

**ANNUAL REPORT
OF THE
PROBATE CODE STUDY COMMISSION**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

November, 2008

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2008

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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly established the Commission to study and recommend to the General Assembly needed changes in the following:

- (1) The probate code (IC 29-1).
- (2) The trust code (IC 30-4).
- (3) Other statutes affecting the administration of a decedent's estate, guardianships, probate jurisdiction, trusts, or fiduciaries.

For the 2008 interim, the Legislative Council assigned to the Commission certain issues related to funeral and cemetery trusts in accordance with SECTION 17 of HEA 1026-2008.

II. INTRODUCTION AND REASONS FOR STUDY

The primary focus of the Commission in the 2008 interim was to study the topics set forth in SECTION 17 of HEA 1026-2008, as follows:

"(b) The commission shall study and make findings and recommendations concerning the following:

- (1) Whether current law is adequate to:
 - (A) protect money and property placed in cemetery perpetual care trusts and preneed funeral trusts; and
 - (B) ensure that the money is used for its intended purposes.
- (2) Whether additional restrictions, prohibitions, or rules are needed concerning cemetery perpetual care trusts and preneed funeral trusts to sufficiently protect consumers and the general public.
- (3) Whether it is appropriate to revise Indiana law concerning funeral and cemetery trusts.
- (4) Approaches used by other states to regulate funeral and cemetery trusts, trustees, funeral service and merchandise sellers, funeral home owners and operators, and cemetery owners.
- (5) Any other matter concerning funeral and cemetery trusts the commission considers appropriate."

III. SUMMARY OF WORK PROGRAM

The Commission met on September 17 to hear testimony on the funeral and cemetery issues set forth in HEA 1026-2008.

The Commission met on October 15 to:

- (1) Consider issues brought to the Commission by its members and the Probate, Trust, and Real Property Section of the Indiana State Bar Association.
- (2) Make recommendations concerning the funeral and cemetery issues considered at the September 15 meeting.

The Commission met for the third and final time on October 29 to consider a comprehensive transfer on death act, funeral planning declarations, and asset protection trusts as proposed by the Probate, Trust, and Real Property Section of the Indiana State Bar Association. The Commission also discussed SB 294-2008 that would have relieved trustees of certain duties concerning the settlor's life insurance policies if it had been enacted by the General Assembly.

IV. SUMMARY OF TESTIMONY

A. Funeral and Cemetery Accounts

The Commission heard testimony from the professional associations representing Indiana's funeral directors and cemetery owners generally agreeing that the Indiana statutes governing the funeral and cemetery businesses sufficiently support Indiana's regulatory effort.

Some cemetery owners urged the state to hire more state inspectors to oversee their industry. The cemetery owners suggested paying for the additional inspectors by redirecting the 1% maintenance fee that is currently collected for deposit in the state's consumer protection fund for cemetery maintenance.

The Office of the Attorney General recommended stiffer penalties for the misuse of funds deposited in trust and escrow accounts established to purchase funeral and cemetery merchandise and services in advance of need. The Indiana Prosecuting Attorney's Council agreed and also suggested that both the Racketeer Influenced Corrupt Organization (RICO) act and the civil forfeiture statute should be utilized against criminal enterprises that raid these funds and accounts.

B. Other Funeral, Probate, and Trust Issues

The Probate, Trust, and Real Property Section of the Indiana State Bar Association presented drafts of proposals to authorize a statutory funeral planning declaration, broaden the estate planning powers of a guardian, enact a comprehensive transfer on death act, and authorize the creation of asset protection trusts. The Indiana Bankers Association urged the Commission to adopt SB 194-2008. The Commission was asked to recommend that the General Assembly amend the Indiana Code to specify that the Chair of the Commission serve a two year term.

V. COMMISSION RECOMMENDATIONS

The Commission recommended the following preliminary drafts to the General Assembly:

- (1) Preliminary Draft 3399
Various probate and trust issues, including enhanced law enforcement tools for punishing criminals who misuse certain funeral and cemetery funds.
- (2) Preliminary Draft 3422
Estate planning powers of guardians.
- (3) Preliminary Draft 3433
Comprehensive transfer on death act
- (4) Preliminary Draft 3498
Funeral planning declarations.

The Commission also recommended that the General Assembly amend the Commission's enabling statute in IC 2-5-16-4 to have the Chair of the Commission serve a two year term.

WITNESS LIST

Mr. Steve Johnson, Indiana Prosecuting Attorneys Council
Mr. Bill Keown, Attorney at Law
Mr. Jeff Kolb, Attorney at Law
Mr. Matt Light, Office of the Attorney General
Mr. Dave McComb, State Board of Funeral and Cemetery Service
Mr. Theodore Nowacki, Indiana Bankers Association
Mr. Curtis Rostad, Indiana Funeral Directors Association
Mr. Ray Sabol, Indiana Cemetery Association