



February 8, 2019

SENATE BILL No. 265

DIGEST OF SB 265 (Updated February 6, 2019 12:04 pm - DI 128)

Citations Affected: IC 30-4; IC 34-30.

Synopsis: Various trust matters. Defines "designated representative", "judicial proceeding", and "nonjudicial matter" for purposes of the trust code. Authorizes the establishment of legacy trusts. Prescribes the procedures for establishing a legacy trust. Provides that the rule against perpetuities does not apply to legacy trusts. Adopts the uniform directed trust act, which allows for the terms of a trust to grant a person other than a trustee power over some aspect of the trust's administration. Repeals a provision regarding duties and liabilities of a trustee under the control of a third person. Allows for the use of quiet trusts. Provides that an interested person may enter into a binding nonjudicial settlement agreement with respect to trust matters. Provides for nonjudicial account settlements.

Effective: July 1, 2019.

Head, Young M

January 7, 2019, read first time and referred to Committee on Judiciary.
February 7, 2019, amended, reported favorably — Do Pass.

SB 265—LS 6487/DI 128



February 8, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 265

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

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

- 1 SECTION 1. IC 30-4-1-2, AS AMENDED BY P.L.163-2018,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 2. As used in this article:
4 (1) "Adult" means any person eighteen (18) years of age or older.
5 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
6 descendant, brother, sister, spouse of a brother or sister,
7 employee, director, officer, partner, joint venturer, a corporation
8 subject to common control with the trustee, a shareholder, or
9 corporation who controls the trustee or a corporation controlled
10 by the trustee other than as a fiduciary, an attorney, or an agent.
11 (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
12 (4) "Breach of trust" means a violation by the trustee of any duty
13 which is owed to the settlor or beneficiary.
14 (5) "Charitable trust" means a trust in which all the beneficiaries
15 are the general public or organizations, including trusts,
16 corporations, and associations, and that is organized and operated
17 wholly for religious, charitable, scientific, public safety testing,

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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) **"Designated representative" means a person who:**

7 **(A) is authorized, under the terms of a trust, to represent**
 8 **the interests of a beneficiary;**

9 **(B) delivers to the trustee a written acceptance of**
 10 **appointment as the designated representative; and**

11 **(C) is appointed or assigned to act and communicate on**
 12 **behalf of that beneficiary in one (1) or more of the**
 13 **following ways:**

14 **(i) The person is expressly appointed by the settlor, in the**
 15 **trust instrument or under a power reserved by the**
 16 **settlor, to act as a designated representative for one (1)**
 17 **or more beneficiaries of a trust.**

18 **(ii) The person is appointed as a designated**
 19 **representative by the trustee or by another authorized**
 20 **person under procedures provided in the trust**
 21 **instrument or under this subdivision.**

22 **(iii) The person is authorized or directed under the trust**
 23 **instrument to represent or bind one (1) or more**
 24 **beneficiaries in connection with a judicial proceeding or**
 25 **nonjudicial matter.**

26 **(iv) The person is appointed by a beneficiary to act as a**
 27 **designated representative of that beneficiary.**

28 **Notwithstanding any contrary provision in the trust**
 29 **instrument or in any other writing that appoints a designated**
 30 **representative, a designated representative is a fiduciary and**
 31 **has a duty to act in good faith in representing the best**
 32 **interests of the beneficiary being represented, and to refrain**
 33 **from willful misconduct.**

34 ~~(7)~~ **(8) "Income", except as otherwise stated in a trust agreement,**
 35 **has the meaning set forth in IC 30-2-14-4.**

36 ~~(8)~~ **(9) "Income beneficiary" has the meaning set forth in**
 37 **IC 30-2-14-5.**

38 ~~(9)~~ **(10) "Inventory value" means the cost of property to the settlor**
 39 **or the trustee at the time of acquisition or the market value of the**
 40 **property at the time it is delivered to the trustee, or the value of**
 41 **the property as finally determined for purposes of an estate or**
 42 **inheritance tax.**



- 1 **(11) "Judicial proceeding" means a proceeding involving a**
 2 **trust before a court having subject matter jurisdiction of the**
 3 **trust, whether or not the administration of the trust is**
 4 **governed by Indiana law.**
- 5 ~~(10)~~ **(12) "Minor" means any person under the age of eighteen**
 6 **(18) years.**
- 7 ~~(11)~~ **(13) "No contest provision" refers to a provision of a trust**
 8 **instrument that, if given effect, would reduce or eliminate the**
 9 **interest of a beneficiary of the trust who, directly or indirectly,**
 10 **initiates or otherwise pursues:**
- 11 (A) an action to contest the validity of:
- 12 (i) the trust; or
- 13 (ii) the terms of the trust;
- 14 (B) an action to set aside or vary any term of the trust; or
- 15 (C) any other act to frustrate or defeat the settlor's intent as
- 16 expressed in the terms of the trust.
- 17 **(14) "Nonjudicial matter" includes but is not limited to any of**
 18 **the following matters or actions relating to a trust or its**
 19 **administration:**
- 20 (A) A trustee's provision of accounting statements or
- 21 notices to beneficiaries under IC 30-2-14, IC 30-2-15, or
- 22 this article.
- 23 (B) The solicitation, execution, and delivery of waivers of
- 24 notice, consent, or objections from beneficiaries under
- 25 IC 30-2-14, IC 30-2-15, or this article.
- 26 (C) The solicitation, execution, and delivery of a consent,
- 27 acquiescence, ratification, release, or discharge by a
- 28 beneficiary under IC 30-4-3-19.
- 29 ~~(12)~~ **(15) "Person" has the meaning set forth in IC 30-2-14-9.**
- 30 ~~(13)~~ **(16) "Personal representative" means an executor or**
 31 **administrator of a decedent's or absentee's estate, guardian of the**
 32 **person or estate, guardian ad litem or other court appointed**
 33 **representative, next friend, parent or custodian of a minor,**
 34 **attorney in fact, or custodian of an incapacitated person (as**
 35 **defined in IC 29-3-1-7.5).**
- 36 ~~(14)~~ **(17) "Principal" has the meaning set forth in IC 30-2-14-10.**
- 37 ~~(15)~~ **(18) "Qualified beneficiary" means:**
- 38 (A) a beneficiary who, on the date the beneficiary's
- 39 qualification is determined:
- 40 (i) is a distributee or permissible distributee of trust income
- 41 or principal;
- 42 (ii) would be a distributee or permissible distributee of trust



1 income or principal if the interest of the distributee
 2 described in item (i) terminated on that date;
 3 (iii) would be a distributee or permissible distributee of trust
 4 income or principal if the trust terminated on that date;
 5 (iv) is a charitable organization expressly designated to
 6 receive distributions under the terms of a charitable trust;
 7 (v) is a person appointed to enforce a trust for the care of an
 8 animal under IC 30-4-2-18; or
 9 (vi) is a person appointed to enforce a trust for a
 10 noncharitable purpose under IC 30-4-2-19; or
 11 (B) the attorney general, if the trust is a charitable trust having
 12 its principal place of administration in Indiana.

13 ~~(16)~~ **(19)** "Remainderman" means a beneficiary entitled to
 14 principal, including income which has been accumulated and
 15 added to the principal.

16 ~~(17)~~ **(20)** "Settlor" means a person who establishes a trust
 17 including the testator of a will under which a trust is created.

18 ~~(18)~~ **(21)** "Terms of a trust", "terms of the trust", or "terms of a
 19 charitable trust" means the manifestation of the intent of a settlor
 20 or decedent with respect to the trust, expressed in a manner that
 21 admits of its proof in a judicial proceeding, whether by written or
 22 spoken words or by conduct.

23 ~~(19)~~ **(22)** "Trust estate" means the trust property and the income
 24 derived from its use.

25 ~~(20)~~ **(23)** "Trust for a benevolent public purpose" means a
 26 charitable trust (as defined in subdivision (5)), a split-interest
 27 trust (as defined in Section 4947 of the Internal Revenue Code),
 28 a perpetual care fund or an endowment care fund established
 29 under IC 23-14-48-2, a prepaid funeral plan or funeral trust
 30 established under IC 30-2-9, a funeral trust established under
 31 IC 30-2-10, a trust or an escrow account created from payments
 32 of funeral, burial services, or merchandise in advance of need
 33 described in IC 30-2-13, and any other form of split-interest
 34 charitable trust that has both charitable and noncharitable
 35 beneficiaries, including but not limited to charitable remainder
 36 trusts, charitable lead trusts, and charitable pooled income funds.

