



January 25, 2010

HOUSE BILL No. 1169

DIGEST OF HB 1169 (Updated January 20, 2010 3:24 pm - DI 107)

Citations Affected: IC 29-3.

Synopsis: Volunteer advocates programs for incapacitated adults and seniors. Provides that a court will appoint volunteer advocates for seniors programs or volunteer advocates for incapacitated adults programs (programs) rather than individual advocates. Changes the: (1) reporting requirements for; (2) duties of; and (3) appointments of; programs. Provides that a program may petition the court for reasonable compensation or reimbursement of expenses. Provides that probate courts in adjacent counties may establish joint or multiple county programs. Provides that probate courts may contract with an Indiana nonprofit corporation to provide programs. Provides that the programs have the duties of a guardian of a minor. Provides that the programs have certain responsibilities regarding property that a guardian has.

Effective: July 1, 2010.

Avery, Klinker, Koch, Lawson L

January 7, 2010, read first time and referred to Committee on Family, Children and Human Affairs.
January 25, 2010, amended, reported — Do Pass.

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HB 1169—LS 7005/DI 107+



January 25, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1169



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

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

1 SECTION 1. IC 29-3-1-15.5, AS ADDED BY P.L.11-2006,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2010]: Sec. 15.5. "Volunteer advocate for incapacitated
4 adults" means an individual who:
5 (1) is a volunteer;
6 (2) has completed a ~~limited~~ guardian training program approved
7 by a court;
8 (3) is supervised by a ~~community~~ volunteer advocates for
9 **incapacitated adults program that is appointed by a court to**
10 **serve as a guardian for an incapacitated person who is at least**
11 **eighteen (18) years of age; and**
12 ~~(4)~~ is appointed by a court to serve as a limited guardian for an
13 incapacitated person or protected person who is at least eighteen
14 ~~(+8)~~ years of age; and
15 ~~(5)~~ (4) provides reports and makes recommendations to a court.
16 SECTION 2. IC 29-3-1-16 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. "Volunteer

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- 1 advocate for seniors" means an individual who:
- 2 (1) is a volunteer;
- 3 (2) has completed a ~~limited~~ guardian training program approved
- 4 by a court;
- 5 (3) is supervised by a ~~community~~ volunteer advocates for seniors
- 6 program **that is appointed by a court to serve as a guardian for**
- 7 **an incapacitated person who is at least fifty-five (55) years of**
- 8 **age; and**
- 9 (~~4~~) is appointed by a court to serve as a limited guardian for an
- 10 incapacitated person or protected person who is at least fifty-five
- 11 (~~55~~) years of age; and
- 12 (~~5~~) (**4**) provides reports and makes recommendations to a court.

13 SECTION 3. IC 29-3-1-17 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2010]: **Sec. 17. "Volunteer advocates for incapacitated adults**
 16 **program" means:**

- 17 (1) **an Indiana nonprofit corporation;**
- 18 (2) **a program of an Indiana nonprofit corporation; or**
- 19 (3) **a program operated by a county or court;**
- 20 **that is appointed by a court to serve as a guardian for an**
- 21 **incapacitated person who is at least eighteen (18) years of age and**
- 22 **trains and supervises volunteers in a court approved guardian**
- 23 **program for incapacitated adults.**

24 SECTION 4. IC 29-3-1-18 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2010]: **Sec. 18. "Volunteer advocates for seniors program"**
 27 **means:**

- 28 (1) **an Indiana nonprofit corporation;**
- 29 (2) **a program of an Indiana nonprofit corporation; or**
- 30 (3) **a program operated by a county or court;**
- 31 **that is appointed by a court to serve as a guardian for an**
- 32 **incapacitated person who is at least fifty-five (55) years of age and**
- 33 **trains and supervises volunteers in a court approved guardian**
- 34 **program for incapacitated persons who are at least fifty-five (55)**
- 35 **years of age.**

