



March 16, 2023

ENGROSSED

SENATE BILL No. 287

DIGEST OF SB 287 (Updated March 15, 2023 11:59 am - DI 140)

Citations Affected: IC 16-36; IC 29-1; IC 29-3; IC 30-4; IC 30-5; IC 31-11.

Synopsis: Various probate and trust matters. Provides that a person may sign a form of living will declaration or a form of life prolonging procedures will declaration in the presence of a notary public. Removes nonconforming language in a petition for administration statute. Clarifies the service requirements for certain probate notices. Provides that a testator or a testator's agent may send written notice of the existence of a will to certain persons. Provides that if a testator's will includes a provision exercising a power of appointment, the testator or the testator's agent may notify certain persons of the existence of the will. Provides that a written notice of the existence of a will contains certain information. Provides for a procedure to contest certain wills. Provides that if a notice to contest the validity of a trust pertains to a trust created by a settlor who is still living, a complete copy of the trust instrument must be sent with the notice to each recipient. Sets forth certain complaint and notice requirements if a trust is being contested. Allows a court to increase, decrease, or waive the bond amount that:

(Continued next page)

Effective: July 1, 2023.

Freeman, Koch

(HOUSE SPONSOR — TORR)

January 11, 2023, read first time and referred to Committee on Judiciary.
January 19, 2023, amended, reported favorably — Do Pass. Reassigned to Committee on Appropriations pursuant to Rule 68(b).
January 26, 2023, reassigned to Committee on Rules and Legislative Procedure pursuant to Rule 68(b). Committee Report: Without recommendation, adopted.
January 30, 2023, read second time, ordered engrossed. Engrossed.
January 31, 2023, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 28, 2023, read first time and referred to Committee on Judiciary.
March 16, 2023, reported — Do Pass.

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Digest Continued

(1) a nonresident personal representative; or (2) a personal representative who becomes a nonresident; is to file in order to administer an unsupervised estate. Sets forth the requirements for: (1) a verified petition for a confidential health disclosure order; and (2) the court procedures after the verified petition is filed. Provides that if a settlor revokes a revocable trust and the trustee does not deliver the trust property, the remaining trust property becomes part of the revoking settlor's probate estate. Provides that certain grantors are entitled to reimbursement from a trust for certain taxes. Provides that an individual may execute certain authority for an application for public benefits on behalf of the individual. Sets forth requirements for the enforcement of a portability agreement contained within a premarital agreement or postmarital agreement. Makes conforming and clarifying changes. (The introduced version of this bill was prepared by the probate code study commission.)



March 16, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 287

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

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

1 SECTION 1. IC 16-36-4-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) A person who is
3 of sound mind and is at least eighteen (18) years of age may execute a
4 life prolonging procedures will declaration under section 11 of this
5 chapter or a living will declaration under section 10 of this chapter.
6 (b) A declaration under section 10 or 11 of this chapter must meet
7 the following conditions:
8 (1) Be voluntary.
9 (2) Be in writing.
10 (3) Be signed by the person making the declaration or by another
11 person in the declarant's presence and at the declarant's express
12 direction.
13 (4) Be dated.
14 (5) Be signed in the presence of at least two (2) competent
15 witnesses who are at least eighteen (18) years of age **or a notary**

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- 1 **public.**
 2 (c) A witness to a living will declaration under subsection (b)(5)
 3 may not meet any of the following conditions:
 4 (1) Be the person who signed the declaration on behalf of and at
 5 the direction of the declarant.
 6 (2) Be a parent, spouse, or child of the declarant.
 7 (3) Be entitled to any part of the declarant's estate whether the
 8 declarant dies testate or intestate, including whether the witness
 9 could take from the declarant's estate if the declarant's will is
 10 declared invalid.
 11 (4) Be directly financially responsible for the declarant's medical
 12 care.
 13 For the purposes of subdivision (3), a person is not considered to be
 14 entitled to any part of the declarant's estate solely by virtue of being
 15 nominated as a personal representative or as the attorney for the estate
 16 in the declarant's will.
 17 (d) The living will declaration of a person diagnosed as pregnant by
 18 the attending physician has no effect during the person's pregnancy.
 19 (e) The life prolonging procedures will declarant or the living will
 20 declarant shall notify the declarant's attending physician of the
 21 existence of the declaration. An attending physician who is notified
 22 shall make the declaration or a copy of the declaration a part of the
 23 declarant's medical records.
 24 (f) A living will declaration under section 10 of this chapter:
 25 (1) does not require the physician to use, withhold, or withdraw
 26 life prolonging procedures but is presumptive evidence of the
 27 patient's desires concerning the use, withholding, or withdrawal
 28 of life prolonging procedures under this chapter; and
 29 (2) shall be given great weight by the physician in determining the
 30 intent of the patient who is mentally incompetent.
 31 (g) A life prolonging procedures will declaration under section 11
 32 of this chapter does require the physician to use life prolonging
 33 procedures as requested.
 34 SECTION 2. IC 29-1-7-15.1, AS AMENDED BY P.L.184-2021,
 35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2023]: Sec. 15.1. (a) When it has been determined that a
 37 decedent died intestate and letters of administration have been issued
 38 upon the decedent's estate, no will shall be probated unless it is
 39 presented for probate:
 40 (1) before the court decrees final distribution of the estate; or
 41 (2) in an unsupervised estate, before a closing statement has been
 42 filed.



1 (b) No real property located in Indiana of which any person may die
2 seized shall be sold by the executor or administrator of the deceased
3 person's estate to pay any debt or obligation of the deceased person,
4 which is not a lien of record in the county in which the real property is
5 located or to pay any costs of administration of any decedent's estate,
6 unless a petition for administration is filed in court under section 5 of
7 this chapter not later than five (5) months after the decedent's death and
8 the clerk issues letters testamentary or letters of administration not later
9 than seven (7) months after the decedent's death.

10 (c) If:
11 (1) a petitioner files a petition for administration filed in an estate
12 to which subsection (b) may apply; and
13 (2) the clerk of the court does not issue letters testamentary or of
14 administration ~~and publish notice of the estate administration~~
15 under subsection (a) not later than thirty (30) days after the
16 petition for administration has been filed;

17 the petitioner shall serve the following notice on each creditor in the
18 manner provided under section 7(d) of this chapter not later than
19 forty-five (45) days after the petition for administration has been filed:

20 NOTICE OF PETITION FOR ADMINISTRATION

21 In the _____ Court of _____ County, Indiana.

22 Notice is hereby given that a petition for administration was filed on
23 the ___ day of ___, 20___, in cause number _____,
24 concerning the estate of _____, deceased, who died on the
25 ___ day of _____, 20___, but the clerk of the court has not issued
26 letters testamentary or of administration.

27 The estate includes real property that may be subject to sale
28 restrictions under IC 29-1-7-15.1.

29 All persons who have claims against this estate, whether or not now
30 due, must file their claims in the office of the clerk of this court not
31 later than seventy-five (75) days after the date on which the petition for
32 administration was filed, or not later than thirty (30) days after the date
33 on which the petitioner serves this notice, to prevent the application of
34 real property sale restrictions to the claims, whichever is later.

35 Dated at _____, Indiana this ___ day of _____,
36 20___.

37 _____ as the Petitioner.

