

Members

Rep. Ralph Foley, Chairperson
Rep. Jud McMillin
Rep. Ed DeLaney
Sen. Joseph Zakas, Vice-Chairperson
Sen. Susan Glick
Sen. John Broden
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
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Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

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

Authority: IC 2-5-16-2

MEETING MINUTES¹

Meeting Date: October 12, 2011
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Ralph Foley, Chairperson; Rep. Jud McMillin; Rep. Ed DeLaney; Sen. Joseph Zakas, Vice-Chairperson; Sen. Susan Glick; Joseph H. Davis; Kris Fruehwald; Thomas Hardin; Judge Thomas Lowe; James Martin; David Pendergast; Timothy Sendak; Jerry Withered.

Members Absent: Sen. John Broden; Dan Reeves.

Rep. Foley called the meeting to order at 1:34 p.m..

Study Topic Assigned by Legislative Council

Legislative Council Resolution 11-02 charged the Commission with studying the following:

¹ 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.

"How the probate code should be amended to permit the sale of real estate located in Indiana to satisfy a claim by:

- (1) the office of Medicaid Policy and Planning;
- (2) the United States;
- (3) the state; or
- (4) a subdivision of the state;

against a decedent regardless of whether letters testamentary or of administration are issued within five months of the decedent's death."

Preliminary Draft (PD) 3124 and Preliminary Draft 3125

Attorney Jeff Kolb, Probate, Trust, and Real Property Section of the Indiana State Bar Association, explained that IC 29-1-7-15.1(b) clears title to real property of an estate without administration, by prohibiting the payment of a decedent's debts or obligations from the sale of real property unless letters testamentary or of administration are issued within five months of death. A letter from the Office of the Attorney General (OAG) (Exhibit 1) was distributed to the Commission concerning a pending appeal that addresses whether IC 29-1-7-15.1(b) bars Medicaid claims filed after the five month deadline. Mr. Kolb explained that PD 3125 (Exhibit 2), extends the deadline to nine months for Medicaid claims. Ross Hooten, attorney for the Commission, discussed PD 3124 (Exhibit 3) which extends the deadline to nine months and also clarifies the language of IC 29-1-7-15.1. The Commission agreed by consent to amend PD 3124 on page 2, lines 29 through 31 of the draft to read "(1) To pay a debt or obligation that is:". PD 3125 was withdrawn from further consideration.

Dawn Hetzel, Deputy Legislative Director, Office of the Secretary of Family and Social Services Administration (FSSA), and Sarah Jagger, Policy Director, Office of Medicaid Policy and Planning (FSSA) stated FSSA's position that IC 29-1-7-15.1(b) does not apply to Medicaid claims. Ms. Jagger said that FSSA would prefer to await the outcome of the appeal referenced in the letter from the OAG before imposing any limitations on Medicaid claim recovery.

Charlie Hiltunen, Indiana Land Title Association, spoke in favor of adding a time limitation for Medicaid claims to prevent granting a non-secured creditor an indefinite right. Mr. Hiltunen said that all real estate titles will be clouded because it won't be immediately ascertainable whether the decedent property owner was a Medicaid recipient. The Commission discussed the federal limitations on the filing of Medicaid liens.

The Commission took action on PD 3124, resulting in a vote of 6 to 6. PD 3124 was not adopted by the Commission because IC 2-5-16-5.5 requires the Commission to have at least 8 affirmative votes to adopt a draft for recommendation to the General Assembly.

Indiana State Bar Proposals/ PD 3142

The Commission discussed PD 3142 (Exhibit 4) which is based upon the legislative proposals provided in the Report from the Probate, Trust, and Real Property Section of the Indiana State Bar Association to the Probate Study Commission (Exhibit 5). Mr. Kolb withdrew the proposal concerning matrimonial trusts and suggested removing SECTION 12 of PD 3142 that dealt with this proposal.

Ms. Sarah Jagger, Policy Director, Office of Medicaid Policy and Planning (FSSA), discussed FSSA's proposed amendment to PD 3142 (Exhibit 6) which would allow \$1750 in funeral expenses to have priority over claims to recover supplemental assistance to the

aged and Medicaid from a recipient's estate. The Commission voted 8 to 3 against the amendment. Commission member Jim Martin's proposed amendment (Exhibit 7) clarifies when an owner's testamentary trust is considered to have come into existence for purposes of IC 32-17-14-21. Mr. Martin's amendment was amended by consent to delete the language "under IC 29-1-7" in IC 32-17-14-21(d) so that the provision would apply not only to estates with administration, but also estates without administration. The Commission voted 13-0 to adopt PD 3142 with SECTION 12 deleted and as amended by Mr. Martin's amendment.

PD 3126

Attorney Jeff Kolb discussed PD 3126 (Exhibit 8) which would place the unauthorized practice of law under the racketeering statutes. Mr. Kolb discussed *State of Indiana ex. rel. Indiana State Bar Association v. United Financial Systems Corporation*, in which non-attorney representatives of an insurance corporation sold wills and trusts in addition to insurance products. Mr. Kolb explained that placing the unauthorized practice of law under the racketeering statutes would permit collection of treble damages, recovery of attorney's fees, asset seizure, and provide other recovery tools. The Commission voted 11-2 in favor of adopting PD 3126.

Recommendations/Final Report

The Commission recommended the following PDs for adoption by the General Assembly:

- (1) PD 3142 As amended, 13 yes votes, 0 no votes, adopted.
- (2) PD 3126 11 yes votes, 2 no votes, adopted.

The Commission voted on the following recommendations to the General Assembly:

- (1) The Commission voted 13-0 in favor of recommending to the General Assembly that no action be taken on limiting the recovery of Medicaid claims out of real property proceeds until the litigation is resolved.
- (2) The Commission voted 12 to 1 in favor of recommending repeal of the Indiana inheritance tax.
- (3) The Commission voted 13 to 0 in favor of a recommendation to increase the Indiana inheritance tax exemption to \$50,000 for a Class B beneficiary and to \$25,000 for Class C beneficiary.

Rep. Foley said that this would be the last meeting of the Commission for the interim.

The Commission voted 13-0 in favor of adopting the Commission's final report.

Rep. Foley adjourned the meeting at 4:55 p.m.



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October 11, 2011

Ms. Susie Howard
Ms. Dawn Hetzel
Family & Social Services Administration
402 West Washington Street, Room W461
Indianapolis, IN 46204

RE: Litigation update

Dear Ms. Howard and Ms. Hetzel:

The Office of the Indiana Attorney General (the "OAG") is appealing, under Cause No. 33A04-1105-ES-246, a ruling from the Henry Superior Court regarding the Estate of Phillip Roy (the "estate"). In August 2009, the OAG, on behalf of the Family & Social Services Administration ("FSSA"), filed a Verified Petition to Open Estate and to Appoint an Administrator to enforce FSSA's claim in the amount of \$39,695.46 for Medicaid benefits received by Mr. Roy during his lifetime. FSSA's claim for Medicaid reimbursement was denied by the co-representatives of the estate. The estate filed a Motion to Void Lien claiming that Ind. Code § 29-1-7-15.1(b) prevents the estate from selling real property to pay FSSA's claim for Medicaid reimbursement because letters testamentary or letters of administration were not issued within five months after the date of Mr. Roy's death. In response, the OAG argued that the provisions of Ind. Code § 29-1-7-15.1(b) do not apply to FSSA's claim. After briefing and a hearing, the Henry Superior Court denied FSSA's claim because it was not timely filed pursuant to Ind. Code § 29-1-14-1(d).

On appeal, the OAG argues that the time limitation set forth in Ind. Code § 29-1-14-1(d) does not apply to FSSA's claim. In fact, the statute specifically states that "claims of the United States, the state, or a subdivision of the state" will not be barred. Ind. Code § 29-1-14-1(a). The estate cross-appeals arguing, *inter alia*, the applicability of Ind. Code § 29-1-7-15.1(b). The OAG's response to the cross-appeal is due on or before November 2, 2011. The OAG anticipates that this appeal will address and resolve the applicability of Ind. Code § 29-1-7-15.1(b) to FSSA's claims for Medicaid reimbursement.

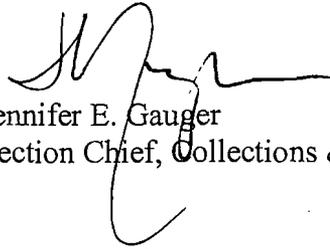
You indicated to me that the Probate Summer Study Committee may consider whether the five month limitation set forth in Ind. Code § 29-1-7-15.1(b) should be extended to nine months. This expansion of time will not necessarily protect taxpayers' claims for Medicaid

PCSC
October 12, 2011
EXHIBIT A

reimbursement. The suggested expansion of time will only delay the issuance of letters testamentary or letters of administration instead of addressing whether the statute can defeat timely filed claims for Medicaid reimbursement.

You may distribute this letter as you deem appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer E. Gauger', with a long horizontal flourish extending to the right.

Jennifer E. Gauger
Section Chief, Collections & Bankruptcy



PRELIMINARY DRAFT
No. 3125

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1-7-15.1.

Synopsis: Payment of Medicaid claims. Provides that real estate may not be sold to pay a Medicaid recovery claim unless letters testamentary or of administration are taken out within nine months after the Medicaid recipient's death. (Current law prevents the sale of real estate to pay a debt of the decedent unless letters testamentary or of administration are taken out within five months after the decedent's death unless the debt is for a lien of record in the county in which the real estate is located or to pay the costs of administering the decedent's estate.)

Effective: July 1, 2012.

PCSC
October 12, 2011
EXHIBIT 2



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.36-2011,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: 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:

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

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 **except claims by the office of Medicaid policy and planning, which**
18 **claims shall not be paid under this provision unless letters**
19 **testamentary or of administration are taken out within nine (9)**
20 **months after the decedent's death.**

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

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

31 (d) Except as provided in subsection (e), the will of the decedent



1 shall not be admitted to probate unless the will is presented for probate
2 before the latest of the following dates:

- 3 (1) Three (3) years after the individual's death.
4 (2) Sixty (60) days after the entry of an order denying the probate
5 of a will of the decedent previously offered for probate and
6 objected to under section 16 of this chapter.
7 (3) Sixty (60) days after entry of an order revoking probate of a
8 will of the decedent previously admitted to probate and contested
9 under section 17 of this chapter.

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

13 (e) This subsection applies with respect to the will of an individual
14 who dies after June 30, 2011. If:

- 15 (1) no estate proceedings have been commenced for a decedent;
16 and
17 (2) an asset of the decedent remains titled or registered in the
18 name of the decedent;

19 the will of the decedent may be presented to the court for probate and
20 admitted to probate at any time after the expiration of the deadline
21 determined under subsection (d) for the sole purpose of transferring the
22 asset described in subdivision (2). A will presented for probate under
23 this subsection is subject to all rules governing the admission of wills
24 to probate.





**PRELIMINARY DRAFT
No. 3124**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 29-1-7-15.1.

Synopsis: Payment of Medicaid claims. Updates language of a statute that specifies when Indiana real estate owned by an individual at the time of the individual's death may be sold to pay debts or obligations of the decedent. Retains current law with respect to: (1) liens on the real estate; (2) costs of administration; and (3) claims other than Medicaid claims. Provides that real estate may be sold to pay a Medicaid claim if an estate is opened within nine months after the decedent's death. (Current law prevents the sale of real estate to pay a debt of the decedent unless letters testamentary or of administration are taken out within five months after the decedent's death, unless the debt is for a lien of record in the county in which the real estate is located or to pay the costs of administering the decedent's estate.)

Effective: July 1, 2012.

PCSC
October 12, 2011
EXHIBIT 3



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.36-2011,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: 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:

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

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 (b) Except as provided in subsection (f), real estate that is:

- 18 (1) located in Indiana; and
19 (2) owned by an individual at the time of the individual's
20 death;

21 **may not be sold by the executor or administrator of the decedent's**
22 **estate to pay any debt or obligation of the decedent.**

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

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



1 probated.

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

- 5 (1) Three (3) years after the individual's death.
6 (2) Sixty (60) days after the entry of an order denying the probate
7 of a will of the decedent previously offered for probate and
8 objected to under section 16 of this chapter.
9 (3) Sixty (60) days after entry of an order revoking probate of a
10 will of the decedent previously admitted to probate and contested
11 under section 17 of this chapter.

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

15 (e) This subsection applies with respect to the will of an individual
16 who dies after June 30, 2011. If:

- 17 (1) no estate proceedings have been commenced for a decedent;
18 and
19 (2) an asset of the decedent remains titled or registered in the
20 name of the decedent;

21 the will of the decedent may be presented to the court for probate and
22 admitted to probate at any time after the expiration of the deadline
23 determined under subsection (d) for the sole purpose of transferring the
24 asset described in subdivision (2). A will presented for probate under
25 this subsection is subject to all rules governing the admission of wills
26 to probate.

27 (f) **Real estate described in subsection (b) may be sold to pay a
28 debt or obligation of the decedent as follows:**

29 **(1) Subject only to the applicable deadlines imposed by
30 IC 29-1-7-7 and IC 29-1-14-1, to pay a debt or obligation that
31 is:**

32 **(A) a lien of record in the county in which the real estate is
33 located; or**

34 **(B) a cost of administering the decedent's estate.**

35 **(2) To pay a claim by the office of Medicaid policy and
36 planning if letters testamentary or of administration are taken
37 out within nine (9) months after the decedent's death.**

38 **(3) To pay a debt or obligation that is not described by
39 subdivision (1) or (2) if letters testamentary or of
40 administration are taken out within five (5) months after the
41 decedent's death.**





PRELIMINARY DRAFT
No. 3142

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 6-4.1; IC 12-14-21-3; IC 12-15-9; IC 29-1;
IC 29-3-3-7; IC 30-4; IC 32-17-14-2.1.

Synopsis: Various estate planning matters. Specifies that an individual holding a beneficial or ownership interests in an entity is considered the transferee when a transferor makes a transfer subject to the inheritance tax to the entity. Provides that the individual is liable for the same percentage of the inheritance tax as the individual's percentage of beneficial or ownership interest in the entity. Provides that reasonable funeral expenses have priority over claims to recover supplemental assistance for the aged and Medicaid from a recipient's estate. (Current law provides that only limited amounts of the funeral expenses have priority over the recovery claim.) Eliminates authority to file a recovery claim against the estate of the recipient's spouse. Specifies that for purposes of the Medicaid recovery statute costs of administration include taxes, penalties, and interest paid by the estate. Eliminates rules of will construction that only applied to decedents dying in 2010. Authorizes foreign wills to be probated after the expiration of the probate deadlines for the same limited purposes that Indiana wills may be probated after the deadlines. Provides that when an estate's resources are insufficient to pay all claims the amount given priority for reasonable funeral expenses is not subject to any reductions for various benefits received by the decedent. Provides that costs of
(Continued next page)

Effective: Upon passage; July 1, 2012.

