



March 31, 2015

ENGROSSED SENATE BILL No. 355

DIGEST OF SB 355 (Updated March 30, 2015 1:02 pm - DI 123)

Citations Affected: IC 9-17; IC 9-29; IC 9-31; IC 16-36; IC 29-1; IC 29-3; IC 30-4; IC 30-5; IC 32-17; IC 34-30.

Synopsis: Various probate and trust matters. Provides that a trust may incorporate by reference a document that exists at the time the trust is executed. Specifies that funeral expenses and expenses of a tombstone are expenses of administration. Expands the definition of "person" in certain cases under the probate code to include governmental entities and other legal entities. Provides that a nonprobate transfer to a testamentary trust: (1) is valid upon the will being admitted to probate; and (2) is not subject to claims against the probate estate. Allows a governmental entity or business entity (in addition to an individual) to be a transfer on death beneficiary of an automobile or a watercraft. Allows a governmental entity or business entity (in addition to an individual) to be appointed a health care representative. Provides that a power of attorney may delegate the authority of a parent or guardian with respect to the health care of a minor or protected person. Provides that an attorney in fact is entitled to judicial review and settlement of an account. Provides that absent fraud, misrepresentation, inadequate disclosure, or failure to provide proper notice, an attorney in fact is discharged from all liability as to the transactions in the accounting if proper notice is provided of the court's approval of the accounting.

Effective: July 1, 2015.

Steele, Zakas

(HOUSE SPONSOR — KOCH)

January 8, 2015, read first time and referred to Committee on Civil Law.
February 17, 2015, amended, reported favorably — Do Pass.
February 19, 2015, read second time, ordered engrossed. Engrossed.
February 23, 2015, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 2, 2015, read first time and referred to Committee on Judiciary.
March 30, 2015, amended, reported — Do Pass.

ES 355—LS 6324/DI 87



March 31, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 355

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

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

- 1 SECTION 1. IC 9-17-2-2, AS AMENDED BY P.L.125-2012,
2 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 2. (a) A person applying for a certificate of title
4 for a vehicle must submit an application on a form furnished by the
5 bureau and provide the following information:
6 (1) A full description of the vehicle, including the make, model,
7 and year of manufacture of the vehicle.
8 (2) A statement of any lien or encumbrance on the vehicle.
9 (3) The vehicle identification number or special identification
10 number of the vehicle.
11 (4) The former title number, if applicable.
12 (5) The purchase or acquisition date.
13 (6) The name, residence address and, if different from the
14 residence address, mailing address, and Social Security number
15 or federal identification number of the person.
16 (7) Other information that the bureau requires.

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1 (b) This subsection applies only to ~~an individual~~ **a person** who
 2 receives an interest in a vehicle under IC 9-17-3-9. To obtain a
 3 certificate of title for the vehicle, the ~~individual~~ **person** must do the
 4 following:

5 (1) Surrender the certificate of title designating the ~~individual~~
 6 **person** as a transfer on death beneficiary.

7 (2) Submit proof of the transferor's death.

8 (3) Submit an application for a certificate of title on a form
 9 furnished by the bureau that meets the requirements of subsection

10 (a).

11 SECTION 2. IC 9-17-3-9, AS AMENDED BY P.L.36-2011,
 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2015]: Sec. 9. (a) The owner or owners of a vehicle may
 14 create an interest in the vehicle that is transferrable on the death of the
 15 owner or owners by obtaining a certificate of title conveying the
 16 interest in the vehicle to one (1) or more ~~named individuals~~ **persons** as
 17 transfer on death beneficiaries.

18 (b) Subject to subsection (e), an interest in a vehicle transferred
 19 under this section vests upon the death of the owner or owners.

20 (c) A certificate of title that is:

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

23 (2) signed by the owner or owners;

24 is a good and sufficient conveyance on the death of the owner or
 25 owners to the transferee or transferees.

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

28 (1) supported by consideration; or

29 (2) delivered to the named transfer on death beneficiary or
 30 beneficiaries;

31 to be effective.

32 (e) Upon the death of the owner or owners conveying an interest in
 33 a vehicle in a certificate of title obtained under this section, the interest
 34 in the vehicle is transferred to each beneficiary who is described by
 35 either of the following:

36 (1) The beneficiary:

37 (A) is named in the certificate; and

38 (B) survives the transferor.

39 (2) The beneficiary:

40 (A) survives the transferor; and

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



1 (i) is named in the certificate; and

2 (ii) did not survive the transferor.

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

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

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

11 SECTION 3. IC 9-29-4-4, AS AMENDED BY P.L.216-2014,
12 SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2015]: Sec. 4. (a) For purposes of this section, and except as
14 provided in subsection (e), a title is considered delinquent when a
15 purchaser or transferee of a vehicle fails to apply for an original
16 certificate of title or a transfer of title, by assignment, for the vehicle
17 within thirty-one (31) days after the vehicle is purchased or otherwise
18 acquired.

19 (b) The fee for a delinquent title is twenty-one dollars and fifty cents
20 (\$21.50). The fee shall be distributed as follows:

21 (1) Twenty-five cents (\$0.25) to the crossroads 2000 fund.

22 (2) Fifty cents (\$0.50) to the state motor vehicle technology fund.

23 (3) Three dollars (\$3) to the highway, road and street fund.

24 (4) Five dollars (\$5) to the motor vehicle highway account.

25 (5) For an application received before July 1, 2019, as follows:

26 (A) One dollar and fifty cents (\$1.50) to the integrated public
27 safety communications fund.

28 (B) Eleven dollars and twenty-five cents (\$11.25) to the
29 commission fund.

30 (6) For an application received after June 30, 2019, twelve dollars
31 and seventy-five cents (\$12.75) to the commission fund.

32 This fee is in addition to all other fees imposed for the issuance of a
33 certificate of title.

34 (c) A dealer who titles a vehicle in the dealership's name for
35 purposes of putting the vehicle in rental, leasing, or demonstrating
36 service is not required to pay a delinquent title fee under this section.

37 (d) IC 9-17-2-1.5 applies to the purchase or acquisition of an
38 off-road vehicle that is less than five (5) model years old.