37 ~~(21)~~ **(24)** "Trust instrument" means an instrument, agreement, or
 38 other written document executed by the settlor that contains the
 39 terms of the trust, including any amendments to the terms of the
 40 trust.

41 ~~(22)~~ **(25)** "Trust property" means property either placed in trust or
 42 purchased or otherwise acquired by the trustee for the trust



1 regardless of whether the trust property is titled in the name of the
2 trustee or the name of the trust.

3 ~~(23)~~ **(26)** "Trustee" has the meaning set forth in IC 30-2-14-13.

4 SECTION 2. IC 30-4-3-2 IS AMENDED TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The settlor may provide in the
6 terms of the trust that the interest of a beneficiary may not be either
7 voluntarily or involuntarily transferred before payment or delivery of
8 the interest to the beneficiary by the trustee.

9 (b) Except as otherwise provided in subsection (c), if the settlor is
10 also a beneficiary of the trust, a provision restraining the voluntary or
11 involuntary transfer of ~~his~~ **the settlor's** beneficial interest will not
12 prevent ~~his~~ **the settlor's** creditors from satisfying claims from ~~his~~ **the**
13 **settlor's** interest in the trust estate.

14 (c) ~~Subsection (a) applies to a trust that meets both of the following~~
15 ~~requirements, regardless of whether or not the~~ **A protective provision**
16 **similar to that authorized by subsection (a) prevents a creditor of**
17 **the settlor from satisfying a claim from the settlor's interest in the**
18 **trust estate when the settlor is also a beneficiary of the trust if the**
19 **trust is one (1) of the following:**

20 **(1) A trust that meets both of the following requirements:**

21 ~~(A)~~ **(A)** The trust is a qualified trust under 26 U.S.C. 401(a).

22 ~~(B)~~ **(B)** The limitations on each beneficiary's control over the
23 beneficiary's interest in the trust complies with 29 U.S.C.
24 1056(d).

25 **(2) A legacy trust established under IC 30-4-8.**

26 (d) A trust containing terms authorized under subsection (a) may be
27 referred to wherever appropriate as a trust with protective provisions.

28 SECTION 3. IC 30-4-3-6, AS AMENDED BY P.L.5-2015,
29 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2019]: Sec. 6. (a) The trustee has a duty to administer a trust
31 according to the terms of the trust.

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

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

36 (2) Take possession of and maintain control over the trust
37 property.

38 (3) Preserve the trust property.

39 (4) Make the trust property productive for both the income and
40 remainder beneficiary. As used in this subdivision, "productive"
41 includes the production of income or investment for potential
42 appreciation.



- 1 (5) Keep the trust property separate from the trustee's individual
 2 property and separate from or clearly identifiable from property
 3 subject to another trust.
- 4 (6) Maintain clear and accurate accounts with respect to the trust
 5 estate.
- 6 (7) **Except as provided in subsection (c)**, keep the following
 7 beneficiaries reasonably informed about the administration of the
 8 trust and of the material facts necessary for the beneficiaries to
 9 protect their interests:
- 10 (A) A current income beneficiary.
 11 (B) A beneficiary who will become an income beneficiary
 12 upon the expiration of the term of the current income
 13 beneficiary, if the trust has become irrevocable by:
- 14 (i) the terms of the trust instrument; or
 15 (ii) the death of the settlor.
- 16 A trustee satisfies the requirements of this subdivision by
 17 providing a beneficiary described in clause (A) or (B), upon the
 18 beneficiary's written request, access to the trust's accounting and
 19 financial records concerning the administration of trust property
 20 and the administration of the trust.
- 21 (8) Upon:
- 22 (A) the trust becoming irrevocable:
 23 (i) by the terms of the trust instrument; or
 24 (ii) by the death of the settlor; and
 25 (B) the written request of an income beneficiary or
 26 remainderman;
- 27 promptly provide a copy of the complete trust instrument to the
 28 income beneficiary or remainderman. **This subdivision does not**
 29 **prohibit the terms of the trust from requiring the trustee to**
 30 **separately provide each beneficiary only the portions of the**
 31 **trust instrument that describe or pertain to that beneficiary's**
 32 **interest in the trust and the administrative provision of the**
 33 **trust instrument that pertain to all beneficiaries of the trust.**
- 34 (9) Take whatever action is reasonable to realize on claims
 35 constituting part of the trust property.
- 36 (10) Defend actions involving the trust estate.
- 37 (11) Supervise any person to whom authority has been delegated.
- 38 (12) Determine the trust beneficiaries by acting on information:
 39 (A) the trustee, by reasonable inquiry, considers reliable; and
 40 (B) with respect to heirship, relationship, survivorship, or any
 41 other issue relative to determining a trust beneficiary.
- 42 (c) **The terms of a trust may expand, restrict, eliminate, or**



1 otherwise vary the right of a beneficiary to be informed of the
 2 beneficiary's interest in a trust for a period of time, including a
 3 period of time related to:

- 4 (1) the age of the beneficiary;
 5 (2) the lifetime of a settlor or the spouse of a settlor;
 6 (3) a term of years or a period of time ending on a specific
 7 date; or
 8 (4) a specific event that is certain to occur.

9 (d) During any period of time that the trust instrument restricts
 10 or eliminates the right of a beneficiary to be informed of the
 11 beneficiary's interest in a trust, a designated representative for the
 12 beneficiary:

- 13 (1) shall represent that beneficiary and bind that beneficiary's
 14 interests for purposes of any judiciary proceeding or
 15 nonjudicial matter involving the trust unless the court finds,
 16 after a hearing upon notice, that a conflict of interest exists
 17 between the beneficiary and the designated representative;
 18 and
 19 (2) has the authority to initiate or defend and participate in
 20 any proceeding relating to the trust under this article or
 21 under IC 30-2 on behalf of the beneficiary.

22 An alleged conflict of interest between a beneficiary and the
 23 beneficiary's designated representative may be asserted to the
 24 court by the beneficiary whose right to be informed of the
 25 beneficiary's interest in a trust is restricted or eliminated in the
 26 trust instrument or by any other person authorized to represent
 27 and bind that beneficiary's interest under IC 30-4-6-10.5.

28 (e) If:

- 29 (1) a beneficiary is an adult and has not been adjudicated to
 30 be an incapacitated person;
 31 (2) the trust instrument restricts or eliminates the right of the
 32 beneficiary to be informed of the beneficiary's interest in a
 33 trust; and
 34 (3) the beneficiary discovers information about the
 35 beneficiary's interest in the trust from sources other than the
 36 trustee;

37 subsections (c) and (e) do not prohibit the beneficiary from
 38 demanding and receiving information about the trust and its
 39 administration under subsection (b)(7), including a copy of all
 40 relevant portions of the trust instrument, or an accounting or
 41 statement regarding the trust under IC 30-4-5-12(c). The
 42 beneficiary may also initiate and participate in any proceeding



1 **against or with the trustee under this chapter.**

2 SECTION 4. IC 30-4-3-9 IS REPEALED [EFFECTIVE JULY 1,
3 2019]. Sec. 9: (~~Duty of Trustee under Control of Third Person~~)

4 (a) If the terms of the trust give a person a power to direct the trustee
5 in the administration of the trust and those terms expressly direct the
6 trustee to rely, or relieve the trustee from liability if he does rely, on
7 that person's directions, the trustee may do so and will incur no liability
8 for any loss to the trust estate.

9 (b) If the terms of the trust give a person a power to direct the
10 trustee in the administration of the trust, except as provided in
11 subsection (a) of this section:

12 (1) If the person holds the power as a fiduciary, the trustee has a
13 duty to refuse to comply with any direction which he knows or should
14 know would constitute a breach of a duty owed by that person as a
15 fiduciary.

16 (2) If the person holds the power solely for his own benefit, the
17 trustee may refuse to comply only if the attempted exercise of the
18 power violates the terms of the trust with respect to that power.

19 SECTION 5. IC 30-4-3-24.5, AS ADDED BY P.L.238-2005,
20 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2019]: Sec. 24.5. (a) This section does not apply to an
22 easement for conservation or preservation.

23 (b) This subsection applies to a trust consisting of trust property
24 having a total value of less than seventy-five thousand dollars
25 (\$75,000). Unless the terms of the trust provide otherwise, the trustee
26 may terminate the trust:

27 (1) if the trustee concludes the value of the trust property is
28 insufficient to justify the cost of administration; and

29 (2) after providing notice of the trust termination to qualified
30 beneficiaries.

