

Members

Sen. Joseph Zakas, Chairperson  
Sen. Randall Head  
Sen. John Broden  
Rep. Ed DeLaney, Vice-Chairperson  
Rep. Ryan Dvorak  
Rep. Ralph Foley  
Chris Colpaert  
Joseph H. Davis  
Kris Fruehwald  
Thomas Hardin  
Judge Thomas Lowe  
James Martin  
David Pendergast  
Dan Reeves  
Timothy Sendak  
Jerry Withered



## PROBATE CODE STUDY COMMISSION

Legislative Services Agency  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Ross Hooten, Attorney for the Commission  
Jessica Harmon, Fiscal Analyst for the Commission

Authority: IC 2-5-16-2

### MEETING MINUTES<sup>1</sup>

Meeting Date: October 13, 2010  
Meeting Time: 10:30 A.M.  
Meeting Place: State House, 200 W. Washington St., Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 3

**Members Present:** Sen. Joseph Zakas, Chairperson; Sen. John Broden; Rep. Ed DeLaney, Vice-Chairperson; Rep. Ryan Dvorak; Rep. Ralph Foley; Joseph H. Davis; Kris Fruehwald; Judge Thomas Lowe; James Martin; David Pendergast; Dan Reeves; Jerry Withered.

**Members Absent:** Sen. Randall Head; Chris Colpaert; Thomas Hardin; Timothy Sendak.

Sen. Zakas called the meeting to order at 10:40 a.m. The Commission discussed eleven preliminary drafts, heard public testimony in support of PD 3403, and voted to recommend six of the preliminary drafts to the General Assembly.

#### I. Commission Discussion

The Commission discussed the following preliminary drafts which are primarily based upon the legislative proposals of the Probate, Trust, and Real Property Section of the Indiana

---

<sup>1</sup> These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative> Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

State Bar Association<sup>2</sup>:

<u>Number</u>	<u>Subject Matter</u>
PD 3233	Technical corrections
PD 3247	Various transfer on death matters
PD 3403	Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
PD 3405	Probate administration and Medicaid claims
PD 3406	Probate administration and Medicaid claims
PD 3402	Standby guardians
PD 3241	Probate administration
PD 3323	Probate administration
PD 3324	Probate administration
PD 3244	Discretionary interests and matrimonial trusts
PD 3308	Asset protection trusts

## II. Public Testimony

Mr. George Slater, an elder law attorney from Carmel, presented PD 3403, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGAPPJA). He testified that twenty states have adopted UAGAPPJA. Mr. Slater stated that a task force of Indiana judges has endorsed UAGAPPJA, but that neither the Probate Review Committee nor the Probate, Trust, and Real Property Section of the ISBA have reviewed the language of PD 3403.

According to Mr. Slater, UAGAPPJA is an adaptation to the jurisdictional challenges of a mobile society. A fairly common occurrence is that the family member who convinces Granny to move across state lines will soon thereafter petition for a guardianship. When the family members left behind object, Granny's move is called "Granny snatching". To the chagrin of the objecting family members, jurisdiction is usually based on Granny's new residence regardless of her connections to any other state. Mr. Slater hopes that UAGAPPJA will deter "Granny snatching" by replacing residency based jurisdiction. Instead of merely confirming Granny's residency, UAGAPPJA requires the courts of the different states to cooperate and analyze a variety of factors to determine which state is the most appropriate forum for Granny's guardianship proceedings. Mr. Slater conceded that UAGAPPJA could also make it more difficult for Indiana citizens to begin guardianship proceedings in Indiana.

Mr. Michael Sullivan, Director of Public Policy and Governmental Affairs of the Greater Indiana Chapter of the Alzheimer's Association, testified that the Alzheimer's Association supports UAGAPPJA. Mr. Sullivan explained that UAGAPPJA would make interstate coordination much easier, citing the jurisdictional challenges presented when a Hoosier snowbird dies in Florida and her surviving husband has Alzheimer's disease.

## III. Commission Action

The Commission took no action on the following Preliminary Drafts:

- (1) PD 3405.
- (2) PD 3406.

---

<sup>2</sup>See the minutes of the Commission's September 7 meeting to view the proposals submitted by the Section.

The Commission took action on the following Preliminary Drafts:

<u>Number</u>	<u>Result</u>
PD 3233	Voice Vote, Adopted with 0 no votes
PD 3247	Voice Vote, Amended and Adopted with 0 no votes
PD 3403	Voice Vote, Adopted with 2 no votes
PD 3402	Voice Vote, Amended and Adopted with 0 no votes
PD 3323	Voice Vote, Amended and Adopted with 0 no votes
PD 3244	Voice Vote, Adopted with 1 no vote
PD 3308	7 yes, 4 no votes, but <u>not</u> adopted

Preliminary Draft 3308 was not adopted by the Commission because IC 2-5-16-5.5 requires the Commission to have at least 9 affirmative votes to adopt a draft for recommendation to the General Assembly.

The amendments noted above are as follows:

(1) PD 3247 is amended to change the effective date of SECTION 8 to [EFFECTIVE JULY 1, 2009 (RETROACTIVE)].

(2) PD 3402 is amended to replace the term "preneed guardian" with "standby guardian".

(3) PD 3323 is amended to replace "2010" with "2011" on page 2, line 10.

After conducting the votes described above, Sen. Zakas adjourned the meeting at 12:40 p.m.

Preliminary Drafts  
Probate Code Study Commission  
October 13, 2010  
*MEETING # 3*

PD 3233	Technical Corrections	
PD 3236	Asset Protection Trusts	Tab B
<b>PD 3308</b>	<b>Asset Protection Trusts</b>	<b>Revised PD 3236</b>
PD 3240	Taxation, Medicaid Claims	Tabs C & D
PD 3277	Taxation, Medicaid Claims	Tabs C & D +
<b>PD 3405</b>	<b>Taxation, Medicaid Claims</b>	<b>Revised PD 3240</b>
<b>PD 3406</b>	<b>Taxation, Medicaid Claims</b>	<b>Revised PD 3277</b>
PD 3241	Probate Administration	Tabs E & F
<b>PD 3323</b>	<b>Probate Administration</b>	<b>Revised PD 3241</b>
<b>PD 3324</b>	<b>Probate Administration</b>	<b>Revised PD 3241</b>
PD 3244	Trusts	Tabs K & J
PD 3247	Transfer on Death	Tabs I, L, M, & N
PD 3248	Guardianships	Tabs G & H
PD 3251	Guardianships	
<b>PD 3402</b>	<b>Guardianships</b>	<b>Revised PD 3251</b>
<b>PD 3403</b>	<b>Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act</b>	



---

**PRELIMINARY DRAFT**  
**No. 3233**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

**DIGEST**

**Citations Affected:** IC 29-1-6-1; IC 29-2-12-4.

**Synopsis:** Technical corrections. Makes technical corrections.

**Effective:** Upon passage.



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 29-1-6-1, AS AMENDED BY P.L.6-2010,  
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 1. In the absence of a contrary intent  
4 appearing in the will, wills shall be construed as to real and personal  
5 estate in accordance with the rules in this section.

6 (a) Any estate, right, or interest in land or other things acquired by  
7 the testator after the making of the testator's will shall pass as if title  
8 was vested in the testator at the time of making of the will.

9 (b) All devises of real estate shall pass the whole estate of the  
10 testator in the premises devised, although there are no words of  
11 inheritance or of perpetuity, whether or not at the time of the execution  
12 of the will the decedent was the owner of that particular interest in the  
13 real estate devised. Such devise shall also pass any interest which the  
14 testator may have at the time of the testator's death as vendor under a  
15 contract for the sale of such real estate.

16 (c) A devise of real or personal estate, whether directly or in trust,  
17 to the testator's or another designated person's "heirs", "next of kin",  
18 "relatives", or "family", or to "the persons thereunto entitled under the  
19 intestate laws" or to persons described by words of similar import, shall  
20 mean those persons (including the spouse) who would take under the  
21 intestate laws if the testator or other designated person were to die  
22 intestate at the time when such class is to be ascertained, domiciled in  
23 this state, and owning the estate so devised. With respect to a devise  
24 which does not take effect at the testator's death, the time when such  
25 class is to be ascertained shall be the time when the devise is to take  
26 effect in enjoyment.

27 (d) In construing a will making a devise to a person or persons  
28 described by relationship to the testator or to another, any person  
29 adopted prior to the person's twenty-first birthday before the death of  
30 the testator shall be considered the child of the adopting parent or  
31 parents and not the child of the natural or previous adopting parents.



1 However, if a natural parent or previous adopting parent marries the  
2 adopting parent before the testator's death, the adopted person shall  
3 also be considered the child of such natural or previous adopting  
4 parent. Any person adopted after the person's twenty-first birthday by  
5 the testator shall be considered the child of the testator, but no other  
6 person shall be entitled to establish relationship to the testator through  
7 such child.

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

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

18 (g) If a devise of real or personal property, not included in the  
19 residuary clause of the will, is void, is revoked, or lapses, it shall  
20 become a part of the residue, and shall pass to the residuary devisee.  
21 Whenever any estate, real or personal, shall be devised to any  
22 descendant of the testator, and such devisee shall die during the  
23 lifetime of the testator, whether before or after the execution of the will,  
24 leaving a descendant who shall survive such testator, such devise shall  
25 not lapse, but the property so devised shall vest in the surviving  
26 descendant of the devisee as if such devisee had survived the testator  
27 and died intestate. The word "descendant", as used in this section,  
28 includes children adopted during minority by the testator and by the  
29 testator's descendants and includes descendants of such adopted  
30 children. "Descendant" also includes children of the mother who are  
31 born out of wedlock, and children of the father who are born out of  
32 wedlock, if, but only if, such child's right to inherit from such father is,  
33 or has been, established in the manner provided in IC 29-1-2-7. This  
34 rule applies where the parent is a descendant of the testator as well as  
35 where the parent is the testator. Descendants of such children shall also  
36 be included.

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

43 (i) If a testator devises real or personal property upon such terms  
44 that the testator's intentions with respect to such devise can be  
45 determined at the testator's death only by reference to a fact or an event  
46 independent of the will, such devise shall be valid and effective if the



1 testator's intention can be clearly ascertained by taking into  
 2 consideration such fact or event even though occurring after the  
 3 execution of the will.

4 (j) If a testator devises or bequeaths property to be added to a trust  
 5 or trust fund which is clearly identified in the testator's will and which  
 6 trust is in existence at the time of the death of the testator, such devise  
 7 or bequest shall be valid and effective. Unless the will provides  
 8 otherwise, the property so devised or bequeathed shall be subject to the  
 9 terms and provisions of the instrument or instruments creating or  
 10 governing the trust or trust fund, including any amendments or  
 11 modifications in writing made at any time before or after the execution  
 12 of the will and before or after the death of the testator.

13 (k) If a testator devises securities in a will and the testator then  
 14 owned securities that meet the description in the will, the devise  
 15 includes additional securities owned by the testator at death to the  
 16 extent the additional securities were acquired by the testator after the  
 17 will was executed as a result of the testator's ownership of the  
 18 described securities and are securities of any of the following types:

19 (1) Securities of the same organization acquired because of an  
 20 action initiated by the organization or any successor, related, or  
 21 acquiring organization, excluding any security acquired by  
 22 exercise of purchase options.

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

26 (3) Securities of the same organization acquired as a result of a  
 27 plan of reinvestment.

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

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

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

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

38 a guardian or an agent acting within the authority of a durable power  
 39 of attorney for an incapacitated principal, the specific devisee has the  
 40 right to a general pecuniary devise equal to the net sale price, the  
 41 amount of the unpaid loan, the condemnation award, the insurance  
 42 proceeds, or the recovery.

43 (m) A written statement or list that:

44 (1) complies with this subsection; and

45 (2) is referred to in a will;

46 may be used to dispose of items of tangible personal property, other



1 than property used in a trade or business, not otherwise specifically  
 2 disposed of by the will. To be admissible under this subsection as  
 3 evidence of the intended disposition, the writing must be signed by the  
 4 testator and must describe the items and the beneficiaries with  
 5 reasonable certainty. The writing may be prepared before or after the  
 6 execution of the will. The writing may be altered by the testator after  
 7 the writing is prepared. The writing may have no significance apart  
 8 from the writing's effect on the dispositions made by the will. If more  
 9 than one (1) otherwise effective writing exists, then, to the extent of a  
 10 conflict among the writings, the provisions of the most recent writing  
 11 revoke the inconsistent provisions of each earlier writing.

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

- 14 (1) the unified credit;
- 15 (2) the estate tax exemption;
- 16 (3) the applicable credit amount;
- 17 (4) the applicable exclusion amount;
- 18 (5) the generation-skipping transfer tax exemption;
- 19 (6) the GST exemption;
- 20 (7) the marital deduction;
- 21 (8) the maximum marital deduction;
- 22 (9) the unlimited marital deduction;
- 23 (10) the inclusion ratio;
- 24 (11) the applicable fraction;
- 25 (12) any section of the Internal Revenue Code:

26 (A) relating to the:

- 27 (i) federal estate tax; or
- 28 (ii) generation-skipping transfer tax; and

29 (B) that measures a share of:

- 30 (i) an estate; or
- 31 (ii) a trust;

32 based on the amount that can pass free of federal estate taxes  
 33 or the amount that can pass free of federal generation-skipping  
 34 transfer tax law; or

35 (13) a provision of federal estate tax or generation-skipping  
 36 transfer tax law that is similar to subdivisions (1) through (12);  
 37 refers to the federal estate tax and generation-skipping transfer tax laws  
 38 as they applied with respect to estates of decedents on December 31,  
 39 2009.

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

- 41 (1) that is executed or amended after December 31, 2009; or
- 42 (2) that manifests an intent that a contrary rule apply if the  
 43 decedent dies on a date on which there is no then applicable  
 44 federal estate or generation-skipping transfer tax.

45 (p) If the federal estate or generation-skipping transfer tax becomes  
 46 effective before January 1, 2011, the reference to January 1, 2011, in



1 subsection (n) shall refer instead to the first date on which the tax  
2 becomes legally effective.

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

4 (1) decedent's death;

5 (2) fiduciary's appointment; or

6 (3) enactment of this subsection;

7 the personal representative under a will to which subsection (n) applies  
8 shall give written notice ~~regarding to~~ the affected beneficiary of the  
9 right to commence a proceeding under subsection (r) and to the present  
10 income beneficiary of any trust created under the will of the existence  
11 of this ~~statute, section~~ and the beneficiary's right to commence a  
12 proceeding under subsection (r).

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

20 SECTION 2. IC 29-2-12-4 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The portion of  
22 ~~such the~~ federal estate tax ~~2001 et seq.~~ to be paid by each person, heir,  
23 or beneficiary of ~~said a~~ decedent's estate shall be determined by  
24 dividing the value of the property received by ~~such the~~ person, heir, or  
25 beneficiary, which is included in the net taxable estate, by the amount  
26 of the net taxable estate, and multiplying the result by the amount of the  
27 total federal estate tax paid.