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PD 3142/DI 92+

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PCSC
October 12, 2011
EXHIBIT 4

Digest Continued

administration include the fee of a surrogate attorney for purposes of determining the priority of claims when an estate's resources are insufficient to pay all claims. Eliminates the requirement that a declaration designating a standby guardian include the Social Security number of a child or protected person. Specifies that a standby guardian has all of the powers granted by the guardianship statute. Provides that amendments to the trust code apply to trusts created prior to the effective date of the amendment unless certain adverse events would occur because of the application of the amendment. Specifies rules for determining whether a surviving settlor's interest in matrimonial trust property will be exposed to creditors after the death of one of the settlors. Provides that amendments to the transfer on death statute apply to transfer on death transfers created before the effective date of the amendment. Repeals rules of trust construction that only applied to decedents dying in 2010.



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 6-4.1-1-3.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]: **Sec. 3.5. "Entity" refers to a partnership, limited
4 partnership, limited liability partnership, association, corporation,
5 limited liability company, trust, or similar entity.**

6 SECTION 2. IC 6-4.1-2-8 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2012]: **Sec. 8. If a transferor makes a taxable transfer to an
9 entity, each individual with a beneficial (whether discretionary or
10 not) or ownership interest in the entity is considered a transferee.
11 Each transferee is liable for the same percentage of the taxes
12 imposed on the taxable transfer as that individual's percentage of
13 beneficial (whether discretionary or not) or ownership interest in
14 the entity.**

15 SECTION 3. IC 12-14-21-3 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 3. Notwithstanding any
17 other law, a claim filed for recovery of aged assistance has priority in
18 order of payment from the estate over all other claims, except the
19 following:**

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

30 SECTION 4. IC 12-15-9-0.5, AS AMENDED BY P.L.246-2005,
31 SECTION 107, IS AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2012]: Sec. 0.5. (a) As used in this chapter,
2 "estate" includes:

3 (1) all real and personal property and other assets included within
4 an individual's probate estate;

5 (2) any interest in real property owned by the individual at the
6 time of death that was conveyed to the individual's survivor
7 through joint tenancy with right of survivorship, if the joint
8 tenancy was created after June 30, 2002;

9 (3) any real or personal property conveyed through a nonprobate
10 transfer; and

11 (4) any sum due after June 30, 2005, to a person after the death of
12 a Medicaid recipient that is under the terms of an annuity contract
13 purchased after May 1, 2005, with the assets of

14 ~~(A) the Medicaid recipient. or~~

15 ~~(B) the Medicaid recipient's spouse.~~

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

18 (1) whose last domicile was in Indiana; and

19 (2) who immediately before death had the power, acting alone, to
20 prevent transfer of the property by revocation or withdrawal and:

21 (A) use the property for the benefit of the transferor; or

22 (B) apply the property to discharge claims against the
23 transferor's probate estate.

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

27 SECTION 5. IC 12-15-9-1, AS AMENDED BY P.L.246-2005,
28 SECTION 108, IS AMENDED TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2012]: Sec. 1. ~~(a) Subject to subsection (b);~~
30 ~~Upon the death of a Medicaid recipient, or upon the death of a~~
31 ~~deceased Medicaid recipient's spouse, the total amount of Medicaid~~
32 ~~paid on behalf of the recipient after the recipient became fifty-five (55)~~
33 ~~years of age must be allowed as a preferred claim against the estate of~~
34 ~~the recipient or the recipient's spouse in favor of the state. The affidavit~~
35 ~~of a person designated by the secretary to administer this section is~~
36 ~~evidence of the amount of the claim and is payable after the payment~~
37 ~~of the following in accordance with IC 29-1-14-9:~~

38 **(1) The expenses of administering the estate, including the**
39 **attorney's fees approved by the court and all taxes, interest,**
40 **and penalties imposed by one (1) or more of the following:**

41 **(A) The federal government.**

42 **(B) A state.**

43 **(C) A political subdivision (as defined in IC 36-1-2-13).**

44 ~~(1) (2) Funeral expenses for the recipient. and the recipient's~~
45 ~~spouse, not to exceed in each individual case three hundred fifty~~
46 ~~dollars (\$350).~~



1 (2) (3) The expenses of the last illness of the recipient ~~and the~~
2 recipient's spouse that are authorized or paid by the office.

3 (3) The expenses of administering the estate, including the
4 attorney's fees approved by the court.

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

8 SECTION 6. IC 12-15-9-5, AS AMENDED BY P.L.246-2005,
9 SECTION 109, IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) The office may not recover
11 on a claim filed ~~file a claim~~ against the estate of a recipient's
12 surviving spouse. ~~while the individual is survived by a child who is:~~

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

14 (2) permanently and totally disabled under criteria established by
15 the federal Supplemental Security Income program.

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

19 SECTION 7. IC 29-1-6-1, AS AMENDED BY P.L.36-2011,
20 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2012]: Sec. 1. In the absence of a contrary intent appearing in
22 the will, wills shall be construed as to real and personal estate in
23 accordance with the rules in this section.

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

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

34 (c) A devise of real or personal estate, whether directly or in trust,
35 to the testator's or another designated person's "heirs", "next of kin",
36 "relatives", or "family", or to "the persons thereunto entitled under the
37 intestate laws" or to persons described by words of similar import, shall
38 mean those persons (including the spouse) who would take under the
39 intestate laws if the testator or other designated person were to die
40 intestate at the time when such class is to be ascertained, domiciled in
41 this state, and owning the estate so devised. With respect to a devise
42 which does not take effect at the testator's death, the time when such
43 class is to be ascertained shall be the time when the devise is to take
44 effect in enjoyment.

45 (d) In construing a will making a devise to a person or persons
46 described by relationship to the testator or to another, any person



1 adopted prior to the person's twenty-first birthday before the death of
2 the testator shall be considered the child of the adopting parent or
3 parents and not the child of the natural or previous adopting parents.
4 However, if a natural parent or previous adopting parent marries the
5 adopting parent before the testator's death, the adopted person shall
6 also be considered the child of such natural or previous adopting
7 parent. Any person adopted after the person's twenty-first birthday by
8 the testator shall be considered the child of the testator, but no other
9 person shall be entitled to establish relationship to the testator through
10 such child.

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

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

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

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

46 (i) If a testator devises real or personal property upon such terms



1 that the testator's intentions with respect to such devise can be
 2 determined at the testator's death only by reference to a fact or an event
 3 independent of the will, such devise shall be valid and effective if the
 4 testator's intention can be clearly ascertained by taking into
 5 consideration such fact or event even though occurring after the
 6 execution of the will.

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

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

- 22 (1) Securities of the same organization acquired because of an
 23 action initiated by the organization or any successor, related, or
 24 acquiring organization, excluding any security acquired by
 25 exercise of purchase options.
- 26 (2) Securities of another organization acquired as a result of a
 27 merger, consolidation, reorganization, or other distribution by the
 28 organization or any successor, related, or acquiring organization.
- 29 (3) Securities of the same organization acquired as a result of a
 30 plan of reinvestment.

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

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

- 38 (1) specifically devised property is sold or mortgaged by; or
- 39 (2) a condemnation award, insurance proceeds, or recovery for
 40 injury to specifically devised property are paid to;

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

46 (m) A written statement or list that:



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

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

17 (1) the unified credit;
 18 (2) the estate tax exemption;
 19 (3) the applicable credit amount;
 20 (4) the applicable exclusion amount;
 21 (5) the generation-skipping transfer tax exemption;
 22 (6) the GST exemption;
 23 (7) the marital deduction;
 24 (8) the maximum marital deduction;
 25 (9) the unlimited marital deduction;
 26 (10) the inclusion ratio;
 27 (11) the applicable fraction;
 28 (12) any section of the Internal Revenue Code:
 29 (A) relating to the:
 30 (i) federal estate tax; or
 31 (ii) generation-skipping transfer tax; and
 32 (B) that measures a share of:
 33 (i) an estate; or
 34 (ii) a trust;
 35 based on the amount that can pass free of federal estate taxes
 36 or the amount that can pass free of federal generation-skipping
 37 transfer tax law; or
 38 (13) a provision of federal estate tax or generation-skipping
 39 transfer tax law that is similar to subdivisions (1) through (12);
 40 refers to the federal estate tax and generation-skipping transfer tax laws
 41 as they applied with respect to estates of decedents on December 31,
 42 2009.

43 (o) Subsection (n) does not apply to a will:
 44 (1) that is executed or amended after December 31, 2009; or
 45 (2) that manifests an intent that a contrary rule apply if the
 46 decedent dies on a date on which there is no then applicable



federal estate or generation-skipping transfer tax:

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

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

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

the personal representative under a will to which subsection (n) applies shall give written notice to the affected beneficiary of the right to commence a proceeding under subsection (r) and to the present income beneficiary of any trust created under the will of the existence of this section and the beneficiary's right to commence a proceeding under subsection (r):

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

SECTION 8. IC 29-1-7-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 25. (a) Any will that has been proved or allowed in any other state or in any foreign country, according to the laws of that state or country, may be received and recorded in this state: ~~within three (3) years after the decedent's death~~

(1) before the deadlines imposed by section 15.1(d) of this chapter unless the will is probated for a purpose described in section 15.1(e) of this chapter; and

(2) in the manner and for the purpose stated in sections 26 and 27 of this chapter.

(b) A foreign will received and recorded for a purpose described in section 15.1(e) may not be admitted to probate for any other purpose and is subject to all rules governing the admission of wills to probate.

SECTION 9. IC 29-1-14-9, AS AMENDED BY P.L.161-2007, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) All claims shall be classified in one (1) of the following classes. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) Costs and expenses of administration.
- (2) Reasonable funeral expenses. ~~However, in any estate in which the decedent was a recipient of public assistance under IC 12-1-1 through IC 12-1-12 (before its repeal) or any of the following, the amount of funeral expenses having priority over any claim for the~~



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



1 and payable before possession thereof is delivered by the personal
2 representative pursuant to the provisions of IC 29-1.

3 (7) All other claims allowed.

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

7 **(c) For purposes of subsection (a), costs and expenses of**
8 **administration include the fee of a surrogate attorney that has**
9 **been:**

10 **(1) approved by a court under the rules of the Indiana**
11 **Supreme Court governing surrogate attorneys; and**

12 **(2) filed as a claim in the estate of a deceased attorney.**

13 SECTION 10. IC 29-3-3-7, AS ADDED BY P.L.178-2011,
14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2012]: Sec. 7. (a) Subject to subsection (e), a parent of a
16 minor or the guardian of a protected person may designate a standby
17 guardian by making a written declaration naming the individual
18 designated to serve as a standby guardian. A declarant may name an
19 alternate to the designated standby guardian if the designated standby
20 guardian is unable to serve, refuses to serve, renounces the
21 appointment, dies, or becomes incapacitated after the death of the
22 declarant.

23 (b) A declaration under this section must contain the following
24 information:

25 (1) The names of the declarant, the designated standby guardian,
26 and the alternate standby guardian, if any.

27 (2) The following information concerning each minor child or
28 protected person for whom a standby guardian is designated by
29 the declaration:

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

32 (B) The person's date of birth.

33 ~~(C) The person's Social Security number, if any.~~

34 (3) A statement that the declaration becomes effective upon the
35 death or incapacity of the declarant.

36 (4) A statement that the declaration terminates ninety (90) days
37 after becoming effective unless the standby guardian files a
38 petition for a guardianship of the minor or protected person
39 during that ninety (90) day period.

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

42 (d) A declaration executed under this section becomes effective
43 upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent
44 or guardian and terminates ninety (90) days after the declaration
45 becomes effective. However, if the designated standby guardian files
46 a petition for a guardianship of the minor or protected person during



1 that ninety (90) day period, the declaration remains in effect until the
2 court rules on the petition.

3 (e) A declaration executed under this section must be considered by,
4 but is not binding upon, the department of child services, a probation
5 department, or a juvenile court for purposes of determining the
6 placement of a child who is the subject of:

- 7 (1) an allegation of child abuse or neglect under IC 31-33;
- 8 (2) an open child in need of services case under IC 31-34; or
- 9 (3) an open delinquency case under IC 31-37.

10 **(f) A standby guardian shall have all the powers granted to a**
11 **guardian under this article.**

12 SECTION 11. IC 30-4-1-4 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (~~Application of~~
14 ~~the Article with Respect to Pre-Existing Trusts~~) **(a)** Except as provided
15 elsewhere in this article, the rules of law contained in this article shall
16 apply to all trusts created prior to September 2, 1971, unless to do so
17 would:

- 18 (1) adversely affect a right given to any beneficiary;
- 19 (2) give a right to any beneficiary which ~~he~~ **the beneficiary** was
20 not intended to have when the trust was created;
- 21 (3) impose a duty or liability on any person which was not
22 intended to be imposed when the trust was created; or
- 23 (4) relieve any person from any duty or liability imposed by the
24 terms of the trust or under prior law.

25 **(b) Except as provided elsewhere in this article, an amendment**
26 **to the rules of law contained in this article applies to all trusts**
27 **created prior to the effective date of the applicable amendment**
28 **unless to do so would:**

- 29 (1) adversely affect a right given to any beneficiary;
- 30 (2) give a right to any beneficiary which the beneficiary was
31 not intended to have when the trust was created;
- 32 (3) impose a duty or liability on any person which was not
33 intended to be imposed when the trust was created; or
- 34 (4) relieve any person from any duty or liability imposed by
35 the terms of the trust or under prior law.

36 SECTION 12. IC 30-4-3-35, AS AMENDED BY P.L.36-2011,
37 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2012]: Sec. 35. (a) This section is intended to ensure that if
39 real property is transferred to one (1) or more revocable trusts created
40 by a husband and wife for estate planning purposes, the husband and
41 wife will enjoy the real estate ownership protections that they would
42 otherwise enjoy if they owned that real property in an estate by the
43 entireties including an estate by the entireties created under
44 IC 32-17-3-1.