38 (d) The limitation described in subsection (b) on the sale of real
39 property does not apply to a claim if:

40 (1) a petition for administration is filed in court under section 5 of
41 this chapter not later than five (5) months after the decedent's
42 death;



- 1 (2) the claimant files the claim in the office of the clerk of the
 2 court not later than:
 3 (A) seventy-five (75) days after the date on which the petition
 4 for administration was filed; or
 5 (B) thirty (30) days after the date on which the petitioner
 6 serves the notice required in subsection (c);
 7 whichever is later; and
 8 (3) the failure of the clerk to issue letters testamentary or letters
 9 of administration not later than seven (7) months after the
 10 decedent's death is not the result of the petitioner's failure to
 11 comply with the requirements of:
 12 (A) this article;
 13 (B) the Indiana Rules of Trial Procedure; or
 14 (C) the local rules of the court.
- 15 (e) The court shall order the limitation described in subsection (b)
 16 inapplicable to a claimant's claim concerning the sale of real property
 17 if any interested person files a motion for findings under this subsection
 18 and the court finds that the following conditions apply:
 19 (1) A petition for administration was filed in court under section
 20 5 of this chapter not later than five (5) months after the decedent's
 21 death.
 22 (2) More than thirty (30) days have elapsed since the petition was
 23 filed.
 24 (3) The claimant is a reasonably ascertainable creditor under
 25 section 7 of this chapter.
 26 (4) The claimant filed a claim in the estate not later than
 27 seventy-five (75) days after the date on which the petition for
 28 administration was filed, or not later than thirty (30) days after the
 29 date on which the petitioner serves the notice required in
 30 subsection (c), whichever is later.
 31 (5) The petitioner has not satisfied the provisions of subsection
 32 (c).
- 33 (f) The title of any real property or interest therein purchased in
 34 good faith and for a valuable consideration from the heirs of any person
 35 who died seized of the real property shall not be affected or impaired
 36 by any devise made by the person of the real property so purchased,
 37 unless:
 38 (1) the will containing the devise has been probated and recorded
 39 in the office of the clerk of the court having jurisdiction within
 40 five (5) months after the death of the testator; or
 41 (2) an action to contest the will's validity is commenced within the
 42 time provided by law and, as a result, the will is ultimately



1 probated.

2 (g) Except as provided in subsection (h), the will of the decedent
3 shall not be admitted to probate unless the will is presented for probate
4 before the latest of the following dates:

- 5 (1) Three (3) years after the individual's death.
6 (2) Sixty (60) days after the entry of an order denying the probate
7 of a will of the decedent previously offered for probate and
8 objected to under section 16 of this chapter.
9 (3) Sixty (60) days after entry of an order revoking probate of a
10 will of the decedent previously admitted to probate and contested
11 under section 17 of this chapter.

12 However, in the case of an individual presumed dead under
13 IC 29-2-5-1, the three (3) year period commences with the date the
14 individual's death has been established by appropriate legal action.

15 (h) This subsection applies with respect to the will of an individual
16 who dies after June 30, 2011. If:

- 17 (1) no estate proceedings have been commenced for a decedent;
18 and
19 (2) an asset of the decedent remains titled or registered in the
20 name of the decedent;

21 the will of the decedent may be presented to the court for probate and
22 admitted to probate at any time after the expiration of the deadline
23 determined under subsection (g) for the sole purpose of transferring the
24 asset described in subdivision (2). A will presented for probate under
25 this subsection is subject to all rules governing the admission of wills
26 to probate.

27 SECTION 3. IC 29-1-7-16.5 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
29 1, 2023]: **Sec. 16.5. (a) A testator or a testator's agent at the
30 testator's direction may send a written notice under this section to
31 the following:**

- 32 **(1) Any person named as a beneficiary in the testator's will.**
33 **(2) Any person who would be entitled to inherit from the
34 testator under IC 29-1-2-1 if the testator died intestate on the
35 date the notice is received.**
36 **(3) Any person who the testator wishes to bar from contesting
37 the validity of the testator's will under this chapter.**

38 **(b) If a testator's will includes a provision exercising a power of
39 appointment, the testator or the testator's agent acting at the
40 testator's direction may send a written notice that complies with
41 this section to the following:**

- 42 **(1) Any person named in the exercise of the power of**



1 **appointment as a beneficiary.**

2 **(2) Any person who would be entitled to receive property for**
3 **which the testator exercises the power of appointment if the**
4 **testator failed to validly exercise the power of appointment.**

5 **(3) A trustee of a trust holding property subject to the power**
6 **of appointment.**

7 **(4) A person the testator wishes to be bound to the validity of**
8 **the exercise of the power of appointment under the testator's**
9 **will.**

10 **(c) A testator or a testator's agent must send a written notice**
11 **under this section to a recipient described in subsection (a) in**
12 **accordance with Rules 4.1 through 4.6 of the Indiana Rules of Trial**
13 **Procedure.**

14 **(d) A written notice under this section must include the**
15 **following:**

16 **(1) A copy of the testator's will.**

17 **(2) The name and address of each person to whom the testator**
18 **has sent the written notice.**

19 **(e) A person who wishes to contest the validity of the will must**
20 **file a proceeding to contest the will within ninety (90) days after the**
21 **receipt of the notice, unless the testator dies before the ninety (90)**
22 **day period has elapsed.**

23 **(f) Transmission of notice under this section to a recipient at the**
24 **recipient's last known address is prima facie evidence that notice**
25 **was received, unless controverted by competent evidence to the**
26 **contrary. A person is deemed to have received a written notice**
27 **under this section if the written notice was sent to any person who**
28 **under IC 29-1-1-20 may represent and bind that person.**

29 **(g) A person who receives a written notice under this section**
30 **and wishes to contest the will or the testator's exercise of a power**
31 **of appointment must file a proceeding in the court that would have**
32 **subject matter jurisdiction of the testator's will, as a separate cause**
33 **of action, not later than ninety (90) days after the person's receipt**
34 **of the written notice.**

35 **(h) A proceeding to contest filed under subsection (g) must name**
36 **the following persons, if the persons exist or are living, as party**
37 **defendants:**

38 **(1) The testator.**

39 **(2) The testator's spouse.**

40 **(3) Any person who would be entitled to inherit under**
41 **IC 29-1-2-1 if the testator died intestate on the date of the**
42 **written notice sent under this section.**



- 1 **(4) Beneficiaries named or who are discernable as part of a**
 2 **class identified in the will.**
 3 **(5) The primary personal representative nominated in the**
 4 **will.**
 5 **(6) Any person who was sent a written notice under this**
 6 **section.**
 7 **(i) A proceeding filed under subsection (g) must allege at least**
 8 **one (1) of the following:**
 9 **(1) The will does not meet the requirements for the execution**
 10 **of a valid will under IC 29-1-5-3 or IC 29-1-21-4.**
 11 **(2) The testator was of unsound mind at the time the will was**
 12 **executed.**
 13 **(3) The will was unduly executed.**
 14 **(4) The will was executed under duress or was obtained by**
 15 **fraud.**
 16 **(5) Any other objection to the validity of the will, the probate**
 17 **of the will, or the testator's exercise of a power of**
 18 **appointment.**
 19 **(j) If:**
 20 **(1) a testator resided in Indiana at the time of death;**
 21 **(2) a notice sent under subsection (c) was received by a**
 22 **person;**
 23 **(3) ninety (90) days or more have passed after the person**
 24 **received the notice before the testator's death; and**
 25 **(4) the person did not file a will contest under this section**
 26 **within ninety (90) days after the person's receipt of the notice;**
 27 **that person is barred from filing a proceeding under section 17 of**
 28 **this chapter or under this section. That person may not seek relief**
 29 **as a co-plaintiff or intervenor in a proceeding commenced by**
 30 **another person under section 17 of this chapter or this section.**
 31 **(k) If the testator dies before the end of the ninety (90) day**
 32 **period under subsection (e), the bar and limitation set forth under**
 33 **subsection (g) do not apply to the testator's will that was disclosed**
 34 **under subsection (d), and section 17 of this chapter applies to a will**
 35 **contest after the entry of an order admitting a will of the testator**
 36 **to probate.**
 37 **(l) If the ninety (90) day period described in subsection (e) has**
 38 **not expired as of the date of the death of the testator, the bar and**
 39 **limitation under subsection (g) do not apply to the testator's will**
 40 **that was disclosed in the written notice.**
 41 **(m) The failure of a testator to use the procedures or adhere to**
 42 **the requirements of this section may not be offered or cited as**



1 **evidence that a will is not valid.**

2 **(n) Nothing in this section precludes a testator who provides a**
 3 **written notice under this section from executing a later will or**
 4 **codicil, but the written notice sent with respect to an earlier will or**
 5 **a proceeding under this section has no effect on a determination of**
 6 **the validity of the later will or codicil.**

7 **(o) Nothing in this section shall be construed as abrogating the**
 8 **right or cutting short the time period for a spouse to seek an**
 9 **elective share under IC 29-1-3-1.**

10 SECTION 4. IC 29-1-7-17, AS AMENDED BY P.L.194-2017,
 11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2023]: Sec. 17. **Except as provided in section 16.5 of this**
 13 **chapter**, any interested person may contest the validity of any will in
 14 the court having jurisdiction over the probate of the will within three
 15 (3) months after the date of the order admitting the will to probate by
 16 filing in the same court, in a separate cause of action, the person's
 17 allegations in writing verified by affidavit, setting forth:

- 18 (1) the unsoundness of mind of the testator;
 19 (2) the undue execution of the will;
 20 (3) that the will was executed under duress or was obtained by
 21 fraud; or
 22 (4) any other valid objection to the will's validity or the probate of
 23 the will.

