

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR EHB 1153**

**Citations Affected:** IC 6-4.1-1-3; IC 6-4.1-4-2; IC 29-1; IC 29-3-8-5; IC 30-1-8-7; IC 30-2-8.5-29; IC 30-3-4-1; IC 30-4; IC 30-5; IC 32-17.5-4-1; IC 32-29-7-3; IC 33-37-5-2; IC 34-30-2; IC 34-54-11-2.

**Synopsis:** Will depository, probate, trust, and inheritance tax matters. Provides that a subsequent childless spouse's share of a deceased individual'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 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 convicted of an individual's death from acquiring trust property because of the individual's death. Voids a transaction in which a personal representative acquires an interest in an 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. 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. Gives a trustee additional

powers. Makes an exception to the cy pres doctrine. Requires a settlor of a trust 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 benefitting 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. Allows a person to deposit a will with the circuit court clerk of the county in which the testator resided when the will was executed. Requires the circuit court clerk to collect a \$25 fee for depositing the will, unless the circuit court waives the fee. Makes a fee waiver mandatory if the depositor is participating in a supreme court program, and permits a fee waiver if the depositor is an attorney who will no longer practice law. Provides that an individual adopted as an adult is to be treated as the natural child of the adopting parent for purposes of the inheritance tax if the adoption was finalized before July 1, 2004. (Current law requires an individual to be adopted before being emancipated in order to be treated as the natural child of the adopting parent.) Specifies that a stepchild of the transferor is a Class A beneficiary for purposes of the inheritance tax, whether or not the stepchild is adopted by the transferor. Provides that a lineal descendant of a stepchild of a transferor, whether or not the stepchild is adopted by the transferor, is a Class A transferee for purposes of the inheritance tax. Provides that defenses raised by a foreign judgment debtor must be ruled upon before the foreign judgment: (1) may be enforced by execution; or (2) constitutes a lien. Provides that a foreign judgment creditor is entitled to the same prejudgment remedies as an Indiana judgment creditor. Authorizes an Indiana court in which a foreign judgment is filed to preliminarily litigate certain postjudgment motions. Allows a sheriff to charge a person enforcing a mortgage foreclosure judgment a fee of not more than \$200 for sheriff's sale costs. **(This conference committee report inserts EHB 1129, which does the following: (1) Adds provisions concerning will depositories. (2) Provides that an individual adopted as an adult is to be treated as the natural child of the adopting parent for purposes of the inheritance tax if the adoption was finalized before July 1, 2004. (3) Specifies that a stepchild of the transferor is a Class A beneficiary for purposes of the inheritance tax, whether or not the stepchild is adopted by the transferor. (4) Provides that a lineal descendant of a stepchild of a transferor, whether or not the stepchild is adopted by the transferor, is a Class A transferee for purposes of the inheritance tax. This conference committee report also inserts SB 102, which adds provisions concerning foreign judgments. (5) Adds a provision from SB 564 that allows a sheriff to charge a person enforcing a mortgage foreclosure judgment a fee for sheriff's sale costs.)**

**Effective:** July 1, 2004 (retroactive); July 1, 2005; January 1, 2006.

Adopted

Rejected

## CONFERENCE COMMITTEE REPORT

**MR. SPEAKER:**

*Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1153 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 property.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 6-4.1-1-3 IS AMENDED TO READ AS FOLLOWS
- 6 [EFFECTIVE JULY 1, 2004 (RETROACTIVE)]: Sec. 3. (a) "Class A
- 7 transferee" means a transferee who is **a:**
- 8 (1) ~~a~~ lineal ancestor of the transferor;
- 9 (2) ~~a~~ lineal descendant of the transferor; ~~or~~
- 10 (3) ~~a~~ stepchild of the transferor, **whether or not the stepchild is**
- 11 **adopted by the transferor; or**
- 12 **(4) lineal descendant of a stepchild of the transferor, whether**
- 13 **or not the stepchild is adopted by the transferor.**
- 14 (b) "Class B transferee" means a transferee who is a:
- 15 (1) brother or sister of the transferor;
- 16 (2) descendant of a brother or sister of the transferor; or
- 17 (3) spouse, widow, or widower of a child of the transferor.
- 18 (c) "Class C transferee" means a transferee, except a surviving
- 19 spouse, who is neither a Class A nor a Class B transferee.
- 20 (d) For purposes of this section, a legally adopted child is to be
- 21 treated as if the child were the natural child of the child's adopting
- 22 parent if the adoption occurred before the individual was totally

1 emancipated. **However, an individual adopted after being totally**  
 2 **emancipated shall be treated as the natural child of the adopting**  
 3 **parent if the adoption was finalized before July 1, 2004.**

4 (e) For purposes of this section, if a relationship of loco parentis has  
 5 existed for at least ten (10) years and if the relationship began before  
 6 the child's fifteenth birthday, the child is to be considered the natural  
 7 child of the loco parentis parent.

8 (f) As used in this section, "stepchild" means a child of the  
 9 transferor's surviving, deceased, or former spouse who is not a child of  
 10 the transferor.

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

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

24 (c) For purposes of sections 3 and 6 of this chapter, an inheritance tax  
 25 return is not due until the last day of any extension period or periods  
 26 granted by the court under this section.

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

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

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

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

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

39 (c) If the surviving spouse is a second or other subsequent spouse  
 40 who did not at any time have children by the decedent, and the  
 41 decedent left surviving ~~him~~ **the decedent** a child or children or the  
 42 descendants of a child or children by a previous spouse, such surviving  
 43 second or subsequent childless spouse shall take only an amount equal  
 44 to twenty-five percent (25%) of the fair market value as of the date of  
 45 death of the ~~lands~~ **real property** of the deceased spouse, **less liens and**  
 46 **encumbrances on the real property of the deceased spouse**, and the  
 47 fee shall, at the decedent's death, vest at once in such child or children,  
 48 or the descendants of such as may be dead. Such second or subsequent  
 49 childless spouse shall, however, receive the same share of the personal  
 50 property of the decedent as is provided in subsection (b) with respect  
 51 to surviving spouses generally.

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

4 (1) To the issue of the intestate, if they are all of the same degree  
 5 of kinship to the intestate, they shall take equally, or if of unequal  
 6 degree, then those of more remote degrees shall take by  
 7 representation.

8 (2) If there is a surviving spouse but no surviving issue of the  
 9 intestate, then to the surviving parents of the intestate.

10 (3) If there is no surviving spouse or issue of the intestate, then to  
 11 the surviving parents, brothers, and sisters, and the issue of  
 12 deceased brothers and sisters of the intestate. Each living parent of  
 13 the intestate shall be treated as of the same degree as a brother or  
 14 sister and shall be entitled to the same share as a brother or sister.  
 15 However, the share of each parent shall be not less than one-fourth  
 16 (1/4) of such net estate. Issue of deceased brothers and sisters shall  
 17 take by representation.

18 (4) If there is no surviving parent or brother or sister of the  
 19 intestate, then to the issue of brothers and sisters. If such  
 20 distributees are all in the same degree of kinship to the intestate,  
 21 they shall take equally or, if of unequal degree, then those of more  
 22 remote degrees shall take by representation.

23 (5) If there is no surviving issue or parent of the intestate or issue  
 24 of a parent, then to the surviving grandparents of the intestate  
 25 equally.

26 (6) If there is no surviving issue or parent or issue of a parent, or  
 27 grandparent of the intestate, then the estate of the decedent shall be  
 28 divided into that number of shares equal to the sum of:

29 (A) the number of brothers and sisters of the decedent's parents  
 30 surviving the decedent; plus

31 (B) the number of deceased brothers and sisters of the decedent's  
 32 parents leaving issue surviving both them and the decedent;  
 33 and one (1) of the shares shall pass to each of the brothers and  
 34 sisters of the decedent's parents or their respective issue per stirpes.

35 (7) If interests in real estate go to a husband and wife under this  
 36 subsection, the aggregate interests so descending shall be owned by  
 37 them as tenants by the entireties. Interests in personal property so  
 38 descending shall be owned as tenants in common.

39 (8) If there is no person mentioned in subdivisions (1) through (7),  
 40 then to the state.

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

51 (b) A civil action may be initiated to have a person declared a

1 constructive trustee of property that is acquired by ~~him~~, **the person**, or  
 2 that ~~he~~ **the person** is otherwise entitled to receive, **including property**  
 3 **from a trust**, as a result of a ~~decedent's~~ **an individual's** death, if:

4 (1) the person has been charged with murder, causing suicide, or  
 5 voluntary manslaughter, because of the ~~decedent's~~ **individual's**  
 6 death; and

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

9 If a civil action is initiated under this subsection, the court shall declare  
 10 that the person is a constructive trustee of the property if by a  
 11 preponderance of the evidence it is determined that the person killed or  
 12 caused the suicide of the ~~decedent~~. **individual.**

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

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

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

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

39 **(b)** If, at the expiration of such period for making the election,  
 40 litigation is pending to test the validity or ~~to~~ determine the effect or  
 41 construction of the will or to determine the existence of issue surviving  
 42 the deceased, or to determine any other matter of law or fact which  
 43 would affect the amount of the share to be received by the surviving  
 44 spouse, the right of such surviving spouse to make an election shall not  
 45 be barred until the expiration of thirty (30) days after the final  
 46 determination of the litigation.

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

51 (a) Any estate, right, or interest in land or other things acquired by the

1 testator after the making of the testator's will shall pass as if title was  
2 vested in the testator at the time of making of the will.

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

10 (c) A devise of real or personal estate, whether directly or in trust, to  
11 the testator's or another designated person's "heirs", "next of kin",  
12 "relatives", or "family", or to "the persons thereunto entitled under the  
13 intestate laws" or to persons described by words of similar import, shall  
14 mean those persons (including the spouse) who would take under the  
15 intestate laws if the testator or other designated person were to die  
16 intestate at the time when such class is to be ascertained, domiciled in  
17 this state, and owning the estate so devised. With respect to a devise  
18 which does not take effect at the testator's death, the time when such  
19 class is to be ascertained shall be the time when the devise is to take  
20 effect in enjoyment.

21 (d) In construing a will making a devise to a person or persons  
22 described by relationship to the testator or to another, any person  
23 adopted prior to the person's twenty-first birthday before the death of  
24 the testator shall be considered the child of the adopting parent or  
25 parents and not the child of the natural or previous adopting parents.  
26 However, if a natural parent or previous adopting parent marries the  
27 adopting parent before the testator's death, the adopted person shall also  
28 be considered the child of such natural or previous adopting parent.  
29 Any person adopted after the person's twenty-first birthday by the  
30 testator shall be considered the child of the testator, but no other person  
31 shall be entitled to establish relationship to the testator through such  
32 child.

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

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

43 (g) If a devise of real or personal property, not included in the  
44 residuary clause of the will, is void, is revoked, or lapses, it shall  
45 become a part of the residue, and shall pass to the residuary devisee.  
46 Whenever any estate, real or personal, shall be devised to any  
47 descendant of the testator, and such devisee shall die during the lifetime  
48 of the testator, whether before or after the execution of the will, leaving  
49 a descendant who shall survive such testator, such devise shall not  
50 lapse, but the property so devised shall vest in the surviving descendant  
51 of the devisee as if such devisee had survived the testator and died

1       intestate. The word "descendant", as used in this section, includes  
 2       children adopted during minority by the testator and by the testator's  
 3       descendants and includes descendants of such adopted children.  
 4       "Descendant" also includes children of the mother who are born out of  
 5       wedlock, and children of the father who are born out of wedlock, if, but  
 6       only if, such child's right to inherit from such father is, or has been,  
 7       established in the manner provided in IC 29-1-2-7. This rule applies  
 8       where the parent is a descendant of the testator as well as where the  
 9       parent is the testator. Descendants of such children shall also be  
 10       included.

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

17       (i) If a testator devises real or personal property upon such terms that  
 18       the testator's intentions with respect to such devise can be determined  
 19       at the testator's death only by reference to a fact or an event  
 20       independent of the will, such devise shall be valid and effective if the  
 21       testator's intention can be clearly ascertained by taking into  
 22       consideration such fact or event even though occurring after the  
 23       execution of the will.