45 (b) As used in this section, "joint matrimonial trust" means a single
46 inter vivos trust established under this section by settlors who are



- 1 related as husband and wife.
- 2 (c) As used in this section, "matrimonial property" means real
3 property that:
- 4 (1) is subject to a written election to treat the property as
5 matrimonial property under this section; and
6 (2) is owned by a matrimonial trust.
- 7 (d) As used in this section, "matrimonial trust" means a trust
8 established under this section to own matrimonial property.
- 9 (e) As used in this section, "separate matrimonial trust" means a
10 separate trust that is also a matrimonial trust.
- 11 (f) As used in this section, "separate trust" means a trust established
12 by one (1) individual.
- 13 (g) A matrimonial trust may be established:
- 14 (1) jointly by a husband and wife; or
15 (2) in two (2) or more separate trusts.
- 16 (h) A husband and wife may elect to treat real property as
17 matrimonial property with a written statement of the election:
- 18 (1) in an instrument or instruments conveying the real property to
19 a matrimonial trust or trusts; or
20 (2) in a separate writing that must be recorded in the county
21 where the real property is situated and indexed in the records of
22 the county recorder's office to the instrument or instruments that
23 convey the real property to a matrimonial trust or trusts.
- 24 (i) A guardian of a husband or wife may make an election under this
25 section:
- 26 (1) without the approval of the court if the guardian has unlimited
27 powers under IC 29-3-8-4; and
28 (2) with the approval of the court in all other cases.
- 29 (j) An attorney in fact of a husband and wife may join in the making
30 of an election under this section under the powers conferred upon the
31 attorney in fact by IC 30-5-5-2 if the power of attorney is recorded in
32 the county where the real property is situated and indexed in the
33 records of the county recorder's office to the instrument or instruments
34 that convey the real property to a matrimonial trust or trusts.
- 35 (k) The terms of a separate matrimonial trust or a joint matrimonial
36 trust may (but are not required to) restrict the sale or transfer of the
37 matrimonial property for:
- 38 (1) the lifetime of the settlor who dies first;
39 (2) the lifetime of the surviving settlor; or
40 (3) another defined time period.
- 41 (l) An interest in matrimonial property is not severable during the
42 marriage of the husband and wife unless:
- 43 (1) both the husband and wife join in the severance in writing; or
44 (2) a third party owns and forecloses a mortgage or other lien
45 against the interests of both the husband and wife in the
46 matrimonial property.



1 (m) Notwithstanding any other provision of this section, the legal
 2 rights of a lienholder that exist at the time of an election to treat the real
 3 property subject to the lien as marital property may not be subject
 4 to a severance described in subsection (l) without the lienholder's
 5 written consent.

6 (n) To the extent that a marital trust continues to be a
 7 marital trust after the death of a settlor (as provided by
 8 subsections ~~(o)~~ (p) and ~~(q)~~: (r):

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

12 (2) an unsecured creditor or judgment lien creditor who has a
 13 claim only against the deceased settlor but not against the
 14 surviving settlor cannot enforce that claim against the deceased
 15 settlor's interest or the surviving settlor's interest in the
 16 marital property.

17 (o) **After the death of a settlor of a separate marital trust
 18 or a joint marital trust, the issue whether the surviving
 19 settlor's interest in the marital property will be exposed to the
 20 claims of the surviving settlor's existing creditors or new creditors
 21 must be determined according to:**

22 (1) **the nature and extent of the surviving settlor's interest in
 23 the marital property under the terms of the deceased
 24 settlor's separate trust or the joint trust;**

25 (2) **all the other relevant facts and circumstances; and**

26 (3) **pertinent principles of non-trust law.**

27 ~~(o)~~ (p) Marital property held in a separate marital trust or
 28 in a joint marital trust continues to be marital property after
 29 the death of one (1) settlor:

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

33 (2) if the deceased settlor's trust (**whether it is a separate trust or
 34 a joint marital trust**) provides to the surviving settlor:

35 (A) a life estate;

36 (B) an interest that qualifies for a deduction from the gross
 37 estate of the decedent under Section 2056 of the Internal
 38 Revenue Code regardless of whether an election is made to
 39 qualify the interest for the deduction; or

40 (C) in some respect the current right to occupy or receive rent,
 41 royalties, or other kinds of income with respect to the
 42 marital property.

43 ~~(p)~~ (q) A separate marital trust established by a deceased
 44 settlor ceases to be a marital trust upon the termination of
 45 payments to the surviving settlor as a result of the surviving settlor's
 46 death or as a result of the surviving settlor's valid disclaimer of all



1 interests in the matrimonial property held in the deceased settlor's trust.

2 (q) (r) A separate matrimonial trust established by a settlor who
3 remains alive continues to be a matrimonial trust during that settlor's
4 remaining lifetime, so long as the settlor retains the right to use or
5 occupy matrimonial property held in the settlor's separate trust.

6 (r) (s) A matrimonial trust ceases to be a matrimonial trust upon the
7 dissolution of the marriage of the settlors.

8 (s) (t) A husband and wife may revoke a matrimonial trust by
9 together executing a writing expressing the revocation.

10 SECTION 13. IC 32-17-14-2.1 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. An amendment to the**
13 **rules of law contained in this chapter applies to all transfer on**
14 **death transfers created prior to the effective date of the applicable**
15 **amendment.**

16 SECTION 14. IC 30-4-2.1-13 IS REPEALED [EFFECTIVE JULY
17 1, 2012].

18 SECTION 15. **An emergency is declared for this act.**



REPORT FROM
PROBATE TRUST AND REAL PROPERTY SECTION
OF THE
INDIANA STATE BAR ASSOCIATION
TO THE
PROBATE CODE STUDY COMMISSION
AUGUST 31, 2011

PCSC
OCTOBER 12, 2011
EXHIBIT 5

**REPORT FROM
PROBATE TRUST AND REAL PROPERTY SECTION
OF THE
INDIANA STATE BAR ASSOCIATION
TO THE
PROBATE CODE STUDY COMMISSION
AUGUST 31, 2011**

The Probate Trust and Real Property Section of the Indiana State Bar Association (Section) provides the following legislative changes for the 2012 legislative session. It appreciates the willingness of the Probate Code Study Commission (PCSC) to work with the Section on improving Indiana laws.

1. **ASSET PROTECTION TRUST.** This issue was first presented to the PCSC in 2008. Under current Indiana law, a person cannot create a trust where trust assets will be protected from claims of the persons creditors. As of this date, thirteen (13) states adopted statutes which allow the creation of a self settled asset protection trust under certain conditions. A review of twelve of those asset protection states (excepting Hawaii) is contained under **Tab A**. One of the leading states in this area is Delaware. Its language was codified by Tennessee. Attached as **Tab B** is language adapted from Delaware and Tennessee for enactment in Indiana. An asset protection trust cannot be set up to defraud creditors and the rights of spouses and child support are protected. The statute also provides that the rule against perpetuities does not apply to an asset protection trust. This allows Indiana estate planners to create a trust for future generations known as a dynasty trust.
2. **MEDICAID CLAIM – COORDINATION WITH PROBATE CODE.** Under I.C. 12-15-9-1, Medicaid is given a high priority claim for reimbursement against estates of decedents who received Medicaid. However, the statute is not coordinated with the claim statute under the probate code found at I.C. 29-1-14-9. This amendment makes it clear that the Medicaid claim does not have priority over prior recorded encumbrances, taxes, reasonable costs of administration and reasonable funeral expenses. This relieves a specific problem that arises when taxes are owed to federal or state agencies. There is personal liability for the fiduciary if the taxes are not paid before any other distribution is made. **Tab C** contains these changes.
3. **INHERITANCE TAX – ENTITY – TRANSFEREE.** Sometimes, transfers subject to the Indiana Inheritance tax are made on death to an entity. For example, a deed may be TOD with the property to a trust or an LLC. There is confusion on who is the transferee under those circumstances. If the entity is the transferee, it would be a Class C transferee. However, the owner or beneficiary may be a Class A transferee if the transfer was made by an individual. These changes make it clear that a taxable transfer to an entity is to be taxed as though the transferee was the individual who owned the beneficial or ownership interest. See **Tab D**.
4. **REPEAL OF RULES OF CONSTRUCTION RELATED TO FEDERAL ESTATE TAX.** In 2010, the Indiana legislature adopted rules of construction for wills and trusts related to the repeal of the federal estate tax in 2010. The provisions basically treated formula clauses as applying to the federal estate tax laws as they existed in 2009. This was to avoid overfunding

bypass trust. In late 2010, Congress amended the federal estate tax laws to remove many of the concerns addressed by these rules of construction. As a result, they now can be repealed. See **Tab E**.

5. **FOREIGN WILLS – TIME TO RECORD.** In 2011, the legislature removed the three year limitation on the probate of wills in Indiana. There is a similar three year limitation for allowing a foreign will proved in a foreign state to be received and recorded in Indiana. The change would conform the time limit to be the same as that for wills probated in Indiana. See **Tab F**.

6. **STANDBY GUARDIAN – POWERS.** In 2011, the legislature adopted the concept of the standby trustee. There is confusion over the powers granted to a standby trustee. The major change in this section gives the standby guardian all the powers granted to a guardian under the guardianship code. Another technical correction was made by removing the requirement that the declaration designating a standby guardian give the protected persons social security number. See **Tab G**.

7. **TRUST – AMENDMENTS – RETROACTIVITY.** A recent Court of Appeals case pointed out there may be a gap in the current trust code for trusts created after September 2, 1971 but before some of the amendments to the trust code. The proposed change would make it clear that amendments did apply to trust created prior to the effective date of the applicable amendment. See **Tab H**.

8. **MATRIMONIAL TRUST – SEPARATE TRUST.** In 2011, the concept of the matrimonial trust was adopted in Indiana. Simply stated, it retains the tenancy by the entireties protection from creditors for property transferred by a husband and wife to a trust. There is an ambiguity concerning what the protection provided after the death of the first spouse and whether that protection applies to joint trusts as well as separate trusts. This small technical correction makes it clear that the protection applies to any matrimonial trust and not just to a separate matrimonial trust. See **Tab I**.

9. **TRANSFER ON DEATH – AMENDMENT – RETROACTIVITY.** In 2009, Indiana adopted a comprehensive Transfer on Death Act which was retroactive under the terms of the statute. Similar to the changes made to the trust code, there is a possibility that future amendments to the act may be questioned as to whether they apply to transfers on death created after July 1, 2009. This change makes it clear that the act, as amended, applies to any and all transfers made after July 1, 2009. See **Tab J**.

Comparison of the Twelve Domestic Asset Protection Statutes

Updated Through November, 2008

by David G. Shaftel
Anchorage, Alaska*

Editors' Synopsis: This recently updated chart provides a summary and comparison of the characteristics and attributes of domestic asset protection trusts in those states which have enacted such legislation.

INTRODUCTION

A domestic asset protection trust (hereinafter referred to as a "DAPT") is generally, an irrevocable trust with an independent trustee who has absolute discretion to make distributions to a class of beneficiaries which includes the settlor. The primary goals of DAPTs are asset protection and, if so designed, transfer tax minimization.

Prior to 1997, several states had statutory provisions which appear to support the formation of DAPTs. In 1997, Alaska was the first state to enact a usable DAPT statute. In the ten years since, other states have followed suit. There are now eleven (arguably 12, if Colorado is included) states that allow for the formation of DAPTs.

Legislatures have taken different approaches. The original statutes are terse and only indicate a public policy (Missouri and Colorado). Some of the new statutes amend existing statutes, and others enact new "Acts." Interest groups within the various states have influenced the extent of the asset protection provided by the statutes.

If implemented correctly, the DAPT approach may be used successfully by residents of states with

DAPT statutes. An interesting issue remains whether non-residents of DAPT states may form a DAPT under one of the DAPT state's laws and obtain the desired asset protection and tax benefits. The analysis of this issue involves the conflict of laws. The most likely test is whether the non-resident's domiciliary state has a "strong public policy" against DAPT asset protection. The fact that twelve states now have DAPT statutes moves this approach from the eccentric anomaly category to an accepted asset protection and transfer tax minimization planning technique. As more and more states enact DAPT statutes, the conclusion that a non-DAPT state has a "strong public policy" against a DAPT trust seems less likely.

The DAPT chart below is designed to give the reader an easy and quick comparison of the various DAPT statutes. A chart, by its very nature, is an oversimplification. The reader is urged to carefully analyze the provisions of a statute before implementing a DAPT.

The following ACTEC Fellows generously reviewed and edited their state's summaries for accuracy: Marc A. Chorney (Colorado); Richard G. Bacon (Delaware); Larry P. Katzenstein (Missouri); Layne Rushforth (Nevada); William Zorn (New Hampshire); Richard B. Kells (Oklahoma); Mary Louise Kennedy (Rhode Island); John H. Raforth (South Dakota); Bryan Howard (Tennessee); Thomas Christensen, Jr. (Utah); and Robert H. Leonard (Wyoming).

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SUBJECT	ALASKA	COLORADO**	DELAWARE	MISSOURI
	Citation: Alaska Stat. § 34.40.110	Citation: Colo. Rev. Stat. §§ 38-10-111	Citation: Del. Code Ann. tit. 12, §§ 3570-3576	Citation: Mo. Rev. Stat. §§ 456.5-505
	Effective Date: April 2, 1997	Effective Date: 1861	Effective Date: July 1, 1997	Effective Date: 1989
	URL: http://www.legis.state.ak.us	URL: http://www.state.co.us	URL: http://www.delcode.state.de.us	URL: http://www.moga.mo.gov
1. What requirements must trust meet to come within protection of statute?	Trust instrument must: (1) be irrevocable; (2) expressly state AK law governs validity, construction, and administration of trust (unless trust is being transferred to AK trustee from non-AK trustee); (3) contain spendthrift clause.	In trust, limited to future creditors.	Trust instrument must: (1) be irrevocable; (2) expressly state that DE law governs validity, construction, and administration of trust (unless trust is being transferred to DE trustee from non-DE trustee); (3) contain spendthrift clause.	Trust instrument must: (1) be irrevocable; (2) contain a spendthrift clause; (3) have more than the settlor as a beneficiary; (4) settlor's interest must be discretionary.
2. May a revocable trust be used for asset protection?	No.	No.	No.	No.
3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	Yes, amendments enacted in: 2006, 2004, 2003, 2001, 2000, and 1998.	No amendments.	Yes, amendments enacted in: 2008, 2007, 2006, 2005, 2003, 2002, 2001, 2000, and 1998.	Amendments enacted in 2004.
4. What contacts with state are suggested or required to establish situs?	Suggested: (1) some or all of trust assets deposited in state; (2) AK trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns (can be non-exclusive); (3) part or all of the administration occurs in state, including maintenance of records.	Not addressed by statute.	Required: (1) some or all of trust assets deposited in state; (2) DE trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust.	Principal place of business or residence of trustee in designated jurisdiction, or presence of all or part of the administration in designated jurisdiction; statute includes procedure for transfer of principal place of business. RSMo § 456.11-1108

** It is unclear whether Colorado's statute qualifies as a DAPT statute. Compare *In Re Baum*, 22 F.3d 1014, 1017 (10th Cir. 1994), with *In the Matter of Cohen*, 8 P.3d 429 (Colo. 1999). See also Howard D. Rosen and Gideon Rothschild, 810 2nd T.M., *ASSET PROTECTION PLANNING*, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors).

