
SENATE BILL No. 252

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-4.1-5; IC 29-1; IC 30-4; IC 30-5; IC 32-1-4.5; IC 32-4; IC 34-30-2-136.5.

Synopsis: Numerous changes to probate, trust, and tax laws. Changes notice of appraisal requirements. Establishes rules for interpreting trusts. Extends a procedure allowing a trust beneficiary to petition the court for removal of a corporate trustee to beneficiaries of trusts executed before July 1, 1996. Makes various changes concerning the responsibilities of an attorney in fact. Amends the rule against perpetuities to allow for the creation of a perpetual trust. Adds provisions regarding the liability of a nonprobate transferee. Allows a putative father, for the purpose of inheritance, to execute a paternity affidavit to establish the paternity of a child born out of wedlock. Repeals a superseded provision concerning the liability of a person who receives payment from a multiple party account for claims against the estate. Makes other changes to the probate and trust laws. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2002.

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January 7, 2002, read first time and referred to Committee on Judiciary.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

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SENATE BILL No. 252



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

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

1 SECTION 1. IC 6-4.1-5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. Before ~~he makes~~
3 **making** the appraisal required under section 2(3) of this chapter, the
4 county inheritance tax appraiser shall give notice of the **date**, time, and
5 place of the appraisal, by mail, to ~~(1) each person known to have an~~
6 **interest in the property interests to be appraised; including the**
7 **department of state revenue; and (2) any person designated by the**
8 **probate court: each interested person who filed a request for notice**
9 **and provided a mailing address to the county assessor.** The county
10 inheritance tax appraiser shall appraise the property interests at the
11 time and place stated in the notice.

12 SECTION 2. IC 6-4.1-5-9 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. ~~(a)~~ When the county
14 inheritance tax appraiser files an appraisal report with the probate
15 court, the court shall give twenty (20) days notice **by mail** of the **date**,
16 time, and place of a hearing on the report **to each interested person**
17 **who filed a request for notice and provided a mailing address**



1 **under section 3 of this chapter.** The court shall give the notice by
 2 mail to all persons known to be interested in the resident decedent's
 3 estate, including the department of state revenue.

4 (b) If the address of a person interested in a resident decedent's
 5 estate is unknown, the probate court shall give notice of the time and
 6 place of the appraisal report hearing by publication. The court shall
 7 publish the notice not less than three (3) successive weeks before the
 8 hearing in a newspaper published in the county.

9 SECTION 3. IC 6-4.1-5-11 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. The court shall
 11 immediately mail a copy of its determination of the fair market value
 12 of the property interests transferred by a resident decedent and the
 13 inheritance tax due as a result of the ~~decedent's~~ **person's** death to ~~all~~
 14 ~~persons interested in the decedent's estate, including each interested~~
 15 **person who filed a request for notice and provided a mailing**
 16 **address under section 3 of this chapter,** the department of state
 17 revenue, and the county treasurer.

18 SECTION 4. IC 29-1-2-7, AS AMENDED BY P.L.9-1999,
 19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2002]: Sec. 7. (a) For the purpose of inheritance (on the
 21 maternal side) to, through, and from a child born out of wedlock, the
 22 child shall be treated as if the child's mother were married to the child's
 23 father at the time of the child's birth, so that the child and the child's
 24 issue shall inherit from the child's mother and from the child's maternal
 25 kindred, both descendants and collaterals, in all degrees, and they may
 26 inherit from the child. The child shall also be treated as if the child's
 27 mother were married to the child's father at the time of the child's birth,
 28 for the purpose of determining homestead rights and the making of
 29 family allowances.

30 (b) For the purpose of inheritance (on the paternal side) to, through,
 31 and from a child born out of wedlock, the child shall be treated as if the
 32 child's father were married to the child's mother at the time of the
 33 child's birth, if one (1) of the following requirements is met:

34 (1) The paternity of a child who was at least twenty (20) years of
 35 age when the father died has been established by law in a cause
 36 of action that is filed during the father's lifetime.

37 (2) The paternity of a child who was less than twenty (20) years
 38 of age when the father died has been established by law in a cause
 39 of action that is filed:

40 (A) during the father's lifetime; or

41 (B) within five (5) months after the father's death.

