

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 371

AN ACT to amend the Indiana Code concerning probate.

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

SECTION 1. IC 6-1.1-12-17.9, AS AMENDED BY P.L.250-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.9. A trust is entitled to a deduction under section 9, 11, 13, 14, 16, or 17.4 (before its expiration) of this chapter for real property owned by the trust and occupied by an individual if the county auditor determines that the individual:

(1) upon verification in the body of the deed or otherwise, has either:

(A) a beneficial interest in the trust; or

(B) the right to occupy the real property rent free under the terms of a qualified personal residence trust created by the individual under United States Treasury Regulation 25.2702-5(c)(2); **and**

(2) otherwise qualifies for the deduction. ~~and~~

~~(3) would be considered the owner of the real property under IC 6-1.1-1-9(f) or IC 6-1.1-1-9(g).~~

SECTION 2. IC 6-4.1-4-1, AS AMENDED BY P.L.6-2010, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as otherwise provided in section 0.5 of this chapter or in IC 6-4.1-5-8, the personal representative of a resident decedent's estate or the trustee or transferee of property transferred by the decedent shall file an inheritance tax return with:

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(1) the appropriate probate court, **in the case of a return filed before April 1, 2016; or**

(2) **the department of state revenue, in the case of a return filed after March 31, 2016;**

within nine (9) months after the date of the decedent's death.

(b) The person filing the return shall file it under oath on the forms prescribed by the department of state revenue. The return shall:

(1) contain a statement of all property interests transferred by the decedent under taxable transfers known to the person filing the return;

(2) indicate the fair market value, as of the appraisal date prescribed by IC 6-4.1-5-1.5, of each property interest included in the statement;

(3) contain an itemized list of all inheritance tax deductions claimed with respect to property interests included in the statement;

(4) contain a list which indicates the name and address of each transferee of the property interests included in the statement and which indicates the total value of the property interests transferred to each transferee; and

(5) contain the name and address of the attorney for the personal representative or for the person filing the return.

~~(b)~~ (c) If the decedent died testate, the person filing the return shall attach a copy of the decedent's will to the return.

SECTION 3. IC 6-4.1-4-2, AS AMENDED BY P.L.238-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) If the Internal Revenue Service allows an extension on a federal estate tax return, the corresponding due date for the Indiana inheritance tax return is automatically extended for the same period as the federal extension.

(b) **This subsection applies to an inheritance tax return due before April 1, 2016.** If the appropriate probate court finds that because of an unavoidable delay an inheritance tax return cannot be filed within nine (9) months after the date of decedent's death, the court may extend the period for filing the return. After the expiration of the first extension period, the court may grant a subsequent extension if the person seeking the extension files a written motion which states the reason for the delay in filing the return.

(c) **This subsection applies to an inheritance tax return due after March 31, 2016. If the department of state revenue finds that because of an unavoidable delay an inheritance tax return cannot be filed before the deadline established by the appropriate probate**



court or the department of state revenue, the department of state revenue may extend the period for filing the return. After the expiration of the first extension period, the department of state revenue may grant a subsequent extension if the person seeking the extension files a written petition that states the reason for the delay in filing the return.

~~(c)~~ **(d)** For purposes of sections 3 and 6 of this chapter, an inheritance tax return is not due until the last day of any extension period or periods granted under this section.

SECTION 4. IC 6-4.1-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) **This subsection applies to an inheritance tax return due before April 1, 2016.** Except as provided in subsection (b), ~~of this section~~, the appropriate probate court shall charge a person who fails to file an inheritance tax return on or before the due date a penalty in an amount which equals:

- (1) fifty cents (\$0.50) per day for each day that the return is delinquent; or
- (2) fifty dollars (\$50);

whichever is less. The court shall include the penalty in the inheritance tax decree which it issues with respect to the decedent's estate. The person to whom the penalty is charged shall pay it to the treasurer of the county in which the resident decedent was domiciled at the time of the resident decedent's death.

(b) The appropriate probate court may waive the penalty otherwise required under subsection (a) ~~of this section~~ if the court finds that the person had a justifiable excuse for not filing the return on or before the due date.

(c) This subsection applies to an inheritance tax return due after March 31, 2016. Except as provided in subsection (d), the department of state revenue shall charge a person who fails to file an inheritance tax return on or before the due date a penalty in an amount that equals:

- (1) fifty cents (\$0.50) per day for each day that the return is delinquent; or
- (2) fifty dollars (\$50);

whichever is less. The department of state revenue shall include the penalty in the inheritance tax order that it issues with respect to the decedent's estate. The person to whom the penalty is charged shall pay the penalty to the department of state revenue.

(d) The department of state revenue may waive the penalty otherwise required under subsection (c) if the department of state



revenue finds that the person had a justifiable excuse for not filing the return on or before the due date.