SUBJECT	ALASKA	COLORADO**	DELAWARE	MISSOURI
5. What interests in principal and income may settlor retain?	Settlor may retain interests in: (1) CRT; (2) total-return trust; (3) GRAT or GRUT; (4) QPRT; (5) IRA.	Not addressed by statute.	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) GRAT or GRUT; (5) QPRT; (6) qualified annuity interest; (7) ability to be reimbursed for income taxes attributable to trust; and (8) the ability to have debts, expenses and taxes of the settlor's estate paid from the trust.	Settlor may be one of a class of beneficiaries of a trust discretionary as to income or principal. RSMo § 456.5-505.3
6. What is trustee's distribution authority?	Absolute discretion.	Not addressed by statute.	(1) Discretion; or (2) pursuant to a standard.	Not directly addressed by statute.
7. What powers may settlor retain?	Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; and (3) right to appoint trust protector of trustee advisor.	Not addressed by statute.	Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; and (3) power to replace trustee/advisor.	None.
8. Who must serve as trustee to come within protection of statute?	Alaska trustee not required, but suggested to establish situs. Resident individual or trust company or bank that possesses trust powers and has principal place of business in Alaska.	Not addressed by statute.	Resident individual or corporation whose activities are subject to supervision by Delaware Bank Commissioner, FDIC, Comptroller of Currency, or Office of Thrift Supervision.	Not addressed by statute.
9. May non-qualified trustees serve?	Yes.	Not addressed by statute.	Yes, as a co-trustee.	Not addressed by statute.
10. May trust have distribution advisor, investment advisor, or trust protector?	Yes. Trust may have trust protector (who must be disinterested third party) and trustee advisor. Settlor may be advisor if does not have trustee power over discretionary distributions.	Not addressed by statute.	Yes. Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or	Not addressed by statute.

** It is unclear whether Colorado's statute qualifies as a DAPT statute. *Compare* In Re Baum, 22 F.3d 1014, 1017 (10th Cir. 1994), with In the Matter of Cohen, 8 P.3d 429 (Colo. 1999). *See also* Howard D. Rosen and Gideon Rothschild, 810 2nd T.M., ASSET PROTECTION PLANNING, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors).

SUBJECT	ALASKA	COLORADO**	DELAWARE	MISSOURI
10. (Continued)			disapprove distributions from trust. Trust may have investment advisor, including trustor. The term "advisor" includes a protector.	
11. Are fraudulent transfers excepted from coverage?	Yes. Alaska has not adopted Uniform Fraudulent Transfer Act. Alaska statute sets aside transfers made with intent to defraud.	Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with actual intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. However, future creditors may set aside transfer only if transfer made with intent to defraud.	Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent. RSMo § 456.5-505.
12. Fraudulent transfer action: burden of proof and statute of limitations.	Burden not addressed by statute. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered, but future creditor must establish claim within four years after transfer. <u>Future creditors:</u> Four years after transfer.	Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.	Clear and convincing evidence. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Four years after transfer.	Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.
13. Does statute provide an exception (no asset protection) for a child support claim?	Yes, if settlor was 30 days or more in default of making payment at time of transfer of assets to trust.	No.	Yes.	Yes. RSMo § 456.5-503.2
14. Does the statute provide an exception (no asset protection) for alimony?	No.	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.	Yes. RSMo § 456.5-503.2

** It is unclear whether Colorado's statute qualifies as a DAPT statute. Compare *In Re Baum*, 22 F.3d 1014, 1017 (10th Cir. 1994), with *In the Matter of Cohen*, 8 P.3d 429 (Colo. 1999). See also Howard D. Rosen and Gideon Rothschild, 810 2nd T.M., ASSET PROTECTION PLANNING, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors).

SUBJECT	ALASKA	COLORADO**	DELAWARE	MISSOURI
15. Does statute provide an exception (no asset protection) for property division upon divorce?	Yes, if assets were transferred to trust during or less than 30 days prior to marriage. Otherwise, assets are protected.	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.	No.
16. Does statute provide an exception (no asset protection) for tort claims?	No.	No.	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer.	No.
17. Does statute provide other express exceptions (no asset protection)?	No.	No.	No.	Yes if another governing law supercedes.
18. Does statute prohibit any claim for forced heirship, legitime or elective share?	No.	No.	Yes.	No.
19. Are there provisions for moving trust to state and making it subject to statute?	Yes.	No.	Yes.	No.
20. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes.	No.	Yes.	No.
21. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?	No.	No.	Yes.	No.

** It is unclear whether Colorado's statute qualifies as a DAPT statute. Compare *In Re Baum*, 22 F.3d 1014, 1017 (10th Cir. 1994), with *In the Matter of Cohen*, 8 P.3d 429 (Colo. 1999). See also Howard D. Rosen and Gideon Rothschild, 810 2nd T.M., *ASSET PROTECTION PLANNING*, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors).

SUBJECT	ALASKA	COLORADO**	DELAWARE	MISSOURI
22. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	Yes.	No.	Yes.	No.
23. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	Yes, and also provides protection for funding limited partnerships and LLCs.	No.	Yes.	No.
24. Does statute authorize a beneficiary to use or occupy real property or intangible personal property owned by trust, if in accordance with trustee's discretion?	Yes.	No.	No, except for QPRT residence.	No.
25. Is a non-settlor beneficiary's interest protected from property division at divorce?	Yes, and may not be considered in property division.	Increases in the value of and income from separate property after marriage are marital property.	Yes, but may be considered in property division.	Yes, but may be considered in property division.
26. Are due diligence procedures required by statute?	Yes; affidavit required.	No.	No.	No.
27. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?	Yes.	No.	Yes.	Yes. RSMo § 456.7-709.

** It is unclear whether Colorado's statute qualifies as a DAPT statute. Compare *In Re Baum*, 22 F.3d 1014, 1017 (10th Cir. 1994), with *In the Matter of Cohen*, 8 P.3d 429 (Colo. 1999). See also Howard D. Rosen and Gideon Rothschild, 810 2nd T.M., ASSET PROTECTION PLANNING, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors).

SUBJECT	ALASKA	COLORADO**	DELAWARE	MISSOURI
28. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?	Yes.	No.	Yes.	No.
29. Is the trustee given "decanting" authority to modify the trust?	Yes.	No.	Yes.	No.
30. What is allowable duration of trusts?	Up to 1,000 years.	Up to 1,000 years.	Abolished rule against perpetuities for personal property (which includes LLC and LP interests). 110 years for real property.	Abolished rule against perpetuities when trustee has power of sale; generally effective for trusts created only on or after August 28, 2001. RSMo § 456.025.1
31. Does state assert income tax against DAPTs formed by non-resident settlors?	No.	Yes.	No. However, does impose its income tax upon trusts that accumulate income for Delaware residents.	Yes, if from sources within Missouri. Probably no if from marketable securities.
32. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	Yes, charging order is only remedy.	Yes, charging order is only remedy.	Yes, charging order is only remedy.	Yes, charging order is only remedy.
33. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	(1) Trustee petition and court discharge; or (2) six months after trustee provides report that adequately discloses claims.	Six months after receipt of a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary.	Trustee filing and court discharge. Discharge occurs two years after delivery of statement that discloses the facts giving rise to the claim. (Accountings do not have <i>res judicata</i> effect in Delaware except as to matters actually contested in the accounting proceeding.)	One year after trustee provides report that adequately discloses claims. RSMo § 456.10-1005.

** It is unclear whether Colorado's statute qualifies as a DAPT statute. Compare *In Re Baum*, 22 F.3d 1014, 1017 (10th Cir. 1994), with *In the Matter of Cohen*, 8 P.3d 429 (Colo. 1999). See also Howard D. Rosen and Gideon Rothschild, 810 2nd T.M., ASSET PROTECTION PLANNING, A-96 (2008) (contending that the Colorado statute qualifies as a DAPT statute as to future creditors).

SUBJECT	NEVADA	NEW HAMPSHIRE	OKLAHOMA	RHODE ISLAND
	Citation: Nev. Rev. Stat. §§ 166.010-166.170	Citation: N.H. Rev. Stat. Ann. § 564-D: 1 -18	Citation: Okla. Stat. tit. 31 § 11, et seq.	Citation: R.I. Gen Laws §§ 18-9.2-1 - 18-9.2-7
	Effective Date: Oct. 1, 1999	Effective Date: Jan. 2, 2009	Effective Date: June 9, 2004	Effective Date: July 1, 1999
	URL: http://www.leg.state.nv.us	URL: http://www.gencourt.state.nh.us	URL: http://www.lsb.state.ok.us	URL: http://www.rilin.state.ri.us
1. What requirements must trust meet to come within protection of statute?	Trust instrument must: (1) be irrevocable; (2) all or part of corpus of trust must be located in Nevada, domicile of settlor must be in Nevada, or trust instrument must appoint Nevada trustee; and (3) distributions to settlor must be approved by someone other than the settlor.	Trust instrument must: (1) be irrevocable; (2) expressly state that NH law governs validity, construction, and administration of trust (unless trust is being transferred to NH trustee from non-NH trustee); (3) contain spendthrift clause.	Trust instrument may be revocable or irrevocable. Trust instrument must: (1) expressly state Oklahoma law governs; (2) have qualified beneficiaries (ancestors or descendants of grantor, spouse of the grantor, charities, or trusts for such beneficiaries); (3) recite that income subject to income tax laws of Oklahoma; (4) limited to \$1,000,000 of assets plus growth.	Trust instrument must: (1) be irrevocable; (2) expressly state R.I. Law governs validity, construction, and administration of trust; (3) contain spendthrift clause.
2. May a revocable trust be used for asset protection?	No.	No.	Yes. Settlor may revoke or amend trust and take back assets. No court or other judicial body may compel such revocation or amendment.	No.
3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	Yes. The 2007 legislature approved minor amendments.	No amendments. Statute first enacted in 2008.	Yes, amendment enacted in 2005.	Yes, amendment enacted in 2007.
4. What contacts with state are suggested or required to establish situs?	Required: (1) all or part of assets are in state; (2) Nevada trustee whose powers include: (a) maintaining records, (b) preparing income tax returns; (3) all or part	Required: (1) some or all of trust assets deposited in state; (2) NH trustee whose powers include (a) maintaining records (can be nonexclusive), (b) preparing or	Required: (1) Oklahoma trustee; (2) majority of value of assets comprised of Oklahoma assets.	Required: (1) some or all of trust assets deposited in state; (2) R.I. trustee whose powers include: (a) maintaining records (can be non-exclusive), (b) preparing or

SUBJECT	NEVADA	NEW HAMPSHIRE	OKLAHOMA	RHODE ISLAND
4. (Continued)	of administration in state.	arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust.		arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust.
5. What interests in principal and income may settlor retain?	Not addressed by statute.	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to five percent interest in total return trust; (4) QPRT; (5) GRAT or GRUT; (6) the ability to have debts, expenses and taxes of the settlor's estate paid from the trust; (7) ability to be reimbursed for income taxes attributable to trust.	Irrevocable trusts: not addressed by statute. Revocable trusts: see Item 7.	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to five percent interest in total return trust; QPRT; ability to be reimbursed for income taxes attributable to trust.
6. What is trustee's distribution authority?	Absolute discretion.	(1) Discretion; or (2) pursuant to an ascertainable standard.	Irrevocable trusts: not addressed by statute. Revocable trusts: see Item 7.	Discretion, or pursuant to a standard.
7. What powers may settlor retain?	Settlor may retain: (1) power to veto distributions; and (2) special testamentary power of appointment or other similar power.	Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; and (3) power to replace trustee/advisor with nonrelated/nonsubordinate party.	Irrevocable trusts: not addressed by statute. Revocable trusts: settlor may revoke or amend.	Settlor may retain: (1) power to veto distributions; and (2) special testamentary power of appointment.
8. Who must serve as trustee to come within protection of statute?	Resident individual or trust company or bank that maintains office in Nevada.	Resident individual or a state or federally chartered bank or trust company having a place of business in New Hampshire.	Oklahoma based bank or credit union insured by FDIC or NCUA or Oklahoma based trust company chartered under Oklahoma law or nationally chartered, and has place of business in Oklahoma.	Resident individual (other than the transferor) or corporation whose activities are subject to supervision by R.I. Dept. of Business Regulation, FDIC, Comptroller of Currency, or Office of Thrift Supervision.

SUBJECT	NEVADA	NEW HAMPSHIRE	OKLAHOMA	RHODE ISLAND
9. May non-qualified trustees serve?	Yes.	Yes.	Yes.	Yes.
10. May trust have distribution advisor, investment advisor, or trust protector?	Not addressed by statute.	Yes. Trust may have one or more trust advisors who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. "Trust advisor" includes a trust protector or any other person who holds one or more trust powers.	Not addressed by statute.	Yes. Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. Trust may have investment advisor, including trustor. The term "advisor" includes a protector.
11. Are fraudulent transfers excepted from coverage?	Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.
12. Fraudulent transfer action: burden of proof and statute of limitations.	Clear and convincing evidence. <u>Future creditors:</u> Two years after transfer. <u>Existing creditors:</u> Two years after transfer, or, if longer, six months after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud (rather than constructive fraud). 2007 amendment (effective 10/1/2007) provides that transfer is deemed discovered when reflected in a public record.	<u>Case law:</u> Actual fraud must be proved by clear and convincing evidence; constructive fraud by a preponderance of the evidence. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Four years after transfer.	Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.	Clear and convincing evidence. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Four years after transfer.

SUBJECT	NEVADA	NEW HAMPSHIRE	OKLAHOMA	RHODE ISLAND
13. Does statute provide an exception (no asset protection) for a child support claim?	No.	Yes.	Yes.	Yes, if at the time of transfer a court order for child support existed.
14. Does the statute provide an exception (no asset protection) for alimony?	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.
15. Does statute provide an exception (no asset protection) for property division upon divorce?	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.	No.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.
16. Does statute provide an exception (no asset protection) for tort claims?	No.	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer.	No.	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer.
17. Does statute provide other express exceptions (no asset protection)?	No.	No.	Yes, statute does not protect excess over \$1,000,000 of contributed property.	No.
18. Does statute prohibit any claim for forced heirship, legitime or elective share?	No.	Yes, unless the transferor made the qualified disposition for the purpose of defeating the surviving spouse's elective share rights.	No.	No.
19. Are there provisions for moving trust to state and making it subject to statute?	No.	No.	No.	No.
20. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	No.	Yes.	Yes.	Yes.

