

HOUSE BILL No. 1107

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-36; IC 26-2-8-103; IC 29-1; IC 30-4; IC 30-5-4-1; IC 32-39-2.

Synopsis: Electronic signatures. Provides that a person may create an electronic will and an electronic trust document if certain conditions are met, and provides that a power of attorney (including a living will and health care power of attorney) may be signed electronically and created or stored in an electronic format. Makes conforming amendments.

Effective: July 1, 2017.

Steuerwald

January 5, 2017, read first time and referred to Committee on Judiciary.



First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1107

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 16-18-2-106.2 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2017]: **Sec. 106.2. "Electronic record", for**
4 **purposes of IC 16-36-1 and IC 16-36-4, has the meaning set forth**
5 **in IC 26-2-8-102.**

6 SECTION 2. IC 16-18-2-106.3, AS ADDED BY P.L.204-2005,
7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2017]: Sec. 106.3. (a) **"Electronic signature", for purposes**
9 **of IC 16-36-1 and IC 16-36-4, has the meaning set forth in**
10 **IC 26-2-8-102.**

11 (b) **"Electronic signature"**, for purposes of IC 16-42-3 and
12 IC 16-42-22, ~~"electronic signature"~~ means an electronic sound, symbol,
13 or process:

14 (1) attached to or logically associated with an electronically
15 transmitted prescription or order; and

16 (2) executed or adopted by a person;
17 with the intent to sign the electronically transmitted prescription or



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- order.
- SECTION 3. IC 16-36-1-7, AS AMENDED BY P.L.81-2015, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7. (a) An individual who may consent to health care under section 3 of this chapter may appoint another representative to act for the appointor in matters affecting the appointor's health care.
- (b) An appointment and any amendment must meet the following conditions:
- (1) Be in writing, **including an electronic record.**
 - (2) Be signed by the appointor or by a designee in the appointor's presence. **The use of an electronic signature constitutes being signed under this subdivision.**
 - (3) Be witnessed by an adult other than the representative.
- (c) The appointor may specify in the appointment appropriate terms and conditions, including an authorization to the representative to delegate the authority to consent to another.
- (d) The authority granted becomes effective according to the terms of the appointment.
- (e) The appointment does not commence until the appointor becomes incapable of consenting. The authority granted in the appointment is not effective if the appointor regains the capacity to consent.
- (f) Unless the appointment provides otherwise, a representative appointed under this section who is reasonably available and willing to act has priority to act in all matters of health care for the appointor, except when the appointor is capable of consenting.
- (g) In making all decisions regarding the appointor's health care, a representative appointed under this section shall act as follows:
- (1) In the best interest of the appointor consistent with the purpose expressed in the appointment.
 - (2) In good faith.
- (h) A health care representative who resigns or is unwilling to comply with the written appointment may not exercise further power under the appointment and shall so inform the following:
- (1) The appointor.
 - (2) The appointor's legal representative if one is known.
 - (3) The health care provider if the representative knows there is one.
- (i) An individual who is capable of consenting to health care may revoke:
- (1) the appointment at any time by notifying the representative orally or in writing, **including by means of an electronic record;**



1 or

2 (2) the authority granted to the representative by notifying the
3 health care provider orally or in writing, **including by means of**
4 **an electronic record.**

5 SECTION 4. IC 16-36-4-8 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) A person who is
7 of sound mind and is at least eighteen (18) years of age may execute a
8 life prolonging procedures will declaration under section 11 of this
9 chapter or a living will declaration under section 10 of this chapter.

10 (b) A declaration under section 10 or 11 of this chapter must meet
11 the following conditions:

12 (1) Be voluntary.

13 (2) Be:

14 (A) in writing; or

15 (B) in the form of an electronic record.

16 (3) Be signed by the person making the declaration or by another
17 person in the declarant's presence and at the declarant's express
18 direction. **A person may sign a declaration under this**
19 **subdivision by means of an electronic signature.**

20 (4) Be dated.

21 (5) Be signed in the presence of at least two (2) competent
22 witnesses who are at least eighteen (18) years of age.

23 (c) A witness to a living will declaration under subsection (b)(5)
24 may not meet any of the following conditions:

25 (1) Be the person who signed the declaration on behalf of and at
26 the direction of the declarant.

27 (2) Be a parent, spouse, or child of the declarant.

28 (3) Be entitled to any part of the declarant's estate whether the
29 declarant dies testate or intestate, including whether the witness
30 could take from the declarant's estate if the declarant's will is
31 declared invalid.

