

IC 25-15-9

Chapter 9. State Board of Funeral and Cemetery Service; Education Fund; Cemetery Registration

IC 25-15-9-1

Establishment of board

Sec. 1. The state board of funeral and cemetery service is established.

As added by P.L.48-1991, SEC.31.

IC 25-15-9-2

Members; chairman

Sec. 2. (a) The board consists of eleven (11) members as follows:

(1) Ten (10) members appointed by the governor for terms of four (4) years.

(2) The commissioner of the state department of health or the commissioner's designee.

(b) The board shall elect a chairman from the board's own membership every two (2) years to serve a term of two (2) years. The chairman shall be elected alternately from those board members appointed under sections 3 and 4 of this chapter.

As added by P.L.48-1991, SEC.31. Amended by P.L.2-1992, SEC.767; P.L.236-1995, SEC.45.

IC 25-15-9-3

Funeral directors; members

Sec. 3. Four (4) of the board's appointed members must be licensed funeral directors, in good standing, without any association with a school of mortuary science other than as a preceptor or supervisor of a funeral service intern.

As added by P.L.48-1991, SEC.31.

IC 25-15-9-4

Cemetery owners or managers; members

Sec. 4. Four (4) of the board's appointed members must be active in the cemetery industry in Indiana, either as an owner or a manager of an operating cemetery property.

As added by P.L.48-1991, SEC.31.

IC 25-15-9-5

Consumers; members

Sec. 5. Two (2) of the board's appointed members must be residents of Indiana who are not associated with the practice of funeral service or a cemetery operation other than as consumers.

As added by P.L.48-1991, SEC.31.

IC 25-15-9-6

Party affiliation; members

Sec. 6. Not more than five (5) of the board's appointed members may be affiliated with the same political party.

As added by P.L.48-1991, SEC.31.

IC 25-15-9-7

Number of terms; limitation

Sec. 7. The board's appointed members may serve only two (2) terms on the board, including prior service either as a member of the state board of funeral service or the state board of embalmers and funeral directors. A member of the board may serve until the member's successor is appointed and qualified under this chapter.

As added by P.L.48-1991, SEC.31. Amended by P.L.194-2005, SEC.58.

IC 25-15-9-8

Sale and payment of funeral or burial expenses; duties of board

Sec. 8. The board shall do the following:

- (1) Adopt rules under IC 4-22-2 to do the following:
 - (A) Establish standards for the sale and payment of funeral or burial services or merchandise in advance of need.
 - (B) Establish the terms of contracts authorized under IC 30-2-13.
 - (C) Implement IC 30-2-13.
 - (D) Implement IC 23-14-48.5.
- (2) Register and issue certificates to sellers of merchandise or services under IC 30-2-13.
- (3) Determine compliance with this article by persons engaged in the sale and payment of funeral or burial services or merchandise in advance of need under IC 30-2-13.
- (4) Investigate any complaint alleging a violation of IC 30-2-13.
- (5) Set fees under IC 25-1-8.
- (6) For a violation of this article or IC 30-2-13 by a person engaged in the sale and payment of funeral or burial services or merchandise in advance of need under IC 30-2-13, if necessary, take any combination of the following actions:
 - (A) Issue an appropriate order to correct the violation.
 - (B) Suspend the seller's certificate of authority.
 - (C) Permanently revoke the seller's certificate of authority.
 - (D) Censure the seller.
 - (E) Issue a letter of reprimand to the seller.
 - (F) Place the seller on probation.
 - (G) Assess a civil penalty against the seller in an amount not to exceed one thousand dollars (\$1,000) for each violation, except for a finding of incompetency due to a physical or

mental disability. When imposing a civil penalty, the board shall consider the seller's ability to pay the amount assessed. If the seller fails to pay the civil penalty within the time specified by the board, the board may suspend the seller's certificate of authority without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the seller's inability to pay a civil penalty.

(H) Refer the matter to the attorney general or prosecuting attorney for enforcement.

(7) In addition to any actions taken under subdivision (6), permanently revoke a seller's certificate of authority, if the seller demonstrates a pattern or practice of violating the following provisions:

(A) The requirement under IC 30-2-13-12 that all property paid or delivered to fund a contract for prepaid services or merchandise be irrevocably deposited to trust or escrow thirty (30) days after the contract is signed.

(B) The prohibition against knowingly inducing a purchaser to breach an existing contract under IC 30-2-13-13(e).

As added by P.L.48-1991, SEC.31. Amended by P.L.207-1993, SEC.21; P.L.241-1995, SEC.1; P.L.65-2007, SEC.4.