39 (e) ~~An individual~~ **A person** who acquires a vehicle by a conveyance
40 subject to IC 9-17-3-9 is not required to pay a delinquent title fee under
41 this section unless the ~~individual~~ **person** fails to apply for a certificate
42 of title within sixty (60) days after the vehicle is acquired.



1 SECTION 4. IC 9-31-2-30, AS AMENDED BY P.L.36-2011,
 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2015]: Sec. 30. (a) The owner or owners of a watercraft may
 4 create an interest in the watercraft that is transferrable on the death of
 5 the owner or owners by obtaining a certificate of title conveying the
 6 interest in the watercraft to one (1) or more ~~named individuals~~ **persons**
 7 as transfer on death beneficiaries.

8 (b) Subject to subsection (e), an interest in a watercraft transferred
 9 under this section vests upon the death of the owner or owners.

10 (c) A certificate of title that is:

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

13 (2) signed by the owner or owners;

14 is a good and sufficient conveyance on the death of the owner or
 15 owners to the transferee or transferees.

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

18 (1) supported by consideration; or

19 (2) delivered to the named transfer on death beneficiary or
 20 beneficiaries;

21 to be effective.

22 (e) Upon the death of the owner or owners conveying an interest in
 23 a watercraft in a certificate of title obtained under this section, the
 24 interest in the watercraft is transferred to each beneficiary who is
 25 described by either of the following:

26 (1) The beneficiary:

27 (A) is named in the certificate; and

28 (B) survives the transferor.

29 (2) The beneficiary:

30 (A) survives the transferor; and

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

33 (i) is named in the certificate; and

34 (ii) did not survive the transferor.

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

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

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



1 SECTION 5. IC 16-36-1-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. As used in this
 3 chapter, "representative" means:

- 4 (1) an individual **at least eighteen (18) years of age;**
 5 (2) **a corporation;**
 6 (3) **a trust;**
 7 (4) **a limited liability company;**
 8 (5) **a partnership;**
 9 (6) **a business trust;**
 10 (7) **an estate;**
 11 (8) **an association;**
 12 (9) **a joint venture;**
 13 (10) **a government or political subdivision;**
 14 (11) **an agency;**
 15 (12) **an instrumentality; or**
 16 (13) **any other legal or commercial entity;**

17 appointed to consent to health care of another under this chapter.

18 SECTION 6. IC 16-36-1-5 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) If an individual
 20 incapable of consenting under section 4 of this chapter has not
 21 appointed a health care representative under section 7 of this chapter
 22 or the health care representative appointed under section 7 of this
 23 chapter is not reasonably available or declines to act, consent to health
 24 care may be given:

- 25 (1) by a judicially appointed guardian of the person or a
 26 representative appointed under section 8 of this chapter; or
 27 (2) by a spouse, a parent, an adult child, or an adult sibling, unless
 28 disqualified under section 9 of this chapter, if:
 29 (A) there is no guardian or other representative described in
 30 subdivision (1);
 31 (B) the guardian or other representative is not reasonably
 32 available or declines to act; or
 33 (C) the existence of the guardian or other representative is
 34 unknown to the health care provider; or
 35 (3) by the individual's religious superior, if the individual is a
 36 member of a religious order and:
 37 (A) there is no guardian or other representative described in
 38 subdivision (1);
 39 (B) the guardian or other representative is not reasonably
 40 available or declines to act; or
 41 (C) the existence of the guardian or other representative is
 42 unknown to the health care provider.



1 (b) Consent to health care for a minor not authorized to consent
2 under section 3 of this chapter may be given by any of the following:

3 (1) A judicially appointed guardian of the person or a
4 representative appointed under section 8 of this chapter.

5 (2) A parent or an individual in loco parentis if:

6 (A) there is no guardian or other representative described in
7 subdivision (1);

8 (B) the guardian or other representative is not reasonably
9 available or declines to act; or

10 (C) the existence of the guardian or other representative is
11 unknown to the health care provider.

12 (3) An adult sibling of the minor if:

13 (A) there is no guardian or other representative described in
14 subdivision (1);

15 (B) a parent or an individual in loco parentis is not reasonably
16 available or declines to act; or

17 (C) the existence of the parent or individual in loco parentis is
18 unknown to the health care provider.

19 (c) ~~An individual~~ **A representative** delegated authority to consent
20 under section 6 of this chapter has the same authority and responsibility
21 as the individual delegating the authority.

22 (d) An individual authorized to consent for another under this
23 section shall act in good faith and in the best interest of the individual
24 incapable of consenting.

25 SECTION 7. IC 16-36-1-6 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) ~~An individual~~ **A**
27 **representative** authorized to consent to health care for another under
28 section 5(a)(2), 5(b)(2), or 5(b)(3) of this chapter who for a time will
29 not be reasonably available to exercise the authority may delegate the
30 authority to consent during that time to another ~~individual~~
31 **representative** not disqualified under section 9 of this chapter. The
32 delegation:

33 (1) must be in writing;

34 (2) must be signed by the delegate;

35 (3) must be witnessed by an adult; and

36 (4) may specify conditions on the authority delegated.

37 (b) Unless the writing expressly provides otherwise, the delegate
38 may not delegate the authority to another ~~individual~~ **representative**.

39 (c) The delegate may revoke the delegation at any time by notifying
40 orally or in writing the delegate or the health care provider.

41 SECTION 8. IC 16-36-1-7 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) An individual



1 who may consent to health care under section 3 of this chapter may
 2 appoint another individual as a representative to act for the appointor
 3 in matters affecting the appointor's health care.

4 ~~(b)~~ **(b)** A representative appointed under this section must be an
 5 individual who may consent to health care under section 3 of this
 6 chapter.

7 ~~(c)~~ **(b)** An appointment and any amendment must meet the
 8 following conditions:

9 (1) Be in writing.

10 (2) Be signed by the appointor or by a designee in the appointor's
 11 presence.

12 (3) Be witnessed by an adult other than the representative.

13 ~~(d)~~ **(c)** The appointor may specify in the appointment appropriate
 14 terms and conditions, including an authorization to the representative
 15 to delegate the authority to consent to another.

16 ~~(e)~~ **(d)** The authority granted becomes effective according to the
 17 terms of the appointment.