31 **(c) The trustee may propose the termination of a trust by**
32 **written notice to qualified beneficiaries if the trustee, upon review**
33 **of surrounding circumstances, concludes that continuation of the**
34 **trust on its existing terms would be contrary to the economic best**
35 **interest of the trust estate and that early termination would be in**
36 **the best interests of the beneficiaries consistent with the settlor's**
37 **intent. This trust termination shall occur upon receipt of written**
38 **consent of all qualified beneficiaries.**

39 (e) (d) The court may:

40 (1) modify or terminate a trust; or

41 (2) remove the trustee and appoint a different trustee;

42 if the court determines that the value of the trust property is insufficient



1 to justify the cost of administration. If a trust terminates under this
 2 subsection, the court shall direct the trustee to distribute the trust
 3 property in a manner consistent with the purposes of the trust.

4 ~~(d)~~ (e) If a trust terminates under subsection (b), the trustee shall
 5 distribute the trust property in a manner consistent with the purposes
 6 of the trust.

7 SECTION 6. IC 30-4-5-14.5 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2019]: **Sec. 14.5. (a) A trustee may obtain a nonjudicial
 10 settlement of its accounts in accordance with subsection (b) when:**

- 11 **(1) a trust terminates pursuant to the terms of the trust;**
- 12 **(2) a small trust terminates pursuant to IC 30-4-3-24.5;**
- 13 **(3) a trustee resigns or is removed; or**
- 14 **(4) a trustee seeks discharge of an interim accounting period
 15 when the trust is continuing.**

16 **(b) A trustee who elects to proceed under this section shall
 17 provide the following to the qualified beneficiaries of the trust and
 18 a successor trustee, if applicable, within a reasonable time after
 19 termination of the trust pursuant to its terms, the resignation or
 20 removal of the trustee, or the end of the period for which the
 21 trustee is seeking discharge:**

- 22 **(1) A statement showing the fair market value of the new
 23 assets to be distributed from a terminating trust or a
 24 successor trustee.**
- 25 **(2) A trust accounting for the prior three (3) years showing all
 26 receipts and disbursements and inventory value of the net
 27 assets.**
- 28 **(3) An estimate for any items reasonably anticipated to be
 29 received or disbursed.**
- 30 **(4) The amount of any fees, including trustee fees, remaining
 31 to be paid.**
- 32 **(5) Notice that the trust is terminating, or that the trustee has
 33 resigned or been removed, the time period for which the
 34 trustee seeks discharge of its accounts, and a statement
 35 providing that claims against a trustee under IC 30-4-6-12
 36 and IC 30-4-6-14, if applicable, shall be barred if no
 37 objections are received within the time period described in
 38 subsection (c).**
- 39 **(6) The name and mailing address of the trustee.**
- 40 **(7) The name and telephone number of a person who may be
 41 contacted for additional information.**

42 **The trustee may also provide the statement and notice described in**



1 this subsection to any other person who the trustee reasonably
2 believes may have an interest in the trust.

3 (c) If, after receiving the notice and trust information described
4 in subsection (b), a qualified beneficiary objects to a disclosed act
5 or omission, the qualified beneficiary shall provide written notice
6 of the objection to the trustee not later than sixty (60) days after
7 the notice was sent by the trustee. If no written objection is
8 provided in the sixty (60) day time period, the information
9 provided under subsection (b) shall be considered approved by the
10 recipient. The trustee shall, in the case of a trust terminating
11 pursuant to the terms of the trust or the trustee's resignation or
12 removal, within a reasonable period of time following the
13 expiration of the sixty (60) day time period, distribute the assets as
14 provided in the trust or to the successor trustee. If a qualified
15 beneficiary gives the trustee a written objection within the
16 applicable sixty (60) day time period, the trustee or the qualified
17 beneficiary may:

18 (1) submit the written objection to the court for resolution
19 and charge the expense of commencing a proceeding to the
20 trust; or

21 (2) resolve the objection by a nonjudicial settlement
22 agreement under section 25 of this chapter, or otherwise.

23 Any agreement entered into pursuant to subdivision (2) may
24 include a release, an indemnity clause, or both, on the part of the
25 beneficiary against the trustee relating to the trust. If the parties
26 agree to a nonjudicial settlement agreement under section 25 of
27 this chapter, any related expenses shall be charged to the trust.
28 Upon a resolution of an objection under this subsection, within a
29 reasonable period of time, the trustee shall distribute the
30 remaining trust assets as provided in the trust or to the successor
31 trustee.

32 (d) The trustee may rely upon the written statement of a person
33 receiving notice that the person does not object.

34 (e) When a trustee distributes assets of a terminating trust or to
35 a successor trustee after complying with the provisions of this
36 article and having received no objections, each person who
37 received notice and either consented or failed to object pursuant to
38 this section is barred from:

39 (1) bringing a claim against the trustee or challenging the
40 validity of the trust to the same extent and with the same
41 preclusive effect as if the court had entered a final order
42 approving the trustee's final account; or



- 1 **(2) bringing a claim against the trustee for the period of such**
- 2 **interim accounts to the same extent and with the same**
- 3 **preclusive effect as if the court had entered a final order**
- 4 **approving the trustee's interim accounts.**
- 5 **(f) A trustee may not request that a beneficiary indemnify the**
- 6 **trustee against loss in exchange for the trustee forgoing a request**
- 7 **to the court to approve its accounts at the time that the trust**
- 8 **terminates, or at the time the trustee resigns or is removed, except**
- 9 **as agreed upon by the parties pursuant to subsection (c).**
- 10 **(g) The court that exercises probate jurisdiction shall have**
- 11 **exclusive jurisdiction over matters under this section.**
- 12 **(h) IC 30-4-6-10.5 shall apply to this section.**
- 13 **(i) Nothing in this section shall preclude a trustee from**
- 14 **proceeding under IC 30-4-3-18(b) to have the trustee's accounts**
- 15 **reviewed and settled by the court.**
- 16 **SECTION 7. IC 30-4-5-25 IS ADDED TO THE INDIANA CODE**
- 17 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
- 18 **1, 2019]: Sec. 25. (a) As used in this section, "interested person"**
- 19 **means a person whose consent would be required to achieve a**
- 20 **binding settlement were the settlement to be approved by the court.**
- 21 **(b) Except as provided in subsection (c), an interested person**
- 22 **may enter into a binding nonjudicial settlement agreement with**
- 23 **respect to any matter involving a trust. This procedure is not**
- 24 **intended to foreclose or limit any other procedure for settlement**
- 25 **available under other applicable law.**
- 26 **(c) A nonjudicial settlement agreement is valid only to the extent**
- 27 **it does not violate a material purpose of the trust and includes**
- 28 **terms and conditions that could be properly approved by the court**
- 29 **under this article or other applicable law. A nonjudicial settlement**
- 30 **may not be used to produce a result not authorized by other**
- 31 **provisions of this article, including but not limited to terminating**
- 32 **or modifying a trust in an impermissible manner.**
- 33 **(d) Subject to subsection (c), matters that may be resolved by a**
- 34 **nonjudicial settlement agreement include the following:**
- 35 **(1) The interpretation or construction of the terms of a trust.**
- 36 **(2) The approval of a trustee's report or accounting or waiver**
- 37 **of the preparation of a trustee's report or accounting.**
- 38 **(3) Direction to a trustee to refrain from performing a**
- 39 **particular act or the grant to a trustee of any necessary or**
- 40 **desirable power.**
- 41 **(4) The resignation or appointment of a trustee and the**
- 42 **determination of a trustee's compensation.**



- 1 **(5) Transfer of a trust's principal place of administration.**
- 2 **(6) Liability or release of a trustee for an action relating to a**
- 3 **trust.**
- 4 **(7) The criteria for distribution to a beneficiary where a**
- 5 **trustee is given discretion.**
- 6 **(8) The resolution of a dispute arising out of the**
- 7 **administration or distribution of a trust.**
- 8 **(9) An investment action.**
- 9 **(10) The appointment of and powers granted to a directing**
- 10 **party of a trust protector.**
- 11 **(11) Direction to a directing party or to a trust protector to**
- 12 **perform or refrain from performing a particular act or the**
- 13 **grant of a power to a directing party or trust protector.**

14 **(e) Before or after the parties enter into a nonjudicial settlement**
 15 **agreement, an interested person may request the court to approve**
 16 **a nonjudicial settlement agreement to determine whether the**
 17 **representation under IC 30-4-6-10.5 was adequate and to**
 18 **determine whether the agreement contains terms and conditions**
 19 **the court would approve.**

20 SECTION 8. IC 30-4-6-10.5, AS ADDED BY P.L.238-2005,
 21 SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2019]: Sec. 10.5. (a) Except as provided in the terms of a
 23 trust, and to the extent there is not a conflict of interest between the
 24 representative and the person represented or among those being
 25 represented:

- 26 (1) a guardian may represent and bind the protected person who
- 27 is subject to the guardianship;
- 28 (2) an attorney in fact who has authority to act with respect to the
- 29 particular question or dispute may represent and bind the
- 30 principal;
- 31 (3) a trustee may represent and bind the beneficiaries of the trust;
- 32 (4) a personal representative of a decedent's estate may represent
- 33 and bind persons interested in the estate; ~~and~~
- 34 **(5) a designated representative appointed for a beneficiary**
- 35 **under a provision in a trust instrument may represent and**
- 36 **bind the beneficiary of the trust; and**
- 37 ~~(5)~~ **(6)** a parent may represent and bind the parent's minor,
- 38 unborn, or not yet adopted child if a guardian for the child has not
- 39 been appointed;
- 40 with regard to a particular question or dispute.

