



January 23, 2015

SENATE BILL No. 368

DIGEST OF SB 368 (Updated January 21, 2015 12:13 pm - DI 106)

Citations Affected: IC 29-1; IC 29-3; IC 30-2; IC 30-4; IC 30-5; IC 34-30.

Synopsis: Uniform Fiduciary Access to Digital Assets Act. Enacts the Uniform Fiduciary Access to Digital Assets Act, drafted by the National Conference of Commissioners on Uniform State Laws. Vests fiduciaries with the authority to access, control, or copy digital assets. Makes conforming amendments.

Effective: July 1, 2015.

**Waltz, Bray, Young R Michael,
Randolph**

January 12, 2015, read first time and referred to Committee on Judiciary.
January 22, 2015, reported favorably — Do Pass.

SB 368—LS 6928/DI 113



January 23, 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. 368

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 29-1-8-1, AS AMENDED BY P.L.51-2014,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1. (a) Forty-five (45) days after the death of a
4 decedent and upon being presented an affidavit that complies with
5 subsection (b), a person:
6 (1) indebted to the decedent; or
7 (2) having possession of personal property or an instrument
8 evidencing a debt, an obligation, a stock, or a chose in action
9 belonging to the decedent;
10 shall make payment of the indebtedness or deliver the personal
11 property or the instrument evidencing a debt, an obligation, a stock, or
12 a chose in action to a distributee claiming to be entitled to payment or
13 delivery of property of the decedent as alleged in the affidavit.
14 (b) The affidavit required by subsection (a) must be an affidavit
15 made by or on behalf of the distributee and must state the following:
16 (1) That the value of the gross probate estate, wherever located

SB 368—LS 6928/DI 113



- 1 (less liens and encumbrances), does not exceed fifty thousand
2 dollars (\$50,000).
- 3 (2) That forty-five (45) days have elapsed since the death of the
4 decedent.
- 5 (3) That no application or petition for the appointment of a
6 personal representative is pending or has been granted in any
7 jurisdiction.
- 8 (4) The name and address of each distributee that is entitled to a
9 share of the property and the part of the property to which each
10 distributee is entitled.
- 11 (5) That the affiant has notified each distributee identified in the
12 affidavit of the affiant's intention to present an affidavit under this
13 section.
- 14 (6) That the affiant is entitled to payment or delivery of the
15 property on behalf of each distributee identified in the affidavit.
- 16 (c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5)
17 is part of the estate, nothing in this section shall prohibit a transfer of
18 the certificate of title to the motor vehicle if five (5) days have elapsed
19 since the death of the decedent and no appointment of a personal
20 representative is contemplated. A transfer under this subsection shall
21 be made by the bureau of motor vehicles upon receipt of an affidavit
22 containing a statement of the conditions required by subsection (b)(1)
23 and (b)(6). The affidavit must be duly executed by the distributees of
24 the estate.
- 25 (d) A transfer agent of a security shall change the registered
26 ownership on the books of a corporation from the decedent to a
27 distributee upon the presentation of an affidavit as provided in
28 subsection (a).
- 29 (e) For the purposes of subsection (a), an insurance company that,
30 by reason of the death of the decedent, becomes obligated to pay a
31 death benefit to the estate of the decedent is considered a person
32 indebted to the decedent.
- 33 (f) For purposes of subsection (a), property in a safe deposit box
34 rented by a decedent from a financial institution organized or
35 reorganized under the law of any state (as defined in IC 28-2-17-19) or
36 the United States is considered personal property belonging to the
37 decedent in the possession of the financial institution.
- 38 **(g) For purposes of subsection (a), a distributee has the same**
39 **rights as a personal representative under IC 30-2-17-4 to access:**
40 **(1) the content of an electronic communication (as defined in**
41 **IC 30-2-17-3);**
42 **(2) a catalogue of electronic communications (as defined in**



1 **IC 30-2-17-3); or**
 2 **(3) any other digital asset (as defined in IC 30-2-17-3);**
 3 **of the decedent.**

4 SECTION 2. IC 29-1-13-1.1, AS ADDED BY P.L.12-2007,
 5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2015]: Sec. 1.1. (a) As used in this section, "custodian" means
 7 any person who electronically stores the documents or information of
 8 another person:

9 (b) A custodian shall provide (a) **IC 30-2-17-4 applies to the right**
 10 **of a personal representative who is acting on behalf of the estate of a**
 11 **deceased person who was domiciled in Indiana at the time of the**
 12 **person's death; to access: to or copies of any documents or information**
 13 **of the deceased person stored electronically by the custodian upon**
 14 **receipt by the custodian of:**

15 (1) a written request for access or copies made by the personal
 16 representative, accompanied by a copy of the death certificate and
 17 a certified copy of the personal representative's letters
 18 testamentary; or the content of an electronic communication
 19 (as defined in IC 30-2-17-3);

20 (2) an order of a court having probate jurisdiction of the deceased
 21 person's estate: a catalogue of electronic communications (as
 22 defined in IC 30-2-17-3); or

23 **(3) any other digital asset (as defined in IC 30-2-17-3);**
 24 **of the deceased person.**

25 (e) (b) A custodian (as defined in IC 30-2-17-3) may not destroy
 26 or dispose of the electronically stored documents or information of the
 27 deceased person for two (2) years after the custodian receives a request
 28 or order under subsection (b): **IC 30-2-17.**

29 (d) Nothing in this section shall be construed to require a custodian
 30 to disclose any information:

31 (1) in violation of any applicable federal law; or

32 (2) to which the deceased person would not have been permitted
 33 access in the ordinary course of business by the custodian:

34 SECTION 3. IC 29-3-1-1.6 IS ADDED TO THE INDIANA CODE
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2015]: **Sec. 1.6. "Catalogue of electronic communications" has**
 37 **the meaning set forth in IC 30-2-17-3.**

38 SECTION 4. IC 29-3-1-2.7 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 2015]: **Sec. 2.7. "Content of an electronic communication" has**
 41 **the meaning set forth in IC 30-2-17-3.**

42 SECTION 5. IC 29-3-1-4.1 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2015]: **Sec. 4.1. "Digital asset" has the meaning set forth in
3 IC 30-2-17-3.**

4 SECTION 6. IC 29-3-8-10 IS ADDED TO THE INDIANA CODE
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2015]: **Sec. 10. (a) IC 30-2-17-5 applies to the right of a guardian
7 to access:**

- 8 (1) the content of an electronic communication;
- 9 (2) a catalogue of electronic communications; or
- 10 (3) any other digital asset;

11 **of a protected person.**

12 (b) **This article does not confer upon a guardian the power to
13 access:**

- 14 (1) the content of an electronic communication;
- 15 (2) a catalogue of electronic communications; or
- 16 (3) any other digital asset;

17 **of a protected person, unless, and only to the extent that, the court
18 expressly confers the power upon the guardian under
19 IC 29-3-9-4.1.**

20 (c) **For purposes of section 8 of this chapter, a power expressly
21 conferred by the court upon a guardian under IC 29-3-9-4.1 is
22 considered an additional responsibility and power with the
23 meaning of section 8(a)(1) of this chapter.**

24 SECTION 7. IC 29-3-9-4.1 IS ADDED TO THE INDIANA CODE
25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
26 1, 2015]: **Sec. 4.1. (a) After notice to interested persons and upon
27 authorization of the court, a guardian may access:**

- 28 (1) the content of an electronic communication;
- 29 (2) a catalogue of electronic communications; or
- 30 (3) any other digital asset;

31 **of a protected person as provided in the order of the court. The
32 court's authorization may apply generally or be restricted in scope.**

33 (b) **Before approving a guardian's exercise of the power to
34 access an item described in subsection (a)(1) through (a)(3), the
35 court shall consider primarily the decision that the protected
36 person would have made, to the extent that the decision of the
37 protected person can be ascertained.**

38 SECTION 8. IC 30-2-17 IS ADDED TO THE INDIANA CODE AS
39 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
40 1, 2015]:

41 **Chapter 17. Uniform Fiduciary Access to Digital Assets Act**

42 **Sec. 1. This chapter may be cited as the Uniform Fiduciary**



1 **Access to Digital Assets Act.**

2 **Sec. 2. (a) This chapter applies to the following:**

3 (1) A fiduciary or agent acting under a will or power of
4 attorney, regardless of the date on which the will or the power
5 of attorney is executed.