24       (j) If a testator devises or bequeaths property to be added to a trust or  
 25       trust fund which is clearly identified in the testator's will and which  
 26       trust is in existence at the time of the death of the testator, such devise  
 27       or bequest shall be valid and effective. Unless the will provides  
 28       otherwise, the property so devised or bequeathed shall be subject to the  
 29       terms and provisions of the instrument or instruments creating or  
 30       governing the trust or trust fund, including any amendments or  
 31       modifications in writing made at any time before or after the execution  
 32       of the will and before or after the death of the testator.

33       (k) If a testator devises securities in a will and the testator then owned  
 34       securities that meet the description in the will, the devise includes  
 35       additional securities owned by the testator at death to the extent the  
 36       additional securities were acquired by the testator after the will was  
 37       executed as a result of the testator's ownership of the described  
 38       securities and are securities of any of the following types:

39               (1) Securities of the same organization acquired because of an  
 40               action initiated by the organization or any successor, related, or  
 41               acquiring organization, excluding any security acquired by exercise  
 42               of purchase options.

43               (2) Securities of another organization acquired as a result of a  
 44               merger, consolidation, reorganization, or other distribution by the  
 45               organization or any successor, related, or acquiring organization.

46               (3) Securities of the same organization acquired as a result of a plan  
 47               of reinvestment.

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

50       (l) For purposes of this subsection, "incapacitated principal" means  
 51       a principal who is an incapacitated person. An adjudication of



1 incapacity before death is not necessary. The acts of an agent within the  
2 authority of a durable power of attorney are presumed to be for an  
3 incapacitated principal. If:

4 (1) specifically devised property is sold or mortgaged by; or

5 (2) a condemnation award, insurance proceeds, or recovery for  
6 injury to specifically devised property are paid to;

7 a guardian or an agent acting within the authority of a durable power of  
8 attorney for an incapacitated principal, the specific devisee has the right  
9 to a general pecuniary devise equal to the net sale price, the amount of  
10 the unpaid loan, the condemnation award, the insurance proceeds, or  
11 the recovery.

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

13 **(1) complies with this subsection; and**

14 **(2) is referred to in a will;**

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

28 SECTION 9. IC 29-1-7-3.1 IS ADDED TO THE INDIANA CODE  
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2005]: **Sec. 3.1. (a) This section applies whether it is:**

31 **(1) known; or**

32 **(2) unknown;**

33 **whether a testator is living.**

34 **(b) As used in this section, "depositor" refers to a person who**  
35 **deposits a will with the circuit court clerk under this section.**

36 **(c) As used in this section, "will" refers to an original:**

37 **(1) will;**

38 **(2) codicil; or**

39 **(3) will and codicil.**

40 **(d) A person may deposit a will with the circuit court clerk of the**  
41 **county in which the testator resided when the testator executed the**  
42 **will. The circuit court clerk may assume, without inquiring into the**  
43 **facts, that the depositor's representation is accurate as to the**  
44 **county where the testator resided when the testator executed the**  
45 **will. Except as provided in subsection (e), the circuit court clerk**  
46 **shall collect a fee of twenty-five dollars (\$25) for the deposit of the**  
47 **will. The circuit court clerk shall deposit the fee in the clerk's**  
48 **record perpetuation fund under IC 33-37-5-2.**

49 **(e) The circuit court:**

50 **(1) shall waive the fee under subsection (d) if:**

51 **(A) a court with probate jurisdiction of the county where the**

- 1 will is deposited certifies that the depositor deposits the will:  
 2 (i) as a participant; or  
 3 (ii) for a participant;  
 4 in a program of the supreme court, including the Judges and  
 5 Lawyers Assistance Program established under Rule 31 of  
 6 the supreme court Rules for Admission to the Bar and the  
 7 Discipline of Attorneys; and  
 8 (B) the certification described in clause (A) accompanies the  
 9 will when the will is deposited; and  
 10 (2) may waive the fee under subsection (d) if the depositor is no  
 11 longer practicing law.  
 12 (f) Upon receipt of a will under this section, the circuit court clerk  
 13 shall:  
 14 (1) provide the depositor with a receipt for the will;  
 15 (2) place the will in an envelope and seal the envelope securely  
 16 in the presence of the depositor;  
 17 (3) designate on the envelope the:  
 18 (A) date of deposit;  
 19 (B) name of the testator; and  
 20 (C) name and address of the depositor; and  
 21 (4) index the will alphabetically by the name of the testator.  
 22 An envelope and will deposited under this section is not a public  
 23 record under IC 5-14-3.  
 24 (g) During the testator's lifetime, the circuit court clerk shall:  
 25 (1) keep the envelope containing the will sealed; and  
 26 (2) deliver the envelope to:  
 27 (A) the testator; or  
 28 (B) a person authorized, in a writing signed by the testator,  
 29 to receive the envelope.  
 30 (h) If the circuit court clerk has custody of the will after the death  
 31 of the testator, the circuit court clerk may deliver the will to the  
 32 court that has jurisdiction of the administration of the decedent's  
 33 estate as set forth in section 3 of this chapter.  
 34 (i) A circuit court clerk may destroy a will deposited under this  
 35 section if:  
 36 (1) the circuit court clerk has not received notice of the death  
 37 of the testator; and  
 38 (2) at least one hundred (100) years have passed since the date  
 39 the will was deposited.  
 40 (j) A depositor that complies with this section is immune from  
 41 civil liability for depositing the will.  
 42 SECTION 10. IC 29-1-7-5 IS AMENDED TO READ AS  
 43 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. A petition for the  
 44 probate of a will and for the issuance of letters testamentary or for the  
 45 appointment of an administrator with the will annexed, or for the  
 46 appointment of an administrator, shall state:  
 47 (1) the name, ~~age~~, domicile, and date of the death of the decedent,  
 48 **and whether the decedent is an adult or a minor;**  
 49 (2) the name, ~~age~~, and place of residence of each heir, **and**  
 50 **whether the heir is an adult or a minor**, in the event the decedent  
 51 left no will; and the name, ~~age~~, and place of residence of each

1 legatee and devisee, **and whether each legatee and devisee is an**  
 2 **adult or a minor**, in the event the decedent left a will, so far as  
 3 such are known or can with reasonable diligence be ascertained by  
 4 the personal representative;

5 (3) whether the person named in subdivision (1) died testate or  
 6 intestate;

7 (4) if the decedent was not domiciled in the state at the time of ~~his~~  
 8 death, a description of the property to be administered which is  
 9 within the county in which the petition is filed;

10 (5) if the will sought to be probated is unwritten, lost, or was  
 11 improperly destroyed or suppressed, a detailed statement of the  
 12 provisions of said will so far as known;

13 (6) the name and place of residence or business address of the  
 14 person, if any, designated as executor of the will;

15 (7) if the petition be for the appointment of an administrator with  
 16 the will annexed, or of an administrator, the name and place of  
 17 residence or business address of the person to be so appointed,  
 18 together with a statement of ~~his~~ **the person's** relationship to the  
 19 decedent, and such other facts, if any, which entitle such person to  
 20 be so appointed;

21 (8) the name and business address of the attorney who is to  
 22 represent the personal representative; and

23 (9) if the person named in subdivision (1) died intestate, whether  
 24 a petition to dissolve the marriage of the decedent and the  
 25 decedent's spouse is pending in an Indiana court or the court of  
 26 another state at the time of the decedent's death.

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

33 (b) No real estate situate in Indiana of which any person may die  
 34 seized shall be sold by the executor or administrator of the deceased  
 35 person's estate to pay any debt or obligation of the deceased person,  
 36 which is not a lien of record in the county in which the real estate is  
 37 situate, or to pay any costs of administration of any decedent's estate,  
 38 unless letters testamentary or of administration upon the decedent's  
 39 estate are taken out within five (5) months after the decedent's death.

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

44 (1) the will containing the devise has been probated and recorded  
 45 in the office of the clerk of the court having jurisdiction within five  
 46 (5) months after the death of the testator; or

47 (2) an action to contest the will's validity is commenced within the  
 48 time provided by law and, as a result, the will is ultimately  
 49 probated.

50 (d) ~~If letters testamentary or of administration are not taken out upon~~  
 51 ~~a decedent's estate within three (3) years after the decedent's death, The~~

1 will of the decedent shall not be ~~probated~~: **admitted to probate unless**  
2 **the will is presented for probate not more than three (3) years after**  
3 **the individual's death.** However, in the case of an individual presumed  
4 dead under IC 29-2-5-1, the three (3) year period commences with the  
5 date the individual's death has been established by appropriate legal  
6 action.

7 SECTION 12. IC 29-1-7.5-1.5 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.5. (a) As soon as  
9 letters testamentary or letters of administration have been issued, the  
10 clerk of the court shall serve by mail notice of the petition on each of  
11 the decedent's heirs at law, if the decedent died intestate, or the devisees  
12 and legatees under the decedent's will. The mailing of notice under this  
13 subsection may not be waived.

14 (b) The notice required under subsection (a) shall read substantially  
15 as follows:

16 NOTICE OF UNSUPERVISED ADMINISTRATION TO BE  
17 MAILED TO A DISTRIBUTEE

18 In the \_\_\_\_\_ Court of \_\_\_\_\_ County, Indiana.

19 Notice is hereby given that \_\_\_\_\_, on the \_\_\_\_ day of  
20 \_\_\_\_\_, ~~19\_\_~~, **20\_\_**, was appointed as the personal representative of  
21 the estate of \_\_\_\_\_, who died on the \_\_\_\_ day of  
22 \_\_\_\_\_, ~~19\_\_~~, **20\_\_**, {leaving a will} {not leaving a will}. The  
23 estate will be administered without court supervision.

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

26 (1) The personal representative has the authority to take actions  
27 concerning the estate without first consulting you.

28 (2) The personal representative may be serving without posting a  
29 bond with the court. You have the right to petition the court to set  
30 a bond for your protection.

31 (3) The personal representative will not obtain court approval of  
32 any action, including the amount of attorney's or personal  
33 representative's fees.

34 (4) Within two (2) months after the appointment of the personal  
35 representative, the personal representative must prepare an  
36 inventory of the estate's assets. You have the right to request and  
37 receive a copy of this inventory from the personal representative.

38 **However, if you do not participate in the residue of the estate**  
39 **and receive only a specific bequest in money or personal**  
40 **property that will be paid, you are entitled only to the**  
41 **information concerning your specific bequest and not to the**  
42 **assets of the estate as a whole.**

43 (5) The personal representative is required to furnish you with a  
44 copy of the closing statement that will be filed with the court, and,  
45 if your interests are affected, with a full account in writing of the  
46 administration of the estate.

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

50 (7) If an objection to the closing statement is not filed with the  
51 court within three (3) months after the filing of the closing

1 statement, the estate is closed and the court does not have a duty to  
2 audit or make an inquiry.

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

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

10 The personal representative's address is \_\_\_\_\_, and  
11 telephone number is \_\_\_\_\_. The attorney for the personal  
12 representative is \_\_\_\_\_, whose address is  
13 \_\_\_\_\_ and telephone number is \_\_\_\_\_.

14 Dated at \_\_\_\_\_, Indiana, this \_\_\_\_\_ day of  
15 \_\_\_\_\_, 19\_\_\_\_ 20\_\_.

16 CLERK OF THE \_\_\_\_\_ COURT

17 SECTION 13. IC 29-1-15-16.5 IS ADDED TO THE INDIANA  
18 CODE AS A NEW SECTION TO READ AS FOLLOWS  
19 [EFFECTIVE JULY 1, 2005]: **Sec. 16.5. (a) This section applies to a  
20 supervised or an unsupervised estate.**

21 **(b) Unless authorized by:**

- 22 **(1) a will;**
- 23 **(2) a trust;**
- 24 **(3) the consent of all heirs, legatees, or beneficiaries; or**
- 25 **(4) an adjudicated compromise agreement approved by the**
- 26 **court under IC 29-1-9;**

27 **any sale (including an auction sale), encumbrance, lease, or rental**  
28 **of real property that is an asset of the estate is void if the sale,**  
29 **encumbrance, lease, or rental of the real property causes the**  
30 **personal representative to directly or indirectly acquire a beneficial**  
31 **interest in the real property.**

32 **(c) This section does not prohibit a personal representative from**  
33 **enforcing or fulfilling any enforceable contract or agreement:**

- 34 **(1) executed during the decedent's lifetime; and**
- 35 **(2) between the decedent and the personal representative in the**
- 36 **personal representative's individual capacity.**

37 SECTION 14. IC 29-1-15-17 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) Upon the  
39 confirmation of any sale, mortgage or lease in accordance with section  
40 16 of this chapter, the personal representative shall execute a  
41 conveyance to the grantee or mortgagee or a lease with the lessee  
42 according to the order of confirmation. A certified copy of the order of  
43 confirmation may be recorded with the deed or other instrument in the  
44 office of the recorder of the county where the land lies, and shall be  
45 prima facie evidence of the due appointment and qualification of the  
46 personal representative, the correctness of the proceedings and the  
47 authority of the personal representative to execute the instrument.

