

IC 30

TITLE 30. TRUSTS AND FIDUCIARIES

IC 30-1

**ARTICLE 1. SALES OF SECURITIES AND
INVESTMENTS BY FIDUCIARIES**

IC 30-1-1

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-2

Chapter 2. Sales of Securities

IC 30-1-2-1

Stocks; bonds; securities

Sec. 1. Whenever any trust, or any decedent's estate, or any property subject to the control of any executor, administrator, trustee, guardian or other fiduciary shall consist, in whole or in part, of the corporate stock, bonds or other securities of any corporation, public or private, which the fiduciary is required or authorized to sell, and which are listed or admitted to trading on the New York Stock Exchange, the New York Curb Exchange, the Chicago Stock Exchange, or the San Francisco Stock Exchange, or which are securities which are obligations of the government of the United States, such securities may be sold by such fiduciary under the direction of the proper court for cash at the market price of such securities at the time of sale, whether such price be more or less than the appraised or inventory value of such securities. Such sale may be without notice and without any requirement for the reappraisal of such securities.

(Formerly: Acts 1947, c.351, s.1.)

IC 30-1-2-2

Securities not listed; terms

Sec. 2. Whenever any decedent's estate or any property subject to the control of any executor, administrator, or guardian, shall consist, in whole or in part, of securities of any corporation, public or private, which the fiduciary is required or authorized to sell and which are not listed or admitted to trade on one (1) of the exchanges enumerated in section 1 of this chapter, such securities may be sold by such fiduciary in the same manner and upon the same terms as other personal property of a decedent's estate or guardianship may be sold. *(Formerly: Acts 1947, c.351, s.2.) As amended by Acts 1982, P.L.171, SEC.86.*

IC 30-1-3

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-4

Chapter 4. Investments in Inter-American Development Bank Securities

IC 30-1-4-1

Eligible investments

Sec. 1. (a) Obligations issued by or for the Inter-American Development Bank or the African Development Bank are declared to be eligible investments for all funds authorized by law to be invested by any and all of the following:

- (1) Any financial institution (as defined in IC 28-1-1-3).
- (2) Individual or corporate fiduciaries.
- (3) Fraternal beneficiary societies (as defined in IC 27-11-1-11).

(b) Nothing in this section may be construed to change any limitations as to amounts which may be invested in obligations of any one (1) obligor as may be imposed by laws regulating the investments of the various financial institutions, industrial loan and investment companies, and trust funds.

(Formerly: Acts 1963(ss), c.14, s.1.) As amended by Acts 1982, P.L.171, SEC.87; P.L.49-1988, SEC.3.

IC 30-1-5

Chapter 5. Other Investments by Fiduciaries

IC 30-1-5-1

Securities; insurance

Sec. 1. Every executor, administrator, guardian, trustee, receiver or other fiduciary shall have the power, in such capacity, to invest in the following:

(1) Obligations issued pursuant to the provisions of the Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.), as in effect on December 31, 1990, and in obligations issued by the FSLIC Resolution Fund.

(2) Life, endowment, or annuity contracts of legal reserve life insurance companies duly licensed by the insurance commissioner for the state of Indiana to transact business within the state. The purchase of contracts authorized by this subdivision shall be limited, however, to executors or the successors to their powers when specifically authorized by will, to guardians on authorization of the court having probate jurisdiction over the guardianship, and to trustees. Such contracts may be issued on the life or lives of a protected person or persons, a beneficiary or beneficiaries of a trust fund, or according to the terms of a will, or upon the life or lives of persons in whom the protected person or beneficiary has an insurable interest. Life or endowment or annuity contracts may be purchased by trustees in the absence of an express prohibition against such purchase contained in the instrument creating the trust. The trustee may expend trust income and principal to pay annual premiums for contracts authorized by this subsection subject to limitations that are:

(A) imposed by the court having probate jurisdiction over the trust; or

(B) expressly authorized in the trust instrument.

In the absence of express provision in the trust instrument to the contrary, the trustee, as trustee, shall possess all the incidents of ownership in contracts so issued and the trustee as trustee, or the beneficiary or beneficiaries of the trust shall be the beneficiary or beneficiaries of such contracts.

(3) Obligations of the federal government, or any federal agency or instrumentality, whenever a governing instrument or order directs, requires, authorizes, or permits investment in such obligations, either directly or in the form of securities of, or other interests in, any open end management type investment company or investment trust registered under the provisions of the Investment Company Act of 1940 (15 U.S.C. 80a et seq.), as in effect on December 31, 1990. However, the portfolio of the investment company or investment trust must be limited to obligations of the federal government or any federal agency or instrumentality, and to repurchase agreements fully collateralized by such obligations to which obligations the

investment company or investment trust takes delivery either directly or through an authorized custodian.

(Formerly: Acts 1941, c.149, s.1; Acts 1943, c.250, s.1; Acts 1969, c.160, s.1.) As amended by P.L.280-1987, SEC.3; P.L.33-1989, SEC.84; P.L.8-1991, SEC.33; P.L.252-2001, SEC.29.

IC 30-1-6

Chapter 6. Oil, Gas, and Mineral Leases

IC 30-1-6-1

Administrators, executors, and guardians; powers to execute leases; term; jurisdiction; sale of leases; petition

Sec. 1. Administrators and executors of estates of deceased persons and guardians of the estates of persons under eighteen (18) years of age and incapacitated persons (as defined in IC 29-3-1-7.5) are authorized to execute oil and gas, coal, or other mining leases upon the lands belonging to the estates of the deceased persons, or of persons under eighteen (18) years of age or incapacitated persons, for a term not to exceed ten (10) years and as long thereafter as oil, gas, coal or other minerals may be produced in paying quantities, upon compliance with this chapter. The court having probate jurisdiction in the county in which the guardianship or administration proceedings are pending shall have jurisdiction to order the sale for execution and delivery of a lease or leases upon the filing of a petition alleging that the estate of the deceased person or the estate of a person under eighteen (18) years of age or a protected person is the owner of the lands described in the petition, and that the lands have a probable value for oil and gas, coal or other mining purposes, stating the probable value of the proposed lease, and that the estate of the deceased person or of the protected person is not financially able or that it is impractical for the estate to explore and develop the land for oil and gas, coal, or other minerals, and that it is to the best interest of the estate to lease the lands. The petition shall be verified by the administrator, executor, or guardian, and if it involves lands belonging to the estate of deceased persons, the petition shall set forth the names and post office addresses of the heirs of the deceased persons. If the will of any deceased person empowers the executor to sell oil, and gas, coal, or other mineral leases upon the lands of the testator, it shall not be necessary for the executor, or the administrator with the will annexed, to comply with this chapter. The word "land" or "lands" includes any oil, gas, coal, or other mineral rights or interests in lands which may be leasable.

(Formerly: Acts 1943, c.270, s.1; Acts 1973, P.L.264, SEC.5.) As amended by Acts 1982, P.L.171, SEC.88; P.L.33-1989, SEC.85.

IC 30-1-6-2

Sale of leases; order of court; notice; royalties; bonus

Sec. 2. Upon the filing of a petition under section 1 of this chapter, the court in its discretion and upon showing of benefit to the estate of the decedent or protected person shall make an order authorizing and directing the administrator, executor, or guardian to sell a lease upon the lands for oil, and gas, coal, or other mining purposes. The sale may be either public or private as the court may direct and upon notice as may be fixed by the court in its order of sale. Should the court determine from the petition that the sale price of the lease would not be sufficient to justify the giving of notice of sale, the

court may order the lease sold without notice. Any sale of oil, and gas, coal leases, or other mineral rights under this chapter shall be on a royalty basis and bonus if any. The bonus shall be payable in cash at the time of the execution and delivery of the lease or on terms as the court shall deem just and proper. Where an estate is solvent, no administrator or executor may lease land as provided in this chapter unless the administrator or executor is joined in the lease by the heirs, or their guardians if the heirs are under the age of eighteen (18) years or incapacitated, of the deceased person whose estate is being administered. If the lands to be leased are situated in any other county than that in which the probate proceeding is pending, then the notices of sale, if any are to be given, shall be published and posted in the county of the location of the lands.

(Formerly: Acts 1943, c.270, s.2; Acts 1973, P.L.264, SEC.6.) As amended by Acts 1982, P.L.171, SEC.89; P.L.33-1989, SEC.86.

IC 30-1-6-3

Bidding; report; hearing; endorsement

Sec. 3. In compliance with the terms of the order for the sale of said oil and gas, coal, or other mineral lease, said administrator, executor, or guardian shall offer said lease for sale and sell the same to the highest bidder upon such terms and conditions as the court shall order and shall thereupon file a report of sale showing the land upon which said lease was sold, the term of years thereof, the name of the purchaser, and the amount for which the same was sold, and attach to the return a copy of the form of lease proposed to be executed, which report shall thereupon, without further notice, be heard by the court having probate jurisdiction and if the court finds that said sale was properly conducted as herein provided, and that the price bid for said lease was not disproportionate to the value thereof, said sale shall be confirmed and said administrator, executor or guardian authorized and directed to execute and deliver said lease, and when said lease is executed the judge shall indorse his approval thereon.

(Formerly: Acts 1943, c.270, s.3.)

IC 30-1-6-4

Consolidating with adjoining land; joint development

Sec. 4. Every guardian, executor, or administrator shall have the power, upon approval by the court wherein the guardianship is pending, to execute agreements consolidating the lands of the protected person or of the estate covered by an oil and gas mining lease that has been executed, or which may be executed, or any part thereof, with other adjoining land for the purpose of joint development and operation of the entire consolidated premises as a unit, to the end that the protected person or estate shall share proportionately in the royalty on oil, gas and casinghead gas produced from the consolidated tract.

(Formerly: Acts 1943, c.270, s.4.) As amended by P.L.33-1989, SEC.87.

IC 30-1-6-5

Acts conclusive; disaffirmance denied

Sec. 5. Acts of guardians under this chapter are conclusive upon the protected person and any future disaffirmance is denied.

(Formerly: Acts 1943, c.270, s.5.) As amended by P.L.33-1989, SEC.88.

IC 30-1-7

Chapter 7. Mining Contracts Executed by Guardians

IC 30-1-7-1

Guardians of minors and incapacitated persons; option contracts for exploring

Sec. 1. Guardians of the estates of persons under the age of eighteen (18) years and incapacitated persons (as defined in IC 29-3-1-7.5) owning real estate in any county in Indiana in which coal and other solid minerals are being explored for, developed, recovered, marketed, or found by mining or other methods are authorized with the consent of the court to enter into option contracts with prospective mining operators for the purpose of exploring and testing the land for coal and other solid minerals, with tools, machinery, and appliances and for the purchase of the real estate and mineral deposits on terms, conditions, and considerations as the guardian shall consider to be for the best interest of the protected person's estate. All options for exploring, testing, and sale must be made with the consent of the court having probate jurisdiction in the county as provided in this chapter.

(Formerly: Acts 1943, c.105, s.1; Acts 1973, P.L.264, SEC.7.) As amended by P.L.33-1989, SEC.89.

IC 30-1-7-2

Petition to execute options; prospectus

Sec. 2. Guardians of the estates of persons under the age of eighteen (18) years and incapacitated persons are authorized to petition the court having probate jurisdiction in the county in which the guardianship is pending for authority to execute the options under section 1 of this chapter. The petition shall be verified and set forth the name of the person, firm, limited liability company, or corporation to whom it is proposed to give the option. It shall also set forth a prospectus as to the probable existence of minerals, their probable value, the amount to be paid for the option, the length of time the option is to continue, a copy of the proposed option, and a copy of the proposed lease or deed which is to be executed in the event the option is exercised.

(Formerly: Acts 1943, c.105, s.2; Acts 1973, P.L.264, SEC.8.) As amended by P.L.33-1989, SEC.90; P.L.8-1993, SEC.462.

IC 30-1-7-3

Hearing; order of court

Sec. 3. Upon the filing of such petition, the court shall proceed to hear and determine the same either in term time or vacation. If the court, after being duly advised in the premises, finds that the execution of said option to purchase would be to the best interests of the ward's estate and that said option is in proper form and that the price to be paid for said option and for the interest to be acquired if the option is exercised is not less than the established price being paid in the area; the court may thereupon enter an order authorizing said

guardian to sign and execute said option and lease or deed, in the event the option is exercised, for and upon behalf of his ward.

(Formerly: Acts 1943, c.105, s.3.)

IC 30-1-7-4

Binding and conclusive; disaffirmance

Sec. 4. Said option and the deed or lease, as the case may be, in the event the option is exercised, shall be binding and conclusive upon the ward for the respective term thereof and the right of disaffirmance is hereby denied.

(Formerly: Acts 1943, c.105, s.4.)

IC 30-1-8

Chapter 8. Common Trust Funds

IC 30-1-8-1

Definitions

Sec. 1. The words and phrases used in this chapter shall be construed as follows:

(a) "Fiduciary" shall mean a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, personal representative, registrar of stocks and bonds, guardian of estates, assignee, receiver, managing agent and any other similar capacity.

(b) "Regulations" shall mean the regulations promulgated by the board of governors of the federal reserve system and the comptroller of currency in conformity with the federal Internal Revenue Code, as such regulations now exist or as they may be hereafter amended.

(c) "Participating interest" shall mean a proportionate undivided interest in all assets of the common trust fund for the time being, acquired by a fiduciary for cash, or in exchange for other assets.

(d) Words imputing the masculine gender shall be applied to and include all persons and corporations.

(Formerly: Acts 1949, c.70, s.1; Acts 1965, c.409, s.1.) As amended by Acts 1982, P.L.171, SEC.90.

IC 30-1-8-2

Establishment; conformity with Internal Revenue Code

Sec. 2. Any Indiana bank or trust company or any national bank, qualified to act as fiduciary in this state, may establish common trust funds in conformity with the provisions of Section 584 of the Internal Revenue Code, and the regulations promulgated thereunder, pertaining to the collective investment and reinvestment of trust funds by such banks and companies as fiduciaries or co-fiduciaries, and may lawfully purchase with funds which it holds for investment as such fiduciary or co-fiduciary participating interests in such common trust funds, if:

(1) such investment is not prohibited by the instrument or judgment creating such fiduciary relationship; and

(2) in any case where it is a co-fiduciary, the bank or trust company procures the written consent of its co-fiduciary to such investment. Such consent is hereby authorized.

(Formerly: Acts 1949, c.70, s.2.) As amended by P.L.2-1987, SEC.44.

IC 30-1-8-3

Written plans; rights of participants

Sec. 3. Each common trust fund administered by such bank shall be established and maintained in accordance with a written plan approved by a resolution of its board of directors and by competent legal counsel, which shall contain provisions not inconsistent with said regulations as to the manner in which the fund is to be operated,

and define the rights of participants therein.
(Formerly: Acts 1949, c.70, s.3.)

IC 30-1-8-4

Participation; proportionate interest

Sec. 4. Each fiduciary investment placed in every such common trust fund shall participate on the basis of a proportionate interest in all of the assets and income of the fund, and may be evidenced in writing or otherwise at the option of the bank administering the fund, but not in any form which purports to be negotiable or assignable.
(Formerly: Acts 1949, c.70, s.4.)

IC 30-1-8-5

Governing laws and regulations

Sec. 5. Investment and reinvestment of the money paid into every such fund shall be made, retained and disposed of in accordance with the laws of this state governing trustees, and with said regulations of the Board of Governors of the Federal Reserve System.
(Formerly: Acts 1949, c.70, s.5.)

IC 30-1-8-6

Repealed

(Repealed by P.L.80-1989, SEC.18.)

IC 30-1-8-7

Common trust funds for funds held by other bank, trust company, or affiliate as fiduciary

Sec. 7. Any:

- (1) Indiana bank or trust company; or
- (2) national bank qualified to act as fiduciary and whose principal place of business is in Indiana;

may establish and maintain one (1) or more common trust funds in accordance with section 2 of this chapter for the funds held by the bank or trust company or any other bank or trust company, including an affiliate, in its capacity as administrator, executor, guardian, or trustee under will or trust agreement.

(Formerly: Acts 1973, P.L.292, SEC.1.) As amended by P.L.280-1987, SEC.4; P.L.238-2005, SEC.16.

IC 30-1-9
Chapter 9. Resulting Trusts and Powers

IC 30-1-9-1
Repealed
(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-2
Repealed
(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-3
Repealed
(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-4
Repealed
(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-5
Repealed
(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-6
Resulting trust
Sec. 6. When a conveyance for a valuable consideration is made to one (1) person, and the consideration therefor paid by another, no use or trust shall result in favor of the latter; but the title shall vest in the former, subject to the provisions of the next two (2) sections.
(Formerly: Acts 1852, IRS, c.113, s.6.)

IC 30-1-9-7
Repealed
(Repealed by P.L.144-1994, SEC.4.)

IC 30-1-9-8
Resulting trust; absolute conveyance without consent
Sec. 8. The provisions of the section next before the last, shall not extend to cases where the alienee shall have taken an absolute conveyance in his own name, without the consent of the person with whose money the consideration was paid; or where such alienee, in violation of some trust, shall have purchased the land with moneys not his own; or where it shall be made to appear that, by agreement, and without any fraudulent intent, the party to whom the conveyance was made, or in whom the title shall vest, was to hold the land or some interest therein in trust for the party paying the purchase-money or some part thereof.
(Formerly: Acts 1852, IRS, c.113, s.8.)

IC 30-1-9-9

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-10

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-11

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-12

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-13

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-1-9-14

Reserving absolute power of revocation

Sec. 14. A grantor of lands reserving an absolute power of revocation, shall be deemed an absolute owner, as regards creditors and purchasers.

(Formerly: Acts 1852, IRS, c.113, s.14.)

IC 30-1-9-15

Disposition more extensive than power

Sec. 15. No disposition by virtue of a power, shall be void on the ground that it is more extensive than was authorized by the power. But every estate or trust so created, so far as embraced by the terms of the power, shall be valid.

(Formerly: Acts 1852, IRS, c.113, s.15.)

IC 30-1-9-16

Repealed

(Repealed by Acts 1975, P.L.111, SEC.13.)

IC 30-1-9-17

Revocation

Sec. 17. (a) Every power, beneficial or in trust, shall be irrevocable, unless an authority to revoke it is reserved in the instrument creating the same.

(b) This section does not apply to any power of attorney, regardless of when the power of attorney was created.

(Formerly: Acts 1852, IRS, c.113, s.17.) As amended by Acts 1982, P.L.178, SEC.1.

IC 30-1-9-18

Sale of lands; mortgage or conveyance

Sec. 18. Where a power to sell lands shall be given to the grantee, in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in any person who shall become entitled to the money so secured to be paid.

(Formerly: Acts 1852, IRS, c.113, s.18.)

IC 30-1-9-19

Power of attorney; conveyances

Sec. 19. The provisions of this chapter relative to powers, shall not extend to a simple power of attorney to convey lands, in the name and for the benefit of the owner.

(Formerly: Acts 1852, IRS, c.113, s.17a.) As amended by Acts 1982, P.L.171, SEC.91.

IC 30-2

ARTICLE 2. GENERAL PROVISIONS

IC 30-2-1

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-2-1.5

Repealed

(Repealed by P.L.275-1985, SEC.2.)

IC 30-2-2

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-2-3

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-2-4

Chapter 4. Uniform Fiduciaries Act

IC 30-2-4-1

Definitions

Sec. 1. (a) In this chapter unless the context or subject-matter otherwise requires:

(1) "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

(2) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

(3) "Person" includes a corporation, limited liability company, partnership, or other association, or two (2) or more persons having a joint or common interest.

(4) "Principal" includes any person to whom a fiduciary as such owes an obligation.

(b) A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not.

(Formerly: Acts 1927, c.17, s.1.) As amended by Acts 1982, P.L.171, SEC.92; P.L.8-1993, SEC.463.

IC 30-2-4-2

Application of payments made to fiduciaries

Sec. 2. A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right to title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

(Formerly: Acts 1927, c.17, s.2.)

IC 30-2-4-3

Registration or transfer of securities held by fiduciaries

Sec. 3. If an executor, administrator, trustee, guardian or other fiduciary or the nominee of a fiduciary in whose name are registered or to be registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, applies for the registration or transfer of the same, such corporation or company or other association, or its or their transfer agent, is not bound to inquire whether the fiduciary or nominee is committing a breach of his obligation as fiduciary or nominee in making such registration or transfer, or to see to the performance of the fiduciary obligation, and is liable for such registration or transfer only where

such registration or transfer is made with actual knowledge that such fiduciary or nominee is committing a breach of trust in requesting such registration or transfer, or with knowledge of such facts that its or their participation in such registration or transfer amounts to bad faith.

(Formerly: Acts 1927, c.17, s.3; Acts 1947, c.351, s.3.)

IC 30-2-4-4

Transfer of negotiable instrument by fiduciary

Sec. 4. If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary, in fact commits a breach of his obligation as fiduciary in transferring the instrument.

(Formerly: Acts 1927, c.17, s.4.)

IC 30-2-4-5

Check drawn by fiduciary payable to third person

Sec. 5. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

(Formerly: Acts 1927, c.17, s.5.)

IC 30-2-4-6

Check drawn by and payable to fiduciary

Sec. 6. If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith.

(Formerly: Acts 1927, c.17, s.6.)

IC 30-2-4-7

Deposit in name of fiduciary

Sec. 7. If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with the actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(Formerly: Acts 1927, c.17, s.7.)

IC 30-2-4-8

Deposit in name of principal

Sec. 8. If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(Formerly: Acts 1927, c.17, s.8.)

IC 30-2-4-9

Deposit in fiduciary's personal account

Sec. 9. If a fiduciary makes a deposit in a bank to his personal

credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

(Formerly: Acts 1927, c.17, s.9.)

IC 30-2-4-10

Deposit in names of two or more trustees

Sec. 10. When a deposit is made in a bank in the name of two (2) or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

(Formerly: Acts 1927, c.17, s.10.)

IC 30-2-4-11

Prior transactions

Sec. 11. The provisions of this chapter shall not apply to transactions taking place prior to May 16, 1927.

(Formerly: Acts 1927, c.17, s.11.) As amended by Acts 1982, P.L.171, SEC.93.

IC 30-2-4-12

Cases not provided for

Sec. 12. In any case not provided for in this chapter, the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

(Formerly: Acts 1927, c.17, s.12.) As amended by Acts 1982, P.L.171, SEC.94.

IC 30-2-4-13

Uniformity of interpretation

Sec. 13. This chapter shall be so interpreted and construed as to

effectuate its general purpose to make uniform the law of those states which enact it.

(Formerly: Acts 1927, c.17, s.13.) As amended by Acts 1982, P.L.171, SEC.95.

IC 30-2-4-14

Short title

Sec. 14. This chapter may be cited as the Uniform Fiduciaries Act.
(Formerly: Acts 1927, c.17, s.14.) As amended by Acts 1982, P.L.171, SEC.96.

IC 30-2-5

Chapter 5. Uniform Act for the Simplification of Fiduciary Security Transfers

IC 30-2-5-1

Definitions

Sec. 1. In this chapter and IC 30-2-6, unless the context otherwise requires:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a protected person, a beneficial owner of a security registered in the name of a nominee, or an owner under eighteen (18) years of age, of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on the claimant's behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association, or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

(Formerly: Acts 1961, c.124, s.1; Acts 1973, P.L.293, SEC.1.) As amended by P.L.33-1989, SEC.91.

IC 30-2-5-2

Registration in name of fiduciary

Sec. 2. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

(Formerly: Acts 1961, c.124, s.2.)

IC 30-2-5-3

Assignment by fiduciary

Sec. 3. Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

- (a) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;
- (b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and
- (c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

(Formerly: Acts 1961, c.124, s.3.) As amended by Acts 1982, P.L.171, SEC.97.

IC 30-2-5-4

Evidence of appointment or incumbency

Sec. 4. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty (60) days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection (b) provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (b) except to the extent that the contents relate directly to the appointment or incumbency.

(Formerly: Acts 1961, c.124, s.4.)

IC 30-2-5-5

Adverse claims

Sec. 5. (a) A person asserting a claim of beneficial interest adverse

to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty (30) days after the mailing and shall then make the transfer unless restrained by a court order.

(Formerly: Acts 1961, c.124, s.5.) As amended by Acts 1982, P.L.171, SEC.98.

IC 30-2-5-6

Nonliability of corporation or transfer agent

Sec. 6. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter.

(Formerly: Acts 1961, c.124, s.6.) As amended by Acts 1982, P.L.171, SEC.99.

IC 30-2-5-7

Nonliability of third persons

Sec. 7. (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent.

(Formerly: Acts 1961, c.124, s.7.) As amended by Acts 1982, P.L.171, SEC.100.

IC 30-2-5-8

Territorial application

Sec. 8. (a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

(Formerly: Acts 1961, c.124, s.8.) As amended by Acts 1982, P.L.171, SEC.101.

IC 30-2-5-9

Tax obligations

Sec. 9. This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

(Formerly: Acts 1961, c.124, s.9.) As amended by Acts 1982, P.L.171, SEC.102.

IC 30-2-5-10

Uniformity of interpretation

Sec. 10. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Formerly: Acts 1961, c.124, s.10.) As amended by Acts 1982, P.L.171, SEC.103.

IC 30-2-5-11

Short title

Sec. 11. This chapter may be cited as the Uniform Act for the Simplification of Fiduciary Security Transfers.

(Formerly: Acts 1961, c.124, s.11.) As amended by Acts 1982, P.L.171, SEC.104.

IC 30-2-6

Chapter 6. Exemption of Employee Benefit Trusts From Rule Against Perpetuities

IC 30-2-6-1

Contributions; self-employment retirement fund

Sec. 1. Either:

(1) a trust created by an employer as part of a stock bonus, pension, disability, death benefit, or profit-sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees the earnings or principal, or both earnings and principal, of the fund held in trust; or

(2) a retirement fund or trust which at any time is tax exempt under the provisions of the Internal Revenue Code and to which contributions are made by self-employed persons or qualified individuals for the purpose of providing pension or other benefits for themselves or their beneficiaries;

may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which such trust is created and shall not be invalid as violating any law against perpetuities or suspension of the power of alienation of the title to property.

(Formerly: Acts 1949, c.184, s.1; Acts 1953, c.253, s.1.) As amended by P.L.2-1987, SEC.45.

IC 30-2-6-2

Income; accumulation

Sec. 2. The income arising from any trust within the classification mentioned in the preceding section may be permitted to accumulate in accordance with the terms of such trust for as long a time as may be necessary to accomplish the purposes for which the same was created, notwithstanding any existing law or laws limiting the period during which trust income may be accumulated.

(Formerly: Acts 1949, c.184, s.2.)

IC 30-2-6-3

Termination of trust; limitation of actions

Sec. 3. No rule of law against perpetuities or suspension of the power of alienation of the title to property, or the accumulation of income, shall operate to invalidate any trust created or attempted to be created before September 10, 1949, by an employer as part of a stock bonus, pension, disability, death benefit, or profit-sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees or both for the earnings and principal of the fund held in trust, unless the trust is terminated by a court of competent jurisdiction in a suit instituted before September 11, 1950.

(Formerly: Acts 1949, c.184, s.3.) As amended by Acts 1982, P.L.171, SEC.105.

IC 30-2-7

Chapter 7. Uniform Act Governing Secured Creditors' Dividends in Liquidation Proceedings

IC 30-2-7-1

Definitions

Sec. 1. As used in this chapter, unless the context or subject-matter requires otherwise:

(a) "Liquidation proceeding" includes all assignments for the benefit of creditors, whether voluntary or by operation of law; administration of insolvent decedents' estates; liquidations of insolvent banks; equity receiverships where the subject under receivership is insolvent; and any other proceedings for distribution of assets of any insolvent debtor, whether a person, decedent's estate, partnership, limited liability company, corporation, or business association.

(b) "Liquidator" means any person administering assets in any liquidation proceeding as defined in this chapter.

(c) "Insolvent debtor" means any insolvent person, decedent's estate, partnership, limited liability company, corporation, or business association involved in a liquidation proceeding as defined in this chapter.

(d) "Secured creditor" means a creditor who has either legal or equitable security for his debt upon any property of the insolvent debtor of a nature to be liquidated and distributed in a liquidation proceeding, or a creditor to whom is owed a debt for which such security is possessed by some indorser, surety, or other person secondarily liable.

(e) "Creditor's sale" includes any sale effected by the secured creditor by judicial process or otherwise under the terms of his contract or the applicable law for the purpose of realizing upon his security.

(Formerly: Acts 1941, c.50, s.1.) As amended by Acts 1982, P.L.171, SEC.106; P.L.8-1993, SEC.464.

IC 30-2-7-2

Secured creditors' claim must disclose security

Sec. 2. In a liquidation proceeding every secured creditor's claim against the general assets shall disclose the nature of the security. When a decedent's estate already in the course of administration is judicially declared insolvent or when in an equity receivership it is determined that the subject under receivership is insolvent, secured creditors having claims on file which do not comply with this section shall make disclosure within a time to be fixed by the court.

(Formerly: Acts 1941, c.50, s.2.)

IC 30-2-7-3

Effect of concealment

Sec. 3. Any secured creditor who with intent to evade the provisions of this chapter fails to disclose the existence of the

security shall not be entitled to receive or retain dividends out of the general assets, unless he thereafter releases or surrenders to the liquidator the security which he has failed to disclose, or unless he procures such release or surrender if the security is in the possession of an indorser, surety, or other person secondarily liable for the insolvent debtor.

(Formerly: Acts 1941, c.50, s.3.) As amended by Acts 1982, P.L.171, SEC.107.

IC 30-2-7-4

Value of security credited upon claims

Sec. 4. Dividends paid to secured creditors shall be computed only upon the balance due after the value of all security not exempt from the claims of unsecured creditors and not released or surrendered to the liquidator, is determined and credited upon the claim secured by it.

(Formerly: Acts 1941, c.50, s.4.)

IC 30-2-7-5

Determination of value by secured creditor

Sec. 5. (1) By collection. When the asset constituting the security is an obligation for the payment of money, the secured creditor may determine its value by collection or by exhausting his remedies thereon and then surrendering the obligation to the liquidator.

(2) By creditor's sale. When the asset constituting the security is something other than an obligation for the payment of money, the secured creditor may determine its value by creditor's sale.

(Formerly: Acts 1941, c.50, s.5.)

IC 30-2-7-6

Alternative determination of value

Sec. 6. Where valuation under the provisions of section 5 of this chapter is impracticable or would cause undue delay, the court, upon petition by either the secured creditor or the liquidator, may order the value of the security determined by any of the following methods:

(1) By compromise, if the secured creditor and the liquidator agree upon a value. The liquidator may redeem such assets by payment of the agreed value, if authorized by the court.

(2) By litigation, through proceedings in the liquidation proceedings. The liquidator may redeem such assets by paying the value so determined, if authorized by the court.

(3) By liquidator's sale of the assets which, when completed and approved by the court, shall pass to the purchaser good title, free and clear of all liens of the secured creditor, such liens to be transferred to the proceeds of the sale. The order of sale may be either:

(a) conditional, requiring the sale to be made by the liquidator only if the secured creditor does not complete a determination by collection or creditor's sale as set forth in section 5 of this chapter within a time fixed by the court; or

(b) absolute, requiring the sale to be made by the liquidator within a time fixed by the court.

Provided, that subdivision (3) shall not apply to security upon real estate or insolvent decedents' estates administered by the court.

(Formerly: Acts 1941, c.50, s.6.) As amended by Acts 1982, P.L.171, SEC.108.

IC 30-2-7-7

Exempt security not credited

Sec. 7. When any creditor has legal or equitable security upon assets which are exempt from process for the satisfaction of unsecured debts and are duly claimed as exempt by the insolvent debtor, the value of such security shall not be credited upon the claim. Amounts realized by the creditor from such security after liquidation proceedings are begun shall be disregarded in computing dividends, unless the dividend so computed exceeds the sum actually owing upon the claim, in which event only the amount owing shall be paid.

(Formerly: Acts 1941, c.50, s.7.)

IC 30-2-7-8

Uniformity of interpretation

Sec. 8. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Formerly: Acts 1941, c.50, s.9.) As amended by Acts 1982, P.L.171, SEC.109.

IC 30-2-7-9

Short title

Sec. 9. This chapter may be cited as Uniform Act Governing Secured Creditors' Dividends in Liquidation Proceedings.

(Formerly: Acts 1941, c.50, s.10.) As amended by Acts 1982, P.L.171, SEC.110.

IC 30-2-8

Repealed

(Repealed by P.L.267-1989, SEC.3.)

IC 30-2-8.5

Chapter 8.5. Indiana Uniform Transfers to Minors Act

IC 30-2-8.5-1

"Adult" defined

Sec. 1. As used in this chapter, "adult" means an individual who is at least twenty-one (21) years of age.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-2

"Benefit plan" defined

Sec. 2. As used in this chapter, "benefit plan" means an employer's plan for the benefit of an employee or partner.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-3

"Broker" defined

Sec. 3. As used in this chapter, "broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities, or both, for the person's own account or for the account of others, or both.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-4

"Custodial property" defined

Sec. 4. As used in this chapter, "custodial property" means:

- (1) an interest in property transferred to a custodian under this chapter; and
- (2) the income from and proceeds of that interest in property.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-5

"Custodian" defined

Sec. 5. As used in this chapter, "custodian" means a person designated as a custodian under section 24 of this chapter or a successor or substitute custodian designated under section 33 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-6

"Financial institution" defined

Sec. 6. As used in this chapter, "financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-7

"Guardian" defined

Sec. 7. As used in this chapter, "guardian" has the meaning set forth in IC 29-3-1-6.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-8

"Legal representative" defined

Sec. 8. As used in this chapter, "legal representative" means an individual's personal representative or guardian.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-9

"Members of the minor's family" defined

Sec. 9. As used in this chapter, "member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-10

"Minor" defined

Sec. 10. As used in this chapter, "minor" means an individual who is less than twenty-one (21) years of age.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-11

"Person" defined

Sec. 11. As used in this chapter, "person" means an individual, corporation, organization, or other legal entity.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-12

"Personal representative" defined

Sec. 12. As used in this chapter, "personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-13

"State" defined

Sec. 13. As used in this chapter, "state" includes a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession subject to the legislative authority of the United States.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-14

"Transfer" defined

Sec. 14. As used in this chapter, "transfer" means a transaction that creates custodial property under section 24 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-15**"Transferor" defined**

Sec. 15. As used in this chapter, "transferor" means a person who makes a transfer under this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-16**"Trust company" defined**

Sec. 16. As used in this chapter, "trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-17**Scope and jurisdiction**

Sec. 17. (a) This chapter applies to a transfer that refers to this chapter in the designation under section 24(a) of this chapter by which the transfer is made if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of Indiana or the custodial property is located in Indiana. The custodianship created under this section remains subject to this chapter despite:

(1) a change in residence of:

- (A) a transferor;
- (B) the minor; or
- (C) the custodian; or

(2) the removal of custodial property from Indiana.

(b) A person designated as custodian under this chapter is subject to personal jurisdiction in Indiana with respect to a matter relating to the custodianship.

(c) A transfer that purports to be made and that is valid under the uniform transfers to minors act, the uniform gifts to minors act or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in Indiana if at the time of the transfer the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-18**Nomination of custodian**

Sec. 18. (a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act". The nomination may name one (1) or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve.

The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 24(a) of this chapter.

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 24 of this chapter. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under section 24 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-19

Transfer by gift or exercise of power of appointment

Sec. 19. A person may make:

- (1) a transfer by irrevocable gift to; or
- (2) an irrevocable exercise of a power of appointment in favor of;

a custodian for the benefit of a minor under section 24 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-20

Transfer authorized by will or trust; designation of custodian

Sec. 20. (a) A personal representative or trustee may make an irrevocable transfer under section 24 of this chapter to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under section 18 of this chapter to receive the custodial property, the transfer shall be made to that person.

(c) If the testator or settlor has not nominated a custodian under section 18 of this chapter, or a person nominated as custodian dies before the transfer or is unable, declines, or is ineligible to serve, the personal representative or the trustee shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 24(a) of this chapter. The personal representative or trustee may be designated as custodian under this subsection if the personal representative or trustee is eligible to serve as custodian for property of that kind under section 24(a) of this chapter.

As added by P.L.267-1989, SEC.2. Amended by P.L.95-2007, SEC.15.

IC 30-2-8.5-21

Other transfers by fiduciary; guardian as custodian

Sec. 21. (a) A personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor under section 24 of this chapter in the absence

of a will or under a will or trust that does not contain an authorization to do so. The personal representative or trustee may also serve as the custodian of the transferred property if the personal representative or trustee is qualified under section 24 of this chapter.

(b) A guardian may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor under section 24 of this chapter. The guardian may also serve as the custodian of the transferred property if the guardian is qualified under section 24 of this chapter.

(c) A transfer under subsection (a) or (b) may be made only if:

(1) the personal representative, trustee, or guardian considers the transfer to be in the best interest of the minor;

(2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(3) the transfer is authorized by the court if the property transferred exceeds ten thousand dollars (\$10,000) in value.

As added by P.L.267-1989, SEC.2. Amended by P.L.95-2007, SEC.16.

IC 30-2-8.5-22

Transfer by obligor

Sec. 22. (a) A person not subject to section 20 or 21 of this chapter that holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor under section 24 of this chapter.

(b) If a person having the right to nominate a custodian under section 18 of this chapter has nominated a custodian under that section to receive the custodial property, the transfer shall be made to the custodian.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-23

Receipt for custodial property

Sec. 23. A written acknowledgement of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-24

Manner of creating custodial property and effecting transfer; designation of initial custodian; control

Sec. 24. (a) Custodial property is created and a transfer is made if:

(1) an uncertificated security or a certificated security in registered form is:

(A) registered in the name of:

(i) the transferor;

(ii) an adult other than the transferor; or

(iii) a trust company;

followed by the words: "as custodian for _____ (name

of minor) under the Indiana uniform transfers to minors act";
or

(B) delivered if in certificated form, or a document necessary for the transfer of an uncertificated security is delivered, together with a necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b);

(2) money is paid or delivered to a broker or financial institution for credit to an account in the name of:

(A) the transferor;

(B) an adult other than the transferor; or

(C) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

(3) the ownership of a life or endowment insurance policy or annuity contract is:

(A) registered with the issuer in the name of:

(i) the transferor;

(ii) an adult other than the transferor; or

(iii) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

or

(B) assigned in a writing delivered to:

(i) an adult other than the transferor; or

(ii) a trust company;

whose name in the assignment is followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to:

(A) the transferor;

(B) an adult other than the transferor; or

(C) a trust company;

whose name in the notification is followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

(5) an interest in real property is recorded in the name of:

(A) the transferor;

(B) an adult other than the transferor; or

(C) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

(6) a certificate of title issued by a department or agency of a state or of the United States that evidences title to tangible personal property is:

(A) issued in the name of:

- (i) the transferor;
- (ii) an adult other than the transferor; or
- (iii) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";
or

(B) delivered and endorsed to:

- (i) an adult other than the transferor; or
- (ii) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";
or

(7) an interest in property not described in subdivisions (1) through (6) is transferred to:

- (A) an adult other than the transferor; or
- (B) a trust company;

by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of subsection (a)(1)(B) and (a)(7):

TRANSFER UNDER THE INDIANA UNIFORM
TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: _____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Indiana uniform transfers to minors act.

Dated: _____

(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-25

Single custodianship

Sec. 25. A transfer may be made only for one (1) minor, and only one (1) person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-26

Validity and effect of transfer

Sec. 26. (a) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

- (1) the failure of the transferor to comply with section 24(c) of this chapter concerning possession and control;
- (2) the designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 24(a) of this chapter; or
- (3) the death or incapacity of a person nominated under section 18 of this chapter or designated under section 24 of this chapter as custodian or the disclaimer of the office by that person.

(b) A transfer made under section 24 of this chapter is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter and neither the minor nor the minor's legal representative has a right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter, and grants to the custodian, and to a third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-27

Care of custodial property

Sec. 27. (a) A custodian shall:

- (1) take control of custodial property;
- (2) register or record title to custodial property if appropriate; and
- (3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian in the custodian's discretion and without liability to the minor or the minor's estate, may retain custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on:

- (1) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or
- (2) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate

and distinct from all other property in a manner sufficient to identify the property clearly as custodial property of the minor. Custodial property consisting of an undivided interest is identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is identified if the property is recorded, and custodial property subject to registration is identified if the property is either registered or held in an account designated in the name of the custodian, followed by the words: "as a custodian for _____ (name of minor) under the Indiana uniform transfers to minors act".

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor is at least fourteen (14) years of age.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-28

Powers of custodian

Sec. 28. (a) A custodian acting in a custodial capacity has all the rights, powers, and authority over custodial property that an unmarried adult owner has over the adult owner's own property, but a custodian may exercise those rights, powers, and authority in a custodial capacity only.

(b) This section does not relieve a custodian from liability for breach of the requirements of section 27 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-29

Use of custodial property; transfer of property to trust

Sec. 29. (a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

- (1) the duty or ability of the custodian personally or of any other person to support the minor; or
- (2) any other income or property of the minor that may be applicable or available for the support of the minor.

(b) At any time and without a court order, a custodian may transfer part or all of the custodial property to a trust, including a trust created by the custodian, in which:

- (1) the minor is the sole beneficiary of the trust; and
- (2) the terms of the trust satisfy the requirements of Section 2503(c) of the Internal Revenue Code and the regulations under that section.

The transfer terminates the custodianship of the property to the extent of the transfer.

(c) On petition of an interested person or the minor if the minor is at least fourteen (14) years of age, the court may order the custodian

to deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the court considers advisable for the use and benefit of the minor.

(d) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect an obligation of a person to support the minor.

As added by P.L.267-1989, SEC.2. Amended by P.L.238-2005, SEC.17; P.L.95-2007, SEC.17.

IC 30-2-8.5-30

Custodian's expenses, compensation, and bond

Sec. 30. (a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for a person who is a transferor under section 19 of this chapter, a custodian has an election during each calendar year to charge reasonable compensation for services performed during that year.

(c) A custodian's election to charge reasonable compensation for a calendar year must be exercised during the calendar year.

(d) Except as provided in section 33(f) of this chapter, a custodian is not required to give a bond.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-31

Exemption of third person from liability

Sec. 31. A person in good faith and without court order may act on the instructions of or otherwise deal with a person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

- (1) the validity of the purported custodian's designation;
- (2) the propriety of, or the authority under this chapter for, an act of the purported custodian;
- (3) the validity or propriety under this chapter of an instrument or instruction executed or given by the person purporting to make a transfer or by the purported custodian, or both; or
- (4) the propriety of the application of property of the minor delivered to the purported custodian.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-32

Liability to third person

Sec. 32. (a) A claim based on:

- (1) a contract entered into by a custodian acting in a custodial capacity;
- (2) an obligation arising from the ownership or control of custodial property, or both; or
- (3) a tort committed during the custodianship;

may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian

or the minor is personally liable.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and fails to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-33

Renunciation, resignation, death, or removal of custodian; designation of successor custodian

Sec. 33. (a) A person nominated under section 18 of this chapter or designated under section 24 of this chapter as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If:

(1) the event giving rise to a transfer has not occurred; and

(2) no substitute custodian able, willing, and eligible to serve was nominated under section 18 of this chapter;

the person who made the nomination may nominate a substitute custodian under section 18 of this chapter. Otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer from among the persons eligible to serve as custodian for that kind of property under section 24(a) of this chapter. The custodian designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section 19 of this chapter as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor is at least fourteen (14) years of age and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is at least fourteen (14) years of age, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a guardian of the minor, or a trust company. Except as provided in subsection (g), if the minor is less than fourteen (14) years of age or fails to act within sixty (60) days

after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and is responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor is at least fourteen (14) years of age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 19 of this chapter or to require the custodian to give appropriate bond.

(g) If the custodial property, including a custodial account, is worth less than ten thousand dollars (\$10,000), a guardian does not need to be appointed as set forth in IC 29-3-3-1.

As added by P.L.267-1989, SEC.2. Amended by P.L.149-2012, SEC.10.

IC 30-2-8.5-34

Accounting by and determination of liability of custodian

Sec. 34. (a) A minor who is at least fourteen (14) years of age, the minor's guardian or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court for:

- (1) an accounting by the custodian or the custodian's legal representative; or
- (2) a determination of responsibility between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 32 of this chapter to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to give an accounting.