SUBJECT	NEVADA	NEW HAMPSHIRE	OKLAHOMA	RHODE ISLAND
21. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?	No.	No.	No.	Yes.
22. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	No.	Yes.	No.	Yes.
23. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	No.	Yes.	No.	Yes.
24. Does statute authorize a beneficiary to use or occupy real property or intangible personal property owned by trust, if in accordance with trustee's discretion?	No.	No, except for QPRT residence.	No.	No, except for QPRT residence.
25. Is a non-settlor beneficiary's interest protected from property division at divorce?	Yes, if property is retained in a spendthrift trust for the beneficiary. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property; however, trust income and assets can be considered a resource for purposes of determining alimony and child support.	No, however case law establishes that only vested and defined trust interests are included in the valuation of marital estates.	Yes, if property is retained in a spendthrift trust for the beneficiary. Even if not retained in trust, property received by gift or inheritance is the beneficiary's separate property; however, trust income and assets can be considered a resource for purposes of determining alimony and child support.	Yes, but may be considered in property division.

SUBJECT	NEVADA	NEW HAMPSHIRE	OKLAHOMA	RHODE ISLAND
26. Are due diligence procedures required by statute?	No.	No.	No.	No.
27. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?	No.	Yes.	No.	Yes.
28. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?	No.	No.	No.	No.
29. Is the trustee given "decanting" authority to modify the trust?	No.	Yes. N.H. Rev. Stat. Ann. § 564-B: 4-418.	No.	No.
30. What is allowable duration of trusts?	Up to 365 years.	Abolished rule against perpetuities if the trust instrument expressly exempts the instrument from the rule against perpetuities and a trustee has the power to sell.	Rule against perpetuities.	Abolished rule against perpetuities.
31. Does state assert income tax against DAPTs formed by non-resident settlors?	No. Nevada has no state income tax.	Yes	Yes	No
32. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	Yes, charging order is only remedy.	Yes, charging order is only remedy.	Yes, charging order is only remedy.	Yes, charging order is only remedy.
33. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	Trustee petition and court discharge.	One year after trustee provides report that adequately discloses claims. N.H. Rev. Stat. Ann. § 564-B: 10-1005.	Two years after trustee provides report that adequately discloses claims.	Trustee application and court discharge.

SUBJECT	SOUTH DAKOTA	TENNESSEE	UTAH	WYOMING
	Citation: S.D. Codified Laws §§ 55-16-1 - 55-16-17	Citation: Tenn. Code Ann. § 35-16-101	Citation: Utah Code Ann. § 25-6-14	Citation: Wyo. Stat. §§ 4-1-505 and 4-10-510 - 523
	Effective Date: March 2, 2005	Effective Date: July 1, 2007	Effective Date: December 31, 2003	Effective Date: July 1, 2007
	URL: http://www.legis.state.sd.us	URL: http://www.legislature.state.tn.us	URL: http://www.le.utah.gov	URL: http://legisweb.state.wy.us
1. What requirements must trust meet to come within protection of statute?	Trust instrument must: (1) be irrevocable; (2) expressly state that S.D. law governs validity, construction, and administration of trust (unless trust is being transferred to S.D. trustee from non-S.D. trustee); (3) contain spendthrift clause; specifically refer to S.D. Act.	Trust instrument must: (1) be irrevocable; (2) expressly state TN law governs validity, construction and administration of the trust; (3) contain a spendthrift clause.	Trust instrument must: (1) be irrevocable; (2) contain spendthrift clause.	Trust instrument must: (1) state that trust is a "qualified spendthrift trust" under § 4-10-510 of Wyoming statutes; (2) be irrevocable; (3) expressly state Wyoming law governs validity, construction and administration of the trust; (4) contain a spendthrift clause; (5) settlor must have personal liability insurance equal to lesser of \$1,000,000 or value of trust assets.
2. May a revocable trust be used for asset protection?	No.	No.	No.	No.
3. Has the state legislature consistently supported DAPTs and related estate planning by continued amendments?	No amendments.	Yes. Amendments enacted in 2008. Public Chapter No. 1010.	No amendments.	No amendments to DAPT statute which was enacted in 2007. However, Legislature has annually supported estate and trust legislation.
4. What contacts with state are suggested or required to establish situs?	Suggested: (1) some or all of trust assets deposited in state; (2) S.D. trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or otherwise materially participates in the administration of the trust.	Required: (1) some or all of trust assets deposited in state; (2) Tennessee trustee whose powers include (a) maintaining records (can be non-exclusive), (b) preparing or arranging for the preparation of income tax returns; (3) or, otherwise materially participates in the administration of the trust.	Required: (1) Utah trust company; (2) some or all of the assets held in certain types of accounts in state.	Required: Wyoming trustee who: (a) maintains custody of some or all of trust assets in state; (b) maintains records (can be non-exclusive); (c) prepares or arranges for the preparation of income tax returns; (d) or, otherwise materially participates in the administration of the trust.

SUBJECT	SOUTH DAKOTA	TENNESSEE	UTAH	WYOMING
5. What interests in principal and income may settlor retain?	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) GRAT or GRUT; (5) QPRT.	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT.	Settlor may retain interest in CRT.	Settlor may retain interests in: (1) current income; (2) CRT; (3) up to 5% interest in total-return trust; (4) QPRT.
6. What is trustee's distribution authority?	(1) Absolute discretion; (2) pursuant to an ascertainable standard.	(1) Absolute discretion; (2) pursuant to a standard.	(1) Absolute discretion; (2) pursuant to an ascertainable standard.	(1) Absolute discretion; (2) pursuant to a standard.
7. What powers may settlor retain?	Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; and (3) power to replace trustee/advisor with nonrelated/nonsubordinate party.	Settlor may retain: (1) power to veto distributions; (2) non-general testamentary power of appointment; (3) power to replace trustee/advisor with nonrelated/nonsubordinate party; and (4) serve as an investment advisor.	Settlor may retain: (1) power to veto distributions; (2) testamentary special power of appointment; and (3) power to appoint nonsubordinate advisors/protectors.	Settlor may retain: (1) power to veto distributions; (2) inter vivos or testamentary general or limited power of appointment; (3) power to add or remove a trustee, trust protector, or trust advisor; (4) serve as an investment advisor.
8. Who must serve as trustee to come within protection of statute?	Resident individual or corporation whose activities are subject to supervision by S.D. Division of Banking, FDIC, Comptroller of Currency, or Office of Thrift Supervision. S.D. trustee automatically ceases to serve if it fails to meet these requirements.	Resident individual, or is authorized by Tennessee law to act as a trustee and whose activities are subject to supervision by the Tennessee Dept. of Financial Institutions, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision, or any successor thereto.	Institution authorized to engage in trust business in Utah, including Utah depository institutions, non-Utah depository institutions authorized to do business in Utah, and certain other institutions.	Resident individual or a person authorized by Wyoming law to act as trustee or a regulated financial institution.
9. May non-qualified trustees serve?	Yes	Yes	Yes. Individual co-trustees may serve.	Yes
10. May trust have distribution advisor, investment advisor, or trust protector?	Yes. Trust may have one or more advisors (other than trustor) who may remove and appoint qualified trustees or trust advisors or who have authority to direct, consent to, or disapprove distributions from trust. Trust may have investment advisor, including trustor.	Yes. Trust may have: (1) advisors who have authority to remove and appoint qualified trustees or trust advisors; (2) advisors who have authority to direct, consent to or disapprove distributions from the trust; and (3) investment advisors. The term "advisor" includes a trust protector.	Yes. Trust may have non-subordinate advisors/protectors who can remove or appoint trustees; direct, consent to, or disapprove distributions; or serve as investment directors. Settlor may be investment director.	Yes. Trust may have trust protector who can remove or appoint trustees; direct, consent to, or disapprove distributions; change governing law; change beneficiary's interests; and grant or terminate powers of appointment. Trust may have advisors. Settlor may be an advisor.

SUBJECT	SOUTH DAKOTA	TENNESSEE	UTAH	WYOMING
11. Are fraudulent transfers excepted from coverage?	Yes. Uniform Fraudulent Transfer Act applies, and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.	Yes. Uniform Fraudulent Transfer Act applies and sets aside transfers with intent to hinder, delay or defraud, and transfers made with constructive fraudulent intent.
12. Fraudulent transfer action: burden of proof and statute of limitations.	Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.	Burden not addressed by statute. <u>Existing creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud. <u>Future creditors:</u> Four years after transfer.	Clear and convincing evidence. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.	Burden not addressed by statute. <u>Existing creditors and future creditors:</u> Four years after transfer, or one year after transfer was or could reasonably have been discovered if claim based upon intent to hinder, delay or defraud. Four years after transfer if claim based upon constructive fraud.
13. Does statute provide an exception (no asset protection) for a child support claim?	Yes.	Yes.	Yes.	Yes.
14. Does the statute provide an exception (no asset protection) for alimony?	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust.	Yes.	No.
15. Does statute provide an exception (no asset protection) for property division upon divorce?	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.	Yes, if ex-spouse was married to settlor before or on date of transfer of assets to trust. Otherwise, assets are protected.	Yes.	No.
16. Does statute provide an exception (no asset protection) for tort claims?	Yes, for claims that arise as a result of death, personal injury, or property damage occurring before or on the date of transfer.	No.	Yes, see Item 17, below.	No.

SUBJECT	SOUTH DAKOTA	TENNESSEE	UTAH	WYOMING
17. Does statute provide other express exceptions (no asset protection)?	No.	No.	Yes: (1) claim is decision or ruling resulting from judicial, arbitration, mediation, or administrative proceeding commenced prior to or within three years after trust created; (2) public assistance; (3) taxes; (4) violation of certain written representations or agreements; (5) fraud.	Yes. (1) Qualified trust property that is listed upon an application or financial statement used to obtain or maintain credit other than for the benefit of the qualified spendthrift trust; (2) property of a qualified spendthrift trust that was transferred to the trust by a settlor who received the property by a fraudulent transfer.
18. Does statute prohibit any claim for forced heirship, legitime or elective share?	No.	No.	No.	No.
19. Are there provisions for moving trust to state and making it subject to statute?	Yes.	Implied, based on a trustee's power to make contributions to a DAPT.	Yes.	Yes, permits transfer of trust property from trust created in another jurisdiction with similar creditor protection for settlor with creditor protection relating back to date of funding of trust created in other jurisdiction. Irrevocable trusts from other states may also elect to become qualified spendthrift trusts if they incorporate law of Wyoming, obtain qualified trustee, and have spendthrift clause.
20. Does statute provide that spendthrift clause is transfer restriction described in Section 541(c)(2) of the Bankruptcy Code?	Yes.	Yes.	Yes.	Yes.

SUBJECT	SOUTH DAKOTA	TENNESSEE	UTAH	WYOMING
21. Does statute provide that trustee automatically ceases to act if court has jurisdiction and determines that law of trust does not apply?	No.	Yes.	No.	Yes.
22. Does statute provide that express/implied understandings regarding distributions to settlor are invalid?	Yes.	Yes.	No.	No.
23. Does statute provide protection for attorneys, trustees, and others involved in creation and administration of trust?	Yes.	Yes.	Yes.	Yes.
24. Does statute authorize a beneficiary to use or occupy real property or intangible personal property owned by trust, if in accordance with trustee's discretion?	Yes.	Yes.	No.	No, except for QPRT residence.
25. Is a non-settlor beneficiary's interest protected from property division at divorce?	No.	Yes, but may be considered in property division.	No.	Yes, but may be considered in property division.
26. Are due diligence procedures required by statute?	No.	Yes; affidavit required.	No.	Yes; affidavit required.

SUBJECT	SOUTH DAKOTA	TENNESSEE	UTAH	WYOMING
27. Is the trustee given a lien against trust assets for costs and fees incurred to defend the trust?	Yes.	Yes.	Yes.	Yes.
28. Is there statutory authority supporting a trust's non-contestability clause even if probable cause exists for contest?	No.	No.	No.	No.
29. Is the trustee given "decanting" authority to modify the trust?	Yes.	Yes.	No.	No, but trust protector may have a similar power.
30. What is allowable duration of trusts?	Abolished rule against perpetuities.	Up to 360 years.	Up to 1,000 years.	Up to 1,000 years, except for real property.
31. Does state assert income tax against DAPTs formed by non-resident settlors?	No.	No, if the beneficiaries are nonresidents. If the beneficiaries are residents, a tax is levied on dividends and interest.	No, except for Utah source income, such as rental income from Utah real property.	No.
32. Have state limited partnership and LLC statutes been amended to provide maximum creditor protection?	Yes; charging order is only remedy.	Yes for LLCs; charging order is only remedy. No for LPs.	Yes, charging order is only remedy.	Yes; charging order is exclusive remedy.
33. What is the procedure and time period for a trustee to provide an accounting and be discharged from liability?	180 days after trustee provides accounting, or by order of court for supervised trusts.	One year after trustee provides report that adequately discloses claims.	Six months after trustee provides report that adequately discloses claims.	Two years after trustee provides report that adequately discloses claims.

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2nd Annual Domestic Asset Protection Trust State Rankings

Rank	2010 Forbes Letter Grade	State	State Income Tax	Statute of Limitations (Future Creditor)	Statute of Limitations (Preexisting Creditor)	Spouse/ Child Support Exception Creditors	Preexisting Torts/Other Exception Creditors	Comments
1	A+	Nevada	No	2 Yrs.	2 Yrs. or 0.5 Yr. Discovery	No	No	Top of Tier 1
2	A	Alaska	No	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Divorcing Spouse	No	Tier 1
3	A-	South Dakota	No	3 Yrs.	3 Yrs. or 1 Yr. Discovery	Divorcing Spouse; Alimony; Child Support	Preexisting Torts	Bottom of Tier 1
4	A-	Delaware	No (except residents)	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Divorcing Spouse; Alimony; Child Support	Preexisting Torts	Bottom of Tier 1
5	B	Tennessee	No (except dividends/ interest on residents)	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Divorcing Spouse; Alimony; Child Support	No	Tier 2
6 (tie)	B	Rhode Island	No	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Divorcing Spouse; Alimony; Child Support	Preexisting Torts	Preexisting tort creditors puts behind Tennessee
6 (tie)	B-	New Hampshire	No (except dividends/ interest on residents)	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Divorcing Spouse; Alimony; Child Support	Preexisting Torts	Preexisting tort creditors puts behind Tennessee
8	C	Wyoming	No	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Child Support	Property listed on app. to obtain credit; Property received by fraudulent transfer	Exception creditor statute restricts usability
9	C	Utah	No (except Utah source income)	3 Yrs.	3 Yrs. or 1 Yr. Discovery	Divorcing Spouse; Alimony; Child Support	Numerous	Too many exception creditors
10	C-	Missouri	No (except Missouri source)	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Alimony; Child Support	State/U.S. to extent state/ federal law provides	Very limited provisions
11	C-	Oklahoma	Yes	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Child Support	Protection limited to \$1,000,000	Limited to \$1,000,000
12	N/A	Hawaii	No (except residents)	2 Yrs.	2 Yrs. Pers. Injury; 6 Yrs. Contract	Divorcing Spouse; Alimony; Child Support	Preexisting Torts, Certain Lenders, Hawaii Tax	1% entry tax and limited assets allowed
13	D	Colorado	Yes	4 Yrs.	4 Yrs. or 1 Yr. Discovery	Not clear if protection from any creditor	Not clear if protection from any creditor	Question whether law works

2nd annual rankings chart created in April 2011. Original rankings created in April 2010.
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IC 30-4-8 INDIANA ASSET PROTECTION TRUST

30-4-8-1 APPLICABLE DATE. This chapter shall apply to Qualified Dispositions to Asset Protection Trusts and Dispositions by Transferors who are trustees made on or after June 30, 2012.