18 ~~(f)~~ **(e)** The appointment does not commence until the appointor
 19 becomes incapable of consenting. The authority granted in the
 20 appointment is not effective if the appointor regains the capacity to
 21 consent.

22 ~~(g)~~ **(f)** Unless the appointment provides otherwise, a representative
 23 appointed under this section who is reasonably available and willing to
 24 act has priority to act in all matters of health care for the appointor,
 25 except when the appointor is capable of consenting.

26 ~~(h)~~ **(g)** In making all decisions regarding the appointor's health care,
 27 a representative appointed under this section shall act as follows:

28 (1) In the best interest of the appointor consistent with the
 29 purpose expressed in the appointment.

30 (2) In good faith.

31 ~~(i)~~ **(h)** A health care representative who resigns or is unwilling to
 32 comply with the written appointment may not exercise further power
 33 under the appointment and shall so inform the following:

34 (1) The appointor.

35 (2) The appointor's legal representative if one is known.

36 (3) The health care provider if the representative knows there is
 37 one.

38 ~~(j)~~ **(i)** An individual who is capable of consenting to health care may
 39 revoke:

40 (1) the appointment at any time by notifying the representative
 41 orally or in writing; or

42 (2) the authority granted to the representative by notifying the



1 health care provider orally or in writing.

2 SECTION 9. IC 16-36-1-8 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) A health care
4 provider or any interested ~~individual~~ **person (as defined in**
5 **IC 30-5-2-6)** may petition the probate court in the county where the
6 individual who is the subject of the petition is present for purposes of
7 receiving health care to:

8 (1) make a health care decision or order health care for an
9 individual incapable of consenting; or

10 (2) appoint a representative to act for the individual.

11 (b) Reasonable notice of the time and place of hearing a petition
12 under this section must be given to the following:

13 (1) The individual incapable of consenting.

14 (2) Anyone having the care and custody of the individual.

15 (3) Those ~~individuals~~ **persons** in the classes described in section
16 5 of this chapter who are reasonably available and who are
17 designated by the court.

18 (c) The probate court may modify or dispense with notice and
19 hearing if the probate court finds that delay will have a serious, adverse
20 effect upon the health of the individual.

21 (d) The probate court may order health care, appoint a
22 representative to make a health care decision for the individual
23 incapable of consenting to health care with the limitations on the
24 authority of the representative as the probate court considers
25 appropriate, or order any other appropriate relief in the best interest of
26 the individual if the probate court finds the following:

27 (1) A health care decision is required for the individual.

28 (2) The individual is incapable of consenting to health care.

29 (3) There is no ~~individual~~ **person** authorized to consent or ~~an~~
30 ~~individual~~ **a person** authorized to consent to health care:

31 (A) is not reasonably available;

32 (B) declines to act; or

33 (C) is not acting in the best interest of the individual in need
34 of health care.

35 SECTION 10. IC 16-36-1-10 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) A health care
37 provider acting or declining to act in reliance on the consent or refusal
38 of consent of an ~~individual~~ **a representative** who the provider believes
39 in good faith is authorized to consent to health care is not subject to:

40 (1) criminal prosecution;

41 (2) civil liability; or

42 (3) professional disciplinary action;



1 on the ground that the ~~individual~~ **representative** who consented or
 2 refused to consent lacked authority or capacity.

3 (b) A health care provider who believes in good faith that ~~an~~
 4 ~~individual~~ **a representative** is incapable of consenting is not subject to:

- 5 (1) criminal prosecution;
- 6 (2) civil liability; or
- 7 (3) professional disciplinary action;

8 for failing to follow the ~~individual's~~ **representative's** direction.

9 (c) A person who in good faith believes the ~~person~~ **representative**
 10 is authorized to consent or refuse to consent to health care for another
 11 under this chapter or another statute is not subject to:

- 12 (1) criminal prosecution; or
- 13 (2) civil liability if the person exercises due care;

14 on the ground that the ~~person~~ **representative** lacked authority to
 15 consent.

16 SECTION 11. IC 16-36-1-11 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 11. (a) ~~An individual~~
 18 ~~authorized to consent to health care for another individual~~ **A**
 19 **representative** under this chapter has the same right that the
 20 authorizing individual has to receive information relevant to the
 21 contemplated health care and to consent to the disclosure of medical
 22 records to a health care provider.

23 (b) Disclosure of information regarding contemplated health care to
 24 ~~an individual authorized to consent for another~~ **a representative** is not
 25 a waiver of an evidentiary privilege or of the right to assert
 26 confidentiality.

27 SECTION 12. IC 16-36-1-12 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. (a) This chapter
 29 does not affect Indiana law concerning an individual's authorization to
 30 do the following:

- 31 (1) Make a health care decision for the individual or another
 32 individual.
- 33 (2) Provide, withdraw, or withhold medical care necessary to
 34 prolong or sustain life.

35 (b) This chapter does not affect the requirements in any other
 36 Indiana law concerning consent to observation, diagnosis, treatment,
 37 or hospitalization for a mental illness.

38 (c) This chapter does not authorize ~~an individual~~ **a representative**
 39 to consent to any health care that is prohibited under Indiana law.

40 (d) This chapter does not affect any requirement of notice to others
 41 of proposed health care under any other Indiana law.

42 (e) This chapter does not affect Indiana law concerning the



- 1 following:
- 2 (1) The standard of care of a health care provider required in the
- 3 provision of health care.
- 4 (2) When consent is required for health care.
- 5 (3) Elements of informed consent for health care.
- 6 (4) Other methods of consent authorized by Indiana law.
- 7 (5) Health care being provided in an emergency without consent.
- 8 (f) This chapter does not prevent an individual capable of
- 9 consenting to the individual's own health care or to the health care of
- 10 another under this chapter, including those authorized under sections
- 11 5 through 7 of this chapter, from consenting to health care administered
- 12 in good faith under religious tenets of the individual requiring health
- 13 care.
- 14 (g) A representative consenting to health care for an individual
- 15 under this chapter does not become personally liable for the cost of the
- 16 health care by virtue of that consent.
- 17 SECTION 13. IC 16-36-6-9, AS ADDED BY P.L.164-2013,
- 18 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 19 JULY 1, 2015]: Sec. 9. (a) The state department shall develop a
- 20 standardized POST form and distribute the POST form.
- 21 (b) The POST form developed under this section must include the
- 22 following:
- 23 (1) A medical order specifying whether cardiopulmonary
- 24 resuscitation (CPR) should be performed if the qualified person
- 25 is in cardiopulmonary arrest.
- 26 (2) A medical order concerning the level of medical intervention
- 27 that should be provided to the qualified person, including the
- 28 following:
- 29 (A) Comfort measures.
- 30 (B) Limited additional interventions.
- 31 (C) Full intervention.
- 32 (3) A medical order specifying whether antibiotics should be
- 33 provided to the qualified person.
- 34 (4) A medical order specifying whether artificially administered
- 35 nutrition should be provided to the qualified person.
- 36 (5) A signature line for the treating physician, including the
- 37 following information:
- 38 (A) The physician's printed name.
- 39 (B) The physician's telephone number.
- 40 (C) The physician's medical license number.
- 41 (D) The date of the physician's signature.
- 42 As used in this subdivision, "signature" includes an electronic or



