



Reprinted
January 19, 2005

HOUSE BILL No. 1153

DIGEST OF HB 1153 (Updated January 18, 2005 2:06 pm - DI 107)

Citations Affected: IC 6-4.1; IC 23-14; IC 29-1; IC 29-3; IC 30-1; IC 30-2; IC 30-3; IC 30-4; IC 30-5; IC 32-17.5; IC 34-30; noncode.

Synopsis: Probate, trust, and inheritance tax matters. Provides that a subsequent childless spouse's share of the deceased spouse's real property is calculated less liens and encumbrances. Allows custodial property to be transferred under the Uniform Transfers to Minors Act to a trust if the minor is the sole beneficiary and the trust terms meet Internal Revenue Code requirements for not treating the transfer as a gift of a future interest. Changes the annual maximum value of gifts that an attorney in fact or a person the attorney in fact is legally obligated to support may receive under the attorney in fact's gift making powers from \$10,000 to the amount allowed as an exclusion from gifts under the Internal Revenue Code. Allows an attorney in fact to exercise powers regarding retirement plans. Extends a power of attorney after the death of the principal as to the authority to donate organs, request an autopsy, and plan for the disposition of the principal's body. Prohibits a will from admission for probate unless the will is presented for probate within three years after the testator dies. Allows a will or revocable trust to incorporate by reference a list of items for disposition that may be amended after incorporation. Removes limitations on naming an attorney in fact as a beneficiary of an insurance contract. Validates, with court approval, a transaction that affects a protected person's property and the guardian's interest. Provides that a disclaimed interest that arose under the law of intestate succession passes as if the disclaimant had died immediately before the
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Effective: July 1, 2004 (retroactive); July 1, 2005; January 1, 2006.

Foley, Bardon, Kuzman

January 6, 2005, read first time and referred to Committee on Judiciary.
January 11, 2005, amended, reported — Do Pass.
January 18, 2005, read second time, amended, ordered engrossed.

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intestate's death. Prohibits an abandoning or adulterous spouse from acquiring property from the deceased spouse's trust. Imposes a constructive trust to prevent a person charged in or convicted of an individual's death from acquiring trust property because of the individual's death. Voids a transaction in which the personal representative acquires an interest in the estate's real property, unless authorized by a will, a trust, the consent of all heirs, legatees, or beneficiaries, or an adjudicated compromise agreement. Repeals a statute that requires a personal representative to file a report of sale. Allows a person who receives only a specific bequest to receive an estate inventory limited to the bequest. Allows a decedent's adult child to consent to disinterment, if the decedent does not have a spouse. Requires a petition for probate of a will or for the appointment of an administrator to state whether the decedent, heirs, legatees, and devisees are adults or minors. Requires, absent litigation, a spouse to elect against a will within three months after the will is admitted to probate. Provides that a trust is presumed to be revocable. Allows an agent or attorney in fact to amend a trust if authorized in a power of attorney. Authorizes the creation of a pet trust and a noncharitable trust with the beneficiary determined by the trustee. Requires a settlor to have the same capacity for making a will. Allows an uneconomic trust to be modified or terminated. Limits actions to contest a revocable trust. Adds provisions concerning filling a trustee vacancy. Repeals and adds provisions about modifying and terminating trust terms. Provides that a transaction benefiting an attorney in fact is not presumptively valid or invalid if made by the principal and not by the attorney in fact acting for the principal. Allows a trustee or an interested person to petition the court to determine a trust's heirs and the heirs' interests. Allows a court to determine the heirs and heirs' interests by evidence or by affidavit after a hearing. Provides that a trustee's good faith acts are valid if the trustee acts in accordance with the facts as determined by the court and the law. Adds the trustee's duty to determine the trust beneficiaries. Makes a technical amendment. Provides immunity to a person who relies on a power of attorney or an affidavit concerning a power of attorney. Automatically extends the due date for the Indiana inheritance tax return if the Internal Revenue Service allows an extension for a federal estate tax return. Makes other changes to the trust law. (The introduced version of this bill was prepared by the probate code study commission.)

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January 19, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1153

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

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

1 SECTION 1. IC 6-4.1-4-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a) If the Internal**
3 **Revenue Service allows an extension on a federal estate tax return,**
4 **the corresponding due date for the Indiana inheritance tax return**
5 **is automatically extended for the same period as the federal**
6 **extension.**

7 (b) If the appropriate probate court finds that because of an
8 unavoidable delay an inheritance tax return cannot be filed within nine
9 (9) months after the date of decedent's death, the court may extend the
10 period for filing the return. After the expiration of the first extension
11 period, the court may grant a subsequent extension if the person
12 seeking the extension files a written motion which states the reason for
13 the delay in filing the return.

14 (c) For purposes of sections 3 and 6 of this chapter, an inheritance
15 tax return is not due until the last day of any extension period or

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periods granted by the court under this section.

SECTION 2. IC 23-14-57-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) As used in this section, "removed" refers to the disinterment, disentombment, or disinurnment of the remains of a deceased human.

(b) Except as provided in subsection (e), the remains, either cremated or uncremated, of a deceased human shall not be removed from a cemetery without:

- (1) a written order issued by the state department of health;
- (2) the written consent of:
 - (A) the owner of the cemetery; or
 - (B) the owner's representative; and
- (3) the written consent of:
 - (A) the spouse of the deceased; ~~or~~;
 - (B) an adult child of the deceased, if there is no spouse of the deceased; or**
 - ~~(B)~~ **(C) the parents of the deceased in the case of a deceased minor child;**

authorizing the disinterment, disentombment, or disinurnment.

(c) Before issuing a written authorization under subsection (b), the state department of health shall do the following:

- (1) Obtain written evidence of the legal ownership of the property from which the remains will be removed.
- (2) Send written notice to the department of natural resources, division of historic preservation and archeology, of the time, date, and place from which the remains will be removed.
- (3) Obtain written evidence that a licensed funeral director has agreed to:
 - (A) be present at the removal and at the reinterment, reentombment, or reinurnment of the remains; and
 - (B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal occurred.
- (4) Obtain written evidence that a notice of the proposed removal has been published at least five (5) days before a written order is issued by the state department of health in a newspaper of general circulation in the county where the removal will occur.
- (5) Obtain a copy of:
 - (A) the written consent required under subsection (b)(3); or
 - (B) a court order obtained by a person under subsection (d).

(d) If the written consent of:

- (1) the spouse of the deceased; ~~or~~

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1 **(2) an adult child of the deceased, if there is no spouse of the**
 2 **deceased; or**
 3 ~~(2)~~ **(3)** the parents of the deceased in the case of a deceased
 4 minor;
 5 is not available, a person who has made a request under this section to
 6 the state department of health may petition a court to determine
 7 whether to waive the consent requirement of subsection (b)(3). In
 8 determining whether to waive the requirement, the court shall consider
 9 the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased.
 10 In a proceeding under this subsection, the court may not order the
 11 disinterment, disentombment, or disinurnment of the remains of a
 12 deceased human.
 13 (e) This subsection applies only if the human remains are on
 14 property owned or leased by a coal company. The remains, either
 15 cremated or uncremated, of a deceased human may be removed from
 16 a cemetery by a coal company if the coal company obtains a court order
 17 authorizing the disinterment, disentombment, or disinurnment. Before
 18 issuing a court order under this subsection, a court must conduct a
 19 hearing and be satisfied as to the following:
 20 (1) That the property is owned or leased by the coal company.
 21 (2) That the coal company has obtained the written consent of:
 22 (A) the spouse of the deceased; ~~or~~
 23 **(B) an adult child of the deceased, if there is no spouse of**
 24 **the deceased; or**
 25 ~~(B)~~ **(C)** the parents of the deceased in the case of a deceased
 26 minor child;
 27 authorizing the disinterment, disentombment, or disinurnment. If
 28 the consent is not available, the court may waive the requirement
 29 after considering the viewpoint of any issue (as defined in
 30 IC 29-1-1-3) of the deceased.
 31 (3) That the department of natural resources, division of historic
 32 preservation and archeology, has received at least five (5) days
 33 written notice of the time, date, and place of any hearing under
 34 this subsection. The notice must describe the proposed place from
 35 which the remains will be removed.
 36 (4) That a licensed funeral director has agreed to:
 37 (A) be present at the removal and at the reinterment,
 38 reentombment, or reinurnment of the remains; and
 39 (B) cause the completed order of the state department of health
 40 to be recorded in the office of the county recorder of the
 41 county where the removal occurred.
 42 (5) That the coal company has caused a notice of the proposed

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1 removal to be published at least five (5) days before the hearing
2 in a newspaper of general circulation in the county where the
3 removal will occur.

4 (6) That the coal company will notify the department of natural
5 resources, division of historic preservation and archeology, after
6 the hearing of the proposed time and date when the remains will
7 be removed.

8 (f) The state department of health may adopt rules under IC 4-22-2
9 to implement this section.

10 SECTION 3. IC 29-1-2-1 IS AMENDED TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2004 (RETROACTIVE)]: Sec. 1. (a) The estate
12 of a person dying intestate shall descend and be distributed as provided
13 in this section.

14 (b) Except as otherwise provided in subsection (c), the surviving
15 spouse shall receive the following share:

16 (1) One-half (1/2) of the net estate if the intestate is survived by
17 at least one (1) child or by the issue of at least one (1) deceased
18 child.

19 (2) Three-fourths (3/4) of the net estate, if there is no surviving
20 issue, but the intestate is survived by one (1) or both of the
21 intestate's parents.

22 (3) All of the net estate, if there is no surviving issue or parent.

23 (c) If the surviving spouse is a second or other subsequent spouse
24 who did not at any time have children by the decedent, and the
25 decedent left surviving ~~him~~ **the decedent** a child or children or the
26 descendants of a child or children by a previous spouse, such surviving
27 second or subsequent childless spouse shall take only an amount equal
28 to twenty-five percent (25%) of the fair market value as of the date of
29 death of the ~~lands~~ **real property** of the deceased spouse, **less liens and**
30 **encumbrances on the real property of the deceased spouse**, and the
31 fee shall, at the decedent's death, vest at once in such child or children,
32 or the descendants of such as may be dead. Such second or subsequent
33 childless spouse shall, however, receive the same share of the personal
34 property of the decedent as is provided in subsection (b) with respect
35 to surviving spouses generally.

36 (d) The share of the net estate not distributable to the surviving
37 spouse, or the entire net estate if there is no surviving spouse, shall
38 descend and be distributed as follows:

39 (1) To the issue of the intestate, if they are all of the same degree
40 of kinship to the intestate, they shall take equally, or if of unequal
41 degree, then those of more remote degrees shall take by
42 representation.

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- 1 (2) If there is a surviving spouse but no surviving issue of the
- 2 intestate, then to the surviving parents of the intestate.
- 3 (3) If there is no surviving spouse or issue of the intestate, then to
- 4 the surviving parents, brothers, and sisters, and the issue of
- 5 deceased brothers and sisters of the intestate. Each living parent
- 6 of the intestate shall be treated as of the same degree as a brother
- 7 or sister and shall be entitled to the same share as a brother or
- 8 sister. However, the share of each parent shall be not less than
- 9 one-fourth (1/4) of such net estate. Issue of deceased brothers and
- 10 sisters shall take by representation.
- 11 (4) If there is no surviving parent or brother or sister of the
- 12 intestate, then to the issue of brothers and sisters. If such
- 13 distributees are all in the same degree of kinship to the intestate,
- 14 they shall take equally or, if of unequal degree, then those of more
- 15 remote degrees shall take by representation.
- 16 (5) If there is no surviving issue or parent of the intestate or issue
- 17 of a parent, then to the surviving grandparents of the intestate
- 18 equally.
- 19 (6) If there is no surviving issue or parent or issue of a parent, or
- 20 grandparent of the intestate, then the estate of the decedent shall
- 21 be divided into that number of shares equal to the sum of:
- 22 (A) the number of brothers and sisters of the decedent's
- 23 parents surviving the decedent; plus
- 24 (B) the number of deceased brothers and sisters of the
- 25 decedent's parents leaving issue surviving both them and the
- 26 decedent; and
- 27 one (1) of the shares shall pass to each of the brothers and sisters
- 28 of the decedent's parents or their respective issue per stirpes.
- 29 (7) If interests in real estate go to a husband and wife under this
- 30 subsection, the aggregate interests so descending shall be owned
- 31 by them as tenants by the entireties. Interests in personal property
- 32 so descending shall be owned as tenants in common.
- 33 (8) If there is no person mentioned in subdivisions (1) through
- 34 (7), then to the state.