30-4-8-2 DEFINITIONS. Unless the context otherwise requires, the following definitions apply in this chapter.

(1) “Asset Protection Trust” means a trust that:

(A) Appoints at least one or more Qualified Trustees for the Property that is the subject of a Qualified Disposition;

(B) Expressly incorporates the law of Indiana to govern the validity, construction and administration of the trust;

(C) Is irrevocable; and

(D) Provides that the interest of the Transferor or beneficiary in the trust Property or the income therefrom may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the a trustee actually distributes the Property or income to the beneficiary.

(2) “Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(3) “Creditor” means, with respect to a Transferor, a Person who has a Claim.

(4) “Debt” means liability on a Claim.

(5) “Disposition” means a transfer, conveyance or assignment of Property including a change in the legal ownership of Property occurring upon the substitution of one (1) trustee for another or the addition of one (1) or more new trustees. “Disposition” also includes the exercise of a power so as to cause a transfer of Property to a trustee or trustees, but shall not include the release or relinquishment of an interest in Property that until the release or relinquishment was the subject of a Qualified Disposition.

(6) “Investment Decision” means the retention, purchase, sale, exchange, tender or other transaction affecting the ownership of or rights in investments.

(7) “Person” means an individual at least eighteen (18) years of age, a corporation, trust, limited partnership, limited liability company or partnership, partnership, governmental entity or political subdivision.

(8) “Property” includes real property, personal property, and interests in real or personal property.

(9) “Qualified Affidavit” means a sworn affidavit signed by the Transferor before a Disposition of Property to an Asset Protection Trust that meets the requirements of IC 30-4-8-3(a). In the event of a Disposition by a Transferor who is a trustee, the Qualified Affidavit shall be signed by the Transferor who made the original Disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of IC 30-4-8-2(1)(C) and (D) and shall state facts as of the time of the original Disposition.

(10) “Qualified Disposition” means a Disposition by or from a Transferor with or without consideration, to an Asset Protection Trust after the Transferor executes a Qualified Affidavit. A Disposition by a trustee that is not a Qualified Trustee to a trustee that is a Qualified Trustee shall not be treated as other than a Qualified Disposition solely because the trust instrument fails to meet the requirements of IC 30-4-8-2(1)(B). In the case of a disposition to more than one (1) trustee, a Disposition that is otherwise a Qualified Disposition shall not be treated as other than a Qualified Disposition solely because not all of the recipient trustees are Qualified Trustees.

(11) “Qualified Trustee” means a person who:

(A) In the case of a natural Person, is a resident of Indiana, or, in all other cases, is authorized by the law of Indiana to act as a trustee and whose activities are subject to supervision by the State of Indiana, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or any successor thereto;

(B) Maintains or arranges for custody in Indiana some or all of the Property that is the subject of the Qualified Disposition, maintains records for the Asset Protection Trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the Asset Protection Trust, or otherwise materially participates in the administration of the Asset Protection Trust; and

(C) Is not the Transferor.

(12) “Transferor” means a Person who, as an owner of Property, is a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder’s Creditors, the holder’s estate or the Creditors of the holder’s estate, or as a trustee, directly or indirectly makes a Disposition or causes a Disposition to be made.

(13) “Trust Advisor” means a Person given authority by the terms of an Asset Protection Trust to direct, consent to or disapprove actual or proposed Investment Decisions, distribution decisions or other decisions related to Property in an Asset Protection Trust.

30-4-8-3 QUALIFIED AFFIDAVIT.

(a) A Qualified Affidavit shall identify the Property to be transferred to the Asset Protection Trust and state that:

(1) The Transferor has full right, title, and authority to transfer the Property to the Asset Protection Trust;

(2) The transfer of the Property to the Asset Protection Trust will not render the Transferor insolvent;

(3) The Transferor does not intend to defraud a Creditor by transferring the Property to the Asset Protection Trust,

(4) The Transferor does not have any pending or threatened court actions against the Transferor, except for those court actions identified by the Transferor on an attachment to the Qualified Affidavit;

(5) The Transferor is not involved in any administrative proceedings except for those administrative proceedings identified on an attachment to the Qualified Affidavit;

(6) The Transferor does not contemplate filing for relief under the provisions of the federal bankruptcy code; and

(7) The Property being transferred to the Asset Protection Trust is not derived from unlawful activities.

(b) If Transferor is an individual and is married at the time the Qualified Affidavit is signed, a copy of this Qualified Affidavit shall be given to the Transferor's spouse.

30-4-8-4 PROTECTION FROM CREDITORS.

(a) Except as provided in IC 30-4-8-5 and notwithstanding any provision of law to the contrary, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against Property that is the subject of a Qualified Disposition to an Asset Protection Trust or for the avoidance of a Qualified Disposition to an Asset Protection Trust.

(b) If, in any action brought against an Asset Protection Trust, a court takes any action whereby the court declines to apply the law of Indiana in determining the effect of a spendthrift provision in the Asset Protection Trust, the trustee of the Asset Protection Trust shall immediately upon such court's action and without the further order of any court, cease in all respect to be trustee of the Asset Protection Trust and a successor trustee shall

thereupon succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of Asset Protection Trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of the trust and this Act. Upon the trustee's ceasing to be trustee, that trustee shall have no power or authority other than to convey the trust Property to the successor trustee named in the trust in accordance with this section.

(c) An Asset Protection Trust and its Property shall be protected under this section whether or not the Transferor retains any or all of the powers and rights described in IC 30-4-8-10 or serves as a Trust Advisor pursuant to IC 30-4-8-9.

IC 30-4-8-5 CREDITOR EXCEPTIONS.

(a) The only Claims that are exceptions to IC 30-4-8-4 are:

(1) Actions brought in this state pursuant to the provisions of the Uniform Fraudulent Transfer Act, IC 32-18-2, where the requirements for recovery under the Uniform Fraudulent Transfer Act are met by clear and convincing evidence;

(2) Payments, both past and future, due under a court judgment or order for child support against the Transferor in existence at the time of the Qualified Disposition to the Asset Protection Trust; or

(3) A court judgment or order of division of property in a dissolution of marriage or legal separation of the Transferor if the Qualified Disposition to the Asset Protection Trust was:

(A) After the date of the Transferor's marriage that is being dissolved or separated; or

(B) Within thirty (30) days before the date of the Transferor's marriage that is being dissolved or separated unless Transferor gives written notice to the other party to the marriage three (3) days before the Qualified Disposition

(b) A Creditor's Claim under subsection (a)(1) of this section shall be extinguished unless:

(1) The Creditor's Claim arose before the Qualified Disposition to an Asset Protection Trust was made, and the action is brought within the later of:

(A) Two (2) years after the Transfer was made; or

(B) Six (6) months after the Transfer was recorded or made a public record or, if not recorded or made a public record, was or could have reasonably be discovered by the Creditor.

(2) Notwithstanding the provisions of IC 32-18-2-19, the Creditor's Claim arose concurrent with or subsequent to the Qualified Disposition and the action is brought within four (4) years after the Qualified Disposition is made.

(c) For purpose of this chapter, a Qualified Disposition that is made by means of a Disposition by a Transferor who is a trustee shall be deemed to have been made as of the time, whether before, on or after July 1, 2012, the Property that is the subject of the Qualified Disposition was originally transferred to the Transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of IC 30-4-8-2(1)(C) and (D).

(d) In circumstances where more than one (1) Qualified Disposition is made by means of the same Asset Protection Trust, then:

(1) The making of a subsequent Qualified Disposition shall be disregarded in determining whether a Creditor's Claim with respect to a prior Qualified Disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest Qualified Disposition.

IC 30-4-8-6 LIMITATIONS ON CREDITOR'S CLAIM.

(a) If a Creditor's Claim is allowed under IC 30-4-8-5 (a), the Qualified Disposition to an Asset Protection Trust shall be subject to that Claim only to the extent necessary to satisfy the Transferor's Debt to the Creditor whose Claim was allowed.

(b) In the event any Creditor's Claim is allowed as provided in subsection (a), then:

(1) If the court is satisfied that a Qualified Trustee has not acted in bad faith in accepting or administering the Property that is the subject of the Qualified Disposition:

(A) The Qualified Trustee shall have a first and paramount lien against the Property that is the subject of the Qualified Disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the Qualified Trustee in the defense of the action or proceedings filed by the Creditor;

(B) The Creditor's Claim shall be allowed subject to the proper fees, costs, preexisting rights, claims and interests of the Qualified Trustee and of any predecessor Qualified Trustee that has not acted in bad faith; and

(C) For the purposes of this subdivision, it shall be presumed that the Qualified Trustee did not act in bad faith merely by accepting the Property; and

(D) If the court is satisfied that a beneficiary of an Asset Protection Trust has not acted in bad faith, the Creditor's Claim shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the Qualified Trustee or Qualified Trustees of the Asset Protection Trust, which power or discretion was properly exercised prior to the Creditor's commencement of an action. For purposes of this subdivision, it shall be presumed that the beneficiary, including a beneficiary who is also a Transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the Asset Protection Trust.

IC 30-4-8-7 BANKRUPTCY PROVISION. A spendthrift provision as described in IC 30-4-8-2(1)(D) shall be deemed to be a restriction on the transfer of the Transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of § 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any successor provision thereto.

IC 30-4-8-8 TRANSFEROR'S LIMITATIONS. Except as permitted by the provisions of the Asset Protection Trust and by IC 30-4-8-9 and 10, the Transferor shall have no rights or authority with respect to the principal or income of the Asset Protection Trust and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

IC 30-4-8-9 TRANSFEROR AS ADVISOR. A Person may serve as a Trust Advisor notwithstanding that Person is the Transferor of the Qualified Disposition, but that Person may not serve as advisor to a trust that is a Qualified Disposition except with respect to the retention of the veto right permitted by IC 30-4-8-10(1).

IC 30-4-8-10 TRANSFEROR RETAINED POWERS. An Asset Protection Trust shall not be deemed revocable on account of its inclusion of one (1) or more of the following:

- (1) A Transferor's power to veto a distribution from the trust;
- (2) A power of appointment (other than a power to appoint to the Transferor, the Transferor's Creditors, the Transferor's estate or the Creditors of the Transferor's estate) exercisable by will or other written instrument of the Transferor effective only upon the Transferor's death;
- (3) The Transferor's potential or actual receipt of income or principal, including rights to income retained in the trust;
- (4) The Transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as such terms are defined

in § 664 of the Internal Revenue Code of 1986 (26 U.S.C. § 664) and any successor provision thereto;

(5) The Transferor's potential or actual receipt of income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702 of the Internal Revenue Code as that section exists on the date this Act is effective and as amended;

(6) The Transferor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a Qualified Trustee's or Qualified Trustees' acting:

(A) In the Qualified Trustee's or Qualified Trustees' discretion. For purposes of this section, a Qualified Trustee is presumed to have discretion with respect to the distribution of principal unless such discretion is expressly denied to the Qualified Trustee by the terms of the trust;

(B) Pursuant to a standard that governs the distribution of principal and does not confer upon the Transferor a power to consume, invade or appropriate property for the benefit of the Transferor, unless such power of the Transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2007, or as later amended; or

(C) At the direction of an advisor described in IC 30-4-8-11 acting:

(i) In such advisor's discretion; or

(ii) Pursuant to a standard that governs the distribution of principal and does not confer upon the Transferor a power to consume, invade, or appropriate Property for the benefit of the Transferor, unless such power of the Transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or 2414(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2007, or as later amended.

(7) The Transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; provided, however, that such right shall not include the appointment of a Person who is a related or subordinate party with respect to the Transferor within the meaning of § 672(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 672(c)) and any successor provision thereto;

(8) The Transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of such term as described in § 2702(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 2702(c)) and any successor provision thereto.

IC 30-4-8-11 ADVISORS

(a) For purposes of this chapter, neither the Transferor nor any other natural Person who is a nonresident of this state nor an entity that is not authorized by the law of Indiana to act as a trustee or whose activities are not subject to supervision as provided in IC 30-4-8-2 (11)(A) shall be considered a Qualified Trustee; however, nothing in this chapter shall preclude a Transferor from appointing one (1) or more advisors, including but not limited to:

(1) Advisors who have authority under the terms of the trust instrument to remove and appoint Qualified Trustees or Trust Advisors;

(2) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust; and

(3) Trust Advisors, whether or not such advisors would meet the requirements imposed by IC 30-4-8-2 (11).

(b) For purposes of this subsection, the term “advisor” includes a trust “protector” or any other person who, in addition to a Qualified Trustee, holds one (1) or more trust powers.

IC 30-4-8-12 QUALIFIED TRUSTEE VACANCY. In the event that a Qualified Trustee of an Asset Protection Trust ceases to meet the requirements of IC 30-4-8-2 (11)(A), and there remains no trustee that meets such requirements, that Qualified Trustee shall be deemed to have resigned as of the time of cessation, and the successor Qualified trustee provided for in the Asset Protection Trust shall become a Qualified Trustee of the Asset Protection Trust or in the absence of any successor Qualified Trustee provided for in the Asset Protection Trust, then a court of this state shall, upon application of any interested party, appoint a successor Qualified Trustee.

IC 30-4-8-13 IMMUNITY

(a) Notwithstanding any provision of law to the contrary, a Creditor, including a Creditor whose Claim arose before or after a Qualified Disposition, or any other Person shall have only those rights with respect to a Qualified Disposition as are provided in this chapter, and that Creditor or any other Person shall not have any Claim or cause of action against the trustee, or an advisor of an Asset Protection Trust, or against any person involved in the counseling, drafting, preparation, execution or funding of an Asset Protection Trust. For purposes of this section, counseling, drafting, preparation, execution or funding of an Asset Protection Trust includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the Asset Protection Trust.

