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## SENATE BILL No. 512

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 23-14.

**Synopsis:** Cemetery matters. Specifies the order of need for a family burial plot. Allows the living parents and children to terminate the status of a family burial plot. Establishes procedures to remove human remains from a cemetery by a court order. Allows a cemetery to terminate the rights and interests of the owner of the burial space if the burial space has: (1) remained unused for a period of at least 50 years from the date of sale or last recorded designation or transfer; and (2) not had improvements on the burial space. Makes technical changes.

**Effective:** July 1, 2007.

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### Alting

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January 23, 2007, read first time and referred to Committee on Judiciary.

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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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**SENATE BILL No. 512**



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

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

1 SECTION 1. IC 23-14-41-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) In a family burial  
3 plot:  
4 (1) one (1) grave, crypt, or niche may be used for the record  
5 owner's interment, entombment, or inurnment;  
6 (2) after the record owner's interment, entombment, or inurnment,  
7 one (1) grave, crypt, or niche may be used for the surviving  
8 spouse of the record owner; and  
9 (3) in the spaces remaining, if any, the parents and children of the  
10 deceased record owner, in order of need, may be interred,  
11 entombed, or inurned without the consent of any person claiming  
12 an interest in the family burial plot.  
13 (b) If there is no parent or child who survives the deceased record  
14 owner, the right of interment, entombment, or inurnment in a family  
15 burial plot shall go  
16 ~~(1) first, in order of need, to the spouse of any child of the~~  
17 ~~deceased record owner; and~~



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

7           SECTION 2. IC 23-14-41-7 IS ADDED TO THE INDIANA CODE  
 8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 9 1, 2007]: **Sec. 7. If a family burial plot has been established under**  
 10 **section 3 of this chapter and all the living children and parents of**  
 11 **the deceased record owner consent in writing, the status as a family**  
 12 **burial plot may be terminated and the remaining lots may be**  
 13 **transferred, conveyed, or sold to the cemetery owner or any other**  
 14 **person designated in the agreement.**

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

22           SECTION 4. IC 23-14-57-0.1 IS ADDED TO THE INDIANA  
 23 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2007]: **Sec. 0.1. This chapter does not affect**  
 25 **IC 23-14-58.**

26           SECTION 5. IC 23-14-57-0.5 IS ADDED TO THE INDIANA  
 27 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 2007]: **Sec. 0.5. As used in this chapter,**  
 29 **"removed" refers to the disinterment, disentombment, or**  
 30 **disinurnment of the remains of a deceased human.**

31           SECTION 6. IC 23-14-57-1 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. ~~(a) As used in this~~  
 33 ~~section, "removed" refers to the disinterment, disentombment, or~~  
 34 ~~disinurnment of the remains of a deceased human.~~

35           ~~(b)~~ **(a)** Except as provided in subsection ~~(c)~~; **(d)**, the remains, either  
 36 cremated or uncremated, of a deceased human shall not be removed  
 37 from a cemetery without:

- 38           (1) a written order issued by the state department of health;
- 39           (2) the written consent of:
  - 40           (A) the owner of the cemetery; or
  - 41           (B) the **cemetery** owner's representative; and
  - 42           (3) the written consent of:

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1 (A) the **surviving** spouse of the deceased; or  
 2 (B) the **surviving** parents of the deceased in the case of:  
 3 (i) a deceased minor child; or  
 4 (ii) **an incapacitated child who was unmarried at the time**  
 5 **of death; or**  
 6 **(4) a court order;**  
 7 authorizing the disinterment, disentombment, or disinurnment.  
 8 **However, in the case of a court order, a court may not issue an**  
 9 **order unless the person requesting the court order demonstrates**  
 10 **to the court that the removal complies with a plan approved by the**  
 11 **department of natural resources under IC 14-21-1-25.**  
 12 ~~(c)~~ (b) Before issuing a written authorization under subsection ~~(b)~~;  
 13 (a)(1), the state department of health shall do the following:  
 14 (1) Obtain written evidence of the legal ownership of the property  
 15 from which the remains will be removed.  
 16 (2) Send written notice to the department of natural resources,  
 17 division of historic preservation and archeology, of the time, date,  
 18 and place from which the remains will be removed.  
 19 (3) Obtain written evidence that a licensed funeral director has  
 20 agreed to:  
 21 (A) be present at the removal and at the reinterment,  
 22 reentombment, or reinurnment of the remains; and  
 23 (B) cause the completed order of the state department of health  
 24 to be recorded in the office of the county recorder of the  
 25 county where the removal occurred.  
 26 (4) Obtain written evidence that a notice of the proposed removal  
 27 has been published at least five (5) days before a written order is  
 28 issued by the state department of health in a newspaper of general  
 29 circulation in the county where the removal will occur.  
 30 (5) Obtain a copy of  
 31 ~~(A) the written consent required under subsection (b)(3); or~~  
 32 ~~(B) a the court order obtained by a person under subsection~~  
 33 ~~(d): (a)(4).~~  
 34 ~~(d)~~ (c) If the written consent of:  
 35 ~~(1) the spouse of the deceased; or~~  
 36 ~~(2) the parents of the deceased in the case of a deceased minor;~~  
 37 **as described in subsection (a)(3)** is not available, a person who has  
 38 made **or wants to make** a request under this **section chapter** to the  
 39 state department of health may petition a court to determine whether to  
 40 waive the consent requirement of subsection ~~(b)(3): (a)(3)~~. In  
 41 determining whether to waive the requirement, the court shall consider  
 42 the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased.