41 (b) The holder of a general power of appointment, including a
 42 general testamentary power of appointment, may represent and bind



1 persons whose interests are subject to the power of appointment,
2 including:

- 3 (1) permissible appointees; and
4 (2) takers in default.

5 (c) Unless otherwise represented:

- 6 (1) a minor;
7 (2) an incapacitated person;
8 (3) an unborn or a not yet adopted child; or
9 (4) a person whose identity or location is unknown and not
10 reasonably ascertainable;

11 may be represented by and bound by another person who has a
12 substantially identical interest with respect to the particular question or
13 dispute but only to the extent there is not a conflict of interest between
14 the representative and the person represented.

15 (d) If the court determines that an interest is not represented under
16 this section or that the otherwise available representation might be
17 inadequate, the court may appoint a guardian ad litem to receive notice,
18 give consent, and otherwise represent, bind, and act on behalf of:

- 19 (1) a minor;
20 (2) an incapacitated person;
21 (3) an unborn child; or
22 (4) a person whose identity or location is unknown.

23 If not precluded by conflict of interest, a guardian ad litem may be
24 appointed to represent several persons or interests. A guardian ad litem
25 may act on behalf of the person represented with respect to any matter
26 arising under this title, regardless of whether a judicial proceeding
27 concerning the trust is pending. In making decisions, a guardian ad
28 litem may consider general benefits accruing to the living members of
29 the family of the persons represented.

30 (e) Notice to a person who may represent and bind another person
31 under this section has the same effect as if notice were given directly
32 to the other person.

33 (f) The consent of a person who may represent and bind another
34 person under this section is binding on the person represented unless
35 the person represented objects to the representation before the consent
36 would have become effective.

37 SECTION 9. IC 30-4-8 IS ADDED TO THE INDIANA CODE AS
38 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2019]:

40 **Chapter 8. Legacy Trusts**

41 **Sec. 1. (a) Subject to the limitations set forth in subsection (b),**
42 **this chapter applies to:**

SB 265—LS 6487/DI 128



1 (1) qualified dispositions to legacy trusts; and
 2 (2) dispositions by transferors who are trustees;
 3 that are made after June 30, 2019.

4 (b) This chapter does not apply to:

5 (1) any assets that are listed on an application or financial
 6 statement completed by the transferor and which is submitted
 7 to a lender in connection with a request to obtain or maintain
 8 credit from the lender; or

9 (2) any assets of a legacy trust that are listed on an application
 10 or financial statement completed on behalf of the legacy trust
 11 and which is submitted to a lender in connection with a
 12 request to obtain or maintain credit from the lender on behalf
 13 of the legacy trust.

14 In the event that assets described in subsection (b)(1) are later
 15 transferred to a legacy trust and a default occurs under the loan or
 16 extension of credit, either before or after the transfer or disposition
 17 under the legacy trust, the lender shall be entitled to proceed
 18 against any assets listed on the applications or financial statements
 19 which were submitted in connection with the loan, or any
 20 modifications, amendments, or renewals of the loan. Nothing in this
 21 chapter shall prohibit such action. A change in the character, form,
 22 or ownership of the assets described in subsection (b)(1) shall in no
 23 way make subsection (b)(1) inapplicable.

24 Sec. 2. Unless the context requires otherwise, the following
 25 definitions apply throughout this chapter:

26 (1) "Claim" means a right to payment, regardless of whether
 27 the right is reduced to judgment, liquidated, unliquidated,
 28 fixed, contingent, matured, immature, disputed, undisputed,
 29 legal, equitable, secured, or unsecured.

30 (2) "Creditor" means a person who has a claim against the
 31 transferor.

32 (3) "Debt" means liability on a claim.

33 (4) "Disposition" means a transfer, conveyance, or assignment
 34 of property, including a change in the legal ownership of
 35 property that occurs when a trustee is substituted for another
 36 trustee or when at least one (1) trustee is added. The term also
 37 includes the exercise of a power that causes a transfer of
 38 property to a trustee. However, the term does not include the
 39 release or relinquishment of an interest in property that, until
 40 the release or relinquishment, was the subject of a qualified
 41 disposition.

42 (5) "Investment decision" means the retention, purchase, sale,



- 1 exchange, tender, or other transaction affecting the ownership
 2 of or rights in an investment.
- 3 (6) "Legacy trust" means an irrevocable trust established
 4 under section 3 of this chapter.
- 5 (7) "Lender" means a company or entity that extends credit,
 6 including but not limited to a financial institution (as defined
 7 by IC 28-1-1-3(1)), a company or entity that extends credit
 8 under IC 24-4.4 or IC 24-4.5, or the successors and assigns of
 9 the company or entity.
- 10 (8) "Person" means an individual at least eighteen (18) years
 11 of age, a corporation, a trust, a limited liability company, a
 12 limited liability partnership, a partnership, a governmental
 13 entity, the state, or a political subdivision of the state.
- 14 (9) "Property" means real property, personal property, or an
 15 interest in real or personal property.
- 16 (10) "Qualified affidavit" means a sworn affidavit executed
 17 under section 5 of this chapter.
- 18 (11) "Qualified disposition" means a disposition by a
 19 transferor to a legacy trust.
- 20 (12) "Qualified trustee" means a person qualified to serve as
 21 the trustee of a legacy trust under section 6 of this chapter.
- 22 (13) "Transferor" means a person who as:
 23 (A) an owner of property;
 24 (B) a holder of a power of appointment that authorizes the
 25 holder to appoint in favor of the holder, the holder's
 26 creditors, the holder's estate, or the creditors of the
 27 holder's estate; or
 28 (C) a trustee;
 29 directly or indirectly makes a disposition or causes a
 30 disposition to be made.
- 31 (14) "Trust director" means a person given authority by the
 32 terms of a legacy trust to direct, consent to, or disapprove
 33 actual or proposed investment decisions, distribution
 34 decisions, or other decisions related to property in a legacy
 35 trust.
- 36 **Sec. 3. A legacy trust is established by:**
 37 (1) designating in writing in the trust that the trust is a legacy
 38 trust established under this chapter;
 39 (2) including the terms required by section 4 of this chapter in
 40 the legacy trust; and
 41 (3) delivering a qualified affidavit containing the statements
 42 required by section 5 of this chapter to the qualified trustee.



