



February 26, 2018

ENGROSSED SENATE BILL No. 247

DIGEST OF SB 247 (Updated February 26, 2018 12:48 pm - DI 123)

Citations Affected: IC 12-15; IC 29-1; IC 30-4; IC 32-17; IC 32-39.

Synopsis: Creditors' rights. Makes various changes to probate and trust law relating to creditors' claims, claims against nonprobate transferees, and no contest provisions in wills and trusts. Provides that the estate recovery unit of the office of Medicaid policy and planning is a reasonably ascertainable creditor if the decedent was at least 55 years of age at the time of death. Extends the time period for county clerks to issue letters testamentary or of administration from five months to six months. Allows for the deduction of liens, encumbrances, and reasonable funeral expenses from the estate value for purposes of determining whether the estate assets are worth more or less than the threshold value of \$50,000. Makes conforming changes.

Effective: July 1, 2018.

Koch, Zakas, Young M

(HOUSE SPONSORS — STEUERWALD, DELANEY)

January 3, 2018, read first time and referred to Committee on Judiciary.
February 1, 2018, amended, reported favorably — Do Pass.
February 5, 2018, read second time, amended, ordered engrossed.
February 6, 2018, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 12, 2018, read first time and referred to Committee on Judiciary.
February 26, 2018, amended, reported — Do Pass.

ES 247—LS 6829/DI 128



February 26, 2018

Second Regular Session 120th General Assembly (2018)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 247

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 12-15-9-0.5, AS AMENDED BY P.L.149-2012,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 0.5. (a) As used in this chapter, "estate" includes:
4 (1) all real and personal property and other assets included within
5 an individual's probate estate;
6 (2) any interest in real property owned by the individual at the
7 time of death that was conveyed to the individual's survivor
8 through joint tenancy with right of survivorship, if the joint
9 tenancy was created after June 30, 2002;
10 (3) any real or personal property conveyed through a nonprobate
11 transfer; and
12 (4) any sum due after June 30, 2005, to a person after the death of
13 a Medicaid recipient that is under the terms of an annuity contract
14 purchased after May 1, 2005, with the assets of the Medicaid
15 recipient.
16 (b) As used in this chapter, "nonprobate transfer" ~~means a valid~~
17 ~~transfer, effective at death, by a transferor:~~

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- 1 (1) whose last domicile was in Indiana; and
 2 (2) who immediately before death had the power, acting alone, to
 3 prevent transfer of the property by revocation or withdrawal and:
 4 (A) use the property for the benefit of the transferor; or
 5 (B) apply the property to discharge claims against the
 6 transferor's probate estate.

7 The term does not include transfer of a survivorship interest in a
 8 tenancy by the entireties real estate or payment of the death proceeds
 9 of a life insurance policy: **has the meaning set forth in IC 32-17-13-1.**

10 SECTION 2. IC 12-15-9-0.6, AS AMENDED BY P.L.44-2009,
 11 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2018]: Sec. 0.6. (a) The office's claim against assets ~~that are~~
 13 ~~not included in the individual's probate estate transferred by a~~
 14 ~~nonprobate transfer~~ may be enforced as set out in IC 32-17-13.

15 (b) **Except as provided in subsection (c),** enforcement of a claim
 16 against assets ~~that are not included in an individual's probate estate~~
 17 ~~transferred by a nonprobate transfer~~ must be commenced ~~not more~~
 18 ~~than nine (9) months after the decedent's death. This limit does within~~
 19 ~~the time limits provided in IC 32-17-13.~~

20 (c) **The time limits provided in subsection (b) do** not apply to any
 21 assets that were not reported to the county office of the division of
 22 family resources.

23 SECTION 3. IC 29-1-1-3, AS AMENDED BY P.L.190-2016,
 24 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2018]: Sec. 3. (a) The following definitions apply throughout
 26 this article, unless otherwise apparent from the context:

27 (1) "Child" includes an adopted child but does not include a
 28 grandchild or other more remote descendants, nor, except as
 29 provided in IC 29-1-2-7, a child born out of wedlock.

30 (2) **"Claimant" means a person having a claim against the**
 31 ~~decedent's estate as described in IC 29-1-14-1(a).~~

32 (3) ~~(2)~~ (3) "Claims" includes liabilities of a decedent which survive,
 33 whether arising in contract or in tort or otherwise, expenses of
 34 administration, and all taxes imposed by reason of the person's
 35 death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the
 36 term does not include taxes imposed by reason of the person's
 37 death.

38 (4) ~~(3)~~ (4) "Court" means the court having probate jurisdiction.

39 (5) ~~(4)~~ (5) "Decedent" means one who dies testate or intestate.

40 (6) ~~(5)~~ (6) "Devise" or "legacy", when used as a noun, means a
 41 testamentary disposition of either real or personal property or
 42 both.



- 1 ~~(6)~~ **(7)** "Devise", when used as a verb, means to dispose of either
 2 real or personal property or both by will.
 3 ~~(7)~~ **(8)** "Devisee" includes legatee, and "legatee" includes devisee.
 4 ~~(8)~~ **(9)** "Distributee" denotes those persons who are entitled to the
 5 real and personal property of a decedent under a will, under the
 6 statutes of intestate succession, or under IC 29-1-4-1.
 7 ~~(9)~~ **(10)** "Estate" denotes the real and personal property of the
 8 decedent or protected person, as from time to time changed in
 9 form by sale, reinvestment, or otherwise, and augmented by any
 10 accretions and additions thereto and substitutions therefor and
 11 diminished by any decreases and distributions therefrom.
 12 ~~(10)~~ **(11)** "Expenses of administration" includes expenses
 13 incurred by or on behalf of a decedent's estate in the collection of
 14 assets, the payment of debts, and the distribution of property to
 15 the persons entitled to the property, including funeral expenses,
 16 expenses of a tombstone, expenses incurred in the disposition of
 17 the decedent's body, executor's commissions, attorney's fees, and
 18 miscellaneous expenses.
 19 ~~(11)~~ **(12)** "Fiduciary" includes a:
 20 (A) personal representative;
 21 (B) guardian;
 22 (C) conservator;
 23 (D) trustee; and
 24 (E) person designated in a protective order to act on behalf of
 25 a protected person.
 26 ~~(12)~~ **(13)** "Heirs" denotes those persons, including the surviving
 27 spouse, who are entitled under the statutes of intestate succession
 28 to the real and personal property of a decedent on the decedent's
 29 death intestate, unless otherwise defined or limited by the will.
 30 ~~(13)~~ **(14)** "Incapacitated" has the meaning set forth in
 31 IC 29-3-1-7.5.
 32 ~~(14)~~ **(15)** "Interested persons" means heirs, devisees, spouses,
 33 creditors, or any others having a property right in or claim against
 34 the estate of a decedent being administered. This meaning may
 35 vary at different stages and different parts of a proceeding and
 36 must be determined according to the particular purpose and
 37 matter involved.
 38 ~~(15)~~ **(16)** "Issue" of a person, when used to refer to persons who
 39 take by intestate succession, includes all lawful lineal descendants
 40 except those who are lineal descendants of living lineal
 41 descendants of the intestate.
 42 ~~(16)~~ **(17)** "Lease" includes an oil and gas lease or other mineral



