

# HOUSE BILL No. 1407

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 29-1; IC 29-3; IC 30-4-3; IC 30-5-3-4; IC 31-17-2-8.

**Synopsis:** Probate and trust matters. Makes various changes to probate and trust laws concerning contesting of wills, the size of unsupervised estates, authorization of certain acts by a trustee, and the consideration of the requests of de facto custodians and living parents of incapacitated persons in the appointment of guardians and in custody orders.

**Effective:** July 1, 2017.

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## Washburne

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January 17, 2017, read first time and referred to Committee on Judiciary.

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

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

# HOUSE BILL No. 1407

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

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

1 SECTION 1. IC 29-1-7-17, AS AMENDED BY P.L.190-2016,  
2 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 17. Any interested person may contest the validity  
4 of any will in the court having jurisdiction over the probate of the will  
5 within three (3) months after the date of the order admitting the will to  
6 probate by filing in the same court, in ~~the same~~ **a separate** cause of  
7 action, the person's allegations in writing verified by affidavit, setting  
8 forth:  
9 (1) the unsoundness of mind of the testator;  
10 (2) the undue execution of the will;  
11 (3) that the will was executed under duress or was obtained by  
12 fraud; or  
13 (4) any other valid objection to the will's validity or the probate of  
14 the will.  
15 The executor and all other persons beneficially interested in the will  
16 shall be made defendants to the action.  
17 SECTION 2. IC 29-1-7.5-4 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) Unless prohibited  
2 by order of the court and except for estates being administered in  
3 supervised administration proceedings, a personal representative may  
4 close an estate by filing with the court no earlier than three (3) months  
5 after the date of the first published notice to creditors under  
6 IC 29-1-7-7(b), a verified statement stating that the personal  
7 representative, or a prior personal representative, has done the  
8 following:

9 (1) Published notice to creditors as provided in IC 29-1-7-7(b),  
10 and that the first publication occurred more than three (3) months  
11 prior to the date of the statement.

12 (2) Provided notice to creditors as required under IC 29-1-7-7(c)  
13 and IC 29-1-7-7(d).

14 (3) Fully administered the estate of the decedent by making  
15 payment, settlement, or other disposition of all claims which were  
16 presented, expenses of administration and estate, inheritance, and  
17 other death taxes, except as specified in the statement. If any  
18 claims remain undischarged, the statement shall:

19 (A) state whether the personal representative has distributed  
20 the estate, subject to possible liability, with the agreement of  
21 the distributees; or

22 (B) detail other arrangements which have been made to  
23 accommodate outstanding liabilities.

24 (4) Executed and recorded a personal representative's deed for  
25 any real estate owned by the decedent.

26 (5) Distributed all the assets of the estate to the persons entitled  
27 to receive the assets.

28 (6) Sent a copy of the statement to:

29 (A) all distributees of the estate; and

30 (B) ~~to~~ all creditors or other claimants of whom the personal  
31 representative has actual knowledge whose claims are neither  
32 paid nor barred and has furnished a full account in writing of  
33 the personal representative's administration to the distributees  
34 whose interests are affected, **unless waived in writing.**

35 (7) Provided the court with the names and addresses of all  
36 distributees, creditors, and claimants to whom the personal  
37 representative has sent a copy of the statement under subdivision  
38 (6).

39 (b) If no proceedings involving the personal representative are  
40 pending in the court three (3) months after the closing statement is  
41 filed, the appointment of the personal representative terminates and the  
42 estate is closed by operation of law.



1 SECTION 3. IC 29-1-8-1, AS AMENDED BY P.L.137-2016,  
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2017]: Sec. 1. (a) Forty-five (45) days after the death of a  
 4 decedent and upon being presented an affidavit that complies with  
 5 subsection (b), a person:

- 6 (1) indebted to the decedent; or  
 7 (2) having possession of personal property or an instrument  
 8 evidencing a debt, an obligation, a stock, or a chose in action  
 9 belonging to the decedent;

10 shall make payment of the indebtedness or deliver the personal  
 11 property or the instrument evidencing a debt, an obligation, a stock, or  
 12 a chose in action to a distributee claiming to be entitled to payment or  
 13 delivery of property of the decedent as alleged in the affidavit.

