

Adopted	Rejected
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## COMMITTEE REPORT

<b>YES:</b>	<b>12</b>
<b>NO:</b>	<b>0</b>

### MR. SPEAKER:

*Your Committee on Judiciary, to which was referred Senate Bill 65, 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:*

- 1 Page 6, between lines 20 and 21, begin a new paragraph and insert:
- 2 "SECTION 6. IC 29-1-6-1, AS AMENDED BY P.L.238-2005,
- 3 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 DECEMBER 1, 2009 (RETROACTIVE)]: Sec. 1. In the absence of a
- 5 contrary intent appearing in the will, wills shall be construed as to real
- 6 and personal estate in accordance with the rules in this section.
- 7 (a) Any estate, right, or interest in land or other things acquired by
- 8 the testator after the making of the testator's will shall pass as if title
- 9 was vested in the testator at the time of making of the will.
- 10 (b) All devises of real estate shall pass the whole estate of the
- 11 testator in the premises devised, although there are no words of
- 12 inheritance or of perpetuity, whether or not at the time of the execution
- 13 of the will the decedent was the owner of that particular interest in the
- 14 real estate devised. Such devise shall also pass any interest which the

1 testator may have at the time of the testator's death as vendor under a  
2 contract for the sale of such real estate.

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

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

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

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

36 (g) If a devise of real or personal property, not included in the  
37 residuary clause of the will, is void, is revoked, or lapses, it shall  
38 become a part of the residue, and shall pass to the residuary devisee.

1 Whenever any estate, real or personal, shall be devised to any  
2 descendant of the testator, and such devisee shall die during the  
3 lifetime of the testator, whether before or after the execution of the will,  
4 leaving a descendant who shall survive such testator, such devise shall  
5 not lapse, but the property so devised shall vest in the surviving  
6 descendant of the devisee as if such devisee had survived the testator  
7 and died intestate. The word "descendant", as used in this section,  
8 includes children adopted during minority by the testator and by the  
9 testator's descendants and includes descendants of such adopted  
10 children. "Descendant" also includes children of the mother who are  
11 born out of wedlock, and children of the father who are born out of  
12 wedlock, if, but only if, such child's right to inherit from such father is,  
13 or has been, established in the manner provided in IC 29-1-2-7. This  
14 rule applies where the parent is a descendant of the testator as well as  
15 where the parent is the testator. Descendants of such children shall also  
16 be included.

17 (h) Except as provided in subsection (m), if a testator in the  
18 testator's will refers to a writing of any kind, such writing, whether  
19 subsequently amended or revoked, as it existed at the time of execution  
20 of the will, shall be given the same effect as if set forth at length in the  
21 will, if such writing is clearly identified in the will and is in existence  
22 both at the time of the execution of the will and at the testator's death.

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

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

1 (k) If a testator devises securities in a will and the testator then  
 2 owned securities that meet the description in the will, the devise  
 3 includes additional securities owned by the testator at death to the  
 4 extent the additional securities were acquired by the testator after the  
 5 will was executed as a result of the testator's ownership of the  
 6 described securities and are securities of any of the following types:

7 (1) Securities of the same organization acquired because of an  
 8 action initiated by the organization or any successor, related, or  
 9 acquiring organization, excluding any security acquired by  
 10 exercise of purchase options.

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

14 (3) Securities of the same organization acquired as a result of a  
 15 plan of reinvestment.

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

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

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

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

26 a guardian or an agent acting within the authority of a durable power  
 27 of attorney for an incapacitated principal, the specific devisee has the  
 28 right to a general pecuniary devise equal to the net sale price, the  
 29 amount of the unpaid loan, the condemnation award, the insurance  
 30 proceeds, or the recovery.

31 (m) A written statement or list that:

32 (1) complies with this subsection; and

33 (2) is referred to in a will;

34 may be used to dispose of items of tangible personal property, other  
 35 than property used in a trade or business, not otherwise specifically  
 36 disposed of by the will. To be admissible under this subsection as  
 37 evidence of the intended disposition, the writing must be signed by the  
 38 testator and must describe the items and the beneficiaries with

1 reasonable certainty. The writing may be prepared before or after the  
 2 execution of the will. The writing may be altered by the testator after  
 3 the writing is prepared. The writing may have no significance apart  
 4 from the writing's effect on the dispositions made by the will. If more  
 5 than one (1) otherwise effective writing exists, then, to the extent of a  
 6 conflict among the writings, the provisions of the most recent writing  
 7 revoke the inconsistent provisions of each earlier writing.