- 1 lease.
- 2 ~~(17)~~ **(18)** "Letters" includes letters testamentary, letters of
- 3 administration, and letters of guardianship.
- 4 ~~(18)~~ **(19)** "Minor" or "minor child" or "minority" refers to any
- 5 person under the age of eighteen (18) years.
- 6 ~~(19)~~ **(20)** "Mortgage" includes deed of trust, vendor's lien, and
- 7 chattel mortgage.
- 8 ~~(20)~~ **(21)** "Net estate" refers to the real and personal property of
- 9 a decedent less the allowances provided under IC 29-1-4-1 and
- 10 enforceable claims against the estate.
- 11 **(22) "No contest provision" refers to a provision of a will that,**
- 12 **if given effect, would reduce or eliminate the interest of a**
- 13 **beneficiary of the will who, directly or indirectly, initiates or**
- 14 **otherwise pursues:**
- 15 **(A) an action to contest the admissibility or validity of the**
- 16 **will;**
- 17 **(B) an action to set aside a term of the will; or**
- 18 **(C) any other act to frustrate or defeat the testator's intent**
- 19 **as expressed in the terms of the will.**
- 20 ~~(21)~~ **(23)** "Person" means:
- 21 (A) an individual;
- 22 (B) a corporation;
- 23 (C) a trust;
- 24 (D) a limited liability company;
- 25 (E) a partnership;
- 26 (F) a business trust;
- 27 (G) an estate;
- 28 (H) an association;
- 29 (I) a joint venture;
- 30 (J) a government or political subdivision;
- 31 (K) an agency;
- 32 (L) an instrumentality; or
- 33 (M) any other legal or commercial entity.
- 34 ~~(22)~~ **(24)** "Personal property" includes interests in goods, money,
- 35 choses in action, evidences of debt, and chattels real.
- 36 ~~(23)~~ **(25)** "Personal representative" includes executor,
- 37 administrator, administrator with the will annexed, administrator
- 38 de bonis non, and special administrator.
- 39 ~~(24)~~ **(26)** "Probate estate" denotes the property transferred at the
- 40 death of a decedent under the decedent's will or under IC 29-1-2,
- 41 in the case of a decedent dying intestate.
- 42 ~~(25)~~ **(27)** "Property" includes both real and personal property.



- 1 ~~(26)~~ **(28)** "Protected person" has the meaning set forth in
 2 IC 29-3-1-13.
- 3 ~~(27)~~ **(29)** "Real property" includes estates and interests in land,
 4 corporeal or incorporeal, legal or equitable, other than chattels
 5 real.
- 6 ~~(28)~~ **(30)** "Will" includes all wills, testaments, and codicils. The
 7 term also includes a testamentary instrument which merely
 8 appoints an executor or revokes or revives another will.
- 9 (b) The following rules of construction apply throughout this article
 10 unless otherwise apparent from the context:
- 11 (1) The singular number includes the plural and the plural number
 12 includes the singular.
- 13 (2) The masculine gender includes the feminine and neuter.
- 14 SECTION 4. IC 29-1-6-2 IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2018]: Sec. 2. If, in any will admitted to probate
 16 in any of the courts of this state, there is a provision or provisions
 17 providing that if any beneficiary thereunder shall take any proceeding
 18 to contest such will or to prevent the admission thereof to probate, or
 19 provisions to that effect, such beneficiary shall thereby forfeit any
 20 benefit which said will made for said beneficiary, such provision or
 21 provisions shall be void and of no force or effect. **(a) Except as
 22 provided in subsection (b), a no contest provision is enforceable
 23 according to the express terms of the no contest provision.**
- 24 **(b) Subsection (a) does not apply to the following proceedings:**
- 25 **(1) An action brought by a beneficiary if good cause is found
 26 by a court.**
- 27 **(2) An action brought by an executor or other fiduciary of a
 28 will that incorporates a no contest provision, unless the
 29 executor or other fiduciary is a beneficiary against whom the
 30 no contest provision is otherwise enforceable.**
- 31 **(3) An agreement, including a nonjudicial settlement
 32 agreement, among beneficiaries and any other interested
 33 persons to settle or resolve any other matter relating to a will
 34 or estate.**
- 35 **(4) An action to determine whether a proposed or pending
 36 motion or proceeding constitutes a contest.**
- 37 **(5) An action brought by or on behalf of a beneficiary to seek
 38 a ruling regarding the construction or interpretation of a will.**
- 39 **(6) An action or objection brought by a beneficiary, an
 40 executor, or other fiduciary that seeks a ruling on proposed
 41 distributions, fiduciary fees, or any other matter where a
 42 court has discretion.**



- 1 **(7) An action brought by the attorney general that:**
 2 **(A) seeks a ruling regarding the construction or**
 3 **interpretation of:**
 4 **(i) a will containing a charitable trust or charitable**
 5 **bequest; or**
 6 **(ii) a no contest provision contained in a will or trust that**
 7 **purports to penalize a charity or charitable interest; or**
 8 **(B) institutes any other proceedings relating to:**
 9 **(i) an estate; or**
 10 **(ii) a trust;**
 11 **if good cause is shown to do so.**

12 SECTION 5. IC 29-1-7-7, AS AMENDED BY P.L.143-2009,
 13 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2018]: Sec. 7. (a) As soon as letters testamentary or of
 15 administration, general or special, supervised or unsupervised, have
 16 been issued, the clerk of the court shall publish notice of the estate
 17 administration.

18 (b) The notice required under subsection (a) shall be published in
 19 a newspaper of general circulation, printed in the English language and
 20 published in the county where the court is located, once each week for
 21 two (2) consecutive weeks. A copy of the notice, with proof of
 22 publication, shall be filed with the clerk of the court as a part of the
 23 administration of the estate within thirty (30) days after the publication.
 24 If no newspaper is published in the county, the notice shall be
 25 published in a newspaper published in an adjacent county.

26 (c) The notice required under subsection (a) shall be served by first
 27 class postage prepaid mail on each heir, devisee, legatee, and known
 28 creditor whose name and address is set forth in the petition for probate
 29 or letters, except as otherwise ordered by the court. The personal
 30 representative shall furnish sufficient copies of the notice, prepared for
 31 mailing, and the clerk of the court shall mail the notice upon the
 32 issuance of letters.

33 (d) The personal representative or the personal representative's
 34 agent shall serve notice on each creditor of the decedent:

- 35 (1) whose name is not set forth in the petition for probate or
 36 letters under subsection (c);
 37 (2) who is known or reasonably ascertainable within one (1)
 38 month after the first publication of notice under subsection (a);
 39 and
 40 (3) whose claim has not been paid or settled by the personal
 41 representative.

42 The notice may be served by mail or any other means reasonably



1 calculated to ensure actual receipt of the notice by a creditor. **The**
 2 **estate recovery unit of the office of Medicaid policy and planning**
 3 **(established by IC 12-8-6.5-1) is a reasonably ascertainable**
 4 **creditor under this section if the decedent was at least fifty-five (55)**
 5 **years of age at the time of death.**

6 (e) Notice under subsection (d) shall be served within one (1) month
 7 after the first publication of notice under subsection (a) or as soon as
 8 possible after the elapse of one (1) month. If the personal representative
 9 or the personal representative's agent fails to give notice to a known or
 10 reasonably ascertainable creditor of the decedent under subsection (d)
 11 within one (1) month after the first publication of notice under
 12 subsection (a), the period during which the creditor may submit a claim
 13 against the estate includes an additional period ending two (2) months
 14 after the date notice is given to the creditor under subsection (d).
 15 However, a claim filed under IC 29-1-14-1(a) more than nine (9)
 16 months after the death of the decedent is barred.

17 (f) A schedule of creditors that received notice under subsection (d)
 18 shall be delivered to the clerk of the court as soon as possible after
 19 notice is given.

20 (g) The giving of notice to a creditor or the listing of a creditor on
 21 the schedule delivered to the clerk of the court does not constitute an
 22 admission by the personal representative that the creditor has an
 23 allowable claim against the estate.

24 (h) If any person entitled to receive notice under this section is
 25 under a legal disability, the notice may be served upon or waived by the
 26 person's natural or legal guardian or by the person who has care and
 27 custody of the person.

28 (i) The notice shall read substantially as follows:

29 NOTICE OF ADMINISTRATION

30 In the _____ Court of _____ County, Indiana.

31 Notice is hereby given that _____ was, on the ____ day of
 32 _____, 20 __, appointed personal representative of the estate of
 33 _____, deceased, who died on the __ day of _____, 20 __.

