

Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1303

AN ACT to amend the Indiana Code concerning probate.

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

SECTION 1. IC 29-1-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 5. A will is legally executed if the manner of its execution complies with the law, in force either at the time of execution or at the time of the testator's death, of:

- (1) this state; ~~or~~
- (2) ~~the place of execution; the jurisdiction that the testator is actually present in at the time the testator executes the will;~~
- or
- (3) the domicile of the testator at the time of execution or at the time of his death.

SECTION 2. IC 29-1-21 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

Chapter 21. Electronic Wills

Sec. 1. The purpose of this chapter is to provide rules for the valid execution, attestation, self-proving, and probate of wills that are prepared and signed electronically. This chapter shall be applied fairly and flexibly so that a testator whose identity can be verified, who has testamentary capacity, and who is acting free from duress and undue influence may execute a valid electronic will consistent with the testator's intent. If an electronic will is properly and electronically signed by the testator and by the witnesses and is maintained as an electronic record or as a

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complete converted copy in compliance with this chapter, all the normal presumptions that apply to a traditional paper will that is validly signed and executed apply to an electronic will.

Sec. 2. (a) Except as provided in subsection (b), electronic wills are exclusively governed by this chapter.

(b) If this chapter does not provide an explicit definition, form, rule, or statute concerning the creation, execution, probate, interpretation, storage, or use of an electronic will, the applicable statute from this article shall apply to the electronic will.

Sec. 3. The following terms are defined for this chapter:

(1) "Actual presence" means that:

(A) a witness; or

(B) another individual who observes the execution of the electronic will;

is physically present in the same physical location as the testator. The term does not include any form of observation or interaction that is conducted by means of audio, visual, or audiovisual telecommunication or similar technological means.

(2) "Affidavit of regularity" means an affidavit executed by a custodian or other person under section 13 of this chapter with respect to the electronic record for an electronic will or a complete converted copy of an electronic will.

(3) "Complete converted copy" means a document in any format that:

(A) can be visually perceived in its entirety on a monitor or other display device;

(B) can be printed; and

(C) contains:

(i) the text of the electronic will;

(ii) the electronic signatures of the testator and the witnesses;

(iii) a readable copy of any associated document integrity evidence that may be a part of or attached to the electronic will; and

(iv) a self-proving clause concerning the electronic will, if the electronic will is self-proved.

(4) "Custodian" means a person, other than:

(A) the testator who executed the electronic will;

(B) an attorney;

(C) a person who is named in the electronic will as a personal representative of the testator's estate; or



- (D) a person who is named or defined as a distributee in the electronic will;**
who has authorized possession or control of the electronic will. The term may include an attorney in fact serving under a living testator's durable power of attorney who possesses general authority over records, reports, statements, electronic records, or estate planning transactions.
- (5) "Custody" means the authorized possession and control of at least one (1) of the following:**
- (A) A complete copy of the electronic record for the electronic will, including a self-proving clause if a self-proving clause is executed.**
 - (B) A complete converted copy of the electronic will, if the complete electronic record has been lost or destroyed or the electronic will has been revoked.**
- (6) "Document integrity evidence" means the part of the electronic record for the electronic will that:**
- (A) is created and maintained electronically;**
 - (B) includes digital markers showing that the electronic will has not been altered after its initial execution and witnessing;**
 - (C) is logically associated with the electronic will in a tamper evident manner so that any change made to the text of the electronic will after its execution is visibly perceptible when the electronic record is displayed or printed;**
 - (D) displays any changes made to the text of the electronic will after its execution; and**
 - (E) displays the following information:**
 - (i) The city, state, date, and time the electronic will was executed by the testator and the attesting witnesses.**
 - (ii) The text of the self-proving clause, if the electronic will is electronically self-proved through use of a self-proving clause executed under section 4(c) of this chapter.**
 - (iii) The name of the testator and attesting witnesses.**
 - (iv) The name and address of the person responsible for marking the testator's signature on the electronic will at the testator's direction and in the actual presence of the testator and attesting witnesses.**
 - (v) Copies of or links to the electronic signatures of the testator and the attesting witnesses on the electronic will.**



(vi) A general description of the type of identity verification evidence used to verify the testator's identity.

(vii) The text of the advisory instruction, if any, that is provided to the testator under section 6 of this chapter at the time of the execution of the electronic will.

(viii) The content of the cryptographic hash or unique code used by the testator to sign the electronic will in the event that public key infrastructure or similar secure technology was used to sign or authenticate the electronic will.

Document integrity evidence may, but is not required to, contain other information about the electronic will such as a unique document number, client number, or other identifier that an attorney or custodian assigns to the electronic will or a link to a secure Internet web site where a complete copy of the electronic will is accessible. The title, heading, or label, if any, that is assigned to the document integrity evidence (such as "certificate of completion", "audit trail", or "audit log" is immaterial).

(7) "Electronic" has the meaning set forth in IC 26-2-8-102.

(8) "Electronic record" has the meaning set forth in IC 26-2-8-102. The term may include one (1) or both of the following:

(A) The document integrity evidence associated with the electronic will.

(B) The identity verification evidence of the testator who executed the electronic will.

(9) "Electronic signature" has the meaning set forth in IC 26-2-8-102.

(10) "Electronic will" means the will of a testator that:

(A) is initially created and maintained as an electronic record;

(B) contains the electronic signatures of:

(i) the testator; and

(ii) the attesting witnesses; and

(C) contains the date and times of the electronic signatures described by items (i) and (ii).

The term may include a codicil that amends an electronic will or a traditional paper will if the codicil is executed in accordance with the requirements of this chapter.

(11) "Executed" means the signing of an electronic will. The



term includes the use of an electronic signature.

(12) "Identity verification evidence" means either:

(A) a copy of the testator's government issued photo identification card; or

(B) any other information that verifies the identity of the testator if derived from one (1) or more of the following sources:

(i) A knowledge based authentication method.

(ii) A physical device.

(iii) A digital certificate using a public key infrastructure.

(iv) A verification or authorization code sent to or used by the testator.

(v) Biometric identification.

(vi) Any other commercially reasonable method for verifying the testator's identity using current or future technology.

(13) "Logically associated" means electronically connected, cross referenced, or linked in a reliable manner.

(14) "Sign" means valid use of a properly executed electronic signature.

(15) "Signature" means the authorized use of the testator's name to authenticate an electronic will. The term includes an electronic signature.

(16) "Tamper evident" means the feature of an electronic record, such as an electronic will or document integrity evidence for an electronic will, that will cause any alteration or tampering of the electronic record, after it is created or signed, to be perceptible to any person viewing the electronic record when it is printed on paper or viewed on a monitor or other display device.

(17) "Traditional paper will" means a will or codicil that is signed by the testator and the attesting witnesses:

(A) on paper; and

(B) in the manner specified in IC 29-1-5-3 or IC 29-1-5-3.1.

(18) "Will" includes all wills, testaments, and codicils. The term includes:

(A) an electronic will; and

(B) any testamentary instrument that:

(i) appoints an executor; or

(ii) revives or revokes another will.

Sec. 4. (a) To be valid as a will under this article, an electronic



will must be executed by the electronic signature of the testator and attested to by the electronic signatures of at least two (2) witnesses in the following manner:

(1) The testator and the attesting witnesses must be in each other's actual presence when the electronic signatures are made in or on the electronic will. The testator and witnesses must directly observe one another as the electronic will is being signed by the parties.

(2) The testator and attesting witnesses must comply with:

(A) the prompts, if any, issued by the software being used to perform the electronic signing; or

(B) the instructions by the person, if any, responsible for supervising the execution of the electronic will.

(3) The testator must state, in the actual presence of the attesting witnesses, that the instrument to be electronically signed is the testator's will.

(4) The testator must:

(A) electronically sign the electronic will in the actual presence of the attesting witnesses; or

(B) direct another adult individual who is not an attesting witness to sign the electronic will on the testator's behalf in the actual presence of the testator and the attesting witnesses.

(5) The attesting witnesses must electronically sign the electronic will in the actual presence of:

(A) the testator; and

(B) one another;

after the testator has electronically signed the electronic will.

(6) The:

(A) testator; or

(B) other adult individual who is:

(i) not an attesting witness; and

(ii) acting on behalf of the testator;

must command the software application or user interface to finalize the electronically signed electronic will as an electronic record.

The process described in this section may include as part of the electronic record for the electronic will any identity verification evidence pertaining to the testator or any document integrity evidence for the electronic will.

(b) An electronic will may be self-proved:

(1) at the time that it is electronically signed; and



(2) before it is electronically finalized;
by incorporating into the electronic record of the electronic will a self-proving clause described under subsection (c). An electronic will is not required to contain an attestation clause or a self-proving clause in order to be a valid electronic will.

(c) A self-proving clause under subsection (b) must substantially be in the following form:

"We, the undersigned testator and the undersigned witnesses, whose names are signed to the attached or foregoing instrument, declare:

(1) That the testator executed the instrument as the testator's will.

(2) That, in the actual and direct physical presence of both witnesses, the testator signed the will or directed another individual who is not one of the witnesses to sign for the testator in the testator's presence and in the witnesses' actual and direct physical presence;

(3) That the testator executed the will as a free and voluntary act for the purposes expressed in it;

(4) That each of the witnesses, in the actual and direct physical presence of the testator and each other, signed the will as a witness;

(5) That the testator was of sound mind when the will was executed; and

(6) That, to the best knowledge of each attesting witness, the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.

(insert date) (insert signature of testator)

(insert date)(insert signature of witness)

(insert date) (insert signature of witness)".

A single signature from the testator and from each attesting witness may be provided for any electronic will bearing or containing a self-proving clause.

(d) An electronic will that is executed in compliance with subsection (a) shall not be rendered invalid by the existence of any of the following attributes:

(1) An attestation clause.



(2) Additional signatures.

(3) A self-proving clause that differs in form from the exemplar provided in subsection (c).

(4) Any additional language that refers to the circumstances or manner in which the electronic will was executed.

(e) This section shall be construed in a manner that gives effect to the testator's intent to execute a valid will.

Sec. 5. Subject to the Indiana Rules of Evidence and the Indiana Rules of Trial Procedure, a video recording of an electronic will's execution or a video recording of a testator either before or after the execution of an electronic will may be admissible as evidence of the following:

(1) The proper execution of an electronic will in compliance with section 4 of this chapter.

(2) The intentions of the testator.

(3) The mental state or capacity of the testator.

(4) The absence of undue influence or duress with respect to the testator.

(5) Verification of the testator's identity.

(6) Evidence that a complete converted copy of an electronic will should be admitted to probate.

(7) Whether a will whose execution failed to fully comply with section 4 of this chapter should be admitted to probate as a valid traditional paper will.