48 (b) Whenever a personal representative executes a deed, mortgage,  
49 lease or other conveyance under a power given him **the personal**  
50 **representative** in any will, a certified copy of the will giving such  
51 power and a certified copy of the personal representative's letters may

1 be recorded with the deed, mortgage, lease, or other instrument  
 2 executed by the personal representative pursuant to and in accordance  
 3 with such power, and such certified copies shall be prima facie  
 4 evidence of the due appointment and qualification of the personal  
 5 representative and **his the personal representative's** authority to  
 6 execute said deed, mortgage, lease, or other instrument.

7 SECTION 15. IC 29-3-8-5 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Any:

9 (1) sale or encumbrance of any part of the property of a protected  
 10 person to a guardian or guardian's spouse, agent, attorney, or any  
 11 corporation, trust, or other organization in which the guardian has  
 12 a substantial beneficial interest; or

13 (2) other transaction involving the property that is affected by a  
 14 substantial conflict between the interest of the protected person and  
 15 the guardian's personal interest;

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

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

20 SECTION 16. IC 30-1-8-7 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. ~~(a)~~ Any:

22 (1) Indiana bank or trust company; or

23 (2) national bank qualified to act as fiduciary and whose principal  
 24 place of business is in Indiana;

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

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

31 ~~(1) another qualified bank or trust company's common trust fund;~~  
 32 ~~or~~

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

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

39 SECTION 17. IC 30-2-8.5-29 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) A custodian  
 41 may deliver or pay to the minor or expend for the minor's benefit so  
 42 much of the custodial property as the custodian considers advisable for  
 43 the use and benefit of the minor, without court order and without regard  
 44 to:

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

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

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

1           **(1) the minor is the sole beneficiary of the trust; and**  
 2           **(2) the terms of the trust satisfy the requirements of Section**  
 3           **2503 of the Internal Revenue Code and the regulations under**  
 4           **that section.**

5           **The transfer terminates the custodianship of the property to the**  
 6           **extent of the transfer.**

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

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

15           SECTION 18. IC 30-3-4-1 IS AMENDED TO READ AS  
 16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Notwithstanding  
 17 IC 30-4-2-2 **and IC 30-4-3-33**, this chapter applies whenever a county  
 18 that has been given, devised, or bequeathed money or property in trust  
 19 for the purpose of establishing and maintaining a home for indigent  
 20 women, worthy poor, or orphan children, and the board of  
 21 commissioners of the county has been named as trustee by the donor of  
 22 the property or money.

23           SECTION 19. IC 30-4-1-2 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this  
 25 article:

26           (1) "Adult" means any person eighteen (18) years of age or older.

27           (2) "Affiliate" means a parent, descendant, spouse, spouse of a  
 28 descendant, brother, sister, spouse of a brother or sister, employee,  
 29 director, officer, partner, joint venturer, a corporation subject to  
 30 common control with the trustee, a shareholder, or corporation who  
 31 controls the trustee or a corporation controlled by the trustee other  
 32 than as a fiduciary, **an attorney, or an agent.**

33           (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.

34           (4) "Breach of trust" means a violation by the trustee of any duty  
 35 which is owed to the settlor or beneficiary.

36           (5) "Charitable trust" means a trust in which all the beneficiaries  
 37 are the general public or organizations, including trusts,  
 38 corporations, and associations, and that is organized and operated  
 39 wholly for religious, charitable, scientific, public safety testing,  
 40 literary, or educational purposes. The term does not include  
 41 charitable remainder trusts, charitable lead trusts, pooled income  
 42 funds, or any other form of split-interest charitable trust that has at  
 43 least one (1) noncharitable beneficiary.

44           (6) "Court" means a court having jurisdiction over trust matters.

45           (7) "Income", except as otherwise stated in a trust agreement, has  
 46 the meaning set forth in IC 30-2-14-4.

47           (8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.

48           (9) "Inventory value" means the cost of property to the settlor or  
 49 the trustee at the time of acquisition or the market value of the  
 50 property at the time it is delivered to the trustee, or the value of the  
 51 property as finally determined for purposes of an estate or

- 1 inheritance tax.
- 2 (10) "Minor" means any person under the age of eighteen (18)
- 3 years.
- 4 (11) "Person" has the meaning set forth in IC 30-2-14-9.
- 5 (12) "Personal representative" means an executor or administrator
- 6 of a decedent's or absentee's estate, guardian of the person or estate,
- 7 guardian ad litem or other court appointed representative, next
- 8 friend, parent or custodian of a minor, attorney in fact, or custodian
- 9 of an incapacitated person (as defined in IC 29-3-1-7.5).
- 10 (13) "Principal" has the meaning set forth in IC 30-2-14-10.
- 11 **(14) "Qualified beneficiary" means:**
- 12 **(A) a beneficiary who, on the date the beneficiary's**
- 13 **qualification is determined:**
- 14 **(i) is a distributee or permissible distributee of trust income**
- 15 **or principal;**
- 16 **(ii) would be a distributee or permissible distributee of**
- 17 **trust income or principal if the interest of the distributee**
- 18 **described in item (i) terminated on that date;**
- 19 **(iii) would be a distributee or permissible distributee of**
- 20 **trust income or principal if the trust terminated on that**
- 21 **date;**
- 22 **(iv) has sent the trustee a request for notice;**
- 23 **(v) is a charitable organization expressly designated to**
- 24 **receive distributions under the terms of a charitable trust;**
- 25 **(vi) is a person appointed to enforce a trust for the care of**
- 26 **an animal under IC 30-4-2-18; or**
- 27 **(vii) is a person appointed to enforce a trust for a**
- 28 **noncharitable purpose under IC 30-4-2-19; or**
- 29 **(B) the attorney general, if the trust is a charitable trust**
- 30 **having its principal place of administration in Indiana.**
- 31 ~~(14)~~ **(15)** "Remainderman" means a beneficiary entitled to
- 32 principal, including income which has been accumulated and added
- 33 to the principal.
- 34 ~~(15)~~ **(16)** "Settlor" means a person who establishes a trust including
- 35 the testator of a will under which a trust is created.
- 36 ~~(16)~~ **(17)** "Trust estate" means the trust property and the income
- 37 derived from its use.
- 38 ~~(17)~~ **(18)** "Trust for a benevolent public purpose" means a
- 39 charitable trust (as defined in subdivision (5)), a split-interest trust
- 40 (as defined in Section 4947 of the Internal Revenue Code), and any
- 41 other form of split-interest charitable trust that has both charitable
- 42 and noncharitable beneficiaries, including but not limited to
- 43 charitable remainder trusts, charitable lead trusts, and charitable
- 44 pooled income funds.
- 45 ~~(18)~~ **(19)** "Trust property" means property either placed in trust or
- 46 purchased or otherwise acquired by the trustee for the trust
- 47 regardless of whether the trust property is titled in the name of the
- 48 trustee or the name of the trust.
- 49 ~~(19)~~ **(20)** "Trustee" has the meaning set forth in IC 30-2-14-13.
- 50 SECTION 20. IC 30-4-1-13 IS ADDED TO THE INDIANA CODE
- 51 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2005]: **Sec. 13. IC 29-1-2-12.1 applies to a trust.**

2 SECTION 21. IC 30-4-2-1 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1. (a) A trust in  
4 either real or personal property is enforceable only if there is written  
5 evidence of its terms bearing the signature of the settlor or ~~his~~ **the**  
6 **settlor's** authorized agent.

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

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

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

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

- 22 (1) **section 18 of this chapter for the care of an animal; or**
- 23 (2) **section 19 of this chapter for a noncharitable purpose;**

24 **has a beneficiary.**

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

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

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

35 SECTION 22. IC 30-4-2-1.5 IS ADDED TO THE INDIANA CODE  
36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
37 JANUARY 1, 2006]: **Sec. 1.5. (a) Except as provided in subsection**  
38 **(b), a trust that is not created by a will is validly created if the**  
39 **trust's creation complies with the law of the jurisdiction in which**  
40 **the trust instrument was executed or the law of the jurisdiction in**  
41 **which, at the time of creation:**

- 42 (1) **the settlor was domiciled, had a place of abode, or was a**  
43 **national;**
- 44 (2) **a trustee was domiciled or had a place of business; or**
- 45 (3) **any trust property is located.**

46 **(b) A valid trust must be:**

- 47 (1) **in writing; and**
- 48 (2) **signed by:**
  - 49 (A) **the settlor; or**
  - 50 (B) **an agent of the settlor who is an attorney in fact.**

51 SECTION 23. IC 30-4-2-2 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2. ~~(Acceptance~~  
 2 ~~by Trustee)~~ **With respect (a) This section applies to the** acceptance of  
 3 a trust by a person named as trustee.

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

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

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

16 ~~(d)~~ **(e)** If there is an immediate risk of damage to the trust estate, the  
 17 named person may act to preserve the trust estate and will not be  
 18 presumed to have accepted the trust, provided ~~he~~ **the named person**  
 19 delivers a written rejection to the settlor at or within a reasonable time  
 20 after ~~he~~ **the named person** acts, or, if the settlor is dead, to the  
 21 beneficiary or the court having jurisdiction over the administration of  
 22 the trust estate.

23 **(e)** If the person named as the original trustee does not accept the  
 24 trust, or if he is dead or does not have capacity to act as trustee, the  
 25 person named as the alternate trustee under the terms of the trust, or  
 26 selected as alternate trustee according to a method prescribed in the  
 27 terms of the trust, may accept the trust. If no person is named as trustee  
 28 or if there is no alternate trustee designated or selected in the manner  
 29 prescribed in the terms of the trust, the court shall appoint a trustee.

30 SECTION 24. IC 30-4-2-10 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 10. ~~(Capacity of~~  
 32 ~~Settlor)~~ **(a)** If a trust is created by a declaration by the owner of  
 33 property that he holds it in trust, his capacity must be the same as if the  
 34 trust were created by a transfer to a third person.

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

38 ~~(c)~~ **(a)** If ~~the~~ **a** trust is created by a will, the settlor's capacity **that is**  
 39 **required to create the trust** is determined by the applicable probate  
 40 law.