34 All persons who have claims against this estate, whether or not now
 35 due, must file the claim in the office of the clerk of this court within
 36 three (3) months from the date of the first publication of this notice, or
 37 within nine (9) months after the decedent's death, whichever is earlier,
 38 or the claims will be forever barred.

39 Dated at _____, Indiana, this __ day of _____, 20 __.

40
 41 _____
 42 CLERK OF THE _____ COURT
 FOR _____ COUNTY, INDIANA



1 SECTION 6. IC 29-1-7-15.1, AS AMENDED BY P.L.36-2011,
 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2018]: Sec. 15.1. (a) When it has been determined that a
 4 decedent died intestate and letters of administration have been issued
 5 upon the decedent's estate, no will shall be probated unless it is
 6 presented for probate:

- 7 (1) before the court decrees final distribution of the estate; or
 8 (2) in an unsupervised estate, before a closing statement has been
 9 filed.

10 (b) No real estate ~~situate~~ **located** in Indiana of which any person
 11 may die seized shall be sold by the executor or administrator of the
 12 deceased person's estate to pay any debt or obligation of the deceased
 13 person, which is not a lien of record in the county in which the real
 14 estate is ~~situate;~~ **located**, or to pay any costs of administration of any
 15 decedent's estate, unless ~~letters testamentary or of administration upon~~
 16 ~~the decedent's estate are taken out within five (5) months after the~~
 17 ~~decedent's death. the clerk issues letters testamentary or letters of~~
 18 **administration not later than six (6) months after the decedent's**
 19 **death.**

20 (c) The title of any real estate or interest therein purchased in good
 21 faith and for a valuable consideration from the heirs of any person who
 22 died seized of the real estate shall not be affected or impaired by any
 23 devise made by the person of the real estate so purchased, unless:

- 24 (1) the will containing the devise has been probated and recorded in
 25 the office of the clerk of the court having jurisdiction within
 26 five (5) months after the death of the testator; or
 27 (2) an action to contest the will's validity is commenced within the
 28 time provided by law and, as a result, the will is ultimately
 29 probated.

30 (d) Except as provided in subsection (e), the will of the decedent
 31 shall not be admitted to probate unless the will is presented for probate
 32 before the latest of the following dates:

- 33 (1) Three (3) years after the individual's death.
 34 (2) Sixty (60) days after the entry of an order denying the probate
 35 of a will of the decedent previously offered for probate and
 36 objected to under section 16 of this chapter.
 37 (3) Sixty (60) days after entry of an order revoking probate of a
 38 will of the decedent previously admitted to probate and contested
 39 under section 17 of this chapter.

40 However, in the case of an individual presumed dead under
 41 IC 29-2-5-1, the three (3) year period commences with the date the
 42 individual's death has been established by appropriate legal action.



1 (e) This subsection applies with respect to the will of an individual
2 who dies after June 30, 2011. If:

- 3 (1) no estate proceedings have been commenced for a decedent;
4 and
5 (2) an asset of the decedent remains titled or registered in the
6 name of the decedent;

7 the will of the decedent may be presented to the court for probate and
8 admitted to probate at any time after the expiration of the deadline
9 determined under subsection (d) for the sole purpose of transferring the
10 asset described in subdivision (2). A will presented for probate under
11 this subsection is subject to all rules governing the admission of wills
12 to probate.

13 SECTION 7. IC 29-1-7-15.2 IS ADDED TO THE INDIANA CODE
14 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
15 **1, 2018]: Sec. 15.2. (a) This section applies to real estate subject to**
16 **section 15.1(b) of this chapter, if all distributees consent to the sale**
17 **of the real estate under IC 29-1-10-21.**

18 (b) **The proceeds of the sale of real estate described in**
19 **subsection (a) will retain the same protection that section 15.1(b)**
20 **of this chapter provides to real estate. Such proceeds can only be**
21 **used to satisfy a debt or obligation of the deceased person or costs**
22 **of administration of the decedent's estate if the distributees consent**
23 **to the personal representative's use of the proceeds to satisfy the**
24 **debts, obligations, or costs of administration.**

25 SECTION 8. IC 29-1-8-1, AS AMENDED BY P.L.137-2016,
26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2018]: Sec. 1. (a) Forty-five (45) days after the death of a
28 decedent and upon being presented an affidavit that complies with
29 subsection (b), a person:

- 30 (1) indebted to the decedent; or
31 (2) having possession of personal property or an instrument
32 evidencing a debt, an obligation, a stock, or a chose in action
33 belonging to the decedent;

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

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

- 40 (1) That the value of the gross probate estate, wherever located,
41 (less liens, ~~and~~ encumbrances, **and reasonable funeral expenses**)
42 does not exceed fifty thousand dollars (\$50,000).



- 1 (2) That forty-five (45) days have elapsed since the death of the
 2 decedent.
- 3 (3) That no application or petition for the appointment of a
 4 personal representative is pending or has been granted in any
 5 jurisdiction.
- 6 (4) The name and address of each distributee that is entitled to a
 7 share of the property and the part of the property to which each
 8 distributee is entitled.
- 9 (5) That the affiant has notified each distributee identified in the
 10 affidavit of the affiant's intention to present an affidavit under this
 11 section.
- 12 (6) That the affiant is entitled to payment or delivery of the
 13 property on behalf of each distributee identified in the affidavit.
- 14 (c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5)
 15 is part of the estate, nothing in this section shall prohibit a transfer of
 16 the certificate of title to the motor vehicle if five (5) days have elapsed
 17 since the death of the decedent and no appointment of a personal
 18 representative is contemplated. A transfer under this subsection shall
 19 be made by the bureau of motor vehicles upon receipt of an affidavit
 20 containing a statement of the conditions required by subsection (b)(1)
 21 and (b)(6). The affidavit must be duly executed by the distributees of
 22 the estate.
- 23 (d) A transfer agent of a security shall change the registered
 24 ownership on the books of a corporation from the decedent to a
 25 distributee upon the presentation of an affidavit as provided in
 26 subsection (a).
- 27 (e) For the purposes of subsection (a), an insurance company that,
 28 by reason of the death of the decedent, becomes obligated to pay a
 29 death benefit to the estate of the decedent is considered a person
 30 indebted to the decedent.
- 31 (f) For purposes of subsection (a), property in a safe deposit box
 32 rented by a decedent from a financial institution organized or
 33 reorganized under the law of any state (as defined in IC 28-2-17-19) or
 34 the United States is considered personal property belonging to the
 35 decedent in the possession of the financial institution.
- 36 (g) For purposes of subsection (a), a distributee has the same rights
 37 as a personal representative under IC 32-39 to access a digital asset (as
 38 defined in IC 32-39-1-10) of the decedent.
- 39 SECTION 9. IC 29-1-14-10 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 10. (a) On or before
 41 three (3) months and fifteen (15) days after the date of the first
 42 published notice to creditors, the personal representative shall allow or



1 disallow each claim filed ~~within~~ **not later than** three (3) months after
 2 the date of the first published notice to creditors, ~~by making and as to~~
 3 **any claim filed not later than nine (9) months after the decedent's**
 4 **death by a claimant (other than the United States, the state, or a**
 5 **subdivision of the state) who did not receive notice of**
 6 **administration under IC 29-1-7-7, the personal representative shall**
 7 **allow or disallow the claim not later than fifteen (15) days after the**
 8 **date of filing of the claim.**

9 (b) The personal representative shall allow or disallow each
 10 claim filed by the United States, the state, or a subdivision of the
 11 state on or before the later of:

12 (1) three (3) months and fifteen (15) days after the first
 13 published notice to creditors; or

14 (2) fifteen (15) days after the date on which the United States,
 15 the state, or a subdivision of the state filed the claim.