IC 25-15-9-9

Funeral homes; standards for operation; duties of department

Sec. 9. The funeral director, consumer, and the state department of health members of the board shall do the following:

(1) Adopt rules under IC 4-22-2 to do the following:

(A) Establish standards for the competent practice of funeral service.

(B) Establish sanitation standards for the construction and equipping of funeral homes.

(C) Establish standards for the operation of funeral homes.

(D) Set fees under IC 25-1-8.

(E) Carry out this article.

(2) Establish a program of inspection to administer this article.

(3) Pass upon the qualifications of each applicant for a license under this article.

(4) Provide all examinations under this article.

(5) License all applicants who meet the requirements of IC 25-15-4.

(6) Investigate a complaint alleging a violation of this article.

(7) For a violation of this article by a person who is licensed under this article, if necessary, take any combination of the following actions:

(A) Issue an appropriate order to correct the violation.

- (B) Suspend the seller's certificate of authority issued under IC 30-2-13.
 - (C) Permanently revoke the licensee's license.
 - (D) Censure the licensee.
 - (E) Issue a letter of reprimand.
 - (F) Place the licensee on probation.
 - (G) Assess a civil penalty against the licensee in an amount not to exceed one thousand dollars (\$1,000) for each violation, except for a finding of incompetency due to a physical or mental disability. When imposing a civil penalty, the board shall consider a licensee's ability to pay the amount assessed. If the licensee fails to pay the civil penalty within the time specified by the board, the board may suspend the licensee's license without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the licensee's inability to pay a civil penalty.
 - (H) Refer the matter to the attorney general or the prosecuting attorney for enforcement.
- (8) The board shall suspend the license of a funeral home licensee who employs a person who:
- (A) holds an inactive funeral director license (as described in IC 25-15-4-6); and
 - (B) engages in the practice of funeral services or provides funeral services to the public (as described in IC 25-15-2-17 or IC 25-15-2-22).

As added by P.L.48-1991, SEC.31. Amended by P.L.2-1992, SEC.768; P.L.207-1993, SEC.22.

IC 25-15-9-10

Cemeteries; operation; duties of department

Sec. 10. The cemetery, consumer, and the state department of health members of the board shall do the following:

- (1) Determine compliance with IC 23-14 by cemetery owners.
- (2) Investigate a complaint alleging a violation of IC 23-14.
- (3) For a violation of IC 23-14 by a cemetery owner, if necessary, take any combination of the following actions:
 - (A) Issue an appropriate order to correct the violation.
 - (B) Suspend the seller's certificate of authority issued under IC 30-2-13.
 - (C) Censure the cemetery owner.
 - (D) Issue a letter of reprimand.
 - (E) Assess a civil penalty against the cemetery owner in an amount not to exceed one thousand dollars (\$1,000) for each violation, except for a finding of incompetency due to a physical or mental disability. When imposing a civil penalty, the board shall consider a cemetery owner's ability to pay the

amount assessed.

(F) Refer the matter to the attorney general or prosecuting attorney for enforcement.

As added by P.L.48-1991, SEC.31. Amended by P.L.2-1992, SEC.769; P.L.207-1993, SEC.23.

IC 25-15-9-11

Official actions of board; voting

Sec. 11. An official action of the board is valid only if the action is adopted by at least six (6) of the board's members. However, cemetery members may not vote on any matter involving section 9 of this chapter, and funeral director members may not vote on any matter involving section 10 of this chapter. When either cemetery or funeral director members are ineligible to vote, an official action of the board is valid if the action is adopted by at least four (4) of the board's members.

As added by P.L.48-1991, SEC.31.

IC 25-15-9-12

Health officers; cooperation with department

Sec. 12. The state department of health and local health officers shall cooperate with the board to enforce the sanitation standards adopted by the board for funeral homes.

As added by P.L.48-1991, SEC.31. Amended by P.L.2-1992, SEC.770.

IC 25-15-9-13

Funeral service education fund

Sec. 13. (a) The funeral service education fund is established for the following purposes:

(1) To supplement the funding for a program of inspection administered by the funeral director, consumer, and state department of health members of the board under section 9 of this chapter.

(2) To fund educational projects of the funeral director, consumer, and state department of health members of the board directed toward funeral directors and embalmers.

(3) To carry out the duties of the board.

(b) The fund shall be administered by the funeral director, consumer, and state department of health members of the board.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund. If the amount of money in the fund at the close of a fiscal year exceeds forty thousand dollars (\$40,000),

the treasurer of state shall transfer the excess from the fund into the state general fund.

