

SENATE BILL No. 196

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-3-9; IC 30-5-6-4.

Synopsis: Accountings by guardians and attorneys in fact. Requires a guardian to file with the court a written verified account of the guardian's administration annually. (Under current law, a guardian is required to file an account biennially.) Provides that, unless the power of attorney states that an annual accounting is not required, an attorney in fact is required to file with the court having probate jurisdiction in the county in which the principal (if an individual) resides a written verified accounting at least annually, not more than 30 days after the anniversary of the date on which the power of attorney became effective. (Under current law, an attorney in fact is not required to render an accounting unless specifically ordered or requested to do so.) Provides that if an accounting is ordered or requested less than 11 months before the anniversary of the date on which a power of attorney became effective, the attorney in fact is excused from filing an annual accounting with the court for the year ending on the anniversary of the date on which the power of attorney became effective.

Effective: July 1, 2016.

Crider

January 6, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE BILL No. 196

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 29-3-9-5 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) Within ninety (90) days after
3 appointment, a guardian (other than a temporary guardian) shall file
4 with the court a complete inventory of the property subject to the
5 guardian's control together with an oath or affirmation that the
6 inventory is believed to be complete and accurate as far as information
7 permits. A temporary guardian shall file the inventory and oath or
8 affirmation with the court within thirty (30) days after appointment.
9 The inventory must conform to the requirements of IC 29-1-12-1. The
10 guardian shall provide a copy of the inventory to the protected person
11 if the protected person is at least fourteen (14) years of age. A copy also
12 shall be provided to any guardian, parent, or person with whom the
13 protected person resides and any other person ordered by the court. In
14 addition, the guardian shall provide notice of the filing of the inventory
15 to each person that was required to be notified of the hearing on the
16 petition to establish the guardianship. The notice must be provided in
17 the same manner as the notice of the hearing to establish a



1 guardianship. The notice must include all of the following:

2 (1) The cause number.

3 (2) A statement that Indiana law requires a guardian to file with
4 the court a written verified account of the guardian's
5 administration:

6 (A) at least ~~biennially~~, **annually**, not more than thirty (30)
7 days after the anniversary date of the guardian's appointment;

8 and

9 (B) not more than thirty (30) days after the termination of the
10 appointment.

11 (3) A statement that the inventory and the written verified
12 accounts may be inspected at the court's address.

13 (b) The guardian shall keep suitable records of the guardian's
14 administration and exhibit the records as ordered by the court.

15 SECTION 2. IC 29-3-9-6, AS AMENDED BY P.L.99-2013,
16 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2016]: Sec. 6. (a) Unless otherwise directed by the court, a
18 guardian (other than a temporary guardian) shall file with the court:

19 (1) at least ~~biennially~~, **annually**, not more than thirty (30) days
20 after the anniversary date of the guardian's appointment; and

21 (2) not more than thirty (30) days after the termination of the
22 appointment;

23 a written verified account of the guardian's administration.

24 (b) A temporary guardian shall file with the court, within thirty (30)
25 days after the termination of the temporary guardian's appointment, and
26 otherwise as ordered by the court, a written verified account of the
27 temporary guardian's administration.

28 (c) A written verified account required under this section must
29 include the incapacitated person's or minor's current residence and a
30 description of the condition and circumstances of the incapacitated
31 person or minor.

32 (d) The court shall conduct a hearing on each verified account filed
33 under this section. The court shall give notice to each person entitled
34 to receive notice that an accounting has been filed and will be acted
35 upon by the court on the date set unless written objections are
36 presented to the court on or before that date. The court shall give the
37 notice required by this subsection, unless waived, to the following:

38 (1) The protected person, unless waived by the court. If notice to
39 the protected person is waived, the court shall give notice to a
40 person who is not the guardian of the protected person in the
41 following priority:

42 (A) The protected person's spouse.



