

IC 30-2

ARTICLE 2. GENERAL PROVISIONS

IC 30-2-1

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-2-1.5

Repealed

(Repealed by P.L.275-1985, SEC.2.)

IC 30-2-2

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-2-3

Repealed

(Repealed by Acts 1971, P.L.416, SEC.8.)

IC 30-2-4

Chapter 4. Uniform Fiduciaries Act

IC 30-2-4-1

Definitions

Sec. 1. (a) In this chapter unless the context or subject-matter otherwise requires:

(1) "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

(2) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

(3) "Person" includes a corporation, limited liability company, partnership, or other association, or two (2) or more persons having a joint or common interest.

(4) "Principal" includes any person to whom a fiduciary as such owes an obligation.

(b) A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not.

(Formerly: Acts 1927, c.17, s.1.) As amended by Acts 1982, P.L.171, SEC.92; P.L.8-1993, SEC.463.

IC 30-2-4-2

Application of payments made to fiduciaries

Sec. 2. A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right to title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

(Formerly: Acts 1927, c.17, s.2.)

IC 30-2-4-3

Registration or transfer of securities held by fiduciaries

Sec. 3. If an executor, administrator, trustee, guardian or other fiduciary or the nominee of a fiduciary in whose name are registered or to be registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, applies for the registration or transfer of the same, such corporation or company or other association, or its or their transfer agent, is not bound to inquire whether the fiduciary or nominee is committing a breach of his obligation as fiduciary or nominee in making such registration or transfer, or to see to the performance of the fiduciary obligation, and is liable for such registration or transfer only where

such registration or transfer is made with actual knowledge that such fiduciary or nominee is committing a breach of trust in requesting such registration or transfer, or with knowledge of such facts that its or their participation in such registration or transfer amounts to bad faith.

(Formerly: Acts 1927, c.17, s.3; Acts 1947, c.351, s.3.)

IC 30-2-4-4

Transfer of negotiable instrument by fiduciary

Sec. 4. If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary, in fact commits a breach of his obligation as fiduciary in transferring the instrument.

(Formerly: Acts 1927, c.17, s.4.)

IC 30-2-4-5

Check drawn by fiduciary payable to third person

Sec. 5. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

(Formerly: Acts 1927, c.17, s.5.)

IC 30-2-4-6

Check drawn by and payable to fiduciary

Sec. 6. If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith.

(Formerly: Acts 1927, c.17, s.6.)

IC 30-2-4-7

Deposit in name of fiduciary

Sec. 7. If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with the actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(Formerly: Acts 1927, c.17, s.7.)

IC 30-2-4-8

Deposit in name of principal

Sec. 8. If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(Formerly: Acts 1927, c.17, s.8.)

IC 30-2-4-9

Deposit in fiduciary's personal account

Sec. 9. If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

(Formerly: Acts 1927, c.17, s.9.)

IC 30-2-4-10

Deposit in names of two or more trustees

Sec. 10. When a deposit is made in a bank in the name of two (2) or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

(Formerly: Acts 1927, c.17, s.10.)

IC 30-2-4-11

Prior transactions

Sec. 11. The provisions of this chapter shall not apply to transactions taking place prior to May 16, 1927.

(Formerly: Acts 1927, c.17, s.11.) As amended by Acts 1982, P.L.171, SEC.93.

IC 30-2-4-12

Cases not provided for

Sec. 12. In any case not provided for in this chapter, the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

(Formerly: Acts 1927, c.17, s.12.) As amended by Acts 1982, P.L.171, SEC.94.

IC 30-2-4-13

Uniformity of interpretation

Sec. 13. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Formerly: Acts 1927, c.17, s.13.) As amended by Acts 1982, P.L.171, SEC.95.

IC 30-2-4-14

Short title

Sec. 14. This chapter may be cited as the Uniform Fiduciaries Act.
(Formerly: Acts 1927, c.17, s.14.) As amended by Acts 1982, P.L.171, SEC.96.

IC 30-2-5

Chapter 5. Uniform Act for the Simplification of Fiduciary Security Transfers

IC 30-2-5-1

Definitions

Sec. 1. In this chapter and IC 30-2-6, unless the context otherwise requires:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a protected person, a beneficial owner of a security registered in the name of a nominee, or an owner under eighteen (18) years of age, of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on the claimant's behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association, or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

(Formerly: Acts 1961, c.124, s.1; Acts 1973, P.L.293, SEC.1.) As amended by P.L.33-1989, SEC.91.

IC 30-2-5-2

Registration in name of fiduciary

Sec. 2. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

(Formerly: Acts 1961, c.124, s.2.)

IC 30-2-5-3

Assignment by fiduciary

Sec. 3. Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

- (a) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;
- (b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and
- (c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

(Formerly: Acts 1961, c.124, s.3.) As amended by Acts 1982, P.L.171, SEC.97.

IC 30-2-5-4

Evidence of appointment or incumbency

Sec. 4. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty (60) days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection (b) provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (b) except to the extent that the contents relate directly to the appointment or incumbency.

(Formerly: Acts 1961, c.124, s.4.)

IC 30-2-5-5

Adverse claims

Sec. 5. (a) A person asserting a claim of beneficial interest

adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty (30) days after the mailing and shall then make the transfer unless restrained by a court order.

(Formerly: Acts 1961, c.124, s.5.) As amended by Acts 1982, P.L.171, SEC.98.

IC 30-2-5-6

Nonliability of corporation or transfer agent

Sec. 6. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter.

(Formerly: Acts 1961, c.124, s.6.) As amended by Acts 1982, P.L.171, SEC.99.

IC 30-2-5-7

Nonliability of third persons

Sec. 7. (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent.

(Formerly: Acts 1961, c.124, s.7.) As amended by Acts 1982, P.L.171, SEC.100.

IC 30-2-5-8

Territorial application

Sec. 8. (a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

(Formerly: Acts 1961, c.124, s.8.) As amended by Acts 1982, P.L.171, SEC.101.

IC 30-2-5-9

Tax obligations

Sec. 9. This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

(Formerly: Acts 1961, c.124, s.9.) As amended by Acts 1982, P.L.171, SEC.102.

IC 30-2-5-10

Uniformity of interpretation

Sec. 10. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Formerly: Acts 1961, c.124, s.10.) As amended by Acts 1982, P.L.171, SEC.103.

IC 30-2-5-11

Short title

Sec. 11. This chapter may be cited as the Uniform Act for the Simplification of Fiduciary Security Transfers.

(Formerly: Acts 1961, c.124, s.11.) As amended by Acts 1982, P.L.171, SEC.104.

IC 30-2-6

Chapter 6. Exemption of Employee Benefit Trusts From Rule Against Perpetuities

IC 30-2-6-1

Contributions; self-employment retirement fund

Sec. 1. Either:

(1) a trust created by an employer as part of a stock bonus, pension, disability, death benefit, or profit-sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees the earnings or principal, or both earnings and principal, of the fund held in trust; or

(2) a retirement fund or trust which at any time is tax exempt under the provisions of the Internal Revenue Code and to which contributions are made by self-employed persons or qualified individuals for the purpose of providing pension or other benefits for themselves or their beneficiaries;

may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which such trust is created and shall not be invalid as violating any law against perpetuities or suspension of the power of alienation of the title to property.

(Formerly: Acts 1949, c.184, s.1; Acts 1953, c.253, s.1.) As amended by P.L.2-1987, SEC.45.

IC 30-2-6-2

Income; accumulation

Sec. 2. The income arising from any trust within the classification mentioned in the preceding section may be permitted to accumulate in accordance with the terms of such trust for as long a time as may be necessary to accomplish the purposes for which the same was created, notwithstanding any existing law or laws limiting the period during which trust income may be accumulated.

(Formerly: Acts 1949, c.184, s.2.)

IC 30-2-6-3

Termination of trust; limitation of actions

Sec. 3. No rule of law against perpetuities or suspension of the power of alienation of the title to property, or the accumulation of income, shall operate to invalidate any trust created or attempted to be created before September 10, 1949, by an employer as part of a stock bonus, pension, disability, death benefit, or profit-sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees or both for the earnings and principal of the fund held in trust, unless the trust is terminated by a court of competent jurisdiction in a suit instituted before September 11, 1950.

(Formerly: Acts 1949, c.184, s.3.) As amended by Acts 1982, P.L.171, SEC.105.

IC 30-2-7

Chapter 7. Uniform Act Governing Secured Creditors' Dividends in Liquidation Proceedings

IC 30-2-7-1

Definitions

Sec. 1. As used in this chapter, unless the context or subject-matter requires otherwise:

(a) "Liquidation proceeding" includes all assignments for the benefit of creditors, whether voluntary or by operation of law; administration of insolvent decedents' estates; liquidations of insolvent banks; equity receiverships where the subject under receivership is insolvent; and any other proceedings for distribution of assets of any insolvent debtor, whether a person, decedent's estate, partnership, limited liability company, corporation, or business association.

(b) "Liquidator" means any person administering assets in any liquidation proceeding as defined in this chapter.

(c) "Insolvent debtor" means any insolvent person, decedent's estate, partnership, limited liability company, corporation, or business association involved in a liquidation proceeding as defined in this chapter.

(d) "Secured creditor" means a creditor who has either legal or equitable security for his debt upon any property of the insolvent debtor of a nature to be liquidated and distributed in a liquidation proceeding, or a creditor to whom is owed a debt for which such security is possessed by some indorser, surety, or other person secondarily liable.

(e) "Creditor's sale" includes any sale effected by the secured creditor by judicial process or otherwise under the terms of his contract or the applicable law for the purpose of realizing upon his security.

(Formerly: Acts 1941, c.50, s.1.) As amended by Acts 1982, P.L.171, SEC.106; P.L.8-1993, SEC.464.

IC 30-2-7-2

Secured creditors' claim must disclose security

Sec. 2. In a liquidation proceeding every secured creditor's claim against the general assets shall disclose the nature of the security. When a decedent's estate already in the course of administration is judicially declared insolvent or when in an equity receivership it is determined that the subject under receivership is insolvent, secured creditors having claims on file which do not comply with this section shall make disclosure within a time to be fixed by the court.

(Formerly: Acts 1941, c.50, s.2.)

IC 30-2-7-3

Effect of concealment

Sec. 3. Any secured creditor who with intent to evade the provisions of this chapter fails to disclose the existence of the

security shall not be entitled to receive or retain dividends out of the general assets, unless he thereafter releases or surrenders to the liquidator the security which he has failed to disclose, or unless he procures such release or surrender if the security is in the possession of an indorser, surety, or other person secondarily liable for the insolvent debtor.

(Formerly: Acts 1941, c.50, s.3.) As amended by Acts 1982, P.L.171, SEC.107.

IC 30-2-7-4

Value of security credited upon claims

Sec. 4. Dividends paid to secured creditors shall be computed only upon the balance due after the value of all security not exempt from the claims of unsecured creditors and not released or surrendered to the liquidator, is determined and credited upon the claim secured by it.

(Formerly: Acts 1941, c.50, s.4.)

IC 30-2-7-5

Determination of value by secured creditor

Sec. 5. (1) By collection. When the asset constituting the security is an obligation for the payment of money, the secured creditor may determine its value by collection or by exhausting his remedies thereon and then surrendering the obligation to the liquidator.

(2) By creditor's sale. When the asset constituting the security is something other than an obligation for the payment of money, the secured creditor may determine its value by creditor's sale.

(Formerly: Acts 1941, c.50, s.5.)

IC 30-2-7-6

Alternative determination of value

Sec. 6. Where valuation under the provisions of section 5 of this chapter is impracticable or would cause undue delay, the court, upon petition by either the secured creditor or the liquidator, may order the value of the security determined by any of the following methods:

(1) By compromise, if the secured creditor and the liquidator agree upon a value. The liquidator may redeem such assets by payment of the agreed value, if authorized by the court.

(2) By litigation, through proceedings in the liquidation proceedings. The liquidator may redeem such assets by paying the value so determined, if authorized by the court.

(3) By liquidator's sale of the assets which, when completed and approved by the court, shall pass to the purchaser good title, free and clear of all liens of the secured creditor, such liens to be transferred to the proceeds of the sale. The order of sale may be either:

(a) conditional, requiring the sale to be made by the liquidator only if the secured creditor does not complete a determination by collection or creditor's sale as set forth in section 5 of this chapter within a time fixed by the court; or

(b) absolute, requiring the sale to be made by the liquidator within a time fixed by the court.

Provided, that subdivision (3) shall not apply to security upon real estate or insolvent decedents' estates administered by the court.

(Formerly: Acts 1941, c.50, s.6.) As amended by Acts 1982, P.L.171, SEC.108.

IC 30-2-7-7

Exempt security not credited

Sec. 7. When any creditor has legal or equitable security upon assets which are exempt from process for the satisfaction of unsecured debts and are duly claimed as exempt by the insolvent debtor, the value of such security shall not be credited upon the claim. Amounts realized by the creditor from such security after liquidation proceedings are begun shall be disregarded in computing dividends, unless the dividend so computed exceeds the sum actually owing upon the claim, in which event only the amount owing shall be paid.

(Formerly: Acts 1941, c.50, s.7.)

IC 30-2-7-8

Uniformity of interpretation

Sec. 8. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Formerly: Acts 1941, c.50, s.9.) As amended by Acts 1982, P.L.171, SEC.109.

IC 30-2-7-9

Short title

Sec. 9. This chapter may be cited as Uniform Act Governing Secured Creditors' Dividends in Liquidation Proceedings.

(Formerly: Acts 1941, c.50, s.10.) As amended by Acts 1982, P.L.171, SEC.110.

IC 30-2-8

Repealed

(Repealed by P.L.267-1989, SEC.3.)

IC 30-2-8.5

Chapter 8.5. Indiana Uniform Transfers to Minors Act

IC 30-2-8.5-1

"Adult" defined

Sec. 1. As used in this chapter, "adult" means an individual who is at least twenty-one (21) years of age.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-2

"Benefit plan" defined

Sec. 2. As used in this chapter, "benefit plan" means an employer's plan for the benefit of an employee or partner.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-3

"Broker" defined

Sec. 3. As used in this chapter, "broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities, or both, for the person's own account or for the account of others, or both.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-4

"Custodial property" defined

Sec. 4. As used in this chapter, "custodial property" means:

- (1) an interest in property transferred to a custodian under this chapter; and
- (2) the income from and proceeds of that interest in property.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-5

"Custodian" defined

Sec. 5. As used in this chapter, "custodian" means a person designated as a custodian under section 24 of this chapter or a successor or substitute custodian designated under section 33 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-6

"Financial institution" defined

Sec. 6. As used in this chapter, "financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-7

"Guardian" defined

Sec. 7. As used in this chapter, "guardian" has the meaning set forth in IC 29-3-1-6.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-8

"Legal representative" defined

Sec. 8. As used in this chapter, "legal representative" means an individual's personal representative or guardian.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-9

"Members of the minor's family" defined

Sec. 9. As used in this chapter, "member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-10

"Minor" defined

Sec. 10. As used in this chapter, "minor" means an individual who is less than twenty-one (21) years of age.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-11

"Person" defined

Sec. 11. As used in this chapter, "person" means an individual, corporation, organization, or other legal entity.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-12

"Personal representative" defined

Sec. 12. As used in this chapter, "personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-13

"State" defined

Sec. 13. As used in this chapter, "state" includes a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession subject to the legislative authority of the United States.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-14

"Transfer" defined

Sec. 14. As used in this chapter, "transfer" means a transaction that creates custodial property under section 24 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-15

"Transferor" defined

Sec. 15. As used in this chapter, "transferor" means a person who makes a transfer under this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-16

"Trust company" defined

Sec. 16. As used in this chapter, "trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-17

Scope and jurisdiction

Sec. 17. (a) This chapter applies to a transfer that refers to this chapter in the designation under section 24(a) of this chapter by which the transfer is made if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of Indiana or the custodial property is located in Indiana. The custodianship created under this section remains subject to this chapter despite:

(1) a change in residence of:

- (A) a transferor;
- (B) the minor; or
- (C) the custodian; or

(2) the removal of custodial property from Indiana.

(b) A person designated as custodian under this chapter is subject to personal jurisdiction in Indiana with respect to a matter relating to the custodianship.

(c) A transfer that purports to be made and that is valid under the uniform transfers to minors act, the uniform gifts to minors act or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in Indiana if at the time of the transfer the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-18

Nomination of custodian

Sec. 18. (a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act". The nomination may name one (1) or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve.

The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 24(a) of this chapter.

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 24 of this chapter. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under section 24 of this chapter.
As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-19

Transfer by gift or exercise of power of appointment

Sec. 19. A person may make:

- (1) a transfer by irrevocable gift to; or
- (2) an irrevocable exercise of a power of appointment in favor of;

a custodian for the benefit of a minor under section 24 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-20

Transfer authorized by will or trust; designation of custodian

Sec. 20. (a) A personal representative or trustee may make an irrevocable transfer under section 24 of this chapter to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under section 18 of this chapter to receive the custodial property, the transfer shall be made to that person.

(c) If the testator or settlor has not nominated a custodian under section 18 of this chapter, or a person nominated as custodian dies before the transfer or is unable, declines, or is ineligible to serve, the personal representative or the trustee shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 24(a) of this chapter. The personal representative or trustee may be designated as custodian under this subsection if the personal representative or trustee is eligible to serve as custodian for property of that kind under section 24(a) of this chapter.

As added by P.L.267-1989, SEC.2. Amended by P.L.95-2007, SEC.15.

IC 30-2-8.5-21

Other transfers by fiduciary; guardian as custodian

Sec. 21. (a) A personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian

for the benefit of a minor under section 24 of this chapter in the absence of a will or under a will or trust that does not contain an authorization to do so. The personal representative or trustee may also serve as the custodian of the transferred property if the personal representative or trustee is qualified under section 24 of this chapter.

(b) A guardian may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor under section 24 of this chapter. The guardian may also serve as the custodian of the transferred property if the guardian is qualified under section 24 of this chapter.

(c) A transfer under subsection (a) or (b) may be made only if:

- (1) the personal representative, trustee, or guardian considers the transfer to be in the best interest of the minor;
- (2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and
- (3) the transfer is authorized by the court if the property transferred exceeds ten thousand dollars (\$10,000) in value.

As added by P.L.267-1989, SEC.2. Amended by P.L.95-2007, SEC.16.

IC 30-2-8.5-22

Transfer by obligor

Sec. 22. (a) A person not subject to section 20 or 21 of this chapter that holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor under section 24 of this chapter.

