



February 25, 2014

ENGROSSED SENATE BILL No. 59

DIGEST OF SB 59 (Updated February 24, 2014 2:22 pm - DI 107)

Citations Affected: IC 29-3; IC 30-4; IC 31-9; IC 31-11; IC 31-15.

Synopsis: Guardian filing for dissolution of marriage, legal separation, or annulment. Allows a guardian, including a volunteer advocates for senior program or a volunteer advocates for incapacitated adults program, to request permission to file a petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person. Allows the court to grant a request for permission to file a petition for a dissolution of marriage, a legal separation, or an
(Continued next page)

Effective: July 1, 2014.

Bray, Head, Randolph

(HOUSE SPONSOR — MAYFIELD)

January 7, 2014, read first time and referred to Committee on Judiciary.
January 23, 2014, amended, reported favorably — Do Pass.
February 3, 2014, read second time, amended, ordered engrossed.
February 4, 2014, engrossed. Read third time, passed. Yeas 42, nays 6.

HOUSE ACTION

February 10, 2014, read first time and referred to Committee on Judiciary.
February 25, 2014, amended, reported — Do Pass.

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Digest Continued

annulment on behalf of an incapacitated person only if the court determines by clear and convincing evidence that petitioning for a dissolution of marriage, a legal separation, or an annulment is in the best interests of the incapacitated person. Provides that the guardian may not delegate the power to request permission to file a petition for dissolution, separation, or annulment. Requires the guardian to: (1) be named in a petition for dissolution of marriage, legal separation, or annulment; and (2) file, with the petition, a copy of the court order granting the request for permission to file the petition. Permits a guardian to file a petition for dissolution of marriage, legal separation, or annulment on behalf of an incapacitated person in the guardian's county of residence. Allows a guardian to bring an enforcement proceeding to compel compliance if a third party fails to comply with certain demands concerning the guardianship of a minor or incapacitated adult.



February 25, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 59

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

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

- 1 SECTION 1. IC 29-3-6-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) At any time after the
3 appointment of a guardian or the issuance of a protective order, any
4 person may, in person or by the person's attorney, serve upon the
5 guardian or the guardian's attorney, and file with the clerk of the court
6 where the proceedings are pending, a written request together with a
7 written admission or proof of service stating that the person desires
8 written notice of all hearings and copies of all pleadings or other papers
9 in connection with:
10 (1) the settlement of accounts;
11 (2) the sale, mortgage, lease, or exchange of any property of the
12 protected person;
13 (3) allowances of any nature payable from the protected person's
14 property;
15 (4) the investment of funds of the protected person;
16 (5) a petition to request the authority to petition for

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1 **dissolution of marriage, legal separation, or annulment of**
 2 **marriage on behalf of the protected person as provided under**
 3 **IC 29-3-9-12.2;**

4 ~~(5)~~ (6) the removal, suspension, or discharge of the guardian;

5 ~~(6)~~ (7) the final termination of the guardianship; or

6 ~~(7)~~ (8) any other notice or matter as specified in the request.

7 The applicant requesting special notice must include in the written
 8 request the applicant's post office address or that of the applicant's
 9 attorney. The court may determine that any person requesting notice
 10 under this section has no interest in the proceeding, either generally or
 11 with respect to a particular matter, and is not entitled to the notice
 12 requested. Unless the court otherwise directs, upon filing the request,
 13 the guardian or the guardian's attorney shall comply with the request.

14 (b) Failure to comply with a request for notice under this section
 15 does not affect the validity of the proceeding.

16 SECTION 2. IC 29-3-8-4 IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2014]: Sec. 4. A guardian (other than a
 18 temporary guardian) may exercise all of the powers required to perform
 19 the guardian's responsibilities, including the following:

20 (1) To receive and issue a receipt for property payable to the
 21 protected person or the protected person's parent, guardian, or
 22 custodian from any source, including any statutory benefit,
 23 insurance system, or any private contract, devise, trust,
 24 guardianship, or custodianship.

25 (2) If reasonable, to delegate to the protected person certain
 26 responsibilities for decisions affecting the protected person's
 27 business affairs and well-being.

28 (3) To invest and reinvest the property of the protected person in
 29 accordance with powers vested in, and according to the standards
 30 imposed upon, trustees under IC 30-4-3-3(c).

31 (4) To secure the appointment of a guardian or co-guardian in any
 32 other state, when needed, with respect to any part or all of the
 33 guardianship property located in another state, to confer upon the
 34 appointed guardian any or all of the guardian's powers as guardian
 35 with respect to the property.

36 (5) To continue any business of the protected person, whether in
 37 corporate, partnership, or proprietorship form, according to the
 38 rules for continuing the business of a decedent specified in
 39 IC 29-1-13-11.

40 (6) To pay to the person, guardian, department, bureau, or agency
 41 having care and custody of the protected person, or to the
 42 protected person if at least fourteen (14) years of age, a



1 reasonable amount to be expended for the support of the protected
 2 person and the protected person's dependents, with due regard to
 3 the following:

4 (A) The size of the guardianship property, the probable
 5 duration of the guardianship, and the extent to which the
 6 protected person in the future may be self-sufficient and able
 7 to manage the protected person's financial affairs and property.