1 physician controlled stamp signature.
 2 (6) A signature line for the qualified person or representative,
 3 including the following information:
 4 (A) The qualified person's or representative's printed name.
 5 (B) The relationship of the representative signing the POST
 6 form to the qualified person covered by the POST form.
 7 (C) The date of the signature.
 8 (7) A section presenting the option to allow a declarant to appoint
 9 **an individual a representative (as defined in IC 16-36-1-2)**
 10 under IC 16-36-1-7 to serve as the declarant's health care
 11 representative.
 12 (c) The state department shall place the POST form on its Internet
 13 web site.
 14 (d) The state department is not liable for any use or misuse of the
 15 POST form.
 16 SECTION 14. IC 16-36-6-13, AS ADDED BY P.L.164-2013,
 17 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2015]: Sec. 13. (a) A health care provider, a health care
 19 facility, or an interested **individual person** that believes that following
 20 the medical orders set forth in the POST form will result in care or
 21 treatment, or the withholding of care or treatment, that:
 22 (1) is inconsistent with the declarant's known preferences; or
 23 (2) in the absence of the declarant's known preferences, is not in
 24 the declarant's best interest;
 25 may seek relief under IC 16-36-1-8 by petitioning the probate court in
 26 the county where the declarant is located.
 27 (b) If, in a proceeding sought under subsection (a), a probate court
 28 determines that following the medical orders in the declarant's POST
 29 form will result in care or treatment, or the withholding or withdrawal
 30 of care or treatment, that:
 31 (1) is inconsistent with the declarant's known preferences; or
 32 (2) in the absence of the declarant's known preferences, is not in
 33 the declarant's best interest;
 34 the probate court may order any of the relief available under
 35 IC 16-36-1-8.
 36 SECTION 15. IC 29-1-1-3, AS AMENDED BY P.L.99-2013,
 37 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2015]: Sec. 3. (a) The following definitions apply throughout
 39 this article, unless otherwise apparent from the context:
 40 (1) "Child" includes an adopted child but does not include a
 41 grandchild or other more remote descendants, nor, except as
 42 provided in IC 29-1-2-5, a child born out of wedlock.



- 1 (2) "Claims" includes liabilities of a decedent which survive,
 2 whether arising in contract or in tort or otherwise, ~~funeral~~
 3 ~~expenses, the expense of a tombstone,~~ expenses of administration,
 4 and all taxes imposed by reason of the person's death. However,
 5 for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not
 6 include taxes imposed by reason of the person's death.
- 7 (3) "Court" means the court having probate jurisdiction.
- 8 (4) "Decedent" means one who dies testate or intestate.
- 9 (5) "Devise" or "legacy", when used as a noun, means a
 10 testamentary disposition of either real or personal property or
 11 both.
- 12 (6) "Devise", when used as a verb, means to dispose of either real
 13 or personal property or both by will.
- 14 (7) "Devisee" includes legatee, and "legatee" includes devisee.
- 15 (8) "Distributee" denotes those persons who are entitled to the
 16 real and personal property of a decedent under a will, under the
 17 statutes of intestate succession, or under IC 29-1-4-1.
- 18 (9) "Estate" denotes the real and personal property of the decedent
 19 or protected person, as from time to time changed in form by sale,
 20 reinvestment, or otherwise, and augmented by any accretions and
 21 additions thereto and substitutions therefor and diminished by any
 22 decreases and distributions therefrom.
- 23 **(10) "Expenses of administration" includes expenses incurred**
 24 **by or on behalf of a decedent's estate in the collection of**
 25 **assets, the payment of debts, and the distribution of property**
 26 **to the persons entitled to the property, including funeral**
 27 **expenses, expenses of a tombstone, expenses incurred in the**
 28 **disposition of the decedent's body, executor's commissions,**
 29 **attorney's fees, and miscellaneous expenses.**
- 30 ~~(10)~~ **(11) "Fiduciary" includes a:**
- 31 (A) personal representative;
- 32 (B) guardian;
- 33 (C) conservator;
- 34 (D) trustee; and
- 35 (E) person designated in a protective order to act on behalf of
 36 a protected person.
- 37 ~~(11)~~ **(12) "Heirs" denotes those persons, including the surviving**
 38 **spouse, who are entitled under the statutes of intestate succession**
 39 **to the real and personal property of a decedent on the decedent's**
 40 **death intestate, unless otherwise defined or limited by the will.**
- 41 ~~(12)~~ **(13) "Incapacitated" has the meaning set forth in**
 42 **IC 29-3-1-7.5.**