16 (c) The personal representative shall make appropriate notations
 17 on the margin of the claim and allowance docket showing the action
 18 taken as to the claim, **or, in a jurisdiction that has implemented**
 19 **electronic filing, by making appropriate notations of the action**
 20 **taken as to the claim according to rules established by the Indiana**
 21 **supreme court, or if the Indiana supreme court adopts no rule**
 22 **regarding the notations, then by local rules established by the court**
 23 **where the claim is filed.**

24 (d) If a personal representative determines that the personal
 25 representative should not allow a claim in full, the claim shall be noted
 26 "disallowed". The clerk of the court shall give written notice to a
 27 creditor if a claim has been disallowed in full or in part.

28 (e) All claims that are disallowed, or are neither allowed nor
 29 disallowed ~~within three (3) months and fifteen (15) days;~~ **the deadlines**
 30 **provided in subsection (a) or (b),** shall be set for trial in the probate
 31 court upon the petition of either party to the claim. The personal
 32 representative shall make an appropriate notation of any compromise
 33 or adjustment on the margin of the claim and allowance docket, **or in**
 34 **a jurisdiction that has implemented electronic filing, by making**
 35 **appropriate notations of the action taken as to the claim according**
 36 **to rules established by the Indiana supreme court, or if the Indiana**
 37 **supreme court adopts no rule regarding the notations, then by local**
 38 **rules established by the court where the claim is filed.** If the
 39 personal representative, after allowing a claim and before paying it,
 40 determines that the claim should not have been allowed, the personal
 41 representative shall change the notation on the claim and allowance
 42 docket from "allowed" to "disallowed" and give written notice to the



1 creditor. If a claim has been paid in full or in part, the creditor shall:

2 (1) release the claim to the extent that the claim has been paid;

3 and

4 (2) give written notice to the clerk of the court of the release.

5 ~~(b)~~ (f) Claims for expenses of administration may be allowed upon
6 application of the claimant or of the personal representative, or may be
7 allowed at any accounting, regardless of whether or not they have been
8 paid by the personal representative.

9 SECTION 10. IC 29-1-17-1 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) At any time
11 during the administration, upon application of the personal
12 representative or any distributee, with or without notice as the court
13 may direct, the court may order the personal representative to deliver
14 to any distributee, who consents to it, possession of any specific real or
15 tangible personal property to which he is entitled under the terms of the
16 will or by intestacy, provided that other distributees and claimants are
17 not prejudiced thereby. The court may at any time prior to the decree
18 of final distribution order him to return such property to the personal
19 representative if it is for the best interest of the estate. The court may
20 require the distributee to give security for such return.

21 (b) At any time during the administration, when it is apparent that
22 the estate is solvent, the court in its discretion may order distribution
23 to the persons entitled thereto of such items of property of the estate as:

24 (1) are perishable in nature,

25 (2) would materially depreciate in value if distribution were
26 delayed, or

27 (3) would necessitate the expenditure of estate funds for storage
28 or preservation if not distributed.

29 Such distribution may be with or without security or notice to the
30 interested parties as the court may direct.

31 (c) After the expiration of the time limited for the filing of claims
32 and before final settlement of the accounts of the personal
33 representative, a partial distribution may be decreed, with notice to
34 interested persons as the court may direct. Such distribution shall be as
35 conclusive as a decree of final distribution, except that the court may,
36 as provided in section ~~2(b)~~ **2(d)** of this chapter, modify such decree of
37 partial distribution to the extent necessary to protect the other
38 distributees and claimants, and assure them that they will receive the
39 amount due them on final distribution. Before a partial distribution is
40 so decreed, the court may require that security be given for the return
41 of the property so distributed to the extent necessary to satisfy any
42 distributees and claimants who may be prejudiced as aforesaid by the



1 partial distribution.

2 (d) The person to whom possession or distribution has been made
3 under the provisions of this section, shall be entitled to the income and
4 profits from such property.

5 SECTION 11. IC 29-1-17-2, AS AMENDED BY P.L.95-2007,
6 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2018]: Sec. 2. (a) After the expiration of the time limit for the
8 filing of claims, and after all claims against the estate, including state
9 and federal inheritance and estate taxes, have been determined, paid,
10 or provision made therefor, except contingent and unmatured claims
11 which cannot then be paid, the personal representative shall, if the
12 estate is in a condition to be closed, render a final account and at the
13 same time petition the court to decree the final distribution of the
14 estate. ~~Notice of the hearing of the petition shall be given under~~
15 ~~IC 29-1-16-6.~~

16 **(b) The final account will include a verified statement that the**
17 **clerk of the court, the personal representative, or a previous**
18 **personal representative, has done the following:**

19 **(1) Published notice to creditors as provided in IC 29-1-7-7(b),**
20 **with the first publication occurring more than three (3)**
21 **months before the date of the final account.**

22 **(2) Provided notice to creditors as required under**
23 **IC 29-1-7-7(c) and IC 29-1-7-7(d).**

24 **(c) Notice of the hearing of the petition shall be provided under**
25 **IC 29-1-16-6.**

26 ~~(b)~~ **(d)** In its decree of final distribution, the court shall designate the
27 persons to whom distribution is to be made, and the proportions or
28 parts of the estate, or the amounts, to which each is entitled under the
29 will and the provisions of this probate code, including the provisions
30 regarding advancements, election by the surviving spouse, lapse,
31 renunciation, adjudicated compromise of controversies, and retainer.
32 Every tract of real property so distributed shall be specifically
33 described therein. The decree shall find that all state and federal
34 inheritance and estate taxes are paid, and if all claims have been paid,
35 it shall so state; otherwise, the decree shall state that all claims except
36 those therein specified are paid and shall describe the claims for the
37 payment of which a special fund is set aside, and the amount of such
38 fund. If any contingent claims which have been duly allowed are still
39 unpaid and have not become absolute, such claims shall be described
40 in the decree, which shall state whether the distributees take subject to
41 them. If a fund is set aside for the payment of contingent claims, the
42 decree shall provide for the distribution of such fund in the event that



1 all or a part of it is not needed to satisfy such contingent claims. If a
 2 decree of partial distribution has been previously made, the decree of
 3 final distribution shall expressly confirm it, or, for good cause, shall
 4 modify said decree and state specifically what modifications are made.

5 ~~(e)~~ (e) If a distributee dies before distribution to the distributee of
 6 the distributee's share of the estate, the distributee's share may be
 7 distributed to the personal representative of the distributee's estate, if
 8 there is one; or if no administration on the deceased distributee's estate
 9 is had and none is necessary according to IC 29-1-8, the share of the
 10 deceased distributee shall be distributed in accordance with IC 29-1-8.

11 ~~(d)~~ (f) The decree of final distribution shall be a conclusive
 12 determination of the persons who are the successors in interest to the
 13 estate of the decedent and of the extent and character of their interest
 14 therein, subject only to the right of appeal and the right to reopen the
 15 decree. It shall operate as the final adjudication of the transfer of the
 16 right, title, and interest of the decedent to the distributees therein
 17 designated; but no transfer before or after the decedent's death by an
 18 heir or devisee shall affect the decree, nor shall the decree affect any
 19 rights so acquired by grantees from the heirs or devisees.

20 ~~(e)~~ (g) Whenever the decree of final distribution includes real
 21 property, a certified copy thereof shall be recorded by the personal
 22 representative in every county of this state in which any real property
 23 distributed by the decree is ~~situated~~ **located** except the county in which
 24 the estate is administered. The cost of recording such decree shall be
 25 charged to the estate.