35 SECTION 4. IC 29-1-2-12.1 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.1. (a) A person is a
 37 constructive trustee of any property that is acquired by ~~him~~ **the person**
 38 or that ~~he~~ **the person** is otherwise entitled to receive as a result of a
 39 ~~decedent's~~ **an individual's** death, **including property from a trust**, if
 40 that person has been found guilty, or guilty but mentally ill, of murder,
 41 causing suicide, or voluntary manslaughter, because of the ~~decedent's~~
 42 **individual's** death. A judgment of conviction is conclusive in a

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1 subsequent civil action to have the person declared a constructive
2 trustee.

3 (b) A civil action may be initiated to have a person declared a
4 constructive trustee of property that is acquired by ~~him~~, **the person**, or
5 that ~~he~~ **the person** is otherwise entitled to receive, **including property**
6 **from a trust**, as a result of a ~~decendent's~~ **an individual's** death, if:

7 (1) the person has been charged with murder, causing suicide, or
8 voluntary manslaughter, because of the ~~decendent's~~ **individual's**
9 death; and

10 (2) the person has been found not responsible by reason of
11 insanity at the time of the crime.

12 If a civil action is initiated under this subsection, the court shall declare
13 that the person is a constructive trustee of the property if by a
14 preponderance of the evidence it is determined that the person killed
15 or caused the suicide of the ~~decendent~~: **individual**.

16 (c) If a constructive trust is established under this section, the
17 property that is subject to the trust may be used only to benefit those
18 persons, other than the constructive trustee, legally entitled to the
19 property, determined as if the constructive trustee had died
20 immediately before the decedent. However, if any property that the
21 constructive trustee acquired as a result of the decedent's death has
22 been sold to an innocent purchaser for value who acted in good faith,
23 that property is no longer subject to the constructive trust, but the
24 property received from the purchaser under the transaction becomes
25 subject to the constructive trust.

26 SECTION 5. IC 29-1-2-14 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. If either a husband
28 or wife shall have left the other and shall be living at the time of his or
29 her death in adultery, he or she as the case may be shall take no part of
30 the estate **or trust** of the deceased husband or wife.

31 SECTION 6. IC 29-1-2-15 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. If a person shall
33 abandon his or her spouse without just cause, he or she shall take no
34 part of his or her estate **or trust**.

35 SECTION 7. IC 29-1-3-2 IS AMENDED TO READ AS FOLLOWS
36 [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) **Except as provided in**
37 **subsection (b)**, the election by a surviving spouse to take the share
38 hereinbefore provided must be made not later than ~~ten (10) days~~ **three**
39 **(3) months** after the ~~expiration of the time limited for the filing of~~
40 ~~claims; provided that date of the order admitting to probate the will~~
41 **against which the election is made.**

42 (b) If, at the expiration of such period for making the election,

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1 litigation is pending to test the validity or to determine the effect or
2 construction of the will or to determine the existence of issue surviving
3 the deceased, or to determine any other matter of law or fact which
4 would affect the amount of the share to be received by the surviving
5 spouse, the right of such surviving spouse to make an election shall not
6 be barred until the expiration of thirty (30) days after the final
7 determination of the litigation.

8 SECTION 8. IC 29-1-6-1 IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2005]: Sec. 1. In the absence of a contrary
10 intent appearing in the will, wills shall be construed as to real and
11 personal estate in accordance with the rules in this section.

12 (a) Any estate, right, or interest in land or other things acquired by
13 the testator after the making of the testator's will shall pass as if title
14 was vested in the testator at the time of making of the will.

15 (b) All devises of real estate shall pass the whole estate of the
16 testator in the premises devised, although there are no words of
17 inheritance or of perpetuity, whether or not at the time of the execution
18 of the will the decedent was the owner of that particular interest in the
19 real estate devised. Such devise shall also pass any interest which the
20 testator may have at the time of the testator's death as vendor under a
21 contract for the sale of such real estate.

22 (c) A devise of real or personal estate, whether directly or in trust,
23 to the testator's or another designated person's "heirs", "next of kin",
24 "relatives", or "family", or to "the persons thereunto entitled under the
25 intestate laws" or to persons described by words of similar import, shall
26 mean those persons (including the spouse) who would take under the
27 intestate laws if the testator or other designated person were to die
28 intestate at the time when such class is to be ascertained, domiciled in
29 this state, and owning the estate so devised. With respect to a devise
30 which does not take effect at the testator's death, the time when such
31 class is to be ascertained shall be the time when the devise is to take
32 effect in enjoyment.

33 (d) In construing a will making a devise to a person or persons
34 described by relationship to the testator or to another, any person
35 adopted prior to the person's twenty-first birthday before the death of
36 the testator shall be considered the child of the adopting parent or
37 parents and not the child of the natural or previous adopting parents.
38 However, if a natural parent or previous adopting parent marries the
39 adopting parent before the testator's death, the adopted person shall
40 also be considered the child of such natural or previous adopting
41 parent. Any person adopted after the person's twenty-first birthday by
42 the testator shall be considered the child of the testator, but no other

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1 person shall be entitled to establish relationship to the testator through
2 such child.

3 (e) In construing a will making a devise to a person described by
4 relationship to the testator or to another, a person born out of wedlock
5 shall be considered the child of the child's mother, and also of the
6 child's father, if, but only if, the child's right to inherit from the child's
7 father is, or has been, established in the manner provided in
8 IC 29-1-2-7.

9 (f) A will shall not operate as the exercise of a power of
10 appointment which the testator may have with respect to any real or
11 personal estate, unless by its terms the will specifically indicates that
12 the testator intended to exercise the power.

13 (g) If a devise of real or personal property, not included in the
14 residuary clause of the will, is void, is revoked, or lapses, it shall
15 become a part of the residue, and shall pass to the residuary devisee.
16 Whenever any estate, real or personal, shall be devised to any
17 descendant of the testator, and such devisee shall die during the
18 lifetime of the testator, whether before or after the execution of the will,
19 leaving a descendant who shall survive such testator, such devise shall
20 not lapse, but the property so devised shall vest in the surviving
21 descendant of the devisee as if such devisee had survived the testator
22 and died intestate. The word "descendant", as used in this section,
23 includes children adopted during minority by the testator and by the
24 testator's descendants and includes descendants of such adopted
25 children. "Descendant" also includes children of the mother who are
26 born out of wedlock, and children of the father who are born out of
27 wedlock, if, but only if, such child's right to inherit from such father is,
28 or has been, established in the manner provided in IC 29-1-2-7. This
29 rule applies where the parent is a descendant of the testator as well as
30 where the parent is the testator. Descendants of such children shall also
31 be included.

32 (h) **Except as provided in subsection (m)**, if a testator in the
33 testator's will refers to a writing of any kind, such writing, whether
34 subsequently amended or revoked, as it existed at the time of execution
35 of the will, shall be given the same effect as if set forth at length in the
36 will, if such writing is clearly identified in the will and is in existence
37 both at the time of the execution of the will and at the testator's death.

38 (i) If a testator devises real or personal property upon such terms
39 that the testator's intentions with respect to such devise can be
40 determined at the testator's death only by reference to a fact or an event
41 independent of the will, such devise shall be valid and effective if the
42 testator's intention can be clearly ascertained by taking into

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1 consideration such fact or event even though occurring after the
2 execution of the will.

3 (j) If a testator devises or bequeaths property to be added to a trust
4 or trust fund which is clearly identified in the testator's will and which
5 trust is in existence at the time of the death of the testator, such devise
6 or bequest shall be valid and effective. Unless the will provides
7 otherwise, the property so devised or bequeathed shall be subject to the
8 terms and provisions of the instrument or instruments creating or
9 governing the trust or trust fund, including any amendments or
10 modifications in writing made at any time before or after the execution
11 of the will and before or after the death of the testator.

12 (k) If a testator devises securities in a will and the testator then
13 owned securities that meet the description in the will, the devise
14 includes additional securities owned by the testator at death to the
15 extent the additional securities were acquired by the testator after the
16 will was executed as a result of the testator's ownership of the
17 described securities and are securities of any of the following types:

- 18 (1) Securities of the same organization acquired because of an
19 action initiated by the organization or any successor, related, or
20 acquiring organization, excluding any security acquired by
21 exercise of purchase options.
- 22 (2) Securities of another organization acquired as a result of a
23 merger, consolidation, reorganization, or other distribution by the
24 organization or any successor, related, or acquiring organization.
- 25 (3) Securities of the same organization acquired as a result of a
26 plan of reinvestment.

27 Distributions in cash before death with respect to a described security
28 are not part of the devise.

29 (l) For purposes of this subsection, "incapacitated principal" means
30 a principal who is an incapacitated person. An adjudication of
31 incapacity before death is not necessary. The acts of an agent within the
32 authority of a durable power of attorney are presumed to be for an
33 incapacitated principal. If:

- 34 (1) specifically devised property is sold or mortgaged by; or
- 35 (2) a condemnation award, insurance proceeds, or recovery for
36 injury to specifically devised property are paid to;

37 a guardian or an agent acting within the authority of a durable power
38 of attorney for an incapacitated principal, the specific devisee has the
39 right to a general pecuniary devise equal to the net sale price, the
40 amount of the unpaid loan, the condemnation award, the insurance
41 proceeds, or the recovery.

42 (m) **A written statement or list that:**

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**(1) complies with this subsection; and
(2) is referred to in a will;**
may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the will. To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the will. The writing may be altered by the testator after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the will. If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

SECTION 9. IC 29-1-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. A petition for the probate of a will and for the issuance of letters testamentary or for the appointment of an administrator with the will annexed, or for the appointment of an administrator, shall state:

- (1) the name, ~~age~~, **whether the decedent is an adult or a minor**, domicile, and date of the death of the decedent;
- (2) the name, ~~age~~, **whether the heir is an adult or a minor**, and place of residence of each heir, in the event the decedent left no will; and the name, ~~age~~, **whether each legatee and devisee is an adult or a minor**, and place of residence of each legatee and devisee, in the event the decedent left a will, so far as such are known or can with reasonable diligence be ascertained by the personal representative;
- (3) whether the person named in subdivision (1) died testate or intestate;
- (4) if the decedent was not domiciled in the state at the time of ~~his~~ death, a description of the property to be administered which is within the county in which the petition is filed;
- (5) if the will sought to be probated is unwritten, lost, or was improperly destroyed or suppressed, a detailed statement of the provisions of said will so far as known;
- (6) the name and place of residence or business address of the person, if any, designated as executor of the will;
- (7) if the petition be for the appointment of an administrator with the will annexed, or of an administrator, the name and place of residence or business address of the person to be so appointed,

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1 together with a statement of ~~his~~ **the person's** relationship to the
 2 decedent, and such other facts, if any, which entitle such person
 3 to be so appointed;
 4 (8) the name and business address of the attorney who is to
 5 represent the personal representative; and
 6 (9) if the person named in subdivision (1) died intestate, whether
 7 a petition to dissolve the marriage of the decedent and the
 8 decedent's spouse is pending in an Indiana court or the court of
 9 another state at the time of the decedent's death.

10 SECTION 10. IC 29-1-7-15.1 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15.1. (a) When it has
 12 been determined that a decedent died intestate and letters of
 13 administration have been issued upon the decedent's estate, no will
 14 shall be probated unless it is presented for probate before the court
 15 decrees final distribution of the estate.

16 (b) No real estate situate in Indiana of which any person may die
 17 seized shall be sold by the executor or administrator of the deceased
 18 person's estate to pay any debt or obligation of the deceased person,
 19 which is not a lien of record in the county in which the real estate is
 20 situate, or to pay any costs of administration of any decedent's estate,
 21 unless letters testamentary or of administration upon the decedent's
 22 estate are taken out within five (5) months after the decedent's death.

23 (c) The title of any real estate or interest therein purchased in good
 24 faith and for a valuable consideration from the heirs of any person who
 25 died seized of the real estate shall not be affected or impaired by any
 26 devise made by the person of the real estate so purchased, unless:

- 27 (1) the will containing the devise has been probated and recorded
- 28 in the office of the clerk of the court having jurisdiction within
- 29 five (5) months after the death of the testator; or
- 30 (2) an action to contest the will's validity is commenced within the
- 31 time provided by law and, as a result, the will is ultimately
- 32 probated.

33 (d) ~~If letters testamentary or of administration are not taken out upon~~
 34 ~~a decedent's estate within three (3) years after the decedent's death,~~ The
 35 will of the decedent shall not be ~~probated.~~ **admitted to probate unless**
 36 **the will is presented for probate not more than three (3) years after**
 37 **the individual's death.** However, in the case of an individual
 38 presumed dead under IC 29-2-5-1, the three (3) year period commences
 39 with the date the individual's death has been established by appropriate
 40 legal action.