(d) If a custodian is removed under section 33(f) of this chapter, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-35**Termination of custodianship**

Sec. 35. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

- (1) the minor's attaining twenty-one (21) years of age; or
- (2) the minor's death.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-36**Applicability**

Sec. 36. This chapter applies to a transfer within the scope of section 17 of this chapter made after this chapter's effective date:

- (1) if:
 - (A) the transfer purports to have been made under the Indiana uniform gifts to minors act (IC 30-2-8); or
 - (B) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state; and
- (2) the application of this chapter is necessary to validate the transfer.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-37**Effect on existing custodianships**

Sec. 37. (a) A transfer of custodial property made before July 1, 1989, is validated even if there was no specific authority in the Indiana uniform gifts to minors act (IC 30-2-8) for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This chapter applies to all transfers made before July 1, 1989, in a manner and form prescribed in the Indiana uniform gifts to minors act (IC 30-2-8) except to the extent:

- (1) the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1989; or
- (2) provided in subsection (c).

(c) The amendments to IC 30-2-8 made by Acts 1973, P.L.293; do not apply to a custodian account established in accordance with IC 30-2-8 before January 1, 1974.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-38**Uniformity of application and construction**

Sec. 38. This chapter shall be applied and construed to effectuate a general purpose to make uniform the law with respect to the subject of this chapter among states enacting this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-39

Severability

Sec. 39. The provisions of this chapter are severable in the manner provided by IC 1-1-1-8(b).

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-40

Written election concerning custodial property

Sec. 40. (a) If a transferor:

(1) has transferred property to a custodian for the benefit of a minor before July 1, 1989; and

(2) has made or wishes to make further transfers of property to the same custodian for the benefit of the same minor after June 30, 1989;

the transferor shall make a written election under subsection (b) concerning the custodial property.

(b) A transferor may elect one (1) of the following:

(1) The transferor may establish a new account under this chapter for only the property transferred after June 30, 1989.

(2) The transferor may transfer the property transferred before July 1, 1989, into a new account established under this chapter and make further transfers of property into the account established under this subdivision.

(3) The transferor may transfer property after June 30, 1989, into the account established before July 1, 1989. However, any property transferred into the account after June 30, 1989, is subject to this chapter.

As added by P.L.137-1994, SEC.1.

IC 30-2-8.6

Chapter 8.6. Uniform Custodial Trust Act

IC 30-2-8.6-1

Applicability

Sec. 1. (a) This chapter applies to a transfer or declaration creating a custodial trust that refers to this chapter if, at the time of the transfer or declaration:

(1) the transferor, beneficiary, or custodial trustee:

(A) is a resident of; or

(B) has its principal place of business in Indiana; or

(2) custodial trust property is located in Indiana.

(b) The custodial trust remains subject to this chapter even if the transferor, beneficiary, or custodial trustee:

(1) changes its residence or principal place of business; or

(2) removes custodial trust property;

to a location outside Indiana.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-2

Transfer under other state's law; enforcement

Sec. 2. A transfer made pursuant to an act of another state substantially similar to this chapter is governed by the law of that state and may be enforced in Indiana.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-3

Construction

Sec. 3. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-4

Citing chapter

Sec. 4. This chapter may be cited as the "Indiana Uniform Custodial Trust Act".

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-5

"Adult"

Sec. 5. As used in this chapter, "adult" means an individual who is at least eighteen (18) years of age.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-6

"Beneficiary"

Sec. 6. As used in this chapter, "beneficiary" means an individual for whom property:

(1) has been transferred to; or

(2) is held under a declaration of trust by;
a custodial trustee for the individual's use and benefit under this
chapter.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-7

"Custodial trust property"

Sec. 7. As used in this chapter, "custodial trust property" means
the following:

(1) An interest in property:

(A) transferred to; or

(B) held under a declaration of trust by;

a custodial trustee under this chapter.

(2) The income from and proceeds of the property interest
described in subdivision (1).

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-8

"Custodial trustee"

Sec. 8. As used in this chapter, "custodial trustee" means a person
designated as:

(1) trustee; or

(2) substitute or successor to the person designated as trustee;

of a custodial trust under this chapter.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-9

"Guardian"

Sec. 9. As used in this chapter, "guardian" has the meaning set
forth in IC 29-3-1-6.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-10

"Incapacitated"

Sec. 10. As used in this chapter, "incapacitated" has the meaning
set forth in IC 29-3-1-7.5.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-11

"Legal representative"

Sec. 11. As used in this chapter, "legal representative" means a
personal representative or guardian.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-12

"Member of the beneficiary's family"

Sec. 12. As used in this chapter, "member of the beneficiary's
family" means a beneficiary's spouse, descendant, stepchild, parent,
stepparent, grandparent, brother, sister, uncle, or aunt, whether of
whole or half blood or by adoption.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-13

"Person"

Sec. 13. As used in this chapter, "person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-14

"Personal representative"

Sec. 14. As used in this chapter, "personal representative" has the meaning set forth in IC 29-1-1-3.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-15

"State"

Sec. 15. As used in this chapter, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-16

"Transferor"

Sec. 16. As used in this chapter, "transferor" means a person who creates a custodial trust by transfer or declaration.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-17

"Trust company"

Sec. 17. As used in this chapter, "trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-18

Creating a custodial trust

Sec. 18. (a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration of the property or by an instrument of transfer that:

- (1) is executed in any lawful manner;
- (2) names an individual as beneficiary who may be the transferor; and
- (3) in substance, designates the transferee to be the custodial trustee of the property under this chapter.

(b) A person may create a custodial trust of property by a written declaration evidenced by registration of the property or by another instrument of declaration that:

- (1) is executed in any lawful manner;
- (2) describes the property;

(3) names as beneficiary an individual other than the declarant;
and

(4) in substance, designates the declarant, who is also the titleholder of the property, to be the custodial trustee of the property under this chapter.

(c) A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this chapter.

(d) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-19

Terminating a custodial trust

Sec. 19. (a) Except as provided in subsection (b), a transferor may not terminate a custodial trust.

(b) A custodial trust may be terminated by the beneficiary if the beneficiary is not incapacitated. In order to terminate the trust, the beneficiary must deliver to the custodial trustee a writing that:

(1) is signed by the beneficiary; and

(2) declares the termination of the custodial trust.

(c) If not previously terminated, a custodial trust terminates on the death of the beneficiary.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-20

Adding trust property

Sec. 20. A person may augment existing custodial trust property by the addition of other property under this chapter.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-21

Successor custodial trustee

Sec. 21. The transferor may:

(1) designate; or

(2) authorize the designation of;

a successor custodial trustee in the trust instrument.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-22

Creation and enforcement of trust under other law

Sec. 22. (a) This chapter does not supersede or restrict other means of creating trusts.

(b) A trust whose terms do not conform to this chapter may be enforceable according to the terms of the trust under another law.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-23

Custodial trust upon occurrence of future event

Sec. 23. (a) A person having the right to designate the recipient of property payable or transferable upon a future event may create a

custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(c) A designation under this section may be made by:

(1) making the designation in:

- (A) a will;
 - (B) a trust;
 - (C) a deed;
 - (D) a multiple party account;
 - (E) an insurance policy;
 - (F) an instrument exercising a power of appointment; or
 - (G) a writing designating a beneficiary of contractual rights;
- or

(2) registering the designation with or delivering the designation to the fiduciary, payor, issuer, or obligor of the future right.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-24

Custodial trustee's acceptance of trust property

Sec. 24. (a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this chapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, _____ (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act. I undertake to administer and distribute the custodial trust property under the Indiana uniform custodial trust act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of _____.

Dated: _____

(Signature of Custodial Trustee)

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this chapter is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-25

Transfer for use and benefit of incapacitated individual

Sec. 25. (a) Unless otherwise directed by an instrument designating a custodial trustee under section 23 of this chapter, a person, including a fiduciary other than a custodial trustee, who:

- (1) holds property of; or
- (2) owes a debt to;

an incapacitated individual may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds twenty thousand dollars (\$20,000), the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee under this section.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-26

Multiple beneficiaries

Sec. 26. (a) Beneficial interests in a custodial trust created for multiple beneficiaries are considered to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship.

(b) Custodial trust property held under this chapter by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of custodial trust property held for at least two (2) beneficiaries shall separately account to each beneficiary under sections 27 and 35 of this chapter for the administration of the custodial trust.

(d) The custodial trust property or the income from the custodial trust property may not be subject to:

- (1) anticipation;
- (2) alienation;
- (3) assignment;
- (4) pledge;
- (5) appointment; or
- (6) any other voluntary or involuntary transfer;

before distribution by the custodial trustee. The custodial trustee may disregard and defeat an attempt to violate the requirements of this subsection.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-27

Custodial trustee's powers and duties

Sec. 27. (a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument identifying the property is recorded, and custodial trust property subject to registration is identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-28

Rights and powers

Sec. 28. (a) A custodial trustee acting in a fiduciary capacity has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of section 27 of this chapter.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-29

Distribution of custodial trust property

Sec. 29. (a) If a beneficiary is not incapacitated, the custodial trustee shall:

(1) pay to the beneficiary; or
(2) expend for the beneficiary's use and benefit;
so much or all of the custodial trust property as the beneficiary may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee, in the custodial trustee's sole discretion, may expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of:

- (1) the beneficiary; and
- (2) individuals who:
 - (A) were supported by the beneficiary when the beneficiary became incapacitated; or
 - (B) are legally entitled to support by the beneficiary.

(c) The custodial trustee may make expenditures:

- (1) in the manner;
- (2) when; and
- (3) to the extent;

that the custodial trustee determines suitable and proper. The custodial trustee may make expenditures without court order and without regard to other support, income, or property of the beneficiary.

(d) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which:

- (1) the custodial trustee; or
- (2) the beneficiary;

may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-30

Administering custodial trust for incapacitated beneficiary

Sec. 30. (a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if:

- (1) the custodial trust was created under section 25 of this chapter;
- (2) the transferor has so directed in the instrument creating the custodial trust; or
- (3) the custodial trustee has determined that the beneficiary is incapacitated.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon:

- (1) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority under a durable power of attorney;
- (2) the certificate of the beneficiary's physician; or
- (3) other persuasive evidence.

(c) If a custodial trustee for an incapacitated beneficiary reasonably concludes that:

- (1) the beneficiary's incapacity has ceased; or
- (2) circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary;

the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) Upon the petition of:

- (1) the beneficiary;
- (2) the custodial trustee; or
- (3) another person interested in:
 - (A) the custodial trust property; or
 - (B) the welfare of the beneficiary;

the court shall determine whether the beneficiary is incapacitated.

(e) If:

- (1) the custodial trustee or a court has not determined that a beneficiary is incapacitated under subsection (b) or (d); and
- (2) the custodial trustee has reason to believe that the beneficiary is incapacitated;

the custodial trustee shall administer the custodial trust in accordance with the provisions of this chapter applicable to an incapacitated beneficiary.

(f) Incapacity of a beneficiary does not terminate:

- (1) the custodial trust;
- (2) any designation of a successor custodial trustee;
- (3) rights or powers of the custodial trustee; or
- (4) any immunities of third persons acting on the instructions of the custodial trustee.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-31

Reliance on person purporting to be custodial trustee

Sec. 31. (a) A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to:

- (1) make a transfer as; or
- (2) act in the capacity of;

a custodial trustee.

(b) In the absence of knowledge to the contrary, a third person described in subsection (a) is not responsible for determining:

- (1) the validity of the purported custodial trustee's designation;
- (2) the propriety of, or the authority under this chapter for, any action of the purported custodial trustee;
- (3) the validity or propriety of an instrument executed or instruction given under this chapter by:
 - (A) the person purporting to make a transfer or declaration;
 - or
 - (B) the purported custodial trustee; or
- (4) the propriety of the application of property vested in the purported custodial trustee.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-32

Claim by third person against custodial trustee

Sec. 32. (a) A claim based on:

- (1) a contract entered into by a custodial trustee acting in a fiduciary capacity;
- (2) an obligation arising from the ownership or control of custodial trust property; or
- (3) a tort committed in the course of administering the custodial trust;

may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable to a third person on a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to:

- (1) reveal that capacity; or
- (2) identify the custodial trust in the contract.

(c) Unless a custodial trustee is personally at fault, a custodial trustee is not liable to a third person for:

- (1) an obligation arising from control of custodial trust property; or
- (2) a tort committed in the course of the administration of the custodial trust.

(d) A beneficiary is not personally liable to a third person for:

- (1) an obligation arising from beneficial ownership of custodial trust property; or
- (2) a tort committed in the course of administration of the custodial trust;

unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(e) Subsections (b) and (c) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-33

Resigning or declining to serve as custodial trustee

Sec. 33. (a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve as custodial trustee by notifying:

- (1) the person who made the designation;
- (2) the transferor; or
- (3) the transferor's legal representative.

(b) If the person designated to serve as custodial trustee declines to serve under subsection (a), and an event giving rise to a transfer has not occurred:

- (1) the substitute custodial trustee designated under section 23 of this chapter becomes the custodial trustee; or
- (2) if a substitute custodial trustee has not been designated:
 - (A) the person who made the designation may designate a substitute custodial trustee under section 23 of this chapter; or
 - (B) the transferor or the transferor's legal representative may designate a substitute custodial trustee.
- (c) A custodial trustee who has accepted the custodial trust property may resign by:
 - (1) delivering written notice of resignation to:
 - (A) a successor custodial trustee, if any;
 - (B) the beneficiary; and
 - (C) if the beneficiary is incapacitated, the beneficiary's guardian, if any;
 - (2) transferring, registering, or recording an appropriate instrument relating to the custodial trust property in the name of the successor custodial trustee identified under subsection (d); and
 - (3) delivering the records to the successor trustee identified under subsection (d).
- (d) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 21 or 23 of this chapter becomes custodial trustee. If there is no effective provision for a successor:
 - (1) the beneficiary, if not incapacitated, may designate a successor custodial trustee; or
 - (2) if the beneficiary is incapacitated, or fails to act within ninety (90) days after the ineligibility, resignation, death, or incapacity of the custodial trustee:
 - (A) the beneficiary's guardian becomes successor custodial trustee; or
 - (B) if the beneficiary does not have a guardian or the guardian fails to act, the resigning custodial trustee may designate a successor custodial trustee.
- (e) If a successor custodial trustee is not designated under subsection (d), any of the following may petition the court to designate a successor custodial trustee:
 - (1) The transferor.
 - (2) The legal representative of the transferor.
 - (3) The legal representative of the custodial trustee.
 - (4) An adult member of the beneficiary's family.
 - (5) The guardian of the beneficiary.
 - (6) A person interested in the custodial trust property.
 - (7) A person interested in the welfare of the beneficiary.
- (f) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver

custodial trust property and records and becomes responsible for each item as received.

(g) A beneficiary, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court:

- (1) to remove the custodial trustee for cause and designate a successor custodial trustee;
- (2) to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties; or
- (3) for other appropriate relief.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-34

Compensation of custodial trustee

Sec. 34. Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

- (1) is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;
- (2) has a noncumulative election, to be made not later than six (6) months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and
- (3) need not furnish a bond or other security for the faithful performance of fiduciary duties.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-35

Written statement of trust administration; petition for accounting

Sec. 35. (a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property. The custodial trustee shall provide a written statement of the administration of the custodial trust property:

- (1) once each year;
- (2) upon request at reasonable times by the beneficiary or the beneficiary's legal representative;
- (3) upon resignation or removal of the custodial trustee; and
- (4) upon termination of the custodial trust.

The statements described by this section must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) The following may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative:

- (1) A beneficiary.
- (2) The beneficiary's legal representative.
- (3) An adult member of the beneficiary's family.

- (4) A person interested in the custodial trust property.
- (5) A person interested in the welfare of the beneficiary.
- (c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.
- (d) In an action or proceeding under this chapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.
- (e) If a custodial trustee is removed, the court shall:
 - (1) require an accounting;
 - (2) order delivery of the custodial trust property and records to the successor custodial trustee; and
 - (3) order the execution of all instruments required for transfer of the custodial trust property.
- (f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may:
 - (1) issue instructions to the custodial trustee;
 - (2) review the propriety of the acts of a custodial trustee; or
 - (3) review the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-36

Claim against custodial trustee's claim barred against other parties

Sec. 36. (a) Except as provided in subsection (c), and unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

- (1) who has received a final account or statement fully disclosing the matter, unless an action or proceeding to assert the claim is commenced not later than two (2) years after receipt of the final account or statement; or
 - (2) who has not received a final account or statement fully disclosing the matter, unless an action or proceeding to assert the claim is commenced not later than three (3) years after the termination of the custodial trust.
- (b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust is barred unless an action or proceeding to assert the claim is commenced not later than five (5) years after the termination of the custodial trust.
- (c) The limitations on a claim for relief are as follows:
- (1) If the claimant is a minor, the claim is barred unless an action or proceeding to assert the claim is commenced before

the earlier of the following:

(A) Two (2) years after the claimant becomes an adult.

(B) Two (2) years after the claimant dies.

(2) If the claimant is an incapacitated adult, the claim is barred unless an action or proceeding to assert the claim is commenced before the earliest of the following:

(A) Two (2) years after the appointment of a guardian for claimant.

(B) Two (2) years after the removal of the incapacity.

(C) Two (2) years after the death of the claimant.

(3) If the claimant:

(A) was an adult;

(B) is deceased; and

(C) was not incapacitated;

the claim is barred unless an action or proceeding to assert the claim is commenced not later than two (2) years after the claimant's death.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-37

Termination of a custodial trust

Sec. 37. (a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(1) to the beneficiary, if not incapacitated or deceased;

(2) to the guardian or other recipient designated by the court for an incapacitated beneficiary; or

(3) upon the beneficiary's death, in the following order:

(A) as last directed in a writing:

(i) signed by the deceased beneficiary while not incapacitated; and

(ii) received by the custodial trustee during the life of the deceased beneficiary;

(B) to the survivor of multiple beneficiaries if survivorship is provided for under section 26 of this chapter;

(C) as designated in the instrument creating the custodial trust; or

(D) to the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-38

Creating a custodial trust

Sec. 38. (a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable

law, the criteria of section 18 of this chapter are satisfied by either of the following:

(1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE
INDIANA UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary), transfer to _____ (name of trustee other than transferor), as custodial trustee for _____ (name of beneficiary) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the Indiana uniform custodial trust act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

(Signature)

(2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE
INDIANA UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of owner of property), declare that henceforth I hold as custodial trustee for _____ (name of beneficiary other than transferor) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the Indiana uniform custodial trust act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) Registration of a security in the name of:

(A) a trust company;

(B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;

designated in substance "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(2) Delivery of:

(A) a certificated security, or a document necessary for the transfer of an uncertificated security; and

(B) any necessary endorsement;

to an adult other than the transferor or to a trust company as

custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1).

(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of:

- (A) a trust company;
- (B) an adult other than the transferor; or
- (C) the transferor if the beneficiary is other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of:

- (A) a trust company;
- (B) an adult other than the transferor; or
- (C) the transferor if the beneficiary is other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(5) Delivery of a written assignment to:

- (A) an adult other than the transferor; or
- (B) a trust company;

whose name in the assignment is designated in substance by the words: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of:

- (A) a trust company;
- (B) an adult other than the donee of the power; or
- (C) the donee who holds the power if the beneficiary is other than the donee;

whose name in the appointment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor that transfers the right under the contract to:

- (A) a trust company;
- (B) an adult other than the transferor; or
- (C) the transferor if the beneficiary is other than the transferor;

whose name in the notification or assignment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(8) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of:

- (A) a trust company;
- (B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;
designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(9) Issuance of a certificate of title by an agency of a state or of the United States that evidences title to tangible personal property:

(A) issued in the name of:

- (i) a trust company;
- (ii) an adult other than the transferor; or
- (iii) the transferor if the beneficiary is other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act"; or

(B) delivered to:

- (i) a trust company; or
- (ii) an adult other than the transferor or endorsed by the transferor to that person;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(10) Execution and delivery of an instrument of gift to:

- (A) a trust company; or
- (B) an adult other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

As added by P.L.3-2003, SEC.1. Amended by P.L.97-2004, SEC.103.

IC 30-2-8.6-39

Severability

Sec. 39. The provisions of this chapter are severable in the manner provided by IC 1-1-1-8(b).

As added by P.L.3-2003, SEC.1.

IC 30-2-9

Chapter 9. Prepaid Funeral Plans and Funeral Trust Funds Established Before 1982

IC 30-2-9-0.1

Repealed

(Repealed by P.L.63-2012, SEC.31.)

IC 30-2-9-1

Agreement or contract; personal property, merchandise, or services; General Cemetery law

Sec. 1. (a) Any payment of money made to any person, firm, partnership, association, limited liability company, or corporation, other than a bank or trust company, upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of any personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person or persons whose body or bodies are to be so disposed of, shall be held to be trust funds, and the person, firm, partnership, association, or corporation receiving said payments is hereby declared to be a trustee thereof. This subsection applies only to such a contract or agreement executed before July 1, 1978.

(b) After June 30, 1978, it is unlawful to enter into any agreement or contract for a purpose described in subsection (a) unless the agreement or contract requires that all payments be made by the settlor to an account in a:

- (1) bank;
- (2) trust company;
- (3) savings association; or
- (4) credit union;

whose principal office is in Indiana.

(c) Nothing contained in this chapter shall be deemed or construed to apply to those persons, firms, partnerships, associations, limited liability companies, or corporations covered by the "Indiana General Cemetery Law", IC 23-14-1.

(Formerly: Acts 1963, c.303, s.1.) As amended by Acts 1978, P.L.133, SEC.1; Acts 1979, P.L.272, SEC.1; P.L.8-1993, SEC.465; P.L.79-1998, SEC.92.

IC 30-2-9-1.5

Funeral trusts

Sec. 1.5. (a) After June 30, 1978, but before July 1, 1982, an individual may establish one (1) funeral trust under this section, in lieu of any other arrangement for advance payment of funeral and burial expense, such as a joint account, that may be lawful under section 1(b) of this chapter.

(b) A funeral trust established under this section must:

- (1) be irrevocable;

- (2) have only one (1) settlor;
- (3) name a financial institution qualified under section 1(b) of this chapter in which all funds are to be deposited;
- (4) name an embalmer, a funeral director, or funeral home, licensed under IC 25-15, as sole beneficiary;
- (5) be accompanied by a contract between the settlor and beneficiary as provided in subsection (c); and
- (6) be either a time deposit, or account, or certificate of deposit in a financial institution, in the names of the settlor and the beneficiary payable on death to the survivor, or name the designated financial institution as sole trustee.

(c) A funeral trust contract must specify in detail the funeral and burial services to be provided by the beneficiary, and must specify the place of the funeral and the place of burial or other disposition. The contract must contain an acknowledgement by the settlor that he understands the irrevocable nature of the trust. In addition, the contract may provide for reasonable adjustment of the services to be provided if:

- (1) the settlor has not contributed the full amount specified in the contract at the time of his death; or
- (2) the reasonable expense of transporting the corpse a distance greater than twenty-five (25) miles to the place of the funeral or the place of burial is paid by the beneficiary.

The contract may contain other provisions not inconsistent with this chapter, including a provision for disposition of income on the trust funds that results in a balance greater than the contribution agreed to by the settlor.

(d) The settlor may change the beneficiary, but any new beneficiary must be licensed under IC 25-15 or be a funeral director or funeral home licensed under the laws of another state. The settlor may also change the place of the funeral or the place of burial.

(e) Any trust established under section 1(a) of this chapter may be converted to a funeral trust, provided for under this section, by agreement of the parties to the original contract, payment of all trust funds into the funeral trust, and satisfaction of all requirements of this section including execution of the required contract.

(f) Any trust established under this chapter may be converted to a funeral trust provided for under IC 30-2-10 by satisfaction of all requirements of that chapter.

As added by Acts 1978, P.L.133, SEC.2. Amended by Acts 1979, P.L.272, SEC.2; Acts 1982, P.L.179, SEC.1; P.L.246-1985, SEC.20.

IC 30-2-9-2

Deposit of funds; investments

Sec. 2. All trust funds paid under section 1(a) of this chapter shall be deposited in a bank or trust company whose principal office is in this state, or invested in a savings and loan, or building and loan association whose principal office is in this state, in the name of the trustee, as trustee, within thirty (30) days after receipt thereof, and shall be held by such trustee in trust, subject to the provisions of this

chapter.

(Formerly: Acts 1963, c.303, s.2.) As amended by Acts 1978, P.L.133, SEC.3.

IC 30-2-9-3

Permits; fidelity bonds; accounts, books, and records

Sec. 3. No person, firm, partnership, association, limited liability company, or corporation may accept or hold trust funds paid under section 1(a) of this chapter without first securing from the state board of funeral service a permit to accept and hold the funds. Applications for the permit must be in writing, signed by the applicant, and duly verified on forms furnished by the board. Each application must contain at least the following:

- (1) The full name and address (both residence and place of business) of the applicant, and every member, officer, and director of the applicant if the applicant is a firm, partnership, association, limited liability company, or corporation. Any permit issued in response to the application is valid for two (2) years, only at the address stated in the application for the applicant or at the address as may be approved by the board.
- (2) A detailed statement of the applicant's assets and liabilities.
- (3) A fidelity bond executed by the applicant and a surety company authorized to do business in this state in the amount not exceeding ten thousand dollars (\$10,000) as the board may require.

Upon receipt of such application and bond, the board shall issue a permit unless it determines that the applicant has made false statements or representations in the application, is insolvent, has conducted or is about to conduct his business in a fraudulent manner, or is not duly authorized to transact business in this state. The board may require an additional bond from time to time in amounts equal to one tenth (1/10) of the trust funds held by the permittee. The bond must run to the state of Indiana for the use and benefit of the beneficiaries of the trust funds. The permittee shall keep accurate accounts, books, and records in this state of all transactions, copies of all agreements, dates, and amounts of payments made and accepted on all agreements, the names and addresses of the contracting parties, the persons for whose benefit the funds are accepted, and the names of the depositories of the funds. The permittee shall make reports to the board annually or at any other times that the board may require, on forms furnished by the board. Every application must be accompanied by a fee of ten dollars (\$10) and every report must be accompanied by a fee of two dollars (\$2). The permittee shall make all the books and records pertaining to the trust funds available to the board for examination. The board, or a qualified person designated by it may at any time investigate the books, records, and accounts of the permittee with respect to its trust funds and for that purpose may require the attendance of and examine under oath all persons whose testimony he may require.

(Formerly: Acts 1963, c.303, s.3.) As amended by Acts 1978,

P.L.133, SEC.4; P.L.246-1985, SEC.21; P.L.8-1993, SEC.466.

IC 30-2-9-4

Deposits or investments; interest or dividends; withdrawal; forfeiture

Sec. 4. The amount or amounts deposited or invested, with interest or dividends thereon, if any, shall not be withdrawn until the death of the person or persons for whose funeral or burial such funds were paid, unless sooner withdrawn and repaid to the person who originally paid the money under or in connection with said agreement or series of agreements or to his or her legal representative: Provided, That if the agreement or series of agreements provides for forfeiture and retention of any or all such payments by reason of default in payment upon and according to the terms thereof, then upon any such default and forfeiture the trustee may withdraw such deposits or investments: Provided, further, That nothing herein contained shall prohibit the change of depository by the trustee and the transfer of trust funds from one depository to another. This section applies only to trust funds that include payments under section 1(a) of this chapter. *(Formerly: Acts 1963, c.303, s.4.) As amended by Acts 1978, P.L.133, SEC.5.*

IC 30-2-9-5

Compensation and expenses of trustee

Sec. 5. This chapter shall not be construed to prohibit a trustee under section 1(a) of this chapter from being reimbursed and receiving from the fund its reasonable expenses in the custody and administration of the funds and the usual and reasonable compensation for its services as the trustee. However, the expenses and compensation shall be fixed by the state board of funeral service in a reasonable amount based upon the principal fund and the earnings of the fund deposited or invested under each of the agreements or series of agreements. A financial institution trustee under section 1.5 of this chapter may be reimbursed for its reasonable expenses from the fund, except the amount shall be fixed by the Indiana department of financial institutions.

(Formerly: Acts 1963, c.303, s.5.) As amended by Acts 1978, P.L.133, SEC.6; P.L.246-1985, SEC.22.

IC 30-2-9-6

Liquidated damages

Sec. 6. It shall be unlawful for any such agreement or agreements to provide for forfeiture and retention of payments upon any such agreement or series of agreements as and for liquidated damages for default therein in excess of 10% of the payments made or \$35.00, whichever sum is the larger.

(Formerly: Acts 1963, c.303, s.6.)

IC 30-2-9-7

False reports; illegal use or disbursement of funds

Sec. 7. (a) Except as provided in subsection (b) or (c), a person who violates this chapter or makes any false and fraudulent report required under this chapter commits a Class B misdemeanor.

(b) A person who knowingly or intentionally uses or disburses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Level 5 felony.

(c) Except as authorized in an agreement described in section 4 of this chapter permitting the early withdrawal of funds, a trustee that disburses funds in a funeral trust established under this chapter without verifying:

(1) the death of the individual for whom services are to be provided under the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

(Formerly: Acts 1963, c.303, s.7.) As amended by Acts 1978, P.L.2, SEC.3001; P.L.113-2007, SEC.8; P.L.61-2008, SEC.4; P.L.158-2013, SEC.304.

IC 30-2-9-8

Partial invalidity of law

Sec. 8. If any part or parts of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect as completely as if the part held unconstitutional had not been included herein, if such remaining part or parts can then be administered for the purpose of licensing and regulating payments for future use in connection with the disposition of a dead human body, as provided for in this chapter.

(Formerly: Acts 1963, c.303, s.8.) As amended by Acts 1982, P.L.171, SEC.116.

IC 30-2-10

Chapter 10. Funeral Trust Funds

IC 30-2-10-0.1

Repealed

(Repealed by P.L.63-2012, SEC.32.)

IC 30-2-10-1

Establishment

Sec. 1. An individual may establish one (1) funeral trust under this chapter, in lieu of any other arrangements for advance payment for funeral and burial expense.

As added by Acts 1982, P.L.179, SEC.2.

IC 30-2-10-2

Payments required to be made to accounts in certain banks, trust companies, and other institutions

Sec. 2. It is unlawful to enter into any agreement or contract for a purpose described in section 1 of this chapter unless the agreement or contract requires that all payments be made by the settlor to an account in a:

- (1) bank;
- (2) trust company;
- (3) savings association; or
- (4) credit union;

with an office in Indiana.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.79-1998, SEC.93; P.L.216-2013, SEC.67.

IC 30-2-10-3

Validity of trust; requirements

Sec. 3. A funeral trust established under this chapter is valid only if it:

- (1) is irrevocable;
- (2) has only one (1) settlor;
- (3) names as trustee an Indiana institution qualified under section 2 of this chapter, and requires that all funds be deposited in that institution;
- (4) names a funeral home, licensed under IC 25-15, as sole beneficiary; and
- (5) is accompanied by a written contract between settlor and beneficiary as provided in section 5 of this chapter.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.246-1985, SEC.23.

IC 30-2-10-4

Trustee; expenses and compensation

Sec. 4. The trustee, in the administration of funds accepted under this chapter, may be reimbursed and receive from the funds its reasonable expenses in the custody and administration of the funds,

and is entitled to the usual and reasonable compensation for its services as trustee. The expenses and compensation shall be paid in accordance with the rules of the department of financial institutions. *As added by Acts 1982, P.L.179, SEC.2.*

IC 30-2-10-5

Contracts; required provisions

Sec. 5. The contract under which funds are accepted under this chapter must be in writing and contain, as a minimum, the following provisions:

(1) Details of the professional services, facilities, equipment, and a description of merchandise to be provided by the beneficiary. If the merchandise or equipment includes a vault (as defined in IC 23-14-33-33) that:

(A) will be used to encase the remains of a deceased individual; and

(B) is not airtight and watertight;

the details must include a written statement indicating that the vault is not airtight and watertight.

(2) A provision that the beneficiary may provide merchandise of equal or better quality if the merchandise contracted for is no longer available at the time the merchandise is to be provided.

(3) The place of the funeral and the place of the burial or other final disposition to be made of the decedent.

(4) An acknowledgment by the settlor that the settlor understands the irrevocable nature of the trust.

(5) A provision for reasonable adjustment of the services, or cost of services, if the body is transported a distance greater than twenty-five (25) miles to the place of funeral or the place of burial or final disposition and transportation of a distance in excess of twenty-five (25) miles was not contemplated at the time of the execution of the contract.

(6) A provision for full payment of the contract amount by the settlor, a description of the manner in which the funds are to be deposited, and a statement that the interest will accrue to the trust account and a further statement that the principal and interest earned shall inure to the beneficiary to cover all the costs incident to the beneficiary's performance of the contract, any excess to be refunded to the estate of the settlor or to the heirs at law.

(7) The settlor's name, address, and social security number.

(8) The date that the funeral trust is executed by the settlor.

(9) The trustee's name and address.

(10) The beneficiary's license number issued by the state board of funeral service.

(11) A provision that except under the circumstances described in subsection (12), only the settlor may change the beneficiary, that the settlor may make the change at any time, and that the change is not effective until written notification is given to the original beneficiary.

(12) A provision that allows the state board of funeral service to change the beneficiary by naming a funeral home as new beneficiary if the original beneficiary becomes deceased, dissolved, terminated, or otherwise loses beneficiary status as a licensee of the state board, and the settlor or the settlor's guardian or personal representative fails to select a qualified beneficiary.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.246-1985, SEC.24; P.L.61-2008, SEC.5.

IC 30-2-10-6

Change of beneficiary; procedure

Sec. 6. If the settlor changes the beneficiary, he must:

- (1) select a new beneficiary licensed under IC 25-15, or a funeral home or a funeral director licensed in another state; and
- (2) give written notification to the funeral home originally named as beneficiary.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.246-1985, SEC.25.

IC 30-2-10-7

Delivery of copy of contract to settlor

Sec. 7. (a) The settlor shall be furnished an executed copy of the contract.

(b) If a contract has been approved and signed by both parties and a copy of the contract has been delivered to the settlor, no further notification to the settlor related to the contract is required.

As added by Acts 1982, P.L.179, SEC.2.

IC 30-2-10-8

Management of funds by financial institutions; annual reports from beneficiaries

Sec. 8. (a) Indiana financial institutions in which trust funds have been deposited in accordance with this chapter may place the funds in a common or commingled trust fund under a single trust instrument. The trustee shall maintain a separate accounting record for each trust fund.

(b) All interest earned by funds deposited in accordance with this chapter accrue to the trust.

(c) The trustee shall disburse the funds deposited in accordance with this chapter to the named beneficiary to discharge an obligation arising from any contract described in section 5 of this chapter, upon receipt of evidence satisfactory to the trustee that the contract has been performed.

(d) A funeral home, licensed under IC 25-15 that is named as beneficiary of funeral trust funds under this chapter shall annually report the following to the state board of funeral service:

- (1) The funeral home's name, Indiana license number, and officers.
- (2) The name and address of any trustee with which funeral trust

funds are deposited for the funeral home.

(e) No bonds or permits are required from funeral homes that enter into contracts described in section 5 of this chapter.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.246-1985, SEC.26.

IC 30-2-10-9

Violations; offense

Sec. 9. (a) Except as provided in subsections (b) and (c), a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who knowingly or intentionally uses or disburses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Level 5 felony.

(c) A trustee that disburses funds in a funeral trust established under this chapter without verifying:

(1) the death of the individual for whom services are to be provided under the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.207-1993, SEC.24; P.L.113-2007, SEC.9; P.L.61-2008, SEC.6; P.L.1-2009, SEC.152; P.L.158-2013, SEC.305.

IC 30-2-10-10

Incapacity, resignation, and removal of trustees

Sec. 10. IC 30-4-3-29 governs procedures concerning the incapacity, resignation, or removal of a trustee.

As added by Acts 1982, P.L.179, SEC.2.

IC 30-2-11

Repealed

(Repealed by P.L.149-1991, SEC.6.)

IC 30-2-12

Chapter 12. Uniform Management of Institutional Funds Act

IC 30-2-12-0.5

Application of chapter

Sec. 0.5. This chapter applies to gift instruments, whenever executed or in effect.

As added by P.L.220-2011, SEC.484.

IC 30-2-12-1

Application of chapter

Sec. 1. (a) This chapter applies to an institutional fund in existence after June 30, 2007.

(b) For an institutional fund in existence before July 1, 2007, this chapter applies only to decisions made or actions taken after June 30, 2007.

As added by P.L.268-1989, SEC.1. Amended by P.L.226-2007, SEC.7.

IC 30-2-12-1.3

"Charitable purpose" defined

Sec. 1.3. As used in this chapter, "charitable purpose" means the following:

- (1) Relief of poverty.
- (2) Advancement of education.
- (3) Advancement of religion.
- (4) Promotion of health.
- (5) Promotion of a governmental purpose.
- (6) Any other purpose the achievement of which benefits the community.

As added by P.L.226-2007, SEC.8.

IC 30-2-12-1.5

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-2

"Endowment fund" defined

Sec. 2. As used in this chapter, "endowment fund" means an institutional fund, or any part of the fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument. The term does not include assets that an institution designates as an endowment fund for the institution's use.

As added by P.L.268-1989, SEC.1. Amended by P.L.226-2007, SEC.9.

IC 30-2-12-3

"Gift instrument" defined

Sec. 3. As used in this chapter, "gift instrument" means a record, including any institutional solicitations, under which property is

granted or transferred to or held by an institution as an institutional fund.

As added by P.L.268-1989, SEC.1. Amended by P.L.226-2007, SEC.10.

IC 30-2-12-4

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-5

"Institution" defined

Sec. 5. As used in this chapter, "institution" means any of the following:

- (1) A person, other than an individual, that is organized and operated exclusively for charitable purposes.
- (2) The state, including any agency or instrumentality of the state, or a unit of local government to the extent that the state or unit holds funds exclusively for charitable purposes.
- (3) A trust that has only charitable interests, including a trust:
 - (A) that previously had both charitable and noncharitable interests; and
 - (B) the noncharitable interests of which were previously terminated.

As added by P.L.268-1989, SEC.1. Amended by P.L.199-1991, SEC.1; P.L.266-1995, SEC.2; P.L.2-2007, SEC.356; P.L.226-2007, SEC.11; P.L.3-2008, SEC.227.

IC 30-2-12-6

"Institutional fund" defined

Sec. 6. As used in this chapter, "institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include the following:

- (1) A fund held for an institution by a trustee that is not an institution.
- (2) A fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.
- (3) Assets held by an institution primarily for charitable purposes and not primarily for investment purposes.

As added by P.L.268-1989, SEC.1. Amended by P.L.266-1995, SEC.3; P.L.226-2007, SEC.12.

IC 30-2-12-6.4

"Person" defined

Sec. 6.4. As used in this chapter, "person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, the state of Indiana, a state agency or instrumentality, a unit of local government, or any other legal or commercial entity.

As added by P.L.226-2007, SEC.13.

IC 30-2-12-6.7

"Record" defined

Sec. 6.7. As used in this chapter, "record" means information that is:

- (1) inscribed on a tangible medium; or
 - (2) stored in an electronic or other medium; and
- is retrievable in a perceivable form.

As added by P.L.226-2007, SEC.14.

IC 30-2-12-7

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-8

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-9

Appropriation or accumulation of endowment funds; gift instrument

Sec. 9. (a) Subject to the terms of a gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund that the institution determines is prudent for the uses, benefits, purposes, and duration of the endowment fund. Except as provided in a gift instrument, the assets in an endowment fund are donor restricted until appropriated by the institution.

(b) In determining to appropriate or accumulate endowment funds, an institution shall:

- (1) act in good faith and with the care a prudent person acting in a like position would use under similar circumstances; and
- (2) consider the following factors:
 - (A) The duration and preservation of the endowment fund.
 - (B) The purposes of the institution and the endowment fund.
 - (C) General economic conditions.
 - (D) The possible effects of inflation or deflation.
 - (E) The expected total return from income and the appreciation of investments.
 - (F) Other resources of the institution.
 - (G) The investment policy of the institution.

(c) To be effective, a gift instrument must specifically state a limitation on the authority of an institution to appropriate or accumulate under subsection (a).

(d) A gift instrument that designates a gift as an endowment or contains a direction or authorization to use only income, interest, dividends, rents, issues, or profits, or to preserve the principal intact, or a similar direction:

- (1) creates an endowment fund of permanent duration unless the gift instrument states otherwise; and
- (2) does not otherwise limit the authority to appropriate or accumulate under subsection (a).

As added by P.L.268-1989, SEC.1. Amended by P.L.226-2007, SEC.15.

IC 30-2-12-10

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-11

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-12

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-13

Modification or release of restrictions in gift instrument; modification of charitable purpose; notice to attorney general

Sec. 13. (a) With the consent of the donor in a record, an institution may modify or release, in whole or in part, a restriction in a gift instrument on the management, investment, and purpose of an institutional fund.

(b) A release under this section may not allow an institutional fund to be used for purposes other than the charitable purposes of the institution affected.

(c) An institution may petition a court to modify, in a manner consistent with the donor's intentions to the extent practicable, a restriction in a gift instrument concerning the management or investment of an institutional fund if:

- (1) the restriction is impracticable or wasteful;
- (2) the restriction impairs the management or investment of the fund; or
- (3) due to unanticipated circumstances, the modification will further the purposes of the institutional fund.

An institution shall notify the attorney general of a petition under this subsection. A court shall provide the attorney general an opportunity to be heard on the petition.

(d) An institution may petition a court to modify, in a manner consistent with the gift instrument, the charitable purpose of a fund or a restriction on the use of a fund if the charitable purpose or use becomes unlawful, impracticable, impossible, or wasteful. An institution shall notify the attorney general of a petition under this subsection. A court shall provide the attorney general an opportunity to be heard on the petition.

(e) If an institution determines that a restriction in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible, or wasteful, the institution shall notify the attorney general. Not more than sixty (60) days after providing notice under this subsection, the institution may release or modify all or part of the restriction if:

- (1) the value of the institutional fund subject to the restriction is less than twenty-five thousand dollars (\$25,000);
- (2) the institutional fund was established more than twenty (20) years earlier; and
- (3) the institution uses the institutional fund in a manner consistent with the charitable purposes expressed in the gift instrument.

As added by P.L.268-1989, SEC.1. Amended by P.L.199-1991, SEC.3; P.L.226-2007, SEC.16.

IC 30-2-12-14

Duties of person or institution managing or investing institutional fund

Sec. 14. (a) An institution that manages or invests an institutional fund shall consider the following:

- (1) The intent of a donor expressed in a gift instrument.
- (2) The charitable purposes of the institution.
- (3) The purposes of the institutional fund.

(b) A person who is responsible for managing or investing an institutional fund shall:

- (1) comply with the duty of loyalty imposed by any law; and
- (2) manage or invest the fund in good faith and with the care a prudent person acting in a like position would use under similar circumstances.

(c) An institution that manages or invests an institutional fund:

(1) may only incur costs that are appropriate and reasonable in relation to:

- (A) the assets of;
- (B) the purposes of; and
- (C) the skills available to;

the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two (2) or more institutional funds for purposes of management or investment.

(e) Subject to the terms of a gift instrument, an institution or a person shall do the following:

(1) An institution that manages or invests an institutional fund shall consider the following factors:

- (A) General economic conditions.
- (B) The possible effects of inflation or deflation.
- (C) The possible tax consequences of investment decisions or strategies.
- (D) The role of each investment or course of action in relation to the overall investment portfolio of the institutional fund.
- (E) The expected total return from income and the appreciation of investments.
- (F) Other resources of the institution.
- (G) The needs of the institution and institutional fund to

make distributions and to preserve capital.

(H) The relationship or value of an asset to the charitable purposes of the institution.

(2) An institution shall make management and investment decisions about an individual asset:

(A) in the context of an institutional fund's portfolio of investments as a whole and not in isolation; and

(B) as part of an overall investment strategy that has risk and return objectives reasonably suited to the institutional fund and to the institution.

(3) Except as otherwise provided in law, an institution may invest in any kind of property or type of investment.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, due to special circumstances, the purposes of the institutional fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall:

(A) retain or dispose of the property; or

(B) otherwise rebalance the investment portfolio;

to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution.

(6) A person that has, or represents to have, special skills or expertise shall use the skills or expertise to manage or invest institutional funds.

(7) Notwithstanding any other provision in this chapter, an institution may retain property contributed by a donor to an institutional fund as long as the governing board of the institution considers it advisable.

As added by P.L.226-2007, SEC.17.