6 (2) A personal representative acting for a decedent, regardless
7 of the date on which the decedent dies.

8 (3) A guardianship proceeding, regardless of the date on
9 which the guardianship proceeding commenced or whether
10 the guardianship proceeding is pending.

11 (4) A trustee acting under a trust, regardless of the date on
12 which the trust is created.

13 (b) This chapter does not apply to a digital asset of an employer
14 used by an employee in the ordinary course of the employer's
15 business.

16 **Sec. 3. The following definitions apply throughout this chapter:**

17 (1) "Account holder" means a person that has entered into a
18 terms of service agreement with a custodian or a fiduciary for
19 the person.

20 (2) "Agent" means an attorney in fact granted authority
21 under a durable or nondurable power of attorney.

22 (3) "Carries" means engages in the transmission of electronic
23 communications.

24 (4) "Catalogue of electronic communications" means
25 information that identifies each person with which an account
26 holder has had an electronic communication, the time and
27 date of the communication, and the electronic address of the
28 person.

29 (5) "Content of an electronic communication" means
30 information concerning the substance or meaning of a
31 communication that:

32 (A) has been sent or received by the account holder;

33 (B) is in electronic storage by a custodian providing an
34 electronic communication service to the public or is
35 carried or maintained by a custodian providing a remote
36 computing service to the public; and

37 (C) is not readily accessible to the public.

38 (6) "Court" means the following unless the context clearly
39 indicates another meaning:

40 (A) The term has the meaning set forth in IC 30-5-2-3, if
41 the context in which the term is used concerns a fiduciary
42 or agent acting under a will or a power of attorney.



- 1 **(B) The term has the meaning set forth in**
 2 **IC 29-1-1-3(a)(3), if the context in which the term is used**
 3 **concerns a personal representative acting for a decedent.**
 4 **(C) The term has the meaning set forth in IC 29-3-1-3, if**
 5 **the context in which the term is used concerns a guardian**
 6 **acting for a protected person.**
 7 **(D) The term has the meaning set forth in IC 30-4-1-2(6),**
 8 **if the context in which the term is used concerns a trustee**
 9 **acting under a trust.**
 10 **(7) "Custodian" means a person that carries, maintains,**
 11 **processes, receives, or stores a digital asset of an account**
 12 **holder.**
 13 **(8) "Digital asset" means a record that is electronic. The term**
 14 **does not include an underlying asset or liability unless the**
 15 **asset or liability is itself a record that is electronic.**
 16 **(9) "Electronic" means relating to technology having**
 17 **electrical, digital, magnetic, wireless, optical, electromagnetic,**
 18 **or similar capabilities.**
 19 **(10) "Electronic communication" has the meaning set forth in**
 20 **18 U.S.C. 2510(12), as amended.**
 21 **(11) "Electronic communication service" means a custodian**
 22 **that provides to an account holder the ability to send or**
 23 **receive an electronic communication.**
 24 **(12) "Fiduciary" means an original, additional, or successor**
 25 **personal representative, guardian, agent, or trustee.**
 26 **(13) "Guardian" means a person appointed by a court to**
 27 **manage the estate of a living individual. The term includes a**
 28 **limited guardian.**
 29 **(14) "Information" means data, text, images, videos, sounds,**
 30 **codes, computer programs, software, data bases, or the like.**
 31 **(15) "Person" means an individual, estate, business or**
 32 **nonprofit entity, public corporation, government or**
 33 **governmental subdivision, agency, or instrumentality, or**
 34 **other legal entity.**
 35 **(16) "Personal representative" means an executor,**
 36 **administrator, special administrator, or person that performs**
 37 **substantially the same function under Indiana law other than**
 38 **this chapter. The term includes a distributee under IC 29-1-8.**
 39 **(17) "Power of attorney" means a record that grants an agent**
 40 **authority to act in the place of a principal.**
 41 **(18) "Principal" means an individual who grants authority to**
 42 **an agent in a power of attorney.**