41 SECTION 11. IC 29-1-7.5-1.5 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.5. (a) As soon as

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1 letters testamentary or letters of administration have been issued, the
2 clerk of the court shall serve by mail notice of the petition on each of
3 the decedent's heirs at law, if the decedent died intestate, or the
4 devisees and legatees under the decedent's will. The mailing of notice
5 under this subsection may not be waived.

6 (b) The notice required under subsection (a) shall read substantially
7 as follows:

8 NOTICE OF UNSUPERVISED ADMINISTRATION TO BE
9 MAILED TO A DISTRIBUTEE

10 In the _____ Court of _____ County, Indiana.
11 Notice is hereby given that _____, on the ____ day of
12 _____, ~~19__~~, 20__, was appointed as the personal representative of
13 the estate of _____, who died on the ____ day of
14 _____, ~~19__~~, 20__, {leaving a will} {not leaving a will}. The
15 estate will be administered without court supervision.

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

- 18 (1) The personal representative has the authority to take actions
19 concerning the estate without first consulting you.
- 20 (2) The personal representative may be serving without posting a
21 bond with the court. You have the right to petition the court to set
22 a bond for your protection.
- 23 (3) The personal representative will not obtain court approval of
24 any action, including the amount of attorney's or personal
25 representative's fees.
- 26 (4) Within two (2) months after the appointment of the personal
27 representative, the personal representative must prepare an
28 inventory of the estate's assets. You have the right to request and
29 receive a copy of this inventory from the personal representative.
30 **However, if you do not participate in the residue of the estate
31 and receive only a specific bequest in money or personal
32 property that will be paid, you are entitled only to the
33 information concerning your specific bequest and not to the
34 assets of the estate as a whole.**
- 35 (5) The personal representative is required to furnish you with a
36 copy of the closing statement that will be filed with the court, and,
37 if your interests are affected, with a full account in writing of the
38 administration of the estate.
- 39 (6) You must file an objection to the closing statement within
40 three (3) months after the closing statement is filed with the court
41 if you want the court to consider your objection.
- 42 (7) If an objection to the closing statement is not filed with the

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1 court within three (3) months after the filing of the closing
2 statement, the estate is closed and the court does not have a duty
3 to audit or make an inquiry.

4 IF, AT ANY TIME BEFORE THE ESTATE IS CLOSED, YOU
5 HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF
6 THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU
7 HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED
8 ADMINISTRATION.

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

11 The personal representative's address is _____, and
12 telephone number is _____. The attorney for the personal
13 representative is _____, whose address is
14 _____ and telephone number is _____.

15 Dated at _____, Indiana, this _____ day of
16 _____, 19__ 20__.

17 CLERK OF THE _____ COURT

18 SECTION 12. IC 29-1-15-16.5 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2005]: **Sec. 16.5. (a) This section applies to a
21 supervised or an unsupervised estate.**

22 **(b) Unless authorized by:**
23 **(1) a will;**
24 **(2) a trust;**
25 **(3) the consent of all heirs, legatees, or beneficiaries; or**
26 **(4) an adjudicated compromise agreement approved by the**
27 **court under IC 29-1-9;**
28 **any sale (including an auction sale), encumbrance, lease, or rental**
29 **of real property that is an asset of the estate is void if the sale,**
30 **encumbrance, lease, or rental of the real property causes the**
31 **personal representative to directly or indirectly acquire a**
32 **beneficial interest in the real property.**

33 **(c) This section does not prohibit a personal representative from**
34 **enforcing or fulfilling any enforceable contract or agreement:**
35 **(1) executed during the decedent's lifetime; and**
36 **(2) between the decedent and the personal representative in**
37 **the personal representative's individual capacity.**

38 SECTION 13. IC 29-1-15-17 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 17. (a) Upon the**
40 **confirmation of any sale, mortgage or lease in accordance with section**
41 **16 of this chapter, the personal representative shall execute a**
42 **conveyance to the grantee or mortgagee or a lease with the lessee**

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1 according to the order of confirmation. A certified copy of the order of
2 confirmation may be recorded with the deed or other instrument in the
3 office of the recorder of the county where the land lies; and shall be
4 prima facie evidence of the due appointment and qualification of the
5 personal representative; the correctness of the proceedings and the
6 authority of the personal representative to execute the instrument.

7 (b) Whenever a personal representative executes a deed, mortgage,
8 lease or other conveyance under a power given ~~him~~ **the personal**
9 **representative** in any will, a certified copy of the will giving such
10 power and a certified copy of the personal representative's letters may
11 be recorded with the deed, mortgage, lease, or other instrument
12 executed by the personal representative pursuant to and in accordance
13 with such power, and such certified copies shall be prima facie
14 evidence of the due appointment and qualification of the personal
15 representative and ~~his~~ **the personal representative's** authority to
16 execute said deed, mortgage, lease, or other instrument.

17 SECTION 14. IC 29-3-8-5 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Any:

- 19 (1) sale or encumbrance of any part of the property of a protected
20 person to a guardian or guardian's spouse, agent, attorney, or any
21 corporation, trust, or other organization in which the guardian has
22 a substantial beneficial interest; or
- 23 (2) other transaction involving the property that is affected by a
24 substantial conflict between the interest of the protected person
25 and the guardian's personal interest;

26 is void **unless approved by the court.**

27 (b) Every contract, sale, or conveyance executed by a protected
28 person is void unless the protected person is a minor, in which event
29 the contract, sale, or conveyance is voidable.

30 SECTION 15. IC 30-1-8-7 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) Any:

- 32 (1) Indiana bank or trust company; or
- 33 (2) national bank qualified to act as fiduciary and whose principal
34 place of business is in Indiana;

35 may establish and maintain one (1) or more common trust funds in
36 accordance with section 2 of this chapter for the funds held by the bank
37 or trust company or any other bank or trust company, including an
38 affiliate, in its capacity as administrator, executor, guardian, or trustee
39 under will or trust agreement.

40 (b) ~~The bank investing under subsection (a) in:~~

- 41 ~~(1) another qualified bank or trust company's common trust fund;~~
- 42 ~~or~~

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1 (2) a common trust fund established and maintained by any bank
2 or trust company, including an affiliate, organized or reorganized
3 under the laws of the United States or a state listed in
4 IC 28-2-15-14;

5 shall not be deemed to be in derogation of IC 30-4-3-6(b)(11), relating
6 to a fiduciary's delegation of authority to another person.

7 SECTION 16. IC 30-2-8.5-29 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) A custodian
9 may deliver or pay to the minor or expend for the minor's benefit so
10 much of the custodial property as the custodian considers advisable for
11 the use and benefit of the minor, without court order and without regard
12 to:

13 (1) the duty or ability of the custodian personally or of any other
14 person to support the minor; or

15 (2) any other income or property of the minor that may be
16 applicable or available for the support of the minor.

17 **(b) At any time and without a court order, a custodian may**
18 **transfer part or all of the custodial property to a trust, including**
19 **a trust created by the custodian, in which:**

20 **(1) the minor is the sole beneficiary of the trust; and**

21 **(2) the terms of the trust satisfy the requirements of Section**
22 **2503 of the Internal Revenue Code and the regulations under**
23 **that section.**

24 **The transfer terminates the custodianship of the property to the**
25 **extent of the transfer.**

26 ~~(b)~~ (c) On petition of an interested person or the minor if the minor
27 is at least fourteen (14) years of age, the court may order the custodian
28 to deliver or pay to the minor or expend for the minor's benefit as much
29 of the custodial property as the court considers advisable for the use
30 and benefit of the minor.

31 ~~(c)~~ (d) A delivery, payment, or expenditure under this section is in
32 addition to, not in substitution for, and does not affect an obligation of
33 a person to support the minor.

34 SECTION 17. IC 30-3-4-1 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Notwithstanding
36 IC 30-4-2-2 and IC 30-4-3-33, this chapter applies whenever a county
37 that has been given, devised, or bequeathed money or property in trust
38 for the purpose of establishing and maintaining a home for indigent
39 women, worthy poor, or orphan children, and the board of
40 commissioners of the county has been named as trustee by the donor
41 of the property or money.

42 SECTION 18. IC 30-4-1-2 IS AMENDED TO READ AS

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- 1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this
2 article:
- 3 (1) "Adult" means any person eighteen (18) years of age or older.
4 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
5 descendant, brother, sister, spouse of a brother or sister,
6 employee, director, officer, partner, joint venturer, a corporation
7 subject to common control with the trustee, a shareholder, or
8 corporation who controls the trustee or a corporation controlled
9 by the trustee other than as a fiduciary, **an attorney, or an agent.**
10 (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
11 (4) "Breach of trust" means a violation by the trustee of any duty
12 which is owed to the settlor or beneficiary.
13 (5) "Charitable trust" means a trust in which all the beneficiaries
14 are the general public or organizations, including trusts,
15 corporations, and associations, and that is organized and operated
16 wholly for religious, charitable, scientific, public safety testing,
17 literary, or educational purposes. The term does not include
18 charitable remainder trusts, charitable lead trusts, pooled income
19 funds, or any other form of split-interest charitable trust that has
20 at least one (1) noncharitable beneficiary.
21 (6) "Court" means a court having jurisdiction over trust matters.
22 (7) "Income", except as otherwise stated in a trust agreement, has
23 the meaning set forth in IC 30-2-14-4.
24 (8) "Income beneficiary" has the meaning set forth in
25 IC 30-2-14-5.
26 (9) "Inventory value" means the cost of property to the settlor or
27 the trustee at the time of acquisition or the market value of the
28 property at the time it is delivered to the trustee, or the value of
29 the property as finally determined for purposes of an estate or
30 inheritance tax.
31 (10) "Minor" means any person under the age of eighteen (18)
32 years.
33 (11) "Person" has the meaning set forth in IC 30-2-14-9.
34 (12) "Personal representative" means an executor or administrator
35 of a decedent's or absentee's estate, guardian of the person or
36 estate, guardian ad litem or other court appointed representative,
37 next friend, parent or custodian of a minor, attorney in fact, or
38 custodian of an incapacitated person (as defined in
39 IC 29-3-1-7.5).
40 (13) "Principal" has the meaning set forth in IC 30-2-14-10.
41 **(14) "Qualified beneficiary" means:**
42 **(A) a beneficiary who, on the date the beneficiary's**

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qualification is determined:
(i) is a distributee or permissible distributee of trust income or principal;
(ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;
(iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;
(iv) has sent the trustee a request for notice;
(v) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;
(vi) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or
(vii) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or
(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

~~(14)~~ **(15)** "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

~~(15)~~ **(16)** "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

~~(16)~~ **(17)** "Trust estate" means the trust property and the income derived from its use.

~~(17)~~ **(18)** "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

~~(18)~~ **(19)** "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

~~(19)~~ **(20)** "Trustee" has the meaning set forth in IC 30-2-14-13.

SECTION 19. IC 30-4-1-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 13. IC 29-1-2-12.1 applies to a trust.**

SECTION 20. IC 30-4-2-1 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1. (a) A trust in
2 either real or personal property is enforceable only if there is written
3 evidence of its terms bearing the signature of the settlor or ~~his~~ **the**
4 **settlor's** authorized agent.

5 (b) Except as required in the applicable probate law for the
6 execution of wills, no formal language is required to create a trust, but
7 its terms must be sufficiently definite so that the trust property, the
8 identity of the trustee, the nature of the trustee's interest, the identity of
9 the beneficiary, the nature of the beneficiary's interest and the purpose
10 of the trust may be ascertained with reasonable certainty.

11 (c) It is not necessary to the validity of ~~an inter vivos~~ **a** trust that the
12 ~~inter vivos~~ trust be funded with or have a corpus that includes property
13 other than the present or future, vested or contingent right of the trustee
14 to receive proceeds or property, **including:**

- 15 (1) as beneficiary of an estate under IC 29-1-6-1;
- 16 (2) life insurance benefits under section 5 of this chapter;
- 17 (3) retirement plan benefits; or
- 18 (4) the proceeds of an individual retirement account.