IC 30-2-12-15

Delegation of management or investment of institutional fund; duties of agent

Sec. 15. (a) Subject to the terms of a gift instrument and except as provided in any other law, an institution may delegate to an agent the management or investment of an institutional fund. The institution shall act in good faith and with the care a prudent person acting in a like position would use under similar circumstances in doing the following:

(1) Selecting an agent.

(2) Establishing the scope and terms of the delegation, subject to the purposes of the institution and the institutional fund.

(3) Periodically reviewing the agent's actions to monitor the agent's performance of and compliance with the scope and terms of the delegation.

An institution that complies with this subsection is not liable for the decisions or actions of an agent to whom the management or investment of an institutional fund is delegated.

(b) An agent shall exercise reasonable care to perform a delegated

function in compliance with the scope and terms of the delegation.

(c) An agent that accepts the delegation of a management or investment function from an institution submits to the jurisdiction of Indiana courts in all proceedings concerning the delegation or the performance of a delegated function.

(d) An institution may delegate management or investment functions to its committees, officers, or employees as otherwise provided by law.

As added by P.L.226-2007, SEC.18.

IC 30-2-12-16

Determination of compliance

Sec. 16. Compliance with this chapter shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.

As added by P.L.226-2007, SEC.19.

IC 30-2-12-17

Effect on existing law

Sec. 17. (a) Except as provided in subsection (b), this chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

(b) This chapter does not:

(1) modify, limit, or supersede 15 U.S.C. 7001(a); or

(2) authorize electronic delivery of a notice described in 15 U.S.C. 7003(b).

As added by P.L.226-2007, SEC.20.

IC 30-2-12-18

Consideration for uniformity of law

Sec. 18. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

As added by P.L.226-2007, SEC.21.

IC 30-2-13

Chapter 13. Payment of Funeral, Burial Services, or Merchandise in Advance of Need

IC 30-2-13-0.1

Repealed

(Repealed by P.L.63-2012, SEC.33.)

IC 30-2-13-1

Applicability of chapter

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to any written agreement between a purchaser and a seller that obligates the seller to provide prepaid services or merchandise, or both, for a named individual in conjunction with the death, funeral, burial, or final disposition of the individual.

(b) Except as provided in subsections (c) and (d), this chapter does not apply to the following:

(1) Perpetual care funds under IC 23-14-48.

(2) The sale of burial rights. However, this chapter applies to the sale of services or merchandise sold in conjunction with the sale of burial rights and to the use of free or discounted burial rights as an inducement for a purchaser to transfer sellers.

(3) A contract between a purchaser and a seller that requires delivery of prepaid services or merchandise, or both, not later than one (1) year after the date of final payment and for circumstances other than death.

(c) The annual reporting requirements of section 31 of this chapter apply to a perpetual care fund.

(d) The solicitation requirements of section 24 of this chapter and the provisions concerning inducement in section 13(h) of this chapter apply to the sale of burial rights.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.25; P.L.120-1994, SEC.2; P.L.241-1995, SEC.2; P.L.114-1999, SEC.1; P.L.14-2000, SEC.62.

IC 30-2-13-2

"Agent"

Sec. 2. As used in this chapter, "agent" means a person authorized by a seller to offer, sell, or solicit the sale of a contract on behalf of the seller and includes an employee or independent contractor of the seller.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-2.5

"At-need services and merchandise"

Sec. 2.5. (a) As used in this chapter, "at-need services and merchandise" includes personal property or services:

(1) listed in section 8(1) of this chapter; and

(2) purchased after the time of death.

(b) The term does not include burial rights.

As added by P.L.207-1993, SEC.26.

IC 30-2-13-3

"Board"

Sec. 3. As used in this chapter, "board" refers to the state board of funeral and cemetery service established by IC 25-15-9-1.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-4

"Contract"

Sec. 4. As used in this chapter, "contract" means a written agreement between a purchaser and a seller that:

- (1) obligates the seller to provide prepaid services or merchandise, or both, for a named individual; and
- (2) becomes irrevocable thirty (30) days after the written agreement is signed by the purchaser and seller.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-5

"Delivery"

Sec. 5. As used in this chapter, "delivery" means the time when:

- (1) services are performed in connection with the funeral or other disposition of the purchaser or the individual for whom services are to be provided under the contract;
- (2) except for merchandise described in section 8(1)(A) and 8(1)(C) of this chapter, the merchandise is:
 - (A) in the possession of the purchaser or used for the intended purpose of the merchandise; or
 - (B) permanently installed on or in cemetery property, the burial rights to which have been transferred or granted to the purchaser or individual for whose interment the merchandise is to be used; or
- (3) except for merchandise described in section 8(1)(A) and 8(1)(C) of this chapter, the merchandise is:
 - (A) purchased by the seller and stored in manufactured form, in a manner and number equal to all merchandise sold, on the premises where the merchandise is to be used or installed and specifically identified in the name of the purchaser, although any applicable installation or final finishing fees remain subject to the terms of the contract made under this chapter; or
 - (B) permanently identified with the name of the purchaser or individual for whom the merchandise is to be provided and delivered to a warehouse, with both title to the merchandise and a warehouse receipt delivered to the purchaser, and notification to and acceptance of delivery acknowledged in writing by the purchaser.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.3; P.L.236-1995, SEC.52; P.L.114-1999, SEC.2.

IC 30-2-13-6**"Fund"**

Sec. 6. As used in this chapter, "fund" refers to the preneed consumer protection fund established by section 28 of this chapter. *As added by P.L.200-1991, SEC.1.*

IC 30-2-13-7**"Insurance policy"**

Sec. 7. As used in this chapter, "insurance policy" means a policy providing one (1) or more of the types of insurance described in IC 27-1-5-1, Class 1(a) and Class 1(c). *As added by P.L.200-1991, SEC.1.*

IC 30-2-13-8**"Prepaid services or merchandise" or "services or merchandise"**

Sec. 8. As used in this chapter, "prepaid services or merchandise" or "services or merchandise" includes personal property or services:

(1) typically sold or provided in connection with the final disposition or memorialization of human remains, including:

(A) caskets or other primary containers, including rental, temporary, or disposable caskets or containers;

(B) outer burial containers;

(C) cremation or transportation containers;

(D) funeral clothing or accessories;

(E) monuments;

(F) grave markers;

(G) cremation urns;

(H) embalming services;

(I) funeral directing services provided at the time of death and in connection with the final disposition of human remains;

(J) final date carving fees, including carving fees for double monuments;

(K) cremation;

(L) cremation services;

(M) other funeral and burial items, including items of service or merchandise that may be rented or leased; and

(N) services or merchandise otherwise described as cash advance items under section 11.5 of this chapter and sold directly by the seller and not provided by a third person; and

(2) purchased in advance of need to be provided or delivered after the death of the purchaser or individual for whom services or merchandise are to be provided in the contract.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.27; P.L.241-1995, SEC.4; P.L.114-1999, SEC.3.

IC 30-2-13-9**"Purchaser"**

Sec. 9. As used in this chapter, "purchaser" means a person or firm contracting with a seller for services or merchandise to be provided

or delivered for a named individual.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.28; P.L.114-1999, SEC.4; P.L.143-2009, SEC.17; P.L.101-2010, SEC.5; P.L.34-2011, SEC.8.

IC 30-2-13-10

"Seller"

Sec. 10. As used in this chapter, "seller" means a person doing business as a sole proprietor, a firm, a limited liability company, a corporation, an association, or a partnership contracting to provide services or merchandise, or both, to a named individual.

As added by P.L.200-1991, SEC.1. Amended by P.L.8-1993, SEC.468; P.L.114-1999, SEC.5.

IC 30-2-13-11

"Trustee" or "escrow agent, acting as a fiduciary"

Sec. 11. (a) As used in this chapter, "trustee" or "escrow agent, acting as a fiduciary", means a:

- (1) bank;
- (2) trust company;
- (3) savings association; or
- (4) credit union;

that maintains an office in Indiana and is qualified under state or federal law to serve as a trustee or escrow agent, acting as a fiduciary.

(b) For a contract using a life insurance policy as consideration, the term also includes a life insurance company or other entity that establishes a trust for the purposes of holding and administering life insurance policies issued by an insurance company to fund contracts under this chapter. Notwithstanding any other law to the contrary, a life insurance company or other entity acting as a trustee shall comply with this chapter.

(c) For a contract using a previously issued life insurance policy as consideration, the seller is considered to be a qualified trustee if ownership is irrevocably assigned to the seller in conjunction with an assignment of death benefits.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.5; P.L.79-1998, SEC.94; P.L.114-1999, SEC.6.

IC 30-2-13-11.5

"Cash advance item"

Sec. 11.5. (a) As used in this chapter, "cash advance item" means an item of property, or services, or merchandise that is not sold directly by a seller and is described to a purchaser as one (1) of the following:

- (1) A cash advance.
- (2) An accommodation.
- (3) A cash disbursement.
- (4) An estimated future charge by a third party.
- (5) A similar term.

(b) The term also refers to a service or property obtained from a

third party for which the seller collects an estimated payment to be held in trust or escrow until services or merchandise subject to a contract are delivered because the cost of the service or property can only be estimated at the time the contract is made.

(c) Cash advance items include the following:

- (1) Cemetery or crematory services.
- (2) Pallbearers.
- (3) Public transportation.
- (4) Clergy honoraria.
- (5) Flowers.
- (6) Musicians or singers.
- (7) Nurses.
- (8) Obituary notices.
- (9) Gratuities.
- (10) Death Certificates.
- (11) Sales tax.
- (12) Foreign language interpreters.
- (13) Religious commemorative services.
- (14) Fees charged for the following:
 - (A) Interment.
 - (B) Opening and closing of a grave or crypt.

(d) If property or services are not cash advance items under this section, they are services or merchandise under section 8 of this chapter.

As added by P.L.114-1999, SEC.7.

IC 30-2-13-12

Contracts

Sec. 12. (a) This section applies to contracts for prepaid services or merchandise, or both, entered into under this chapter before January 1, 1996.

(b) A purchaser may enter into more than one (1) contract under this chapter for prepaid services or merchandise, or both. Each contract may be funded with cash, either in a lump sum or installment payments, or an insurance policy, or both. The purchaser may revoke the contract if the purchaser sends the seller written notice of the revocation within thirty (30) days after the contract is signed by the purchaser and seller. If a purchaser revokes a contract the seller shall refund to the purchaser, without interest, all property used to fund the contract. If the seller receives payment of at least five hundred dollars (\$500) in cash that must ultimately be placed in trust or escrow under this section, the seller shall, not more than five (5) days after receiving the payment, deposit the payment in escrow pending irrevocable deposit to trust or escrow authorized by IC 30-2-10. Thirty (30) days after the contract is signed all property paid or delivered to the seller to fund each contract shall be irrevocably deposited by the seller to trust or escrow authorized by either IC 30-2-10 or IC 23-14-49-1. All property received for services or merchandise sold by a seller licensed under IC 25-15 shall be irrevocably deposited to trust in compliance with IC 30-2-10. All

sellers shall guarantee the provision of all services and merchandise sold under a contract authorized by this chapter.

(c) If a contract under this chapter is funded with an insurance policy, the ownership of the insurance policy must be irrevocably assigned to a trustee. The seller may not borrow against, pledge, withdraw, or impair the cash value of the policy.

(d) A finance charge may be assessed on a contract sold on an installment basis, and the seller shall disclose to the purchaser all the applicable requirements under federal and state law.

(e) A seller or successor seller who has accepted cash or an insurance policy, or both, as full payment of a contract under subsection (b), is responsible for providing all contracted prepaid services and merchandise if the insurance company or trust company used to fund the contract is insolvent.

(f) A purchaser who purchases a contract with cash in a lump sum or through an insurance contract shall make the payment for the contract payable only to the seller. A purchaser who purchases a contract with cash in installments may make payments for the contract to the seller.

As added by P.L.200-1991, SEC.1. Amended by P.L.1-1992, SEC.159; P.L.207-1993, SEC.29; P.L.120-1994, SEC.3; P.L.241-1995, SEC.6; P.L.52-1997, SEC.52.

IC 30-2-13-12.1

Contracts entered into after December 31, 1995, and before July 1, 1999

Sec. 12.1. (a) This section applies to contracts for prepaid services or merchandise, or both, entered into under this chapter after December 31, 1995, and before July 1, 1999.

(b) A purchaser may enter into more than one (1) contract under this chapter for prepaid services or merchandise, or both. Each contract may be funded with cash, either in a lump sum or installment payments, or an insurance policy, or both. The purchaser may revoke the contract if the purchaser sends the seller written notice of the revocation within thirty (30) days after the contract is signed by the purchaser and seller. If a purchaser revokes a contract, the seller shall refund to the purchaser, without interest, all property used to fund the contract. If the seller receives payment of at least five hundred dollars (\$500) in cash that must ultimately be placed in trust or escrow under this section, the seller shall, not more than five (5) days after receiving the payment, deposit the payment in escrow pending irrevocable deposit to trust or escrow authorized by either subsection (h) or (i). Thirty (30) days after the contract is signed all property paid or delivered to the seller to fund each contract shall be irrevocably deposited by the seller to trust or escrow authorized by either subsection (h) or (i). Except for installment contracts funded with cash and contracts funded with a newly issued insurance policy that has a limited or qualified death benefit period, all sellers shall guarantee the provision of all services and merchandise sold under a contract authorized by this chapter. At delivery, a seller may not

impose additional charges to recover a difference between the original contract retail prices or current retail prices for services and merchandise that are sold under the contract, whichever is greater, and the amount on deposit in trust or escrow.

(c) If a contract under this chapter is funded with an insurance policy, the ownership of the insurance policy must be irrevocably assigned to a trustee. The seller may not borrow against, pledge, withdraw, or impair the cash value of the policy.

(d) A finance charge may be assessed on a contract sold on an installment basis, and the seller shall disclose to the purchaser all the applicable requirements under federal and state law.

(e) A seller or successor seller who has accepted cash or an insurance policy, or both as full payment of a contract under subsection (b) is responsible for providing all contracted prepaid services and merchandise if the insurance company or trust company used to fund the contract is insolvent.

(f) A purchaser who purchases a contract with cash or through an insurance contract shall make the payment for the contract payable only to the seller or insurer, respectively.

(g) A seller may not accept or deposit to trust or escrow cash, an insurance policy, or any other property as consideration for services or merchandise to be provided in the future except in connection with a contract authorized by this chapter.

(h) A trust account authorized and established under this chapter must:

- (1) be irrevocable and require the seller to deposit to trust all sums or property received from the purchaser;
- (2) designate the seller as settlor and the seller as beneficiary;
- (3) designate a trustee qualified under this chapter and authorize the trustee to charge a reasonable fee for services;
- (4) require that a separate account be maintained in the name of each purchaser;
- (5) require that interest earned on the account be added to the principal and reinvested;
- (6) permit assets of the separate accounts of several purchasers to be commingled for investment; and
- (7) require that on delivery of services or merchandise the trustee shall remit to the seller the amount on deposit in the purchaser's trust.

Upon full delivery of all services and merchandise under the contract, if the amount on deposit in the trust is greater than the seller's total current retail price of all services and merchandise under the contract, the remaining amount may but need not be returned to the individual, if any, designated by the purchaser to receive the remainder, or to the purchaser's estate.

(i) An escrow account authorized and established under this chapter must:

- (1) be irrevocable and require the seller to deposit to escrow all sums or property received from the purchaser;
- (2) designate the seller as settlor and beneficiary;

- (3) designate a trustee qualified under this chapter and authorize the trustee to charge a reasonable fee for services;
- (4) require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or other property received by the seller to fund contracts sold by the seller;
- (5) permit the commingling of cash for investment;
- (6) permit the seller to withdraw from the escrow account the current retail value of prepaid services or merchandise delivered under this chapter; and
- (7) permit any interest earned or appreciation in value of money or other property deposited in escrow to be paid to the seller not more frequently than monthly, to the extent that the total value of the escrow account after a payment under this subdivision is not less than the current retail value of all services and merchandise under the contracts that remain undelivered.

(j) A trust account or an escrow account established under this chapter:

- (1) must include the provisions set forth in either subsection (h) or (i);
- (2) may be included as an integral part of a seller's contract through the execution of an adoption agreement that references the trust account or escrow account; and
- (3) is not required to be represented by a separate trust or escrow document for each contract.

(k) The entire value of an irrevocable trust or an escrow established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(l) A contract for prepaid services or merchandise, or both, entered into after June 30, 1997, must contain a statement that:

- (1) the purchaser may revoke the contract under subsection (b) within thirty (30) days after the contract is signed; and
- (2) after thirty (30) days, the contract is irrevocable.

(m) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program under federal or state law.

As added by P.L.241-1995, SEC.7. Amended by P.L.113-1996, SEC.2; P.L.195-1997, SEC.1; P.L.114-1999, SEC.8.

IC 30-2-13-12.5

Contracts entered into after June 30, 1999

Sec. 12.5. (a) This section applies to the following contracts entered into or established under this chapter after June 30, 1999:

- (1) Contracts for prepaid services.
- (2) Contracts for prepaid merchandise.
- (3) Trusts or escrows established to hold consideration paid for services or merchandise subject to a contract entered into under

this chapter.

(b) A contract between a purchaser and a seller must:

(1) specify that the consideration for the contract is:

(A) cash, payable either in a lump sum or in installments; or

(B) an insurance policy that is:

(i) newly issued in conjunction with and integral to the contract;

(ii) issued previously in a transaction separate and distinct from the contract; or

(iii) both.

If a contract is funded with an insurance policy, the ownership of the policy must be irrevocably assigned to a trustee, and the seller may not borrow against, pledge, withdraw, or impair the cash value of the policy;

(2) specify that only the purchaser, acting by written notice to the seller, may revoke the contract within thirty (30) days after the date the contract is signed by the purchaser and the seller and that the contract becomes irrevocable upon the expiration of the thirty (30) day period;

(3) specify that, if the contract is revoked, the seller shall refund and return to the purchaser, without interest, the cash or insurance policy used to fund the contract;

(4) specify that not more than thirty (30) days after the contract is signed by the purchaser and the seller, the whole of the cash or insurance policy serving as consideration for the contract must be deposited into a trust or escrow authorized by subsection (c) or (d). However, a seller may elect to serve as trustee of a previously existing life insurance contract;

(5) except as provided in subsection (f), unconditionally require that the seller shall deliver all services or merchandise, or both, specified in the contract and receive as consideration for the delivery of services or merchandise, or both, only the cash or insurance policy held in trust or escrow without regard to the solvency of the insurer or the adequacy or loss in value of any cash deposit or insurance policy used to fund a contract;

(6) except as provided in subsection (f), prohibit a seller from imposing additional charges to recover any shortage or difference between the retail prices for services or merchandise, or both, in effect on the date of delivery of the services or merchandise, or both, and the value of the trust or escrow applicable to the contract on the date of delivery;

(7) require that a seller accepting the transfer of a contract permitted under section 13 of this chapter shall honor the requirements and obligations of the contract;

(8) permit the seller to assess a finance charge on a contract sold on an installment basis and require that the seller disclose to the purchaser the applicable requirements of federal and Indiana law;

(9) provide that the contract must comply with the following requirements:

- (A) The contract must be made in a form that is:
 - (i) written in clear and understandable language; and
 - (ii) printed in a size and style of type that is easy to read.
- (B) The contract must describe the services, merchandise, or cash advance items being purchased. If the merchandise or cash advance items include a vault (as defined in IC 23-14-33-33) that:
 - (i) will be used to encase the remains of a deceased individual; and
 - (ii) is not airtight and watertight;the contract must include a written statement indicating that the vault is not airtight and watertight.
- (C) The contract must identify the following by name, address, and telephone number:
 - (i) The seller.
 - (ii) The purchaser.
 - (iii) The contract beneficiary if the beneficiary is an individual other than the purchaser.
- (D) The contract must contain the seller's certificate of authority number and the date of the contract.
- (E) The contract must provide that if an item of the particular services or merchandise specified in the contract is unavailable at the time of delivery, the seller shall deliver services or merchandise similar in style, quality, and of equal value to the unavailable item in the place of the item.
- (F) The contract must disclose the precise manner in which the contract is to be funded by:
 - (i) identifying the consideration for the contract;
 - (ii) identifying the name, number, if known, and issuer of any insurance policy used to fund the contract; and
 - (iii) including the identity and location of the trustee or escrow agent, acting as fiduciary, who is to hold the trust or escrow.
- (G) The contract must disclose that the seller reserves the right to assess an extra charge for:
 - (i) transportation costs;
 - (ii) services or merchandise incurred in the transport of human remains a distance greater than twenty-five (25) miles from the seller's place of business; and
 - (iii) service charges necessarily incident to the transport of human remains and in excess of those service charges specified in the contract.
- (H) The contract must disclose the following:
 - (i) The amount, if any, the seller has elected to receive under subsection (c)(1) or subsection (d)(6).
 - (ii) That a commission or fee may be paid to the seller or the seller's agent on a contract funded under subsection (b)(1)(B)(i).
- (10) specify that a purchaser has the unrestricted right to designate one (1) or more successor sellers to whom the contract

may be transferred under section 13 of this chapter, but that such a transfer is effective only with the consent of the newly designated seller and upon the fulfillment of the other requirements of section 13 of this chapter;

(11) specify that if cash advance items are funded in the contract, the seller agrees to deliver the cash advance items under one (1) of the following alternatives:

(A) Delivery is unconditionally guaranteed at the option of the seller.

(B) Delivery is conditionally guaranteed for a seller and will be equal in value to the total value of the trust or escrow account maintained for the purchaser multiplied by the percentage of the total original contract price represented by cash advance items;

(12) specify that a release from trust or escrow shall occur only upon the seller's delivery of services or merchandise, or both;

(13) permit, at the option of the seller, the incorporation of the trust or escrow language contained in subsection (c) or (d) directly into the contract;

(14) prohibit the seller from charging any service, transaction, or other type of fee or charge unless the fee is:

(A) authorized under subsections (c)(1) and (d)(6) and section 27 of this chapter; or

(B) included within the definitions contained in section 8 or 11.5 of this chapter.

(c) A trust account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require either of the following:

(A) The seller deposit the insurance policy used to fund the contract into the trust account. However, for contracts funded after June 30, 1995, with a previously issued insurance policy, the seller may serve instead of a trustee if the seller is qualified to do so under section 11(c) of this chapter.

(B) The seller deposit the cash used to fund the contract into the trust account. However, as consideration for the sale of the contract and any expense incurred by the seller in conjunction with the sale of the contract, the contract must permit the seller to notify, within a ten (10) day period following the date the contract becomes irrevocable, the trustee of its election to receive only up to ten percent (10%) of the seller's original contract price for services or merchandise, or both.

(2) Designate the seller as the beneficiary of the trust.

(3) Designate a trustee qualified under this chapter and authorize the trustee to assess the charges authorized under section 18 of this chapter.

(4) Require that a separate account be maintained in the name of each purchaser.

(5) Require that any interest, dividend, or accumulation in the account be reinvested and added to the principal.

(6) Permit the assets of the several, separate accounts to be commingled for investment purposes.

(7) Require that on receipt of the seller's proof of delivery of services or merchandise the trustee shall remit to the seller the full amount in trust applicable to the purchaser's contract and all of the accumulated interest.

(8) Permit the seller to retain the remaining amount if the amount in the trust account is greater than the seller's total current retail price of all services and merchandise subject to the contract at the time of delivery of all services or merchandise subject to the contract. However, in the case of a contract funded under subsection (b)(1)(B)(ii), the seller may not retain the remaining amount but must pay the remaining amount to the entity or individual designated by the insured as the beneficiary of the death benefit proceeds not later than sixty (60) days after the receipt and deposit of the proceeds by the seller. The seller may not qualify as a beneficiary of the remaining amount or the insurance death benefit. In the case of all other contracts funded under this chapter, the seller may opt to return the remaining amount to the individual designated by the purchaser to receive the remainder or to the purchaser's estate.

(d) An escrow account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require that the seller deposit all cash or the insurance policy used to fund the contract into the escrow account.

(2) Designate the seller as the recipient of the escrow funds.

(3) Designate an escrow agent, acting as fiduciary, qualified under this chapter to act as escrow agent acting as fiduciary and authorize the escrow agent acting as fiduciary to assess the charges authorized under section 18 of this chapter.

(4) Require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or insurance policies used to fund contracts sold by the seller.

(5) Permit the investment of and commingling of cash for investment purposes.

(6) Permit the seller to receive an administrative or service fee at the option of the seller. The seller may opt to receive the fee after the day following the date the contract becomes irrevocable. The amount of the fee may not exceed ten percent (10%) of the seller's total contract price for services or merchandise or both.

(7) Require that on delivery of services or merchandise, the escrow agent shall remit to the seller an amount equal to:

(A) the seller's original retail price as set forth in the contract for the services or merchandise delivered; minus

(B) the amount, if any, received by the seller under subdivision (6).

(8) Permit the seller to receive monthly payments of the interest earned and the appreciation in the value of the escrow assets to

the extent that the total value of the escrow after a payment authorized under this subdivision is not less than:

(A) the original contract value of all services or merchandise under the contracts, or parts of the contracts that remain undelivered; minus

(B) the amounts, if any, received by the seller under subdivision (6).

(e) A trust account or an escrow account established under this section must contain a concise written description of all the provisions of this chapter that apply to the account.

(f) A seller's guarantee of delivery of all services or merchandise subject to a contract sold by the seller or transferred to a seller is unconditional except in the instance of one (1) of the following circumstances:

(1) An installment contract funded with cash or an insurance policy issued in conjunction with the contract is guaranteed to the extent of the cash paid or death benefits available at the time of death of the individual for whom services or merchandise are to be provided.

(2) A contract funded with an insurance policy issued previously and not in conjunction with the contract is guaranteed to the extent of the death benefit proceeds available at the time of the individual for whom services or merchandise are to be provided.

(3) A contract funded with an insurance policy issued in conjunction with the contract, but having a limited or qualified death benefit period, is guaranteed to the extent of the death benefit proceeds available at the time of the death of the individual for whom services or merchandise are to be provided.

(4) A transportation expense incurred by the seller while transporting human remains a distance greater than twenty-five (25) miles from the seller's place of business, plus any charge for services or merchandise necessarily incident to the transport of the human remains.

(5) The seller agrees to conditionally guarantee the delivery of cash advance items under subsection (b)(11)(B).

In the instance of unguaranteed delivery, the seller may reduce the value or number of the services or merchandise subject to the contract or cash advance items delivered or deliver the services or merchandise in full on the condition that the seller receives adequate consideration to compensate the seller for the unguaranteed part of the contract.

(g) The entire value of an escrow or trust established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(h) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program

under federal or state law.

(i) A seller may not accept or deposit into a trust or escrow account cash, an insurance policy, or any other property as consideration for services or merchandise to be provided in the future except in conjunction with a contract authorized by this chapter.

As added by P.L.114-1999, SEC.9. Amended by P.L.76-2000, SEC.1; P.L.61-2008, SEC.7.

IC 30-2-13-13

Designation of successor sellers

Sec. 13. (a) Notwithstanding section 10 of this chapter, as used in this section, "seller" means an individual, a person doing business as a sole proprietor, a firm, a corporation, an association, a limited liability company, or a partnership:

- (1) contracting to provide prepaid or at-need services or merchandise, or both, to a named individual; and
- (2) holding a certificate of authority under this chapter.

(b) A purchaser has the option to designate one (1) or more successor sellers to provide:

- (1) prepaid services or merchandise; or
- (2) at-need services or merchandise.

A purchaser who exercises the purchaser's option to designate a successor seller shall give written notice of the designation to the currently designated seller, successor seller, and trustee or escrow agent. Only a purchaser may exercise the option to designate a new seller. However, the designation is ineffective unless the newly designated seller consents to the designation.

(c) If a purchaser designates a successor seller, and the successor seller consents to the designation, not less than thirty (30) days after receiving notice under subsection (b), the seller who was previously designated shall:

- (1) relinquish and transfer all rights under the contract;
- (2) transfer to the successor the contract; and
- (3) release from trust or escrow for subsequent deposit to the successor seller's trust or escrow all property being held as consideration for the contract, together with an itemized statement disclosing all services or merchandise delivered as of the date of transfer.

However, a seller who was previously designated to provide the services or merchandise shall comply with section 30 of this chapter. The seller and the successor sellers shall cooperate to ensure that there is no forfeiture or loss of a right or benefit under the contract and that all contract terms are fulfilled. If similar prepaid or at-need services or merchandise are purchased from one (1) or more sellers, the contract that is first in time prevails and is valid.

(d) The trustee shall confirm the transfer to the seller, successor seller, and purchaser by written notice confirming the identity and value of the property transferred.

(e) It is a violation of this chapter for a seller to knowingly induce a purchaser to breach an existing contract that provides for prepaid

or at-need services or merchandise.

(f) This section does not abrogate the requirements of IC 25-15-4 concerning contracting for or delivering at-need services and merchandise.

(g) It is a violation of this chapter for a seller to knowingly:

(1) induce a purchaser who has the right to designate a successor seller under subsection (b) to:

(A) make a designation of a successor seller;

(B) breach an existing contract for prepaid or at-need services or merchandise; or

(C) enter into an at-need or prepaid contract calling for the delivery of similar services or merchandise; or

(2) offer a monetary inducement or the exchange or substitution of free or discounted services or merchandise in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

(h) It is a violation of this chapter for a seller to provide free or discounted burial rights:

(1) as an inducement or as consideration for the transfer of a contract; or

(2) in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.30; P.L.120-1994, SEC.4; P.L.241-1995, SEC.8; P.L.114-1999, SEC.10; P.L.76-2000, SEC.2; P.L.61-2008, SEC.8.

IC 30-2-13-14

Conversion of trust or escrow agreement; change in method of funding; new or successor trustee or escrow agent

Sec. 14. (a) A trust or an escrow agreement created under:

(1) IC 23-14-49-1;

(2) IC 30-2-9; or

(3) IC 30-2-10;

may not be converted to a trust or an escrow agreement required by section 12 or 12.5 of this chapter.

(b) A contract that has been funded with cash may not subsequently be changed to be funded with an insurance policy.

(c) A contract that has been funded with an insurance policy may not subsequently be changed to be funded with cash.

(d) Unless a transaction occurs under section 15(a)(4) of this chapter or the provisions of the contract permit otherwise, a new or successor trustee or escrow agent may not qualify and serve as trustee or escrow agent without the written consent of the purchaser and the seller designated to provide services or merchandise subject to a contract under this chapter.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.9; P.L.52-1997, SEC.53; P.L.114-1999, SEC.11.

IC 30-2-13-15

Loss of certificate of authority or license by seller; notice to purchaser; selection of new seller; transfer of unperformed contracts and funds to successor owner

Sec. 15. (a) If a seller:

- (1) ceases to have a certificate of authority or loses a professional license required to provide services under this chapter;
- (2) ceases to exist or operate;
- (3) is incapable of performing the seller's obligations under an unperformed contract for any reason; or
- (4) sells or leases the seller's business, facilities, or assets;

the seller shall give notice to the board and to each purchaser for whom funds are held in a trust or escrow under this chapter. The notice shall specify the reason for the issuance of the notice.

(b) The seller's written notice under subsection (a) must be:

- (1) addressed to the purchaser's last known address; and
- (2) mailed within fifteen (15) days after the seller becomes incapable of performing the obligations under the contract.

(c) A purchaser who receives a notice under subsection (a) has thirty (30) days after the date the notice was mailed by the seller to select and designate a new seller under section 13 of this chapter to become the beneficiary of the trust or the designated recipient of the escrow funds. The first seller shall send written notice of the designation of a new seller to the newly designated seller or to the trustee.

(d) A seller shall transfer all unperformed contracts and funds held in trust or escrow under this chapter to the seller who is the successor owner or lessee of the transferring seller. The successor seller shall perform all contracts transferred under this subsection.

(e) If:

- (1) the seller fails to comply with subsection (a)(1), (a)(2), or (a)(3); or
- (2) a purchaser fails to designate a new seller;

the designation shall be made by the board.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.10; P.L.114-1999, SEC.12; P.L.177-2009, SEC.60.

IC 30-2-13-16

Sale, consolidation, merger, disposal, or lease of assets in bulk; designation of successor

Sec. 16. (a) Except for sales of stock or merchandise in the ordinary course of the seller's business, a seller who has deposited money or an insurance policy under section 12 or 12.5 of this chapter may not:

- (1) sell, consolidate, merge, or dispose of assets; or
- (2) lease the seller's business, facilities, or assets;

without providing, as an integral part of the transaction or occurrence, for the designation of a successor seller of the money or insurance policy placed in trust. For purposes of this section, a change in control determines the seller's obligation.

(b) If a seller acting as a trustee of an insurance policy fails to designate a qualified successor seller, the board shall make the designation. However, the designated successor must be willing to accept the designation.

(c) This section does not restrict a purchaser's right to designate a new seller in accordance with section 13 of this chapter.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.11; P.L.114-1999, SEC.13.

IC 30-2-13-17

Successors to seller; obligations

Sec. 17. A seller may not sell the seller's stock, business, or assets, transfer assets, merge or consolidate, in whole or in part, or sell, transfer, or consolidate contracts unless:

(1) the purchaser of the stock, business, or assets or the successor in interest is liable for shortages in a trust under this chapter existing before or after the sale, however, the purchaser or successor in interest has no obligation to cure a shortage in a contract between the seller and the purchaser that is not performed by the purchaser or successor in interest; or

(2) the purchaser of the stock, business, or assets or the successor in interest will perform all obligations imposed under this chapter, all obligations imposed under contracts between the seller and the purchaser, and any other related obligations.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-18

Compensation and expenses of trustee; withdrawal of tax liability

Sec. 18. A trustee or an escrow agent may be reimbursed for necessary expenses and be paid reasonable compensation for those services from the trust or escrow. A trustee or an escrow agent shall also be permitted to withdraw from trust or escrow any federal or state tax liability assessed against the purchasers' interest in the trust or escrow.

As added by P.L.200-1991, SEC.1. Amended by P.L.114-1999, SEC.14.

IC 30-2-13-19

Common trust fund

Sec. 19. (a) A trustee may place trust money in a common or commingled trust fund under a single trust instrument.

(b) A trustee shall maintain a separate accounting record for each seller who deposits funds in a trust.

(c) Except for trusts established under IC 30-2-10, records maintained under this section do not need to be segregated on a purchaser by purchaser basis.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-20

Funeral service contracts; ratification by funeral director

Sec. 20. If an agent and a purchaser execute a contract covering funeral services (as defined in IC 25-15), the contract is valid only if the contract is ratified by a funeral director licensed under IC 25-15 who is directly affiliated with the seller as an agent when the contract is made. A contract ratified by an unaffiliated licensed funeral director is void.

As added by P.L.200-1991, SEC.1. Amended by P.L.114-1999, SEC.15.

IC 30-2-13-21

Agents of seller; seller liability; written statement

Sec. 21. A seller who solicits for or enters into a contract under this chapter must satisfy the following conditions:

- (1) An agent who acts on behalf of a seller must be directly affiliated with the seller for whom the agent is acting.
- (2) The contract must state that the seller is responsible and liable for the veracity and competency of the agent.
- (3) An agent must provide to the purchaser a written statement containing the following:
 - (A) The capacity of the person to act and whether the person is acting for the seller as an agent.
 - (B) Notice that the seller is the only person or entity authorized to provide the services or merchandise called for by the contract.
 - (C) The name, address, and telephone number of the seller.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-22

Seller bond or permit

Sec. 22. A bond or permit is not required of a seller except as specifically required in this chapter.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-23

Contracts; invalid provisions; unenforceable contracts

Sec. 23. (a) A contract is invalid if the contract allows the purchaser the right to:

- (1) convert, substitute, or exchange the purchase of burial rights for the purchase of services or merchandise;
- (2) free services or merchandise in exchange for the purchase of other services or merchandise; or
- (3) receive cash or gifts, other than burial rights and services and merchandise, with a value of more than fifty dollars (\$50) as an inducement to purchase a contract.

(b) A contract is unenforceable if:

- (1) the contract obligates the seller to provide prepaid services or merchandise for a named individual in conjunction with the death, burial, or final disposition of the individual;
- (2) the purchaser under the contract is the attorney in fact, appointed under IC 30-5, of the purchaser.

(3) the death of the named individual appears to have been the result of:

- (A) murder (IC 35-42-1-1);
- (B) voluntary manslaughter (IC 35-42-1-3); or
- (C) another criminal act, if the death does not result from the operation of a vehicle; and

(4) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that the purchaser referred to in subdivision (2) committed the offense.

The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the seller of the determination of the purchaser described in subdivision (4).

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.12; P.L.102-2007, SEC.4; P.L.34-2011, SEC.9.

IC 30-2-13-24

Seller or agent; prohibited acts

Sec. 24. A seller or an agent may not knowingly do the following:

- (1) Except on request of a prospective purchaser, contact prospective purchasers in hospitals, health facilities, or similar institutions for the purpose of soliciting the sale of prepaid services or merchandise.
- (2) Solicit relatives of a person whose death is apparently pending for the purpose of selling prepaid services or merchandise.
- (3) Except where the arrangement is the subject of a contract allowed under this chapter, solicit, accept, or pay any consideration for recommending or causing a deceased person to be provided services or merchandise by specific sellers.
- (4) Advertise prepaid services or merchandise in a false or misleading manner.

As added by P.L.200-1991, SEC.1. Amended by P.L.1-1992, SEC.160.

IC 30-2-13-25

Solicitation of sales; conditions

Sec. 25. Solicitation of a sale of prepaid services or merchandise is permitted by a seller or an agent of a seller if the following exist:

- (1) The conditions set forth in sections 21 and 24 of this chapter are observed.
- (2) The following are clearly identified:
 - (A) The seller or agent.
 - (B) The seller with whom the agent is affiliated.
- (3) The purpose of the call or visit is explained.
- (4) An appointment is made with the prospective purchaser.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-26

Confidentiality of contracts

Sec. 26. During the lifetime of the purchaser the contract executed under this chapter is confidential and neither the seller nor the trustee may disclose to a third party the identity of the purchaser or the terms of the contract. This section does not prohibit normal commercial activities by a seller with regard to an account receivable from a purchaser or compliance with a court order.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-27

Payments to board

Sec. 27. Each seller of a prepaid contract under this chapter shall pay to the board on a form provided by it not later than March 1 of each year from money not deposited in a trust or escrow the following amounts for each contract written during the preceding calendar year:

- (1) Two dollars and fifty cents (\$2.50) for each contract having a value of less than five hundred dollars (\$500).
- (2) Five dollars (\$5) for each contract having a value of at least five hundred dollars (\$500) and less than one thousand five hundred dollars (\$1,500).
- (3) Ten dollars (\$10) for each contract having a value of one thousand five hundred dollars (\$1,500) or more.

However, no fee is due and payable on contracts funded with a previously issued life insurance policy. The payment may be charged to the purchaser or, at the option of the seller, paid by the seller. A trustee shall quarterly report to the board all payments received by the trustee from all sellers during the preceding quarter. The report must identify the name and address of each seller from whom the trustee received payments and the total amount of the payments. The payments are administered under section 28 of this chapter.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.31; P.L.195-1997, SEC.2; P.L.114-1999, SEC.16.

IC 30-2-13-28

Preneed consumer protection fund; establishment; funding

Sec. 28. (a) The preneed consumer protection fund is established. The board shall deposit receipts under section 27 of this chapter in the preneed consumer protection fund.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The money in the fund and the interest accruing to the fund remain in the fund and do not revert to the state general fund.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-29

Fund uses; complaints; annual review

Sec. 29. (a) Money in the fund may be used to provide restitution to a seller who performs a defaulted contract, to a purchaser, or to a purchaser's estate for pecuniary loss arising from a trust or an escrow required by:

- (1) this chapter;
- (2) IC 23-14-49-1;
- (3) IC 30-2-9; or
- (4) IC 30-2-10.

The repeal of a statute cited in this subsection does not terminate the ability of a party to a contract made under the repealed statute to receive restitution under this chapter.

(b) The purchaser, seller, or other interested person must request restitution by filing a verified complaint with the board.

(c) The board may investigate any verified complaint. Within one hundred eighty (180) days after a verified complaint is filed, the board shall determine if a seller has defaulted on a contract. If the seller's obligation to perform under the contract cannot be collected from the seller, the board may order the auditor of state to make restitution from the fund.

(d) The amount of restitution may not exceed the gross amount of the original contract plus interest, compounded annually, on the gross amount that is figured, for each year or part of a year for which restitution is owed, using the lesser of:

- (1) the rate set forth in IC 24-4.6-1-101 in effect on January 1 of each year; or
- (2) the monthly average yield on United States Treasury Securities for the month of January of each year, adjusted to a constant maturity of one (1) year, as published by the Federal Reserve.

(e) The fund may not be charged with court costs or the payment of legal or other fees. In computing the amount of restitution, the board shall give credit for:

- (1) merchandise delivered; and
- (2) resources still existing in trust.

(f) When restitution is paid from the fund, the fund is subrogated to the amount of the restitution, and the board shall ask the attorney general to take all reasonable steps to collect the subrogated amount from the seller. Any amount collected shall be deposited in the fund.

(g) Money in the fund may only be used for a purpose that is specified in this section.

(h) The payment of restitution from the fund is not a right, and a purchaser does not have a vested right in the fund as a beneficiary of the fund.

(i) The status of the fund shall be annually reviewed by the board. If the board determines during its annual review that the fund balance equals or exceeds two million five hundred thousand dollars (\$2,500,000), the board shall suspend payments to the fund until after the next annual review that the board determines that the fund balance is less than two million five hundred thousand dollars (\$2,500,000).

As added by P.L.200-1991, SEC.1. Amended by P.L.120-1994, SEC.5; P.L.52-1997, SEC.54; P.L.114-1999, SEC.17; P.L.65-2007, SEC.5; P.L.112-2014, SEC.38.

IC 30-2-13-30

Seller records and books

Sec. 30. (a) The seller shall maintain accurate records, books, and accounts for each contract sold under this chapter containing the following:

- (1) Copies of all contracts.
- (2) The dates of all contracts.
- (3) The amounts paid and received under each contract.
- (4) The complete name, address, and identification of all parties to each contract.

(b) The seller shall maintain at the seller's principal Indiana business address complete records of all transactions under this chapter that involve the seller. The records may be audited and examined by the board at any reasonable time.

(c) The seller shall maintain all records required by this section for the longer of:

- (1) ten (10) years; or
- (2) three (3) years after the date of full performance of a contract.

The records are business records and customer lists within the meaning of IC 24-2-3.

(d) The requirements of this section apply to a seller, a successor seller, and a seller who was previously designated to provide services or merchandise to a purchaser.

As added by P.L.200-1991, SEC.1. Amended by P.L.61-2008, SEC.9.

IC 30-2-13-31

Annual report

Sec. 31. (a) A seller who is required to register under this article, a cemetery under IC 25-15-9-17, a funeral home under IC 25-15, and a perpetual care fund under IC 23-14-48 shall file an annual report with the board that provides the following information:

- (1) The name and location of each seller, cemetery, funeral home, and perpetual care fund.
- (2) The name and business address of the owner and the names and business addresses of the resident agent and chief officer if the owner is not a natural person.
- (3) If a cemetery, the amount of funds received by the owner during the previous fiscal year that are subject to trust requirements set forth in IC 23-14-48 and the amount required to be placed in trust, the amount of funds actually placed in trust to satisfy the requirements of IC 23-14-48, the name and address of the trustee, and if the funds are not held in trust by a corporate trustee, the name of the corporate surety and the amount of the trustee's fidelity bond as required by IC 23-14-51-4.
- (4) The amount of money or identity of other property received subject to the trust or escrow requirements of this chapter, the amount required to be placed in trust or escrow, the amount actually placed in trust or escrow, and the name and address of

the trustee.

(5) For a holder of a certificate of authority under section 33 of this chapter, the information that is listed in section 33(b)(2) through 33(b)(4) of this chapter.

(b) The annual report required by this section must meet the following requirements:

- (1) Be made on a form prescribed and furnished by the board.
- (2) Be signed by the owner if an individual or by the president or vice president and the treasurer or secretary if the owner is not an individual.
- (3) Be notarized and affirmed under penalties of perjury by the individuals signing the annual report.
- (4) Be filed in the office of the board by the seller not later than ninety (90) days after the end of the seller's fiscal year.
- (5) Be accompanied by an annual fee of ten dollars (\$10) if the seller is a funeral home or cemetery.
- (6) Be accompanied by the fee required by section 27 of this chapter.