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

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

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

50 **(1)** have the capacity to hold and deal with property for the  
 51 settlor's or person's own benefit;

- 1           **(2) be at least eighteen (18) years of age; and**  
 2           **(3) be of sound mind.**

3           SECTION 25. IC 30-4-2-17 IS ADDED TO THE INDIANA CODE  
 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 5 JULY 1, 2005]: **Sec. 17. (a) A charitable trust may be created for**  
 6 **the following purposes:**

- 7           **(1) The relief of poverty.**  
 8           **(2) The advancement of education or religion.**  
 9           **(3) The promotion of health.**  
 10           **(4) Governmental and municipal purposes.**  
 11           **(5) A purpose that is beneficial to the community.**  
 12           **(b) If the terms of a charitable trust do not indicate a particular**  
 13 **charitable purpose or beneficiary, the court may select at least one**  
 14 **(1) charitable purpose or beneficiary. The selection must be**  
 15 **consistent with the settlor's intention to the extent the intention can**  
 16 **be ascertained.**  
 17           **(c) The settlor of a charitable trust, among other persons, may**  
 18 **maintain a proceeding to enforce the charitable trust.**

19           SECTION 26. IC 30-4-2-18 IS ADDED TO THE INDIANA CODE  
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 2005]: **Sec. 18. (a) A trust may be created to provide for**  
 22 **the care of an animal alive during the settlor's lifetime.**

- 23           **(b) A trust authorized by this section terminates as follows:**  
 24           **(1) If the trust is created to provide for the care of one (1)**  
 25 **animal alive during the settlor's lifetime, the trust terminates**  
 26 **on the death of the animal.**  
 27           **(2) If the trust is created to provide for the care of more than**  
 28 **one (1) animal alive during the settlor's lifetime, the trust**  
 29 **terminates on the death of the last surviving animal.**

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

- 32           **(1) A person appointed in the terms of the trust.**  
 33           **(2) A person appointed by the court, if the terms of the trust do**  
 34 **not appoint a person.**  
 35           **(d) A person having an interest in the welfare of an animal for**  
 36 **whose care a trust is established may request the court to:**  
 37           **(1) appoint a person to enforce the trust; or**  
 38           **(2) remove a person appointed to enforce the trust.**

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

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

- 46           **(1) The settlor, if the settlor is living.**  
 47           **(2) The settlor's successors in interest, if the settlor is deceased.**

48           SECTION 27. IC 30-4-2-19 IS ADDED TO THE INDIANA CODE  
 49 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 50 JULY 1, 2005]: **Sec. 19. (a) Except as provided in section 18 of this**  
 51 **chapter, a trust may be created for a:**

- 1           **(1) noncharitable purpose without a beneficiary; or**  
 2           **(2) noncharitable and valid purpose to be selected by the**  
 3           **trustee.**
- 4           **(b) A trust authorized by this section may be enforced for not**  
 5           **more than twenty-one (21) years.**
- 6           **(c) A trust authorized by this section may be enforced by the**  
 7           **following:**
- 8               **(1) A person appointed in the terms of the trust.**  
 9               **(2) A person appointed by the court, if the terms of the trust do**  
 10              **not appoint a person.**
- 11           **(d) Property of a trust authorized by this section may be applied**  
 12           **only to the trust's intended use, except to the extent the court**  
 13           **determines that the value of the trust property exceeds the amount**  
 14           **required for the trust's intended use.**
- 15           **(e) Except as provided in the terms of the trust, property not**  
 16           **required for the trust's intended use must be distributed to the**  
 17           **following:**
- 18               **(1) The settlor, if the settlor is living.**  
 19               **(2) The settlor's successors in interest, if the settlor is deceased.**
- 20           SECTION 28. IC 30-4-2.1-9 IS ADDED TO THE INDIANA CODE  
 21           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 22           JULY 1, 2005]: **Sec. 9. A trust of a deceased spouse is subject to the**  
 23           **following:**
- 24               **(1) IC 29-1-2-14.**  
 25               **(2) IC 29-1-2-15.**
- 26           SECTION 29. IC 30-4-2.1-11 IS ADDED TO THE INDIANA  
 27           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28           [EFFECTIVE JULY 1, 2005]: **Sec. 11. (a) A written statement or list**  
 29           **that:**
- 30               **(1) complies with this section; and**  
 31               **(2) is referred to in a settlor's trust that was revocable during**  
 32               **the settlor's lifetime;**
- 33           **may be used to dispose of items of tangible personal property, other**  
 34           **than property used in a trade or business, not otherwise specifically**  
 35           **disposed of by the trust.**
- 36           **(b) To be admissible under this section as evidence of the**  
 37           **intended disposition, the writing must be signed by the settlor and**  
 38           **must describe the items and the beneficiaries with reasonable**  
 39           **certainty. The writing may be prepared before or after the**  
 40           **execution of the trust. The writing may be altered by the settlor**  
 41           **after the writing is prepared. The writing may have no significance**  
 42           **apart from the writing's effect on the dispositions made by the**  
 43           **trust.**
- 44           **(c) If more than one (1) otherwise effective writing exists, then, to**  
 45           **the extent of a conflict among the writings, the provisions of the**  
 46           **most recent writing revoke the inconsistent provisions of each**  
 47           **earlier writing.**
- 48           SECTION 30. IC 30-4-3-1.5 IS ADDED TO THE INDIANA CODE  
 49           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 50           JULY 1, 2005]: **Sec. 1.5. (a) This subsection applies to a trust**  
 51           **created under an instrument executed after June 30, 2005. Unless**

1 the terms of a trust expressly provide that the trust is irrevocable,  
2 the settlor may revoke or amend the trust.

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

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

8 (A) revoked by either spouse acting alone; and

9 (B) amended only by the joint action of both spouses; and

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

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

15 (1) The settlor may comply with a method provided in the  
16 terms of the trust.

17 (2) If the terms of the trust do not provide a method or the  
18 terms of the trust provide a method that is not expressly made  
19 the exclusive method to revoke or amend the trust, the settlor  
20 may revoke or amend the trust by:

21 (A) executing a later will or codicil that:

22 (i) expressly refers to the trust; or

23 (ii) specifically devises property that would otherwise have  
24 passed according to the terms of the trust; or

25 (B) any other method that:

26 (i) is in writing; and

27 (ii) manifests clear and convincing evidence of the settlor's  
28 intent.

29 (d) If a revocable trust is revoked, the trustee shall deliver the  
30 trust property as the settlor directs.

31 (e) A settlor's powers with respect to revocation, amendment, and  
32 distribution of trust property may be exercised by an agent under  
33 a power of attorney only to the extent expressly authorized by the  
34 terms of the trust or the power of attorney.

35 (f) A guardian of a settlor may exercise the settlor's powers with  
36 respect to revocation, amendment, or distribution of trust property  
37 only with the approval of the court supervising the guardianship.

38 (g) A trustee who does not know that a trust has been revoked or  
39 amended is not liable to the settlor or settlor's successors in interest  
40 for distributions made and other actions taken on the assumption  
41 that the trust had not been revoked or amended.

42 SECTION 31. IC 30-4-3-3 IS AMENDED TO READ AS  
43 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~Unless the terms of~~  
44 ~~the trust provide otherwise:~~

45 (a) ~~Except as provided in the terms of the trust and~~ subject to  
46 subsection (c), ~~of this section,~~ a trustee has the power to perform  
47 without court authorization, except as provided in **sections 4(b)**  
48 ~~IC 30-4-3-4(b) and IC 30-4-3-5(a);~~ **5(a) of this chapter,** every act  
49 necessary or appropriate for the purposes of the trust including, by way  
50 of illustration and not of limitation, the ~~power:~~ **following powers:**

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

- 1           (A) deal with the trust estate; ~~to~~
- 2           (B) buy, sell, or exchange and convey or transfer all property
- 3           (real, personal, or mixed) for cash or on credit and at public or
- 4           private sale with or without notice; and
- 5           (C) ~~to~~ invest and reinvest the trust estate.
- 6           (2) **The power** to receive additions to the assets of the trust.
- 7           (3) **The power** to acquire an undivided interest in a trust asset in
- 8           which the trustee, in any trust capacity, holds an undivided interest.
- 9           (4) **The power** to manage real property in every way, including:
- 10          ~~among other things;~~
- 11          (A) the adjusting of boundaries;
- 12          (B) erecting, altering, or demolishing buildings;
- 13          (C) dedicating of streets, alleys, or other public uses;
- 14          (D) subdividing;
- 15          (E) developing;
- 16          (F) obtaining vacation of plats;
- 17          (G) granting of easements and rights-of-way;
- 18          (H) partitioning;
- 19          (I) entering into party wall agreements; and
- 20          (J) obtaining title insurance for trust property.
- 21          (5) **The power** to:
- 22          (A) grant options concerning disposition of trust property,
- 23          including the sale of covered security options; and
- 24          (B) ~~to~~ take options for acquisition of trust property, including the
- 25          purchase back of previously sold covered security options.
- 26          (6) **The power** to enter into a lease as lessor or lessee, with or
- 27          without option to renew.
- 28          (7) **The power** to enter into arrangements for exploration and
- 29          removal of minerals or other natural resources and enter into a
- 30          pooling or unitization agreement.
- 31          (8) **The power** to continue the operation or management of any
- 32          business or other enterprise placed in trust.
- 33          (9) **The power** to:
- 34          (A) borrow money, to be repaid from trust property or otherwise;
- 35          and
- 36          (B) ~~to~~ encumber, mortgage, pledge, or grant a security interest in
- 37          trust property in connection with the exercise of any power.
- 38          (10) **The power** to:
- 39          (A) advance money for the benefit of the trust estate and for all
- 40          expenses or losses sustained in the administration of the trust;
- 41          and
- 42          (B) ~~to~~ collect any money advanced, without interest or with
- 43          interest, at no more than the lowest rate prevailing when
- 44          advanced.
- 45          (11) **The power** to prosecute or defend actions, claims, or
- 46          proceedings for the protection of:
- 47          (A) trust property; and
- 48          (B) ~~of himself the trustee~~ in the performance of ~~his~~ **the trustee's**
- 49          duties.
- 50          (12) **The power** to:
- 51          (A) pay or contest any claim;

- 1           **(B)** ~~to~~ settle a claim by or against the trust by compromise or  
 2           arbitration; and  
 3           **(C)** ~~to~~ abandon or release, totally or partially, any claim  
 4           belonging to the trust.
- 5           (13) **The power** to insure the:  
 6           **(A)** trust estate against damage or loss; and  
 7           **(B)** ~~the~~ trustee against liability with respect to third persons.
- 8           (14) **The power** to pay taxes, assessments, and other expenses  
 9           incurred in the:  
 10          **(A)** acquisition, retention, and maintenance of the trust property;  
 11          and  
 12          **(B)** ~~in the~~ administration of the trust.
- 13          (15) **The power** to:  
 14          **(A)** vote securities, in person or by a general or special proxy;  
 15          **(B)** ~~to~~ hold the securities in the name of a nominee if the trustee  
 16          is a corporate trustee; and  
 17          **(C)** ~~to~~ effect or approve, and deposit securities in connection  
 18          with, any change in the form of the corporation, including:  
 19          ~~among other things~~  
 20          **(i)** dissolution;  
 21          **(ii)** liquidation;  
 22          **(iii)** reorganization;  
 23          **(iv)** acquisition; and  
 24          **(v)** merger.
- 25          (16) **The power** to employ persons, including: ~~among others~~;  
 26          **(A)** attorneys;  
 27          **(B)** accountants;  
 28          **(C)** investment advisors; and  
 29          **(D)** agents;  
 30          to advise and assist the trustee in the performance of ~~his~~ **the**  
 31          **trustee's** duties.
- 32          (17) **The power** to effect distribution of property in cash, in kind,  
 33          or partly in cash and partly in kind, in divided or undivided  
 34          interests. ~~and~~
- 35          (18) **The power** to execute and deliver all instruments necessary or  
 36          appropriate to accomplishing or facilitating the exercise of the  
 37          trustee's powers.
- 38          **(19) With respect to an interest in a proprietorship,**  
 39          **partnership, limited liability company, business trust,**  
 40          **corporation, or another form of business or enterprise, the**  
 41          **power to:**  
 42          **(A) continue the business or enterprise; and**  
 43          **(B) take any action that may be taken by shareholders,**  
 44          **members, or property owners, including:**  
 45          **(i) merging;**  
 46          **(ii) dissolving; or**  
 47          **(iii) changing the form of business organization or**  
 48          **contributing additional capital.**
- 49          **(20) With respect to possible liability for violation of**  
 50          **environmental law, the power to:**  
 51          **(A) inspect or investigate property:**