(8) Any other matter the court considers relevant to the probate of an electronic will.

Sec. 6. (a) As used in this section, "form vendor" means any person who provides a testator with an electronic will form or a user interface for creating, completing, or executing an electronic will. The term includes:

(1) an attorney who prepares an electronic will for a testator; and

(2) any vendor or licensor of estate planning software of digital estate planning forms.

(b) It is consistent with best practices to provide the following advisory instruction with each electronic will:

"IMPORTANT Instructions to the Signatory of an Electronic Will

A. The procedure for proper execution (electronic signing and witnessing) of your electronic will is as follows:

(1) You (the testator) and the two (2) attesting witnesses must be actually present in the same location throughout



the execution process. Indiana law does not permit attesting witnesses to observe or participate in the signing process from a location that is apart or separate from the testator's location or act as an attesting witness through use of remote audio, remote visual, or remote audiovisual software or technology.

(2) Both attesting witnesses must be adults and should not be individuals who will be gifted money or other property under the terms of your electronic will. If a witness named in the electronic will is named as a beneficiary or legatee or entitled to money or property under the terms of the electronic will, the beneficiary or legatee named in the electronic will may only receive money, property, or shares reserved for them under state intestacy laws.

(3) You, as the testator, must inform the attesting witnesses that the document you will be signing is your will.

(4) You (the testator) and the two (2) attesting witnesses may use the same computer or device or different computers and devices to make your respective electronic signatures on the electronic will.

(5) The online user interface or software application for your will may require you and the attesting witnesses to use a password, validation code, token, or other security feature in order to prevent identity theft or impersonation and permanently link each of you, as individuals, to your respective electronic signatures.

(6) You (the testator) and the two (2) attesting witnesses should follow the instructions provided by the online user interface or software application when making your respective electronic signatures on your electronic will. You (the testator) should electronically sign the electronic will first followed by each of the attesting witnesses. If you (the testator) are physically unable to type, press keys, or otherwise enter commands on the computer or device being used to electronically sign the electronic will, you may instruct another adult who is not an attesting witness to enter your electronic signature on your electronic will for you. Any individual who enters your electronic signature on your electronic will on your behalf must do so in your actual presence.

(7) The software application or online user interface may create a date and time stamp for your electronic signature



and for the electronic signature of each attesting witness.

(8) The execution of your electronic will is complete after you and the attesting witnesses have completed making your electronic signatures by clicking or executing a command that saves or submits your respective electronic signatures in the software application or online interface.

(9) You are strongly encouraged to save a complete copy of your electronic will in a portable and printable format. An electronic will preserved in this manner should include all information related to the execution process of your electronic will, including information that is compiled or stored by the software application or online user interface. The related information described in this subdivision should be viewable and printable as a self-contained and permanent part of the electronic record for your electronic will.

B. If you used a software application or an online user interface to generate, finalize, and sign your electronic will, the software or user interface may also offer you the ability to securely store the electronic record of your electronic will. You may be required to create or establish a user identification, password, or other security feature in order to store the electronic record of your electronic will in this way. You should carefully safeguard your user identification, password, security questions, and personal information used to securely save or store your electronic will. The information that you are being asked to safeguard will likely be required in order to:

- (1) generate;
- (2) replace;
- (3) retrieve; or
- (4) revoke;

your electronic will at a later date.

C. The only proper and valid way for you to revoke your electronic will is to:

- (1) sign a new electronic will or a traditional paper will that revokes all previous wills executed by you; or
- (2) permanently and irrevocably make unreadable and nonretrievable the electronic record for your electronic will.

If you are holding the electronic record for your electronic will on your own computer or digital storage device and not



making use of a third party custodian or online storage or cloud based document storage service to store or safeguard your electronic will, you may personally delete permanently or make unreadable the electronic record associated with your electronic will. Before doing so, you are encouraged to make and save a printable, permanent copy of the complete electronic record associated with your electronic will, including any related information pertaining to the execution or signing process of your electronic will, so that the contents of your revoked electronic will may be discovered later by a probate court or any other interested persons in the event of a dispute concerning the validity of any later will that you decide to make.

If you are making use of a third party custodian or online or cloud based document storage service to store or safeguard your electronic will, the valid revocation of your electronic will requires you to personally issue a written or electronic revocation document to each third party custodian who has custody of a copy of the electronic record associated with your electronic will. A valid revocation document must instruct the custodian to permanently delete or make unreadable and nonretrievable the electronic record associated with your electronic will. A valid revocation document must be signed by you and two (2) attesting witnesses while following the same procedures required for the execution of a new traditional paper will or new electronic will."

(c) A failure to provide the text of the advisory instruction in subsection (b) does not affect the validity of the electronic will if the electronic will is otherwise properly executed in the manner set forth in this chapter.

(d) A failure to provide the advisory instruction described in subsection (b) may not be the predicate for any form of civil or other liability.

Sec. 7. An electronic will is legally executed if the manner of its execution complies with the law of:

- (1) this state;
- (2) the jurisdiction that the testator is actually present in at the time of execution; or
- (3) the domicile of the testator at the time of execution or at the time of the testator's death.

Sec. 8. (a) This section describes the exclusive methods for revoking an electronic will. Before a testator completes or directs



the revocation of an electronic will, the testator shall:

- (1) comply with; or
- (2) direct a third party custodian to comply, as applicable, with;

subsection (e).

(b) A testator may revoke and supersede a previously executed electronic will by executing a new electronic will or traditional paper will that explicitly revokes and supersedes all prior wills. However, if the revoked or superseded electronic will is held in the custody or control of more than one (1) custodian, the testator shall use the testator's best efforts to contact each custodian and to instruct each custodian to permanently delete and render nonretrievable each revoked or superseded electronic will in the manner described in subsection (d).

(c) If a testator is not using the services of a custodian to store the electronic record for an electronic will, the testator may revoke the electronic will by permanently deleting each copy of the electronic record associated with the electronic will in the testator's possession or control or by rendering the electronic record for the associated electronic will unreadable and nonretrievable.

(d) The testator may revoke the testator's electronic will by executing a revocation document that:

- (1) is signed by the testator and two (2) attesting witnesses in a manner that complies with IC 29-1-5-3(b) or with section 4 of this chapter;
- (2) refers to the date on which the electronic will that is being revoked was signed; and
- (3) states that the testator is revoking the electronic will described in subdivision (2).

A revocation document under this subsection may be signed and witnessed with the electronic signature of the testator and two (2) attesting witnesses, or signed and witnessed with signatures on paper as described in IC 29-1-5-6.

(e) If a testator is using the services of an attorney or a custodian to store the electronic record associated with the testator's electronic will, the testator may revoke the electronic will by instructing the custodian or attorney to permanently delete or make unreadable and nonretrievable the electronic record associated with the electronic will. An instruction issued under this subsection must be made in writing to the custodian or attorney as applicable. A custodian or attorney who receives a written instruction described in this subsection shall:



- (1) sign an affidavit of regularity under section 13 of this chapter with respect to the electronic will to be revoked by the testator;**
- (2) create a complete converted copy (as defined in section 3(3) of this chapter) of the electronic will being revoked;**
- (3) make the signed affidavit of regularity a permanent attachment to or part of the complete converted copy;**
- (4) follow the testator's written instruction by:**
 - (A) permanently deleting the electronic record for the revoked electronic will; or**
 - (B) rendering the electronic record associated with the revoked electronic will unreadable and nonretrievable;**
- and**
- (5) transmit or issue the complete converted copy of the revoked electronic will to the testator.**

(f) If the electronic record for a particular electronic will or a complete converted copy of the electronic will cannot be found after the testator's death, the presumption that applied to a lost or missing traditional paper will shall be applied to the lost or missing electronic will.

Sec. 9. (a) If:

- (1) a person discovers an accurate and substantially complete copy of an electronic will that:**
 - (A) bears the signatures of the testator and attesting witnesses; and**
 - (B) lacks some other portion of the electronic will; or**
- (2) the electronic record for an electronic will becomes lost or corrupted so that the absence of unauthorized alteration or tampering cannot be assured by viewing the electronic record;**

the attorney, custodian, or living testator with access to a complete nonelectronic copy of the electronic will or the person described in subdivision (1) may prepare a complete converted copy of the electronic will using all available information.

(b) A person who creates a complete converted copy of an electronic will under subsection (a) shall sign an affidavit that specifies the following:

- (1) When the electronic will was created if not specified in the body of the electronic will.**
- (2) When the electronic will was discovered.**
- (3) How the electronic will was discovered.**
- (4) The method and format that the electronic will was stored**



under (if known).

(5) The methods (if any) used to:

- (A) prevent alterations to the electronic record; or
- (B) ensure the accuracy and authenticity of the electronic record.

(6) Whether the electronic will has been altered since its creation.

(7) Confirmation that an electronic record, including any associated document integrity evidence for the electronic will, was created at the time the testator made the electronic will.

(8) Confirmation by the person responsible for:

- (A) creating the complete converted copy; and
- (B) signing the affidavit;

that, to the best of the person's knowledge, the electronic record has not been altered while in the custody of the current custodian or any prior custodian.

(9) Confirmation that the complete converted copy is a complete and correct duplication of:

- (A) the electronic will; and
- (B) the date, place, and time of the electronic will's execution by the testator and the attesting witnesses.

(c) A complete converted copy derived from a complete and correct electronic will may be offered for and admitted to probate in the same manner as a traditional paper will.

(d) A complete converted copy derived from a complete and correct self-proved electronic will shall be presumed to be valid and, absent any objection, admitted to probate without the need for additional proof.

(e) If a complete converted copy is generated from a complete and intact electronic record associated with an electronic will at or after the time of its execution, the person who generates the complete converted copy is not required to sign the affidavit described in subsection (b).

Sec. 10. (a) Any person with the written authorization of the testator may maintain, receive, or transfer custody of:

- (1) the electronic record associated with an electronic will;
- (2) any document integrity evidence associated with an electronic record or electronic will; or
- (3) a complete converted copy of the electronic will.

A testator may identify and designate an adult individual as the custodian of the testator's electronic will within the electronic record of an electronic will.



(b) A custodian of an electronic will, any accompanying self-proving clause, or any document integrity evidence logically associated with the electronic will, has the following responsibilities:

(1) To use best practices to maintain custody of the electronic record for the electronic will and any accompanying document integrity evidence.

(2) To use best practices and commercially reasonable means to:

(A) maintain the privacy and security of the electronic record associated with an electronic will; and

(B) exercise reasonable care to guard against unauthorized:

(i) disclosure of; and

(ii) alteration or tampering with;

the electronic record.

(3) To maintain electronic and conceptual separation between different testators and their respective electronic records and electronic wills if the custodian maintains custody of two (2) or more electronic records or electronic wills.