8 (B) The accustomed standard of living of the protected person
 9 and the protected person's dependents.

10 (C) Other funds or sources used for the support of the
 11 protected person and the protected person's dependents.

12 (7) To distribute income and discretionary amounts of principal
 13 in one (1) or more of the following ways as the guardian believes
 14 to be in the best interests of the protected person:

15 (A) Directly to the protected person.

16 (B) To a guardian of the protected person appointed in another
 17 state.

18 (C) To a custodian for the protected person under IC 30-2-8.5.

19 (D) To an adult relative of the protected person.

20 (E) By expending the money or using the property directly for
 21 the benefit of the protected person.

22 (8) To apply the guardianship property to or for the benefit of any
 23 person, including the protected person, in reimbursement for
 24 reasonable expenditures made in good faith on behalf of the
 25 protected person that the guardian might have made, or in
 26 advance for services to be rendered to the protected person if it is
 27 reasonable to expect that the services will be performed and
 28 advance payments are reasonably necessary under the
 29 circumstances.

30 (9) To bind all or any part of the guardianship property in a
 31 transaction for the benefit of the protected person, unless the third
 32 party dealing with the guardian is acting in bad faith.

33 (10) Except as provided in IC 29-3-2-6(d), powers conferred upon
 34 trustees and personal representatives respectively by IC 30-4-3-3
 35 and IC 29-1-7.5-3. However, if there is a conflict, the broader
 36 power controls.

37 (11) To exercise on behalf of the protected person powers that are
 38 the same as those granted to the parent of a minor under
 39 IC 29-3-3-3.

40 **(12) To petition the court to request the authority to petition**
 41 **for dissolution of marriage, legal separation, or annulment of**
 42 **marriage on behalf of the protected person, if the protected**



- 1 **person is an incapacitated person, as provided under**
 2 **IC 29-3-9-12.2.**
- 3 SECTION 3. IC 29-3-8.5-4, AS AMENDED BY P.L.72-2010,
 4 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2014]: Sec. 4. (a) A volunteer advocates for seniors program
 6 or a volunteer advocates for incapacitated adults program may:
- 7 (1) consent to medical and other professional care and treatment
 8 for the incapacitated person's or senior's health and welfare;
 9 (2) secure the appointment of a guardian or coguardian in another
 10 state;
 11 (3) take custody of the incapacitated person or senior and
 12 establish the incapacitated person's or senior's residence within
 13 Indiana or another state in accordance with IC 29-3-9-2;
 14 (4) institute proceedings or take other appropriate action to
 15 compel the performance by any person of a duty to support the
 16 incapacitated person's or senior's health or welfare;
 17 (5) protect and preserve the property of the incapacitated person
 18 or senior and preserve any property in excess of the incapacitated
 19 person's or senior's current needs; ~~and~~
 20 (6) delegate to the incapacitated person or senior certain
 21 responsibilities for decisions affecting the incapacitated person's
 22 or senior's business affairs and well-being; **and**
 23 **(7) petition the court to request the authority to petition for**
 24 **dissolution of marriage, legal separation, or annulment of**
 25 **marriage on behalf of an incapacitated person as provided**
 26 **under IC 29-3-9-12.2.**
- 27 (b) A volunteer advocates for seniors program or a volunteer
 28 advocates for incapacitated adults program may exercise the powers of
 29 a guardian of a minor listed in IC 29-3-8-2 and IC 29-3-8-4.
- 30 SECTION 4. IC 29-3-9-1, AS AMENDED BY P.L.178-2011,
 31 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2014]: Sec. 1. (a) **Except as provided in subsection (b)**, by
 33 a properly executed power of attorney, a parent of a minor or a
 34 guardian (other than a temporary guardian) of a protected person may
 35 delegate to another person for:
- 36 (1) any period during which the care and custody of the minor or
 37 protected person is entrusted to an institution furnishing care,
 38 custody, education, or training; or
 39 (2) a period not exceeding twelve (12) months;
 40 any powers regarding support, custody, or property of the minor or
 41 protected person. ~~except the power to consent to the marriage or~~
 42 ~~adoption of a protected person who is a minor.~~ A delegation described



1 in this subsection is effective immediately unless otherwise stated in
 2 the power of attorney.

3 **(b) A parent of a minor or a guardian of a protected person may**
 4 **not delegate under subsection (a) the power to:**

5 **(1) consent to the marriage or adoption of a protected person**
 6 **who is a minor; or**

7 **(2) petition the court to request the authority to petition for**
 8 **dissolution of marriage, legal separation, or annulment of**
 9 **marriage on behalf of a protected person as provided under**
 10 **IC 29-3-9-12.2.**

11 ~~(b)~~ **(c)** A person having a power of attorney executed under
 12 subsection (a) has and shall exercise, for the period during which the
 13 power is effective, all other authority of the parent or guardian
 14 respecting the support, custody, or property of the minor or protected
 15 person except any authority expressly excluded in the written
 16 instrument delegating the power. However, the parent or guardian
 17 remains responsible for any act or omission of the person having the
 18 power of attorney with respect to the affairs, property, and person of the
 19 minor or protected person as though the power of attorney had never
 20 been executed.