- 1           **(i) the trustee holds or has been asked to hold; or**  
 2           **(ii) owned or operated by an organization in which the**  
 3           **trustee holds an interest or has been asked to hold an**  
 4           **interest;**  
 5           **to determine the application of environmental law with**  
 6           **respect to the property;**  
 7           **(B) take action to prevent, abate, or remedy an actual or**  
 8           **potential violation of an environmental law affecting**  
 9           **property held directly or indirectly by the trustee before or**  
 10           **after the assertion of a claim or the initiation of**  
 11           **governmental enforcement;**  
 12           **(C) decline to accept property into the trust or disclaim any**  
 13           **power with respect to property that is or may be burdened**  
 14           **with liability for violation of environmental law;**  
 15           **(D) compromise claims against the trust that may be asserted**  
 16           **for an alleged violation of environmental law; and**  
 17           **(E) pay the expense of any inspection, review, abatement, or**  
 18           **remedial action to comply with environmental law.**  
 19           **(21) The power to exercise elections with respect to federal,**  
 20           **state, and local taxes.**  
 21           **(22) The power to select a mode of payment under any**  
 22           **employee benefit plan or retirement plan, annuity, or life**  
 23           **insurance payable to the trustee and exercise rights under the**  
 24           **plan, annuity, or insurance, including the right to:**  
 25           **(A) indemnification:**  
 26           **(i) for expenses; and**  
 27           **(ii) against liabilities; and**  
 28           **(B) take appropriate action to collect the proceeds.**  
 29           **(23) The power to make loans out of trust property, including**  
 30           **loans to a beneficiary on terms and conditions the trustee**  
 31           **determines fair and reasonable under the circumstances. The**  
 32           **trustee has a lien on future distributions for repayment of the**  
 33           **loans.**  
 34           **(24) The power to pledge trust property to guarantee loans**  
 35           **made by others to the beneficiary on terms and conditions the**  
 36           **trustee considers to be fair and reasonable under the**  
 37           **circumstances. The trustee has a lien on future distributions for**  
 38           **repayment of the loans.**  
 39           **(25) The power to:**  
 40           **(A) appoint a trustee to act in another jurisdiction with**  
 41           **respect to trust property located in the other jurisdiction;**  
 42           **(B) confer on the appointed trustee all the appointing**  
 43           **trustee's powers and duties;**  
 44           **(C) require the appointed trustee to furnish security; and**  
 45           **(D) remove the appointed trustee.**  
 46           **(26) With regard to a beneficiary who is under a legal disability**  
 47           **or whom the trustee reasonably believes is incapacitated, the**  
 48           **power to pay an amount distributable to the beneficiary by:**  
 49           **(A) paying the amount directly to the beneficiary;**  
 50           **(B) applying the amount for the beneficiary's benefit;**  
 51           **(C) paying the amount to the beneficiary's guardian;**



1           **(D) paying the amount to the beneficiary's custodian under**  
 2           **IC 30-2-8.5 to create a custodianship or custodial trust;**  
 3           **(E) paying the amount to an adult relative or another person**  
 4           **having legal or physical care or custody of the beneficiary to**  
 5           **be expended on the beneficiary's behalf, if the trustee does**  
 6           **not know of a guardian, custodian, or custodial trustee; or**  
 7           **(F) managing the amount as a separate fund on the**  
 8           **beneficiary's behalf, subject to the beneficiary's continuing**  
 9           **right to withdraw the distribution.**

10          **(27) The power to:**

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

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

13           **after notice to the qualified beneficiaries, if the result does not**  
 14           **impair the rights of any beneficiary or adversely affect**  
 15           **achievement of the purposes of the trust.**

16          (b) Any act under ~~subdivision (4) of subsection (a) of this section;~~  
 17          **subsection (a)(4), an option under subdivision (5); subsection (a)(5),**  
 18          a lease under ~~subdivision (6); subsection (a)(6),~~ an arrangement under  
 19          ~~subdivision (7); subsection (a)(7),~~ and an encumbrance, mortgage,  
 20          pledge, or security interest under ~~subdivision (9) subsection (a)(9)~~ may  
 21          be for a term either within or extending beyond the term of the trust.

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

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

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

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

47          **(e) If the trust is terminated or partially terminated, the trustee**  
 48          **may send to the beneficiaries a proposal for distribution. If the**  
 49          **proposal for distribution informs the beneficiary that the**  
 50          **beneficiary:**

51           **(1) has a right to object to the proposed distribution; and**

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

6           SECTION 32. IC 30-4-3-6 IS AMENDED TO READ AS  
 7           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The trustee has  
 8           a duty to administer a trust according to its terms.

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

- 11           (1) Administer the trust in a manner consistent with IC 30-4-3.5.
- 12           (2) Take possession of and maintain control over the trust property.
- 13           (3) Preserve the trust property.
- 14           (4) Make the trust property productive for both the income and  
 15           remainder beneficiary. As used in this subdivision, "productive"  
 16           includes the production of income or investment for potential  
 17           appreciation.
- 18           (5) Keep the trust property separate from the trustee's individual  
 19           property and separate from or clearly identifiable from property  
 20           subject to another trust.
- 21           (6) Maintain clear and accurate accounts with respect to the trust  
 22           estate.
- 23           (7) Upon reasonable request, give the beneficiary complete and  
 24           accurate information concerning any matter related to the  
 25           administration of the trust and permit the beneficiary or the  
 26           beneficiary's agent to inspect the trust property, the trustee's  
 27           accounts, and any other documents concerning the administration  
 28           of the trust.
- 29           (8) Take whatever action is reasonable to realize on claims  
 30           constituting part of the trust property.
- 31           (9) Defend actions involving the trust estate.
- 32           (10) Supervise any person to whom authority has been delegated.
- 33           **(11) Determine the trust beneficiaries by acting on information:**  
 34           **(A) the trustee, by reasonable inquiry, considers reliable; and**  
 35           **(B) with respect to heirship, relationship, survivorship, or**  
 36           **any other issue relative to determining a trust beneficiary.**

37           SECTION 33. IC 30-4-3-6.5 IS ADDED TO THE INDIANA CODE  
 38           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 39           JULY 1, 2005]: Sec. 6.5. **If the happening of an event, including:**

- 40           **(1) marriage;**
- 41           **(2) divorce;**
- 42           **(3) performance of educational requirements; or**
- 43           **(4) death;**

44           **affects the administration or distribution of a trust, a trustee who**  
 45           **has exercised reasonable care to ascertain the happening of the**  
 46           **event is not liable for a loss resulting from the trustee's lack of**  
 47           **knowledge.**

48           SECTION 34. IC 30-4-3-7 IS AMENDED TO READ AS  
 49           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) Unless the terms  
 50           of the trust provide otherwise, the trustee has a duty:

- 51           (1) not to loan funds to himself or an affiliate;

1 (2) not to purchase or participate in the purchase of trust property  
2 from the trust for the trustee's own or an affiliate's account;

3 (3) not to sell or participate in the sale of the trustee's own or an  
4 affiliate's property to the trust; or

5 (4) if a corporate trustee, not to purchase for or retain in the trust its  
6 own or a parent or subsidiary corporation's stock, bonds, or other  
7 capital securities. However, the trustee may retain such securities  
8 already held in trusts created prior to September 2, 1971.

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

14 (c) Unless the terms of the trust provide otherwise, a corporate trustee  
15 does not violate subsection (a) by investing in, purchasing for, or  
16 retaining in the trust its own or an affiliate's obligations, including  
17 savings accounts and certificates of deposit, if the payment of each  
18 obligation is fully insured by the Bank Insurance Fund or the Savings  
19 Association Insurance Fund of the Federal Deposit Insurance  
20 Corporation, the National Credit Union Share Insurance Fund, or any  
21 insurer approved by the department of financial institutions under  
22 IC 28-7-1-31.5.

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

27 (e) Unless the terms of the trust provide otherwise, the trustee may  
28 sell, exchange, or participate in the sale or exchange of trust property  
29 from one (1) trust to himself as trustee of another trust, provided the  
30 sale or exchange is fair and reasonable with respect to the beneficiaries  
31 of both trusts and the trustee discloses to the beneficiaries of both trusts  
32 all material facts related to the sale or exchange which the trustee  
33 knows or should know.

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

36 **(1) executed during the settlor's lifetime; and**

37 **(2) between the settlor and the trustee in the trustee's**  
38 **individual capacity.**

39 SECTION 35. IC 30-4-3-24.4 IS ADDED TO THE INDIANA  
40 CODE AS A NEW SECTION TO READ AS FOLLOWS  
41 [EFFECTIVE JULY 1, 2005]: **Sec. 24.4. (a) The court may modify**  
42 **the administrative or dispositive terms of a trust if, because of**  
43 **circumstances not anticipated by the settlor, modification or**  
44 **termination will further the purposes of the trust. To the extent**  
45 **practicable, the modification must be made in accordance with the**  
46 **settlor's probable intention.**

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

49 **(1) the purpose of the trust has been fulfilled; or**

50 **(2) continuation of the trust on the trust's existing terms would:**  
51 **(A) be illegal, impossible, impracticable, or wasteful; or**

- 1           **(B) impair the trust's administration.**
- 2           **(c) If the trust terminates under this section, the court shall direct**
- 3 **the trustee to distribute the trust property in a manner consistent**
- 4 **with the purposes of the trust.**
- 5           **(d) The court may modify the terms of a trust to give the settlor**
- 6 **the power to revoke and modify the trust if the:**
- 7           **(1) settlor intended to reserve the power;**
- 8           **(2) settlor believed the power was reserved; and**
- 9           **(3) power was omitted from the terms of the trust by mistake.**
- 10          SECTION 36. IC 30-4-3-24.5 IS ADDED TO THE INDIANA
- 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 12 [EFFECTIVE JULY 1, 2005]: **Sec. 24.5. (a) This section does not**
- 13 **apply to an easement for conservation or preservation.**
- 14           **(b) This subsection applies to a trust consisting of trust property**
- 15 **having a total value of less than seventy-five thousand dollars**
- 16 **(\$75,000). Unless the terms of the trust provide otherwise, the**
- 17 **trustee may terminate the trust:**
- 18           **(1) if the trustee concludes the value of the trust property is**
- 19 **insufficient to justify the cost of administration; and**
- 20           **(2) after providing notice of the trust termination to qualified**
- 21 **beneficiaries.**
- 22           **(c) The court may:**
- 23           **(1) modify or terminate a trust; or**
- 24           **(2) remove the trustee and appoint a different trustee;**
- 25 **if the court determines that the value of the trust property is**
- 26 **insufficient to justify the cost of administration. If a trust**
- 27 **terminates under this subsection, the court shall direct the trustee**
- 28 **to distribute the trust property in a manner consistent with the**
- 29 **purposes of the trust.**
- 30           **(d) If a trust terminates under subsection (b), the trustee shall**
- 31 **distribute the trust property in a manner consistent with the**
- 32 **purposes of the trust.**
- 33          SECTION 37. IC 30-4-3-27 IS AMENDED TO READ AS
- 34 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 27. (~~Cy Pres Doctrine~~)**
- 35 **(a) If property is given to a trust for a benevolent public purpose and**
- 36 **the property is to be applied to a particular charitable purpose, and it is**
- 37 **or becomes impossible, impracticable, wasteful, or illegal to carry out**
- 38 **the particular purpose, and if the settlor manifested a more general**
- 39 **intention to devote the property to charitable purposes, the trust need**
- 40 **not fail, but the court may direct the application of the property to some**
- 41 **charitable purpose which falls within the general charitable intention of**
- 42 **the settlor.**
- 43           **(b) The terms of a charitable trust that would result in the**
- 44 **distribution of the trust property to a noncharitable beneficiary**
- 45 **prevails over the power of the court under subsection (a) to apply**
- 46 **the cy pres doctrine to modify or terminate the trust only if, when**
- 47 **the provision takes effect:**
- 48           **(1) the trust property is to revert to the settlor and the settlor**
- 49 **is still alive; or**
- 50           **(2) less than twenty-one (21) years have elapsed since the trust**
- 51 **was created.**

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

- 3           (1) the heir's or beneficiary's opinion of the settlor's intent; and  
4           (2) the heir's or beneficiary's wishes;  
5 regarding the property given in trust.

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

9           (1) By the court.

10          (2) By the person, if any, who by the terms of the trust is  
11 authorized to remove the trustee.

12          (3) Unless the terms of the trust instrument provide otherwise, by  
13 a beneficiary of the trust whose petition is granted by the court  
14 under subsection ~~(e)~~: **(d)**.

15          ~~(b)~~ Upon petition by the trustee the court may, in its discretion;  
16 permit the trustee to resign if the trustee's resignation will not be  
17 detrimental to the trust.

18          ~~(c)~~ Unless a successor trustee is named in or selected according to a  
19 method prescribed in the terms of the trust, the court may appoint a  
20 trustee to replace a removed, resigned, or deceased trustee and, on  
21 petition by a party to the trust, may appoint a co-trustee if to do so  
22 would facilitate more effective administration of the trust. The court  
23 shall inquire into the qualifications of a proposed successor trustee and  
24 give due consideration to the intentions of the settlor of the trust before  
25 appointing a successor trustee.

