



February 11, 2015

SENATE BILL No. 56

DIGEST OF SB 56 (Updated February 9, 2015 12:27 pm - DI 106)

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

Synopsis: Legacy trust. Provides that a protective provision in a legacy trust prevents a creditor of the settlor from satisfying a claim from the settlor's interest in the trust estate when the settlor is also a beneficiary of the trust. Authorizes the establishment of legacy trusts. Prescribes the procedures for establishing a legacy trust. Bars most claims against a legacy trust. Permits claims against a legacy trust for certain fraudulent transfers, to enforce certain child support orders, and to enforce certain orders for the division of property with respect to a dissolution of marriage or a legal separation. Provides immunity to the trustees and advisers of legacy trusts and the professionals involved in establishing legacy trusts. Provides that the rule against perpetuities does not apply to legacy trusts. Authorizes a trustee to provide notice or deliver documents electronically in accordance with an agreement between the trustee and the recipient for electronic delivery of the notice or other documents.

Effective: July 1, 2015.

Steele, Bray

January 6, 2015, read first time and referred to Committee on Civil Law.
February 10, 2015, amended, reported favorably — Do Pass.

SB 56—LS 6364/DI 92



February 11, 2015

First Regular Session 119th General Assembly (2015)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 56

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

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

1 SECTION 1. IC 30-4-3-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) The settlor may provide in the
3 terms of the trust that the interest of a beneficiary may not be either
4 voluntarily or involuntarily transferred before payment or delivery of
5 the interest to the beneficiary by the trustee.
6 (b) Except as otherwise provided in subsection (c), if the settlor is
7 also a beneficiary of the trust, a provision restraining the voluntary or
8 involuntary transfer of **his the settlor's** beneficial interest will not
9 prevent **his the settlor's** creditors from satisfying claims from **his the**
10 **settlor's** interest in the trust estate.
11 (c) Subsection (a) applies to a trust that meets both of the following
12 requirements, regardless of whether or not **A protective provision**
13 **similar to that authorized by subsection (a) prevents a creditor of**
14 **the settlor from satisfying a claim from the settlor's interest in the**
15 **trust estate when the settlor is also a beneficiary of the trust if the**
16 **trust is one (1) of the following:**

SB 56—LS 6364/DI 92



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

- 2 (+) **(A)** The trust is a qualified trust under 26 U.S.C. 401(a).
 3 (2) **(B)** The limitations on each beneficiary's control over the
 4 beneficiary's interest in the trust complies with 29 U.S.C.
 5 1056(d).

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

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

9 SECTION 2. IC 30-4-3-38 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2015]: **Sec. 38. Receipt of a document under this article is
 12 presumed if the trustee has procedures in place requiring the
 13 mailing or delivery of the document to a beneficiary or other
 14 person entitled to the document. The presumption applies to the
 15 delivery of a document by:**

- 16 **(1) a properly directed electronic message; or**
 17 **(2) any other means that enables the recipient to access the
 18 document electronically;**

19 **in accordance with an agreement between the trustee and the
 20 recipient for electronic delivery of the document.**

21 SECTION 3. IC 30-4-3-39 IS ADDED TO THE INDIANA CODE
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 2015]: **Sec. 39. Except as expressly prohibited by statute or a
 24 court rule, a trustee may provide notice of an action or a proposed
 25 action under this article by:**

- 26 **(1) a properly directed electronic message; or**
 27 **(2) any other means that enables the recipient to access the
 28 notice electronically;**

29 **in accordance with an agreement between the trustee and the
 30 recipient for providing the notice electronically.**

31 SECTION 4. IC 30-4-5-12, AS AMENDED BY P.L.137-2014,
 32 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2015]: **Sec. 12. (~~Accounting by Trustees~~) (a)** Unless the terms
 34 of the trust provide otherwise or unless waived in writing by an adult,
 35 competent beneficiary, the trustee shall deliver a written statement of
 36 accounts to each income beneficiary or the income beneficiary's
 37 personal representative annually. The statement shall contain at least:

- 38 (1) all receipts and disbursements since the last statement; and
 39 (2) all items of trust property held by the trustee on the date of the
 40 statement at their inventory value.