26 SECTION 12. IC 30-4-1-2, AS AMENDED BY P.L.51-2014,
 27 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2018]: Sec. 2. As used in this article:

- 29 (1) "Adult" means any person eighteen (18) years of age or older.
 30 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
 31 descendant, brother, sister, spouse of a brother or sister,
 32 employee, director, officer, partner, joint venturer, a corporation
 33 subject to common control with the trustee, a shareholder, or
 34 corporation who controls the trustee or a corporation controlled
 35 by the trustee other than as a fiduciary, an attorney, or an agent.
 36 (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
 37 (4) "Breach of trust" means a violation by the trustee of any duty
 38 which is owed to the settlor or beneficiary.
 39 (5) "Charitable trust" means a trust in which all the beneficiaries
 40 are the general public or organizations, including trusts,
 41 corporations, and associations, and that is organized and operated
 42 wholly for religious, charitable, scientific, public safety testing,



- 1 literary, or educational purposes. The term does not include
 2 charitable remainder trusts, charitable lead trusts, pooled income
 3 funds, or any other form of split-interest charitable trust that has
 4 at least one (1) noncharitable beneficiary.
- 5 (6) "Court" means a court having jurisdiction over trust matters.
 6 (7) "Income", except as otherwise stated in a trust agreement, has
 7 the meaning set forth in IC 30-2-14-4.
 8 (8) "Income beneficiary" has the meaning set forth in
 9 IC 30-2-14-5.
 10 (9) "Inventory value" means the cost of property to the settlor or
 11 the trustee at the time of acquisition or the market value of the
 12 property at the time it is delivered to the trustee, or the value of
 13 the property as finally determined for purposes of an estate or
 14 inheritance tax.
- 15 (10) "Minor" means any person under the age of eighteen (18)
 16 years.
- 17 **(11) "No contest provision" refers to a provision of a trust**
 18 **instrument that, if given effect, would reduce or eliminate the**
 19 **interest of a beneficiary of the trust who, directly or**
 20 **indirectly, initiates or otherwise pursues:**
- 21 **(A) an action to contest the validity of:**
 22 **(i) the trust; or**
 23 **(ii) the terms of the trust;**
 24 **(B) an action to set aside or vary any term of the trust; or**
 25 **(C) any other act to frustrate or defeat the settlor's intent**
 26 **as expressed in the terms of the trust.**
- 27 ~~(11)~~ (12) "Person" has the meaning set forth in IC 30-2-14-9.
 28 ~~(12)~~ (13) "Personal representative" means an executor or
 29 administrator of a decedent's or absentee's estate, guardian of the
 30 person or estate, guardian ad litem or other court appointed
 31 representative, next friend, parent or custodian of a minor,
 32 attorney in fact, or custodian of an incapacitated person (as
 33 defined in IC 29-3-1-7.5).
 34 ~~(13)~~ (14) "Principal" has the meaning set forth in IC 30-2-14-10.
 35 ~~(14)~~ (15) "Qualified beneficiary" means:
 36 (A) a beneficiary who, on the date the beneficiary's
 37 qualification is determined:
 38 (i) is a distributee or permissible distributee of trust income
 39 or principal;
 40 (ii) would be a distributee or permissible distributee of trust
 41 income or principal if the interest of the distributee
 42 described in item (i) terminated on that date;



- 1 (iii) would be a distributee or permissible distributee of trust
 2 income or principal if the trust terminated on that date;
 3 (iv) is a charitable organization expressly designated to
 4 receive distributions under the terms of a charitable trust;
 5 (v) is a person appointed to enforce a trust for the care of an
 6 animal under IC 30-4-2-18; or
 7 (vi) is a person appointed to enforce a trust for a
 8 noncharitable purpose under IC 30-4-2-19; or
 9 (B) the attorney general, if the trust is a charitable trust having
 10 its principal place of administration in Indiana.
- 11 ~~(15)~~ **(16)** "Remainderman" means a beneficiary entitled to
 12 principal, including income which has been accumulated and
 13 added to the principal.
- 14 ~~(16)~~ **(17)** "Settlor" means a person who establishes a trust
 15 including the testator of a will under which a trust is created.
- 16 ~~(17)~~ **(18)** "Terms of a trust", "terms of the trust", or "terms of a
 17 charitable trust" means the manifestation of the intent of a settlor
 18 or decedent with respect to the trust, expressed in a manner that
 19 admits of its proof in a judicial proceeding, whether by written or
 20 spoken words or by conduct.
- 21 ~~(18)~~ **(19)** "Trust estate" means the trust property and the income
 22 derived from its use.
- 23 ~~(19)~~ **(20)** "Trust for a benevolent public purpose" means a
 24 charitable trust (as defined in subdivision (5)), a split-interest
 25 trust (as defined in Section 4947 of the Internal Revenue Code),
 26 a perpetual care fund or an endowment care fund established
 27 under IC 23-14-48-2, a prepaid funeral plan or funeral trust
 28 established under IC 30-2-9, a funeral trust established under
 29 IC 30-2-10, a trust or an escrow account created from payments
 30 of funeral, burial services, or merchandise in advance of need
 31 described in IC 30-2-13, and any other form of split-interest
 32 charitable trust that has both charitable and noncharitable
 33 beneficiaries, including but not limited to charitable remainder
 34 trusts, charitable lead trusts, and charitable pooled income funds.
- 35 ~~(20)~~ **(21)** "Trust instrument" means an instrument, agreement, or
 36 other written document executed by the settlor that contains the
 37 terms of the trust, including any amendments to the terms of the
 38 trust.
- 39 ~~(21)~~ **(22)** "Trust property" means property either placed in trust or
 40 purchased or otherwise acquired by the trustee for the trust
 41 regardless of whether the trust property is titled in the name of the
 42 trustee or the name of the trust.



1 (22) (23) "Trustee" has the meaning set forth in IC 30-2-14-13.

2 SECTION 13. IC 30-4-2.1-3 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 3. ~~A provision in a trust~~
4 ~~that provides, or has the effect of providing,~~ that a beneficiary forfeits
5 a benefit from the trust if the beneficiary contests the trust is void: (a)
6 **Except as provided in subsection (b), a no contest provision is**
7 **enforceable according to the express terms of the no contest**
8 **provision.**

9 (b) Subsection (a) does not apply to the following proceedings:

10 (1) An action brought by a beneficiary if good cause is found
11 by a court.

12 (2) An action brought by a trustee or other fiduciary serving
13 under the terms of the trust that incorporates a no contest
14 provision, unless the trustee or other fiduciary is a beneficiary
15 against whom the no contest provision is otherwise
16 enforceable.

17 (3) An agreement, including a nonjudicial settlement
18 agreement, among beneficiaries and any other interested
19 persons to settle or resolve any other matter relating to a
20 trust.

21 (4) An action to determine whether a proposed or pending
22 motion or proceeding constitutes a contest.

23 (5) An action brought by or on behalf of a beneficiary to seek
24 a ruling regarding the construction or interpretation of a
25 trust.

26 (6) An action or objection brought by a beneficiary, executor,
27 or other fiduciary that seeks a ruling on proposed
28 distributions, fiduciary fees, or any other matter where a
29 court has discretion, including actions under IC 30-4-3-22.

30 (7) An action brought by the attorney general that:

31 (A) seeks a ruling regarding the construction or
32 interpretation of:

33 (i) a charitable trust or a trust containing a charitable
34 interest; or

35 (ii) a no contest provision contained in a trust that
36 purports to penalize a charity or charitable interest; or

37 (B) institutes any other proceedings relating to a trust if
38 good cause is shown to do so.