- 1 (B) An adult child of the protected person.
 2 (C) A parent of the protected person.
 3 (D) A guardian ad litem appointed by the court under
 4 subsection (e).
 5 (2) In the case of a protected person who has died, the personal
 6 representative of the estate of the protected person, if any.
 7 (3) Any other persons that the court directs.
 8 (e) The court may appoint a guardian ad litem to review on behalf
 9 of a protected person an accounting filed under this section if:
 10 (1) the protected person does not have a spouse, an adult child, or
 11 a parent; or
 12 (2) the same individual:
 13 (A) served as the protected person's guardian before the death
 14 of the protected person; and
 15 (B) is the personal representative of the protected person's
 16 estate.
 17 (f) When an account other than an account in final settlement is
 18 filed, the court may approve the same ex parte, but the account may be
 19 reviewed by the court at any subsequent time and does not become
 20 final until an account in final settlement is approved by the court after
 21 notice and hearing.
 22 (g) When notice of hearing has been given under this section, the
 23 order of the court approving the intermediate account or the final
 24 account is binding upon all persons.
 25 (h) When a guardian files with the court proper receipts or other
 26 evidence satisfactory to the court showing that the guardian has
 27 delivered to the appropriate persons all the property for which the
 28 guardian is accountable as guardian, the court shall enter an order of
 29 discharge. The order of discharge operates as a release from the duties
 30 of the guardian's office that have not yet terminated and operates as a
 31 bar to any suit against the guardian and the guardian's sureties, unless
 32 the suit is commenced within one (1) year from the date of the
 33 discharge.
 34 SECTION 3. IC 30-5-6-4, AS AMENDED BY P.L.51-2014,
 35 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2016]: Sec. 4. (a) The attorney in fact shall keep complete
 37 records of all transactions entered into by the attorney in fact on behalf
 38 of the principal:
 39 (1) for six (6) years after the date of the transaction; or
 40 (2) until the records are delivered to the successor attorney in fact;
 41 whichever occurs first.
 42 (b) ~~Except as otherwise (1) stated in~~ **Unless** the power of attorney



1 or (2) required by subsection (c); **states that an annual accounting by**
 2 **the attorney in fact is not required,** the attorney in fact is not required
 3 to render an accounting; **shall file with the court having probate**
 4 **jurisdiction in the county in which the principal (if an individual)**
 5 **resides a written verified accounting at least annually, not more**
 6 **than thirty (30) days after the anniversary of the date on which the**
 7 **power of attorney became effective under IC 30-5-4-2.**

8 (c) Except as provided in subsection (f), the attorney in fact shall
 9 render a written accounting if an accounting is:

10 (1) ordered by a court; **or**

11 (2) requested by:

12 (A) the principal;

13 (B) a guardian appointed for the principal;

14 (C) a child of the principal; or

15 (D) upon the death of the principal, the personal representative
 16 of the principal's estate or an heir or legatee of the principal.

17 (d) Except as provided in subsection (f), an attorney in fact shall
 18 deliver an accounting requested under subsection (c) to:

19 (1) the principal;

20 (2) a guardian appointed for the principal;

21 (3) the personal representative of the principal's estate;

22 (4) an heir of the principal after the death of the principal;

23 (5) a legatee of the principal after the death of the principal; or

24 (6) a child of the principal.

25 (e) Except as provided in subsection (f)(2), an attorney in fact shall
 26 deliver an accounting ordered or requested under subsection (c) to the
 27 court or the person requesting the accounting not later than sixty (60)
 28 days after the date the attorney in fact receives the court order or
 29 written request for an accounting.

30 (f) In the case of a principal who has died, the following apply:

31 (1) The court may order an accounting under subsection (c) at any
 32 time.

33 (2) In the absence of a court ordered accounting, an attorney in
 34 fact is not required to deliver an accounting to a person described
 35 in subsection (d)(2) through (d)(6) unless the person requests the
 36 accounting not later than nine (9) months after the date of the
 37 principal's death.

38 (3) The delivery deadline set forth in subsection (e) applies to a
 39 written request for an accounting that is timely submitted under
 40 subdivision (2).

41 (g) Not more than one (1) accounting is required under this section
 42 in each twelve (12) month period unless the court, in its discretion,



1 orders additional accountings. **If an attorney in fact is otherwise**
2 **required to file annual accountings under subsection (b) but an**
3 **accounting is ordered by a court under subsection (c)(1) or**
4 **requested under subsection (c)(2) less than eleven (11) months**
5 **before the anniversary of the date on which the power of attorney**
6 **became effective under IC 30-5-4-2, the attorney in fact is not**
7 **required to file an annual accounting with the court under**
8 **subsection (b) for the year ending on that anniversary date.**

9 (h) If an attorney in fact fails to deliver an accounting as **required**
10 **under this section; requested under subsection (c)(2)**, the person
11 requesting the accounting may initiate an action in mandamus to
12 compel the attorney in fact to render the accounting. The court may
13 award the attorney's fees and court costs incurred under this subsection
14 to the person requesting the accounting if the court finds that the
15 attorney in fact failed to render an accounting as required under this
16 section without just cause.