14 (b) The affidavit required by subsection (a) must be an affidavit  
 15 made by or on behalf of the distributee and must state the following:

16 (1) That the value of the gross probate estate, wherever located  
 17 (less liens and encumbrances), does not exceed ~~fifty thousand~~  
 18 ~~dollars (\$50,000).~~ **seventy-five thousand dollars (\$75,000).**

19 (2) That forty-five (45) days have elapsed since the death of the  
 20 decedent.

21 (3) That no application or petition for the appointment of a  
 22 personal representative is pending or has been granted in any  
 23 jurisdiction.

24 (4) The name and address of each distributee that is entitled to a  
 25 share of the property and the part of the property to which each  
 26 distributee is entitled.

27 (5) That the affiant has notified each distributee identified in the  
 28 affidavit of the affiant's intention to present an affidavit under this  
 29 section.

30 (6) That the affiant is entitled to payment or delivery of the  
 31 property on behalf of each distributee identified in the affidavit.

32 (c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5)  
 33 is part of the estate, nothing in this section shall prohibit a transfer of  
 34 the certificate of title to the motor vehicle if five (5) days have elapsed  
 35 since the death of the decedent and no appointment of a personal  
 36 representative is contemplated. A transfer under this subsection shall  
 37 be made by the bureau of motor vehicles upon receipt of an affidavit  
 38 containing a statement of the conditions required by subsection (b)(1)  
 39 and (b)(6). The affidavit must be duly executed by the distributees of  
 40 the estate.

41 (d) A transfer agent of a security shall change the registered  
 42 ownership on the books of a corporation from the decedent to a



1 distributee upon the presentation of an affidavit as provided in  
2 subsection (a).

3 (e) For the purposes of subsection (a), an insurance company that,  
4 by reason of the death of the decedent, becomes obligated to pay a  
5 death benefit to the estate of the decedent is considered a person  
6 indebted to the decedent.

7 (f) For purposes of subsection (a), property in a safe deposit box  
8 rented by a decedent from a financial institution organized or  
9 reorganized under the law of any state (as defined in IC 28-2-17-19) or  
10 the United States is considered personal property belonging to the  
11 decedent in the possession of the financial institution.

12 (g) For purposes of subsection (a), a distributee has the same rights  
13 as a personal representative under IC 32-39 to access a digital asset (as  
14 defined in IC 32-39-1-10) of the decedent.

15 SECTION 4. IC 29-1-8-3, AS AMENDED BY P.L.220-2011,  
16 SECTION 473, IS AMENDED TO READ AS FOLLOWS  
17 [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) If it appears that the value of  
18 a decedent's gross probate estate, less liens and encumbrances, does not  
19 exceed the sum of:

20 (1) twenty-five thousand dollars (\$25,000), for the estate of an  
21 individual who dies before July 1, 2007, ~~and~~ fifty thousand dollars  
22 (\$50,000), for the estate of an individual who dies after June 30,  
23 2007, **and before July 1, 2017, and seventy-five thousand**  
24 **dollars (\$75,000), for the estate of an individual who dies after**  
25 **June 30, 2017;**

26 (2) the costs and expenses of administration; and

27 (3) reasonable funeral expenses;

28 the personal representative or a person acting on behalf of the  
29 distributees, without giving notice to creditors, may immediately  
30 disburse and distribute the estate to the persons entitled to it and file a  
31 closing statement as provided in section 4 of this chapter.

32 (b) If an estate described in subsection (a) includes real property, an  
33 affidavit may be recorded in the office of the recorder in the county in  
34 which the real property is located. The affidavit must contain the  
35 following:

36 (1) The legal description of the real property.