32 (4) Be directly financially responsible for the declarant's medical
33 care.

34 For the purposes of subdivision (3), a person is not considered to be
35 entitled to any part of the declarant's estate solely by virtue of being
36 nominated as a personal representative or as the attorney for the estate
37 in the declarant's will.

38 (d) The living will declaration of a person diagnosed as pregnant by
39 the attending physician has no effect during the person's pregnancy.

40 (e) The life prolonging procedures will declarant or the living will
41 declarant shall notify the declarant's attending physician of the
42 existence of the declaration. An attending physician who is notified



1 shall make the declaration or a copy of the declaration a part of the
2 declarant's medical records.

3 (f) A living will declaration under section 10 of this chapter:

4 (1) does not require the physician to use, withhold, or withdraw
5 life prolonging procedures but is presumptive evidence of the
6 patient's desires concerning the use, withholding, or withdrawal
7 of life prolonging procedures under this chapter; and

8 (2) shall be given great weight by the physician in determining the
9 intent of the patient who is mentally incompetent.

10 (g) A life prolonging procedures will declaration under section 11
11 of this chapter does require the physician to use life prolonging
12 procedures as requested.

13 SECTION 5. IC 16-36-4-12 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 12. (a) A living will
15 declaration or a life prolonging procedures will declaration may be
16 revoked at any time by the declarant by any of the following:

17 (1) A signed, dated writing, **including:**

18 (A) **an electronic record; or**

19 (B) **other writing;**

20 **signed with an electronic signature.**

21 (2) Physical cancellation or destruction of the declaration by the
22 declarant or another in the declarant's presence and at the
23 declarant's direction.

24 (3) An oral expression of intent to revoke.

25 (b) A revocation is effective when communicated to the attending
26 physician.

27 (c) No civil or criminal liability is imposed upon a person for failure
28 to act upon a revocation unless the person had actual knowledge of the
29 revocation.

30 (d) The revocation of a life prolonging procedures will declaration
31 is not evidence that the declarant desires to have life prolonging
32 procedures withheld or withdrawn.

33 SECTION 6. IC 26-2-8-103 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 103. (a) Except as
35 otherwise provided in subsection (b), this chapter applies to electronic
36 records and electronic signatures that relate to a transaction.

37 (b) This chapter does not apply to transactions subject to the
38 following laws:

39 (1) A law governing the creation and execution of wills, codicils,
40 or testamentary trusts, **except as otherwise provided in**
41 **IC 29-1-5 or IC 30-4.**

42 (2) IC 26-1 (other than IC 26-1-1-107, IC 26-1-1-206, IC 26-1-2,



1 and IC 26-1-2.1).

2 (3) Laws specifically excluded by a governmental agency under
3 sections 201 and 202 of this chapter.

4 (c) This chapter applies to an electronic record or electronic
5 signature otherwise excluded from the application of this chapter under
6 subsection (b) when used for transactions subject to a law other than
7 those specified in subsection (b).

8 (d) A transaction subject to this chapter is also subject to other
9 applicable substantive law.

10 SECTION 7. IC 29-1-1-3, AS AMENDED BY P.L.190-2016,
11 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2017]: Sec. 3. (a) The following definitions apply throughout
13 this article, unless otherwise apparent from the context:

14 (1) **"Authentication method" means:**

15 (A) **both:**

16 (i) **a copy of the testator's government issued photo**
17 **identification card, including a passport; and**

18 (ii) **a knowledge based authentication method; a digital**
19 **certificate using a public key infrastructure; a physical**
20 **device, including a smart card, a USB device, or another**
21 **token; biometric identification, including fingerprint**
22 **identification, a retinal scan, voice or facial recognition,**
23 **or a video recording of the testator; or another**
24 **commercially reasonable method; or**

25 (B) **electronic notarization, in accordance with**
26 **IC 26-2-8-110 or other applicable law.**

27 (⊕) (2) "Child" includes an adopted child but does not include a
28 grandchild or other more remote descendants, nor, except as
29 provided in IC 29-1-2-7, a child born out of wedlock.

30 (⊖) (3) "Claims" includes liabilities of a decedent which survive,
31 whether arising in contract or in tort or otherwise, expenses of
32 administration, and all taxes imposed by reason of the person's
33 death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the
34 term does not include taxes imposed by reason of the person's
35 death.