(4) To promptly generate a complete converted copy of each electronic will and all accompanying document integrity evidence after receiving a written request to do so from a living testator, the court, or another authorized person.

(5) To promptly respond to a written instruction from the living testator or another person with written authorization originating from the living testator to transfer custody of the electronic will to a successor custodian.

(6) To transfer the entire electronic record of the electronic will to a successor custodian upon the receipt of a written instruction requesting the transfer of the entire electronic record of an electronic will to a successor custodian.

(7) To provide an executed delivery receipt to the outgoing custodian who transfers:

(A) the electronic record;

(B) the electronic will;

(C) any accompanying document integrity evidence; or

(D) information pertaining to the format in which the electronic record or electronic will is received;

if the receiving custodian agrees to assume responsibility for an electronic record or an electronic will and all associated documents from an outgoing custodian.



- (8) To perform the following upon the death of the testator:**
- (A) To relinquish possession and control of the:**
- (i) electronic record associated with the testator's electronic will; or**
 - (ii) complete converted copy of the testator's electronic will (if applicable);**
- to a person authorized to receive these items under section 11 of this chapter.**
- (B) To comply with the court order requiring the electronic filing or delivery of the electronic will and any accompanying document integrity evidence or a complete converted copy of the electronic will, as applicable, with the court.**
- (C) To provide an accurate copy of:**
- (i) an electronic record; or**
 - (ii) a complete converted copy of the testator's electronic will;**
- to any interested person who requests a copy for the purpose of submitting the electronic will for probate.**
- (D) To furnish, for any court hearing or matter involving an electronic will currently or previously stored by the custodian, any information requested by the court pertaining to the custodian's policies, practices, or qualifications as they relate to the maintenance, production, or storage of electronic wills.**
- (c) A proposed successor custodian has no obligation to accept delivery of an electronic will from an outgoing custodian or to accept the responsibility of maintaining custody of an electronic record associated with an electronic will. A successor custodian's execution of a delivery receipt under subsection (b)(7) constitutes acceptance of the appointment as successor custodian.**
- (d) If a custodian wishes to discontinue custody of an electronic will, the custodian must send written notice to the testator or, if the testator's whereabouts are unknown, to any other person:**
- (1) holding written authority from the testator; or**
 - (2) identifiable from the custodian's records.**
- (e) A written notice described in subsection (d) must inform the testator or other person authorized to act on the testator's behalf that the custodian will transfer custody of the electronic record associated with the electronic will to a successor custodian chosen by the current custodian unless the testator or person authorized to act on behalf of the testator provides the custodian with written**



direction not later than thirty (30) days after the written notice described in subsection (d) was first issued.

(f) If the testator or person authorized to act on the testator's behalf does not respond to the current custodian with a contrary written instruction before the end of the thirty (30) day period described in subsection (e), the custodian may, in order of decreasing priority, dispose of the electronic record associated with the electronic will in one (1) of the following ways:

- (1) The current custodian may transfer custody of the electronic record for the electronic will to a successor custodian previously designated by the testator.
- (2) The current custodian may transfer custody of the electronic will to a successor custodian selected by the current custodian.
- (3) The current custodian may transmit a complete converted copy of the electronic will and accompanying affidavit of regularity under section 13 of this chapter to the testator or other person authorized to act on behalf of the testator.

Sec. 11. (a) After a testator's death becomes known to a custodian or other person authorized to act on behalf of the testator, custody of the electronic record associated with the testator's will or a complete converted copy of the testator's electronic will shall be delivered to one (1) of the following individuals, in decreasing order of priority, unless the testator has left other written instructions concerning the disposition of the testator's electronic will:

- (1) A person nominated in the electronic will as a personal representative of the testator's estate and having priority to seek appointment.
- (2) A surviving spouse of the testator.
- (3) A living adult child of the testator.
- (4) A living parent of the testator.
- (5) A living adult sibling of the testator.
- (6) A beneficiary named or defined in the electronic will and entitled to share in the testator's residuary probate estate.
- (7) The clerk of the probate court having jurisdiction over the testator's estate if the custodian or other person authorized to act on behalf of the testator has knowledge of:
 - (A) the testator's domicile; or
 - (B) the location of the testator's property at the time of the testator's death.

The custodian or other person may use any means of delivery,



including electronic means, that is commercially reasonable.

(b) After the death of a testator, subsection (a) and IC 29-1-7-3(b) and IC 29-1-7-3(c) shall apply to electronic wills and permit the personal representative named in an electronic will or any other interested person to file a verified written application requesting a probate court with subject matter jurisdiction to order the delivery of the electronic will to the clerk of the probate court.

(c) If a custodian or other person has possession of both the electronic record for a deceased testator's electronic will and a complete converted copy of the electronic will:

(1) the custodian or other person shall deliver only the complete converted copy of the electronic will if delivery is made to the clerk of the probate court under subsection (a)(7); and

(2) the custodian or other person shall deliver both the electronic record and the complete converted copy of the electronic will if delivery is made to a person named in the testator's written instructions or to any other person listed in subsection (a).

(d) If the custodian or other person delivers the electronic will to the clerk of the probate court under subsection (a)(7) or subsection (b), the custodian or other person shall deliver only a complete converted copy of the electronic will to the clerk, unless the court rules or other applicable laws specifically require otherwise.

Sec. 12. (a) As used in this section, "destroy" means any act that:

(1) permanently deletes the electronic record associated with an electronic will; or

(2) renders the electronic record associated with an electronic will unreadable and nonretrievable.

(b) Any custodian or attorney holding an electronic will may destroy the electronic record associated with the electronic will and any accompanying document integrity evidence (as applicable) at any time following the:

(1) fifth anniversary of a testator's will being admitted to probate;

(2) fifth anniversary of the date that the custodian ceases to have custody of the electronic will;

(3) tenth anniversary of the testator's death;

(4) one hundredth anniversary of an electronic will's



execution; or

(5) valid revocation of an electronic will.

(c) This section does not require a custodian, attorney, or other person to destroy a complete converted copy of an electronic will.

Sec. 13. A custodian or other person required or permitted to create an affidavit of regularity under this chapter may use a form that substantially complies with the following format:

"Affidavit of Regularity for Electronic Will

(1) Beginning on (insert date of first possession of the electronic will by the signatory of this affidavit) and continuing to the date and time of this affidavit, the undersigned person has had possession of (circle all that apply):

(A) the electronic record for the electronic will;

(B) a complete converted copy of the electronic will; of (insert name of testator), which was electronically executed on (insert date of electronic signing and attestation or insert reference to time and date stamp).

(2) (Insert client number, customer number, document number, or other unique identifier if any) is the unique identifier that the undersigned person assigned to this electronic will in the undersigned person's records.

(3) The undersigned person believes that the testator (circle one (1) of the following):

(A) Is currently alive.

(B) Died on or about (insert date of testator's death).

(4) The undersigned person is (circle all of the following that apply):

(A) Transferring custody of the electronic record for the electronic will to the living testator of the electronic will.

(B) Transferring custody of the electronic record for the electronic will to (insert name and address of successor custodian).

(C) Transferring a complete converted copy of the electronic will to (insert the name and address of the authorized recipient).

(D) Submitting the electronic record for the electronic will to the (insert the name of the court) for probate.

(E) Submitting a complete converted copy for the electronic will to the (insert the name of the court) for probate.

(5) If the undersigned person is transferring or submitting the



electronic record for the electronic will, it is in the following format (insert description of the format).

(6) If the undersigned person is transferring or submitting the electronic record for the electronic will, the undersigned person affirms, under penalty of perjury, that the electronic record has been in the undersigned person's possession or control for the period of time stated in paragraph (1) and that during the specified period of time the electronic record showed no indication of unauthorized alteration or tampering.

(7) The undersigned person affirms, under penalty of perjury, that (circle one (1) of the following):

(A) The undersigned has no knowledge of the testator's later execution of a will or codicil that amends, revokes, or supersedes the electronic will described in paragraph (1).

(B) The undersigned believes that the testator purportedly revoked or amended the electronic will described in paragraph (1) on (insert date, if known, or approximate time frame if date is not known), by (insert known details about the amendment or revocation).

(8) The undersigned person is (circle one (1) if applicable):

(A) The living testator who executed the electronic will.

(B) An attorney admitted to practice law in the state of Indiana.

(C) An attorney in fact or other person acting on the written authority of the testator.

(D) A personal representative nominated in the electronic will.

(E) An interested person (as defined in IC 29-1-1-3) with respect to the estate of the testator.

(F) A custodian currently in compliance with all applicable requirements under IC 29-1-21-10.

(insert date and time of custodian's or other person's signature)

(insert name and signature of custodian or other person signing)

(insert job title or position of signatory if signatory is not an individual)."

Sec. 14. (a) Regardless of the number of custodians or other persons who receive, hold, or transfer copies of an electronic



record for an electronic will to other custodians, other authorized persons, or the testator:

(1) the electronic record, including any accompanying document integrity evidence (if applicable), is prima facie evidence of:

(A) the validity of the electronic will; and

(B) freedom from unauthorized alteration or tampering unless evidence of alteration or tampering is evident on the face of the electronic record;

(2) a complete converted copy of an electronic will is prima facie evidence of:

(A) the validity of the electronic will; and

(B) freedom from unauthorized alteration or tampering; if the electronic will was executed in compliance with this chapter; and

(3) except as provided in section 16(e)(2) of this chapter, a custodian or other person is not required to make or issue an affidavit regarding the custodian's or other person's custody of the electronic record for an electronic will or custody of a complete converted copy of the electronic will. Any custodian or other person may, however, make an affidavit of regularity under section 13 of this chapter if any objection is asserted or any doubt is raised concerning the validity of the electronic will or about any alleged unauthorized alteration of the electronic will.

(b) The presumption of:

(1) validity; and

(2) freedom from unauthorized alteration or tampering;

described in subsection (a) may be rebutted by clear and convincing evidence or by evidence that the testator executed another electronic will or traditional paper will at a later date.

Sec. 15. (a) As used in this section, "electronic will copy" means a complete converted copy of an electronic will that is deposited with a circuit court clerk under IC 29-1-7-3.1.

(b) The following shall apply to the deposit of an electronic will copy with circuit court clerks:

(1) IC 29-1-7-3.1(a).

(2) IC 29-1-7-3.1(b).

(3) IC 29-1-7-3.1(d).

(4) IC 29-1-7-3.1(e).

(5) IC 29-1-7-3.1(g).

(6) IC 29-1-7-3.1(h).



(7) IC 29-1-7-3.1(i).

(8) IC 29-1-7-3.1(j).

(c) A person or depositor may deposit an electronic will copy with the circuit court clerk under IC 29-1-7-3.1 by:

(1) submitting a paper copy of the complete converted copy of the electronic will copy to the clerk; or

(2) electronically filing a readable and printable copy of the completed converted copy of the electronic will copy with the clerk if permitted by court rules.

