

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.

SENATE ENROLLED ACT No. 59

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:

SECTION 1. IC 29-3-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) At any time after the appointment of a guardian or the issuance of a protective order, any person may, in person or by the person's attorney, serve upon the guardian or the guardian's attorney, and file with the clerk of the court where the proceedings are pending, a written request together with a written admission or proof of service stating that the person desires written notice of all hearings and copies of all pleadings or other papers in connection with:

- (1) the settlement of accounts;
- (2) the sale, mortgage, lease, or exchange of any property of the protected person;
- (3) allowances of any nature payable from the protected person's property;
- (4) the investment of funds of the protected person;
- (5) a petition to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the protected person as provided under IC 29-3-9-12.2;**
- ~~(5)~~ **(6)** the removal, suspension, or discharge of the guardian;
- ~~(6)~~ **(7)** the final termination of the guardianship; or

SEA 59 — CC 1



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

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

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

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 29-3-9-12.2.

SECTION 3. IC 29-3-8.5-4, AS AMENDED BY P.L.72-2010, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) A volunteer advocates for seniors program



or a volunteer advocates for incapacitated adults program may:

- (1) consent to medical and other professional care and treatment for the incapacitated person's or senior's health and welfare;
- (2) secure the appointment of a guardian or coguardian in another state;
- (3) take custody of the incapacitated person or senior and establish the incapacitated person's or senior's residence within Indiana or another state in accordance with IC 29-3-9-2;
- (4) institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the incapacitated person's or senior's health or welfare;
- (5) protect and preserve the property of the incapacitated person or senior and preserve any property in excess of the incapacitated person's or senior's current needs; ~~and~~
- (6) delegate to the incapacitated person or senior certain responsibilities for decisions affecting the incapacitated person's or senior's business affairs and well-being; **and**
- (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 29-3-9-12.2.**

(b) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program may exercise the powers of a guardian of a minor listed in IC 29-3-8-2 and IC 29-3-8-4.

SECTION 4. IC 29-3-9-1, AS AMENDED BY P.L.178-2011, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) **Except as provided in subsection (b)**, by a properly executed power of attorney, a parent of a minor or a guardian (other than a temporary guardian) of a protected person may delegate to another person for:

- (1) any period during which the care and custody of the minor or protected person is entrusted to an institution furnishing care, custody, education, or training; or
- (2) a period not exceeding twelve (12) months;

any powers regarding support, custody, or property of the minor or protected person. ~~except the power to consent to the marriage or adoption of a protected person who is a minor.~~ A delegation described in this subsection is effective immediately unless otherwise stated in the power of attorney.

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

- (1) consent to the marriage or adoption of a protected person**



who is a minor; or

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

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

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

- (1) identifies the power of attorney revoked; and
- (2) is signed by the:
 - (A) parent of a minor; or
 - (B) guardian of a protected person;
 who executed the power of attorney.

SECTION 5. IC 29-3-9-12, AS ADDED BY SEA 36-2014, SECTION 7, IS AMENDED 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:

- (1) acted in bad faith in failing to comply with the guardian's written demand or instruction; or
- (2) refused to respond within ~~ten (10)~~ **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.

SECTION 6. IC 29-3-9-12.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 12.2. (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 authority described in subsection (a).

(e) If the court determines by clear and convincing 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, considering the totality of the circumstances, including the desire and interests of the spouse in remaining married, 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) 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.

(h) 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 7. 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 12.2 of this chapter.**

(b) A guardian may file a petition for dissolution on behalf of an incapacitated person under IC 31-15-2 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.

SECTION 8. IC 30-4-3-6, AS AMENDED BY SEA 36-2014, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: (a) The trustee has a duty to administer a trust according to the terms of the trust.

(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) Keep the following beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests:

(A) A current income beneficiary.

(B) A beneficiary who will become an income beneficiary upon the expiration of the term of the current income beneficiary, if the trust has become irrevocable by:

(i) the terms of the trust instrument; or

(ii) the death of the settlor.

A trustee satisfies the requirements of this subdivision by providing a beneficiary described in clause (A) or (B), upon the beneficiary's written request, access to the trust's accounting and financial records concerning the administration of trust property and the administration of the trust.

(8) Upon:

(A) the trust becoming irrevocable:

(i) by the terms of the trust instrument; or

(ii) by the death of the settlor; and

(B) the written request of an income beneficiary or remainderman;

promptly provide a copy of the complete trust instrument to the income beneficiary or remainderman.

(9) Take whatever action is reasonable to realize on claims constituting part of the trust property.

(10) Defend actions involving the trust estate.

(11) Supervise any person to whom authority has been delegated.

(12) 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.

SECTION 9. IC 31-9-2-49 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 49. (a) "**Guardian**", 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 29-3-1-6.

(b) "Guardian", for purposes of the juvenile law, means a person appointed by a court to have the care and custody of a child or the child's estate, or both.

SECTION 10. IC 31-9-2-54.5 IS ADDED TO THE INDIANA



CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 54.5. "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 11. 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 29-3-9-12.2.

SECTION 12. 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 29-3-9-12.2, 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.

SECTION 13. IC 31-15-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) A petition for dissolution of marriage 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 name, age, and address 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 dissolution of the marriage.

(F) The relief sought.

(G) If a guardian of an incapacitated person is filing the petition for dissolution of marriage 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 dissolution 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 dissolution of marriage described in IC 29-3-9-12.2.

SECTION 14. 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 29-3-9-12.2, 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 15. 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 29-3-9-12.2.

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.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 59 — CC 1