8 **(n) A will of a decedent who dies after December 31, 2009, and**  
 9 **before January 1, 2011, that contains a formula referring to:**

- 10 **(1) the unified credit;**  
 11 **(2) the estate tax exemption;**  
 12 **(3) the applicable credit amount;**  
 13 **(4) the applicable exclusion amount;**  
 14 **(5) the generation-skipping transfer tax exemption;**  
 15 **(6) the GST exemption;**  
 16 **(7) the marital deduction;**  
 17 **(8) the maximum marital deduction;**  
 18 **(9) the unlimited marital deduction;**  
 19 **(10) the inclusion ratio;**  
 20 **(11) the applicable fraction;**  
 21 **(12) any section of the Internal Revenue Code:**  
 22 **(A) relating to the:**  
 23 **(i) federal estate tax; or**  
 24 **(ii) generation-skipping transfer tax; and**  
 25 **(B) that measures a share of:**  
 26 **(i) an estate; or**  
 27 **(ii) a trust;**  
 28 **based on the amount that can pass free of federal estate**  
 29 **taxes or the amount that can pass free of federal**  
 30 **generation-skipping transfer tax law; or**  
 31 **(13) a provision of federal estate tax or generation-skipping**  
 32 **transfer tax law that is similar to subdivisions (1) through**  
 33 **(12);**

34 **refers to the federal estate tax and generation-skipping transfer tax**  
 35 **laws as they applied with respect to estates of decedents on**  
 36 **December 31, 2009.**

37 **(o) Subsection (n) does not apply to a will:**

- 38 **(1) that is executed or amended after December 31, 2009; or**

1           **(2) that manifests an intent that a contrary rule apply if the**  
 2           **decedent dies on a date on which there is no then applicable**  
 3           **federal estate or generation-skipping transfer tax.**

4           **(p) If the federal estate or generation-skipping transfer tax**  
 5           **becomes effective before January 1, 2011, the reference to January**  
 6           **1, 2011, in subsection (n) shall refer instead to the first date on**  
 7           **which the tax becomes legally effective.**

8           **(q) Within three (3) months following the latest to occur of the:**

- 9           **(1) decedent's death;**  
 10          **(2) fiduciary's appointment; or**  
 11          **(3) enactment of this subsection;**

12          **the personal representative under a will to which subsection (n)**  
 13          **applies shall give written notice regarding the affected beneficiary**  
 14          **of the right to commence a proceeding under subsection (r) and to**  
 15          **the present income beneficiary of any trust created under the will,**  
 16          **of the existence of this statute, and the beneficiary's right to**  
 17          **commence a proceeding under subsection (r).**

18          **(r) The personal representative of an affected beneficiary under**  
 19          **a will described in subsection (n) may initiate a proceeding to**  
 20          **determine whether the decedent intended that a formula described**  
 21          **in subsection (n) be construed with respect to the law as it existed**  
 22          **after December 31, 2009. A proceeding under this subsection must**  
 23          **be commenced within nine (9) months after the death of the**  
 24          **testator or grantor."**

25          Page 13, between lines 4 and 5, begin a new paragraph and insert:

26          "SECTION 13. IC 30-4-2.1-13 IS ADDED TO THE INDIANA  
 27          CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28          [EFFECTIVE DECEMBER 1, 2009 (RETROACTIVE)]: **Sec. 13. (a)**  
 29          **A trust of a decedent who dies after December 31, 2009, and before**  
 30          **January 1, 2011, that contains a formula referring to:**

- 31               **(1) the unified credit;**  
 32               **(2) the estate tax exemption;**  
 33               **(3) the applicable credit amount;**  
 34               **(4) the applicable exclusion amount;**  
 35               **(5) the generation-skipping transfer tax exemption;**  
 36               **(6) the GST exemption;**  
 37               **(7) the marital deduction;**  
 38               **(8) the maximum marital deduction;**