(b) If a person having the right to nominate a custodian under section 18 of this chapter has nominated a custodian under that section to receive the custodial property, the transfer shall be made to the custodian.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-23

Receipt for custodial property

Sec. 23. A written acknowledgement of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-24

Manner of creating custodial property and effecting transfer; designation of initial custodian; control

Sec. 24. (a) Custodial property is created and a transfer is made if:

- (1) an uncertificated security or a certificated security in registered form is:
 - (A) registered in the name of:
 - (i) the transferor;

(ii) an adult other than the transferor; or

(iii) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";
or

(B) delivered if in certificated form, or a document necessary for the transfer of an uncertificated security is delivered, together with a necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b);

(2) money is paid or delivered to a broker or financial institution for credit to an account in the name of:

(A) the transferor;

(B) an adult other than the transferor; or

(C) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

(3) the ownership of a life or endowment insurance policy or annuity contract is:

(A) registered with the issuer in the name of:

(i) the transferor;

(ii) an adult other than the transferor; or

(iii) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";
or

(B) assigned in a writing delivered to:

(i) an adult other than the transferor; or

(ii) a trust company;

whose name in the assignment is followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to:

(A) the transferor;

(B) an adult other than the transferor; or

(C) a trust company;

whose name in the notification is followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

(5) an interest in real property is recorded in the name of:

(A) the transferor;

(B) an adult other than the transferor; or

(C) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

(6) a certificate of title issued by a department or agency of a

state or of the United States that evidences title to tangible personal property is:

(A) issued in the name of:

- (i) the transferor;
- (ii) an adult other than the transferor; or
- (iii) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

or

(B) delivered and endorsed to:

- (i) an adult other than the transferor; or
- (ii) a trust company;

followed by the words: "as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act";

or

(7) an interest in property not described in subdivisions (1) through (6) is transferred to:

- (A) an adult other than the transferor; or
- (B) a trust company;

by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of subsection (a)(1)(B) and (a)(7):

TRANSFER UNDER THE INDIANA UNIFORM
TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the Indiana uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: _____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Indiana uniform transfers to minors act.

Dated: _____

(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-25

Single custodianship

Sec. 25. A transfer may be made only for one (1) minor, and only one (1) person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-26

Validity and effect of transfer

Sec. 26. (a) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

- (1) the failure of the transferor to comply with section 24(c) of this chapter concerning possession and control;
- (2) the designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 24(a) of this chapter; or
- (3) the death or incapacity of a person nominated under section 18 of this chapter or designated under section 24 of this chapter as custodian or the disclaimer of the office by that person.

(b) A transfer made under section 24 of this chapter is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter and neither the minor nor the minor's legal representative has a right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter, and grants to the custodian, and to a third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-27

Care of custodial property

Sec. 27. (a) A custodian shall:

- (1) take control of custodial property;
- (2) register or record title to custodial property if appropriate; and
- (3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian in the custodian's discretion and without liability to the minor or the minor's estate, may retain custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on:

- (1) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or
- (2) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian is the

irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify the property clearly as custodial property of the minor. Custodial property consisting of an undivided interest is identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is identified if the property is recorded, and custodial property subject to registration is identified if the property is either registered or held in an account designated in the name of the custodian, followed by the words: "as a custodian for _____ (name of minor) under the Indiana uniform transfers to minors act".

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor is at least fourteen (14) years of age.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-28

Powers of custodian

Sec. 28. (a) A custodian acting in a custodial capacity has all the rights, powers, and authority over custodial property that an unmarried adult owner has over the adult owner's own property, but a custodian may exercise those rights, powers, and authority in a custodial capacity only.

(b) This section does not relieve a custodian from liability for breach of the requirements of section 27 of this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-29

Use of custodial property; transfer of property to trust

Sec. 29. (a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

- (1) the duty or ability of the custodian personally or of any other person to support the minor; or
- (2) any other income or property of the minor that may be applicable or available for the support of the minor.

(b) At any time and without a court order, a custodian may transfer part or all of the custodial property to a trust, including a trust created by the custodian, in which:

- (1) the minor is the sole beneficiary of the trust; and
- (2) the terms of the trust satisfy the requirements of Section 2503(c) of the Internal Revenue Code and the regulations under that section.

The transfer terminates the custodianship of the property to the extent of the transfer.

(c) On petition of an interested person or the minor if the minor is at least fourteen (14) years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the court considers advisable for the use and benefit of the minor.

(d) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect an obligation of a person to support the minor.

As added by P.L.267-1989, SEC.2. Amended by P.L.238-2005, SEC.17; P.L.95-2007, SEC.17.

IC 30-2-8.5-30

Custodian's expenses, compensation, and bond

Sec. 30. (a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for a person who is a transferor under section 19 of this chapter, a custodian has an election during each calendar year to charge reasonable compensation for services performed during that year.

(c) A custodian's election to charge reasonable compensation for a calendar year must be exercised during the calendar year.

(d) Except as provided in section 33(f) of this chapter, a custodian is not required to give a bond.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-31

Exemption of third person from liability

Sec. 31. A person in good faith and without court order may act on the instructions of or otherwise deal with a person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

- (1) the validity of the purported custodian's designation;
- (2) the propriety of, or the authority under this chapter for, an act of the purported custodian;
- (3) the validity or propriety under this chapter of an instrument or instruction executed or given by the person purporting to make a transfer or by the purported custodian, or both; or
- (4) the propriety of the application of property of the minor delivered to the purported custodian.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-32

Liability to third person

Sec. 32. (a) A claim based on:

- (1) a contract entered into by a custodian acting in a custodial capacity;
- (2) an obligation arising from the ownership or control of custodial property, or both; or
- (3) a tort committed during the custodianship;

may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and fails to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-33

Renunciation, resignation, death, or removal of custodian; designation of successor custodian

Sec. 33. (a) A person nominated under section 18 of this chapter or designated under section 24 of this chapter as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If:

(1) the event giving rise to a transfer has not occurred; and

(2) no substitute custodian able, willing, and eligible to serve was nominated under section 18 of this chapter;

the person who made the nomination may nominate a substitute custodian under section 18 of this chapter. Otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer from among the persons eligible to serve as custodian for that kind of property under section 24(a) of this chapter. The custodian designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section 19 of this chapter as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor is at least fourteen (14) years of age and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is at least fourteen (14) years of age, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a guardian of the minor, or a

trust company. If the minor is less than fourteen (14) years of age or fails to act within sixty (60) days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and is responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor is at least fourteen (14) years of age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 19 of this chapter or to require the custodian to give appropriate bond.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-34

Accounting by and determination of liability of custodian

Sec. 34. (a) A minor who is at least fourteen (14) years of age, the minor's guardian or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court for:

- (1) an accounting by the custodian or the custodian's legal representative; or
- (2) a determination of responsibility between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 32 of this chapter to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to give an accounting.

(d) If a custodian is removed under section 33(f) of this chapter, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-35

Termination of custodianship

Sec. 35. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

- (1) the minor's attaining twenty-one (21) years of age; or
- (2) the minor's death.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-36

Applicability

Sec. 36. This chapter applies to a transfer within the scope of section 17 of this chapter made after this chapter's effective date:

- (1) if:
 - (A) the transfer purports to have been made under the Indiana uniform gifts to minors act (IC 30-2-8); or
 - (B) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state; and
- (2) the application of this chapter is necessary to validate the transfer.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-37

Effect on existing custodianships

Sec. 37. (a) A transfer of custodial property made before July 1, 1989, is validated even if there was no specific authority in the Indiana uniform gifts to minors act (IC 30-2-8) for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This chapter applies to all transfers made before July 1, 1989, in a manner and form prescribed in the Indiana uniform gifts to minors act (IC 30-2-8) except to the extent:

- (1) the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1989; or
- (2) provided in subsection (c).

(c) The amendments to IC 30-2-8 made by Acts 1973, P.L.293; do not apply to a custodian account established in accordance with IC 30-2-8 before January 1, 1974.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-38

Uniformity of application and construction

Sec. 38. This chapter shall be applied and construed to effectuate a general purpose to make uniform the law with respect to the subject of this chapter among states enacting this chapter.

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-39

Severability

Sec. 39. The provisions of this chapter are severable in the manner provided by IC 1-1-1-8(b).

As added by P.L.267-1989, SEC.2.

IC 30-2-8.5-40

Written election concerning custodial property

Sec. 40. (a) If a transferor:

- (1) has transferred property to a custodian for the benefit of a minor before July 1, 1989; and
- (2) has made or wishes to make further transfers of property to the same custodian for the benefit of the same minor after June 30, 1989;

the transferor shall make a written election under subsection (b) concerning the custodial property.

(b) A transferor may elect one (1) of the following:

- (1) The transferor may establish a new account under this chapter for only the property transferred after June 30, 1989.
- (2) The transferor may transfer the property transferred before July 1, 1989, into a new account established under this chapter and make further transfers of property into the account established under this subdivision.
- (3) The transferor may transfer property after June 30, 1989, into the account established before July 1, 1989. However, any property transferred into the account after June 30, 1989, is subject to this chapter.

As added by P.L.137-1994, SEC.1.

IC 30-2-8.6

Chapter 8.6. Uniform Custodial Trust Act

IC 30-2-8.6-1

Applicability

Sec. 1. (a) This chapter applies to a transfer or declaration creating a custodial trust that refers to this chapter if, at the time of the transfer or declaration:

(1) the transferor, beneficiary, or custodial trustee:

(A) is a resident of; or

(B) has its principal place of business in Indiana; or

(2) custodial trust property is located in Indiana.

(b) The custodial trust remains subject to this chapter even if the transferor, beneficiary, or custodial trustee:

(1) changes its residence or principal place of business; or

(2) removes custodial trust property;

to a location outside Indiana.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-2

Transfer under other state's law; enforcement

Sec. 2. A transfer made pursuant to an act of another state substantially similar to this chapter is governed by the law of that state and may be enforced in Indiana.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-3

Construction

Sec. 3. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-4

Citing chapter

Sec. 4. This chapter may be cited as the "Indiana Uniform Custodial Trust Act".

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-5

"Adult"

Sec. 5. As used in this chapter, "adult" means an individual who is at least eighteen (18) years of age.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-6

"Beneficiary"

Sec. 6. As used in this chapter, "beneficiary" means an individual for whom property:

(1) has been transferred to; or

(2) is held under a declaration of trust by;
a custodial trustee for the individual's use and benefit under this chapter.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-7

"Custodial trust property"

Sec. 7. As used in this chapter, "custodial trust property" means the following:

(1) An interest in property:

(A) transferred to; or

(B) held under a declaration of trust by;
a custodial trustee under this chapter.

(2) The income from and proceeds of the property interest described in subdivision (1).

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-8

"Custodial trustee"

Sec. 8. As used in this chapter, "custodial trustee" means a person designated as:

(1) trustee; or

(2) substitute or successor to the person designated as trustee;
of a custodial trust under this chapter.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-9

"Guardian"

Sec. 9. As used in this chapter, "guardian" has the meaning set forth in IC 29-3-1-6.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-10

"Incapacitated"

Sec. 10. As used in this chapter, "incapacitated" has the meaning set forth in IC 29-3-1-7.5.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-11

"Legal representative"

Sec. 11. As used in this chapter, "legal representative" means a personal representative or guardian.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-12

"Member of the beneficiary's family"

Sec. 12. As used in this chapter, "member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of whole or half blood or by adoption.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-13

"Person"

Sec. 13. As used in this chapter, "person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-14

"Personal representative"

Sec. 14. As used in this chapter, "personal representative" has the meaning set forth in IC 29-1-1-3.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-15

"State"

Sec. 15. As used in this chapter, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-16

"Transferor"

Sec. 16. As used in this chapter, "transferor" means a person who creates a custodial trust by transfer or declaration.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-17

"Trust company"

Sec. 17. As used in this chapter, "trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-18

Creating a custodial trust

Sec. 18. (a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration of the property or by an instrument of transfer that:

- (1) is executed in any lawful manner;
- (2) names an individual as beneficiary who may be the transferor; and
- (3) in substance, designates the transferee to be the custodial trustee of the property under this chapter.

(b) A person may create a custodial trust of property by a written declaration evidenced by registration of the property or by another instrument of declaration that:

- (1) is executed in any lawful manner;
- (2) describes the property;

(3) names as beneficiary an individual other than the declarant; and

(4) in substance, designates the declarant, who is also the titleholder of the property, to be the custodial trustee of the property under this chapter.

(c) A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this chapter.

(d) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-19

Terminating a custodial trust

Sec. 19. (a) Except as provided in subsection (b), a transferor may not terminate a custodial trust.

(b) A custodial trust may be terminated by the beneficiary if the beneficiary is not incapacitated. In order to terminate the trust, the beneficiary must deliver to the custodial trustee a writing that:

(1) is signed by the beneficiary; and

(2) declares the termination of the custodial trust.

(c) If not previously terminated, a custodial trust terminates on the death of the beneficiary.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-20

Adding trust property

Sec. 20. A person may augment existing custodial trust property by the addition of other property under this chapter.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-21

Successor custodial trustee

Sec. 21. The transferor may:

(1) designate; or

(2) authorize the designation of;

a successor custodial trustee in the trust instrument.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-22

Creation and enforcement of trust under other law

Sec. 22. (a) This chapter does not supersede or restrict other means of creating trusts.

(b) A trust whose terms do not conform to this chapter may be enforceable according to the terms of the trust under another law.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-23

Custodial trust upon occurrence of future event

Sec. 23. (a) A person having the right to designate the recipient of property payable or transferable upon a future event may create a

custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(c) A designation under this section may be made by:

(1) making the designation in:

(A) a will;

(B) a trust;

(C) a deed;

(D) a multiple party account;

(E) an insurance policy;

(F) an instrument exercising a power of appointment; or

(G) a writing designating a beneficiary of contractual rights;
or

(2) registering the designation with or delivering the designation to the fiduciary, payor, issuer, or obligor of the future right.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-24

Custodial trustee's acceptance of trust property

Sec. 24. (a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this chapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, _____ (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act. I undertake to administer and distribute the custodial trust property under the Indiana uniform custodial trust act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of _____.

Dated: _____

(Signature of Custodial Trustee)

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this chapter is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-25

Transfer for use and benefit of incapacitated individual

Sec. 25. (a) Unless otherwise directed by an instrument designating a custodial trustee under section 23 of this chapter, a person, including a fiduciary other than a custodial trustee, who:

- (1) holds property of; or
- (2) owes a debt to;

an incapacitated individual may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds twenty thousand dollars (\$20,000), the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee under this section.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-26

Multiple beneficiaries

Sec. 26. (a) Beneficial interests in a custodial trust created for multiple beneficiaries are considered to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship.

(b) Custodial trust property held under this chapter by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of custodial trust property held for at least two (2) beneficiaries shall separately account to each beneficiary under sections 27 and 35 of this chapter for the administration of the custodial trust.

(d) The custodial trust property or the income from the custodial trust property may not be subject to:

- (1) anticipation;
- (2) alienation;
- (3) assignment;
- (4) pledge;
- (5) appointment; or
- (6) any other voluntary or involuntary transfer;

before distribution by the custodial trustee. The custodial trustee may disregard and defeat an attempt to violate the requirements of this subsection.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-27

Custodial trustee's powers and duties

Sec. 27. (a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument identifying the property is recorded, and custodial trust property subject to registration is identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-28

Rights and powers

Sec. 28. (a) A custodial trustee acting in a fiduciary capacity has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of section 27 of this chapter.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-29

Distribution of custodial trust property

Sec. 29. (a) If a beneficiary is not incapacitated, the custodial

trustee shall:

- (1) pay to the beneficiary; or
- (2) expend for the beneficiary's use and benefit;

so much or all of the custodial trust property as the beneficiary may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee, in the custodial trustee's sole discretion, may expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of:

- (1) the beneficiary; and
- (2) individuals who:
 - (A) were supported by the beneficiary when the beneficiary became incapacitated; or
 - (B) are legally entitled to support by the beneficiary.

(c) The custodial trustee may make expenditures:

- (1) in the manner;
- (2) when; and
- (3) to the extent;

that the custodial trustee determines suitable and proper. The custodial trustee may make expenditures without court order and without regard to other support, income, or property of the beneficiary.

(d) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which:

- (1) the custodial trustee; or
- (2) the beneficiary;

may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-30

Administering custodial trust for incapacitated beneficiary

Sec. 30. (a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if:

- (1) the custodial trust was created under section 25 of this chapter;
- (2) the transferor has so directed in the instrument creating the custodial trust; or
- (3) the custodial trustee has determined that the beneficiary is incapacitated.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon:

- (1) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority under a durable power of attorney;
- (2) the certificate of the beneficiary's physician; or
- (3) other persuasive evidence.

(c) If a custodial trustee for an incapacitated beneficiary

reasonably concludes that:

- (1) the beneficiary's incapacity has ceased; or
- (2) circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary;

the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) Upon the petition of:

- (1) the beneficiary;
- (2) the custodial trustee; or
- (3) another person interested in:
 - (A) the custodial trust property; or
 - (B) the welfare of the beneficiary;

the court shall determine whether the beneficiary is incapacitated.

(e) If:

- (1) the custodial trustee or a court has not determined that a beneficiary is incapacitated under subsection (b) or (d); and
- (2) the custodial trustee has reason to believe that the beneficiary is incapacitated;

the custodial trustee shall administer the custodial trust in accordance with the provisions of this chapter applicable to an incapacitated beneficiary.

(f) Incapacity of a beneficiary does not terminate:

- (1) the custodial trust;
- (2) any designation of a successor custodial trustee;
- (3) rights or powers of the custodial trustee; or
- (4) any immunities of third persons acting on the instructions of the custodial trustee.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-31

Reliance on person purporting to be custodial trustee

Sec. 31. (a) A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to:

- (1) make a transfer as; or
- (2) act in the capacity of;

a custodial trustee.

(b) In the absence of knowledge to the contrary, a third person described in subsection (a) is not responsible for determining:

- (1) the validity of the purported custodial trustee's designation;
- (2) the propriety of, or the authority under this chapter for, any action of the purported custodial trustee;
- (3) the validity or propriety of an instrument executed or instruction given under this chapter by:
 - (A) the person purporting to make a transfer or declaration;
 - or
 - (B) the purported custodial trustee; or
- (4) the propriety of the application of property vested in the

purported custodial trustee.
As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-32

Claim by third person against custodial trustee

Sec. 32. (a) A claim based on:

- (1) a contract entered into by a custodial trustee acting in a fiduciary capacity;
- (2) an obligation arising from the ownership or control of custodial trust property; or
- (3) a tort committed in the course of administering the custodial trust;

may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable to a third person on a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to:

- (1) reveal that capacity; or
- (2) identify the custodial trust in the contract.

(c) Unless a custodial trustee is personally at fault, a custodial trustee is not liable to a third person for:

- (1) an obligation arising from control of custodial trust property; or
- (2) a tort committed in the course of the administration of the custodial trust.