41 (b) This subsection applies to a charitable trust with assets of at least
 42 five hundred thousand dollars (\$500,000). The trustee of a charitable



1 trust shall annually file a verified written certification with the attorney
 2 general stating that a written statement of accounts has been prepared
 3 showing at least the items listed in section 13(a) of this chapter. The
 4 certification must state that the statement of accounts is available to the
 5 attorney general and any member of the general public upon request.
 6 A charitable trust may not be exempted from this requirement by a
 7 provision in a will, trust agreement, indenture, or other governing
 8 instrument. This subsection does not prevent a trustee from docketing
 9 a charitable trust to finalize a written statement of account or any other
 10 lawful purpose in the manner provided in this article. However, this
 11 subsection does not apply to an organization that is not required to file
 12 a federal information return under Section 6033(a)(3)(A)(1) of the
 13 Internal Revenue Code.

14 (c) Upon petition by the settlor, a beneficiary or the beneficiary's
 15 personal representative, a person designated by the settlor to have
 16 advisory or supervisory powers over the trust, or any other person
 17 having an interest in the administration or the benefits of the trust,
 18 including the attorney general in the case of a trust for a benevolent
 19 public purpose, the court may direct the trustee to file a verified written
 20 statement of accounts showing the items listed in section 13(a) of this
 21 chapter. The petition may be filed at any time; however, the court may
 22 not, in the absence of good cause shown, require the trustee to file a
 23 statement more than once a year.

24 (d) If the court's jurisdiction is of a continuing nature as provided in
 25 IC 30-4-6-2, the trustee shall file a verified written statement of
 26 accounts containing the items shown in section 13(a) of this chapter
 27 with the court biennially, and the court may, on its own motion, require
 28 the trustee to file such a statement at any other time if there is good
 29 cause for requiring a statement to be filed.

30 **(e) Receipt of a written statement of accounts under this section**
 31 **is presumed if the trustee has procedures in place requiring the**
 32 **mailing or delivery of the statement to a beneficiary or other**
 33 **person entitled to the statement. The presumption applies to the**
 34 **delivery of a written statement of accounts by:**

35 **(1) a properly directed electronic message; or**

36 **(2) any other means that enables the recipient to access the**
 37 **statement electronically;**

38 **in accordance with an agreement between the trustee and the**
 39 **recipient for electronic delivery of the written statement of**
 40 **accounts.**

41 SECTION 5. IC 30-4-6-6 IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2015]: Sec. 6. ~~(Notice)~~ (a) Notice must be given



1 to any person or his personal representative who is named as a party in
 2 a petition or complaint, whose rights may be affected or upon whom a
 3 liability might be imposed by any proceeding; to the Attorney General
 4 if the trust is for a benevolent public purpose; and to any other person
 5 whom the court may order to be given notice.

6 (b) The form of notice required shall be in the form of a summons
 7 as provided for in the Indiana Rules of Procedure or in such other form
 8 as may be ordered or approved by the court.

9 (c) The manner of service of a notice shall be the same as that
 10 provided in the Indiana Rules of Procedure for service of summons or
 11 such other manner as may be ordered or approved by the court.

12 (d) Any person who is a nonresident of this state or whose address
 13 is unknown may be served by publication according to the Indiana
 14 Rules of Procedure. All persons served by publication whose names
 15 and addresses are known or can by reasonable diligence be ascertained
 16 by the party seeking service shall, in addition to such published notice,
 17 be served by registered or certified mail, **a properly directed**
 18 **electronic message**, or other public means by which a return receipt
 19 may be requested.

20 (e) The court shall give notice in any case in which it acts on its own
 21 motion.

22 (f) Any person not under a legal disability or a personal
 23 representative may waive in writing notice of the proceeding.

24 (g) An order of the court is binding as to all persons who are given
 25 notice of the proceeding, even though less than all interested persons
 26 receive notice.

27 SECTION 6. IC 30-4-8 IS ADDED TO THE INDIANA CODE AS
 28 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 29 1, 2015]:

30 **Chapter 8. Legacy Trusts**

31 **Sec. 1. This chapter applies to:**

- 32 (1) **qualified dispositions to legacy trusts; and**
 33 (2) **dispositions by transferors who are trustees;**

34 **that are made after June 30, 2015.**

35 **Sec. 2. Unless the context requires otherwise, the following**
 36 **definitions apply throughout this chapter:**

- 37 (1) **"Claim" means a right to payment, regardless of whether**
 38 **the right is reduced to judgment, liquidated, unliquidated,**
 39 **fixed, contingent, matured, immature, disputed, undisputed,**
 40 **legal, equitable, secured, or unsecured.**

- 41 (2) **"Creditor" means a person who has a claim against the**
 42 **transferor.**