36 (⊕) (4) "Court" means the court having probate jurisdiction.

37 (⊕) (5) "Decedent" means one who dies testate or intestate.

38 (⊕) (6) "Devise" or "legacy", when used as a noun, means a
39 testamentary disposition of either real or personal property or
40 both.

41 (⊕) (7) "Devise", when used as a verb, means to dispose of either
42 real or personal property or both by will.



- 1 (7) ~~(8)~~ "Devisee" includes legatee, and "legatee" includes devisee.
 2 ~~(8)~~ ~~(9)~~ "Distributee" denotes those persons who are entitled to the
 3 real and personal property of a decedent under a will, under the
 4 statutes of intestate succession, or under IC 29-1-4-1.
 5 **(10) "Electronic" has the meaning set forth in IC 26-2-8-102.**
 6 **(11) "Electronic record" has the meaning set forth in**
 7 **IC 26-2-8-102.**
 8 **(12) "Electronic signature" has the meaning set forth in**
 9 **IC 26-2-8-102.**
 10 **(13) "Electronic will" means a will of a testator that:**
 11 **(A) is created and maintained as an electronic record;**
 12 **(B) contains the electronic signature of the testator;**
 13 **(C) contains the date and time of the electronic signature;**
 14 **(D) includes an authentication method that is attached to**
 15 **or logically associated with the electronic will to identify**
 16 **the testator;**
 17 **(E) is created and maintained in such a manner that any**
 18 **alteration of the electronic will is detectable; and**
 19 **(F) is otherwise subject to IC 26-2-8.**
 20 **The term includes a codicil.**
 21 **(14) "Executed" includes the use of an electronic signature.**
 22 ~~(9)~~ **(15) "Estate" denotes the real and personal property of the**
 23 decedent or protected person, as from time to time changed in
 24 form by sale, reinvestment, or otherwise, and augmented by any
 25 accretions and additions thereto and substitutions therefor and
 26 diminished by any decreases and distributions therefrom.
 27 ~~(10)~~ **(16) "Expenses of administration" includes expenses**
 28 incurred by or on behalf of a decedent's estate in the collection of
 29 assets, the payment of debts, and the distribution of property to
 30 the persons entitled to the property, including funeral expenses,
 31 expenses of a tombstone, expenses incurred in the disposition of
 32 the decedent's body, executor's commissions, attorney's fees, and
 33 miscellaneous expenses.
 34 ~~(11)~~ **(17) "Fiduciary" includes a:**
 35 **(A) personal representative;**
 36 **(B) guardian;**
 37 **(C) conservator;**
 38 **(D) trustee; and**
 39 **(E) person designated in a protective order to act on behalf of**
 40 **a protected person.**
 41 ~~(12)~~ **(18) "Heirs" denotes those persons, including the surviving**
 42 spouse, who are entitled under the statutes of intestate succession



- 1 to the real and personal property of a decedent on the decedent's
 2 death intestate, unless otherwise defined or limited by the will.
- 3 ~~(13)~~ **(19)** "Incapacitated" has the meaning set forth in
 4 IC 29-3-1-7.5.
- 5 ~~(14)~~ **(20)** "Interested persons" means heirs, devisees, spouses,
 6 creditors, or any others having a property right in or claim against
 7 the estate of a decedent being administered. This meaning may
 8 vary at different stages and different parts of a proceeding and
 9 must be determined according to the particular purpose and
 10 matter involved.
- 11 ~~(15)~~ **(21)** "Issue" of a person, when used to refer to persons who
 12 take by intestate succession, includes all lawful lineal descendants
 13 except those who are lineal descendants of living lineal
 14 descendants of the intestate.
- 15 ~~(16)~~ **(22)** "Lease" includes an oil and gas lease or other mineral
 16 lease.
- 17 ~~(17)~~ **(23)** "Letters" includes letters testamentary, letters of
 18 administration, and letters of guardianship.
- 19 ~~(18)~~ **(24)** "Minor" or "minor child" or "minority" refers to any
 20 person under the age of eighteen (18) years.
- 21 ~~(19)~~ **(25)** "Mortgage" includes deed of trust, vendor's lien, and
 22 chattel mortgage.
- 23 ~~(20)~~ **(26)** "Net estate" refers to the real and personal property of
 24 a decedent less the allowances provided under IC 29-1-4-1 and
 25 enforceable claims against the estate.
- 26 ~~(21)~~ **(27)** "Person" means:
- 27 (A) an individual;
 28 (B) a corporation;
 29 (C) a trust;
 30 (D) a limited liability company;
 31 (E) a partnership;
 32 (F) a business trust;
 33 (G) an estate;
 34 (H) an association;
 35 (I) a joint venture;
 36 (J) a government or political subdivision;
 37 (K) an agency;
 38 (L) an instrumentality; or
 39 (M) any other legal or commercial entity.
- 40 ~~(22)~~ **(28)** "Personal property" includes interests in goods, money,
 41 choses in action, evidences of debt, and chattels real.
- 42 ~~(23)~~ **(29)** "Personal representative" includes executor,