(d) A beneficiary is not personally liable to a third person for:

- (1) an obligation arising from beneficial ownership of custodial trust property; or
- (2) a tort committed in the course of administration of the custodial trust;

unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(e) Subsections (b) and (c) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-33

Resigning or declining to serve as custodial trustee

Sec. 33. (a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve as custodial trustee by notifying:

- (1) the person who made the designation;
- (2) the transferor; or
- (3) the transferor's legal representative.

(b) If the person designated to serve as custodial trustee declines to serve under subsection (a), and an event giving rise to a transfer

has not occurred:

- (1) the substitute custodial trustee designated under section 23 of this chapter becomes the custodial trustee; or
- (2) if a substitute custodial trustee has not been designated:
 - (A) the person who made the designation may designate a substitute custodial trustee under section 23 of this chapter; or
 - (B) the transferor or the transferor's legal representative may designate a substitute custodial trustee.
- (c) A custodial trustee who has accepted the custodial trust property may resign by:
 - (1) delivering written notice of resignation to:
 - (A) a successor custodial trustee, if any;
 - (B) the beneficiary; and
 - (C) if the beneficiary is incapacitated, the beneficiary's guardian, if any;
 - (2) transferring, registering, or recording an appropriate instrument relating to the custodial trust property in the name of the successor custodial trustee identified under subsection (d); and
 - (3) delivering the records to the successor trustee identified under subsection (d).
- (d) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 21 or 23 of this chapter becomes custodial trustee. If there is no effective provision for a successor:
 - (1) the beneficiary, if not incapacitated, may designate a successor custodial trustee; or
 - (2) if the beneficiary is incapacitated, or fails to act within ninety (90) days after the ineligibility, resignation, death, or incapacity of the custodial trustee:
 - (A) the beneficiary's guardian becomes successor custodial trustee; or
 - (B) if the beneficiary does not have a guardian or the guardian fails to act, the resigning custodial trustee may designate a successor custodial trustee.
- (e) If a successor custodial trustee is not designated under subsection (d), any of the following may petition the court to designate a successor custodial trustee:
 - (1) The transferor.
 - (2) The legal representative of the transferor.
 - (3) The legal representative of the custodial trustee.
 - (4) An adult member of the beneficiary's family.
 - (5) The guardian of the beneficiary.
 - (6) A person interested in the custodial trust property.
 - (7) A person interested in the welfare of the beneficiary.
- (f) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial

trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(g) A beneficiary, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court:

- (1) to remove the custodial trustee for cause and designate a successor custodial trustee;
- (2) to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties; or
- (3) for other appropriate relief.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-34

Compensation of custodial trustee

Sec. 34. Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

- (1) is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;
- (2) has a noncumulative election, to be made not later than six (6) months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and
- (3) need not furnish a bond or other security for the faithful performance of fiduciary duties.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-35

Written statement of trust administration; petition for accounting

Sec. 35. (a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property. The custodial trustee shall provide a written statement of the administration of the custodial trust property:

- (1) once each year;
- (2) upon request at reasonable times by the beneficiary or the beneficiary's legal representative;
- (3) upon resignation or removal of the custodial trustee; and
- (4) upon termination of the custodial trust.

The statements described by this section must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) The following may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative:

- (1) A beneficiary.
- (2) The beneficiary's legal representative.

- (3) An adult member of the beneficiary's family.
- (4) A person interested in the custodial trust property.
- (5) A person interested in the welfare of the beneficiary.
- (c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.
- (d) In an action or proceeding under this chapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.
- (e) If a custodial trustee is removed, the court shall:
 - (1) require an accounting;
 - (2) order delivery of the custodial trust property and records to the successor custodial trustee; and
 - (3) order the execution of all instruments required for transfer of the custodial trust property.
- (f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may:
 - (1) issue instructions to the custodial trustee;
 - (2) review the propriety of the acts of a custodial trustee; or
 - (3) review the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-36

Claim against custodial trustee's claim barred against other parties

Sec. 36. (a) Except as provided in subsection (c), and unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

- (1) who has received a final account or statement fully disclosing the matter, unless an action or proceeding to assert the claim is commenced not later than two (2) years after receipt of the final account or statement; or
 - (2) who has not received a final account or statement fully disclosing the matter, unless an action or proceeding to assert the claim is commenced not later than three (3) years after the termination of the custodial trust.
- (b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust is barred unless an action or proceeding to assert the claim is commenced not later than five (5) years after the termination of the custodial trust.
- (c) The limitations on a claim for relief are as follows:
- (1) If the claimant is a minor, the claim is barred unless an

action or proceeding to assert the claim is commenced before the earlier of the following:

(A) Two (2) years after the claimant becomes an adult.

(B) Two (2) years after the claimant dies.

(2) If the claimant is an incapacitated adult, the claim is barred unless an action or proceeding to assert the claim is commenced before the earliest of the following:

(A) Two (2) years after the appointment of a guardian for claimant.

(B) Two (2) years after the removal of the incapacity.

(C) Two (2) years after the death of the claimant.

(3) If the claimant:

(A) was an adult;

(B) is deceased; and

(C) was not incapacitated;

the claim is barred unless an action or proceeding to assert the claim is commenced not later than two (2) years after the claimant's death.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-37

Termination of a custodial trust

Sec. 37. (a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(1) to the beneficiary, if not incapacitated or deceased;

(2) to the guardian or other recipient designated by the court for an incapacitated beneficiary; or

(3) upon the beneficiary's death, in the following order:

(A) as last directed in a writing:

(i) signed by the deceased beneficiary while not incapacitated; and

(ii) received by the custodial trustee during the life of the deceased beneficiary;

(B) to the survivor of multiple beneficiaries if survivorship is provided for under section 26 of this chapter;

(C) as designated in the instrument creating the custodial trust; or

(D) to the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

As added by P.L.3-2003, SEC.1.

IC 30-2-8.6-38

Creating a custodial trust

Sec. 38. (a) If a transaction, including a declaration with respect

to or a transfer of specific property, otherwise satisfies applicable law, the criteria of section 18 of this chapter are satisfied by either of the following:

- (1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE

INDIANA UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary), transfer to _____ (name of trustee other than transferor), as custodial trustee for _____ (name of beneficiary) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the Indiana uniform custodial trust act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

(Signature)

- (2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE

INDIANA UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of owner of property), declare that henceforth I hold as custodial trustee for _____ (name of beneficiary other than transferor) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the Indiana uniform custodial trust act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

- (1) Registration of a security in the name of:

(A) a trust company;

(B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;

designated in substance "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

- (2) Delivery of:

(A) a certificated security, or a document necessary for the transfer of an uncertificated security; and

(B) any necessary endorsement;

to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1).

(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of:

(A) a trust company;

(B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of:

(A) a trust company;

(B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(5) Delivery of a written assignment to:

(A) an adult other than the transferor; or

(B) a trust company;

whose name in the assignment is designated in substance by the words: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of:

(A) a trust company;

(B) an adult other than the donee of the power; or

(C) the donee who holds the power if the beneficiary is other than the donee;

whose name in the appointment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor that transfers the right under the contract to:

(A) a trust company;

(B) an adult other than the transferor; or

(C) the transferor if the beneficiary is other than the transferor;

whose name in the notification or assignment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(8) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of:

(A) a trust company;

(B) an adult other than the transferor; or
(C) the transferor if the beneficiary is other than the transferor;
designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(9) Issuance of a certificate of title by an agency of a state or of the United States that evidences title to tangible personal property:

(A) issued in the name of:

- (i) a trust company;
- (ii) an adult other than the transferor; or
- (iii) the transferor if the beneficiary is other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act"; or

(B) delivered to:

- (i) a trust company; or
- (ii) an adult other than the transferor or endorsed by the transferor to that person;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

(10) Execution and delivery of an instrument of gift to:

- (A) a trust company; or
- (B) an adult other than the transferor;

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Indiana uniform custodial trust act".

As added by P.L.3-2003, SEC.1. Amended by P.L.97-2004, SEC.103.

IC 30-2-8.6-39

Severability

Sec. 39. The provisions of this chapter are severable in the manner provided by IC 1-1-1-8(b).

As added by P.L.3-2003, SEC.1.

IC 30-2-9

Chapter 9. Prepaid Funeral Plans and Funeral Trust Funds Established Before 1982

IC 30-2-9-1

Agreement or contract; personal property, merchandise, or services; General Cemetery law

Sec. 1. (a) Any payment of money made to any person, firm, partnership, association, limited liability company, or corporation, other than a bank or trust company, upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of any personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person or persons whose body or bodies are to be so disposed of, shall be held to be trust funds, and the person, firm, partnership, association, or corporation receiving said payments is hereby declared to be a trustee thereof. This subsection applies only to such a contract or agreement executed before July 1, 1978.

(b) After June 30, 1978, it is unlawful to enter into any agreement or contract for a purpose described in subsection (a) unless the agreement or contract requires that all payments be made by the settlor to an account in a:

- (1) bank;
- (2) trust company;
- (3) savings association; or
- (4) credit union;

whose principal office is in Indiana.

(c) Nothing contained in this chapter shall be deemed or construed to apply to those persons, firms, partnerships, associations, limited liability companies, or corporations covered by the "Indiana General Cemetery Law", IC 23-14-1.

(Formerly: Acts 1963, c.303, s.1.) As amended by Acts 1978, P.L.133, SEC.1; Acts 1979, P.L.272, SEC.1; P.L.8-1993, SEC.465; P.L.79-1998, SEC.92.

IC 30-2-9-1.5

Funeral trusts

Sec. 1.5. (a) After June 30, 1978, but before July 1, 1982, an individual may establish one (1) funeral trust under this section, in lieu of any other arrangement for advance payment of funeral and burial expense, such as a joint account, that may be lawful under section 1(b) of this chapter.

(b) A funeral trust established under this section must:

- (1) be irrevocable;
- (2) have only one (1) settlor;
- (3) name a financial institution qualified under section 1(b) of this chapter in which all funds are to be deposited;
- (4) name an embalmer, a funeral director, or funeral home,

licensed under IC 25-15, as sole beneficiary;

(5) be accompanied by a contract between the settlor and beneficiary as provided in subsection (c); and

(6) be either a time deposit, or account, or certificate of deposit in a financial institution, in the names of the settlor and the beneficiary payable on death to the survivor, or name the designated financial institution as sole trustee.

(c) A funeral trust contract must specify in detail the funeral and burial services to be provided by the beneficiary, and must specify the place of the funeral and the place of burial or other disposition. The contract must contain an acknowledgement by the settlor that he understands the irrevocable nature of the trust. In addition, the contract may provide for reasonable adjustment of the services to be provided if:

(1) the settlor has not contributed the full amount specified in the contract at the time of his death; or

(2) the reasonable expense of transporting the corpse a distance greater than twenty-five (25) miles to the place of the funeral or the place of burial is paid by the beneficiary.

The contract may contain other provisions not inconsistent with this chapter, including a provision for disposition of income on the trust funds that results in a balance greater than the contribution agreed to by the settlor.

(d) The settlor may change the beneficiary, but any new beneficiary must be licensed under IC 25-15 or be a funeral director or funeral home licensed under the laws of another state. The settlor may also change the place of the funeral or the place of burial.

(e) Any trust established under section 1(a) of this chapter may be converted to a funeral trust, provided for under this section, by agreement of the parties to the original contract, payment of all trust funds into the funeral trust, and satisfaction of all requirements of this section including execution of the required contract.

(f) Any trust established under this chapter may be converted to a funeral trust provided for under IC 30-2-10 by satisfaction of all requirements of that chapter.

As added by Acts 1978, P.L.133, SEC.2. Amended by Acts 1979, P.L.272, SEC.2; Acts 1982, P.L.179, SEC.1; P.L.246-1985, SEC.20.

IC 30-2-9-2

Deposit of funds; investments

Sec. 2. All trust funds paid under section 1(a) of this chapter shall be deposited in a bank or trust company whose principal office is in this state, or invested in a savings and loan, or building and loan association whose principal office is in this state, in the name of the trustee, as trustee, within thirty (30) days after receipt thereof, and shall be held by such trustee in trust, subject to the provisions of this chapter.

(Formerly: Acts 1963, c.303, s.2.) As amended by Acts 1978, P.L.133, SEC.3.

IC 30-2-9-3

Permits; fidelity bonds; accounts, books, and records

Sec. 3. No person, firm, partnership, association, limited liability company, or corporation may accept or hold trust funds paid under section 1(a) of this chapter without first securing from the state board of funeral service a permit to accept and hold the funds. Applications for the permit must be in writing, signed by the applicant, and duly verified on forms furnished by the board. Each application must contain at least the following:

- (1) The full name and address (both residence and place of business) of the applicant, and every member, officer, and director of the applicant if the applicant is a firm, partnership, association, limited liability company, or corporation. Any permit issued in response to the application is valid for two (2) years, only at the address stated in the application for the applicant or at the address as may be approved by the board.
- (2) A detailed statement of the applicant's assets and liabilities.
- (3) A fidelity bond executed by the applicant and a surety company authorized to do business in this state in the amount not exceeding ten thousand dollars (\$10,000) as the board may require.

Upon receipt of such application and bond, the board shall issue a permit unless it determines that the applicant has made false statements or representations in the application, is insolvent, has conducted or is about to conduct his business in a fraudulent manner, or is not duly authorized to transact business in this state. The board may require an additional bond from time to time in amounts equal to one tenth (1/10) of the trust funds held by the permittee. The bond must run to the state of Indiana for the use and benefit of the beneficiaries of the trust funds. The permittee shall keep accurate accounts, books, and records in this state of all transactions, copies of all agreements, dates, and amounts of payments made and accepted on all agreements, the names and addresses of the contracting parties, the persons for whose benefit the funds are accepted, and the names of the depositories of the funds. The permittee shall make reports to the board annually or at any other times that the board may require, on forms furnished by the board. Every application must be accompanied by a fee of ten dollars (\$10) and every report must be accompanied by a fee of two dollars (\$2). The permittee shall make all the books and records pertaining to the trust funds available to the board for examination. The board, or a qualified person designated by it may at any time investigate the books, records, and accounts of the permittee with respect to its trust funds and for that purpose may require the attendance of and examine under oath all persons whose testimony he may require. *(Formerly: Acts 1963, c.303, s.3.) As amended by Acts 1978, P.L.133, SEC.4; P.L.246-1985, SEC.21; P.L.8-1993, SEC.466.*

IC 30-2-9-4

Deposits or investments; interest or dividends; withdrawal;

forfeiture

Sec. 4. The amount or amounts deposited or invested, with interest or dividends thereon, if any, shall not be withdrawn until the death of the person or persons for whose funeral or burial such funds were paid, unless sooner withdrawn and repaid to the person who originally paid the money under or in connection with said agreement or series of agreements or to his or her legal representative: Provided, That if the agreement or series of agreements provides for forfeiture and retention of any or all such payments by reason of default in payment upon and according to the terms thereof, then upon any such default and forfeiture the trustee may withdraw such deposits or investments: Provided, further, That nothing herein contained shall prohibit the change of depository by the trustee and the transfer of trust funds from one depository to another. This section applies only to trust funds that include payments under section 1(a) of this chapter.

(Formerly: Acts 1963, c.303, s.4.) As amended by Acts 1978, P.L.133, SEC.5.

IC 30-2-9-5**Compensation and expenses of trustee**

Sec. 5. This chapter shall not be construed to prohibit a trustee under section 1(a) of this chapter from being reimbursed and receiving from the fund its reasonable expenses in the custody and administration of the funds and the usual and reasonable compensation for its services as the trustee. However, the expenses and compensation shall be fixed by the state board of funeral service in a reasonable amount based upon the principal fund and the earnings of the fund deposited or invested under each of the agreements or series of agreements. A financial institution trustee under section 1.5 of this chapter may be reimbursed for its reasonable expenses from the fund, except the amount shall be fixed by the Indiana department of financial institutions.

(Formerly: Acts 1963, c.303, s.5.) As amended by Acts 1978, P.L.133, SEC.6; P.L.246-1985, SEC.22.

IC 30-2-9-6**Liquidated damages**

Sec. 6. It shall be unlawful for any such agreement or agreements to provide for forfeiture and retention of payments upon any such agreement or series of agreements as and for liquidated damages for default therein in excess of 10% of the payments made or \$35.00, whichever sum is the larger.

(Formerly: Acts 1963, c.303, s.6.)

IC 30-2-9-7**False reports; illegal use or disbursement of funds**

Sec. 7. (a) Except as provided in subsection (b) or (c), a person who violates this chapter or makes any false and fraudulent report required under this chapter commits a Class B misdemeanor.

(b) A person who knowingly or intentionally uses or disburses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

(c) Except as authorized in an agreement described in section 4 of this chapter permitting the early withdrawal of funds, a trustee that disburses funds in a funeral trust established under this chapter without verifying:

(1) the death of the individual for whom services are to be provided under the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

(Formerly: Acts 1963, c.303, s.7.) As amended by Acts 1978, P.L.2, SEC.3001; P.L.113-2007, SEC.8; P.L.61-2008, SEC.4.

IC 30-2-9-8

Partial invalidity of law

Sec. 8. If any part or parts of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect as completely as if the part held unconstitutional had not been included herein, if such remaining part or parts can then be administered for the purpose of licensing and regulating payments for future use in connection with the disposition of a dead human body, as provided for in this chapter.

(Formerly: Acts 1963, c.303, s.8.) As amended by Acts 1982, P.L.171, SEC.116.

IC 30-2-10

Chapter 10. Funeral Trust Funds

IC 30-2-10-1

Establishment

Sec. 1. An individual may establish one (1) funeral trust under this chapter, in lieu of any other arrangements for advance payment for funeral and burial expense.

As added by Acts 1982, P.L.179, SEC.2.

IC 30-2-10-2

Payments required to be made to accounts in certain banks, trust companies, and other institutions

Sec. 2. It is unlawful to enter into any agreement or contract for a purpose described in section 1 of this chapter unless the agreement or contract requires that all payments be made by the settlor to an account in a:

- (1) bank;
- (2) trust company;
- (3) savings association; or
- (4) credit union;

whose principal office is in Indiana.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.79-1998, SEC.93.

IC 30-2-10-3

Validity of trust; requirements

Sec. 3. A funeral trust established under this chapter is valid only if it:

- (1) is irrevocable;
- (2) has only one (1) settlor;
- (3) names as trustee an Indiana institution qualified under section 2 of this chapter, and requires that all funds be deposited in that institution;
- (4) names a funeral home, licensed under IC 25-15, as sole beneficiary; and
- (5) is accompanied by a written contract between settlor and beneficiary as provided in section 5 of this chapter.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.246-1985, SEC.23.

IC 30-2-10-4

Trustee; expenses and compensation

Sec. 4. The trustee, in the administration of funds accepted under this chapter, may be reimbursed and receive from the funds its reasonable expenses in the custody and administration of the funds, and is entitled to the usual and reasonable compensation for its services as trustee. The expenses and compensation shall be paid in accordance with the rules of the department of financial institutions.

As added by Acts 1982, P.L.179, SEC.2.