42 (3) The paternity of a child born after the father died has been

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1 established by law in a cause of action that is filed within eleven
2 (11) months after the father's death.

3 (4) The putative father marries the mother of the child and
4 acknowledges the child to be his own.

5 **(5) The putative father executes a paternity affidavit as set**
6 **forth in IC 16-37-2-2.1.**

7 (c) The testimony of the mother may be received in evidence to
8 establish such paternity and acknowledgment, but no judgment shall be
9 made upon the evidence of the mother alone. The evidence of the
10 mother must be supported by corroborative evidence or circumstances.

11 (d) If paternity is established as described in this section, the child
12 shall be treated as if the child's father were married to the child's
13 mother at the time of the child's birth, so that the child and the child's
14 issue shall inherit from the child's father and from the child's paternal
15 kindred, both descendants and collateral, in all degrees, and they may
16 inherit from the child. The child shall also be treated as if the child's
17 father were married to the child's mother at the time of the child's birth,
18 for the purpose of determining homestead rights and the making of
19 family allowances.

20 SECTION 5. IC 29-1-7-3 IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2002]: Sec. 3. **(a)** After the death of a ~~testator~~
22 **decedent**, the person having custody of ~~his~~ **the decedent's** will:

23 **(1) may; or**

24 **(2) shall, upon written demand by the personal representative**
25 **or upon court order;**

26 deliver ~~it~~ **the will** to the court which has jurisdiction of the
27 administration of ~~his~~ **the decedent's** estate.

28 **(b)** A verified written application may be filed by or on behalf of
29 any interested person or any personal representative named, in any
30 court having jurisdiction of the administration of the decedent's estate
31 for an order of that court against any person who is alleged to have the
32 custody of the will of the said person so dying, to produce said will
33 before said court at the time fixed by said court in order that said will
34 may be probated. Upon the filing of said application, the court shall
35 cause notice to issue of the filing thereof to the person alleged in said
36 petition to have the custody of said will. If, upon the hearing of said
37 application, the court shall find the allegations thereof to be true, the
38 court shall enter an order directing the person so named in said
39 application to deliver said will within the time fixed in said order, to
40 such person as the court shall designate, so that the same may be
41 offered for probate.

42 **(c)** If the person against whom said order is issued shall, after said

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1 order shall have been served upon him, fail without just cause to so
 2 produce said will at the time so fixed therefor, he shall be guilty of
 3 contempt of court and may by said court be committed to the jail of the
 4 county in which said court is located, there to remain until he produces
 5 said will, or until said order to produce shall have been vacated, and
 6 said person so found guilty of contempt shall also be liable to any
 7 person interested in the probate of said will for all damages he may
 8 sustain by the failure of said person to comply with said order.

9 SECTION 6. IC 30-4-2.1 IS ADDED TO THE INDIANA CODE
 10 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2002]:

12 **Chapter 2.1. Rules for Interpretation of Trusts**

13 **Sec. 1. In the absence of a contrary intent appearing in the trust,**
 14 **a trust shall be construed in accordance with the rules in this**
 15 **chapter.**

16 **Sec. 2. (a) Except as provided in subsection (b), in construing a**
 17 **trust naming as beneficiary a person described by relationship to**
 18 **the settlor or to another, a person adopted before:**

- 19 (1) the person is twenty-one (21) years of age; and
 20 (2) the death of the settlor;

21 shall be considered the child of the adopting parent or parents and
 22 not the child of the natural or previous adopting parents.

23 (b) If a natural parent or previous adopting parent marries the
 24 adopting parent before the settlor's death, the adopted person shall
 25 also be considered the child of the natural or previous adopting
 26 parent.

27 (c) A person adopted by the settlor after the person becomes
 28 twenty-one (21) years of age shall be considered the child of the
 29 settlor. However, no other person is entitled to establish the
 30 relationship to the settlor through the child.