- 1 **(19) "Protected person" means an individual for whom a**
 2 **guardian has been appointed. The term includes an individual**
 3 **for whom an application for the appointment of a guardian is**
 4 **pending.**
- 5 **(20) "Record" means information that is inscribed on a**
 6 **tangible medium or that is stored in an electronic or other**
 7 **medium and is retrievable in perceivable form.**
- 8 **(21) "Remote computing service" means a custodian that**
 9 **provides to an account holder computer processing services**
 10 **or the storage of digital assets by means of an electronic**
 11 **communications system (as defined in 18 U.S.C. 2510(14), as**
 12 **amended).**
- 13 **(22) "Terms of service agreement" means an agreement that**
 14 **controls the relationship between an account holder and a**
 15 **custodian.**
- 16 **(23) "Trustee" means a fiduciary with legal title to property**
 17 **pursuant to an agreement or declaration that creates a**
 18 **beneficial interest in another. The term includes a successor**
 19 **trustee.**
- 20 **(24) "Will" includes a codicil, testamentary instrument that**
 21 **only appoints an executor, and instrument that revokes or**
 22 **revises a testamentary instrument.**
- 23 **Sec. 4. Subject to section 8(b) of this chapter and unless**
 24 **otherwise ordered by a court or provided in the will of a decedent,**
 25 **the personal representative of the decedent has the right to access:**
- 26 **(1) the content of an electronic communication that the**
 27 **custodian is permitted to disclose under the Electronic**
 28 **Communications Privacy Act, 18 U.S.C. 2702(b), as amended;**
 29 **(2) any catalogue of electronic communications sent or**
 30 **received by the decedent; and**
 31 **(3) any other digital asset in which at death the decedent had**
 32 **a right or interest.**
- 33 **Sec. 5. Subject to section 8(b) of this chapter, a court, after an**
 34 **opportunity for hearing under IC 29-3-9-4.1, may grant a guardian**
 35 **the right to access:**
- 36 **(1) the content of an electronic communication that the**
 37 **custodian is permitted to disclose under the Electronic**
 38 **Communications Privacy Act, 18 U.S.C. 2702(b), as amended;**
 39 **(2) any catalogue of electronic communications sent or**
 40 **received by the protected person; and**
 41 **(3) any other digital asset in which the protected person has**
 42 **a right or interest.**



1 **Sec. 6. (a) To the extent a power of attorney expressly grants an**
 2 **agent authority over the content of an electronic communication of**
 3 **the principal, and subject to section 8(b) of this chapter, the agent**
 4 **has the right to access the content of an electronic communication**
 5 **that the custodian is permitted to disclose under the Electronic**
 6 **Communications Privacy Act, 18 U.S.C. 2702(b), as amended.**

7 **(b) Subject to section 8(b) of this chapter and unless otherwise**
 8 **ordered by the court or provided by a power of attorney, an agent**
 9 **has the right to access:**

10 **(1) any catalogue of electronic communications sent or**
 11 **received by the principal; and**

12 **(2) any other digital asset in which the principal has a right or**
 13 **interest.**

14 **Sec. 7. (a) Subject to section 8(b) of this chapter and unless**
 15 **otherwise ordered by the court or provided in a trust, a trustee that**
 16 **is an original account holder has the right to access any digital**
 17 **asset held in trust, including any catalogue of electronic**
 18 **communications of the trustee and the content of an electronic**
 19 **communication.**

20 **(b) Subject to section 8(b) of this chapter and unless otherwise**
 21 **ordered by the court or provided in a trust, a trustee that is not an**
 22 **original account holder has the right to access:**

23 **(1) the content of an electronic communication that the**
 24 **custodian is permitted to disclose under the Electronic**
 25 **Communications Privacy Act, 18 U.S.C. 2702(b), as amended;**

26 **(2) any catalogue of electronic communications sent or**
 27 **received by the original or any successor account holder; and**

28 **(3) any other digital asset in which the original or any**
 29 **successor account holder has a right or interest.**

30 **Sec. 8. (a) A fiduciary that is an account holder or has the right**
 31 **under this chapter to access a digital asset of an account holder:**