37 (2) The following statement:

38 **(A) If the individual dies after June 30, 2017, the following**  
39 **statement: "It appears that the decedent's gross probate**  
40 **estate, less liens and encumbrances, does not exceed the**  
41 **sum of the following: seventy-five thousand dollars**  
42 **(\$75,000), the costs and expenses of administration, and**



- 1           **reasonable funeral expenses."**  
 2           ~~(A)~~ **(B)** If the individual dies after June 30, 2007, **and before**  
 3           **July 1, 2017**, the following statement: "It appears that the  
 4           decedent's gross probate estate, less liens and encumbrances,  
 5           does not exceed the sum of the following: fifty thousand  
 6           dollars (\$50,000), the costs and expenses of administration,  
 7           and reasonable funeral expenses."  
 8           ~~(B)~~ **(C)** If the individual dies before July 1, 2007, the  
 9           following statement: "It appears that the decedent's gross  
 10          probate estate, less liens and encumbrances, does not exceed  
 11          the sum of the following: twenty-five thousand dollars  
 12          (\$25,000), the costs and expenses of administration, and  
 13          reasonable funeral expenses."  
 14          (3) The name of each person entitled to at least a part interest in  
 15          the real property as a result of a decedent's death, the share to  
 16          which each person is entitled, and whether the share is a divided  
 17          or undivided interest.  
 18          (4) A statement which explains how each person's share has been  
 19          determined.  
 20          SECTION 5. IC 29-1-8-4, AS AMENDED BY P.L.220-2011,  
 21          SECTION 474, IS AMENDED TO READ AS FOLLOWS  
 22          [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) Unless prohibited by order of  
 23          the court and except for estates being administered by supervised  
 24          personal representatives, a personal representative or a person acting  
 25          on behalf of the distributees may close an estate administered under the  
 26          summary procedures of section 3 of this chapter by filing with the  
 27          court, at any time after disbursement and distribution of the estate, a  
 28          verified statement stating that:  
 29                  (1) to the best knowledge of the personal representative or person  
 30                  acting on behalf of the distributees the value of the gross probate  
 31                  estate, less liens and encumbrances, did not exceed the sum of:  
 32                          (A) twenty-five thousand dollars (\$25,000), for the estate of an  
 33                          individual who dies before July 1, 2007, ~~and~~ fifty thousand  
 34                          dollars (\$50,000), for the estate of an individual who dies after  
 35                          June 30, 2007, **and before July 1, 2017, and seventy-five**  
 36                          **thousand dollars (\$75,000), for the estate of an individual**  
 37                          **who dies after June 30, 2017;**  
 38                          (B) the costs and expenses of administration; and  
 39                          (C) reasonable funeral expenses;  
 40                  (2) the personal representative or person acting on behalf of the  
 41                  distributees has fully administered the estate by disbursing and  
 42                  distributing it to the persons entitled to it; and



1 (3) the personal representative or person acting on behalf of the  
 2 distributees has sent a copy of the closing statement to all  
 3 distributees of the estate and to all creditors or other claimants of  
 4 whom the personal representative or person acting on behalf of  
 5 the distributees is aware and has furnished a full account in  
 6 writing of the administration to the distributees whose interests  
 7 are affected.

8 (b) If no actions, claims, objections, or proceedings involving the  
 9 personal representative or person acting on behalf of the distributees  
 10 are filed in the court within three (3) months after the closing statement  
 11 is filed, the appointment of the personal representative or the duties of  
 12 the person acting on behalf of the distributees terminate.

13 (c) A closing statement filed under this section has the same effect  
 14 as one (1) filed under IC 29-1-7.5-4.

15 (d) A copy of any affidavit recorded under section 3(b) of this  
 16 chapter must be attached to the closing statement filed under this  
 17 section.

18 SECTION 6. IC 29-3-1-3.5 IS ADDED TO THE INDIANA CODE  
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 20 1, 2017]: **Sec. 3.5. "De facto custodian" has the meaning set forth  
 21 in IC 31-9-2-35.5.**

22 SECTION 7. IC 29-3-5-4, AS AMENDED BY P.L.190-2016,  
 23 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2017]: Sec. 4. The court shall appoint as guardian a qualified  
 25 person or persons most suitable and willing to serve, having due regard  
 26 to the following:

27 (1) Any request made by a person alleged to be an incapacitated  
 28 person, including designations in a durable power of attorney  
 29 under IC 30-5-3-4(a).

30 **(2) Any request made for a minor by:**

31 **(A) a parent of the minor; or**

32 **(B) a de facto custodian of the minor, including a  
 33 designation in a power of attorney under IC 30-5-3-4(b) or  
 34 IC 30-5-3-4(c).**

35 ~~(3)~~ (3) Any request contained in a will or other written  
 36 instrument.