39 SECTION 14. IC 32-17-13-1, AS AMENDED BY P.L.198-2016,
40 SECTION 661, IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) As used in this chapter,
42 "nonprobate transfer" means a valid transfer, effective at death, by a



- 1 transferor:
- 2 (1) whose last domicile was in Indiana; and
- 3 (2) who immediately before death had the power, acting alone, to
- 4 prevent transfer of the property by revocation or withdrawal and:
- 5 (A) use the property for the benefit of the transferor; or
- 6 (B) apply the property to discharge claims against the
- 7 transferor's probate estate.
- 8 (b) The term does not include a transfer at death (other than a
- 9 transfer to or from the ~~decedent's~~ **deceased transferor's** probate estate)
- 10 of:
- 11 (1) a survivorship interest in a tenancy by the entireties real
- 12 estate;
- 13 (2) a life insurance policy or annuity;
- 14 (3) the death proceeds of a life insurance policy or annuity;
- 15 (4) an individual retirement account or a similar account or plan;
- 16 or
- 17 (5) benefits under an employee benefit plan.
- 18 (c) With respect to a nonprobate transfer involving a multiple party
- 19 account, a nonprobate transfer occurs if the last domicile of the
- 20 depositor whose interest is transferred under IC 32-17-11 was in
- 21 Indiana.
- 22 (d) With respect to a motor vehicle or a watercraft, a nonprobate
- 23 transfer occurs if the transferee obtains a certificate of title in Indiana
- 24 under IC 9-17.
- 25 (e) A transfer on death transfer completed under IC 32-17-14 is a
- 26 nonprobate transfer.
- 27 SECTION 15. IC 32-17-13-2 IS AMENDED TO READ AS
- 28 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2. (a) **As used in this**
- 29 **chapter, "claimant" means the surviving spouse or a surviving**
- 30 **child, to the extent that statutory allowances are affected, or a**
- 31 **person who has filed a timely claim in a deceased transferor's**
- 32 **probate estate under IC 29-1-14, and is entitled to enforce the**
- 33 **claim against a transferee of a nonprobate transfer.**
- 34 (b) **As used in this chapter, "nonprobate transferee" means a**
- 35 **person who acquires an interest in property by a nonprobate**
- 36 **transfer.**
- 37 (c) Except as otherwise provided by statute, a transferee of a
- 38 nonprobate transfer is subject to liability to a ~~decedent's~~ **deceased**
- 39 **transferor's** probate estate for:
- 40 (1) allowed claims against the ~~decedent's~~ **deceased transferor's**
- 41 probate estate; and
- 42 (2) statutory allowances to the decedent's spouse and children;



1 to the extent the decedent's probate estate is insufficient to satisfy those
2 claims and allowances.

3 ~~(b)~~ **(d)** The liability of the nonprobate transferee may not exceed the
4 value of nonprobate transfers received or controlled by the nonprobate
5 transferee.

6 ~~(c)~~ **(e)** The liability of the nonprobate transferee does not include the
7 net contributions of the nonprobate transferee.

8 SECTION 16. IC 32-17-13-3 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 3. Nonprobate
10 transferees are liable for the insufficiency described in section 2 of this
11 chapter in the following order:

12 (1) As provided in the ~~decedent's~~ **deceased transferor's** will or
13 other governing instrument.

14 (2) To the extent of the value of the nonprobate transfer received
15 or controlled by the trustee of trusts that can be amended,
16 modified, or revoked by the decedent during the ~~decedent's~~
17 **deceased transferor's** lifetime. If there is more than one (1) such
18 trust, in proportion to the relative value of the trusts.

19 (3) Other nonprobate transferees in proportion to the values
20 received.

21 SECTION 17. IC 32-17-13-6 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 6. **(a)** Upon due notice
23 to a nonprobate transferee, the liability imposed by this chapter is
24 enforceable in proceedings in Indiana in the county where:

25 (1) the transfer occurred;

26 (2) the transferee is located; or

27 (3) the probate action is pending.

28 **(b) A proceeding under this chapter may be commenced as a**
29 **separate cause from a cause in which a probate action is pending**
30 **with respect to a deceased transferor of a nonprobate transfer by**
31 **filing a complaint against a nonprobate transferee as a defendant**
32 **and serving a summons and a complete copy of the complaint to**
33 **each defendant under the Indiana Rules of Trial Procedure.**

34 SECTION 18. IC 32-17-13-7, AS AMENDED BY P.L.6-2010,
35 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2018]: Sec. 7. (a) A proceeding under this chapter may not be
37 commenced unless:

38 **(1) the claimant delivers a written demand for the proceeding**
39 **to:**

40 **(A) the personal representative of the decedent's deceased**
41 **transferor's estate; and**

42 **(B) each known nonprobate transferee; and**



- 1 (2) the written demand has been filed in the estate, not later
2 than seven (7) months after the deceased transferor's death.
- 3 **(b) The written demand must include the following information:**
- 4 (1) The cause number of the deceased transferor's estate.
- 5 (2) A statement of the claimant's interest in the deceased
6 transferor's estate and nonprobate transfers, including the
7 date on which the claimant filed a claim in the deceased
8 transferor's estate.
- 9 (3) A copy of the claim attached as an exhibit to the written
10 demand.
- 11 (4) A description of the nonprobate transfer, including:
- 12 (A) a description of the transferred asset, as the asset
13 would be described under IC 29-1-12-1, regardless of
14 whether the asset is part of the decedent's probate estate,
15 subject to the redaction requirements of the Indiana
16 administrative rules, established by the Indiana supreme
17 court;
- 18 (B) a description or copy of the instrument by which the
19 deceased transferor established the nonprobate transfer,
20 subject to the redaction requirements of the Indiana
21 administrative rules, established by the Indiana supreme
22 court; and
- 23 (C) the name and mailing address of each nonprobate
24 transferee known by the claimant.
- 25 (c) A proceeding under this chapter may not be commenced on
26 behalf of a claimant, if the claimant has not filed a claim in the
27 deceased transferor's estate by not later than nine (9) months after
28 the deceased transferor's death.
- 29 (d) A proceeding under this chapter may not be commenced on
30 behalf of a claimant who has not delivered and filed the written
31 demand under subsection (a) by the later of the following dates:
- 32 (1) Thirty (30) days after the final allowance of the claimant's
33 claim.
- 34 (2) Nine (9) months after the deceased transferor's death.
- 35 (e) A proceeding under this chapter may not be commenced on
36 behalf of a claimant if the personal representative has neither
37 allowed nor disallowed the claimant's claim within the deadlines in
38 IC 29-1-14-10(a) and IC 29-1-14-10(b), unless the claimant's
39 petition to set the claim for trial in the probate court under
40 IC 29-1-14-10(a) has been filed within thirty (30) days after the
41 expiration of the deadlines applicable to the claimant's claim under
42 IC 29-1-14-10(a) and IC 29-1-14-10(b).



1 ~~(f)~~ **(f)** If the personal representative declines or fails to commence
 2 a proceeding **under this chapter** within ~~sixty (60)~~ **thirty (30)** days
 3 after receiving the **written demand required under subsection (a)**, a
 4 person making the demand may commence the proceeding in the name
 5 of the ~~decedent's~~ **deceased transferor's** estate at the expense of the
 6 person making the demand and not of the estate.

7 ~~(g)~~ **(g)** A personal representative who declines in good faith to
 8 commence a requested proceeding incurs no personal liability for
 9 declining.

10 **(h) Nothing in this section shall affect or prevent any action or**
 11 **proceeding to enforce a valid and otherwise enforceable lien,**
 12 **warrant, mortgage, pledge, security interest, or other comparable**
 13 **interest against property included in a nonprobate transfer.**

14 SECTION 19. IC 32-17-13-8, AS AMENDED BY P.L.6-2010,
 15 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2018]: Sec. 8. **(a)** A proceeding under this chapter must be
 17 commenced not later than nine (9) months after the ~~person's~~ **deceased**
 18 **transferor's** death, but a proceeding on behalf of a **creditor claimant**
 19 whose claim was timely filed **in the deceased transferor's estate** may
 20 be commenced ~~within~~ **not later than sixty (60) days after the**
 21 **personal representative of the deceased transferor's estate has**
 22 **received a timely written demand if the personal representative**
 23 **declines or fails to commence a proceeding under this chapter after**
 24 **the time limits specified in section 7 of this chapter.**

25 (1) ~~sixty (60) days after final allowance of the claim; or~~

26 (2) ~~ninety (90) days after demand is made under section 7 of this~~
 27 ~~chapter if the personal representative declines or fails to~~
 28 ~~commence a proceeding after receiving the demand.~~

29 **(b) Notwithstanding any other provision in this chapter, a**
 30 **proceeding under this chapter must be commenced not later than**
 31 **one (1) year after the deceased transferor's death.**

32 SECTION 20. IC 32-17-13-9 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 9. Unless written notice
 34 asserting that a ~~decedent's~~ **deceased transferor's** probate estate is
 35 insufficient to pay allowed claims and statutory allowances has been
 36 received from the ~~decedent's~~ **deceased transferor's** personal
 37 representative, the following rules apply:

38 (1) Payment or delivery of assets by a financial institution,
 39 registrar, or another obligor to a nonprobate transferee under the
 40 terms of the governing instrument controlling the transfer releases
 41 the obligor from all claims for amounts paid or assets delivered.