31 **Sec. 3. A provision in a trust that provides, or has the effect of**
 32 **providing, that a beneficiary forfeits a benefit from the trust if the**
 33 **beneficiary contests the trust is void.**

34 **Sec. 4. (a) Except as provided in subsection (b) and section 5 of**
 35 **this chapter, when a settlor fails to provide in the settlor's trust for**
 36 **a child who is:**

- 37 (1) born or adopted after the making of the settlor's trust; and
 38 (2) born before or after the settlor's death;

39 the child is entitled to receive a share in the trust assets. The child's
 40 share of the trust assets shall be determined by ascertaining what
 41 the child's intestate share would have been under IC 29-1-2-1 if the
 42 settlor had died intestate. The child is entitled to receive a share of

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1 the trust assets equivalent in value to the intestacy share
2 determined under IC 29-1-2-1.

3 (b) Subsection (a) does not apply to a child of the settlor if:

4 (1) it appears from the trust that the settlor intentionally
5 failed to provide in the settlor's trust for the child; or

6 (2) when the trust was executed:

7 (A) the settlor had at least one (1) child known to the
8 settlor to be living; and

9 (B) the settlor devised substantially all of the settlor's
10 estate to the settlor's surviving spouse.

11 Sec. 5. (a) Except as provided in subsection (b), if at the time of
12 the making of the trust, the settlor:

13 (1) believes a child of the settlor to be dead; and

14 (2) fails to provide for the child in the settlor's trust;

15 the child is entitled to receive a share in the trust assets. The child's
16 share of the trust assets shall be determined by ascertaining what
17 the child's intestate share would have been under IC 29-1-2-1 if the
18 settlor had died intestate. The child is entitled to receive a share of
19 the trust assets equivalent in value to the intestacy share
20 determined under IC 29-1-2-1.

21 (b) Subsection (a) does not apply to a child of the settlor if it
22 appears from the trust or from other evidence that the settlor
23 would not have devised anything to the child had the settlor known
24 that the child was alive.

25 Sec. 6. If a devise of real or personal property, not included in
26 the residuary clause of the trust, is:

27 (1) void;

28 (2) revoked; or

29 (3) lapses;

30 the devise becomes a part of the residue and passes to the residuary
31 beneficiary.

32 Sec. 7. (a) As used in this section, "descendant" includes the
33 following:

34 (1) A child adopted before the child is twenty-one (21) years
35 of age by:

36 (A) the settlor; or

37 (B) the settlor's descendants.

38 (2) A descendant of a child adopted as set forth in subdivision
39 (1).

40 (3) A child who is born of the mother out of wedlock, in either
41 of the following circumstances:

42 (A) The mother is a descendant of the settlor.

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(B) The mother is the settlor.
(4) If the right of a child born out of wedlock to inherit from the father is or has been established in the manner provided under IC 29-1-2-7, the child, in either of the following circumstances:

- (A) The father is a descendant of the settlor.**
- (B) The father is the settlor.**

(5) A descendant of a child born out of wedlock as set forth in subdivisions (3) and (4).

(b) If:

(1) an estate, real or personal, is devised to a descendant of the settlor; and

(2) the beneficiary:

(A) dies during the lifetime of the settlor before or after the execution of the trust; and

(B) leaves a descendant who survives the settlor;

the devise does not lapse, but the property devised vests in the surviving descendant of the beneficiary as if the beneficiary had survived the settlor and died intestate.

Sec. 8. Kindred of the half blood are entitled to receive the same trust interest that they would have received if they had been of the whole blood.

SECTION 7. IC 30-4-3-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 29. (a) A trustee may be removed as follows:

- (1) By the court.
- (2) By the person, if any, who by the terms of the trust is authorized to remove the trustee.
- (3) Unless the terms of the trust instrument provide otherwise, by a beneficiary of the trust whose petition is granted by the court under subsection (e).

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

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

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1 (d) For good cause shown, the court may at any time appoint a
 2 temporary trustee for such period of time, and to perform such duties,
 3 as the court may direct.