- 1 **Sec. 4. A legacy trust must do the following:**
 2 (1) Provide for the appointment of at least one (1) qualified
 3 trustee for the property that is the subject of a qualified
 4 disposition.
 5 (2) Expressly incorporate Indiana law to govern the validity,
 6 construction, and administration of the trust.
 7 (3) Be irrevocable.
 8 (4) Provide that the interests of the transferor or beneficiary
 9 in the trust property or the income from the trust property
 10 may not voluntarily or involuntarily be transferred, assigned,
 11 pledged, or mortgaged before the qualified trustee actually
 12 distributes the property or income to the beneficiary.
- 13 **Sec. 5. (a) A qualified affidavit must be signed under the**
 14 **penalties of perjury, and state the following:**
 15 (1) That the transferor has full right, title, and authority to
 16 transfer the property to the legacy trust.
 17 (2) That the transfer of the property to the legacy trust will
 18 not render the transferor insolvent.
 19 (3) That the transferor does not intend to defraud a creditor
 20 by transferring the property to the legacy trust.
 21 (4) That there are no pending or threatened court actions
 22 against the transferor other than the court actions identified
 23 by the transferor and attached to the qualified affidavit.
 24 (5) That the transferor is not involved in any administrative
 25 proceedings other than the administrative proceedings
 26 identified by the transferor and attached to the qualified
 27 affidavit.
 28 (6) That the transferor does not contemplate filing for relief
 29 under the federal bankruptcy code.
 30 (7) That the property transferred to the legacy trust is not
 31 derived from unlawful activities.
- 32 (b) Except as provided in subsection (c), a qualified affidavit
 33 must be signed by the transferor.
- 34 (c) In the case of a disposition by a transferor who is a trustee,
 35 the qualified affidavit must be signed by the transferor who made
 36 the original disposition to the trustee. A qualified affidavit signed
 37 under this subsection must state the facts as of the time of the
 38 original disposition.
- 39 (d) If a transferor is a married individual at the time a qualified
 40 affidavit is signed, the transferor shall provide a copy of the
 41 qualified affidavit to the transferor's spouse.
- 42 **Sec. 6. (a) A person may serve as a qualified trustee of a legacy**



1 trust if the person is not the transferor and satisfies either of the
2 following requirements:

3 (1) In the case of an individual, the individual is a resident of
4 Indiana.

5 (2) In all other cases, the person is:

6 (A) authorized by Indiana law to act as a trustee; and

7 (B) subject to the supervision of:

8 (i) the department of financial institutions; or

9 (ii) the federal Office of the Comptroller of the
10 Currency, the Federal Deposit Insurance Corporation,
11 the Board of Governors of the Federal Reserve System,
12 the federal Office of Thrift Supervision, or any successor
13 to these agencies.

14 (b) A qualified trustee shall do the following:

15 (1) Maintain or arrange for providing custody of the property
16 subject to the qualified disposition in Indiana.

17 (2) Maintain complete and accurate records for the legacy
18 trust on an exclusive or nonexclusive basis.

19 (3) Prepare or arrange for the preparation of all required tax
20 returns for the legacy trust.

21 (4) Materially participate in the administration of the legacy
22 trust.

23 Sec. 7. (a) Except as provided in section 8 of this chapter, no
24 cause of action of any kind, including a cause of action to enforce
25 a judgment, may be brought for:

26 (1) an attachment or other provisional remedy against
27 property that is the subject of a qualified disposition to a
28 legacy trust; or

29 (2) the avoidance of a qualified disposition to a legacy trust.

30 The protections provided to a qualified disposition by this
31 subsection apply notwithstanding any law to the contrary set forth
32 outside this chapter.

33 (b) If a court declines to apply Indiana law in determining the
34 effect of a spendthrift provision in a legacy trust in an action
35 brought against a legacy trust, the trustee of the legacy trust shall
36 immediately resign and, without further order of any court, cease
37 to be the trustee of the legacy trust. When a trustee resigns under
38 this section, the trustee has the power only to convey the trust
39 property to a successor trustee appointed under this section. A
40 successor trustee shall succeed the resigning trustee in accordance
41 with the terms of the legacy trust. If the trust does not provide for
42 a successor trustee and the trust would otherwise be without a



1 trustee, any beneficiary of the trust may petition an Indiana court
 2 to appoint a successor trustee. The Indiana court receiving the
 3 petition shall appoint a successor trustee to serve in accordance
 4 with the terms and conditions that the court determines are
 5 consistent with the purposes of the trust and this chapter.

6 (c) A legacy trust and its property are protected under this
 7 section regardless of whether or not the transferor:

8 (1) serves as a trust adviser under section 12 of this chapter;

9 or

10 (2) retains a power described in section 13 of this chapter.

11 Sec. 8. (a) Except as provided in subsection (e), a claim against
 12 property that is the subject of a qualified disposition to a legacy
 13 trust is barred by section 7 of this chapter unless the claim is one

14 (1) of the following:

15 (1) Except as provided in subsection (b), an action brought in
 16 Indiana under the Uniform Fraudulent Transfer Act
 17 (IC 32-18-2) in which the requirements for recovery under the
 18 act are met by clear and convincing evidence.

19 (2) An action to enforce the child support obligations of the
 20 transferor under a judgment or court order in existence at the
 21 time of the transferor's qualified disposition to the legacy
 22 trust.

23 (3) A court judgment or order for the division of property in
 24 a dissolution of the transferor's marriage or a legal separation
 25 between the transferor and the transferor's spouse, if the
 26 transferor's distribution to the legacy trust was made:

27 (A) after the date of the transferor's marriage that is
 28 subject to the dissolution or legal separation; or

29 (B) within thirty (30) days before the date of the
 30 transferor's marriage that is subject to the dissolution or
 31 legal separation unless the transferor provided written
 32 notice of the qualified disposition to the other party to the
 33 marriage at least three (3) days before making the
 34 qualified disposition.

35 (b) A claim brought under an action described in subsection
 36 (a)(1) is extinguished unless:

37 (1) the creditor's claim arose before the qualified disposition
 38 to a legacy trust was made and the action is brought not later
 39 than the later of:

40 (A) two (2) years after the transfer was made; or

41 (B) six (6) months after the transfer:

42 (i) was recorded or made a public record; or



1 (ii) if not recorded or made a public record, was
 2 discovered or could have reasonably been discovered by
 3 the creditor; or

4 (2) notwithstanding IC 32-18-2-19, the creditor's claim arose
 5 concurrent with or after the qualified disposition and the
 6 action is brought not more than two (2) years after the date of
 7 the qualified disposition.

8 (c) A qualified disposition made by a transferor who is a trustee
 9 is considered for purposes of this chapter to have been made on the
 10 date that the property that is subject to the qualified disposition
 11 was originally transferred in trust to the trustee or any predecessor
 12 trustee and the conditions set forth in section 4(3) of this chapter
 13 are satisfied.

14 (d) If more than one (1) qualified disposition is made by means
 15 of the same legacy trust:

16 (1) the making of a subsequent qualified disposition is
 17 disregarded when determining whether a creditor's claim
 18 with respect to a prior qualified disposition is extinguished
 19 under subsection (b); and

20 (2) any distribution to a beneficiary is considered to have been
 21 made from the latest qualified disposition.

22 (e) If the state of Indiana is a creditor of a transferor, then
 23 notwithstanding subsection (a)(1) and subsection (b), the state of
 24 Indiana may bring an action against a qualified trustee to assert a
 25 claim against or to recover property that is the subject of a
 26 qualified disposition by proceeding under the Indiana Uniform
 27 Fraudulent Transfer Act, subject to the standard of evidence in
 28 IC 32-18-2-14 and IC 32-18-2-15, and the limitation periods in
 29 IC 32-18-2-19.

30 Sec. 9. (a) If a creditor's claim is allowed under section 8 of this
 31 chapter, the transferor's qualified disposition to a legacy trust is
 32 subject to the claim only to the extent necessary to satisfy the
 33 transferor's debt to the creditor making the allowed claim.

34 (b) In the event the trustee participates in litigation brought by
 35 a lender to enforce its rights under section 1(b)(1) of this chapter,
 36 the trustee may recover the fees and costs incurred in such
 37 litigation from the trust only after the lender has been paid in full.

38 (c) If a creditor's claim is allowed under section 8 of this chapter
 39 and the creditor has not sought to enforce its rights under section
 40 1(b)(1) of this chapter, the claim is limited as follows:

41 (1) If the court is satisfied that a qualified trustee has not
 42 acted in bad faith in accepting or administering the property



1 that is the subject of the qualified disposition:

2 (A) the qualified trustee has a first and paramount lien
3 against the property that is the subject of the qualified
4 disposition in an amount equal to the entire cost, including
5 attorney's fees, properly incurred by the qualified trustee
6 in the defense of the action or proceedings filed by the
7 creditor;

8 (B) the creditor's claim shall be allowed subject to the
9 proper fees, costs, preexisting rights, claims, and interests
10 of the qualified trustee and of any predecessor qualified
11 trustee that has not acted in bad faith; and

12 (C) it is presumed that the qualified trustee did not act in
13 bad faith merely by accepting the property that is the
14 subject of the qualified disposition.