SECTION 5. IC 6-4.1-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) This section does not apply to an inheritance tax return filed for a resident decedent after March 31, 2016.**

(b) Within ten (10) days after an inheritance tax return for a resident decedent is filed with the probate court, the court shall refer the return to the county inheritance tax appraiser. The county inheritance tax appraiser shall:

- (1) investigate the facts concerning taxable transfers made by the decedent before ~~his~~ **the decedent's** death;
- (2) review the return for mistakes and omissions; and
- (3) appraise each property interest, transferred by the decedent under a taxable transfer, at its fair market value as of the appraisal date prescribed by IC 6-4.1-5-1.5.

SECTION 6. IC 6-4.1-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) This section does not apply to an inheritance tax return filed for a resident decedent after March 31, 2016.**

(b) Before making the appraisal required under section ~~2(3)~~ **2(b)(3)** of this chapter, the county inheritance tax appraiser shall give notice of the date, time, and place of the appraisal, by mail, to any person designated by the probate court and each interested person who filed a request for notice and provided a mailing address to the county assessor. The county inheritance tax appraiser shall appraise the property interests at the time and place stated in the notice.

SECTION 7. IC 6-4.1-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) This section does not apply to an inheritance tax return filed for a resident decedent after March 31, 2016.**

(b) In order to make the appraisal required under section ~~2(3)~~ **2(b)(3)** of this chapter, the county inheritance tax appraiser may:

- (1) issue subpoenas;
- (2) compel the appearance of witnesses before ~~him~~; **the appraiser**; and
- (3) examine witnesses under oath.

Each witness examined with respect to the appraisal is entitled to receive a fee in the same amount paid to a witness subpoenaed to appear before a court of record. The county treasurer shall, from county funds not otherwise appropriated, pay the witness fee which is provided for under this section and which is allowed by the probate court under



section 10 of this chapter.

SECTION 8. IC 6-4.1-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **(a) This section does not apply to an inheritance tax return filed for a resident decedent after March 31, 2016.**

(b) After an inheritance tax return filed for a resident decedent is examined by the county inheritance tax appraiser and the probate court, the court shall order the person responsible for filing the return to complete the return and refile it if the court finds that the return is incomplete. When the return is refiled, the court shall refer the refiled return to the county inheritance tax appraiser for review. ~~by him:~~

SECTION 9. IC 6-4.1-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a) This section does not apply to an inheritance tax return filed for a resident decedent after March 31, 2016.**

(b) After completing the duties assigned to ~~him~~ under section ~~2~~ **(b)** of this chapter, the county inheritance tax appraiser shall prepare an appraisal report. The appraisal report shall:

- (1) contain a list of the property interests described in section ~~2~~ **(b)(3)** of this chapter; and
- (2) indicate the fair market value of the property interests.

The county inheritance tax appraiser shall file one (1) copy of the report with the probate court, and ~~he~~ shall file another copy of the report with the department of state revenue. The appraiser shall attach the depositions of any witnesses examined with respect to the appraisal and any other information which the court may require to the appraisal report ~~which he files~~ **filed** with the court.

SECTION 10. IC 6-4.1-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. If the personal representative of a resident decedent's estate or the trustee or transferee of property transferred by the decedent believes that no inheritance tax is imposed under this article as a result of the decedent's death, ~~he~~ **the personal representative** may file a verified petition with:

- (1) the appropriate probate court, in the case of an inheritance tax return that would otherwise be due before April 1, 2016;**
- or**
- (2) the department of state revenue, in the case of an inheritance tax return that would otherwise be due after March 31, 2016;**

requesting that the court **or the department of state revenue, whichever is applicable**, enter an order stating that no inheritance tax is due. The petitioner must include in the petition a statement of the



value of the property interests transferred by the decedent.

SECTION 11. IC 6-4.1-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. **(a)** If a petition is filed under section 7 of this chapter, the:

(1) probate court, in the case of a petition filed under section 7(1) of this chapter; or

(2) department of state revenue, in the case of a petition filed under section 7(2) of this chapter;

may hold a hearing on the petition. If the court **or the department of state revenue, whichever is applicable**, elects to hold a hearing, it shall give notice of the hearing in the same manner prescribed for giving the notice required under section ~~9~~ **9(b)** of this chapter.

(b) After the:

(1) probate court; or

(2) department of state revenue;

completes its examination of the petition, the court **or the department of state revenue, whichever is applicable**, may enter an order stating that no inheritance tax is due as a result of the decedent's death.

(c) If the:

(1) court; or

(2) department of state revenue;

enters ~~such~~ an order **under subsection (b)**, the petitioner is not required to file an inheritance tax return.

(d) However, a person may petition the:

(1) appropriate probate court; or

(2) department of state revenue;

under IC 6-4.1-7 for a rehearing on the ~~court's~~ order **entered under subsection (b)** or for a reappraisal of the property interests transferred by the decedent.

SECTION 12. IC 6-4.1-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. **(a) This section does not apply to an inheritance tax return filed for a resident decedent after March 31, 2016.**

(b) When the county inheritance tax appraiser files an appraisal report with the probate court, the court shall give twenty (20) days notice by mail of the date, time, and place of a hearing on the report to each interested person who filed a request for notice and provided a mailing address under section ~~3~~ **3(b)** of this chapter.