28 SECTION 3. **An emergency is declared for this act.**





---

**PRELIMINARY DRAFT**  
**No. 3308**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

**DIGEST**

**Citations Affected:** IC 30-4; IC 34-30-2-132.7.

**Synopsis:** Trusts. Authorizes the establishment of asset protection trusts. Prescribes the procedures for establishing an asset protection trust. Bars most claims against an asset protection trust. Permits claims for certain fraudulent transfers, to enforce certain child support orders, and to enforce certain orders for the division of property with respect to a dissolution of marriage or a legal separation. Provides immunity to the trustees and advisers of asset protection trusts and the professionals involved in establishing asset protection trusts. Provides that the rule against perpetuities does not apply to asset protection trusts.

**Effective:** July 1, 2011.



1 protector or any other person who, in addition to a qualified  
2 trustee, holds at least one (1) trust power.

3 Sec. 3. (a) Except as otherwise provided in this chapter, a person  
4 may establish an asset protection trust.

5 (b) A trust is an asset protection trust if the trust satisfies each  
6 of the following requirements:

7 (1) The trust must provide for the appointment of at least one  
8 (1) qualified trustee for the property that is the subject of a  
9 qualified disposition.

10 (2) The trust must expressly incorporate Indiana law to  
11 govern the validity, construction, and administration of the  
12 trust.

13 (3) The trust must be irrevocable.

14 (4) The trust must provide that the interests of the transferor  
15 or beneficiary in the trust property or the income from the  
16 trust property may not voluntarily or involuntarily be  
17 transferred, assigned, pledged, or mortgaged before the  
18 qualified trustee actually distributes the property or income  
19 to the beneficiary.

20 Sec. 4. (a) A person establishing an asset protection trust under  
21 this chapter must sign a qualified affidavit identifying the property  
22 to be transferred to the asset protection trust. The qualified  
23 affidavit must state the following:

24 (1) That the transferor has full right, title, and authority to  
25 transfer the property to the asset protection trust.

26 (2) That the transfer of the property to the asset protection  
27 trust will not render the transferor insolvent.

28 (3) That the transferor does not intend to defraud a creditor  
29 by transferring the property to the asset protection trust.

30 (4) That there are no pending or threatened court actions  
31 against the transferor other than the court actions identified  
32 by the transferor and attached to the qualified affidavit.

33 (5) That the transferor is not involved in any administrative  
34 proceedings other than the administrative proceedings  
35 identified by the transferor and attached to the qualified  
36 affidavit.

37 (6) That the transferor does not contemplate filing for relief  
38 under the federal bankruptcy code.

39 (7) That the property transferred to the asset protection trust  
40 is not derived from unlawful activities.

41 (b) Except as otherwise provided by this section, the qualified  
42 affidavit must be signed by the transferor.

43 (c) In the case of a disposition by a transferor who is a trustee,  
44 the qualified affidavit must be signed by the transferor who made  
45 the original disposition to the trustee. A qualified affidavit signed  
46 under this subsection must state the facts as of the time of the



1 originally transferred in trust to the trustee or any predecessor  
2 trustee in a form that satisfies section 3(b)(3) and 3(b)(4) of this  
3 chapter.

4 (d) If more than one (1) qualified disposition is made by means  
5 of the same asset protection trust:

6 (1) the making of a subsequent qualified disposition is  
7 disregarded when determining whether a creditor's claim  
8 with respect to a prior qualified disposition is extinguished  
9 under subsection (b); and

10 (2) any distribution to a beneficiary is considered to have been  
11 made from the latest qualified disposition.

12 **Sec. 8. (a) If a creditor's claim is allowed under section 7 of this**  
13 **chapter, the transferor's qualified disposition to an asset protection**  
14 **trust is subject to the claim only to the extent necessary to satisfy**  
15 **the transferor's debt to the creditor making the allowed claim.**

16 (b) If a creditor's claim is allowed under section 7 of this  
17 chapter, the claim is limited as follows:

18 (1) If the court is satisfied that a qualified trustee has not  
19 acted in bad faith in accepting or administering the property  
20 that is the subject of the qualified disposition:

21 (A) the qualified trustee has a first and paramount lien  
22 against the property that is the subject of the qualified  
23 disposition in an amount equal to the entire cost, including  
24 attorneys' fees, properly incurred by the qualified trustee  
25 in the defense of the action or proceedings filed by the  
26 creditor;

27 (B) the creditor's claim shall be allowed subject to the  
28 proper fees, costs, preexisting rights, claims, and interests  
29 of the qualified trustee and of any predecessor qualified  
30 trustee that had not acted in bad faith; and

31 (C) it is presumed that the qualified trustee did not act in  
32 bad faith merely by accepting the property that is the  
33 subject of the qualified disposition.

34 (2) If the court is satisfied that a beneficiary of an asset  
35 protection trust has not acted in bad faith;

36 (A) the creditor's claim is subject to the right of the  
37 beneficiary to retain any distribution made upon the  
38 exercise of a trust power or the discretion vested in the  
39 qualified trustee that was properly exercised before the  
40 creditor commenced an action to enforce the claim; and

41 (B) it is presumed that the beneficiary, including a  
42 beneficiary who is also a transferor, did not act in bad faith  
43 merely by creating the asset protection trust or by  
44 accepting a distribution made in accordance with the terms  
45 of the asset protection trust.

46 **Sec. 9. A spendthrift provision described in section 3(b)(4) of**



1 this chapter is considered a restriction on the transfer of the  
 2 transferor's beneficial interest in the trust that is enforceable  
 3 under applicable nonbankruptcy law within the meaning of Section  
 4 541(c)(2) of the Bankruptcy Code (11 U.S.C. 541(c)(2)) or any  
 5 successor provision of the federal bankruptcy code.

6 **Sec. 10.** Except as permitted by the provisions of an asset  
 7 protection trust and by sections 11 and 12 of this chapter, the  
 8 transferor may not have any rights or authority with respect to the  
 9 principal or income of the asset protection trust. An agreement or  
 10 understanding purporting to grant or permit the retention of any  
 11 greater rights or authority is void.

12 **Sec. 11.** A transferor who makes a qualified disposition may also  
 13 serve as a trust adviser.

14 **Sec. 12. (a)** An asset protection trust is not considered revocable  
 15 because of the inclusion of one (1) or more of the following:

16 (1) A transferor's power to veto a distribution from the trust.

17 (2) A power of appointment (other than the power to appoint  
 18 to the transferor, the transferor's creditors, the transferor's  
 19 estate, or the creditors of the transferor's estate) that may be  
 20 exercised by will or other written instrument of the transferor  
 21 that is effective only upon the transferor's death.

22 (3) The transferor's potential or actual receipt of income or  
 23 principal, including right to income retained in the trust.

24 (4) The transferor's potential or actual receipt of income or  
 25 principal from a charitable remainder unitrust or charitable  
 26 remainder annuity trust (as those terms are defined in Section  
 27 664 of the Internal Revenue Code).

28 (5) The transferor's potential or actual receipt of income or  
 29 principal from a grantor retained annuity trust or grantor  
 30 retained unitrust that is allowed under Section 2702 of the  
 31 Internal Revenue Code.

32 (6) The transferor's potential or actual receipt or use of  
 33 principal when that potential or actual receipt or use results  
 34 from a qualified trustee's acting:

35 (A) in the qualified trustee's discretion;

36 (B) under a standard that governs the distribution of  
 37 principal and does not confer upon the transferor a power  
 38 to consume, invade, or appropriate property for the benefit  
 39 of the transferor unless the power of the transferor is  
 40 limited by an ascertainable standard relating to health,  
 41 education, support, or maintenance within the meaning of  
 42 Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue  
 43 Code; or

44 (C) at the direction of an adviser described in section 13 of  
 45 this chapter who acts:

46 (i) in the adviser's discretion; or



1 (ii) under a standard that governs the distribution of  
 2 principal and does not confer upon the transferor a  
 3 power to consume, invade, or appropriate property for  
 4 the benefit of the transferor unless the power of the  
 5 transferor is limited by an ascertainable standard  
 6 relating to health, education, support, or maintenance  
 7 within the meaning of Section 2041(b)(1)(A) or  
 8 2514(c)(1) of the Internal Revenue Code.

9 (7) The transferor's right to remove a trustee or adviser and  
 10 to appoint a new trustee or adviser as long as that right does  
 11 not include the appointment of a person who is a related or  
 12 subordinate party to the transferor within the meaning of  
 13 Section 672(c) of the Internal Revenue Code.

14 (8) The transferor's potential or actual use of real property  
 15 held under a qualified personal residence trust (as defined in  
 16 Section 2702(c) of the Internal Revenue Code).

17 (b) For the purposes of subsection (a)(6)(A), a qualified trustee  
 18 is presumed to have discretion with respect to the distribution of  
 19 principal unless that discretion is denied to the qualified trustee by  
 20 the terms of the asset protection trust.

21 Sec. 13. (a) A transferor may appoint one (1) or more trust  
 22 advisers. If specifically authorized by the terms of the trust, a trust  
 23 adviser may:

- 24 (1) remove and appoint qualified trustees or trust advisers;
- 25 and
- 26 (2) direct, consent to, or disapprove distributions from the
- 27 trust.

28 (b) A trust adviser is not required to satisfy the requirements  
 29 imposed upon a trustee by section 5 of this chapter.

30 Sec. 14. If:

- 31 (1) a qualified trustee of an asset protection trust ceases to
- 32 meet the requirements of section 5 of this chapter; and
- 33 (2) no trustee of the asset protection trust remains that meets
- 34 the requirements of section 5 of this chapter;

35 the qualified trustee described in subdivision (1) is considered to  
 36 have resigned when the qualified trustee ceased to meet the  
 37 requirements of section 5 of this chapter and a successor trustee  
 38 provided for in the asset protection trust shall become a qualified  
 39 trustee. If the asset protection trust does not provide for a  
 40 successor qualified trustee, a court shall appoint a successor  
 41 qualified trustee upon the application of any interested party.

42 Sec. 15. (a) Notwithstanding any provision of law to the  
 43 contrary, a person is entitled to only the rights with respect to a  
 44 qualified disposition that are provided by this chapter. A person,  
 45 including a creditor whose claim arises before or after a qualified  
 46 disposition, may not bring a claim or a cause of action against:



- 1           (1) a trustee or an adviser of an asset protection trust; or  
 2           (2) any person involved in the counseling, drafting,  
 3           preparation, execution, or funding of an asset protection trust.

4           (b) This subsection applies to a cause of action to enforce a  
 5 judgment notwithstanding any provision of law to the contrary. A  
 6 cause of action to enforce a judgment may not be brought at law or  
 7 equity against:

- 8           (1) a trustee or adviser of an asset protection trust; or  
 9           (2) any person involved in the counseling, drafting,  
 10          preparation, execution, or funding of an asset protection  
 11          trust;

12 if, as of the date of the cause of action, a cause of action by a  
 13 creditor with respect to the asset protection trust would be barred  
 14 by this section.

15          (c) For purposes of this section, the counseling, drafting,  
 16 preparation, execution, and funding of an asset protection trust  
 17 include the counseling, drafting, preparation, execution, and  
 18 funding of a limited partnership or a limited liability company if  
 19 interests in the limited partnership or limited liability company are  
 20 subsequently transferred to the asset protection trust.

21          Sec. 16. The common law rule against perpetuities and the  
 22 Uniform Statutory Rule Against Perpetuities (IC 32-17-8) do not  
 23 apply to:

- 24          (1) the property or property interests in an asset protection  
 25          trust; or  
 26          (2) the terms and provisions of an asset protection trust.

27          SECTION 3. IC 34-30-2-132.7 IS ADDED TO THE INDIANA  
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 29 [EFFECTIVE JULY 1, 2011]: Sec. 132.7. IC 30-4-8-15 (Concerning  
 30 asset protection trusts).





---

**PRELIMINARY DRAFT**  
**No. 3405**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

DIGEST

**Citations Affected:** IC 6-4.1-5-15; IC 12-14-21-3; IC 12-15-9;  
IC 29-1-14-9.

**Synopsis:** Priority of claims. Provides that the clerk of the circuit court of each county in which real property described in the inheritance tax order of a nonresident decedent is located shall spread a copy of the order of record upon request by an interested person rather than as a matter of course. Provides that the order of priority of the claims that are not subservient to a claim to recapture Medicaid benefits is: (1) the expenses of administering the recipient's estate, including taxes; (2) reasonable funeral expenses; and (3) the expenses of the recipient's last illness. Removes caps on the amount of funeral expenses that have priority. Provides that the court approved fees of attorneys, personal representatives, and certain attorney surrogates are expenses of administering the recipient's estate.

**Effective:** July 1, 2011.



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 6-4.1-5-15 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. (a) The department  
3 of state revenue shall, with respect to a nonresident decedent's estate,  
4 enter an order which:

- 5 (1) states the fair market value of all property interests transferred  
6 by the decedent under taxable transfers;  
7 (2) describes all Indiana real property so transferred by the  
8 decedent; and  
9 (3) states the inheritance tax imposed as a result of the decedent's  
10 death.

11 (b) The clerk of the circuit court of each county in which real  
12 property described in the order is located shall spread a copy of the  
13 order of record **upon request by an interested person.**

14 SECTION 2. IC 12-14-21-3 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. Notwithstanding any  
16 other law, a claim filed for recovery of aged assistance has priority in  
17 order of payment from the estate over all other claims, except the  
18 following:

- 19 (1) Prior recorded encumbrances.  
20 (2) Taxes.  
21 (3) Reasonable costs of administration.  
22 (4) **Reasonable** funeral expenses. ~~in an amount not to exceed five~~  
23 ~~hundred fifty dollars (\$550). However, this amount is zero (0) if~~  
24 ~~the decedent has~~ **The court may consider the amount of funds**  
25 **for prepaid funeral expenses that were excluded as a resource for**  
26 **Medicaid eligibility under IC 12-15-2 to determine whether the**  
27 **amount of claimed funeral expenses is reasonable.**

28 SECTION 3. IC 12-15-9-0.5, AS AMENDED BY P.L.246-2005,  
29 SECTION 107, IS AMENDED TO READ AS FOLLOWS  
30 [EFFECTIVE JULY 1, 2011]: Sec. 0.5. (a) As used in this chapter,  
31 "estate" includes:



- 1 (1) all real and personal property and other assets included within  
 2 an individual's probate estate; assets described in  
 3 **IC 29-1-1-3(a)(9)**;
- 4 (2) any interest in real property owned by the individual at the  
 5 time of death that was conveyed to the individual's survivor  
 6 through joint tenancy with right of survivorship, if the joint  
 7 tenancy was created after June 30, 2002;
- 8 (3) any real or personal property conveyed through a nonprobate  
 9 transfer; and
- 10 (4) any sum due after June 30, 2005, to a person after the death of  
 11 a Medicaid recipient that is under the terms of an annuity contract  
 12 purchased after May 1, 2005, with the assets of
- 13 ~~(A) the Medicaid recipient. or~~  
 14 ~~(B) the Medicaid recipient's spouse.~~
- 15 (b) As used in this chapter, "nonprobate transfer" means a valid  
 16 transfer, effective at death, by a transferor:
- 17 (1) whose last domicile was in Indiana; and
- 18 (2) who immediately before death had the power, acting alone, to  
 19 prevent transfer of the property by revocation or withdrawal and:
- 20 (A) use the property for the benefit of the transferor; or  
 21 (B) apply the property to discharge claims against the  
 22 transferor's probate estate.
- 23 The term does not include transfer of a survivorship interest in a  
 24 tenancy by the entireties real estate or payment of the death proceeds  
 25 of a life insurance policy.
- 26 SECTION 4. IC 12-15-9-1, AS AMENDED BY P.L.246-2005,  
 27 SECTION 108, IS AMENDED TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 2011]: Sec. 1. ~~(a) Subject to subsection (b);~~  
 29 ~~Upon the death of a Medicaid recipient, or upon the death of a~~  
 30 ~~deceased Medicaid recipient's spouse, the total amount of Medicaid~~  
 31 ~~paid on behalf of the recipient after the recipient became fifty-five (55)~~  
 32 ~~years of age must be allowed as a preferred claim against the estate of~~  
 33 ~~the recipient or the recipient's spouse in favor of the state. The affidavit~~  
 34 ~~of a person designated by the secretary to administer this section is~~  
 35 ~~evidence of the amount of the claim and is payable after the payment~~  
 36 ~~of the following in accordance with IC 29-1-14-9:~~
- 37 **(1) The expenses of administering the estate, including**  
 38 **attorney's fees and personal representative fees approved by**  
 39 **the court and all taxes, interest, and penalties imposed by the**  
 40 **federal, state, and local governments.**
- 41 ~~(1) (2) Reasonable funeral expenses for the recipient. and the~~  
 42 ~~recipient's spouse, not to exceed in each individual case three~~  
 43 ~~hundred fifty dollars (\$350).~~
- 44 ~~(2) (3) The expenses of the last illness of the recipient and the~~  
 45 ~~recipient's spouse that are authorized or paid by the office.~~
- 46 ~~(3) The expenses of administering the estate, including the~~



1 attorney's fees approved by the court.