42 (2) A trustee receiving or controlling a nonprobate transfer is



1 released from liability under this section on any assets distributed
 2 to the trust's beneficiaries. Each beneficiary, to the extent of the
 3 distribution received, becomes liable for the amount of the
 4 trustee's liability attributable to that asset imposed by sections 2
 5 and 3 of this chapter.

6 SECTION 21. IC 32-17-13-10 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2018]: **Sec. 10. (a) If the personal**
 9 **representative of a deceased transferor's probate estate**
 10 **commences a separate proceeding under this chapter and recovers**
 11 **all or part of the value of the nonprobate transfer from the**
 12 **nonprobate transferees, the personal representative must:**

- 13 (1) include the value in the inventory of the deceased
 14 transferor's probate estate; and
 15 (2) pay or distribute the value as the personal representative
 16 would pay or distribute other assets of the deceased
 17 transferor's probate estate.

18 (b) If:

- 19 (1) the personal representative of a deceased transferor's
 20 probate estate declines or fails to commence a proceeding
 21 under this chapter after receiving written demand;
 22 (2) the person making the written demand commences a
 23 timely and proper action under this chapter; and
 24 (3) the person making the written demand recovers all or part
 25 of the value of the nonprobate transfer from the nonprobate
 26 transferees;

27 the person making the written demand may retain the recovered
 28 value without remitting it to the personal representative of the
 29 deceased transferor's probate estate.

30 (c) If one (1) or more claimants of the deceased transferor's
 31 estate intervenes in the separate proceeding, the court shall enter
 32 an order allocating the recovered value among the plaintiff and
 33 other claimants according to the priorities of their claims in the
 34 deceased transferor's estate, and allow the plaintiff to retain
 35 plaintiff's costs and reasonable attorney's fees from the recovered
 36 value.

37 (d) Any claimant that recovers assets under this section must file
 38 a satisfaction or partial satisfaction of the claimant's claim in the
 39 deceased transferor's probate estate to the extent of the recovered
 40 value within thirty (30) days after the recovery.

41 SECTION 22. IC 32-39-2-4, AS ADDED BY P.L.137-2016,
 42 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2018]: Sec. 4. If a deceased user consented to, or a court
 2 directs, disclosure of the contents of electronic communications of the
 3 user, the custodian shall disclose to the personal representative of the
 4 estate of the user the content of an electronic communication sent or
 5 received by the user if the personal representative gives the custodian
 6 the following:

7 (1) A written request for disclosure in physical or electronic form.

8 (2) A certified or authenticated copy of the death certificate of the
 9 user.

10 (3) A copy of the letters (as defined in ~~IC 29-1-1-3(a)(17))~~
 11 **IC 29-1-1-3(a)(18)**) of the personal representative or of the order
 12 of no supervision or order of unsupervised administration issued
 13 to the personal representative under IC 29-1-7.5.

14 (4) Unless the user provided direction using an online tool, a copy
 15 of the user's will, trust, power of attorney, or other record
 16 evidencing the user's consent to disclosure of the content of
 17 electronic communications.

18 (5) If requested by the custodian:

19 (A) a number, username, address, or other unique subscriber
 20 identifier or account identifier assigned by the custodian to
 21 identify the user's account;

22 (B) evidence linking the account to the user; or

23 (C) a finding by the court that:

24 (i) the user had a specific account with the custodian,
 25 identifiable by the information specified in clause (A);

26 (ii) disclosure of the content of electronic communications
 27 of the user would not violate 18 U.S.C. 2701 et seq., 47
 28 U.S.C. 222, or other applicable law;

29 (iii) unless the user provided direction using an online tool,
 30 the user consented to disclosure of the content of electronic
 31 communications; or

32 (iv) disclosure of the content of electronic communications
 33 of the user is reasonably necessary for administration of the
 34 user's estate.

35 SECTION 23. IC 32-39-2-5, AS ADDED BY P.L.137-2016,
 36 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2018]: Sec. 5. Unless the user prohibited disclosure of the
 38 user's digital assets or a court directs otherwise, a custodian shall
 39 disclose to the personal representative of the estate of a deceased user
 40 a catalogue of electronic communications sent or received by the user
 41 and digital assets, other than the content of electronic communications,
 42 of the user, if the personal representative gives the custodian:



- 1 (1) a written request for disclosure in physical or electronic form;
 2 (2) a certified or authenticated copy of the death certificate of the
 3 user;
 4 (3) a copy of the letters (as defined in ~~IC 29-1-1-3(a)(17)~~
 5 **IC 29-1-1-3(a)(18)**) of the personal representative or of the order
 6 of no supervision or order of unsupervised administration issued
 7 to the personal representative under IC 29-1-7.5; or
 8 (4) if requested by the custodian:
 9 (A) a number, username, address, or other unique subscriber
 10 identifier or account identifier assigned by the custodian to
 11 identify the user's account;
 12 (B) evidence linking the account to the user;
 13 (C) an affidavit stating that disclosure of the user's digital
 14 assets is reasonably necessary for administration of the user's
 15 estate; or
 16 (D) a finding by the court that:
 17 (i) the user had a specific account with the custodian,
 18 identifiable by the information specified in clause (A); or
 19 (ii) disclosure of the user's digital assets is reasonably
 20 necessary for administration of the user's estate.
- 21 SECTION 24. IC 32-39-2-12, AS ADDED BY P.L.137-2016,
 22 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2018]: Sec. 12. (a) The legal duties imposed on a fiduciary
 24 charged with managing tangible property, including:
 25 (1) the duty of care;
 26 (2) the duty of loyalty; and
 27 (3) the duty of confidentiality;
 28 also apply to a fiduciary charged with managing digital assets.
- 29 (b) A fiduciary's or designated recipient's authority with respect to
 30 a digital asset of a user:
 31 (1) except as otherwise provided in section 1 of this chapter, is
 32 subject to the applicable terms of service;
 33 (2) is subject to other applicable law, including copyright law;
 34 (3) is limited by the scope of the fiduciary's duties; and
 35 (4) may not be used to impersonate the user.
- 36 (c) A fiduciary with authority over the property of a decedent,
 37 protected person, principal, or settlor has the right to access any digital
 38 asset:
 39 (1) in which the decedent, protected person, principal, or settlor
 40 had a right or interest; and
 41 (2) that is not held by a custodian or subject to a terms-of-service
 42 agreement.



1 (d) A fiduciary acting within the scope of the fiduciary's duties is an
 2 authorized user of the property of the decedent, protected person,
 3 principal, or settlor for the purpose of applicable computer fraud and
 4 unauthorized computer access laws, including IC 24-4.8-2, IC 24-5-22,
 5 IC 35-43-1-7, IC 35-43-1-8, IC 35-43-2-3, and IC 35-45-13.

6 (e) A fiduciary with authority over the tangible, personal property
 7 of a decedent, protected person, principal, or settlor:

8 (1) has the right to access the property and any digital asset stored
 9 in the property; and

10 (2) is an authorized user for the purpose of computer fraud and
 11 unauthorized computer access laws, including IC 24-4.8-2,
 12 IC 24-5-22, IC 35-43-2-3, and IC 35-45-13.

13 (f) A custodian may disclose information in an account to a
 14 fiduciary of the user when the information is required to terminate an
 15 account used to access digital assets licensed to the user.