(c) Each geographic location of a seller is a separate and distinct business and requires a separate report.

(d) The board may suspend the certificate of authority of a seller who fails to file the seller's annual report within the period required under this section.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.32; P.L.241-1995, SEC.13; P.L.52-1997, SEC.55; P.L.195-1997, SEC.3; P.L.253-1997(ss), SEC.28.

IC 30-2-13-32

General price list

Sec. 32. A seller of:

- (1) prepaid services or merchandise; or
- (2) at-need services or merchandise;

shall maintain for display or on request at the seller's place of business and in the possession of an agent appointed by the seller a fully detailed general price list of all prepaid and at-need services or merchandise offered by the seller. The seller shall make this list available to any individual requesting price information.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.33; P.L.241-1995, SEC.14.

IC 30-2-13-33

Certificates of authority

Sec. 33. (a) A seller may not sell or provide prepaid services or merchandise or a contract designed to provide a funding mechanism to be used in conjunction with the purchase of prepaid services or merchandise under this chapter without first obtaining a certificate of authority from the board. However, an employee of a seller is exempt from subsections (b) and (c).

(b) A seller who seeks a certificate of authority must submit a statement to the board that includes the following:

- (1) The seller's name and the address of the place of business.
- (2) Information considered necessary by the board to show evidence of the seller's good moral character, reputation for fair dealing in business matters, and lack of a criminal record.
- (3) The name, address, and Social Security number of each person authorized to directly represent the seller as an agent.
- (4) A statement by the seller notarized and affirmed under the penalties for perjury that all payments required under section 27 of this chapter have been made.

(c) Upon issuance, the certificate of authority shall be posted conspicuously in the seller's place of business.

(d) A seller holding a certificate of authority or an agent of a seller who engages in door-to-door solicitation shall present a copy of the certificate of authority upon entry onto the premises of a prospective purchaser.

(e) A certificate of authority issued under this chapter expires annually on March 1.

(f) The board may renew a certificate of authority upon receipt of an application for renewal that includes the information listed in subsection (b).

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.34; P.L.173-1996, SEC.16; P.L.195-1997, SEC.4; P.L.84-1998, SEC.27.

IC 30-2-13-34

Rules

Sec. 34. The board may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-35

Seller misrepresentation

Sec. 35. It is a violation of this chapter for a seller to misrepresent the character, quality, durability, or suitability for a specific or an intended purpose of services or merchandise offered for sale to a purchaser.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-36

Suspension of certificates of authority; fines

Sec. 36. The board may suspend the certificate of authority of a seller who violates a provision of this chapter. The board may suspend the certificate of authority of a seller who intentionally violates section 12.5 of this chapter for at least one (1) year. The board may assess a seller a fine of not more than ten thousand dollars (\$10,000) for each violation of section 12.5, 13, 15, 21, 23, 24, or 25 of this chapter to be added to the fund established under section 28 of this chapter.

As added by P.L.200-1991, SEC.1. Amended by P.L.114-1999, SEC.18.

IC 30-2-13-37

Repealed

(Repealed by P.L.207-1993, SEC.35.)

IC 30-2-13-38

Uncured deceptive acts; violations; injunctive relief; private right of action

Sec. 38. (a) A seller who violates a provision of this chapter commits an uncured deceptive act (as defined in IC 24-5-0.5-2).

(b) A person doing business as a sole proprietor, a firm, a limited liability company, a corporation, an association, or a partnership, but not acting as a seller that:

(1) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) and fails to obtain the certificate of authority required by section 33 of this chapter; or

(2) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) after the entity's certificate of authority has:

(A) expired; or

(B) been rescinded, revoked, or suspended by the board;

commits a Class A misdemeanor. Each act committed in violation of this subsection constitutes a separate offense.

(c) The following may maintain an action to enjoin an individual or entity from continuing to violate this section:

(1) The board.

(2) The attorney general.

(3) The prosecuting attorney of a county in which a violation occurs.

(d) A purchaser has a private right of action against a seller who commits an uncured deceptive act.

(e) A trustee or escrow agent, acting as a fiduciary, that disburses funds in a trust or escrow account established under this chapter without verifying that the seller has delivered the services or merchandise for which the funds were deposited through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

(f) A person who knowingly or intentionally uses or disburses funds in a trust or escrow account established under this chapter for purposes other than the purposes required under this chapter commits a Level 5 felony.

As added by P.L.114-1999, SEC.19. Amended by P.L.61-2008, SEC.10; P.L.143-2009, SEC.18; P.L.158-2013, SEC.306.

IC 30-2-13-39

Prohibited relationships between sellers and trustees or escrow agents

Sec. 39. (a) This section does not apply to a trust funded by the method described in section 11(c) of this chapter.

(b) A seller may not be an affiliate, a parent, or a subsidiary organization of the trustee or escrow agent, acting as a fiduciary, of a trust or escrow account established after June 30, 2008, to hold consideration paid for services or merchandise subject to a contract entered into under this chapter by the seller and a purchaser.

As added by P.L.61-2008, SEC.11.

IC 30-2-14

Chapter 14. Uniform Principal and Income Act

IC 30-2-14-0.1

Application of chapter; application of certain amendments to chapter

Sec. 0.1. (a) This chapter applies to the following:

(1) Every trust existing on or created after January 1, 2003, except as otherwise expressly provided in this chapter or by the terms of the trust.

(2) Every decedent's estate existing on or created after January 1, 2003, to the extent that under other applicable law or the decedent's will, the personal representative of the estate is required or allowed to account for and distribute income received during administration of the estate separately from the corpus.

(b) The amendments made to section 31 of this chapter by P.L.143-2009 apply to a trust described in section 31(h) of this chapter, on and after the following dates:

(1) If the trust is not funded as of July 1, 2009, the date of the decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

(3) If the trust is not described in subdivision (1) or (2), January 1, 2009.

(c) The amendments made to this section and to sections 3, 12, 14, 18, 19, 20, 21, and 38 of this chapter and the addition of section 13.5 of this chapter by legislation enacted in the 2014 regular session of the general assembly apply to the following:

(1) The estate of a decedent dying on or after July 1, 2013.

(2) In the case of a trust existing on or created after January 1, 2003:

(A) to the principal and income receipts of the trust; and

(B) to distributions received and made by the trust before, on, or after July 1, 2013.

As added by P.L.220-2011, SEC.486. Amended by P.L.51-2014, SEC.8.

IC 30-2-14-1

"Accounting period" defined

Sec. 1. As used in this chapter, "accounting period" means a calendar year unless another twelve (12) month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve (12) month period that begins when an income interest begins or ends when an income interest ends.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-2

"Beneficiary" defined

Sec. 2. As used in this chapter, "beneficiary" includes, in the case

of:

- (1) a decedent's estate, an heir, and a devisee; and
- (2) a trust, an income beneficiary, and a remainder beneficiary.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-3

"Fiduciary"

Sec. 3. As used in this chapter, "fiduciary" means the following:

- (1) A personal representative, including an executor, an administrator, a successor personal representative, a special administrator, or a person performing substantially the same function with respect to a decedent's estate that meets the requirements of section 13.5 of this chapter.
- (2) A trustee.

As added by P.L.84-2002, SEC.2. Amended by P.L.51-2014, SEC.9.

IC 30-2-14-4

"Income" defined

Sec. 4. As used in this chapter, "income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections 21 through 35 of this chapter.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-5

"Income beneficiary" defined

Sec. 5. As used in this chapter, "income beneficiary" means a person to whom net income of a trust is or may be payable.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-6

"Income interest" defined

Sec. 6. As used in this chapter, "income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-7

"Mandatory income interest" defined

Sec. 7. As used in this chapter, "mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-8

"Net income" defined

Sec. 8. As used in this chapter, "net income" means the total receipts allocated to income during an accounting period minus the

disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-9

"Person" defined

Sec. 9. As used in this chapter, "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-10

"Principal" defined

Sec. 10. As used in this chapter, "principal" means property that is held in trust for distribution to a remainder beneficiary when the trust terminates or that will remain perpetually vested in the trustee.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-11

"Remainder beneficiary" defined

Sec. 11. As used in this chapter, "remainder beneficiary" means a person entitled to receive principal when an income interest ends.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-12

"Terms of a trust"

Sec. 12. As used in this chapter, "terms of a trust" means the manifestation of the intent of:

- (1) a settlor with respect to a trust; or
- (2) a decedent with respect to a trust established under the decedent's will;

expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

As added by P.L.84-2002, SEC.2. Amended by P.L.51-2014, SEC.10.

IC 30-2-14-13

"Trustee" defined

Sec. 13. As used in this chapter, "trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-13.5

Personal representative as a fiduciary

Sec. 13.5. A personal representative, including an executor, an administrator, a successor personal representative, a special administrator, or a person performing substantially the same function with respect to a decedent's estate, is a fiduciary for purposes of this

chapter if:

- (1) under the terms of a decedent's will this chapter applies to the administration of the estate; or
- (2) under other applicable law, the personal representative is required or allowed to account for and distribute income received during administration of the estate separately from the corpus of the estate.

As added by P.L.51-2014, SEC.11.

IC 30-2-14-14

Allocating receipts and disbursements between principal and income

Sec. 14. (a) The following applies to a fiduciary in allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of this chapter:

- (1) A fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter.
- (2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter. An inference that the fiduciary has improperly exercised the discretion does not arise from the fact that the fiduciary has made or has not made an allocation contrary to a provision of this chapter.
- (3) A fiduciary shall administer a trust in accordance with this chapter if the terms of the trust do not contain a different provision or do not give the fiduciary a discretionary power of administration.
- (4) A fiduciary shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust or the will and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under section 15 of this chapter or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or an estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one (1) or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

As added by P.L.84-2002, SEC.2. Amended by P.L.51-2014, SEC.12.

IC 30-2-14-15

Power of trustee to adjust between principal and income

Sec. 15. (a) A trustee may adjust between principal and income to the extent the trustee considers necessary if:

- (1) the trustee invests and manages trust assets as a prudent investor;
- (2) the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income; and
- (3) the trustee determines:
 - (A) after applying the rules in section 14(a) of this chapter; and
 - (B) considering any power the trustee may have under the trust or the will to invade principal or accumulate income; that the trustee is unable to comply with section 14(b) of this chapter.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee may consider, but is not limited to, any of the following:

- (1) The nature, purpose, and expected duration of the trust.
- (2) The intent of the settlor.
- (3) The identity and circumstances of the beneficiaries.
- (4) The needs for liquidity, regularity of income, and preservation and appreciation of capital.
- (5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor.
- (6) The net amount allocated to income under this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available.
- (7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.
- (8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.
- (9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

- (1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
- (4) from any amount that is permanently set aside for charitable

purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(7) if the trustee is a beneficiary of the trust.

(d) If subsection (c)(5), (c)(6), or (c)(7) applies to a trustee and there is more than one (1) trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee:

(1) is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (c)(6); or

(2) determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c).

The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

(g) Nothing in this chapter is intended to create or imply a duty to make an adjustment. A trustee incurs no liability for:

(1) not considering whether to make an adjustment; or

(2) choosing not to make an adjustment.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-16

Notice of proposed action

Sec. 16. (a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as set forth in this section. For purposes of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all living beneficiaries who:

(1) are receiving; or

- (2) are entitled to receive:
 - (A) income under the trust; or
 - (B) a distribution of principal;

if the trust were terminated at the time the notice is given.

If a beneficiary described in this subsection is a minor, the trustee may comply with this subsection by mailing the notice to any court appointed or natural guardian of the minor.

(c) A trustee is not required to give notice of proposed action to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that the notice is given as set forth in this section and shall state all of the following:

- (1) The name and mailing address of the trustee.
- (2) The name and telephone number of a person who may be contacted for additional information.
- (3) A description of the action proposed to be taken and an explanation of the reasons for the action.
- (4) The time within which objections to the proposed action may be made, which shall be at least thirty (30) days after the mailing of the notice of proposed action.
- (5) The date on or after which the proposed action may be taken or is effective.
- (6) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the period specified in the notice of proposed action.

(e) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if:

- (1) the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period; and
- (2) the other requirements of this section are satisfied.

If a beneficiary not entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(f) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall mail notice to the beneficiaries described in subsection (b) of the decision not to take the action. The trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. Within thirty (30) days after the mailing of the notice not to implement the proposed action, a beneficiary may petition the court to have the action taken

and has the burden of proving that it should be taken.
As added by P.L.84-2002, SEC.2.

IC 30-2-14-17

Discretionary powers of fiduciary; failure to exercise power; remedies

Sec. 17. (a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) applies include the following:

(1) A determination under section 15(a) of this chapter of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) In deciding whether and to what extent to exercise the power conferred by section 15(a) of this chapter, a determination of the following:

(A) The factors that are relevant to the trust and the trust's beneficiaries.

(B) The extent to which the factors are relevant.

(C) The weight, if any, to be given to the relevant factors.

(c) If a court determines that a fiduciary has abused the fiduciary's discretion, the remedy shall be to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, subject to the following:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute to the beneficiary an amount that the court determines will restore the beneficiaries, in whole or in part, to their appropriate positions.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, in whole or in part, to their appropriate positions by requiring:

(A) the fiduciary to withhold an amount from at least one (1) future distribution to that beneficiary; or

(B) the beneficiary to return some or all of the distribution to the trust.

(3) To the extent the court is unable, after applying subdivisions (1) and (2), to restore the beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court shall require the fiduciary to pay an appropriate amount to:

(A) at least one (1) of the beneficiaries;

(B) the trust; or

(C) entities under both clauses (A) and (B).

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise of a discretionary power by the fiduciary will result in an abuse of the fiduciary's discretion. The petition shall:

- (1) describe the proposed exercise or nonexercise of the power;
- (2) contain sufficient information to inform the beneficiaries of:
 - (A) the reasons for the proposal; and
 - (B) the facts upon which the fiduciary relies; and
- (3) contain an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power.

(e) A beneficiary who challenges a fiduciary's proposed decision or actual decision to exercise or not to exercise a discretionary power conferred by this chapter shall have the burden of establishing that it will result or did result in an abuse of discretion.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-18

Distributions to beneficiaries; payment of fees and costs

Sec. 18. (a) After an income interest in a trust ends, the following rules apply:

- (1) A fiduciary of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in sections 20 through 43 of this chapter that apply to trustees and the rules in subdivision (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.
- (2) A fiduciary shall determine the remaining net income of a terminating income interest under the rules in sections 20 through 43 of this chapter that apply to trustees and by:
 - (A) including in net income all income from property used to discharge liabilities;
 - (B) paying from income or principal, in the fiduciary's discretion:
 - (i) fees of attorneys, accountants, and fiduciaries;
 - (ii) court costs and other expenses of administration; and
 - (iii) interest on death taxes;

but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the winding up of a terminating income interest, including debts; funeral expenses; disposition of remains; family allowances; and death taxes and related penalties that are apportioned to the terminating income interest by the terms of the trust or applicable law.

(3) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) in the manner described in section 19 of this chapter to all residuary beneficiaries, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) because of a payment described in section 38 or 39 of this chapter to the extent that the terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by:

(A) including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of an income interest's terminating event; and

(B) making a reasonable provision for amounts that the fiduciary believes the terminating income interest may become obligated to pay after the property is distributed.

(b) For purposes of this section, the interest of a settlor in a revocable living trust ends and becomes a terminating income interest when the settlor dies. Property that:

(1) becomes part of the trust by reason of the settlor's death; or

(2) is distributed to the trust from the settlor's estate;

becomes part of the terminating income interest when the property is received by the trust.

(c) For purposes of this section, a decedent's estate is not a terminating income interest.

As added by P.L.84-2002, SEC.2. Amended by P.L.61-2006, SEC.6; P.L.51-2014, SEC.13.

IC 30-2-14-19

Beneficiary's share of net income

Sec. 19. (a) Each beneficiary described in section 18(a)(4) of this chapter is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including a beneficiary who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or

terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

As added by P.L. 84-2002, SEC.2. Amended by P.L. 51-2014, SEC.14.

IC 30-2-14-20

Income interest; asset subject to trust

Sec. 20. (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust on the following dates:

(1) On the date the asset is transferred to the trust, in the case of an asset that is transferred to a trust during the transferor's life.

(2) On the date the asset is distributed to the trust from the decedent's estate, if the income received during the administration of the estate was accounted for and distributed by the estate as part of the corpus of the estate in accordance with IC 29-1-17-7.

(3) On the date of the decedent's death if, under the terms of the decedent's will or other applicable law, income received during administration of the decedent's estate was accounted for and

distributed by the estate as income, and not as part of the corpus of the estate.

(4) On the date of an individual's death, in the case of an asset that is not part of the probate estate (as defined in IC 29-1-1-3) and that is transferred to a trust or becomes a part of a trust because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

(e) This section applies only for purposes of determining the period in which an income beneficiary is entitled or eligible to receive any net income of a trust. This section does not control how receipts and disbursements are allocated to or between principal and income during that period. Amounts received by a trust from a decedent's estate or another trust as a distribution of principal may be allocable to principal under section 24 of this chapter even to the extent the amounts received include income of the distributing estate or trust received or accrued after the beneficiary's income interest begins.

As added by P.L. 84-2002, SEC.2. Amended by P.L. 51-2014, SEC.15.

IC 30-2-14-21

Income receipts and disbursements

Sec. 21. (a) A trustee shall allocate an income receipt or disbursement other than one to which section 18(a)(1) of this chapter applies to principal if its due date occurs before:

- (1) an individual dies in the case of an estate; or
- (2) an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which an individual dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which an individual dies or an income interest begins must be allocated to principal, and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 23 of this chapter applies are considered to be due on:

- (1) the date fixed by the entity for determining who is entitled to receive the distribution; or
- (2) if no date is fixed, the declaration date for the distribution.

A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

(d) This section applies only for purposes of determining which income receipts and disbursements of a trust are to be taken into account in determining the net income of the trust for the period after the beginning and before the end of a beneficiary's income interest. Although this section provides for certain income receipts and disbursements to be allocated to principal, this section does not control the initial classification of receipts and disbursements as between principal and income. Amounts received by a trust from a decedent's estate or another trust as a distribution of principal may be allocable to principal under section 24 of this chapter, even to the extent the amounts received include income receipts of the distributing estate or trust received or accrued after the beneficiary's income interest begins.

As added by P.L.84-2002, SEC.2. Amended by P.L.51-2014, SEC.16.

IC 30-2-14-22

Termination of mandatory income interest

Sec. 22. (a) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-23

Receipts from an entity

Sec. 23. (a) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest. The term does not include the following:

- (1) A trust or an estate to which section 24 of this chapter applies.

(2) A business or an activity to which section 25 of this chapter applies.

(3) An asset backed security to which section 37 of this chapter applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money.

(2) Money received in one (1) distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

(3) Money received in total or partial liquidation of the entity.

(4) Money received from an entity that is:

(A) a regulated investment company; or

(B) a real estate investment trust;

if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by:

(1) the entity's board of directors; or

(2) a person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-24

Distributions of principal and income from trust or estate

Sec. 24. A trustee shall allocate to:

(1) income an amount received as a distribution of income; and

(2) principal an amount received as a distribution of principal;

from a trust or an estate in which the trust has an interest other than a purchased interest. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 23 or 37 of this chapter applies to a receipt from the trust.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-25

Separate accounting records for business or activity

Sec. 25. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which:

- (1) its net cash receipts must be retained for:
 - (A) working capital;
 - (B) the acquisition or replacement of fixed assets; and
 - (C) other reasonably foreseeable needs of the business or activity; and
- (2) the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records.

If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

- (1) retail, manufacturing, service, and other traditional business activities;
- (2) farming;
- (3) raising and selling livestock and other animals;
- (4) management of rental properties;
- (5) extraction of minerals and other natural resources;
- (6) timber operations; and
- (7) activities to which section 36 of this chapter applies.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-26

Receipts and property allocated to principal

Sec. 26. A trustee shall allocate to principal:

- (1) to the extent not allocated to income under this chapter, assets received from:
 - (A) a transferor during the transferor's lifetime;
 - (B) a decedent's estate;
 - (C) a trust with a terminating income interest; or
 - (D) a payer under a contract naming the trust or its trustee as beneficiary;
- (2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 23 through 37 of this chapter;
- (3) amounts recovered from third parties to reimburse the trust

because of disbursements described in section 39(a)(7) of this chapter or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) other receipts as provided in sections 30 through 37 of this chapter.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-27

Rental property receipts

Sec. 27. To the extent that a trustee accounts for receipts from rental property under this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-28

Obligation to pay money to trustee

Sec. 28. (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one (1) year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one (1) year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) Notwithstanding any other provision of this section, when an obligation described in this section is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee receives

cash on account of the obligation. If the obligation is surrendered or liquidated partially, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

(d) This section does not apply to an obligation to which section 31, 32, 33, 34, 36, or 37 of this chapter applies.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-29

Life insurance policy proceeds; proceeds of other contracts

Sec. 29. (a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 25 of this chapter, loss of profits from a business.

(c) This section does not apply to a contract to which section 31 of this chapter applies.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-30

Insubstantial allocation between principal and income

Sec. 30. If a trustee determines that an allocation between principal and income required by section 31, 32, 33, 34, or 37 of this chapter is insubstantial, the trustee may allocate the entire amount to principal unless one (1) of the circumstances described in section 15(c) of this chapter applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 15(d) of this chapter and may be released for the reasons and in the manner described in section 15(e) of this chapter. An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(2) the value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-31

Allocating payments to principal or income

Sec. 31. (a) This section does not apply to a payment to which section 32 of this chapter applies.

(b) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments, regardless of whether the trustee also has the option to receive the payment in a lump sum or other form of payment, whether the payment is made in money or other property, and whether the payment is made from the payer's general assets or from a separate fund created by the payer. For purposes of subsection (h), the term also includes any payment from any separate fund, regardless of the reason for the payment.

(c) As used in this section, "separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan (including an individual account under a plan and a separate share of any account described in this subsection).

(d) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(e) If a payment is not characterized as interest, a dividend, or an equivalent payment and is made from a separate fund, the payment shall be allocated between income and principal as follows:

(1) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and allocate the balance of the payment to principal.

(2) If a trustee cannot determine the internal income of the separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal five percent (5%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee cannot determine the internal income of the separate fund or the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code, for the month preceding the accounting period for which the computation is made.

(f) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and the payment is made otherwise than from a separate fund, then the trustee shall allocate to income ten percent (10%) of any part of the payment that is required to be made during the accounting period and the balance to principal, unless no part of the payment is required to be made or the payment received is the entire amount to which the trustee is entitled, in which case the

trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(g) Notwithstanding any other provision of this section, when a private or commercial deferred annuity is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of the acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee exercises a right of withdrawal or otherwise receives cash on account of the obligation. If the obligation is surrendered wholly or partially before annuitization, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

(h) Except as provided in subdivision (2), trusts described in subdivision (1) are subject to the following special rules regarding allocations and distributions of income provided in subdivision (3):

(1) This subsection applies to:

(A) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code has been made; or

(B) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code.

(2) This subsection does not apply to a series of payments if and to the extent that the series of payments would, without the application of this subsection, qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code.

(3) Except as provided in subdivision (2), a payment made from a separate fund to a trust described in subdivision (1) shall be allocated between income and principal in accordance with subsection (e)(1) and (e)(2) and not in accordance with subsection (d) or (f), even if part or all of the payment is characterized as interest, a dividend, or an equivalent payment, and even if the payment is the entire amount to which the trustee is entitled. The trustee shall distribute to the surviving spouse the part of the payment allocated to income. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute all of the internal income of the fund to the trust. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments from the separate fund to the trust during the accounting period.

As added by P.L.84-2002, SEC.2. Amended by P.L.143-2009, SEC.19.

IC 30-2-14-32

Receipts from liquidating asset

Sec. 32. (a) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is

expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one (1) year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include the following:

- (1) A payment subject to section 31 of this chapter.
- (2) Resources subject to section 33 of this chapter.
- (3) Timber subject to section 34 of this chapter.
- (4) An activity subject to section 36 of this chapter.
- (5) An asset subject to section 37 of this chapter.
- (6) Any asset for which the trustee establishes a reserve for depreciation under section 40 of this chapter.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-33

Receipts from an interest in minerals or other natural resources

Sec. 33. (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources under this section, the trustee shall allocate them as follows:

- (1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.
- (2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.
- (3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) must be allocated to principal and the balance to income.
- (4) If an amount is received from a working interest or any other interest not provided for in subdivision (1), (2), or (3), ninety percent (90%) of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent (90%) of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2003, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in minerals, water, or other natural resources after December 31, 2002, the trustee shall allocate receipts from the interest as provided in this chapter.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-34

Net receipts from the sale of timber and related products

Sec. 34. (a) To the extent that a trustee accounts for receipts from the sale of timber and related products under this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from:

(A) the lease of timberland; or

(B) a contract to cut timber from land owned by a trust;

by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (1) and (2); or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated under subdivision (1), (2), or (3).

(b) In determining net receipts to be allocated under subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after December 31, 2002, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-35

Marital deduction for trust assets

Sec. 35. (a) If:

(1) a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets; and

(2) the amounts that the trustee transfers from principal to income under section 15 of this chapter and distributes to the spouse from principal under the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction;

the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the

power conferred by section 15(a) of this chapter. The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.
As added by P.L.84-2002, SEC.2.

IC 30-2-14-36

Transactions in derivatives; granting, acquiring, or exercising an option

Sec. 36. (a) As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in:

- (1) some or all changes in the price of a tangible or intangible asset or group of assets; or
- (2) changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under section 25 of this chapter for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee:

- (1) grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted;
- (2) grants an option that permits another person to sell property to the trust; or
- (3) acquires an option to buy property for the trust or an option to sell an asset owned by the trust;

and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-37

Asset backed securities

Sec. 37. (a) As used in this section, "asset backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 23 or section 31 of this chapter applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and

shall allocate the balance of the payment to principal.

(c) If a trust receives one (1) or more payments in exchange for the trust's entire interest in an asset backed security in one (1) accounting period, the trustee shall allocate the payments to principal. If a payment is one (1) of a series of payments that will result in the liquidation of the trust's interest in the security over more than one (1) accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-38

Disbursements from income

Sec. 38. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 18(a)(2)(B) or 18(a)(2)(C) of this chapter applies:

- (1) one-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;
- (2) one-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;
- (3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including:
 - (A) interest;
 - (B) ordinary repairs;
 - (C) regularly recurring taxes assessed against principal; and
 - (D) expenses of a proceeding or other matter that concerns primarily the income interest; and
- (4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

As added by P.L.84-2002, SEC.2. Amended by P.L.51-2014, SEC.17.

IC 30-2-14-39

Disbursements from principal

Sec. 39. (a) A trustee shall make the following disbursements from principal:

- (1) the remaining one-half (1/2) of the disbursements described in section 38(1) and 38(2) of this chapter;
- (2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;
- (3) payments on the principal of a trust debt;
- (4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
- (5) premiums paid on a policy of insurance not described in section 38(4) of this chapter of which the trust is the owner and beneficiary;
- (6) estate, inheritance, and other transfer taxes, including

penalties, apportioned to the trust; and
(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-40

Principal asset subject to depreciation

Sec. 40. (a) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one (1) year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

- (1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
- (2) during the administration of a decedent's estate; or
- (3) under this section if the trustee is accounting under section 25 of this chapter for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-41

Principal disbursements; income transfers to reimburse principal or create principal disbursement reserve

Sec. 41. (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one (1) or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

- (1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;
- (2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;
- (3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;
- (4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and
- (5) disbursements described in section 39(a)(7) of this chapter.

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

As added by P.L.84-2002, SEC.2.

IC 30-2-14-42

Tax payments

Sec. 42. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

- (1) from income to the extent that receipts from the entity are allocated to income;
- (2) from principal to the extent that receipts from the entity are allocated only to principal;
- (3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and
- (4) from principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

As added by P.L.84-2002, SEC.2. Amended by P.L.143-2009, SEC.20.

IC 30-2-14-43

Adjustments to offset shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries

Sec. 43. (a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

(1) elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, a trust, or a beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-44

Uniformity of the law

Sec. 44. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

As added by P.L.84-2002, SEC.2.

IC 30-2-15

Chapter 15. Total Return Unitrusts

IC 30-2-15-1

"Current valuation year"

Sec. 1. As used in this chapter, "current valuation year" means the year of the trust for which the unitrust amount is being determined.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-2

"Income trust"

Sec. 2. As used in this chapter, "income trust" means a trust created by an inter vivos or a testamentary instrument that has terms that describe the amount that may or must be distributed to a beneficiary by referring to the trust's income.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-3

"Net fair market value"

Sec. 3. As used in this chapter, "net fair market value" means the fair market value of each asset comprising the trust reduced by the liens, debts, and encumbrances of the trust, regardless of whether the liens, debts, and encumbrances are allocable to a specific asset.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-4

"Total return unitrust"

Sec. 4. As used in this chapter, "total return unitrust" means an income trust that has been converted to a total return unitrust in accordance with this chapter.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-5

"Trustee"

Sec. 5. As used in this chapter, "trustee" refers to the:

- (1) trustee of a trust; or
- (2) if at least two (2) persons are acting as trustee, a majority of the trustees.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-6

"Unitrust amount"

Sec. 6. As used in this chapter, "unitrust amount" means an amount computed as a percentage of the fair market value of the trust as set forth in this chapter.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-7

"Unitrust rate"

Sec. 7. As used in this chapter, "unitrust rate" means the

percentage of the fair market value of the trust that is determined under section 15 of this chapter and used to calculate the unitrust amount.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-8

"Year"

Sec. 8. As used in this chapter, "year" means a calendar year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-9

Trustee's power to convert trust, reconvert trust, and change unitrust rate

Sec. 9. A trustee may:

- (1) release the trustee's power to adjust between trust principal and income under IC 30-2-14-15 and convert an income trust to a total return unitrust;
- (2) reconvert a total return unitrust to an income trust; or
- (3) change the unitrust rate;

if the requirements of this chapter are met.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-10

Acting without court approval

Sec. 10. (a) Unless expressly prohibited in the governing trust instrument, and if the trustee would not be prohibited from exercising the power to adjust under IC 30-2-14-15(a) because at least one (1) of the provisions of IC 30-2-14-15(c)(3) through IC 30-2-14-15(c)(7) would be applicable, a trustee may, without the approval of the court having jurisdiction of the trust, take an action set forth in section 9 of this chapter if:

(1) the trustee sends written notice of the trustee's proposed action to:

- (A) the settlor of the trust, if the settlor is living; and
- (B) the trust beneficiaries described in IC 30-2-14-16(b); and

(2) no person who receives a written notice under subdivision (1) objects to the proposed action.

(b) To the extent applicable, the notice must:

(1) state the trustee's intent to release the power to adjust under IC 30-2-14-15 and to convert the trust to a total return unitrust; and

(2) describe how the unitrust will operate and any decisions made by the trustee under this chapter.

In the notice, the trustee shall also specify an effective date of the conversion, reconversion, or change in the unitrust rate.

(c) A person who receives notice under subsection (a) of a trustee's proposed action may object to the proposed action by delivering a written objection to the trustee not later than sixty (60) days after receiving the notice.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-11

Petition by trustee

Sec. 11. If a trustee:

- (1) receives an objection under section 10 of this chapter;
- (2) elects not to proceed under section 10 of this chapter; or
- (3) is not able to proceed under section 10 of this chapter because the trustee does not have the power to adjust under IC 30-2-14-15(c)(5), IC 30-2-14-15(c)(6), or IC 30-2-14-15(c)(7);

the trustee may petition the court having jurisdiction of the trust for an order that allows the trustee to take an action described in section 9 of this chapter.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-12

Petition by trust beneficiary

Sec. 12. A trust beneficiary described in IC 30-2-14-16(b) may petition the court having jurisdiction of the trust to order the trustee to take an action described in section 9 of this chapter, if the action would not alter any amount in the trust that is permanently set aside for charitable purposes unless both income and principal are set aside.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-13

When court shall approve conversion, reconversion, or change in rate

Sec. 13. If the court finds that the conversion, reconversion, or change in the unitrust rate under this chapter will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust, the court shall approve the conversion, reconversion, or change in the unitrust rate under this chapter.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-14

Reconversion's release of power to adjust void

Sec. 14. This section applies if a total return unitrust is reconverted to an income trust. The trustee's release of the trustee's power under IC 30-2-14-15, if it was given at the time the trust was converted to a total return unitrust, is void when the trust is reconverted.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-15

Conversion to unitrust; unitrust rate

Sec. 15. (a) When a trustee gives notice of a proposed action under section 10 of this chapter to convert a trust to a unitrust, the trustee must include the unitrust rate in the notice of proposed action.

(b) If:

- (1) the trustee proposes a unitrust rate of four percent (4%) in the notice of proposed action; and
- (2) no beneficiary entitled to notice of the proposed action

makes a written objection to the unitrust rate under section 10 of this chapter;
the unitrust rate must be four percent (4%).

(c) A trust may have a unitrust rate that represents a reasonable current return from the trust and best reflects the goals of the trust and the intent of the settlor or testator, but that is not less than three percent (3%) or more than five percent (5%), if the rate is:

- (1) agreed upon in writing by the trustee and the beneficiaries entitled to notice under section 11 of this chapter; or
- (2) ordered by the court having jurisdiction of the trust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-16

Unitrust amount; initial two years of trust

Sec. 16. For the first two (2) years of the trust or the first two (2) years after the conversion to a total return unitrust under this chapter, the unitrust amount for a current valuation year of the trust must be the product of the unitrust rate multiplied by the net fair market values of the assets held in the trust on the first business day of the current valuation year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-17

Unitrust amount; successive years

Sec. 17. Beginning with the third year of the trust, and each year after that year, the unitrust amount for a current valuation year of the trust is the product of the unitrust rate multiplied by the average of the net fair market values of the assets held in the trust on the first business day of:

- (1) the current valuation year; and
- (2) each of the two (2) years of the trust immediately preceding the current valuation year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-18

Net fair market value of unitrust assets

Sec. 18. In determining the net fair market value of each asset held in the trust under sections 16 and 17 of this chapter, the value of the following may not be included:

- (1) Any residential property or tangible personal property that, as of the first business day of the current valuation year, at least one (1) income beneficiary of the trust has or had the right to:

- (A) occupy; or
- (B) possess or control;

other than in a capacity as trustee. However, the right of occupancy or the right to possession or control shall be considered to be the unitrust amount with respect to the residential property or the tangible personal property.

- (2) Any asset specifically given to a beneficiary under the terms of the trust and the return on that investment. The return on the

investment shall be distributable to the beneficiary.

(3) Any assets that are held in a testator's estate.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-19

Trustee powers

Sec. 19. (a) The trustee may exclude any assets for which the fair market value is not readily determinable from the determination of net fair market value of trust assets. However, the terms of the trust continue to apply to these assets.

(b) The trustee may determine any other matter necessary for the proper functioning of the total return unitrust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-20

Prohibited reduction in unitrust amount

Sec. 20. The unitrust amount may not be reduced for expenses that would be deducted from income if the trust were not a total return unitrust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-21

Adjusting net fair market values of assets

Sec. 21. For purposes of section 16 of this chapter, the net fair market values of the assets held in trust on the first business day of a proper valuation year shall be adjusted to reflect any:

(1) reduction, in the case of a distribution or payment; or

(2) increase, in the case of a receipt;

for the prior valuation year as if the distribution, payment, or receipt had occurred on the first day of the prior valuation year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-22

Prorating unitrust amount in short year

Sec. 22. (a) As used in this section, "short year" refers to a part of a calendar year that:

(1) begins when the interest of the current beneficiary or class of current beneficiaries begins; or

(2) ends when the interest of the current beneficiary or class of beneficiaries ends.

(b) The trustee shall prorate the unitrust amount on a daily basis in a short year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-23

Unitrust amount's satisfying tax law requirement of preserving tax benefit

Sec. 23. (a) This section applies to the following trusts:

(1) A trust for which a marital deduction has been taken for federal tax purposes during the lifetime of the spouse for whom

the trust was created under Section 2056 or 2523 of the Internal Revenue Code.

(2) A trust to which the generation-skipping transfer tax due under Section 2601 of the Internal Revenue Code does not apply by reason of any effective date or transition rule.

(b) To the extent necessary to satisfy a tax law requirement or to preserve a tax benefit, the unitrust amount may not be less than the net income of the trust. Net income of the trust shall be determined as if the trust were not a unitrust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-24

Construing the governing instrument

Sec. 24. After the income trust is converted to a total return unitrust under this chapter, both of the following apply:

(1) The term "income" in the governing instrument means the unitrust amount plus any income from the trust assets excluded from the determination of net fair market value under sections 18 and 19 of this chapter.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with this chapter.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-25

Paying the unitrust amount

Sec. 25. (a) Except as provided in subsection (b), and unless otherwise provided by the governing instrument, the unitrust amount shall be considered to have been paid from net income. The net income of the trust shall be determined as if the trust were not a unitrust.

(b) To the extent that:

(1) net income is insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from net realized short term capital gains;

(2) net income and net realized short term capital gains are insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from net realized long term capital gains; and

(3) net income and net realized short term and net long term capital gains are insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from the principal of the trust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-26

Immunity of trustee

Sec. 26. (a) A trustee who in good faith acts or fails to act under section 9 of this chapter is not liable to any person affected by the action or inaction, regardless of whether the person:

(1) received written notice as provided in section 10 of this chapter; and

(2) was under legal disability at the time of the delivery of the notice.

(b) The exclusive remedy of a person affected by the action or inaction of a trustee is to obtain an order of the court having jurisdiction of the trust that directs the trustee to take an action described in section 9 of this chapter.

As added by P.L.3-2003, SEC.2.

IC 30-2-16

Chapter 16. Payroll Savings Plan Administration

IC 30-2-16-1

"Participant"

Sec. 1. As used in this chapter, "participant" means an individual who has accumulated a balance of funds with a payroll savings plan administrator through a payroll savings plan.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-2

"Payroll savings plan"

Sec. 2. As used in this chapter, "payroll savings plan" means a method provided by an employer to the employer's employees for the voluntary purchase of United States savings bonds on a regular schedule through the designation of an amount to be deducted each pay period until a sufficient amount accumulates to pay the purchase price of at least one (1) United States savings bond.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-3

"Payroll savings plan administrator"

Sec. 3. As used in this chapter, "payroll savings plan administrator" means an organization that:

- (1) has been qualified by the Federal Reserve Bank or the Bureau of the Public Debt under 31 CFR Part 317 to sell United States savings bonds; and
- (2) operates payroll savings plans on behalf of employers for the purchase of United States savings bonds.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-4

"Static balance"

Sec. 4. As used in this chapter, "static balance" means an amount held by a payroll savings plan administrator for a participant who:

- (1) is not making allotments of payroll deductions to the payroll savings plan administrator; but
- (2) has not terminated the individual's directions to the participant's employer or the employer's payroll savings plan administrator to purchase United States savings bonds for the individual when a sufficient balance accumulates to pay the purchase price.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-5

Static balance administration services; reimbursement of administrator

Sec. 5. Subject to this chapter, a payroll savings plan administrator is entitled to reimbursement from a static balance for reasonable expenses incurred in the performance of static balance administration

services beginning with the year after the participant ceases to make allotments of payroll deductions to the payroll savings plan administrator.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-6

Applicability of reimbursement provision

Sec. 6. Section 5 of this chapter applies only to an account in which the static balance does not exceed fifty dollars (\$50).

As added by P.L.141-2005, SEC.27.

IC 30-2-16-7

Static balance accounts reportable as unclaimed property; inapplicability of reimbursement provisions

Sec. 7. Section 5 of this chapter does not apply to accounts containing a static balance that would otherwise be reported to the state under IC 32-34-1-26 as Indiana property.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-8

Static balance account; maximum monthly charge

Sec. 8. The maximum charge that may be imposed on an account with a static balance is one dollar (\$1) per month.

As added by P.L.141-2005, SEC.27.

IC 30-3

ARTICLE 3. MISCELLANEOUS PROVISIONS

IC 30-3-1

Repealed

(Repealed by P.L.1-1989, SEC.75.)

IC 30-3-2

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-3-3

Chapter 3. Bond of Fiduciary in Judicial Sale

IC 30-3-3-1

Order of court; time

Sec. 1. In any case where real estate is to be sold under the orders of any court of competent jurisdiction, and where the law requires that a bond be given for the faithful accounting of all money which may come into the custody and possession of the guardian, trustee, receiver, commissioner or other person appointed by the court to make such sale, it shall not be necessary for such guardian, trustee, receiver, commissioner or other person to execute such bond until a sale of such real estate has been ordered by the court having jurisdiction, or until such time as the court, in its discretion, may order and approve for the safeguarding of such assets.

(Formerly: Acts 1937, c.178, s.1.)

IC 30-3-4

Chapter 4. Relinquishment of Certain Charitable Trusts

IC 30-3-4-1

Application of chapter; home for indigent women, worthy poor, or orphaned children

Sec. 1. Notwithstanding IC 30-4-2-2 and IC 30-4-3-33, this chapter applies whenever a county that has been given, devised, or bequeathed money or property in trust for the purpose of establishing and maintaining a home for indigent women, worthy poor, or orphan children, and the board of commissioners of the county has been named as trustee by the donor of the property or money.

As added by Acts 1980, P.L.8, SEC.143. Amended by P.L.238-2005, SEC.18.

IC 30-3-4-2

Determination by board of commissioners to relinquish trust

Sec. 2. If the board of commissioners determines:

- (1) that the amount of money or property given, devised, or bequeathed is or will be inadequate to carry out the trust without an additional appropriation from the county; and
- (2) that the county will not be substantially benefited by the administration of the trust;

then the board shall relinquish the trust. The title to any money and property so given, devised, or bequeathed then vests in the legal heirs of the donor or testator according to the provisions of IC 29 concerning intestate succession.

As added by Acts 1980, P.L.8, SEC.143.

IC 30-3-4-3

Certifying transcript of finding; recording

Sec. 3. The auditor of a county in which the board of commissioners makes a finding under this chapter affecting the title to real estate shall immediately certify a transcript of the finding to the county recorder of the county in which the real estate so affected is located. The county recorder shall then have the transcript recorded in the deed record of the county.

As added by Acts 1980, P.L.8, SEC.143.

IC 30-4

ARTICLE 4. TRUST CODE

IC 30-4-1

Chapter 1. General Provisions

IC 30-4-1-1

Definition of "trust"; relationships excluded from this article; transferability of employee benefit trust

Sec. 1. (a) A trust is a fiduciary relationship between a person who, as trustee, holds title to property and another person for whom, as beneficiary, the title is held.

(b) Subject to IC 30-4-2-8, the same person may be both the trustee and a beneficiary.

(c) The rules of law contained in this article do not apply to:

- (1) trusts created by operation of law;
- (2) business trusts (as defined in IC 23-5-1);
- (3) security instruments and creditor arrangements;
- (4) voting trusts;
- (5) religious, educational, and cultural institutions, created in other than trust form, except with respect to the application of IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which an institution is entitled;
- (6) corporations and other entities governed by IC 23-17, except with respect to IC 30-4-5-18 through IC 30-4-5-23 as those sections relate to the maintenance of federal income tax exemption privileges to which a corporation or other entity is entitled;
- (7) except as provided in this article for trusts for a benevolent public purpose and as provided in the Indiana uniform prudent investor act (IC 30-4-3.5):
 - (A) prepaid funeral plans;
 - (B) trusts for the care and upkeep of cemeteries; and
 - (C) agreements to furnish funeral services; and
- (8) trusts created or authorized by statute other than this article.

(d) IC 30-4-3-2(a) applies to an employee benefit trust that meets the requirements set forth in IC 30-4-3-2(c). However, no other provision of this article applies to an employee benefit trust.

*(Formerly: Acts 1971, P.L.416, SEC.2; Acts 1972, P.L.11, SEC.12.)
As amended by P.L.287-1987, SEC.1; P.L.41-2000, SEC.1;
P.L.61-2008, SEC.12.*

IC 30-4-1-1.5

IC 30-2-4 and IC 30-2-5 not repealed

Sec. 1.5. This article does not repeal:

- (1) IC 30-2-4 (the Uniform Fiduciaries Act); or
- (2) IC 30-2-5 (the Uniform Act for the Simplification of Fiduciary Security Transfers).

As added by P.L.1-1989, SEC.60.