21 ~~(c)~~ **(d)** Except as otherwise stated in the power of attorney
 22 delegating powers under this section, a delegation of powers under this
 23 section may be revoked by a written instrument of revocation that:

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

25 (2) is signed by the:

26 (A) parent of a minor; or

27 (B) guardian of a protected person;

28 who executed the power of attorney.

29 SECTION 5. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2014]: **Sec. 12. (a) This section applies only to a guardianship of**
 32 **the property of a minor or an incapacitated adult.**

33 **(b) If a third party fails to comply with a guardian's written**
 34 **demand or instruction that:**

35 **(1) was issued within the scope of the guardian's authority;**
 36 **and**

37 **(2) is consistent with this article;**

38 **the guardian may bring an enforcement proceeding to compel**
 39 **compliance in the court having jurisdiction over the guardianship.**

40 **(c) A court may award attorney's fees and costs to the guardian**
 41 **in an enforcement proceeding under subsection (b), if the person**
 42 **indebted to the guardianship estate or holding property of the**



1 guardianship estate other than an insurer regulated under IC 27:

2 (1) acted in bad faith in failing to comply with the guardian's
3 written demand or instruction; or

4 (2) refused to respond within thirty (30) business days after
5 receiving the guardian's written demand or instruction, if the
6 demand or instruction is consistent with this article.

7 (d) A court may, upon notice and hearing, award attorney's fees
8 and costs to an estate bringing an enforcement proceeding under
9 subsection (a) against an insurer regulated under IC 27 if:

10 (1) the insurer failed to respond under IC 27 after receiving
11 a written demand or instruction from the personal guardian;
12 and

13 (2) the written demand or instruction is consistent with this
14 article.

15 SECTION 6. IC 29-3-9-12.2 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2014]: Sec. 12.2. (a) If a guardian of an incapacitated person
18 determines that:

19 (1) a dissolution of the incapacitated person's marriage;

20 (2) a legal separation of the incapacitated person and the
21 incapacitated person's spouse; or

22 (3) an annulment of the incapacitated person's marriage;

23 is in the best interests of the incapacitated person, the guardian
24 shall petition the court to request the authority to petition for a
25 dissolution of marriage, a legal separation, or an annulment of
26 marriage on behalf of the incapacitated person.

27 (b) The petition to request authority described in subsection (a)
28 must set forth the following:

29 (1) The purpose for petitioning for dissolution of marriage,
30 legal separation, or annulment of marriage.

31 (2) The names and addresses of all the following:

32 (A) The incapacitated person's spouse.

33 (B) If the incapacitated person has adult children, any
34 adult children of the incapacitated person who are not
35 guardians of the incapacitated person.

36 (C) If the incapacitated person is a minor, a parent of the
37 incapacitated person whose parental rights have not been
38 terminated.

39 (c) A guardian that petitions the court to request authority as
40 described in subsection (a) shall provide a copy of the petition, on
41 or before the date the petition is filed, to all the following:

42 (1) The individuals listed in subsection (b)(2).



- 1 (2) Any other interested person as ordered by the court.
 2 (d) The court shall:
 3 (1) set a date for a hearing on the petition to request authority
 4 described in subsection (a);
 5 (2) notify:
 6 (A) all the parties; and
 7 (B) any other individual listed in subsection (c);
 8 of the hearing at least thirty (30) days before the hearing; and
 9 (3) hold a hearing on the petition to request the authority
 10 described in subsection (a).
 11 (e) If the court determines by clear and convincing evidence that
 12 petitioning for:
 13 (1) a dissolution of the incapacitated person's marriage;
 14 (2) a legal separation of the incapacitated person and the
 15 incapacitated person's spouse; or
 16 (3) an annulment of the incapacitated person's marriage;
 17 is in the best interests of the incapacitated person, the court shall
 18 grant the petition and authorize the guardian to petition for
 19 dissolution of marriage, legal separation, or annulment of marriage
 20 on behalf of the incapacitated person.
 21 (f) In making a determination under subsection (e), the court
 22 shall consider the risk of harm to the incapacitated person's
 23 physical or mental health, safety, or property if the court does not
 24 grant the petition and authorize the guardian to petition for
 25 dissolution of marriage, legal separation, or annulment of marriage
 26 on behalf of the incapacitated person.
 27 (g) In making a determination under subsection (e), the court
 28 shall also give appropriate weight to evidence of:
 29 (1) the incapacitated person's intent or preferences; or
 30 (2) a prior decision of the incapacitated person;
 31 for or against a dissolution of marriage, a legal separation, or an
 32 annulment of marriage. The court may reduce the weight given to
 33 evidence of the intent, preferences, or prior decisions of the
 34 incapacitated person if the court concludes, from all of the relevant
 35 facts and circumstances, that the passage of time, the relevant
 36 circumstances at the time of a prior statement or action by the
 37 incapacitated person, or changed circumstances after a prior
 38 statement or action make the prior statement or action less reliable
 39 evidence of the incapacitated person's best interests and current
 40 preferences. The court may give no weight to evidence considered
 41 under this subsection that the court concludes is unreliable
 42 evidence of the incapacitated person's best interests and current



1 preferences.