37 ~~(4)~~ (4) A designation of a standby guardian under IC 29-3-3-7.

38 ~~(5)~~ (5) Any request made by a minor who is at least fourteen (14)  
 39 years of age.

40 ~~(6)~~ (6) Any request made by the spouse of the alleged  
 41 incapacitated person.

42 ~~(7)~~ (7) The relationship of the proposed guardian to the individual



1 for whom guardianship is sought.

2 ~~(7)~~ **(8)** Any person acting for the incapacitated person under a  
3 durable power of attorney.

4 ~~(8)~~ **(9)** The best interest of the incapacitated person or minor and  
5 the property of the incapacitated person or minor.

6 SECTION 8. IC 29-3-5-5, AS AMENDED BY P.L.190-2016,  
7 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2017]: Sec. 5. (a) The following are entitled to consideration  
9 for appointment as a guardian under section 4 of this chapter in the  
10 order listed:

11 (1) A person designated in a durable power of attorney.

12 (2) A person designated as a standby guardian under IC 29-3-3-7.

13 (3) The spouse of an incapacitated person.

14 (4) An adult child of an incapacitated person.

15 (5) A parent of an incapacitated person, or a person nominated by  
16 will of a deceased parent of an incapacitated person or by any  
17 writing signed by a parent of an incapacitated person and attested  
18 to by at least two (2) witnesses, **or in a power of attorney of a**  
19 **living parent of an incapacitated person under IC 30-5-3-4(c).**

20 **(6) A parent of a minor, a de facto custodian of a minor, or a**  
21 **person nominated:**

22 **(A) by will of a deceased parent or a de facto custodian of**  
23 **a minor; or**

24 **(B) by a power of attorney of a living parent or a de facto**  
25 **custodian of a minor.**

26 ~~(6)~~ **(7)** Any person related to an incapacitated person by blood or  
27 marriage with whom the incapacitated person has resided for  
28 more than six (6) months before the filing of the petition.

29 ~~(7)~~ **(8)** A person nominated by the incapacitated person who is  
30 caring for or paying for the care of the incapacitated person.

31 (b) With respect to persons having equal priority, the court shall  
32 select the person it considers best qualified to serve as guardian. The  
33 court, acting in the best interest of the incapacitated person or minor,  
34 may pass over a person having priority and appoint a person having a  
35 lower priority or no priority under this section.

36 SECTION 9. IC 30-4-3-7, AS AMENDED BY P.L.89-2011,  
37 SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 JULY 1, 2017]: Sec. 7. (a) Unless the terms of the trust provide  
39 otherwise or the transaction is authorized under **section 7.5 of this**  
40 **chapter**, IC 28-1-12-8, or IC 28-6.1-6-26, the trustee has a duty:

41 (1) not to loan funds to the trustee or an affiliate;

42 (2) not to purchase or participate in the purchase of trust property





1 from the trust for the trustee's own or an affiliate's account;

2 (3) not to sell or participate in the sale of the trustee's own or an  
3 affiliate's property to the trust; or

4 (4) if a corporate trustee, not to purchase for or retain in the trust  
5 its own or a parent or subsidiary corporation's stock, bonds, or  
6 other capital securities. However, the trustee may retain such  
7 securities already held in trusts created prior to September 2,  
8 1971.

9 (b) Unless the terms of the trust provide otherwise, a corporate  
10 trustee may invest in, purchase for, or retain in the trust its own or an  
11 affiliate's obligations, including savings accounts and certificates of  
12 deposit, without the investment, purchase, or retention constituting a  
13 conflict of interest under section 5 of this chapter.

14 (c) Unless the terms of the trust provide otherwise, a corporate  
15 trustee does not violate subsection (a) by investing in, purchasing for,  
16 or retaining in the trust its own or an affiliate's obligations, including  
17 savings accounts and certificates of deposit, if the payment of each  
18 obligation is fully insured by the Federal Deposit Insurance  
19 Corporation, the National Credit Union Share Insurance Fund, or any  
20 insurer approved by the department of financial institutions under  
21 IC 28-7-1-31.5.

22 (d) If the terms of the trust permit the trustee to deal with a  
23 beneficiary for the trustee's own account, the trustee has a duty to deal  
24 fairly with and to disclose to the beneficiary all material facts related  
25 to the transaction which the trustee knows or should know.