4 (e) ~~This subsection applies only to a trust executed after June 30,~~
 5 ~~1996.~~ A beneficiary of a trust may petition the court for the removal of
 6 a corporate trustee if there has been a change in control of the corporate
 7 trustee after the date of the execution of the trust. The court may
 8 remove the corporate trustee if the court determines the removal is in
 9 the best interests of all the beneficiaries of the trust. For purposes of
 10 this subsection a change in control of the corporate trustee occurs
 11 whenever a person or group of persons acting in concert ~~acquire~~
 12 **acquires** the beneficial ownership of an aggregate of at least
 13 twenty-five percent (25%) of the outstanding shares of voting stock of:

- 14 (1) a trustee; or
 15 (2) a corporation controlling a trustee.

16 ~~after June 30, 1996.~~

17 SECTION 8. IC 30-5-5-1 IS AMENDED TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) An attorney in fact has a
 19 power granted under this chapter if the power of attorney incorporates
 20 the power by:

- 21 (1) referring to the descriptive language in sections 2 through 19
 22 of this chapter; or
 23 (2) citing to a specific section of sections 2 through 19 of this
 24 chapter.

25 (b) Reference in a power of attorney to the descriptive language in
 26 sections 2 through 19 of this chapter shall be construed as though the
 27 entire section is set out in full in the power of attorney.

28 (c) If powers are similar or overlap, the broadest power controls.

29 (d) A power of attorney may ~~modify any power incorporated by~~
 30 ~~reference: in writing delete from, add to, or modify in any manner~~
 31 **a power incorporated by reference, including the power to make**
 32 **gifts under section 9 of this chapter.**

33 SECTION 9. IC 30-5-6-4, AS AMENDED BY P.L.252-2001,
 34 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2002]: Sec. 4. (a) The attorney in fact shall keep complete
 36 records of all transactions entered into by the attorney in fact on behalf
 37 of the principal:

- 38 (1) **for six (6) years; or**
 39 (2) **until the records are delivered to the successor attorney in**
 40 **fact;**

41 **whichever occurs first.**

42 (b) Except as otherwise stated in the power of attorney, the attorney

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1 in fact is not required to render an accounting. The attorney in fact shall
 2 render a written accounting if an accounting is ordered by a court,
 3 requested by the principal, a guardian appointed for the principal, or,
 4 upon the death of the principal, the personal representative of the
 5 principal's estate, or an heir or legatee of the principal.

6 (c) An attorney in fact shall deliver an accounting requested under
 7 subsection (b) to:

- 8 (1) the principal;
- 9 (2) a guardian appointed for the principal;
- 10 (3) the personal representative of the principal's estate;
- 11 (4) an heir of the principal after the death of the principal; or
- 12 (5) a legatee of the principal after the death of the principal;

13 not later than sixty (60) days after the date the attorney in fact receives
 14 the written request for an accounting. **In the event of the principal's
 15 death, an accounting under this subsection must be requested not
 16 later than nine (9) months after the date of the principal's death.**

17 (d) Not more than one (1) accounting is required under this section
 18 in each twelve (12) month period unless the court, in its discretion,
 19 orders additional accountings.

20 (e) If an attorney in fact fails to deliver an accounting as required
 21 under subsection (c), the person requesting the accounting may initiate
 22 an action in mandamus to compel the attorney in fact to render the
 23 accounting. The court may award the attorney's fees and court costs
 24 incurred under this subsection to the person requesting the accounting
 25 if the court finds that the attorney in fact failed to render an accounting
 26 as required under this section without just cause.

27 SECTION 10. IC 30-5-6-4.5 IS ADDED TO THE INDIANA CODE
 28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 29 1, 2002]: **Sec. 4.5. (a) An attorney in fact has the authority to
 30 employ persons, including:**

- 31 (1) attorneys;
- 32 (2) accountants;
- 33 (3) investment advisers; and
- 34 (4) agents;

35 **to assist the attorney in fact in the performance of the attorney in
 36 fact's fiduciary duties. Any costs incurred with regard to services
 37 rendered for the benefit of the principal shall be paid from the
 38 principal's asset holdings.**

39 (b) Except as provided in subsection (c), if an accounting is
 40 requested as set forth in section 4 of this chapter, costs incurred by
 41 the attorney in fact:

- 42 (1) to defend the actions of the attorney in fact on behalf of the

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1 principal with regard to the preparation of the accounting;
 2 and
 3 (2) to defend any other actions of the attorney in fact on
 4 behalf of the principal;
 5 shall be paid from the principal's asset holdings.