- 1 (3) "Debt" means liability on a claim.
- 2 (4) "Disposition" means a transfer, conveyance, or assignment
- 3 of property, including a change in the legal ownership of
- 4 property that occurs when a trustee is substituted for another
- 5 trustee or when at least one (1) trustee is added. The term also
- 6 includes the exercise of a power that causes a transfer of
- 7 property to a trustee. However, the term does not include the
- 8 release or relinquishment of an interest in property that, until
- 9 the release or relinquishment, was the subject of a qualified
- 10 disposition.
- 11 (5) "Investment decision" means the retention, purchase, sale,
- 12 exchange, tender, or other transaction affecting the ownership
- 13 of or rights in an investment.
- 14 (6) "Legacy trust" means an irrevocable trust established
- 15 under section 3 of this chapter.
- 16 (7) "Person" means an individual at least eighteen (18) years
- 17 of age, a corporation, a trust, a limited liability company, a
- 18 limited liability partnership, a partnership, a governmental
- 19 entity, the state, or a political subdivision of the state.
- 20 (8) "Property" means real property, personal property, or an
- 21 interest in real or personal property.
- 22 (9) "Qualified affidavit" means a sworn affidavit executed
- 23 under section 5 of this chapter.
- 24 (10) "Qualified disposition" means a disposition by a
- 25 transferor to a legacy trust established under section 3 of this
- 26 chapter.
- 27 (11) "Qualified trustee" means a person qualified to serve as
- 28 the trustee of a legacy trust under section 6 of this chapter.
- 29 (12) "Transferor" means a person who as:
- 30 (A) an owner of property;
- 31 (B) a holder of a power of appointment that authorizes the
- 32 holder to appoint in favor of the holder, the holder's
- 33 creditors, the holder's estate, or the creditors of the
- 34 holder's estate; or
- 35 (C) a trustee;
- 36 directly or indirectly makes a disposition or causes a
- 37 disposition to be made.
- 38 (13) "Trust adviser" means a person given authority by the
- 39 terms of a legacy trust to direct, consent to, or disapprove
- 40 actual or proposed investment decisions, distribution
- 41 decisions, or other decisions related to property in a legacy
- 42 trust.



1 **Sec. 3. A legacy trust is established by:**

- 2 (1) designating in writing in the trust that the trust is a legacy
3 trust established under this chapter;
4 (2) including the terms required by section 4 of this chapter in
5 the legacy trust; and
6 (3) delivering a qualified affidavit containing the statements
7 required by section 5 of this chapter to the qualified trustee.

8 **Sec. 4. A legacy trust must do the following:**

- 9 (1) Provide for the appointment of at least one (1) qualified
10 trustee for the property that is the subject of a qualified
11 disposition.
12 (2) Expressly incorporate Indiana law to govern the validity,
13 construction, and administration of the trust.
14 (3) Be irrevocable.
15 (4) Provide that the interests of the transferor or beneficiary
16 in the trust property or the income from the trust property
17 may not voluntarily or involuntarily be transferred, assigned,
18 pledged, or mortgaged before the qualified trustee actually
19 distributes the property or income to the beneficiary.

20 **Sec. 5. (a) A qualified affidavit must state the following:**

- 21 (1) That the transferor has full right, title, and authority to
22 transfer the property to the legacy trust.
23 (2) That the transfer of the property to the legacy trust will
24 not render the transferor insolvent.
25 (3) That the transferor does not intend to defraud a creditor
26 by transferring the property to the legacy trust.
27 (4) That there are no pending or threatened court actions
28 against the transferor other than the court actions identified
29 by the transferor and attached to the qualified affidavit.
30 (5) That the transferor is not involved in any administrative
31 proceedings other than the administrative proceedings
32 identified by the transferor and attached to the qualified
33 affidavit.
34 (6) That the transferor does not contemplate filing for relief
35 under the federal bankruptcy code.
36 (7) That the property transferred to the legacy trust is not
37 derived from unlawful activities.

38 (b) Except as provided in subsection (c), a qualified affidavit
39 must be signed by the transferor.

40 (c) In the case of a disposition by a transferor who is a trustee,
41 the qualified affidavit must be signed by the transferor who made
42 the original disposition to the trustee. A qualified affidavit signed



1 under this subsection must state the facts as of the time of the
2 original disposition.

3 (d) If a transferor is a married individual at the time a qualified
4 affidavit is signed, the transferor shall provide a copy of the
5 qualified affidavit to the transferor's spouse.