(d) If the circuit court clerk receives a paper copy of a complete converted copy, the clerk shall promptly do the following:

(1) Place the electronic will copy in an envelope.

(2) Securely seal the envelope.

(3) Give or send a confirmation receipt verifying reception of the electronic will copy to the person or depositor.

(e) If the circuit court clerk receives an electronic copy of a complete converted copy of an electronic will, the clerk shall do the following:

(1) Print the entire complete converted copy.

(2) Place the printed copy described in subdivision (1) in an envelope.

(3) Securely seal the envelope.

(4) Give or send a confirmation receipt verifying reception of the will to the person or depositor.

(f) The circuit court clerk, after sealing a complete converted copy of an electronic will in an envelope as described in subsection (e), shall do the following:

(1) Designate the:

(A) date of deposit;

(B) name of the testator; and

(C) name and address of the depositor;

on the envelope.

(2) Index the electronic will alphabetically by the name of the testator.

An envelope and electronic will copy deposited under this section or IC 29-1-7-3.1 is confidential under IC 5-14-3.

Sec. 16. (a) As used in this section and for the purpose of offering or submitting an electronic will in probate under IC 29-1-7, the "filing of an electronic will" means the electronic filing of a complete converted copy of the associated electronic will.

(b) When filing an electronic will, the filing of any accompanying document integrity evidence or identity verification



is not required unless explicitly required by the court.

(c) If a person files an electronic will:

- (1) for the purpose of probating the electronic will; and
- (2) including accompanying:
 - (A) document integrity evidence;
 - (B) identity verification evidence; or
 - (C) evidence described in both clauses (A) and (B);

in the filing or in response to a court order under subsection (e)(2), the person shall file a complete and unredacted copy of the evidence described in clauses (A) and (B) as a nonpublic document under Ind. Administrative Rule 9(G). All personally identifying information pertaining to the testator or the attesting witnesses shall be redacted in the publicly filed copy.

(d) If an electronic will includes a self-proving clause that complies with section 4(c) of this chapter, the testator's and witnesses' compliance with the execution requirements shall be presumed upon the filing of the electronic will with the court without the need for any additional testimony or an accompanying affidavit. The presumption described in this subsection may be subject to rebuttal or objection on the grounds of fraud, forgery, or impersonation.

(e) After determining that a testator is dead and that the testator's electronic will has been executed in compliance with applicable law, the court may:

- (1) enter an order, without requiring the submission of additional evidence, admitting the electronic will to probate as the last will of the deceased testator unless objections are filed under IC 29-1-7-16; or
- (2) require the petitioner to submit additional evidence regarding:
 - (A) the proper execution of the electronic will; or
 - (B) the electronic will's freedom from unauthorized alteration or tampering after its execution.

The court may require the submission of additional evidence under subdivision (2) on the court's own motion or in response to an objection filed under IC 29-1-7-16.

(f) The additional evidence that the court may require and rely upon under subsection (e)(2) may include one (1) or more of the following:

- (1) Readable copies of the document integrity evidence or the identity verification evidence associated with the electronic will.



- (2) All or part of the electronic record (if available) in a native or computer readable form.
- (3) A sworn or verified affidavit from:
 - (A) an attorney or other person who supervised the execution of the electronic will; or
 - (B) one (1) or more of the attesting witnesses.
- (4) An affidavit signed under section 9(b) of this chapter by a person who created a complete converted copy of the electronic will.
- (5) A sworn or verified affidavit from a qualified person that:
 - (A) describes the person's training and expertise;
 - (B) describes the results of the person's forensic examination of the electronic record associated with:
 - (i) the electronic will at issue; or
 - (ii) any other relevant evidence; and
 - (C) affirms that the electronic will was not altered or tampered with after its execution.
- (6) Any other evidence, including other affidavits or testimony, that the court considers material or probative on the issues of proper execution or unauthorized alteration or tampering.
- (g) If the court enters an order admitting an electronic will to probate after receiving additional evidence, any of the additional evidence may be disputed through a will contest that is timely filed under IC 29-1-7-17.

Sec. 17. (a) This section shall apply to the situation created by:

- (1) the rejection of a petition to probate a deceased testator's electronic or traditional paper will; or
- (2) the revocation of a deceased testator's electronic will due to the timely filing of a will contest as described in IC 29-1-7-17.

(b) The following terms are defined for this section:

- (1) "Other electronic will" means:
 - (A) an electronic will that the same testator purportedly executed in compliance with applicable laws on a date that preceded the date of execution seen in the rejected will; or
 - (B) an electronic will that the same testator purportedly executed in compliance with applicable laws on a date that followed the date of execution seen on the rejected will;
 where the petitioner or proponent for the electronic will is not aware of any other paper will or electronic will executed by the testator at a date later than the date of the testator's



purposed execution of the other electronic will.

(2) "Rejected will" means a will that is rejected for a reason described in subsection (a).

(c) On or before the end of the time period specified in IC 29-1-7-15.1(d)(2) or IC 29-1-7-15.1(d)(3), any interested person may file a petition requesting probate of another electronic will associated with the testator. A complete converted copy of the other electronic will and an affidavit of regularity must accompany any petition filed under this subsection. The complete converted copy of another electronic will is prima facie evidence of:

- (1) the substance of the other electronic will; and
- (2) the proper execution of the other electronic will.

(d) Section 18 of this chapter shall apply to any proceeding concerning the probate of another electronic will of a deceased testator. In the absence of:

- (1) clear and convincing evidence; and
- (2) written evidence;

of the testator's contrary intentions, the court shall presume that the deceased testator would have preferred the probate and enforcement of the testator's other electronic will to intestacy.

Sec. 18. (a) For purpose of IC 29-3, IC 30-5, and IC 32-39:

- (1) the electronic record for an electronic will is a "digital asset" as that term is defined in IC 32-39-1-10;
- (2) the electronic record for an electronic will is not an "electronic communication" as defined in 18 U.S.C. 2510(12) or IC 32-39-1-12;
- (3) the digital or electronic transfer or transmission of the electronic record for an electronic will between any two (2) persons other than the testator and the testator's attorney is an electronic communication as defined in 18 U.S.C. 2510(12) or IC 32-39-1-12;
- (4) a custodian (as defined in section 3(4) of this chapter) of an electronic will is a "custodian" as defined in IC 32-39-1-8; and
- (5) the following individuals are "users" for purposes of IC 32-39 if the testator, attorney, or other authorized person contracts with another person to store the electronic record for the electronic will:
 - (A) The testator of an electronic will.
 - (B) The attorney representing the testator.
 - (C) Any other person with authorized possession of or authorized access to the electronic record for the electronic will.



(b) The execution or revocation of an electronic will is not a contract or a "transaction in or affecting interstate or foreign commerce" for purposes of the federal E-SIGN Act, 15 U.S.C. 7001.

(c) The execution or revocation of an electronic will is not a contract or "transaction" for purposes of IC 26-2-8 and the exclusion stated in IC 26-2-8-103(b)(1) continues in effect with respect to electronic wills and codicils.

SECTION 3. IC 30-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

Chapter 1.5. Electronic Trust Instruments

Sec. 1. The purpose of this chapter is to provide rules for the valid execution, amendment, and revocation of inter vivos trusts that are prepared and signed electronically. This chapter shall be applied fairly and flexibly so that a settlor whose identity can be verified, who has capacity, and who is acting free from undue duress and undue influence may execute a valid electronic trust instrument consistent with the settlor's intent. If an electronic trust instrument is electronically signed by the settlor and is maintained as an electronic record or as a complete converted copy in compliance with the rules of this chapter, the normal presumptions that apply to a traditional paper trust instrument apply to the electronic trust instrument.

Sec. 2. (a) Except as provided in subsections (b) and (c), electronic trust instruments are exclusively governed by this chapter.

(b) This chapter does not apply to an entity, arrangement, or relationship that:

- (1) is or may be described as a trust; and
- (2) is excluded from IC 30-4 under IC 30-4-1-1(c).

(c) The execution, amendment, and revocation of an electronic testamentary trust shall be governed by IC 29-1-21 during the lifetime of a testator or settlor who creates, has created, or intends to create an electronic testamentary trust.

(d) If this chapter does not provide an explicit definition, form, rule, or statute concerning an issue pertaining to electronic trust instruments, applicable statutes from this article that apply to traditional paper trust instruments control.

Sec. 3. The following terms are defined for this chapter:

- (1) "Affidavit of regularity" means an affidavit executed by a custodian or other person under section 10 of this chapter



with respect to the electronic record for an electronic trust instrument or a complete converted copy of an electronic trust instrument.

(2) "Complete converted copy" means a document in any format that:

(A) can be visually perceived in its entirety on a monitor or other display device;

(B) can be printed; and

(C) contains:

(i) the text of an electronic trust instrument; and

(ii) a readable copy of the document integrity evidence, if any, that is or was part of or attached to the electronic trust instrument.

(3) "Custodian" means a person other than:

(A) the settlor who executed the electronic trust instrument;

(B) an attorney;

(C) a person who is named in the electronic trust instrument as a current trustee or successor trustee of the trust; or

(D) a person who is named or defined as a beneficiary in the electronic trust instrument;

who has authorized possession or control of the electronic trust instrument. The term may include an attorney in fact serving under a living settlor's durable power of attorney who possesses general authority over records, reports, statements, electronic records, or estate planning transactions.

(4) "Custody" means the authorized possession and control of at least one (1) of the following:

(A) A complete copy of the electronic record for the electronic trust instrument.

(B) A complete converted copy of the electronic trust instrument if the complete electronic record has been lost or destroyed or if the electronic trust instrument has been revoked.

(5) "Document integrity evidence" means the part of the electronic record for the electronic trust instrument that:

(A) is created and maintained electronically;

(B) includes digital markers showing that the electronic trust instrument has not been altered after its initial execution by the settlor;

(C) is logically associated with the electronic trust



instrument in a tamper evident manner so that any change made to the text of the electronic trust instrument after its execution is visibly perceptible when the electronic record is displayed or printed;

(D) displays any changes made to the text of the electronic trust instrument after its execution; and

(E) displays the following information:

(i) The city, state, date, and time the electronic trust instrument was executed by the settlor.

(ii) The name of the settlor.

(iii) The name and address of another person, if any, responsible for marking the settlor's electronic signature on the electronic trust instrument at the settlor's direction and in the actual presence of the settlor.

(iv) A copy of or a link to the electronic signature of the settlor on the electronic trust instrument.

(v) A general description of the type of identity verification evidence used to verify the settlor's identity.