32 **(1) subject to the terms of service agreement, copyright law,**
 33 **and other applicable law, may take any action concerning the**
 34 **asset to the extent of the account holder's authority and the**
 35 **fiduciary's power under Indiana law other than this chapter;**

36 **(2) has, for the purpose of applicable electronic privacy laws,**
 37 **the lawful consent of the account holder for the custodian to**
 38 **divulge the content of an electronic communication to the**
 39 **fiduciary; and**

40 **(3) is, for the purpose of applicable computer fraud and**
 41 **unauthorized computer access laws, including IC 35-43-1-7,**
 42 **IC 35-43-1-8, and IC 35-43-2-3(b), an authorized user.**



1 **(b) Unless an account holder, after June 30, 2015, agrees to a**
 2 **provision in a terms of service agreement that limits a fiduciary's**
 3 **access to a digital asset of the account holder by an affirmative act**
 4 **separate from the account holder's assent to other provisions of the**
 5 **agreement:**

6 **(1) the provision is void as against the strong public policy of**
 7 **this state; and**

8 **(2) the fiduciary's access under this chapter to a digital asset**
 9 **does not violate the terms of service agreement even if the**
 10 **agreement requires notice of a change in the account holder's**
 11 **status.**

12 **(c) A choice of law provision in a terms of service agreement is**
 13 **unenforceable against a fiduciary acting under this chapter to the**
 14 **extent the provision designates law that enforces a limitation on a**
 15 **fiduciary's access to a digital asset, and the limitation is void under**
 16 **subsection (b).**

17 **(d) As to tangible personal property capable of receiving,**
 18 **storing, processing, or sending a digital asset, a fiduciary with**
 19 **authority over the property of a decedent, protected person,**
 20 **principal, or settlor:**

21 **(1) has the right to access the property and any digital asset**
 22 **stored in it; and**

23 **(2) is an authorized user for purposes of any applicable**
 24 **computer fraud and unauthorized computer access laws,**
 25 **including IC 35-43-1-7, IC 35-43-1-8, and IC 35-43-2-3(b).**

26 **Sec. 9. (a) If a fiduciary with a right under this chapter to access**
 27 **a digital asset of an account holder complies with subsection (b),**
 28 **the custodian shall comply with the fiduciary's request in a record**
 29 **for:**

30 **(1) access to the asset;**

31 **(2) control of the asset; and**

32 **(3) a copy of the asset to the extent permitted by copyright**
 33 **law.**

34 **(b) If a request under subsection (a) is made by:**

35 **(1) a personal representative with the right of access under**
 36 **section 4 of this chapter, the request must be accompanied by**
 37 **a certified copy of the letter of appointment of the**
 38 **representative, the affidavit of a distributee under**
 39 **IC 29-1-8-1, or a court order;**

40 **(2) a guardian with the right of access under section 5 of this**
 41 **chapter, the request must be accompanied by a certified copy**
 42 **of the court order that gives the guardian authority over the**