15 (2) If the court is satisfied that a beneficiary of a legacy trust
16 has not acted in bad faith, and the distribution was made to
17 the beneficiary before the creditor made the trustee aware of
18 its claim or commenced an action to enforce its claim, the
19 creditor's claim is subject to the right of the beneficiary to
20 retain any distribution made upon the exercise of a trust
21 power or the discretion vested in the qualified trustee that was
22 properly exercised before the trustee was made aware of the
23 claim or an action was commenced to enforce the claim. and

24 Sec. 10. A spendthrift provision described in section 4(4) of this
25 chapter is considered a restriction on the transfer of the
26 transferor's beneficial interest in the trust that is enforceable
27 under applicable nonbankruptcy law within the meaning of Section
28 541(c)(2) of the federal Bankruptcy Code (11 U.S.C. 541(c)(2)) or
29 any successor provision of the federal Bankruptcy Code.

30 Sec. 11. Except as permitted by the terms of a legacy trust and
31 by sections 12 and 13 of this chapter, the transferor may not have
32 any rights or authority with respect to the principal or income of
33 the legacy trust. An agreement or understanding purporting to
34 grant or permit the retention of any greater rights or authority is
35 void.

36 Sec. 12. A transferor who makes a qualified disposition may also
37 serve as an investment adviser to the trust. However, the
38 transferor may not serve as a trust director to a legacy trust except
39 with respect to the retention of a veto right permitted by section
40 13(a)(1) of this chapter.

41 Sec. 13. (a) A legacy trust is not considered revocable because of
42 the inclusion of one (1) or more of the following:



- 1 (1) A transferor's power to veto a distribution from the trust.
- 2 (2) A power of appointment (other than the power to appoint
- 3 to the transferor, the transferor's creditors, the transferor's
- 4 estate, or the creditors of the transferor's estate) that may be
- 5 exercised by will or other written instrument of the transferor
- 6 that is effective only upon the transferor's death.
- 7 (3) The transferor's potential or actual receipt of income or
- 8 principal, including a right to income retained in the trust.
- 9 (4) The transferor's potential or actual receipt of income or
- 10 principal from a charitable remainder unitrust or charitable
- 11 remainder annuity trust (as those terms are defined in Section
- 12 664 of the Internal Revenue Code).
- 13 (5) The transferor's potential or actual receipt of income or
- 14 principal from a grantor retained annuity trust or grantor
- 15 retained unitrust that is allowed under Section 2702 of the
- 16 Internal Revenue Code.
- 17 (6) The transferor's potential or actual receipt or use of
- 18 principal when that potential or actual receipt or use results
- 19 from a qualified trustee's acting:
- 20 (A) in the qualified trustee's discretion;
- 21 (B) under a standard that governs the distribution of
- 22 principal and does not confer upon the transferor a power
- 23 to consume, invade, or appropriate property for the benefit
- 24 of the transferor unless the power of the transferor is
- 25 limited by an ascertainable standard relating to health,
- 26 education, support, or maintenance within the meaning of
- 27 Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue
- 28 Code; or
- 29 (C) at the direction of a trust director described in section
- 30 14 of this chapter who acts:
- 31 (i) in the trust director's discretion; or
- 32 (ii) under a standard that governs the distribution of
- 33 principal and does not confer upon the transferor a
- 34 power to consume, invade, or appropriate property for
- 35 the benefit of the transferor unless the power of the
- 36 transferor is limited by an ascertainable standard
- 37 relating to health, education, support, or maintenance
- 38 within the meaning of Section 2041(b)(1)(A) or
- 39 2514(c)(1) of the Internal Revenue Code.
- 40 (1) to remove and appoint qualified trustees or trust
- 41 directors; and
- 42 (2) to direct, consent to, or disapprove distributions from the



1 trust.
 2 (b) Trust directors are not required to satisfy the requirements
 3 imposed upon trustees by section 6 of this chapter.

4 Sec. 15. If:
 5 (1) a qualified trustee of a legacy trust ceases to meet the
 6 requirements of section 6 of this chapter; and
 7 (2) there remains no trustee of the legacy trust that meets the
 8 requirements of section 6 of this chapter;

9 the qualified trustee described in subdivision (1) is considered to
 10 have resigned when the qualified trustee ceased to meet the
 11 requirements of section 6 of this chapter, and a successor trustee
 12 provided for in the legacy trust shall become a qualified trustee. If
 13 the legacy trust does not provide for a successor qualified trustee,
 14 a court shall appoint a successor qualified trustee upon the
 15 application of any interested party.

16 cause of action to enforce a judgment may not be brought at law or
 17 equity against:

18 (1) a trustee or adviser of a legacy trust; or
 19 (2) any person involved in the counseling, drafting,
 20 preparation, execution, or funding of a legacy trust;

21 if, as of the date of the cause of action, a cause of action by a
 22 creditor with respect to the legacy trust would be barred by this
 23 section.

24 (c) For purposes of this section, the counseling, drafting,
 25 preparation, execution, and funding of a legacy trust include the
 26 counseling, drafting, preparation, execution, and funding of a
 27 limited partnership or a limited liability company if interests in the
 28 limited partnership or limited liability company are subsequently
 29 transferred to the legacy trust.

30 Sec. 16. The common law rule against perpetuities and the
 31 Uniform Statutory Rule Against Perpetuities (IC 32-17-8) do not
 32 apply to:

33 (1) the property or property interests in a legacy trust; or
 34 (2) the terms and provisions of a legacy trust.

35 Sec. 17. (a) Nothing in this chapter shall be construed to prohibit
 36 a lender from enforcing its rights in property identified in section
 37 1(b) of this chapter and, to the extent necessary, naming the legacy
 38 trust or trustee of the trust as a defendant to the action or
 39 proceeding.

40 (b) If an asset described in subsection 1(b)(1) of this chapter is
 41 transferred to a legacy trust or trustee of a legacy trust, the
 42 transferor of that asset must send written notice of the transfer to



1 the pertinent lender within fifteen (15) days after that transfer. The
 2 transferor must send the notice by certified mail, return receipt
 3 requested, to the registered agent for the lender. If there is no
 4 registered agent for the lender, the transferor must send notice to
 5 one (1) of the following:

- 6 (1) The last known address of the lender.
 7 (2) The last address specified by the lender for mailing
 8 payments on the obligations.
 9 (3) The address specified by the lender for general inquiries
 10 by customers.

11 The notice must include the name of the transferor, a description
 12 of the asset transferred, the name of the trustee, and the date that
 13 the transfer was completed. Upon request, the transferor or trustee
 14 shall provide the lender with a certification of the trust under
 15 IC 30-4-4-4, the names and addresses of the qualified beneficiaries
 16 of the trust, and copies of the pages from the trust instrument that
 17 identify the current trustee and describe the trustee's
 18 administrative powers and duties.

19 (c) Nothing in this chapter shall be construed to authorize any
 20 disposition that is prohibited by the terms of any agreements,
 21 notes, guaranties, mortgages, indentures, instruments,
 22 undertakings, or other documents. Any provisions that prohibit
 23 such transfer or disposition shall be binding and shall make this
 24 chapter inapplicable.

25 (d) In the event of a conflict between this section and any other
 26 provision of this chapter, this section shall control.

27 SECTION 10. IC 30-4-9 IS ADDED TO THE INDIANA CODE AS
 28 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 29 1, 2019]:

30 **Chapter 9. Uniform Directed Trust Act**

31 **Sec. 1. This chapter may be cited as the Uniform Directed Trust**
 32 **Act.**

33 **Sec. 2. As used in this chapter, the following definitions apply:**

- 34 (1) "Breach of trust" includes a violation by a trust director
 35 or trustee of a duty imposed on that director or trustee by the
 36 terms of the trust, this chapter, or the law of this state other
 37 than this chapter.
 38 (2) "Directed trust" means a trust for which the terms of the
 39 trust grant a power of direction.
 40 (3) "Directed trustee" means a trustee that is subject to a
 41 trust director's power of direction.
 42 (4) "Person" means an individual, estate, business or



- 1 nonprofit entity, public corporation, government or
 2 government subdivision, agency, or instrumentality or other
 3 legal entity.
- 4 (5) "Power of direction" means a power over a trust granted
 5 to a person by the terms of the trust to the extent the power is
 6 exercisable while the person is not serving as a trustee. The
 7 term includes a power over the investment, management, or
 8 distribution of trust property or other matters of trust
 9 administration. The term excludes the powers described in
 10 section 5(b) of this chapter.
- 11 (6) "Settlor" means a person, including a testator, that
 12 creates, or contributes property to, a trust. If more than one
 13 (1) person creates or contributes property to a trust, each
 14 person is a settlor of the portion of the trust property
 15 attributable to that person's contribution except to the extent
 16 another person has the power to revoke or withdraw that
 17 portion.
- 18 (7) "State" means a state of the United States, the District of
 19 Columbia, Puerto Rico, the United States Virgin Islands, or
 20 any other territory of possession subject to the jurisdiction of
 21 the United States.
- 22 (8) "Terms of a trust" means:
- 23 (A) except as otherwise provided in clause (B), the
 24 manifestation of the settlor's intent regarding a trust's
 25 provisions as:
- 26 (i) expressed in the trust instrument; or
 27 (ii) established by other evidence that would be
 28 admissible in a judicial proceeding; or
- 29 (B) the trust's provisions as established, determined, or
 30 amended by:
- 31 (i) a trustee or trust director in accordance with
 32 applicable law; or
 33 (ii) court order.
- 34 (9) "Trust director" means a person that is granted a power
 35 of direction by the terms of a trust to the extent the power is
 36 exercisable while the person is not serving as a trustee. The
 37 person is a trust director whether or not the terms of the trust
 38 refer to the person as a trust director and whether or not the
 39 person is a beneficiary or settlor of the trust.
- 40 (10) "Trustee" includes an original, additional, and successor
 41 trustee, and a cotrustee.
- 42 (11) "Willful misconduct" means intentional wrongdoing, and



1 not mere negligence, gross negligence, or recklessness.