IC 30-2-10-5

Contracts; required provisions

Sec. 5. The contract under which funds are accepted under this chapter must be in writing and contain, as a minimum, the following provisions:

(1) Details of the professional services, facilities, equipment, and a description of merchandise to be provided by the beneficiary. If the merchandise or equipment includes a vault (as defined in IC 23-14-33-33) that:

(A) will be used to encase the remains of a deceased individual; and

(B) is not airtight and watertight;

the details must include a written statement indicating that the vault is not airtight and watertight.

(2) A provision that the beneficiary may provide merchandise of equal or better quality if the merchandise contracted for is no longer available at the time the merchandise is to be provided.

(3) The place of the funeral and the place of the burial or other final disposition to be made of the decedent.

(4) An acknowledgment by the settlor that the settlor understands the irrevocable nature of the trust.

(5) A provision for reasonable adjustment of the services, or cost of services, if the body is transported a distance greater than twenty-five (25) miles to the place of funeral or the place of burial or final disposition and transportation of a distance in excess of twenty-five (25) miles was not contemplated at the time of the execution of the contract.

(6) A provision for full payment of the contract amount by the settlor, a description of the manner in which the funds are to be deposited, and a statement that the interest will accrue to the trust account and a further statement that the principal and interest earned shall inure to the beneficiary to cover all the costs incident to the beneficiary's performance of the contract, any excess to be refunded to the estate of the settlor or to the heirs at law.

(7) The settlor's name, address, and social security number.

(8) The date that the funeral trust is executed by the settlor.

(9) The trustee's name and address.

(10) The beneficiary's license number issued by the state board of funeral service.

(11) A provision that except under the circumstances described in subsection (12), only the settlor may change the beneficiary, that the settlor may make the change at any time, and that the change is not effective until written notification is given to the original beneficiary.

(12) A provision that allows the state board of funeral service to change the beneficiary by naming a funeral home as new beneficiary if the original beneficiary becomes deceased, dissolved, terminated, or otherwise loses beneficiary status as a licensee of the state board, and the settlor or the settlor's

guardian or personal representative fails to select a qualified beneficiary.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.246-1985, SEC.24; P.L.61-2008, SEC.5.

IC 30-2-10-6

Change of beneficiary; procedure

Sec. 6. If the settlor changes the beneficiary, he must:

- (1) select a new beneficiary licensed under IC 25-15, or a funeral home or a funeral director licensed in another state; and
- (2) give written notification to the funeral home originally named as beneficiary.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.246-1985, SEC.25.

IC 30-2-10-7

Delivery of copy of contract to settlor

Sec. 7. (a) The settlor shall be furnished an executed copy of the contract.

(b) If a contract has been approved and signed by both parties and a copy of the contract has been delivered to the settlor, no further notification to the settlor related to the contract is required.

As added by Acts 1982, P.L.179, SEC.2.

IC 30-2-10-8

Management of funds by financial institutions; annual reports from beneficiaries

Sec. 8. (a) Indiana financial institutions in which trust funds have been deposited in accordance with this chapter may place the funds in a common or commingled trust fund under a single trust instrument. The trustee shall maintain a separate accounting record for each trust fund.

(b) All interest earned by funds deposited in accordance with this chapter accrue to the trust.

(c) The trustee shall disburse the funds deposited in accordance with this chapter to the named beneficiary to discharge an obligation arising from any contract described in section 5 of this chapter, upon receipt of evidence satisfactory to the trustee that the contract has been performed.

(d) A funeral home, licensed under IC 25-15 that is named as beneficiary of funeral trust funds under this chapter shall annually report the following to the state board of funeral service:

- (1) The funeral home's name, Indiana license number, and officers.
- (2) The name and address of any trustee with which funeral trust funds are deposited for the funeral home.

(e) No bonds or permits are required from funeral homes that enter into contracts described in section 5 of this chapter.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.246-1985, SEC.26.

IC 30-2-10-9

Violations; offense

Sec. 9. (a) Except as provided in subsections (b) and (c), a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who knowingly or intentionally uses or disburses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

(c) A trustee that disburses funds in a funeral trust established under this chapter without verifying:

(1) the death of the individual for whom services are to be provided under the contract; and

(2) that the beneficiary fully performed all funeral and burial services provided for in the contract;

through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

As added by Acts 1982, P.L.179, SEC.2. Amended by P.L.207-1993, SEC.24; P.L.113-2007, SEC.9; P.L.61-2008, SEC.6; P.L.1-2009, SEC.152.

IC 30-2-10-10

Incapacity, resignation, and removal of trustees

Sec. 10. IC 30-4-3-29 governs procedures concerning the incapacity, resignation, or removal of a trustee.

As added by Acts 1982, P.L.179, SEC.2.

IC 30-2-11

Repealed

(Repealed by P.L.149-1991, SEC.6.)

IC 30-2-12

Chapter 12. Uniform Management of Institutional Funds

IC 30-2-12-1

Application of chapter

Sec. 1. (a) This chapter applies to an institutional fund in existence after June 30, 2007.

(b) For an institutional fund in existence before July 1, 2007, this chapter applies only to decisions made or actions taken after June 30, 2007.

As added by P.L.268-1989, SEC.1. Amended by P.L.226-2007, SEC.7.

IC 30-2-12-1.3

"Charitable purpose" defined

Sec. 1.3. As used in this chapter, "charitable purpose" means the following:

- (1) Relief of poverty.
- (2) Advancement of education.
- (3) Advancement of religion.
- (4) Promotion of health.
- (5) Promotion of a governmental purpose.
- (6) Any other purpose the achievement of which benefits the community.

As added by P.L.226-2007, SEC.8.

IC 30-2-12-1.5

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-2

"Endowment fund" defined

Sec. 2. As used in this chapter, "endowment fund" means an institutional fund, or any part of the fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument. The term does not include assets that an institution designates as an endowment fund for the institution's use.

As added by P.L.268-1989, SEC.1. Amended by P.L.226-2007, SEC.9.

IC 30-2-12-3

"Gift instrument" defined

Sec. 3. As used in this chapter, "gift instrument" means a record, including any institutional solicitations, under which property is granted or transferred to or held by an institution as an institutional fund.

As added by P.L.268-1989, SEC.1. Amended by P.L.226-2007, SEC.10.

IC 30-2-12-4

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-5

"Institution" defined

Sec. 5. As used in this chapter, "institution" means any of the following:

- (1) A person, other than an individual, that is organized and operated exclusively for charitable purposes.
- (2) The state, including any agency or instrumentality of the state, or a unit of local government to the extent that the state or unit holds funds exclusively for charitable purposes.
- (3) A trust that has only charitable interests, including a trust:
 - (A) that previously had both charitable and noncharitable interests; and
 - (B) the noncharitable interests of which were previously terminated.

As added by P.L.268-1989, SEC.1. Amended by P.L.199-1991, SEC.1; P.L.266-1995, SEC.2; P.L.2-2007, SEC.356; P.L.226-2007, SEC.11; P.L.3-2008, SEC.227.

IC 30-2-12-6

"Institutional fund" defined

Sec. 6. As used in this chapter, "institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include the following:

- (1) A fund held for an institution by a trustee that is not an institution.
- (2) A fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.
- (3) Assets held by an institution primarily for charitable purposes and not primarily for investment purposes.

As added by P.L.268-1989, SEC.1. Amended by P.L.266-1995, SEC.3; P.L.226-2007, SEC.12.

IC 30-2-12-6.4

"Person" defined

Sec. 6.4. As used in this chapter, "person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, the state of Indiana, a state agency or instrumentality, a unit of local government, or any other legal or commercial entity.

As added by P.L.226-2007, SEC.13.

IC 30-2-12-6.7

"Record" defined

Sec. 6.7. As used in this chapter, "record" means information that is:

- (1) inscribed on a tangible medium; or

(2) stored in an electronic or other medium; and
is retrievable in a perceivable form.

As added by P.L.226-2007, SEC.14.

IC 30-2-12-7

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-8

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-9

Appropriation or accumulation of endowment funds; gift instrument

Sec. 9. (a) Subject to the terms of a gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund that the institution determines is prudent for the uses, benefits, purposes, and duration of the endowment fund. Except as provided in a gift instrument, the assets in an endowment fund are donor restricted until appropriated by the institution.

(b) In determining to appropriate or accumulate endowment funds, an institution shall:

- (1) act in good faith and with the care a prudent person acting in a like position would use under similar circumstances; and
- (2) consider the following factors:
 - (A) The duration and preservation of the endowment fund.
 - (B) The purposes of the institution and the endowment fund.
 - (C) General economic conditions.
 - (D) The possible effects of inflation or deflation.
 - (E) The expected total return from income and the appreciation of investments.
 - (F) Other resources of the institution.
 - (G) The investment policy of the institution.

(c) To be effective, a gift instrument must specifically state a limitation on the authority of an institution to appropriate or accumulate under subsection (a).

(d) A gift instrument that designates a gift as an endowment or contains a direction or authorization to use only income, interest, dividends, rents, issues, or profits, or to preserve the principal intact, or a similar direction:

- (1) creates an endowment fund of permanent duration unless the gift instrument states otherwise; and
- (2) does not otherwise limit the authority to appropriate or accumulate under subsection (a).

As added by P.L.268-1989, SEC.1. Amended by P.L.226-2007, SEC.15.

IC 30-2-12-10

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-11

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-12

Repealed

(Repealed by P.L.226-2007, SEC.24.)

IC 30-2-12-13

Modification or release of restrictions in gift instrument; modification of charitable purpose; notice to attorney general

Sec. 13. (a) With the consent of the donor in a record, an institution may modify or release, in whole or in part, a restriction in a gift instrument on the management, investment, and purpose of an institutional fund.

(b) A release under this section may not allow an institutional fund to be used for purposes other than the charitable purposes of the institution affected.

(c) An institution may petition a court to modify, in a manner consistent with the donor's intentions to the extent practicable, a restriction in a gift instrument concerning the management or investment of an institutional fund if:

- (1) the restriction is impracticable or wasteful;
- (2) the restriction impairs the management or investment of the fund; or
- (3) due to unanticipated circumstances, the modification will further the purposes of the institutional fund.

An institution shall notify the attorney general of a petition under this subsection. A court shall provide the attorney general an opportunity to be heard on the petition.

(d) An institution may petition a court to modify, in a manner consistent with the gift instrument, the charitable purpose of a fund or a restriction on the use of a fund if the charitable purpose or use becomes unlawful, impracticable, impossible, or wasteful. An institution shall notify the attorney general of a petition under this subsection. A court shall provide the attorney general an opportunity to be heard on the petition.

(e) If an institution determines that a restriction in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible, or wasteful, the institution shall notify the attorney general. Not more than sixty (60) days after providing notice under this subsection, the institution may release or modify all or part of the restriction if:

- (1) the value of the institutional fund subject to the restriction is less than twenty-five thousand dollars (\$25,000);
- (2) the institutional fund was established more than twenty (20) years earlier; and
- (3) the institution uses the institutional fund in a manner

consistent with the charitable purposes expressed in the gift instrument.

As added by P.L.268-1989, SEC.1. Amended by P.L.199-1991, SEC.3; P.L.226-2007, SEC.16.

IC 30-2-12-14

Duties of person or institution managing or investing institutional fund

Sec. 14. (a) An institution that manages or invests an institutional fund shall consider the following:

- (1) The intent of a donor expressed in a gift instrument.
- (2) The charitable purposes of the institution.
- (3) The purposes of the institutional fund.

(b) A person who is responsible for managing or investing an institutional fund shall:

- (1) comply with the duty of loyalty imposed by any law; and
- (2) manage or invest the fund in good faith and with the care a prudent person acting in a like position would use under similar circumstances.

(c) An institution that manages or invests an institutional fund:

- (1) may only incur costs that are appropriate and reasonable in relation to:

- (A) the assets of;
- (B) the purposes of; and
- (C) the skills available to;

the institution; and

- (2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two (2) or more institutional funds for purposes of management or investment.

(e) Subject to the terms of a gift instrument, an institution or a person shall do the following:

- (1) An institution that manages or invests an institutional fund shall consider the following factors:

- (A) General economic conditions.
- (B) The possible effects of inflation or deflation.
- (C) The possible tax consequences of investment decisions or strategies.
- (D) The role of each investment or course of action in relation to the overall investment portfolio of the institutional fund.
- (E) The expected total return from income and the appreciation of investments.
- (F) Other resources of the institution.
- (G) The needs of the institution and institutional fund to make distributions and to preserve capital.
- (H) The relationship or value of an asset to the charitable purposes of the institution.

- (2) An institution shall make management and investment decisions about an individual asset:

- (A) in the context of an institutional fund's portfolio of investments as a whole and not in isolation; and
 - (B) as part of an overall investment strategy that has risk and return objectives reasonably suited to the institutional fund and to the institution.
- (3) Except as otherwise provided in law, an institution may invest in any kind of property or type of investment.
- (4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, due to special circumstances, the purposes of the institutional fund are better served without diversification.
- (5) Within a reasonable time after receiving property, an institution shall:
- (A) retain or dispose of the property; or
 - (B) otherwise rebalance the investment portfolio;
- to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution.
- (6) A person that has, or represents to have, special skills or expertise shall use the skills or expertise to manage or invest institutional funds.
- (7) Notwithstanding any other provision in this chapter, an institution may retain property contributed by a donor to an institutional fund as long as the governing board of the institution considers it advisable.

As added by P.L.226-2007, SEC.17.

IC 30-2-12-15

Delegation of management or investment of institutional fund; duties of agent

Sec. 15. (a) Subject to the terms of a gift instrument and except as provided in any other law, an institution may delegate to an agent the management or investment of an institutional fund. The institution shall act in good faith and with the care a prudent person acting in a like position would use under similar circumstances in doing the following:

- (1) Selecting an agent.
- (2) Establishing the scope and terms of the delegation, subject to the purposes of the institution and the institutional fund.
- (3) Periodically reviewing the agent's actions to monitor the agent's performance of and compliance with the scope and terms of the delegation.

An institution that complies with this subsection is not liable for the decisions or actions of an agent to whom the management or investment of an institutional fund is delegated.

(b) An agent shall exercise reasonable care to perform a delegated function in compliance with the scope and terms of the delegation.

(c) An agent that accepts the delegation of a management or investment function from an institution submits to the jurisdiction of Indiana courts in all proceedings concerning the delegation or the performance of a delegated function.

(d) An institution may delegate management or investment functions to its committees, officers, or employees as otherwise provided by law.

As added by P.L.226-2007, SEC.18.

IC 30-2-12-16

Determination of compliance

Sec. 16. Compliance with this chapter shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.

As added by P.L.226-2007, SEC.19.

IC 30-2-12-17

Effect on existing law

Sec. 17. (a) Except as provided in subsection (b), this chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

(b) This chapter does not:

(1) modify, limit, or supersede 15 U.S.C. 7001(a); or

(2) authorize electronic delivery of a notice described in 15 U.S.C. 7003(b).

As added by P.L.226-2007, SEC.20.

IC 30-2-12-18

Consideration for uniformity of law

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

As added by P.L.226-2007, SEC.21.

IC 30-2-13

Chapter 13. Payment of Funeral, Burial Services, or Merchandise in Advance of Need

IC 30-2-13-1

Applicability of chapter

Sec. 1. (a) Except as provided in subsection (b), this chapter applies to any written agreement between a purchaser and a seller that obligates the seller to provide prepaid services or merchandise, or both, for a named individual in conjunction with the death, funeral, burial, or final disposition of the individual.

(b) Except as provided in subsections (c) and (d), this chapter does not apply to the following:

(1) Perpetual care funds under IC 23-14-48.

(2) The sale of burial rights. However, this chapter applies to the sale of services or merchandise sold in conjunction with the sale of burial rights and to the use of free or discounted burial rights as an inducement for a purchaser to transfer sellers.

(3) A contract between a purchaser and a seller that requires delivery of prepaid services or merchandise, or both, not later than one (1) year after the date of final payment and for circumstances other than death.

(c) The annual reporting requirements of section 31 of this chapter apply to a perpetual care fund.

(d) The solicitation requirements of section 24 of this chapter and the provisions concerning inducement in section 13(h) of this chapter apply to the sale of burial rights.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.25; P.L.120-1994, SEC.2; P.L.241-1995, SEC.2; P.L.114-1999, SEC.1; P.L.14-2000, SEC.62.

IC 30-2-13-2

"Agent" defined

Sec. 2. As used in this chapter, "agent" means a person authorized by a seller to offer, sell, or solicit the sale of a contract on behalf of the seller and includes an employee or independent contractor of the seller.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-2.5

"At-need services and merchandise" defined

Sec. 2.5. (a) As used in this chapter, "at-need services and merchandise" includes personal property or services:

(1) listed in section 8(1) of this chapter; and

(2) purchased after the time of death.

(b) The term does not include burial rights.

As added by P.L.207-1993, SEC.26.

IC 30-2-13-3

"Board" defined

Sec. 3. As used in this chapter, "board" refers to the state board of funeral and cemetery service established by IC 25-15-9-1.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-4

"Contract" defined

Sec. 4. As used in this chapter, "contract" means a written agreement between a purchaser and a seller that:

- (1) obligates the seller to provide prepaid services or merchandise, or both, for a named individual; and
- (2) becomes irrevocable thirty (30) days after the written agreement is signed by the purchaser and seller.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-5

"Delivery" defined

Sec. 5. As used in this chapter, "delivery" means the time when:

- (1) services are performed in connection with the funeral or other disposition of the purchaser or the individual for whom services are to be provided under the contract;
- (2) except for merchandise described in section 8(1)(A) and 8(1)(C) of this chapter, the merchandise is:

(A) in the possession of the purchaser or used for the intended purpose of the merchandise; or

(B) permanently installed on or in cemetery property, the burial rights to which have been transferred or granted to the purchaser or individual for whose interment the merchandise is to be used; or

- (3) except for merchandise described in section 8(1)(A) and 8(1)(C) of this chapter, the merchandise is:

(A) purchased by the seller and stored in manufactured form, in a manner and number equal to all merchandise sold, on the premises where the merchandise is to be used or installed and specifically identified in the name of the purchaser, although any applicable installation or final finishing fees remain subject to the terms of the contract made under this chapter; or

(B) permanently identified with the name of the purchaser or individual for whom the merchandise is to be provided and delivered to a warehouse, with both title to the merchandise and a warehouse receipt delivered to the purchaser, and notification to and acceptance of delivery acknowledged in writing by the purchaser.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.3; P.L.236-1995, SEC.52; P.L.114-1999, SEC.2.

IC 30-2-13-6

"Fund" defined

Sec. 6. As used in this chapter, "fund" refers to the preneed consumer protection fund established by section 28 of this chapter.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-7

"Insurance policy" defined

Sec. 7. As used in this chapter, "insurance policy" means a policy providing one (1) or more of the types of insurance described in IC 27-1-5-1, Class 1(a) and Class 1(c).