- 1 ~~(13)~~ **(14)** "Interested persons" means heirs, devisees, spouses,
2 creditors, or any others having a property right in or claim against
3 the estate of a decedent being administered. This meaning may
4 vary at different stages and different parts of a proceeding and
5 must be determined according to the particular purpose and
6 matter involved.
- 7 ~~(14)~~ **(15)** "Issue" of a person, when used to refer to persons who
8 take by intestate succession, includes all lawful lineal descendants
9 except those who are lineal descendants of living lineal
10 descendants of the intestate.
- 11 ~~(15)~~ **(16)** "Lease" includes an oil and gas lease or other mineral
12 lease.
- 13 ~~(16)~~ **(17)** "Letters" includes letters testamentary, letters of
14 administration, and letters of guardianship.
- 15 ~~(17)~~ **(18)** "Minor" or "minor child" or "minority" refers to any
16 person under the age of eighteen (18) years.
- 17 ~~(18)~~ **(19)** "Mortgage" includes deed of trust, vendor's lien, and
18 chattel mortgage.
- 19 ~~(19)~~ **(20)** "Net estate" refers to the real and personal property of
20 a decedent less the allowances provided under IC 29-1-4-1 and
21 enforceable claims against the estate.
- 22 ~~(20)~~ **(21)** "Person" ~~includes natural persons and corporations.~~
23 **means:**
- 24 **(A) an individual;**
25 **(B) a corporation;**
26 **(C) a trust;**
27 **(D) a limited liability company;**
28 **(E) a partnership;**
29 **(F) a business trust;**
30 **(G) an estate;**
31 **(H) an association;**
32 **(I) a joint venture;**
33 **(J) a government or political subdivision;**
34 **(K) an agency;**
35 **(L) an instrumentality; or**
36 **(M) any other legal or commercial entity.**
- 37 ~~(21)~~ **(22)** "Personal property" includes interests in goods, money,
38 choses in action, evidences of debt, and chattels real.
- 39 ~~(22)~~ **(23)** "Personal representative" includes executor,
40 administrator, administrator with the will annexed, administrator
41 de bonis non, and special administrator.
- 42 ~~(23)~~ **(24)** "Probate estate" denotes the property transferred at the



- 1 death of a decedent under the decedent's will or under IC 29-1-2,
 2 in the case of a decedent dying intestate.
 3 ~~(24)~~ **(25)** "Property" includes both real and personal property.
 4 ~~(25)~~ **(26)** "Protected person" has the meaning set forth in
 5 IC 29-3-1-13.
 6 ~~(26)~~ **(27)** "Real property" includes estates and interests in land,
 7 corporeal or incorporeal, legal or equitable, other than chattels
 8 real.
 9 ~~(27)~~ **(28)** "Will" includes all wills, testaments, and codicils. The
 10 term also includes a testamentary instrument which merely
 11 appoints an executor or revokes or revives another will.
 12 (b) The following rules of construction apply throughout this article
 13 unless otherwise apparent from the context:
 14 (1) The singular number includes the plural and the plural number
 15 includes the singular.
 16 (2) The masculine gender includes the feminine and neuter.
 17 SECTION 16. IC 29-1-8-10 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2015]: **Sec. 10. (a) This section applies only to a nonprobate**
 20 **transfer (as defined in IC 32-17-13-1) by a transferee that is a**
 21 **testamentary trust established in a will that is admitted to probate**
 22 **under this article.**
 23 **(b) All of the following apply to a nonprobate transfer described**
 24 **in subsection (a):**
 25 **(1) The nonprobate transfer is considered effective upon the**
 26 **decedent's death, if the decedent's will is admitted to probate,**
 27 **regardless of when the will is admitted to probate.**
 28 **(2) The nonprobate transfer:**
 29 **(A) does not constitute part of the estate (as defined in**
 30 **IC 29-1-1-3); and**
 31 **(B) is not subject to claims other than as provided in**
 32 **IC 32-17-13.**
 33 **(3) The nonprobate transfer is not considered the decedent's**
 34 **transfer to the testamentary trust by the decedent's will for all**
 35 **other purposes of the Indiana Code.**
 36 SECTION 17. IC 29-1-14-9, AS AMENDED BY P.L.99-2013,
 37 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2015]: **Sec. 9. (a) All claims shall be classified in one (1) of**
 39 **the following classes. If the applicable assets of the estate are**
 40 **insufficient to pay all claims in full, the personal representative shall**
 41 **make payment in the following order:**
 42 **(1) Costs and expenses of administration, except funeral**



- 1 **expenses, expenses of a tombstone, and expenses incurred in**
 2 **the disposition of the decedent's body.**
 3 (2) Reasonable funeral expenses, **expenses of a tombstone, and**
 4 **expenses incurred in the disposition of the decedent's body.**
 5 However, in any estate in which the decedent was a recipient of
 6 public assistance under IC 12-1-1 through IC 12-1-12 (before its
 7 repeal) or any of the following, the amount of funeral expenses
 8 having priority over any claim for the recovery of public
 9 assistance shall not exceed the limitations provided for under
 10 IC 12-14-6, IC 12-14-17, and IC 12-14-21:
 11 TANF assistance.
 12 TANF burials.
 13 TANF IMPACT/J.O.B.S.
 14 Temporary Assistance to Other Needy Families (TAONF)
 15 assistance.
 16 ARCH.
 17 Blind relief.
 18 Child care.
 19 Child welfare adoption assistance.
 20 Child welfare adoption opportunities.
 21 Child welfare assistance.
 22 Child welfare child care improvement.
 23 Child welfare child abuse.
 24 Child welfare child abuse and neglect prevention.
 25 Child welfare children's victim advocacy program.
 26 Child welfare foster care assistance.
 27 Child welfare independent living.
 28 Child welfare medical assistance to wards.
 29 Child welfare program review action group (PRAG).
 30 Child welfare special needs adoption.
 31 Food Stamp administration.
 32 Health care for indigent (HCI).
 33 ICES.
 34 IMPACT (food stamps).
 35 Title IV-D (ISETS or a successor statewide automated support
 36 enforcement system).
 37 Title IV-D child support administration.
 38 Title IV-D child support enforcement (parent locator).
 39 Medicaid assistance.
 40 Medical services for inmates and patients (590).
 41 Room and board assistance (RBA).
 42 Refugee social service.



