

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



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

October, 2009

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2009

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PROBATE CODE STUDY COMMISSION

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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 DIRECTIVE

The Indiana General Assembly enacted legislation directing 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.

II. SUMMARY OF WORK PROGRAM

The Commission met three times during the 2009 interim session on September 23, October 7, and October 21. The Commission considered issues presented by its membership and the Probate, Trust, and Real Property Section of the Indiana State Bar Association. The Commission recommended the following preliminary drafts to the General Assembly:

- (1) PD 3190

Makes various changes to statutes concerning the following: (1) The transfer on death of motor vehicles and watercraft. (2) Probate notice requirements. (3) Protected persons. (4) Funeral declarations. (5) Attorneys in fact. (6) Non-probate transferees. (7) The transfer on death act. (8) Disclaiming interests in property.

- (2) PD 3199

Specifies a guardian's powers concerning the estate planning of a protected person. Repeals the current statute governing a guardian's authority to engage in estate planning for a protected person.

- (3) PD 3214

Prescribes trust interpretation rules to protect discretionary interests held by beneficiaries. Precludes creditor actions against certain trust interests. Authorizes matrimonial trusts. Authorizes a trustee to decant a trust. Authorizes a trustee to close a trust when a beneficiary cannot be found by selling the beneficiary's share and depositing the proceeds with the clerk of the court. Requires the clerk to hold the proceeds for the use and benefit of the person or persons thereafter determined by law to be entitled to the proceeds.

(4) PD 3251¹

Provides that a spouse, widow, or widower of a child or stepchild of a transferor is a Class B transferee rather than a Class C transferee. Increases the amount of a transfer to a Class B transferee that is exempt from the inheritance tax from \$500 to \$50,000. Increases the amount of a transfer to a Class C transferee that is exempt from the inheritance tax from \$100 to \$25,000. Specifies the requirements of an affidavit used to state that no inheritance tax is due after applying statutory exemptions to each transferee receiving property as a result of the decedent's death. Requires that inheritance tax returns include all taxable transfers known to the person filing the return.

The Commission also voted to support the eventual repeal of the Indiana inheritance tax, generation skipping tax, and estate tax. However, the Commission did not recommend any legislation to enact a repeal of those taxes.

The Commission is not required to file a final report. Meeting minutes for the Commission and the recommended preliminary drafts can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

¹Approved by the Commission as PD 3123 with the removal of SECTION 7.