2 (b) If a recipient's spouse remarries, the part of the estate of the  
3 recipient's spouse that is attributable to the subsequent spouse is not  
4 subject to a claim for Medicaid paid on behalf of the recipient:

5 SECTION 5. IC 29-1-14-9, AS AMENDED BY P.L.161-2007,  
6 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2011]: Sec. 9. (a) All claims shall be classified in one (1) of  
8 the following classes. If the applicable assets of the estate are  
9 insufficient to pay all claims in full, the personal representative shall  
10 make payment in the following order:

11 (1) Costs and expenses of administration, **including the fee of an**  
12 **attorney surrogate that has been:**

13 **(A) approved by a court under the rules of the Indiana**  
14 **supreme court governing attorney surrogates; and**

15 **(B) filed as a claim in the estate of a deceased attorney.**

16 (2) Reasonable funeral expenses. However, in any estate in which  
17 the decedent was a recipient of public assistance under IC 12-1-1  
18 through IC 12-1-12 (before its repeal) or any of the following, the  
19 amount of funeral expenses having priority over any claim for the  
20 recovery of public assistance shall not exceed the limitations  
21 provided for under IC 12-14-6, IC 12-14-17, and IC 12-14-21:

22 TANF assistance.

23 TANF burials.

24 TANF IMPACT/J.O.B.S.

25 Temporary Assistance to Other Needy Families (TAONF)  
26 assistance.

27 ARCH.

28 Blind relief.

29 Child care.

30 Child welfare adoption assistance.

31 Child welfare adoption opportunities.

32 Child welfare assistance.

33 Child welfare child care improvement.

34 Child welfare child abuse.

35 Child welfare child abuse and neglect prevention.

36 Child welfare children's victim advocacy program.

37 Child welfare foster care assistance.

38 Child welfare independent living.

39 Child welfare medical assistance to wards.

40 Child welfare program review action group (PRAG).

41 Child welfare special needs adoption.

42 Food Stamp administration.

43 Health care for indigent (HCI).

44 ICES.

45 IMPACT (food stamps).

46 Title IV-D (ICETS).



- 1 Title IV-D child support administration.  
2 Title IV-D child support enforcement (parent locator).  
3 Medicaid assistance.  
4 Medical services for inmates and patients (590).  
5 Room and board assistance (RBA).  
6 Refugee social service.  
7 Refugee resettlement.  
8 Repatriated citizens.  
9 SSI burials and disabled examinations.  
10 Title XIX certification.  
11 (3) Allowances made under IC 29-1-4-1.  
12 (4) All debts and taxes having preference under the laws of the  
13 United States.  
14 (5) Reasonable and necessary medical expenses of the last  
15 sickness of the decedent, including compensation of persons  
16 attending ~~him~~ **the decedent**.  
17 (6) All debts and taxes having preference under the laws of this  
18 state; but no personal representative shall be required to pay any  
19 taxes on any property of the decedent unless such taxes are due  
20 and payable before possession thereof is delivered by the personal  
21 representative pursuant to the provisions of IC 29-1.  
22 (7) All other claims allowed.  
23 (b) No preference shall be given in the payment of any claim over  
24 any other claim of the same class, nor shall a claim due and payable be  
25 entitled to a preference over claims not due.





---

**PRELIMINARY DRAFT**  
**No. 3406**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

**DIGEST**

**Citations Affected:** IC 6-4.1-5-15; IC 29-1-14-9; IC 12-14;  
IC 12-15-9.

**Synopsis:** Priority of claims. Provides that the clerk of the circuit court of each county in which real property described in the inheritance tax order of a nonresident decedent is located shall spread a copy of the order of record upon request by an interested person rather than as a matter of course. Provides that the order of priority of claims that are not subservient to a claim to recapture Medicaid benefits is: (1) the expenses of administering the recipient's estate, including taxes; (2) reasonable funeral expenses; and (3) the expenses of the recipient's last illness. Removes caps on the amount of funeral expenses that have priority. Provides that the court approved fees of attorneys, personal representatives, and certain attorney surrogates are expenses of administering the recipient's estate. Disallows claims against the estate of a Medicaid recipient's spouse.

**Effective:** July 1, 2011.



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 6-4.1-5-15 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. (a) The department  
3 of state revenue shall, with respect to a nonresident decedent's estate,  
4 enter an order which:

- 5 (1) states the fair market value of all property interests transferred  
6 by the decedent under taxable transfers;  
7 (2) describes all Indiana real property so transferred by the  
8 decedent; and  
9 (3) states the inheritance tax imposed as a result of the decedent's  
10 death.

11 (b) The clerk of the circuit court of each county in which real  
12 property described in the order is located shall spread a copy of the  
13 order of record **upon request by an interested person.**

14 SECTION 2. IC 12-14-17-4, AS AMENDED BY P.L.9-2006,  
15 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2011]: Sec. 4. The division:

- 17 (1) may not consider a combined total of one thousand seven  
18 hundred fifty dollars (\$1,750) that is contributed by:  
19 (A) friends;  
20 (B) relatives; and  
21 (C) the resources of the deceased; and  
22 (2) may consider any amount that exceeds one thousand seven  
23 hundred fifty dollars (\$1,750) contributed by:  
24 (A) friends;  
25 (B) relatives; and  
26 (C) the resources of the deceased;

27 when determining the amount to be paid to the funeral director for  
28 expenses under this chapter. ~~However, the resources of the deceased~~  
29 ~~may not be used if the deceased has prepaid funeral expenses that were~~  
30 ~~excluded as a resource for Medicaid eligibility under IC 12-15-2.~~

31 SECTION 3. IC 12-14-21-3 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. Notwithstanding any  
 2 other law, a claim filed for recovery of aged assistance has priority in  
 3 order of payment from the estate over all other claims, except the  
 4 following:

- 5 (1) Prior recorded encumbrances.
- 6 (2) Taxes.
- 7 (3) Reasonable costs of administration.
- 8 (4) **Reasonable** funeral expenses. ~~in an amount not to exceed five~~  
 9 ~~hundred fifty dollars (\$550). However, this amount is zero (0) if~~  
 10 ~~the decedent has~~ **To determine whether the amount of claimed**  
 11 **funeral expenses is reasonable, the court may consider the**  
 12 **amount of funds for** prepaid funeral expenses that were excluded  
 13 as a resource for Medicaid eligibility under IC 12-15-2.

14 SECTION 4. IC 12-15-9-0.5, AS AMENDED BY P.L.246-2005,  
 15 SECTION 107, IS AMENDED TO READ AS FOLLOWS  
 16 [EFFECTIVE JULY 1, 2011]: Sec. 0.5. (a) As used in this chapter,  
 17 "estate" includes:

- 18 (1) ~~all real and personal property and other assets included within~~  
 19 ~~an individual's probate estate; assets described in~~  
 20 **IC 29-1-1-3(a)(9);**
- 21 (2) any interest in real property owned by the individual at the  
 22 time of death that was conveyed to the individual's survivor  
 23 through joint tenancy with right of survivorship, if the joint  
 24 tenancy was created after June 30, 2002;
- 25 (3) any real or personal property conveyed through a nonprobate  
 26 transfer; and
- 27 (4) any sum due after June 30, 2005, to a person after the death of  
 28 a Medicaid recipient that is under the terms of an annuity contract  
 29 purchased after May 1, 2005, with the assets of  
 30 ~~(A) the Medicaid recipient. or~~  
 31 ~~(B) the Medicaid recipient's spouse.~~

32 (b) As used in this chapter, "nonprobate transfer" means a valid  
 33 transfer, effective at death, by a transferor:

- 34 (1) whose last domicile was in Indiana; and
- 35 (2) who immediately before death had the power, acting alone, to  
 36 prevent transfer of the property by revocation or withdrawal and:  
 37 (A) use the property for the benefit of the transferor; or  
 38 (B) apply the property to discharge claims against the  
 39 transferor's probate estate.

40 The term does not include transfer of a survivorship interest in a  
 41 tenancy by the entireties real estate or payment of the death proceeds  
 42 of a life insurance policy.

43 SECTION 5. IC 12-15-9-1, AS AMENDED BY P.L.246-2005,  
 44 SECTION 108, IS AMENDED TO READ AS FOLLOWS  
 45 [EFFECTIVE JULY 1, 2011]: Sec. 1. ~~(a) Subject to subsection (b);~~  
 46 Upon the death of a Medicaid recipient, ~~or upon the death of a~~



1 deceased Medicaid recipient's spouse; the total amount of Medicaid  
 2 paid on behalf of the recipient after the recipient became fifty-five (55)  
 3 years of age must be allowed as a preferred claim against the estate of  
 4 the recipient or the recipient's spouse in favor of the state. The affidavit  
 5 of a person designated by the secretary to administer this section is  
 6 evidence of the amount of the claim and is payable after the payment  
 7 of the following in accordance with IC 29-1-14-9:

8 **(1) The expenses of administering the estate, including**  
 9 **attorney's fees and personal representative fees approved by**  
 10 **the court and all taxes, interest, and penalties imposed by the**  
 11 **federal, state, and local governments.**

12 ~~(1)~~ **(2) Reasonable** funeral expenses for the recipient. and the  
 13 recipient's spouse; not to exceed in each individual case three  
 14 hundred fifty dollars (\$350):

15 ~~(2)~~ **(3)** The expenses of the last illness of the recipient and the  
 16 recipient's spouse that are authorized or paid by the office.

17 ~~(3)~~ The expenses of administering the estate; including the  
 18 attorney's fees approved by the court.

19 ~~(b)~~ If a recipient's spouse remarries; the part of the estate of the  
 20 recipient's spouse that is attributable to the subsequent spouse is not  
 21 subject to a claim for Medicaid paid on behalf of the recipient.

22 SECTION 6. IC 12-15-9-5, AS AMENDED BY P.L.246-2005,  
 23 SECTION 109, IS AMENDED TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2011]: Sec. 5. ~~(a)~~ The office may not recover  
 25 on a claim filed against the estate of a surviving spouse, while the  
 26 individual is survived by a child who is:

27 ~~(1)~~ less than twenty-one ~~(21)~~ years of age; or

28 ~~(2)~~ permanently and totally disabled under criteria established by  
 29 the federal Supplemental Security Income program.

30 ~~(b)~~ The office may not recover on a claim filed against the estate of  
 31 a surviving spouse from any part of the estate described in section ~~1~~(b)  
 32 of this chapter.

33 SECTION 7. IC 29-1-14-9, AS AMENDED BY P.L.161-2007,  
 34 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2011]: Sec. 9. (a) All claims shall be classified in one (1) of  
 36 the following classes. If the applicable assets of the estate are  
 37 insufficient to pay all claims in full, the personal representative shall  
 38 make payment in the following order:

39 (1) Costs and expenses of administration, **including the fee of an**  
 40 **attorney surrogate that has been:**

41 **(A) approved by a court under the rules of the Indiana**  
 42 **supreme court governing attorney surrogates; and**

43 **(B) filed as a claim in the estate of a deceased attorney.**

44 (2) Reasonable funeral expenses. However, in any estate in which  
 45 the decedent was a recipient of public assistance under IC 12-1-1  
 46 through IC 12-1-12 (before its repeal) or any of the following, the



- 1 amount of funeral expenses having priority over any claim for the  
 2 recovery of public assistance shall not exceed the limitations  
 3 provided for under IC 12-14-6, IC 12-14-17, and IC 12-14-21:
- 4 TANF assistance.
  - 5 TANF burials.
  - 6 TANF IMPACT/J.O.B.S.
  - 7 Temporary Assistance to Other Needy Families (TAONF)
  - 8 assistance.
  - 9 ARCH.
  - 10 Blind relief.
  - 11 Child care.
  - 12 Child welfare adoption assistance.
  - 13 Child welfare adoption opportunities.
  - 14 Child welfare assistance.
  - 15 Child welfare child care improvement.
  - 16 Child welfare child abuse.
  - 17 Child welfare child abuse and neglect prevention.
  - 18 Child welfare children's victim advocacy program.
  - 19 Child welfare foster care assistance.
  - 20 Child welfare independent living.
  - 21 Child welfare medical assistance to wards.
  - 22 Child welfare program review action group (PRAG).
  - 23 Child welfare special needs adoption.
  - 24 Food Stamp administration.
  - 25 Health care for indigent (HCI).
  - 26 ICES.
  - 27 IMPACT (food stamps).
  - 28 Title IV-D (ICETS).
  - 29 Title IV-D child support administration.
  - 30 Title IV-D child support enforcement (parent locator).
  - 31 Medicaid assistance.
  - 32 Medical services for inmates and patients (590).
  - 33 Room and board assistance (RBA).
  - 34 Refugee social service.
  - 35 Refugee resettlement.
  - 36 Repatriated citizens.
  - 37 SSI burials and disabled examinations.
  - 38 Title XIX certification.
  - 39 (3) Allowances made under IC 29-1-4-1.
  - 40 (4) All debts and taxes having preference under the laws of the
  - 41 United States.
  - 42 (5) Reasonable and necessary medical expenses of the last
  - 43 sickness of the decedent, including compensation of persons
  - 44 attending ~~him~~: **the decedent**.
  - 45 (6) All debts and taxes having preference under the laws of this
  - 46 state; but no personal representative shall be required to pay any



1 taxes on any property of the decedent unless such taxes are due  
2 and payable before possession thereof is delivered by the personal  
3 representative pursuant to the provisions of IC 29-1.

4 (7) All other claims allowed.

5 (b) No preference shall be given in the payment of any claim over  
6 any other claim of the same class, nor shall a claim due and payable be  
7 entitled to a preference over claims not due.