- 1 Refugee resettlement.
- 2 Repatriated citizens.
- 3 SSI burials and disabled examinations.
- 4 Title XIX certification.
- 5 (3) Allowances made under IC 29-1-4-1.
- 6 (4) All debts and taxes having preference under the laws of the
- 7 United States.
- 8 (5) Reasonable and necessary medical expenses of the last
- 9 sickness of the decedent, including compensation of persons
- 10 attending the decedent.
- 11 (6) All debts and taxes having preference under the laws of this
- 12 state; but no personal representative shall be required to pay any
- 13 taxes on any property of the decedent unless such taxes are due
- 14 and payable before possession thereof is delivered by the personal
- 15 representative pursuant to the provisions of IC 29-1.
- 16 (7) All other claims allowed.
- 17 (b) No preference shall be given in the payment of any claim over
- 18 any other claim of the same class, nor shall a claim due and payable be
- 19 entitled to a preference over claims not due.
- 20 SECTION 18. IC 29-3-9-1, AS AMENDED BY P.L.83-2014,
- 21 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2015]: Sec. 1. (a) Except as provided in subsection (b), by a
- 23 properly executed power of attorney, a parent of a minor or a guardian
- 24 (other than a temporary guardian) of a protected person may delegate
- 25 to another person for:
- 26 (1) any period during which the care and custody of the minor or
- 27 protected person is entrusted to an institution furnishing care,
- 28 custody, education, or training; or
- 29 (2) a period not exceeding twelve (12) months;
- 30 any powers regarding **health care**, support, custody, or property of the
- 31 minor or protected person. A delegation described in this subsection is
- 32 effective immediately unless otherwise stated in the power of attorney.
- 33 (b) A parent of a minor or a guardian of a protected person may not
- 34 delegate under subsection (a) the power to:
- 35 (1) consent to the marriage or adoption of a protected person who
- 36 is a minor; or
- 37 (2) petition the court to request the authority to petition for
- 38 dissolution of marriage, legal separation, or annulment of
- 39 marriage on behalf of a protected person as provided under
- 40 IC 29-3-9-12.2.
- 41 (c) A person having a power of attorney executed under subsection
- 42 (a) has and shall exercise, for the period during which the power is



1 effective, all other authority of the parent or guardian respecting the
 2 **health care**, support, custody, or property of the minor or protected
 3 person except any authority expressly excluded in the written
 4 instrument delegating the power. ~~However,~~ The parent or guardian
 5 remains responsible for any act or omission of the person having the
 6 power of attorney with respect to the affairs, property, and person of the
 7 minor or protected person as though the power of attorney had never
 8 been executed.

9 (d) Except as otherwise stated in the power of attorney delegating
 10 powers under this section, a delegation of powers under this section
 11 may be revoked by a written instrument of revocation that:

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

13 (2) is signed by the:

14 (A) parent of a minor; or

15 (B) guardian of a protected person;

16 who executed the power of attorney.

17 SECTION 19. IC 30-4-2.1-11.1 IS ADDED TO THE INDIANA
 18 CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2015]: **Sec. 11.1. Except as provided in**
 19 **section 11 of this chapter, if a trust refers to a writing of any kind,**
 20 **the referenced writing, whether subsequently amended or revoked,**
 21 **as it existed at the time of the execution of the trust, shall be given**
 22 **the same effect as if set forth at length in the trust, if the referenced**
 23 **writing is clearly identified in the trust and is in existence at the**
 24 **time of the execution of the trust.**

25 SECTION 20. IC 30-5-5-16, AS AMENDED BY P.L.143-2009,
 26 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2015]: Sec. 16. (a) This section does not prohibit an individual
 28 capable of consenting to the individual's own health care or to the
 29 health care of another from consenting to health care administered in
 30 good faith under the religious tenets and practices of the individual
 31 requiring health care.
 32

33 (b) Language conferring general authority with respect to health
 34 care powers means the principal authorizes the attorney in fact to do
 35 the following:

36 (1) Employ or contract with servants, companions, or health care
 37 providers to care for the principal.

38 (2) ~~If the attorney in fact is an individual,~~ Consent to or refuse
 39 health care for the principal who is an individual in accordance
 40 with IC 16-36-4 and IC 16-36-1 by properly executing and
 41 attaching to the power of attorney a declaration or appointment,
 42 or both.



- 1 (3) Admit or release the principal from a hospital or health care
- 2 facility.
- 3 (4) Have access to records, including medical records, concerning
- 4 the principal's condition.
- 5 (5) Make anatomical gifts on the principal's behalf.
- 6 (6) Request an autopsy.
- 7 (7) Make plans for the disposition of the principal's body,
- 8 including executing a funeral planning declaration on behalf of
- 9 the principal in accordance with IC 29-2-19.
- 10 SECTION 21. IC 30-5-6-4.1 IS ADDED TO THE INDIANA CODE
- 11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 12 1, 2015]: **Sec. 4.1. (a) An attorney in fact is entitled to judicial**
- 13 **review and settlement of an account of all transactions entered into**
- 14 **by the attorney in fact, whether or not:**
- 15 (1) the attorney in fact's authority under the power of
- 16 attorney has been revoked; or
- 17 (2) a request for an accounting is made under section 4(c) of
- 18 this chapter.
- 19 (b) Judicial review and settlement of an account is initiated
- 20 upon the filing of a petition to settle and allow an account. The
- 21 petition must be filed with the court exercising probate jurisdiction
- 22 for the county in which the principal resides. Except as otherwise
- 23 provided by this section, the procedures under IC 30-4-5-14(b),
- 24 IC 30-4-5-14(c), IC 30-4-5-14(d), and IC 30-4-5-15 applicable to
- 25 judicial settlement of a trustee's account govern:
- 26 (1) the filing of objections; and
- 27 (2) all proceedings;
- 28 on the petition.
- 29 (c) A petition to settle and allow an account must be served upon
- 30 all the following that are applicable:
- 31 (1) The principal.
- 32 (2) Any guardian appointed for the principal.
- 33 (3) Any successor attorney in fact.
- 34 (4) If the principal is deceased and a personal representative
- 35 has been appointed:
- 36 (A) the personal representative;
- 37 (B) any other fiduciary of the principal, if applicable; and
- 38 (C) any person beneficially interested in the decedent's
- 39 estate.
- 40 (5) If the principal is deceased and a personal representative
- 41 has not been appointed, the principal's heirs at law.
- 42 (6) If the principal is deceased and the principal's will is



1 **probated without administration:**

2 **(A) the personal representative named in the probated**
3 **will; and**

4 **(B) all persons or entities beneficially interested in the**
5 **probated will.**

6 **(7) Any other person that the court directs.**

7 **(d) An attorney in fact is discharged from liability as to the**
8 **transactions disclosed in the accounting if:**