36 SECTION 5. IC 29-3-8.5-1, AS AMENDED BY P.L.11-2006,
 37 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2010]: Sec. 1. A court in a proceeding under this article may
 39 appoint a volunteer ~~advocate~~ **advocates** for seniors **program** or a
 40 volunteer ~~advocate~~ **advocates** for incapacitated adults **program.**

41 SECTION 6. IC 29-3-8.5-2, AS AMENDED BY P.L.11-2006,
 42 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2010]: Sec. 2. A volunteer ~~advocate~~ **advocates** for seniors
 2 **program** or a volunteer ~~advocate~~ **advocates** for incapacitated adults
 3 **program** shall submit to the court:
 4 (1) a progress report ~~fifteen (15)~~ **thirty (30)** days after the date of
 5 appointment describing:
 6 (A) the matters required by the court; and
 7 (B) the:
 8 (i) **current physical and mental condition;**
 9 (ii) **residential placement; and**
 10 (iii) **property, and any property related issues;**
 11 **of the senior or the incapacitated adult;**
 12 (2) a ~~final~~ **progress** report sixty (60) days after the date of
 13 appointment:
 14 (A) describing the matters required by the court; and
 15 (B) making recommendations to the court as to whether a need
 16 exists for continued representation of the incapacitated or
 17 protected person: **that includes a verified inventory**
 18 **describing the property, and any property related issues,**
 19 **of the incapacitated adult or senior;**
 20 (3) a **progress report or final report** ninety (90) days after the
 21 date of appointment:
 22 (A) describing the matters required by the court; and
 23 (B) making recommendations to the court as to whether
 24 the need continues to exist for the appointment of a
 25 guardian of the incapacitated adult or senior;
 26 (4) an annual progress report on the anniversary date of the
 27 appointment if the appointment of the volunteer advocate is
 28 continued by the court for more than one (1) year:
 29 (A) describing the matters required by the court;
 30 (B) describing the:
 31 (i) **current physical and mental condition;**
 32 (ii) **residential placement; and**
 33 (iii) **property, and any property related issues;**
 34 **of the senior or the incapacitated adult; and**
 35 (C) making recommendations to the court as to whether
 36 the need continues to exist for the appointment of a
 37 guardian of the incapacitated adult or senior; and
 38 (5) upon the death of the incapacitated person, a final report
 39 and financial accounting:
 40 (A) describing the incapacitated person's:
 41 (i) **final physical and mental condition;**
 42 (ii) **cause of death;**

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- 1 (iii) last residential placement; and
- 2 (iv) final burial arrangements;
- 3 (B) stating the actions taken by the program regarding the:
- 4 (i) person's care and custody; and
- 5 (ii) preservation of the person's property;
- 6 (C) making recommendations to the court to close the
- 7 guardianship of the person; and
- 8 (D) containing all other matters required by the court.

9 SECTION 7. IC 29-3-8.5-3, AS AMENDED BY P.L.11-2006,
 10 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2010]: Sec. 3. (a) A volunteer ~~advocate~~ **advocates** for seniors
 12 **program** or a volunteer ~~advocate~~ **advocates** for incapacitated adults
 13 **program** shall:

- 14 (1) serve as a ~~limited~~ guardian to represent and protect the **best**
- 15 interests of an incapacitated ~~or protected~~ person **or senior**
- 16 **including the person's property;**
- 17 (2) investigate and gather information regarding the health,
- 18 welfare, and financial circumstances of the incapacitated ~~or~~
- 19 ~~protected~~ person **or senior**, as directed by a court;
- 20 (3) facilitate and authorize health care, social welfare, and
- 21 residential placement services as needed by the incapacitated ~~or~~
- 22 ~~protected~~ person **or senior;**
- 23 (4) advocate for the rights of the incapacitated ~~or protected~~ person
- 24 **or senior;**
- 25 (5) facilitate legal representation for the incapacitated ~~or protected~~
- 26 person **or senior; and**
- 27 **(6) provide the court with the required reports under section**
- 28 **2 of this chapter; and**
- 29 ~~(6)~~ (7) perform any other ~~duty~~ **responsibilities** required by ~~a~~ **the**
- 30 court.