---

**PRELIMINARY DRAFT**  
**No. 3241**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

**DIGEST**

**Citations Affected:** IC 29-1-7-15.1; IC 29-2-1-6.

**Synopsis:** Probate administration. Specifies that in the case of an unsupervised estate in which it has been determined that a decedent died intestate, a will may not be probated unless it is presented before a closing statement is filed. Provides that the will of a decedent may be presented to the court for probate and admitted to probate at any time if no estate proceedings have been commenced for a decedent and an asset of the decedent remains titled or registered in the name of the decedent. Provides that the will may be probated for the sole purpose of transferring ownership of the asset. Provides that a domiciliary foreign personal representative may exercise all powers of a local unsupervised personal representative.

**Effective:** July 1, 2011.



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 29-1-7-15.1, AS AMENDED BY P.L.95-2007,  
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 15.1. (a) When it has been determined that a  
4 decedent died intestate and letters of administration have been issued  
5 upon the decedent's estate, no will shall be probated unless it is  
6 presented for probate before:

- 7 (1) the court decrees final distribution of the estate; or  
8 (2) **a closing statement has been filed in an unsupervised**  
9 **estate.**

10 (b) No real estate situate in Indiana of which any person may die  
11 seized shall be sold by the executor or administrator of the deceased  
12 person's estate to pay any debt or obligation of the deceased person,  
13 which is not a lien of record in the county in which the real estate is  
14 situate, or to pay any costs of administration of any decedent's estate,  
15 unless letters testamentary or of administration upon the decedent's  
16 estate are taken out within five (5) months after the decedent's death.

17 (c) The title of any real estate or interest therein purchased in good  
18 faith and for a valuable consideration from the heirs of any person who  
19 died seized of the real estate shall not be affected or impaired by any  
20 devise made by the person of the real estate so purchased, unless:

- 21 (1) the will containing the devise has been probated and recorded  
22 in the office of the clerk of the court having jurisdiction within  
23 five (5) months after the death of the testator; or  
24 (2) an action to contest the will's validity is commenced within the  
25 time provided by law and, as a result, the will is ultimately  
26 probated.

27 (d) **Except as provided in subsection (e),** the will of the decedent  
28 shall not be admitted to probate unless the will is presented for probate  
29 before the latest of the following dates:

- 30 (1) Three (3) years after the individual's death.  
31 (2) Sixty (60) days after the entry of an order denying the probate



1 of a will of the decedent previously offered for probate and  
2 objected to under section 16 of this chapter.

3 (3) Sixty (60) days after entry of an order revoking probate of a  
4 will of the decedent previously admitted to probate and contested  
5 under section 17 of this chapter.

6 However, in the case of an individual presumed dead under  
7 IC 29-2-5-1, the three (3) year period commences with the date the  
8 individual's death has been established by appropriate legal action.

9 (e) If:

10 (1) no estate proceedings have been commenced for a  
11 decedent; and

12 (2) an asset of the decedent remains titled or registered in the  
13 name of the decedent;

14 **the will of the decedent may be presented to the court for probate**  
15 **and admitted to probate at any time after the expiration of the**  
16 **deadline determined under subsection (d) for the sole purpose of**  
17 **transferring the asset described in subdivision (2). A will presented**  
18 **for probate under this subsection is subject to all rules governing**  
19 **the admission of wills to probate. A will admitted for probate**  
20 **under this subsection may not be used to divest any person of an**  
21 **ownership interest in property acquired before July 1, 2011.**

22 SECTION 2. IC 29-2-1-6 IS AMENDED TO READ AS FOLLOWS  
23 [EFFECTIVE JULY 1, 2011]: Sec. 6. A domiciliary foreign personal  
24 representative who has complied with section 5 may exercise as to  
25 assets in this state all powers of a local **unsupervised** personal  
26 representative and may maintain actions and proceedings in this state  
27 subject to any conditions imposed upon non-resident parties generally.





---

**PRELIMINARY DRAFT**  
**No. 3323**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

DIGEST

**Citations Affected:** IC 29-1-7-15.1; IC 29-2-1-6.

**Synopsis:** Probate administration. Specifies that in the case of an unsupervised estate in which it has been determined that a decedent died intestate, a will may not be probated unless it is presented before a closing statement is filed. Provides that the will of a decedent may be presented to the court for probate and admitted to probate at any time if no estate proceedings have been commenced for the decedent and an asset of the decedent remains titled or registered in the name of the decedent. Provides that the will may be probated for the sole purpose of transferring ownership of the asset. Provides that a domiciliary foreign personal representative may exercise all powers of a local unsupervised personal representative.

**Effective:** July 1, 2011.





---

**PRELIMINARY DRAFT**  
**No. 3324**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

DIGEST

**Citations Affected:** IC 29-1-7-15.1; IC 29-2-1-6.

**Synopsis:** Probate administration. Specifies that in the case of an unsupervised estate in which it has been determined that a decedent died intestate, a will may not be probated unless it is presented before a closing statement is filed. Provides that the will of a decedent may be presented to the court for probate and admitted to probate at any time if no estate proceedings have been commenced for the decedent and an asset of the decedent remains titled or registered in the name of the decedent. Provides that the will may be probated for the sole purpose of transferring ownership of the asset. Provides that a domiciliary foreign personal representative may exercise all powers of a local unsupervised personal representative.

**Effective:** July 1, 2011.



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 29-1-7-15.1, AS AMENDED BY P.L.95-2007,  
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 15.1. (a) When it has been determined that a  
4 decedent died intestate and letters of administration have been issued  
5 upon the decedent's estate, no will shall be probated unless it is  
6 presented for probate before:

7 (1) the court decrees final distribution of the estate; or

8 (2) **a closing statement has been filed in an unsupervised**  
9 **estate.**

10 (b) No real estate situate in Indiana of which any person may die  
11 seized shall be sold by the executor or administrator of the deceased  
12 person's estate to pay any debt or obligation of the deceased person,  
13 which is not a lien of record in the county in which the real estate is  
14 situate, or to pay any costs of administration of any decedent's estate,  
15 unless letters testamentary or of administration upon the decedent's  
16 estate are taken out within five (5) months after the decedent's death.

17 (c) The title of any real estate or interest therein purchased in good  
18 faith and for a valuable consideration from the heirs of any person who  
19 died seized of the real estate shall not be affected or impaired by any  
20 devise made by the person of the real estate so purchased, unless:

21 (1) the will containing the devise has been probated and recorded  
22 in the office of the clerk of the court having jurisdiction within  
23 five (5) months after the death of the testator; or

24 (2) an action to contest the will's validity is commenced within the  
25 time provided by law and, as a result, the will is ultimately  
26 probated.

27 (d) **Except as provided in subsection (e),** the will of the decedent  
28 shall not be admitted to probate unless the will is presented for probate  
29 before the latest of the following dates:

30 (1) Three (3) years after the individual's death.

31 (2) Sixty (60) days after the entry of an order denying the probate



1 of a will of the decedent previously offered for probate and  
 2 objected to under section 16 of this chapter.

3 (3) Sixty (60) days after entry of an order revoking probate of a  
 4 will of the decedent previously admitted to probate and contested  
 5 under section 17 of this chapter.

6 However, in the case of an individual presumed dead under  
 7 IC 29-2-5-1, the three (3) year period commences with the date the  
 8 individual's death has been established by appropriate legal action.

9 (e) If:

10 (1) **no estate proceedings have been commenced for a**  
 11 **decedent; and**

12 (2) **an asset of the decedent remains titled or registered in the**  
 13 **name of the decedent;**

14 **the will of the decedent may be presented to the court for probate**  
 15 **and admitted to probate at any time after the expiration of the**  
 16 **deadline determined under subsection (d) for the sole purpose of**  
 17 **transferring the asset described in subdivision (2). A will presented**  
 18 **for probate under this subsection is subject to all rules governing**  
 19 **the admission of wills to probate. However, this subsection does not**  
 20 **apply if the deadline determined under subsection (d) with respect**  
 21 **to the decedent's will expires before July 1, 2011.**

22 SECTION 2. IC 29-2-1-6 IS AMENDED TO READ AS FOLLOWS  
 23 [EFFECTIVE JULY 1, 2011]: Sec. 6. A domiciliary foreign personal  
 24 representative who has complied with section 5 may exercise as to  
 25 assets in this state all powers of a local **unsupervised** personal  
 26 representative and may maintain actions and proceedings in this state  
 27 subject to any conditions imposed upon non-resident parties generally.





---

**PRELIMINARY DRAFT  
No. 3244**

**PREPARED BY  
LEGISLATIVE SERVICES AGENCY  
2011 GENERAL ASSEMBLY**

---

**DIGEST**

**Citations Affected:** IC 30-4-2.1; IC 30-4-3-35.

**Synopsis:** Trust construction. Defines "discretionary interest". Specifies that real property transferred to matrimonial trusts for estate planning purposes continues to enjoy the ownership protection of real property owned as joint tenants by the entireties. Provides that the terms of a matrimonial trust may restrict the transfer of matrimonial property. Specifies when property continues to be matrimonial property. Specifies when claims against the property are barred. Specifies when matrimonial trusts cease to be matrimonial trusts.

**Effective:** Upon passage.



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 30-4-2.1-14, AS ADDED BY P.L.6-2010,  
2 SECTION 14, IS AMENDED TO READ AS FOLLOWS: Sec. 14. (a)  
3 The following rules apply only to discretionary interests (**as defined in**  
4 **IC 30-4-2.1-14.5**):

5 (1) A discretionary interest is a mere expectancy that is neither a  
6 property interest nor an enforceable right.

7 (2) A creditor may not:

8 (A) require a trustee to exercise the trustee's discretion to make  
9 a distribution; or

10 (B) cause a court to foreclose a discretionary interest.

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

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

15 (c) Absent express language to the contrary, if the distribution  
16 language in a discretionary interest permits unequal distributions  
17 between beneficiaries or distributions to the exclusion of other  
18 beneficiaries, a trustee may, in the trustee's discretion, distribute all of  
19 the accumulated, accrued, or undistributed income and principal to one  
20 (1) beneficiary to the exclusion of the other beneficiaries.

21 (d) Regardless of whether a beneficiary has any outstanding  
22 creditors, a trustee of a discretionary interest may directly pay any  
23 expense on behalf of the beneficiary and may exhaust the income and  
24 principal of the trust for the benefit of the beneficiary. A trustee is not  
25 liable to a creditor for paying the expenses of a beneficiary who holds  
26 a discretionary interest.

27 SECTION 2. IC 30-4-2.1-14.5 IS ADDED TO THE INDIANA  
28 CODE AS A NEW SECTION TO READ AS FOLLOWS  
29 [EFFECTIVE UPON PASSAGE]: Sec. 14.5. (a) As used in this  
30 section and section 14 of this chapter, "discretionary interest"  
31 refers to any interest over which the trustee has any discretion to



1 make or withhold a distribution.

2 (b) A discretionary interest may be evidenced by permissive  
3 language such as "may make distributions" or may be evidenced  
4 by mandatory distribution language that is negated by the  
5 discretionary language of the trust such as "the trustee shall make  
6 distributions in the trustee's sole and absolute discretion".

7 (c) An interest that includes distribution language that appears  
8 mandatory but is subsequently qualified by discretionary  
9 distribution language is considered a discretionary interest.

10 (d) Trust provisions that create discretionary interests include  
11 the following examples:

12 (1) "The trustee may, in the trustee's sole and absolute  
13 discretion, make distributions for health, education,  
14 maintenance, and support."

15 (2) "The trustee shall, in the trustee's sole and absolute  
16 discretion, make distributions for health, education,  
17 maintenance, and support."

18 (3) "The trustee may make distributions for health, education,  
19 maintenance, and support."

20 (4) "The trustee shall make distributions for health,  
21 education, maintenance, and support. The trustee may  
22 exclude any beneficiary or make unequal distributions among  
23 the beneficiaries."

24 (5) "The trustee may make distributions for health, education,  
25 maintenance, support, comfort, and general welfare."

26 SECTION 3. IC 30-4-3-35, AS ADDED BY P.L.6-2010, SECTION  
27 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON  
28 PASSAGE]: Sec. 35. (a) This section is intended to ensure that if  
29 real property is transferred to one (1) or more revocable trusts  
30 created by a husband and wife for estate planning purposes, the  
31 husband and wife will enjoy the real estate ownership protections  
32 that they would otherwise enjoy if they owned that real property  
33 in an estate by the entireties including an estate by the entireties  
34 created under IC 32-17-3-1.

35 (a) (b) As used in this section, "joint matrimonial trust" means a  
36 single inter vivos trust established under this section by settlors who  
37 are related as husband and wife.

38 (b) (c) As used in this section, "matrimonial property" means real  
39 property that:

40 (1) is subject to a written election to treat the property as  
41 matrimonial property under this section; and

42 (2) is owned by a matrimonial trust.

43 (c) (d) As used in this section, "matrimonial trust" means a trust  
44 established under this section to own matrimonial property.

45 (d) (e) As used in this section, "separate matrimonial trust" means  
46 a separate trust that is also a matrimonial trust.



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

3           ~~(f)~~ **(g)** A matrimonial trust may be established:

4               (1) jointly by a husband and wife; or

5               (2) in two (2) or more separate trusts.

6           ~~(g)~~ **(h)** A husband and wife may elect to treat real property as  
7 matrimonial property with a written statement of the election:

8               (1) in an instrument or instruments conveying the real property to  
9 a matrimonial trust or trusts; or

10              (2) in a separate writing that must be recorded in the county  
11 where the real property is situated and indexed in the records of  
12 the county recorder's office to the instrument or instruments that  
13 convey the real property to a matrimonial trust or trusts.

14           ~~(h)~~ **(i)** A guardian of a husband ~~and~~ or wife may make an election  
15 under this section:

16               (1) without the approval of the court if the guardian has unlimited  
17 powers under IC 29-3-8-4; and

18               (2) with the approval of the court in all other cases.

19           ~~(i)~~ **(j)** An attorney in fact of a husband and wife may ~~make~~ **join in**  
20 **the making of** an election under this section under the powers  
21 conferred upon the attorney in fact by IC 30-5-5-2 if the power of  
22 attorney is recorded in the county where the real property is situated  
23 and indexed in the records of the county recorder's office to the  
24 instrument or instruments that convey the real property to a  
25 matrimonial trust or trusts.

26           ~~(j)~~ **(k)** **The terms of a separate matrimonial trust or a joint**  
27 **matrimonial trust may (but are not required to) restrict the sale or**  
28 **transfer of the matrimonial property for:**

29               **(1) the lifetime of the settlor who dies first;**

30               **(2) the lifetime of the surviving settlor; or**

31               **(3) another defined time period.**

32           **(l)** An interest in matrimonial property is not severable during the  
33 marriage of the husband and wife unless:

34               (1) both the husband and wife join in the severance in writing; or

35               (2) a third party owns and forecloses a mortgage or other lien  
36 against the interests of both the husband and wife in the  
37 matrimonial property.

38           ~~(k)~~ **(m)** Notwithstanding any other provision of this section, the  
39 legal rights of a lienholder that exist at the time of an election to treat  
40 the real property subject to the lien as matrimonial property may not be  
41 subject to a severance described in subsection ~~(j)~~ **(l)** without the  
42 lienholder's written consent.