24 The executor and all other persons beneficially interested in the will
 25 shall be made defendants to the action.

26 SECTION 5. IC 29-1-7.5-1 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Upon the filing
 28 of a petition under IC 29-1-7-5, the following persons may at any time
 29 petition the court for authority to have a decedent's estate administered
 30 without court supervision:

- 31 (1) The decedent's heirs at law if the decedent dies intestate.
 32 (2) The legatees and devisees under the decedent's will.
 33 (3) The personal representative.

34 (b) The clerk of the court shall **give sign and issue** a notice of the
 35 filing of a petition for unsupervised administration. ~~to creditors of the~~
 36 ~~decedent as provided in IC 29-1-7-7(c) and IC 29-1-7-7(d).~~

37 **(c) The petitioner or the petitioner's agent shall serve the notice**
 38 **described in subsection (b) upon the known creditors of the**
 39 **decedent as provided in IC 29-1-7-7(c) and IC 29-1-7-7(d).**

40 SECTION 6. IC 29-1-7.5-1.5, AS AMENDED BY P.L.143-2009,
 41 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2023]: Sec. 1.5. (a) As soon as letters testamentary or letters



1 of administration have been issued, the clerk of the court shall ~~serve by~~
 2 ~~mail sign and issue~~ a notice of the ~~petition on each of~~ **unsupervised**
 3 **administration addressed to** the:

- 4 (1) decedent's heirs at law, if the decedent died intestate; or
 5 (2) ~~the~~ devisees and legatees under the decedent's will, **if the**
 6 **decedent died with a will that is admitted to probate. The**
 7 ~~mailing of notice under this subsection may not be waived.~~

8 (b) The notice required under subsection (a) shall read substantially
 9 as follows:

10 NOTICE OF UNSUPERVISED ADMINISTRATION TO BE
 11 MAILED TO A DISTRIBUTEE

12 In the _____ Court of _____ County, Indiana.

13 Notice is hereby given that _____, on the ____ day of
 14 _____, 20__, was appointed as the personal representative of the
 15 estate of _____, who died on the ____ day of _____,
 16 20__, {leaving a will} {not leaving a will}. The estate will be
 17 administered without court supervision.

18 As an heir, a devisee, or a legatee of the estate (a "distributee"), you
 19 are advised of the following information:

- 20 (1) The personal representative has the authority to take actions
 21 concerning the estate without first consulting you.
 22 (2) The personal representative may be serving without posting a
 23 bond with the court. You have the right to petition the court to set
 24 a bond for your protection. You also have the right to petition the
 25 court to remove a corporate personal representative not later than
 26 thirty (30) days after this notice if the ownership or control of the
 27 corporate personal representative has changed since the execution
 28 of the decedent's will.
 29 (3) The personal representative will not obtain court approval of
 30 any action, including the amount of attorney's or personal
 31 representative's fees.
 32 (4) Within two (2) months after the appointment of the personal
 33 representative, the personal representative must prepare an
 34 inventory of the estate's assets. You have the right to request and
 35 receive a copy of this inventory from the personal representative.
 36 However, if you do not participate in the residue of the estate and
 37 receive only a specific bequest in money or personal property that
 38 will be paid, you are entitled only to the information concerning
 39 your specific bequest and not to the assets of the estate as a
 40 whole.
 41 (5) The personal representative is required to furnish you with a
 42 copy of the closing statement that will be filed with the court, and,



1 if your interests are affected, with a full account in writing of the
2 administration of the estate.

3 (6) You must file an objection to the closing statement within
4 three (3) months after the closing statement is filed with the court
5 if you want the court to consider your objection.

6 (7) If an objection to the closing statement is not filed with the
7 court within three (3) months after the filing of the closing
8 statement, the estate is closed and the court does not have a duty
9 to audit or make an inquiry.

10 IF, AT ANY TIME BEFORE THE ESTATE IS CLOSED, YOU
11 HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF
12 THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU
13 HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED
14 ADMINISTRATION.

15 IF YOU DO NOT UNDERSTAND THIS NOTICE, YOU SHOULD
16 ASK YOUR ATTORNEY TO EXPLAIN IT TO YOU.

17 The personal representative's address is _____, and
18 telephone number is _____. The attorney for the personal
19 representative is _____, whose address is
20 _____ and telephone number is _____.

21 Dated at _____, Indiana, this _____ day of
22 _____, 20__.

23 CLERK OF THE _____ COURT

24 **(c) The issuance and mailing of notice under this section may**
25 **not be waived.**

26 **(d) After the notice is issued under subsection (c), the personal**
27 **representative or the personal representative's agent shall mail the**
28 **notice to each person whose name and address is required to be**
29 **listed in the notice under subsection (a).**

30 SECTION 7. IC 29-1-7.5-2.5 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2.5. (a) ~~Except as~~
32 ~~provided in subsection (c);~~ A personal representative is not required to
33 execute and file a bond relating to the duties of the personal
34 representative's office under this chapter unless:

- 35 (1) the will provides for the execution and filing of a bond; or
36 (2) the court finds, on the court's own motion or on motion by an
37 interested person, that a bond is necessary to protect creditors,
38 heirs, devisees, and legatees.

- 39 (b) If a bond is required under subsection (a):
40 (1) the amount of the bond shall be determined by the court; and
41 (2) the bond shall be administered;

42 under IC 29-1-11.



1 (c) If a personal representative is not an Indiana resident or ceases
 2 to be an Indiana resident, the personal representative **at the discretion**
 3 **of the court shall** shall execute and file a bond under IC 29-1-10-1.
 4 The amount of the bond may be ~~adjusted~~ **increased, decreased, or**
 5 **reduced to zero (0)** at the court's discretion.

6 SECTION 8. IC 29-1-10-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Domiciliary
 8 letters testamentary or domiciliary letters of general administration may
 9 be granted to one (1) or more of the persons mentioned in this
 10 subsection, natural or corporate, who are not disqualified, in the
 11 following order:

12 (1) To the executor or executors designated in a will that has been
 13 admitted to probate.

14 (2) To a surviving spouse who is a devisee in a will that has been
 15 admitted to probate.

16 (3) To a devisee in a will that has been admitted to probate.

17 (4) To the surviving spouse, or to the person or persons
 18 nominated by the surviving spouse or to the surviving spouse and
 19 the person or persons nominated by the surviving spouse.

20 (5) To:

21 (A) an heir;

22 (B) the person or persons nominated by an heir; or

23 (C) an heir and the person or persons nominated by an heir.

24 (6) If there is not a person listed in subdivisions (1) through (5),
 25 then to any other qualified person.

26 (b) No person is qualified to serve as a domiciliary personal
 27 representative who is:

28 (1) under eighteen (18) years of age;

29 (2) incapacitated unless the incapacity is caused only by:

30 (A) physical illness;

31 (B) physical impairment; or

32 (C) physical infirmity;

33 (3) a convicted felon, either under the laws of the United States or
 34 of any state or territory of the United States;

35 (4) a resident corporation not authorized to act as a fiduciary in
 36 this state; or

37 (5) a person whom the court finds unsuitable.

38 (c) A nonresident individual or corporate fiduciary may qualify and
 39 serve as a joint personal representative with a resident personal
 40 representative only by:

41 (1) filing with the court that has jurisdiction of the administration
 42 of the decedent's estate a bond in an amount:



- 1 (A) not less than:
- 2 (i) the probable value of the estate's personal property; plus
- 3 (ii) the estimated rents and profits to be derived from the
- 4 property in the estate during the probate period; and
- 5 (B) not greater than the probable gross value of the estate; and
- 6 (2) otherwise meeting the qualifications of subsection (b).