SECTION 13. IC 6-4.1-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. **(a)** After the hearing required by section ~~9~~ **9(b)** of this chapter **for a determination made before April 1, 2016**, the probate court shall determine the fair



market value of the property interests transferred by the resident decedent and the amount of inheritance tax due as a result of ~~his~~ **the decedent's** death. The court shall then enter an order stating the amount of inheritance tax due and the fees due witnesses under section 4 of this chapter. If the court finds that no inheritance tax is due, the court shall include a statement to that effect in the order.

(b) The court shall prepare the order required by ~~this section~~ **subsection (a)** on the form prescribed by the department of state revenue. The court shall include in the order a description of all Indiana real property owned by the resident decedent at the time of ~~his~~ **the decedent's** death. The probate court shall spread the order of record in the office of the clerk of the circuit court. The clerk shall maintain the orders in a looseleaf ledger.

(c) This subsection applies if an order stating the amount of inheritance tax due as a result of the death of a decedent who died before January 1, 2013, has not been issued as of the close of business on March 31, 2016. The department of state revenue shall determine the fair market value of the property interests transferred by the resident decedent and the amount of inheritance tax due as a result of the decedent's death. The department of state revenue shall then enter an order stating the amount of inheritance tax due and the fees due witnesses under section 4 of this chapter. If the department of state revenue finds that no inheritance tax is due, the department shall include a statement to that effect in the order. The department of state revenue shall prepare the order required by this subsection on a form prescribed by the department. The department shall include in the order a description of all Indiana real property owned by the resident decedent at the time of the decedent's death. The department shall spread the order of record in the office of the clerk of the appropriate circuit court. The clerk shall maintain the orders in a looseleaf ledger.

~~(c)~~ **(d) The order described in An order issued by the appropriate probate court or the department of state revenue under this section is confidential.**

SECTION 14. IC 6-4.1-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. **(a)** The court, **or the department of state revenue, whichever is applicable,** shall immediately mail a copy of its determination of the fair market value of the property interests transferred by a resident decedent and the inheritance tax due as a result of the person's death to each interested person who filed a request for notice and provided a mailing address

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under section 3 **3(b)** of this chapter.

(b) If the appropriate probate court made the determinations under section 10 of this chapter, the court shall also mail the information described in subsection (a) to the department of state revenue and the county treasurer.

SECTION 15. IC 6-4.1-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) For purposes of this article, ~~county inheritance tax appraisers~~ and the department of state revenue shall, if possible, appraise each future, contingent, defeasible, or life interest in property and each annuity by using the rules, methods, standards of mortality, and actuarial tables used by the Internal Revenue Service on October 1, 1988, for federal estate tax purposes.

(b) Except as otherwise provided in this chapter, the value of a future interest in specific property equals the remainder of:

- (1) the total value of the property; minus
- (2) the value of all other interests in the property.

(c) Unless otherwise provided by the transferor, the inheritance tax imposed on the transfer of each of the interests is payable from the property in which the interests exist.

SECTION 16. IC 6-4.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. ~~County inheritance tax appraisers~~ and The department of state revenue shall appraise a property interest which may be divested because of an act or omission of the transferee as if there were no possibility of divestment.

SECTION 17. IC 6-4.1-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) This subsection applies to an inheritance tax return filed before April 1, 2016.** For purposes of determining the inheritance tax imposed on a decedent's transfer of specific property, the appropriate probate court shall, so far as possible, determine the manner in which the property will probably be distributed if:

- (1) a contingency makes it impossible to determine each transferee's exact interest in the property; and
- (2) the department of state revenue and the taxpayer fail, within a reasonable time, to enter into an agreement under section 3 of this chapter.

Unless the court's determination is appealed, it is final and binding on all parties.

(b) This subsection applies to an inheritance tax return filed after March 31, 2016. For purposes of determining the inheritance tax imposed on a decedent's transfer of specific property, the



department of state revenue shall, so far as possible, determine the manner in which the property will probably be distributed if:

- (1) a contingency makes it impossible to determine each transferee's exact interest in the property; and
- (2) the department of state revenue and the taxpayer fail, within a reasonable time, to enter into an agreement under section 3 of this chapter.

A person may petition the department of state revenue for a redetermination of the amount of inheritance tax imposed under this subsection in the time and manner provided under IC 6-4.1-7-1 or IC 6-4.1-7-5, whichever is applicable.

SECTION 18. IC 6-4.1-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If proceedings have not been instituted under this chapter to determine the inheritance tax imposed on the decedent's transfer of a contingent or defeasible future interest in property or if the tax imposed on such a transfer is postponed under subsection (b), ~~of this section, the county inheritance tax appraiser~~ or the department of state revenue shall, notwithstanding the provisions of IC 6-4.1-5, appraise the property interest at its fair market value when the transferee of the interest obtains the beneficial enjoyment or possession of the property.

(b) The inheritance tax imposed on the decedent's transfer of a contingent or defeasible interest in property accrues and is due when the transferee of the interest obtains the beneficial enjoyment or possession of the property if the fair market value of the property interest as of the appraisal date prescribed by IC 6-4.1-5-1.5 cannot otherwise be ascertained under this chapter.