- 1           **(9) the unlimited marital deduction;**  
 2           **(10) the inclusion ratio;**  
 3           **(11) the applicable fraction;**  
 4           **(12) any section of the Internal Revenue Code:**  
 5               **(A) relating to the:**  
 6                   **(i) federal estate tax; or**  
 7                   **(ii) generation-skipping transfer tax; and**  
 8               **(B) that measures a share of trust;**  
 9               **based on the amount that can pass free of federal estate**  
 10               **taxes or the amount that can pass free of federal**  
 11               **generation-skipping transfer tax law; or**  
 12           **(13) a provision of federal estate tax or generation-skipping**  
 13           **transfer tax law that is similar to subdivisions (1) through**  
 14           **(12);**

15           **refers to the federal estate tax and generation-skipping transfer tax**  
 16           **laws as they applied with respect to estates of decedents on**  
 17           **December 31, 2009.**

- 18           **(b) Subsection (a) does not apply to a trust:**  
 19               **(1) that is executed or amended after December 31, 2009; or**  
 20               **(2) that manifests an intent that a contrary rule apply if the**  
 21               **decedent dies on a date on which there is no then applicable**  
 22               **federal estate or generation-skipping transfer tax.**

23           **(c) If the federal estate or generation-skipping transfer tax**  
 24           **becomes effective before January 1, 2011, the reference to January**  
 25           **1, 2011, in subsection (a) shall refer instead to the first date on**  
 26           **which the tax becomes legally effective.**

- 27           **(d) Within three (3) months following the latest to occur of the:**  
 28               **(1) decedent's death;**  
 29               **(2) trustee's appointment; or**  
 30               **(3) enactment of this subsection;**

31           **the trustee of a trust to which subsection (a) applies shall give**  
 32           **written notice regarding the beneficiary's right to commence a**  
 33           **proceeding under subsection (e) to any beneficiary having a right**  
 34           **to trust income or principal under subsection (a), of the existence**  
 35           **of this statute, and of the beneficiary's right to commence a**  
 36           **proceeding under subsection (e).**

37           **(e) The trustee of any beneficiary under the trust having a**  
 38           **present right to income or principal of the trust may initiate a**

1        **proceeding to determine whether the decedent intended that a**  
 2        **formula described in subsection (a) be construed with respect to**  
 3        **the law as it existed after December 31, 2009. A proceeding under**  
 4        **this subsection must be commenced within nine (9) months after**  
 5        **the death of the settlor.**

6        SECTION 14. IC 30-4-2.1-14 IS ADDED TO THE INDIANA  
 7        CODE AS A NEW SECTION TO READ AS FOLLOWS  
 8        [EFFECTIVE JULY 1, 2010]: **Sec. 14. (a) The following rules apply**  
 9        **only to discretionary interests:**

10        **(1) A discretionary interest is a mere expectancy that is**  
 11        **neither a property interest nor an enforceable right.**

12        **(2) A creditor may not:**

13            **(A) require a trustee to exercise the trustee's discretion to**  
 14            **make a distribution; or**

15            **(B) cause a court to foreclose a discretionary interest.**

16        **(3) A court may review a trustee's distribution discretion only**  
 17        **if the trustee acts dishonestly or with an improper motive.**

18        **(b) Words such as sole, absolute, uncontrolled, or unfettered**  
 19        **discretion dispense with the trustee acting reasonably.**

20        **(c) Absent express language to the contrary, if the distribution**  
 21        **language in a discretionary interest permits unequal distributions**  
 22        **between beneficiaries or distributions to the exclusion of other**  
 23        **beneficiaries, a trustee may, in the trustee's discretion, distribute**  
 24        **all of the accumulated, accrued, or undistributed income and**  
 25        **principal to one (1) beneficiary to the exclusion of the other**  
 26        **beneficiaries.**

27        **(d) Regardless of whether a beneficiary has any outstanding**  
 28        **creditors, a trustee of a discretionary interest may directly pay any**  
 29        **expense on behalf of the beneficiary and may exhaust the income**  
 30        **and principal of the trust for the benefit of the beneficiary. A**  
 31        **trustee is not liable to a creditor for paying the expenses of a**  
 32        **beneficiary who holds a discretionary interest.**

33        SECTION 15. IC 30-4-2.1-15 IS ADDED TO THE INDIANA  
 34        CODE AS A NEW SECTION TO READ AS FOLLOWS  
 35        [EFFECTIVE JULY 1, 2010]: **Sec. 15. If a party challenges a settlor**  
 36        **or a beneficiary's influence over a trust, none of the following**  
 37        **factors, alone or in combination, may be considered dominion and**  
 38        **control over a trust:**