(b) Notwithstanding any provision of law to the contrary, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other

body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of an Asset Protection Trust, or against any Person involved in the counseling, drafting, preparation, execution or funding of an Asset Protection Trust, if, as of the date such action is brought, an action by a Creditor with respect to such Asset Protection Trust would be barred under this section.

IC 30-4-8-14 **RULE AGAINST PERPETUITIES EXCLUSION.** The common law rule against perpetuities and the Uniform Statutory Rule Against Perpetuities, IC 32-17-8, shall not apply to Property or Property interests in an Asset Protection Trust or the terms and provisions of an Asset Protection Trust.

Exhibit C

IC 12-14-21-3 Priority of Lien

Sec. 3. Notwithstanding any other law, a claim filed for recovery of aged assistance has priority in order of payment from the estate over all other claims, except the following:

- (1) Prior recorded encumbrances.
- (2) Taxes.
- (3) Reasonable costs of administration.

(4) Reasonable funeral expenses in an amount not to exceed five hundred fifty dollars (\$550). The court may consider the amount of funds established~~However, this amount is zero (0) if the decedent has for prepaid funeral expenses that were excluded as a resource for Medicaid eligibility under IC 12-15-2 to determine reasonability of funeral expenses under this section..Amended by P.L.118-1997, SEC.5.~~

[Commentary: This amendment is intended to resolve problems in which a funeral director provides services for a Medicaid recipient's funeral and the decedent's assets are sufficient to pay all or part of the funeral director's fees and expenses, but Medicaid estate recovery claim priority prohibits payment of those fees and expenses. In the 21st century, \$550 will not pay even the most modest cremation service fees and expenses. Funeral directors have no way to protect themselves from this risk because a Medicaid recipient's Medicaid records are confidential.]

IC 12-15-9-0.5 "Estate" and "nonprobate transfer" defined

Sec. 0.5. (a) As used in this chapter, "estate" includes:

(1) all real and personal property and other assets included within an individual's probate estate;

(2) any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002;

(3) any real or personal property conveyed through a nonprobate transfer; and

(4) any sum due after June 30, 2005, to a person after the death of a Medicaid recipient that is under the terms of an annuity contract purchased after May 1, 2005, with the assets of:

~~(A) the Medicaid recipient; or~~

~~(B) the Medicaid recipient's spouse.~~

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

(1) whose last domicile was in Indiana; and

(2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

(A) use the property for the benefit of the transferor; or

(B) apply the property to discharge claims against the transferor's probate estate. The term does not include transfer of a survivorship interest in a tenancy by the entireties real estate or payment of the death proceeds of a life insurance policy.

[Commentary: This amendment is intended to remove unauthorized referenes to "the Medicaid recipient's spouse." 42 USC § 1396p(b) only permits recovery of the Medicaid recipient's assets from the recipient's estate and does not permit such recovery from his or her spouse.]

As added by P.L.152-1995, SEC.5. Amended by P.L.178-2002, SEC.82; P.L.224-2003, SEC.78; P.L.246-2005, SEC.107.

IC 12-15-9-1 Amount of claim; preference

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

(1) The expenses of administering the estate, including the attorney's fees approved by the court; and all taxes, interest, and penalties imposed by federal, state, county, and local governments. ~~Funeral expenses for the recipient and the recipient's spouse, not to exceed in each individual case three hundred fifty dollars (\$350).~~

(2) Reasonable funeral expenses for the recipient. ~~The expenses of the last illness of the recipient and the recipient's spouse that are authorized or paid by the office.~~

(3) The expenses of the last illness of the recipient that are authorized or paid by the office. ~~The expenses of administering the estate, including the attorney's fees approved by the court.~~

(b) If a recipient's spouse remarries, the part of the estate of the recipient's spouse that is attributable to the subsequent spouse is not subject to a claim for Medicaid paid on behalf of the recipient. *As added by P.L.2-1992, SEC.9. Amended by P.L.152-1995, SEC.6; P.L.246-2005, SEC.108.*

[Commentary: This amendment is intended to resolve problems in which a funeral director provides services for a Medicaid recipient's funeral and the decedent's assets are sufficient to pay all or part of the funeral director's fees and expenses, but Medicaid estate recovery claim priority prohibits payment of those fees and expenses. In the 21st century, \$350 will not pay even the most modest cremation service fees and expenses. Funeral directors have no way to protect themselves from this risk because a Medicaid recipient's Medicaid records are confidential. This amendment is also intended to clarify that certain administrative expenses should be subject exclusively to the court's discretion as the most appropriate arbiter of reasonable expenses.]

IC 29-1-14-9 Classification of claims; preferences

Sec. 9. (a) All claims shall be classified in one (1) of the following classes. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration.

(2) Reasonable funeral expenses. However, in any estate in which the decedent was a recipient of public assistance under IC 12-1-1 through IC 12-1-12 (before its repeal) or any of the following, subject to the provisions of IC 12-15-9-1, the amount of funeral expenses having priority over any claim for the recovery of public assistance shall not exceed the limitations provided for under IC 12-14-6, IC 12-14-17, and IC 12-14-21:

TANF assistance.

TANF burials.

TANF IMPACT/J.O.B.S.

Temporary Assistance to Other Needy Families

(TAONF) assistance.

ARCH.

Blind relief.

Child care.

Child welfare adoption assistance.

Child welfare adoption opportunities.

Child welfare assistance.

Child welfare child care improvement.

Child welfare child abuse.

Child welfare child abuse and neglect prevention.

Child welfare children's victim advocacy program.

Child welfare foster care assistance.

Child welfare independent living.

Child welfare medical assistance to wards.

Child welfare program review action group (PRAG).

Child welfare special needs adoption.

Food Stamp administration.

Health care for indigent (HCI).

ICES.

IMPACT (food stamps).

Title IV-D (ICETS).

Title IV-D child support administration.

Title IV-D child support enforcement (parent locator).

Medicaid assistance.

Medical services for inmates and patients (590).

Room and board assistance (RBA).

Refugee social service.

Refugee resettlement.

Repatriated citizens.

SSI burials and disabled examinations.

Title XIX certification.

(3) Allowances made under IC 29-1-4-1.

(4) All debts and taxes having preference under the laws of the United States.

(5) Reasonable and necessary medical expenses of the last sickness of the decedent, including compensation of persons attending him.

(6) All debts and taxes having preference under the laws of this state; but no personal representative shall be required to pay any taxes on any property of the decedent unless such taxes are due and payable before possession thereof is delivered by the personal representative pursuant to the provisions of IC 29-1.

(7) All other claims allowed.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, nor shall a claim due and payable be entitled to a preference over claims not due. *(Formerly: Acts 1953, c.112, s.1409; Acts 1955, c.258, s.5; Acts 1965, c.371, s.1; Acts 1975, P.L.288, SEC.23.) As amended by Acts 1976, P.L.125, SEC.6; Acts 1979, P.L.268, SEC.5; P.L.2-1992, SEC.788; P.L.161-2007, SEC.39.*

(c) Costs and expenses of administration referred to in subsection (a)(1) include without limitation the fee of a surrogate attorney that has been approved by a court under the rules of the Indiana Supreme Court governing surrogate attorneys and filed as a claim in the estate of a deceased attorney.

[Commentary: This amendment is intended to reconcile IC 29-1-1-9(a)(2) with IC 12-15-9-1 as herein amended. The amendment is also intended to expand the definition of administrative expenses to include fees and expenses incurred in administration and conclusion of a deceased lawyer's law practice under rules of the Indiana Supreme Court.]

Exhibit D

IC 6-4.1-1-3(g)

The transferee of a taxable transfer to an entity shall be an individual with a beneficial (whether discretionary or not) or ownership interest in the entity to the same percentage of the taxable transfer as that individual's percentage of beneficial (whether discretionary or not) or ownership interest in the entity.

IC 6-4.1-1-3.5

"Entity" includes a partnership, limited partnership, limited liability partnership, association, corporation, limited liability company, trust and similar entities.

Exhibit E

29-1-6-1. Rules for interpretation of wills.

In the absence of a contrary intent appearing in the will, wills shall be construed as to real and personal estate in accordance with the rules in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) A written statement or list that:

(1) complies with this subsection; and

(2) is referred to in a will;

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

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

~~(1) the unified credit;—~~

~~(2) the estate tax exemption;—~~

~~(3) the applicable credit amount;—~~

~~(4) the applicable exclusion amount; —~~

~~(5) the generation skipping transfer tax exemption; —~~

~~(6) the GST exemption; —~~

~~(7) the marital deduction; —~~

~~(8) the maximum marital deduction; —~~

~~(9) the unlimited marital deduction; —~~

~~(10) the inclusion ratio; —~~

~~(11) the applicable fraction; —~~

~~(12) any section of the Internal Revenue Code: —~~

~~(A) relating to the: —~~

~~(i) federal estate tax; or —~~

~~(ii) generation skipping transfer tax; and —~~

~~(B) that measures a share of: —~~

~~(i) an estate; or —~~

~~(ii) a trust; —~~

~~based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation skipping transfer tax law; or —~~

~~(13) a provision of federal estate tax or generation skipping transfer tax law that is similar to subdivisions (1) through (12); —~~

~~refers to the federal estate tax and generation skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2000. —~~

~~(e) Subsection (n) does not apply to a will: —~~

~~(1) that is executed or amended after December 1, 2000; or —~~

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

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

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

- ~~(1) decedent's death;~~
- ~~(2) fiduciary's appointment; or~~
- ~~(3) enactment of this subsection;~~

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

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

IC 30-4-2.1-13 Repealed

Exhibit F

29-1-7-25. Foreign wills -- Recording.

Any will that has been proved or allowed in any other state or in any foreign country, according to the laws of that state or country, may be received and recorded in this state within ~~three~~ [3] ~~years after the decedent's death in~~ the time limits and conditions set out in IC 29-1-7-15.1(e) in the manner and for the purpose stated in sections 26 and 27 [IC 29-1-7-26 and IC 29-1-7-27] of this chapter.

Exhibit G

IC 29-3-3-7.

(a) Subject to subsection (e), a parent of a minor or the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

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

(1) The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any.

(2) The following information concerning each minor child or protected person for whom a standby guardian is designated by the declaration:

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

(B) The person's date of birth.

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

(3) A statement that the declaration becomes effective upon the death or incapacity of the declarant.

(4) A statement that the declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period.

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

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

(e) A declaration executed under this section must be considered by, but is not binding upon, the department of child services, a probation department, or a juvenile court for purposes of determining the placement of a child who is the subject of:

(1) an allegation of child abuse or neglect under IC 31-33;

(2) an open child in need of services case under IC 31-34; or

(3) an open delinquency case under IC 31-37.

(f) The standby guardian shall have all the powers granted to a guardian under this article (IC 29-3).

Exhibit H

IC 30-4-1-4 Application of this article with respect to pre-existing trusts

Sec. 4. (Application of the Article with Respect to Pre-Existing Trusts)

Except as provided elsewhere in this article, the rules of law contained in this article shall apply to all trusts created prior to September 2, 1971, or in the case of amendments to the rules of law contained in this article, trusts created prior to the effective date of the applicable amendment, unless to do so would:

- (1) adversely affect a right given to any beneficiary;
- (2) give a right to any beneficiary which he was not intended to have when the trust was created;
- (3) impose a duty or liability on any person which was not intended to be imposed when the trust was created; or
- (4) relieve any person from any duty or liability imposed by the terms of the trust or under prior law.

(Formerly: Acts 1971, P.L.416, SEC.2.) As amended by Acts 1982, P.L.171, SEC.117.

Exhibit I

IC 30-4-3-35

Matrimonial trusts; election; effect of the death of a spouse or the dissolution of the marriage; revocation

Sec. 35. (a) This section is intended to ensure that if real property is transferred to one (1) or more revocable trusts created by a husband and wife for estate planning purposes, the husband and wife will enjoy the real estate ownership protections that they would otherwise enjoy if they owned that real property in an estate by the entireties including an estate by the entireties created under IC 32-17-3-1.

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

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

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

(2) is owned by a matrimonial trust.

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

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

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

(g) A matrimonial trust may be established:

(1) jointly by a husband and wife; or

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

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

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

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

(i) A guardian of a husband and wife may make an election under this section:

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

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

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

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

- (1) the lifetime of the settlor who dies first;
- (2) the lifetime of the surviving settlor; or
- (3) another defined time period.

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

- (1) both the husband and wife join in the severance in writing; or
- (2) a third party owns and forecloses a mortgage or other lien against the interests of both the husband and wife in the matrimonial property.

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

(n) To the extent that a matrimonial trust continues to be a matrimonial trust after the death of a settlor (as provided in subsections (e~~p~~) and (e~~r~~)):

- (1) real property held or owned in a separate trust, and for which an earlier election was made under this section, continues to be matrimonial property; and
- (2) an unsecured creditor or judgment lien creditor who has a claim only against the deceased settlor but not against the surviving settlor cannot enforce that claim against the deceased settlor's interest or the surviving settlor's interest in the matrimonial property.

(o) After the death of a settlor of a separate matrimonial trust or a joint matrimonial trust, the issue of whether the surviving settlor's interest in the matrimonial property will be exposed to the claims of the surviving settlor's existing creditors or new creditors must be determined according to:

- (1) The nature and extent of the surviving settlor's interest in the matrimonial property under the terms of the deceased settlor's separate trust or the joint trust;
- (2) All the other relevant facts and circumstances; and
- (3) Pertinent principles of non-trust law outside this article.

(p) Matrimonial property held in a separate matrimonial trust or in a joint matrimonial trust continues to be matrimonial property after the death of one (1) settlor:

- (1) if the settlors reserved a life estate in the matrimonial property for each settlor when they conveyed the matrimonial property to the matrimonial trust(s); or

- (2) if the deceased settlor's trust (whether it is a separate trust or a joint matrimonial trust) provides to the surviving settlor:
- (A) a life estate;
 - (B) an interest that qualifies for a deduction from the gross estate of the decedent under Section 2056 of the Internal Revenue Code regardless of whether an election is made to qualify the interest for the deduction; or
 - (C) in some respect the current right to occupy or receive rent, royalties, or other kinds of income with respect to the matrimonial property.

(~~pg~~) A separate matrimonial trust established by a deceased settlor ceases to be a matrimonial trust upon the termination of payments to the surviving settlor as a result of the surviving settlor's death or as a result of the surviving settlor's valid disclaimer of all interests in the matrimonial property held in the deceased settlor's trust.