IC 30-4-1-2

Other definitions

Sec. 2. As used in this article:

- (1) "Adult" means any person eighteen (18) years of age or older.
- (2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.
- (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
- (4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.
- (5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.
- (6) "Court" means a court having jurisdiction over trust matters.
- (7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.
- (8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.
- (9) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.
- (10) "Minor" means any person under the age of eighteen (18) years.
- (11) "Person" has the meaning set forth in IC 30-2-14-9.
- (12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).
- (13) "Principal" has the meaning set forth in IC 30-2-14-10.
- (14) "Qualified beneficiary" means:
 - (A) a beneficiary who, on the date the beneficiary's qualification is determined:
 - (i) is a distributee or permissible distributee of trust income or principal;
 - (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;

(iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

(iv) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;

(v) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or

(vi) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

(15) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

(16) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

(17) "Terms of a trust", "terms of the trust", or "terms of a charitable trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(18) "Trust estate" means the trust property and the income derived from its use.

(19) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

(20) "Trust instrument" means an instrument, agreement, or other written document executed by the settlor that contains the terms of the trust, including any amendments to the terms of the trust.

(21) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

(22) "Trustee" has the meaning set forth in IC 30-2-14-13.

*(Formerly: Acts 1971, P.L.416, SEC.2; Acts 1973, P.L.293, SEC.5.)
As amended by P.L.33-1989, SEC.94; P.L.138-1994, SEC.1;
P.L.41-2000, SEC.2; P.L.84-2002, SEC.3; P.L.238-2005, SEC.19;
P.L.61-2008, SEC.13; P.L.51-2014, SEC.18.*

IC 30-4-1-3

Application and interpretation of rules of law and terms of trust

Sec. 3. (Application and Interpretation of the Rules of Law and the Terms of the Trust)

The rules of law contained in this article shall be interpreted and applied to the terms of the trust so as to implement the intent of the settlor and the purposes of the trust. If the rules of law and the terms of the trust conflict, the terms of the trust shall control unless the rules of law clearly prohibit or restrict the article which the terms of the trust purport to authorize.

(Formerly: Acts 1971, P.L.416, SEC.2.)

IC 30-4-1-4

Application of article to preexisting trusts; application of amendments to preexisting trusts

Sec. 4. (a) 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, unless to do so would:

- (1) adversely affect a right given to any beneficiary;
- (2) give a right to any beneficiary which the beneficiary 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.

(b) Except as provided elsewhere in this article, an amendment to the rules of law contained in this article applies to all 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 that the beneficiary was not intended to have when the trust was created;
- (3) impose a duty or liability on any person that 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; P.L.149-2012, SEC.11.

IC 30-4-1-5

Construction of pronouns

Sec. 5. (Construction of Pronouns)

A pronoun used in this article may be construed, unless the context requires otherwise, without regard to gender or whether the person or thing to which it refers is animate or inanimate.

(Formerly: Acts 1971, P.L.416, SEC.2.)

IC 30-4-1-6

Construction of singular number

Sec. 6. (Construction of Singular Number)

Any word appearing in the singular number in this article may be construed as plural, unless the context requires otherwise.

(Formerly: Acts 1971, P.L.416, SEC.2.)

IC 30-4-1-7

Trust Code Study Commission report

Sec. 7. The report of the Trust Code Study Commission made according to IC 2-5-11 (repealed) may be consulted by the courts to determine the reasons, purpose and policies of this article, and may be used as a guide to its construction and application.

(Formerly: Acts 1971, P.L.416, SEC.2.) As amended by P.L.1-2009, SEC.153.

IC 30-4-1-8

Effect of requirement of exercising power of appointment by reference

Sec. 8. If a trust creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the settlor's intention, in requiring that the grantee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

As added by P.L.252-2001, SEC.30.

IC 30-4-1-9

Specific indication of power of appointment required

Sec. 9. A trust shall not operate as to the exercise of a power of appointment, which the settlor may have with respect to any real or personal property, unless by its terms the trust specifically indicates that the settlor intended to exercise the power.

As added by P.L.252-2001, SEC.31.

IC 30-4-1-10

Distribution under laws of intestate succession when manner not specified

Sec. 10. If a distribution in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the distribution is to take effect in possession or enjoyment, in such shares they would receive, under the applicable law of intestate succession, as if the designated ancestor had then died intestate, unmarried, and owning the subject matter of the distribution.

As added by P.L.252-2001, SEC.32.

IC 30-4-1-11

Choice of law

Sec. 11. The meaning and legal effect of a distribution under a trust shall be determined by the law of the state selected by the settlor

in the trust, unless the application of that law is contrary to the public policy of this state.

As added by P.L.252-2001, SEC.33.

IC 30-4-1-12

Persons born out of wedlock

Sec. 12. In construing a trust making a distribution to a person described by relationship to the settlor or to another person, a person born out of wedlock shall be considered the child of the person's mother. If the right of a person born out of wedlock to inherit from the person's father is established under IC 29-1-2-7, the person shall also be considered a child of the person's father.

As added by P.L.252-2001, SEC.34.

IC 30-4-1-13

Applicability of constructive trust provisions

Sec. 13. IC 29-1-2-12.1 applies to a trust.

As added by P.L.238-2005, SEC.20.

IC 30-4-2

Chapter 2. Rules Governing the Creation of Trusts

IC 30-4-2-1

Written evidence of terms; definite terms; validity of inter vivos trust; existence of trust beneficiaries; creation of trust by exercise of power of appointment

Sec. 1. (a) A trust in either real or personal property is enforceable only if there is written evidence of the terms of the trust bearing the signature of the settlor or the settlor's authorized agent.

(b) Except as required in the applicable probate law for the execution of wills, no formal language is required to create a trust, but the terms of the trust must be sufficiently definite so that the trust property, the identity of the trustee, the nature of the trustee's interest, the identity of the beneficiary, the nature of the beneficiary's interest and the purpose of the trust may be ascertained with reasonable certainty.

(c) It is not necessary to the validity of a trust that the trust be funded with or have a corpus that includes property other than the present or future, vested or contingent right of the trustee to receive proceeds or property, including:

- (1) as beneficiary of an estate under IC 29-1-6-1;
- (2) life insurance benefits under section 5 of this chapter;
- (3) retirement plan benefits; or
- (4) the proceeds of an individual retirement account.

(d) A trust created under:

- (1) section 18 of this chapter for the care of an animal; or
- (2) section 19 of this chapter for a noncharitable purpose;

has a beneficiary.

(e) A trust has a beneficiary if the beneficiary can be presently ascertained or ascertained in the future, subject to any applicable rule against perpetuities.

(f) A power of a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(g) A trust may be created by exercise of a power of appointment in favor of a trustee.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.132-1992, SEC.1; P.L.238-2005, SEC.21; P.L.51-2014, SEC.19.

IC 30-4-2-1.5

Trust not created by will; requirements

Sec. 1.5. (a) Except as provided in subsection (b), a trust that is not created by a will is validly created if the trust's creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

- (1) the settlor was domiciled, had a place of abode, or was a

national;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property is located.

(b) A valid trust must be:

(1) in writing; and

(2) signed by:

(A) the settlor; or

(B) an agent of the settlor who is an attorney in fact.

As added by P.L.238-2005, SEC.22.

IC 30-4-2-2

Acceptance by trustee

Sec. 2. (a) This section applies to the acceptance of a trust by a person named as trustee.

(b) The appearance of the named person's signature on the writing which is the evidence of the trust or on a separate written acceptance will be conclusive that the named person accepted the trust.

(c) Except as provided in subsection (e), if the named person exercises powers or performs duties under the trust, the named person will be presumed to have accepted the trust.

(d) The named person may reject the trust in writing and, if the named person does so, will incur no liability. If, after being informed that the named person has been named as trustee, the named person neither expressly accepts the trust nor exercises powers or performs duties under the trust within a reasonable time, the named person will be presumed to have rejected the trust.

(e) If there is an immediate risk of damage to the trust estate, the named person may act to preserve the trust estate and will not be presumed to have accepted the trust, provided the named person delivers a written rejection to the settlor at or within a reasonable time after the named person acts, or, if the settlor is dead, to the beneficiary or the court having jurisdiction over the administration of the trust estate.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.238-2005, SEC.23.

IC 30-4-2-3

Repealed

(Repealed by P.L.293-1983, SEC.2.)

IC 30-4-2-4

Repealed

(Repealed by P.L.293-1983, SEC.2.)

IC 30-4-2-5

Life insurance trusts

Sec. 5. (Life Insurance Trusts)

Proceeds of life insurance policies heretofore made payable to a trustee or trustees named as beneficiary or hereafter to be named beneficiary under an inter vivos trust shall be paid directly to the

trustee or trustees and held and disposed of by the trustee or trustees as provided in the trust agreement or declaration of trust in writing made and in existence on the date of death of the insured, whether or not such trust or declaration of trust is amendable or revocable or both, or whether it may have been amended, and notwithstanding the reservation of any or all rights of ownership under the insurance policy or annuity contract; subject, however, to a valid assignment of any part of the proceeds. It is not necessary to the validity of such trust agreement or declaration of trust that it be funded or have a corpus other than the right, which need not be irrevocable, of the trustee or trustees named therein to receive such proceeds as beneficiary. A policy of life insurance or annuity contract may designate as beneficiary a trustee or trustees named or to be named by will if the designation is made in accordance with the provisions of the policy or contract whether or not the will is in existence at the time of the designation.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-6

Nature of trustee's estate

Sec. 6. (Nature of the Trustee's Estate)

(a) The trustee takes the title to the trust property.

(b) The extent of the trustee's estate in the trust property is limited to that which is necessary to enable him to perform the trust.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-7

Nature of beneficiary's estate

Sec. 7. (Nature of the Beneficiary's Estate)

(a) The beneficiary takes an equitable interest in the trust property.

(b) The extent of the beneficiary's estate shall be determined from the terms of the trust. The Rule in Shelley's Case and the Doctrine of Worthier Title shall not be applied to determine the meaning or application of the terms.

(c) Except as provided in 30-4-2-14, if, under the terms of the trust, the trustee is required at some time to distribute real property from the trust estate to a beneficiary, that beneficiary's equitable interest is real property. In all other cases the beneficiary's interest is personal property.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-8

Merger of estates

Sec. 8. (a) If the settlor transfers both the title and the entire equitable interest in property to the same person as both the sole trustee and the sole beneficiary, no trust will be deemed to have been created and the transferee shall treat the property as the transferee's own.

(b) Except as provided in subsection (c), if the title to the trust property and the entire beneficial interest becomes united in one (1)

person the trust terminates. If:

- (1) a beneficiary is serving as trustee; and
- (2) the trust creates an interest in a beneficiary who is not the trustee, whether the interest is contingent or vested;

the entire beneficial interest shall not be construed to be united in one (1) person.

(c) The title to the trust property and the entire beneficial interest shall not become united in a beneficiary whose interest is protected under a trust with protective provisions, and in that case the court shall appoint a new trustee to administer the trust for the beneficiary's benefit.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.200-1991, SEC.2.

IC 30-4-2-9

Necessity of powers or duties

Sec. 9. (Necessity of Powers or Duties)

Subject to 30-4-2-13, if the trustee has neither a power nor a duty related to the administration of the trust, the title to the trust property will be treated as having vested directly in the beneficiary on the date of delivery to the trustee.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-10

Capacity of settlor

Sec. 10. (a) If a trust is created by a will, the settlor's capacity that is required to create the trust is determined by the applicable probate law.

(b) The capacity of a settlor that is required to create, amend, revoke, or add property to a revocable trust is the same as the capacity of a testator that is required to make a will.

(c) To create or add property to an irrevocable trust, the settlor or transferor must be of sound mind and have a reasonable understanding of the nature and effect of the act and the terms of the trust.

(d) To direct the actions of the trustee of a trust, the settlor or other person must:

- (1) have the capacity to hold and deal with property for the settlor's or person's own benefit;
- (2) be at least eighteen (18) years of age; and
- (3) be of sound mind.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.238-2005, SEC.24.

IC 30-4-2-11

Capacity of trustee

Sec. 11. (Trustee's Capacity)

(a) If the trustee is a natural person, he must have the capacity to take, hold, and deal with property for his own benefit and must be at least eighteen (18) years of age, be of sound mind and of good moral

character.

(b) If the trustee is a corporation, it must have the power to take, hold, and deal with property for its own benefit and have the power to act as a trustee.

(c) Subject to IC 1971, 30-4-2-8, the fact that the person named to be trustee is also a beneficiary will not disqualify him from acting as trustee if he is otherwise qualified.

(Formerly: Acts 1971, P.L.416, SEC.3; Acts 1973, P.L.293, SEC.6.)

IC 30-4-2-12

Illegality

Sec. 12. (Illegality)

(a) The terms of the trust may not require the trustee to commit a criminal or tortious act or an act which is contrary to public policy.

(b) A trust with terms which violate subsection (a) of this section is invalid unless the prohibited term is separable. If the prohibited term is separable, only it is invalid and the remainder of the trust is valid.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-13

Application of statute of uses

Sec. 13. (Application of Statute of Uses)

If the trust property includes real property, and, under the terms of the trust,

(a) The beneficiary has the power to manage the trust property, including the power to direct the trustee to sell the property; and

(b) The trustee may sell the trust property only on direction by the beneficiary or other person or may sell it after a period of time stipulated in the terms of the trust in the absence of a direction: then 30-4-2-9 shall not apply to defeat the trustee's title.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by Acts 1979, P.L.268, SEC.8.

IC 30-4-2-14

Assignment of beneficiary's interest

Sec. 14. (Assignment of Beneficiary's Interest)

(a) If the terms of the trust give the trustee the power to sell the trust property upon direction by the beneficiary or other person or to sell it after a stipulated period of time in the absence of a direction as provided in 30-4-2-13, the beneficiary may treat his interest as personal property and may assign it to any person notwithstanding the provisions of 30-4-2-7(c).

(b) The trustee will be bound by an assignment made under subsection (a) of this section only after he receives written notice of it.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-15

Divorce or annulment of marriage; effect on revocable trust

Sec. 15. (a) This section does not apply to a trust:

- (1) that is irrevocable on the date of a divorce or an annulment;
or
- (2) created by:
 - (A) the settlor and the settlor's spouse or former spouse under a written agreement with each other that requires the creation of the trust; or
 - (B) a court order.

(b) If, after creating a revocable trust, the settlor is divorced or the marriage of the settlor to the settlor's spouse is annulled, the settlor's former spouse shall for the purposes of the trust be treated as if the spouse had died before the settlor died.

As added by P.L.200-1991, SEC.3.

IC 30-4-2-16

Election by surviving spouse to take share against settlor's will; distribution of remainder

Sec. 16. (a) This section applies to:

- (1) property in a trust that is subject to a spouse's right of election under IC 29-1-3; and
 - (2) a trust that receives property from the settlor's estate;
- if the settlor's spouse files an effective election to take a share of the settlor's estate against the settlor's will under IC 29-1-3.

(b) The trustee shall dispose of the assets received from the settlor's estate and the portion of the trust remaining after the spouse's election as if the settlor's spouse had died before the settlor died.

As added by P.L.200-1991, SEC.4.

IC 30-4-2-17

Valid purposes of charitable trust; selection of purpose or beneficiary if not specified by trust

Sec. 17. (a) A charitable trust may be created for the following purposes:

- (1) The relief of poverty.
- (2) The advancement of education or religion.
- (3) The promotion of health.
- (4) Governmental and municipal purposes.
- (5) A purpose that is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select at least one (1) charitable purpose or beneficiary. The selection must be consistent with the settlor's intention to the extent the intention can be ascertained.

(c) The settlor of a charitable trust, among other persons, may maintain a proceeding to enforce the charitable trust.

As added by P.L.238-2005, SEC.25.

IC 30-4-2-18

Trust for care of animal

Sec. 18. (a) A trust may be created to provide for the care of an

animal alive during the settlor's lifetime.

(b) A trust authorized by this section terminates as follows:

(1) If the trust is created to provide for the care of one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the animal.

(2) If the trust is created to provide for the care of more than one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the last surviving animal.

(c) A trust authorized by this section may be enforced by the following:

(1) A person appointed in the terms of the trust.

(2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) A person having an interest in the welfare of an animal for whose care a trust is established may request the court to:

(1) appoint a person to enforce the trust; or

(2) remove a person appointed to enforce the trust.

(e) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(f) Except as provided in the terms of the trust, property not required for the trust's intended use must be distributed to the following:

(1) The settlor, if the settlor is living.

(2) The settlor's successors in interest, if the settlor is deceased.

As added by P.L.238-2005, SEC.26.

IC 30-4-2-19

Trust for noncharitable purpose

Sec. 19. (a) Except as provided in section 18 of this chapter, a trust may be created for a:

(1) noncharitable purpose without a beneficiary; or

(2) noncharitable and valid purpose to be selected by the trustee.

(b) A trust authorized by this section may be enforced for not more than twenty-one (21) years.

(c) A trust authorized by this section may be enforced by the following:

(1) A person appointed in the terms of the trust.

(2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(e) Except as provided in the terms of the trust, property not required for the trust's intended use must be distributed to the following:

(1) The settlor, if the settlor is living.

(2) The settlor's successors in interest, if the settlor is deceased.

As added by P.L.238-2005, SEC.27.

IC 30-4-2.1

Chapter 2.1. Rules for Interpretation of Trusts

IC 30-4-2.1-1

Construction

Sec. 1. In the absence of a contrary intent appearing in the trust, a trust shall be construed in accordance with the rules in this chapter.
As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-2

Adopted children

Sec. 2. (a) Except as provided in subsection (b), in construing a trust naming as beneficiary a person described by relationship to the settlor or to another, a person adopted before:

- (1) the person is twenty-one (21) years of age; and
- (2) the death of the settlor;

shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents.

(b) If a natural parent or previous adopting parent marries the adopting parent before the settlor's death, the adopted person shall also be considered the child of the natural or previous adopting parent.

(c) A person adopted by the settlor after the person becomes twenty-one (21) years of age shall be considered the child of the settlor. However, no other person is entitled to establish the relationship to the settlor through the child.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-3

No contest provision void

Sec. 3. A provision in a trust that provides, or has the effect of providing, that a beneficiary forfeits a benefit from the trust if the beneficiary contests the trust is void.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-4

Children born after trust's creation

Sec. 4. (a) Except as provided in subsection (b) and section 5 of this chapter, when a settlor fails to provide in the settlor's trust for a child who is:

- (1) born or adopted after the making of the settlor's trust; and
- (2) born before or after the settlor's death;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

(b) Subsection (a) does not apply to a child of the settlor if:

- (1) it appears from the trust that the settlor intentionally failed

- to provide in the settlor's trust for the child; or
- (2) when the trust was executed:
 - (A) the settlor had at least one (1) child known to the settlor to be living; and
 - (B) the settlor devised substantially all of the settlor's estate to the settlor's surviving spouse.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-5

Mistaken belief that settlor's child deceased

Sec. 5. (a) Except as provided in subsection (b), if, at the time of the making of the trust, the settlor:

- (1) believes a child of the settlor to be dead; and
- (2) fails to provide for the child in the settlor's trust;

the child is entitled to receive a share in the trust assets. The child's share of the trust assets shall be determined by ascertaining what the child's intestate share would have been under IC 29-1-2-1 if the settlor had died intestate. The child is entitled to receive a share of the trust assets equivalent in value to the intestacy share determined under IC 29-1-2-1.

(b) Subsection (a) does not apply to a child of the settlor if it appears from the trust or from other evidence that the settlor would not have devised anything to the child had the settlor known that the child was alive.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-6

Void, revoked, or lapsed devise

Sec. 6. If a devise of real or personal property, not included in the residuary clause of the trust:

- (1) is void;
- (2) is revoked; or
- (3) lapses;

the devise becomes a part of the residue and passes to the residuary beneficiary.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-7

Beneficiary predeceases settlor

Sec. 7. (a) As used in this section, "descendant" includes the following:

- (1) A child adopted before the child is twenty-one (21) years of age by:
 - (A) the settlor; or
 - (B) the settlor's descendants.
- (2) A descendant of a child adopted as set forth in subdivision (1).
- (3) A child who is born of the mother out of wedlock in either of the following circumstances:
 - (A) The mother is a descendant of the settlor.

- (B) The mother is the settlor.
- (4) If the right of a child born out of wedlock to inherit from the father is or has been established in the manner provided under IC 29-1-2-7, the child, in either of the following circumstances:
 - (A) The father is a descendant of the settlor.
 - (B) The father is the settlor.
- (5) A descendant of a child born out of wedlock as set forth in subdivisions (3) and (4).
- (b) If:
 - (1) an estate, real or personal, is devised to a descendant of the settlor; and
 - (2) the beneficiary:
 - (A) dies during the lifetime of the settlor before or after the execution of the trust; and
 - (B) leaves a descendant who survives the settlor;

the devise does not lapse, but the property devised vests in the surviving descendant of the beneficiary as if the beneficiary had survived the settlor and died intestate.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-8

Kindred of the half blood

Sec. 8. Kindred of the half blood are entitled to receive the same trust interest that they would have received if they had been of the whole blood.

As added by P.L.4-2003, SEC.7.

IC 30-4-2.1-9

Applicability of adultery and abandonment forfeiture provisions

Sec. 9. A trust of a deceased spouse is subject to the following:

- (1) IC 29-1-2-14.
- (2) IC 29-1-2-15.

As added by P.L.238-2005, SEC.28.

IC 30-4-2.1-11

Written statement or list disposing of tangible personal property

Sec. 11. (a) A written statement or list that:

- (1) complies with this section; and
- (2) is referred to in a settlor's trust that was revocable during the settlor's lifetime;

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 trust.

(b) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the settlor and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the trust. The writing may be altered by the settlor after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the trust.

(c) 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.

As added by P.L.238-2005, SEC.29.

IC 30-4-2.1-12

Order of abatement; other rules governing abatement

Sec. 12. (a) If a trust is terminated or partially terminated and the available trust property is not sufficient to fully satisfy the interests of all beneficiaries, the interests must be abated in the following order:

(1) The interests that would be characterized as residuary devises if the trust were a will.

(2) The interests that would be characterized as general devises if the trust were a will.

(3) The interests that would be characterized as specific devises if the trust were a will.

The amount abated for each beneficiary within each classification described in subdivisions (1) through (3) must be proportional to the amount of property that each beneficiary would have received if full distribution of the trust property had been made in accordance with the terms of the trust instrument.

(b) If:

(1) a trust instrument expresses an order of abatement that differs from the order set forth in subsection (a); or

(2) the order of abatement stated in subsection (a) would impair an express or implied purpose of the trust;

the interests of the beneficiaries must be abated in the manner determined appropriate to give effect to the settlor's intent.

(c) If, under the terms of a trust that was revocable at the time of the settlor's death, the subject of a preferred devise is sold or used to pay debts, expenses, taxes, or other obligations incident to the settlement of the settlor's affairs, abatement must be achieved by adjustment in, or contribution from, other interests in the remaining trust property.

(d) Where applicable, the abatement of beneficiary interests in a trust is subject to IC 32-17-13-4.

As added by P.L.101-2008, SEC.8.

IC 30-4-2.1-13

Repealed

(Repealed by P.L.149-2012, SEC.12.)

IC 30-4-2.1-14

Rules of interpretation concerning discretionary interests

Sec. 14. (a) The following rules apply only to discretionary interests (as defined in section 14.5 of this chapter):

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

- (2) A creditor may not:
 - (A) require a trustee to exercise the trustee's discretion to make a distribution; or
 - (B) cause a court to foreclose a discretionary interest.
- (3) A court may review a trustee's distribution discretion only if the trustee acts dishonestly or with an improper motive.
- (b) Words such as sole, absolute, uncontrolled, or unfettered discretion dispense with the trustee acting reasonably.
- (c) Absent express language to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, a trustee may, in the trustee's discretion, distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary to the exclusion of the other beneficiaries.
- (d) Regardless of whether a beneficiary has any outstanding creditors, a trustee of a discretionary interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary. A trustee is not liable to a creditor for paying the expenses of a beneficiary who holds a discretionary interest.

As added by P.L.6-2010, SEC.14. Amended by P.L.36-2011, SEC.7; P.L.6-2012, SEC.202.

IC 30-4-2.1-14.5

"Discretionary interest"; rules of construction

Sec. 14.5. (a) As used in this section and section 14 of this chapter, "discretionary interest" refers to any interest over which the trustee has any discretion to make or withhold a distribution.

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

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

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

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

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

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

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

(5) "The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare."
As added by P.L.36-2011, SEC.8.

IC 30-4-2.1-15

Rules of interpretation concerning a beneficiary's influence over a trust

Sec. 15. If a party challenges a settlor or a beneficiary's influence over a trust, none of the following factors, alone or in combination, may be considered dominion and control over a trust:

- (1) A beneficiary serving as a trustee or co-trustee.
- (2) The settlor or beneficiary holds an unrestricted power to remove or replace a trustee.
- (3) The settlor or a beneficiary:
 - (A) is a trust administrator, a general partner of a partnership, a manager of a limited liability company, or an officer of a corporation; or
 - (B) has any other managerial function in any other entity; that is owned in whole or in part by the trust.
- (4) A person related by blood or adoption to a settlor or beneficiary is appointed as trustee.
- (5) An agent, accountant, attorney, financial adviser, or friend of the settlor or a beneficiary is appointed as trustee.
- (6) A business associate of the settlor or a beneficiary is appointed as trustee.
- (7) A beneficiary holds any power of appointment over part or all of the trust property.
- (8) The settlor holds a power to substitute property of equivalent value.
- (9) The trustee may loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security.
- (10) The trust contains broad purposes or highly discretionary distribution language.
- (11) The trust has only one (1) beneficiary eligible for current distributions.

As added by P.L.6-2010, SEC.15.

IC 30-4-2.1-16

Rules of interpretation concerning a trustee's independence from the settlor

Sec. 16. Absent clear and convincing evidence otherwise, a settlor of an irrevocable trust may not be considered the alter ego of a trustee. The following factors, alone or in combination, are not sufficient evidence to conclude that the settlor controls a trustee or is the alter ego of the trustee:

- (1) Any combination of the factors listed in section 15 of this chapter.
- (2) Isolated occurrences of the settlor signing checks, making disbursements, or executing other documents related to the trust as a trustee when the settlor is, in fact, not a trustee.

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

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

As added by P.L.6-2010, SEC.16.

IC 30-4-2.1-17

Limits on creditors of beneficiaries who may replace or remove a trustee or who are also trustees or co-trustees

Sec. 17. (a) A creditor may not reach, exercise, or otherwise acquire an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee. A power described in this subsection is personal to a beneficiary or other person and may not be exercised by the person's creditors. A court may not direct a person to exercise the power.

(b) A creditor may not:

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

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

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

As added by P.L.6-2010, SEC.17.

IC 30-4-3

Chapter 3. Rules Governing the Rights, Powers, Duties, Liabilities, and Remedies of the Parties to a Trust

IC 30-4-3-1

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-1.3

Revocable trusts; powers of settlor; duties of trustees

Sec. 1.3. (a) While a trust is revocable and the settlor has the capacity to revoke the trust:

(1) the rights of the beneficiaries are subject to the control of;
and

(2) the duties of the trustee are owed exclusively to;
the settlor.

(b) A settlor is presumed to have capacity for the purposes of subsection (a) until the trustee receives from at least one (1) licensed physician written certification that the settlor lacks the capacity to revoke the trust.

(c) If a revocable trust has more than one (1) settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(d) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

(e) If a trustee reasonably believes that a settlor of a revocable trust lacks capacity to revoke the trust, the trustee is authorized to provide information to the settlor's designated agent (even if the designated agent is one (1) of two (2) or more trustees) or to any beneficiary who, if the settlor were deceased, would be entitled to distributions from the trust.

(f) A person who becomes a successor trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who was also a settlor is not liable for any act or failure to act by the settlor while the settlor was trustee.

(g) A successor trustee of a revocable trust who succeeds a trustee who was also a settlor of the trust does not have a duty to:

(1) investigate any act or failure to act by the predecessor trustee;

(2) review any accounting of the predecessor trustee; or

(3) take action on account of any breach of trust by the predecessor trustee.

As added by P.L.99-2013, SEC.9.

IC 30-4-3-1.5

Revocation or amendment of trust by settlor

Sec. 1.5. (a) This subsection applies to a trust created under an instrument executed after June 30, 2005. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke

or amend the trust.

(b) This subsection applies to a revocable trust created or funded by at least two (2) settlors. Unless the terms of the trust provide otherwise:

(1) to the extent the trust consists of community property, the trust may be:

(A) revoked by either spouse acting alone; and

(B) amended only by the joint action of both spouses; and

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the part of the trust property attributable to that settlor's contribution.

(c) The settlor may revoke or amend a revocable trust as follows:

(1) The settlor may comply with a method provided in the terms of the trust.

(2) If the terms of the trust do not provide a method or the terms of the trust provide a method that is not expressly made the exclusive method to revoke or amend the trust, the settlor may revoke or amend the trust by:

(A) executing a later will or codicil that:

(i) expressly refers to the trust; or

(ii) specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) any other method that:

(i) is in writing; and

(ii) manifests clear and convincing evidence of the settlor's intent.

(d) If a revocable trust is revoked, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, and distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney.

(f) A guardian of a settlor may exercise the settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been revoked or amended.

As added by P.L.238-2005, SEC.30.

IC 30-4-3-2

Power to restrain transfer of a beneficiary's interest

Sec. 2. (a) The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) Except as otherwise provided in subsection (c), if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or

involuntary transfer of his beneficial interest will not prevent his creditors from satisfying claims from his interest in the trust estate.

(c) Subsection (a) applies to a trust that meets both of the following requirements, regardless of whether or not the settlor is also a beneficiary of the trust:

- (1) The trust is a qualified trust under 26 U.S.C. 401(a).
- (2) The limitations on each beneficiary's control over the beneficiary's interest in the trust complies with 29 U.S.C. 1056(d).

(d) A trust containing terms authorized under subsection (a) may be referred to wherever appropriate as a trust with protective provisions.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.287-1987, SEC.2.

IC 30-4-3-3

Powers of trustees

Sec. 3. (a) Except as provided in the terms of the trust and subject to subsection (c), a trustee has the power to perform without court authorization, except as provided in sections 4(b) and 5(a) of this chapter, every act necessary or appropriate for the purposes of the trust including, by way of illustration and not of limitation, the following powers:

- (1) The power to:
 - (A) deal with the trust estate;
 - (B) buy, sell, or exchange and convey or transfer all property (real, personal, or mixed) for cash or on credit and at public or private sale with or without notice; and
 - (C) invest and reinvest the trust estate.
- (2) The power to receive additions to the assets of the trust.
- (3) The power to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest.
- (4) The power to manage real property in every way, including:
 - (A) the adjusting of boundaries;
 - (B) erecting, altering, or demolishing buildings;
 - (C) dedicating of streets, alleys, or other public uses;
 - (D) subdividing;
 - (E) developing;
 - (F) obtaining vacation of plats;
 - (G) granting of easements and rights-of-way;
 - (H) partitioning;
 - (I) entering into party wall agreements; and
 - (J) obtaining title insurance for trust property.
- (5) The power to:
 - (A) grant options concerning disposition of trust property, including the sale of covered security options; and
 - (B) take options for acquisition of trust property, including the purchase back of previously sold covered security options.

- (6) The power to enter into a lease as lessor or lessee, with or without option to renew.
- (7) The power to enter into arrangements for exploration and removal of minerals or other natural resources and enter into a pooling or unitization agreement.
- (8) The power to continue the operation or management of any business or other enterprise placed in trust.
- (9) The power to:
 - (A) borrow money, to be repaid from trust property or otherwise; and
 - (B) encumber, mortgage, pledge, or grant a security interest in trust property in connection with the exercise of any power.
- (10) The power to:
 - (A) advance money for the benefit of the trust estate and for all expenses or losses sustained in the administration of the trust; and
 - (B) collect any money advanced, without interest or with interest, at no more than the lowest rate prevailing when advanced.
- (11) The power to prosecute or defend actions, claims, or proceedings for the protection of:
 - (A) trust property; and
 - (B) the trustee in the performance of the trustee's duties.
- (12) The power to:
 - (A) pay or contest any claim;
 - (B) settle a claim by or against the trust by compromise or arbitration; and
 - (C) abandon or release, totally or partially, any claim belonging to the trust.
- (13) The power to insure the:
 - (A) trust estate against damage or loss; and
 - (B) trustee against liability with respect to third persons.
- (14) The power to pay taxes, assessments, and other expenses incurred in the:
 - (A) acquisition, retention, and maintenance of the trust property; and
 - (B) administration of the trust.
- (15) The power to:
 - (A) vote securities, in person or by a general or special proxy;
 - (B) hold the securities in the name of a nominee if the trustee is a corporate trustee; and
 - (C) effect or approve, and deposit securities in connection with, any change in the form of the corporation, including:
 - (i) dissolution;
 - (ii) liquidation;
 - (iii) reorganization;
 - (iv) acquisition; and
 - (v) merger.

(16) The power to employ persons, including:

- (A) attorneys;
- (B) accountants;
- (C) investment advisors; and
- (D) agents;

to advise and assist the trustee in the performance of the trustee's duties.

(17) The power to effect distribution of property in cash, in kind, or partly in cash and partly in kind, in divided or undivided interests.

(18) The power to execute and deliver all instruments necessary or appropriate to accomplishing or facilitating the exercise of the trustee's powers.

(19) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or another form of business or enterprise, the power to:

- (A) continue the business or enterprise; and
- (B) take any action that may be taken by shareholders, members, or property owners, including:
 - (i) merging;
 - (ii) dissolving; or
 - (iii) changing the form of business organization or contributing additional capital.

(20) With respect to possible liability for violation of environmental law, the power to:

- (A) inspect or investigate property:
 - (i) the trustee holds or has been asked to hold; or
 - (ii) owned or operated by an organization in which the trustee holds an interest or has been asked to hold an interest;

to determine the application of environmental law with respect to the property;

(B) take action to prevent, abate, or remedy an actual or potential violation of an environmental law affecting property held directly or indirectly by the trustee before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into the trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

(21) The power to exercise elections with respect to federal, state, and local taxes.

(22) The power to select a mode of payment under any employee benefit plan or retirement plan, annuity, or life insurance payable to the trustee and exercise rights under the plan, annuity, or insurance, including the right to:

- (A) indemnification:
 - (i) for expenses; and
 - (ii) against liabilities; and

(B) take appropriate action to collect the proceeds.

(23) The power to make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee determines fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of the loans.

(24) The power to pledge trust property to guarantee loans made by others to the beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee has a lien on future distributions for repayment of the loans.

(25) The power to:

- (A) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction;
- (B) confer on the appointed trustee all the appointing trustee's powers and duties;
- (C) require the appointed trustee to furnish security; and
- (D) remove the appointed trustee.

(26) With regard to a beneficiary who is under a legal disability or whom the trustee reasonably believes is incapacitated, the power to pay an amount distributable to the beneficiary by:

- (A) paying the amount directly to the beneficiary;
- (B) applying the amount for the beneficiary's benefit;
- (C) paying the amount to the beneficiary's guardian;
- (D) paying the amount to the beneficiary's custodian under IC 30-2-8.5 to create a custodianship or custodial trust;
- (E) paying the amount to an adult relative or another person having legal or physical care or custody of the beneficiary to be expended on the beneficiary's behalf, if the trustee does not know of a guardian, custodian, or custodial trustee; or
- (F) managing the amount as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(27) The power to:

- (A) combine at least two (2) trusts into one (1) trust; or
- (B) divide one (1) trust into at least two (2) trusts;

after notice to the qualified beneficiaries, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(b) Any act under subsection (a)(4), an option under subsection (a)(5), a lease under subsection (a)(6), an arrangement under subsection (a)(7), and an encumbrance, mortgage, pledge, or security interest under subsection (a)(9) may be for a term either within or extending beyond the term of the trust.

(c) In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for any trust, the trustee thereof shall exercise the judgment and care required by IC 30-4-3.5. Within the

limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate obligations, stocks, preferred or common, and real estate mortgages, which persons of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee is authorized to retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. Within the limitations of the foregoing standard, the trustee is authorized to sell covered security options and to purchase back previously sold covered security options.

(d) If a distribution of particular trust assets is to be made to two (2) or more beneficiaries entitled to receive fractional shares in those assets, the trustee may distribute the particular assets without distributing to each beneficiary a pro rata share of each asset. However, the trustee shall:

- (1) distribute to each beneficiary a pro rata share of the total fair market value of all of the particular assets as of the date of distribution; and
- (2) cause the distribution to result in a fair and equitable division among the beneficiaries of capital gain or loss on the assets.

(e) If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

- (1) has a right to object to the proposed distribution; and
- (2) must object not later than thirty (30) days after the proposal for distribution was sent;

the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

(f) When any real or personal property subject to a lien (as defined by IC 29-1-17-9(a)) is specifically distributable, the distributee shall take the property subject to the lien unless the terms of the trust provide expressly or by necessary implication that the lien be otherwise paid. If:

- (1) an event occurs that makes the property distributable; and
- (2) the holder of a lien on the property receives payment on a claim based upon the obligation secured by the lien;

the property subject to the lien shall be charged with the reimbursement to the trust of the amount of the payment for the benefit of the beneficiaries entitled to the distribution, unless the terms of the trust provide expressly or by necessary implication that the payment be charged against the residue of the trust estate.

(g) For purposes of subsection (f), a general directive or authority in the trust for payment of debts does not imply an intent that the distribution of property subject to a lien be made free from the lien. *(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1977,*

P.L.300, SEC.1; P.L.277-1983, SEC.1; P.L.137-1999, SEC.1; P.L.238-2005, SEC.31; P.L.51-2014, SEC.20.

IC 30-4-3-4

Exercise of powers by multiple, successor, or surviving trustees

Sec. 4. (Exercise of Powers by Multiple, Successor, or Surviving Trustees)

Unless the terms of the trust provide otherwise:

(a) Any power vested in two (2) trustees must be exercised by them jointly; any power vested in three (3) or more trustees must be exercised by a majority.

(b) If there are two (2) or more trustees and they are unable to exercise a power under subsection (a) of this section:

(1) If there is an immediate risk of irreparable damage to the trust property or the interest of any beneficiary before court approval could be obtained, any trustee may exercise the power and petition the court for approval after the power has been exercised; but

(2) if there is no immediate risk of irreparable damage to the trust property or the interest of any beneficiary, any trustee may petition the court for permission to exercise the power, but none may exercise the power prior to obtaining permission from the court.

(c) A co-trustee is excused from liability incurred because of the exercise by a majority of a power vested in three (3) or more trustees if he:

(1) refuses to join in the exercise of the power and mails a written dissent to any of the co-trustees; or

(2) if the power was exercised without his knowledge, mails a written dissent to any co-trustee within a reasonable time after being informed that it has been exercised.

(d) A successor trustee, additional trustee or surviving or remaining co-trustee may exercise all powers previously vested in the predecessor trustee or co-trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-5

Conflict of interest in exercise of powers

Sec. 5. (a) If the duty of the trustee in the exercise of any power conflicts with the trustee's individual interest or the trustee's interest as trustee of another trust, the power may be exercised only under one (1) of the following circumstances:

(1) The trustee receives court authorization to exercise the power with notice to interested persons as the court may direct.

(2) The trustee gives notice of the proposed action in accordance with IC 30-2-14-16 and:

(A) the trustee receives the written authorization of all interested persons to the proposed action within the period specified in the notice of the proposed action; or

(B) a beneficiary objects to the proposed action within the period specified in the notice of the proposed action, but the trustee receives court authorization to exercise the power.

(3) The exercise of the power is specifically authorized by the terms of the trust.

(b) For purposes of this section, the interest of an affiliate of the trustee will be deemed to be the interest of the trustee.

(Formerly: Acts 1971, P.L. 416, SEC. 4.) As amended by P.L. 61-2006, SEC. 7.

IC 30-4-3-6

Duties of trustee

Sec. 6. (a) The trustee has a duty to administer a trust according to the terms of the trust.

(b) Unless the terms of the trust or the provisions of section 1.3 of this chapter provide otherwise, the trustee also has a duty to do the following:

(1) Administer the trust in a manner consistent with IC 30-4-3.5.

(2) Take possession of and maintain control over the trust property.

(3) Preserve the trust property.

(4) Make the trust property productive for both the income and remainder beneficiary. As used in this subdivision, "productive" includes the production of income or investment for potential appreciation.

(5) Keep the trust property separate from the trustee's individual property and separate from or clearly identifiable from property subject to another trust.

(6) Maintain clear and accurate accounts with respect to the trust estate.

(7) Keep the following beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests:

(A) A current income beneficiary.

(B) A beneficiary who will become an income beneficiary upon the expiration of the term of the current income beneficiary, if the trust has become irrevocable by:

(i) the terms of the trust instrument; or

(ii) the death of the settlor.

A trustee satisfies the requirements of this subdivision by providing a beneficiary described in clause (A) or (B), upon the beneficiary's written request, access to the trust's accounting and financial records concerning the administration of trust property and the administration of the trust.

(8) Upon:

(A) the trust becoming irrevocable:

(i) by the terms of the trust instrument; or

(ii) by the death of the settlor; and

(B) the written request of an income beneficiary or remainderman;

promptly provide a copy of the complete trust instrument to the income beneficiary or remainderman.

(9) Take whatever action is reasonable to realize on claims

constituting part of the trust property.

(10) Defend actions involving the trust estate.

(11) Supervise any person to whom authority has been delegated.

(12) Determine the trust beneficiaries by acting on information:

(A) the trustee, by reasonable inquiry, considers reliable; and

(B) with respect to heirship, relationship, survivorship, or any other issue relative to determining a trust beneficiary.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.198-1996, SEC.1; P.L.137-1999, SEC.2; P.L.238-2005, SEC.32; P.L.51-2014, SEC.21; P.L.83-2014, SEC.8.

IC 30-4-3-6.5

Liability of trustee for lack of knowledge of event affecting administration or distribution of trust

Sec. 6.5. If the happening of an event, including:

(1) marriage;

(2) divorce;

(3) performance of educational requirements; or

(4) death;

affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

As added by P.L.238-2005, SEC.33.

IC 30-4-3-7

Self-dealing; transactions between trusts

Sec. 7. (a) Unless the terms of the trust provide otherwise or the transaction is authorized under IC 28-1-12-8 or IC 28-6.1-6-26, the trustee has a duty:

(1) not to loan funds to the trustee or an affiliate;

(2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account;

(3) not to sell or participate in the sale of the trustee's own or an affiliate's property to the trust; or

(4) if a corporate trustee, not to purchase for or retain in the trust its own or a parent or subsidiary corporation's stock, bonds, or other capital securities. However, the trustee may retain such securities already held in trusts created prior to September 2, 1971.

(b) Unless the terms of the trust provide otherwise, a corporate trustee may invest in, purchase for, or retain in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, without the investment, purchase, or retention constituting a conflict of interest under section 5 of this chapter.

(c) Unless the terms of the trust provide otherwise, a corporate trustee does not violate subsection (a) by investing in, purchasing for, or retaining in the trust its own or an affiliate's obligations, including savings accounts and certificates of deposit, if the payment of each

obligation is fully insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or any insurer approved by the department of financial institutions under IC 28-7-1-31.5.

(d) If the terms of the trust permit the trustee to deal with a beneficiary for the trustee's own account, the trustee has a duty to deal fairly with and to disclose to the beneficiary all material facts related to the transaction which the trustee knows or should know.

(e) Unless the terms of the trust provide otherwise, the trustee may sell, exchange, or participate in the sale or exchange of trust property from one (1) trust to the trustee as trustee of another trust, provided the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts and the trustee discloses to the beneficiaries of both trusts all material facts related to the sale or exchange which the trustee knows or should know.

(f) This section does not prohibit a trustee from enforcing or fulfilling any enforceable contract or agreement:

- (1) executed during the settlor's lifetime; and
- (2) between the settlor and the trustee in the trustee's individual capacity.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by Acts 1982, P.L.171, SEC.118; P.L.174-1986, SEC.1; P.L.8-1991, SEC.34; P.L.176-1996, SEC.34; P.L.238-2005, SEC.34; P.L.202-2007, SEC.3; P.L.226-2007, SEC.22; P.L.89-2011, SEC.75.