2 (h) This section does not require a guardian of an incapacitated
3 person to file a petition under this section in order to:

4 (1) defend the incapacitated person against a petition for
5 dissolution, legal separation, or annulment of marriage that
6 was filed before or after the filing of the petition for
7 guardianship; or

8 (2) finalize:

9 (A) a dissolution of the incapacitated person's marriage;

10 (B) a legal separation between the incapacitated person
11 and the incapacitated person's spouse; or

12 (C) an annulment of the incapacitated person's marriage;
13 if the petition for dissolution of marriage, legal separation, or
14 annulment of marriage was filed by the incapacitated person
15 or the incapacitated person's spouse before the appointment
16 of the guardian.

17 SECTION 7. IC 29-3-9-13 IS ADDED TO THE INDIANA CODE
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
19 1, 2014]: Sec. 13. (a) This section applies if a court has authorized
20 a guardian to petition for dissolution of marriage, legal separation,
21 or annulment of marriage on behalf of an incapacitated person
22 under section 12.2 of this chapter.

23 (b) A guardian may file a petition for dissolution on behalf of an
24 incapacitated person under IC 31-15-2-4 in the county where the
25 guardian resides in accordance with IC 31-15-2-6.

26 (c) A guardian may file a petition for legal separation on behalf
27 of an incapacitated person under IC 31-15-3-4 in the county where
28 the guardian resides in accordance with IC 31-15-3-6.

29 (d) A guardian may file an action to annul a marriage under
30 IC 31-11-10 in the county where the guardian resides in
31 accordance with IC 31-11-10-4.

32 SECTION 8. IC 30-4-3-6, AS AMENDED BY P.L.238-2005,
33 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2014]: Sec. 6. (a) The trustee has a duty to administer a trust
35 according to its terms.

36 (b) Unless the terms of the trust or the provisions of section 1.3 of
37 this chapter provide otherwise, the trustee also has a duty to do the
38 following:

39 (1) Administer the trust in a manner consistent with IC 30-4-3.5.

40 (2) Take possession of and maintain control over the trust
41 property.

42 (3) Preserve the trust property.



- 1 (4) Make the trust property productive for both the income and
 2 remainder beneficiary. As used in this subdivision, "productive"
 3 includes the production of income or investment for potential
 4 appreciation.
 5 (5) Keep the trust property separate from the trustee's individual
 6 property and separate from or clearly identifiable from property
 7 subject to another trust.
 8 (6) Maintain clear and accurate accounts with respect to the trust
 9 estate.
 10 (7) Upon reasonable request, give the beneficiary complete and
 11 accurate information concerning any matter related to the
 12 administration of the trust and permit the beneficiary or the
 13 beneficiary's agent to inspect the trust property, the trustee's
 14 accounts, and any other documents concerning the administration
 15 of the trust.
 16 (8) Take whatever action is reasonable to realize on claims
 17 constituting part of the trust property.
 18 (9) Defend actions involving the trust estate.
 19 (10) Supervise any person to whom authority has been delegated.
 20 (11) Determine the trust beneficiaries by acting on information:
 21 (A) the trustee, by reasonable inquiry, considers reliable; and
 22 (B) with respect to heirship, relationship, survivorship, or any
 23 other issue relative to determining a trust beneficiary.
- 24 SECTION 9. IC 31-9-2-49 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 49. (a) **"Guardian",**
 26 **for purposes of IC 31-11-10-1, IC 31-15-2-5, and IC 31-15-3-4, has**
 27 **the meaning set forth in IC 29-3-1-6.**
 28 (b) "Guardian", for purposes of the juvenile law, means a person
 29 appointed by a court to have the care and custody of a child or the
 30 child's estate, or both.
- 31 SECTION 10. IC 31-9-2-53.5 IS ADDED TO THE INDIANA
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2014]: Sec. 53.5. **"Incapacitated person", for**
 34 **purposes of IC 31-11-10-1, IC 31-15-2-5, and IC 31-15-3-4, has the**
 35 **meaning set forth in IC 29-3-1-7.5.**
- 36 SECTION 11. IC 31-11-10-1 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This section
 38 applies to a marriage that is voidable under IC 31-11-9-2 on the ground
 39 that a party to the marriage was incapable because of age or mental
 40 incompetency of contracting the marriage.
 41 (b) The incapable party described in subsection (a) may file an
 42 action to annul the marriage in a court that has jurisdiction over the



1 action under section 3 of this chapter.

2 **(c) If a guardian of an incapacitated person is filing a petition**
 3 **for annulment of a marriage on behalf of the incapacitated person,**
 4 **the petition for annulment must set forth the name and address of**
 5 **the guardian.**

6 **(d) If a guardian of an incapacitated person files a petition for**
 7 **annulment of a marriage on behalf of the incapacitated person, the**
 8 **guardian shall file with the petition a copy of the court order**
 9 **granting authority to petition for annulment of marriage described**
 10 **in IC 29-3-9-12.2.**

11 SECTION 12. IC 31-11-10-4 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. **(a)** An action to
 13 annul a voidable marriage under this chapter must be conducted in
 14 accordance with IC 31-15.