6 Sec. 6. (a) A person may serve as a qualified trustee of a legacy
7 trust if the person is not the transferor and satisfies either of the
8 following requirements:

9 (1) In the case of an individual, the individual is a resident of
10 Indiana.

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

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

13 (B) subject to the supervision of:

14 (i) the department of financial institutions; or

15 (ii) the federal Office of the Comptroller of the
16 Currency, the Federal Deposit Insurance Corporation,
17 the Board of Governors of the Federal Reserve System,
18 the federal Office of Thrift Supervision, or any successor
19 to these agencies.

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

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

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

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

27 (4) Materially participate in the administration of the legacy
28 trust.

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

32 (1) an attachment or other provisional remedy against
33 property that is the subject of a qualified disposition to a
34 legacy trust; or

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

36 The protections provided to a qualified disposition by this
37 subsection apply notwithstanding any law to the contrary set forth
38 outside this chapter.

39 (b) If a court declines to apply Indiana law in determining the
40 effect of a spendthrift provision in a legacy trust in an action
41 brought against a legacy trust, the trustee of the legacy trust shall
42 immediately resign and, without further order of any court, cease



1 to be the trustee of the legacy trust. When a trustee resigns under
 2 this section, the trustee has the power only to convey the trust
 3 property to a successor trustee appointed under this section. A
 4 successor trustee shall succeed the resigning trustee in accordance
 5 with the terms of the legacy trust. If the trust does not provide for
 6 a successor trustee and the trust would otherwise be without a
 7 trustee, any beneficiary of the trust may petition an Indiana court
 8 to appoint a successor trustee. The Indiana court receiving the
 9 petition shall appoint a successor trustee to serve in accordance
 10 with the terms and conditions that the court determines are
 11 consistent with the purposes of the trust and this chapter.

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

14 (1) serves as a trust adviser under section 12 of this chapter;
 15 or

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

17 Sec. 8. (a) A claim against property that is the subject of a
 18 qualified disposition to a legacy trust is barred by section 7 of this
 19 chapter unless the claim is one (1) of the following:

20 (1) Except as provided in subsection (b), an action brought in
 21 Indiana under the Uniform Fraudulent Transfer Act
 22 (IC 32-18-2) where the requirements for recovery under the
 23 act are met by a preponderance of the evidence.

24 (2) An action, including a judicial or administrative action, to
 25 enforce the child support obligations of the transferor under
 26 a judgment or court order in existence at the time of the
 27 transferor's qualified disposition to the legacy trust.

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

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

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

40 (b) A claim brought under an action described in subsection
 41 (a)(1) is extinguished unless either of the following applies:

42 (1) The creditor's claim arose before the qualified disposition



1 to a legacy trust was made and the action is brought not later
2 than the following applicable deadline:

3 (A) Four (4) years after the transfer was made unless
4 clause (B) or (C) applies.

5 (B) Two (2) years after the transfer:

6 (i) if the transfer was recorded in the county recorder's
7 office in the county in which the transferor resides; or

8 (ii) if not recorded, was discovered or could have
9 reasonably been discovered by the creditor.

10 (C) Six (6) months after the transferor delivers written
11 notice of the qualified disposition to the creditor if the
12 transferor owes a debt to the creditor at the time of the
13 qualified disposition.

14 (2) Notwithstanding IC 32-18-2-19, the creditor's claim arose
15 after the qualified disposition and the action is brought not
16 more than two (2) years after the date of the qualified
17 disposition.

18 (c) A qualified disposition made by a transferor who is a trustee
19 is considered for purposes of this chapter to have been made on the
20 date that the property that is subject to the qualified disposition
21 was originally transferred in trust to the trustee or any predecessor
22 trustee in a form that satisfies section 4(3) and 4(4) of this chapter.