9 **(1) the court reviews and approves the accounting; and**

10 **(2) notice of the court's approval of the accounting is provided**
11 **to:**

12 **(A) the principal, if the principal is not deceased; or**

13 **(B) the principal's representatives, whether or not the**
14 **principal is deceased.**

15 **(e) In the absence of fraud, misrepresentation, inadequate**
16 **disclosure, or failure to provide proper notice related to the power**
17 **of attorney transactions, the discharge from liability under**
18 **subsection (d) is lawful and binding upon all interested persons:**

19 **(1) who would assert an interest on behalf of or through the**
20 **principal; and**

21 **(2) who are:**

22 **(A) born or unborn;**

23 **(B) notified or not notified; or**

24 **(C) represented or not represented.**

25 **(f) The filing fee for a petition to settle and allow an account**
26 **filed under this section is a legitimate expense of the principal or**
27 **the principal's estate.**

28 **SECTION 22. IC 30-5-6-4.2 IS ADDED TO THE INDIANA CODE**
29 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
30 **1, 2015]: Sec. 4.2. (a) This section applies to a claim against an**
31 **attorney in fact by:**

32 **(1) the principal;**

33 **(2) the principal's guardian;**

34 **(3) the principal's personal representative; or**

35 **(4) any person claiming through the principal following death.**

36 **(b) Except as provided in subsection (c), any claim against an**
37 **attorney in fact that has not previously been barred by**
38 **adjudication under section 4.1 of this chapter, by consent or by**
39 **limitation, is barred against any person described in subsection (a)**
40 **who:**

41 **(1) receives an accounting of all transactions entered into by**
42 **the attorney in fact:**



1 (A) personally, if the person is an adult; or
 2 (B) through receipt by a parent or guardian, if the person
 3 is a minor or person with a disability; and
 4 (2) does not commence a proceeding under IC 30-5-9-11 not
 5 later than two (2) years after receiving the accounting;
 6 as to the matters disclosed in the accounting.
 7 (c) The rights to recover from an attorney in fact for fraud,
 8 misrepresentation, or inadequate disclosure related to a power of
 9 attorney accounting are not barred under this section.
 10 SECTION 23. IC 30-5-6-4.5 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4.5. (a) An attorney in
 12 fact has the authority to employ persons, including:
 13 (1) attorneys;
 14 (2) accountants;
 15 (3) investment advisers; and
 16 (4) agents;
 17 to assist the attorney in fact in the performance of the attorney in fact's
 18 fiduciary duties. Any reasonable costs incurred with regard to services
 19 rendered for the benefit of the principal shall be paid from the
 20 principal's asset holdings.
 21 (b) Except as provided in subsection (c), if an accounting is
 22 requested as set forth in section 4 of this chapter, **or a petition to settle**
 23 **and allow an account is filed under section 4.1 of this chapter**, costs
 24 incurred by the attorney in fact:
 25 (1) to defend the actions of the attorney in fact on behalf of the
 26 principal with regard to the preparation of the accounting; and
 27 (2) to defend any other actions of the attorney in fact on behalf of
 28 the principal;
 29 shall be paid from the principal's asset holdings.
 30 (c) If a court determines that an attorney in fact:
 31 (1) breached the attorney in fact's fiduciary duty or obligation to
 32 the principal; or
 33 (2) was engaged in self-dealing activities with the principal's asset
 34 holdings;
 35 the court may determine that the attorney in fact is responsible for the
 36 payment of the costs incurred under subsection (b).
 37 SECTION 24. IC 32-17-14-3, AS AMENDED BY P.L.36-2011,
 38 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2015]: Sec. 3. The following definitions apply throughout this
 40 chapter:
 41 (1) "Beneficiary" means a person designated or entitled to receive
 42 property because of another person's death under a transfer on



- 1 death transfer.
- 2 (2) "Beneficiary designation" means a written instrument other
- 3 than a will or trust that designates the beneficiary of a transfer on
- 4 death transfer.
- 5 (3) "Governing instrument" refers to a written instrument agreed
- 6 to by an owner that establishes the terms and conditions of an
- 7 ownership in beneficiary form.
- 8 **(4) "Intangible personal property" means incorporeal**
- 9 **property, such as money, deposits, credits, shares of stock,**
- 10 **bonds, notes, other evidences of indebtedness, and other**
- 11 **evidences of property interests.**
- 12 ~~(4)~~ (5) "Joint owners" refers to persons who hold property as joint
- 13 tenants with a right of survivorship. However, the term does not
- 14 include a husband and wife who hold property as tenants by the
- 15 entirety.
- 16 ~~(5)~~ (6) "LDPS" means an abbreviation of lineal descendants per
- 17 stirpes, which may be used in a beneficiary designation to
- 18 designate a substitute beneficiary as provided in section 22 of this
- 19 chapter.
- 20 ~~(6)~~ (7) "Owner" refers to a person or persons who have a right to
- 21 designate the beneficiary of a transfer on death transfer.
- 22 ~~(7)~~ (8) "Ownership in beneficiary form" means holding property
- 23 under a registration in beneficiary form or other written
- 24 instrument that:
- 25 (A) names the owner of the property;
- 26 (B) directs ownership of the property to be transferred upon
- 27 the death of the owner to the designated beneficiary; and
- 28 (C) designates the beneficiary.
- 29 ~~(8)~~ (9) "Person" means an individual, a sole proprietorship, a
- 30 partnership, an association, a fiduciary, a trustee, a corporation,
- 31 a limited liability company, or any other business entity.
- 32 ~~(9)~~ (10) "Proof of death" means a death certificate or a record or
- 33 report that is prima facie proof or evidence of an individual's
- 34 death.
- 35 ~~(10)~~ (11) "Property" means any present or future interest in real
- 36 property, intangible personal property, ~~(as defined in~~
- 37 ~~IC 6-4.1-1-5);~~ or tangible personal property. ~~(as defined in~~
- 38 ~~IC 6-4.1-1-13);~~ The term includes:
- 39 (A) a right to direct or receive payment of a debt;
- 40 (B) a right to direct or receive payment of money or other
- 41 benefits due under a contract, account agreement, deposit
- 42 agreement, employment contract, or trust or by operation of



