

PROPOSED AMENDMENT

HB 1209 # 1

DIGEST

Trusts. Adds provisions regarding a second power of appointment. Substitutes a duration of 360 years for 90 years for certain trusts in certain instances.

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
2 "SECTION 1. IC 30-4-5-26 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2024]: **Sec. 26. (a) If the trustee has the full, unrestricted power
5 to alienate trust property and the trust expressly states that this
6 exception applies to the trust, IC 32-17-8-3 shall apply to a
7 nonvested property interest or power of appointment contained in
8 the trust by substituting three hundred sixty (360) years instead of
9 ninety (90) years in each place where the term appears in
10 IC 32-17-8-3, unless the terms of the trust require that all
11 beneficial interests in the trust vest or terminate within a lesser
12 period.**
13 **(b) When a power of appointment in a trust ("first power") is
14 exercised to create another power of appointment ("second
15 power"), then a nonvested property interest or second power
16 created through the exercise of the first power is considered to
17 have been created at the time of irrevocable exercise of the first
18 power, unless the instrument exercising the first power provides
19 that the second power was created at the time of creation of the
20 first power.**
21 SECTION 2. IC 32-17-8-3 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 3. (a) A nonvested
23 property interest is valid if:**
24 (1) when the interest is created, the interest is certain to vest or
25 terminate not later than twenty-one (21) years after the death of
26 an individual then alive; or
27 (2) the interest either vests or terminates within ~~ninety (90) years~~

1 ~~after the interest's creation:~~ **three hundred sixty (360) years**
 2 **after the interest's creation, unless the terms of the trust**
 3 **require that all beneficial interests in the trust vest or**
 4 **terminate within a lesser period of time.**

5 (b) A general power of appointment not presently exercisable
 6 because of a condition precedent is valid if:

7 (1) when the power is created, the condition precedent is certain
 8 to be satisfied or become impossible to satisfy not later than
 9 twenty-one (21) years after the death of an individual then alive;
 10 or

11 (2) the condition precedent either is satisfied or becomes
 12 impossible to satisfy within ~~ninety (90) years after the condition~~
 13 ~~precedent's creation:~~ **three hundred sixty (360) years after the**
 14 **condition precedent's creation, unless the terms of the trust**
 15 **require that all beneficial interests in the trust vest or**
 16 **terminate within a lesser period of time.**

17 (c) A nongeneral power of appointment or a general testamentary
 18 power of appointment is valid if:

19 (1) when the power is created, the power is certain to be
 20 irrevocably exercised or otherwise to terminate not later than
 21 twenty-one (21) years after the death of an individual then alive;
 22 or

23 (2) the power is irrevocably exercised or otherwise terminates
 24 within ~~ninety (90) years after the power's creation:~~ **three hundred**
 25 **sixty (360) years after the power's creation, unless the terms**
 26 **of the trust require that all beneficial interests in the trust vest**
 27 **or terminate within a lesser period of time.**

28 (d) In determining whether a nonvested property interest or a power
 29 of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the
 30 possibility that a child will be born to an individual after the
 31 individual's death is disregarded.

32 SECTION 3. IC 32-17-8-3.5 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2024]: **Sec. 3.5. When the initial power of appointment in a**
 35 **legacy trust is exercised to create a second power of appointment,**
 36 **a nonvested property interest or the second power of appointment**
 37 **created through the exercise of the initial power of appointment is**
 38 **considered to have been created at the time of the irrevocable**
 39 **exercise of the initial power of appointment, unless the instrument**
 40 **exercising the initial power of appointment provides that the**

1 **second power of appointment was created at the time of the**
2 **creation of the initial power of appointment."**

3 Page 2, delete lines 1 through 13.

4 Renumber all SECTIONS consecutively.
(Reference is to HB 1209 as introduced.)