(vi) The content of the cryptographic hash or unique code used by the settlor to sign the electronic trust instrument in the event that public key infrastructure or a similar secure technology was used to sign or authenticate the electronic trust instrument.

Document integrity evidence may, but is not required to, contain other information about the electronic trust instrument such as a unique document number, client number, or other identifier that an attorney or custodian assigns to the electronic trust instrument or a link to a secure Internet web site where a complete copy of the electronic trust instrument is accessible. The title, heading, or label, if any, that is assigned to the document integrity evidence (such as "certificate of completion", "audit trail", or "audit log" is immaterial).

(6) "Electronic" has the meaning set forth in IC 26-2-8-102.

(7) "Electronic record" has the meaning set forth in IC 26-2-8-102. The term may include one (1) or both of the following:

(A) The document integrity evidence associated with the electronic trust instrument.

(B) The identity verification evidence of the settlor who executed the electronic trust instrument.

(8) "Electronic signature" has the meaning set forth in



IC 26-2-8-102.

(9) "Electronic trust instrument" means a trust instrument for an inter vivos trust created by a settlor or other person that:

- (A) is initially created and maintained as an electronic record;**
- (B) contains the electronic signature of the settlor or other person creating the trust; and**
- (C) contains the date and time of the electronic signature of the settlor or other person creating the trust.**

The term includes an amendment to or a restatement of a revocable trust instrument when the amendment or restatement is executed in accordance with the requirements of section 6 of this chapter.

(10) "Executed" means the signing of an electronic trust instrument. The term includes the use of an electronic signature.

(11) "Identity verification evidence" means either:

- (A) a copy of the settlor's government issued photo identification card; or**
- (B) any other information that verifies the identity of the settlor if derived from one (1) or more of the following sources:**
 - (i) A knowledge based authentication method.**
 - (ii) A physical device.**
 - (iii) A digital certificate using a public key infrastructure.**
 - (iv) A verification or authorization code sent to or used by the settlor.**
 - (v) Biometric identification.**
 - (vi) Any other commercially reasonable method for verifying the settlor's identity using current or future technology.**

(12) "Logically associated" means electronically connected, cross referenced, or linked in a reliable manner.

(13) "Sign" means valid use of a properly executed electronic signature.

(14) "Signature" means the authorized use of the settlor's name to authenticate an electronic trust instrument. The term includes an electronic signature.

(15) "Tamper evident" means the feature of an electronic record, such as an electronic trust instrument or document



integrity evidence for an electronic trust instrument, that will cause any alteration or tampering of the electronic record, after it is created or signed, to be perceptible to any person viewing the electronic record when it is printed on paper or viewed on a monitor or other display device.

(16) "Traditional paper trust instrument" means a trust instrument or an amendment to or a restatement of a trust instrument that is signed by the settlor on paper.

Sec. 4. (a) Any of the following persons may create a valid inter vivos trust by electronically signing an electronic trust instrument that sufficiently states the terms of the trust in compliance with IC 30-4-2-1(b):

- (1) A settlor.
- (2) An agent of a settlor who is an attorney in fact.
- (3) A person who holds a power of appointment that is exercisable by appointing money or property to the trustee of a trust.

The electronic signature of the settlor or other person creating the trust is not required to be acknowledged or witnessed by a notary.

(b) The following persons may use the electronic record associated with an electronic trust instrument to make a complete converted copy of an electronic trust instrument immediately after its execution or at a later time when a complete and intact electronic record is available:

- (1) The settlor.
- (2) A trustee who accepts appointment under the electronic trust instrument.
- (3) An attorney representing the settlor or the trustee.
- (4) Any other person authorized by the settlor.

If a complete converted copy is generated from a complete and intact electronic record associated with an electronic trust instrument, the person who generates the complete converted copy is not required to sign the affidavit described in subsection (d).

(c) If:

- (1) a person discovers an accurate but incomplete copy of an electronic trust instrument;
- (2) the electronic record for the electronic trust instrument becomes:
 - (A) lost; or
 - (B) corrupted; or
- (3) freedom from tampering or unauthorized alteration cannot be authenticated or verified;



a living settlor, attorney, custodian, or person responsible for the discovery of the incomplete electronic trust instrument may prepare a complete converted copy of the electronic trust instrument using all available information if the person creating the complete converted copy of the electronic trust instrument has access to a substantially complete, nonelectronic copy of the electronic trust instrument.

(d) A person who creates a complete converted copy of an electronic trust instrument under subsection (c) shall sign an affidavit that affirms or specifies, as applicable, the following:

- (1) The date the electronic trust instrument was created.
- (2) The time the electronic trust instrument was created.
- (3) How the incomplete electronic trust instrument was discovered.
- (4) The method and format used to store the original electronic record associated with the electronic trust instrument.
- (5) The methods used, if any, to prevent tampering or the making of unauthorized alterations to the electronic record or electronic trust instrument.
- (6) Whether the electronic trust instrument has been altered since its creation.
- (7) Confirmation that an electronic record, including the document integrity evidence, if any, was created at the time the settlor made the electronic trust instrument.
- (8) Confirmation that the electronic record has not been altered while in the custody of the current custodian or any prior custodian.
- (9) Confirmation that the complete converted copy is a complete and correct duplication of the electronic trust instrument and the date, place, and time of its execution by the settlor or the settlor's authorized agent.

(e) A complete converted copy derived from a complete and correct electronic trust instrument may be docketed under IC 30-4-6-7 or, absent any objection, offered and admitted as evidence of the trust's terms in the same manner as the original and traditional paper trust instrument of the settlor. Whenever this article permits or requires the trustee of a trust to provide a copy of a trust instrument to a beneficiary or other interested person, the trustee may provide a complete converted copy of the electronic trust instrument. A complete and converted copy is conclusive evidence of the trust's terms unless otherwise



determined by a court in an order entered upon notice to all interested persons and after an opportunity for a hearing.

Sec. 5. (a) If a settlor creates an inter vivos trust or amends or restates the trust by electronically signing an electronic trust instrument, the person named as trustee may:

- (1) electronically sign the electronic record for the electronic trust instrument at or about the same time as the settlor's electronic signature;
- (2) electronically sign:
 - (A) a separate electronic record referring to the electronic trust instrument, its date, and the name of the settlor; and
 - (B) a statement that explicitly accepts:
 - (i) the appointment as trustee; and
 - (ii) the trust's terms;
- (3) make an ordinary signature on a complete converted copy of the electronic trust instrument in order to signify the person's acceptance of the trust's terms and the person's appointment as trustee; or
- (4) make an ordinary signature on a separate written acceptance.

(b) Except as provided in subsection (d), a person named as trustee who exercises powers or performs duties under the trust is presumed to have accepted the trust.

(c) The person named as trustee may reject the trust in writing or in an electronically signed document. A person named as trustee who rejects a trust in the manner described in this subsection will incur no liability. If, after being informed of the named person's appointment as trustee, the named person does not:

- (1) expressly accept the trust; or
- (2) exercise powers or perform duties under the trust within a reasonable time;

the named person shall be presumed to have rejected the trust.

(d) If there is an immediate risk of damage to the trust estate, the person named as trustee may act to preserve the trust estate and will not be presumed to have accepted the trust if the named person delivers a written or electronically signed rejection, at the time of or shortly after the person acts, to:

- (1) the settlor;
- (2) the beneficiary; or
- (3) the court having jurisdiction over the administration of the trust estate.

Sec. 6. (a) If the settlor created or last amended a revocable



trust by electronically signing an electronic trust instrument, the settlor may amend or revoke the trust in the following ways:

(1) By complying with a method provided in the terms of the trust and making either an electronic signature or an ordinary signature on paper to confirm the amendment or the revocation.

(2) If the terms of the trust do not specify any method or do not specify an exclusive method for amending or revoking the trust, the settlor may do the following:

(A) Execute a later will or codicil that:

- (i) expressly refers to the trust; or
- (ii) specifically devises property that would otherwise have passed according to the terms of the trust.

(B) Sign the settlor's electronic signature on an electronic record that:

- (i) manifests the clear and convincing intent of the settlor to amend or revoke the trust; and
- (ii) specifies the specific amendments or revocation that the settlor wishes to make.

(C) Sign the settlor's ordinary signature on a paper record that:

- (i) manifests the clear and convincing intent of the settlor to amend or revoke the trust; and
- (ii) specifies the specific amendments or revocation that the settlor wishes to make.

(D) Permanently delete or render unreadable and nonretrievable each copy of the electronic record for the electronic trust instrument that is in the settlor's possession or control if the settlor is not making use of a custodian to store the electronic record for the electronic trust instrument.

(E) Transmit or provide to the custodian of the electronic record for an electronic trust instrument a written or electronic record of the amendment or revocation that:

- (i) is signed by the settlor; and
- (ii) directs the custodian to permanently delete or make unreadable and nonretrievable the electronic record for the electronic trust instrument.

If the settlor knows that the electronic record for the electronic trust instrument or a complete converted copy of the electronic trust instrument is in the possession of a custodian, the settlor has a duty to use reasonable efforts to provide the custodian with



written or electronic evidence of the amendment or revocation of the electronic trust instrument.

(b) If the settlor has possession of the electronic record for an electronic trust instrument that the settlor intends to amend or revoke, the settlor shall save a complete converted copy of the original electronic trust instrument before making any amendment or executing any revocation.

(c) If a custodian has possession of the electronic record for an electronic trust instrument that the settlor intends to amend or revoke, the custodian shall save a complete converted copy of the original electronic trust instrument before carrying out the settlor's direction to amend the electronic record or to render the electronic record unreadable and nonretrievable.

(d) A complete converted copy of an electronic trust instrument that is preserved in the manner described in subsection (b) or (c) may be used as evidence in the event that the validity of the settlor's amendment or revocation is later challenged.

Sec. 7. (a) Any person with the written authorization of the settlor may maintain, receive, or transfer custody of:

- (1) the electronic record associated with an electronic trust instrument;
- (2) a complete converted copy of the electronic trust instrument; or
- (3) any document integrity evidence associated with the electronic trust instrument.

A settlor may identify and designate an adult individual or other person as the custodian of the electronic trust instrument within the electronic record associated with the electronic trust instrument.