- 1 administrator, administrator with the will annexed, administrator
 2 de bonis non, and special administrator.
- 3 ~~(24)~~ **(30)** "Probate estate" denotes the property transferred at the
 4 death of a decedent under the decedent's will or under IC 29-1-2,
 5 in the case of a decedent dying intestate.
- 6 ~~(25)~~ **(31)** "Property" includes both real and personal property.
- 7 ~~(26)~~ **(32)** "Protected person" has the meaning set forth in
 8 IC 29-3-1-13.
- 9 ~~(27)~~ **(33)** "Real property" includes estates and interests in land,
 10 corporeal or incorporeal, legal or equitable, other than chattels
 11 real.
- 12 **(34) "Signature" includes an electronic signature.**
- 13 **(35) "Signed" includes the use of an electronic signature.**
- 14 **(36) "Trust" includes an electronic trust or an electronic trust**
 15 **instrument (as defined in IC 30-4-1-2).**
- 16 ~~(28)~~ **(37)** "Will" includes all wills, testaments, and codicils,
 17 **including an electronic will.** The term also includes a
 18 testamentary instrument which merely appoints an executor or
 19 revokes or revives another will.
- 20 **(38) "Written" or "writing" includes the use of an electronic**
 21 **record.**
- 22 (b) The following rules of construction apply throughout this article
 23 unless otherwise apparent from the context:
- 24 (1) The singular number includes the plural and the plural number
 25 includes the singular.
- 26 (2) The masculine gender includes the feminine and neuter.
- 27 SECTION 8. IC 29-1-5-3.1 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3.1. (a) This section
 29 applies to a will executed before, on, or after July 1, 2003. When a will
 30 is executed, the will may be:
- 31 (1) attested; and
 32 (2) made self-proving;
- 33 by incorporating into, or attaching to, **or logically associating with** the
 34 will a self-proving clause that meets the requirements of subsection (c)
 35 or (d). If the testator and witnesses sign a self-proving clause that meets
 36 the requirements of subsection (c) or (d) at the time the will is
 37 executed, no other signatures of the testator and witnesses are required
 38 for the will to be validly executed and self-proved.
- 39 (b) If a will is executed by the signatures of the testator and
 40 witnesses on an attestation clause under section 3(b) of this chapter, the
 41 will may be made self-proving at a later date by attaching to **or**
 42 **logically associating with** the will a self-proving clause signed by the



1 testator and witnesses that meets the requirements of subsection (c) or
2 (d).

3 (c) A self-proving clause must contain the acknowledgment of the
4 will by the testator and the statements of the witnesses, each made
5 under the laws of Indiana and evidenced by the signatures of the
6 testator and witnesses (which may be made under the penalties for
7 perjury) attached **to, logically associated with,** or annexed to the will
8 in form and content substantially as follows:

9 We, the undersigned testator and the undersigned witnesses,
10 respectively, whose names are signed to the attached or foregoing
11 instrument declare:

- 12 (1) that the testator executed the instrument as the testator's will;
- 13 (2) that, in the presence of both witnesses, the testator signed or
- 14 acknowledged the signature already made or directed another to
- 15 sign for the testator in the testator's presence;
- 16 (3) that the testator executed the will as a free and voluntary act
- 17 for the purposes expressed in it;
- 18 (4) that each of the witnesses, in the presence of the testator and
- 19 of each other, signed the will as a witness;
- 20 (5) that the testator was of sound mind when the will was
- 21 executed; and
- 22 (6) that to the best knowledge of each of the witnesses the testator
- 23 was, at the time the will was executed, at least eighteen (18) years
- 24 of age or was a member of the armed forces or of the merchant
- 25 marine of the United States or its allies.