As added by P.L.200-1991, SEC.1.

IC 30-2-13-8

"Prepaid services or merchandise" or "services or merchandise" defined

Sec. 8. As used in this chapter, "prepaid services or merchandise" or "services or merchandise" includes personal property or services:

(1) typically sold or provided in connection with the final disposition or memorialization of human remains, including:

(A) caskets or other primary containers, including rental, temporary, or disposable caskets or containers;

(B) outer burial containers;

(C) cremation or transportation containers;

(D) funeral clothing or accessories;

(E) monuments;

(F) grave markers;

(G) cremation urns;

(H) embalming services;

(I) funeral directing services provided at the time of death and in connection with the final disposition of human remains;

(J) final date carving fees, including carving fees for double monuments;

(K) cremation;

(L) cremation services;

(M) other funeral and burial items, including items of service or merchandise that may be rented or leased; and

(N) services or merchandise otherwise described as cash advance items under section 11.5 of this chapter and sold directly by the seller and not provided by a third person; and

(2) purchased in advance of need to be provided or delivered after the death of the purchaser or individual for whom services or merchandise are to be provided in the contract.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.27; P.L.241-1995, SEC.4; P.L.114-1999, SEC.3.

IC 30-2-13-9

"Purchaser" defined

Sec. 9. (a) Except as provided in subsection (b), as used in this chapter, "purchaser" means a person or firm contracting with a seller for services or merchandise to be provided or delivered for a named individual.

(b) As used in section 13(b) of this chapter, "purchaser" means:

(1) the person named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.

(2) an individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19;

(3) an individual described in subsection (a);

(4) the attorney in fact, appointed under IC 30-5, of an individual described in subsection (a);

(5) the guardian, appointed under IC 29-3, of an individual described in subsection (a); or

(6) if an individual described in subsection (a) is deceased:

(A) the surviving spouse of the individual;

(B) if there is no surviving spouse, the adult children of the individual;

(C) if there is no surviving spouse or surviving adult child, the surviving parent or parents of the individual; or

(D) if there is neither a surviving spouse nor adult children, nor a surviving parent, the personal representative (as defined in IC 29-1-1-3) of the individual.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.28; P.L.114-1999, SEC.4; P.L.143-2009, SEC.17; P.L.101-2010, SEC.5.

IC 30-2-13-10

"Seller" defined

Sec. 10. As used in this chapter, "seller" means a person doing business as a sole proprietor, a firm, a limited liability company, a corporation, an association, or a partnership contracting to provide services or merchandise, or both, to a named individual.

As added by P.L.200-1991, SEC.1. Amended by P.L.8-1993, SEC.468; P.L.114-1999, SEC.5.

IC 30-2-13-11

"Trustee" or "escrow agent, acting as a fiduciary" defined

Sec. 11. (a) As used in this chapter, "trustee" or "escrow agent, acting as a fiduciary", means a:

(1) bank;

(2) trust company;

(3) savings association; or

(4) credit union;

that maintains an office in Indiana and is qualified under state or federal law to serve as a trustee or escrow agent, acting as a fiduciary.

(b) For a contract using a life insurance policy as consideration, the term also includes a life insurance company or other entity that establishes a trust for the purposes of holding and administering life insurance policies issued by an insurance company to fund contracts

under this chapter. Notwithstanding any other law to the contrary, a life insurance company or other entity acting as a trustee shall comply with this chapter.

(c) For a contract using a previously issued life insurance policy as consideration, the seller is considered to be a qualified trustee if ownership is irrevocably assigned to the seller in conjunction with an assignment of death benefits.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.5; P.L.79-1998, SEC.94; P.L.114-1999, SEC.6.

IC 30-2-13-11.5

"Cash advance item" defined

Sec. 11.5. (a) As used in this chapter, "cash advance item" means an item of property, or services, or merchandise that is not sold directly by a seller and is described to a purchaser as one (1) of the following:

- (1) A cash advance.
- (2) An accommodation.
- (3) A cash disbursement.
- (4) An estimated future charge by a third party.
- (5) A similar term.

(b) The term also refers to a service or property obtained from a third party for which the seller collects an estimated payment to be held in trust or escrow until services or merchandise subject to a contract are delivered because the cost of the service or property can only be estimated at the time the contract is made.

(c) Cash advance items include the following:

- (1) Cemetery or crematory services.
- (2) Pallbearers.
- (3) Public transportation.
- (4) Clergy honoraria.
- (5) Flowers.
- (6) Musicians or singers.
- (7) Nurses.
- (8) Obituary notices.
- (9) Gratuities.
- (10) Death Certificates.
- (11) Sales tax.
- (12) Foreign language interpreters.
- (13) Religious commemorative services.
- (14) Fees charged for the following:
 - (A) Interment.
 - (B) Opening and closing of a grave or crypt.

(d) If property or services are not cash advance items under this section, they are services or merchandise under section 8 of this chapter.

As added by P.L.114-1999, SEC.7.

IC 30-2-13-12

Contracts

Sec. 12. (a) This section applies to contracts for prepaid services or merchandise, or both, entered into under this chapter before January 1, 1996.

(b) A purchaser may enter into more than one (1) contract under this chapter for prepaid services or merchandise, or both. Each contract may be funded with cash, either in a lump sum or installment payments, or an insurance policy, or both. The purchaser may revoke the contract if the purchaser sends the seller written notice of the revocation within thirty (30) days after the contract is signed by the purchaser and seller. If a purchaser revokes a contract the seller shall refund to the purchaser, without interest, all property used to fund the contract. If the seller receives payment of at least five hundred dollars (\$500) in cash that must ultimately be placed in trust or escrow under this section, the seller shall, not more than five (5) days after receiving the payment, deposit the payment in escrow pending irrevocable deposit to trust or escrow authorized by IC 30-2-10. Thirty (30) days after the contract is signed all property paid or delivered to the seller to fund each contract shall be irrevocably deposited by the seller to trust or escrow authorized by either IC 30-2-10 or IC 23-14-49-1. All property received for services or merchandise sold by a seller licensed under IC 25-15 shall be irrevocably deposited to trust in compliance with IC 30-2-10. All sellers shall guarantee the provision of all services and merchandise sold under a contract authorized by this chapter.

(c) If a contract under this chapter is funded with an insurance policy, the ownership of the insurance policy must be irrevocably assigned to a trustee. The seller may not borrow against, pledge, withdraw, or impair the cash value of the policy.

(d) A finance charge may be assessed on a contract sold on an installment basis, and the seller shall disclose to the purchaser all the applicable requirements under federal and state law.

(e) A seller or successor seller who has accepted cash or an insurance policy, or both, as full payment of a contract under subsection (b), is responsible for providing all contracted prepaid services and merchandise if the insurance company or trust company used to fund the contract is insolvent.

(f) A purchaser who purchases a contract with cash in a lump sum or through an insurance contract shall make the payment for the contract payable only to the seller. A purchaser who purchases a contract with cash in installments may make payments for the contract to the seller.

As added by P.L.200-1991, SEC.1. Amended by P.L.1-1992, SEC.159; P.L.207-1993, SEC.29; P.L.120-1994, SEC.3; P.L.241-1995, SEC.6; P.L.52-1997, SEC.52.

IC 30-2-13-12.1

Contracts entered into after December 31, 1995, and before July 1, 1999

Sec. 12.1. (a) This section applies to contracts for prepaid services or merchandise, or both, entered into under this chapter after

December 31, 1995, and before July 1, 1999.

(b) A purchaser may enter into more than one (1) contract under this chapter for prepaid services or merchandise, or both. Each contract may be funded with cash, either in a lump sum or installment payments, or an insurance policy, or both. The purchaser may revoke the contract if the purchaser sends the seller written notice of the revocation within thirty (30) days after the contract is signed by the purchaser and seller. If a purchaser revokes a contract, the seller shall refund to the purchaser, without interest, all property used to fund the contract. If the seller receives payment of at least five hundred dollars (\$500) in cash that must ultimately be placed in trust or escrow under this section, the seller shall, not more than five (5) days after receiving the payment, deposit the payment in escrow pending irrevocable deposit to trust or escrow authorized by either subsection (h) or (i). Thirty (30) days after the contract is signed all property paid or delivered to the seller to fund each contract shall be irrevocably deposited by the seller to trust or escrow authorized by either subsection (h) or (i). Except for installment contracts funded with cash and contracts funded with a newly issued insurance policy that has a limited or qualified death benefit period, all sellers shall guarantee the provision of all services and merchandise sold under a contract authorized by this chapter. At delivery, a seller may not impose additional charges to recover a difference between the original contract retail prices or current retail prices for services and merchandise that are sold under the contract, whichever is greater, and the amount on deposit in trust or escrow.

(c) If a contract under this chapter is funded with an insurance policy, the ownership of the insurance policy must be irrevocably assigned to a trustee. The seller may not borrow against, pledge, withdraw, or impair the cash value of the policy.

(d) A finance charge may be assessed on a contract sold on an installment basis, and the seller shall disclose to the purchaser all the applicable requirements under federal and state law.

(e) A seller or successor seller who has accepted cash or an insurance policy, or both as full payment of a contract under subsection (b) is responsible for providing all contracted prepaid services and merchandise if the insurance company or trust company used to fund the contract is insolvent.

(f) A purchaser who purchases a contract with cash or through an insurance contract shall make the payment for the contract payable only to the seller or insurer, respectively.

(g) A seller may not accept or deposit to trust or escrow cash, an insurance policy, or any other property as consideration for services or merchandise to be provided in the future except in connection with a contract authorized by this chapter.

(h) A trust account authorized and established under this chapter must:

- (1) be irrevocable and require the seller to deposit to trust all sums or property received from the purchaser;
- (2) designate the seller as settlor and the seller as beneficiary;

- (3) designate a trustee qualified under this chapter and authorize the trustee to charge a reasonable fee for services;
- (4) require that a separate account be maintained in the name of each purchaser;
- (5) require that interest earned on the account be added to the principal and reinvested;
- (6) permit assets of the separate accounts of several purchasers to be commingled for investment; and
- (7) require that on delivery of services or merchandise the trustee shall remit to the seller the amount on deposit in the purchaser's trust.

Upon full delivery of all services and merchandise under the contract, if the amount on deposit in the trust is greater than the seller's total current retail price of all services and merchandise under the contract, the remaining amount may but need not be returned to the individual, if any, designated by the purchaser to receive the remainder, or to the purchaser's estate.

(i) An escrow account authorized and established under this chapter must:

- (1) be irrevocable and require the seller to deposit to escrow all sums or property received from the purchaser;
- (2) designate the seller as settlor and beneficiary;
- (3) designate a trustee qualified under this chapter and authorize the trustee to charge a reasonable fee for services;
- (4) require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or other property received by the seller to fund contracts sold by the seller;
- (5) permit the commingling of cash for investment;
- (6) permit the seller to withdraw from the escrow account the current retail value of prepaid services or merchandise delivered under this chapter; and
- (7) permit any interest earned or appreciation in value of money or other property deposited in escrow to be paid to the seller not more frequently than monthly, to the extent that the total value of the escrow account after a payment under this subdivision is not less than the current retail value of all services and merchandise under the contracts that remain undelivered.

(j) A trust account or an escrow account established under this chapter:

- (1) must include the provisions set forth in either subsection (h) or (i);
- (2) may be included as an integral part of a seller's contract through the execution of an adoption agreement that references the trust account or escrow account; and
- (3) is not required to be represented by a separate trust or escrow document for each contract.

(k) The entire value of an irrevocable trust or an escrow established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(l) A contract for prepaid services or merchandise, or both, entered into after June 30, 1997, must contain a statement that:

- (1) the purchaser may revoke the contract under subsection (b) within thirty (30) days after the contract is signed; and
- (2) after thirty (30) days, the contract is irrevocable.

(m) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program under federal or state law.

As added by P.L.241-1995, SEC.7. Amended by P.L.113-1996, SEC.2; P.L.195-1997, SEC.1; P.L.114-1999, SEC.8.

IC 30-2-13-12.5

Contracts entered into after June 30, 1999

Sec. 12.5. (a) This section applies to the following contracts entered into or established under this chapter after June 30, 1999:

- (1) Contracts for prepaid services.
- (2) Contracts for prepaid merchandise.
- (3) Trusts or escrows established to hold consideration paid for services or merchandise subject to a contract entered into under this chapter.
- (b) A contract between a purchaser and a seller must:
 - (1) specify that the consideration for the contract is:
 - (A) cash, payable either in a lump sum or in installments; or
 - (B) an insurance policy that is:
 - (i) newly issued in conjunction with and integral to the contract;
 - (ii) issued previously in a transaction separate and distinct from the contract; or
 - (iii) both.

If a contract is funded with an insurance policy, the ownership of the policy must be irrevocably assigned to a trustee, and the seller may not borrow against, pledge, withdraw, or impair the cash value of the policy;

- (2) specify that only the purchaser, acting by written notice to the seller, may revoke the contract within thirty (30) days after the date the contract is signed by the purchaser and the seller and that the contract becomes irrevocable upon the expiration of the thirty (30) day period;
- (3) specify that, if the contract is revoked, the seller shall refund and return to the purchaser, without interest, the cash or insurance policy used to fund the contract;
- (4) specify that not more than thirty (30) days after the contract is signed by the purchaser and the seller, the whole of the cash or insurance policy serving as consideration for the contract must be deposited into a trust or escrow authorized by subsection (c) or (d). However, a seller may elect to serve as trustee of a previously existing life insurance contract;

(5) except as provided in subsection (f), unconditionally require that the seller shall deliver all services or merchandise, or both, specified in the contract and receive as consideration for the delivery of services or merchandise, or both, only the cash or insurance policy held in trust or escrow without regard to the solvency of the insurer or the adequacy or loss in value of any cash deposit or insurance policy used to fund a contract;

(6) except as provided in subsection (f), prohibit a seller from imposing additional charges to recover any shortage or difference between the retail prices for services or merchandise, or both, in effect on the date of delivery of the services or merchandise, or both, and the value of the trust or escrow applicable to the contract on the date of delivery;

(7) require that a seller accepting the transfer of a contract permitted under section 13 of this chapter shall honor the requirements and obligations of the contract;

(8) permit the seller to assess a finance charge on a contract sold on an installment basis and require that the seller disclose to the purchaser the applicable requirements of federal and Indiana law;

(9) provide that the contract must comply with the following requirements:

(A) The contract must be made in a form that is:

(i) written in clear and understandable language; and

(ii) printed in a size and style of type that is easy to read.

(B) The contract must describe the services, merchandise, or cash advance items being purchased. If the merchandise or cash advance items include a vault (as defined in IC 23-14-33-33) that:

(i) will be used to encase the remains of a deceased individual; and

(ii) is not airtight and watertight;

the contract must include a written statement indicating that the vault is not airtight and watertight.

(C) The contract must identify the following by name, address, and telephone number:

(i) The seller.

(ii) The purchaser.

(iii) The contract beneficiary if the beneficiary is an individual other than the purchaser.

(D) The contract must contain the seller's certificate of authority number and the date of the contract.

(E) The contract must provide that if an item of the particular services or merchandise specified in the contract is unavailable at the time of delivery, the seller shall deliver services or merchandise similar in style, quality, and of equal value to the unavailable item in the place of the item.

(F) The contract must disclose the precise manner in which the contract is to be funded by:

(i) identifying the consideration for the contract;

- (ii) identifying the name, number, if known, and issuer of any insurance policy used to fund the contract; and
- (iii) including the identity and location of the trustee or escrow agent, acting as fiduciary, who is to hold the trust or escrow.

(G) The contract must disclose that the seller reserves the right to assess an extra charge for:

- (i) transportation costs;
- (ii) services or merchandise incurred in the transport of human remains a distance greater than twenty-five (25) miles from the seller's place of business; and
- (iii) service charges necessarily incident to the transport of human remains and in excess of those service charges specified in the contract.

(H) The contract must disclose the following:

- (i) The amount, if any, the seller has elected to receive under subsection (c)(1) or subsection (d)(6).
- (ii) That a commission or fee may be paid to the seller or the seller's agent on a contract funded under subsection (b)(1)(B)(i).

(10) specify that a purchaser has the unrestricted right to designate one (1) or more successor sellers to whom the contract may be transferred under section 13 of this chapter, but that such a transfer is effective only with the consent of the newly designated seller and upon the fulfillment of the other requirements of section 13 of this chapter;

(11) specify that if cash advance items are funded in the contract, the seller agrees to deliver the cash advance items under one (1) of the following alternatives:

(A) Delivery is unconditionally guaranteed at the option of the seller.

(B) Delivery is conditionally guaranteed for a seller and will be equal in value to the total value of the trust or escrow account maintained for the purchaser multiplied by the percentage of the total original contract price represented by cash advance items;

(12) specify that a release from trust or escrow shall occur only upon the seller's delivery of services or merchandise, or both;

(13) permit, at the option of the seller, the incorporation of the trust or escrow language contained in subsection (c) or (d) directly into the contract;

(14) prohibit the seller from charging any service, transaction, or other type of fee or charge unless the fee is:

(A) authorized under subsections (c)(1) and (d)(6) and section 27 of this chapter; or

(B) included within the definitions contained in section 8 or 11.5 of this chapter.

(c) A trust account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require either of the following:

(A) The seller deposit the insurance policy used to fund the contract into the trust account. However, for contracts funded after June 30, 1995, with a previously issued insurance policy, the seller may serve instead of a trustee if the seller is qualified to do so under section 11(c) of this chapter.

(B) The seller deposit the cash used to fund the contract into the trust account. However, as consideration for the sale of the contract and any expense incurred by the seller in conjunction with the sale of the contract, the contract must permit the seller to notify, within a ten (10) day period following the date the contract becomes irrevocable, the trustee of its election to receive only up to ten percent (10%) of the seller's original contract price for services or merchandise, or both.

(2) Designate the seller as the beneficiary of the trust.

(3) Designate a trustee qualified under this chapter and authorize the trustee to assess the charges authorized under section 18 of this chapter.

(4) Require that a separate account be maintained in the name of each purchaser.

(5) Require that any interest, dividend, or accumulation in the account be reinvested and added to the principal.

(6) Permit the assets of the several, separate accounts to be commingled for investment purposes.

(7) Require that on receipt of the seller's proof of delivery of services or merchandise the trustee shall remit to the seller the full amount in trust applicable to the purchaser's contract and all of the accumulated interest.

(8) Permit the seller to retain the remaining amount if the amount in the trust account is greater than the seller's total current retail price of all services and merchandise subject to the contract at the time of delivery of all services or merchandise subject to the contract. However, in the case of a contract funded under subsection (b)(1)(B)(ii), the seller may not retain the remaining amount but must pay the remaining amount to the entity or individual designated by the insured as the beneficiary of the death benefit proceeds not later than sixty (60) days after the receipt and deposit of the proceeds by the seller. The seller may not qualify as a beneficiary of the remaining amount or the insurance death benefit. In the case of all other contracts funded under this chapter, the seller may opt to return the remaining amount to the individual designated by the purchaser to receive the remainder or to the purchaser's estate.