7 **If the court authorizes the joint personal representative to**
 8 **administer the estate without court supervision under IC 29-1-7.5,**
 9 **the court may exercise its discretion under IC 29-1-7.5-2.5(c) to**
 10 **increase, decrease, or waive the bond that the nonresident joint**
 11 **personal representative would otherwise be required to file under**
 12 **this subsection.**

13 (d) A nonresident individual who otherwise qualifies under
 14 subsection (b) may qualify to serve as a personal representative in
 15 Indiana only by filing with the court that has jurisdiction of the
 16 administration of the decedent's estate:

- 17 (1) notice in writing of the individual's acceptance of the
- 18 appointment as personal representative;
- 19 (2) notice of the appointment of a resident agent to accept service
- 20 of process, notices, and other documents; and
- 21 (3) a bond in an amount:
- 22 (A) not less than:
- 23 (i) the probable value of the estate's personal property; plus
- 24 (ii) the estimated rents and profits to be derived from the
- 25 property in the estate during the probate period; and
- 26 (B) not greater than the probable gross value of the estate.

27 **If the court authorizes the nonresident personal representative to**
 28 **administer the estate without court supervision under IC 29-1-7.5,**
 29 **the court may exercise its discretion under IC 29-1-7.5-2.5(c) to**
 30 **increase, decrease, or waive the bond that the nonresident personal**
 31 **representative would otherwise be required to file under**
 32 **subdivision (3).**

33 (e) If a personal representative becomes a nonresident of this state,
 34 the representative remains qualified to serve only if the representative
 35 files with the court that has jurisdiction of the administration of the
 36 estate a bond in an amount:

- 37 (1) not less than:
- 38 (A) the probable value of the estate's personal property; plus
- 39 (B) the estimated rents and profits to be derived from the
- 40 property in the estate during the probate period; and
- 41 (2) not greater than the probable gross value of the estate.

42 **If the court previously authorized the personal representative to**



1 **administer the estate without court supervision under IC 29-1-7.5,**
 2 **the court may exercise its discretion under IC 29-1-7.5-2.5(c) to**
 3 **increase, decrease, or waive the bond that the nonresident personal**
 4 **representative would otherwise be required to file under this**
 5 **subsection.**

6 (f) A nonresident individual who satisfies the conditions of
 7 subsection (d) or (e) submits personally to the jurisdiction of the court
 8 in any proceeding that relates to the estate of the decedent.

9 SECTION 9. IC 29-3-1-2.6 IS ADDED TO THE INDIANA CODE
 10 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 11 **1, 2023]: Sec. 2.6. "Confidential health disclosure order", for**
 12 **purposes of IC 29-3-4-1.5, means an order issued by the court**
 13 **under IC 29-3-4-1.5.**

14 SECTION 10. IC 29-3-1-7.2 IS ADDED TO THE INDIANA CODE
 15 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 16 **1, 2023]: Sec. 7.2. "Health care provider", for purposes of section**
 17 **9.5 of this chapter and IC 29-3-4-1.5, has the meaning set forth in**
 18 **IC 16-18-2-163(a)(1).**

19 SECTION 11. IC 29-3-1-9.5 IS ADDED TO THE INDIANA CODE
 20 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 21 **1, 2023]: Sec. 9.5. "Medical evidence of capacity or incapacity", for**
 22 **purposes of IC 29-3-4-1.5, means any evidence that is relevant to**
 23 **determine a person's capacity or incapacity. The term includes**
 24 **admissible written and electronic medical records that:**

25 **(1) are maintained by a health care provider in the course of**
 26 **examining, evaluating, or treating an adult individual;**

27 **(2) are relevant to the:**

28 **(A) health, physical, or mental condition of the adult**
 29 **individual;**

30 **(B) ability or capacity of the adult individual to make and**
 31 **carry out decisions to provide for the individual's own**
 32 **self-care or management of the individual's property; or**

33 **(C) individual's ability to benefit from or use less**
 34 **restrictive alternatives to guardianship under IC 29-3-5;**

35 **and**

36 **(3) may be admissible as evidence in a hearing held under**
 37 **IC 29-3-4-1.5 if authenticated and identified as a business**
 38 **record or presented in sworn testimony by a licensed health**
 39 **care provider.**

40 SECTION 12. IC 29-3-4-1.5 IS ADDED TO THE INDIANA CODE
 41 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 42 **1, 2023]: Sec. 1.5. (a) A person may file a verified petition for the**



- 1 issuance of a confidential health disclosure order against a
- 2 respondent health care provider that:
- 3 (1) has existing health or medical records in the possession or
- 4 custody of the respondent health care provider that contain
- 5 medical evidence of capacity or incapacity about an alleged
- 6 incapacitated person; or
- 7 (2) may be able to create a report to summarize medical
- 8 evidence of capacity or incapacity about an alleged
- 9 incapacitated person.
- 10 (b) A verified petition filed under this section must state the
- 11 following:
- 12 (1) The name, age, and residence address of the alleged
- 13 incapacitated person.
- 14 (2) The name and address of any legal counsel that represents
- 15 the alleged incapacitated person, which is known or
- 16 reasonably available to the petitioner.
- 17 (3) The name and last known address of each person
- 18 described in IC 29-3-6-1(a)(4)(A) through
- 19 IC 29-3-6-1(a)(4)(D).
- 20 (4) Facts sufficient to establish that the following conditions
- 21 are met:
- 22 (A) Any person alleges that the alleged incapacitated
- 23 person requires the appointment of a guardian or limited
- 24 guardian under this article.
- 25 (B) The alleged incapacitated person does not possess
- 26 medical evidence of capacity or incapacity sufficient to
- 27 establish or rebut evidence that may be presented in a
- 28 hearing for the appointment of a guardian under
- 29 IC 29-3-5-1.
- 30 (C) The alleged incapacitated person cannot provide
- 31 written authorization under 45 CFR 164.508 for disclosure
- 32 of medical evidence of capacity or incapacity about the
- 33 alleged incapacitated person.
- 34 (D) No other person is able and willing to provide a written
- 35 authorization under 45 CFR 164.502(g)(2) for the
- 36 disclosure of medical evidence of capacity or incapacity
- 37 about the alleged incapacitated person.
- 38 (E) The respondent health care provider possesses medical
- 39 evidence of capacity or incapacity about the alleged
- 40 incapacitated person and is not willing to disclose the
- 41 medical evidence of capacity or incapacity without a
- 42 written authorization under 45 CFR 164.508 or a court



1 order under 45 CFR 164.512.

2 (5) The name and address of the respondent health care
3 provider.

4 (6) A description of:

5 (A) the existing health or medical records or the type of
6 existing health or medical records in the possession or
7 custody of the respondent health care provider that
8 contain medical evidence of capacity or incapacity about
9 the alleged incapacitated person; or

10 (B) a narrative report sought from the respondent health
11 care provider that would identify medical evidence of
12 capacity or incapacity about the alleged incapacitated
13 person.

14 A petition filed under this section is not a confidential case record.
15 However, any protected health information contained within the
16 petition must be excluded from the publicly filed document and
17 must be filed as a confidential document under Rule 5(B) of the
18 Indiana Rules on Access to Court Records.

19 (c) A verified petition under this section may be combined with
20 any other petition for relief filed under this article, including a
21 petition to establish a limited or full guardianship.

22 (d) If the court receives a verified petition that complies with the
23 requirements of subsection (b), the court shall issue an order to set
24 a hearing date. In the order setting the hearing date, the court shall
25 do the following:

26 (1) Appoint an attorney or guardian ad litem to represent the
27 alleged incapacitated person if the verified petition does not
28 identify an attorney under subsection (b)(2).

29 (2) State that any person with an objection to a confidential
30 health disclosure order being issued in response to a verified
31 petition filed under this section shall file a written objection
32 not later than ten (10) days prior to the hearing date set under
33 subsection (e) or shall appear in person at the hearing to
34 testify to the objection.