15 **(b) If a court has authorized a guardian to file an action to annul**
 16 **a marriage on behalf of an incapacitated person under**
 17 **IC 29-3-9-12.2, the guardian may file an action to annul a marriage**
 18 **in the guardian's county of residence if the guardian has resided in**
 19 **that county for at least three (3) months immediately preceding the**
 20 **filing of the action.**

21 SECTION 13. IC 31-15-2-5 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. **(a)** A petition for
 23 dissolution of marriage must:

24 (1) be verified; and

25 (2) set forth the following:

26 (A) The residence of each party and the length of residence in
 27 the state and county.

28 (B) The date of the marriage.

29 (C) The date on which the parties separated.

30 (D) The name, age, and address of:

31 (i) any living child less than twenty-one (21) years of age;
 32 and

33 (ii) any incapacitated child;

34 of the marriage and whether the wife is pregnant.

35 (E) The grounds for dissolution of the marriage.

36 (F) The relief sought.

37 **(G) If a guardian of an incapacitated person is filing the**
 38 **petition for dissolution of marriage on behalf of the**
 39 **incapacitated person, the name and address of the**
 40 **guardian.**

41 **(b) If a guardian of an incapacitated person files a petition for**
 42 **dissolution of a marriage on behalf of the incapacitated person, the**



1 **guardian shall file with the petition a copy of the court order**
 2 **granting authority to petition for dissolution of marriage described**
 3 **in IC 29-3-9-12.2.**

4 SECTION 14. IC 31-15-2-6 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) At the time of the
 6 filing of a petition under section 4 of this chapter, at least one (1) of the
 7 parties must have been:

- 8 (1) a resident of Indiana; or
- 9 (2) stationed at a United States military installation within
 10 Indiana;

11 for six (6) months immediately preceding the filing of the petition.

12 (b) **Except as provided in subsection (c)**, at the time of the filing
 13 of a petition under section 4 of this chapter, at least one (1) of the
 14 parties must have been:

- 15 (1) a resident of the county; or
- 16 (2) stationed at a United States military installation within the
 17 county;

18 where the petition is filed for three (3) months immediately preceding
 19 the filing of the petition.

20 (c) **If a court has authorized a guardian to file a petition under**
 21 **section 4 of this chapter on behalf of an incapacitated person under**
 22 **IC 29-3-9-12.2, the guardian may file the petition for dissolution in**
 23 **the guardian's county of residence if the guardian has resided in**
 24 **that county for at least three (3) months immediately preceding the**
 25 **filing of the petition.**

26 SECTION 15. IC 31-15-3-4 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) A proceeding for
 28 legal separation is commenced by the filing of a petition entitled, "In
 29 Re the legal separation of _____ and _____". The petition
 30 must:

- 31 (1) be verified; and
- 32 (2) set forth the following:
 - 33 (A) The residence of each party and the length of residence in
 34 the state and county.
 - 35 (B) The date of the marriage.
 - 36 (C) The date on which the parties separated.
 - 37 (D) The names, ages, and addresses of:
 - 38 (i) any living child less than twenty-one (21) years of age;
 - 39 and
 - 40 (ii) any incapacitated child;
 - 41 of the marriage and whether the wife is pregnant.
 - 42 (E) The grounds for legal separation.



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(F) The relief sought.

(G) If a guardian of an incapacitated person is filing the petition for legal separation on behalf of the incapacitated person, the name and address of the guardian.

(b) If a guardian of an incapacitated person files a petition for legal separation on behalf of the incapacitated person, the guardian shall file with the petition a copy of the court order granting authority to petition for legal separation described in IC 29-3-9-12.2.

SECTION 16. IC 31-15-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) At the time of the filing of a petition for legal separation under section 4 of this chapter, at least one (1) of the parties must have been:

- (1) a resident of Indiana; or
- (2) stationed at a United States military installation within Indiana;

for six (6) months immediately preceding the filing of each petition.

(b) Except as provided in subsection (c), at the time of the filing of a petition for legal separation under section 4 of this chapter, at least one (1) of the parties must have been:

- (1) a resident of the county; or
- (2) stationed at a United States military installation within the county;

where the petition is filed for three (3) months immediately preceding the filing of the petition.

(c) If a court has authorized a guardian to file a petition for legal separation under section 4 of this chapter on behalf of an incapacitated person under IC 29-3-9-12.2, the guardian may file the petition in the guardian's county of residence if the guardian has resided in that county for at least three (3) months immediately preceding the filing of the petition.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 59, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 16, after "(5) a" insert "**petition to**".

Page 1, line 16, delete "for permission to file a petition of" and insert "**the authority to petition for**".

Page 2, line 1, delete "marriage" and insert "**marriage, legal separation, or annulment of marriage**".

Page 2, line 1, delete "person;" and insert "**person as provided under IC 29-3-9-12;**".