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

25 (1) the making of a subsequent qualified disposition is
26 disregarded when determining whether a creditor's claim
27 with respect to a prior qualified disposition is extinguished
28 under subsection (b); and

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

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

35 (b) If a creditor's claim is allowed under section 8 of this
36 chapter, the claim is limited as follows:

37 (1) If the court is satisfied that a qualified trustee has not
38 acted in bad faith in accepting or administering the property
39 that is the subject of the qualified disposition:

40 (A) the qualified trustee has a first and paramount lien
41 against the property that is the subject of the qualified
42 disposition in an amount equal to the entire cost, including



1 attorney's fees, properly incurred by the qualified trustee
 2 in the defense of the action or proceedings filed by the
 3 creditor;

4 (B) the creditor's claim shall be allowed subject to the
 5 proper fees, costs, preexisting rights, claims, and interests
 6 of the qualified trustee and of any predecessor qualified
 7 trustee that had not acted in bad faith; and

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

11 (2) If the court is satisfied that a beneficiary of a legacy trust
 12 has not acted in bad faith:

13 (A) the creditor's claim is subject to the right of the
 14 beneficiary to retain any distribution made upon the
 15 exercise of a trust power or the discretion vested in the
 16 qualified trustee that was properly exercised before the
 17 creditor commenced an action to enforce the claim; and

18 (B) it is presumed that the beneficiary, including a
 19 beneficiary who is also a transferor, did not act in bad faith
 20 merely by creating the legacy trust or by accepting a
 21 distribution made in accordance with the terms of the
 22 legacy trust.

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

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

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

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

42 (1) A transferor's power to veto a distribution from the trust.



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



1 Section 672(c) of the Internal Revenue Code.

2 (8) The transferor's potential or actual use of real property
3 held under a qualified personal residence trust (as defined in
4 Section 2702(c) of the Internal Revenue Code).

5 (b) For the purposes of subsection (a)(6)(A), a qualified trustee
6 is presumed to have discretion with respect to the distribution of
7 principal unless that discretion is denied to the qualified trustee by
8 the terms of the legacy trust.

9 Sec. 14. (a) A transferor may appoint one (1) or more advisers
10 who may have authority under the terms of the trust:

11 (1) to remove and appoint qualified trustees or trust advisers;
12 and

13 (2) to direct, consent to, or disapprove distributions from the
14 trust.

15 (b) Trust advisers are not required to satisfy the requirements
16 imposed upon trustees by section 6 of this chapter.

17 Sec. 15. If:

18 (1) a qualified trustee of a legacy trust ceases to meet the
19 requirements of section 6 of this chapter; and

20 (2) there remains no trustee of the legacy trust that meets the
21 requirements of section 6 of this chapter;

22 the qualified trustee described in subdivision (1) is considered to
23 have resigned when the qualified trustee ceased to meet the
24 requirements of section 6 of this chapter and a successor trustee
25 provided for in the legacy trust shall become a qualified trustee. If
26 the legacy trust does not provide for a successor qualified trustee,
27 a court shall appoint a successor qualified trustee upon the
28 application of any interested party.

29 Sec. 16. (a) Notwithstanding any provision of law to the
30 contrary, a person is entitled to only the rights with respect to a
31 qualified disposition that are provided by this chapter. No person,
32 including a creditor whose claim arises before or after a qualified
33 disposition, may bring a claim or a cause of action against:

34 (1) a trustee or an adviser of a legacy trust; or

35 (2) any person involved in the counseling, drafting,
36 preparation, execution, or funding of a legacy trust.

37 (b) This subsection applies to a cause of action to enforce a
38 judgment notwithstanding any provision of law to the contrary. A
39 cause of action to enforce a judgment may not be brought at law or
40 equity against:

41 (1) a trustee or adviser of a legacy trust; or

42 (2) any person involved in the counseling, drafting,



1 preparation, execution, or funding of a legacy trust;
2 if, as of the date of the cause of action, a cause of action by a
3 creditor with respect to the legacy trust would be barred by this
4 section.

5 (c) For purposes of this section, the counseling, drafting,
6 preparation, execution, and funding of a legacy trust include the
7 counseling, drafting, preparation, execution, and funding of a
8 limited partnership or a limited liability company if interests in the
9 limited partnership or limited liability company are subsequently
10 transferred to the legacy trust.

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

14 (1) the property or property interests in a legacy trust; or

15 (2) the terms and provisions of a legacy trust.

16 SECTION 7. IC 34-30-2-132.7 IS ADDED TO THE INDIANA
17 CODE AS A NEW SECTION TO READ AS FOLLOWS
18 [EFFECTIVE JULY 1, 2015]: **Sec. 132.7. IC 30-4-8-16 (Concerning**
19 **legacy trusts).**



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 56, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 2. IC 30-4-3-38 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 38. Receipt of a document under this article is presumed if the trustee has procedures in place requiring the mailing or delivery of the document to a beneficiary or other person entitled to the document. The presumption applies to the delivery of a document by:**

- (1) a properly directed electronic message; or**
- (2) any other means that enables the recipient to access the document electronically;**

in accordance with an agreement between the trustee and the recipient for electronic delivery of the document.