19 **(d) A trust created under:**

- 20 (1) **section 18 of this chapter for the care of an animal; or**
 - 21 (2) **section 19 of this chapter for a noncharitable purpose;**
- 22 **has a beneficiary.**

23 **(e) A trust has a beneficiary if the beneficiary can be presently**
24 **ascertained or ascertained in the future, subject to any applicable**
25 **rule against perpetuities.**

26 **(f) A power of a trustee to select a beneficiary from an indefinite**
27 **class is valid. If the power is not exercised within a reasonable time,**
28 **the power fails and the property subject to the power passes to the**
29 **persons who would have taken the property had the power not**
30 **been conferred.**

31 **(g) A trust may be created by exercise of a power of**
32 **appointment in favor of a trustee.**

33 SECTION 21. IC 30-4-2-1.5 IS ADDED TO THE INDIANA CODE
34 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
35 **JANUARY 1, 2006]: Sec. 1.5. (a) Except as provided in subsection**
36 **(b), a trust that is not created by a will is validly created if the**
37 **trust's creation complies with the law of the jurisdiction in which**
38 **the trust instrument was executed or the law of the jurisdiction in**
39 **which, at the time of creation:**

- 40 (1) **the settlor was domiciled, had a place of abode, or was a**
41 **national;**
- 42 (2) **a trustee was domiciled or had a place of business; or**

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- 1 **(3) any trust property is located.**
- 2 **(b) A valid trust must be:**
- 3 **(1) in writing; and**
- 4 **(2) signed by:**
- 5 **(A) the settlor; or**
- 6 **(B) an agent of the settlor.**

7 SECTION 22. IC 30-4-2-2 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2. ~~(Acceptance by~~
 9 Trustee) With respect **(a) This section applies to the** acceptance of a
 10 trust by a person named as trustee.

11 ~~(a)~~ **(b)** The appearance of the named person's signature on the
 12 writing which is the evidence of the trust or on a separate written
 13 acceptance will be conclusive that ~~he~~ **the named person** accepted the
 14 trust.

15 ~~(b)~~ **(c)** Except as provided in subsection ~~(d)~~ of this section, **(e)**, if the
 16 named person exercises powers or performs duties under the trust, ~~he~~
 17 **the named person** will be presumed to have accepted the trust.

18 ~~(c)~~ **(d)** The named person may reject the trust in writing and, if ~~he~~
 19 **the named person** does so, will incur no liability. If, after being
 20 informed that ~~he~~ **the named person** has been named as trustee, ~~he~~ **the**
 21 **named person** neither expressly accepts the trust nor exercises powers
 22 or performs duties under the trust within a reasonable time, ~~he~~ **the**
 23 **named person** will be presumed to have rejected the trust.

24 ~~(d)~~ **(e)** If there is an immediate risk of damage to the trust estate, the
 25 named person may act to preserve the trust estate and will not be
 26 presumed to have accepted the trust, provided ~~he~~ **the named person**
 27 delivers a written rejection to the settlor at or within a reasonable time
 28 after ~~he~~ **the named person** acts, or, if the settlor is dead, to the
 29 beneficiary or the court having jurisdiction over the administration of
 30 the trust estate.

31 ~~(e)~~ If the person named as the original trustee does not accept the
 32 trust, or if ~~he~~ is dead or does not have capacity to act as trustee, the
 33 person named as the alternate trustee under the terms of the trust, or
 34 selected as alternate trustee according to a method prescribed in the
 35 terms of the trust, may accept the trust: if no person is named as trustee
 36 or if there is no alternate trustee designated or selected in the manner
 37 prescribed in the terms of the trust, the court shall appoint a trustee.

38 SECTION 23. IC 30-4-2-10 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 10. ~~(Capacity of~~
 40 Settlor) **(a)** If a trust is created by a declaration by the owner of
 41 property that ~~he~~ holds it in trust, his capacity must be the same as if the
 42 trust were created by a transfer to a third person:

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1 (b) If the trust is created by a transfer of property in trust, the
2 transferor must have the same capacity as if he had made a non-trust
3 transfer of the property.

4 (c) (a) If the a trust is created by a will, the settlor's capacity **that is**
5 **required to create the trust** is determined by the applicable probate
6 law.

7 (b) **The capacity of a settlor that is required to create, amend,**
8 **revoke, or add property to a revocable trust is the same as the**
9 **capacity of a testator that is required to make a will.**

10 (c) **To create or add property to an irrevocable trust, the settlor**
11 **or transferor must be of sound mind and have a reasonable**
12 **understanding of the nature and effect of the act and the terms of**
13 **the trust.**

14 (d) **To direct the actions of the trustee of a trust, the settlor or**
15 **other person must:**

- 16 (1) **have the capacity to hold and deal with property for the**
- 17 **settlor's or person's own benefit;**
- 18 (2) **be at least eighteen (18) years of age; and**
- 19 (3) **be of sound mind.**

20 SECTION 24. IC 30-4-2-17 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22 1, 2005]: **Sec. 17. (a) A charitable trust may be created for the**
23 **following purposes:**

- 24 (1) **The relief of poverty.**
- 25 (2) **The advancement of education or religion.**
- 26 (3) **The promotion of health.**
- 27 (4) **Governmental and municipal purposes.**
- 28 (5) **A purpose that is beneficial to the community.**

29 (b) **If the terms of a charitable trust do not indicate a particular**
30 **charitable purpose or beneficiary, the court may select at least one**
31 **(1) charitable purpose or beneficiary. The selection must be**
32 **consistent with the settlor's intention to the extent the intention can**
33 **be ascertained.**

34 (c) **The settlor of a charitable trust, among other persons, may**
35 **maintain a proceeding to enforce the charitable trust.**

36 SECTION 25. IC 30-4-2-18 IS ADDED TO THE INDIANA CODE
37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
38 1, 2005]: **Sec. 18. (a) A trust may be created to provide for the care**
39 **of an animal alive during the settlor's lifetime.**

40 (b) **A trust authorized by this section terminates as follows:**

- 41 (1) **If the trust is created to provide for the care of one (1)**
- 42 **animal alive during the settlor's lifetime, the trust terminates**

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on the death of the animal.

(2) If the trust is created to provide for the care of more than one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the last surviving animal.

(c) A trust authorized by this section may be enforced by the following:

(1) A person appointed in the terms of the trust.

(2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) A person having an interest in the welfare of an animal for whose care a trust is established may request the court to:

(1) appoint a person to enforce the trust; or

(2) remove a person appointed to enforce the trust.

(e) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(f) Except as provided in the terms of the trust, property not required for the trust's intended use must be distributed to the following:

(1) The settlor, if the settlor is living.

(2) The settlor's successors in interest, if the settlor is deceased.

SECTION 26. IC 30-4-2-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. (a) Except as provided in section 18 of this chapter, a trust may be created for a:

(1) noncharitable purpose without a beneficiary; or

(2) noncharitable and valid purpose to be selected by the trustee.

(b) A trust authorized by this section may be enforced for not more than twenty-one (21) years.

(c) A trust authorized by this section may be enforced by the following:

(1) A person appointed in the terms of the trust.

(2) A person appointed by the court, if the terms of the trust do not a appoint a person.

(d) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(e) Except as provided in the terms of the trust, property not

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1 required for the trust's intended use must be distributed to the
2 following:

- 3 (1) The settlor, if the settlor is living.
- 4 (2) The settlor's successors in interest, if the settlor is
5 deceased.

6 SECTION 27. IC 30-4-2.1-9 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2005]: **Sec. 9. A trust of a deceased spouse is subject to the
9 following:**

- 10 (1) IC 29-1-2-14.
- 11 (2) IC 29-1-2-15.

12 SECTION 28. IC 30-4-2.1-11 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2005]: **Sec. 11. (a) A written statement or list
15 that:**

- 16 (1) complies with this section; and
- 17 (2) is referred to in a settlor's trust that was revocable during
18 the settlor's lifetime;

19 may be used to dispose of items of tangible personal property,
20 other than property used in a trade or business, not otherwise
21 specifically disposed of by the trust.

22 (b) To be admissible under this section as evidence of the
23 intended disposition, the writing must be signed by the settlor and
24 must describe the items and the beneficiaries with reasonable
25 certainty. The writing may be prepared before or after the
26 execution of the trust. The writing may be altered by the settlor
27 after the writing is prepared. The writing may have no significance
28 apart from the writing's effect on the dispositions made by the
29 trust.

30 (c) If more than one (1) otherwise effective writing exists, then,
31 to the extent of a conflict among the writings, the provisions of the
32 most recent writing revoke the inconsistent provisions of each
33 earlier writing.

34 SECTION 29. IC 30-4-3-1.5 IS ADDED TO THE INDIANA CODE
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
36 1, 2005]: **Sec. 1.5. (a) This subsection applies to a trust created
37 under an instrument executed after June 30, 2005. Unless the terms
38 of a trust expressly provide that the trust is irrevocable, the settlor
39 may revoke or amend the trust.**

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

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(1) to the extent the trust consists of community property, the trust may be:

- (A) revoked by either spouse acting alone; and
- (B) amended only by the joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the part of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust as follows:

- (1) The settlor may substantially comply with a method provided in the terms of the trust.
- (2) If the terms of the trust do not provide a method or the terms of the trust provide a method that is not expressly made the exclusive method to revoke or amend the trust, the settlor may revoke or amend the trust by:
 - (A) executing a later will or codicil that:
 - (i) expressly refers to the trust; or
 - (ii) specifically devises property that would otherwise have passed according to the terms of the trust; or
 - (B) any other method that:
 - (i) is in writing; and
 - (ii) manifests clear and convincing evidence of the settlor's intent.
- (d) If a revocable trust is revoked, the trustee shall deliver the trust property as the settlor directs.
- (e) A settlor's powers with respect to revocation, amendment, and distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney.
- (f) A guardian of a settlor may exercise the settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.
- (g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been revoked or amended.

SECTION 30. IC 30-4-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~Unless the terms of the trust provide otherwise:~~

- (a) ~~Except as provided in the terms of the trust and~~ subject to subsection (c), ~~of this section;~~ a trustee has the power to perform

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1 without court authorization, except as provided in sections 4(b)
2 ~~IC 30-4-3-4(b)~~ and ~~IC 30-4-3-5(a)~~, 5(a) of this chapter, every act
3 necessary or appropriate for the purposes of the trust including, by way
4 of illustration and not of limitation, the ~~power~~ following powers:

5 (1) **The power to:**

- 6 (A) deal with the trust estate; ~~to~~
- 7 (B) buy, sell, or exchange and convey or transfer all property
8 (real, personal, or mixed) for cash or on credit and at public or
9 private sale with or without notice; and
- 10 (C) ~~to~~ invest and reinvest the trust estate.

11 (2) **The power** to receive additions to the assets of the trust.

12 (3) **The power** to acquire an undivided interest in a trust asset in
13 which the trustee, in any trust capacity, holds an undivided
14 interest.

15 (4) **The power** to manage real property in every way, including:
16 among other things,

- 17 (A) the adjusting of boundaries;
- 18 (B) erecting, altering, or demolishing buildings;
- 19 (C) dedicating of streets, alleys, or other public uses;
- 20 (D) subdividing;
- 21 (E) developing;
- 22 (F) obtaining vacation of plats;
- 23 (G) granting of easements and rights-of-way;
- 24 (H) partitioning;
- 25 (I) entering into party wall agreements; and
- 26 (J) obtaining title insurance for trust property.

27 (5) **The power to:**

- 28 (A) grant options concerning disposition of trust property,
29 including the sale of covered security options; and
- 30 (B) ~~to~~ take options for acquisition of trust property, including
31 the purchase back of previously sold covered security options.

32 (6) **The power** to enter into a lease as lessor or lessee, with or
33 without option to renew.

34 (7) **The power** to enter into arrangements for exploration and
35 removal of minerals or other natural resources and enter into a
36 pooling or unitization agreement.

37 (8) **The power** to continue the operation or management of any
38 business or other enterprise placed in trust.