SECTION 19. IC 6-4.1-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **(a) This subsection applies to an inheritance tax return filed before April 1, 2016.** A person who is dissatisfied with an inheritance tax determination made by a probate court with respect to a resident decedent's estate may obtain a rehearing on the determination. To obtain the rehearing, the person must file a petition for rehearing with the probate court within one hundred twenty (120) days after the determination is made. In the petition, the person must state the grounds for the rehearing. The probate court shall base the rehearing on evidence presented at the original hearing plus any additional evidence which the court elects to hear.

(b) This subsection applies to an inheritance tax return filed after March 31, 2016. A person who is dissatisfied with an inheritance tax determination made by the department of state



revenue with respect to a resident decedent's estate may obtain a hearing on the determination. To obtain the hearing, the person must file a petition for a hearing with the appropriate probate court within one hundred twenty (120) days after the determination is made. In the petition, the person must state the grounds for the hearing. The probate court shall base the hearing on evidence presented to the department of state revenue plus any additional evidence which the court elects to hear.

SECTION 20. IC 6-4.1-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) This subsection applies to an inheritance tax return filed before April 1, 2016.** A person who is dissatisfied with an appraisal approved by a probate court with respect to a resident decedent's estate may obtain a reappraisal of the property interest involved. To obtain the reappraisal, the person must file a petition for reappraisal with the probate court within one (1) year after the court enters an order determining the inheritance tax due as a result of the decedent's death. However, if the original appraisal is fraudulently or erroneously made, the person may file the reappraisal petition within two (2) years after the court enters the order.

(b) This subsection applies to an inheritance tax return filed after March 31, 2016. A person who is dissatisfied with an appraisal made by the department of state revenue with respect to a resident decedent's estate may obtain a reappraisal of the property interest involved. To obtain the reappraisal, the person must file a petition for reappraisal with the probate court within one (1) year after the department of state revenue enters an order determining the inheritance tax due as a result of the decedent's death. However, if the original appraisal is fraudulently or erroneously made, the person may file the reappraisal petition within two (2) years after the department of state revenue enters the order.

SECTION 21. IC 6-4.1-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. When a reappraisal petition is filed under section 2 of this chapter, the probate court may appoint a competent person to reappraise the property interests transferred by the resident decedent under taxable transfers. An appraiser appointed by the court under this section has the same powers and duties, including the duty to give notice of the appraisal and the duty to make an appraisal report to the court, as the county inheritance tax appraiser **had under this article as of January 1, 2016.** The appointed appraiser is entitled to receive an amount fixed by

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the court and approved by the department of revenue as compensation for **his the appointed appraiser's** services. After the probate court certifies to the county treasurer the amount of compensation due the appointed appraiser, the county treasurer shall pay the appraiser from county funds not otherwise appropriated.

SECTION 22. IC 6-4.1-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) After the appraiser, if any, appointed under section 3 of this chapter files **his an** appraisal report, the probate court shall redetermine the inheritance tax due with respect to the property interests transferred by the resident decedent. In making the redetermination, the court shall follow the same procedures:

- (1) **it the court** is required to follow under IC 6-4.1-5-9, IC 6-4.1-5-10, and IC 6-4.1-5-11 when making an original inheritance tax determination, **in the case of an inheritance tax return filed before April 1, 2016; or**
- (2) **the department of state revenue is required to follow under IC 6-4.1-5-9, IC 6-4.1-5-10, and IC 6-4.1-5-11 when making an original inheritance tax determination, in the case of an inheritance tax return filed after March 31, 2016.**

(b) The probate court's redetermination of the inheritance tax due supersedes:

- (1) the court's original determination; **or**
- (2) **an original determination by the department of state revenue;**

whichever is applicable. The court shall file a copy of the redetermination with the clerk of the court.

SECTION 23. IC 6-4.1-7-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.5. An inheritance tax determination or an appraisal made by the department of state revenue may not be directly appealed to the tax court. A person dissatisfied with an inheritance tax determination or an appraisal made by the department of state revenue must have the inheritance tax determination or appraisal reviewed by the appropriate probate court under section 1, 2, or 5 of this chapter, whichever is applicable. The probate court's action on the inheritance tax determination or an appraisal made by the department of state revenue may be appealed to the tax court under section 7 of this chapter.**

SECTION 24. IC 6-4.1-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as



otherwise provided in IC 6-4.1-6-6(b), the inheritance tax imposed as a result of a decedent's death is due twelve (12) months after the person's date of death. If a person liable for payment of inheritance tax does not pay the tax on or before the due date, the person shall, except as provided in subsection (b), ~~of this section~~, pay interest on the delinquent portion of the tax at the rate of ten percent (10%) per year from the date of the decedent's death to the date payment is made.