(d) An escrow account authorized and established under this chapter must do all of the following:

(1) Be irrevocable and require that the seller deposit all cash or the insurance policy used to fund the contract into the escrow account.

- (2) Designate the seller as the recipient of the escrow funds.
- (3) Designate an escrow agent, acting as fiduciary, qualified under this chapter to act as escrow agent acting as fiduciary and authorize the escrow agent acting as fiduciary to assess the charges authorized under section 18 of this chapter.
- (4) Require that the escrow account be maintained in the name of the seller and serve as a depository for all cash or insurance policies used to fund contracts sold by the seller.
- (5) Permit the investment of and commingling of cash for investment purposes.
- (6) Permit the seller to receive an administrative or service fee at the option of the seller. The seller may opt to receive the fee after the day following the date the contract becomes irrevocable. The amount of the fee may not exceed ten percent (10%) of the seller's total contract price for services or merchandise or both.
- (7) Require that on delivery of services or merchandise, the escrow agent shall remit to the seller an amount equal to:
 - (A) the seller's original retail price as set forth in the contract for the services or merchandise delivered; minus
 - (B) the amount, if any, received by the seller under subdivision (6).
- (8) Permit the seller to receive monthly payments of the interest earned and the appreciation in the value of the escrow assets to the extent that the total value of the escrow after a payment authorized under this subdivision is not less than:
 - (A) the original contract value of all services or merchandise under the contracts, or parts of the contracts that remain undelivered; minus
 - (B) the amounts, if any, received by the seller under subdivision (6).

(e) A trust account or an escrow account established under this section must contain a concise written description of all the provisions of this chapter that apply to the account.

(f) A seller's guarantee of delivery of all services or merchandise subject to a contract sold by the seller or transferred to a seller is unconditional except in the instance of one (1) of the following circumstances:

- (1) An installment contract funded with cash or an insurance policy issued in conjunction with the contract is guaranteed to the extent of the cash paid or death benefits available at the time of death of the individual for whom services or merchandise are to be provided.
- (2) A contract funded with an insurance policy issued previously and not in conjunction with the contract is guaranteed to the extent of the death benefit proceeds available at the time of the individual for whom services or merchandise are to be provided.
- (3) A contract funded with an insurance policy issued in conjunction with the contract, but having a limited or qualified

death benefit period, is guaranteed to the extent of the death benefit proceeds available at the time of the death of the individual for whom services or merchandise are to be provided.

(4) A transportation expense incurred by the seller while transporting human remains a distance greater than twenty-five (25) miles from the seller's place of business, plus any charge for services or merchandise necessarily incident to the transport of the human remains.

(5) The seller agrees to conditionally guarantee the delivery of cash advance items under subsection (b)(11)(B).

In the instance of unguaranteed delivery, the seller may reduce the value or number of the services or merchandise subject to the contract or cash advance items delivered or deliver the services or merchandise in full on the condition that the seller receives adequate consideration to compensate the seller for the unguaranteed part of the contract.

(g) The entire value of an escrow or trust established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(h) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program under federal or state law.

(i) A seller may not accept or deposit into a trust or escrow account cash, an insurance policy, or any other property as consideration for services or merchandise to be provided in the future except in conjunction with a contract authorized by this chapter.

As added by P.L. 114-1999, SEC. 9. Amended by P.L. 76-2000, SEC. 1; P.L. 61-2008, SEC. 7.

IC 30-2-13-13

Designation of successor sellers

Sec. 13. (a) Notwithstanding section 10 of this chapter, as used in this section, "seller" means an individual, a person doing business as a sole proprietor, a firm, a corporation, an association, a limited liability company, or a partnership:

(1) contracting to provide prepaid or at-need services or merchandise, or both, to a named individual; and

(2) holding a certificate of authority under this chapter.

(b) A purchaser has the option to designate one (1) or more successor sellers to provide:

(1) prepaid services or merchandise; or

(2) at-need services or merchandise.

A purchaser who exercises the purchaser's option to designate a successor seller shall give written notice of the designation to the currently designated seller, successor seller, and trustee or escrow agent. Only a purchaser may exercise the option to designate a new

seller. However, the designation is ineffective unless the newly designated seller consents to the designation.

(c) If a purchaser designates a successor seller, and the successor seller consents to the designation, not less than thirty (30) days after receiving notice under subsection (b), the seller who was previously designated shall:

- (1) relinquish and transfer all rights under the contract;
- (2) transfer to the successor the contract; and
- (3) release from trust or escrow for subsequent deposit to the successor seller's trust or escrow all property being held as consideration for the contract, together with an itemized statement disclosing all services or merchandise delivered as of the date of transfer.

However, a seller who was previously designated to provide the services or merchandise shall comply with section 30 of this chapter. The seller and the successor sellers shall cooperate to ensure that there is no forfeiture or loss of a right or benefit under the contract and that all contract terms are fulfilled. If similar prepaid or at-need services or merchandise are purchased from one (1) or more sellers, the contract that is first in time prevails and is valid.

(d) The trustee shall confirm the transfer to the seller, successor seller, and purchaser by written notice confirming the identity and value of the property transferred.

(e) It is a violation of this chapter for a seller to knowingly induce a purchaser to breach an existing contract that provides for prepaid or at-need services or merchandise.

(f) This section does not abrogate the requirements of IC 25-15-4 concerning contracting for or delivering at-need services and merchandise.

(g) It is a violation of this chapter for a seller to knowingly:

(1) induce a purchaser who has the right to designate a successor seller under subsection (b) to:

- (A) make a designation of a successor seller;
- (B) breach an existing contract for prepaid or at-need services or merchandise; or
- (C) enter into an at-need or prepaid contract calling for the delivery of similar services or merchandise; or

(2) offer a monetary inducement or the exchange or substitution of free or discounted services or merchandise in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

(h) It is a violation of this chapter for a seller to provide free or discounted burial rights:

- (1) as an inducement or as consideration for the transfer of a contract; or
- (2) in an effort to induce a purchaser to effect a change in the designation of a seller of prepaid or at-need services or merchandise.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.30; P.L.120-1994, SEC.4; P.L.241-1995, SEC.8; P.L.114-1999,

SEC.10; P.L.76-2000, SEC.2; P.L.61-2008, SEC.8.

IC 30-2-13-14

Conversion of trust or escrow agreement; change in method of funding; new or successor trustee or escrow agent

Sec. 14. (a) A trust or an escrow agreement created under:

- (1) IC 23-14-49-1;
- (2) IC 30-2-9; or
- (3) IC 30-2-10;

may not be converted to a trust or an escrow agreement required by section 12 or 12.5 of this chapter.

(b) A contract that has been funded with cash may not subsequently be changed to be funded with an insurance policy.

(c) A contract that has been funded with an insurance policy may not subsequently be changed to be funded with cash.

(d) Unless a transaction occurs under section 15(a)(4) of this chapter or the provisions of the contract permit otherwise, a new or successor trustee or escrow agent may not qualify and serve as trustee or escrow agent without the written consent of the purchaser and the seller designated to provide services or merchandise subject to a contract under this chapter.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.9; P.L.52-1997, SEC.53; P.L.114-1999, SEC.11.

IC 30-2-13-15

Loss of certificate of authority or license by seller; notice to purchaser; selection of new seller; transfer of unperformed contracts and funds to successor owner

Sec. 15. (a) If a seller:

- (1) ceases to have a certificate of authority or loses a professional license required to provide services under this chapter;
- (2) ceases to exist or operate;
- (3) is incapable of performing the seller's obligations under an unperformed contract for any reason; or
- (4) sells or leases the seller's business, facilities, or assets;

the seller shall give notice to the board and to each purchaser for whom funds are held in a trust or escrow under this chapter. The notice shall specify the reason for the issuance of the notice.

(b) The seller's written notice under subsection (a) must be:

- (1) addressed to the purchaser's last known address; and
- (2) mailed within fifteen (15) days after the seller becomes incapable of performing the obligations under the contract.

(c) A purchaser who receives a notice under subsection (a) has thirty (30) days after the date the notice was mailed by the seller to select and designate a new seller under section 13 of this chapter to become the beneficiary of the trust or the designated recipient of the escrow funds. The first seller shall send written notice of the designation of a new seller to the newly designated seller or to the trustee.

(d) A seller shall transfer all unperformed contracts and funds held in trust or escrow under this chapter to the seller who is the successor owner or lessee of the transferring seller. The successor seller shall perform all contracts transferred under this subsection.

(e) If:

(1) the seller fails to comply with subsection (a)(1), (a)(2), or (a)(3); or

(2) a purchaser fails to designate a new seller;

the designation shall be made by the board.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.10; P.L.114-1999, SEC.12; P.L.177-2009, SEC.60.

IC 30-2-13-16

Sale, consolidation, merger, disposal, or lease of assets in bulk; designation of successor

Sec. 16. (a) Except for sales of stock or merchandise in the ordinary course of the seller's business, a seller who has deposited money or an insurance policy under section 12 or 12.5 of this chapter may not:

(1) sell, consolidate, merge, or dispose of assets; or

(2) lease the seller's business, facilities, or assets;

without providing, as an integral part of the transaction or occurrence, for the designation of a successor seller of the money or insurance policy placed in trust. For purposes of this section, a change in control determines the seller's obligation.

(b) If a seller acting as a trustee of an insurance policy fails to designate a qualified successor seller, the board shall make the designation. However, the designated successor must be willing to accept the designation.

(c) This section does not restrict a purchaser's right to designate a new seller in accordance with section 13 of this chapter.

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.11; P.L.114-1999, SEC.13.

IC 30-2-13-17

Successors to seller; obligations

Sec. 17. A seller may not sell the seller's stock, business, or assets, transfer assets, merge or consolidate, in whole or in part, or sell, transfer, or consolidate contracts unless:

(1) the purchaser of the stock, business, or assets or the successor in interest is liable for shortages in a trust under this chapter existing before or after the sale, however, the purchaser or successor in interest has no obligation to cure a shortage in a contract between the seller and the purchaser that is not performed by the purchaser or successor in interest; or

(2) the purchaser of the stock, business, or assets or the successor in interest will perform all obligations imposed under this chapter, all obligations imposed under contracts between the seller and the purchaser, and any other related obligations.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-18

Compensation and expenses of trustee; withdrawal of tax liability

Sec. 18. A trustee or an escrow agent may be reimbursed for necessary expenses and be paid reasonable compensation for those services from the trust or escrow. A trustee or an escrow agent shall also be permitted to withdraw from trust or escrow any federal or state tax liability assessed against the purchasers' interest in the trust or escrow.

As added by P.L.200-1991, SEC.1. Amended by P.L.114-1999, SEC.14.

IC 30-2-13-19

Common trust fund

Sec. 19. (a) A trustee may place trust money in a common or commingled trust fund under a single trust instrument.

(b) A trustee shall maintain a separate accounting record for each seller who deposits funds in a trust.

(c) Except for trusts established under IC 30-2-10, records maintained under this section do not need to be segregated on a purchaser by purchaser basis.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-20

Funeral service contracts; ratification by funeral director

Sec. 20. If an agent and a purchaser execute a contract covering funeral services (as defined in IC 25-15), the contract is valid only if the contract is ratified by a funeral director licensed under IC 25-15 who is directly affiliated with the seller as an agent when the contract is made. A contract ratified by an unaffiliated licensed funeral director is void.

As added by P.L.200-1991, SEC.1. Amended by P.L.114-1999, SEC.15.

IC 30-2-13-21

Agents of seller; seller liability; written statement

Sec. 21. A seller who solicits for or enters into a contract under this chapter must satisfy the following conditions:

(1) An agent who acts on behalf of a seller must be directly affiliated with the seller for whom the agent is acting.

(2) The contract must state that the seller is responsible and liable for the veracity and competency of the agent.

(3) An agent must provide to the purchaser a written statement containing the following:

(A) The capacity of the person to act and whether the person is acting for the seller as an agent.

(B) Notice that the seller is the only person or entity authorized to provide the services or merchandise called for by the contract.

(C) The name, address, and telephone number of the seller.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-22

Seller bond or permit

Sec. 22. A bond or permit is not required of a seller except as specifically required in this chapter.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-23

Contracts; invalid provisions; unenforceable contracts

Sec. 23. (a) A contract is invalid if the contract allows the purchaser the right to:

- (1) convert, substitute, or exchange the purchase of burial rights for the purchase of services or merchandise;
- (2) free services or merchandise in exchange for the purchase of other services or merchandise; or
- (3) receive cash or gifts, other than burial rights and services and merchandise, with a value of more than fifty dollars (\$50) as an inducement to purchase a contract.

(b) A contract is unenforceable if:

- (1) the contract obligates the seller to provide prepaid services or merchandise for a named individual in conjunction with the death, burial, or final disposition of the individual;
- (2) the purchaser under the contract is described in section 9(b)(4) of this chapter;
- (3) the death of the named individual appears to have been the result of:
 - (A) murder (IC 35-42-1-1);
 - (B) voluntary manslaughter (IC 35-42-1-3); or
 - (C) another criminal act, if the death does not result from the operation of a vehicle; and
- (4) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that the purchaser referred to in subdivision (2) committed the offense.

The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the seller of the determination of the purchaser described in subdivision (4).

As added by P.L.200-1991, SEC.1. Amended by P.L.241-1995, SEC.12; P.L.102-2007, SEC.4.

IC 30-2-13-24

Seller or agent; prohibited acts

Sec. 24. A seller or an agent may not knowingly do the following:

- (1) Except on request of a prospective purchaser, contact prospective purchasers in hospitals, health facilities, or similar institutions for the purpose of soliciting the sale of prepaid services or merchandise.
- (2) Solicit relatives of a person whose death is apparently pending for the purpose of selling prepaid services or merchandise.
- (3) Except where the arrangement is the subject of a contract

allowed under this chapter, solicit, accept, or pay any consideration for recommending or causing a deceased person to be provided services or merchandise by specific sellers.

(4) Advertise prepaid services or merchandise in a false or misleading manner.

As added by P.L.200-1991, SEC.1. Amended by P.L.1-1992, SEC.160.

IC 30-2-13-25

Solicitation of sales; conditions

Sec. 25. Solicitation of a sale of prepaid services or merchandise is permitted by a seller or an agent of a seller if the following exist:

(1) The conditions set forth in sections 21 and 24 of this chapter are observed.

(2) The following are clearly identified:

(A) The seller or agent.

(B) The seller with whom the agent is affiliated.

(3) The purpose of the call or visit is explained.

(4) An appointment is made with the prospective purchaser.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-26

Confidentiality of contracts

Sec. 26. During the lifetime of the purchaser the contract executed under this chapter is confidential and neither the seller nor the trustee may disclose to a third party the identity of the purchaser or the terms of the contract. This section does not prohibit normal commercial activities by a seller with regard to an account receivable from a purchaser or compliance with a court order.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-27

Payments to board

Sec. 27. Each seller of a prepaid contract under this chapter shall pay to the board on a form provided by it not later than March 1 of each year from money not deposited in a trust or escrow the following amounts for each contract written during the preceding calendar year:

(1) Two dollars and fifty cents (\$2.50) for each contract having a value of less than five hundred dollars (\$500).

(2) Five dollars (\$5) for each contract having a value of at least five hundred dollars (\$500) and less than one thousand five hundred dollars (\$1,500).

(3) Ten dollars (\$10) for each contract having a value of one thousand five hundred dollars (\$1,500) or more.

However, no fee is due and payable on contracts funded with a previously issued life insurance policy. The payment may be charged to the purchaser or, at the option of the seller, paid by the seller. A trustee shall quarterly report to the board all payments received by the trustee from all sellers during the preceding quarter. The report

must identify the name and address of each seller from whom the trustee received payments and the total amount of the payments. The payments are administered under section 28 of this chapter.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.31; P.L.195-1997, SEC.2; P.L.114-1999, SEC.16.

IC 30-2-13-28

Preneed consumer protection fund; establishment; funding

Sec. 28. (a) The preneed consumer protection fund is established. The board shall deposit receipts under section 27 of this chapter in the preneed consumer protection fund.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The money in the fund and the interest accruing to the fund remain in the fund and do not revert to the state general fund.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-29

Use of money in fund

Sec. 29. (a) Money in the fund may be used to provide restitution to a seller who performs a defaulted contract, to a purchaser, or to a purchaser's estate for pecuniary loss arising from a trust or an escrow required by:

- (1) this chapter;
- (2) IC 23-14-49-1;
- (3) IC 30-2-9; or
- (4) IC 30-2-10.

The repeal of a statute cited in this subsection does not terminate the ability of a party to a contract made under the repealed statute to receive restitution under this chapter.

(b) The purchaser, seller, or other interested person must request restitution by filing a verified complaint with the board.

(c) The board may investigate any verified complaint. Within sixty (60) days after a verified complaint is filed, the board shall determine if a seller has defaulted on a contract. If the seller's obligation to perform under the contract cannot be collected from the seller, the board shall order the auditor of state to make restitution from the fund.

(d) The amount of restitution may not exceed the gross amount of the original contract plus interest, compounded annually, on the gross amount that is figured, for each year or part of a year for which restitution is owed, using the lesser of:

- (1) the rate set forth in IC 24-4.6-1-101 in effect on January 1 of each year; or
- (2) the monthly average yield on United States Treasury Securities for the month of January of each year, adjusted to a constant maturity of one (1) year, as published by the Federal Reserve.

The fund may not be charged with court costs or the payment of legal or other fees. In computing the amount of restitution, the board shall

give credit for:

- (1) merchandise delivered; and
- (2) resources still existing in trust.

(e) When restitution is paid from the fund, the fund is subrogated to the amount of the restitution, and the board shall ask the attorney general to take all reasonable steps to collect the subrogated amount from the seller. Any amount collected shall be deposited in the fund.

(f) Money in the fund may only be used for a purpose that is specified in this section.

(g) The payment of restitution from the fund is not a right, and a purchaser does not have a vested right in the fund as a beneficiary of the fund.

(h) The status of the fund shall be annually reviewed by the board. If the board determines during its annual review that the fund balance equals or exceeds two million five hundred thousand dollars (\$2,500,000), the board shall suspend payments to the fund until after the next annual review that the board determines that the fund balance is less than two million five hundred thousand dollars (\$2,500,000).

As added by P.L.200-1991, SEC.1. Amended by P.L.120-1994, SEC.5; P.L.52-1997, SEC.54; P.L.114-1999, SEC.17; P.L.65-2007, SEC.5.

IC 30-2-13-30

Seller records and books

Sec. 30. (a) The seller shall maintain accurate records, books, and accounts for each contract sold under this chapter containing the following:

- (1) Copies of all contracts.
- (2) The dates of all contracts.
- (3) The amounts paid and received under each contract.
- (4) The complete name, address, and identification of all parties to each contract.