26 (e) Unless the terms of the trust provide otherwise, the trustee may  
27 sell, exchange, or participate in the sale or exchange of trust property  
28 from one (1) trust to the trustee as trustee of another trust, provided the  
29 sale or exchange is fair and reasonable with respect to the beneficiaries  
30 of both trusts and the trustee discloses to the beneficiaries of both trusts  
31 all material facts related to the sale or exchange which the trustee  
32 knows or should know.

33 (f) This section does not prohibit a trustee from enforcing or  
34 fulfilling any enforceable contract or agreement:

35 (1) executed during the settlor's lifetime; and

36 (2) between the settlor and the trustee in the trustee's individual  
37 capacity.

38 SECTION 10. IC 30-4-3-7.5 IS ADDED TO THE INDIANA CODE  
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
40 1, 2017]: **Sec. 7.5. A transaction otherwise prohibited by section 7  
41 of this chapter is authorized if:**

42 (1) the proposed prohibited transaction is authorized by the



1           **written consent of all qualified beneficiaries; or**  
 2           **(2) the proposed prohibited transaction is approved by an**  
 3           **order of the court issued after:**

4           **(A) notice to all qualified beneficiaries; and**

5           **(B) a hearing to ensure that adequate consideration is**  
 6           **received by or delivered from the trust for the interest**  
 7           **transferred.**

8           SECTION 11. IC 30-5-3-4 IS AMENDED TO READ AS  
 9           FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) A principal may  
 10          nominate a guardian for consideration by the court if protective  
 11          proceedings for the principal's person or estate are commenced. The  
 12          court shall make an appointment in accordance with the principal's  
 13          most recent nomination in a power of attorney except for good cause  
 14          or disqualification.

15          **(b) A parent of a minor or a de facto custodian of a minor may**  
 16          **nominate a guardian of the minor for consideration by the court if**  
 17          **protective proceedings for the minor's person or estate are**  
 18          **commenced. The court shall consider a nomination in a power of**  
 19          **attorney.**

20          **(c) A parent of an incapacitated person may nominate a**  
 21          **guardian of the incapacitated person for consideration by the court**  
 22          **if protective proceedings for the incapacitated person's person or**  
 23          **estate are commenced. The court shall consider a nomination in a**  
 24          **power of attorney.**

25          ~~(b)~~ **(d) A guardian does not have power, duty, or liability with**  
 26          **respect to property or personal health care decisions that are subject to**  
 27          **a valid power of attorney. A guardian has no power to revoke or amend**  
 28          **a valid power of attorney unless specifically directed to revoke or**  
 29          **amend the power of attorney by a court order on behalf of the principal.**  
 30          **A court may not enter an order to revoke or amend a power of attorney**  
 31          **without a hearing. Notice of a hearing held under this section shall be**  
 32          **given to the attorney in fact.**

33          SECTION 12. IC 31-17-2-8 IS AMENDED TO READ AS  
 34          FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. The court shall  
 35          determine custody and enter a custody order in accordance with the  
 36          best interests of the child. In determining the best interests of the child,  
 37          there is no presumption favoring either parent. The court shall consider  
 38          all relevant factors, including the following:

39               (1) The age and sex of the child.

40               (2) The wishes of the child's parent or parents.

41               (3) The wishes of the child, with more consideration given to the  
 42               child's wishes if the child is at least fourteen (14) years of age.



- 1 (4) The interaction and interrelationship of the child with:  
2 (A) the child's parent or parents;  
3 (B) the child's sibling; and  
4 (C) any other person who may significantly affect the child's  
5 best interests.  
6 (5) The child's adjustment to the child's:  
7 (A) home;  
8 (B) school; and  
9 (C) community.  
10 (6) The mental and physical health of all individuals involved.  
11 (7) Evidence of a pattern of domestic or family violence by either  
12 parent.  
13 (8) Evidence that the child has been cared for by a de facto  
14 custodian, and if the evidence is sufficient, the court shall  
15 consider the factors described in section 8.5(b) of this chapter.  
16 **(9) A designation in a power of attorney of:**  
17 **(A) the child's parent; or**  
18 **(B) a person found to be a de facto custodian of the child.**