SECTION 3. IC 30-4-3-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 39. Except as expressly prohibited by statute or a court rule, a trustee may provide notice of an action or a proposed action under this article by:**

- (1) a properly directed electronic message; or**
- (2) any other means that enables the recipient to access the notice electronically;**

in accordance with an agreement between the trustee and the recipient for providing the notice electronically.

SECTION 4. IC 30-4-5-12, AS AMENDED BY P.L.137-2014, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 12. (~~Accounting by Trustees~~) (a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or the income beneficiary's personal representative annually. The statement shall contain at least:**

- (1) all receipts and disbursements since the last statement; and**
- (2) all items of trust property held by the trustee on the date of the statement at their inventory value.**

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared

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showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(3)(A)(1) of the Internal Revenue Code.

(c) Upon petition by the settlor, a beneficiary or the beneficiary's personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in section 13(a) of this chapter. The petition may be filed at any time; however, the court may not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

(d) If the court's jurisdiction is of a continuing nature as provided in IC 30-4-6-2, the trustee shall file a verified written statement of accounts containing the items shown in section 13(a) of this chapter with the court biennially, and the court may, on its own motion, require the trustee to file such a statement at any other time if there is good cause for requiring a statement to be filed.

(e) Receipt of a written statement of accounts under this section is presumed if the trustee has procedures in place requiring the mailing or delivery of the statement to a beneficiary or other person entitled to the statement. The presumption applies to the delivery of a written statement of accounts by:

- (1) a properly directed electronic message; or**
- (2) any other means that enables the recipient to access the statement electronically;**

in accordance with an agreement between the trustee and the recipient for electronic delivery of the written statement of accounts.

SECTION 5. IC 30-4-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. ~~(Notice)~~ (a) Notice must be given to any person or his personal representative who is named as a party in a petition or complaint, whose rights may be affected or upon whom a



liability might be imposed by any proceeding; to the Attorney General if the trust is for a benevolent public purpose; and to any other person whom the court may order to be given notice.

(b) The form of notice required shall be in the form of a summons as provided for in the Indiana Rules of Procedure or in such other form as may be ordered or approved by the court.

(c) The manner of service of a notice shall be the same as that provided in the Indiana Rules of Procedure for service of summons or such other manner as may be ordered or approved by the court.

(d) Any person who is a nonresident of this state or whose address is unknown may be served by publication according to the Indiana Rules of Procedure. All persons served by publication whose names and addresses are known or can by reasonable diligence be ascertained by the party seeking service shall, in addition to such published notice, be served by registered or certified mail, **a properly directed electronic message**, or other public means by which a return receipt may be requested.

(e) The court shall give notice in any case in which it acts on its own motion.

(f) Any person not under a legal disability or a personal representative may waive in writing notice of the proceeding.

(g) An order of the court is binding as to all persons who are given notice of the proceeding, even though less than all interested persons receive notice."

Page 6, line 5, delete "clear and convincing" and insert "**a preponderance of the**".

Page 6, line 6, delete "action" and insert "**action, including a judicial or administrative action,**".

Page 6, line 23, delete "unless:" and insert "**unless either of the following applies:**".

Page 6, line 24, after "(1)" delete "the" and insert "**The**".

Page 6, line 26, delete "the later of:" and insert "**the following applicable deadline:**".

Page 6, line 27, delete "two (2)" and insert "**Four (4)**".

Page 6, line 27, delete "made; or" and insert "**made unless clause (B) or (C) applies.**".

Page 6, line 28, delete "six (6) months" and insert "**Two (2) years**".

Page 6, line 29, after "(i)" insert "**if the transfer**".

Page 6, line 29, delete "or made a public record;" and insert "**in the county recorder's office in the county in which the transferor resides;**".

Page 6, line 30, delete "recorded or made a public record," and



insert "**recorded**".

Page 6, line 32, delete "creditor; or" and insert "**creditor**".

Page 6, between lines 32 and 33, begin a new line double block indented and insert:

"(C) Six (6) months after the transferor delivers written notice of the qualified disposition to the creditor if the transferor owes a debt to the creditor at the time of the qualified disposition."

Page 6, line 33, delete "notwithstanding" and insert "**Notwithstanding**".

Page 6, line 34, delete "concurrent with or".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 56 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 4, Nays 3.