(b) The seller shall maintain at the seller's principal Indiana business address complete records of all transactions under this chapter that involve the seller. The records may be audited and examined by the board at any reasonable time.

(c) The seller shall maintain all records required by this section for the longer of:

- (1) ten (10) years; or
- (2) three (3) years after the date of full performance of a contract.

The records are business records and customer lists within the meaning of IC 24-2-3.

(d) The requirements of this section apply to a seller, a successor seller, and a seller who was previously designated to provide services or merchandise to a purchaser.

As added by P.L.200-1991, SEC.1. Amended by P.L.61-2008, SEC.9.

IC 30-2-13-31

Annual report

Sec. 31. (a) A seller who is required to register under this article, a cemetery under IC 25-15-9-17, a funeral home under IC 25-15, and a perpetual care fund under IC 23-14-48 shall file an annual report with the board that provides the following information:

- (1) The name and location of each seller, cemetery, funeral home, and perpetual care fund.
- (2) The name and business address of the owner and the names and business addresses of the resident agent and chief officer if the owner is not a natural person.
- (3) If a cemetery, the amount of funds received by the owner during the previous fiscal year that are subject to trust requirements set forth in IC 23-14-48 and the amount required to be placed in trust, the amount of funds actually placed in trust to satisfy the requirements of IC 23-14-48, the name and address of the trustee, and if the funds are not held in trust by a corporate trustee, the name of the corporate surety and the amount of the trustee's fidelity bond as required by IC 23-14-51-4.
- (4) The amount of money or identity of other property received subject to the trust or escrow requirements of this chapter, the amount required to be placed in trust or escrow, the amount actually placed in trust or escrow, and the name and address of the trustee.
- (5) For a holder of a certificate of authority under section 33 of this chapter, the information that is listed in section 33(b)(2) through 33(b)(4) of this chapter.

(b) The annual report required by this section must meet the following requirements:

- (1) Be made on a form prescribed and furnished by the board.
- (2) Be signed by the owner if an individual or by the president or vice president and the treasurer or secretary if the owner is not an individual.
- (3) Be notarized and affirmed under penalties of perjury by the individuals signing the annual report.
- (4) Be filed in the office of the board by the seller not later than ninety (90) days after the end of the seller's fiscal year.
- (5) Be accompanied by an annual fee of ten dollars (\$10) if the seller is a funeral home or cemetery.
- (6) Be accompanied by the fee required by section 27 of this chapter.

(c) Each geographic location of a seller is a separate and distinct business and requires a separate report.

(d) The board may suspend the certificate of authority of a seller who fails to file the seller's annual report within the period required under this section.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.32; P.L.241-1995, SEC.13; P.L.52-1997, SEC.55; P.L.195-1997, SEC.3; P.L.253-1997(ss), SEC.28.

IC 30-2-13-32

General price list

Sec. 32. A seller of:

- (1) prepaid services or merchandise; or
- (2) at-need services or merchandise;

shall maintain for display or on request at the seller's place of business and in the possession of an agent appointed by the seller a fully detailed general price list of all prepaid and at-need services or merchandise offered by the seller. The seller shall make this list available to any individual requesting price information.

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.33; P.L.241-1995, SEC.14.

IC 30-2-13-33

Certificates of authority

Sec. 33. (a) A seller may not sell or provide prepaid services or merchandise or a contract designed to provide a funding mechanism to be used in conjunction with the purchase of prepaid services or merchandise under this chapter without first obtaining a certificate of authority from the board. However, an employee of a seller is exempt from subsections (b) and (c).

(b) A seller who seeks a certificate of authority must submit a statement to the board that includes the following:

- (1) The seller's name and the address of the place of business.
- (2) Information considered necessary by the board to show evidence of the seller's good moral character, reputation for fair dealing in business matters, and lack of a criminal record.
- (3) The name, address, and Social Security number of each person authorized to directly represent the seller as an agent.
- (4) A statement by the seller notarized and affirmed under the penalties for perjury that all payments required under section 27 of this chapter have been made.

(c) Upon issuance, the certificate of authority shall be posted conspicuously in the seller's place of business.

(d) A seller holding a certificate of authority or an agent of a seller who engages in door-to-door solicitation shall present a copy of the certificate of authority upon entry onto the premises of a prospective purchaser.

(e) A certificate of authority issued under this chapter expires annually on March 1.

(f) The board may renew a certificate of authority upon receipt of an application for renewal that includes the information listed in subsection (b).

As added by P.L.200-1991, SEC.1. Amended by P.L.207-1993, SEC.34; P.L.173-1996, SEC.16; P.L.195-1997, SEC.4; P.L.84-1998, SEC.27.

IC 30-2-13-34

Rules

Sec. 34. The board may adopt rules under IC 4-22-2 to implement

this chapter.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-35

Seller misrepresentation

Sec. 35. It is a violation of this chapter for a seller to misrepresent the character, quality, durability, or suitability for a specific or an intended purpose of services or merchandise offered for sale to a purchaser.

As added by P.L.200-1991, SEC.1.

IC 30-2-13-36

Suspension of certificates of authority; fines

Sec. 36. The board may suspend the certificate of authority of a seller who violates a provision of this chapter. The board may suspend the certificate of authority of a seller who intentionally violates section 12.5 of this chapter for at least one (1) year. The board may assess a seller a fine of not more than ten thousand dollars (\$10,000) for each violation of section 12.5, 13, 15, 21, 23, 24, or 25 of this chapter to be added to the fund established under section 28 of this chapter.

As added by P.L.200-1991, SEC.1. Amended by P.L.114-1999, SEC.18.

IC 30-2-13-37

Repealed

(Repealed by P.L.207-1993, SEC.35.)

IC 30-2-13-38

Uncured deceptive acts; violations; injunctive relief; private right of action

Sec. 38. (a) A seller who violates a provision of this chapter commits an uncured deceptive act (as defined in IC 24-5-0.5-2).

(b) A person doing business as a sole proprietor, a firm, a limited liability company, a corporation, an association, or a partnership, but not acting as a seller that:

(1) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) and fails to obtain the certificate of authority required by section 33 of this chapter; or

(2) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) after the entity's certificate of authority has:

(A) expired; or

(B) been rescinded, revoked, or suspended by the board; commits a Class A misdemeanor. Each act committed in violation of this subsection constitutes a separate offense.

(c) The following may maintain an action to enjoin an individual or entity from continuing to violate this section:

(1) The board.

(2) The attorney general.

(3) The prosecuting attorney of a county in which a violation occurs.

(d) A purchaser has a private right of action against a seller who commits an uncured deceptive act.

(e) A trustee or escrow agent, acting as a fiduciary, that disburses funds in a trust or escrow account established under this chapter without verifying that the seller has delivered the services or merchandise for which the funds were deposited through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

(f) A person who knowingly or intentionally uses or disburses funds in a trust or escrow account established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

As added by P.L.114-1999, SEC.19. Amended by P.L.61-2008, SEC.10; P.L.143-2009, SEC.18.

IC 30-2-13-39

Prohibited relationships between sellers and trustees or escrow agents

Sec. 39. (a) This section does not apply to a trust funded by the method described in section 11(c) of this chapter.

(b) A seller may not be an affiliate, a parent, or a subsidiary organization of the trustee or escrow agent, acting as a fiduciary, of a trust or escrow account established after June 30, 2008, to hold consideration paid for services or merchandise subject to a contract entered into under this chapter by the seller and a purchaser.

As added by P.L.61-2008, SEC.11.

IC 30-2-14

Chapter 14. Uniform Principal and Income Act

IC 30-2-14-1

"Accounting period" defined

Sec. 1. As used in this chapter, "accounting period" means a calendar year unless another twelve (12) month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve (12) month period that begins when an income interest begins or ends when an income interest ends.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-2

"Beneficiary" defined

Sec. 2. As used in this chapter, "beneficiary" includes, in the case of:

- (1) a decedent's estate, an heir, and a devisee; and
- (2) a trust, an income beneficiary, and a remainder beneficiary.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-3

"Fiduciary" defined

Sec. 3. As used in this chapter, "fiduciary" means a personal representative or a trustee. The term includes an executor, an administrator, a successor personal representative, a special administrator, and a person performing substantially the same function.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-4

"Income" defined

Sec. 4. As used in this chapter, "income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections 21 through 35 of this chapter.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-5

"Income beneficiary" defined

Sec. 5. As used in this chapter, "income beneficiary" means a person to whom net income of a trust is or may be payable.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-6

"Income interest" defined

Sec. 6. As used in this chapter, "income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-7

"Mandatory income interest" defined

Sec. 7. As used in this chapter, "mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-8

"Net income" defined

Sec. 8. As used in this chapter, "net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-9

"Person" defined

Sec. 9. As used in this chapter, "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-10

"Principal" defined

Sec. 10. As used in this chapter, "principal" means property that is held in trust for distribution to a remainder beneficiary when the trust terminates or that will remain perpetually vested in the trustee.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-11

"Remainder beneficiary" defined

Sec. 11. As used in this chapter, "remainder beneficiary" means a person entitled to receive principal when an income interest ends.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-12

"Terms of a trust" defined

Sec. 12. As used in this chapter, "terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-13

"Trustee" defined

Sec. 13. As used in this chapter, "trustee" includes an original,

additional, or successor trustee, whether or not appointed or confirmed by a court.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-14

Allocating receipts and disbursements between principal and income

Sec. 14. (a) The following applies to a fiduciary in allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of this chapter:

(1) A fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter. An inference that the fiduciary has improperly exercised the discretion does not arise from the fact that the fiduciary has made or has not made an allocation contrary to a provision of this chapter.

(3) A fiduciary shall administer a trust or an estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(4) A fiduciary shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust or the will and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under section 15 of this chapter or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or an estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one (1) or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-15

Power of trustee to adjust between principal and income

Sec. 15. (a) A trustee may adjust between principal and income to the extent the trustee considers necessary if:

(1) the trustee invests and manages trust assets as a prudent investor;

(2) the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income; and

(3) the trustee determines:

(A) after applying the rules in section 14(a) of this chapter;
and

(B) considering any power the trustee may have under the trust or the will to invade principal or accumulate income; that the trustee is unable to comply with section 14(b) of this chapter.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee may consider, but is not limited to, any of the following:

(1) The nature, purpose, and expected duration of the trust.

(2) The intent of the settlor.

(3) The identity and circumstances of the beneficiaries.

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital.

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor.

(6) The net amount allocated to income under this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available.

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not

be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(7) if the trustee is a beneficiary of the trust.

(d) If subsection (c)(5), (c)(6), or (c)(7) applies to a trustee and there is more than one (1) trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee:

(1) is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (c)(6); or

(2) determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c).

The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

(g) Nothing in this chapter is intended to create or imply a duty to make an adjustment. A trustee incurs no liability for:

(1) not considering whether to make an adjustment; or

(2) choosing not to make an adjustment.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-16

Notice of proposed action

Sec. 16. (a) A trustee may give a notice of proposed action regarding a matter governed by this chapter as set forth in this section. For purposes of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all living beneficiaries who:

(1) are receiving; or

(2) are entitled to receive:

(A) income under the trust; or

(B) a distribution of principal;

if the trust were terminated at the time the notice is given.

If a beneficiary described in this subsection is a minor, the trustee

may comply with this subsection by mailing the notice to any court appointed or natural guardian of the minor.

(c) A trustee is not required to give notice of proposed action to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that the notice is given as set forth in this section and shall state all of the following:

(1) The name and mailing address of the trustee.

(2) The name and telephone number of a person who may be contacted for additional information.

(3) A description of the action proposed to be taken and an explanation of the reasons for the action.

(4) The time within which objections to the proposed action may be made, which shall be at least thirty (30) days after the mailing of the notice of proposed action.

(5) The date on or after which the proposed action may be taken or is effective.

(6) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the period specified in the notice of proposed action.

(e) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if:

(1) the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period; and

(2) the other requirements of this section are satisfied.

If a beneficiary not entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(f) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall mail notice to the beneficiaries described in subsection (b) of the decision not to take the action. The trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. Within thirty (30) days after the mailing of the notice not to implement the proposed action, a beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-17

Discretionary powers of fiduciary; failure to exercise power;

remedies

Sec. 17. (a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) applies include the following:

(1) A determination under section 15(a) of this chapter of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) In deciding whether and to what extent to exercise the power conferred by section 15(a) of this chapter, a determination of the following:

(A) The factors that are relevant to the trust and the trust's beneficiaries.

(B) The extent to which the factors are relevant.

(C) The weight, if any, to be given to the relevant factors.

(c) If a court determines that a fiduciary has abused the fiduciary's discretion, the remedy shall be to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, subject to the following:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute to the beneficiary an amount that the court determines will restore the beneficiaries, in whole or in part, to their appropriate positions.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, in whole or in part, to their appropriate positions by requiring:

(A) the fiduciary to withhold an amount from at least one (1) future distribution to that beneficiary; or

(B) the beneficiary to return some or all of the distribution to the trust.

(3) To the extent the court is unable, after applying subdivisions (1) and (2), to restore the beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court shall require the fiduciary to pay an appropriate amount to:

(A) at least one (1) of the beneficiaries;

(B) the trust; or

(C) entities under both clauses (A) and (B).

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise of a discretionary power by the fiduciary will result in an abuse of the fiduciary's discretion. The petition shall:

- (1) describe the proposed exercise or nonexercise of the power;
- (2) contain sufficient information to inform the beneficiaries of:
 - (A) the reasons for the proposal; and
 - (B) the facts upon which the fiduciary relies; and
- (3) contain an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power.

(e) A beneficiary who challenges a fiduciary's proposed decision or actual decision to exercise or not to exercise a discretionary power conferred by this chapter shall have the burden of establishing that it will result or did result in an abuse of discretion.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-18

Distributions to beneficiaries; payment of fees and costs

Sec. 18. After an income interest in a trust ends, the following rules apply:

(1) A fiduciary of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in sections 20 through 43 of this chapter that apply to trustees and the rules in subdivision (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a terminating income interest under the rules in sections 20 through 43 of this chapter that apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion:

(i) fees of attorneys, accountants, and fiduciaries;

(ii) court costs and other expenses of administration; and

(iii) interest on death taxes;

but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the winding up of a terminating income interest, including debts; funeral expenses; disposition of remains; family allowances; and death taxes and related penalties that are apportioned to the terminating income interest by the terms of the trust or applicable law.

(3) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under

applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) in the manner described in section 19 of this chapter to all residuary beneficiaries, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) because of a payment described in section 38 or 39 of this chapter to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by:

(A) including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts:

(i) accrued or became due before, on, or after the date of an individual's death; or

(ii) an income interest's terminating event; and

(B) making a reasonable provision for amounts that the fiduciary believes the terminating income interest may become obligated to pay after the property is distributed.

As added by P.L.84-2002, SEC.2. Amended by P.L.61-2006, SEC.6.

IC 30-2-14-19

Beneficiary's share of net income

Sec. 19. (a) Each beneficiary described in section 18(4) of this chapter is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including a beneficiary who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-20

Income interest; asset subject to trust

Sec. 20. (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-21

Income receipts and disbursements

Sec. 21. (a) A trustee shall allocate an income receipt or disbursement other than one to which section 18(1) of this chapter applies to principal if its due date occurs before:

- (1) an individual dies in the case of an estate; or
- (2) an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which an individual dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which an individual dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 23 of this chapter applies are considered to be due on:

- (1) the date fixed by the entity for determining who is entitled to receive the distribution; or
- (2) if no date is fixed, the declaration date for the distribution.

A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-22

Termination of mandatory income interest

Sec. 22. (a) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-23

Receipts from an entity

Sec. 23. (a) As used in this section, "entity" means a corporation,

partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest. The term does not include the following:

- (1) A trust or an estate to which section 24 of this chapter applies.
 - (2) A business or an activity to which section 25 of this chapter applies.
 - (3) An asset backed security to which section 37 of this chapter applies.
- (b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.
- (c) A trustee shall allocate the following receipts from an entity to principal:
- (1) Property other than money.
 - (2) Money received in one (1) distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.
 - (3) Money received in total or partial liquidation of the entity.
 - (4) Money received from an entity that is:
 - (A) a regulated investment company; or
 - (B) a real estate investment trust;if the money distributed is a capital gain dividend for federal income tax purposes.
- (d) Money is received in partial liquidation:
- (1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or
 - (2) if the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.
- (e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.
- (f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by:
- (1) the entity's board of directors; or
 - (2) a person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-24

Distributions of principal and income from trust or estate

Sec. 24. A trustee shall allocate to:

- (1) income an amount received as a distribution of income; and

(2) principal an amount received as a distribution of principal; from a trust or an estate in which the trust has an interest other than a purchased interest. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 23 or 37 of this chapter applies to a receipt from the trust.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-25

Separate accounting records for business or activity

Sec. 25. (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which:

(1) its net cash receipts must be retained for:

(A) working capital;

(B) the acquisition or replacement of fixed assets; and

(C) other reasonably foreseeable needs of the business or activity; and

(2) the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records.

If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service, and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) management of rental properties;

(5) extraction of minerals and other natural resources;

(6) timber operations; and

(7) activities to which section 36 of this chapter applies.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-26

Receipts and property allocated to principal

Sec. 26. A trustee shall allocate to principal:

(1) to the extent not allocated to income under this chapter, assets received from:

(A) a transferor during the transferor's lifetime;

(B) a decedent's estate;

(C) a trust with a terminating income interest; or

- (D) a payer under a contract naming the trust or its trustee as beneficiary;
- (2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 23 through 37 of this chapter;
- (3) amounts recovered from third parties to reimburse the trust because of disbursements described in section 39(a)(7) of this chapter or for other reasons to the extent not based on the loss of income;
- (4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
- (5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and
- (6) other receipts as provided in sections 30 through 37 of this chapter.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-27

Rental property receipts

Sec. 27. To the extent that a trustee accounts for receipts from rental property under this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-28

Obligation to pay money to trustee

Sec. 28. (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one (1) year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one (1) year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) Notwithstanding any other provision of this section, when an obligation described in this section is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or liquidated partially, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

(d) This section does not apply to an obligation to which section 31, 32, 33, 34, 36, or 37 of this chapter applies.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-29

Life insurance policy proceeds; proceeds of other contracts

Sec. 29. (a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 25 of this chapter, loss of profits from a business.

(c) This section does not apply to a contract to which section 31 of this chapter applies.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-30

Insubstantial allocation between principal and income

Sec. 30. If a trustee determines that an allocation between principal and income required by section 31, 32, 33, 34, or 37 of this chapter is insubstantial, the trustee may allocate the entire amount to principal unless one (1) of the circumstances described in section 15(c) of this chapter applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in section 15(d) of this chapter and may be released for the reasons and in the manner described in section 15(e) of this chapter. An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(2) the value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

IC 30-2-14-31

Allocating payments to principal or income

Sec. 31. (a) This section does not apply to a payment to which section 32 of this chapter applies.