- 1 law;
- 2 (C) a right to receive performance remaining due under a
- 3 contract;
- 4 (D) a right to receive payment under a promissory note or a
- 5 debt maintained in a written account record;
- 6 (E) rights under a certificated or uncertificated security;
- 7 (F) rights under an instrument evidencing ownership of
- 8 property issued by a governmental agency; and
- 9 (G) rights under a document of title (as defined in
- 10 IC 26-1-1-201).
- 11 ~~(H)~~ **(12)** "Registration in beneficiary form" means titling of an
- 12 account record, certificate, or other written instrument that:
- 13 (A) provides evidence of ownership of property in the name of
- 14 the owner;
- 15 (B) directs ownership of the property to be transferred upon
- 16 the death of the owner to the designated beneficiary; and
- 17 (C) designates the beneficiary.
- 18 ~~(I)~~ **(13)** "Security" means a share, participation, or other interest
- 19 in property, in a business, or in an obligation of an enterprise or
- 20 other issuer. The term includes a certificated security, an
- 21 uncertificated security, and a security account.
- 22 **(14) "Tangible personal property" means corporeal personal**
- 23 **property, such as goods, wares, and merchandise.**
- 24 ~~(J)~~ **(15)** "Transfer on death deed" means a deed that conveys an
- 25 interest in real property to a grantee by beneficiary designation.
- 26 ~~(K)~~ **(16)** "Transfer on death transfer" refers to a transfer of
- 27 property that takes effect upon the death of the owner under a
- 28 beneficiary designation made under this chapter.
- 29 ~~(L)~~ **(17)** "Transferring entity" means a person who:
- 30 (A) owes a debt or is obligated to pay money or benefits;
- 31 (B) renders contract performance;
- 32 (C) delivers or conveys property; or
- 33 (D) changes the record of ownership of property on the books,
- 34 records, and accounts of an enterprise or on a certificate or
- 35 document of title that evidences property rights.
- 36 The term includes a governmental agency, business entity, or
- 37 transfer agent that issues certificates of ownership or title to
- 38 property and a person acting as a custodial agent for an owner's
- 39 property. However, the term does not include a governmental
- 40 office charged with endorsing, entering, or recording the transfer
- 41 of real property in the public records.
- 42 SECTION 25. IC 34-30-2-71 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 71. IC 16-36-1-10
2 (Concerning a health care provider who acts or declines to act in
3 reliance on the consent or refusal to consent of ~~an individual who a~~
4 **representative that** the provider believes is authorized to do so).



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 355, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- Page 11, delete lines 36 through 42.
- Delete pages 12 through 20.
- Page 21, delete lines 1 through 11.
- Page 25, delete lines 38 through 42.
- Delete page 26.
- Page 27, delete lines 1 through 27.
- Page 27, line 38, after "regarding" insert "**health care,**".
- Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 355 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 0.

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 355, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

- Page 18, between lines 9 and 10, begin a new paragraph and insert:
 "SECTION 21. IC 30-5-6-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 4.1. (a) An attorney in fact is entitled to judicial review and settlement of an account of all transactions entered into by the attorney in fact, whether or not:**
- (1) the attorney in fact's authority under the power of attorney has been revoked; or**
 - (2) a request for an accounting is made under section 4(c) of this chapter.**
- (b) Judicial review and settlement of an account is initiated upon the filing of a petition to settle and allow an account. The petition must be filed with the court exercising probate jurisdiction for the county in which the principal resides. Except as otherwise**

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provided by this section, the procedures under IC 30-4-5-14(b), IC 30-4-5-14(c), IC 30-4-5-14(d), and IC 30-4-5-15 applicable to judicial settlement of a trustee's account govern:

- (1) the filing of objections; and
- (2) all proceedings;

on the petition.

(c) A petition to settle and allow an account must be served upon all the following that are applicable:

- (1) The principal.
- (2) Any guardian appointed for the principal.
- (3) Any successor attorney in fact.
- (4) If the principal is deceased and a personal representative has been appointed:
 - (A) the personal representative;
 - (B) any other fiduciary of the principal, if applicable; and
 - (C) any person beneficially interested in the decedent's estate.

(5) If the principal is deceased and a personal representative has not been appointed, the principal's heirs at law.

(6) If the principal is deceased and the principal's will is probated without administration:

- (A) the personal representative named in the probated will; and
- (B) all persons or entities beneficially interested in the probated will.

(7) Any other person that the court directs.

(d) An attorney in fact is discharged from liability as to the transactions disclosed in the accounting if:

- (1) the court reviews and approves the accounting; and
- (2) notice of the court's approval of the accounting is provided to:
 - (A) the principal, if the principal is not deceased; or
 - (B) the principal's representatives, whether or not the principal is deceased.

(e) In the absence of fraud, misrepresentation, inadequate disclosure, or failure to provide proper notice related to the power of attorney transactions, the discharge from liability under subsection (d) is lawful and binding upon all interested persons:

- (1) who would assert an interest on behalf of or through the principal; and
- (2) who are:
 - (A) born or unborn;



(B) notified or not notified; or

(C) represented or not represented.

(f) The filing fee for a petition to settle and allow an account filed under this section is a legitimate expense of the principal or the principal's estate.

SECTION 22. IC 30-5-6-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 4.2. (a) This section applies to a claim against an attorney in fact by:**

(1) the principal;

(2) the principal's guardian;

(3) the principal's personal representative; or

(4) any person claiming through the principal following death.

(b) Except as provided in subsection (c), any claim against an attorney in fact that has not previously been barred by adjudication under section 4.1 of this chapter, by consent or by limitation, is barred against any person described in subsection (a) who:

(1) receives an accounting of all transactions entered into by the attorney in fact:

(A) personally, if the person is an adult; or

(B) through receipt by a parent or guardian, if the person is a minor or person with a disability; and

(2) does not commence a proceeding under IC 30-5-9-11 not later than two (2) years after receiving the accounting;

as to the matters disclosed in the accounting.

(c) The rights to recover from an attorney in fact for fraud, misrepresentation, or inadequate disclosure related to a power of attorney accounting are not barred under this section.

SECTION 23. IC 30-5-6-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **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, or a petition to settle



and allow an account is filed under section 4.1 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)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 355 as printed February 18, 2015.)

STEUERWALD

Committee Vote: yeas 9, nays 0.