2 (12) "Wrongdoing" means malicious conduct or conduct
3 designed to defraud or to seek an unconscionable advantage.

4 **Sec. 3. (a) This chapter applies to a trust, whenever created, that**
5 **has its principal place of administration in Indiana, subject to the**
6 **following:**

7 (1) If the trust was created before July 1, 2019, this chapter
8 applies only to a decision or action occurring after June 30,
9 2019.

10 (2) If the principal place of administration of the trust is
11 changed to Indiana after June 30, 2019, this chapter applies
12 only to a decision or action occurring on or after the date of
13 the change.

14 (b) Without precluding other means to establish a sufficient
15 connection with the designated jurisdiction in a directed trust, the
16 terms of the trust that designate the principal place of
17 administration of the trust are valid and controlling if:

18 (1) a trustee's principal place of business is located in or a
19 trustee is a resident of the designated jurisdiction;

20 (2) a trust director's principal place of business is located in
21 or a trust director is a resident of the designated jurisdiction;
22 or

23 (3) all or part of the administration occurs in the designated
24 jurisdiction.

25 **Sec. 4. The common law and principles of equity supplement**
26 **this chapter, except to the extent modified by this chapter or law of**
27 **Indiana other than this chapter.**

28 **Sec. 5. (a) As used in this section, "power of appointment"**
29 **means a power that enables a person acting in a nonfiduciary**
30 **capacity to designate a recipient of an ownership interest in or**
31 **another power of appointment over trust property.**

32 (b) This chapter does not apply to a:

33 (1) power of appointment;

34 (2) power to appoint or remove a trustee or trust director;

35 (3) power of a settlor over a trust to the extent the settlor has
36 a power to revoke the trust;

37 (4) power of a beneficiary over a trust to the extent the
38 exercise or nonexercise of the power affects the beneficiary
39 interest of:

40 (A) the beneficiary; or

41 (B) another beneficiary represented by the beneficiary
42 with respect to the exercise or nonexercise of the power; or



1 **(5) power over a trust if:**

2 **(A) the terms of the trust provide that the power is held in**
 3 **a nonfiduciary capacity; and**

4 **(B) the power must be held in a nonfiduciary capacity to**
 5 **achieve the settlor's tax objectives under the Internal**
 6 **Revenue Code.**

7 **(c) Unless the terms of a trust provide otherwise, a power**
 8 **granted to a person to designate a recipient of an ownership**
 9 **interest in or power of appointment over trust property that is**
 10 **exercisable while the person is not serving as a trustee is a power**
 11 **of appointment and not a power of direction.**

12 **Sec. 6. (a) Subject to section 7 of this chapter, the terms of the**
 13 **trust may grant a power of direction to a trust director.**

14 **(b) Unless the terms of a trust provide otherwise:**

15 **(1) a trust director may exercise any further power**
 16 **appropriate to the exercise or nonexercise of a power of**
 17 **direction granted to the director under subsection (a); and**

18 **(2) trust directors with joint powers must act by majority**
 19 **decision.**

20 **Sec. 7. A trust director is subject to the same rules as a trustee**
 21 **in a like position and under similar circumstances in the exercise**
 22 **or nonexercise of a power of direction or further power under**
 23 **section 6(b)(1) of this chapter regarding:**

24 **(1) a payback provision in the terms of a trust necessary to**
 25 **comply with the reimbursement requirements under 42**
 26 **U.S.C. 1396p(d)(4)(A); or**

27 **(2) a charitable interest in the trust, including notice**
 28 **regarding the interest to the attorney general under**
 29 **IC 30-4-6-6.**

30 **Sec. 8. (a) Subject to subsection (b), with respect to a power of**
 31 **direction or further power under section 6(b)(1) of this chapter:**

32 **(1) a trust director has the same fiduciary duty and liability in**
 33 **the exercise or nonexercise of the power:**

34 **(A) if the power is held individually, as a sole trustee in a**
 35 **like position and under similar circumstances; or**

36 **(B) if the power is held jointly with a trustee or another**
 37 **trust director, as a cotrustee in a like position and under**
 38 **similar circumstances; and**

39 **(2) the terms of the trust may vary the director's duty or**
 40 **liability to the same extent the terms of the trust could vary**
 41 **the duty or liability of a trustee in a like position and under**
 42 **similar circumstances.**



1 (b) Unless the terms of a trust provide otherwise, if a trust
2 director is licensed, certified, or otherwise authorized or permitted
3 by law other than this chapter to provide health care in the
4 ordinary course of the director's business or practice of a
5 profession, to the extent the director acts in that capacity, the
6 director has no duty or liability under this chapter.

7 (c) The terms of a trust may impose a duty or liability on a trust
8 director in addition to the duties and liabilities under this section.

9 Sec. 9. (a) Subject to subsection (b), a directed trustee shall take
10 reasonable action to comply with a trust director's exercise or
11 nonexercise of a power of direction or further power under section
12 6(b)(1) of this chapter, and the trustee is not liable for the action.

13 (b) A directed trustee must not comply with a trust director's
14 exercise or nonexercise of a power of direction or further power
15 under section 6(b)(1) of this chapter to the extent that by
16 complying the trustee would engage in willful misconduct.

17 (c) An exercise of power of direction under which a trust
18 director may release a trustee or another trust director from
19 liability for breach of trust is not effective if:

- 20 (1) the breach involved the trustee's or other director's willful
21 misconduct;
22 (2) the release was induced by improper conduct of the trustee
23 or other director in procuring the release; or
24 (3) at the time of the release, the director did not know the
25 material facts relating to the breach.

26 (d) A directed trustee that has reasonable doubt about the
27 directed trustee's duty under this section may petition the court for
28 instructions.

29 (e) The terms of a trust may impose a duty or liability on a
30 directed trustee in addition to the duties and liabilities under this
31 section.

32 Sec. 10. (a) Subject to section 11 of this chapter, a trustee shall
33 provide information to a trust director to the extent the
34 information is reasonably related both to:

- 35 (1) the powers or duties of the trustee; and
36 (2) the powers or duties of the director.

37 (b) Subject to section 11 of this chapter, a trust director shall
38 provide information to a trustee or another trust director to the
39 extent the information is reasonably related to:

- 40 (1) the powers or duties of the director; and
41 (2) the powers or duties of the trustee or other director.

42 (c) A trustee that acts in reliance on information provided by a



1 trust director is not liable for a breach of trust to the extent the
2 breach resulted from the reliance, unless by so acting, the trustee
3 engages in willful misconduct.

4 (d) A trust director that acts in reliance on information
5 provided by a trustee or another trust director is not liable for a
6 breach of trust to the extent the breach resulted from the reliance,
7 unless by so acting, the trust director engages in willful
8 misconduct.

9 Sec. 11. (a) Unless the terms of a trust provide otherwise:

10 (1) a trustee does not have a duty to:

11 (A) monitor a trust director; or

12 (B) inform or give advice to a settlor, beneficiary, trustee,
13 or trust director concerning an instance in which the
14 trustee might have acted differently than the director; and

15 (2) by taking an action described in subdivision (1), a trustee
16 does not assume the duty excluded by subdivision (1).

17 (b) Unless the terms of a trust provide otherwise:

18 (1) a trust director does not have a duty to:

19 (A) monitor a trustee or another trust director; or

20 (B) inform or give advice to a settlor, beneficiary, trustee,
21 or another trust director concerning an instance in which
22 the director might have acted differently than a trustee or
23 another trust director; and

24 (2) by taking an action described in subdivision (1), a trust
25 director does not assume the duty excluded by subdivision (1).

