the same cause number as the dissolution or separation proceeding. A spouse who files a petition



under this subsection is not required to pay a filing fee.

SECTION 3. IC 23-14-57-1, AS AMENDED BY P.L.113-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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) A guardian appointed by a court under IC 29-3-5-3.**
 - ~~(A)~~ **(B)** The individual who was the spouse of the deceased at the time of the deceased's death.
 - ~~(B)~~ **(C)** 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)~~ **(D)** 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)~~ **(E)** 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.

SECTION 4. IC 25-15-9-18, AS AMENDED BY P.L.190-2016, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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 of human remains, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death:

(1) A person:

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

(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) A guardian appointed by a court under IC 29-3-5-3.

~~(2)~~ **(3)** 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)~~ **(4)** 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, unless a court finds that the decedent and spouse were reconciled before 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)~~ **(5)** The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the 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)~~ **(6)** The decedent's surviving parent or parents. 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)~~ **(7)** 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.

~~(7)~~ **(8)** 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, the majority of



those who are of the same degree of kinship. However, less than half of the individuals who are of the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who are of 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 are of the same degree of kinship.

~~(8)~~ **(9)** If none of the persons described in subdivisions (1) through ~~(7)~~ **(8)** are available, or willing, to act and arrange for the final disposition of the decedent's remains, a stepchild (as defined in IC 6-4.1-1-3(f)) of the decedent. If more than one (1) stepchild survives the decedent, then a majority of the surviving stepchildren. However, less than half of the surviving stepchildren have the rights under this subdivision if they have used reasonable efforts to notify the other stepchildren of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the stepchildren.

~~(9)~~ **(10)** The person appointed to administer the decedent's estate under IC 29-1.

~~(10)~~ **(11)** If none of the persons identified in subdivisions (1) through ~~(9)~~ **(10)** are available, any other person willing to act and arrange for the final disposition of the decedent's remains, 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's remains; and

(B) attests in writing that a good faith effort has been made to contact any living individuals described in subdivisions (1) through ~~(9)~~ **(10)**.

~~(11)~~ **(12)** 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 ~~(10)~~ **(11)** 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;

the person referred to in subdivision (2) may not authorize or designate the manner, type, or selection of the final disposition 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 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's remains 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 of 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's remains, 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's remains. 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.

(j) A spouse seeking a judicial determination under subsection ~~(a)(3)(A)~~ **(a)(4)(A)** that the decedent and spouse were reconciled before the decedent's death may petition the court having jurisdiction over the dissolution or separation proceeding to make this determination by filing the petition under the same cause number as the dissolution or separation proceeding. A spouse who files a petition under this subsection is not required to pay a filing fee.

SECTION 5. IC 29-2-16.1-8, AS ADDED BY P.L.147-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) Subject to subsections (b) and (c), unless barred by section 6 or 7 of this chapter, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who are reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under section 3(2) of this chapter immediately before the decedent's death.

(2) A guardian appointed by a court under IC 29-3-5-3.

~~(2) (3)~~ The spouse of the decedent.

~~(3) (4)~~ Adult children of the decedent.

~~(4) (5)~~ Parents of the decedent.

~~(5) (6)~~ Adult siblings of the decedent.

~~(6) (7)~~ Adult grandchildren of the decedent.

~~(7) (8)~~ Grandparents of the decedent.

~~(8) (9)~~ An adult who exhibited special care and concern for the decedent.

~~(9) A person acting as the guardian of the decedent at the time of death.~~

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one (1) member of a class listed in subsection (a)(1), ~~(a)(3)~~, ~~(a)(4)~~, ~~(a)(5)~~, ~~(a)(6)~~, ~~(a)(7)~~, or ~~(a)(9)~~ **(a)(4)**, **(a)(5)**, **(a)(6)**, **(a)(7)**, or **(a)(8)** entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to whom the gift may pass under section 10 of this chapter knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.



(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

SECTION 6. IC 29-2-16.1-17, AS ADDED BY P.L.147-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 17. (a) A person who acts in accordance with this chapter is not liable for the act in a civil action or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in section ~~8(a)(2); 8(a)(3); 8(a)(4); 8(a)(5); 8(a)(6); 8(a)(7); or 8(a)(8)~~ **8(a)(3), 8(a)(4), 8(a)(5), 8(a)(6), 8(a)(7), 8(a)(8), or 8(a)(9)** of this chapter relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

(d) A health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17.

(e) A hospital or a recovery agency is immune from civil liability for determining in good faith and in compliance with this section that:

- (1) an individual made a written anatomical gift; or
- (2) an individual subsequently made a written revocation of an anatomical gift.

(f) A person who, in good faith reliance upon a will, card, or other document of gift, and without actual notice of the amendment, revocation, or invalidity of the will, card, or document:

- (1) takes possession of a decedent's body or performs or causes to be performed surgical operations upon a decedent's body; or
- (2) removes or causes to be removed organs, tissues, or other parts from a decedent's body;

is not liable in damages in any civil action brought against the donor for that act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 276 as introduced.)



BROWN L, Chairperson

Committee Vote: Yeas 6, Nays 5.