IC 30-4-3-8

Duties of co-trustees

Sec. 8. (Duties of Co-Trustee)

Unless the terms of the trust provide otherwise, if there are two (2) or more trustees, each has a duty to:

- (a) participate in the administration of the trust;
- (b) take whatever action is reasonable to prevent a co-trustee from committing a breach of trust; and
- (c) take whatever action is reasonable to compel a co-trustee to redress a breach of trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-9

Duty of trustee under control of third persons

Sec. 9. (Duty of Trustee under Control of Third Person)

(a) If the terms of the trust give a person a power to direct the trustee in the administration of the trust and those terms expressly direct the trustee to rely, or relieve the trustee from liability if he does rely, on that person's directions, the trustee may do so and will incur no liability for any loss to the trust estate.

(b) If the terms of the trust give a person a power to direct the trustee in the administration of the trust, except as provided in subsection (a) of this section:

- (1) If the person holds the power as a fiduciary, the trustee has a duty to refuse to comply with any direction which he knows or

should know would constitute a breach of a duty owed by that person as a fiduciary.

(2) If the person holds the power solely for his own benefit, the trustee may refuse to comply only if the attempted exercise of the power violates the terms of the trust with respect to that power.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-10

Liability to third persons

Sec. 10. (Liability to Third Persons)

(a) Unless the terms of the contract or other non-negotiable obligation expressly provide otherwise, the trustee is not personally liable on a contract or other non-negotiable obligation with a third person made by him in the administration of the trust.

(b) When a third person is entitled to compensation for injury suffered in the course of the administration of the trust:

(1) If the injury is the result of the trustee's personal act or omission as trustee, the trustee will be personally liable and the injured party will be entitled to satisfaction of his claim from the trustee's individual property first and then, to the extent the claim is yet unsatisfied, from the trust estate.

(2) If the injury is the result of the act or omission of an agent of the trustee, and the agent was properly selected and supervised and there was no improper delegation of authority to the agent, the injured party will be entitled to satisfaction of his claim from the trust estate first and then, to the extent that the claim is yet unsatisfied, from the trustee's individual property.

(3) If the injury is the result of the act or omission of the settlor or his agent, and not that of the trustee or his agent, the injured party will be entitled to satisfaction of his claim from the trust estate and not from the trustee's individual property.

(4) The question of ultimate liability as between the trust estate and the trustee individually, if it is to be determined, shall be determined in a proceeding for accounting, surcharge or indemnification.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-11

Potential liability of trustee to beneficiary; remedies; removal of trustee

Sec. 11. (a) The trustee is accountable to the beneficiary for the trust estate.

(b) If the trustee commits a breach of trust, the trustee is liable to the beneficiary for:

(1) any loss or depreciation in the value of the trust property as a result of the breach;

(2) any profit made by the trustee through the breach;

(3) any reasonable profit which would have accrued on the trust property in the absence of a breach; and

(4) reasonable attorney's fees incurred by the beneficiary in

bringing an action on the breach.

(c) In the absence of a breach of trust, the trustee has no liability to the beneficiary either for any loss or depreciation in value of the trust property or for a failure to make a profit. However, if:

- (1) a loss or depreciation in value of the trust property; or
- (2) the trust's failure to make a profit;

is the result of a violation by the trustee of IC 28-1-12-8 or IC 28-6.1-6-26, one (1) or more beneficiaries of the trust may petition the court for any remedy described in subsection (b) or for removal of the trustee under section 22(a)(4) of this chapter, regardless of whether the transaction under IC 28-1-12-8 or IC 28-6.1-6-26 constitutes or involves a breach of trust. The court may award one (1) or more remedies described in subsection (b) or remove the trustee, or both, if the court determines that the remedy or the removal of the trustee is in the best interests of all beneficiaries of the trust. The burden of proof is on the one (1) or more petitioning beneficiaries to demonstrate that the remedy or the removal of the trustee is in the best interests of all beneficiaries of the trust.

(d) The trustee is liable to the beneficiary for acts of an agent which, if committed by the trustee, would be a breach of the trust if the trustee:

- (1) directs or permits the act of the agent;
- (2) delegates the authority to perform an act to the agent which the trustee is under a duty not to delegate;
- (3) fails to use reasonable care in the selection or retention of the agent;
- (4) fails to exercise proper supervision over the conduct of the agent;
- (5) approves, acquiesces in, or conceals the act of the agent; or
- (6) fails to use reasonable effort to compel the agent to reimburse the trust estate for any loss or to account to the trust estate for any profit.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.202-2007, SEC.4; P.L.226-2007, SEC.23; P.L.3-2008, SEC.228.

IC 30-4-3-12

Liability for breach of trust by co-trustee

Sec. 12. (Liability for Breach of Trust by Co-Trustee)

A trustee becomes liable to the beneficiary for a breach of trust committed by his co-trustee if he:

- (a) participates in the breach of trust;
- (b) improperly delegates the administration of the trust to the co-trustee;
- (c) approves, acquiesces in or conceals a breach of trust;
- (d) enables the co-trustee to commit a breach of trust by his failure to exercise care in the administration of the trust; or
- (e) fails to use reasonable effort to compel the co-trustee, or, if the co-trustee has died, his estate, to redress a breach of trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-13

Liability of a successor trustee

Sec. 13. (Liability of a Successor Trustee)

A successor trustee becomes liable for a breach of trust of his predecessor if he:

(a) fails to take whatever action is necessary to compel the predecessor trustee to deliver the trust property; or

(b) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-14

Contribution and indemnity

Sec. 14. (Contribution and Indemnity)

(a) Except as stated in subsection (b) of this section, if two (2) or more co-trustees are liable to the beneficiary, each co-trustee is entitled to contribution from the other, provided, however, that:

(1) if one (1) co-trustee is substantially more at fault than another, the co-trustee who is most at fault is not entitled to contribution, and the other co-trustee is entitled to indemnity from him; or

(2) if one (1) of the co-trustees receives a profit from the administration of the trust or a benefit from a breach of trust, the other co-trustee is entitled to indemnity from him to the extent of the profit or benefit received by that co-trustee.

(b) If a trustee commits a breach of trust in bad faith, he is not entitled to either contribution or indemnity from his co-trustee.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-15

Remedies of trustee against third persons

Sec. 15. (Remedies of the Trustee against Third Persons)

The trustee may maintain in his representative capacity a civil action for any legal or equitable remedy against a third person that he could maintain in his own right if he were the owner.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-16

Remedies among co-trustees

Sec. 16. (Remedies among Co-Trustees)

Any trustee may maintain an action against a co-trustee to:

(a) compel him to perform his duties under the trust;

(b) enjoin him from committing a breach of trust; or

(c) compel him to redress a breach of trust committed by him.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-17

Remedies of trustee against beneficiary

Sec. 17. (Remedies of Trustee against Beneficiary)

The trustee may maintain a civil action against a beneficiary for any legal or equitable remedy, including, among others, a charge

against the beneficiary's interest in the trust estate, in any case in which the beneficiary is liable under 30-4-3-20.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-18

Other remedies of the trustee

Sec. 18. (Other Remedies of the Trustee)

(a) If there is reasonable doubt with respect to any matter relating to the administration of the trust, the trustee is entitled to be instructed by the court.

(b) The trustee is entitled to a review and settlement by the court of the accounts of his administration.

(c) The trustee is entitled to a lien against the trust estate:

(1) for any advances made by him under 30-4-3-3(a) (10); and

(2) for the value of his services for which he is entitled to, but has not received, compensation as provided either under the terms of the trust or under 30-4-5-16.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-19

Relief of trustee's liability for breach of trust

Sec. 19. (Relief of Trustee's Liability for Breach of Trust)

(a) Unless the terms of the trust provide otherwise or unless if to do so would frustrate, impair or defeat the purposes of the trust, a beneficiary, except as provided in subsection (b) of this section, relieves the trustee from liability for breach of trust as to that beneficiary's interest if he:

(1) consents to or acquiesces in the act or omission which constitutes a breach of trust;

(2) agrees to release or discharge the trustee from liability for breach of trust after the act or omission constituting the breach occurs;

(3) elects, under an option to affirm or reject a transaction entered into as a breach of trust, to affirm the transaction; or

(4) participates in the act of the trustee which constitutes the breach of trust.

(b) The consent, acquiescence, agreement to release or discharge, affirmance, or participation by a beneficiary will not relieve the trustee from liability if:

(1) at the time it was given the beneficiary was under an incapacity;

(2) at the time it was given the beneficiary did not know of his rights or all of the material facts which the trustee knew or should have known;

(3) it was induced by the trustee's improper conduct;

(4) the trustee had an adverse interest in the transaction and the transaction was not fair and reasonable; or

(5) the trustee pays or delivers a beneficiary's interest to that beneficiary contrary to the terms of a trust with protective provisions.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-20

Liability of beneficiary

Sec. 20. (Liability of Beneficiary)

(a) A beneficiary is liable for loss to the trust estate if he has:

(1) misappropriated or otherwise wrongfully dealt with the trust property;

(2) expressly consented to, participated in or agreed with the trustee to be liable for a breach of trust committed by the trustee;

(3) failed to repay an advance or loan of trust funds;

(4) failed to repay a distribution or disbursement from the trust estate in excess of that to which he is entitled; or

(5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust estate.

(b) Unless the terms of the trust provide otherwise a beneficiary of a trust is liable to the extent of his interest in the trust estate for the amount of any debt owed the trust estate by him.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-21

Remedies of beneficiary against third persons

Sec. 21. (Remedies of the Beneficiary against Third Persons)

If the trustee has a claim against a third person for which he may maintain a civil action under 30-4-3-15 but he is unable, unwilling or neglects to commence the action within a reasonable time not to exceed thirty (30) days after written demand, any beneficiary may commence the action in his own right for the benefit of all the beneficiaries.

(Formerly: Acts 1971, P.L.416, SEC.4; Acts 1972, P.L.11, SEC.13.)

IC 30-4-3-22

Remedies of the beneficiary against the trustee

Sec. 22. (Remedies of the Beneficiary against the Trustee)

(a) A beneficiary of a trust may maintain an action:

(1) to compel the trustee to perform his duties;

(2) to enjoin the trustee from committing an act which may be a breach of trust;

(3) to compel the trustee to redress a breach of trust; or

(4) to remove a trustee for cause and to appoint a successor trustee.

(b) If the trustee acquires property and wrongfully holds it outside the trust, a beneficiary is entitled at his option to either:

(1) require the property to be transferred to the trust or

(2) impose an equitable lien upon it to secure his claim for damages for breach of trust.

(c) If the trustee commingles the trust funds or property with his own funds or property or converts the trust fund or property into another form which is wrongfully held outside the trust:

(1) if the fund or property can be traced and identified, the beneficiary is entitled to restoration of the fund or property to the trust; or

(2) if the fund or property cannot be traced and identified,

(A) In a case of commingling of funds or property, the beneficiary is entitled to a lien against the trustee's individual property from the date and in the amount of the fund or the value of the property at the time of the commingling.

(B) In a case of conversion of property, the beneficiary is entitled to a lien against the trustee's individual property from the date and according to the value of the property at the time of the conversion.

(d) If the trustee is also a beneficiary, the other beneficiaries will be entitled to a charge against the trustee's beneficial interest to secure their claims against him for a breach of trust.

(e) If a beneficiary successfully maintains an action under subsection (a) of this section or is entitled to a judgment under subsections (b), (c), or (d) of this section, he is entitled to a judgment for reasonable attorney's fees.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-23

Remedy of a beneficiary against a co-beneficiary

Sec. 23. (Remedy of a Beneficiary against a Co-Beneficiary)

(a) If no recovery can be made from the trustee for a breach of trust, a beneficiary may maintain an action against a co-beneficiary who consented to the breach for a redress of the breach, if the co-beneficiary:

(1) knows or should have known that the act of the trustee to which he consented constituted a breach of trust;

(2) agreed with the trustee or the other beneficiaries to be liable for any loss which might result from the act constituting the breach; or

(3) participated in the act constituting the breach.

(b) The consenting co-beneficiary shall be personally liable for any loss for which the other beneficiaries are entitled to redress under subsection (a) of this section and his beneficial interest in the trust estate may be charged for the amount of the loss if the court deems it proper to do so.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-24

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-24.4

Modification or termination of trust by court

Sec. 24.4. (a) The court may modify the administrative or dispositive terms of a trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust or terminate the trust if:

- (1) the purpose of the trust has been fulfilled; or
- (2) continuation of the trust on the trust's existing terms would:
 - (A) be illegal, impossible, impracticable, or wasteful; or
 - (B) impair the trust's administration.

(c) If the trust terminates under this section, the court shall direct the trustee to distribute the trust property in a manner consistent with the purposes of the trust.

(d) The court may modify the terms of a trust to give the settlor the power to revoke and modify the trust if the:

- (1) settlor intended to reserve the power;
- (2) settlor believed the power was reserved; and
- (3) power was omitted from the terms of the trust by mistake.

As added by P.L.238-2005, SEC.35.

IC 30-4-3-24.5

Termination by trustee of trust with value less than \$75,000

Sec. 24.5. (a) This section does not apply to an easement for conservation or preservation.

(b) This subsection applies to a trust consisting of trust property having a total value of less than seventy-five thousand dollars (\$75,000). Unless the terms of the trust provide otherwise, the trustee may terminate the trust:

- (1) if the trustee concludes the value of the trust property is insufficient to justify the cost of administration; and
- (2) after providing notice of the trust termination to qualified beneficiaries.

(c) The court may:

- (1) modify or terminate a trust; or
- (2) remove the trustee and appoint a different trustee;

if the court determines that the value of the trust property is insufficient to justify the cost of administration. If a trust terminates under this subsection, the court shall direct the trustee to distribute the trust property in a manner consistent with the purposes of the trust.

(d) If a trust terminates under subsection (b), the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

As added by P.L.238-2005, SEC.36.

IC 30-4-3-25

Rescission and reformation

Sec. 25. (Rescission and Reformation)

Upon petition by an interested party, the court may rescind or reform a trust according to the same general rules applying to rescission or reformation of non-trust transfers of property.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-25.5

Distribution of terminated trust; payment of federal and state taxes

Sec. 25.5. (a) This section applies beginning October 1, 2009.

(b) Except as provided in subsection (d), when a trust created to comply with 42 U.S.C. 1396p(d)(4)(A) is terminated, the trustee shall not distribute trust property to any person entitled to payment from the trust until the office of Medicaid policy and planning has been fully reimbursed for assistance rendered to the person for whom the trust was created.

(c) The primary purpose of a trust described in subsection (b) is to ensure that the state is repaid Medicaid benefits provided in return for exempting the trust from the general requirements of 42 U.S.C. 1396(d).

(d) A trustee may pay federal and state taxes from the trust before reimbursing the office of Medicaid policy and planning.

As added by P.L.14-2009, SEC.3.

IC 30-4-3-26

Power to direct a deviation from the terms of the trust

Sec. 26. (Power to Direct a Deviation from the Terms of the Trust)

(a) Upon petition by the trustee or a beneficiary, the court shall direct or permit the trustee to deviate from a term of the trust if, owing to circumstances not known to the settlor and not anticipated by him, compliance would defeat or substantially impair the accomplishment of the purposes of the trust. In that case, if necessary to carry out the purposes of the trust, the court may direct or permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust, or may prohibit the trustee from performing acts required by the terms of the trust.

(b) The trustee may deviate from the terms of the trust as provided in subsection (a) of this section, without first obtaining the permission of the court, if there is an emergency or if he reasonably believes that there is an emergency, and before deviating he has no opportunity to apply to the court for permission to deviate.

(c) The trustee is liable for any loss or damage which results if he fails to apply to the court for permission to deviate from the terms of the trust, when he knows or should know that, owing to circumstances not known to the settlor and not anticipated by him, compliance will defeat or substantially impair the accomplishment of the purposes of the trust.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-27

Cy pres doctrine

Sec. 27. (a) If property is given to a trust for a benevolent public purpose and the property is to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, wasteful, or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust need not fail, but the court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.

(b) The terms of a charitable trust that would result in the

distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply the cy pres doctrine to modify or terminate the trust only if, when the provision takes effect:

- (1) the trust property is to revert to the settlor and the settlor is still alive; or
- (2) less than twenty-one (21) years have elapsed since the trust was created.

(c) A living heir of the settlor or a living beneficiary named in the original trust agreement may present evidence to the court of:

- (1) the heir's or beneficiary's opinion of the settlor's intent; and
- (2) the heir's or beneficiary's wishes;

regarding the property given in trust.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.41-2000, SEC.3; P.L.238-2005, SEC.37.

IC 30-4-3-28

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 30-4-3-29

Removal, resignation, and appointment of trustees

Sec. 29. (a) A trustee may be removed as follows:

- (1) By the court.
- (2) By the person, if any, who by the terms of the trust is authorized to remove the trustee.
- (3) Unless the terms of the trust instrument provide otherwise, by a beneficiary of the trust whose petition is granted by the court under subsection (d).

(b) Unless the terms of the trust requires a different time, the trustee may resign:

- (1) if the trustee gives at least thirty (30) days notice to:
 - (A) the qualified beneficiaries;
 - (B) the settlor, if living; and
 - (C) all cotrustees; or
- (2) with the approval of the court.

In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

(c) For good cause shown, the court may at any time appoint a temporary trustee for such period of time, and to perform such duties, as the court may direct.

(d) This subsection applies only to a trust executed after June 30, 1996. A beneficiary of a trust may petition the court for the removal of a corporate trustee if there has been a change in control of the corporate trustee after the date of the execution of the trust. The court may remove the corporate trustee if the court determines the removal is in the best interests of all the beneficiaries of the trust. For

purposes of this subsection a change in control of the corporate trustee occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of an aggregate of at least twenty-five percent (25%) of the outstanding shares of voting stock of:

- (1) a trustee; or
- (2) a corporation controlling a trustee;

after June 30, 1996.

(e) A trustee who has resigned or been removed shall expeditiously deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the trust property. A trustee who has resigned or been removed has the duties of trustee and the powers necessary to protect the trust property:

- (1) unless a cotrustee remains in the office of trustee or the court orders otherwise; and
- (2) until the trust property is delivered to a successor trustee or other person entitled to the trust property.

(Formerly: Acts 1971, P.L.416, SEC.4.) As amended by P.L.199-1996, SEC.1; P.L.165-2002, SEC.6; P.L.238-2005, SEC.38.

IC 30-4-3-29.5

Corporate trustee that acquires trust due to change in control

Sec. 29.5. (a) Except as provided in subsection (b) and unless the trust instrument provides otherwise, a corporate trustee that acquires a trust as a result of a change in control may not:

- (1) decline to accept the trust property;
- (2) resign as trustee; or
- (3) otherwise refuse to administer the trust;

based upon the amount of property or funds held in the trust estate.

(b) A court may, at the court's discretion, allow a trustee described in subsection (a) to resign if:

- (1) the trustee petitions the court; and
- (2) the court determines that the trustee's resignation will be in the best interests of all the beneficiaries of the trust.

As added by P.L.199-1996, SEC.2.

IC 30-4-3-30

Effect of this article on the court's equity powers

Sec. 30. (Effect of This Article on the Court's Equity Powers)

Except as otherwise provided in this article, the article shall not be construed to limit the general equity powers of the court over the administration of trusts.

(Formerly: Acts 1971, P.L.416, SEC.4.)

IC 30-4-3-31

Judicial modification of trusts for benevolent public purpose and certain transfers not in trust; federal compliance

Sec. 31. (a) This section is enacted for the purpose of confirming the power of Indiana courts to modify trusts for a benevolent public purpose, and transfers not in trust as described in Section

170(f)(3)(A) of the Internal Revenue Code, to effect compliance with Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code so that these trusts and transfers may obtain the income tax exemption afforded by Section 664 of the Internal Revenue Code and donors or other contributors of gifts or contributions to these trusts and transfers may secure the income, estate, and gift tax charitable deductions granted by Sections 170, 2055, 2106, and 2522 of the Internal Revenue Code.

(b) Upon petition, any court of general or probate jurisdiction in Indiana may, in its discretion, modify the instrument of an inter vivos or testamentary trust for a benevolent public purpose, or transfer not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, so that the trust or transfer complies with and conforms to the provisions of Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code and regulations thereunder from the date of the trust's or transfer's creation, if consent to the modification is given by:

- (1) all beneficiaries of the trust or transfer; and
- (2) the settlor of the trust or transfer if the settlor is living at the date of modification.

(Formerly: Acts 1973, P.L.294, SEC.1.) As amended by Acts 1977, P.L.301, SEC.1; Acts 1982, P.L.180, SEC.1; P.L.2-1987, SEC.46; P.L.41-2000, SEC.4.

IC 30-4-3-32

Trustee's liability for breach of trust

Sec. 32. (a) Except as stated in subsections (b) and (c), the trustee, by provisions of the trust, can be relieved of liability for breach of trust.

(b) A provision in the trust instrument is not effective to relieve the trustee of liability for breach of trust committed in bad faith, intentionally, or with reckless indifference to the interest of the beneficiary, or of liability for any profit that the trustee has derived from a breach of trust.

(c) A provision that relieves the trustee of liability for breach of trust is ineffective if it is inserted in the trust instrument as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

As added by P.L.149-1984, SEC.1.

IC 30-4-3-33

Trustee vacancies; priority for filling vacancy

Sec. 33. (a) In addition to the terms of a trust regarding the circumstances under which a trustee vacancy occurs, a trustee vacancy occurs if:

- (1) a person designated as trustee does not accept being trustee;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or

(6) the person designated as trustee lacks capacity.

(b) Except as provided in the terms of a trust, if a trust has at least two (2) cotrustees and at least one (1) cotrustee remains in office, a cotrustee vacancy is not required to be filled. A cotrustee vacancy must be filled if the trust has no remaining cotrustee.

(c) Except as provided in the terms of a trust, a trustee vacancy of a noncharitable trust that is required to be filled must be filled according to the following priority:

(1) A person designated in the terms of the trust to act as successor trustee.

(2) A person appointed by a majority of the qualified beneficiaries.

(3) A person appointed by the court.

(d) Except as provided in the terms of a trust, a trustee vacancy of a charitable trust that is required to be filled must be filled according to the following priority:

(1) A person designated in the terms of the trust to be successor trustee.

(2) A person:

(A) selected by the charitable organizations expressly designated to receive distributions under the terms of the trust; and

(B) whose selection is approved by the attorney general.

(3) A person appointed by the court.

(e) Regardless of whether a trustee vacancy exists or is required to be filled, the court may appoint an additional trustee or a special fiduciary if the court considers the appointment necessary for the administration of the trust.

As added by P.L.238-2005, SEC.39.

IC 30-4-3-34

Petition to determine heirs and interests in trust estate

Sec. 34. (a) At any time during the administration of a trust, a trustee or any interested person may petition the court to determine the:

(1) heirs of:

(A) the settlor; or

(B) any person named in the trust; and

(2) respective interests of the persons described in subdivision

(1) in the trust estate or any part of the trust estate.

(b) If a petition is filed under this section, the court shall fix the time for a hearing on the petition. Notice of the hearing shall be given in the following manner:

(1) Personally or by mail to persons who are named in the trust and:

(A) are known to claim;

(B) are believed to claim; or

(C) have;

an interest in the trust estate or any part of the trust estate as heir or through an heir of the settlor.

(2) By publication to any unknown heirs.

(c) When a hearing is held on the petition, the issues set forth in the petition under subsection (a) may be determined by:

- (1) competent evidence; or
- (2) affidavit, if there are no objections.

A record shall be made of the oral evidence. The record and affidavits must be a part of the files in the trust proceeding.

(d) If there is satisfactory proof, the court shall make a decree that determines the issues set forth in the petition under subsection (a). The court's decree is conclusive of the facts determined by the court with regard to any interested person who has been notified personally or by mail in accordance with subsection (b)(1), subject to the interested person's right of appeal.

(e) An act of the trustee is valid with regard to the rights and liabilities of a purchaser, a lessee, or other person who deals with the trustee for value and in good faith, if the trustee acts in:

- (1) accordance with the facts as determined by the court's decree under subsection (d);
- (2) accordance with the law; and
- (3) good faith.

As added by P.L.238-2005, SEC.40.

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 maintain real estate ownership protections equivalent to those they would have 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 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 or 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 and 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 by subsections (p) and (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 matrimonial trust (whether separate or joint), 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 other relevant facts and circumstances; and
- (3) pertinent principles of nontrust 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 or trusts; or
- (2) if the deceased settlor's separate 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.

(q) 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.

(r) 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 the settlor retains the right to use or occupy matrimonial property held in the settlor's separate trust.

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

(t) 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; P.L.99-2013, SEC.10.

IC 30-4-3-36

Trust decanting; notice; rules of construction

Sec. 36. (a) Unless a trust expressly provides otherwise, a trustee who has discretion under the terms of a trust (referred to in this section as the "first trust") to invade the principal of the trust to make distributions to or for the benefit of one (1) or more persons may instead exercise the power by appointing all or part of the principal of the first trust in favor of a trustee of another trust (referred to in this section as the "second trust") for the benefit of one (1) or more persons under the same trust instrument or under a different trust

instrument as long as:

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

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

- (1) in writing;
- (2) signed and acknowledged by the trustee; and
- (3) filed with the records of the first trust.

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

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

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

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

(g) This section may not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust, under any other provision of this article or any other statute, or under common law.
As added by P.L. 6-2010, SEC.19. Amended by P.L. 51-2014, SEC.22.

IC 30-4-3-37

Unclaimed trust shares; disposition procedures

Sec. 37. (a) If a beneficiary of a trust cannot be found after a reasonable search, the trustee may file a petition setting out the facts of the unsuccessful search. The court may order the trustee to sell the shares of the trust to which the beneficiary is entitled and to pay the proceeds to the clerk of the court. The clerk shall hold the proceeds for the use and benefit of the person or persons thereafter determined by law to be entitled to the proceeds.

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

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

As added by P.L.6-2010, SEC.20.

IC 30-4-3.5

Chapter 3.5. Indiana Uniform Prudent Investor Act

IC 30-4-3.5-1

Compliance with prudent investor rule

Sec. 1. (a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provision of the trust.

(c) This chapter applies to a trustee or escrow agent, acting as fiduciary, of:

- (1) a perpetual care fund or an endowment care fund established under IC 23-14-48-2;
- (2) a prepaid funeral plan or funeral trust established under IC 30-2-9;
- (3) a funeral trust established under IC 30-2-10; or
- (4) a trust or escrow account created from payments of funeral, burial services, or merchandise in advance of need, as described in IC 30-2-13.

As added by P.L.137-1999, SEC.3. Amended by P.L.61-2008, SEC.14.

IC 30-4-3.5-2

Prudent investor rule

Sec. 2. (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms of the trust, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are those of the following that are relevant to the trust or its beneficiaries:

- (1) General economic conditions.
- (2) The possible effect of inflation or deflation.
- (3) The expected tax consequences of investment decisions or strategies.
- (4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property.
- (5) The expected total return from income and the appreciation

of capital.

(6) Other resources of the beneficiaries.

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one (1) or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use the special skills or expertise.

As added by P.L.137-1999, SEC.3. Amended by P.L.51-2014, SEC.23.

IC 30-4-3.5-3

Diversification of investments

Sec. 3. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-4

Review of trust assets

Sec. 4. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms of the trust, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

As added by P.L.137-1999, SEC.3. Amended by P.L.51-2014, SEC.24.

IC 30-4-3.5-5

Trust managed in interest of beneficiaries

Sec. 5. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-6

Impartial management

Sec. 6. If a trust has at least two (2) beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-7

Costs

Sec. 7. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-8

Determination of compliance with prudent investor rule

Sec. 8. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-9

Delegation of functions by trustee

Sec. 9. (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) reviewing the agent's actions periodically in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care.

(c) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of Indiana, an agent submits to the jurisdiction of the courts of Indiana.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-10

Authorization of investments or strategies

Sec. 10. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter:

- (1) "Investments permissible by law for investment of trust funds".
- (2) "Legal investments".
- (3) "Authorized investments".
- (4) "Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital".
- (5) "Prudent man rule".
- (6) "Prudent trustee rule".
- (7) "Prudent person rule".

(8) "Prudent investor rule".
As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-11

Applicability of chapter

Sec. 11. This chapter applies to trusts existing on and created after June 30, 1999. As applied to trusts existing on June 30, 1999, this chapter governs only decisions or actions occurring after June 30, 1999.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-12

Purpose of chapter

Sec. 12. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

As added by P.L.137-1999, SEC.3.

IC 30-4-3.5-13

Short title

Sec. 13. This chapter may be cited as the "Indiana Uniform Prudent Investor Act".

As added by P.L.137-1999, SEC.3.

IC 30-4-4

Chapter 4. Rules Governing the Rights of Third Parties

IC 30-4-4-1

Presumption of trustee's authority

Sec. 1. (Presumption of Trustee's Authority)

(a) Except as provided in subsection (b) of this section, any third person dealing with the trustee or assisting him in conducting a transaction:

(1) may assume without inquiry that the trustee has the powers he purports to exercise and has exercised them properly; and

(2) shall not be responsible for the application of money or property paid or delivered to the trustee.

(b) If the third person has actual knowledge that the trustee is exceeding his powers or is improperly exercising them, that person will not be protected under subsection (a) of this section.

(c) If a trust which includes real estate is a public record in the county in which the real estate is situated, a third person dealing with the trustee with respect to that real estate shall be deemed to have actual notice of the terms of the trust.

(Formerly: Acts 1971, P.L.416, SEC.5.)

IC 30-4-4-2

Transfers by the trustee to third persons

Sec. 2. (Transfers by the Trustee to Third Persons)

(a) If, in transferring an interest in trust property to a third party, the trustee is not committing a breach of trust, the transferee holds the interest free of the trust and incurs no liability to the beneficiary.

(b) A third person, to whom an interest in trust property is transferred by the trustee in breach of trust, takes his interest free of the trust if he:

(1) takes for value and without notice of the breach of trust; and

(2) is not taking part in what he knows to be an illegal transaction.

(Formerly: Acts 1971, P.L.416, SEC.5.)

IC 30-4-4-3

Judgment lien against the trustee or beneficiary

Sec. 3. (Judgment Lien against the Trustee or Beneficiary)

(a) A judgment against a person individually who may also be a trustee shall not be a lien against the trust estate.

(b) When trust property is properly sold or disposed of by the trustee to a third person, the liens against a beneficiary's interest in the trust estate, if any, will be divested from that property and will attach to the interest of that beneficiary in the proceeds from its sale or other disposition.

(Formerly: Acts 1971, P.L.416, SEC.5.)

IC 30-4-4-4

Disclosure of information concerning beneficiaries

Sec. 4. (Disclosure of Information Concerning Beneficiaries)

(a) Any person may petition the court for disclosure of information concerning beneficiaries or the trust estate. The court may order the disclosure of all or any part of the information requested in the petition only after the petitioner has shown both a reasonable need for it and that the trustee has either refused or neglected to provide the information on written request delivered to the trustee.

(b) The court shall, upon petition, order the disclosure of the identity of the beneficiaries or their agents, if any, and any other information concerning the trust, in any case in which:

(1) in a trust of real estate, there is a violation of a state law or an ordinance or resolution of a political subdivision relating to the structure or condition of buildings, or the health and safety of occupants of or visitors to buildings; or

(2) there has been or may be a deed, sale, lease, purchase, mortgage, assignment or similar transfer of any interest in trust property to or from any unit of state or local government or agency or official thereof;

and the trustee has refused to disclose the identities of the beneficiaries within a reasonable time after written demand.

(Formerly: Acts 1971, P.L.416, SEC.5.)

IC 30-4-4-5

Certification of trust; contents; liability of person relying on certification of trust

Sec. 5. (a) A trustee may furnish to a person other than a beneficiary a certification of trust instead of a copy of the trust instrument. The certification of trust must contain the following information:

(1) That the trust exists and the date the trust instrument was executed.

(2) The identity of the settlor.

(3) The identity and address of the currently acting trustee.

(4) The powers of the trustee.

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all the cotrustees are required in order to exercise the powers of the trustee.

(7) The manner of taking title to trust property.

(b) A certification of trust may be signed or authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust may contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of excerpts from the original trust instrument and later amendments that:

- (1) designate the trustee; and
- (2) confer on the trustee the power to act in a pending transaction in which the recipient has an interest.

(f) A person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification of trust are incorrect:

- (1) is not liable to any person for acting in reliance on the certification of trust; and
- (2) may assume without inquiry the existence of the facts contained in the certification of trust.

Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the certification.

(g) A person who in good faith enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts from the original trust instrument is liable for damages if the court determines that a person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.
As added by P.L.238-2005, SEC.41. Amended by P.L.95-2007, SEC.18; P.L.202-2007, SEC.5.

IC 30-4-5

Chapter 5. Rules Governing the Administration of a Trust

IC 30-4-5-0.5

Application of Uniform Principal and Income Act

Sec. 0.5. The Uniform Principal and Income Act (IC 30-2-14) applies to the administration of a trust under this article.

As added by P.L.84-2002, SEC.4.

IC 30-4-5-1

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-2

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-3

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-4

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-5

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-6

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-7

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-8

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-9

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-10

Repealed

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-11

(Repealed by P.L.84-2002, SEC.11.)

IC 30-4-5-12

Accounting by trustees

Sec. 12. (Accounting by Trustees)

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or the income beneficiary's personal representative annually. The statement shall contain at least:

- (1) all receipts and disbursements since the last statement; and
- (2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(3)(A)(1) of the Internal Revenue Code.

(c) Upon petition by the settlor, a beneficiary or the beneficiary's personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in section 13(a) of this chapter. The petition may be filed at any time; however, the court may not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

(d) If the court's jurisdiction is of a continuing nature as provided in IC 30-4-6-2, the trustee shall file a verified written statement of accounts containing the items shown in section 13(a) of this chapter with the court biennially, and the court may, on its own motion, require the trustee to file such a statement at any other time if there is good cause for requiring a statement to be filed.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.41-2000, SEC.5; P.L.137-2014, SEC.43.

IC 30-4-5-13

Content of written statements of account filed with the court

Sec. 13. (a) A verified written statement of accounts filed with the

court under 30-4-5-12 or by the trustee under 30-4-3-18(b) shall show:

- (1) the period covered by the account;
- (2) the total principal with which the trustee is chargeable according to the last preceding written statement of accounts or the original inventory if there is no preceding statement;
- (3) an itemized schedule of all principal cash and property received and disbursed, distributed, or otherwise disposed of during the period;
- (4) an itemized schedule of income received and disbursed, distributed, or otherwise disposed of during the period;
- (5) the balance of principal and income remaining at the close of the period, how invested, and both the inventory and current market values of all investments;
- (6) a statement that the trust has been administered according to the terms of the trust;
- (7) the names and addresses of all living beneficiaries and a statement identifying any beneficiary known to be under a legal disability;
- (8) a description of any possible unborn or unascertained beneficiary and the possible beneficiary's interest in the trust estate; and
- (9) the business addresses, if any, or the residence addresses of all the trustees.

(b) The court may, either on petition or on its own motion, require the trustee to submit such proof as it deems necessary to support the trustee's verified written statement of accounts. The court may accept the unqualified certificate of a certified public accountant in lieu of other proof.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.51-2014, SEC.25.

IC 30-4-5-14

Settlements; objections; hearing; surcharge

Sec. 14. (Settlements; Objections; Hearing; Surcharge)

(a) With respect to the annual written statement required by 30-4-5-12(a), a beneficiary or his personal representative will be deemed to have discharged the trustee from liability as to that beneficiary for all matters disclosed in the statement if he approves in writing the trustee's statement.

(b) In a proceeding in which the court has been requested by petition to approve a verified written statement of accounts, any person authorized by 30-4-5-12(c) to petition for an accounting may file an appropriate responsive pleading, and if he does so, he must file it within the period of time after notice that a responsive pleading is required to be filed after service of a prior pleading under the Indiana Rules of Procedure.

(c) When a responsive pleading filed under subsection (b) of this section includes objections to any matter contained in the trustee's statement, those objections must be specific unless the court orders

otherwise.

(d) Upon request for approval of a verified written statement of accounts and the filing of objections, if any, the court shall determine the correctness of the statement and the validity and propriety of all actions of the trustee described in the statement and may take any additional action that it deems necessary.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-15

Judgment; fees

Sec. 15. (Judgment; Fees)

(a) Subject to the right of appeal, a judgment rendered by the court under 30-4-5-14, either approving the statement or disapproving it and surcharging the trustee, is final, conclusive and binding upon all the parties to the action who are subject to the jurisdiction of the court.

(b) Entry of the judgment by the court finally disposes of the matter and the clerk may not tax or charge a service fee for any year beyond that in which the judgment is rendered.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-16

Right to compensation

Sec. 16. (a) Unless the terms of the trust provide otherwise, and except as provided in section 17 of this chapter, the trustee is entitled to reasonable compensation from the trust estate for acting as trustee.

(b) If the terms of the trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

- (1) the duties of the trustee are substantially different from those contemplated when the trust was created; or
- (2) the compensation specified in the terms of the trust would be unreasonably low or high.

(c) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

- (1) expenses that were properly incurred in the administration of the trust; and
- (2) expenses that were not properly incurred in the administration of the trust, to the extent necessary to prevent unjust enrichment of the trust.

An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.238-2005, SEC.42.

IC 30-4-5-17

Compensation if trustee breaches trust

Sec. 17. (Compensation if Trustee Breaches Trust)

(a) In a proceeding in which the trustee is found to be in breach of

trust, the court may in its discretion either deny him all compensation, allow him a reduced compensation, or allow him full compensation.

(b) In the exercise of its discretion under subsection (a) of this section, the court may consider, among others, the following facts:

(1) whether the breach of trust was intentional, negligent, or without fault;

(2) whether or not the trustee acted in good faith;

(3) whether or not the breach of trust resulted in a loss to the trust estate;

(4) if a loss results, whether the trustee has indemnified the trust estate; and

(5) whether the trustee's services were of value to the trust estate.
(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-18

Private foundations

Sec. 18. Subject to section 20 of this chapter, every corporation which is organized under the laws of this state and which is a private foundation as defined in Section 509(a) of the Internal Revenue Code shall, unless otherwise provided in the articles of incorporation of such corporation:

(a) distribute each taxable year amounts sufficient for such corporation to avoid liability for the tax imposed by Section 4942 of the Internal Revenue Code;

(b) not engage in any act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4941 of the Internal Revenue Code;

(c) not retain any excess business holding (as defined in Section 4943(c) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4943 of the Internal Revenue Code;

(d) not make any investment which would jeopardize the carrying out of any of such corporation's exempt purposes (within the meaning of Section 4944 of the Internal Revenue Code) and which would subject such corporation to liability for the taxes imposed by Section 4944 of the Internal Revenue Code; and

(e) not make any taxable expenditure (as defined in Section 4945(d) of the Internal Revenue Code) which would subject such corporation to liability for the taxes imposed by Section 4945 of the Internal Revenue Code.

(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.2-1987, SEC.47.

IC 30-4-5-19

Private corporate foundations organized before January 1, 1970; application of IC 30-4-5-18

Sec. 19. The provisions of 30-4-5-18 shall not apply to any such

corporation organized before January 1, 1970, to the extent that a court of competent jurisdiction shall determine that application of such section to such corporation would be contrary to the terms of any instrument which may not be changed to conform to such section and by which such corporation is bound.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-20

Private corporate foundations; effective dates of IC 30-4-5-18

Sec. 20. The provisions of 30-4-5-18 shall be effective as to corporations to which such section applies in accordance with the following subsections (a) and (b):

(a) With respect to each such corporation organized on or after January 1, 1970, the provisions of 30-4-5-18 shall be effective from and after the date of such corporation's organization.

(b) With respect to each such corporation organized before January 1, 1970, the provisions of 30-4-5-18 shall be effective during taxable years commencing after December 31, 1971.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-21

Trusts for benevolent public purpose; general rules

Sec. 21. Subject to the provisions of this section and of section 23 of this chapter, every trust for a benevolent public purpose that is subject to the provisions of Subchapter A of Chapter 42 of Subtitle D of the Internal Revenue Code shall:

- (1) distribute each taxable year amounts sufficient for such trust to avoid liability for the tax imposed by Section 4942 of the Internal Revenue Code, except that this subdivision shall not apply to split-interest trusts;
- (2) not engage in any act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4941 of the Internal Revenue Code;
- (3) not retain any excess business holding (as defined in Section 4943(c) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4943 of the Internal Revenue Code;
- (4) not make any investment which would jeopardize the carrying out of any of such trust's exempt purposes (within the meaning of Section 4944 of the Internal Revenue Code) and which would subject such trust to liability for the taxes imposed by Section 4944 of the Internal Revenue Code; and
- (5) not make any taxable expenditure (as defined in Section 4945(d) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4945 of the Internal Revenue Code.

The provisions of this section shall not apply to split-interest trusts or amounts thereof to the extent that such split-interest trusts and amounts are not, under Section 4947 of the Internal Revenue Code,

subject to the prohibitions applicable to private foundations.
(Formerly: Acts 1971, P.L.416, SEC.6.) As amended by P.L.2-1987, SEC.48; P.L.41-2000, SEC.6.

IC 30-4-5-22

Private and charitable trust foundations; split-interest trusts; creation before January 1, 1970; application of IC 30-4-5-21

Sec. 22. The provisions of 30-4-5-21 shall not apply to any such trust created before January 1, 1970, to the extent that a court of competent jurisdiction shall determine that application of such section to such trust would be contrary to the terms of any instrument which may not be changed to conform to such section and by which such trust is bound.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-23

Private and charitable trust foundations; split-interest trusts; effective date of IC 30-4-5-21

Sec. 23. The provisions of 30-4-5-21 shall be effective as to trusts to which such section applies in accordance with the following subsections (a) and (b):

(a) With respect to each such trust first existing on or after January 1, 1970, the provisions of 30-4-5-21 shall be effective from and after the date such trust comes into existence.

(b) With respect to each such trust existing before January 1, 1970, the provisions of 30-4-5-21 shall be effective during taxable years commencing after December 31, 1971.

(Formerly: Acts 1971, P.L.416, SEC.6.)

IC 30-4-5-24

Repealed

(Repealed by P.L.2-1987, SEC.53.)

IC 30-4-5.5

Chapter 5.5. Enforcement Powers of Attorney General

IC 30-4-5.5-1

Remedies by attorney general against certain trustees and other individuals

Sec. 1. (a) This section applies to the following:

- (1) A trustee of a benevolent trust, including a perpetual care fund or endowment care fund established under IC 23-14-48 or a prepaid funeral trust or escrow account established under IC 30-2-9, IC 30-2-10, or IC 30-2-13.
- (2) A cemetery owner.
- (3) A funeral home.
- (4) A beneficiary of a contract entered into under IC 30-2-9.
- (5) A seller (as defined in IC 30-2-13-10) under IC 30-2-13.
- (6) Any other person that holds a perpetual care fund, an endowment care fund, or a prepaid funeral trust fund.

(b) A person described in subsection (a) may not do any of the following:

- (1) Commit a breach of trust.
- (2) Violate the mandate of a charitable trust.
- (3) Violate a duty listed in this article.
- (4) Fail to comply with a requirement or prohibition set forth in any of the following:
 - (A) IC 23-14-48.
 - (B) IC 23-14-48.5.
 - (C) IC 23-14-49.
 - (D) IC 23-14-51.
 - (E) IC 30-2-9.
 - (F) IC 30-2-10.
 - (G) IC 30-2-13.
 - (H) IC 30-4.

(c) The attorney general may petition a court to issue one (1) or more of the following remedies for a breach, violation, or failure enumerated in subsection (b):

- (1) Injunctive relief.
- (2) Appointment of temporary or permanent receivers.
- (3) Permanent removal of trustees.
- (4) Appointment of permanent replacement trustees subject to court approval.

A remedy under this subsection is in addition to any other remedy.

(d) The attorney general may seek a remedy listed in subsection (c) against a trustee, a trust, or any other person described in subsection (a) for a breach, violation, or failure enumerated in subsection (b).

(e) A court in which an action is brought under this section may do the following:

- (1) Issue a temporary restraining order, preliminary injunction, or permanent injunction.
- (2) Order a trustee, an escrow agent, a seller (as defined in

IC 30-2-13-10), a cemetery owner, or a funeral home to pay restitution or money unlawfully received or retained from purchasers and deposit the restitution or money into an escrow account for distribution to aggrieved purchasers.

(3) Order a trustee, an escrow agent, a seller (as defined in IC 30-2-13-10), a cemetery owner, or a funeral home to reimburse the state for reasonable costs incurred by the attorney general in investigating and prosecuting a violation of this section.

(4) Impose civil penalties.

(5) Provide for the appointment of a receiver.

As added by P.L.245-2005, SEC.8. Amended by P.L.61-2008, SEC.15.