35 (e) In its discretion, the court shall set the hearing required
36 under subsection (d) on a date that is as soon as practicable.

37 (f) Not later than three (3) business days after the court issues
38 an order under subsection (d), the petitioner shall serve a copy of
39 the verified petition and a copy of the order setting a hearing date,
40 by first class mail, upon the following:

41 (1) The respondent health care provider.

42 (2) The alleged incapacitated person or the person having



- 1 **physical custody and care of the alleged incapacitated person.**
- 2 **(3) The alleged incapacitated person's attorney described in**
- 3 **subsection (b)(2) or the court appointed attorney or guardian**
- 4 **ad litem appointed under subsection (d)(1).**
- 5 **(4) Each individual identified in subsection (b)(3) of the**
- 6 **verified petition.**
- 7 **(5) Each respondent health care provider identified in**
- 8 **subsection (b)(5) of the verified petition.**
- 9 **(6) Any other person to whom the court directs that notice be**
- 10 **served.**
- 11 **Any person who is entitled to receive notice under this subsection**
- 12 **may waive the service of notice in writing.**
- 13 **(g) At the hearing, the petitioner has the burden of proving, by**
- 14 **a preponderance of the evidence, that the conditions alleged in**
- 15 **subsection (b)(4) are met. An individual entitled to receive notice**
- 16 **under subsection (f) may present evidence at the hearing.**
- 17 **(h) If the court finds that the petitioner has proven that the**
- 18 **conditions in subsection (b)(4) apply and it is in the best interest of**
- 19 **the alleged incapacitated person to issue a confidential health**
- 20 **disclosure order, it shall grant the verified petition and issue a**
- 21 **confidential health disclosure order that requires the respondent**
- 22 **health care provider to:**
- 23 **(1) produce a copy of the alleged incapacitated person's**
- 24 **medical records that contain medical evidence concerning the**
- 25 **capacity or incapacity of the person; or**
- 26 **(2) prepare a written narrative report for the court with a**
- 27 **professional assessment of the capacity or incapacity of the**
- 28 **alleged incapacitated person to make personal, financial, and**
- 29 **health care decisions without substantial assistance and the**
- 30 **suitability of less restrictive alternatives to a guardianship.**
- 31 **(i) A confidential health disclosure order issued by a court**
- 32 **under this section is intended to comply with the standard in 45**
- 33 **CFR 164.512(e) for disclosure of protected health information in**
- 34 **judicial proceedings.**
- 35 **(j) The respondent health care provider shall comply with the**
- 36 **confidential health disclosure order and transmit the medical**
- 37 **evidence of capacity or incapacity of the person described in**
- 38 **subsection (h) to the court. Upon receipt of the respondent health**
- 39 **care provider's response, the court shall:**
- 40 **(1) serve a copy of the medical records or medical report**
- 41 **produced by the respondent health care provider to the**
- 42 **alleged incapacitated person and the alleged incapacitated**



1 person's attorney or guardian ad litem, not more than five (5)
2 days after receipt of the records; and

3 (2) determine, in the court's discretion, whether it is in the
4 best interest of the alleged incapacitated person to disclose all
5 or part of the medical records or medical report produced by
6 the respondent health care provider to any other individual
7 identified in the verified petition under subsection (b)(3).

8 To make a determination under subdivision (2) concerning
9 whether the medical evidence of capacity or incapacity should be
10 disclosed to any other individual, the court shall consider all
11 material facts and circumstances stated in the filed pleadings and
12 in any hearing record; medical evidence that contains a specific
13 diagnosis of functional impairment of the alleged incapacitated
14 person; and the likelihood that a limited guardianship or full
15 guardianship may be warranted for the alleged incapacitated
16 person in the current proceeding or a future proceeding under this
17 article.

18 (k) Unless otherwise ordered by the court, the petitioner shall
19 bear the costs and expenses incurred by the respondent health care
20 provider to comply with the confidential health disclosure order.

21 (l) The record of:

22 (1) any court hearing held under this section;

23 (2) all exhibits entered during a hearing;

24 (3) all records or reports produced by a respondent health
25 care provider in response to a confidential health disclosure
26 order; and

27 (4) all written objections filed or entered as evidence in a
28 proceeding under this section;

29 must be filed as a nonpublic document under Rule 5 of the Indiana
30 Rules on Access to Court Records.

31 (m) Once any action filed under this article concerning the
32 alleged incapacitated person has been fully adjudicated, every
33 individual who received any records in the course of those
34 proceedings shall destroy all documents that contain medical
35 evidence of capacity or incapacity about the individual alleged to
36 be incapacitated.

37 SECTION 13. IC 29-3-8-8 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) The court, at the
39 time of appointment or later, on its own motion or on petition of the
40 protected person or other person approved by the court, may:

41 (1) confer upon the guardian any additional responsibilities and
42 powers;



1 (2) increase or decrease the bond of the guardian to satisfy the
2 requirements of IC 29-3-7-1; or
3 (3) limit the responsibilities and powers of the guardian otherwise
4 conferred by this article and create a limited guardianship.
5 (b) However, all limitations must be endorsed on the guardian's
6 letters. Following the same procedure, a limitation may be removed or
7 modified and appropriate revised letters issued.
8 **(c) If a protected person files a petition to limit or modify a**
9 **guardianship under this section and the protected person is unable**
10 **to obtain medical records from a health care provider, the:**
11 **(1) protected person;**
12 **(2) attorney of record for the protected person;**
13 **(3) court appointed guardian ad litem for the protected**
14 **person; or**
15 **(4) volunteer advocates for seniors or incapacitated adults**
16 **program appointed under IC 29-3-8.5;**
17 **may file a petition under IC 29-3-4-1.5 to request a confidential**
18 **health disclosure order and shall provide notice of the petition to**
19 **any court appointed guardian ad litem of the protected person**
20 **under IC 29-3-4-1.5(f)(3). A petition filed under this subsection that**
21 **contains an allegation that the protected person has made a direct**
22 **request for and has been denied access to the medical records has**
23 **satisfied the requirement of IC 29-3-4-1.5(b)(4)(E).**
24 SECTION 14. IC 29-3-12-1, AS AMENDED BY P.L.184-2021,
25 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2023]: Sec. 1. (a) Except as provided in section 6 or 7 of this
27 chapter, the court shall terminate the guardianship of a minor upon:
28 (1) the minor's attaining eighteen (18) years of age; or
29 (2) the minor's death.
30 The court may terminate the guardianship of a minor upon the minor's
31 adoption or marriage.
32 (b) The court shall terminate the guardianship of an incapacitated
33 person upon:
34 (1) adjudication by the court that the protected person is no longer
35 an incapacitated person; or
36 (2) the death of the protected person.
37 (c) The court may terminate any guardianship if:
38 (1) the guardianship property does not exceed the value of three
39 thousand five hundred dollars (\$3,500);
40 (2) the guardianship property is reduced to three thousand five
41 hundred dollars (\$3,500);
42 (3) the domicile or physical presence of the protected person is



1 changed to another state and a guardian has been appointed for
 2 the protected person and the protected person's property in that
 3 state; or

4 (4) the guardianship is no longer necessary for any other reason.

5 **(d) If a protected person intends to file a petition to terminate**
 6 **a guardianship under this section and the protected person is**
 7 **unable to obtain medical records in support of a petition to**
 8 **terminate a guardianship from a health care provider, the:**

9 **(1) protected person;**

10 **(2) attorney of record for the protected person;**

11 **(3) court appointed guardian ad litem for the protected**
 12 **person; or**

13 **(4) volunteer advocates for seniors or incapacitated adults**
 14 **program appointed under IC 29-3-8.5;**

15 **may file a petition under IC 29-3-4-1.5 to request a confidential**
 16 **health disclosure order and shall provide notice of the petition to**
 17 **any court appointed guardian ad litem of the protected person**
 18 **under IC 29-3-4-1.5(f)(3). A petition filed under this subsection that**
 19 **contains an allegation that the protected person has made a direct**
 20 **request for and has been denied access to the medical records has**
 21 **satisfied the requirement of IC 29-3-4-1.5(b)(4)(E).**

22 ~~(d)~~ **(e)** When a guardianship terminates otherwise than by the death
 23 of the protected person, the powers of the guardian cease, except that
 24 the guardian may pay the claims and expenses of administration that
 25 are approved by the court and exercise other powers that are necessary
 26 to complete the performance of the guardian's trust, including payment
 27 and delivery of the remaining property for which the guardian is
 28 responsible:

29 (1) to the protected person;

30 (2) in the case of an unmarried minor, to a person having care and
 31 custody of the minor with whom the minor resides;

32 (3) to a trust approved by the court, including a trust created by
 33 the guardian, in which:

34 (A) the protected person is the sole beneficiary of the trust;

35 and

36 (B) the terms of the trust satisfy the requirements of Section
 37 2503(c) of the Internal Revenue Code and the regulations
 38 under that Section;

39 (4) to a custodian under the Uniform Transfers to Minors Act
 40 (IC 30-2-8.5); or

41 (5) to another responsible person as the court orders.