(b) If an unavoidable delay, such as necessary litigation, prevents a determination of the amount of inheritance tax due, the:

(1) appropriate probate court, in the case of a resident decedent for whom an inheritance tax return is filed before April 1, 2016; or

(2) the department of state revenue, in the case of a non-resident decedent, all other cases;

may reduce the rate of interest imposed under this section, for the time period beginning on the date of the decedent's death and ending when the cause of delay is removed, to six percent (6%) per year.

SECTION 25. IC 6-4.1-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A person who is liable for inheritance tax imposed as a result of a resident decedent's death shall pay the tax to the:

(1) treasurer of the county in which the resident decedent was domiciled at the time of the resident decedent's death if an inheritance tax return is filed for the resident decedent before April 1, 2016; or

(2) department of state revenue, in all other cases.

If such a person believes that more inheritance tax is due as a result of the resident decedent's death than the amount of tax determined by the court **or the department of state revenue** under IC 6-4.1-5-10, the person may, without obtaining another ~~court~~ determination **from the court or the department of state revenue**, pay the additional tax and any interest due on the additional tax to the county treasurer **or the department of state revenue, whichever is applicable.**

(b) **This subsection applies only to inheritance taxes paid under subsection (a)(1).** The county treasurer shall collect the tax, shall issue a receipt for the tax payment in duplicate, and shall send one (1) copy of the receipt to the department of state revenue. The department shall countersign the receipt, shall affix its seal to the receipt, and shall return the signed and sealed receipt to the payor. The department shall also charge the county treasurer with the amount of inheritance tax collected. ~~by him.~~

SECTION 26. IC 6-4.1-9-6 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) **This subsection applies to inheritance taxes collected by a county treasurer before April 1, 2016.** With respect to the inheritance tax imposed as a result of a resident decedent's death, the county in which the tax is collected shall receive eight percent (8%) of the inheritance tax paid as a result of the decedent's death. On the first day of January, April, July, and October of each year, the county treasurer shall, except as provided in subsection ~~(b)~~, **(c)**, transfer to the county general fund the amount due the county under this section. This state shall receive the remaining ninety-two percent (92%) of the inheritance taxes, all the interest charges collected by the county treasurer under section 1 or 1.5 of this chapter, and all the penalties collected by the county treasurer under IC 6-4.1-4-6.

(b) This subsection applies to inheritance taxes imposed as a result of the death of a resident decedent that are collected after March 31, 2016, by the department of state revenue. The department of state revenue shall distribute inheritance taxes collected as the result of the death of a resident decedent as follows:

(1) The department shall retain ninety-two percent (92%) of the taxes collected for deposit in the state general fund.

(2) The department shall retain any interest or penalties collected by the department for deposit in the state general fund.

(3) Subject to subsection (c), the department shall distribute eight percent (8%) of the taxes collected to the county treasurer of the county in which the resident decedent lived at the time of the resident decedent's death for deposit in the county general fund.

~~(b)~~ **(c)** In a county having a consolidated city, the amount due the county under this section shall be transferred to the general fund of the consolidated city.

SECTION 27. IC 6-4.1-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) **This section does not apply to inheritance taxes paid to the department of state revenue after March 31, 2016.**

(b) On the first day of January, April, July, and October of each year, each county treasurer shall, under oath, send a written inheritance tax report to the department of state revenue. Each report shall state the amount of inheritance taxes collected by the county treasurer during the preceding three (3) months and shall indicate the estates for which the taxes were paid, who paid the taxes, and when the taxes were paid. The county treasurer shall prepare each report on the form prescribed by the



state board of accounts.

~~(b)~~ (c) On the first day of January, April, July, and October of each year, each county auditor shall issue a warrant to the state treasurer for the amount of inheritance taxes, interest charges, and penalties which the state is to receive under section 6 of this chapter. The county treasurer shall stamp and countersign the warrant. The county treasurer shall send the warrant to the department of state revenue not more than thirty (30) days after the county treasurer is required to send the related inheritance tax report for the preceding three (3) months under subsection ~~(a)~~: (b).

SECTION 28. IC 6-4.1-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The department of state revenue shall receipt and account for each warrant which it receives under section ~~7(b)~~ 7(c) of this chapter. The department shall then forward the warrant to the state treasurer. The state treasurer shall deposit the warrants in a special account within the state general fund to be known as the Inheritance Tax Account.

(b) At the end of each month, the state auditor shall issue a quietus to the department of state revenue for the money collected by the department under section ~~7(b)~~ 7(c) of this chapter. The state auditor shall issue the quietus under the same terms and conditions established for issuing a quietus to similar state agencies.

SECTION 29. IC 6-4.1-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) **Except as otherwise provided in this article**, the probate court of the county:

- (1) in which a resident decedent was domiciled at the time of the decedent's death; or
- (2) in which the resident decedent's estate is being administered, if different from the county described in subdivision (1);

has jurisdiction to determine the inheritance tax imposed as a result of the resident decedent's death and to hear all matters related to the tax determination. However, if two (2) or more courts in a county have probate jurisdiction, the first court acquiring jurisdiction under this article acquires exclusive jurisdiction over the inheritance tax determination.