39 (9) **The power to:**

- 40 (A) borrow money, to be repaid from trust property or
41 otherwise; and
- 42 (B) ~~to~~ encumber, mortgage, pledge, or grant a security interest

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- 1 in trust property in connection with the exercise of any power.
- 2 (10) **The power to:**
- 3 (A) advance money for the benefit of the trust estate and for all
- 4 expenses or losses sustained in the administration of the trust;
- 5 and
- 6 (B) ~~to~~ collect any money advanced, without interest or with
- 7 interest, at no more than the lowest rate prevailing when
- 8 advanced.
- 9 (11) **The power to** prosecute or defend actions, claims, or
- 10 proceedings for the protection of:
- 11 (A) trust property; and
- 12 (B) ~~of himself the trustee~~ in the performance of ~~his the~~
- 13 ~~trustee's~~ duties.
- 14 (12) **The power to:**
- 15 (A) pay or contest any claim;
- 16 (B) ~~to~~ settle a claim by or against the trust by compromise or
- 17 arbitration; and
- 18 (C) ~~to~~ abandon or release, totally or partially, any claim
- 19 belonging to the trust.
- 20 (13) **The power to** insure the:
- 21 (A) trust estate against damage or loss; and
- 22 (B) ~~the~~ trustee against liability with respect to third persons.
- 23 (14) **The power to** pay taxes, assessments, and other expenses
- 24 incurred in the:
- 25 (A) acquisition, retention, and maintenance of the trust
- 26 property; and
- 27 (B) ~~in the~~ administration of the trust.
- 28 (15) **The power to:**
- 29 (A) vote securities, in person or by a general or special proxy;
- 30 (B) ~~to~~ hold the securities in the name of a nominee if the
- 31 trustee is a corporate trustee; and
- 32 (C) ~~to~~ effect or approve, and deposit securities in connection
- 33 with, any change in the form of the corporation, including:
- 34 ~~among other things~~
- 35 (i) dissolution;
- 36 (ii) liquidation;
- 37 (iii) reorganization;
- 38 (iv) acquisition; and
- 39 (v) merger.
- 40 (16) **The power to** employ persons, including: ~~among others;~~
- 41 (A) attorneys;
- 42 (B) accountants;

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1 (C) investment advisors; and
 2 (D) agents;
 3 to advise and assist the trustee in the performance of ~~his~~ **the**
 4 **trustee's** duties.
 5 (17) **The power** to effect distribution of property in cash, in kind,
 6 or partly in cash and partly in kind, in divided or undivided
 7 interests. ~~and~~
 8 (18) **The power** to execute and deliver all instruments necessary
 9 or appropriate to accomplishing or facilitating the exercise of the
 10 trustee's powers.
 11 (19) **With respect to an interest in a proprietorship,**
 12 **partnership, limited liability company, business trust,**
 13 **corporation, or another form of business or enterprise, the**
 14 **power to:**
 15 (A) **continue the business or enterprise; and**
 16 (B) **take any action that may be taken by shareholders,**
 17 **members, or property owners, including:**
 18 (i) **merging;**
 19 (ii) **dissolving; or**
 20 (iii) **changing the form of business organization or**
 21 **contributing additional capital.**
 22 (20) **With respect to possible liability for violation of**
 23 **environmental law, the power to:**
 24 (A) **inspect or investigate property:**
 25 (i) **the trustee holds or has been asked to hold; or**
 26 (ii) **owned or operated by an organization in which the**
 27 **trustee holds an interest or has been asked to hold an**
 28 **interest;**
 29 **to determine the application of environmental law with**
 30 **respect to the property;**
 31 (B) **take action to prevent, abate, or remedy an actual or**
 32 **potential violation of an environmental law affecting**
 33 **property held directly or indirectly by the trustee before or**
 34 **after the assertion of a claim or the initiation of**
 35 **governmental enforcement;**
 36 (C) **decline to accept property into the trust or disclaim**
 37 **any power with respect to property that is or may be**
 38 **burdened with liability for violation of environmental law;**
 39 (D) **compromise claims against the trust that may be**
 40 **asserted for an alleged violation of environmental law; and**
 41 (E) **pay the expense of any inspection, review, abatement,**
 42 **or remedial action to comply with environmental law.**

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- 1 **(21) The power to exercise elections with respect to federal,**
- 2 **state, and local taxes.**
- 3 **(22) The power to select a mode of payment under any**
- 4 **employee benefit plan or retirement plan, annuity, or life**
- 5 **insurance payable to the trustee and exercise rights under the**
- 6 **plan, annuity, or insurance, including the right to:**
 - 7 **(A) indemnification:**
 - 8 **(i) for expenses; and**
 - 9 **(ii) against liabilities; and**
 - 10 **(B) take appropriate action to collect the proceeds.**
- 11 **(23) The power to make loans out of trust property, including**
- 12 **loans to a beneficiary on terms and conditions the trustee**
- 13 **determines fair and reasonable under the circumstances. The**
- 14 **trustee has a lien on future distributions for repayment of the**
- 15 **loans.**
- 16 **(24) The power to pledge trust property to guarantee loans**
- 17 **made by others to the beneficiary on terms and conditions the**
- 18 **trustee considers to be fair and reasonable under the**
- 19 **circumstances. The trustee has a lien on future distributions**
- 20 **for repayment of the loans.**
- 21 **(25) The power to:**
 - 22 **(A) appoint a trustee to act in another jurisdiction with**
 - 23 **respect to trust property located in the other jurisdiction;**
 - 24 **(B) confer on the appointed trustee all the appointing**
 - 25 **trustee's powers and duties;**
 - 26 **(C) require the appointed trustee to furnish security; and**
 - 27 **(D) remove the appointed trustee.**
- 28 **(26) With regard to a beneficiary who is under a legal**
- 29 **disability or whom the trustee reasonably believes is**
- 30 **incapacitated, the power to pay an amount distributable to the**
- 31 **beneficiary by:**
 - 32 **(A) paying the amount directly to the beneficiary;**
 - 33 **(B) applying the amount for the beneficiary's benefit;**
 - 34 **(C) paying the amount to the beneficiary's guardian;**
 - 35 **(D) paying the amount to the beneficiary's custodian under**
 - 36 **IC 30-2-8.5 to create a custodianship or custodial trust;**
 - 37 **(E) paying the amount to an adult relative or another**
 - 38 **person having legal or physical care or custody of the**
 - 39 **beneficiary to be expended on the beneficiary's behalf, if**
 - 40 **the trustee does not know of a guardian, custodian, or**
 - 41 **custodial trustee; or**
 - 42 **(F) managing the amount as a separate fund on the**

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1 beneficiary's behalf, subject to the beneficiary's continuing
2 right to withdraw the distribution.

3 (27) The power to:

4 (A) combine at least two (2) trusts into one (1) trust; or

5 (B) divide one (1) trust into at least two (2) trusts;

6 after notice to the qualified beneficiaries, if the result does not
7 impair the rights of any beneficiary or adversely affect
8 achievement of the purposes of the trust.

9 (b) Any act under ~~subdivision (4) of subsection (a) of this section;~~
10 **subsection (a)(4)**, an option under ~~subdivision (5);~~ **subsection (a)(5)**,
11 a lease under ~~subdivision (6);~~ **subsection (a)(6)**, an arrangement under
12 ~~subdivision (7);~~ **subsection (a)(7)**, and an encumbrance, mortgage,
13 pledge, or security interest under ~~subdivision (9)~~ **subsection (a)(9)** may
14 be for a term either within or extending beyond the term of the trust.

15 (c) In acquiring, investing, reinvesting, exchanging, retaining,
16 selling, and managing property for any trust, the trustee thereof shall
17 exercise the judgment and care required by IC 30-4-3.5. Within the
18 limitations of the foregoing standard, the trustee is authorized to
19 acquire and retain every kind of property, real, personal, or mixed, and
20 every kind of investment, including specifically, but without in any way
21 limiting the generality of the foregoing, bonds, debentures, and other
22 corporate obligations, stocks, preferred or common, and real estate
23 mortgages, which persons of prudence, discretion, and intelligence
24 acquire or retain for their own account, and within the limitations of the
25 foregoing standard, the trustee is authorized to retain property properly
26 acquired, without limitation as to time and without regard to its
27 suitability for original purchase. Within the limitations of the foregoing
28 standard the trustee is authorized to sell covered security options and
29 to purchase back previously sold covered security options.

30 (d) If a distribution of particular trust assets is to be made to two (2)
31 or more beneficiaries entitled to receive fractional shares in those
32 assets, the trustee may distribute the particular assets without
33 distributing to each beneficiary a pro rata share of each asset. However,
34 the trustee shall:

35 (1) distribute to each beneficiary a pro rata share of the total fair
36 market value of all of the particular assets as of the date of
37 distribution; and

38 (2) cause the distribution to result in a fair and equitable division
39 among the beneficiaries of capital gain or loss on the assets.

40 (e) **If the trust is terminated or partially terminated, the trustee**
41 **may send to the beneficiaries a proposal for distribution. If the**
42 **proposal for distribution informs the beneficiary that the**

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beneficiary:
(1) has a right to object to the proposed distribution; and
(2) must object not later than thirty (30) days after the proposal for distribution was sent;
the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

SECTION 31. IC 30-4-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The trustee has a duty to administer a trust according to its terms.

(b) Unless the terms of the trust provide otherwise, the trustee also has a duty to do the following:

- (1) Administer the trust in a manner consistent with IC 30-4-3.5.
- (2) Take possession of and maintain control over the trust property.
- (3) Preserve the trust property.
- (4) Make the trust property productive for both the income and remainder beneficiary. As used in this subdivision, "productive" includes the production of income or investment for potential appreciation.
- (5) Keep the trust property separate from the trustee's individual property and separate from or clearly identifiable from property subject to another trust.
- (6) Maintain clear and accurate accounts with respect to the trust estate.
- (7) Upon reasonable request, give the beneficiary complete and accurate information concerning any matter related to the administration of the trust and permit the beneficiary or the beneficiary's agent to inspect the trust property, the trustee's accounts, and any other documents concerning the administration of the trust.
- (8) Take whatever action is reasonable to realize on claims constituting part of the trust property.
- (9) Defend actions involving the trust estate.
- (10) Supervise any person to whom authority has been delegated.
- (11) Determine the trust beneficiaries by acting on information:**

- (A) the trustee, by reasonable inquiry, considers reliable;**
- and**
- (B) with respect to heirship, relationship, survivorship, or any other issue relative to determining a trust beneficiary.**

SECTION 32. IC 30-4-3-6.5 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 2 1, 2005]: **Sec. 6.5. If the happening of an event, including:**
 3 (1) marriage;
 4 (2) divorce;
 5 (3) performance of educational requirements; or
 6 (4) death;
 7 **affects the administration or distribution of a trust, a trustee who**
 8 **has exercised reasonable care to ascertain the happening of the**
 9 **event is not liable for a loss resulting from the trustee's lack of**
 10 **knowledge.**

11 SECTION 33. IC 30-4-3-7 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) Unless the terms
 13 of the trust provide otherwise, the trustee has a duty:

- 14 (1) not to loan funds to himself or an affiliate;
- 15 (2) not to purchase or participate in the purchase of trust property
- 16 from the trust for the trustee's own or an affiliate's account;
- 17 (3) not to sell or participate in the sale of the trustee's own or an
- 18 affiliate's property to the trust; or
- 19 (4) if a corporate trustee, not to purchase for or retain in the trust
- 20 its own or a parent or subsidiary corporation's stock, bonds, or
- 21 other capital securities. However, the trustee may retain such
- 22 securities already held in trusts created prior to September 2,
- 23 1971.

24 (b) Unless the terms of the trust provide otherwise, a corporate
 25 trustee may invest in, purchase for, or retain in the trust its own or an
 26 affiliate's obligations, including savings accounts and certificates of
 27 deposit, without the investment, purchase, or retention constituting a
 28 conflict of interest under section 5 of this chapter.

29 (c) Unless the terms of the trust provide otherwise, a corporate
 30 trustee does not violate subsection (a) by investing in, purchasing for,
 31 or retaining in the trust its own or an affiliate's obligations, including
 32 savings accounts and certificates of deposit, if the payment of each
 33 obligation is fully insured by the Bank Insurance Fund or the Savings
 34 Association Insurance Fund of the Federal Deposit Insurance
 35 Corporation, the National Credit Union Share Insurance Fund, or any
 36 insurer approved by the department of financial institutions under
 37 IC 28-7-1-31.5.

38 (d) If the terms of the trust permit the trustee to deal with a
 39 beneficiary for the trustee's own account, the trustee has a duty to deal
 40 fairly with and to disclose to the beneficiary all material facts related
 41 to the transaction which the trustee knows or should know.

42 (e) Unless the terms of the trust provide otherwise, the trustee may

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1 sell, exchange, or participate in the sale or exchange of trust property
2 from one (1) trust to himself as trustee of another trust, provided the
3 sale or exchange is fair and reasonable with respect to the beneficiaries
4 of both trusts and the trustee discloses to the beneficiaries of both trusts
5 all material facts related to the sale or exchange which the trustee
6 knows or should know.