26 Sec. 12. The terms of a trust may relieve a cotrustee from duty
27 and liability with respect to another cotrustee's exercise or
28 nonexercise of a power of the other cotrustee to the same extent
29 that in a directed trust a directed trustee is relieved from duty and
30 liability with respect to a trust director's power of direction under
31 sections 9 through 11 of this chapter.

32 Sec. 13. (a) An action against a trust director for breach of trust
33 must be commenced within the same limitation period as an action
34 against a trustee under IC 30-4-6-12.

35 (b) A report or accounting has the same effect on the limitation
36 period for an action against a trust director for breach of trust that
37 the report or accounting would have under IC 30-4-6-12 in an
38 action for breach of trust against a trustee who is in a like position
39 and under similar circumstances.

40 Sec. 14. In an action against a trust director for breach of trust,
41 the director may assert the same defenses a trustee in a like
42 position and under similar circumstances could assert in an action



1 for breach of trust against the trustee.

2 **Sec. 15. (a)** By accepting appointment as a trust director of a
3 trust under this chapter, the director submits to personal
4 jurisdiction of the courts of the state of Indiana regarding any
5 matter related to a power or duty of the director.

6 **(b)** This section does not preclude other methods of obtaining
7 jurisdiction over a trust director.

8 **Sec. 16.** Unless the terms of a trust provide otherwise, the rules
9 applicable to a trustee apply to a trust director regarding the
10 following matters:

11 **(1)** Acceptance (IC 30-4-2-2).

12 **(2)** Giving of bond to secure performance (IC 30-4-6-8).

13 **(3)** Reasonable compensation (IC 30-4-5-16).

14 **(4)** Resignation and removal (IC 30-4-3-29).

15 **(5)** Vacancy and appointment of successor (IC 30-4-3-33).

16 **Sec. 17.** In applying and construing this uniform act,
17 consideration must be given to the need to promote uniformity of
18 the law with respect to its subject matter among the states that
19 enact it.

20 SECTION 11. IC 34-30-2-132.7 IS ADDED TO THE INDIANA
21 CODE AS A NEW SECTION TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2019]: **Sec. 132.7. IC 30-4-8-16 (Concerning**
23 **legacy trusts).**



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 265, 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 13, line 41, delete "Sec. 1. This" and insert "**Sec. 1. (a) Subject to the limitations set forth in subsection (b), this**".

Page 14, between lines 2 and 3, begin a new paragraph and insert: "**(b) This chapter does not apply to:**

- (1) any assets that are listed on an application or financial statement completed by the transferor and which is submitted to a lender in connection with a request to obtain or maintain credit from the lender; or**
- (2) any assets of a legacy trust that are listed on an application or financial statement completed on behalf of the legacy trust and which is submitted to a lender in connection with a request to obtain or maintain credit from the lender on behalf of the legacy trust.**

In the event that assets described in subsection (b)(1) are later transferred to a legacy trust and a default occurs under the loan or extension of credit, either before or after the transfer or disposition under the legacy trust, the lender shall be entitled to proceed against any assets listed on the applications or financial statements which were submitted in connection with the loan, or any modifications, amendments, or renewals of the loan. Nothing in this chapter shall prohibit such action. A change in the character, form, or ownership of the assets described in subsection (b)(1) shall in no way make subsection (b)(1) inapplicable."

Page 14, between lines 25 and 26, begin a new line block indented and insert:

"(7) "Lender" means a company or entity that extends credit, including but not limited to a financial institution (as defined by IC 28-1-1-3(1)), a company or entity that extends credit under IC 24-4.4 or IC 24-4.5, or the successors and assigns of the company or entity."

Page 14, line 26, delete "(7)" and insert "**(8)**".

Page 14, line 30, delete "(8)" and insert "**(9)**".

Page 14, line 32, delete "(9)" and insert "**(10)**".

Page 14, line 34, delete "(10)" and insert "**(11)**".

Page 14, line 36, delete "(11)" and insert "**(12)**".

Page 14, line 38, delete "(12)" and insert "**(13)**".

Page 15, line 5, delete "(13)" and insert "**(14)**".



Page 15, line 5, delete "adviser"" and insert "**director**".

Page 15, line 29, after "must" insert "**be signed under the penalties of perjury, and**".

Page 17, line 26, delete "A" and insert "**Except as provided in subsection (e), a**".

Page 18, line 26, after "trustee" insert "**and the conditions set forth**".

Page 18, line 26, delete "a form that satisfies".

Page 18, line 26, delete "and 4(4)".

Page 18, line 26, delete "chapter." and insert "**chapter are satisfied.**".

Page 18, between lines 34 and 35, begin a new paragraph and insert:

"(e) If the state of Indiana is a creditor of a transferor, then notwithstanding subsection (a)(1) and subsection (b), the state of Indiana may bring an action against a qualified trustee to assert a claim against or to recover property that is the subject of a qualified disposition by proceeding under the Indiana Uniform Fraudulent Transfer Act, subject to the standard of evidence in IC 32-18-2-14 and IC 32-18-2-15, and the limitation periods in IC 32-18-2-19."

Page 18, between lines 38 and 39, begin a new paragraph and insert:

"(b) In the event the trustee participates in litigation brought by a lender to enforce its rights under section 1(b)(1) of this chapter, the trustee may recover the fees and costs incurred in such litigation from the trust only after the lender has been paid in full."

Page 18, line 39, delete "(b)" and insert "(c)".

Page 18, line 39, after "section 8" insert "**of this chapter and the creditor has not sought to enforce its rights under section 1(b)(1)**".

Page 19, line 11, delete "had" and insert "**has**".

Page 19, line 16, delete "faith:" and insert "**faith, and the distribution was made to the beneficiary before the creditor made the trustee aware of its claim or commenced an action to enforce its claim,**".

Page 19, line 17, delete "(A)".

Page 19, line 21, delete "creditor" and insert "**trustee was made aware of the claim or an action was**".

Page 19, line 21, delete "an action".

Page 19, line 21, delete "claim;" and insert "**claim.**".

Page 19, run in lines 16 through 21.

Page 19, delete lines 22 through 26.

Page 19, line 41, delete "adviser" and insert "**director**".

Page 20, line 32, delete "an adviser" and insert "**a trust director**".



Page 20, line 34, delete "adviser's" and insert "**trust director's**".

Page 21, line 1, delete "adviser" and insert "**trust director**".

Page 21, line 2, delete "adviser" and insert "**trust director**".

Page 21, line 13, delete "advisers" and insert "**trust directors**".

Page 21, line 15, delete "advisers;" and insert "**directors;**".

Page 21, line 19, delete "advisers" and insert "**directors**".

Page 21, delete lines 33 through 42.

Page 21, delete lines 1 through 14.

Page 22, delete "Sec. 17" and insert "**Sec. 16**".

Page 22, between lines 19 and 20, begin a new paragraph and insert:

"Sec. 17. (a) Nothing in this chapter shall be construed to prohibit a lender from enforcing its rights in property identified in section 1(b) of this chapter and, to the extent necessary, naming the legacy trust or trustee of the trust as a defendant to the action or proceeding.

(b) If an asset described in subsection 1(b)(1) of this chapter is transferred to a legacy trust or trustee of a legacy trust, the transferor of that asset must send written notice of the transfer to the pertinent lender within fifteen (15) days after that transfer. The transferor must send the notice by certified mail, return receipt requested, to the registered agent for the lender. If there is no registered agent for the lender, the transferor must send notice to one (1) of the following:

- (1) The last known address of the lender.**
- (2) The last address specified by the lender for mailing payments on the obligations.**
- (3) The address specified by the lender for general inquiries by customers.**

The notice must include the name of the transferor, a description of the asset transferred, the name of the trustee, and the date that the transfer was completed. Upon request, the transferor or trustee shall provide the lender with a certification of the trust under IC 30-4-4-4, the names and addresses of the qualified beneficiaries of the trust, and copies of the pages from the trust instrument that identify the current trustee and describe the trustee's administrative powers and duties.

(c) Nothing in this chapter shall be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages, indentures, instruments, undertakings, or other documents. Any provisions that prohibit such transfer or disposition shall be binding and shall make this chapter inapplicable.



(d) In the event of a conflict between this section and any other provision of this chapter, this section shall control."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 265 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 6, Nays 4.