26 _____

27 Testator

28 _____

29 Date _____ Witness

30 _____

31 Witness

32 (d) A will is attested and self-proved if the will includes, **is logically**
33 **associated with,** or has attached a clause signed by the testator and the
34 witnesses that indicates in substance that:

- 35 (1) the testator signified that the instrument is the testator's will;
- 36 (2) in the presence of at least two (2) witnesses, the testator
- 37 signed the instrument or acknowledged the testator's signature
- 38 already made or directed another to sign for the testator in the
- 39 testator's presence;
- 40 (3) the testator executed the instrument freely and voluntarily for
- 41 the purposes expressed in it;
- 42 (4) each of the witnesses, in the testator's presence and in the



- 1 presence of all other witnesses, is executing the instrument as a
- 2 witness;
- 3 (5) the testator was of sound mind when the will was executed;
- 4 and
- 5 (6) the testator is, to the best of the knowledge of each of the
- 6 witnesses, either:
- 7 (A) at least eighteen (18) years of age; or
- 8 (B) a member of the armed forces or the merchant marine of
- 9 the United States or its allies.
- 10 (e) This section shall be construed in favor of effectuating the
- 11 testator's intent to make a valid will.

12 SECTION 9. IC 29-1-5-3.2 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3.2. Subject to the
 14 applicable Indiana Rules of Trial Procedure, a ~~videotape~~ **video**
 15 **recording or other electronic record** may be admissible as evidence
 16 of the following:

- 17 (1) The proper execution of a will.
- 18 (2) The intentions of a testator.
- 19 (3) The mental state or capacity of a testator.
- 20 (4) The authenticity of a will.
- 21 (5) Matters that are determined by a court to be relevant to the
- 22 probate of a will.

23 SECTION 10. IC 30-4-1-2, AS AMENDED BY P.L.51-2014,
 24 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2017]: Sec. 2. As used in this article:

- 26 (1) "Adult" means any person eighteen (18) years of age or older.
- 27 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
- 28 descendant, brother, sister, spouse of a brother or sister,
- 29 employee, director, officer, partner, joint venturer, a corporation
- 30 subject to common control with the trustee, a shareholder, or
- 31 corporation who controls the trustee or a corporation controlled
- 32 by the trustee other than as a fiduciary, an attorney, or an agent.
- 33 **(3) "Authentication method" has the meaning set forth in**
- 34 **IC 29-1-1-3.**
- 35 ~~(3)~~ **(4)** "Beneficiary" has the meaning set forth in IC 30-2-14-2.
- 36 ~~(4)~~ **(5)** "Breach of trust" means a violation by the trustee of any
- 37 duty which is owed to the settlor or beneficiary.
- 38 ~~(5)~~ **(6)** "Charitable trust" means a trust in which all the
- 39 beneficiaries are the general public or organizations, including
- 40 trusts, corporations, and associations, and that is organized and
- 41 operated wholly for religious, charitable, scientific, public safety
- 42 testing, literary, or educational purposes. The term does not



- 1 include charitable remainder trusts, charitable lead trusts, pooled
 2 income funds, or any other form of split-interest charitable trust
 3 that has at least one (1) noncharitable beneficiary.
 4 ~~(6)~~ **(7)** "Court" means a court having jurisdiction over trust
 5 matters.
 6 **(8)** "Electronic" has the meaning set forth in IC 26-2-8-102.
 7 **(9)** "Electronic record" has the meaning set forth in
 8 IC 26-2-8-102.
 9 **(10)** "Electronic signature" has the meaning set forth in
 10 IC 26-2-8-102.
 11 **(11)** "Electronic trust instrument" means a trust instrument
 12 executed by a settlor that:
 13 **(A)** is created and maintained as an electronic record;
 14 **(B)** contains the terms of the trust, including any
 15 amendments to the terms of the trust;
 16 **(C)** includes the date and time of the electronic signature;
 17 **(D)** includes an authentication method that is attached to
 18 or logically associated with the electronic trust instrument
 19 to identify the settlor;
 20 **(E)** is created and maintained in such a manner that any
 21 alteration of the electronic trust instrument is detectable;
 22 and
 23 **(F)** is otherwise subject to IC 26-2-8.
 24 **(12)** "Executed" includes the use of an electronic signature.
 25 ~~(7)~~ **(13)** "Income", except as otherwise stated in a trust agreement,
 26 has the meaning set forth in IC 30-2-14-4.
 27 ~~(8)~~ **(14)** "Income beneficiary" has the meaning set forth in
 28 IC 30-2-14-5.
 29 ~~(9)~~ **(15)** "Inventory value" means the cost of property to the settlor
 30 or the trustee at the time of acquisition or the market value of the
 31 property at the time it is delivered to the trustee, or the value of
 32 the property as finally determined for purposes of an estate or
 33 inheritance tax.
 34 ~~(10)~~ **(16)** "Minor" means any person under the age of eighteen
 35 (18) years.
 36 ~~(11)~~ **(17)** "Person" has the meaning set forth in IC 30-2-14-9.
 37 ~~(12)~~ **(18)** "Personal representative" means an executor or
 38 administrator of a decedent's or absentee's estate, guardian of the
 39 person or estate, guardian ad litem or other court appointed
 40 representative, next friend, parent or custodian of a minor,
 41 attorney in fact, or custodian of an incapacitated person (as
 42 defined in IC 29-3-1-7.5).