(b) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments, regardless of whether the trustee also has the option to receive the payment in a lump sum or other form of payment, whether the payment is made in money or other property, and whether the payment is made from the payer's general assets or from a separate fund created by the payer. For purposes of subsection (h), the term also includes any payment from any separate fund, regardless of the reason for the payment.

(c) As used in this section, "separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan (including an individual account under a plan and a separate share of any account described in this subsection).

(d) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(e) If a payment is not characterized as interest, a dividend, or an equivalent payment and is made from a separate fund, the payment shall be allocated between income and principal as follows:

(1) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and allocate the balance of the payment to principal.

(2) If a trustee cannot determine the internal income of the separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal five percent (5%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee cannot determine the internal income of the separate fund or the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code, for the month preceding the accounting period for which the computation is made.

(f) If no part of a payment is characterized as interest, a dividend,

or an equivalent payment, and the payment is made otherwise than from a separate fund, then the trustee shall allocate to income ten percent (10%) of any part of the payment that is required to be made during the accounting period and the balance to principal, unless no part of the payment is required to be made or the payment received is the entire amount to which the trustee is entitled, in which case the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(g) Notwithstanding any other provision of this section, when a private or commercial deferred annuity is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of the acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee exercises a right of withdrawal or otherwise receives cash on account of the obligation. If the obligation is surrendered wholly or partially before annuitization, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

(h) Except as provided in subdivision (2), trusts described in subdivision (1) are subject to the following special rules regarding allocations and distributions of income provided in subdivision (3):

(1) This subsection applies to:

(A) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code has been made; or

(B) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code.

(2) This subsection does not apply to a series of payments if and to the extent that the series of payments would, without the application of this subsection, qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code.

(3) Except as provided in subdivision (2), a payment made from a separate fund to a trust described in subdivision (1) shall be allocated between income and principal in accordance with subsection (e)(1) and (e)(2) and not in accordance with subsection (d) or (f), even if part or all of the payment is characterized as interest, a dividend, or an equivalent payment, and even if the payment is the entire amount to which the trustee is entitled. The trustee shall distribute to the surviving spouse the part of the payment allocated to income. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute all of the internal income of the fund to the trust. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments from the separate fund to the trust during the accounting period.

As added by P.L.84-2002, SEC.2. Amended by P.L.143-2009,

IC 30-2-14-32

Receipts from liquidating asset

Sec. 32. (a) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one (1) year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include the following:

- (1) A payment subject to section 31 of this chapter.
- (2) Resources subject to section 33 of this chapter.
- (3) Timber subject to section 34 of this chapter.
- (4) An activity subject to section 36 of this chapter.
- (5) An asset subject to section 37 of this chapter.
- (6) Any asset for which the trustee establishes a reserve for depreciation under section 40 of this chapter.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-33

Receipts from an interest in minerals or other natural resources

Sec. 33. (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources under this section, the trustee shall allocate them as follows:

- (1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.
- (2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.
- (3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) must be allocated to principal and the balance to income.
- (4) If an amount is received from a working interest or any other interest not provided for in subdivision (1), (2), or (3), ninety percent (90%) of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent (90%) of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2003, the trustee may allocate receipts from

the interest as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in minerals, water, or other natural resources after December 31, 2002, the trustee shall allocate receipts from the interest as provided in this chapter.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-34

Net receipts from the sale of timber and related products

Sec. 34. (a) To the extent that a trustee accounts for receipts from the sale of timber and related products under this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from:

(A) the lease of timberland; or

(B) a contract to cut timber from land owned by a trust; by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (1) and (2); or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated under subdivision (1), (2), or (3).

(b) In determining net receipts to be allocated under subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2003. If the trust acquires an interest in timberland after December 31, 2002, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-35

Marital deduction for trust assets

Sec. 35. (a) If:

(1) a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets; and

(2) the amounts that the trustee transfers from principal to income under section 15 of this chapter and distributes to the spouse from principal under the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction;

the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by section 15(a) of this chapter. The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-36

Transactions in derivatives; granting, acquiring, or exercising an option

Sec. 36. (a) As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in:

(1) some or all changes in the price of a tangible or intangible asset or group of assets; or

(2) changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under section 25 of this chapter for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee:

(1) grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted;

(2) grants an option that permits another person to sell property to the trust; or

(3) acquires an option to buy property for the trust or an option to sell an asset owned by the trust;

and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-37

Asset backed securities

Sec. 37. (a) As used in this section, "asset backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that

gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 23 or section 31 of this chapter applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one (1) or more payments in exchange for the trust's entire interest in an asset backed security in one (1) accounting period, the trustee shall allocate the payments to principal. If a payment is one (1) of a series of payments that will result in the liquidation of the trust's interest in the security over more than one (1) accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.
As added by P.L.84-2002, SEC.2.

IC 30-2-14-38

Disbursements from income

Sec. 38. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 18(2)(B) or 18(2)(C) of this chapter applies:

- (1) one-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;
- (2) one-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;
- (3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including:
 - (A) interest;
 - (B) ordinary repairs;
 - (C) regularly recurring taxes assessed against principal; and
 - (D) expenses of a proceeding or other matter that concerns primarily the income interest; and
- (4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-39

Disbursements from principal

Sec. 39. (a) A trustee shall make the following disbursements from principal:

- (1) the remaining one-half (1/2) of the disbursements described in section 38(1) and 38(2) of this chapter;
- (2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

- (3) payments on the principal of a trust debt;
- (4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
- (5) premiums paid on a policy of insurance not described in section 38(4) of this chapter of which the trust is the owner and beneficiary;
- (6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and
- (7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-40

Principal asset subject to depreciation

Sec. 40. (a) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one (1) year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

- (1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
- (2) during the administration of a decedent's estate; or
- (3) under this section if the trustee is accounting under section 25 of this chapter for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-41

Principal disbursements; income transfers to reimburse principal or create principal disbursement reserve

Sec. 41. (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one (1) or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) disbursements described in section 39(a)(7) of this chapter.

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

As added by P.L.84-2002, SEC.2.

IC 30-2-14-42

Tax payments

Sec. 42. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) from income to the extent that receipts from the entity are allocated to income;

(2) from principal to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

As added by P.L.84-2002, SEC.2. Amended by P.L.143-2009,

IC 30-2-14-43

Adjustments to offset shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries

Sec. 43. (a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

- (1) elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;
- (2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or
- (3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, a trust, or a beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

As added by P.L.84-2002, SEC.2.

IC 30-2-14-44

Uniformity of the law

Sec. 44. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

As added by P.L.84-2002, SEC.2.

IC 30-2-15

Chapter 15. Total Return Unitrusts

IC 30-2-15-1

"Current valuation year"

Sec. 1. As used in this chapter, "current valuation year" means the year of the trust for which the unitrust amount is being determined.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-2

"Income trust"

Sec. 2. As used in this chapter, "income trust" means a trust created by an inter vivos or a testamentary instrument that has terms that describe the amount that may or must be distributed to a beneficiary by referring to the trust's income.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-3

"Net fair market value"

Sec. 3. As used in this chapter, "net fair market value" means the fair market value of each asset comprising the trust reduced by the liens, debts, and encumbrances of the trust, regardless of whether the liens, debts, and encumbrances are allocable to a specific asset.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-4

"Total return unitrust"

Sec. 4. As used in this chapter, "total return unitrust" means an income trust that has been converted to a total return unitrust in accordance with this chapter.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-5

"Trustee"

Sec. 5. As used in this chapter, "trustee" refers to the:

- (1) trustee of a trust; or
- (2) if at least two (2) persons are acting as trustee, a majority of the trustees.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-6

"Unitrust amount"

Sec. 6. As used in this chapter, "unitrust amount" means an amount computed as a percentage of the fair market value of the trust as set forth in this chapter.
As added by P.L.3-2003, SEC.2.

IC 30-2-15-7

"Unitrust rate"

Sec. 7. As used in this chapter, "unitrust rate" means the

percentage of the fair market value of the trust that is determined under section 15 of this chapter and used to calculate the unitrust amount.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-8

"Year"

Sec. 8. As used in this chapter, "year" means a calendar year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-9

Trustee's power to convert trust, reconvert trust, and change unitrust rate

Sec. 9. A trustee may:

- (1) release the trustee's power to adjust between trust principal and income under IC 30-2-14-15 and convert an income trust to a total return unitrust;
- (2) reconvert a total return unitrust to an income trust; or
- (3) change the unitrust rate;

if the requirements of this chapter are met.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-10

Acting without court approval

Sec. 10. (a) Unless expressly prohibited in the governing trust instrument, and if the trustee would not be prohibited from exercising the power to adjust under IC 30-2-14-15(a) because at least one (1) of the provisions of IC 30-2-14-15(c)(3) through IC 30-2-14-15(c)(7) would be applicable, a trustee may, without the approval of the court having jurisdiction of the trust, take an action set forth in section 9 of this chapter if:

- (1) the trustee sends written notice of the trustee's proposed action to:

(A) the settlor of the trust, if the settlor is living; and

(B) the trust beneficiaries described in IC 30-2-14-16(b); and

- (2) no person who receives a written notice under subdivision (1) objects to the proposed action.

- (b) To the extent applicable, the notice must:

- (1) state the trustee's intent to release the power to adjust under IC 30-2-14-15 and to convert the trust to a total return unitrust; and

- (2) describe how the unitrust will operate and any decisions made by the trustee under this chapter.

In the notice, the trustee shall also specify an effective date of the conversion, reconversion, or change in the unitrust rate.

(c) A person who receives notice under subsection (a) of a trustee's proposed action may object to the proposed action by delivering a written objection to the trustee not later than sixty (60) days after receiving the notice.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-11

Petition by trustee

Sec. 11. If a trustee:

- (1) receives an objection under section 10 of this chapter;
- (2) elects not to proceed under section 10 of this chapter; or
- (3) is not able to proceed under section 10 of this chapter because the trustee does not have the power to adjust under IC 30-2-14-15(c)(5), IC 30-2-14-15(c)(6), or IC 30-2-14-15(c)(7);

the trustee may petition the court having jurisdiction of the trust for an order that allows the trustee to take an action described in section 9 of this chapter.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-12

Petition by trust beneficiary

Sec. 12. A trust beneficiary described in IC 30-2-14-16(b) may petition the court having jurisdiction of the trust to order the trustee to take an action described in section 9 of this chapter, if the action would not alter any amount in the trust that is permanently set aside for charitable purposes unless both income and principal are set aside.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-13

When court shall approve conversion, reconversion, or change in rate

Sec. 13. If the court finds that the conversion, reconversion, or change in the unitrust rate under this chapter will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust, the court shall approve the conversion, reconversion, or change in the unitrust rate under this chapter.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-14

Reconversion's release of power to adjust void

Sec. 14. This section applies if a total return unitrust is reconverted to an income trust. The trustee's release of the trustee's power under IC 30-2-14-15, if it was given at the time the trust was converted to a total return unitrust, is void when the trust is reconverted.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-15

Conversion to unitrust; unitrust rate

Sec. 15. (a) When a trustee gives notice of a proposed action under section 10 of this chapter to convert a trust to a unitrust, the trustee must include the unitrust rate in the notice of proposed action.

(b) If:

- (1) the trustee proposes a unitrust rate of four percent (4%) in

the notice of proposed action; and

(2) no beneficiary entitled to notice of the proposed action makes a written objection to the unitrust rate under section 10 of this chapter;

the unitrust rate must be four percent (4%).

(c) A trust may have a unitrust rate that represents a reasonable current return from the trust and best reflects the goals of the trust and the intent of the settlor or testator, but that is not less than three percent (3%) or more than five percent (5%), if the rate is:

(1) agreed upon in writing by the trustee and the beneficiaries entitled to notice under section 11 of this chapter; or

(2) ordered by the court having jurisdiction of the trust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-16

Unitrust amount; initial two years of trust

Sec. 16. For the first two (2) years of the trust or the first two (2) years after the conversion to a total return unitrust under this chapter, the unitrust amount for a current valuation year of the trust must be the product of the unitrust rate multiplied by the net fair market values of the assets held in the trust on the first business day of the current valuation year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-17

Unitrust amount; successive years

Sec. 17. Beginning with the third year of the trust, and each year after that year, the unitrust amount for a current valuation year of the trust is the product of the unitrust rate multiplied by the average of the net fair market values of the assets held in the trust on the first business day of:

(1) the current valuation year; and

(2) each of the two (2) years of the trust immediately preceding the current valuation year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-18

Net fair market value of unitrust assets

Sec. 18. In determining the net fair market value of each asset held in the trust under sections 16 and 17 of this chapter, the value of the following may not be included:

(1) Any residential property or tangible personal property that, as of the first business day of the current valuation year, at least one (1) income beneficiary of the trust has or had the right to:

(A) occupy; or

(B) possess or control;

other than in a capacity as trustee. However, the right of occupancy or the right to possession or control shall be considered to be the unitrust amount with respect to the residential property or the tangible personal property.

(2) Any asset specifically given to a beneficiary under the terms of the trust and the return on that investment. The return on the investment shall be distributable to the beneficiary.

(3) Any assets that are held in a testator's estate.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-19

Trustee powers

Sec. 19. (a) The trustee may exclude any assets for which the fair market value is not readily determinable from the determination of net fair market value of trust assets. However, the terms of the trust continue to apply to these assets.

(b) The trustee may determine any other matter necessary for the proper functioning of the total return unitrust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-20

Prohibited reduction in unitrust amount

Sec. 20. The unitrust amount may not be reduced for expenses that would be deducted from income if the trust were not a total return unitrust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-21

Adjusting net fair market values of assets

Sec. 21. For purposes of section 16 of this chapter, the net fair market values of the assets held in trust on the first business day of a proper valuation year shall be adjusted to reflect any:

(1) reduction, in the case of a distribution or payment; or

(2) increase, in the case of a receipt;

for the prior valuation year as if the distribution, payment, or receipt had occurred on the first day of the prior valuation year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-22

Prorating unitrust amount in short year

Sec. 22. (a) As used in this section, "short year" refers to a part of a calendar year that:

(1) begins when the interest of the current beneficiary or class of current beneficiaries begins; or

(2) ends when the interest of the current beneficiary or class of beneficiaries ends.

(b) The trustee shall prorate the unitrust amount on a daily basis in a short year.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-23

Unitrust amount's satisfying tax law requirement of preserving tax benefit

Sec. 23. (a) This section applies to the following trusts:

(1) A trust for which a marital deduction has been taken for federal tax purposes during the lifetime of the spouse for whom the trust was created under Section 2056 or 2523 of the Internal Revenue Code.

(2) A trust to which the generation-skipping transfer tax due under Section 2601 of the Internal Revenue Code does not apply by reason of any effective date or transition rule.

(b) To the extent necessary to satisfy a tax law requirement or to preserve a tax benefit, the unitrust amount may not be less than the net income of the trust. Net income of the trust shall be determined as if the trust were not a unitrust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-24

Construing the governing instrument

Sec. 24. After the income trust is converted to a total return unitrust under this chapter, both of the following apply:

(1) The term "income" in the governing instrument means the unitrust amount plus any income from the trust assets excluded from the determination of net fair market value under sections 18 and 19 of this chapter.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with this chapter.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-25

Paying the unitrust amount

Sec. 25. (a) Except as provided in subsection (b), and unless otherwise provided by the governing instrument, the unitrust amount shall be considered to have been paid from net income. The net income of the trust shall be determined as if the trust were not a unitrust.

(b) To the extent that:

(1) net income is insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from net realized short term capital gains;

(2) net income and net realized short term capital gains are insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from net realized long term capital gains; and

(3) net income and net realized short term and net long term capital gains are insufficient to pay the unitrust amount, the unitrust amount shall be considered to have been paid from the principal of the trust.

As added by P.L.3-2003, SEC.2.

IC 30-2-15-26

Immunity of trustee

Sec. 26. (a) A trustee who in good faith acts or fails to act under

section 9 of this chapter is not liable to any person affected by the action or inaction, regardless of whether the person:

(1) received written notice as provided in section 10 of this chapter; and

(2) was under legal disability at the time of the delivery of the notice.

(b) The exclusive remedy of a person affected by the action or inaction of a trustee is to obtain an order of the court having jurisdiction of the trust that directs the trustee to take an action described in section 9 of this chapter.

As added by P.L.3-2003, SEC.2.

IC 30-2-16

Chapter 16. Payroll Savings Plan Administration

IC 30-2-16-1

"Participant"

Sec. 1. As used in this chapter, "participant" means an individual who has accumulated a balance of funds with a payroll savings plan administrator through a payroll savings plan.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-2

"Payroll savings plan"

Sec. 2. As used in this chapter, "payroll savings plan" means a method provided by an employer to the employer's employees for the voluntary purchase of United States savings bonds on a regular schedule through the designation of an amount to be deducted each pay period until a sufficient amount accumulates to pay the purchase price of at least one (1) United States savings bond.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-3

"Payroll savings plan administrator"

Sec. 3. As used in this chapter, "payroll savings plan administrator" means an organization that:

- (1) has been qualified by the Federal Reserve Bank or the Bureau of the Public Debt under 31 CFR Part 317 to sell United States savings bonds; and
- (2) operates payroll savings plans on behalf of employers for the purchase of United States savings bonds.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-4

"Static balance"

Sec. 4. As used in this chapter, "static balance" means an amount held by a payroll savings plan administrator for a participant who:

- (1) is not making allotments of payroll deductions to the payroll savings plan administrator; but
- (2) has not terminated the individual's directions to the participant's employer or the employer's payroll savings plan administrator to purchase United States savings bonds for the individual when a sufficient balance accumulates to pay the purchase price.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-5

Static balance administration services; reimbursement of administrator

Sec. 5. Subject to this chapter, a payroll savings plan administrator is entitled to reimbursement from a static balance for reasonable expenses incurred in the performance of static balance

administration services beginning with the year after the participant ceases to make allotments of payroll deductions to the payroll savings plan administrator.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-6

Applicability of reimbursement provision

Sec. 6. Section 5 of this chapter applies only to an account in which the static balance does not exceed fifty dollars (\$50).

As added by P.L.141-2005, SEC.27.

IC 30-2-16-7

Static balance accounts reportable as unclaimed property; inapplicability of reimbursement provisions

Sec. 7. Section 5 of this chapter does not apply to accounts containing a static balance that would otherwise be reported to the state under IC 32-34-1-26 as Indiana property.

As added by P.L.141-2005, SEC.27.

IC 30-2-16-8

Static balance account; maximum monthly charge

Sec. 8. The maximum charge that may be imposed on an account with a static balance is one dollar (\$1) per month.

As added by P.L.141-2005, SEC.27.