42 ~~(e)~~ **(f)** When a guardianship terminates by reason of the death of the



- 1 protected person, the powers of the guardian cease, except as follows:
 2 (1) The guardian may do the following:
 3 (A) Pay the expenses of administration that are approved by
 4 the court.
 5 (B) Exercise all other powers that are necessary to complete
 6 the performance of the guardian's trust. Permitted
 7 performances under this clause include the following:
 8 (i) The power to control the disposition of the deceased
 9 protected person's body.
 10 (ii) The power to make anatomical gifts.
 11 (iii) The power to request an autopsy.
 12 (iv) The power to make arrangements for funeral services.
 13 (v) The power to make other ceremonial arrangements as
 14 provided under IC 29-2-19-17.
 15 (C) Deliver the remaining property for which the guardian is
 16 responsible to the protected person's personal representative or
 17 to a person who presents the guardian with an affidavit under
 18 IC 29-1-8-1 or IC 29-2-1-2.
 19 (D) Request the health records of the protected person under
 20 IC 16-39-1-3(c)(4), except as provided in IC 16-39-1-3(d), if
 21 the protected person was an incapacitated person. The power
 22 of a guardian under this clause terminates sixty (60) days after
 23 the date of the protected person's death.
 24 (2) If the court approves the payment of expenses and obligations
 25 under this subdivision, then before the guardian delivers the
 26 remaining property under subdivision (1)(C), the guardian shall
 27 pay the following expenses and obligations in the amounts
 28 approved by the court and in decreasing order of priority:
 29 (A) Final administration expenses of the guardianship as
 30 approved by the court under subdivision (1)(A).
 31 (B) Unless prepaid by means of a funeral trust or before the
 32 protected person's death, the reasonable expenses for:
 33 (i) the protected person's funeral;
 34 (ii) a tombstone, monument, or other marker; and
 35 (iii) the disposition of the protected person's bodily remains;
 36 subject to the limitations provided in IC 29-1-14-9(a)(2).
 37 (C) Any statutory allowances payable to the protected person's
 38 surviving spouse or surviving child under IC 29-1-4-1.
 39 (D) The protected person's debts disclosed to the court and
 40 which could be filed and allowed as claims under IC 29-1-14,
 41 having the priority and preference established under
 42 IC 29-1-14-9(a)(4).



- 1 (E) Reasonable expenses of the protected person's last illness
- 2 disclosed to the court and which could be filed and allowed as
- 3 claims under IC 29-1-14, having the priority and preference
- 4 established under IC 29-1-14-9(a)(5).
- 5 (F) The protected person's debts disclosed to the court and
- 6 which could be filed and allowed as claims under IC 29-1-14,
- 7 having priority and preference established under
- 8 IC 29-1-14-9(a)(6).
- 9 (G) Any other obligations of the protected person disclosed to
- 10 the court and which could be filed and allowed as claims under
- 11 IC 29-1-14, having the priority established under
- 12 IC 29-1-14-9(a)(7).

13 SECTION 15. IC 29-3-12-5, AS AMENDED BY P.L.240-2017,
 14 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2023]: Sec. 5. (a) The authority and responsibility of a
 16 guardian terminate:

- 17 (1) at the time that the court designates;
- 18 (2) upon the death, resignation, or removal of the guardian; or
- 19 (3) upon the termination of the guardianship, subject to section
- 20 ~~1(d)~~ and 1(e) and 1(f) of this chapter.

21 (b) The termination for any reason of the authority and
 22 responsibility of the guardian does not affect the liability of the
 23 guardian for prior acts or the obligation to account for the guardian's
 24 conduct of the guardian's trust.

25 (c) The resignation of a guardian does not terminate the
 26 appointment of the guardian until the guardian's resignation and final
 27 account have been approved by the court.

28 SECTION 16. IC 30-4-3-1.5, AS ADDED BY P.L.238-2005,
 29 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2023]: Sec. 1.5. (a) This subsection applies to a trust created
 31 under an instrument executed after June 30, 2005. Unless the terms of
 32 a trust expressly provide that the trust is irrevocable, the settlor may
 33 revoke or amend the trust.

34 (b) This subsection applies to a revocable trust created or funded by
 35 at least two (2) settlors. Unless the terms of the trust provide otherwise:

- 36 (1) to the extent the trust consists of community property, the trust
- 37 may be:
- 38 (A) revoked by either spouse acting alone; and
- 39 (B) amended only by the joint action of both spouses; and
- 40 (2) to the extent the trust consists of property other than
- 41 community property, each settlor may revoke or amend the trust
- 42 with regard to the part of the trust property attributable to that



- 1 settlor's contribution.
- 2 (c) The settlor may revoke or amend a revocable trust as follows:
- 3 (1) The settlor may comply with a method provided in the terms
- 4 of the trust.
- 5 (2) If the terms of the trust do not provide a method or the terms
- 6 of the trust provide a method that is not expressly made the
- 7 exclusive method to revoke or amend the trust, the settlor may
- 8 revoke or amend the trust by:
- 9 (A) executing a later will or codicil that:
- 10 (i) expressly refers to the trust; or
- 11 (ii) specifically devises property that would otherwise have
- 12 passed according to the terms of the trust; or
- 13 (B) any other method that:
- 14 (i) is in writing; and
- 15 (ii) manifests clear and convincing evidence of the settlor's
- 16 intent.
- 17 (d) If a **settlor revokes a** revocable trust, ~~is revoked~~, the trustee
- 18 shall deliver the trust property:
- 19 (1) as the settlor directs; **or**
- 20 (2) **as the trust instrument requires.**
- 21 (e) **This subsection applies to a revocable trust created or**
- 22 **funded by one (1) settlor after the settlor's revocation of the trust.**
- 23 **Unless the terms of the trust provide otherwise, if the settlor**
- 24 **revokes the trust and the trustee does not deliver the trust property**
- 25 **under subsection (d) prior to or at the revoking settlor's death, the**
- 26 **remaining trust property becomes part of the revoking settlor's**
- 27 **probate estate.**
- 28 (f) **This subsection applies after a settlor's revocation of a**
- 29 **revocable trust created or funded by at least two (2) settlors.**
- 30 **Unless the terms of the trust provide otherwise, if a settlor revokes**
- 31 **a trust and the trustee does not deliver the trust property under**
- 32 **subsection (d) at the revoking settlor's death, the remaining trust**
- 33 **property that the settlor contributed to the trust becomes part of**
- 34 **the revoking settlor's probate estate.**
- 35 (e) (g) A settlor's powers with respect to revocation, amendment,
- 36 and distribution of trust property may be exercised by an agent under
- 37 a power of attorney only to the extent expressly authorized by the terms
- 38 of the trust or the power of attorney.
- 39 (f) (h) A guardian of a settlor may exercise the settlor's powers with
- 40 respect to revocation, amendment, or distribution of trust property only
- 41 with the approval of the court supervising the guardianship.
- 42 (g) (i) A trustee who does not know that a trust has been revoked or



1 amended is not liable to the settlor or settlor's successors in interest for
 2 distributions made and other actions taken on the assumption that the
 3 trust had not been revoked or amended.