7 **(f) This section does not prohibit a trustee from enforcing or**
8 **fulfilling any enforceable contract or agreement:**

- 9 **(1) executed during the settlor's lifetime; and**
- 10 **(2) between the settlor and the trustee in the trustee's**
11 **individual capacity.**

12 SECTION 34. IC 30-4-3-24.4 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2005]: **Sec. 24.4. (a) The court may modify**
15 **the administrative or dispositive terms of a trust if, because of**
16 **circumstances not anticipated by the settlor, modification or**
17 **termination will further the purposes of the trust. To the extent**
18 **practicable, the modification must be made in accordance with the**
19 **settlor's probable intention.**

20 **(b) The court may modify the administrative terms of a trust or**
21 **terminate the trust if:**

- 22 **(1) the purpose of the trust has been fulfilled; or**
- 23 **(2) continuation of the trust on the trust's existing terms**
24 **would:**
 - 25 **(A) be illegal, impossible, impracticable, or wasteful; or**
 - 26 **(B) impair the trust's administration.**

27 **(c) If the trust terminates under this section, the trustee shall**
28 **distribute the trust property in a manner consistent with the**
29 **purposes of the trust.**

30 **(d) The court may modify the terms of a trust to give the settlor**
31 **the power to revoke and modify the trust if the:**

- 32 **(1) settlor intended to reserve the power;**
- 33 **(2) settlor believed the power was reserved; and**
- 34 **(3) power was omitted from the terms of the trust by mistake.**

35 SECTION 35. IC 30-4-3-24.5 IS ADDED TO THE INDIANA
36 CODE AS A NEW SECTION TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2005]: **Sec. 24.5. (a) This section does not**
38 **apply to an easement for conservation or preservation.**

39 **(b) This subsection applies to a trust consisting of trust property**
40 **having a total value of less than seventy-five thousand dollars**
41 **(\$75,000). Unless the terms of the trust provide otherwise, the**
42 **trustee may terminate the trust:**

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- 1 **(1) if the trustee concludes the value of the trust property is**
- 2 **insufficient to justify the cost of administration; and**
- 3 **(2) after providing notice of the trust termination to qualified**
- 4 **beneficiaries.**

5 **(c) The court may:**
 6 **(1) modify or terminate a trust; or**
 7 **(2) remove the trustee and appoint a different trustee;**
 8 **if the court determines that the value of the trust property is**
 9 **insufficient to justify the cost of administration.**

10 **(d) If a trust terminates under this section, the trustee shall**
 11 **distribute the trust property in a manner consistent with the**
 12 **purposes of the trust.**

13 SECTION 36. IC 30-4-3-27 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. ~~(Cy Pres Doctrine)~~

15 (a) If property is given to a trust for a benevolent public purpose and
 16 the property is to be applied to a particular charitable purpose, and it is
 17 or becomes impossible, impracticable, **wasteful**, or illegal to carry out
 18 the particular purpose, and if the settlor manifested a more general
 19 intention to devote the property to charitable purposes, the trust need
 20 not fail, but the court may direct the application of the property to some
 21 charitable purpose which falls within the general charitable intention
 22 of the settlor.

23 **(b) The terms of a charitable trust that would result in the**
 24 **distribution of the trust property to a noncharitable beneficiary**
 25 **prevails over the power of the court under subsection (a) to apply**
 26 **the cy pres doctrine to modify or terminate the trust only if, when**
 27 **the provision takes effect:**

- 28 **(1) the trust property is to revert to the settlor and the settlor**
 29 **is still alive; or**
- 30 **(2) less than twenty-one (21) years have elapsed since the trust**
 31 **was created.**

32 ~~(b)~~ **(c)** A living heir of the settlor or a living beneficiary named in
 33 the original trust agreement may present evidence to the court of:

- 34 (1) the heir's or beneficiary's opinion of the settlor's intent; and
- 35 (2) the heir's or beneficiary's wishes;

36 regarding the property given in trust.

37 SECTION 37. IC 30-4-3-29 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) A trustee may
 39 be removed as follows:

- 40 (1) By the court.
- 41 (2) By the person, if any, who by the terms of the trust is
 42 authorized to remove the trustee.

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1 (3) Unless the terms of the trust instrument provide otherwise, by
 2 a beneficiary of the trust whose petition is granted by the court
 3 under subsection ~~(e)~~: **(d)**.
 4 ~~(b)~~ Upon petition by the trustee the court may, in its discretion,
 5 permit the trustee to resign if the trustee's resignation will not be
 6 detrimental to the trust:
 7 ~~(c)~~ Unless a successor trustee is named in or selected according to
 8 a method prescribed in the terms of the trust, the court may appoint a
 9 trustee to replace a removed, resigned, or deceased trustee and, on
 10 petition by a party to the trust, may appoint a co-trustee if to do so
 11 would facilitate more effective administration of the trust. The court
 12 shall inquire into the qualifications of a proposed successor trustee and
 13 give due consideration to the intentions of the settlor of the trust before
 14 appointing a successor trustee:
 15 **(b) Unless the terms of the trust requires a different time, the**
 16 **trustee may resign:**
 17 **(1) if the trustee gives at least thirty (30) days notice to:**
 18 **(A) the qualified beneficiaries;**
 19 **(B) the settlor, if living; and**
 20 **(C) all cotrustees; or**
 21 **(2) with the approval of the court.**
 22 **In approving a resignation, the court may issue orders and impose**
 23 **conditions reasonably necessary for the protection of the trust**
 24 **property. Any liability of a resigning trustee or of any sureties on**
 25 **the trustee's bond for acts or omissions of the trustee is not**
 26 **discharged or affected by the trustee's resignation.**
 27 ~~(d)~~ **(c)** For good cause shown, the court may at any time appoint a
 28 temporary trustee for such period of time, and to perform such duties,
 29 as the court may direct.
 30 ~~(e)~~ **(d)** This subsection applies only to a trust executed after June 30,
 31 1996. A beneficiary of a trust may petition the court for the removal of
 32 a corporate trustee if there has been a change in control of the corporate
 33 trustee after the date of the execution of the trust. The court may
 34 remove the corporate trustee if the court determines the removal is in
 35 the best interests of all the beneficiaries of the trust. For purposes of
 36 this subsection a change in control of the corporate trustee occurs
 37 whenever a person or group of persons acting in concert acquires the
 38 beneficial ownership of an aggregate of at least twenty-five percent
 39 (25%) of the outstanding shares of voting stock of:
 40 (1) a trustee; or
 41 (2) a corporation controlling a trustee;
 42 after June 30, 1996.

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1 (e) A trustee who has resigned or been removed shall
2 expeditiously deliver the trust property within the trustee's
3 possession to the cotrustee, successor trustee, or other person
4 entitled to the trust property. A trustee who has resigned or been
5 removed has the duties of trustee and the powers necessary to
6 protect the trust property:

- 7 (1) unless a cotrustee remains in the office of trustee or the
- 8 court orders otherwise; and
- 9 (2) until the trust property is delivered to a successor trustee
- 10 or other person entitled to the trust property.

11 SECTION 38. IC 30-4-3-33 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2005]: Sec. 33. (a) In addition to the terms of a trust regarding
14 the circumstances under which a trustee vacancy occurs, a trustee
15 vacancy occurs if:

- 16 (1) a person designated as trustee does not accept being
- 17 trustee;
- 18 (2) a person designated as trustee cannot be identified or does
- 19 not exist;
- 20 (3) a trustee resigns;
- 21 (4) a trustee is disqualified or removed;
- 22 (5) a trustee dies; or
- 23 (6) the person designated as trustee lacks capacity.

24 (b) Except as provided in the terms of a trust, if a trust has at
25 least two (2) cotrustees and at least one (1) cotrustee remains in
26 office, a cotrustee vacancy is not required to be filled. A cotrustee
27 vacancy must be filled if the trust has no remaining cotrustee.

28 (c) Except as provided in the terms of a trust, a trustee vacancy
29 of a noncharitable trust that is required to be filled must be filled
30 according to the following priority:

- 31 (1) A person designated in the terms of the trust to act as
- 32 successor trustee.
- 33 (2) A person appointed by a majority of the qualified
- 34 beneficiaries.
- 35 (3) A person appointed by the court.

36 (d) Except as provided in the terms of a trust, a trustee vacancy
37 of a charitable trust that is required to be filled must be filled
38 according to the following priority:

- 39 (1) A person designated in the terms of the trust to be
- 40 successor trustee.
- 41 (2) A person:
- 42 (A) selected by the charitable organizations expressly

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1 **designated to receive distributions under the terms of the**
2 **trust; and**
3 **(B) whose selection is approved by the attorney general.**
4 **(3) A person appointed by the court.**
5 **(e) Regardless of whether a trustee vacancy exists or is required**
6 **to be filled, the court may appoint an additional trustee or a special**
7 **fiduciary if the court considers the appointment necessary for the**
8 **administration of the trust.**
9 SECTION 39. IC 30-4-3-34 IS ADDED TO THE INDIANA CODE
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2005]: **Sec. 34. (a) At any time during the administration of a**
12 **trust, a trustee or any interested person may petition the court to**
13 **determine the:**
14 **(1) heirs of:**
15 **(A) the settlor; or**
16 **(B) any person named in the trust; and**
17 **(2) respective interests of the persons described in subdivision**
18 **(1) in the trust estate or any part of the trust estate.**
19 **(b) If a petition is filed under this section, the court shall fix the**
20 **time for a hearing on the petition. Notice of the hearing shall be**
21 **given in the following manner:**
22 **(1) Personally or by mail to persons who are named in the**
23 **trust and:**
24 **(A) are known to claim;**
25 **(B) are believed to claim; or**
26 **(C) have;**
27 **an interest in the trust estate or any part of the trust estate as**
28 **heir or through an heir of the settlor.**
29 **(2) By publication to any unknown heirs.**
30 **(c) When a hearing is held on the petition, the issues set forth in**
31 **the petition under subsection (a) may be determined by:**
32 **(1) competent evidence; or**
33 **(2) affidavit, if there are no objections.**
34 **A record shall be made of the oral evidence. The record and**
35 **affidavits must be a part of the files in the trust proceeding.**
36 **(d) If there is satisfactory proof, the court shall make a decree**
37 **that determines the issues set forth in the petition under subsection**
38 **(a). The court's decree is conclusive of the facts determined by the**
39 **court with regard to any interested person who has been notified**
40 **personally or by mail in accordance with subsection (b)(1), subject**
41 **to the interested person's right of appeal.**
42 **(e) An act of the trustee is valid with regard to the rights and**

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1 liabilities of a purchaser, a lessee, or other person who deals with
2 the trustee for value and in good faith, if the trustee acts in:

- 3 (1) accordance with the facts as determined by the court's
- 4 decree under subsection (d);
- 5 (2) accordance with the law; and
- 6 (3) good faith.

7 SECTION 40. IC 30-4-4-5 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2005]: Sec. 5. (a) A trustee may furnish to a person other than a
10 beneficiary a certification of trust instead of a copy of the trust
11 instrument. The certification of trust must contain the following
12 information:

- 13 (1) That the trust exists and the date the trust instrument was
- 14 executed.
- 15 (2) The identity of the settlor.
- 16 (3) The identity and address of the currently acting trustee.
- 17 (4) The powers of the trustee.
- 18 (5) The revocability or irrevocability of the trust and the
- 19 identity of any person holding a power to revoke the trust.
- 20 (6) The authority of cotrustees to sign or otherwise
- 21 authenticate and whether all or less than all the cotrustees are
- 22 required in order to exercise the powers of the trustee.
- 23 (7) The trust's taxpayer identification number.
- 24 (8) The manner of taking title to trust property.

25 (b) A certification of trust may be signed or authenticated by
26 any trustee.

27 (c) A certification of trust must state that the trust has not been
28 revoked, modified, or amended in any manner that would cause the
29 representations contained in the certification of trust to be
30 incorrect.

31 (d) A certification of trust may contain the dispositive terms of
32 a trust.

33 (e) A recipient of a certification of trust may require the trustee
34 to furnish copies of excerpts from the original trust instrument and
35 later amendments that:

- 36 (1) designate the trustee; and
- 37 (2) confer on the trustee the power to act in a pending
- 38 transaction in which the recipient has an interest.

39 (f) A person who acts in reliance on a certification of trust
40 without knowledge that the representations contained in the
41 certification of trust are incorrect:

- 42 (1) is not liable to any person for acting in reliance on the

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certification of trust; and
(2) may assume without inquiry the existence of the facts contained in the certification of trust.

Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the certification.

(g) A person who in good faith enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts from the original trust instrument is liable for damages if the court determines that a person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

SECTION 41. IC 30-4-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. ~~(Right to Compensation)~~ (a) Unless the terms of the trust provide otherwise, and except as provided in ~~30-4-5-17~~, section 17 of this chapter, the trustee is entitled to reasonable compensation from the trust estate for acting as trustee.

(b) If the terms of the trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

- (1) the duties of the trustee are substantially different from those contemplated when the trust was created; or
- (2) the compensation specified in the terms of the trust would be unreasonably low or high.

(c) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

- (1) expenses that were properly incurred in the administration of the trust; and
- (2) expenses that were not properly incurred in the administration of the trust, to the extent necessary to prevent unjust enrichment of the trust.