- 1           **(1) A beneficiary serving as a trustee or co-trustee.**  
2           **(2) The settlor or beneficiary holds an unrestricted power to**  
3           **remove or replace a trustee.**  
4           **(3) The settlor or a beneficiary:**  
5               **(A) is a trust administrator, a general partner of a**  
6               **partnership, a manager of a limited liability company, or**  
7               **an officer of a corporation; or**  
8               **(B) has any other managerial function in any other entity;**  
9           **that is owned in whole or in part by the trust.**  
10          **(4) A person related by blood or adoption to a settlor or**  
11          **beneficiary is appointed as trustee.**  
12          **(5) An agent, accountant, attorney, financial adviser, or friend**  
13          **of the settlor or a beneficiary is appointed as trustee.**  
14          **(6) A business associate of the settlor or a beneficiary is**  
15          **appointed as trustee.**  
16          **(7) A beneficiary holds any power of appointment over part**  
17          **or all of the trust property.**  
18          **(8) The settlor holds a power to substitute property of**  
19          **equivalent value.**  
20          **(9) The trustee may loan trust property to the settlor for less**  
21          **than a full and adequate rate of interest or without adequate**  
22          **security.**  
23          **(10) The trust contains broad purposes or highly**  
24          **discretionary distribution language.**  
25          **(11) The trust has only one (1) beneficiary eligible for current**  
26          **distributions.**
- 27          SECTION 16. IC 30-4-2.1-16 IS ADDED TO THE INDIANA  
28          CODE AS A NEW SECTION TO READ AS FOLLOWS  
29          [EFFECTIVE JULY 1, 2010]: **Sec. 16. Absent clear and convincing**  
30          **evidence otherwise, a settlor of an irrevocable trust may not be**  
31          **considered the alter ego of a trustee. The following factors, alone**  
32          **or in combination, are not sufficient evidence to conclude that the**  
33          **settlor controls a trustee or is the alter ego of the trustee:**  
34               **(1) Any combination of the factors listed in section 15 of this**  
35               **chapter.**  
36               **(2) Isolated occurrences of the settlor signing checks, making**  
37               **disbursements, or executing other documents related to the**  
38               **trust as a trustee when the settlor is, in fact, not a trustee.**

1           **(3) Requesting a trustee to make distributions on behalf of a**  
 2           **beneficiary.**

3           **(4) Requesting a trustee to hold, purchase, or sell any trust**  
 4           **property.**

5           SECTION 17. IC 30-4-2.1-17 IS ADDED TO THE INDIANA  
 6           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 7           [EFFECTIVE JULY 1, 2010]: **Sec. 17. (a) A creditor may not reach,**  
 8           **exercise, or otherwise acquire an interest of a beneficiary or any**  
 9           **other person who holds an unconditional or conditional removal or**  
 10           **replacement power over a trustee. A power described in this**  
 11           **subsection is personal to a beneficiary or other person and may not**  
 12           **be exercised by the person's creditors. A court may not direct a**  
 13           **person to exercise the power.**

14           **(b) A creditor may not:**

15                 **(1) reach an interest of a beneficiary who is also a trustee or**  
 16                 **co-trustee; or**

17                 **(2) otherwise compel a distribution to a beneficiary who is**  
 18                 **also a trustee or co-trustee.**

19           **(c) A court may not foreclose against an interest held by a**  
 20           **beneficiary described in subsection (b).**

21           SECTION 18. IC 30-4-3-35 IS ADDED TO THE INDIANA CODE  
 22           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 23           1, 2010]: **Sec. 35. (a) As used in this section, "joint matrimonial**  
 24           **trust" means a single inter vivos trust established under this**  
 25           **section by settlors who are related as husband and wife.**

26           **(b) As used in this section, "matrimonial property" means real**  
 27           **property that:**

28                 **(1) is subject to a written election to treat the property as**  
 29                 **matrimonial property under this section; and**

30                 **(2) is owned by a matrimonial trust.**

31           **(c) As used in this section, "matrimonial trust" means a trust**  
 32           **established under this section to own matrimonial property.**

33           **(d) As used in this section, "separate matrimonial trust" means**  
 34           **a separate trust that is also a matrimonial trust.**

35           **(e) As used in this section, "separate trust" means a trust**  
 36           **established by one (1) individual.**

