

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 2017 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 246

AN ACT to amend the Indiana Code concerning cemeteries.

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

SECTION 1. IC 23-14-33-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 30. (a) "Perpetual care" or "endowment care" means, ~~within the limits permitted by the net income received from the perpetual care fund or endowment care fund required by~~ **through the use of funds available under IC 23-14-48** and ~~from~~ other care funds or endowments, the maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including the following:

- (1) Cutting the grass ~~on cemetery plots~~ at reasonable intervals.
- (2) Raking and cleaning of cemetery plots at reasonable intervals.
- (3) Pruning of shrubs and trees.
- (4) Procuring, maintaining, and keeping in workable condition the machinery, tools, and equipment needed for maintenance purposes, and replacing the machinery, tools, and equipment when necessary.
- (5) Keeping in repair and preserving the drains, water lines, roads, buildings, fences, and other structures, including cemetery owned statues and embellishments of a general character applicable to the cemetery as a whole or a particular area.
- (6) The administration of the cemetery, including:
 - (A) the payment of insurance premiums;
 - (B) the payment of pensions; and
 - (C) maintaining the necessary records of lot ownership or

SEA 246



holdership, burial right ownership or holdership, burials, and other necessary information, and making the records available to the public authorities and interested persons.

(b) When used in connection with a mausoleum, garden crypt, columbarium, crematory, or other structure, the term "perpetual care" or "endowment care" means, in addition to the meaning set forth in subsection (a):

- (1) the general upkeep of the structure and the ground surrounding the structure;
- (2) the repair, replacement, and improvement of the structure;
- (3) the procuring, maintaining, and keeping in reasonable condition the machinery, tools, and equipment needed for the purposes set forth in subdivisions (1) through (2); and
- (4) replacing the machinery, tools, and equipment when necessary.

SECTION 2. IC 23-14-48-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 1.5. As used in this chapter, the "immediate maintenance needs" of a cemetery means the need to perform one (1) or more of the perpetual care activities set forth in IC 23-14-33-30(a)(1) through IC 23-14-33-30(a)(6) and IC 23-14-33-30(b)(1) through IC 23-14-33-30(b)(4) in the present rather than at a future time.**

SECTION 3. IC 23-14-48-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 2. (a) The owner of each cemetery shall provide for the creation and establishment of an irrevocable perpetual care fund.**

(b) The principal of a perpetual care fund established under this section shall permanently remain intact, except as provided in this chapter. The principal shall be known as the "perpetual care fund" or "endowment care fund" of the cemetery.

(c) Fifty percent (50%) of any appreciation of the principal of the fund may be withdrawn annually not more than forty-five (45) days after the end of the fund's fiscal year.

(d) Any income earned by the fund during the fiscal year may be withdrawn quarterly during the fund's fiscal year.

(e) The income from a fund established under this section and any withdrawal of the appreciation of the principal under subsection (c) shall be devoted to the perpetual care of the cemetery, **including the immediate maintenance needs of the cemetery.**

(f) The fund established ~~by this chapter~~ **under this section** is not subject to attachment by a creditor unless the underlying debt was



incurred for the perpetual care or endowment care (as defined in IC 23-14-33-30) of the cemetery for which the fund was established.

SECTION 4. IC 23-14-48-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 2.4. (a) As used in this section, "broker or brokerage firm" refers to a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser authorized under IC 23-19 to transact business in Indiana.**

(b) As used in this section, "financial institution" means any bank, trust company, mutual savings bank, savings association, or credit union that was organized and is operating under Indiana law or the laws of the United States.

(c) As used in this section, "money market mutual fund" means either of the following:

(1) A money market mutual fund that meets the conditions of 17 CFR 270.2a-7 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(2) A money market mutual fund that at all times invests only in:

(A) obligations that are issued, guaranteed, or insured by the United States government; or

(B) collateralized repurchase agreements composed of obligations described in clause (A).

(d) As used in this section, "mutual fund" means:

(1) an investment company; or

(2) in the case of an investment company that is organized as a series company, an investment company series;

that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(e) In administering a perpetual care fund established under section 2 of this chapter, the cemetery owner, trustee, or other entity administering the fund shall exercise the judgment and care required by IC 30-4-3.5, except that:

(1) the investment of money in the fund is not limited to:

(A) deposit in a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Share Insurance Fund, or another federal insurance fund backed by the full faith and credit of the United States government; or



- (B) the purchase of government securities of the United States; and**
- (2) money in the fund may be invested in any of the following:**
 - (A) Certificates of deposit issued by financial institutions.**
 - (B) Money market mutual funds.**
 - (C) Stock or shares of mutual funds.**
 - (D) Any interest bearing account or fund that is offered by a financial institution or a broker or brokerage firm.**

SECTION 5. IC 23-14-48.5-1, AS ADDED BY P.L.65-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) Except as provided in subsection (b), this chapter does not apply to:

- (1) a cemetery owned by a municipal corporation or other governmental unit;
 - (2) a religious cemetery; or
 - (3) a cemetery
 - ~~(A) that is ten (10) acres or less in size.~~
 - ~~(B) that is owned and operated entirely and exclusively by a nonprofit mutual association in existence on June 14, 1939; and~~
 - ~~(C) in which burials took place before June 14, 1939.~~
- (b) This chapter applies to the whole of a cemetery described in subsection (a)(3) if, directly or indirectly:
- (1) any structure is constructed above or below ground in the cemetery and interment rights in the structure are offered for sale to the general public; or
 - (2) the acquisition of:
 - (A) additional land; or
 - (B) an interest in additional land;
 causes the cemetery to exceed ten (10) acres in size.