26          **(b) Unless the terms of the trust requires a different time, the  
27 trustee may resign:**

28           **(1) if the trustee gives at least thirty (30) days notice to:**

- 29           **(A) the qualified beneficiaries;**  
30           **(B) the settlor, if living; and**  
31           **(C) all cotrustees; or**

32           **(2) with the approval of the court.**

33          **In approving a resignation, the court may issue orders and impose  
34 conditions reasonably necessary for the protection of the trust  
35 property. Any liability of a resigning trustee or of any sureties on  
36 the trustee's bond for acts or omissions of the trustee is not  
37 discharged or affected by the trustee's resignation.**

38          ~~(d)~~ **(c)** For good cause shown, the court may at any time appoint a  
39 temporary trustee for such period of time, and to perform such duties,  
40 as the court may direct.

41          ~~(e)~~ **(d)** This subsection applies only to a trust executed after June 30,  
42 1996. A beneficiary of a trust may petition the court for the removal of  
43 a corporate trustee if there has been a change in control of the corporate  
44 trustee after the date of the execution of the trust. The court may  
45 remove the corporate trustee if the court determines the removal is in  
46 the best interests of all the beneficiaries of the trust. For purposes of this  
47 subsection a change in control of the corporate trustee occurs whenever  
48 a person or group of persons acting in concert acquires the beneficial  
49 ownership of an aggregate of at least twenty-five percent (25%) of the  
50 outstanding shares of voting stock of:

51           (1) a trustee; or

1 (2) a corporation controlling a trustee;  
2 after June 30, 1996.

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

9 (1) unless a cotrustee remains in the office of trustee or the  
10 court orders otherwise; and

11 (2) until the trust property is delivered to a successor trustee or  
12 other person entitled to the trust property.

13 SECTION 39. IC 30-4-3-33 IS ADDED TO THE INDIANA CODE  
14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2005]: Sec. 33. (a) In addition to the terms of a trust  
16 regarding the circumstances under which a trustee vacancy occurs,  
17 a trustee vacancy occurs if:

18 (1) a person designated as trustee does not accept being trustee;

19 (2) a person designated as trustee cannot be identified or does  
20 not exist;

21 (3) a trustee resigns;

22 (4) a trustee is disqualified or removed;

23 (5) a trustee dies; or

24 (6) the person designated as trustee lacks capacity.

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

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

32 (1) A person designated in the terms of the trust to act as  
33 successor trustee.

34 (2) A person appointed by a majority of the qualified  
35 beneficiaries.

36 (3) A person appointed by the court.

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

40 (1) A person designated in the terms of the trust to be successor  
41 trustee.

42 (2) A person:

43 (A) selected by the charitable organizations expressly  
44 designated to receive distributions under the terms of the  
45 trust; and

46 (B) whose selection is approved by the attorney general.

47 (3) A person appointed by the court.

48 (e) Regardless of whether a trustee vacancy exists or is required  
49 to be filled, the court may appoint an additional trustee or a special  
50 fiduciary if the court considers the appointment necessary for the  
51 administration of the trust.

1 SECTION 40. IC 30-4-3-34 IS ADDED TO THE INDIANA CODE  
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2005]: **Sec. 34. (a) At any time during the administration  
 4 of a trust, a trustee or any interested person may petition the court  
 5 to determine the:**

6 **(1) heirs of:**

7 **(A) the settlor; or**

8 **(B) any person named in the trust; and**

9 **(2) respective interests of the persons described in subdivision  
 10 (1) in the trust estate or any part of the trust estate.**

11 **(b) If a petition is filed under this section, the court shall fix the  
 12 time for a hearing on the petition. Notice of the hearing shall be  
 13 given in the following manner:**

14 **(1) Personally or by mail to persons who are named in the trust  
 15 and:**

16 **(A) are known to claim;**

17 **(B) are believed to claim; or**

18 **(C) have;**

19 **an interest in the trust estate or any part of the trust estate as  
 20 heir or through an heir of the settlor.**

21 **(2) By publication to any unknown heirs.**

22 **(c) When a hearing is held on the petition, the issues set forth in  
 23 the petition under subsection (a) may be determined by:**

24 **(1) competent evidence; or**

25 **(2) affidavit, if there are no objections.**

26 **A record shall be made of the oral evidence. The record and  
 27 affidavits must be a part of the files in the trust proceeding.**

28 **(d) If there is satisfactory proof, the court shall make a decree  
 29 that determines the issues set forth in the petition under subsection  
 30 (a). The court's decree is conclusive of the facts determined by the  
 31 court with regard to any interested person who has been notified  
 32 personally or by mail in accordance with subsection (b)(1), subject  
 33 to the interested person's right of appeal.**

34 **(e) An act of the trustee is valid with regard to the rights and  
 35 liabilities of a purchaser, a lessee, or other person who deals with  
 36 the trustee for value and in good faith, if the trustee acts in:**

37 **(1) accordance with the facts as determined by the court's  
 38 decree under subsection (d);**

39 **(2) accordance with the law; and**

40 **(3) good faith.**

41 SECTION 41. IC 30-4-4-5 IS ADDED TO THE INDIANA CODE  
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 43 JULY 1, 2005]: **Sec. 5. (a) A trustee may furnish to a person other  
 44 than a beneficiary a certification of trust instead of a copy of the  
 45 trust instrument. The certification of trust must contain the  
 46 following information:**

47 **(1) That the trust exists and the date the trust instrument was  
 48 executed.**

49 **(2) The identity of the settlor.**

50 **(3) The identity and address of the currently acting trustee.**

51 **(4) The powers of the trustee.**

- 1           **(5) The revocability or irrevocability of the trust and the**  
 2           **identity of any person holding a power to revoke the trust.**  
 3           **(6) The authority of cotrustees to sign or otherwise authenticate**  
 4           **and whether all or less than all the cotrustees are required in**  
 5           **order to exercise the powers of the trustee.**  
 6           **(7) The trust's taxpayer identification number.**  
 7           **(8) The manner of taking title to trust property.**  
 8           **(b) A certification of trust may be signed or authenticated by any**  
 9           **trustee.**  
 10           **(c) A certification of trust must state that the trust has not been**  
 11           **revoked, modified, or amended in any manner that would cause the**  
 12           **representations contained in the certification of trust to be**  
 13           **incorrect.**  
 14           **(d) A certification of trust may contain the dispositive terms of a**  
 15           **trust.**  
 16           **(e) A recipient of a certification of trust may require the trustee**  
 17           **to furnish copies of excerpts from the original trust instrument and**  
 18           **later amendments that:**  
 19               **(1) designate the trustee; and**  
 20               **(2) confer on the trustee the power to act in a pending**  
 21               **transaction in which the recipient has an interest.**  
 22           **(f) A person who acts in reliance on a certification of trust**  
 23           **without knowledge that the representations contained in the**  
 24           **certification of trust are incorrect:**  
 25               **(1) is not liable to any person for acting in reliance on the**  
 26               **certification of trust; and**  
 27               **(2) may assume without inquiry the existence of the facts**  
 28               **contained in the certification of trust.**  
 29           **Knowledge of the terms of the trust may not be inferred solely from**  
 30           **the fact that a copy of all or part of the trust instrument is held by**  
 31           **the person relying on the certification.**  
 32           **(g) A person who in good faith enters into a transaction in**  
 33           **reliance on a certification of trust may enforce the transaction**  
 34           **against the trust property as if the representations contained in the**  
 35           **certification were correct.**  
 36           **(h) A person making a demand for the trust instrument in**  
 37           **addition to a certification of trust or excerpts from the original**  
 38           **trust instrument is liable for damages if the court determines that**  
 39           **a person did not act in good faith in demanding the trust**  
 40           **instrument.**  
 41           **(i) This section does not limit the right of a person to obtain a**  
 42           **copy of the trust instrument in a judicial proceeding concerning the**  
 43           **trust.**  
 44           **SECTION 42. IC 30-4-5-16 IS AMENDED TO READ AS**  
 45           **FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (~~Right to~~**  
 46           **~~Compensation~~) (a) Unless the terms of the trust provide otherwise, and**  
 47           **except as provided in ~~30-4-5-17~~, **section 17 of this chapter**,**  
 48           **the trustee is entitled to reasonable compensation from the trust estate for acting**  
 49           **as trustee.**  
 50           **(b) If the terms of the trust specify the trustee's compensation,**  
 51           **the trustee is entitled to be compensated as specified, but the court**



1       **may allow more or less compensation if:**

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

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

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

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

16       SECTION 43. IC 30-4-6-3 IS AMENDED TO READ AS  
 17       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (~~Venue~~) (a) Unless  
 18       the terms of the trust provide otherwise, venue in this state for matters  
 19       arising under this article shall be exclusively in the county in which the  
 20       principal place of administration of the trust is located. The principal  
 21       place of administration of a trust is that usual place at which the records  
 22       pertaining to the trust are kept or, if there is no such place, the trustee's  
 23       residence. If there are cotrustees, the principal place of administration  
 24       is either that of the corporate trustee, if there is only one (1); that of the  
 25       individual trustee who has custody of the records, if there is but one (1)  
 26       such person and there is no corporate cotrustee; or, if neither of these  
 27       alternatives apply, that of any of the cotrustees.

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

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

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

- 40           **(1) The name of the jurisdiction to which the principal place of**  
 41           **administration is to be transferred.**  
 42           **(2) The address and telephone number of the new location at**  
 43           **which the trustee can be contacted.**  
 44           **(3) An explanation of the reasons for the proposed transfer.**  
 45           **(4) The date on which the proposed transfer is anticipated to**  
 46           **occur.**  
 47           **(5) The date, not less than sixty (60) days after the giving of**  
 48           **notice, by which the qualified beneficiary must notify the**  
 49           **trustee of an objection to the proposed transfer.**

50       **(e) The authority of a trustee under this section to transfer a**  
 51       **trust's principal place of administration terminates if a qualified**

1 **beneficiary notifies the trustee of an objection to the proposed**  
 2 **transfer on or before the date specified in the notice.**

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

7 ~~(b)~~ **(g)** If the principal place of administration is maintained in  
 8 another state, venue in this state for any matters arising under this  
 9 article shall be in the county stipulated in writing by the parties to the  
 10 trust or, if there is no such stipulation, in the county where the trust  
 11 property, or the evidence of the trust property, which is the subject of  
 12 the action is either situated or generally located.

13 ~~(c)~~ **(h)** Any party to an action or proceeding shall be entitled to a  
 14 change of venue or change of judge as provided in the Indiana Rules of  
 15 Procedure. A change of venue in any action shall not be construed to  
 16 authorize a permanent change of venue for all matters arising under this  
 17 article, and, upon conclusion of the action, venue shall return to the  
 18 court where the action was initiated.

19 SECTION 44. IC 30-4-6-8 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. ~~(Bonding)~~ **(a)** Unless  
 21 the terms of the trust provide otherwise, the trustee need not provide a  
 22 bond to secure ~~his~~ **the trustee's** performance as trustee.