(b) In the case of an inheritance tax return filed after March 31, 2016, the probate court having jurisdiction under subsection (a) does not have the power to make original inheritance tax determinations. The probate court may hear the following matters with respect to an inheritance tax return filed after March 31, 2016, for a resident decedent:

- (1) Any matter subject to IC 6-4.1-4-3 through IC 6-4.1-4-5.

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(2) Any matter subject to IC 6-4.1-5-13.

(3) Petitions for a redetermination of inheritance tax due or a reappraisal of a property interest under IC 6-4.1-7.

(4) An appeal of a refund order under IC 6-4.1-10-4.

SECTION 30. IC 6-4.1-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) Except as provided in subsection (b),** each county assessor shall serve as the county inheritance tax appraiser for the county ~~he the assessor~~ serves. However, the appropriate probate court shall appoint a competent and qualified resident of the county to appraise property transferred by a resident decedent if the county assessor is:

- (1) beneficially interested as an heir of the decedent's estate;
- (2) the personal representative of the decedent's estate; or
- (3) related to the decedent or a beneficiary of the decedent's estate within the third degree of consanguinity or affinity.

A person who is appointed to act as the county inheritance tax appraiser under this section shall receive a fee for ~~his the person's~~ services. The court, subject to the approval of the department of state revenue, shall set the fee.

(b) For purposes of determining the inheritance tax with respect to an inheritance tax return filed after March 31, 2016, the duty to appraise property interest transferred by a resident decedent is transferred to the department of state revenue.

SECTION 31. IC 6-4.1-12-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **Before April 1, 2016,** the county assessor shall receive funds from the county to pay the actual cost of equipment which ~~he the assessor~~ needs to perform the duties assigned to ~~him the assessor~~ under this article.

SECTION 32. IC 23-14-31-26, AS AMENDED BY P.L.6-2012, SECTION 161, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: 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.

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- (2) An individual specifically granted the authority to serve in a power of attorney or a health care power of attorney executed by the decedent under IC 30-5-5-16.
- (3) The individual who was the spouse of the decedent at the time of the decedent's death, except when:
- (A) a petition to dissolve the marriage or for legal separation of the decedent and spouse is pending with a court at the time of the decedent's death, 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) 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) 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) 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) 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) If none of the persons described in subdivisions (1) through (7) 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) The person appointed to administer the decedent's estate under IC 29-1.

~~(8)~~ **(10)** If none of the persons described in subdivisions (1) through ~~(7)~~ **(9)** 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 ~~(7)~~: **(9)**.

~~(9)~~ **(11)** 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 ~~(8)~~ **(10)** 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.

~~(10)~~ **(12)** In the absence of any person under subdivisions (1) through ~~(9)~~; **(11)**, 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) that the decedent and spouse were reconciled before the

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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 33. IC 23-14-55-2, AS AMENDED BY P.L.6-2012, SECTION 163, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: 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) An individual specifically granted the authority in a power of attorney or a health care power of attorney executed by the decedent under IC 30-5-5-16.
 - (C) The individual who was the spouse of the decedent at the time of the decedent's death, except when:
 - (i) a petition to dissolve the marriage or for legal separation of the decedent and spouse is pending with a court at the time of the decedent's death, 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) 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) 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) 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) 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) If none of the persons described in clauses (A) through (G) 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) The person appointed to administer the decedent's estate under IC 29-1.

~~(H)~~ **(J)** If none of the persons described in clauses (A) through ~~(G)~~ **(I)** 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 ~~(G)~~ **(I)**.

(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

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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) 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 34. IC 25-15-9-18, AS AMENDED BY P.L.6-2012, SECTION 176, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: 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) An individual specifically granted the authority in a power of attorney or a health care power of attorney executed by the decedent under IC 30-5-5-16.

(3) The individual who was the spouse of the decedent at the time

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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) 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) 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) 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) 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) If none of the persons described in subdivisions (1) through (7) 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) The person appointed to administer the decedent's estate under IC 29-1.

~~(8)~~ **(10)** If none of the persons identified in subdivisions (1) through ~~(7)~~ **(9)** 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 ~~(7)~~ **(9)**.

~~(9)~~ **(11)** 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 ~~(8)~~ **(10)** 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.

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(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) 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 35. IC 29-1-1-3, AS AMENDED BY P.L.81-2015, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) The following definitions apply throughout this article, unless otherwise apparent from the context:

- (1) "Child" includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in ~~IC 29-1-2-5~~, IC 29-1-2-7, a child born out of wedlock.
- (2) "Claims" includes liabilities of a decedent which survive, whether arising in contract or in tort or otherwise, expenses of administration, and all taxes imposed by reason of the person's death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not include taxes imposed by reason of the person's death.
- (3) "Court" means the court having probate jurisdiction.
- (4) "Decedent" means one who dies testate or intestate.
- (5) "Devise" or "legacy", when used as a noun, means a testamentary disposition of either real or personal property or both.
- (6) "Devise", when used as a verb, means to dispose of either real or personal property or both by will.
- (7) "Devisee" includes legatee, and "legatee" includes devisee.
- (8) "Distributee" denotes those persons who are entitled to the real and personal property of a decedent under a will, under the statutes of intestate succession, or under IC 29-1-4-1.
- (9) "Estate" denotes the real and personal property of the decedent or protected person, as from time to time changed in form by sale, reinvestment, or otherwise, and augmented by any accretions and additions thereto and substitutions therefor and diminished by any decreases and distributions therefrom.
- (10) "Expenses of administration" includes expenses incurred by or on behalf of a decedent's estate in the collection of assets, the payment of debts, and the distribution of property to the persons entitled to the property, including funeral expenses, expenses of a tombstone, expenses incurred in the disposition of the decedent's body, executor's commissions, attorney's fees, and miscellaneous expenses.
- (11) "Fiduciary" includes a:
 - (A) personal representative;
 - (B) guardian;
 - (C) conservator;



- (D) trustee; and
 - (E) person designated in a protective order to act on behalf of a protected person.
- (12) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will.
- (13) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.
- (14) "Interested persons" means heirs, devisees, spouses, creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and different parts of a proceeding and must be determined according to the particular purpose and matter involved.
- (15) "Issue" of a person, when used to refer to persons who take by intestate succession, includes all lawful lineal descendants except those who are lineal descendants of living lineal descendants of the intestate.
- (16) "Lease" includes an oil and gas lease or other mineral lease.
- (17) "Letters" includes letters testamentary, letters of administration, and letters of guardianship.
- (18) "Minor" or "minor child" or "minority" refers to any person under the age of eighteen (18) years.
- (19) "Mortgage" includes deed of trust, vendor's lien, and chattel mortgage.
- (20) "Net estate" refers to the real and personal property of a decedent less the allowances provided under IC 29-1-4-1 and enforceable claims against the estate.
- (21) "Person" means:
- (A) an individual;
 - (B) a corporation;
 - (C) a trust;
 - (D) a limited liability company;
 - (E) a partnership;
 - (F) a business trust;
 - (G) an estate;
 - (H) an association;
 - (I) a joint venture;
 - (J) a government or political subdivision;
 - (K) an agency;
 - (L) an instrumentality; or
 - (M) any other legal or commercial entity.



(22) "Personal property" includes interests in goods, money, choses in action, evidences of debt, and chattels real.

(23) "Personal representative" includes executor, administrator, administrator with the will annexed, administrator de bonis non, and special administrator.

(24) "Probate estate" denotes the property transferred at the death of a decedent under the decedent's will or under IC 29-1-2, in the case of a decedent dying intestate.

(25) "Property" includes both real and personal property.

(26) "Protected person" has the meaning set forth in IC 29-3-1-13.

(27) "Real property" includes estates and interests in land, corporeal or incorporeal, legal or equitable, other than chattels real.

(28) "Will" includes all wills, testaments, and codicils. The term also includes a testamentary instrument which merely appoints an executor or revokes or revives another will.

(b) The following rules of construction apply throughout this article unless otherwise apparent from the context:

(1) The singular number includes the plural and the plural number includes the singular.

(2) The masculine gender includes the feminine and neuter.

SECTION 36. IC 29-1-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) For the purpose of inheritance (on the maternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's mother were married to the child's father at the time of the child's birth, so that the child and the child's issue shall inherit from the child's mother and from the child's maternal kindred, both descendants and collaterals, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's mother were married to the child's father at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

(b) For the purpose of inheritance (on the paternal side) to, through, and from a child born out of wedlock, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, if one (1) of the following requirements is met:

(1) The paternity of a child who was at least twenty (20) years of age when the father died has been established by law in a cause of action that is filed during the father's lifetime.

(2) The paternity of a child who was less than twenty (20) years of age when the father died has been established by law in a cause of action that is filed:

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- (A) during the father's lifetime; or
- (B) within five (5) months after the father's death.
- (3) The paternity of a child born after the father died has been established by law in a cause of action that is filed within eleven (11) months after the father's death.
- (4) The putative father marries the mother of the child and acknowledges the child to be his own.
- (5) The putative father executed a paternity affidavit in accordance with IC 31-6-6.1-9(b) (before its repeal).**
- ~~(5)~~ **(6)** The putative father executes a paternity affidavit as set forth in IC 16-37-2-2.1.

(c) The testimony of the mother may be received in evidence to establish such paternity and acknowledgment, but no judgment shall be made upon the evidence of the mother alone. The evidence of the mother must be supported by corroborative evidence or circumstances.

(d) If paternity is established as described in this section, the child shall be treated as if the child's father were married to the child's mother at the time of the child's birth, so that the child and the child's issue shall inherit from the child's father and from the child's paternal kindred, both descendants and collateral, in all degrees, and they may inherit from the child. The child shall also be treated as if the child's father were married to the child's mother at the time of the child's birth, for the purpose of determining homestead rights and the making of family allowances.