SECTION 6. IC 23-14-48.5-6, AS ADDED BY P.L.65-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 6. Money in the fund may be used to provide cemetery maintenance when the board finds:

- (1) that:**
 - ~~(1) (A) the owner of a cemetery is unable to maintain the cemetery;~~
 - ~~(2) (B) money in the perpetual care fund of the cemetery is depleted, subject to a dispute that prevents distribution of the money, or otherwise unavailable for the purposes of the perpetual care fund; and~~
 - ~~(3) (C) interested persons are unable to take over the~~



management, care, and general supervision of the cemetery under IC 23-14-48-10; or

(2) that the appreciation and income of the principal of a cemetery's perpetual care fund that are available under IC 23-14-48-2 are not sufficient to meet the cemetery's immediate maintenance needs (as defined in IC 23-14-48-1.5).

SECTION 7. IC 23-14-48.5-7, AS ADDED BY P.L.65-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 7. (a) The:

- (1) owner of a cemetery; or
- (2) if the owner of a cemetery is unable to be determined:
 - (A) the owner of a lot in the cemetery;
 - (B) the next of kin of an owner of a lot in the cemetery; or
 - (C) another interested person;

may request maintenance assistance from the fund by filing a ~~verified complaint~~ with the board **an application on a form provided by the board requesting funds for emergency maintenance.**

(b) The board **may hold a hearing concerning an application if the board considers it necessary and shall, investigate within a reasonable time, make a determination concerning** each ~~verified complaint. Within thirty (30) days after a verified complaint is filed;~~ **application.** The board shall ~~complete its investigation and issue findings of fact. If the board makes the findings required under section 6 of this chapter concerning a cemetery;~~ the board may enter into a contract with any suitable person to provide maintenance at the cemetery until a responsible person is able to provide care and maintenance for the cemetery. **may authorize the withdrawal from the fund of an amount sufficient to provide emergency maintenance for the cemetery to which the application relates, but not more than fifty thousand dollars (\$50,000).**

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

(d) The board shall annually review the status of the fund. If the board determines during its annual review that the fund balance equals or exceeds ~~two hundred fifty five hundred thousand dollars (\$250,000);~~ **(\$500,000)**, the board shall suspend the requirement to make payments to the fund under section 5 of this chapter until after the next annual review in which the board determines that the fund



balance is less ~~that two hundred fifty~~ **than five hundred** thousand dollars ~~(\$250,000):~~ **(\$500,000).**

SECTION 8. IC 23-14-68-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) **Except as provided in subsection (b),** this chapter applies to each cemetery that:

- (1) is without funds for maintenance;
- (2) was in existence on February 28, 1939; and
- (3) is operated by a nonprofit organization or is not managed by any viable organization.

(b) Section 4.5 of this chapter applies to a cemetery that is operated by a nonprofit organization.

~~(b)~~ **(c)** This chapter does not apply to a cemetery located on land on which property taxes are assessed and paid under IC 6-1.1-4.

SECTION 9. IC 23-14-68-3, AS AMENDED BY P.L.2-2008, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 3. For the purposes of this chapter, the maintenance of a cemetery includes the following:

- (1) Resetting and straightening all monuments.
- (2) Leveling and seeding the ground.
- (3) Constructing fences where there are none and repairing existing fences.
- (4) Destroying and cleaning up detrimental plants (as defined in IC 15-16-8-1), noxious weeds, and rank vegetation.

(5) Mowing the lawn.

SECTION 10. IC 23-14-68-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 4. (a) The township:

- (1) shall appropriate enough money to provide for the care, repair, and maintenance of each cemetery described in section 1(a) of this chapter that is located within the township; and**
- (2) may appropriate enough money to provide for maintenance of a cemetery described in section 1(b) of this chapter to which the trustee of the township provides assistance under section 4.5 of this chapter.**

Funds shall be appropriated under this subsection in the same manner as other township appropriations.

(b) The township may levy a township cemetery tax to create a fund for maintenance of cemeteries under this chapter. If a fund has not been provided for maintenance of cemeteries under this chapter, part of the township fund may be used.

SECTION 11. IC 23-14-68-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 4.5. (a) If the trustee of a**



township reasonably believes that:

(1) the funds available to a cemetery that is located in the township and described in section 1(b) of this chapter from:

(A) the perpetual care fund maintained by the owner of the cemetery under IC 23-14-48; and

(B) any other source;

are not sufficient to provide for the maintenance of the cemetery; and

(2) providing financial assistance to the cemetery described in subdivision (1) will help to prevent the full responsibility for maintenance of the cemetery from falling on the township under:

(A) sections 1(a) and 4(a)(1) of this chapter;

(B) IC 23-14-64; or

(C) another provision of this article;

the trustee may provide financial assistance to the cemetery for the maintenance of the cemetery.

(b) Financial assistance provided by a trustee to a cemetery under this section may be provided from:

(1) the fund for maintenance of cemeteries created under section 4(b) of this chapter; or

(2) money appropriated under section 4(a)(2) of this chapter.

SECTION 12. IC 25-15-9-7, AS AMENDED BY P.L.194-2005, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 7. The board's appointed members may serve ~~only not more than~~ two (2) ~~consecutive~~ terms on the board ~~including prior service either~~ as a member of the state board of funeral ~~and cemetery~~ 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.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 246