Page 2, delete lines 14 through 27, begin a new paragraph and insert:

"SECTION 2. IC 29-3-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. A guardian (other than a temporary guardian) may exercise all of the powers required to perform the guardian's responsibilities, including the following:

- (1) To receive and issue a receipt for property payable to the protected person or the protected person's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or any private contract, devise, trust, guardianship, or custodianship.
- (2) If reasonable, to delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being.
- (3) To invest and reinvest the property of the protected person in accordance with powers vested in, and according to the standards imposed upon, trustees under IC 30-4-3-3(c).
- (4) To secure the appointment of a guardian or co-guardian in any other state, when needed, with respect to any part or all of the guardianship property located in another state, to confer upon the appointed guardian any or all of the guardian's powers as guardian with respect to the property.
- (5) To continue any business of the protected person, whether in corporate, partnership, or proprietorship form, according to the rules for continuing the business of a decedent specified in IC 29-1-13-11.
- (6) To pay to the person, guardian, department, bureau, or agency having care and custody of the protected person, or to the protected person if at least fourteen (14) years of age, a



reasonable amount to be expended for the support of the protected person and the protected person's dependents, with due regard to the following:

- (A) The size of the guardianship property, the probable duration of the guardianship, and the extent to which the protected person in the future may be self-sufficient and able to manage the protected person's financial affairs and property.
 - (B) The accustomed standard of living of the protected person and the protected person's dependents.
 - (C) Other funds or sources used for the support of the protected person and the protected person's dependents.
- (7) To distribute income and discretionary amounts of principal in one (1) or more of the following ways as the guardian believes to be in the best interests of the protected person:
- (A) Directly to the protected person.
 - (B) To a guardian of the protected person appointed in another state.
 - (C) To a custodian for the protected person under IC 30-2-8.5.
 - (D) To an adult relative of the protected person.
 - (E) By expending the money or using the property directly for the benefit of the protected person.
- (8) To apply the guardianship property to or for the benefit of any person, including the protected person, in reimbursement for reasonable expenditures made in good faith on behalf of the protected person that the guardian might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect that the services will be performed and advance payments are reasonably necessary under the circumstances.
- (9) To bind all or any part of the guardianship property in a transaction for the benefit of the protected person, unless the third party dealing with the guardian is acting in bad faith.
- (10) Except as provided in IC 29-3-2-6(d), powers conferred upon trustees and personal representatives respectively by IC 30-4-3-3 and IC 29-1-7.5-3. However, if there is a conflict, the broader power controls.
- (11) To exercise on behalf of the protected person powers that are the same as those granted to the parent of a minor under IC 29-3-3-3.
- (12) To petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the protected person, if the protected**



person is an incapacitated person, as provided under IC 29-3-9-12."

Page 3, delete lines 6 through 8, begin a new line block indented and insert:

"(7) petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person as provided under IC 29-3-9-12."

Page 3, line 31, delete "request permission to file a petition for dissolution" and insert "**petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment**".

Page 3, line 32, delete "as described in" and insert "**as provided under IC 29-3-9-12."**

Page 3, delete line 33.

Page 4, between lines 9 and 10, begin a new paragraph and insert:
"SECTION 5. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. (a) If a guardian of an incapacitated person determines that:

- (1) a dissolution of the incapacitated person's marriage;**
- (2) a legal separation of the incapacitated person and the incapacitated person's spouse; or**
- (3) an annulment of the incapacitated person's marriage;**

is in the best interests of the incapacitated person, the guardian shall petition the court to request the authority to petition for a dissolution of marriage, a legal separation, or an annulment of marriage on behalf of the incapacitated person.

(b) The petition to request authority described in subsection (a) must set forth the following:

- (1) The purpose for petitioning for dissolution of marriage, legal separation, or annulment of marriage.**
- (2) The names and addresses of all the following:**
 - (A) The incapacitated person's spouse.**
 - (B) If the incapacitated person has adult children, any adult children of the incapacitated person who are not guardians of the incapacitated person.**
 - (C) If the incapacitated person is a minor, a parent of the incapacitated person whose parental rights have not been terminated.**

(c) A guardian that petitions the court to request authority as described in subsection (a) shall provide a copy of the petition, on



or before the date the petition is filed, to all the following:

- (1) The individuals listed in subsection (b)(2).
- (2) Any other interested person as ordered by the court.

(d) The court shall:

- (1) set a date for a hearing on the petition to request authority described in subsection (a);
- (2) notify:
 - (A) all the parties; and
 - (B) any other individual listed in subsection (c);
 of the hearing at least thirty (30) days before the hearing; and
- (3) hold a hearing on the petition to request the authority described in subsection (a).

(e) If the court determines by a preponderance of the evidence that petitioning for:

- (1) a dissolution of the incapacitated person's marriage;
- (2) a legal separation of the incapacitated person and the incapacitated person's spouse; or
- (3) an annulment of the incapacitated person's marriage;

is in the best interests of the incapacitated person, the court shall grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(f) This section does not require a guardian of an incapacitated person to file a petition under this section in order to:

- (1) defend the incapacitated person against a petition for dissolution, legal separation, or annulment of marriage that was filed before or after the filing of the petition for guardianship; or
- (2) finalize:
 - (A) a dissolution of the incapacitated person's marriage;
 - (B) a legal separation between the incapacitated person and the incapacitated person's spouse; or
 - (C) an annulment of the incapacitated person's marriage; if the petition for dissolution of marriage, legal separation, or annulment of marriage was filed by the incapacitated person or the incapacitated person's spouse before the appointment of the guardian.

SECTION 6. IC 29-3-9-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) This section applies if a court has authorized a guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person



under section 12 of this chapter.

(b) A guardian may file a petition for dissolution on behalf of an incapacitated person under IC 31-15-2-4 in the county where the guardian resides in accordance with IC 31-15-2-6.