31 (b) A volunteer **advocates for seniors program** or a volunteer
 32 **advocates for incapacitated adults program** has the duties of the
 33 **guardian of a minor listed in IC 29-3-8-1 and IC 29-3-8-3.**

34 SECTION 8. IC 29-3-8.5-4, AS AMENDED BY P.L.11-2006,
 35 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2010]: Sec. 4. (a) A volunteer ~~advocate~~ **advocates** for seniors
 37 **program** or a volunteer ~~advocate~~ **advocates** for incapacitated adults
 38 **program** may:

- 39 (1) consent to medical and other professional care and treatment
- 40 for the incapacitated ~~or protected~~ person's **or senior's** health and
- 41 welfare;
- 42 (2) secure the appointment of a guardian or coguardian in another

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- 1 state;
- 2 (3) take custody of the incapacitated ~~or protected~~ person **or senior**
- 3 and establish the **incapacitated** person's ~~place of abode or~~
- 4 **senior's residence** within Indiana or another state in accordance
- 5 with IC 29-3-9-2;
- 6 (4) institute proceedings or take other appropriate action to
- 7 compel the performance by any person of a duty to support the
- 8 incapacitated ~~or protected~~ person's **or senior's** health or welfare;
- 9 ~~and~~
- 10 **(5) protect and preserve the property of the incapacitated**
- 11 **person or senior and preserve any property in excess of the**
- 12 **incapacitated person's or senior's current needs; and**
- 13 ~~(5) (6)~~ **(6) delegate to the incapacitated ~~or protected~~ person or senior**
- 14 **certain responsibilities for decisions affecting the incapacitated**
- 15 **person's or senior's business affairs and well-being.**

16 **(b) A volunteer advocates for seniors program or a volunteer**
 17 **advocates for incapacitated adults program may exercise the**
 18 **powers of a guardian of a minor listed in IC 29-3-8-2 and**
 19 **IC 29-3-8-4.**

20 SECTION 9. IC 29-3-8.5-5, AS AMENDED BY P.L.11-2006,
 21 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2010]: Sec. 5. **(a)** If a court appoints ~~an individual to serve as~~
 23 a volunteer ~~advocate~~ **advocates** for seniors **program** or a volunteer
 24 ~~advocate~~ **advocates** for incapacitated adults **program**, the **initial**
 25 appointment shall be for a period of ~~sixty (60)~~ **ninety (90)** days.

26 **(b)** After the initial ~~sixty (60)~~ **ninety (90)** day period, the court may,
 27 upon petition by the volunteer **advocates for seniors program or**
 28 **volunteer advocates for incapacitated adults program** or upon the
 29 court's own motion, extend the appointment for a period as determined
 30 by the court to be necessary to protect the **best interests and property**
 31 of the incapacitated ~~or protected~~ person **or senior.**

32 SECTION 10. IC 29-3-8.5-6, AS AMENDED BY P.L.11-2006,
 33 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2010]: Sec. 6. A volunteer ~~advocate~~ **advocates** for seniors
 35 **program** or a volunteer ~~advocate~~ **advocates** for incapacitated adults
 36 **program** is considered an officer of the court for the purpose of
 37 representing the interests of an incapacitated ~~or protected~~ person **or**
 38 **senior.**

39 SECTION 11. IC 29-3-8.5-9, AS AMENDED BY P.L.11-2006,
 40 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2010]: Sec. 9. A volunteer ~~advocate~~ **advocates** for seniors
 42 **program** or a volunteer ~~advocate~~ **advocates** for incapacitated adults

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1 **program** under this chapter is not authorized to consent to or refuse
2 health care (as defined in IC 16-36-1-1) for an individual if:

3 (1) a spouse, a parent, an adult child, or an adult sibling of the
4 individual or the individual's religious superior, if the individual
5 is a member of a religious order, is available, capable, and
6 suitable to consent to or refuse the health care on behalf of the
7 individual; or

8 (2) the individual has previously:
9 (A) appointed a health care representative under IC 16-36-1;
10 (B) authorized health care under IC 16-36-1.5, IC 16-36-4, or
11 IC 16-36-5;
12 (C) executed a power of attorney under IC 30-5-4; or
13 (D) had a guardian appointed by the court under IC 29-3.