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1 In a proceeding under this subsection, the court may not order the  
 2 disinterment, disentombment, or disinurnment of the remains of a  
 3 deceased human.

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

- 11 (1) That the property is owned or leased by the coal company.  
 12 (2) That the coal company has obtained the written consent of:  
 13 (A) the **surviving** spouse of the deceased; or  
 14 (B) the **surviving** parents of the deceased in the case of:  
 15 (i) a deceased minor child; or  
 16 (ii) **an incapacitated child who was unmarried at the time**  
 17 **of death;**

18 authorizing the disinterment, disentombment, or disinurnment. If  
 19 the consent is not available, the court may waive the requirement  
 20 after considering the viewpoint of any issue (as defined in  
 21 IC 29-1-1-3) of the deceased.

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

27 (4) That a licensed funeral director has agreed to:  
 28 (A) be present at the removal and at the reinterment,  
 29 reentombment, or reinurnment of the remains; and  
 30 (B) cause the completed order of the state department of health  
 31 to be recorded in the office of the county recorder of the  
 32 county where the removal occurred.

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

37 (6) That the coal company will notify the department of natural  
 38 resources, division of historic preservation and archeology, after  
 39 the hearing of the:

- 40 (A) proposed time and date when the remains will be removed;  
 41 **and**  
 42 (B) **location where the remains will be reinterred,**

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**reentombed, or reinurned.**

~~(f)~~ (e) The state department of health may adopt rules under IC 4-22-2 to implement this ~~section~~ **chapter**.

SECTION 7. IC 23-14-57-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) The remains of a deceased human interred, entombed, or inurned in a plot in a cemetery may be removed from the plot for the purpose of autopsy ~~or reinterment, reentombment, or reinurnment in another cemetery~~ with:

- (1) the consent of the owner of the cemetery **or the cemetery owner's representative**; and
- (2) the written consent of:
  - (A) the surviving spouse ~~in the case of a~~ **the deceased; married person**; or
  - (B) the surviving parents in the case of:
    - (i) a deceased minor child; **or**
    - (ii) **an incapacitated child who was unmarried at the time of death.**

- (b) If the consent of:
  - (1) the owner of the cemetery **or the cemetery owner's representative**; or
  - (2) a person from whom consent is required under subsection (a)(2);

~~can not~~ **cannot** be obtained, the remains of a deceased human can be removed for the purpose of autopsy ~~or reinterment, reentombment, or reinurnment in another cemetery~~ only under a judgment of the circuit or superior court with jurisdiction in the county in which the cemetery is located.

SECTION 8. IC 23-14-58.5 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

**Chapter 58.5. Disposition of Abandoned Burial Spaces**

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

- (1) **has remained unused for a period of at least fifty (50) years from the date of sale or last recorded designation or transfer; and**
- (2) **has no improvements on the burial space, including the placement of a monument, memorial, or other permanent appurtenance;**

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

**(b) After July 1, 2007, a contract for the purchase of a burial**

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1 space must include notice that the contract is subject to  
2 termination as provided in subsection (a).

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

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

7 (2) determines that the conditions specified in section 1 of this  
8 chapter have been met;

9 the person or entity must send to the owner a notice of the intent  
10 to terminate the owner's rights to the burial space.

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

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

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

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

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

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

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1 **owner.**  
 2 **(d) If the owner of a burial space contacts the person or entity**  
 3 **having jurisdiction over the cemetery after the owner's rights and**  
 4 **interests in the burial space are terminated under this chapter, the**  
 5 **owner is entitled to select one (1) of the following remedies:**  
 6 **(1) The original burial space, if it has not been resold.**  
 7 **(2) Reimbursement of the amount originally paid for the**  
 8 **burial space.**  
 9 **(3) A comparable burial space in the cemetery.**  
 10 **Sec. 5. A person who:**  
 11 **(1) knowingly terminates an owner's rights and interests in a**  
 12 **burial space;**  
 13 **(2) knows or should have known the identity of the owner;**  
 14 **and**  
 15 **(3) fails to give the owner notice as required under this**  
 16 **chapter;**  
 17 **commits a Class B misdemeanor.**

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