(b) A custodian of an electronic trust instrument and any accompanying document integrity evidence that is logically associated with the electronic trust instrument has the following responsibilities:

- (1) To use best practices to maintain custody of the electronic record for the electronic trust instrument and any accompanying document integrity evidence.
- (2) To use best practices and commercially reasonable means to:
 - (A) maintain the privacy and security of the electronic record associated with an electronic trust instrument; and
 - (B) exercise reasonable care to guard against unauthorized:



- (i) disclosure; and
 - (ii) alteration or tampering with;
- the electronic record.
- (3) To maintain electronic and conceptual separation between different settlors and their respective electronic records and electronic trust instruments if the custodian maintains custody of two (2) or more electronic records or electronic trust instruments.
- (4) To promptly generate a complete converted copy of each electronic trust instrument and all accompanying document integrity evidence after receiving a written request to do so from a living settlor, the court, or another authorized person.
- (5) To promptly respond to a written instruction from the living settlor or another person with written authorization originating from the living settlor to transfer custody of the electronic trust instrument to a successor custodian.
- (6) To transfer the entire electronic record of the electronic trust instrument to a successor custodian upon the receipt of a written instruction requesting the transfer of the entire electronic record of an electronic trust instrument to a successor custodian.
- (7) To provide an executed delivery receipt to the outgoing custodian who transfers:
- (A) the electronic record;
 - (B) the electronic trust instrument;
 - (C) any accompanying document integrity evidence; or
 - (D) information pertaining to the format in which the electronic record or electronic trust instrument is received;
- if the receiving custodian agrees to assume responsibility for an electronic record or an electronic trust instrument and all associated documents from an outgoing custodian.
- (8) To perform the following upon the death of the settlor:
- (A) To relinquish possession and control of the:
 - (i) electronic record associated with the settlor's electronic trust instrument; or
 - (ii) complete converted copy of the testator's electronic will (if applicable);
 to a person authorized to receive these items under section 8 of this chapter.
 - (B) To comply with the court's order requiring the electronic filing or delivery of the electronic trust instrument and any accompanying document integrity



evidence, as applicable, with the court.

(C) To provide an accurate copy of:

- (i) the electronic record of the settlor's electronic trust instrument; or**
- (ii) a complete converted copy of the settlor's electronic trust instrument;**

to any interested person who is entitled to receive a copy under the terms of the trust or IC 30-4-3-6(b).

(D) To furnish, for any court hearing or matter involving an electronic trust instrument currently or previously stored by the custodian, any information requested by the court pertaining to the custodian's policies, practices, or qualifications as they relate to the maintenance, production, or storage of electronic trust instruments.

(c) A proposed successor custodian has no obligation to accept delivery of an electronic trust instrument from an outgoing custodian or to accept the responsibility to maintain custody of the electronic record for an electronic trust instrument. A successor custodian's execution of a delivery receipt constitutes acceptance of:

- (1) the appointment as successor custodian; and**
- (2) the responsibility to maintain and preserve the accepted electronic trust instrument.**

(d) If a custodian wishes to discontinue custody of an electronic trust instrument, the custodian must send written notice to the settlor or, if the settlor's whereabouts are unknown, to the currently serving trustee or any other person holding written authority from the settlor and identifiable from custodian records.

(e) A written notice described in subsection (d) must inform the settlor or other person authorized to act on the settlor's behalf that the custodian will transfer custody of the electronic trust instrument to a successor custodian chosen by the current custodian unless a written instruction is issued to the current custodian by the settlor, current trustee, or other authorized person not later than thirty (30) days after the written notice described in subsection (d) was first issued.

(f) If the settlor, current trustee, or other authorized person does not respond to a written notice described in subsection (d) with a contrary written instruction by the end of the thirty (30) day period described in subsection (e), the custodian may dispose of the electronic record associated with an electronic trust instrument in one (1) of the following ways:



- (1) The current custodian may transfer custody of the electronic record for the electronic trust instrument to a successor custodian previously designated in writing by the settlor.
- (2) The current custodian may transfer custody of the electronic trust instrument to a successor custodian selected by the current custodian.
- (3) The current custodian may transmit a complete converted copy of the electronic trust instrument and an accompanying affidavit of regularity to the person who received the thirty (30) day notice described in subsection (e).

Sec. 8. (a) After a settlor's death becomes known to a custodian or other person in possession or control of the electronic record associated with the settlor's electronic trust instrument, or a complete converted copy of the settlor's electronic trust instrument, the custodian or other person in possession of an item described in section 7(a)(1) or 7(a)(2) of this chapter shall deliver an item described in section 7(a)(1) or 7(a)(2) of this chapter to one (1) of the following persons in decreasing order of priority:

- (1) A person already serving as trustee of the trust.
- (2) A person nominated in the electronic trust instrument as a successor trustee and who has priority under the terms of the trust to accept appointment and to serve as trustee.
- (3) The surviving spouse of the settlor.
- (4) A living adult child of the settlor.
- (5) A living parent of the settlor.
- (6) A living adult sibling of the settlor.
- (7) A beneficiary named or defined in the electronic trust instrument and entitled to a share of the trust's principal assets or income.
- (8) The clerk of the probate court that would have subject matter jurisdiction of the settlor's estate based on the custodian's or other person's knowledge of the settlor's domicile or the location of the property of the settlor at the time of the settlor's death.

A custodian or other person in possession of an item described in section 7(a)(1) or 7(a)(2) of this chapter may use any commercially reasonable method of delivery to accomplish the requirements of this section.

(b) If a custodian or other person has possession of both the electronic record for a deceased settlor's electronic trust instrument and a complete converted copy of the same electronic



trust instrument, the custodian or other person shall deliver both to an authorized person who:

- (1) is described in subsection (a); or
- (2) is specified in written instructions left by the settlor.

If the custodian or other person delivers the electronic trust instrument to the clerk of the probate court under subsection (a)(8), the custodian or other person shall deliver only a complete converted copy of the electronic trust instrument to the clerk, unless the court rules or other applicable laws explicitly require otherwise.

Sec. 9. (a) As used in this section, "destroy" means any action that:

- (1) permanently deletes the electronic record associated with an electronic trust instrument; or
- (2) renders the electronic record associated with an electronic trust instrument unreadable and nonretrievable.

(b) Any custodian or attorney holding an electronic trust instrument may destroy the electronic record associated with the electronic trust instrument and any accompanying document integrity evidence at any time after the:

- (1) fifth anniversary of any will belonging to the settlor is admitted to probate;
- (2) fifth anniversary of the date on which the custodian ceases to have custody of the electronic trust instrument;
- (3) tenth anniversary of the settlor's death;
- (4) one hundredth anniversary of the execution of the electronic trust instrument; or
- (5) valid revocation of the electronic trust instrument.

(c) Notwithstanding subsection (b), this section does not require a custodian, attorney, or other person in possession of a complete converted copy of an electronic trust instrument to destroy the complete converted copy of the electronic trust instrument.

Sec. 10. Whenever this chapter requires or permits a custodian or other person to make an affidavit of regularity with respect to an electronic trust instrument or a complete converted copy, the custodian or other person responsible for the creation of the affidavit of regularity may use the following format for the affidavit:

"Affidavit of Regularity for Electronic Trust Instrument

- (1) Beginning on (insert date of first possession of the electronic trust instrument by the signer of this affidavit) and continuing to the date and time of this affidavit, the



undersigned person has had possession of (circle all of the following that apply):

- (A) The electronic record for the electronic trust instrument.
 - (B) A complete converted copy of the electronic trust instrument of (insert name of settlor), which was electronically executed on (insert date of electronic signing or insert reference to time stamp).
- (2) (Insert client number, customer number, document number, or other unique identifier as applicable) is the unique identifier that the undersigned person assigned to this electronic trust instrument in the undersigned person's records.
- (3) The undersigned person believes that the settlor (circle one the following options):
- (A) Is alive.
 - (B) Died on or about (insert date of death) and believes that the trust is currently (circle one (1) of the following options):
 - (i) Revocable.
 - (ii) Irrevocable.
- (4) The undersigned person is (circle all of the following that apply):
- (A) Transferring custody of the electronic record for the electronic trust instrument to the living settlor of the electronic trust instrument.
 - (B) Transferring custody of the electronic record for the electronic trust instrument to (insert name and address of successor custodian).
 - (C) Transferring a complete converted copy of the electronic trust instrument to (insert name and address of authorized recipient).
 - (D) Transferring a complete converted copy of the electronic trust instrument to the clerk of the (insert name the court) that would have subject matter jurisdiction over the trust.
- (5) The undersigned person is transferring or submitting the electronic record in the following format: (specify format).
- (6) If the undersigned person is transferring or submitting the electronic record for the electronic trust instrument, the undersigned person affirms, under penalty of perjury, that the electronic record has been in the undersigned person's



possession or control for the period stated in paragraph (1) and that during this period, the electronic record showed no indication of unauthorized alteration or tampering.

(7) The undersigned person affirms, under penalty of perjury, that (circle one (1) of the following options):

(A) The undersigned person has no knowledge of the settlor's later execution of any document that amends, revokes, or supersedes the electronic trust instrument described in paragraph (1).

(B) The undersigned believes that the settlor purportedly amended or revoked the electronic trust instrument described in paragraph (1) on (insert date if known or approximate time frame if date is not known), by (insert known details concerning the settlor's amendment or revocation).

(8) The undersigned person is (circle all of the following that apply):

(A) The living settlor who executed the electronic trust instrument.

(B) An attorney admitted to practice law in the state of Indiana.

(C) A currently serving trustee named in or appointed under the terms of the trust.

(D) An attorney in fact or other person acting on written authority of the settlor.

(E) A successor trustee nominated in the electronic trust instrument.

(F) An interested person with respect to the administration of the trust.

(G) A custodian currently in compliance with all applicable requirements under IC 29-1-21-10.

(9) (Insert date and time of custodian or other person's signature).

(10) (Insert name and signature of custodian or other person signing. Insert job title or position of signatory if signatory is not an individual (natural person))."

Sec. 11. (a) Regardless of the number of custodians or other persons who receive, hold, or transfer copies of an electronic record for an electronic trust instrument to other custodians, other authorized persons, or to the settlor:

(1) the electronic record, including any accompanying document integrity evidence (if applicable) is prima facie



evidence of:

- (A) the validity of the electronic trust instrument; and
 - (B) freedom from unauthorized alteration or tampering unless evidence of alteration or tampering is evident on the face of the electronic record;
- (2) a complete converted copy of an electronic trust instrument is prima facie evidence of:
- (A) the validity of the electronic trust instrument; and
 - (B) freedom from unauthorized alteration or tampering; if the electronic trust instrument was executed in compliance with this chapter; and
- (3) except when required by an order of the court, a custodian or other person is not required to make or issue an affidavit regarding the custodian's or other person's custody of the electronic record for an electronic trust instrument or custody of a complete converted copy of the electronic trust instrument. Any custodian or other person may, however, make an affidavit of regularity under section 10 of this chapter if any objection is asserted or any doubt is raised concerning the validity of the electronic trust instrument or about any alleged unauthorized alteration of or tampering with the electronic trust instrument.

(b) The presumption of:

- (1) validity; and
 - (2) freedom from unauthorized alteration or tampering;
- described in subsection (a) may be rebutted by clear and convincing evidence of the settlor's execution of another electronic trust instrument or traditional paper trust instrument at a later date.