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

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

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

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

39 SECTION 45. IC 30-4-6-10.5 IS ADDED TO THE INDIANA  
 40 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 41 [EFFECTIVE JULY 1, 2005]: **Sec. 10.5. (a) Except as provided in**  
 42 **the terms of a trust, and to the extent there is not a conflict of**  
 43 **interest between the representative and the person represented or**  
 44 **among those being represented:**

45 **(1) a guardian may represent and bind the protected person**  
 46 **who is subject to the guardianship;**

47 **(2) an attorney in fact who has authority to act with respect to**  
 48 **the particular question or dispute may represent and bind the**  
 49 **principal;**

50 **(3) a trustee may represent and bind the beneficiaries of the**  
 51 **trust;**

- 1           **(4) a personal representative of a decedent's estate may**  
 2           **represent and bind persons interested in the estate; and**  
 3           **(5) a parent may represent and bind the parent's minor,**  
 4           **unborn, or not yet adopted child if a guardian for the child has**  
 5           **not been appointed;**

6           **with regard to a particular question or dispute.**

7           **(b) The holder of a general power of appointment, including a**  
 8           **general testamentary power of appointment, may represent and**  
 9           **bind persons whose interests are subject to the power of**  
 10           **appointment, including:**

- 11           **(1) permissible appointees; and**  
 12           **(2) takers in default.**

13           **(c) Unless otherwise represented:**

- 14           **(1) a minor;**  
 15           **(2) an incapacitated person;**  
 16           **(3) an unborn or a not yet adopted child; or**  
 17           **(4) a person whose identity or location is unknown and not**  
 18           **reasonably ascertainable;**

19           **may be represented by and bound by another person who has a**  
 20           **substantially identical interest with respect to the particular**  
 21           **question or dispute but only to the extent there is not a conflict of**  
 22           **interest between the representative and the person represented.**

23           **(d) If the court determines that an interest is not represented**  
 24           **under this section or that the otherwise available representation**  
 25           **might be inadequate, the court may appoint a guardian ad litem to**  
 26           **receive notice, give consent, and otherwise represent, bind, and act**  
 27           **on behalf of:**

- 28           **(1) a minor;**  
 29           **(2) an incapacitated person;**  
 30           **(3) an unborn child; or**  
 31           **(4) a person whose identity or location is unknown.**

32           **If not precluded by conflict of interest, a guardian ad litem may be**  
 33           **appointed to represent several persons or interests. A guardian ad**  
 34           **litem may act on behalf of the person represented with respect to**  
 35           **any matter arising under this title, regardless of whether a judicial**  
 36           **proceeding concerning the trust is pending. In making decisions, a**  
 37           **guardian ad litem may consider general benefits accruing to the**  
 38           **living members of the family of the persons represented.**

39           **(e) Notice to a person who may represent and bind another**  
 40           **person under this section has the same effect as if notice were given**  
 41           **directly to the other person.**

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

46           **SECTION 46. IC 30-4-6-14 IS ADDED TO THE INDIANA CODE**  
 47           **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**  
 48           **JULY 1, 2005]: Sec. 14. (a) A person must commence a judicial**  
 49           **proceeding to contest the validity of a trust that was revocable at**  
 50           **the settlor's death within the earlier of the following:**

- 51           **(1) Ninety (90) days after the person receives from the trustee**

1 a copy of the trust certification and a notice informing the  
2 person of:

- 3 (A) the trust's existence;
- 4 (B) the trustee's name and address; and
- 5 (C) the time allowed for commencing the proceeding.

6 (2) Three (3) years after the settlor's death.

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

12 (1) the trustee knows of a pending judicial proceeding  
13 contesting the validity of the trust; or

14 (2) a potential contestant notifies the trustee of a possible  
15 judicial proceeding to contest the trust and a judicial  
16 proceeding is commenced not later than sixty (60) days after  
17 the contestant sends the trustee the notification.

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

20 SECTION 47. IC 30-5-2-5.5 IS ADDED TO THE INDIANA CODE  
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
22 JULY 1, 2005]: **Sec. 5.5. Notwithstanding IC 1-1-4-4 and**  
23 **IC 6-3-1-11, "Internal Revenue Code" means the Internal Revenue**  
24 **Code of 1986 of the United States as amended from time to time.**

25 SECTION 48. IC 30-5-5-4.5 IS ADDED TO THE INDIANA CODE  
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2005]: **Sec. 4.5. (a) Language conferring general authority**  
28 **with respect to retirement plans means the principal authorizes the**  
29 **attorney in fact to:**

30 (1) make contributions, including rollover contributions, or  
31 cause contributions to be made on behalf of the principal to  
32 any retirement plan, including any:

- 33 (A) pension;
- 34 (B) profit sharing or stock bonus plan;
- 35 (C) individual retirement arrangement;
- 36 (D) individual retirement account described in Section
- 37 408(A) of the Internal Revenue Code;
- 38 (E) deferred compensation plan;
- 39 (F) qualified plan under Section 403(b) of the Internal
- 40 Revenue Code; or
- 41 (G) other qualified or nonqualified retirement plan,
- 42 arrangement, or annuity in which the principal is a
- 43 participant or a beneficiary;

44 (2) establish at least one (1) individual retirement account or  
45 other retirement plan in the principal's name;

46 (3) elect a form of payment of benefits from a retirement plan  
47 and withdraw benefits from a retirement plan;

48 (4) exercise investment powers available under a retirement  
49 plan;

50 (5) designate at least one (1) beneficiary or contingent  
51 beneficiary for any benefits payable under a retirement plan on

- 1           **account of the principal's death and change any earlier**  
 2           **designation of beneficiary;**  
 3           **(6) borrow from, sell assets to, and purchase assets from the**  
 4           **retirement plan if authorized by the retirement plan; and**  
 5           **(7) waive the right of the principal to be a beneficiary of a joint**  
 6           **or survivor annuity.**  
 7           **(b) The powers described in this section are equally exercisable**  
 8           **with respect to a retirement plan established or operated in Indiana**  
 9           **or another jurisdiction and:**  
 10           **(1) owned by the principal;**  
 11           **(2) in which the principal was a participant; or**  
 12           **(3) of which the principal was a beneficiary;**  
 13           **when the powers are given or after the powers are given.**  
 14           **(c) A power of attorney executed before July 1, 2005, that confers**  
 15           **general authority with respect to all other matters under section 19**  
 16           **of this chapter, includes general authority with respect to**  
 17           **retirement plans as described in this section.**  
 18           SECTION 49. IC 30-5-5-7 IS AMENDED TO READ AS  
 19           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) Language  
 20           conferring general authority with respect to insurance transactions  
 21           means the principal authorizes the attorney in fact to do the following:  
 22           (1) Continue, pay the premium or assessment on, modify, rescind,  
 23           release, or terminate a contract of life, accident, health, or disability  
 24           insurance or for the provision of health care services or any  
 25           combination of these contracts procured by or on behalf of the  
 26           principal before the granting of the power of attorney that insures  
 27           the principal or another person, without regard to whether the  
 28           principal is or is not a beneficiary under the contract.  
 29           (2) Procure new, different, or additional contracts of life, accident,  
 30           health, or disability insurance for the principal or for the provision  
 31           of health care services for the principal, and select the amount, type  
 32           of insurance, and mode of payment under each contract, pay the  
 33           premium or assessment on, modify, release, or terminate a contract  
 34           procured by the attorney in fact, and designate the beneficiary  
 35           under the contract. ~~The attorney in fact may not be named a~~  
 36           ~~beneficiary of a contract, unless:~~  
 37           ~~(A) the attorney in fact is named as beneficiary of death benefit~~  
 38           ~~proceeds if permitted under section 8 of this chapter; or~~  
 39           ~~(B) the attorney in fact was named as a beneficiary under a~~  
 40           ~~contract that was procured by the principal before the granting of~~  
 41           ~~the power of attorney. The attorney in fact may continue to be~~  
 42           ~~named as beneficiary under the contract, or an extension or~~  
 43           ~~renewal of, or substitute for, the contract.~~  
 44           (3) Apply for and receive any available loan on the security of the  
 45           contract of insurance, whether for the payment of the premium or  
 46           for the procuring of cash, surrender and receive the cash surrender  
 47           value, exercise an election as to beneficiary or mode of payment,  
 48           change the manner of paying premiums, change or convert the type  
 49           of insurance contract, with respect to a contract of life, accident,  
 50           health, disability, or liability insurance in which the principal has,  
 51           or claims to have, a power described in this subdivision, or change

1 the beneficiary of the contract of insurance. The attorney in fact  
2 may not be named a new beneficiary of a contract, unless:

3 (A) the attorney in fact is named as beneficiary of death benefit  
4 proceeds if permitted under section 8 of this chapter; or

5 (B) the attorney in fact was named as a beneficiary under a  
6 contract that was procured by the principal before the granting of  
7 the power of attorney. The attorney in fact may continue to be  
8 named as beneficiary under the contract, or an extension or  
9 renewal of; or substitute for; the contract.

10 (4) Demand, receive, or obtain by action or proceeding money or  
11 other things of value to which the principal is, may become, or  
12 claims to be entitled to as the proceeds of a contract of insurance or  
13 a transaction permitted under this section, conserve, invest,  
14 disburse, or use anything received for a purpose permitted under  
15 this section, and reimburse the attorney in fact for expenditures  
16 properly made in the execution of powers conferred upon the  
17 attorney in fact.

18 (5) Apply for and procure available governmental aid in the  
19 guaranteeing or paying of premiums of a contract of insurance on  
20 the life of the principal.

21 (6) Sell, assign, hypothecate, borrow upon, or pledge the interest  
22 of the principal in a contract of insurance.

23 (7) Pay from the proceeds or otherwise, compromise, contest, and  
24 apply for refunds in connection with a tax or an assessment levied  
25 by a taxing authority with respect to a contract of insurance, the  
26 proceeds of the refunds, or liability accruing from a tax or an  
27 assessment.

28 (8) Agree and contract in any manner and on any terms with any  
29 person the attorney in fact selects to accomplish a purpose  
30 permitted under this section and perform, rescind, reform, release,  
31 or modify an agreement or a contract.

32 (9) Execute, acknowledge, seal, and deliver a consent, a demand,  
33 a request, an application, an agreement, an indemnity, an  
34 authorization, an assignment, a pledge, a notice, a check, a receipt,  
35 a waiver, or other instrument the attorney in fact considers useful  
36 to accomplish a purpose permitted under this section.

37 (10) Continue, procure, pay the premium or assessment on, modify,  
38 rescind, release, terminate, or otherwise deal with a contract of  
39 insurance, other than those permitted under subdivision (1) or (2),  
40 including fire, marine, burglary, compensation, liability, hurricane,  
41 casualty, or a combination of insurance, and do acts with respect to  
42 the contract or with respect to the contract's proceeds or  
43 enforcement that the attorney in fact considers necessary or  
44 desirable for the promotion or protection of the interests of the  
45 principal.

46 (11) Prosecute, defend, submit to arbitration, settle, and propose or  
47 accept a compromise with respect to a claim existing in favor of or  
48 against the principal based on or involving an insurance transaction  
49 or intervene in an action or proceeding relating to a claim.

50 (12) Hire, discharge, and compensate an attorney, accountant,  
51 expert witness, or other assistant when the attorney in fact

1 considers the action to be desirable for the proper execution by the  
 2 attorney in fact of a power described in this section and keep  
 3 needed records.

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

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

12 SECTION 50. IC 30-5-5-9 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Language  
 14 conferring general authority with respect to gift transactions means the  
 15 principal authorizes the attorney in fact to do the following:

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

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

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

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

40 (5) Prosecute, defend, submit to arbitration, settle, and propose or  
 41 accept a compromise with respect to a claim existing in favor of or  
 42 against the principal based on or involving a gift transaction, or  
 43 intervene in a related action or proceeding.

44 (6) Hire, discharge, and compensate an attorney, accountant, expert  
 45 witness, or other assistant when the attorney in fact considers the  
 46 action to be desirable for the proper execution by the attorney in  
 47 fact of a power described in this section and keep needed records.

48 (7) Perform any other acts the attorney in fact considers desirable  
 49 or necessary to complete a gift on behalf of the principal.

50 (b) The powers described in this section are exercisable equally with  
 51 respect to a gift of property in which the principal is interested at the

1 time of the giving of the power of attorney or becomes interested in  
2 after that time, whether conducted in Indiana or in another jurisdiction.

3 SECTION 51. IC 30-5-8-7 IS ADDED TO THE INDIANA CODE  
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2005]: Sec. 7. (a) **A person who acts in good faith reliance  
6 on a power of attorney is immune from liability to the same extent  
7 as if the person had dealt directly with the named principal and the  
8 named principal had been competent and not incapacitated.**

9 (b) **The named attorney in fact may furnish an affidavit to a  
10 person that states, to the best knowledge of the attorney in fact:**

11 (1) **that the instrument relied on by the person is a true copy of  
12 the power of attorney;**

13 (2) **that the named principal is alive;**

14 (3) **that the power of attorney was validly granted and  
15 executed;**

16 (4) **that the relevant powers granted to the attorney in fact have  
17 not been altered or terminated;**

18 (5) **in the case of a successor attorney in fact, that the original  
19 attorney in fact has failed or ceased to serve and the successor  
20 attorney in fact is empowered to act on behalf of the principal;  
21 and**

22 (6) **if the effective date of the power of attorney begins upon the  
23 occurrence of a certain event, that the event has occurred and  
24 the attorney in fact is authorized to act under the power of  
25 attorney.**

26 (c) **A person who:**

27 (1) **relies on an affidavit described in subsection (b); and**

28 (2) **acts in good faith;**

29 **is immune from liability that might otherwise arise from the  
30 person's action in reliance on the power of attorney that is the  
31 subject of the affidavit.**

32 SECTION 52. IC 30-5-9-2 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) **An attorney in  
34 fact who acts with due care for the benefit of the principal is not liable  
35 or limited only because the attorney in fact:**

36 (1) **also benefits from the act;**

37 (2) **has individual or conflicting interests in relation to the property,  
38 care, or affairs of the principal; or**

39 (3) **acts in a different manner with respect to the principal's and the  
40 attorney in fact's individual interests.**

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

43 (1) **is:**

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

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

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

48 SECTION 53. IC 30-5-10-4 IS AMENDED TO READ AS  
49 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) **Except as  
50 provided in subsection subsections (b) and (c), a power of attorney  
51 terminates on the death of the principal.**



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

7 **(c) The death of a principal who executes a written power of**  
 8 **attorney does not revoke or terminate the power of attorney as to**  
 9 **authority granted under IC 30-5-5-16(b)(5) through**  
 10 **IC 30-5-5-16(b)(7). An action taken under this subsection binds the**  
 11 **principal and the principal's successors in interest, unless the**  
 12 **action is inconsistent with a written directive executed by the**  
 13 **principal before the principal's death.**

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

18 (1) Constitute and may not be interpreted as actual notice of the  
 19 death of the principal.