4 SECTION 17. IC 30-4-3-38 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2023]: **Sec. 38. (a) This section does not apply to a trust if the
 7 application of this section disqualifies the trust for, or reduces the
 8 amount of, a marital or charitable deduction available to any
 9 person for state or federal:**

10 (1) income;

11 (2) gift; or

12 (3) estate;

13 tax purposes.

14 (b) As used in this section, "deemed owner" means the settlor or
 15 another person who is treated as the owner of the trust for federal
 16 income tax purposes under 26 U.S.C. 671 through 26 U.S.C. 679.

17 (c) As used in this section, "grantor trust" means a trust in
 18 which part or all of its income is treated as taxable to a deemed
 19 owner for federal tax purposes under 26 U.S.C. 671.

20 (d) As used in this section, "related or subordinate party"
 21 means a nonadverse party who is:

22 (1) the deemed owner's spouse, if living with the deemed
 23 owner; or

24 (2) any of the following:

25 (A) The deemed owner's:

26 (i) father;

27 (ii) mother;

28 (iii) issue; or

29 (iv) brother or sister.

30 (B) A corporation or an employee of a corporation in
 31 which the deemed owner's and the trust's stockholdings
 32 are significant from the viewpoint of voting control.

33 (C) A subordinate employee of a corporation in which the
 34 deemed owner is the executive.

35 (e) This subsection applies only to the part of a trust that is
 36 taxable to the deemed owner if only part of the trust is a grantor
 37 trust. Unless the terms of the trust expressly provide otherwise:

38 (1) the trustee of a grantor trust who is not the deemed owner
 39 and who is not a related or subordinate party; or

40 (2) any other trustee of a grantor trust acting at the direction
 41 of or with the written consent of a trust director who is not
 42 the deemed owner and not a related or subordinate party with



1 **respect to the trust's deemed owner;**
 2 **may reimburse the deemed owner for any amount of the deemed**
 3 **owner's personal federal, state, county, city, local, foreign, or other**
 4 **income tax liability that is attributable to the inclusion of the**
 5 **trust's income, capital gains, deductions, and credits in the**
 6 **calculation of the deemed owner's taxable income.**

7 **(f) The trustee may pay the amount under subsection (e) to the**
 8 **deemed owner directly or to an appropriate taxing authority on**
 9 **behalf of the deemed owner.**

10 **(g) A person who is authorized to reimburse a trust's deemed**
 11 **owner for income taxes under subsection (e) may not use:**

12 **(1) an insurance policy;**

13 **(2) the cash value of an insurance policy; or**

14 **(3) the proceeds of a loan secured by an interest in an**
 15 **insurance policy;**

16 **that the trust holds on the deemed owner's life to reimburse the**
 17 **deemed owner or to pay an appropriate taxing authority on behalf**
 18 **of the deemed owner.**

19 **(h) The deemed owner may not be treated as a beneficiary of the**
 20 **trust for purposes of section 2(b) of this chapter or any other**
 21 **Indiana law:**

22 **(1) because of the trustee's power to make payments to, or on**
 23 **behalf of, the deemed owner; or**

24 **(2) because the trustee decides to exercise power in favor of**
 25 **the deemed owner.**

26 **(i) If a person is the deemed owner of only part of a trust for**
 27 **income tax purposes, the reimbursement or payment of income**
 28 **taxes under this section may be made from that part of the trust.**

29 SECTION 18. IC 30-4-6-14, AS AMENDED BY P.L.51-2014,
 30 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2023]: Sec. 14. (a) A person must commence a judicial
 32 proceeding to contest the validity of a trust that ~~was~~ **is irrevocable or**
 33 **revocable at the settlor's death, or revocable at the time the notice**
 34 **under this section is given**, within the earlier of the following:

35 **(1) Ninety (90) days after the person receives from the trustee, the**
 36 **settlor, or the agent of the trustee or settlor, a copy of a trust**
 37 **certification required by IC 30-4-4-5 and a notice that:**

38 **(A) informs the person of the trust's existence;**

39 **(B) states the trustee's name and address;**

40 **(C) states:**

41 **(i) the person's interest in the trust, as described in the trust**
 42 **document; or**



- 1 (ii) that the person has no interest in the trust; and
 2 (D) states the time allowed for commencing the proceeding.
 3 (2) Three (3) years after the settlor's death.
- 4 **(b) If a notice under subsection (a) pertains to a trust created by**
 5 **a settlor who is still living, the settlor, the trustee, or the agent of**
 6 **the settlor or trustee must send a complete copy of the trust**
 7 **instrument for that trust with the notice to each person to whom**
 8 **the notice under subsection (a) is sent.**
- 9 ~~(b)~~ (c) More than one hundred twenty (120) days after the death of
 10 the settlor of a trust that was revocable at the settlor's death, the trustee
 11 may distribute the trust property in accordance with the terms of the
 12 trust. The trustee is not subject to liability for the distribution unless:
 13 (1) the trustee knows of a pending judicial proceeding contesting
 14 the validity of the trust; or
 15 (2) a potential contestant notifies the trustee of a possible judicial
 16 proceeding to contest the trust and a judicial proceeding is
 17 commenced not later than sixty (60) days after the contestant
 18 sends the trustee the notification.
- 19 ~~(c)~~ (d) A beneficiary of a trust that is determined to be invalid shall
 20 return any distribution received.
- 21 (e) **The complaint or petition for a proceeding filed under**
 22 **subsection (a) must name all of the following, if they exist or are**
 23 **living, as party defendants:**
 24 (1) **The settlor.**
 25 (2) **The settlor's spouse.**
 26 (3) **Each qualified beneficiary identified by name or**
 27 **discernable as part of a class identified in the trust**
 28 **instrument.**
 29 (4) **The currently serving trustee or first priority successor**
 30 **trustee identified in the trust instrument.**
 31 (5) **Any other person who received a notice under subsection**
 32 **(a).**
- 33 (f) **Notice of the filing of a complaint or petition under**
 34 **subsection (a) must be served upon each party defendant as**
 35 **required by the Indiana Rules of Trial Procedure.**
- 36 (g) **The burden of proving an allegation set forth in a complaint**
 37 **or petition that is filed under subsection (a) is on the person who**
 38 **commenced the proceeding.**
- 39 (h) **The failure of a trustee to adhere to the requirements of this**
 40 **section may not be offered or cited as evidence that a trust is not**
 41 **valid.**
- 42 (i) **If a notice sent under subsection (a) is concerning a revocable**



1 **or irrevocable trust and the trust is later:**

- 2 **(1) amended;**
 3 **(2) restated; or**
 4 **(3) lawfully modified;**

5 **a person who received the written notice is not precluded from**
 6 **commencing a proceeding to contest the validity of the amended,**
 7 **restated, or modified trust.**

8 SECTION 19. IC 30-5-5-16, AS AMENDED BY P.L.50-2021,
 9 SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2023]: Sec. 16. (a) This section does not prohibit an individual
 11 capable of consenting to the individual's own health care or to the
 12 health care of another from consenting to health care administered in
 13 good faith under the religious tenets and practices of the individual
 14 requiring health care.

15 (b) Language conferring general authority with respect to health
 16 care powers means the principal authorizes the attorney in fact to do
 17 the following:

- 18 (1) Employ or contract with servants, companions, or health care
 19 providers to care for the principal.
 20 (2) Consent to or refuse health care for the principal who is an
 21 individual in accordance with IC 16-36-4 and IC 16-36-1 by
 22 properly executing and attaching to the power of attorney a
 23 declaration or appointment, or both.
 24 (3) Admit or release the principal from a hospital or health care
 25 facility.
 26 (4) Have access to records, including medical records, concerning
 27 the principal's condition.
 28 (5) Make anatomical gifts on the principal's behalf.
 29 (6) Request an autopsy.
 30 (7) Make plans for the disposition of the principal's body,
 31 including executing a funeral planning declaration on behalf of
 32 the principal in accordance with IC 29-2-19.