Sec. 12. Any interested person who petitions or otherwise seeks to docket an electronic trust instrument under IC 30-4-6 may file with the clerk of the court a complete converted copy of the electronic trust instrument.

Sec. 13. (a) For purposes of IC 29-3, IC 30-5, and IC 32-39:

- (1) the electronic record for an electronic trust instrument is a "digital asset" as defined in IC 32-39-1-10;
- (2) the electronic record for an electronic trust instrument is not an "electronic communication" as defined in 18 U.S.C. 2510(12) or IC 32-39-1-12;
- (3) the digital or electronic transfer of an electronic record for an electronic trust instrument between any two (2) persons other than the settlor and the settlor's attorney is an



"electronic communication" as defined in 18 U.S.C. 2510(12) or IC 32-39-1-12;

(4) a custodian of an electronic trust instrument is also a "custodian" as defined in IC 32-39-1-8; and

(5) the:

(A) settlor of an electronic trust instrument;

(B) trustee of a trust; or

(C) attorney representing the settlor, trustee, or another person with authorized possession of or authorized access to the electronic record for an electronic trust instrument; is a "user" for purposes of IC 32-39 if the settlor, trustee, attorney, or other authorized person contracts with another person to store the electronic record for the electronic trust instrument.

(b) The execution or revocation of an electronic trust instrument may be a contract of a "transaction in or affecting interstate or foreign commerce" for purposes of the federal E-sign Act (15 U.S.C. 7001).

(c) The execution or revocation of an electronic trust instrument is subject to IC 26-2-8 unless there is a conflict between IC 26-2-8 and any provision contained in this article. In the event of a conflict between IC 26-2-8 and a provision of this article, the provision in this article shall control.

SECTION 4. IC 30-5-11 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

Chapter 11. Electronic Powers of Attorney

Sec. 1. The purpose of this chapter is to provide rules for the valid execution, amendment, and revocation of powers of attorney that are prepared and signed electronically. This chapter shall be applied fairly and flexibly so that a principal whose identity can be verified, who has capacity, and who is acting free from undue duress and undue influence may execute a valid electronic power of attorney consistent with the principal's intent. If an electronic power of attorney is electronically signed by the principal and is maintained as an electronic record or as a complete converted copy in compliance with this chapter, the normal presumptions that apply to a traditional paper power of attorney apply to the electronic power of attorney.

Sec. 2. (a) Except as provided in subsection (b), electronic powers of attorney are exclusively governed by this chapter.

(b) If this chapter does not provide an explicit definition, form,



rule, or statute concerning the creation, execution, interpretation, storage, or use of an electronic power of attorney, the applicable statute from this article applies to the electronic power of attorney.

Sec. 3. The following terms are defined for this chapter:

(1) "Affidavit of regularity" means an affidavit executed by a custodian or other person under section 9 of this chapter with respect to the electronic record for an electronic power of attorney or a complete converted copy of an electronic power of attorney.

(2) "Complete converted copy" means a document in any format that:

(A) can be visually viewed in its entirety on a monitor or other display device;

(B) can be printed; and

(C) contains the text of an electronic power of attorney and a readable copy of any associated document integrity evidence that may be a part of or attached to the electronic power of attorney.

(3) "Custodian" means a person other than:

(A) the principal who executed the electronic power of attorney;

(B) an attorney; or

(C) a person who is named in the electronic power of attorney as an attorney in fact or successor attorney in fact under the power of attorney.

(4) "Custody" means the authorized possession and control of at least one (1) of the following:

(A) A complete copy of the electronic record for the electronic power of attorney.

(B) A complete converted copy of the electronic power of attorney if the complete electronic record has been lost or destroyed or the electronic power of attorney has been revoked.

(5) "Document integrity evidence" means the part of the electronic record for the electronic power of attorney that:

(A) is created and maintained electronically;

(B) includes digital markers showing that the electronic power of attorney has not been altered after its initial execution by the principal;

(C) is logically associated with the electronic power of attorney in a tamper evident manner so that any change made to the text of the electronic power of attorney after



its execution is visibly perceptible when the electronic record is displayed or printed;

(D) displays any changes made to the text of the electronic power of attorney after its execution; and

(E) displays the following information:

(i) The city, state, date, and time the electronic power of attorney was executed by the principal.

(ii) The name of the principal.

(iii) The name and address of the person responsible for marking the principal's signature on the electronic power of attorney at the principal's direction and in the principal's presence, as applicable.

(iv) A copy of or a link to the electronic signature of the principal on the electronic power of attorney.

(v) A general description of the type of identity verification evidence used to verify the principal's identity.

Document integrity evidence may, but is not required to, contain other information about the electronic power of attorney such as a unique document number, client number, or other identifier that an attorney or custodian assigns to the electronic power of attorney or a link to a secure Internet web site where a complete copy of the electronic power of attorney is accessible. The title, heading, or label, if any, that is assigned to the document integrity evidence (such as "certificate of completion", "audit trail", or "audit log" is immaterial).

(6) "Electronic" has the meaning set forth in IC 26-2-8-102.

(7) "Electronic power of attorney" means a power of attorney created by a principal that:

(A) is initially created and maintained as an electronic record;

(B) contains the electronic signature of the principal creating the power of attorney;

(C) contains the date and time of the electronic signature of the principal creating the power of attorney; and

(D) is notarized.

The term includes an amendment to or a restatement of the power of attorney if the amendment or restatement complies with the requirements described in section 5 of this chapter.

(8) "Electronic record" has the meaning set forth in IC 26-2-8-102. The term may include one (1) or both of the



following:

- (A) The document integrity evidence associated with an electronic power of attorney.
- (B) The identity verification evidence of the principal who executed the electronic power of attorney.
- (9) "Electronic signature" has the meaning set forth in IC 26-2-8-102.
- (10) "Executed" means the signing of a power of attorney. The term includes the use of an electronic signature.
- (11) "Identity verification evidence" means either:
 - (A) a copy of a government issued photo identification card belonging to the principal; or
 - (B) any other information that verifies the identity of the principal if derived from one (1) or more of the following sources:
 - (i) A knowledge based authentication method.
 - (ii) A physical device.
 - (iii) A digital certificate using a public key infrastructure.
 - (iv) A verification or authorization code sent to or used by the principal.
 - (v) Biometric identification.
 - (vi) Any other commercially reasonable method for verifying the principal's identity using current or future technology.
- (12) "Logically associated" means electronically connected, cross referenced, or linked in a reliable manner.
- (13) "Sign" means valid use of a properly executed electronic signature.
- (14) "Signature" means the authorized use of the principal's name to authenticate a power of attorney. The term includes an electronic signature.
- (15) "Tamper evident" means the feature of an electronic record, such as an electronic power of attorney or document integrity evidence for an electronic power of attorney, that will cause any alteration or tampering of the electronic record, after it is created or signed, to be perceptible to any person viewing the electronic record when it is printed on paper or viewed on a monitor or other display device.
- (16) "Traditional paper power of attorney" means a power of attorney or an amendment to or a restatement of a power of attorney that is signed by the principal on paper.



Sec. 4. (a) A principal, or person acting at the principal's direction, may, in the presence of a notary, create a valid power of attorney by electronically signing an electronic power of attorney.

(b) The:

- (1) principal;**
- (2) attorney in fact under the electronic power of attorney;**
- (3) attorney representing the principal or attorney in fact; or**
- (4) other person authorized by the principal;**

may use the electronic record to make a complete converted copy of the electronic power of attorney on or near the time of its execution or at a later time when the full electronic record is available.

(c) A complete converted copy derived from a complete and correct electronic power of attorney may be offered and admitted into evidence as though it were an original and traditional paper power of attorney without the need for additional proof or evidence of authenticity. Whenever this article permits or requires an attorney in fact to provide a copy of a power of attorney to an interested person, the attorney in fact may provide a complete converted copy of the electronic power of attorney. A complete and converted copy is conclusive evidence of the power of attorney's terms unless otherwise determined by a court in an order entered upon notice to all interested persons and after an opportunity for a hearing.

Sec. 5. (a) If the principal created or last amended a power of attorney by electronically signing an electronic power of attorney, the principal may amend or revoke the power of attorney as follows:

- (1) By complying with a method provided in the terms of the power of attorney and making either an electronic signature or an ordinary signature on paper to confirm the amendment or the revocation.**
- (2) By performing one (1) or more of the following if the terms of the power of attorney do not specify a method for amendment or revocation or do not specify an exclusive method for amending or revoking the electronic power of attorney:**

(A) Using the principal's electronic signature on an electronic record to manifest clear and convincing intent on behalf of the principal to amend or revoke the power of attorney and to specify the desired amendments or revocation.



(B) Using the principal's written signature on a paper record to manifest clear and convincing intent on behalf of the principal to amend or revoke the power of attorney and to specify the desired amendments or revocation.

(C) By:

(i) permanently deleting each copy of the electronic record for the electronic power of attorney that is in the principal's possession or control; or

(ii) rendering each copy of the electronic record unreadable and nonretrievable;

if the principal is not using a custodian to store the electronic record.

(D) By transmitting or giving the custodian of the electronic power of attorney a written or electronic record of the desired amendment or revocation that:

(i) is signed by the principal; and

(ii) directs the custodian to permanently delete the electronic record for the electronic power of attorney or to render that electronic record unreadable and nonretrievable;

if the principal is using a custodian to store the electronic record.

If the principal knows that the electronic record for the electronic power of attorney or a complete converted copy of the electronic power of attorney is in the possession of a custodian, the principal has a duty to use reasonable efforts to provide the custodian with written electronic evidence of the amendment or revocation of the electronic power of attorney.

(b) If the principal has possession of the electronic record for an electronic power of attorney that the principal intends to amend or revoke, the principal shall make and save a complete converted copy of the electronic power of attorney before making and saving an amendment or revocation of the electronic power of attorney under subsection (a). If a custodian has possession of an electronic record for an electronic power of attorney that the principal intends to amend or revoke, the custodian shall make and save a complete converted copy of the electronic power of attorney as it existed originally before rendering the electronic record or electronic power of attorney unreadable or nonretrievable for potential use in evidence in the event that the validity of an amendment or revocation is later challenged.

Sec. 6. (a) Any person, with the written authorization of the



principal, may maintain, receive, or transfer custody of:

- (1) the electronic record for an electronic power of attorney (and any accompanying document integrity evidence); or
- (2) a complete converted copy of the electronic power of attorney.

A principal may identify and designate an adult individual as the custodian of the electronic power of attorney within the electronic record associated with the electronic power of attorney.