16 (g) A fiduciary of a user may request that a custodian terminate the
 17 user's account. A request for termination must be in writing, in either
 18 physical or electronic form, and must be accompanied by:

19 (1) if the user is deceased, a certified or authenticated copy of the
 20 death certificate of the user;

21 (2) a copy of:

22 (A) the letters (as defined in ~~IC 29-1-1-3(a)(17))~~
 23 **IC 29-1-1-3(a)(18)**) of the personal representative or of the
 24 order of no supervision or order of unsupervised
 25 administration issued to the personal representative under
 26 IC 29-1-7.5;

27 (B) the court order;

28 (C) the power of attorney; or

29 (D) the trust;

30 giving the fiduciary authority over the account; and

31 (3) if requested by the custodian:

32 (A) a number, username, address, or other unique subscriber
 33 identifier or account identifier assigned by the custodian to
 34 identify the user's account;

35 (B) evidence linking the account to the user; or

36 (C) a finding by the court that the user had a specific account
 37 with the custodian, identifiable by the information specified in
 38 clause (A).



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 247, 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 6, delete lines 12 through 42.
- Delete page 7.
- Page 8, delete lines 1 through 8.
- Page 8, line 23, delete "unless:" and insert "unless".
- Page 8, delete lines 26 through 31.
- Page 8, line 32, delete "decendent's death and".
- Page 8, line 33, delete "seven (7)" and insert "**five (5)**".
- Page 8, delete lines 35 through 42.
- Page 9, delete lines 1 through 14.
- Page 9, line 15, reset in roman "(c)".
- Page 9, line 15, delete "(e)".
- Page 9, line 25, reset in roman "(d)".
- Page 9, line 25, delete "(f)".
- Page 9, line 25, reset in roman "(e),".
- Page 9, line 25, delete "(g),".
- Page 9, line 38, reset in roman "(e)".
- Page 9, line 38, delete "(g)".
- Page 10, line 4, reset in roman "(d)".
- Page 10, line 4, delete "(f)".
- Page 10, line 11, delete "if:" and insert "**if**".
- Page 10, line 12, delete "(1)".
- Page 10, line 13, delete "IC 29-1-10-21; or" and insert "**IC 29-1-10-21**".
- Page 10, run in lines 11 through 13.
- Page 10, delete lines 14 through 17.
- Page 10, line 22, delete "estate:" and insert "**estate**".
- Page 10, line 23, delete "(1)".
- Page 10, line 25, delete "administration; or" and insert "**administration**".
- Page 10, run in lines 22 through 25.
- Page 10, delete lines 26 through 42.
- Delete page 11.
- Page 12, line 17, delete "less" and insert "(less".
- Page 12, line 17, reset in roman "encumbrances),".
- Page 12, line 17, after "encumbrances)," insert "**and**".
- Page 12, line 18, reset in roman "fifty thousand dollars (\$50,000).".



- Page 12, line 18, delete "seventy-five".
- Page 12, line 19, delete "thousand dollars (\$75,000)".
- Page 12, delete lines 33 through 42.
- Page 13, delete lines 1 through 3.
- Page 13, line 4, delete "(c)" and insert "(c)".
- Page 13, line 4, delete "(d)".
- Page 13, line 13, reset in roman "(d)".
- Page 13, line 13, delete "(e)".
- Page 13, line 17, reset in roman "(e)".
- Page 13, line 17, delete "(f)".
- Page 13, line 21, reset in roman "(f)".
- Page 13, line 21, delete "(g)".
- Page 13, line 26, reset in roman "(g)".
- Page 13, line 26, delete "(h)".
- Page 13, delete lines 29 through 42.
- Delete pages 14 through 16.
- Page 17, delete lines 1 through 18.
- Page 17, line 23, delete "by a claimant other than a claimant agency".
- Page 17, line 24, delete "(as defined in IC 29-1-14.5-1(a)(1))".
- Page 17, line 27, delete "other than a claimant" and insert "**(other than the United States, the state, or a subdivision of the state)**".
- Page 17, line 28, delete "agency".
- Page 17, line 33, delete "a claimant agency" and insert "**the United States, the state, or a subdivision of the state**".
- Page 18, delete lines 31 through 42.
- Delete pages 19 through 26.
- Page 27, delete lines 1 through 28.
- Page 28, line 36, after "that the" insert "**clerk of the court, the**".
- Page 28, line 42, delete "claimant agencies and".
- Page 34, delete lines 12 through 14.
- Page 34, line 15, delete "(c)" and insert "**(b)**".
- Page 34, line 18, delete "(d)" and insert "**(c)**".
- Page 34, line 23, reset in roman "spouse and children;"
- Page 34, line 24, delete "family claimants;"
- Page 34, line 27, delete "(e)" and insert "**(d)**".
- Page 34, line 30, delete "(f)" and insert "**(e)**".
- Page 34, delete lines 32 through 42.
- Page 35, delete lines 1 through 32.
- Page 36, line 26, delete "estate." and insert "**estate, not later than seven (7) months after the deceased transferor's death.**".
- Page 36, line 30, delete "including," and insert "**including**".



Page 36, line 31, delete "except with respect to a family claimant,".

Page 36, line 33, delete "Except with respect to a family claimant, a" and insert "A".

Page 36, line 36, delete "similar to the" and insert "**as the asset would be described under IC 29-1-12-1, regardless of whether the asset is part of the decedent's probate estate,**".

Page 36, line 37, delete "description provided in IC 29-1-14.5-3,".

Page 37, delete lines 5 through 19.

Page 37, line 20, delete "(d)" and insert "(c)".

Page 37, line 21, delete " other than a family claimant or claimant".

Page 37, line 22, delete "agency,".

Page 37, line 25, delete "(e)" and insert "(d)".

Page 37, line 27, delete "latest" and insert "**later**".

Page 37, delete lines 28 through 30.

Page 37, line 31, delete "(2) For a claimant other than a family claimant, thirty (30)" and insert "**(1) Thirty (30)**".

Page 37, delete lines 33 through 35.

Page 37, line 36, delete "(4)" and insert "(2)".

Page 37, line 37, delete "(f)" and insert "(e)".

Page 38, line 3, delete "(g)" and insert "(f)".

Page 38, line 9, delete "(h)" and insert "(g)".

Page 38, line 12, delete "(i)" and insert "(h)".

Page 38, line 33, delete "two (2) years" and insert "**one (1) year**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 247 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 1.



SENATE MOTION

Madam President: I move that Senate Bill 247 be amended to read as follows:

Page 9, line 25, delete "claimant" and insert "**United States, the state, or a subdivision of the state**".

Page 9, line 26, delete "agency".

(Reference is to SB 247 as printed February 2, 2018.)

KOCH

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 247, 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 6, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 5. IC 29-1-7-7, AS AMENDED BY P.L.143-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

(c) The notice required under subsection (a) shall be served by first class postage prepaid mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters, except as otherwise ordered by the court. The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

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- (1) whose name is not set forth in the petition for probate or letters under subsection (c);
- (2) who is known or reasonably ascertainable within one (1) month after the first publication of notice under subsection (a); and
- (3) whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor. **The estate recovery unit of the office of Medicaid policy and planning (established by IC 12-8-6.5-1) is a reasonably ascertainable creditor under this section if the decedent was at least fifty-five (55) years of age at the time of death.**

(e) Notice under subsection (d) shall be served within one (1) month after the first publication of notice under subsection (a) or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within one (1) month after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.
 Notice is hereby given that _____ was, on the ____ day of _____, 20 __, appointed personal representative of the estate of _____, deceased, who died on the ____ day of _____, 20 __.

All persons who have claims against this estate, whether or not now



due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ___ day of _____, 20 __.

CLERK OF THE _____ COURT
FOR _____ COUNTY, INDIANA".

Page 6, line 29, delete "five (5)" and insert "**six (6)**".

Page 8, line 10, after "liens" insert ",".

Page 8, line 10, after "liens" strike "and".

Page 8, line 10, delete "encumbrances)," and insert "encumbrances,".

Page 8, line 10, delete "expenses," and insert "**expenses)**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 247 as reprinted February 6, 2018.)

STEUERWALD

Committee Vote: yeas 9, nays 0.