14 SECTION 12. IC 29-3-8.5-9.5 IS ADDED TO THE INDIANA
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2010]: **Sec. 9.5. IC 29-3-8-5 through**
17 **IC 29-3-8-8 apply to a volunteer advocates for seniors program or**
18 **a volunteer advocates for incapacitated adults program under this**
19 **chapter.**

20 SECTION 13. IC 29-3-8.5-10 IS ADDED TO THE INDIANA
21 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2010]: **Sec. 10. (a) A volunteer advocates for**
23 **seniors program or a volunteer advocates for incapacitated adults**
24 **program may petition the court for reasonable compensation for**
25 **services provided or for expenditures made in good faith on behalf**
26 **of the incapacitated adult or senior.**

27 (b) **A court may grant reasonable compensation or expenditure**
28 **reimbursement to a volunteer advocates for seniors program or a**
29 **volunteer advocates for incapacitated adults program upon the**
30 **court's own motion.**

31 SECTION 14. IC 29-3-8.5-11 IS ADDED TO THE INDIANA
32 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 2010]: **Sec. 11. (a) Courts with probate**
34 **jurisdiction that are located in adjacent counties may establish**
35 **joint or multiple county volunteer advocates for seniors programs**
36 **or volunteer advocates for incapacitated adults programs.**

37 (b) **Courts with probate jurisdiction may contract with an**
38 **Indiana nonprofit corporation to provide volunteer advocates for**
39 **seniors programs or volunteer advocates for incapacitated adults**
40 **programs.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1169, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 8, after "for" insert "**incapacitated**".

Page 1, line 9, delete "program;" and insert "program **that is appointed by a court to serve as a guardian for an incapacitated person who is at least eighteen (18) years of age; and**".

Page 1, line 10, strike "(4) is appointed by a court to serve as a".

Page 1, line 10, strike "guardian for an".

Page 1, line 11, strike "incapacitated person".

Page 1, line 11, strike "who is at least eighteen".

Page 1, strike line 12.

Page 1, line 13, strike "(5)" and insert "(4)".

Page 2, line 4, delete "program;" and insert "program **that is appointed by a court to serve as a guardian for an incapacitated person who is at least fifty-five (55) years of age; and**".

Page 2, line 5, strike "(4) is appointed by a court to serve as a".

Page 2, line 5, strike "guardian for an".

Page 2, line 6, strike "incapacitated person".

Page 2, line 6, strike "who is at least fifty-five".

Page 2, strike line 7.

Page 2, line 8, strike "(5)" and insert "(4)".

Page 2, line 16, after "that" insert "**is appointed by a court to serve as a guardian for an incapacitated person who is at least eighteen (18) years of age and**".

Page 2, line 25, after "that" insert "**is appointed by a court to serve as a guardian for an incapacitated person who is at least fifty-five (55) years of age and**".

Page 2, between lines 27 and 28, begin a new paragraph and insert:
"SECTION 5. IC 29-3-8.5-1, AS AMENDED BY P.L.11-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. A court in a proceeding under this article may appoint a volunteer ~~advocate~~ **advocates** for seniors **program** or a volunteer ~~advocate~~ **advocates** for incapacitated adults **program**."

Page 2, line 30, strike "advocate" and insert "**advocates**".

Page 2, line 30, after "seniors" insert "**program**".

Page 2, line 31, strike "advocate" and insert "**advocates**".

Page 2, line 31, after "adults" insert "**program**".

Page 3, line 11, delete "and".