43           ~~(l)~~ **A matrimonial trust established by an individual (n) To the**  
44 **extent that a matrimonial trust** continues to be a matrimonial trust  
45 after the death of ~~the~~ a settlor **(as provided by subsections (o) and**  
46 **(p):**



1 (1) real property held or owned in a separate trust and for  
 2 which an earlier election was made under this section,  
 3 continues to be marital property; and

4 (2) an unsecured creditor or judgment lien creditor who has  
 5 a claim only against the deceased settlor but not against the  
 6 surviving settlor cannot enforce that claim against the  
 7 deceased settlor's interest or the surviving settlor's interest in  
 8 the marital property.

9 (o) Marital property held in a separate marital trust  
 10 or in a joint marital trust continues to be marital  
 11 property after the death of one (1) settlor:

12 (1) if the settlors reserved a life estate in the marital  
 13 property for each settlor when they conveyed the marital  
 14 property to the marital trust or trusts; or

15 (2) if the deceased settlor's separate trust provides to the surviving  
 16 spouse: settlor:

17 (1) (A) a life estate;

18 (2) (B) an interest that qualifies for a deduction from the gross  
 19 estate of the decedent under Section 2056 of the Internal  
 20 Revenue Code regardless of whether an election is made to  
 21 qualify the interest for the deduction; or

22 (3) (C) in some respect the current right to occupy or receive  
 23 rent, royalties, or other kinds of income with respect to the  
 24 marital property.

25 (m) (p) A separate marital trust established by a deceased  
 26 settlor ceases to be a marital trust upon the termination of  
 27 payments to the surviving spouse settlor as a result of the surviving  
 28 spouse's settlor's death or as a result of the surviving spouse's  
 29 settlor's valid disclaimer of all interests in the separate marital  
 30 property held in the deceased settlor's trust.

31 (n) (q) A joint separate marital trust ceases established by a  
 32 settlor who remains alive continues to be a marital trust upon  
 33 the death of one (1) of the settlors: during that settlor's remaining  
 34 lifetime, so long as the settlor retains the right to use or occupy  
 35 marital property held in the settlor's separate trust.

36 (o) (r) A marital trust ceases to be a marital trust upon the  
 37 dissolution of the marriage of the settlors.

38 (p) (s) A husband and wife may revoke a marital trust by  
 39 together executing a writing expressing the revocation.

40 SECTION 4. An emergency is declared for this act.





---

# PRELIMINARY DRAFT

## No. 3247

PREPARED BY  
LEGISLATIVE SERVICES AGENCY  
2011 GENERAL ASSEMBLY

---

### DIGEST

**Citations Affected:** IC 9-17-3-9; IC 9-31-2-30; IC 32-17-13-1;  
IC 32-17-14.

**Synopsis:** Transfer on death matters. Provides that joint owners and other entities that own motor vehicles and watercraft may transfer title to a motor vehicle or watercraft as a transfer on death transaction. (Current law restricts the procedures to individuals who are the sole owners of motor vehicles or watercraft.) Specifies that the transfer at death of an individual retirement account or a similar account or plan or of benefits under an employee benefit plan is not considered a nonprobate transfer. Provides that the transfer on death act does not apply to certain transfers of retirement or employee benefits. Provides that the endorsement of the county auditor is not necessary to record a transfer on death deed. Removes a provision prohibiting a surviving spouse's election to take against a will from applying to a valid transfer on death transfer. Provides that the affidavit certifying the death of the transferor and cross referencing the transferor's transfer on death deed must be endorsed by the county auditor in order to be recorded.

**Effective:** Upon passage.



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

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

- 1 SECTION 1. IC 9-17-3-9, AS AMENDED BY P.L.6-2010,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 9. (a) ~~An individual whose certificate of title~~  
4 ~~for a vehicle indicates that the individual is the sole owner of The~~  
5 **owner or owners of a vehicle** may create an interest in the vehicle that  
6 is transferrable on the death of the ~~individual~~ **owner or owners** by  
7 obtaining a certificate of title conveying the interest in the vehicle to  
8 one (1) or more named individuals as transfer on death beneficiaries.  
9 (b) Subject to subsection (e), an interest in a vehicle transferred  
10 under this section vests upon the death of the ~~transferor~~ **owner or**  
11 **owners.**  
12 (c) A certificate of title that is:  
13 (1) worded in substance as "A.B. transfers on death to C.D." **or**  
14 **"A.B. and C.D. transfer on death to E.F.";** and  
15 (2) signed by the ~~transferor;~~ **owner or owners;**  
16 is a good and sufficient conveyance on the death of the ~~transferor~~  
17 **owner or owners** to the transferee **or transferees.**  
18 (d) A certificate of title obtained under this section is not required  
19 to be:  
20 (1) supported by consideration; or  
21 (2) delivered to the named transfer on death beneficiary **or**  
22 **beneficiaries;**  
23 to be effective.  
24 (e) Upon the death of ~~an individual~~ **the owner or owners** conveying  
25 an interest in a vehicle in a certificate of title obtained under this  
26 section, the interest in the vehicle is transferred to each beneficiary who  
27 is described by either of the following:  
28 (1) The beneficiary:  
29 (A) is named in the certificate; and  
30 (B) survives the transferor.  
31 (2) The beneficiary:



1 (A) survives the transferor; and  
 2 (B) is entitled to an interest in the vehicle under  
 3 IC 32-17-14-22 following the death of a beneficiary who:

4 (i) is named in the certificate; and  
 5 (ii) did not survive the transferor.

6 (f) A transfer of an interest in a vehicle under this section is subject  
 7 to IC 6-4.1.

8 (g) A certificate of title designating a transfer on death beneficiary  
 9 is not testamentary.

10 (h) In general, IC 32-17-14 applies to a certificate of title  
 11 designating a transfer on death beneficiary. However, a particular  
 12 provision of IC 32-17-14 does not apply if it is inconsistent with the  
 13 requirements of this section or IC 9-17-2-2(b).

14 SECTION 2. IC 9-31-2-30, AS AMENDED BY P.L.6-2010,  
 15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 UPON PASSAGE]: Sec. 30. (a) ~~An individual whose certificate of title~~  
 17 ~~for a watercraft indicates that the individual is the sole owner of The~~  
 18 **owner or owners of a watercraft** may create an interest in the  
 19 watercraft that is transferrable on the death of the ~~individual owner or~~  
 20 **owners** by obtaining a certificate of title conveying the interest in the  
 21 watercraft to one (1) or more named individuals as transfer on death  
 22 beneficiaries.

23 (b) Subject to subsection (e), an interest in a watercraft transferred  
 24 under this section vests upon the death of the ~~transferor: owner or~~  
 25 **owners.**

26 (c) A certificate of title that is:

27 (1) worded in substance as "A.B. transfers on death to C.D." or  
 28 "**A.B. and C.D. transfer on death to E.F.**"; and

29 (2) signed by the ~~transferor; owner or owners;~~

30 is a good and sufficient conveyance on the death of the ~~transferor~~  
 31 **owner or owners** to the transferee or transferees.

32 (d) A certificate of title obtained under this section is not required  
 33 to be:

34 (1) supported by consideration; or

35 (2) delivered to the named transfer on death beneficiary or  
 36 **beneficiaries;**

37 to be effective.

38 (e) Upon the death of ~~an individual~~ **the owner or owners** conveying  
 39 an interest in a watercraft in a certificate of title obtained under this  
 40 section, the interest in the watercraft is transferred to each beneficiary  
 41 who is described by either of the following:

42 (1) The beneficiary:

43 (A) is named in the certificate; and

44 (B) survives the transferor.

45 (2) The beneficiary:

46 (A) survives the transferor; and



1 (B) is entitled to an interest in the watercraft under  
2 IC 32-17-14-22 following the death of a beneficiary who:

- 3 (i) is named in the certificate; and  
4 (ii) did not survive the transferor.

5 (f) A transfer of an interest in a watercraft under this section is  
6 subject to IC 6-4.1.

7 (g) A certificate of title designating a transfer on death beneficiary  
8 is not testamentary.

9 (h) In general, IC 32-17-14 applies to a certificate of title  
10 designating a transfer on death beneficiary. However, a particular  
11 provision of IC 32-17-14 does not apply if it is inconsistent with the  
12 requirements of this section or IC 9-31-2-16.

13 SECTION 3. IC 32-17-13-1, AS AMENDED BY P.L.6-2010,  
14 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 UPON PASSAGE]: Sec. 1. (a) As used in this chapter, "nonprobate  
16 transfer" means a valid transfer, effective at death, by a transferor:

- 17 (1) whose last domicile was in Indiana; and  
18 (2) who immediately before death had the power, acting alone, to  
19 prevent transfer of the property by revocation or withdrawal and:  
20 (A) use the property for the benefit of the transferor; or  
21 (B) apply the property to discharge claims against the  
22 transferor's probate estate.

23 (b) The term does not include a transfer at death (other than a  
24 transfer to or from the decedent's probate estate) of:

- 25 (1) a survivorship interest in a tenancy by the entireties real  
26 estate;  
27 ~~transfer of~~ (2) a life insurance policy or annuity; or ~~payment of~~  
28 (3) the death proceeds of a life insurance policy or annuity;  
29 (4) **an individual retirement account or a similar account or**  
30 **plan; or**  
31 (5) **benefits under an employee benefit plan.**

32 (b) With respect to a nonprobate transfer involving a multiple party  
33 account, a nonprobate transfer occurs if the last domicile of the  
34 depositor whose interest is transferred under IC 32-17-11 was in  
35 Indiana.

36 (c) With respect to a motor vehicle or a watercraft, a nonprobate  
37 transfer occurs if the transferee obtains a certificate of title in Indiana  
38 for:

- 39 (1) the motor vehicle under IC 9-17-2-2(b); or  
40 (2) the watercraft as required by IC 9-31-2-16(a)(1)(C).

41 (d) A transfer on death transfer completed under IC 32-17-14 is a  
42 nonprobate transfer.

43 SECTION 4. IC 32-17-14-2.5 IS ADDED TO THE INDIANA  
44 CODE AS A NEW SECTION TO READ AS FOLLOWS  
45 [EFFECTIVE UPON PASSAGE]: Sec. 2.5. **This chapter does not**  
46 **apply to property, money, or benefits paid or transferred at death**



1 under:

- 2 (1) an employee benefit plan governed by the Employees  
 3 Retirement Income Security Act of 1974;  
 4 (2) an individual retirement account; or  
 5 (3) a similar account or plan intended to qualify for a tax  
 6 exemption or deferral under the Internal Revenue Code;  
 7 unless the provisions of this chapter are incorporated into the  
 8 governing instrument or beneficiary designation in whole or in  
 9 part by express reference.

10 SECTION 5. IC 32-17-14-3, AS AMENDED BY P.L.6-2010,  
 11 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 UPON PASSAGE]: Sec. 3. The following definitions apply throughout  
 13 this chapter:

14 (1) "Beneficiary" means a person designated or entitled to receive  
 15 property because of another person's death under a transfer on  
 16 death transfer.

17 (2) "Beneficiary designation" means a written instrument other  
 18 than a will or trust that designates the beneficiary of a transfer on  
 19 death transfer.

20 (3) "Governing instrument" refers to a written instrument agreed  
 21 to by an owner that establishes the terms and conditions of an  
 22 ownership in beneficiary form.

23 (4) "Joint owners" refers to persons who hold property as joint  
 24 tenants with a right of survivorship. However, the term does not  
 25 include a husband and wife who hold property as tenants by the  
 26 entirety.

27 (5) "LDPS" means an abbreviation of lineal descendants per  
 28 stirpes, which may be used in a beneficiary designation to  
 29 designate a substitute beneficiary as provided in section 22 of this  
 30 chapter.

31 (6) "Owner" refers to a person or persons who have a right to  
 32 designate the beneficiary of a transfer on death transfer.

33 (7) "Ownership in beneficiary form" means holding property  
 34 under a registration in beneficiary form or other written  
 35 instrument that:

36 (A) names the owner of the property;

37 (B) directs ownership of the property to be transferred upon  
 38 the death of the owner to the designated beneficiary; and

39 (C) designates the beneficiary.

40 (8) "Person" means an individual, a sole proprietorship, a  
 41 partnership, an association, a fiduciary, a trustee, a corporation,  
 42 a limited liability company, or any other business entity.

43 (9) "Proof of death" means a death certificate or a record or report  
 44 that is prima facie proof or evidence of an individual's death.

45 (10) "Property" means any present or future interest in real  
 46 property, intangible personal property (as defined in



1 IC 6-4.1-1-5), or tangible personal property (as defined in  
2 IC 6-4.1-1-13). The term includes:

3 (A) a right to direct or receive payment of a debt;

4 (B) a right to direct or receive payment of money or other  
5 benefits due under a contract, account agreement, deposit  
6 agreement, employment contract, ~~compensation plan~~, ~~pension~~  
7 ~~plan~~, ~~individual retirement plan~~, ~~employee benefit plan~~, or  
8 trust or by operation of law;

9 (C) a right to receive performance remaining due under a  
10 contract;

11 (D) a right to receive payment under a promissory note or a  
12 debt maintained in a written account record;

13 (E) rights under a certificated or uncertificated security;

14 (F) rights under an instrument evidencing ownership of  
15 property issued by a governmental agency; and

16 (G) rights under a document of title (as defined in  
17 IC 26-1-1-201).

18 (11) "Registration in beneficiary form" means titling of an  
19 account record, certificate, or other written instrument that:

20 (A) provides evidence of ownership of property in the name of  
21 the owner;

22 (B) directs ownership of the property to be transferred upon  
23 the death of the owner to the designated beneficiary; and

24 (C) designates the beneficiary.

25 (12) "Security" means a share, participation, or other interest in  
26 property, in a business, or in an obligation of an enterprise or  
27 other issuer. The term includes a certificated security, an  
28 uncertificated security, and a security account.

29 (13) "Transfer on death deed" means a deed that conveys an  
30 interest in real property to a grantee by beneficiary designation.

31 (14) "Transfer on death transfer" refers to a transfer of property  
32 that takes effect upon the death of the owner under a beneficiary  
33 designation made under this chapter.

34 (15) "Transferring entity" means a person who:

35 (A) owes a debt or is obligated to pay money or benefits;

36 (B) renders contract performance;

37 (C) delivers or conveys property; or

38 (D) changes the record of ownership of property on the books,  
39 records, and accounts of an enterprise or on a certificate or  
40 document of title that evidences property rights.

41 The term includes a governmental agency, business entity, or  
42 transfer agent that issues certificates of ownership or title to  
43 property and a person acting as a custodial agent for an owner's  
44 property. However, the term does not include a governmental  
45 office charged with endorsing, entering, or recording the transfer  
46 of real property in the public records.



1 SECTION 6. IC 32-17-14-11, AS AMENDED BY P.L.6-2010,  
2 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 11. (a) A transfer on death deed transfers the  
4 interest provided to the beneficiary if the transfer on death deed is:

- 5 (1) executed by the owner or owner's legal representative; and
- 6 (2) recorded with the recorder of deeds in the county in which the  
7 real property is situated before the death of the owner.

8 (b) A transfer on death deed is void if it is not recorded with the  
9 recorder of deeds in the county in which the real property is situated  
10 before the death of the owner.