- 1 ~~(13)~~ **(19)** "Principal" has the meaning set forth in IC 30-2-14-10.
 2 ~~(14)~~ **(20)** "Qualified beneficiary" means:
 3 (A) a beneficiary who, on the date the beneficiary's
 4 qualification is determined:
 5 (i) is a distributee or permissible distributee of trust income
 6 or principal;
 7 (ii) would be a distributee or permissible distributee of trust
 8 income or principal if the interest of the distributee
 9 described in item (i) terminated on that date;
 10 (iii) would be a distributee or permissible distributee of trust
 11 income or principal if the trust terminated on that date;
 12 (iv) is a charitable organization expressly designated to
 13 receive distributions under the terms of a charitable trust;
 14 (v) is a person appointed to enforce a trust for the care of an
 15 animal under IC 30-4-2-18; or
 16 (vi) is a person appointed to enforce a trust for a
 17 noncharitable purpose under IC 30-4-2-19; or
 18 (B) the attorney general, if the trust is a charitable trust having
 19 its principal place of administration in Indiana.
 20 ~~(15)~~ **(21)** "Remainderman" means a beneficiary entitled to
 21 principal, including income which has been accumulated and
 22 added to the principal.
 23 ~~(16)~~ **(22)** "Settlor" means a person who establishes a trust
 24 including the testator of a will under which a trust is created.
 25 **(23) "Signature" includes an electronic signature.**
 26 **(24) "Signed" includes the use of an electronic signature.**
 27 ~~(17)~~ **(25)** "Terms of a trust", "terms of the trust", or "terms of a
 28 charitable trust" means the manifestation of the intent of a settlor
 29 or decedent with respect to the trust, expressed in a manner that
 30 admits of its proof in a judicial proceeding, whether by written or
 31 spoken words or by conduct.
 32 ~~(18)~~ **(26)** "Trust estate" means the trust property and the income
 33 derived from its use.
 34 ~~(19)~~ **(27)** "Trust for a benevolent public purpose" means a
 35 charitable trust (as defined in subdivision (5)), a split-interest
 36 trust (as defined in Section 4947 of the Internal Revenue Code),
 37 a perpetual care fund or an endowment care fund established
 38 under IC 23-14-48-2, a prepaid funeral plan or funeral trust
 39 established under IC 30-2-9, a funeral trust established under
 40 IC 30-2-10, a trust or an escrow account created from payments
 41 of funeral, burial services, or merchandise in advance of need
 42 described in IC 30-2-13, and any other form of split-interest



1 charitable trust that has both charitable and noncharitable
 2 beneficiaries, including but not limited to charitable remainder
 3 trusts, charitable lead trusts, and charitable pooled income funds.

4 ~~(20)~~ **(28)** "Trust instrument" means an instrument, agreement, or
 5 other written document executed by the settlor that contains the
 6 terms of the trust, including any amendments to the terms of the
 7 trust. **The term includes an electronic trust instrument.**

8 ~~(21)~~ **(29)** "Trust property" means property either placed in trust or
 9 purchased or otherwise acquired by the trustee for the trust
 10 regardless of whether the trust property is titled in the name of the
 11 trustee or the name of the trust.

12 ~~(22)~~ **(30)** "Trustee" has the meaning set forth in IC 30-2-14-13.

13 **(31) "Written" or "writing" includes the use of an electronic**
 14 **record.**

15 SECTION 11. IC 30-4-2-2, AS AMENDED BY P.L.238-2005,
 16 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2017]: Sec. 2. (a) This section applies to the acceptance of a
 18 trust by a person named as trustee.