6 (c) If a court determines that an attorney in fact:
 7 (1) breached the attorney in fact's fiduciary duty or obligation
 8 to the principal; or
 9 (2) was engaged in self-dealing activities with the principal's
 10 asset holdings;
 11 the court may determine that the attorney in fact is responsible for
 12 the payment of the costs incurred under subsection (b).

13 SECTION 11. IC 32-1-4.5-3 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A nonvested
 15 property interest is valid if:

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

19 (2) the interest either vests or terminates within ninety (90) years
 20 after the interest's creation; or

21 (3) the interest is in a trust and:

22 (A) the trust does not:

23 (i) require the accumulation of income; and

24 (ii) suspend the power of alienation;

25 for longer than specified in subdivision (1) or (2); or

26 (B) the trust:

27 (i) does not require the accumulation of income for
 28 longer than specified in subdivision (1) or (2); and

29 (ii) gives the trustee the power to sell trust assets.

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

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

36 (2) the condition precedent either is satisfied or becomes
 37 impossible to satisfy within ninety (90) years after the condition
 38 precedent's creation.

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

41 (1) when the power is created, the power is certain to be
 42 irrevocably exercised or otherwise to terminate not later than

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1 twenty-one (21) years after the death of an individual then alive;
 2 **or**
 3 (2) the power is irrevocably exercised or otherwise terminates
 4 within ninety (90) years after the power's creation; **or**
 5 **(3) the power is created in a trust that meets the conditions of**
 6 **subsection (a)(3).**

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

11 SECTION 12. IC 32-1-4.5-4 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) Except as
 13 provided in subsections (b) ~~and (c)~~ **through (d)** and in section 1(a) of
 14 this chapter, the time of creation of a nonvested property interest or a
 15 power of appointment is determined under general principles of
 16 property law.

17 (b) For purposes of this chapter, if there is a person who alone can
 18 exercise a power created by a governing instrument to become the
 19 unqualified beneficial owner of:

- 20 (1) a nonvested property interest; or
- 21 (2) a property interest subject to a power of appointment
- 22 described in section 3(b) or 3(c) of this chapter;

23 the nonvested property interest or power of appointment is created
 24 when the power to become the unqualified beneficial owner terminates.

25 (c) For purposes of this chapter, a nonvested property interest or a
 26 power of appointment arising from a transfer of property to a
 27 previously funded trust or other existing property arrangement is
 28 created when the nonvested property interest or power of appointment
 29 in the original contribution was created.

30 **(d) For purposes of this chapter, a vested or nonvested property**
 31 **interest or power of appointment arising from the exercise of a**
 32 **nongeneral power of appointment is created when the nongeneral**
 33 **power of appointment was deemed created.**

34 SECTION 13. IC 32-4-1.1 IS ADDED TO THE INDIANA CODE
 35 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2002]:

37 **Chapter 1.1. Liability of Nonprobate Transferees for Creditor**
 38 **Claims and Statutory Allowances**

39 **Sec. 1. (a) As used in this chapter, "nonprobate transfer" means**
 40 **a valid transfer, effective at death, by a transferor:**

- 41 **(1) whose last domicile was in Indiana; and**
- 42 **(2) who immediately before death had the power, acting alone,**

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1 to prevent transfer of the property by revocation or
2 withdrawal and:

- 3 (A) use the property for the benefit of the transferor; or
4 (B) apply the property to discharge claims against the
5 transferor's probate estate.

6 The term does not include transfer of a survivorship interest in a
7 tenancy by the entireties real estate.

8 (b) With respect to a security described in IC 32-4-1.6,
9 "nonprobate transfer" means a transfer on death resulting from
10 a registration in beneficiary form by an owner whose last domicile
11 was in Indiana.

12 (c) With respect to a nonprobate transfer involving a multiple
13 party account, a nonprobate transfer occurs if the last domicile of
14 the depositor whose interest is transferred under IC 32-4-1.5 was
15 in Indiana.