11 (c) A transfer on death deed is not required to be supported by  
12 consideration or delivered to the grantee beneficiary.

13 (d) A transfer on death deed may be used to transfer an interest in  
14 real property to either a revocable or an irrevocable trust.

15 (e) If the owner records a transfer on death deed, the effect of the  
16 recording the transfer on death deed is determined as follows:

- 17 (1) If the owner's interest in the real property is as a tenant by the  
18 entirety, the conveyance is inoperable and void unless the other  
19 spouse joins in the conveyance.
- 20 (2) If the owner's interest in the real property is as a joint tenant  
21 with rights of survivorship, the conveyance severs the joint  
22 tenancy and the cotenancy becomes a tenancy in common.
- 23 (3) If the owner's interest in the real property is as a joint tenant  
24 with rights of survivorship and the property is subject to a  
25 beneficiary designation, a conveyance of any joint owner's interest  
26 has no effect on the original beneficiary designation for the  
27 nonsevering joint tenant.
- 28 (4) If the owner's interest is as a tenant in common, the owner's  
29 interest passes to the beneficiary as a transfer on death transfer.
- 30 (5) If the owner's interest is a life estate determined by the owner's  
31 life, the conveyance is inoperable and void.
- 32 (6) If the owner's interest is any other interest, the interest passes  
33 in accordance with this chapter and the terms and conditions of  
34 the conveyance establishing the interest. If a conflict exists  
35 between the conveyance establishing the interest and this chapter,  
36 the terms and conditions of the conveyance establishing the  
37 interest prevail.

38 (f) A beneficiary designation in a transfer on death deed may be  
39 worded in substance as "(insert owner's name) conveys and warrants  
40 (or quitclaims) to (insert owner's name), TOD to (insert beneficiary's  
41 name)". This example is not intended to be exhaustive.

42 (g) A transfer on death deed using the phrase "pay on death to" or  
43 the abbreviation "POD" may not be construed to require the liquidation  
44 of the real property being transferred.

45 (h) This section does not preclude other methods of conveying real  
46 property that are permitted by law and have the effect of postponing



1 enjoyment of an interest in real property until after the death of the  
 2 owner. This section applies only to transfer on death deeds and does  
 3 not invalidate any deed that is otherwise effective by law to convey title  
 4 to the interest and estates provided in the deed.

5 **(i) The endorsement of the auditor under IC 36-2-11-14 is not**  
 6 **necessary to record a transfer on death deed.**

7 SECTION 7. IC 32-17-14-23, AS ADDED BY P.L.143-2009,  
 8 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 UPON PASSAGE]: Sec. 23. (a) If, after an owner makes a beneficiary  
 10 designation, the owner's marriage is dissolved or annulled, any  
 11 provision of the beneficiary designation in favor of the owner's former  
 12 spouse is revoked on the date the marriage is dissolved or annulled.  
 13 Revocation under this subsection is effective regardless of whether the  
 14 beneficiary designation refers to the owner's marital status. The  
 15 beneficiary designation is given effect as if the former spouse had not  
 16 survived the owner.

17 (b) Subsection (a) does not apply to a provision of a beneficiary  
 18 designation that:

19 (1) has been made irrevocable, or revocable only with the spouse's  
 20 consent;

21 (2) is made after the marriage is dissolved or annulled; or

22 (3) expressly states that the dissolution or annulment of the  
 23 marriage does not affect the designation of a spouse or a relative  
 24 of the spouse as a beneficiary.

25 (c) A provision of a beneficiary designation that is revoked solely  
 26 by subsection (a) is revived by the owner's remarriage to the former  
 27 spouse or by a nullification of the dissolution or annulment of the  
 28 marriage.

29 ~~(d) This section does not apply to any employee benefit plan~~  
 30 ~~governed by the Employee Retirement Income Security Act of 1974.~~

31 SECTION 8. IC 32-17-14-25, AS AMENDED BY P.L.6-2010,  
 32 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 33 UPON PASSAGE]: Sec. 25. (a) ~~An election under IC 29-1-3-1 does not~~  
 34 ~~apply to a valid transfer on death transfer.~~ In accordance with  
 35 IC 32-17-13, a transfer on death transfer may be subject to the payment  
 36 of the surviving spouse and family allowances under IC 29-1-4-1.

37 (b) A beneficiary designation designating the children of the owner  
 38 or children of any other person as a class and not by name includes all  
 39 children of the person regardless of whether the child is born or  
 40 adopted before or after the beneficiary designation is made.

41 (c) Except as provided in subsection (d), a child of the owner born  
 42 or adopted after the owner makes a beneficiary designation that names  
 43 another child of the owner as the beneficiary is entitled to receive a  
 44 fractional share of the property that would otherwise be transferred to  
 45 the named beneficiary. The share of the property to which each child  
 46 of the owner is entitled to receive is expressed as a fraction in which



1 the numerator is one (1) and the denominator is the total number of the  
2 owner's children.

3 (d) A beneficiary designation or a governing instrument may  
4 provide that subsection (c) does not apply to an owner's beneficiary  
5 designation. In addition, a transferring entity is not obligated to apply  
6 subsection (c) to property registered in beneficiary form.

7 (e) If a beneficiary designation does not name any child of the  
8 owner as the designated beneficiary with respect to a particular  
9 property interest, a child of the owner born or adopted after the owner  
10 makes the beneficiary designation is not entitled to any share of the  
11 property interest subject to the designation.

12 SECTION 9. IC 32-17-14-26, AS AMENDED BY P.L.6-2010,  
13 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 UPON PASSAGE]: Sec. 26. (a) If an agreement between the owner and  
15 a transferring entity is required to carry out a transfer on death transfer  
16 as described in section 7 of this chapter, a transferring entity may not  
17 adopt rules for the making, execution, acceptance, and revocation of a  
18 beneficiary designation that are inconsistent with this chapter. A  
19 transferring entity may adopt the rules imposed by subsection (b) in  
20 whole or in part by incorporation by reference.

21 (b) Except as otherwise provided in a beneficiary designation, a  
22 governing instrument, or any other applicable law, the following rules  
23 apply to a beneficiary designation:

24 (1) A beneficiary designation or a request for registration of  
25 property in beneficiary form must be made in writing, signed by  
26 the owner, dated, and, in the case of a transfer on death deed,  
27 compliant with all requirements for the recording of deeds.

28 (2) A security that is not registered in the name of the owner may  
29 be registered in beneficiary form on instructions given by a broker  
30 or person delivering the security.

31 (3) A beneficiary designation may designate one (1) or more  
32 primary beneficiaries and one (1) or more contingent  
33 beneficiaries.

34 (4) On property registered in beneficiary form, a primary  
35 beneficiary is the person shown immediately following the  
36 transfer on death direction. Words indicating that the person is a  
37 primary beneficiary are not required. The name of a contingent  
38 beneficiary in the registration must have the words "contingent  
39 beneficiary" or words of similar meaning to indicate the  
40 contingent nature of the interest being transferred.

41 (5) Multiple surviving beneficiaries share equally in the property  
42 being transferred unless a different percentage or fractional share  
43 is stated for each beneficiary. If a percentage or fractional share  
44 is designated for multiple beneficiaries, the surviving  
45 beneficiaries share in the proportion that their designated shares  
46 bear to each other.



- 1 (6) A transfer of unequal shares to multiple beneficiaries for  
2 property registered in beneficiary form may be expressed in  
3 numerical form following the name of the beneficiary in the  
4 registration.
- 5 (7) A transfer on death transfer of property also transfers any  
6 interest, rent, royalties, earnings, dividends, or credits earned or  
7 declared on the property but not paid or credited before the  
8 owner's death.
- 9 (8) If a distribution by a transferring entity under a transfer on  
10 death transfer results in fractional shares in a security or other  
11 property that is not divisible, the transferring entity may distribute  
12 the fractional shares in the name of all beneficiaries as tenants in  
13 common or as the beneficiaries may direct, or the transferring  
14 entity may sell the property that is not divisible and distribute the  
15 proceeds to the beneficiaries in the proportions to which they are  
16 entitled.
- 17 (9) On the death of the owner, the property, minus all amounts  
18 and charges owed by the owner to the transferring entity, belongs  
19 to the surviving beneficiaries and, in the case of substitute  
20 beneficiaries permitted under section 22 of this chapter, the lineal  
21 descendants of designated beneficiaries who did not survive the  
22 owner are entitled to the property as follows:
- 23 (A) If there are multiple primary beneficiaries and a primary  
24 beneficiary does not survive the owner and does not have a  
25 substitute under section 22 of this chapter, the share of the  
26 nonsurviving beneficiary is allocated among the surviving  
27 beneficiaries in the proportion that their shares bear to each  
28 other.
- 29 (B) If there are no surviving primary beneficiaries and there  
30 are no substitutes for the nonsurviving primary beneficiaries  
31 under section 22 of this chapter, the property belongs to the  
32 surviving contingent beneficiaries in equal shares or according  
33 to the percentages or fractional shares stated in the  
34 registration.
- 35 (C) If there are multiple contingent beneficiaries and a  
36 contingent beneficiary does not survive the owner and does not  
37 have a substitute under section 22 of this chapter, the share of  
38 the nonsurviving contingent beneficiary is allocated among the  
39 surviving contingent beneficiaries in the proportion that their  
40 shares bear to each other.
- 41 (10) If a trustee designated as a beneficiary:
- 42 (A) does not survive the owner;
- 43 (B) resigns; or
- 44 (C) is unable or unwilling to execute the trust as trustee and  
45 no successor trustee is appointed in the twelve (12) months  
46 following the owner's death;



1 the transferring entity may make the distribution as if the trust did  
2 not survive the owner.

3 (11) If a trustee is designated as a beneficiary and no affidavit of  
4 certification of trust or probated will creating an express trust is  
5 presented to the transferring entity within the twelve (12) months  
6 after the owner's death, the transferring entity may make the  
7 distribution as if the trust did not survive the owner.

8 (12) If the transferring entity is not presented evidence during the  
9 twelve (12) months after the owner's death that there are lineal  
10 descendants of a nonsurviving beneficiary for whom LDPS  
11 distribution applies who survived the owner, the transferring  
12 entity may make the transfer as if the nonsurviving beneficiary's  
13 descendants also failed to survive the owner.

14 (13) If a beneficiary cannot be located at the time the transfer is  
15 made to located beneficiaries, the transferring entity shall hold the  
16 missing beneficiary's share. If the missing beneficiary's share is  
17 not claimed by the beneficiary or by the beneficiary's personal  
18 representative or successor during the twelve (12) months after  
19 the owner's death, the transferring entity shall transfer the share  
20 as if the beneficiary did not survive the owner.

21 (14) A transferring entity has no obligation to attempt to locate a  
22 missing beneficiary, to pay interest on the share held for a missing  
23 beneficiary, or to invest the share in any different property.

24 (15) Cash, interest, rent, royalties, earnings, or dividends payable  
25 to a missing beneficiary may be held by the transferring entity at  
26 interest or reinvested by the transferring entity in the account or  
27 in a dividend reinvestment account associated with a security held  
28 for the missing beneficiary.

29 (16) If a transferring entity is required to make a transfer on death  
30 transfer to a minor or an incapacitated adult, the transfer may be  
31 made under the Indiana Uniform Transfers to Minors Act, the  
32 Indiana Uniform Custodial Trust Act, or a similar law of another  
33 state.

34 (17) A written request for the execution of a transfer on death  
35 transfer may be made by any beneficiary, a beneficiary's legal  
36 representative or attorney in fact, or the owner's personal  
37 representative.

38 (18) A transfer under a transfer on death deed occurs  
39 automatically upon the owner's death subject to the requirements  
40 of subdivision (20) and does not require a request for the  
41 execution of the transfer.

42 (19) A written request for the execution of a transfer on death  
43 transfer must be accompanied by the following:

44 (A) A certificate or instrument evidencing ownership of the  
45 contract, account, security, or property.

46 (B) Proof of the deaths of the owner and any nonsurviving



- 1 beneficiary.
- 2 (C) An inheritance tax waiver from states that require it.
- 3 (D) In the case of a request by a legal representative, a copy of
- 4 the instrument creating the legal authority or a certified copy
- 5 of the court order appointing the legal representative.
- 6 (E) Any other proof of the person's entitlement that the
- 7 transferring entity may require.
- 8 (20) On the death of an owner whose transfer on death deed has
- 9 been recorded, the beneficiary shall file an affidavit in the office
- 10 of the recorder of the county in which the real property is located.
- 11 **The affidavit must be endorsed by the county auditor under**
- 12 **IC 36-2-11-14 in order to be recorded.** The affidavit must
- 13 contain the following:
- 14 (A) The legal description of the property.
- 15 (B) A certified copy of the death certificate certifying the
- 16 owner's death.
- 17 (C) The name and address of each designated beneficiary who
- 18 survives the owner or is in existence on the date of the owner's
- 19 death.
- 20 (D) The name of each designated beneficiary who has not
- 21 survived the owner's death or is not in existence on the date of
- 22 the owner's death.
- 23 (E) A cross-reference to the recorded transfer on death deed.
- 24 (c) A beneficiary designation is presumed to be valid. A party may
- 25 rely on the presumption of validity unless the party has actual
- 26 knowledge that the beneficiary designation was not validly executed.
- 27 A person who acts in good faith reliance on a transfer on death deed is
- 28 immune from liability to the same extent as if the person had dealt
- 29 directly with the named owner and the named owner had been
- 30 competent and not incapacitated.
- 31 **SECTION 10. An emergency is declared for this act.**





---

**PRELIMINARY DRAFT**  
**No. 3402**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

**DIGEST**

**Citations Affected:** IC 29-3.

**Synopsis:** Guardianships. Specifies the notice requirements following court action on a petition to appoint a temporary guardian. Changes the duration of a temporary guardianship from 60 days to 90 days. Authorizes a parent of a minor or a guardian of a protected person to designate a preneed guardian effective upon the death or incapacity of the parent or guardian. Provides that the declaration is effective for 90 days unless the preneed guardian files a petition for guardianship, in which case the declaration is effective until the court rules on the petition. Provides that a delegation of parental powers by power of attorney is effective immediately.

**Effective:** July 1, 2011.



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 29-3-3-4 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) If:

- 3 (1) a guardian has not been appointed for an incapacitated person  
4 or minor;  
5 (2) an emergency exists;  
6 (3) the welfare of the incapacitated person or minor requires  
7 immediate action; and  
8 (4) no other person appears to have authority to act in the  
9 circumstances;

10 the court, on petition by any person or on its own motion, may appoint  
11 a temporary guardian for the incapacitated person or minor for a  
12 specified period not to exceed ~~sixty (60)~~ **ninety (90)** days. No such  
13 appointment shall be made except after notice and hearing unless it is  
14 alleged and found by the court that immediate and irreparable injury to  
15 the person or injury, loss, or damage to the property of the alleged  
16 incapacitated person or minor may result before the alleged  
17 incapacitated person or minor can be heard in response to the petition.  
18 If a temporary guardian is appointed without **advance** notice and the  
19 alleged incapacitated person or minor files a petition that the  
20 guardianship be terminated or the court order modified, the court shall  
21 hear and determine the petition at the earliest possible time.