20 (2) Terminate the power of attorney.

21 SECTION 54. IC 32-17.5-4-1 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Except for a  
 23 disclaimer under IC 32-17.5-5 or IC 32-17.5-6-1, the following rules  
 24 apply to a disclaimer of an interest in property:

25 (1) A disclaimer takes effect:

26 (A) when the instrument creating the interest becomes  
 27 irrevocable; or

28 (B) upon the intestate's death if the interest arose under the law  
 29 of intestate succession.

30 (2) A disclaimed interest passes according to any provision in the  
 31 instrument creating the interest:

32 (A) that provides for the disposition of the interest should the  
 33 interest be disclaimed; or

34 (B) that concerns disclaimed interests in general.

35 (3) If ~~an~~ **the instrument creating the disclaimed interest** does not  
 36 contain a provision described in subdivision (2), the following rules  
 37 apply:

38 (A) If the disclaimant is an individual, the following rules apply:

39 (i) Except as provided in item (ii), the disclaimed interest  
 40 passes as if the disclaimant had died immediately before the  
 41 time of distribution.

42 (ii) If, by law or under the instrument, the descendants of the  
 43 disclaimant would share in the disclaimed interest by any  
 44 method of representation had the disclaimant died before the  
 45 time of distribution, the disclaimed interest passes only to the  
 46 descendants of the disclaimant who survive at the time of  
 47 distribution.

48 (B) If the disclaimant is not an individual, the disclaimed interest  
 49 passes as if the disclaimant did not exist.

50 **(4) If the disclaimed interest arose under the law of intestate**  
 51 **succession, the disclaimed interest passes as if the disclaimant**

1 **had died immediately before the intestate's death.**

2 ~~(4)~~ (5) Upon the disclaimer of a preceding interest:

3 (A) a future interest held by a person other than the disclaimant  
4 takes effect as if the disclaimant had died or ceased to exist  
5 immediately before the time of distribution; and

6 (B) a future interest held by the disclaimant is not accelerated in  
7 possession or enjoyment.

8 SECTION 55. IC 32-29-7-3 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) In a proceeding  
10 for the foreclosure of a mortgage executed on real estate, process may  
11 not issue for the execution of a judgment or decree of sale for a period  
12 of three (3) months after the filing of a complaint in the proceeding.  
13 However:

14 (1) the period ~~shall be:~~ is:

15 (A) twelve (12) months in a proceeding for the foreclosure of a  
16 mortgage executed before January 1, 1958; and

17 (B) six (6) months in a proceeding for the foreclosure of a  
18 mortgage executed after December 31, 1957, but before July 1,  
19 1975; and

20 (2) if the court finds that the mortgaged real estate is residential real  
21 estate and has been abandoned, a judgment or decree of sale may  
22 be executed on the date the judgment of foreclosure or decree of  
23 sale is entered, regardless of the date the mortgage is executed.

24 (b) A judgment and decree in a proceeding to foreclose a mortgage  
25 that is entered by a court having jurisdiction may be filed with the clerk  
26 in any county as provided in IC 33-32-3-2. After the period set forth in  
27 subsection (a) expires, a person who may enforce the judgment and  
28 decree may file a praecipe with the clerk in any county where the  
29 judgment and decree is filed, and the clerk shall promptly issue and  
30 certify to the sheriff of that county a copy of the judgment and decree  
31 under the seal of the court.

32 (c) Upon receiving a certified judgment under subsection (b), the  
33 sheriff shall, subject to section 4 of this chapter, sell the mortgaged  
34 premises or as much of the mortgaged premises as necessary to satisfy  
35 the judgment, interest, and costs at public auction at the office of the  
36 sheriff or at another location that is reasonably likely to attract higher  
37 competitive bids. The sheriff shall schedule the date and time of the  
38 sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m.  
39 on any day of the week except Sunday.

40 (d) Before selling mortgaged property, the sheriff must advertise the  
41 sale by publication once each week for three (3) successive weeks in a  
42 daily or weekly newspaper of general circulation. The sheriff shall  
43 publish the advertisement in at least one (1) newspaper published and  
44 circulated in each county where the real estate is situated. The first  
45 publication shall be made at least thirty (30) days before the date of  
46 sale. At the time of placing the first advertisement by publication, the  
47 sheriff shall also serve a copy of the written or printed notice of sale  
48 upon each owner of the real estate. Service of the written notice shall  
49 be made as provided in the Indiana Rules of Trial Procedure governing  
50 service of process upon a person. The sheriff shall charge a fee of ten  
51 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional

owner for service of written notice under this subsection. The fee is:

- (1) a cost of the proceeding;
- (2) to be collected as other costs of the proceeding are collected;
- and
- (3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale in at least three (3) public places in each township in which the real estate is situated and at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. ~~However,~~ The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

**(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:**

- (1) payable by the person seeking to enforce the judgment and decree; and**
- (2) due at the time of filing of the praecipe;**

**under subsection (b).**

SECTION 56. IC 33-37-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Each clerk shall establish a clerk's record perpetuation fund. The clerk shall deposit all the following in the fund:

- (1) Revenue received by the clerk for transmitting documents by facsimile machine to a person under IC 5-14-3.
- (2) Document storage fees required under section 20 of this chapter.
- (3) The late payment fees imposed under section 22 of this chapter that are authorized for deposit in the clerk's record perpetuation fund under IC 33-37-7-1 or IC 33-37-7-2.

**(4) The fees required under IC 29-1-7-3.1 for deposit of a will.**

(b) The clerk may use any money in the fund for the following purposes:

- (1) The preservation of records.
- (2) The improvement of record keeping systems and equipment.

SECTION 57. IC 34-30-2-122.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 122.5. IC 29-1-7-3.1 (Concerning a person who deposits a will with a circuit court clerk).**

SECTION 58. IC 34-30-2-131 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 131. **(a) IC 30-4-3-1.5 (Concerning actions of a trustee who does not know that a trust has been revoked or amended).**

1           **(b) IC 30-4-3-6.5 (Concerning actions of a trustee who does not**  
 2 **know of the happening of an event that affects the trust).**

3           **(c) IC 30-4-3-11 (Concerning trustees and beneficiaries of a trust in**  
 4 **certain circumstances).**

5           SECTION 59. IC 34-30-2-132.4 IS ADDED TO THE INDIANA  
 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2005]: **Sec. 132.4. IC 30-4-4-5 (Concerning**  
 8 **a person who acts in reliance on a certification of trust).**

9           SECTION 60. IC 34-30-2-132.6 IS ADDED TO THE INDIANA  
 10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2005]: **Sec. 132.6. IC 30-4-6-14 (Concerning**  
 12 **distribution of trust property).**

13           SECTION 61. IC 34-30-2-132.8 IS ADDED TO THE INDIANA  
 14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2005]: **Sec. 132.8. IC 30-5-8-7 (Concerning**  
 16 **a person who relies on a power of attorney or an affidavit**  
 17 **concerning a power of attorney).**

18           SECTION 62. IC 34-54-11-2 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A judgment  
 20 creditor filing a foreign judgment under this chapter must file an  
 21 affidavit with the clerk of the court in which the foreign judgment is  
 22 filed at the time the foreign judgment is filed. The affidavit must set  
 23 forth:

- 24           (1) the name and last known address of the judgment debtor; and  
 25           (2) the name and last known address of the judgment creditor.

26           (b) The judgment creditor must send notice of the filing of the foreign  
 27 judgment in the same process prescribed under Indiana Trial Rule 4  
 28 through Indiana Trial Rule 4.17.

29           (c) The notice described in subsection (b) must contain:

- 30           (1) the name and address of the judgment creditor;  
 31           (2) the name and address of the judgment creditor's attorney, if any;  
 32           and  
 33           (3) the nature and amount of the judgment creditor's claim under  
 34 the foreign judgment.

35           (d) Execution or other process for the enforcement of a foreign  
 36 judgment may not be issued earlier than twenty-one (21) days after the  
 37 entry of the judgment in the judgment's original jurisdiction.

38           (e) Not later than twenty-one (21) days after the date notice is served  
 39 to the judgment debtor by the judgment creditor or the judgment  
 40 creditor's attorney, the judgment debtor may file a notice with the court  
 41 in which the judgment has been filed asserting any defenses that would  
 42 prohibit the judgment creditor from execution or another process for  
 43 enforcement of the foreign judgment.

44           **(f) If a judgment debtor files a timely notice under subsection (e),**  
 45 **a foreign judgment may not:**

- 46           **(1) constitute a lien under IC 34-55-9-2; or**  
 47           **(2) be enforced by execution or another process for**  
 48 **enforcement of the foreign judgment;**

49 **until the court in which the foreign judgment is filed has issued an**  
 50 **order sustaining or overruling each defense asserted in the notice**  
 51 **filed under subsection (e).**

1           **(g) A court in which a foreign judgment is filed may issue an**  
 2 **order staying the time within which a notice by a judgment debtor**  
 3 **must be filed under subsection (e) if the court determines that**  
 4 **litigation of a postjudgment motion:**

5           **(1) is appropriate; and**

6           **(2) would be available if the judgment had been obtained in an**  
 7 **Indiana court.**

8           **(h) If a court stays under subsection (g) the time within which a**  
 9 **notice by a judgment debtor must be filed under subsection (e), a**  
 10 **foreign judgment may not:**

11           **(1) constitute a lien under IC 34-55-9-2; or**

12           **(2) be enforced by execution or another process for**  
 13 **enforcement of the foreign judgment;**  
 14 **during the period of the stay.**

15           **(i) A creditor filing a foreign judgment is entitled to any**  
 16 **prejudgment remedy that is available to a creditor in an Indiana**  
 17 **court during the pendency of:**

18           **(1) the proceeding to determine the availability of a defense**  
 19 **under subsection (e); or**

20           **(2) a stay under subsection (g).**

21           SECTION 63. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 22 JULY 1, 2005]: IC 29-1-15-16; IC 30-4-3-1; IC 30-4-3-24;  
 23 IC 30-4-3-28.

24           SECTION 64. [EFFECTIVE JULY 1, 2004 (RETROACTIVE)]  
 25 **IC 6-4.1-1-3, as amended by this act, applies to the estate of an**  
 26 **individual who dies after June 30, 2004.**

27           SECTION 65. [EFFECTIVE JULY 1, 2005] **IC 29-1-2-1, as**  
 28 **amended by this act, applies to the estate of a person who dies after**  
 29 **June 30, 2004.**

30           SECTION 66. [EFFECTIVE JULY 1, 2005] **IC 6-4.1-4-2 and**  
 31 **IC 29-1-3-2, both as amended by this act, apply to the estate of a**  
 32 **person who dies after June 30, 2005.**

33           SECTION 67. **An emergency is declared for this act.**  
 (Reference is to EHB 1153 as printed March 25, 2005.)

**Conference Committee Report**  
**on**  
**Engrossed House Bill 1153**

**S**igned by:

---

Representative Foley  
Chairperson

---

Senator Zakas

---

Representative Kuzman

---

Senator Antich-Carr

**House Conferees**

**Senate Conferees**