An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

SECTION 42. IC 30-4-6-3 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~(Venue)~~ (a) Unless
 2 the terms of the trust provide otherwise, venue in this state for matters
 3 arising under this article shall be exclusively in the county in which the
 4 principal place of administration of the trust is located. The principal
 5 place of administration of a trust is that usual place at which the
 6 records pertaining to the trust are kept or, if there is no such place, the
 7 trustee's residence. If there are cotrustees, the principal place of
 8 administration is either that of the corporate trustee, if there is only one
 9 (1); that of the individual trustee who has custody of the records, if
 10 there is but one (1) such person and there is no corporate cotrustee; or,
 11 if neither of these alternatives apply, that of any of the cotrustees.

12 **(b) Unless the trust provides otherwise, a trustee is under a**
 13 **continuing duty to administer the trust at a place appropriate to**
 14 **the trust's purposes and administration.**

15 **(c) Unless the trust provides otherwise, and without precluding**
 16 **the right of the court to order, approve, or disapprove a transfer,**
 17 **the trustee, in furtherance of a duty prescribed by subsection (b),**
 18 **may transfer the trust's principal place of administration to**
 19 **another state or to a jurisdiction outside the United States.**

20 **(d) The trustee shall notify the qualified beneficiaries of a**
 21 **proposed transfer of a trust's principal place of administration not**
 22 **less than sixty (60) days before initiating the transfer. The notice of**
 23 **proposed transfer must include the following information:**

- 24 **(1) The name of the jurisdiction to which the principal place**
 25 **of administration is to be transferred.**
- 26 **(2) The address and telephone number of the new location at**
 27 **which the trustee can be contacted.**
- 28 **(3) An explanation of the reasons for the proposed transfer.**
- 29 **(4) The date on which the proposed transfer is anticipated to**
 30 **occur.**
- 31 **(5) The date, not less than sixty (60) days after the giving of**
 32 **notice, by which the qualified beneficiary must notify the**
 33 **trustee of an objection to the proposed transfer.**

34 **(e) The authority of a trustee under this section to transfer a**
 35 **trust's principal place of administration terminates if a qualified**
 36 **beneficiary notifies the trustee of an objection to the proposed**
 37 **transfer on or before the date specified in the notice.**

38 **(f) In connection with a transfer of the trust's principal place of**
 39 **administration, the trustee may transfer some or all of the trust**
 40 **property to a successor trustee designated in the terms of the trust**
 41 **or appointed under IC 30-4-3-33.**

42 ~~(b)~~ **(g) If the principal place of administration is maintained in**

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1 another state, venue in this state for any matters arising under this
2 article shall be in the county stipulated in writing by the parties to the
3 trust or, if there is no such stipulation, in the county where the trust
4 property, or the evidence of the trust property, which is the subject of
5 the action is either situated or generally located.

6 (c) (h) Any party to an action or proceeding shall be entitled to a
7 change of venue or change of judge as provided in the Indiana Rules of
8 Procedure. A change of venue in any action shall not be construed to
9 authorize a permanent change of venue for all matters arising under
10 this article, and, upon conclusion of the action, venue shall return to the
11 court where the action was initiated.

12 SECTION 43. IC 30-4-6-8 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (~~Bonding~~)

14 (a) Unless the terms of the trust provide otherwise, the trustee need
15 not provide a bond to secure ~~his~~ **the trustee's** performance as trustee.

16 (b) If the trust is subject to continuing supervisory jurisdiction by
17 the court, the court may, on its own motion, direct the trustee to provide
18 a bond to secure performance of ~~his~~ **the trustee's** duties.

19 (c) Upon petition by an interested party, the court may direct the
20 trustee to provide a bond to secure ~~his~~ **the trustee's** performance, ~~as~~
21 ~~such~~, if the court deems it reasonably necessary to protect the interest
22 of any beneficiary.

23 (d) Unless the terms of the trust provide otherwise, the court may,
24 in its discretion, direct a trustee appointed by the court under ~~30-4-3-29~~
25 **IC 30-4-3-33** to file a bond to secure the performance of ~~his~~ **the**
26 **trustee's** duties.

27 (e) In any case in which bond is required, unless otherwise
28 specified, the court shall determine the amount, term and surety of the
29 bond to be provided. The court may also excuse a requirement of bond,
30 reduce or increase the amount of the bond, release the surety, or permit
31 substitution of another bond with the same or different sureties.

32 SECTION 44. IC 30-4-6-10.5 IS ADDED TO THE INDIANA
33 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
34 [EFFECTIVE JULY 1, 2005]: **Sec. 10.5. (a) Except as provided in the**
35 **terms of a trust, and to the extent there is not a conflict of interest**
36 **between the representative and the person represented or among**
37 **those being represented:**

- 38 (1) **a guardian may represent and bind the protected person**
39 **who is subject to the guardianship;**
40 (2) **an attorney in fact who has authority to act with respect to**
41 **the particular question or dispute may represent and bind the**
42 **principal;**

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1 **(3) a trustee may represent and bind the beneficiaries of the**
 2 **trust;**
 3 **(4) a personal representative of a decedent's estate may**
 4 **represent and bind persons interested in the estate; and**
 5 **(5) a parent may represent and bind the parent's minor,**
 6 **unborn, or not yet adopted child if a guardian for the child**
 7 **has not been appointed;**
 8 **with regard to a particular question or dispute.**
 9 **(b) The holder of a general power of appointment, including a**
 10 **general testamentary power of appointment, may represent and**
 11 **bind persons whose interests are subject to the power of**
 12 **appointment, including:**
 13 **(1) permissible appointees; and**
 14 **(2) takers in default.**
 15 **(c) Unless otherwise represented:**
 16 **(1) a minor;**
 17 **(2) an incapacitated person;**
 18 **(3) an unborn or a not yet adopted child; or**
 19 **(4) a person whose identity or location is unknown and not**
 20 **reasonably ascertainable;**
 21 **may be represented by and bound by another person who has a**
 22 **substantially identical interest with respect to the particular**
 23 **question or dispute but only to the extent there is not a conflict of**
 24 **interest between the representative and the person represented.**
 25 **(d) If the court determines that an interest is not represented**
 26 **under this section or that the otherwise available representation**
 27 **might be inadequate, the court may appoint a guardian ad litem to**
 28 **receive notice, give consent, and otherwise represent, bind, and act**
 29 **on behalf of:**
 30 **(1) a minor;**
 31 **(2) an incapacitated person;**
 32 **(3) an unborn child; or**
 33 **(4) a person whose identity or location is unknown.**
 34 **If not precluded by conflict of interest, a guardian ad litem may be**
 35 **appointed to represent several persons or interests. A guardian ad**
 36 **litem may act on behalf of the person represented with respect to**
 37 **any matter arising under this title, regardless of whether a judicial**
 38 **proceeding concerning the trust is pending. In making decisions, a**
 39 **guardian ad litem may consider general benefits accruing to the**
 40 **living members of the family of the persons represented.**
 41 **(e) Notice to a person who may represent and bind another**
 42 **person under this section has the same effect as if notice were given**

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directly to the other person.

(f) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would have become effective.

SECTION 45. IC 30-4-6-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

- (1) Ninety (90) days after the person receives from the trustee a copy of the trust certification and a notice informing the person of:
 - (A) the trust's existence;
 - (B) the trustee's name and address; and
 - (C) the time allowed for commencing the proceeding.
- (2) Three (3) years after the settlor's death.

(b) More than one hundred twenty (120) days after the death of the settlor of a trust that was revocable at the settlor's death, the trustee may distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for the distribution unless:

- (1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or
- (2) a potential contestant notifies the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced not later than sixty (60) days after the contestant sends the trustee the notification.

(c) A beneficiary of a trust that is determined to be invalid shall return any distribution received.

SECTION 46. IC 30-5-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.5. Notwithstanding IC 1-1-4-4 and IC 6-3-1-11, "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States as amended from time to time.

SECTION 47. IC 30-5-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. (a) Language conferring general authority with respect to retirement plans means the principal authorizes the attorney in fact to:

- (1) make contributions, including rollover contributions, or cause contributions to be made on behalf of the principal to

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1 **any retirement plan, including any:**
2 **(A) pension;**
3 **(B) profit sharing or stock bonus plan;**
4 **(C) individual retirement arrangement;**
5 **(D) individual retirement account described in Section**
6 **408(A) of the Internal Revenue Code;**
7 **(E) deferred compensation plan;**
8 **(F) qualified plan under Section 403(b) of the Internal**
9 **Revenue Code; or**
10 **(G) other qualified or nonqualified retirement plan,**
11 **arrangement, or annuity in which the principal is a**
12 **participant or a beneficiary;**
13 **(2) establish at least one (1) individual retirement account or**
14 **other retirement plan in the principal's name;**
15 **(3) elect a form of payment of benefits from a retirement plan**
16 **and withdraw benefits from a retirement plan;**
17 **(4) exercise investment powers available under a retirement**
18 **plan;**
19 **(5) designate at least one (1) beneficiary or contingent**
20 **beneficiary for any benefits payable under a retirement plan**
21 **on account of the principal's death and change any earlier**
22 **designation of beneficiary;**
23 **(6) borrow from, sell assets to, and purchase assets from the**
24 **retirement plan if authorized by the retirement plan; and**
25 **(7) waive the right of the principal to be a beneficiary of a**
26 **joint or survivor annuity.**
27 **(b) The powers described in this section are equally exercisable**
28 **with respect to a retirement plan established or operated in**
29 **Indiana or another jurisdiction and:**
30 **(1) owned by the principal;**
31 **(2) in which the principal was a participant; or**
32 **(3) of which the principal was a beneficiary;**
33 **when the powers are given or after the powers are given.**
34 **(c) A power of attorney executed before July 1, 2005, that**
35 **confers general authority with respect to all other matters under**
36 **section 19 of this chapter, includes general authority with respect**
37 **to retirement plans as described in this section.**
38 SECTION 48. IC 30-5-5-7 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) Language
40 conferring general authority with respect to insurance transactions
41 means the principal authorizes the attorney in fact to do the following:
42 (1) Continue, pay the premium or assessment on, modify, rescind,

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1 release, or terminate a contract of life, accident, health, or
 2 disability insurance or for the provision of health care services or
 3 any combination of these contracts procured by or on behalf of the
 4 principal before the granting of the power of attorney that insures
 5 the principal or another person, without regard to whether the
 6 principal is or is not a beneficiary under the contract.
 7 (2) Procure new, different, or additional contracts of life, accident,
 8 health, or disability insurance for the principal or for the provision
 9 of health care services for the principal, and select the amount,
 10 type of insurance, and mode of payment under each contract, pay
 11 the premium or assessment on, modify, release, or terminate a
 12 contract procured by the attorney in fact, and designate the
 13 beneficiary under the contract. ~~The attorney in fact may not be~~
 14 ~~named a beneficiary of a contract, unless:~~
 15 (A) ~~the attorney in fact is named as beneficiary of death~~
 16 ~~benefit proceeds if permitted under section 8 of this chapter;~~
 17 ~~or~~
 18 (B) ~~the attorney in fact was named as a beneficiary under a~~
 19 ~~contract that was procured by the principal before the granting~~
 20 ~~of the power of attorney. The attorney in fact may continue to~~
 21 ~~be named as beneficiary under the contract; or an extension or~~
 22 ~~renewal of; or substitute for; the contract.~~
 23 (3) Apply for and receive any available loan on the security of the
 24 contract of insurance, whether for the payment of the premium or
 25 for the procuring of cash, surrender and receive the cash surrender
 26 value, exercise an election as to beneficiary or mode of payment,
 27 change the manner of paying premiums, change or convert the
 28 type of insurance contract, with respect to a contract of life,
 29 accident, health, disability, or liability insurance in which the
 30 principal has, or claims to have, a power described in this
 31 subdivision, or change the beneficiary of the contract of
 32 insurance. ~~The attorney in fact may not be named a new~~
 33 ~~beneficiary of a contract, unless:~~
 34 (A) ~~the attorney in fact is named as beneficiary of death~~
 35 ~~benefit proceeds if permitted under section 8 of this chapter;~~
 36 ~~or~~
 37 (B) ~~the attorney in fact was named as a beneficiary under a~~
 38 ~~contract that was procured by the principal before the granting~~
 39 ~~of the power of attorney. The attorney in fact may continue to~~
 40 ~~be named as beneficiary under the contract; or an extension or~~
 41 ~~renewal of; or substitute for; the contract.~~
 42 (4) Demand, receive, or obtain by action or proceeding money or