22 **(b) If:**

- 23 **(1) a petition is filed under this section for the appointment of**  
24 **a temporary guardian; and**  
25 **(2) each person required to receive notice under**  
26 **IC 29-3-6-1(a) has not:**  
27 **(A) received a complete copy of the petition and notice**  
28 **required by IC 29-3-6-2 before the court considers and acts**  
29 **on the petition; or**  
30 **(B) received actual notice of the filing of the petition and**  
31 **specifically waived in writing the necessity for service of**



1           the notice required under IC 29-3-6-2 before the court  
 2           considers and acts on the petition;  
 3           the petitioner shall, immediately after the court enters an order  
 4           scheduling a hearing on the petition or enters an order appointing  
 5           a temporary guardian, serve complete copies of the petition, the  
 6           court's order, and the notice required by IC 29-3-6-2 on every  
 7           person entitled to receive notice under IC 29-3-6-1(a) and on each  
 8           additional person to whom the court directs that notice be given.  
 9           The requirements of this subsection are in addition to the  
 10          petitioner's obligations under Rule 65 of the Indiana Rules of Trial  
 11          Procedure to make a specific showing of the petitioner's efforts to  
 12          provide advance notice to all interested persons or the reasons why  
 13          advance notice cannot or should not be given.

14          (b) (c) If the court finds that a previously appointed guardian is not  
 15          effectively performing fiduciary duties and that the welfare of the  
 16          protected person requires immediate action, the court may suspend the  
 17          authority of the previously appointed guardian and appoint a temporary  
 18          guardian for the protected person for any period fixed by the court. The  
 19          authority of the previously appointed guardian is suspended as long as  
 20          a temporary guardian appointed under this subsection has authority to  
 21          act.

22          (c) (d) A temporary guardian appointed under this section has only  
 23          the responsibilities and powers that are ordered by the court. The court  
 24          shall order only the powers that are necessary to prevent immediate and  
 25          substantial injury or loss to the person or property of the alleged  
 26          incapacitated person or minor in an appointment made under this  
 27          section.

28          (d) (e) Proceedings under this section are not subject to the  
 29          provisions of IC 29-3-4.

30          (e) (f) A proceeding under this section may be joined with a  
 31          proceeding under IC 29-3-4 or IC 29-3-5.

32          SECTION 2. IC 29-3-3-7 IS ADDED TO THE INDIANA CODE  
 33          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 34          1, 2011]: **Sec. 7. (a) A parent of a minor or the guardian of a  
 35          protected person may designate a preneed guardian by making a  
 36          written declaration naming the individual designated to serve as a  
 37          preneed guardian. A declarant may name an alternate to the  
 38          designated preneed guardian if the designated preneed guardian  
 39          refuses to serve, renounces the appointment, dies, or becomes  
 40          incapacitated after the death of the declarant.**

41          (b) A declaration under this section must contain the following  
 42          information:

43                  (1) The names of the declarant and the designated preneed  
 44                  guardian.

45                  (2) The following information concerning each minor child or  
 46                  protected person to be placed in the care and custody of the



1 **designated preneed guardian:**

2 **(A) The person's full name as it appears on the birth**  
 3 **certificate or as ordered by a court.**

4 **(B) The person's date of birth.**

5 **(C) The person's Social Security number, if any.**

6 **(c) A declaration executed under this section must be signed by**  
 7 **the declarant in the presence of a notary public.**

8 **(d) A declaration executed under this section becomes effective**  
 9 **upon the death or incapacity (as defined in IC 29-3-1-7.5) of the**  
 10 **parent or guardian and shall terminate ninety (90) days after the**  
 11 **declaration becomes effective. However, if the designated preneed**  
 12 **guardian files a petition for a guardianship of the minor or**  
 13 **protected person during that ninety (90) day period, the**  
 14 **declaration remains in effect until the court rules on the petition.**

15 SECTION 3. IC 29-3-6-1, AS AMENDED BY P.L.143-2009,  
 16 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17 JULY 1, 2011]: Sec. 1. (a) When a petition for appointment of a  
 18 guardian or for the issuance of a protective order is filed with the court,  
 19 notice of the petition and the hearing on the petition shall be given by  
 20 first class postage prepaid mail as follows:

21 (1) If the petition is for the appointment of a successor guardian,  
 22 notice shall be given unless the court, for good cause shown,  
 23 orders that notice is not necessary.

24 (2) If the petition is for the appointment of a temporary guardian,  
 25 notice shall be given as required by ~~IC 29-3-3-4(a)~~ **IC 29-3-3-4.**

26 (3) If the subject of the petition is a minor, notice of the petition  
 27 and the hearing on the petition shall be given to the following  
 28 persons whose whereabouts can be determined upon reasonable  
 29 inquiry:

30 (A) The minor, if at least fourteen (14) years of age, unless the  
 31 minor has signed the petition.

32 (B) Any living parent of the minor, unless parental rights have  
 33 been terminated by a court order.

34 (C) Any person alleged to have had the principal care and  
 35 custody of the minor during the sixty (60) days preceding the  
 36 filing of the petition.

37 (D) Any other person that the court directs.

38 (4) If it is alleged that the person is an incapacitated person,  
 39 notice of the petition and the hearing on the petition shall be given  
 40 to the following persons whose whereabouts can be determined  
 41 upon reasonable inquiry:

42 (A) The alleged incapacitated person, the alleged incapacitated  
 43 person's spouse, and the alleged incapacitated person's adult  
 44 children, or if none, the alleged incapacitated person's parents.

45 (B) Any person who is serving as a guardian for, or who has  
 46 the care and custody of, the alleged incapacitated person.



1 (C) In case no person other than the incapacitated person is  
 2 notified under clause (A), at least one (1) of the persons most  
 3 closely related by blood or marriage to the alleged  
 4 incapacitated person.

5 (D) Any person known to the petitioner to be serving as the  
 6 alleged incapacitated person's attorney-in-fact under a durable  
 7 power of attorney.

8 (E) Any other person that the court directs.

9 Notice is not required under this subdivision if the person to be  
 10 notified waives notice or appears at the hearing on the petition.

11 (b) Whenever a petition (other than one for the appointment of a  
 12 guardian or for the issuance of a protective order) is filed with the  
 13 court, notice of the petition and the hearing on the petition shall be  
 14 given to the following persons, unless they appear or waive notice:

15 (1) The guardian.

16 (2) Any other persons that the court directs, including the  
 17 following:

18 (A) Any department, bureau, agency, or political subdivision  
 19 of the United States or of this state that makes or awards  
 20 compensation, pension, insurance, or other allowance for the  
 21 benefit of an alleged incapacitated person.

22 (B) Any department, bureau, agency, or political subdivision  
 23 of this state that may be charged with the supervision, control,  
 24 or custody of an alleged incapacitated person.

25 SECTION 4. IC 29-3-9-1, AS AMENDED BY P.L.101-2008,  
 26 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2011]: Sec. 1. (a) By a properly executed power of attorney,  
 28 a parent of a minor or a guardian (other than a temporary guardian) of  
 29 a protected person may delegate to another person for:

30 (1) any period during which the care and custody of the minor or  
 31 protected person is entrusted to an institution furnishing care,  
 32 custody, education, or training; or

33 (2) a period not exceeding twelve (12) months;

34 any powers regarding support, custody, or property of the minor or  
 35 protected person, except the power to consent to the marriage or  
 36 adoption of a protected person who is a minor. **A delegation described  
 37 in this subsection is effective immediately unless otherwise stated  
 38 in the power of attorney.**

39 (b) A person having a power of attorney executed under subsection  
 40 (a) has and shall exercise, for the period during which the power is  
 41 effective, all other authority of the parent or guardian respecting the  
 42 support, custody, or property of the minor or protected person except  
 43 any authority expressly excluded in the written instrument delegating  
 44 the power. However, the parent or guardian remains responsible for any  
 45 act or omission of the person having the power of attorney with respect  
 46 to the affairs, property, and person of the minor or protected person as



1           though the power of attorney had never been executed.

2           (c) Except as otherwise stated in the power of attorney delegating  
3 powers under this section, a delegation of powers under this section  
4 may be revoked by a written instrument of revocation that:

5           (1) identifies the power of attorney revoked; and

6           (2) is signed by the:

7           (A) parent of a minor; or

8           (B) guardian of a protected person;

9           who executed the power of attorney.





---

**PRELIMINARY DRAFT**  
**No. 3403**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2011 GENERAL ASSEMBLY**

---

**DIGEST**

**Citations Affected:** IC 29-3; IC 29-3.5.

**Synopsis:** Guardianships. Enacts the uniform adult guardianship and protective proceedings jurisdiction act. Governs issues concerning original jurisdiction, registration, transfer, and out-of-state enforcement of guardianships and protective orders appointed or issued for adults. Makes conforming changes, including changing the duration of a temporary guardianship from 60 days to 90 days.

**Effective:** July 1, 2011.



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 29-3-2-1, AS AMENDED BY P.L.138-2007,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]: Sec. 1. (a) This article applies to the following:

4 (1) The business affairs, physical person, and property of every  
5 incapacitated person and minor residing in Indiana.

6 (2) Property located in Indiana of every incapacitated person and  
7 minor residing outside Indiana.

8 (3) Property of every incapacitated person or minor, regardless of  
9 where the property is located, coming into the control of a  
10 fiduciary who is subject to the laws of Indiana.

11 (b) Except as provided in subsections (c) through (e), the court has  
12 exclusive original jurisdiction **with respect to an individual who is**  
13 **not an adult (as defined in IC 29-3.5-1-2(1))** over all matters  
14 concerning the following:

15 (1) Guardians.

16 (2) Protective proceedings under IC 29-3-4.

17 **In the case of an adult (as defined in IC 29-3.5-1-2(1)), a court must**  
18 **establish jurisdiction concerning a guardianship or a protective**  
19 **proceeding in accordance with IC 29-3.5-2.**

20 (c) A juvenile court has exclusive original jurisdiction over matters  
21 relating to the following:

22 (1) Minors described in IC 31-30-1-1.

23 (2) Matters related to guardians of the person and guardianships  
24 of the person described in IC 31-30-1-1(10).

25 (d) Except as provided in subsection (c), courts with child custody  
26 jurisdiction under:

27 (1) IC 31-14-10;

28 (2) IC 31-17-2-1; or

29 (3) IC 31-21-5 (or IC 31-17-3-3 before its repeal);

30 have original and continuing jurisdiction over custody matters relating  
31 to minors.



1 (e) A mental health division of a superior court under IC 33-33-49  
 2 has jurisdiction concurrent with the court in mental health proceedings  
 3 under IC 12-26 relating to guardianship and protective orders.

4 (f) Jurisdiction under this section is not dependent on issuance or  
 5 service of summons.

6 SECTION 2. IC 29-3-2-2 IS AMENDED TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The venue for the  
 8 appointment of a guardian or for protective proceedings is as follows:

9 (1) If the alleged incapacitated person or minor resides in Indiana,  
 10 venue is:

11 (A) in the county where the alleged incapacitated person or  
 12 minor resides; or

13 (B) if the proceeding is for the appointment of a temporary  
 14 guardian of the person for an alleged incapacitated person or  
 15 minor who is in need of medical care, in the county where a  
 16 facility is located that is providing or attempting to provide  
 17 medical care to the alleged incapacitated person or minor.

18 (2) If the alleged incapacitated person or minor does not reside in  
 19 Indiana, then venue is in any county where any property of the  
 20 alleged incapacitated person or minor is located. However, if the  
 21 proceeding is for the appointment of a temporary guardian of the  
 22 person for an alleged incapacitated person or minor who is in  
 23 need of medical care, venue is in the county where the facility  
 24 providing or attempting to provide medical care is located.

25 **(3) If the alleged incapacitated person is an adult (as defined**  
 26 **in IC 29-3.5-1-2(1)), venue is determined under the laws of the**  
 27 **state or country having jurisdiction under IC 29-3.5-2.**  
 28 **However, if a court in Indiana has jurisdiction under**  
 29 **IC 29-3.5-2, the rules for determining venue set forth in this**  
 30 **section apply.**

31 (b) If proceedings are commenced in more than one (1) county, they  
 32 shall be stayed except in the county where first commenced until final  
 33 determination of the proper venue by the court in the county where first  
 34 commenced. After proper venue has been determined, all proceedings  
 35 in any county other than the county where jurisdiction has been finally  
 36 determined to exist shall be dismissed. If the proper venue is finally  
 37 determined to be in another county, the court shall transmit the original  
 38 file to the proper county. The proceedings shall be commenced by the  
 39 filing of a petition with the court, and the proceeding first commenced  
 40 extends to all of the property of the minor or the incapacitated person  
 41 unless otherwise ordered by the court.

42 (c) If it appears to the court at any time that:

43 (1) the proceeding was commenced in the wrong county;

44 (2) the residence of the incapacitated person or the minor has  
 45 been changed to another county;

46 (3) the proper venue is determined to be otherwise under the



1 Indiana Rules of Trial Procedure; or  
2 (4) it would be in the best interest of the incapacitated person or  
3 the minor and the property of the minor or the incapacitated  
4 person;

5 the court may order the proceeding, together with all papers, files, and  
6 a certified copy of all orders, transferred to another court in Indiana.  
7 That court shall complete the proceeding as if originally commenced  
8 in that court. The court may in like manner transfer a guardianship or  
9 protective proceeding in Indiana to a court outside Indiana if the other  
10 court assumes jurisdiction to complete the proceeding as if originally  
11 commenced in that court. Before any transfer is made under this  
12 subsection, a hearing pursuant to notice shall be held in the same  
13 manner as provided with respect to the appointment of a guardian.

14 (d) Where a guardian has been appointed by a court that does not  
15 have probate jurisdiction, the matter shall be transferred in accordance  
16 with the proper venue to a court having probate jurisdiction for  
17 qualification of the guardian and for further proceedings in the  
18 guardianship.

19 (e) Nothing in this section shall be construed as a requirement of  
20 jurisdiction.

21 SECTION 3. IC 29-3-3-4 IS AMENDED TO READ AS FOLLOWS  
22 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) If:

- 23 (1) a guardian has not been appointed for an incapacitated person  
24 or minor;
- 25 (2) an emergency exists;
- 26 (3) the welfare of the incapacitated person or minor requires  
27 immediate action; and
- 28 (4) no other person appears to have authority to act in the  
29 circumstances;

30 the court, on petition by any person or on its own motion, may appoint  
31 a temporary guardian for the incapacitated person or minor for a  
32 specified period not to exceed ~~sixty (60)~~ **ninety (90)** days. No such  
33 appointment shall be made except after notice and hearing unless it is  
34 alleged and found by the court that immediate and irreparable injury to  
35 the person or injury, loss, or damage to the property of the alleged  
36 incapacitated person or minor may result before the alleged  
37 incapacitated person or minor can be heard in response to the petition.  
38 If a temporary guardian is appointed without notice and the alleged  
39 incapacitated person or minor files a petition that the guardianship be  
40 terminated or the court order modified, the court shall hear and  
41 determine the petition at the earliest possible time.

42 (b) If the court finds that a previously appointed guardian is not  
43 effectively performing fiduciary duties and that the welfare of the  
44 protected person requires immediate action, the court may suspend the  
45 authority of the previously appointed guardian and appoint a temporary  
46 guardian for the protected person for any period fixed by the court. The



1 authority of the previously appointed guardian is suspended as long as  
 2 a temporary guardian appointed under this subsection has authority to  
 3 act.