37           **(f) A matrimonial trust may be established:**

38                 **(1) jointly by a husband and wife; or**

- 1           **(2) in two (2) or more separate trusts.**
- 2           **(g) A husband and wife may elect to treat real property as**
- 3 **matrimonial property with a written statement of the election:**
- 4           **(1) in an instrument or instruments conveying the real**
- 5 **property to a matrimonial trust or trusts; or**
- 6           **(2) in a separate writing that must be recorded in the county**
- 7 **where the real property is situated and indexed in the records**
- 8 **of the county recorder's office to the instrument or**
- 9 **instruments that convey the real property to a matrimonial**
- 10 **trust or trusts.**
- 11           **(h) A guardian of a husband and wife may make an election**
- 12 **under this section:**
- 13           **(1) without the approval of the court if the guardian has**
- 14 **unlimited powers under IC 29-3-8-4; and**
- 15           **(2) with the approval of the court in all other cases.**
- 16           **(i) An attorney in fact of a husband and wife may make an**
- 17 **election under this section under the powers conferred upon the**
- 18 **attorney in fact by IC 30-5-5-2 if the power of attorney is recorded**
- 19 **in the county where the real property is situated and indexed in the**
- 20 **records of the county recorder's office to the instrument or**
- 21 **instruments that convey the real property to a matrimonial trust**
- 22 **or trusts.**
- 23           **(j) An interest in matrimonial property is not severable during**
- 24 **the marriage of the husband and wife unless:**
- 25           **(1) both the husband and wife join in the severance in writing;**
- 26 **or**
- 27           **(2) a third party owns and forecloses a mortgage or other lien**
- 28 **against the interests of both the husband and wife in the**
- 29 **matrimonial property.**
- 30           **(k) Notwithstanding any other provision of this section, the legal**
- 31 **rights of a lienholder that exist at the time of an election to treat**
- 32 **the real property subject to the lien as matrimonial property may**
- 33 **not be subject to a severance described in subsection (j) without the**
- 34 **lienholder's written consent.**
- 35           **(l) A matrimonial trust established by an individual continues**
- 36 **to be a matrimonial trust after the death of the settlor if the**
- 37 **deceased settlor's separate trust provides to the surviving spouse:**
- 38           **(1) a life estate;**

- 1           **(2) an interest that qualifies for a deduction from the gross**  
 2           **estate of the decedent under Section 2056 of the Internal**  
 3           **Revenue Code regardless of whether an election is made to**  
 4           **qualify the interest for the deduction; or**  
 5           **(3) in some respect the current right to occupy or receive rent,**  
 6           **royalties, or other kinds of income with respect to the**  
 7           **matrimonial property.**

8           **(m) A separate matrimonial trust ceases to be a matrimonial**  
 9           **trust upon the termination of payments to the surviving spouse as**  
 10           **a result of the surviving spouse's death or the surviving spouse's**  
 11           **disclaimer of all interests in the separate matrimonial trust.**

12           **(n) A joint matrimonial trust ceases to be a matrimonial trust**  
 13           **upon the death of one (1) of the settlors.**

14           **(o) A matrimonial trust ceases to be a matrimonial trust upon**  
 15           **the dissolution of the marriage of the settlors.**

16           **(p) A husband and wife may revoke a matrimonial trust by**  
 17           **together executing a writing expressing the revocation.**

18           SECTION 19. IC 30-4-3-36 IS ADDED TO THE INDIANA CODE  
 19           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 20           1, 2010]: **Sec. 36. (a) Unless a trust expressly provides otherwise, a**  
 21           **trustee who has absolute power under the terms of a trust**  
 22           **(referred to in this section as the "first trust") to invade the**  
 23           **principal of the trust to make distributions to or for the benefit of**  
 24           **one (1) or more persons may instead exercise the power by**  
 25           **appointing all or part of the principal of the first trust in favor of**  
 26           **a trustee of another trust (referred to in this section as the "second**  
 27           **trust") for the benefit of one (1) or more persons under the same**  
 28           **trust instrument or under a different trust instrument as long as:**

- 29           **(1) the beneficiaries of the second trust are the same as the**  
 30           **beneficiaries of the first trust;**  
 31           **(2) the second trust does not reduce any income, annuity, or**  
 32           **unitrust interest in the assets of the first trust; and**  
 33           **(3) if any contributions to the first trust qualified for a marital**  
 34           **or charitable deduction for purposes of the federal income,**  
 35           **gift, or estate taxes, the second trust does not contain any**  
 36           **provision that, if included in the first trust, would have**  
 37           **prevented the first trust from qualifying for a deduction or**  
 38           **reduced the amount of a deduction.**