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Page 3, line 23, delete "senior." and insert "**senior; and
(5) upon the death of the incapacitated person, a final report
and financial accounting:**

- (A) describing the incapacitated person's:**
 - (i) final physical and mental condition;**
 - (ii) cause of death;**
 - (iii) last residential placement; and**
 - (iv) final burial arrangements;**
- (B) stating the actions taken by the program regarding the:**
 - (i) person's care and custody; and**
 - (ii) preservation of the person's property;**
- (C) making recommendations to the court to close the guardianship of the person; and**
- (D) containing all other matters required by the court."**

Page 3, line 26, after "3." insert "**(a)**".

Page 3, line 26, strike "advocate" and insert "**advocates**".

Page 3, line 26, after "seniors" insert "**program**".

Page 3, line 27, strike "advocate" and insert "**advocates**".

Page 3, line 27, after "adults" insert "**program**".

Page 4, between lines 2 and 3, begin a new paragraph and insert:

"(b) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program has the duties of the guardian of a minor listed in IC 29-3-8-1 and IC 29-3-8-3."

Page 4, line 5, after "4." insert "**(a)**".

Page 4, line 5, strike "advocate" and insert "**advocates**".

Page 4, line 5, after "seniors" insert "**program**".

Page 4, line 6, strike "advocate" and insert "**advocates**".

Page 4, line 6, after "adults" insert "**program**".

Page 4, between lines 25 and 26, begin a new paragraph and insert:

"(b) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program may exercise the powers of a guardian of a minor listed in IC 29-3-8-2 and IC 29-3-8-4."

Page 4, line 28, strike "an individual to serve as".

Page 4, line 29, before "for seniors" strike "advocate" and insert "**advocates**".

Page 4, line 29, after "seniors" insert "**program**".

Page 4, line 29, after "or a" strike "advocate" and insert "**advocates**".

Page 4, line 30, delete "," and insert "**program,**".

Page 4, line 33, after "volunteer" insert "**advocates for seniors program or volunteer advocates for incapacitated adults**

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program".

Page 4, line 35, after "the" insert "**best**".

Page 4, line 39, strike "advocate" and insert "**advocates**".

Page 4, line 39, after "seniors" insert "**program**".

Page 4, line 40, strike "advocate" and insert "**advocates**".

Page 4, line 40, after "adults" insert "**program**".

Page 4, after line 42, begin a new paragraph and insert:

"SECTION 10. IC 29-3-8.5-9, AS AMENDED BY P.L.11-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. A volunteer ~~advocate~~ **advocates** for seniors **program** or a volunteer ~~advocate~~ **advocates** for incapacitated adults **program** under this chapter is not authorized to consent to or refuse health care (as defined in IC 16-36-1-1) for an individual if:

(1) a spouse, a parent, an adult child, or an adult sibling of the individual or the individual's religious superior, if the individual is a member of a religious order, is available, capable, and suitable to consent to or refuse the health care on behalf of the individual; or

(2) the individual has previously:

- (A) appointed a health care representative under IC 16-36-1;
- (B) authorized health care under IC 16-36-1.5, IC 16-36-4, or IC 16-36-5;
- (C) executed a power of attorney under IC 30-5-4; or
- (D) had a guardian appointed by the court under IC 29-3.

SECTION 11. IC 29-3-8.5-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 9.5. IC 29-3-8-5 through IC 29-3-8-8 apply to a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program under this chapter."**

Page 5, line 3, delete "advocate" and insert "**advocates**".

Page 5, line 4, after "seniors" insert "**program**".

Page 5, line 4, delete "advocate" and insert "**advocates**".

Page 5, line 4, after "adults" insert "**program**".

Page 5, line 9, delete "advocate" and insert "**advocates**".

Page 5, line 9, after "seniors" insert "**program**".

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Page 5, line 10, delete "advocate" and insert "**advocates**".

Page 5, line 10, after "adults" insert "**program**".

and when so amended that said bill do pass.

(Reference is to HB 1169 as introduced.)

SUMMERS, Chair

Committee Vote: yeas 12, nays 0.

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