(c) A guardian may file a petition for legal separation on behalf of an incapacitated person under IC 31-15-3-4 in the county where the guardian resides in accordance with IC 31-15-3-6.

(d) A guardian may file an action to annul a marriage under IC 31-11-10 in the county where the guardian resides in accordance with IC 31-11-10-4."

Page 4, line 12, after "of" insert "**IC 31-11-10-1**,".

Page 4, line 12, after "IC 31-15-2-5," insert "**and IC 31-15-3-4**,".

Page 4, delete lines 17 through 20, begin a new paragraph and insert:

"SECTION 7. IC 31-9-2-53.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 53.5. "Incapacitated person", for purposes of IC 31-11-10-1, IC 31-15-2-5, and IC 31-15-3-4, has the meaning set forth in IC 29-3-1-7.5.

SECTION 8. IC 31-11-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This section applies to a marriage that is voidable under IC 31-11-9-2 on the ground that a party to the marriage was incapable because of age or mental incompetency of contracting the marriage.

(b) The incapable party described in subsection (a) may file an action to annul the marriage in a court that has jurisdiction over the action under section 3 of this chapter.

(c) If a guardian of an incapacitated person is filing a petition for annulment of a marriage on behalf of the incapacitated person, the petition for annulment must set forth the name and address of the guardian.

(d) If a guardian of an incapacitated person files a petition for annulment of a marriage on behalf of the incapacitated person, the guardian shall file with the petition a copy of the court order granting authority to petition for annulment of marriage described in IC 29-3-9-12.

SECTION 9. IC 31-11-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) An action to annul a voidable marriage under this chapter must be conducted in accordance with IC 31-15.

(b) If a court has authorized a guardian to file an action to annul a marriage on behalf of an incapacitated person under



IC 29-3-9-12, the guardian may file an action to annul a marriage in the guardian's county of residence if the guardian has resided in that county for at least three (3) months immediately preceding the filing of the action."

Page 4, line 37, delete "a protected" and insert "**an incapacitated**".

Page 4, line 38, delete "protected" and insert "**incapacitated**".

Page 4, line 40, delete "a protected" and insert "**an incapacitated**".

Page 4, line 41, delete "protected" and insert "**incapacitated**".

Page 5, line 1, delete "permission to file the" and insert "**authority to**".

Page 5, line 2, delete "IC 29-3-8-4.5." and insert "**IC 29-3-9-12.**".

Page 5, after line 2, begin a new paragraph and insert:

"SECTION 10. IC 31-15-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) At the time of the filing of a petition under section 4 of this chapter, at least one (1) of the parties must have been:

(1) a resident of Indiana; or

(2) stationed at a United States military installation within Indiana;

for six (6) months immediately preceding the filing of the petition.

(b) **Except as provided in subsection (c)**, at the time of the filing of a petition under section 4 of this chapter, at least one (1) of the parties must have been:

(1) a resident of the county; or

(2) stationed at a United States military installation within the county;

where the petition is filed for three (3) months immediately preceding the filing of the petition.

(c) If a court has authorized a guardian to file a petition under section 4 of this chapter on behalf of an incapacitated person under IC 29-3-9-12, the guardian may file the petition for dissolution in the guardian's county of residence if the guardian has resided in that county for at least three (3) months immediately preceding the filing of the petition.

SECTION 11. IC 31-15-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) A proceeding for legal separation is commenced by the filing of a petition entitled, "In Re the legal separation of _____ and _____". The petition must:

(1) be verified; and

(2) set forth the following:

(A) The residence of each party and the length of residence in



the state and county.

(B) The date of the marriage.

(C) The date on which the parties separated.

(D) The names, ages, and addresses of:

(i) any living child less than twenty-one (21) years of age;
and

(ii) any incapacitated child;

of the marriage and whether the wife is pregnant.

(E) The grounds for legal separation.

(F) The relief sought.

(G) If a guardian of an incapacitated person is filing the petition for legal separation on behalf of the incapacitated person, the name and address of the guardian.

(b) If a guardian of an incapacitated person files a petition for legal separation on behalf of the incapacitated person, the guardian shall file with the petition a copy of the court order granting authority to petition for legal separation described in IC 29-3-9-12.

SECTION 12. IC 31-15-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) At the time of the filing of a petition for legal separation under section 4 of this chapter, at least one (1) of the parties must have been:

(1) a resident of Indiana; or

(2) stationed at a United States military installation within Indiana;

for six (6) months immediately preceding the filing of each petition.

(b) Except as provided in subsection (c), at the time of the filing of a petition for legal separation under section 4 of this chapter, at least one (1) of the parties must have been:

(1) a resident of the county; or

(2) stationed at a United States military installation within the county;

where the petition is filed for three (3) months immediately preceding the filing of the petition.

(c) If a court has authorized a guardian to file an petition for legal separation under section 4 of this chapter on behalf of an incapacitated person under IC 29-3-9-12, the guardian may file the



petition in the guardian's county of residence if the guardian has resided in that county for at least three (3) months immediately preceding the filing of the petition."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 59 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 6, Nays 3.

SENATE MOTION

Madam President: I move that Senate Bill 59 be amended to read as follows:

Page 6, line 25, delete "a preponderance of the" and insert "**clear and convincing**".