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- 1 other things of value to which the principal is, may become, or
- 2 claims to be entitled to as the proceeds of a contract of insurance
- 3 or a transaction permitted under this section, conserve, invest,
- 4 disburse, or use anything received for a purpose permitted under
- 5 this section, and reimburse the attorney in fact for expenditures
- 6 properly made in the execution of powers conferred upon the
- 7 attorney in fact.
- 8 (5) Apply for and procure available governmental aid in the
- 9 guaranteeing or paying of premiums of a contract of insurance on
- 10 the life of the principal.
- 11 (6) Sell, assign, hypothecate, borrow upon, or pledge the interest
- 12 of the principal in a contract of insurance.
- 13 (7) Pay from the proceeds or otherwise, compromise, contest, and
- 14 apply for refunds in connection with a tax or an assessment levied
- 15 by a taxing authority with respect to a contract of insurance, the
- 16 proceeds of the refunds, or liability accruing from a tax or an
- 17 assessment.
- 18 (8) Agree and contract in any manner and on any terms with any
- 19 person the attorney in fact selects to accomplish a purpose
- 20 permitted under this section and perform, rescind, reform, release,
- 21 or modify an agreement or a contract.
- 22 (9) Execute, acknowledge, seal, and deliver a consent, a demand,
- 23 a request, an application, an agreement, an indemnity, an
- 24 authorization, an assignment, a pledge, a notice, a check, a
- 25 receipt, a waiver, or other instrument the attorney in fact
- 26 considers useful to accomplish a purpose permitted under this
- 27 section.
- 28 (10) Continue, procure, pay the premium or assessment on,
- 29 modify, rescind, release, terminate, or otherwise deal with a
- 30 contract of insurance, other than those permitted under
- 31 subdivision (1) or (2), including fire, marine, burglary,
- 32 compensation, liability, hurricane, casualty, or a combination of
- 33 insurance, and do acts with respect to the contract or with respect
- 34 to the contract's proceeds or enforcement that the attorney in fact
- 35 considers necessary or desirable for the promotion or protection
- 36 of the interests of the principal.
- 37 (11) Prosecute, defend, submit to arbitration, settle, and propose
- 38 or accept a compromise with respect to a claim existing in favor
- 39 of or against the principal based on or involving an insurance
- 40 transaction or intervene in an action or proceeding relating to a
- 41 claim.
- 42 (12) Hire, discharge, and compensate an attorney, accountant,

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1 expert witness, or other assistant when the attorney in fact
2 considers the action to be desirable for the proper execution by
3 the attorney in fact of a power described in this section and keep
4 needed records.

5 (13) Perform any other acts in connection with procuring,
6 supervising, managing, modifying, enforcing, and terminating
7 contracts of insurance or for the provisions of health care services
8 in which the principal is insured or is otherwise interested.

9 (b) The powers described in this section are exercisable equally with
10 respect to a contract of insurance or for the provision of health care
11 service in which the principal is interested, whether located in Indiana
12 or in another jurisdiction.

13 SECTION 49. IC 30-5-5-9 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Language
15 conferring general authority with respect to gift transactions means the
16 principal authorizes the attorney in fact to do the following:

17 (1) Make gifts to organizations, charitable or otherwise, to which
18 the principal has made gifts, and satisfy pledges made to
19 organizations by the principal.

20 (2) Make gifts on behalf of the principal to the principal's spouse,
21 children, and other descendants or the spouse of a child or other
22 descendant, either outright or in trust, for purposes the attorney in
23 fact considers to be in the best interest of the principal, including
24 the minimization of income, estate, inheritance, or gift taxes. The
25 attorney in fact or a person that the attorney in fact has a legal
26 obligation to support may not be the recipient of gifts in one (1)
27 year that total more than ~~ten thousand dollars~~ (\$10,000) in
28 ~~aggregate value to the recipient.~~ **the amount allowed as an**
29 **exclusion from gifts under Section 2503 of the Internal**
30 **Revenue Code.**

31 (3) Prepare, execute, consent to on behalf of the principal, and file
32 a return, report, declaration, or other document required by the
33 laws of the United States, a state, a subdivision of a state, or a
34 foreign government that the attorney in fact considers desirable or
35 necessary with respect to a gift made under the authority of this
36 section.

37 (4) Execute, acknowledge, seal, and deliver a deed, an
38 assignment, an agreement, an authorization, a check, or other
39 instrument the attorney in fact considers useful to accomplish a
40 purpose permitted under this section.

41 (5) Prosecute, defend, submit to arbitration, settle, and propose or
42 accept a compromise with respect to a claim existing in favor of

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1 or against the principal based on or involving a gift transaction,
 2 or intervene in a related action or proceeding.
 3 (6) Hire, discharge, and compensate an attorney, accountant,
 4 expert witness, or other assistant when the attorney in fact
 5 considers the action to be desirable for the proper execution by
 6 the attorney in fact of a power described in this section and keep
 7 needed records.
 8 (7) Perform any other acts the attorney in fact considers desirable
 9 or necessary to complete a gift on behalf of the principal.
 10 (b) The powers described in this section are exercisable equally with
 11 respect to a gift of property in which the principal is interested at the
 12 time of the giving of the power of attorney or becomes interested in
 13 after that time, whether conducted in Indiana or in another jurisdiction.
 14 SECTION 50. IC 30-5-8-7 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2005]: **Sec. 7. (a) A person who acts in good faith reliance on a
 17 power of attorney is immune from liability to the same extent as if
 18 the person had dealt directly with the named principal and the
 19 named principal had been competent and not incapacitated.**
 20 **(b) The named attorney in fact may furnish an affidavit to a
 21 person that states, to the best knowledge of the attorney in fact:**
 22 **(1) that the instrument relied on by the person is a true copy
 23 of the power of attorney;**
 24 **(2) that the named principal is alive;**
 25 **(3) that the power of attorney was validly granted and
 26 executed;**
 27 **(4) that the relevant powers granted to the attorney in fact
 28 have not been altered or terminated;**
 29 **(5) in the case of a successor attorney in fact, that the original
 30 attorney in fact has failed or ceased to serve and the successor
 31 attorney in fact is empowered to act on behalf of the
 32 principal; and**
 33 **(6) if the effective date of the power of attorney begins upon
 34 the occurrence of a certain event, that the event has occurred
 35 and the attorney in fact is authorized to act under the power
 36 of attorney.**
 37 **(c) A person who:**
 38 **(1) relies on an affidavit described in subsection (b); and**
 39 **(2) acts in good faith;**
 40 **is immune from liability that might otherwise arise from the**
 41 **person's action in reliance on the power of attorney that is the**
 42 **subject of the affidavit.**

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1 SECTION 51. IC 30-5-9-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) An attorney in
 3 fact who acts with due care for the benefit of the principal is not liable
 4 or limited only because the attorney in fact:

- 5 (1) also benefits from the act;
 6 (2) has individual or conflicting interests in relation to the
 7 property, care, or affairs of the principal; or
 8 (3) acts in a different manner with respect to the principal's and
 9 the attorney in fact's individual interests.

10 **(b) A gift, bequest, transfer, or transaction is not presumed to**
 11 **be valid or invalid if the gift, bequest, transfer, or transaction:**

12 **(1) is:**

13 **(A) made by the principal taking action; and**

14 **(B) not made by an attorney in fact acting for the principal**
 15 **under a power of attorney; and**

16 **(2) benefits the principal's attorney in fact.**

17 SECTION 52. IC 30-5-10-4 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as
 19 provided in ~~subsection~~ **subsections (b) and (c)**, a power of attorney
 20 terminates on the death of the principal.

21 (b) The death of a principal who has executed a written power of
 22 attorney does not revoke or terminate the power of attorney as to the
 23 attorney in fact or other person who, without actual knowledge of the
 24 death of the principal, acts in good faith under the power. Unless
 25 otherwise invalid or unenforceable, an action taken under this
 26 subsection binds the principal and the principal's successors in interest.

27 **(c) The death of a principal who executes a written power of**
 28 **attorney does not revoke or terminate the power of attorney as to**
 29 **authority granted under IC 30-5-5-16(b)(5) through**
 30 **IC 30-5-5-16(b)(7). An action taken under this subsection binds the**
 31 **principal and the principal's successors in interest.**

32 ~~(c)~~ **(d)** Notice from the United States Department of Defense of the
 33 death of a principal who has given a power of attorney is official notice
 34 of the death of the principal. A report or listing of the principal's being
 35 missing or missing in action does not do any of the following:

- 36 (1) Constitute and may not be interpreted as actual notice of the
 37 death of the principal.
 38 (2) Terminate the power of attorney.

39 SECTION 53. IC 32-17.5-4-1 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Except for a
 41 disclaimer under IC 32-17.5-5 or IC 32-17.5-6-1, the following rules
 42 apply to a disclaimer of an interest in property:

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- 1 (1) A disclaimer takes effect:
 2 (A) when the instrument creating the interest becomes
 3 irrevocable; or
 4 (B) upon the intestate's death if the interest arose under the law
 5 of intestate succession.
 6 (2) A disclaimed interest passes according to any provision in the
 7 instrument creating the interest:
 8 (A) that provides for the disposition of the interest should the
 9 interest be disclaimed; or
 10 (B) that concerns disclaimed interests in general.
 11 (3) If ~~an~~ **the instrument creating the disclaimed interest** does
 12 not contain a provision described in subdivision (2), the following
 13 rules apply:
 14 (A) If the disclaimant is an individual, the following rules
 15 apply:
 16 (i) Except as provided in item (ii), the disclaimed interest
 17 passes as if the disclaimant had died immediately before the
 18 time of distribution.
 19 (ii) If, by law or under the instrument, the descendants of the
 20 disclaimant would share in the disclaimed interest by any
 21 method of representation had the disclaimant died before the
 22 time of distribution, the disclaimed interest passes only to
 23 the descendants of the disclaimant who survive at the time
 24 of distribution.
 25 (B) If the disclaimant is not an individual, the disclaimed
 26 interest passes as if the disclaimant did not exist.
 27 **(4) If the disclaimed interest arose under the law of intestate**
 28 **succession, the disclaimed interest passes as if the disclaimant**
 29 **had died immediately before the intestate's death.**
 30 ~~(4)~~ **(5) Upon the disclaimer of a preceding interest:**
 31 (A) a future interest held by a person other than the
 32 disclaimant takes effect as if the disclaimant had died or
 33 ceased to exist immediately before the time of distribution;
 34 and
 35 (B) a future interest held by the disclaimant is not accelerated
 36 in possession or enjoyment.
 37 SECTION 54. IC 34-30-2-131 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 131. **(a) IC 30-4-3-1.5**
 39 **(Concerning actions of a trustee who does not know that a trust has**
 40 **been revoked or amended).**
 41 **(b) IC 30-4-3-6.5 (Concerning actions of a trustee who does not**
 42 **know of the happening of an event that affects the trust).**

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1 (c) IC 30-4-3-11 (Concerning trustees and beneficiaries of a trust in
 2 certain circumstances).
 3 SECTION 55. IC 34-30-2-132.4 IS ADDED TO THE INDIANA
 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2005]: **Sec. 132.4. IC 30-4-4-5 (Concerning**
 6 **a person who acts in reliance on a certification of trust).**
 7 SECTION 56. IC 34-30-2-132.6 IS ADDED TO THE INDIANA
 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2005]: **Sec. 132.6. IC 30-4-6-14 (Concerning**
 10 **distribution of trust property).**
 11 SECTION 57. IC 34-30-2-132.8 IS ADDED TO THE INDIANA
 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2005]: **Sec. 132.8. IC 30-5-8-7 (Concerning**
 14 **a person who relies on a power of attorney or an affidavit**
 15 **concerning a power of attorney).**
 16 SECTION 58. THE FOLLOWING ARE REPEALED [EFFECTIVE
 17 JULY 1, 2005]: IC 29-1-15-16; IC 30-4-3-1; IC 30-4-3-24;
 18 IC 30-4-3-28.
 19 SECTION 59. [EFFECTIVE JULY 1, 2005] **IC 29-1-2-1, as**
 20 **amended by this act, applies to the estate of a person who dies after**
 21 **June 30, 2004.**
 22 SECTION 60. [EFFECTIVE JULY 1, 2005] **IC 6-4.1-4-2 and**
 23 **IC 29-1-3-2, both as amended by this act, apply to the estate of a**
 24 **person who dies after June 30, 2005.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1153, 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 23, line 27, delete "or" and insert "**and**".

and when so amended that said bill do pass.

(Reference is to HB 1153 as introduced.)

THOMAS, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1153 be amended to read as follows:

Replace the effective dates in SECTIONS 20 through 23 with "[EFFECTIVE JANUARY 1, 2006]".

(Reference is to HB 1153 as printed January 12, 2005.)

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