IC 30-4-6

Chapter 6. Procedure

IC 30-4-6-1

Jurisdiction

Sec. 1. (Jurisdiction)

Jurisdiction in this state for all matters arising under this article shall be with the court exercising probate jurisdiction.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-2

Continuing jurisdiction

Sec. 2. (Continuing Jurisdiction)

The court will have continuing jurisdiction to supervise the administration of the trust only if the settlor expressly directs in the terms of the trust that the court is to have that jurisdiction.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-3

Venue; transfer of trust's principal place of administration; notice; objection to transfer

Sec. 3. (a) Venue in a proceeding brought by the attorney general against a trustee or a trust lies in Marion County, unless a court determines that venue in Marion County would be a hardship for a trustee or a trust.

(b) Unless the terms of the trust provide otherwise, venue in a proceeding brought by a party other than the attorney general for matters arising under this article shall be exclusively in the county in which the principal place of administration of the trust is located. The principal place of administration of a trust is that usual place at which the records pertaining to the trust are kept or, if there is no such place, the trustee's residence. If there are cotrustees, the principal place of administration is either that of the corporate trustee, if there is only one (1); that of the individual trustee who has custody of the records, if there is but one (1) such person and there is no corporate cotrustee; or, if neither of these alternatives apply, that of any of the cotrustees.

(c) Unless the trust provides otherwise, a trustee is under a continuing duty to administer the trust at a place appropriate to the trust's purposes and administration.

(d) Unless the trust provides otherwise, and without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of a duty prescribed by subsection (b), may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

(e) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must include the following information:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred.

(2) The address and telephone number of the new location at which the trustee can be contacted.

(3) An explanation of the reasons for the proposed transfer.

(4) The date on which the proposed transfer is anticipated to occur.

(5) The date, not less than sixty (60) days after the giving of notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(f) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed under IC 30-4-3-33.

(h) If the principal place of administration is maintained in another state, venue in this state for any matters arising under this article shall be in the county stipulated in writing by the parties to the trust or, if there is no such stipulation, in the county where the trust property, or the evidence of the trust property, which is the subject of the action is either situated or generally located.

(i) Any party to an action or proceeding shall be entitled to a change of venue or change of judge as provided in the Indiana Rules of Procedure. A change of venue in any action shall not be construed to authorize a permanent change of venue for all matters arising under this article, and, upon conclusion of the action, venue shall return to the court where the action was initiated.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.238-2005, SEC.43; P.L.245-2005, SEC.9; P.L.1-2006, SEC.494.

IC 30-4-6-4

Docketing of trusts in general

Sec. 4. Except as provided in section 7 of this chapter and IC 30-4-7, unless the terms of the trust expressly direct that the court is to have continuing jurisdiction over the administration of the trust:

(1) a trustee need not docket a trust in the records of the court nor may the court require a trust to be docketed; and

(2) with respect to a decedent's estate docketed for the purpose of probate or administration, which either establishes a trust or makes a devise to another trust, the court shall have no continuing jurisdiction over the administration of the trust after any distribution from the estate is paid or delivered to the trustee.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.200-1991, SEC.5.

IC 30-4-6-5

Pleadings

Sec. 5. (Pleadings)

Any proceedings under this article may be initiated on either a petition or complaint and upon notice as provided in 30-4-6-6.
(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-6

Notice

Sec. 6. (Notice)

(a) Notice must be given to any person or his personal representative who is named as a party in a petition or complaint, whose rights may be affected or upon whom a liability might be imposed by any proceeding; to the Attorney General if the trust is for a benevolent public purpose; and to any other person whom the court may order to be given notice.

(b) The form of notice required shall be in the form of a summons as provided for in the Indiana Rules of Procedure or in such other form as may be ordered or approved by the court.

(c) The manner of service of a notice shall be the same as that provided in the Indiana Rules of Procedure for service of summons or such other manner as may be ordered or approved by the court.

(d) Any person who is a nonresident of this state or whose address is unknown may be served by publication according to the Indiana Rules of Procedure. All persons served by publication whose names and addresses are known or can by reasonable diligence be ascertained by the party seeking service shall, in addition to such published notice, be served by registered or certified mail or other public means by which a return receipt may be requested.

(e) The court shall give notice in any case in which it acts on its own motion.

(f) Any person not under a legal disability or a personal representative may waive in writing notice of the proceeding.

(g) An order of the court is binding as to all persons who are given notice of the proceeding, even though less than all interested persons receive notice.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-7

Docketing as part of proceeding

Sec. 7. (Docketing as Part of Proceeding)

(a) If it is necessary to the determination of any issue of law or fact in a proceeding, the court may direct that a copy of the trust instrument, if any, be kept in its records.

(b) The filing of the trust instrument under subsection (a) of this section shall not result in continuing supervisory jurisdiction by the court. Upon conclusion of the proceeding, the trust instrument shall be removed from the court's records.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-8

Bonding

Sec. 8. (a) Unless the terms of the trust provide otherwise, the

trustee need not provide a bond to secure the trustee's performance as trustee.

(b) If the trust is subject to continuing supervisory jurisdiction by the court, the court may, on its own motion, direct the trustee to provide a bond to secure performance of the trustee's duties.

(c) Upon petition by an interested party, the court may direct the trustee to provide a bond to secure the trustee's performance, if the court deems it reasonably necessary to protect the interest of any beneficiary.

(d) Unless the terms of the trust provide otherwise, the court may, in its discretion, direct a trustee appointed by the court under IC 30-4-3-33 to file a bond to secure the performance of the trustee's duties.

(e) In any case in which bond is required, unless otherwise specified, the court shall determine the amount, term and surety of the bond to be provided. The court may also excuse a requirement of bond, reduce or increase the amount of the bond, release the surety, or permit substitution of another bond with the same or different sureties.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.238-2005, SEC.44.

IC 30-4-6-9

Suit on bond

Sec. 9. (Suit on Bond)

(a) The court may, on breach of the obligation of the bond of the trustee, after notice to the obligors on the bond and to such other persons as the court directs, determine the damages, and by appropriate proceeding enforce the collection thereof from those liable on the bond. Such determination and enforcement may be made by the court upon its own motion or upon application of a successor trustee, or of any other interested person. Damages may be assessed on behalf of all interested persons and may be paid over to the successor or other non-defaulting trustee or any other person the court may direct.

(b) The bond of the trustee shall not be void upon the first recovery, but may be proceeded upon from time to time until the whole penalty is exhausted.

(c) If the court has already determined the liability of the trustee, the sureties shall not be permitted thereafter to deny such liability in any action or hearing to determine their liability; but the surety may intervene in any hearing to determine the liability of the trustee.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-10

Representation by class or similar interest

Sec. 10. (Representation by Class or Similar Interest)

Any adjudication involving the interests of persons represented by a personal representative shall be lawful and binding upon all interested persons, whether born or unborn, whether notified or not

notified, and whether represented or not, provided, those interested persons are of the same class or have interests similar to the predominant interests of any person so notified or represented.
(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-10.5

Persons who represent interests of and bind other persons

Sec. 10.5. (a) Except as provided in the terms of a trust, and to the extent there is not a conflict of interest between the representative and the person represented or among those being represented:

- (1) a guardian may represent and bind the protected person who is subject to the guardianship;
- (2) an attorney in fact who has authority to act with respect to the particular question or dispute may represent and bind the principal;
- (3) a trustee may represent and bind the beneficiaries of the trust;
- (4) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
- (5) a parent may represent and bind the parent's minor, unborn, or not yet adopted child if a guardian for the child has not been appointed;

with regard to a particular question or dispute.

(b) The holder of a general power of appointment, including a general testamentary power of appointment, may represent and bind persons whose interests are subject to the power of appointment, including:

- (1) permissible appointees; and
- (2) takers in default.

(c) Unless otherwise represented:

- (1) a minor;
- (2) an incapacitated person;
- (3) an unborn or a not yet adopted child; or
- (4) a person whose identity or location is unknown and not reasonably ascertainable;

may be represented by and bound by another person who has a substantially identical interest with respect to the particular question or dispute but only to the extent there is not a conflict of interest between the representative and the person represented.

(d) If the court determines that an interest is not represented under this section or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent, and otherwise represent, bind, and act on behalf of:

- (1) a minor;
- (2) an incapacitated person;
- (3) an unborn child; or
- (4) a person whose identity or location is unknown.

If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. A guardian ad

litem may act on behalf of the person represented with respect to any matter arising under this title, regardless of whether a judicial proceeding concerning the trust is pending. In making decisions, a guardian ad litem may consider general benefits accruing to the living members of the family of the persons represented.

(e) Notice to a person who may represent and bind another person under this section has the same effect as if notice were given directly to the other person.

(f) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would have become effective.

As added by P.L.238-2005, SEC.45.

IC 30-4-6-11

Appeals

Sec. 11. (Appeals)

(a) Any person considering himself aggrieved by any decision of a court having jurisdiction in proceedings under this article may prosecute an appeal to the court having jurisdiction of such an appeal. That appeal shall be taken as appeals are taken in civil causes.

(b) In an appeal, the trustee will be entitled to a stay of proceedings without bond.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-12

Statute of limitations

Sec. 12. Unless previously barred by adjudication, consent or limitation, any right against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the right is commenced within three (3) years after receipt of the final account or statement if, being an adult, it is received by him personally or if, being a minor or person with a disability, it is received by his personal representative. The rights thus barred do not include the rights to recover from a trustee for fraud, misrepresentation or inadequate disclosure related to the settlement of the trust.

(Formerly: Acts 1971, P.L.416, SEC.7.) As amended by P.L.99-2007, SEC.195.

IC 30-4-6-13

Application of rules of procedure

Sec. 13. (Application of Rules of Procedure)

Except as otherwise provided in this article, the Indiana Rules of Procedure shall apply with respect to procedure in any matter arising under this article.

(Formerly: Acts 1971, P.L.416, SEC.7.)

IC 30-4-6-14

Contesting validity of revocable trust; time limits; notice requirements

Sec. 14. (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

(1) Ninety (90) days after the person receives from the trustee a copy of a trust certification required by IC 30-4-4-5 and a notice that:

(A) informs the person of the trust's existence;

(B) states the trustee's name and address;

(C) states:

(i) the person's interest in the trust, as described in the trust document; or

(ii) that the person has no interest in the trust; and

(D) states the time allowed for commencing the proceeding.

(2) Three (3) years after the settlor's death.

(b) More than one hundred twenty (120) days after the death of the settlor of a trust that was revocable at the settlor's death, the trustee may distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for the distribution unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant notifies the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced not later than sixty (60) days after the contestant sends the trustee the notification.

(c) A beneficiary of a trust that is determined to be invalid shall return any distribution received.

As added by P.L.238-2005, SEC.46. Amended by P.L.51-2014, SEC.26.

IC 30-4-7

Chapter 7. Adjudicated Compromise of Controversies

IC 30-4-7-1

Application of chapter

Sec. 1. This chapter applies to the compromise of a contest or controversy with respect to the following:

- (1) The construction, validity, or effect of a trust instrument.
- (2) The identity, rights, or interests of a beneficiary of a trust.
- (3) The administration of a trust.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-2

Binding effect of compromise

Sec. 2. A compromise executed under this chapter is binding on all parties to the compromise, including a party represented by a guardian or guardian ad litem.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-3

Rights of creditors or taxing authorities

Sec. 3. A compromise executed under this chapter does not impair the rights of creditors or taxing authorities that are not parties to the compromise.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-4

Appointment of guardian or guardian ad litem

Sec. 4. The court may appoint a guardian or a guardian ad litem to represent the following persons or interests in a compromise executed under this chapter if the persons or interests do not have a guardian or guardian ad litem:

- (1) A minor.
- (2) A person who is without legal capacity to personally act.
- (3) A person whose present existence or whereabouts cannot be ascertained.
- (4) A person who is not yet born or adopted.
- (5) An inalienable estate.
- (6) A future contingent interest.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-5

Law governing appointment of guardian or guardian ad litem

Sec. 5. IC 29-1-1-20 applies to the appointment of a guardian or guardian ad litem under section 4 of this chapter.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-6

Agreement of compromise

Sec. 6. The terms of a compromise executed under this chapter

must be set forth in an agreement that is:

- (1) in writing; and
- (2) executed by all persons or the guardians or guardians ad litem appointed under section 4 of this chapter of all persons who:

- (A) have an interest in the trust; or
- (B) have a claim against the trust.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-7

Docket of documents

Sec. 7. After a compromise is executed, an interested person may docket the trust and submit the following documents to the court for the court's approval:

- (1) The agreement executed under section 6 of this chapter.
- (2) A copy of the trust instrument.
- (3) Any other relevant documents.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-8

Notice and hearing on agreement

Sec. 8. After notice has been given in the manner directed by the court to:

- (1) all interested persons;
- (2) the guardians or guardians ad litem of interested persons;
- (3) the personal representative of an estate affected by the agreement; and
- (4) the trustee of a trust affected by the agreement;

the court shall hold a hearing on the agreement.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-9

Court order

Sec. 9. If the court finds:

- (1) the contest or controversy is in good faith; and
- (2) the effect of the agreement on the interests of all the parties is just and reasonable;

the court shall enter an order approving the agreement submitted under section 7 of this chapter and directing the trustee and the parties to the agreement to carry out the terms of the agreement.

As added by P.L.200-1991, SEC.6.

IC 30-4-7-10

Effect of entry of order

Sec. 10. If the court enters an order under section 9 of this chapter, all further disposition of the trust that is within the scope of the agreement shall be made under the terms of the agreement.

As added by P.L.200-1991, SEC.6.

IC 30-5

ARTICLE 5. POWERS OF ATTORNEY

IC 30-5-1

Chapter 1. Applicability

IC 30-5-1-1

Powers created after June 30, 1991

Sec. 1. This article applies to all powers of attorney created after June 30, 1991.

As added by P.L.149-1991, SEC.2.

IC 30-5-1-2

Powers created before July 1, 1991

Sec. 2. This article applies to all powers of attorney created before July 1, 1991, unless the application of this article would cause one (1) of the following to occur:

- (1) An adverse effect on a right given a principal or an attorney in fact.
- (2) The extension of a right not intended to be given at the time the power of attorney was created.
- (3) The imposition of a duty or liability on a person that was not intended to be imposed at the time the power of attorney was created.
- (4) The relief of a person from a duty or liability imposed by the terms of a power of attorney or the operation of law.

As added by P.L.149-1991, SEC.2.

IC 30-5-2

Chapter 2. Definitions

IC 30-5-2-1

Application of definitions

Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.149-1991, SEC.2.

IC 30-5-2-2

"Attorney in fact"

Sec. 2. "Attorney in fact" means the person designated to act for the principal under a power of attorney. The term includes any of the following:

- (1) The original attorney in fact.
- (2) A co-attorney in fact.
- (3) A successor attorney in fact.
- (4) A person to whom an attorney in fact has delegated authority.

As added by P.L.149-1991, SEC.2. Amended by P.L.143-2009, SEC.21.

IC 30-5-2-3

"Court"

Sec. 3. "Court" means the court having probate jurisdiction.
As added by P.L.149-1991, SEC.2.

IC 30-5-2-4

"Health care"

Sec. 4. "Health care" means any medical care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental well-being. The term includes the providing of nutrition and hydration through intravenous, endotracheal, or nasogastric tubes.

As added by P.L.149-1991, SEC.2.

IC 30-5-2-5

"Health care provider"

Sec. 5. "Health care provider" means the physician who has primary responsibility for treating the principal and any other person administering health care to the principal who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or the practice of a profession, including a pharmacist. The term includes an employee or agent of a health care provider.

As added by P.L.149-1991, SEC.2. Amended by P.L.188-1995, SEC.9.

IC 30-5-2-5.5

"Internal Revenue Code"

Sec. 5.5. Notwithstanding IC 1-1-4-4 and IC 6-3-1-11, "Internal

Revenue Code" means the Internal Revenue Code of 1986 of the United States as amended from time to time.

As added by P.L.238-2005, SEC.47.

IC 30-5-2-6

"Person"

Sec. 6. "Person" means:

- (1) an individual at least eighteen (18) years of age;
- (2) a corporation;
- (3) a trust;
- (4) a limited liability company;
- (5) a partnership;
- (6) a business trust;
- (7) an estate;
- (8) an association;
- (9) a joint venture;
- (10) a government or political subdivision;
- (11) an agency;
- (12) an instrumentality; or
- (13) any other legal or commercial entity.

As added by P.L.149-1991, SEC.2. Amended by P.L.8-1993, SEC.469; P.L.143-2009, SEC.22.

IC 30-5-2-7

"Power of attorney"

Sec. 7. "Power of attorney" means a writing or other record that grants authority to an attorney in fact or agent to act in place of a principal, whether the term "power of attorney" is used. The term refers to all types of powers of attorney, including durable powers of attorney, except for the following:

- (1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a credit in connection with a credit transaction.
- (2) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.
- (3) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

As added by P.L.149-1991, SEC.2. Amended by P.L.143-2009, SEC.23.

IC 30-5-2-8

"Principal"

Sec. 8. "Principal" means:

- (1) an individual, including an individual acting as a:
 - (A) trustee;
 - (B) personal representative; or
 - (C) fiduciary;
- (2) a corporation;
- (3) a limited liability company;

(4) a trust; or

(5) a partnership;

who signs a power of attorney granting powers to an attorney in fact.

As added by P.L.149-1991, SEC.2. Amended by P.L.178-2002, SEC.107.

IC 30-5-3

Chapter 3. General Provisions

IC 30-5-3-1

Rules of law; interpretation and application; conflict with terms of power

Sec. 1. The rules of law contained in this article shall be interpreted and applied to the terms of a power of attorney to implement the intent of the principal and the purposes of the power of attorney. If the rules of law conflict with the terms of the power of attorney, the terms of the power of attorney control unless the rules of law clearly prohibit or restrict what the terms of the power of attorney purport to authorize.

As added by P.L.149-1991, SEC.2.

IC 30-5-3-2

Validity of power; execution under certain laws

Sec. 2. A power of attorney is valid if the power of attorney was valid at the time the power of attorney was executed under any of the following:

- (1) This article.
- (2) IC 30-2-11 (repealed).
- (3) Common law.
- (4) The law of another state or foreign country.
- (5) The requirements for a military power of attorney under 10 U.S.C. 1044b.

As added by P.L.149-1991, SEC.2. Amended by P.L.143-2009, SEC.24.

IC 30-5-3-3

Recording power of attorney

Sec. 3. (a) Except as provided in subsection (b), an attorney in fact may act under a power of attorney without recording the power of attorney with the county recorder.

(b) An attorney in fact shall record the power of attorney authorizing the execution of a document that must be recorded before presenting the document for recording.

(c) A county recorder may not accept a document for recording if the document:

- (1) was executed; and
- (2) is presented;

by an attorney in fact whose power of attorney is unrecorded.

(d) A document creating a power of attorney must comply with recording requirements, including notary and preparation statements, to be recorded under this section.

(e) A document that is presented by an attorney in fact for recording must reference the book and page or instrument number where the instrument creating the power of attorney is recorded before the document may be presented by the attorney in fact.

As added by P.L.149-1991, SEC.2.

IC 30-5-3-4

Guardians; nomination; appointment; powers and duties; amendment or revocation of power; hearing; notice

Sec. 4. (a) A principal may nominate a guardian for consideration by the court if protective proceedings for the principal's person or estate are commenced. The court shall make an appointment in accordance with the principal's most recent nomination in a power of attorney except for good cause or disqualification.

(b) A guardian does not have power, duty, or liability with respect to property or personal health care decisions that are subject to a valid power of attorney. A guardian has no power to revoke or amend a valid power of attorney unless specifically directed to revoke or amend the power of attorney by a court order on behalf of the principal. A court may not enter an order to revoke or amend a power of attorney without a hearing. Notice of a hearing held under this section shall be given to the attorney in fact.

As added by P.L.149-1991, SEC.2.

IC 30-5-3-5

Construction of power and instruction to attorney in fact; petition; notice of hearing

Sec. 5. Upon petition by an interested person, the court may construe a power of attorney and instruct the attorney in fact if the court finds that the principal lacks the capacity to control or revoke the power of attorney. Notice of a hearing on a petition under this subsection shall be given as the court directs.

As added by P.L.149-1991, SEC.2.

IC 30-5-3-6

Interpretation under the law of the jurisdiction indicated in the power of attorney

Sec. 6. The meaning and effect of a power of attorney are determined by the law of the jurisdiction indicated in the power of attorney. In the absence of an indication of jurisdiction, the meaning and effect of a power of attorney are determined by the law of the jurisdiction in which the power of attorney was executed.

As added by P.L.143-2009, SEC.25.

IC 30-5-3-7

Effect on the Electronic Signatures in Global and National Commerce Act

Sec. 7. This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.). However, this article does not:

- (1) modify, limit, or supersede 15 U.S.C. 7001(c); or
- (2) authorize the electronic delivery of a notice described in 15 U.S.C. 7003(b).

As added by P.L.143-2009, SEC.26.

IC 30-5-4

Chapter 4. Creation of a Power of Attorney

IC 30-5-4-1

Validity of power; conditions

Sec. 1. To be valid, a power of attorney must meet the following conditions:

- (1) Be in writing.
- (2) Name an attorney in fact.
- (3) Give the attorney in fact the power to act on behalf of the principal.
- (4) Be signed by the principal or at the principal's direction in the presence of a notary public.
- (5) In the case of a power of attorney signed at the direction of the principal, the notary must state that the individual who signed the power of attorney on behalf of the principal did so at the principal's direction.

As added by P.L.149-1991, SEC.2. Amended by P.L.101-2008, SEC.9.

IC 30-5-4-2

Time power becomes effective; incapacity of the principal

Sec. 2. (a) Except as provided in subsection (b), a power of attorney is effective on the date the power of attorney is signed in accordance with section 1(4) of this chapter.

(b) A power of attorney may:

- (1) specify the date on which the power will become effective;
- or
- (2) become effective upon the occurrence of an event.

(c) If a power of attorney becomes effective upon the principal's incapacity and:

- (1) the principal has not authorized a person to determine whether the principal is incapacitated; or
- (2) the person authorized is unable or unwilling to make the determination;

the power of attorney becomes effective upon a determination that the principal is incapacitated that is set forth in a writing or other record by a physician, licensed psychologist, or judge.

(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may:

- (1) act as the principal's personal representative under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 201 et seq.) and any rules or regulations issued under that act; and
- (2) obtain access to the principal's health care information and communicate with the principal's health care provider.

As added by P.L.149-1991, SEC.2. Amended by P.L.101-2008, SEC.10; P.L.143-2009, SEC.27.

IC 30-5-4-3

More than one attorney in fact; independent actions; failure or cessation of service

Sec. 3. (a) Except as otherwise stated in the power of attorney, if more than one (1) attorney in fact is named, each attorney in fact may act independently of the other attorney in fact in the exercise of a power or duty.

(b) Except as otherwise stated in the power of attorney, if:

(1) more than one (1) attorney in fact is named; and

(2) one (1) attorney in fact fails to serve or ceases to serve;

the remaining attorney in fact may continue to act under the power of attorney without a successor for the attorney in fact who failed to serve or ceased to serve.

As added by P.L.149-1991, SEC.2.

IC 30-5-4-4

Failure or cessation of service; circumstances; successor attorney in fact; powers

Sec. 4. (a) Except as stated otherwise in the power of attorney, an attorney in fact fails to serve or ceases to serve when:

(1) the attorney in fact dies;

(2) the attorney in fact resigns;

(3) the attorney in fact is adjudged incapacitated by a court;

(4) the attorney in fact cannot be located upon reasonable inquiry;

(5) the attorney in fact, if at one time the principal's spouse, legally is no longer the principal's spouse; or

(6) a physician familiar with the condition of the current attorney in fact certifies in writing to the immediate successor attorney in fact that the current attorney in fact is unable to transact a significant part of the business required under the power of attorney.

(b) Except as stated otherwise in the power of attorney, if the replaced attorney in fact reappears or is subsequently able to transact business, the successor attorney in fact shall remain as the attorney in fact.

(c) Except as otherwise stated in the power of attorney, an attorney in fact designated as a successor has the powers granted under the power of attorney to the original attorney in fact.

(d) Unless a power of attorney provides a different method for an attorney in fact's resignation, an attorney in fact may resign by giving notice to the principal and, if the principal is incapacitated:

(1) to:

(A) the principal's guardian, if a guardian has been appointed for the principal; and

(B) a co-attorney in fact or successor attorney in fact; or

(2) if there is no person described in subdivision (1), to:

(A) the principal's caregiver;

(B) another person reasonably believed by the attorney in fact to have sufficient interest in the principal's welfare; or

(C) a governmental agency having authority to protect the

welfare of the principal.
*As added by P.L.149-1991, SEC.2. Amended by P.L.143-2009,
SEC.28; P.L.6-2010, SEC.21.*

IC 30-5-4-5

Reimbursement of expenses; fee for services

Sec. 5. (a) Except as stated otherwise in the power of attorney, an attorney in fact is entitled to reimbursement of all reasonable expenses advanced by the attorney in fact on behalf of the principal.

(b) Except as otherwise stated in the power of attorney, an attorney in fact is entitled to a reasonable fee for services rendered. The attorney in fact shall, not later than twelve (12) months after the date the service is rendered, notify the principal in writing of the amount claimed as compensation for rendering the service.

As added by P.L.149-1991, SEC.2.

IC 30-5-5

Chapter 5. Powers

IC 30-5-5-1

Incorporation of powers; references; similar or overlapping powers; modification

Sec. 1. (a) An attorney in fact has a power granted under this chapter if the power of attorney incorporates the power by:

- (1) referring to the descriptive language in sections 2 through 19 of this chapter; or
- (2) citing to a specific section of sections 2 through 19 of this chapter.

(b) Reference in a power of attorney to the descriptive language in sections 2 through 19 of this chapter shall be construed as though the entire section is set out in full in the power of attorney.

(c) If powers are similar or overlap, the broadest power controls.

(d) A power of attorney may in writing delete from, add to, or modify in any manner a power incorporated by reference, including the power to make gifts under section 9 of this chapter.

As added by P.L.149-1991, SEC.2. Amended by P.L.165-2002, SEC.7.

IC 30-5-5-2

Real property transactions

Sec. 2. (a) Language conferring general authority with respect to real property transactions means the principal authorizes the attorney in fact to do the following:

- (1) Accept as a gift or as security for a loan, to reject, demand, buy, lease, receive, or otherwise acquire either ownership or possession of an estate or interest in real property.
- (2) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, plat or consent to platting, lease, sublet, or otherwise dispose of an estate or interest in real property.
- (3) Release in whole or in part, assign in whole or in part, satisfy in whole or in part, and enforce by action or proceeding, a mortgage, an encumbrance, a lien, or other claim to real property that exists or is claimed to exist in favor of the principal.
- (4) Perform acts of management or conservation with respect to an estate or interest in real property owned or claimed to be owned by the principal, including the power to do the following:
 - (A) Insure against casualty, liability, or loss.
 - (B) Obtain, regain, or protect possession of the estate or interest by action or proceeding.
 - (C) Pay, compromise, or contest taxes and assessments.
 - (D) Apply for and receive refunds for taxes and assessments.
 - (E) Purchase supplies and hire assistance or labor.
 - (F) Make repairs or alterations in the structures or lands.
- (5) Use, develop, modify, alter, replace, remove, erect, or install

structures or other improvements upon real property in which the principal has or claims to have an interest.

(6) Demand, receive, or obtain by action or proceeding money or other things of value to which the principal is, may become, or may claim to be entitled to as the proceeds of an interest in real property or of one (1) or more transactions under this section, conserve, invest, disburse, or use any proceeds received for purposes authorized under this section, and reimburse the attorney in fact for expenditures properly made by the attorney in fact.

(7) Participate in a reorganization with respect to real property, receive and hold shares of stocks or instruments of similar character received under a plan of reorganization, and act with respect to the shares, including the power to do the following:

(A) Sell or otherwise dispose of the shares.

(B) Exercise or sell options.

(C) Convert the shares.

(D) Vote on the shares in person or by the granting of a proxy.

(8) Agree and contract in any manner and on any terms with a person for the accomplishment of any purpose under this section and perform, rescind, reform, release, or modify an agreement or a contract made by or on behalf of the principal.

(9) Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, or other instrument that the attorney in fact considers useful for the accomplishment of a purpose under this section.

(10) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal based on or involving a real property transaction, and intervene in an action or proceeding relating to a claim.

(11) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution of a power under this section or for the keeping of necessary records.

(12) Perform acts relating to land use and zoning concerning property in which the principal has an ownership interest.

(13) Perform any other act with respect to an estate or interest in property.

(b) The powers described in this section are exercisable equally with respect to an interest in an estate or real property owned by the principal at the time of the giving of the power of attorney or acquired after that time, whether located in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-3

Tangible personal property transactions

Sec. 3. (a) Language conferring general authority with respect to tangible personal property transactions means the principal authorizes the attorney in fact to do the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property.

(2) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, pawn, grant options concerning, lease or sublet, or otherwise dispose of tangible personal property or an interest in tangible personal property.

(3) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action or proceeding, a mortgage, an encumbrance, a lien, or other claim that exists or is claimed to exist in favor of the principal with respect to tangible personal property or an interest in tangible personal property.

(4) Perform acts of management or conservation with respect to tangible personal property or an interest in tangible personal property owned or claimed to be owned by the principal, including the power to do the following:

(A) Insure against casualty, liability, or loss.

(B) Obtain, regain possession of, or protect by action or proceeding.

(C) Pay, contest, or compromise taxes or assessments.

(D) Apply for and receive funds in connection with taxes or assessments.

(E) Move from place to place or store for hire or on a gratuitous bailment.

(F) Use, alter, and make repairs.

(5) Demand, receive, or obtain by action or proceeding money or other things of value to which the principal is, may become, or claims to be entitled to as the proceeds of tangible personal property, an interest in tangible personal property, or a transaction permitted under this section, conserve, invest, disburse, or use anything received for a purpose permitted under this section, and reimburse the attorney in fact for expenditures properly made in the execution of powers conferred upon the attorney in fact.

(6) Agree and contract in any manner and on any terms with a person and on any terms that the attorney in fact selects to accomplish a purpose permitted under this section and perform, rescind, reform, release, or modify an agreement or a contract made by or on behalf of the principal.

(7) Execute, acknowledge, seal, and deliver a conveyance, mortgage, lease, notice, check, or other instrument that the attorney in fact considers useful to accomplish a purpose permitted under this section.

(8) Prosecute, defend, submit to arbitration, settle, and propose

or accept a compromise with respect to a claim existing in favor of or against the principal based on or involving a tangible personal property transaction or intervene in an action or proceeding relating to a claim.

(9) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(10) Perform any other acts with respect to tangible personal property or an interest in tangible personal property.

(b) The powers described in this section are exercisable equally with respect to tangible personal property or an interest in tangible personal property owned by the principal at the time of the giving of the power of attorney or acquired after that time, whether located in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-4

Bond, share, and commodity transactions

Sec. 4. (a) Language conferring general authority with respect to bond, share, and commodity transactions means the principal authorizes the attorney in fact to do the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of a bond, a share, an instrument of similar character, a commodity interest, or an instrument with respect to the bond, share, or interest, together with the interest, dividends, proceeds, or other distributions connected with the instruments.

(2) Sell, sell short, exchange, transfer with or without a guaranty, release, surrender, hypothecate, pledge, grant options concerning, loan, trade in, or otherwise dispose of a bond, a share, an instrument of similar character, a commodity interest, or an instrument with respect to the bond, share, or instrument.

(3) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action or proceeding a pledge, an encumbrance, a lien, or other claim as to a bond, a share, an instrument of similar character, a commodity interest, or an interest with respect to the bond, share, or interest when the pledge, lien, or other claim is owned or claimed to be owned by the principal.

(4) Perform acts of management or conservation with respect to a bond, a share, an instrument of similar character, a commodity interest, or an interest with respect to the bond, share, or interest, owned or claimed to be owned by the principal, or in which the principal claims to have an interest, including the power to do the following:

(A) Insure against casualty, liability, or loss.

(B) Obtain, regain possession of, or protect the principal's interest by action or proceeding.

- (C) Pay, compromise, or contest taxes and assessments.
 - (D) Apply for and receive refunds for taxes and assessments.
 - (E) Consent to and participate in a reorganization, recapitalization, liquidation, merger, consolidation, sale, lease, or other change in or revival of a corporation or an association, in the financial structure of a corporation or an association, or in the priorities, voting rights, or other special rights with respect to the corporation or association.
 - (F) Become a depositor with a protective, reorganization, or similar committee of the bond, share, instrument of similar character, commodity interest, or an interest with respect to the bond, share, or interest belonging to the principal, and make payments reasonably incident to becoming a depositor.
 - (G) Exercise or sell an option, a conversion, or a similar right.
 - (H) Vote in person or by the granting of a proxy with or without the power of substitution, either discretionary, general, or otherwise.
- (5) Carry in the name of a nominee selected by the attorney in fact evidence of the ownership of a bond, a share, an instrument of similar character, a commodity interest, or an interest with respect to the bond, share, or interest belonging to the principal.
- (6) Employ in any way believed to be desirable by the attorney in fact a bond, a share, an instrument of similar character, a commodity interest, or an interest with respect to the bond, share, or interest in which the principal has or claims to have an interest for the protection or continued operation of a speculative or margin transaction begun or personally guaranteed in whole or in part by the principal.
- (7) Demand, receive, or obtain by action or proceeding money or other things of value to which the principal is, may become, or claims to be entitled as the proceeds of an interest in a bond, a share, an instrument of similar character, a commodity interest, or an interest with respect to the bond, share, or interest, or of a transaction permitted under this section, conserve, invest, disburse, or use anything received for a purpose permitted under this section, and reimburse the attorney in fact for expenditures properly made in the execution of powers conferred upon the attorney in fact.
- (8) Agree and contract in any manner and on any terms with a broker or other person the attorney in fact selects to accomplish a purpose permitted under this section and perform, rescind, reform, release, or modify the agreement or contract or a similar agreement made by or on behalf of the principal.
- (9) Execute, acknowledge, seal, and deliver a consent, an agreement, an authorization, an assignment, a revocation, a notice, a waiver of notice, a check, or an instrument the attorney in fact considers useful to accomplish a purpose permitted under this section.
- (10) Execute, acknowledge, and file a report or certificate

required by law or governmental regulation.

(11) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal based on or involving a bond, share, or commodity transaction, or intervene in a related action or proceeding.

(12) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(13) Perform any other acts with respect to a bond, a share, an instrument of similar character, a commodity, or an interest with respect to a commodity.

(b) The powers described in this section are exercisable equally with respect to a bond, a share, an instrument of similar character, a commodity, or an instrument with respect to a commodity owned by the principal at the time of the giving of the power of attorney or acquired after that time, whether located in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-4.5

Retirement plans

Sec. 4.5. (a) Language conferring general authority with respect to retirement plans means the principal authorizes the attorney in fact to:

(1) make contributions, including rollover contributions, or cause contributions to be made on behalf of the principal to any retirement plan, including any:

(A) pension;

(B) profit sharing or stock bonus plan;

(C) individual retirement arrangement;

(D) individual retirement account described in Section 408(A) of the Internal Revenue Code;

(E) deferred compensation plan;

(F) qualified plan under Section 403(b) of the Internal Revenue Code; or

(G) other qualified or nonqualified retirement plan, arrangement, or annuity in which the principal is a participant or a beneficiary;

(2) establish at least one (1) individual retirement account or other retirement plan in the principal's name;

(3) elect a form of payment of benefits from a retirement plan and withdraw benefits from a retirement plan;

(4) exercise investment powers available under a retirement plan;

(5) designate at least one (1) beneficiary or contingent beneficiary for any benefits payable under a retirement plan on account of the principal's death and change any earlier

designation of beneficiary;

(6) borrow from, sell assets to, and purchase assets from the retirement plan if authorized by the retirement plan; and

(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity.

(b) The powers described in this section are equally exercisable with respect to a retirement plan established or operated in Indiana or another jurisdiction and:

(1) owned by the principal;

(2) in which the principal was a participant; or

(3) of which the principal was a beneficiary;

when the powers are given or after the powers are given.

(c) A power of attorney executed before July 1, 2005, that confers general authority with respect to all other matters under section 19 of this chapter, includes general authority with respect to retirement plans as described in this section.

As added by P.L.238-2005, SEC.48.

IC 30-5-5-5

Banking transactions

Sec. 5. (a) Language conferring general authority with respect to banking transactions means the principal authorizes the attorney in fact to do the following:

(1) Continue, modify, or terminate a deposit account or other banking arrangement made by or on behalf of the principal before the execution of the power of attorney.

(2) Open in the name of the principal alone, or in a way that clearly evidences the principal and attorney in fact relationship, a deposit account with a bank, trust company, savings association, credit union, thrift company, brokerage firm, or other institution that serves as a depository for funds selected by the attorney in fact, or hire a safe deposit box or vault space and make other contracts to procure services made available by a banking institution as the attorney in fact considers desirable.

(3) Make, sign, and deliver checks or drafts for any purpose and withdraw by check, order, or other means funds or property of the principal deposited with or left in the custody of a banking institution either before or after the power of attorney was executed.

(4) Prepare necessary financial statements of assets and liabilities or income and expenses of the principal for submission to a banking institution.

(5) Receive statements, vouchers, notices, or other documents from a banking institution and act with respect to the documents.

(6) Enter at any time a safe deposit box or vault that the principal could enter if personally present.

(7) Borrow money at an interest rate the attorney in fact selects, pledge as security assets of the principal the attorney in fact considers desirable or necessary for borrowing, and pay, renew,

or extend the time of the payment of a debt of the principal.

(8) Make, assign, pledge, draw, endorse, discount, guarantee, and negotiate promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, receive cash or other proceeds of a transaction authorized under this subdivision, accept a bill of exchange or draft drawn by another person upon the principal, and pay a bill of exchange or a draft when the bill of exchange or draft is due.

(9) Receive for the principal and deal in or deal with a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument in which the principal has or claims to have an interest.

(10) Apply for and receive letters of credit for a banking institution selected by the attorney in fact giving indemnity or other agreement in connection with letters of credit the attorney in fact considers desirable or necessary.

(11) Consent to an extension in the time of payment with respect to a commercial paper or banking transaction in which the principal has an interest or by which the principal is or might be affected in any way.

(12) Demand, receive, or obtain by action or proceeding money or other things of value to which the principal is, may become, or claims to be entitled as the proceeds of a banking transaction, and reimburse the attorney in fact for expenditures properly made in the execution of powers conferred upon the attorney in fact under this section.

(13) Execute, acknowledge, and deliver an instrument in the name of the principal or other person the attorney in fact considers useful to accomplish a purpose permitted under this section.

(14) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal based on or involving a banking transaction, or intervene in a related action or proceeding.

(15) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(16) Perform any other acts with respect to a bond, a share, an instrument of similar character, a commodity, or an interest with respect to a commodity.

(b) The powers described in this section are exercisable equally with respect to a banking transaction engaged in by the principal at the time of the giving of the power of attorney or engaged in after that time, whether conducted in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2. Amended by P.L.79-1998, SEC.95.

IC 30-5-5-6

Business operating transactions

Sec. 6. (a) Language conferring general authority with respect to business operating transactions means the principal authorizes the attorney in fact to do the following:

(1) Discharge and perform a duty or liability, exercise a right, a power, a privilege, or an option the principal has or claims to have under a partnership agreement, whether the principal is a general or limited partner, enforce the terms of a partnership agreement for the protection of the principal by action or proceeding as the attorney in fact considers desirable or necessary, and defend, submit to arbitration, settle, or compromise an action or other legal proceeding in which the principal is a party because of membership in a partnership.

(2) Exercise in person or by proxy or enforce by action or proceeding a right, a power, a privilege, or an option the principal has as the holder of a bond, share, or other instrument of similar character, and defend, submit to arbitration, settle, or compromise an action or legal proceeding to which the principal is a party because of a bond, share, or other instrument of similar character.

(3) With respect to a business owned solely by the principal, to perform the following:

(A) Continue, modify, renegotiate, extend, and terminate contractual arrangements made with a person, an entity, a firm, an association, or a corporation by or on behalf of the principal with respect to the business enterprise prior to the granting of the power of attorney.

(B) Determine the policy of the business enterprise, including the following:

(i) The location of the site or sites to be used for the enterprise's operation.

(ii) The nature and extent of business to be undertaken by the enterprise.

(iii) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising to be employed in the enterprise's operation.

(iv) The amounts and types of insurance to be carried.

(v) The mode of securing, compensating, and dealing with accountants, attorneys, servants, and other agents and employees required for the operation of the enterprise.

(C) Agree and contract in any manner and on any terms with any person on any terms the attorney in fact considers desirable or necessary to make any or all decisions of the attorney in fact as to policy and rescind, reform, release, or modify an agreement or a contract made by or on behalf of the principal.

(D) Change the name or the form of organization under which the business enterprise is operated, enter into a partnership agreement with other persons, or organize a

corporation to take over the business or a part of the business that the attorney in fact considers necessary or desirable.

(E) Demand and receive money that is or becomes due to the principal or that may be claimed by the principal or on the principal's behalf in the operation of the business enterprise, control and disburse the funds in the operation of the enterprise in a way that the attorney in fact considers desirable or necessary, and engage in banking transactions the attorney in fact considers desirable or necessary to execute a power permitted under this subdivision.

(4) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business operating transaction of the principal that are required by a governmental agency, a department, or an instrumentality or that the attorney in fact considers desirable or necessary, and make related payments.

(5) Pay, compromise, or contest taxes or assessments and do acts the attorney in fact considers desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments in connection with the principal's business operations, including the power to attempt to recover, in any manner permitted by law, sums paid before or after the execution of the power of attorney as taxes, fines, penalties, or assessments.

(6) Demand, receive, or obtain by action or proceeding money or other things of value to which the principal is, may become, or claims to be entitled to as the proceeds of a business operation of the principal, conserve, invest, disburse, or use anything received for a purpose permitted under this section, and reimburse the attorney in fact for expenditures properly made in the execution of powers conferred upon the attorney in fact.

(7) Execute, acknowledge, seal, and deliver a deed, an assignment, a mortgage, a lease, a notice, a consent, an agreement, an authorization, a check, or other instrument that the attorney in fact considers useful to accomplish a purpose permitted under this section.

(8) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal based on or involving a business operating transaction or intervene in an action or a proceeding relating to a claim.

(9) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(10) Perform any other acts the attorney in fact considers desirable or necessary for the furtherance or protection of the interests of the principal in a business.

(b) The powers described in this section are exercisable equally with respect to a business in which the principal is interested at the time of the giving of the power of attorney or in which the principal becomes interested after that time, whether located in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-7

Insurance transactions

Sec. 7. (a) Language conferring general authority with respect to insurance transactions means the principal authorizes the attorney in fact to do the following:

(1) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract of life, accident, health, or disability insurance or for the provision of health care services or any combination of these contracts procured by or on behalf of the principal before the granting of the power of attorney that insures the principal or another person, without regard to whether the principal is or is not a beneficiary under the contract.

(2) Procure new, different, or additional contracts of life, accident, health, or disability insurance for the principal or for the provision of health care services for the principal, and select the amount, type of insurance, and mode of payment under each contract, pay the premium or assessment on, modify, release, or terminate a contract procured by the attorney in fact, and designate the beneficiary under the contract.

(3) Apply for and receive any available loan on the security of the contract of insurance, whether for the payment of the premium or for the procuring of cash, surrender and receive the cash surrender value, exercise an election as to beneficiary or mode of payment, change the manner of paying premiums, change or convert the type of insurance contract, with respect to a contract of life, accident, health, disability, or liability insurance in which the principal has, or claims to have, a power described in this subdivision, or change the beneficiary of the contract of insurance.

(4) Demand, receive, or obtain by action or proceeding money or other things of value to which the principal is, may become, or claims to be entitled to as the proceeds of a contract of insurance or a transaction permitted under this section, conserve, invest, disburse, or use anything received for a purpose permitted under this section, and reimburse the attorney in fact for expenditures properly made in the execution of powers conferred upon the attorney in fact.

(5) Apply for and procure available governmental aid in the guaranteeing or paying of premiums of a contract of insurance on the life of the principal.

(6) Sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance.

(7) Pay from the proceeds or otherwise, compromise, contest, and apply for refunds in connection with a tax or an assessment levied by a taxing authority with respect to a contract of insurance, the proceeds of the refunds, or liability accruing from a tax or an assessment.