19 (b) The appearance of the named person's signature on the writing,
 20 **or attached to or logically associated with the writing**, which is the
 21 evidence of the trust or on a separate written acceptance will be
 22 conclusive that the named person accepted the trust.

23 (c) Except as provided in subsection (e), if the named person
 24 exercises powers or performs duties under the trust, the named person
 25 will be presumed to have accepted the trust.

26 (d) The named person may reject the trust in writing and, if the
 27 named person does so, will incur no liability. If, after being informed
 28 that the named person has been named as trustee, the named person
 29 neither expressly accepts the trust nor exercises powers or performs
 30 duties under the trust within a reasonable time, the named person will
 31 be presumed to have rejected the trust.

32 (e) If there is an immediate risk of damage to the trust estate, the
 33 named person may act to preserve the trust estate and will not be
 34 presumed to have accepted the trust, provided the named person
 35 delivers a written rejection to the settlor at or within a reasonable time
 36 after the named person acts, or, if the settlor is dead, to the beneficiary
 37 or the court having jurisdiction over the administration of the trust
 38 estate.

39 SECTION 12. IC 30-4-2-20 IS ADDED TO THE INDIANA CODE
 40 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2017]: **Sec. 20. Subject to the applicable Indiana rules of trial**
 42 **procedure, a video recording or other electronic record may be**



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admissible as evidence of the following:

- (1) The proper execution of a trust.**
- (2) The intentions of a settlor.**
- (3) The mental state or capacity of a settlor.**
- (4) The authenticity of a trust instrument.**
- (5) Matters that are determined by a court to be relevant to the administration of the trust.**

SECTION 13. IC 30-5-4-1, AS AMENDED BY P.L.101-2008, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. **(a)** 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.

(b) Notwithstanding subsection (a) or any other law, a power of attorney, including:

- (1) appointment of a health care representative under IC 16-36-1-7;**
- (2) a medical advance directive created under IC 16-36;**
- (3) a living will or life prolonging procedures will declaration under IC 16-36-4; and**
- (4) a durable power of attorney created under IC 30-5 or any other law;**

may not be denied legal effect or enforceability because an electronic record or electronic signature was used in its formation. However, if the other law requires the power of attorney to be in writing, the power of attorney must include an authentication method (as defined in IC 29-1-1-3) that is attached to or logically associated with the power of attorney to identify the principal.

SECTION 14. IC 32-39-2-4, AS ADDED BY P.L.137-2016, SECTION 14, IS AMENDED TO READ AS FOLLOWS [JULY 1, 2017]: Sec. 4. If a deceased user consented to, or a court directs, disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by



1 the user if the personal representative gives the custodian the
2 following:

- 3 (1) A written request for disclosure in physical or electronic form.
4 (2) A certified or authenticated copy of the death certificate of the
5 user.
6 (3) A copy of the letters (as defined in ~~IC 29-1-1-3(a)(17)~~
7 **IC 29-1-1-3(a)(23)**) of the personal representative or of the order
8 of no supervision or order of unsupervised administration issued
9 to the personal representative under IC 29-1-7.5.
10 (4) Unless the user provided direction using an online tool, a copy
11 of the user's will, trust, power of attorney, or other record
12 evidencing the user's consent to disclosure of the content of
13 electronic communications.
14 (5) If requested by the custodian:
15 (A) a number, username, address, or other unique subscriber
16 identifier or account identifier assigned by the custodian to
17 identify the user's account;
18 (B) evidence linking the account to the user; or
19 (C) a finding by the court that:
20 (i) the user had a specific account with the custodian,
21 identifiable by the information specified in clause (A);
22 (ii) disclosure of the content of electronic communications
23 of the user would not violate 18 U.S.C. 2701 et seq., 47
24 U.S.C. 222, or other applicable law;
25 (iii) unless the user provided direction using an online tool,
26 the user consented to disclosure of the content of electronic
27 communications; or
28 (iv) disclosure of the content of electronic communications
29 of the user is reasonably necessary for administration of the
30 user's estate.