Page 6, between lines 34 and 35, begin a new paragraph and insert:

"(f) In making a determination under subsection (e), the court shall consider the risk of harm to the incapacitated person's physical or mental health, safety, or property if the court does not grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(g) In making a determination under subsection (e), the court shall also give appropriate weight to evidence of:

- (1) the incapacitated person's intent or preferences; or**
- (2) a prior decision of the incapacitated person;**

for or against a dissolution of marriage, a legal separation, or an annulment of marriage. The court may reduce the weight given to evidence of the intent, preferences, or prior decisions of the incapacitated person if the court concludes, from all of the relevant facts and circumstances, that the passage of time, the relevant circumstances at the time of a prior statement or action by the incapacitated person, or changed circumstances after a prior statement or action make the prior statement or action less reliable evidence of the incapacitated person's best interests and current preferences. The court may give no weight to evidence considered under this subsection that the court concludes is unreliable evidence of the incapacitated person's best interests and current preferences."



Page 6, line 35, delete "(f)" and insert "(h)".

Page 10, line 24, delete "an" and insert "a".

(Reference is to SB 59 as printed January 24, 2014.)

BRAY

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 59, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 3, delete "IC 29-3-9-12;" and insert "**IC 29-3-9-12.2;**".

Page 4, line 2, delete "IC 29-3-9-12." and insert "**IC 29-3-9-12.2.**".

Page 4, line 26, delete "IC 29-3-9-12." and insert "**IC 29-3-9-12.2.**".

Page 5, line 10, delete "IC 29-3-9-12." and insert "**IC 29-3-9-12.2.**".

Page 5, between lines 28 and 29, begin a new paragraph and insert:
"SECTION 5. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. (a) This section applies only to a guardianship of the property of a minor or an incapacitated adult.

(b) If a third party fails to comply with a guardian's written demand or instruction that:

**(1) was issued within the scope of the guardian's authority;
and**

(2) is consistent with this article;

the guardian may bring an enforcement proceeding to compel compliance in the court having jurisdiction over the guardianship.

(c) A court may award attorney's fees and costs to the guardian in an enforcement proceeding under subsection (b), if the person indebted to the guardianship estate or holding property of the guardianship estate other than an insurer regulated under IC 27:

(1) acted in bad faith in failing to comply with the guardian's written demand or instruction; or

(2) refused to respond within thirty (30) business days after receiving the guardian's written demand or instruction, if the demand or instruction is consistent with this article.

(d) A court may, upon notice and hearing, award attorney's fees and costs to an estate bringing an enforcement proceeding under subsection (a) against an insurer regulated under IC 27 if:



- (1) the insurer failed to respond under IC 27 after receiving a written demand or instruction from the personal guardian; and**
- (2) the written demand or instruction is consistent with this article."**

Page 5, line 29, delete "IC 29-3-9-12" and insert "IC 29-3-9-12.2".

Page 5, line 31, delete "12." and insert "**12.2**".

Page 7, line 36, delete "12" and insert "**12.2**".

Page 8, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 9. IC 30-4-3-6, AS AMENDED BY P.L.238-2005, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) The trustee has a duty to administer a trust according to its terms.

(b) Unless the terms of the trust **or the provisions of section 1.3 of this chapter** provide otherwise, the trustee also has a duty to do the following:

- (1) Administer the trust in a manner consistent with IC 30-4-3.5.
- (2) Take possession of and maintain control over the trust property.
- (3) Preserve the trust property.
- (4) Make the trust property productive for both the income and remainder beneficiary. As used in this subdivision, "productive" includes the production of income or investment for potential appreciation.
- (5) Keep the trust property separate from the trustee's individual property and separate from or clearly identifiable from property subject to another trust.
- (6) Maintain clear and accurate accounts with respect to the trust estate.
- (7) Upon reasonable request, give the beneficiary complete and accurate information concerning any matter related to the administration of the trust and permit the beneficiary or the beneficiary's agent to inspect the trust property, the trustee's accounts, and any other documents concerning the administration of the trust.
- (8) Take whatever action is reasonable to realize on claims constituting part of the trust property.
- (9) Defend actions involving the trust estate.
- (10) Supervise any person to whom authority has been delegated.
- (11) Determine the trust beneficiaries by acting on information:
 - (A) the trustee, by reasonable inquiry, considers reliable; and
 - (B) with respect to heirship, relationship, survivorship, or any



other issue relative to determining a trust beneficiary."

Page 8, line 32, delete "IC 29-3-9-12." and insert "**IC 12-3-9-12.2.**".

Page 8, line 39, delete "IC 29-3-9-12," and insert "**IC 29-3-9-12.2,**".

Page 9, line 25, delete "IC 29-3-9-12." and insert "**IC 29-3-9-12.2.**".

Page 10, line 2, delete "IC 29-3-9-12," and insert "**IC 29-3-9-12.2,**".

Page 10, line 30, delete "IC 29-3-9-12." and insert "**IC 29-3-9-12.2.**".

Page 11, line 7, delete "IC 29-3-9-12," and insert "**IC 29-3-9-12.2,**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 59 as reprinted February 4, 2014.)

STEUERWALD, Chair

Committee Vote: yeas 6, nays 1.

