



February 23, 2024

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# ENGROSSED HOUSE BILL No. 1209

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DIGEST OF HB 1209 (Updated February 21, 2024 4:07 pm - DI 140)

**Citations Affected:** IC 30-4; IC 32-17.

**Synopsis:** Rule against perpetuities. Adds provisions regarding a second power of appointment. Extends the period of time for which certain nonvested property interests are valid from 90 years to 360 years after the interest is created. Extends the period of time for which certain powers of appointment are valid under specified conditions from 90 years to 360 years. Makes conforming changes.

**Effective:** July 1, 2024.

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## Heine, Snow, Steuerwald, Prescott

(SENATE SPONSORS — BROWN L, JOHNSON T)

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January 9, 2024, read first time and referred to Committee on Judiciary.  
January 29, 2024, amended, reported — Do Pass.  
January 31, 2024, read second time, ordered engrossed. Engrossed.  
February 1, 2024, read third time, passed. Yeas 85, nays 8.

SENATE ACTION

February 12, 2024, read first time and referred to Committee on Judiciary.  
February 22, 2024, reported favorably — Do Pass.

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February 23, 2024

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1209

A BILL FOR AN ACT to amend the Indiana Code concerning property.

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

1 SECTION 1. IC 30-4-5-26 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2024]: **Sec. 26. (a) If the trustee has the full, unrestricted power  
4 to alienate trust property and the trust expressly states that this  
5 exception applies to the trust, IC 32-17-8-3 shall apply to a  
6 nonvested property interest or power of appointment contained in  
7 the trust by substituting three hundred sixty (360) years instead of  
8 ninety (90) years in each place where the term appears in  
9 IC 32-17-8-3, unless the terms of the trust require that all  
10 beneficial interests in the trust vest or terminate within a lesser  
11 period.**

12 **(b) When a power of appointment in a trust ("first power") is  
13 exercised to create another power of appointment ("second  
14 power"), then a nonvested property interest or second power  
15 created through the exercise of the first power is considered to  
16 have been created at the time of irrevocable exercise of the first  
17 power, unless the instrument exercising the first power provides**

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1 **that the second power was created at the time of creation of the**  
 2 **first power.**

3 SECTION 2. IC 32-17-8-3 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. (a) A nonvested  
 5 property interest is valid if:

6 (1) when the interest is created, the interest is certain to vest or  
 7 terminate not later than twenty-one (21) years after the death of  
 8 an individual then alive; or

9 (2) the interest either vests or terminates within ~~ninety (90) years~~  
 10 **after the interest's creation: three hundred sixty (360) years**  
 11 **after the interest's creation, unless the terms of the trust**  
 12 **require that all beneficial interests in the trust vest or**  
 13 **terminate within a lesser period of time.**

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

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

20 (2) the condition precedent either is satisfied or becomes  
 21 impossible to satisfy within ~~ninety (90) years after the condition~~  
 22 **precedent's creation: three hundred sixty (360) years after the**  
 23 **condition precedent's creation, unless the terms of the trust**  
 24 **require that all beneficial interests in the trust vest or**  
 25 **terminate within a lesser period of time.**

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

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

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

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

41 SECTION 3. IC 32-17-8-3.5 IS ADDED TO THE INDIANA CODE  
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1 1, 2024]: **Sec. 3.5. When the initial power of appointment in a**  
 2 **legacy trust is exercised to create a second power of appointment,**  
 3 **a nonvested property interest or the second power of appointment**  
 4 **created through the exercise of the initial power of appointment is**  
 5 **considered to have been created at the time of the irrevocable**  
 6 **exercise of the initial power of appointment, unless the instrument**  
 7 **exercising the initial power of appointment provides that the**  
 8 **second power of appointment was created at the time of the**  
 9 **creation of the initial power of appointment.**

10 SECTION 4. IC 32-17-8-6 IS AMENDED TO READ AS  
 11 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 6. Upon the petition of  
 12 an interested person, a court shall reform a disposition in the manner  
 13 that most closely preserves the transferor's plan of distribution and is  
 14 within the ~~ninety (90)~~ **three hundred sixty (360)** years allowed by  
 15 section 3(a)(2), 3(b)(2), or 3(c)(2) of this chapter if:

16 (1) a nonvested property interest or a power of appointment  
 17 becomes invalid under section 3 of this chapter;  
 18 (2) a class gift is not but might become invalid under section 3 of  
 19 this chapter and the time has arrived when the share of any class  
 20 member is to take effect in possession or enjoyment; or  
 21 (3) a nonvested property interest that is not validated by section  
 22 3(a)(1) of this chapter can vest but not within ~~ninety (90)~~ **three**  
 23 **hundred sixty (360)** years after the interest's creation.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1209, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 30-4-5-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 26. (a) If the trustee has the full, unrestricted power to alienate trust property and the trust expressly states that this exception applies to the trust, IC 32-17-8-3 shall apply to a nonvested property interest or power of appointment contained in the trust by substituting three hundred sixty (360) years instead of ninety (90) years in each place where the term appears in IC 32-17-8-3, unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.**

**(b) When a power of appointment in a trust ("first power") is exercised to create another power of appointment ("second power"), then a nonvested property interest or second power created through the exercise of the first power is considered to have been created at the time of irrevocable exercise of the first power, unless the instrument exercising the first power provides that the second power was created at the time of creation of the first power.**

SECTION 2. IC 32-17-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 3. (a) A nonvested property interest is valid if:**

- (1) when the interest is created, the interest is certain to vest or terminate not later than twenty-one (21) years after the death of an individual then alive; or
- (2) the interest either vests or terminates within ~~ninety (90) years after the interest's creation.~~ **three hundred sixty (360) years after the interest's creation, unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period of time.**

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

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

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

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

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

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

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

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

Page 2, delete lines 1 through 13.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1209 as introduced.)

JETER

Committee Vote: yeas 10, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1209, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1209 as printed January 29, 2024.)

BROWN L, Chairperson

Committee Vote: Yeas 6, Nays 5