SECTION 37. IC 29-1-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 17. Any interested person may contest the validity of any will in the court having jurisdiction over the probate of the will within three (3) months after the date of the order admitting the will to probate by filing in the **same** court, **in the same cause of action**, the person's allegations in writing verified by affidavit, setting forth:

- (1) the unsoundness of mind of the testator;
- (2) the undue execution of the will;
- (3) that the will was executed under duress or was obtained by fraud; or
- (4) any other valid objection to the will's validity or the probate of the will.

The executor and all other persons beneficially interested in the will shall be made defendants to the action.

SECTION 38. IC 29-2-19-17, AS AMENDED BY P.L.6-2012, SECTION 201, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 17. The right to control the



disposition of a decedent's body, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death devolves on the following, in the priority listed:

- (1) A person:
 - (A) granted the authority to serve in a funeral planning declaration executed by the decedent under this chapter; 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) An individual specifically granted the authority in a power of attorney or a health care power of attorney executed by the decedent under IC 30-5-5-16.
- (3) The decedent's surviving spouse.
- (4) A surviving adult child of the decedent or, if more than one (1) adult child is surviving, the majority of the other adult children. However, less than half of the surviving adult children have the rights under this subdivision if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.
- (5) The surviving parent or parents of the decedent. If one (1) of the parents is absent, the parent who is present has the rights under this subdivision if the parent who is present has used reasonable efforts to notify the absent parent.
- (6) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this subdivision if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.
- (7) An individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree survives, the majority of those who 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) If none of the persons described in subdivisions (1) through (7) 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) The person appointed to administer the decedent's estate under IC 29-1.

~~(8)~~ **(10)** If none of the persons described in subdivisions (1) through ~~(7)~~ **(9)** 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 ~~(7)~~: **(9)**.

SECTION 39. IC 29-3-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

(1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).

(2) Any request contained in a will or other written instrument.

(3) A designation of a standby guardian under IC 29-3-3-7.

~~(3)~~ **(4)** Any request made by a minor who is at least fourteen (14) years of age.

~~(4)~~ **(5)** Any request made by the spouse of the alleged incapacitated person.

~~(5)~~ **(6)** The relationship of the proposed guardian to the individual for whom guardianship is sought.

~~(6)~~ **(7)** Any person acting for the incapacitated person under a



durable power of attorney.

~~(7)~~ **(8)** The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.

SECTION 40. IC 29-3-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) The following are entitled to consideration for appointment as a guardian under section 4 of this chapter in the order listed:

(1) A person designated in a durable power of attorney.

(2) A person designated as a standby guardian under IC 29-3-3-7.

~~(2)~~ **(3)** The spouse of an incapacitated person.

~~(3)~~ **(4)** An adult child of an incapacitated person.

~~(4)~~ **(5)** A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses.

~~(5)~~ **(6)** Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.

~~(6)~~ **(7)** A person nominated by the incapacitated person who is caring for or paying for the care of the incapacitated person.

(b) With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person or minor, may pass over a person having priority and appoint a person having a lower priority or no priority under this section.

SECTION 41. IC 32-17.5-4-1, AS AMENDED BY P.L.6-2010, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. Except for a disclaimer under IC 32-17.5-5 or IC 32-17.5-6-1, the following rules apply to a disclaimer of an interest in property:

(1) A disclaimer takes effect:

(A) when the instrument creating the interest becomes irrevocable; or

(B) upon the intestate's death if the interest arose under the law of intestate succession.

(2) A disclaimed interest passes according to any provision in the instrument creating the interest:

(A) that provides for the disposition of the interest should the interest be disclaimed; or

(B) that concerns disclaimed interests in general.

(3) If the instrument creating the disclaimed interest does not



contain a provision described in subdivision (2), the following rules apply:

(A) If the disclaimant is an individual, the following rules apply:

(i) Except as provided in items (ii) and (iii), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(ii) If, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.

(iii) If the disclaimed interest would have passed to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest passes by representation to the descendants of the disclaimant who survive at the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest becomes part of the residue under the instrument creating the disclaimed interest.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) If the disclaimed interest arose under the law of intestate succession, the disclaimed interest passes as if the disclaimant had died immediately before the intestate's death.

(5) Upon the disclaimer of a preceding interest:

(A) a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution; and

(B) a future interest held by the disclaimant is not accelerated in possession or enjoyment.

(6) If a beneficiary of a transfer on death transfer (as defined in IC 32-17-14-3(16)) disclaims an interest in the property, the disclaimant's interest in the property passes as follows:

(A) In the case of a disclaimant who is an individual, as if the disclaimant had died immediately before the death of the owner (as defined in IC 32-17-14-3(7)).

(B) In the case of a disclaimant who is not an individual, as if the disclaimant did not exist before the death of the owner (as defined in IC 32-17-14-3(7)).



SECTION 42. [EFFECTIVE UPON PASSAGE] (a) IC 6-4.1-6-1, IC 6-4.1-6-2, and IC 6-4.1-6-6, each as amended by this act, apply to an appraisal occurring after March 31, 2016, with respect to property interests transferred by a decedent who died before January 1, 2013.

(b) This SECTION expires January 1, 2017.

SECTION 43. An emergency is declared for this act.

SEA 371



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 371