31 SECTION 15. IC 32-39-2-5, AS ADDED BY P.L.137-2016,
32 SECTION 14, IS AMENDED TO READ AS FOLLOWS [JULY 1,
33 2017]: Sec. 5. Unless the user prohibited disclosure of the user's digital
34 assets or a court directs otherwise, a custodian shall disclose to the
35 personal representative of the estate of a deceased user a catalogue of
36 electronic communications sent or received by the user and digital
37 assets, other than the content of electronic communications, of the user,
38 if the personal representative gives the custodian:

- 39 (1) a written request for disclosure in physical or electronic form;
40 (2) a certified or authenticated copy of the death certificate of the
41 user;
42 (3) a copy of the letters (as defined in ~~IC 29-1-1-3(a)(17)~~)



1 **IC 29-1-1-3(a)(23)** of the personal representative or of the order
 2 of no supervision or order of unsupervised administration issued
 3 to the personal representative under IC 29-1-7.5; or

4 (4) if requested by the custodian:

5 (A) a number, username, address, or other unique subscriber
 6 identifier or account identifier assigned by the custodian to
 7 identify the user's account;

8 (B) evidence linking the account to the user;

9 (C) an affidavit stating that disclosure of the user's digital
 10 assets is reasonably necessary for administration of the user's
 11 estate; or

12 (D) a finding by the court that:

13 (i) the user had a specific account with the custodian,
 14 identifiable by the information specified in clause (A); or

15 (ii) disclosure of the user's digital assets is reasonably
 16 necessary for administration of the user's estate.

17 SECTION 16. IC 32-39-2-12, AS ADDED BY P.L.137-2016,
 18 SECTION 14, IS AMENDED TO READ AS FOLLOWS [JULY 1,
 19 2017]: Sec. 12. (a) The legal duties imposed on a fiduciary charged
 20 with managing tangible property, including:

21 (1) the duty of care;

22 (2) the duty of loyalty; and

23 (3) the duty of confidentiality;

24 also apply to a fiduciary charged with managing digital assets.

25 (b) A fiduciary's or designated recipient's authority with respect to
 26 a digital asset of a user:

27 (1) except as otherwise provided in section 1 of this chapter, is
 28 subject to the applicable terms of service;

29 (2) is subject to other applicable law, including copyright law;

30 (3) is limited by the scope of the fiduciary's duties; and

31 (4) may not be used to impersonate the user.

32 (c) A fiduciary with authority over the property of a decedent,
 33 protected person, principal, or settlor has the right to access any digital
 34 asset:

35 (1) in which the decedent, protected person, principal, or settlor
 36 had a right or interest; and

37 (2) that is not held by a custodian or subject to a terms-of-service
 38 agreement.

39 (d) A fiduciary acting within the scope of the fiduciary's duties is an
 40 authorized user of the property of the decedent, protected person,
 41 principal, or settlor for the purpose of applicable computer fraud and
 42 unauthorized computer access laws, including IC 24-4.8-2, IC 24-5-22,



- 1 IC 35-43-1-7, IC 35-43-1-8, IC 35-43-2-3, and IC 35-45-13.
- 2 (e) A fiduciary with authority over the tangible, personal property
 3 of a decedent, protected person, principal, or settlor:
- 4 (1) has the right to access the property and any digital asset stored
 5 in the property; and
- 6 (2) is an authorized user for the purpose of computer fraud and
 7 unauthorized computer access laws, including IC 24-4.8-2,
 8 IC 24-5-22, IC 35-43-2-3, and IC 35-45-13.
- 9 (f) A custodian may disclose information in an account to a
 10 fiduciary of the user when the information is required to terminate an
 11 account used to access digital assets licensed to the user.
- 12 (g) A fiduciary of a user may request that a custodian terminate the
 13 user's account. A request for termination must be in writing, in either
 14 physical or electronic form, and must be accompanied by:
- 15 (1) if the user is deceased, a certified or authenticated copy of the
 16 death certificate of the user;
- 17 (2) a copy of:
- 18 (A) the letters (as defined in ~~IC 29-1-1-3(a)(17)~~
 19 **IC 29-1-1-3(a)(23)**) of the personal representative or of the
 20 order of no supervision or order of unsupervised
 21 administration issued to the personal representative under
 22 IC 29-1-7.5;
- 23 (B) the court order;
- 24 (C) the power of attorney; or
- 25 (D) the trust;
- 26 giving the fiduciary authority over the account; and
- 27 (3) if requested by the custodian:
- 28 (A) a number, username, address, or other unique subscriber
 29 identifier or account identifier assigned by the custodian to
 30 identify the user's account;
- 31 (B) evidence linking the account to the user; or
- 32 (C) a finding by the court that the user had a specific account
 33 with the custodian, identifiable by the information specified in
 34 clause (A).