16 Sec. 2. (a) Except as otherwise provided by statute, a transferee
17 of a nonprobate transfer is subject to liability to a decedent's
18 probate estate for:

- 19 (1) allowed claims against the decedent's probate estate; and
20 (2) statutory allowances to the decedent's spouse and
21 children;

22 to the extent the decedent's probate estate is insufficient to satisfy
23 those claims and allowances.

24 (b) The liability of the nonprobate transferee may not exceed the
25 value of nonprobate transfers received or controlled by the
26 transferee.

27 (c) The liability of the nonprobate transferee does not include
28 the net contributions of the transferee.

29 Sec. 3. Nonprobate transferees are liable for the insufficiency
30 described in section 2 of this chapter in the following order:

- 31 (1) As provided in the decedent's will or other governing
32 instrument.
33 (2) To the extent of the value of the nonprobate transfer
34 received or controlled by the trustee of trusts that can be
35 amended, modified, or revoked by the decedent during the
36 decedent's lifetime. If there is more than one (1) such trust, in
37 proportion to the relative value of the trusts.
38 (3) Except as provided in IC 27-1-12-14, other nonprobate
39 transferees in proportion to the values received.

40 Sec. 4. Unless otherwise provided by the trust instrument,
41 interest of beneficiaries in all trusts incurring liabilities under this
42 chapter shall abate as necessary to satisfy the liability as if all of

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1 the trust instruments were a single will and the interests were
2 devises under it.

3 **Sec. 5. (a) A provision made in an instrument may direct the**
4 **apportionment of the liability among the nonprobate transferees**
5 **taking under that or any other governing instrument.**

6 **(b) If a provision in an instrument conflicts with a provision in**
7 **another instrument, the later provision prevails.**

8 **Sec. 6. Upon due notice to a nonprobate transferee, the liability**
9 **imposed by this chapter is enforceable in proceedings in Indiana in**
10 **the county where:**

- 11 (1) the transfer occurred;
12 (2) the transferee is located; or
13 (3) the probate action is pending.

14 **Sec. 7. (a) A proceeding under this chapter may not be**
15 **commenced unless the personal representative of the decedent's**
16 **estate has received a written demand for the proceeding from the**
17 **surviving spouse or a surviving child, to the extent that statutory**
18 **allowances are affected, or a creditor.**

19 **(b) If the personal representative declines or fails to commence**
20 **a proceeding after demand, a person making demand may**
21 **commence the proceeding in the name of the decedent's estate at**
22 **the expense of the person making the demand and not of the estate.**

23 **(c) A personal representative who declines in good faith to**
24 **commence a requested proceeding incurs no personal liability for**
25 **declining.**

26 **Sec. 8. A proceeding under this chapter must be commenced not**
27 **later than nine (9) months after the decedent's death, but a**
28 **proceeding on behalf of a creditor whose claim was allowed after**
29 **proceedings challenging disallowance of the claim may be**
30 **commenced within sixty (60) days after final allowance of the**
31 **claim.**

32 **Sec. 9. Unless written notice asserting that a decedent's probate**
33 **estate is insufficient to pay allowed claims and statutory allowances**
34 **has been received from the decedent's personal representative, the**
35 **following rules apply:**

- 36 (1) Payment or delivery of assets by a financial institution,
37 registrar, or another obligor to a nonprobate transferee under
38 the terms of the governing instrument controlling the transfer
39 releases the obligor from all claims for amounts paid or assets
40 delivered.
41 (2) A trustee receiving or controlling a nonprobate transfer is
42 released from liability under this section on any assets

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distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to that asset imposed by sections 2 and 3 of this chapter.

SECTION 14. IC 32-4-1.5-7.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 7.1. The liability of a surviving party, P.O.D. payee, or beneficiary for creditor claims and statutory allowances is determined under IC 32-4-1.1.**

SECTION 15. IC 32-4-1.6-11.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 11.1. The liability of a beneficiary for creditor claims and statutory allowances is determined under IC 32-4-1.1.**

SECTION 16. IC 34-30-2-136.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002] **Sec. 136.5. IC 32-4-1.1-7 (Concerning personal liability of a personal representative).**

SECTION 17. IC 32-4-1.5-7 IS REPEALED [EFFECTIVE JULY 1, 2002].

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