(b) A custodian of an electronic power of attorney and any associated document integrity evidence has the following responsibilities:

- (1) To use best practices to maintain custody of the electronic record for the electronic power of attorney and any associated document integrity evidence.
- (2) To use best practices and commercially reasonable means to maintain the privacy and security of the electronic record for the electronic power of attorney.
- (3) To guard against unauthorized disclosure or tampering with the electronic record.
- (4) To maintain electronic and conceptual separation of different electronic records and different electronic powers of attorney associated with different principals if the custodian maintains two (2) or more electronic powers of attorney for different principals.
- (5) To maintain the ability to promptly generate a complete converted copy of each electronic power of attorney and any associated document integrity evidence upon receipt of a written request for a complete converted copy by the living principal, the court, or any other authorized person.
- (6) To promptly respond to a written instruction from the living principal or another person with written authorization originating from the living principal to transfer custody of the electronic power of attorney to a successor custodian.
- (7) To transfer the entire electronic record of the electronic power of attorney to a successor custodian upon the receipt of a written instruction requesting the transfer of the entire electronic record of an electronic power of attorney to a successor custodian.
- (8) To provide an executed delivery receipt to the outgoing custodian who transfers:
 - (A) the electronic record;
 - (B) the electronic power of attorney;



- (C) any accompanying document integrity evidence; or
- (D) the information pertaining to the format in which the electronic record or electronic power of attorney is received;

if the receiving custodian agrees to assume responsibility for an electronic record or an electronic power of attorney and all associated documents from an outgoing custodian.

(9) To relinquish control and possession of:

- (A) the electronic record;
- (B) the electronic power of attorney; or
- (C) a complete converted copy of the electronic power of attorney if the custodian only possesses a complete converted copy;

to a person authorized by the principal to receive the items described in clauses (A) through (C).

(10) To comply with an order of the court requiring the electronic filing or delivery to the court of:

- (A) the electronic power of attorney and any associated document integrity evidence; or
- (B) a complete converted copy.

(11) To provide an accurate copy of the electronic record for the principal's electronic power of attorney or a complete converted copy of the electronic power of attorney to an interested person who is entitled to receive a copy under the terms of the power of attorney.

(12) To furnish, for any court hearing or matter involving an electronic power of attorney currently or previously stored by the custodian, any information requested by the court pertaining to the custodian's policies, practices, or qualifications as they relate to the maintenance, production, or storage of electronic powers of attorney.

(c) A proposed successor custodian has no obligation to accept delivery of an electronic power of attorney from an outgoing custodian or to accept the responsibility to maintain custody of the electronic record for an electronic power of attorney. A successor custodian's execution of a delivery receipt constitutes acceptance of:

- (1) the appointment as successor custodian; and
- (2) the responsibility to maintain and preserve the accepted electronic power of attorney.

(d) If a custodian wishes to discontinue custody of an electronic power of attorney, the custodian must send written notice to the



principal or, if the principal's whereabouts are unknown, to the current attorney in fact or other person holding written authority from the principal.

(e) A written notice described in subsection (d) must inform the principal, attorney in fact, or other person holding written authority from the principal that the custodian will transfer custody of the electronic record to a successor custodian chosen by the current custodian unless a written instruction is issued to the current custodian not later than thirty (30) days after the written notice described in subsection (d) was first issued.

(f) If the principal, current attorney in fact, or person holding written authority from the principal does not respond to a written notice described in subsection (d) by the end of the thirty (30) day period described in subsection (e), the custodian may dispose of the electronic record associated with an electronic power of attorney in one (1) of the following ways:

(1) The current custodian may transfer custody of the electronic record for the electronic power of attorney to a successor custodian previously designated in writing by the principal.

(2) The current custodian may transfer custody of the electronic power of attorney to a successor custodian selected by the current custodian.

(3) The current custodian may transmit a complete converted copy of the electronic power of attorney trust instrument and an accompanying affidavit of regularity to the person who received the thirty (30) day notice described in subsection (e).

Sec. 7. (a) After a principal's death becomes known to a custodian or other person in possession or control of:

(1) the electronic record associated with the principal's electronic power of attorney; or

(2) a complete converted copy of the principal's electronic power of attorney;

the custodian or other person in possession of an item described in subdivision (1) or (2) shall deliver an item described in subdivision (1) or (2) to the attorney in fact.

(b) A custodian or other person in possession of an item described in subsection (a)(1) or (a)(2) may use any commercially reasonable method of delivery to comply with this section.

Sec. 8. (a) As used in this section, "destroy" means any action that:

(1) permanently deletes the electronic record associated with



an electronic power of attorney; or

(2) renders the electronic record associated with an electronic power of attorney unreadable and nonretrievable.

(b) Any custodian or attorney holding an electronic power of attorney may destroy the electronic record associated with an electronic power of attorney and any accompanying document integrity evidence at any time after the fifth anniversary of the principal's death.

(c) Notwithstanding subsection (b), this section does not require a custodian, attorney, or other person in possession of a complete converted copy of an electronic power of attorney to destroy the complete converted copy of the electronic power of attorney.

Sec. 9. Whenever this chapter requires or permits a custodian or other person to make an affidavit of regularity with respect to an electronic power of attorney or a complete converted copy, the custodian or other person responsible for the creation of the affidavit of regularity may use the following format for the affidavit:

"Affidavit of Regularity of Electronic Power of Attorney

(1) Beginning on (insert date of first possession of the electronic trust instrument by the signer of this affidavit) and continuing to the date and time of this affidavit, the undersigned person has had possession of (circle all of the following that apply):

(A) The electronic record for the electronic power of attorney.

(B) A complete converted copy of the electronic power of attorney of (insert name of principal), which was electronically executed on (insert date of electronic signing or insert reference to time stamp).

(2) (Insert client number, customer number, document number, or other unique identifier as applicable) is the unique identifier that the undersigned person assigned to this electronic power of attorney in the undersigned person's records.

(3) The undersigned person believes that the principal (circle one (1) of the following options):

(A) Is alive.

(B) Died on or about (insert date of death) and the undersigned person believes that the power of attorney is currently (circle one (1) of the following options):

(i) In effect.



(ii) Not in effect.

(4) The undersigned person is (circle all of the following that apply):

(A) Transferring custody of the electronic record for the electronic power of attorney to the living principal of the electronic power of attorney.

(B) Transferring custody of the electronic record for the electronic power of attorney to (insert name and address of successor custodian).

(C) Transferring a complete converted copy of the electronic power of attorney to (insert name and address of authorized recipient).

(5) The undersigned person is transferring or submitting the electronic record in the following format: (specify format).

(6) If the undersigned person is transferring or submitting the electronic record for the electronic power of attorney, the undersigned person affirms, under penalty of perjury, that the electronic record has been in the undersigned person's possession or control for the period stated in paragraph (1) and that during this period, the electronic record showed no indication of unauthorized alteration or tampering.

(7) The undersigned person affirms, under penalty of perjury, that (circle one (1) of the following options):

(A) The undersigned person has no knowledge of the principal's later execution of any document that amends, revokes, or supersedes the electronic power of attorney described in paragraph (1).

(B) The undersigned believes that the principal purportedly amended or revoked the electronic power of attorney described in paragraph (1) on (insert date if known or approximate time frame if date is not known), by (insert known details concerning the principal's amendment or revocation).

(8) The undersigned person is (circle all of the following that apply):

(A) The living principal who executed the electronic trust instrument.

(B) An attorney admitted to practice law in the state of Indiana.

(C) A currently serving attorney in fact appointed under or named in the explicit terms of the power of attorney.

(D) A successor attorney in fact nominated by the



electronic trust instrument.

(E) A custodian currently in compliance with all applicable requirements.

(9) (Insert date and time of the custodian's or other person's signature).

(10) (Insert name and signature of custodian or other person signing. Insert job title or position of signatory if signatory is not an individual (natural person))."

Sec. 10. (a) An electronic record, including any accompanying document integrity evidence contained in the electronic record, is:

(1) prima facie evidence of the validity of the electronic power of attorney; and

(2) prima facie evidence of the absence of unauthorized alteration or of tampering with the electronic power of attorney.

(b) If an electronic power of attorney appears to have been executed in compliance with this chapter, a complete converted copy of an electronic power of attorney is prima facie evidence of:

(1) the validity of the electronic power of attorney; and

(2) the absence of unauthorized alteration or tampering.

(c) Except when required by an order of the court, a custodian or other person in possession of an electronic record or electronic power of attorney is not required to make or issue an affidavit of regularity concerning the custody of the electronic record for:

(1) an electronic power of attorney; or

(2) a complete converted copy of an electronic power of attorney.

(d) Notwithstanding subsection (c), any:

(1) custodian; or

(2) other person in possession of an electronic record or electronic power of attorney;

may make an affidavit of regularity if any objection is asserted or any doubt is raised regarding the validity of the electronic power of attorney or about any alleged unauthorized alteration of the electronic power of attorney.

(e) The presumption of regularity created by this section shall apply to an electronic record or an electronic power of attorney regardless of the number of custodians or other persons who:

(1) hold;

(2) receive; or

(3) transfer;

an electronic record or electronic power of attorney to another



custodian, authorized person, or principal.

(f) The presumption of regularity created by this section for an electronic record or electronic power of attorney may be rebutted by:

- (1) clear and convincing evidence; or
- (2) evidence that the principal executed another electronic power of attorney.

Sec. 11. (a) For purposes of IC 29-3, IC 30-5, and IC 32-39:

- (1) the electronic record for an electronic power of attorney is a "digital asset" as defined in IC 32-39-1-10;
- (2) the electronic record for an electronic power of attorney is not an "electronic communication" as defined in 18 U.S.C. 2510(12) or IC 32-39-1-12;
- (3) the digital or electronic transfer of an electronic record for an electronic power of attorney between any two (2) persons other than the principal and principal's attorney or the principal and an attorney in fact is an "electronic communication" as defined in 18 U.S.C. 2510(12) or IC 32-39-1-12;
- (4) a custodian of an electronic power of attorney is also a "custodian" as defined in IC 32-39-1-8; and
- (5) the:
 - (A) principal of an electronic power of attorney;
 - (B) attorney in fact;
 - (C) attorney representing a principal or attorney in fact;
 or
 - (D) other person with authorized possession of or authorized access to the electronic record for an electronic power of attorney;

is a "user" for purposes of IC 32-39 if the person contracts with another person to store the electronic record for the electronic power of attorney.

(b) The execution or revocation of an electronic power of attorney may be a contract of a "transaction in or affecting interstate or foreign commerce" for purposes of the federal E-Sign Act (15 U.S.C. 7001).

(c) The execution or revocation of an electronic power of attorney is subject to IC 26-2-8 unless there is a conflict between IC 26-2-8 and any provision contained in this article. In the event of a conflict between IC 26-2-8 and a provision of this article, the provision of this article shall control.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

HEA 1303