(~~er~~) A separate matrimonial trust established by a settlor who remains alive continues to be a matrimonial trust during that settlor's remaining lifetime, so long as he or she retains the right to use, occupy or enjoy the matrimonial property held in the settlor's separate trust.

(~~rs~~) A matrimonial trust ceases to be a matrimonial trust upon the dissolution of the marriage of the settlors.

(~~st~~) A husband and wife may revoke a matrimonial trust by together executing a writing expressing the revocation.

As added by P.L. 6-2010, SEC. 18. Amended by P.L. 36-2011, SEC. 9.

Document comparison by Workshare Professional on Thursday, July 28, 2011 5:59:15 PM

Input:	
Document 1 ID	interwovenSite://INDEDMS/INDLibrary1/1041082/1
Description	#1041082v1<INDLibrary1> - Matrimonial Trust statute as amended thru July 2011
Document 2 ID	interwovenSite://INDEDMS/INDLibrary1/1041082/2
Description	#1041082v2<INDLibrary1> - Matrimonial Trust statute - with Carr & Dible edits 28 July 2011
Rendering set	standard

Legend:	
<u>Insertion</u>	
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Statistics:	
	Count
Insertions	16
Deletions	9
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	25

Exhibit J

IC 32-17-14-1 Short title

Sec. 1. This chapter, as amended, shall apply to a transfer on death transfer made on or after July 1, 2009. This chapter may be cited as the Transfer on Death Property Act. *As added by P.L.143-2009, SEC.41.*

Revised proposed FSSA amendment to PD 3142.

1 Page 1, delete lines 15 through 29, begin a new paragraph and insert:

2 "SECTION 4. IC 12-14-21-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 3. Notwithstanding any other law, a claim filed for recovery of aged
4 assistance has priority in order of payment from the estate over all other claims, except the
5 following:

- 6 (1) Prior recorded encumbrances.
7 (2) Taxes.
8 (3) Reasonable costs of administration.
9 (4) Funeral expenses in an amount not to exceed **five one thousand seven**
10 **hundred fifty dollars (\$550): (\$1,750)**. However, this amount is zero (0) if the
11 decedent has prepaid funeral expenses that were excluded as a resource for
12 Medicaid eligibility under IC 12-15-2."

13 Page 2, delete lines 27 through 46.

14 Page 3, delete lines 1 through 18, begin a new paragraph and insert:

15 "SECTION 5. IC 12-15-9-1, AS AMENDED BY P.L.246-2005, SECTION 108, IS
16 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) Subject to
17 subsection (b); Upon the death of a Medicaid recipient, ~~or upon the death of a deceased Medicaid~~
18 ~~recipient's spouse~~; the total amount of Medicaid paid on behalf of the recipient after the recipient
19 became fifty-five (55) years of age must be allowed as a preferred claim against the estate of the
20 recipient ~~or the recipient's spouse~~ in favor of the state. The affidavit of a person designated by the
21 secretary to administer this section is evidence of the amount of the claim and is payable after the
22 payment of the following in accordance with IC 29-1-14-9:

- 23 (1) Funeral expenses for the recipient, ~~and the recipient's spouse~~; not to exceed
24 ~~in each individual case three one thousand seven~~ hundred fifty dollars (~~\$350~~):
25 **(\$1,750)**.
26 (2) The expenses of the last illness of the recipient ~~and the recipient's spouse~~ that
27 are authorized or paid by the office.
28 (3) The expenses of administering the estate, including the attorney's fees
29 approved by the court.

30 (b) ~~If a recipient's spouse remarries, the part of the estate of the recipient's spouse that is~~
31 ~~attributable to the subsequent spouse is not subject to a claim for Medicaid paid on behalf of the~~
32 ~~recipient.~~

33 SECTION 6. IC 12-15-9-5 IS REPEALED [EFFECTIVE JULY 1, 2012]. Sec. 5: (a) The
34 office may not recover on a claim filed against the estate of a surviving spouse while the
35 individual is survived by a child who is:

- 36 (1) ~~less than twenty-one (21) years of age; or~~
37 (2) ~~permanently and totally disabled under criteria established by the federal~~

PCSC
OCTOBER 12, 2011
EXHIBIT 6

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Supplemental Security Income program.

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

Page 7, line 43, reset in roman "However, in any estate in which".

Page 7, reset in roman lines 44 through 46.

Page 8, reset in roman lines 1 through 37.

Renumber all SECTIONS consecutively.

(Reference is to PD 3142-2012.)

Proposed amendment to Preliminary Draft 3142.

1 Page 13, between lines 15 and 16, begin a new paragraph and insert:

2 "SECTION 14. IC 32-17-14-21, AS ADDED BY P.L.143-2009, SECTION 41, IS
3 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) A trustee
4 of a trust may be a designated beneficiary regardless of whether the trust is amendable,
5 revocable, irrevocable, funded, unfunded, or amended after the designation is made.

6 (b) Unless a beneficiary designation provides otherwise, a trust that is revoked or
7 terminated before the death of the owner is considered nonexistent at the owner's death.

8 (c) Unless a beneficiary designation provides otherwise, a legal entity or trust that does
9 not:

10 (1) exist; or

11 (2) come into existence effective as of the owner's death;

12 is considered nonexistent at the owner's death.

13 **(d) For purposes of this section, an owner's testamentary trust is considered to have**
14 **come into existence as of the owner's death if the owner's last will and testament is**
15 **admitted to probate under IC 29-1-7.**

16 SECTION 15. IC 32-17-14-27, AS ADDED BY P.L.143-2009, SECTION 41, IS
17 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) An owner
18 who makes arrangements for a transfer on death transfer under this chapter gives to the
19 transferring entity the protections provided in this section for executing the owner's beneficiary
20 designation.

21 (b) A transferring entity may execute a transfer on death transfer with or without a
22 written request for execution.

23 (c) A transferring entity may rely and act on:

24 (1) a certified or authenticated copy of a death certificate issued by an official or
25 an agency of the place where the death occurred as showing the fact, place, date,
26 and time of death and the identity of the decedent; and

27 (2) a certified or authenticated copy of a report or record of any governmental
28 agency that a person is missing, detained, dead, or alive, and the dates,
29 circumstances, and places disclosed by the record or report.

30 (d) A transferring entity has no duty to verify the information contained within a written
31 request for the execution of a beneficiary designation. The transferring entity may rely and act on
32 a request made by a beneficiary or a beneficiary's attorney in fact, guardian, conservator, or other
33 agent.

34 (e) A transferring entity has no duty to:

35 (1) except as provided in subsection (g), give notice to any person of the date,
36 manner, and persons to whom a transfer will be made under beneficiary
37 designation;

PCSC
October 12, 2011
EXHIBIT 7

- 1 (2) attempt to locate any beneficiary or lineal descendant substitute;
2 (3) determine whether a nonsurviving beneficiary or descendant had a lineal
3 descendant who survived the owner;
4 (4) locate a trustee or custodian;
5 (5) obtain the appointment of a successor trustee or custodian;
6 (6) discover the existence of a trust instrument or will that creates an express
7 trust; or
8 (7) determine any fact or law that would:
9 (A) cause the beneficiary designation to be revoked in whole or in part
10 as to any person because of a change in marital status or other reason; or
11 (B) cause a variation in the distribution provided in the beneficiary
12 designation.
- 13 (f) A transferring entity has no duty to withhold making a transfer based on knowledge
14 of any fact or claim adverse to the transfer to be made unless before making the transfer the
15 transferring entity receives a written notice that:
16 (1) in manner, place, and time affords a reasonable opportunity to act on the
17 notice before making the transfer; and
18 (2) does the following:
19 (A) Asserts a claim of beneficial interest in the transfer adverse to the
20 transfer to be made.
21 (B) Gives the name of the claimant and an address for communications
22 directed to the claimant.
23 (C) Identifies the deceased owner.
24 (D) States the nature of the claim as it affects the transfer.
- 25 (g) If a transferring entity receives a timely notice meeting the requirements of
26 subsection (f), the transferring entity may discharge any duty to the claimant by sending a notice
27 by certified mail to the claimant at the address provided by the claimant's notice of claim. The
28 notice must advise the claimant that a transfer **adverse** to the claimant's asserted claim will be
29 made at least forty-five (45) days after the date of the mailing unless the transfer is restrained by
30 a court order. If the transferring entity mails the notice described by this subsection to the
31 claimant, the transferring entity shall withhold making the transfer for at least forty-five (45)
32 days after the date of the mailing. Unless the transfer is restrained by court order, the transferring
33 entity may make the transfer at least forty-five (45) days after the date of the mailing.
- 34 (h) Neither notice that does not comply with the requirements of subsection (f) nor any
35 other information shown to have been available to a transferring entity, its transfer agent, or its
36 employees affects the transferring entity's right to the protections provided by this chapter.
- 37 (i) A transferring entity is not responsible for the application or use of property
38 transferred to a fiduciary entitled to receive the property.
- 39 (j) Notwithstanding the protections provided a transferring entity by this chapter, a
40 transferring entity may require parties engaged in a dispute over the propriety of a transfer to:

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- (1) adjudicate their respective rights; or
- (2) furnish an indemnity bond protecting the transferring entity.

(k) A transfer by a transferring entity made in accordance with this chapter and under the beneficiary designation in good faith and reliance on information the transferring entity reasonably believes to be accurate discharges the transferring entity from all claims for the amounts paid and the property transferred.

(l) All protections provided by this chapter to a transferring entity are in addition to the protections provided by any other applicable Indiana law."

Renumber all SECTIONS consecutively.

(Reference is to Preliminary Draft 3142-2012.)



**PRELIMINARY DRAFT
No. 3126**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 35-45-6.

Synopsis: Unauthorized practice of law. Provides that the practice of law by a person who is not an attorney is considered racketeering activity for purposes of the law concerning racketeer influenced and corrupt organizations.

Effective: July 1, 2012.

PCSC
OCTOBER 12, 2011
EXHIBIT 8



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 35-45-6-0.1, AS ADDED BY P.L.220-2011,
2 SECTION 607, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2012]: Sec. 0.1. (a) The following amendments
4 to this chapter apply as follows:

5 (1) The amendments made to section 1 of this chapter by
6 P.L.112-1998 apply only to offenses committed after June 30,
7 1998.

8 (2) The amendments made to section 1 of this chapter by
9 P.L.17-2001 apply only to offenses committed after June 30,
10 2001.

11 (3) The amendments made to section 1 of this chapter by
12 P.L.227-2007 apply only to crimes committed after June 30, 2007.

13 (4) The amendments made to section 1 of this chapter by
14 P.L.143-2009 apply only to crimes committed after June 30, 2009.

15 (b) **Section 1(e)(37) of this chapter applies only to crimes**
16 **committed after June 30, 2012.**

17 SECTION 2. IC 35-45-6-1, AS AMENDED BY P.L.182-2011,
18 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2012]: Sec. 1. (a) The definitions in this section apply
20 throughout this chapter.

21 (b) "Documentary material" means any document, drawing,
22 photograph, recording, or other tangible item containing compiled data
23 from which information can be either obtained or translated into a
24 usable form.

25 (c) "Enterprise" means:

26 (1) a sole proprietorship, corporation, limited liability company,
27 partnership, business trust, or governmental entity; or

28 (2) a union, an association, or a group, whether a legal entity or
29 merely associated in fact.

30 (d) "Pattern of racketeering activity" means engaging in at least two

31 (2) incidents of racketeering activity that have the same or similar



1 intent, result, accomplice, victim, or method of commission, or that are
 2 otherwise interrelated by distinguishing characteristics that are not
 3 isolated incidents. However, the incidents are a pattern of racketeering
 4 activity only if at least one (1) of the incidents occurred after August
 5 31, 1980, and if the last of the incidents occurred within five (5) years
 6 after a prior incident of racketeering activity.

7 (e) "Racketeering activity" means to commit, to attempt to commit,
 8 to conspire to commit a violation of, or aiding and abetting in a
 9 violation of any of the following:

- 10 (1) A provision of IC 23-19, or of a rule or order issued under
 11 IC 23-19.
- 12 (2) A violation of IC 35-45-9.
- 13 (3) A violation of IC 35-47.
- 14 (4) A violation of IC 35-49-3.
- 15 (5) Murder (IC 35-42-1-1).
- 16 (6) Battery as a Class C felony (IC 35-42-2-1).
- 17 (7) Kidnapping (IC 35-42-3-2).
- 18 (8) Human and sexual trafficking crimes (IC 35-42-3.5).
- 19 (9) Child exploitation (IC 35-42-4-4).
- 20 (10) Robbery (IC 35-42-5-1).
- 21 (11) Carjacking (IC 35-42-5-2).
- 22 (12) Arson (IC 35-43-1-1).
- 23 (13) Burglary (IC 35-43-2-1).
- 24 (14) Theft (IC 35-43-4-2).
- 25 (15) Receiving stolen property (IC 35-43-4-2).
- 26 (16) Forgery (IC 35-43-5-2).
- 27 (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
- 28 (18) Bribery (IC 35-44-1-1).
- 29 (19) Official misconduct (IC 35-44-1-2).
- 30 (20) Conflict of interest (IC 35-44-1-3).
- 31 (21) Perjury (IC 35-44-2-1).
- 32 (22) Obstruction of justice (IC 35-44-3-4).
- 33 (23) Intimidation (IC 35-45-2-1).
- 34 (24) Promoting prostitution (IC 35-45-4-4).
- 35 (25) Professional gambling (IC 35-45-5-3).
- 36 (26) Maintaining a professional gambling site
 37 (IC 35-45-5-3.5(b)).
- 38 (27) Promoting professional gambling (IC 35-45-5-4).
- 39 (28) Dealing in or manufacturing cocaine or a narcotic drug
 40 (IC 35-48-4-1).
- 41 (29) Dealing in or manufacturing methamphetamine
 42 (IC 35-48-4-1.1).
- 43 (30) Dealing in a schedule I, II, or III controlled substance
 44 (IC 35-48-4-2).
- 45 (31) Dealing in a schedule IV controlled substance
 46 (IC 35-48-4-3).



- 1 (32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 2 (33) Dealing in marijuana, hash oil, hashish, salvia, or a synthetic
- 3 cannabinoid (IC 35-48-4-10).
- 4 (34) Money laundering (IC 35-45-15-5).
- 5 (35) A violation of IC 35-47.5-5.
- 6 (36) A violation of any of the following:
- 7 (A) IC 23-14-48-9.
- 8 (B) IC 30-2-9-7(b).
- 9 (C) IC 30-2-10-9(b).
- 10 (D) IC 30-2-13-38(f).
- 11 (37) Practice of law by a person who is not an attorney
- 12 (IC 33-43-2-1).