33 **(c) Except as provided in subsection (d), if an individual has**
 34 **executed both:**

- 35 **(1) a power of attorney under this article that authorizes an**
 36 **attorney in fact to apply for public benefits on behalf of the**
 37 **individual; and**
 38 **(2) an advance directive under IC 16-36-7 that authorizes a**
 39 **health care representative to apply for public benefits on**
 40 **behalf of the individual under IC 16-36-7-36(a)(6);**

41 **the authority of the attorney in fact described in subdivision (1) to**
 42 **apply for public benefits on behalf of the individual and to access**



1 the individual's assets, income, and banking and financial assets
 2 supersedes the authority of the health care representative
 3 described in subdivision (2).

4 (d) The authority of a health care representative described in
 5 subsection (c)(2) supersedes the authority of an attorney in fact
 6 described in subsection (c)(1) to apply for public benefits on behalf
 7 of the individual if the individual has specifically granted the
 8 authority of the health care representative to supersede the
 9 authority of the attorney in fact in the executed power of attorney.

10 (e) Notwithstanding any other law, a document granting health
 11 care powers to an attorney in fact for health care may not be executed
 12 under this chapter after December 31, 2022. However, if a power of
 13 attorney that is executed after December 31, 2022, is written to grant
 14 both:

15 (1) health care powers; and

16 (2) nonhealth care powers under this chapter;

17 to an attorney in fact, the health care powers are void, but all other
 18 powers granted by the power of attorney will remain effective and
 19 enforceable under this article.

20 SECTION 20. IC 31-11-3-5.5 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2023]: **Sec. 5.5. A portability agreement (as**
 23 **defined by IC 31-11-7-5(a)(4)) contained within a premarital**
 24 **agreement is governed by IC 31-11-7-5.**

25 SECTION 21. IC 31-11-7-5 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2023]: **Sec. 5. (a) The following definitions apply throughout this**
 28 **section:**

29 (1) "Deceased spouse" means the first member of a married
 30 couple to die.

31 (2) "DSUE amount" means "deceased spousal unused
 32 exclusion amount" as defined under Section 2010(c)(4) of the
 33 Internal Revenue Code, for federal estate tax and federal gift
 34 tax purposes, for a married individual who dies and is
 35 survived by a spouse.

36 (3) "Internal Revenue Code" means the Internal Revenue
 37 Code of 1986 as amended and applicable United States
 38 Department of Treasury regulations.

39 (4) "Portability agreement" means an executed premarital
 40 agreement or postmarital agreement under which a personal
 41 representative of the deceased spouse shall make a portability
 42 election after the death of that spouse and for the benefit of



- 1 the surviving spouse.
- 2 (5) "Portability election" means an election by the personal
3 representative of a deceased spouse, under Section 2010(c)(5)
4 of the Internal Revenue Code, to effectively transfer a DSUE
5 amount to a surviving spouse for federal estate tax and
6 federal gift tax purposes.
- 7 (6) "Postmarital agreement" means a written agreement
8 between two (2) spouses that is executed:
- 9 (A) after the spouses have entered into the marriage; and
10 (B) while the spouses are married to one another.
- 11 (7) "Premarital agreement" has the meaning set forth in
12 IC 31-11-3-2.
- 13 (b) In order to permit a surviving spouse and the estate of a
14 deceased spouse to timely comply with federal estate tax and
15 federal gift tax reporting obligations, time is of the essence for
16 performance of either party's obligations under a portability
17 agreement and Section 2010(c)(5) of the Internal Revenue Code.
- 18 (c) A portability agreement is enforceable and effective
19 according to its terms and is binding on the:
- 20 (1) spouses; and
21 (2) spouses' heirs, legatees, personal representatives, and
22 other successors in interest;
- 23 without additional or separate consideration and without regard
24 to the validity of other provisions in the same premarital
25 agreement or postmarital agreement. The obligation of the
26 deceased spouse's personal representative or other successor in
27 interest to make a timely portability election is severable from any
28 provision in a premarital agreement or postmarital agreement that
29 is challenged or invalidated.
- 30 (d) A portability agreement becomes effective upon the death of
31 a deceased spouse and remains effective and enforceable until the
32 conclusion of the federal gift tax and federal estate tax proceedings
33 of the surviving spouse.
- 34 (e) A surviving spouse may petition for the appointment of a
35 special administrator under IC 29-1-10-15 to perform any
36 obligation of the deceased spouse or the deceased spouse's
37 successors in interest under a portability agreement, including:
- 38 (1) filing a federal estate tax for the deceased spouse;
39 (2) taking any action required to make a portability election;
40 and
41 (3) obtaining information and documents to confirm the
42 DSUE amount.



1 (f) If the estate of the deceased spouse is not otherwise required
 2 to file a federal estate tax return, then the surviving spouse shall,
 3 subject to the terms of a premarital agreement or postmarital
 4 agreement that contains a portability agreement, pay the
 5 reasonable costs and expenses associated with:

- 6 (1) preparing and filing the federal estate tax return and
 7 making the portability election for the deceased spouse; and
 8 (2) determining the correct DSUE amount that was effectively
 9 transferred to the surviving spouse.

10 (g) After a portability election is made, the personal
 11 representative, surviving spouse, and any successors in interest
 12 have a continuing obligation to promptly exchange material
 13 documents and information necessary to cooperate and comply
 14 with an audit or examination by the Internal Revenue Service
 15 concerning:

- 16 (1) the federal estate tax return filed for the deceased spouse;
 17 or
 18 (2) any federal gift tax return or federal estate tax return filed
 19 for the surviving spouse, during the surviving spouse's
 20 lifetime or after the surviving spouse's death.

21 This subsection applies regardless of whether the portability
 22 agreement contained an obligation to exchange the documents and
 23 materials described in this subsection.

24 (h) If the terms of a valid executed portability agreement
 25 conflict with this section the terms of a portability agreement
 26 control.

27 (i) Except as provided in subsection (j), if a surviving spouse
 28 remarries after the death of the deceased spouse, the parties'
 29 obligations under a portability agreement executed between the
 30 surviving spouse and the deceased spouse remain in full effect.

31 (j) If a surviving spouse remarries after the deceased spouse's
 32 death and the new spouse also predeceases the surviving spouse, a
 33 DSUE amount from the previously deceased spouse is effectively
 34 zero (0) under Section 2010(c)(4)(B) of the Internal Revenue Code,
 35 except to the extent that the surviving spouse has used part of the
 36 earlier deceased spouse's DSUE amount with respect to a lifetime
 37 gift made by the surviving spouse before the death of the
 38 immediately predeceased spouse.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 287, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, line 21, delete "will".

Page 7, line 41, after "testator to" insert "**use the procedures or**".

Page 7, line 42, delete "trust" and insert "**will**".

Page 10, line 28, delete "of the decedent's heirs." and insert "**person whose name and address is required to be listed in the notice under subsection (a).**".

Page 11, line 1, after "representative" insert "**at the discretion of the court shall**".

Page 15, delete lines 34 through 38, begin a new paragraph and insert:

"(e) In its discretion, the court shall set the hearing required under subsection (d) on a date that is as soon as practicable."

Page 23, line 24, delete "grantor's spouse, if living with the grantor;" and insert "**deemed owner's spouse, if living with the deemed owner;**".

Page 23, line 26, delete "grantor's:" and insert "**deemed owner's:**".

Page 23, line 32, delete "grantor's" and insert "**deemed owner's**".

Page 23, line 35, delete "grantor" and insert "**deemed owner**".

Page 23, line 41, delete "other trust" and insert "**other trustee**".

and when so amended that said bill do pass.

(Reference is to SB 287 as introduced.)

BROWN L, Chairperson

Committee Vote: Yeas 10, Nays 0.

REPORT OF THE PRESIDENT
PRO TEMPORE

Madam President: Pursuant to Senate Rule 68(b), I hereby report that, subsequent to the adoption of the Committee Report on January 19, 2023, Senate Bill 287 was reassigned to the Committee on Appropriations.

BRAY

ES 287—LS 6211/DI 149



REPORT OF THE PRESIDENT
PRO TEMPORE

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Senate Bill 287, currently assigned to the Committee on Appropriations, be reassigned to the Committee on Rules and Legislative Procedure.

BRAY

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill 287, has had the same under consideration and begs leave to report back to the Senate without recommendation.

BRAY

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 287, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 287 as printed January 27, 2023.)

TORR

Committee Vote: Yeas 11, Nays 0