1           **(b) For purposes of this section, an absolute power to invade**  
2 **principal includes a power to invade principal that is not limited to**  
3 **specific or ascertainable purposes, such as health, education,**  
4 **maintenance, and support regardless of whether the term**  
5 **"absolute" is used.**

6           **(c) The exercise of a power to invade principal under subsection**  
7 **(a) must be by an instrument that is:**

8               **(1) in writing;**

9               **(2) signed and acknowledged by the trustee; and**

10              **(3) filed with the records of the first trust.**

11           **(d) The exercise of a power to invade principal under subsection**  
12 **(a) is considered the exercise of a power of appointment, other than**  
13 **a power to appoint to the trustee, the trustee's creditors, the**  
14 **trustee's estate, or the creditors of the trustee's estate. The exercise**  
15 **of the power does not extend the time at which the permissible**  
16 **period of the rule against perpetuities begins and the law that**  
17 **determines the permissible period of the rule against perpetuities**  
18 **of the first trust.**

19           **(e) The trustee shall notify in writing all qualified beneficiaries**  
20 **of the first trust at least sixty (60) days before the effective date of**  
21 **the trustee's exercise of the power to invade principal under**  
22 **subsection (a) of the manner in which the trustee intends to**  
23 **exercise the power. A copy of the proposed instrument exercising**  
24 **the power satisfies the trustee's notice obligation under this**  
25 **subsection. If all qualified beneficiaries waive the notice period by**  
26 **signed written instrument delivered to the trustee, the trustee's**  
27 **power to invade principal may be exercised immediately. The**  
28 **trustee's notice under this subsection does not limit the right of any**  
29 **beneficiary to object to the exercise of the trustee's power to invade**  
30 **principal, except as otherwise provided by this article.**

31           **(f) The exercise of the power to invade principal under**  
32 **subsection (a) is not prohibited by a spendthrift clause or by a**  
33 **provision in the trust instrument that prohibits amending or**  
34 **revoking the trust.**

35           **(g) This section is not intended to create or imply a duty to**  
36 **exercise a power to invade principal. No inference of impropriety**  
37 **may be made as a result of a trustee not exercising the power to**  
38 **invade principal conferred under subsection (a).**

1           **(h) This section may not be construed to abridge the right of any**  
 2 **trustee who has a power of invasion to appoint property in further**  
 3 **trust that arises under the terms of the first trust, under any other**  
 4 **provision of this article or any other statute, or under common law.**

5           SECTION 20. IC 30-4-3-37 IS ADDED TO THE INDIANA CODE  
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 7 1, 2010]: **Sec. 37. (a) If a beneficiary of a trust cannot be found**  
 8 **after a reasonable search, the trustee may file a petition setting out**  
 9 **the facts of the unsuccessful search. The court may order the**  
 10 **trustee to sell the shares of the trust to which the beneficiary is**  
 11 **entitled and to pay the proceeds to the clerk of the court. The clerk**  
 12 **shall hold the proceeds for the use and benefit of the person or**  
 13 **persons thereafter determined by law to be entitled to the proceeds.**

14           **(b) If a trustee pays any money to the clerk of the court under**  
 15 **this section, the trustee shall file a receipt with the court. Filing the**  
 16 **receipt is sufficient to discharge the trustee in the same manner**  
 17 **and to the same extent as though the trustee had paid or**  
 18 **distributed the appropriate share of the trust to the unlocated**  
 19 **beneficiary.**

20           **(c) This section does not apply to stocks, dividends, capital**  
 21 **credits, patronage, refunds, utility deposits, membership fees,**  
 22 **account balances, or book equities for which the owner cannot be**  
 23 **found that are the result of distributable savings of a rural electric**  
 24 **membership corporation formed under IC 8-1-13, a rural**  
 25 **telephone cooperative corporation formed under IC 8-1-17, or an**  
 26 **agricultural cooperative association formed under IC 15-12-1."**

27           Page 20, line 12, strike "makes" and insert "records".

28           Page 20, line 13, strike "conveyance" and insert "**recording the**  
 29 **transfer on death deed**".

30           Renumber all SECTIONS consecutively.

(Reference is to SB 65 as reprinted January 22, 2010.)

**and when so amended that said bill do pass.**

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Representative Lawson L