As added by P.L.48-1991, SEC.31. Amended by P.L.2-1992, SEC.771; P.L.112-2014, SEC.24.

IC 25-15-9-14

Fees and gifts; collection and distribution

Sec. 14. The Indiana professional licensing agency shall collect all fees required under this article and gifts received by the board and at the end of each month shall do the following:

- (1) Report amounts collected to the auditor of state.
- (2) Transfer amounts collected to the treasurer of state for deposit as follows:
 - (A) An amount established by the board and not exceeding five dollars (\$5) per license issued under this article in the funeral service education fund.
 - (B) Gifts dedicated to the funeral service education fund in that fund.
 - (C) The remainder, after deducting the amounts described in clause (A) or (B), in the state general fund.

As added by P.L.48-1991, SEC.31.

IC 25-15-9-15

Salary; reimbursement of expenses

Sec. 15. (a) Each member of the board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a member is also entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(b) Each member of the board who is a state employee is entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

As added by P.L.48-1991, SEC.31.

IC 25-15-9-16

Payment of expenses

Sec. 16. All expenses incurred in the administration of this article shall be paid from the state general fund. However, expenses approved by the funeral director, consumer, and state department of health members of the board for payment from the funeral service education fund shall be paid from that fund.

As added by P.L.48-1991, SEC.31. Amended by P.L.2-1992,

SEC.772.

IC 25-15-9-17

Registration of cemeteries

Sec. 17. (a) Each cemetery that:

- (1) qualifies for a certificate of authority as a seller under IC 30-2-13; or
- (2) is subject to IC 23-14-48;

must register with the board.

(b) The cemetery, consumer, and state department of health members of the board shall impose a registration fee for each geographic location of a cemetery to which this section applies that is equal to the combined total of fees charged under IC 25-15 for one (1) funeral home license and one (1) individual funeral director's license.

As added by P.L.48-1991, SEC.31. Amended by P.L.2-1992, SEC.773; P.L.52-1997, SEC.51.

IC 25-15-9-18

Priority among persons as to authority to determine final disposition of human remains and make other arrangements; persons who may not make determination; disputes

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 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 identified in subdivisions (1) through (7) 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) 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) is available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

(b) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

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

(c) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2).

(d) If the decedent had filed a protection order against a person described in subsection (a) and the protection order is currently in effect, the person described in subsection (a) may not authorize or designate the manner, type, or selection of the final disposition of human remains.

(e) A law enforcement agency shall determine if the protection order is in effect. If the law enforcement agency cannot determine the existence of a protection order that is in effect, the law enforcement agency shall consult the protective order registry established under IC 5-2-9-5.5.

(f) If a person vested with a right under subsection (a) does not exercise that right not later than seventy-two (72) hours after the person receives notification of the death of the decedent, the person forfeits the person's right to determine the final disposition of the decedent's remains and the right to determine final disposition passes to the next person described in subsection (a).

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

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

remains of the decedent until the funeral home receives:

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

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

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

(j) A spouse seeking a judicial determination under subsection (a)(3)(A) 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.

As added by P.L.237-1995, SEC.17. Amended by P.L.102-2007, SEC.3; P.L.3-2008, SEC.185; P.L.143-2009, SEC.7; P.L.101-2010, SEC.3; P.L.94-2010, SEC.8; P.L.42-2011, SEC.55; P.L.34-2011, SEC.4; P.L.6-2012, SEC.176.

IC 25-15-9-19

Effect of signing final disposition authorization; liability

Sec. 19. (a) An individual who signs an authorization for the cremation, interment, entombment, or inurnment of human remains:

- (1) is considered to warrant the truthfulness of:
 - (A) any fact set forth in the authorization;
 - (B) the identity of the person for whose remains cremation, interment, entombment, or inurnment is sought; and
 - (C) the individual's authority to order the cremation, interment, entombment, or inurnment; and
- (2) is personally and individually liable to pay damages in compensation for harm that:
 - (A) is caused by; or
 - (B) results from;

the signing of the authorization for cremation, interment, entombment, or inurnment.

(b) A funeral home that relies in good faith on a signed authorization for the cremation, interment, entombment, or inurnment of human remains is not civilly or criminally liable or subject to disciplinary actions for carrying out the disposition of the decedent's remains in accordance with the instructions in the authorization.

As added by P.L.34-2011, SEC.5. Amended by P.L.6-2012, SEC.177.