(8) Agree and contract in any manner and on any terms with any person the attorney in fact selects to accomplish a purpose permitted under this section and perform, rescind, reform, release, or modify an agreement or a contract.

(9) Execute, acknowledge, seal, and deliver a consent, a demand, a request, an application, an agreement, an indemnity, an authorization, an assignment, a pledge, a notice, a check, a receipt, a waiver, or other instrument the attorney in fact considers useful to accomplish a purpose permitted under this section.

(10) Continue, procure, pay the premium or assessment on, modify, rescind, release, terminate, or otherwise deal with a contract of insurance, other than those permitted under subdivision (1) or (2), including fire, marine, burglary, compensation, liability, hurricane, casualty, or a combination of insurance, and do acts with respect to the contract or with respect to the contract's proceeds or enforcement that the attorney in fact considers necessary or desirable for the promotion or protection of the interests of the principal.

(11) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal based on or involving an insurance transaction or intervene in an action or proceeding relating to a claim.

(12) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(13) Perform any other acts in connection with procuring, supervising, managing, modifying, enforcing, and terminating contracts of insurance or for the provisions of health care services in which the principal is insured or is otherwise interested.

(b) The powers described in this section are exercisable equally with respect to a contract of insurance or for the provision of health care service in which the principal is interested, whether located in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2. Amended by P.L.238-2005, SEC.49.

IC 30-5-5-7.5

Transfer on death transfers

Sec. 7.5. (a) Language conferring general authority with respect to transfer on death or payable on death transfers means the principal

authorizes the attorney in fact to do the following:

- (1) Establish one (1) or more transfer on death transfers or payable on death transfers.
- (2) Designate, amend, remove, modify, or change any designation of beneficiary in a transfer on death transfer or payable on death transfer, including those created by the principal before or after the execution of the power of attorney.
- (3) Terminate any transfer on death transfer or payable on death transfer.
- (4) Add to or withdraw from any transfer on death transfer or payable on death transfer.
- (5) Exercise any right or authority that the principal may have in a transfer on death transfer or payable on death transfer during the principal's lifetime.

(b) The powers described in this section are equally exercisable with respect to transfer on death transfers and payable on death transfers that are established or operated in Indiana or another jurisdiction.

(c) A power of attorney that is executed before July 1, 2009, and that confers general authority with respect to all other matters under section 19 of this chapter also confers general authority with respect to transfer on death transfers and payable on death transfers as described in this section.

As added by P.L.143-2009, SEC.29.

IC 30-5-5-8

Beneficiary transactions

Sec. 8. (a) Language conferring general authority with respect to beneficiary transactions means the principal authorizes the attorney in fact to do the following:

- (1) Represent and act for the principal in all ways and in all matters affecting a trust, a probate, an estate, a guardianship, an escrow, a custodianship, or other fund out of which the principal is entitled, or claims to be entitled as a beneficiary, to some share or payment, including the following powers:
 - (A) To accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from a fund.
 - (B) To demand or obtain by action or proceeding money or other things of value to which the principal is, may become, or claims to be entitled to because of the fund, initiate, participate in, or oppose a proceeding, for the ascertainment of the meaning, validity, or effect of a deed, declaration of trust, or other transaction affecting in any way the interest of the principal, initiate, participate in, or oppose a proceeding for the removal, substitution, or surcharge of a fiduciary, conserve, invest, disburse, or use anything received for the purposes permitted under this section, and reimburse the attorney in fact for expenditures properly made by the attorney in fact in the execution of the powers conferred

upon the attorney in fact.

(C) To prepare, sign, file, and deliver all reports, compilations of information, returns, or papers with respect to an interest had or claimed on behalf of the principal in the fund, pay, compromise, or contest, and apply for and receive refunds in connection with a tax or an assessment with respect to an interest had or claimed by or on behalf of the principal in the fund or with respect to a property in which an interest is had or claimed.

(D) To agree and contract in any manner and on any terms with a person the attorney in fact selects to accomplish a purpose permitted under this section, and perform, rescind, reform, release, or modify an agreement or contract.

(E) To execute, acknowledge, verify, seal, file, and deliver a deed, a mortgage, a lease, a consent, a designation, a pleading, a demand, a notice, an election, a conveyance, a release, an assignment, a pledge, a check, a waiver, an admission of service, a notice of appearance, or other instrument the attorney in fact considers useful to accomplish a purpose permitted under this section.

(F) To submit to arbitration, settle, and propose or accept a compromise with respect to a controversy or claim that affects the administration of a fund in which the principal has or claims to have an interest and do all acts the attorney in fact considers to be desirable or necessary to reach a compromise.

(G) To hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(H) To transfer part or all of an interest the principal may have in interests in real property, stocks, bonds, bank accounts, insurance, and other assets of any kind to the trustee of a revocable trust created by the principal as grantor.

(2) Perform any other acts in connection with the administration or disposition of a trust, a probate estate, a guardianship, an escrow, a custodianship, or other fund in which the principal has, or claims to have, an interest as a beneficiary.

(b) The powers described in this section are exercisable equally with respect to the administration or disposition of a trust, a probate estate, a guardianship, an escrow, a custodianship, or other fund in which the principal is interested at the time the power of attorney is given or becomes interested in after that time, whether located in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-9
Gift transactions

Sec. 9. (a) Language conferring general authority with respect to gift transactions means the principal authorizes the attorney in fact to do the following:

(1) Make gifts to organizations, charitable or otherwise, to which the principal has made gifts, and satisfy pledges made to organizations by the principal.

(2) Make gifts on behalf of the principal to the principal's spouse, children, and other descendants or the spouse of a child or other descendant, either outright or in trust, for purposes the attorney in fact considers to be in the best interest of the principal, including the minimization of income, estate, inheritance, or gift taxes. The attorney in fact or a person that the attorney in fact has a legal obligation to support may not be the recipient of gifts in one (1) year that total more than the amount allowed as an exclusion from gifts under Section 2503 of the Internal Revenue Code.

(3) Prepare, execute, consent to on behalf of the principal, and file a return, report, declaration, or other document required by the laws of the United States, a state, a subdivision of a state, or a foreign government that the attorney in fact considers desirable or necessary with respect to a gift made under the authority of this section.

(4) Execute, acknowledge, seal, and deliver a deed, an assignment, an agreement, an authorization, a check, or other instrument the attorney in fact considers useful to accomplish a purpose permitted under this section.

(5) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal based on or involving a gift transaction, or intervene in a related action or proceeding.

(6) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(7) Perform any other acts the attorney in fact considers desirable or necessary to complete a gift on behalf of the principal.

(b) The powers described in this section are exercisable equally with respect to a gift of property in which the principal is interested at the time of the giving of the power of attorney or becomes interested in after that time, whether conducted in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2. Amended by P.L.238-2005, SEC.50.

IC 30-5-5-10

Fiduciary transactions

Sec. 10. (a) Language conferring general authority with respect to fiduciary transactions means the principal authorizes the attorney in

fact to do the following if the principal has the authority to delegate:

(1) Apply for and procure, in the name of the principal, letters of administration, letters testamentary, letters of guardianship, or any other type of judicial or administrative authority to act as a fiduciary.

(2) Represent and act for the principal in all ways and in all matters affecting a fund with respect to which the principal is a fiduciary.

(3) Initiate, participate in, and oppose a proceeding, judicial or otherwise, for the removal, substitution, or surcharge of a fiduciary, conserve, invest, or disburse anything received for the purposes of the fund for which it is received, and reimburse the attorney in fact for expenditures properly made by the attorney in fact in the execution of powers conferred on the attorney in fact.

(4) Agree and contract in any manner and on any terms with a person the attorney in fact selects to accomplish a purpose permitted under this section and perform, rescind, reform, release, or modify an agreement or contract made by or on behalf of the principal.

(5) Execute, acknowledge, verify, seal, file, and deliver a consent, a designation, a pleading, a notice, a demand, an election, a conveyance, a release, an assignment, a pledge, a check, a waiver, an admission of service, a notice of appearance, or other instrument the attorney in fact considers useful to accomplish a purpose permitted under this section.

(6) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(7) Perform any other acts with respect to a fund of which the principal is a fiduciary.

(b) The powers described in this section are exercisable equally with respect to a fund of which the principal is a fiduciary at the time of the giving of the power of attorney or becomes a fiduciary after that time, whether located in Indiana or in another jurisdiction.

(c) As used in this section, "fiduciary" means a trustee, personal representative, guardian, attorney in fact, custodian, escrow agent, or person similarly authorized to act primarily for the benefit of another person.

(d) As used in this section, "fund" means any asset, including real or personal property, in which a principal has an interest as a fiduciary.

(e) The powers granted in this section apply:

(1) to a fund existing at the time the power of attorney is executed;

(2) to a fund created after the power of attorney is executed; and

(3) whether or not the fund is located in Indiana.

As added by P.L.149-1991, SEC.2. Amended by P.L.51-2014,

SEC.27.

IC 30-5-5-11

Claims and litigation

Sec. 11. (a) Language conferring general authority with respect to claims and litigation means the principal authorizes the attorney in fact to do the following:

(1) Assert and prosecute before a court, an administrative board, a department, a commissioner, or other tribunal, a cause of action, a claim, a counterclaim, an offset, or a defense that the principal has or claims to have against an individual, a partnership, an association, a government, a person, or an instrumentality, including the power to sue for the following:

(A) The recovery of land or a thing of value.

(B) The recovery of damages sustained by the principal in any manner.

(C) The elimination or modification of tax liability.

(D) An injunction.

(E) Specific performance.

(F) Any other relief.

(2) Bring an action of interpleader or other action to determine adverse claims, intervene or interplead in an action or proceeding, and act in litigation as amicus curiae.

(3) In connection with an action, a proceeding, or a controversy at law or otherwise, apply for and, if possible, procure a libel, an attachment, a garnishment, an order of arrest, or other preliminary, provisional, or intermediate relief and resort to and use in all ways permitted by law an available procedure to satisfy a judgment, an order, or a decree.

(4) In connection with an action or a proceeding at law, or otherwise, perform an act the principal might perform, including an acceptance of tender, an offer of judgment, an admission of facts, a submission of controversy on an agreed statement of facts, a consent to examination before trial, and the general binding of the principal in the conduct of litigation or controversy as the attorney in fact considers desirable.

(5) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or litigation to which the principal is, may become, or may be designated a party.

(6) Waive the issuance and service of a summons, citation, or other process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, appeal to appellate tribunals, procure and give surety and indemnity bonds at the times and to the extent the attorney in fact considers desirable or necessary, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, a waiver, a release, a

confession of judgment, a satisfaction of judgment, a notice, an agreement, or other instrument the attorney in fact considers desirable or necessary in connection with the prosecution, settlement, or defense of a claim by or against the principal or of litigation to which the principal is, may become, or may be designated a party.

(7) Appear for, represent, and act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the principal or another person, with respect to a reorganization proceeding, a receivership, or an application for the appointment of a receiver or trustee that affects an interest of the principal in real property, a bond, a share, a commodity interest, tangible personal property, or other thing of value.

(8) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the execution of a power permitted under this section.

(9) Pay, from funds in the control of the attorney in fact or the account of the principal, a judgment against the principal or a settlement that may be made in connection with a transaction permitted under this section, receive and conserve money or other things of value paid in settlement of or as proceeds of a transaction permitted under this section, and receive, endorse, and deposit checks.

(10) Perform other acts in connection with a claim by or against the principal or litigation to which the principal is, may become, or may be designated a party.

(b) The powers described in this section are exercisable equally with respect to a claim or litigation existing at the time of the giving of the power of attorney or arising after that time, whether located in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-12

Family maintenance

Sec. 12. (a) Language conferring general authority with respect to family maintenance means the principal authorizes the attorney in fact to do the following:

(1) Perform acts necessary for maintaining the customary standard of living of the spouse, children, and other persons customarily supported by the principal, including the power to provide the following:

(A) Living quarters by purchase, lease, or other contract, or by payment of operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by the principal's family or dependents.

(B) Normal domestic help for the operation of the household.

(C) Usual vacation and travel expenses.

(D) Usual educational facilities.

(E) Funds for all the current living costs of the spouse, children, and other dependents, including shelter, clothing, food, and incidentals.

(2) Pay for necessary medical, dental, and surgical care, hospitalization and custodial care for the spouse, children, and other dependents of the principal.

(3) Continue provisions made by the principal before or after the execution of the power of attorney for the principal's spouse, children, and other persons customarily supported by the principal with respect to automobiles or other means of transportation, including the power to license, insure, and replace automobiles owned by the principal and customarily used by the spouse, children, or other persons customarily supported by the principal.

(4) Continue charge accounts that have been operated by the principal before or after the execution of the power of attorney for the convenience of the principal's spouse, children, or other persons customarily supported by the principal, open new accounts the attorney in fact considers desirable to accomplish a purpose permitted under this section and pay the items charged on those accounts by a person authorized or permitted by the principal to make charges prior to the execution of the power of attorney.

(5) Continue payments incidental to membership or affiliation of the principal in a church, a club, a society, an order, or other organization and continue contributions to those organizations.

(6) Demand, receive, or obtain by action or proceeding money or other things of value to which the principal is or may become entitled as salary, wages, commission, or other remuneration for services performed, as a dividend or distribution on a stock, as interest or principal on an indebtedness, or as a periodic distribution of profits for a partnership or business in which the principal has or claims an interest and endorse, collect, or otherwise realize upon an instrument for the payment received.

(7) Use an asset of the principal for the performance of a power permitted under this section, including the power to draw money by check or otherwise from a bank deposit of the principal, sell an interest in real property, a bond, a share, a commodity interest, tangible personal property, or other asset of the principal, borrow money and pledge as security for a loan an asset, including insurance, that belongs to the principal.

(8) Execute, acknowledge, verify, seal, file, and deliver an application, a consent, a petition, a notice, a release, a waiver, an agreement, or other instrument that the attorney in fact considers useful to accomplish a purpose permitted under this section.

(9) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by

the attorney in fact of a power described in this section and keep needed records.

(10) Perform any other acts for the welfare of the spouse, children, or other persons customarily supported by the principal or for the preservation and maintenance of other personal relationships of the principal to parents, relatives, friends, and organizations as are appropriate.

(b) The powers described in this section are exercisable equally whether the acts required for their execution relate to real or personal property owned by the principal at the time of the giving of the power of attorney or acquired after that time, whether located in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-13

Benefits from military service

Sec. 13. (a) Language conferring general authority with respect to benefits from military service means the principal authorizes the attorney in fact to do the following:

(1) Execute vouchers in the name of the principal for allowances and reimbursements payable to the United States, a state, or a subdivision of a state to the principal, including allowances and reimbursements for transportation of the principal and the principal's dependents, and for shipment of household effects, and receive, endorse, and collect the proceeds of a check payable to the order of the principal drawn on the treasurer, fiscal officers, or depository of the United States, a state, or a subdivision of a state.

(2) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, or certificate the attorney in fact considers desirable or necessary.

(3) Prepare, file, and prosecute the claim of the principal to a benefit or assistance, financial or otherwise, to which the principal is or claims to be entitled under a statute or regulation existing at the time of the execution of the power of attorney or enacted after execution of the power of attorney by the United States, a state, or a subdivision of a state, or by a foreign government if the benefit or assistance arises from or is based upon military service performed before or after the execution of the power of attorney by the principal or a person related by blood or marriage to the principal and execute a receipt or other instrument the attorney in fact considers desirable or necessary for the enforcement or collection of the claim.

(4) Receive the financial proceeds of a claim described in this section, conserve, invest, disburse, or use anything received from a claim for purposes permitted under this section, and reimburse the attorney in fact for expenditures properly made in

the execution of powers conferred upon the attorney in fact.

(5) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal based on or involving benefits from military service or intervene in a related action or proceeding.

(6) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the proper execution by the attorney in fact of a power described in this section and keep needed records.

(7) Perform any other acts the attorney in fact considers desirable or necessary to assure to the principal and to the dependents of the principal the maximum possible benefits from the military service performed before or after the execution of the power of attorney by the principal or a person related by blood or marriage to the principal.

(b) The powers described in this section are exercisable equally with respect to benefits from military service existing at the time of the giving of the power of attorney or accruing after that time, whether accruing in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-14

Records, reports, and statements

Sec. 14. (a) Language conferring general authority with respect to records, reports, and statements means the principal authorizes the attorney in fact to do the following:

(1) Keep records of cash received and disbursed for or on account of the principal, of credits and debits to the account of the principal, and of transactions affecting the assets and liabilities of the principal.

(2) Prepare, execute, and file tax and tax information returns for all periods required by the laws of the United States, a state, or a subdivision of a state, or a foreign government, prepare, execute, and file other tax related documents for all tax periods, including requests for an extension of time, offers, waivers, consents, powers of attorney, closing agreements, and petitions to a tax court regarding tax matters, and prepare, execute, and file all other instruments the attorney in fact considers desirable or necessary for the safeguarding of the principal against excessive or illegal taxation or against penalties imposed for claimed violation of a law or other governmental regulation. This subdivision is intended to be sufficiently definite to permit the attorney in fact to represent the principal respecting all taxes the principal has paid and all tax returns the principal has filed, either personally or through an agent, with the Internal Revenue Service, another agency of the United States, a state department of revenue, a political subdivision of a state, or a foreign country, or a political subdivision of a foreign country.

(3) Prepare, execute, and file a return, report, declaration, or

other document required by the laws of the United States, a state, a political subdivision of a state, or a foreign government, including a report or declaration required by the Social Security Administration, the commissioner of economic security, or other similar agency that the attorney in fact considers desirable or necessary for the safeguarding or maintenance of the principal's interest.

(4) Prepare, execute, and file a record, report, or statement the attorney in fact considers desirable or necessary for the safeguarding or maintenance of the principal's interest with respect to price, rent, wage, or rationing control, or other governmental activity.

(5) Hire, discharge, and compensate an attorney, accountant, expert witness, or other assistant when the attorney in fact considers the action to be desirable for the execution of a power permitted under this section.

(6) Execute any document under IC 3 except:

- (A) a voter registration application;
- (B) the authorization to cancel a voter registration;
- (C) a declaration of candidacy;
- (D) a candidate's consent to be placed on the ballot;
- (E) a ballot; or
- (F) an absentee ballot.

(7) Perform any other acts in connection with the preparation, execution, filing, storage, or other use of records, reports, or statements of or concerning the principal's affairs.

(b) The powers described in this section are exercisable equally with respect to records, reports, or statements of or concerning the affairs of the principal existing at the time of the giving of the power of attorney or arising after that time, whether arising in Indiana or in another jurisdiction.

As added by P.L.149-1991, SEC.2. Amended by P.L.3-1993, SEC.251; P.L.194-2013, SEC.99; P.L.219-2013, SEC.92.

IC 30-5-5-15

Estate transactions

Sec. 15. (a) Language conferring general authority with respect to estate transactions means the principal authorizes the attorney in fact to do the following:

- (1) Accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim, and recover a legacy, bequest, devise, gift, or other property interest or payment due or payable to or for the principal.
- (2) Assert an interest in and exercise power over a trust, an estate, or property subject to fiduciary control.
- (3) Establish a revocable trust solely for the benefit of the principal that terminates at the death of the principal.
- (4) Exercise all powers with respect to estates and trusts the principal could exercise. However, the attorney in fact may not make or change a will.

(b) In exercising powers of amendment or revocation, or powers to expend or withdraw property passing by trust, contract, or beneficiary designation at the principal's death, including specifically bequeathed property, joint accounts, life insurance, trusts, and retirement plans, the attorney in fact shall take the principal's estate plan into account to the extent the estate plan is known to the attorney in fact.

(c) The attorney in fact is not liable to a beneficiary of the principal's estate plan for an action performed under this section unless the attorney in fact acts in bad faith.

(d) The attorney in fact may:

(1) have access to; and

(2) copy, but not hold;

the principal's will, trusts, and other personal records to the extent necessary for the attorney in fact to act under this section.

As added by P.L.149-1991, SEC.2.

IC 30-5-5-16

Health care powers; religious tenets; funeral planning declaration

Sec. 16. (a) This section does not prohibit an individual capable of consenting to the individual's own health care or to the health care of another from consenting to health care administered in good faith under the religious tenets and practices of the individual requiring health care.

(b) Language conferring general authority with respect to health care powers means the principal authorizes the attorney in fact to do the following:

(1) Employ or contract with servants, companions, or health care providers to care for the principal.

(2) If the attorney in fact is an individual, consent to or refuse health care for the principal who is an individual in accordance with IC 16-36-4 and IC 16-36-1 by properly executing and attaching to the power of attorney a declaration or appointment, or both.

(3) Admit or release the principal from a hospital or health care facility.

(4) Have access to records, including medical records, concerning the principal's condition.

(5) Make anatomical gifts on the principal's behalf.

(6) Request an autopsy.

(7) Make plans for the disposition of the principal's body, including executing a funeral planning declaration on behalf of the principal in accordance with IC 29-2-19.

As added by P.L.149-1991, SEC.2. Amended by P.L.2-1993, SEC.154; P.L.143-2009, SEC.30.

IC 30-5-5-17

Consent to or refusal of health care

Sec. 17. (a) If the attorney in fact has the authority to consent to or refuse health care under section 16(2) of this chapter, the attorney

in fact may be empowered to ask in the name of the principal for health care to be withdrawn or withheld when it is not beneficial or when any benefit is outweighed by the demands of the treatment and death may result. To empower the attorney in fact to act under this section, the following language must be included in an appointment under IC 16-36-1 in substantially the same form set forth below:

I authorize my health care representative to make decisions in my best interest concerning withdrawal or withholding of health care. If at any time based on my previously expressed preferences and the diagnosis and prognosis my health care representative is satisfied that certain health care is not or would not be beneficial or that such health care is or would be excessively burdensome, then my health care representative may express my will that such health care be withheld or withdrawn and may consent on my behalf that any or all health care be discontinued or not instituted, even if death may result. My health care representative must try to discuss this decision with me. However, if I am unable to communicate, my health care representative may make such a decision for me, after consultation with my physician or physicians and other relevant health care givers. To the extent appropriate, my health care representative may also discuss this decision with my family and others to the extent they are available.

(b) Nothing in this section may be construed to authorize euthanasia.

As added by P.L.149-1991, SEC.2. Amended by P.L.2-1993, SEC.155.

IC 30-5-5-18

Delegation of authority

Sec. 18. Language conferring general authority with respect to delegating authority means the principal authorizes the attorney in fact to delegate in writing to one (1) or more persons any or all powers given to the attorney in fact by the power of attorney. An action taken by a person holding delegated authority under this section binds the principal and persons who are obligated under IC 30-5-8 to obey instructions issued by the attorney in fact who delegated the authority, even if the attorney in fact who delegated the authority fails to serve or ceases to serve as provided under IC 30-5-4-4 unless:

- (1) the principal revokes the delegation of authority;
- (2) the delegation of authority by the attorney in fact is revoked by another attorney in fact who:
 - (A) is named in the power of attorney; and
 - (B) currently has authority and priority to act for the principal;
- (3) the power of attorney expires or is otherwise invalid or unenforceable; or
- (4) the power of attorney or the document in which the attorney delegates authority specifically provides that the delegation of

authority is terminated when the attorney in fact who delegated the authority fails to serve or ceases to serve as provided under IC 30-5-4-4.

As added by P.L.149-1991, SEC.2. Amended by P.L.51-2014, SEC.28.

IC 30-5-5-19

All other matters

Sec. 19. Language conferring general authority with respect to all other matters means the principal authorizes the attorney in fact to act as an alter ego of the principal with respect to all possible matters and affairs affecting property owned by the principal that the principal can perform through an attorney in fact.

As added by P.L.149-1991, SEC.2.

IC 30-5-6

Chapter 6. Duties of the Attorney in Fact

IC 30-5-6-1

Exercise of powers not required

Sec. 1. The attorney in fact is not required to exercise the powers granted under the power of attorney or to assume control of or responsibility for any of the principal's property, care, or affairs, regardless of the principal's physical or mental condition.

As added by P.L.149-1991, SEC.2.

IC 30-5-6-2

Due care to act for benefit of principal

Sec. 2. Except as otherwise stated in the power of attorney, the attorney in fact shall use due care to act for the benefit of the principal under the terms of the power of attorney.

As added by P.L.149-1991, SEC.2.

IC 30-5-6-3

Fiduciary capacity; exercise of all powers

Sec. 3. An attorney in fact shall exercise all powers granted under the power of attorney in a fiduciary capacity.

As added by P.L.149-1991, SEC.2.

IC 30-5-6-4

Records of transactions; accounting

Sec. 4. (a) The attorney in fact shall keep complete records of all transactions entered into by the attorney in fact on behalf of the principal:

- (1) for six (6) years after the date of the transaction; or
- (2) until the records are delivered to the successor attorney in fact;

whichever occurs first.

(b) Except as otherwise:

- (1) stated in the power of attorney; or
- (2) required by subsection (c);

the attorney in fact is not required to render an accounting.

(c) Except as provided in subsection (f), the attorney in fact shall render a written accounting if an accounting is ordered by a court, requested by the principal, a guardian appointed for the principal, a child of the principal, or, upon the death of the principal, the personal representative of the principal's estate, or an heir or legatee of the principal.

(d) Except as provided in subsection (f), an attorney in fact shall deliver an accounting requested under subsection (c) to:

- (1) the principal;
- (2) a guardian appointed for the principal;
- (3) the personal representative of the principal's estate;
- (4) an heir of the principal after the death of the principal;
- (5) a legatee of the principal after the death of the principal; or

(6) a child of the principal.

(e) Except as provided in subsection (f)(2), an attorney in fact shall deliver an accounting ordered or requested under subsection (c) to the court or the person requesting the accounting not later than sixty (60) days after the date the attorney in fact receives the court order or written request for an accounting.

(f) In the case of a principal who has died, the following apply:

(1) The court may order an accounting under subsection (c) at any time.

(2) In the absence of a court ordered accounting, an attorney in fact is not required to deliver an accounting to a person described in subsection (d)(2) through (d)(6) unless the person requests the accounting not later than nine (9) months after the date of the principal's death.

(3) The delivery deadline set forth in subsection (e) applies to a written request for an accounting that is timely submitted under subdivision (2).

(g) Not more than one (1) accounting is required under this section in each twelve (12) month period unless the court, in its discretion, orders additional accountings.

(h) If an attorney in fact fails to deliver an accounting as required under this section, the person requesting the accounting may initiate an action in mandamus to compel the attorney in fact to render the accounting. The court may award the attorney's fees and court costs incurred under this subsection to the person requesting the accounting if the court finds that the attorney in fact failed to render an accounting as required under this section without just cause.

As added by P.L.149-1991, SEC.2. Amended by P.L.77-1998, SEC.1; P.L.252-2001, SEC.35; P.L.165-2002, SEC.8; P.L.42-2012, SEC.1; P.L.51-2014, SEC.29.

IC 30-5-6-4.5

Attorney in fact's authority to hire persons; cost incurred to defend actions of attorney in fact

Sec. 4.5. (a) An attorney in fact has the authority to employ persons, including:

- (1) attorneys;
- (2) accountants;
- (3) investment advisers; and
- (4) agents;

to assist the attorney in fact in the performance of the attorney in fact's fiduciary duties. Any reasonable costs incurred with regard to services rendered for the benefit of the principal shall be paid from the principal's asset holdings.

(b) Except as provided in subsection (c), if an accounting is requested as set forth in section 4 of this chapter, costs incurred by the attorney in fact:

- (1) to defend the actions of the attorney in fact on behalf of the principal with regard to the preparation of the accounting; and
- (2) to defend any other actions of the attorney in fact on behalf

of the principal;
shall be paid from the principal's asset holdings.

(c) If a court determines that an attorney in fact:

(1) breached the attorney in fact's fiduciary duty or obligation to the principal; or

(2) was engaged in self-dealing activities with the principal's asset holdings;

the court may determine that the attorney in fact is responsible for the payment of the costs incurred under subsection (b).

As added by P.L.165-2002, SEC.9.

IC 30-5-6-5

Notice to health care providers of power of attorney

Sec. 5. The attorney in fact shall ascertain whether the principal has notified the principal's health care providers that a power of attorney has been executed. If the principal has not notified the principal's health care providers of the existence of a power of attorney, the attorney in fact shall notify the health care providers of the existence of the power of attorney.

As added by P.L.149-1991, SEC.2.

IC 30-5-7

Chapter 7. Duties of Health Care Providers

IC 30-5-7-1

Application of chapter

Sec. 1. This chapter applies to a health care provider with whom an attorney in fact deals under a power of attorney.

As added by P.L.149-1991, SEC.2.

IC 30-5-7-2

Medical records

Sec. 2. (a) A health care provider furnished with a copy of a declaration under IC 16-36-4 or an appointment under IC 16-36-1 shall make the documents a part of the principal's medical records.

(b) If a change in or termination of a power of attorney becomes known to the health care provider, the change or termination shall be noted in the principal's medical records.

As added by P.L.149-1991, SEC.2. Amended by P.L.2-1993, SEC.156.

IC 30-5-7-3

Patient lacking capacity to give informed consent; consultation with attorney in fact

Sec. 3. Whenever a health care provider believes a patient may lack the capacity to give informed consent to health care the provider considers necessary, the provider shall consult with the attorney in fact who has power to act for the patient under IC 16-36-4, IC 16-36-1, or this article.

As added by P.L.149-1991, SEC.2. Amended by P.L.2-1993, SEC.157.

IC 30-5-7-4

Compliance with decision of attorney in fact; comfort care; unwillingness to comply

Sec. 4. (a) A health care provider shall comply with a health care decision made by an attorney in fact under a power of attorney if the decision is communicated to the provider. A health care provider may continue to administer treatment for the principal's comfort care or the alleviation of pain in addition to treatment made under the decision of the attorney in fact.

(b) If a health care provider is unwilling to comply with a health care decision made by the attorney in fact, the provider shall do the following:

(1) Notify the attorney in fact of the provider's unwillingness to comply with the decision.

(2) Promptly take all steps necessary to transfer the responsibility for the principal's health care to another health care provider designated by the attorney in fact.

As added by P.L.149-1991, SEC.2.

IC 30-5-7-5

Access to medical records by attorney in fact; release of information

Sec. 5. (a) A health care provider shall give an attorney in fact authorized to receive information under a power of attorney the same access as the principal has to examine and copy the principal's medical records, including records relating to mental health and other medical conditions held by a physician, psychiatrist, psychologist, therapist, hospital, nursing home, or other provider. The access to records shall be given at the principal's expense and may be subject to reasonable rules of the provider to prevent disruption of the principal's health care.

(b) An attorney in fact may release information obtained under subsection (a) to any person authorized to receive the information under IC 16-39.

As added by P.L.149-1991, SEC.2. Amended by P.L.2-1993, SEC.158.

IC 30-5-7-6

Anatomical gifts, autopsies, or remains disposition

Sec. 6. If a power of attorney authorizes the attorney in fact to:

- (1) make an anatomical gift on behalf of the principal;
- (2) authorize an autopsy of the principal's remains; or
- (3) direct the disposition of the principal's remains;

the anatomical gift, autopsy, or remains disposition shall be considered the act of the principal or of the person who has priority under law to make the necessary decisions. Each person to whom the attorney in fact communicates a direction shall comply with the direction.

As added by P.L.149-1991, SEC.2.

IC 30-5-8

Chapter 8. Reliance Upon a Power of Attorney

IC 30-5-8-1

Effect of acts performed under power of attorney

Sec. 1. All acts performed by an attorney in fact under a power of attorney have the same effect, provide the same benefit, and bind the principal and the principal's successors in interest in the same manner as if the principal were competent, not incapacitated, and had acted on the principal's own behalf.

As added by P.L.149-1991, SEC.2.

IC 30-5-8-2

Presumption of validity; actual knowledge of invalidity

Sec. 2. A written power of attorney that purports to be signed by the principal named in the power of attorney is presumed valid. A party may rely on the presumption of validity unless the party has actual knowledge that the power was not validly executed.

As added by P.L.149-1991, SEC.2.

IC 30-5-8-3

Signature of attorney in fact as attestation; conclusive proof

Sec. 3. A signature of the attorney in fact that identifies the principal and the attorney in fact, or a similar written disclosure, is an attestation and is conclusive proof to a party relying on the attestation, except a party with actual knowledge that the attestation is false, that:

- (1) the principal was competent at the time the power of attorney was executed;
- (2) the attorney in fact does not have actual knowledge of the termination of the power of attorney;
- (3) in the case of a successor attorney in fact, the original attorney in fact has failed or ceased to serve, and the successor attorney in fact is empowered to act on behalf of the principal; and
- (4) if the effective date of the power of attorney begins upon the occurrence of a certain event, the event has occurred and the attorney in fact is able to act under the power of attorney.

As added by P.L.149-1991, SEC.2.

IC 30-5-8-4

Investigation not required

Sec. 4. A person relying on the power of attorney or the attestation of the attorney in fact is not required to investigate any of the following:

- (1) Whether the power of attorney is valid.
- (2) Whether the attorney in fact is authorized to act.
- (3) What the attorney in fact does with property delivered to the attorney in fact.

As added by P.L.149-1991, SEC.2.

IC 30-5-8-5

Copy of power of attorney; certification

Sec. 5. A copy of the power of attorney has the same force and effect as the original power of attorney if the attorney in fact or the person granting the power of attorney certifies that the copy is a true and correct copy.

As added by P.L.149-1991, SEC.2. Amended by P.L.42-2012, SEC.2.

IC 30-5-8-6

Concurrent appointments; independent execution

Sec. 6. Appointments made under this article, IC 16-36-4, and IC 16-36-1 can be made concurrently and will be given full effect under the law. However, the appointments may be executed independently and remain valid in their own right.

As added by P.L.149-1991, SEC.2. Amended by P.L.2-1993, SEC.159.

IC 30-5-8-7

Reliance on power of attorney; immunity

Sec. 7. (a) A person who acts in good faith reliance on a power of attorney is immune from liability to the same extent as if the person had dealt directly with the named principal and the named principal had been competent and not incapacitated.

(b) The named attorney in fact may furnish an affidavit to a person that states, to the best knowledge of the attorney in fact:

- (1) that the instrument relied on by the person is a true copy of the power of attorney;
- (2) that the named principal is alive;
- (3) that the power of attorney was validly granted and executed;
- (4) that the relevant powers granted to the attorney in fact have not been altered or terminated;
- (5) in the case of a successor attorney in fact, that the original attorney in fact has failed or ceased to serve and the successor attorney in fact is empowered to act on behalf of the principal; and
- (6) if the effective date of the power of attorney begins upon the occurrence of a certain event, that the event has occurred and the attorney in fact is authorized to act under the power of attorney.

(c) A person who:

- (1) relies on an affidavit described in subsection (b); and
- (2) acts in good faith;

is immune from liability that might otherwise arise from the person's action in reliance on the power of attorney that is the subject of the affidavit.

As added by P.L.238-2005, SEC.51.

IC 30-5-9

Chapter 9. Liabilities

IC 30-5-9-1

Negligent exercise of power; bad faith

Sec. 1. (a) An attorney in fact is liable for the negligent exercise of the power of attorney, except for the exercise of the attorney in fact's power under IC 30-5-5-16 or IC 30-5-5-17.

(b) An attorney in fact is liable for the exercise of authority or failure to exercise authority under IC 30-5-5-16 or IC 30-5-5-17 only if the attorney in fact acted in bad faith.

As added by P.L.149-1991, SEC.2. Amended by P.L.1-2006, SEC.495.

IC 30-5-9-2

Attorney in fact benefiting from act; individual or conflicting interests

Sec. 2. (a) An attorney in fact who acts with due care for the benefit of the principal is not liable or limited only because the attorney in fact:

- (1) also benefits from the act;
- (2) has individual or conflicting interests in relation to the property, care, or affairs of the principal; or
- (3) acts in a different manner with respect to the principal's and the attorney in fact's individual interests.

(b) A gift, bequest, transfer, or transaction is not presumed to be valid or invalid if the gift, bequest, transfer, or transaction:

- (1) is:
 - (A) made by the principal taking action; and
 - (B) not made by an attorney in fact acting for the principal under a power of attorney; and
- (2) benefits the principal's attorney in fact.

As added by P.L.149-1991, SEC.2. Amended by P.L.238-2005, SEC.52.

IC 30-5-9-3

Amended or terminated power of attorney

Sec. 3. The attorney in fact is not liable for actions taken under an amended or terminated power of attorney if the attorney in fact does not have actual knowledge of the amendment or termination.

As added by P.L.149-1991, SEC.2.

IC 30-5-9-4

Errors of judgment; actions or defaults of other persons

Sec. 4. The attorney in fact is not liable for a loss due to an error of judgment or for the act or default of another person.

As added by P.L.149-1991, SEC.2.

IC 30-5-9-5

Exoneration clauses

Sec. 5. The principal may provide in the power of attorney that the attorney in fact is liable only if the attorney in fact acts in bad faith. This exoneration is binding on the principal and the principal's successors in interest.

As added by P.L.149-1991, SEC.2.

IC 30-5-9-6

Successor attorney in fact not liable for acts of predecessor

Sec. 6. A successor attorney in fact who is named in a power of attorney to succeed an attorney in fact who fails or ceases to serve is not liable for the actions taken by a previous attorney in fact.

As added by P.L.149-1991, SEC.2.

IC 30-5-9-7

Co-attorneys in fact

Sec. 7. If two (2) or more attorneys in fact are authorized to act on behalf of a principal, an attorney in fact who did not join in or consent to the action of one (1) or more of the co-attorneys in fact is not liable for the action. Failure to object to an action is not consent to the action.

As added by P.L.149-1991, SEC.2.

IC 30-5-9-8

Good faith purchasers; persons accepting authority of attorney in fact

Sec. 8. (a) A good faith purchaser from a person who has obtained an interest in property from an attorney in fact is not liable to the principal, the heirs or assigns of the principal, or the personal representative of the estate of the principal.

(b) A person accepting the authority of an attorney in fact to exercise a power granted under a power of attorney is not liable to the principal, the heirs and assigns of the principal, or the personal representative of the principal if:

- (1) the person has no actual notice of the revocation of the power of attorney before the transaction;
- (2) the person has no actual knowledge of the death of the principal; or
- (3) the person has no actual knowledge that the duration of the power of attorney specified in the power of attorney, if a duration is specified, has not expired.

As added by P.L.149-1991, SEC.2.

IC 30-5-9-9

Persons refusing to accept authority of attorney in fact

Sec. 9. (a) Except as provided in subsection (b), a person who, not more than three (3) business days after receiving a power of attorney, refuses to accept the authority of an attorney in fact to exercise a power granted under a power of attorney is liable to the principal and to the principal's heirs, assigns, and the personal representative of the estate of the principal in the same manner as the person would be

liable had the person refused to accept the authority of the principal to act on the principal's own behalf. In any action brought in court to either force the acceptance of the authority of the attorney in fact or pursue damages as a result of the person's refusal to accept the authority of an attorney in fact, the person found liable for refusing to accept the authority of an attorney in fact shall pay the following:

- (1) Three (3) times the amount of the actual damages.
- (2) The attorney's fees of the person bringing the action to court.
- (3) Prejudgment interest on the actual damages from the date the person refused to accept the authority of the attorney in fact.

(b) A person refusing to accept the authority of an attorney in fact to exercise a power granted under a power of attorney is not liable under subsection (a) if:

- (1) the person has actual notice of the revocation of the power of attorney before the exercise of the power;
- (2) the duration of the power of attorney specified in the power of attorney has expired;
- (3) the person has actual knowledge of the death of the principal;
- (4) the person reasonably believes that the power of attorney is not valid under Indiana law and provides the attorney in fact with a written statement not more than ten (10) business days after the refusal, describing the reason that the power of attorney is not valid under Indiana law; or
- (5) the person reasonably believes that the power of attorney does not grant the attorney in fact with authority to perform the transaction requested and provides the attorney in fact with a written statement not more than ten (10) business days after the refusal, describing the reason the person believes the power of attorney is deficient under Indiana law.

(c) This section does not negate the liability a person would have to the principal or the attorney in fact under another form of power of attorney, under the common law, or otherwise.

As added by P.L.149-1991, SEC.2. Amended by P.L.252-2001, SEC.36; P.L.165-2002, SEC.10.

IC 30-5-9-10

Health care providers; persons acting in good faith reliance on direction or decision of attorney in fact

Sec. 10. A health care provider or other person who acts in good faith reliance on a direction or decision of an attorney in fact that is not clearly contrary to the terms of the power of attorney is protected and released from liability to the same extent as the provider or other person would be protected or released if the provider or other person had dealt directly with the principal as a fully competent person. In addition, the following rules shall be applied to protect and validate the acts of the attorney in fact and provider or other person:

- (1) A health care provider or other person is not subject to civil or criminal liability or discipline for unprofessional conduct for complying with a direction or decision by the attorney in fact,

even if death or injury to the principal results.

(2) If the actions of a health care provider who fails to comply with a direction or decision of the attorney in fact are substantially in accord with reasonable medical standards at the time of reference and the provider promptly transfers the principal to another health care provider, the provider is not subject to civil or criminal liability or discipline for failure to comply with the attorney in fact.

(3) If the principal's death results from withholding or withdrawing health care in accordance with the terms of a power of attorney, the death is not a suicide or homicide for any purpose under a statute or rule of law and does not impair or invalidate an insurance, annuity, or other type of contract that is conditioned on the life or death of the principal, a term of the contract notwithstanding.

As added by P.L.149-1991, SEC.2.

IC 30-5-9-11

Liability of an attorney in fact

Sec. 11. An attorney in fact that violates this article is liable to the principal or the principal's successors in interest for damages and an amount required to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid as a result of the violation.

As added by P.L.143-2009, SEC.31.

IC 30-5-10

Chapter 10. Termination of the Power of Attorney

IC 30-5-10-0.5

Termination of power to exercise authority

Sec. 0.5. Unless the power of attorney provides otherwise, an attorney in fact may exercise authority until the authority terminates under this chapter, even if time has passed since the execution of the power of attorney.

As added by P.L.143-2009, SEC.32.

IC 30-5-10-1

Revocation of power; record

Sec. 1. (a) Except as otherwise stated in the power of attorney, an executed power of attorney may be revoked only by a written instrument of revocation that:

- (1) identifies the power of attorney revoked; and
- (2) is signed by the principal.

(b) A revocation under subsection (a) is not effective unless the attorney in fact or other person has actual knowledge of the revocation.

(c) If an executed power of attorney was recorded under IC 30-5-3-3, the revocation of the power of attorney must:

- (1) be recorded; and
- (2) reference the book and page or instrument number where the instrument creating the power of attorney is recorded.

As added by P.L.149-1991, SEC.2.

IC 30-5-10-2

Specific termination date and time

Sec. 2. If a power of attorney specifies a termination date and time, the power of attorney terminates at that date and time.

As added by P.L.149-1991, SEC.2.

IC 30-5-10-3

Incapacity of principal

Sec. 3. (a) Except as otherwise stated in the power of attorney, a power of attorney is not terminated by the incapacity of the principal.

(b) The incapacity of a principal who has previously executed a power of attorney that terminates on the principal's incapacity does not revoke or terminate the power of attorney as to the attorney in fact or other person who, without actual knowledge of the incapacity of the principal, acts in good faith under the power. Unless otherwise invalid or unenforceable, an action taken under this subsection binds the principal and the principal's successors in interest.

As added by P.L.149-1991, SEC.2.

IC 30-5-10-4

Death of principal; missing or missing in action; attorney in fact retains authority over anatomical gifts, autopsy, and disposition of

body

Sec. 4. (a) Except as provided in subsections (b) and (c), a power of attorney terminates on the death of the principal.

(b) The death of a principal who has executed a written power of attorney does not revoke or terminate the power of attorney as to the attorney in fact or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Unless otherwise invalid or unenforceable, an action taken under this subsection binds the principal and the principal's successors in interest.

(c) The death of a principal who executes a written power of attorney does not revoke or terminate the power of attorney as to authority granted under IC 30-5-5-16(b)(5) through IC 30-5-5-16(b)(7). An action taken under this subsection binds the principal and the principal's successors in interest, unless the action is inconsistent with a written directive executed by the principal before the principal's death.

(d) Notice from the United States Department of Defense of the death of a principal who has given a power of attorney is official notice of the death of the principal. A report or listing of the principal's being missing or missing in action does not do any of the following:

(1) Constitute and may not be interpreted as actual notice of the death of the principal.

(2) Terminate the power of attorney.

As added by P.L.149-1991, SEC.2. Amended by P.L.238-2005, SEC.53.