4 (c) A temporary guardian appointed under this section has only the  
 5 responsibilities and powers that are ordered by the court. The court  
 6 shall order only the powers that are necessary to prevent immediate and  
 7 substantial injury or loss to the person or property of the alleged  
 8 incapacitated person or minor in an appointment made under this  
 9 section.

10 (d) Proceedings under this section are not subject to the provisions  
 11 of IC 29-3-4.

12 (e) A proceeding under this section may be joined with a proceeding  
 13 under IC 29-3-4 or IC 29-3-5.

14 SECTION 4. IC 29-3-13-1 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Any person  
 16 indebted to an incapacitated person or minor, or having possession of  
 17 property belonging to a minor or incapacitated person, may pay the  
 18 debt or deliver the property to a foreign guardian appointed by a court  
 19 of the state in which the incapacitated person or minor resides upon  
 20 being presented with proof of the foreign guardian's appointment and  
 21 an affidavit made by the foreign guardian stating the following:

22 (1) That the foreign guardian does not know of any other  
 23 guardianship proceeding, relating to the incapacitated person or  
 24 minor, pending in Indiana.

25 (2) That the letters of the foreign guardian were duly issued.

26 **(3) In the case of an incapacitated person who is an adult (as**  
 27 **defined in IC 29-3.5-1-2(1)), that the foreign guardian does**  
 28 **not know of a court in a jurisdiction other than Indiana that**  
 29 **has exercised jurisdiction regarding the incapacitated person**  
 30 **under a law similar to IC 29-3.5-2.**

31 ~~(3)~~ (4) That the foreign guardian is entitled to receive the payment  
 32 or delivery.

33 (b) If the person to whom the affidavit is presented does not know  
 34 of any other guardianship proceeding pending in Indiana, payment or  
 35 delivery in response to the demand and affidavit discharges the debtor  
 36 or possessor from any further liability.

37 SECTION 5. IC 29-3-13-2 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. **(a) This subsection**  
 39 **applies to a guardianship of the property of a minor.** If no guardian  
 40 has been appointed, and no petition in a guardianship proceeding is  
 41 pending in Indiana, a guardian appointed by a court of another state in  
 42 which the ~~incapacitated person~~ or minor is domiciled may file, with an  
 43 Indiana court in a county in which property belonging to the  
 44 ~~incapacitated person~~ or minor is located, an authenticated copy of the  
 45 guardian's appointment and a bond that meets the requirements of  
 46 IC 29-3-7-1 with respect to that part of the property of the ~~incapacitated~~



1 person or minor that is located in that county. After filing the copy and  
2 bond, the foreign guardian may exercise as to the property of the  
3 incapacitated person or minor in that county in Indiana all powers of a  
4 guardian in Indiana and may maintain actions and proceedings in  
5 Indiana.

6 (b) In the case of an incapacitated person who is an adult (as  
7 defined in IC 29-3.5-1-2(1)), a foreign guardian for that adult may  
8 register certified copies of the guardian's letters of office and order  
9 of appointment under IC 29-3.5-4.

10 SECTION 6. IC 29-3-13-3 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. A foreign guardian  
12 submits personally to the jurisdiction of Indiana courts in any  
13 proceeding relating to the property for which the guardian is  
14 responsible by:

- 15 (1) complying with section 2 of this chapter;
- 16 (2) receiving payment of money or taking delivery of property
- 17 belonging to the incapacitated person or a minor in Indiana; or
- 18 (3) doing any act as a guardian in Indiana that would give Indiana
- 19 jurisdiction over the guardian as an individual.

20 SECTION 7. IC 29-3.5 IS ADDED TO THE INDIANA CODE AS  
21 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
22 2011]:

23 **ARTICLE 3.5. UNIFORM ADULT GUARDIANSHIP AND**  
24 **PROTECTIVE PROCEEDINGS JURISDICTION ACT**

25 **Chapter 1. General Provisions**

26 **Sec. 1. This article may be cited as the uniform adult**  
27 **guardianship and protective proceedings jurisdiction act.**

28 **Sec. 2. The following definitions apply throughout this article:**

- 29 (1) "Adult" means either of the following:
  - 30 (A) An individual who has attained eighteen (18) years of
  - 31 age.
  - 32 (B) An emancipated minor who has not attained eighteen
  - 33 (18) years of age.
- 34 (2) "Conservator" means a guardian (as defined in
- 35 IC 29-3-1-6).
- 36 (3) "Guardian" has the meaning set forth in IC 29-3-1-6.
- 37 (4) "Guardianship order" means an order appointing a
- 38 guardian.
- 39 (5) "Guardianship proceeding" means a proceeding in which
- 40 an order for the appointment of a guardian is sought or has
- 41 been issued.
- 42 (6) "Home state" means either of the following:
  - 43 (A) The state in which the respondent was physically
  - 44 present, including any period of temporary absence, for at
  - 45 least six (6) consecutive months immediately before the
  - 46 filing of a petition for a protective order or the



- 1                    appointment of a guardian.  
 2                    (B) In the case of a respondent for whom no state satisfies  
 3                    clause (A), the state in which the respondent was physically  
 4                    present, including any period of temporary absence, for at  
 5                    least six (6) consecutive months ending within the six (6)  
 6                    months prior to the filing of the petition.
- 7                    (7) "Incapacitated person" has the meaning set forth in  
 8                    IC 29-3-1-7.5 with respect to an adult.
- 9                    (8) "Party" means the respondent, petitioner, guardian,  
 10                    conservator, or any other person allowed by the court to  
 11                    participate in a guardianship or protective proceeding.
- 12                    (9) "Person" has the meaning set forth in IC 29-3-1-12.
- 13                    (10) "Protected person" has the meaning set forth in  
 14                    IC 29-3-1-13 with respect to an adult.
- 15                    (11) "Protective order" refers to an order issued under  
 16                    IC 29-3-4.
- 17                    (12) "Protective proceeding" has the meaning set forth in  
 18                    IC 29-3-1-14.
- 19                    (13) "Record" means information that is inscribed on a  
 20                    tangible medium or that is stored in an electronic or other  
 21                    medium and is retrievable in perceivable form.
- 22                    (14) "Respondent" means an adult for whom a protective  
 23                    order or the appointment of a guardian is sought.
- 24                    (15) "Significant connection state" means a state, other than  
 25                    the home state, with which a respondent has a significant  
 26                    connection other than mere physical presence and in which  
 27                    substantial evidence concerning the respondent is available.
- 28                    (16) "State" means a state of the United States, the District of  
 29                    Columbia, Puerto Rico, the United States Virgin Islands, a  
 30                    federally recognized Indian tribe, or any territory or insular  
 31                    possession subject to the jurisdiction of the United States.
- 32                    Sec. 3. A court of this state may treat a foreign country as if it  
 33                    were a state for the purpose of applying this article.
- 34                    Sec. 4. (a) A court of this state may communicate with a court  
 35                    in another state concerning a proceeding arising under this  
 36                    chapter. The court may allow the parties to participate in the  
 37                    communication. Except as otherwise provided in subsection (b), the  
 38                    court shall make a record of the communication. The record may  
 39                    be limited to the fact that the communication occurred.
- 40                    (b) Courts may communicate concerning schedules, calendars,  
 41                    court records, and other administrative matters without making a  
 42                    record.
- 43                    Sec. 5. (a) In a guardianship or protective proceeding in this  
 44                    state, a court of this state may request the appropriate court of  
 45                    another state to do any of the following:
- 46                    (1) Hold an evidentiary hearing.



1 property located in this state under section 4(a)(1) or 4(a)(2) of this  
 2 chapter, if a petition for the appointment of a guardian or issuance  
 3 of a protective order is filed in this state and in another state and  
 4 neither petition has been dismissed or withdrawn, the following  
 5 rules apply:

6 (1) If the court in this state has jurisdiction under section 3 of  
 7 this chapter, it may proceed with the case unless a court in  
 8 another state acquires jurisdiction under provisions similar to  
 9 section 3 of this chapter before the appointment or issuance  
 10 of the order.

11 (2) If the court in this state does not have jurisdiction under  
 12 section 3 of this chapter, whether at the time the petition is  
 13 filed or at any time before the appointment or issuance of the  
 14 order, the court shall stay the proceeding and communicate  
 15 with the court in the other state. If the court in the other state  
 16 has jurisdiction, the court in this state shall dismiss the  
 17 petition unless the court in the other state determines that the  
 18 court in this state is a more appropriate forum.

19 **Chapter 3. Transfer of Guardianship or Conservatorship**

20 **Sec. 1. (a) A guardian appointed in this state may petition the**  
 21 **court to transfer the guardianship to another state.**

22 (b) Notice of a petition under subsection (a) must be given to the  
 23 persons that would be entitled to notice of a petition in this state for  
 24 the appointment of a guardian.

25 (c) On the court's own motion or on request of the guardian, the  
 26 protected person, or other person required to be notified of the  
 27 petition, the court shall hold a hearing on a petition filed under  
 28 subsection (a).

29 (d) The court shall issue an order provisionally granting a  
 30 petition to transfer a guardianship and shall direct the guardian to  
 31 petition for guardianship in the other state if the court is satisfied  
 32 that the guardianship will be accepted by the court in the other  
 33 state and the court finds that:

34 (1) the protected person:

35 (A) is physically present in the other state;

36 (B) is reasonably expected to move permanently to the  
 37 other state; or

38 (C) has a significant connection to the other state as  
 39 determined under IC 29-3.5-2-1;

40 (2) an objection to the transfer has not been made or, if an  
 41 objection has been made, the objector has not established that  
 42 the transfer would be contrary to the interests of the  
 43 protected person;

44 (3) plans for care and services for the protected person in the  
 45 other state are reasonable and sufficient; and

46 (4) adequate arrangements will be made for management of



1 the protected person's property.

2 (e) The court shall issue a final order confirming the transfer  
3 and terminating the guardianship upon its receipt of:

4 (1) a provisional order accepting the proceeding from the  
5 court to which the proceeding is to be transferred which is  
6 issued under provisions similar to section 2 of this chapter;  
7 and

8 (2) the documents required to terminate a guardianship in  
9 this state.

10 Sec. 2. (a) To confirm transfer of a guardianship or  
11 conservatorship transferred to this state under provisions similar  
12 to section 1 of this chapter, the guardian or conservator must  
13 petition the court in this state to accept the guardianship or  
14 conservatorship. The petition must include a certified copy of the  
15 other state's provisional order of transfer.

16 (b) Notice of a petition under subsection (a) must be given to  
17 those persons that would be entitled to notice if the petition were  
18 a petition for the appointment of a guardian or issuance of a  
19 protective order in both the transferring state and this state. The  
20 notice must be given in the same manner as notice is required to be  
21 given in this state.

22 (c) On the court's own motion or on request of the guardian or  
23 conservator, the incapacitated or protected person, or other person  
24 required to be notified of the proceeding, the court shall hold a  
25 hearing on a petition filed under subsection (a).

26 (d) The court shall issue an order provisionally granting a  
27 petition filed under subsection (a) unless:

28 (1) an objection is made and the objector establishes that  
29 transfer of the proceeding would be contrary to the interests  
30 of the incapacitated or protected person; or

31 (2) the guardian or conservator is ineligible for appointment  
32 in this state.

33 (e) The court shall issue a final order accepting the proceeding  
34 and appointing the guardian or conservator as guardian or  
35 conservator in this state upon its receipt from the court from which  
36 the proceeding is being transferred of a final order issued under  
37 provisions similar to section 1 of this chapter transferring the  
38 proceeding to this state.

39 (f) Not later than ninety (90) days after issuance of a final order  
40 accepting transfer of a guardianship or conservatorship, the court  
41 shall determine whether the guardianship or conservatorship needs  
42 to be modified to conform to the law of this state.

43 (g) In granting a petition under this section, the court shall  
44 recognize a guardianship or conservatorship order from the other  
45 state, including the determination of the incapacitated or protected  
46 person's incapacity and the appointment of the guardian or



1 conservator.

2 (h) The denial by a court of this state of a petition to accept a  
3 guardianship or conservatorship transferred from another state  
4 does not affect the ability of the guardian or conservator to seek  
5 appointment as guardian in this state under IC 29-3 if the court has  
6 jurisdiction to make an appointment other than by reason of the  
7 provisional order of transfer.

8 **Chapter 4. Registration and Recognition of Order From Other**  
9 **States**

10 **Sec. 1. If:**

- 11 (1) a guardian has been appointed in another state;  
12 (2) a petition for the appointment of a guardian is not pending  
13 in this state; and  
14 (3) the guardian appointed in the other state gives notice to  
15 the appointing court of an intent to register the guardianship  
16 order;

17 the guardian appointed in the other state may register the  
18 guardianship order in this state by filing certified copies of the  
19 guardian's order and letters of office as a foreign judgment in the  
20 court of this state having probate jurisdiction and venue of the  
21 registered guardianship.

22 **Sec. 2. If:**

- 23 (1) a conservator has been appointed in another state;  
24 (2) a petition for a guardianship or protective order is not  
25 pending in this state; and  
26 (3) the conservator appointed in the other state gives notice to  
27 the appointing court of an intent to register the protective  
28 order;

29 the conservator appointed in the other state may register the  
30 protective order in this state by filing as a foreign judgment  
31 certified copies of the conservator's order, letters of office, and  
32 bond, if any, in the court of this state having probate jurisdiction  
33 in any county in which property belonging to the protected person  
34 is located.

35 **Sec. 3. (a)** Upon registration of a guardianship or protective  
36 order from another state, the guardian or conservator may  
37 exercise in this state all powers authorized in the order of  
38 appointment except as prohibited under the laws of this state,  
39 including maintaining actions and proceedings in this state and, if  
40 the guardian or conservator is not a resident of this state, subject  
41 to any conditions imposed upon nonresident parties.

42 (b) A court of this state may grant any relief available under this  
43 chapter and other laws of this state to enforce a registered order.

44 **Chapter 5. Miscellaneous Provisions**

45 **Sec. 1.** In applying and construing this uniform act,  
46 consideration must be given to the need to promote uniformity of



1 the law with respect to its subject matter among states that enact  
2 it.

3 Sec. 2. This article modifies, limits, and supersedes the federal  
4 Electronic Signatures in Global and National Commerce Act, 15  
5 U.S.C. 7001, et seq., but does not modify, limit, or supersede  
6 Section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic  
7 delivery of any of the notices described in Section 103(b) of that  
8 act, 15 U.S.C. 7003(b).

9 Sec. 3. (a) This article applies as follows:

10 (1) To guardianships and protective orders in existence on  
11 July 1, 2011.

12 (2) To guardianship and protective proceedings begun after  
13 June 30, 2011.

14 (b) In the case of a guardianship or protective proceeding begun  
15 in Indiana before July 1, 2011, jurisdiction is established under  
16 IC 29-3.

17 (c) After June 30, 2011, a guardianship appointed or a  
18 protective order issued by a court exercising jurisdiction  
19 established under subsection (b) may be transferred to another  
20 court in accordance with IC 29-3.5-3.

21 (d) After June 30, 2011, a guardianship or protective proceeding  
22 begun in another state before July 1, 2011, may be registered in  
23 Indiana in accordance with IC 29-3.5-4.