- 1 **digital asset;**
2 **(3) an agent with the right of access under section 6 of this**
3 **chapter, the request must be accompanied by an original or**
4 **a copy of the power of attorney that authorizes the agent to**
5 **exercise authority over the digital asset and a certification of**
6 **the agent, under penalty of perjury, that the power of**
7 **attorney is in effect; and**
8 **(4) a trustee with the right of access under section 7 of this**
9 **chapter, the request must be accompanied by a certified copy**
10 **of the trust instrument or a certification of the trust under**
11 **subsection (d) that authorizes the trustee to exercise authority**
12 **over the digital asset.**
- 13 **(c) A custodian shall comply with a request made under**
14 **subsection (a) not later than sixty (60) days after receipt. If the**
15 **custodian fails to comply, the fiduciary may apply to the court for**
16 **an order directing compliance.**
- 17 **(d) Instead of furnishing a copy of the trust instrument under**
18 **subsection (b)(4), a trustee may provide a certification of trust**
19 **under IC 30-4-4-5. For purposes of a certification under this**
20 **subsection, a trustee may describe the trustee's powers in the**
21 **certification under IC 30-4-4-5(a)(4) by stating that there is**
22 **nothing inconsistent in the trust with respect to the trustee's**
23 **powers over digital assets. A trustee's certification under this**
24 **subsection is not required to contain the dispositive terms of the**
25 **trust.**
- 26 **(e) A custodian that receives a certification under subsection (d)**
27 **may require the trustee to provide copies of excerpts from the**
28 **original trust instrument and later amendments designating the**
29 **trustee and conferring on the trustee the power to act in the**
30 **pending transaction.**
- 31 **(f) A custodian that acts in reliance on a certification under**
32 **subsection (d) without knowledge that the representations**
33 **contained in the certification are incorrect is not liable to any**
34 **person for so acting and may assume without inquiry the existence**
35 **of facts stated in the certification.**
- 36 **(g) A person that in good faith enters into a transaction in**
37 **reliance on a certification under subsection (d) may enforce the**
38 **transaction against the trust property as if the representations**
39 **contained in the certification were correct.**
- 40 **(h) A person that demands the trust instrument in addition to a**
41 **certification under subsection (d) or excerpts under subsection (e)**
42 **is liable for damages, including attorney's fees, if the court**



1 determines that the person did not act in good faith in demanding
2 the instrument.

3 (i) This section does not limit the right of a person to obtain a
4 copy of a trust instrument in a judicial proceeding concerning the
5 trust.

6 **Sec. 10. A custodian and the custodian's officers, employees, and**
7 **agents are immune from liability for an act or omission done in**
8 **good faith in compliance with this chapter.**

9 **Sec. 11. In applying and construing this uniform act,**
10 **consideration must be given to the need to promote uniformity of**
11 **the law with respect to its subject matter among states that enact**
12 **it.**

13 **Sec. 12. This chapter modifies, limits, or supersedes the**
14 **Electronic Signatures in Global and National Commerce Act (15**
15 **U.S.C. 7001 et seq.), but does not modify, limit, or supersede**
16 **Section 101(c) of that act (15 U.S.C. 7001(c)), or authorize**
17 **electronic delivery of any of the notices described in Section 103(b)**
18 **of that act (15 U.S.C. 7003(b)).**

19 SECTION 9. IC 30-4-3-3, AS AMENDED BY P.L.51-2014,
20 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2015]: Sec. 3. (a) Except as provided in the terms of the trust
22 and subject to subsection (c), a trustee has the power to perform
23 without court authorization, except as provided in sections 4(b) and
24 5(a) of this chapter, every act necessary or appropriate for the purposes
25 of the trust including, by way of illustration and not of limitation, the
26 following powers:

27 (1) The power to:

28 (A) deal with the trust estate;

29 (B) buy, sell, or exchange and convey or transfer all property
30 (real, personal, or mixed) for cash or on credit and at public or
31 private sale with or without notice; and

32 (C) invest and reinvest the trust estate.

33 (2) The power to receive additions to the assets of the trust.

34 (3) The power to acquire an undivided interest in a trust asset in
35 which the trustee, in any trust capacity, holds an undivided
36 interest.

37 (4) The power to manage real property in every way, including:

38 (A) the adjusting of boundaries;

39 (B) erecting, altering, or demolishing buildings;

40 (C) dedicating of streets, alleys, or other public uses;

41 (D) subdividing;

42 (E) developing;



- 1 (F) obtaining vacation of plats;
 2 (G) granting of easements and rights-of-way;
 3 (H) partitioning;
 4 (I) entering into party wall agreements; and
 5 (J) obtaining title insurance for trust property.
- 6 (5) The power to:
- 7 (A) grant options concerning disposition of trust property,
 8 including the sale of covered security options; and
 9 (B) take options for acquisition of trust property, including the
 10 purchase back of previously sold covered security options.
- 11 (6) The power to enter into a lease as lessor or lessee, with or
 12 without option to renew.
- 13 (7) The power to enter into arrangements for exploration and
 14 removal of minerals or other natural resources and enter into a
 15 pooling or unitization agreement.
- 16 (8) The power to continue the operation or management of any
 17 business or other enterprise placed in trust.
- 18 (9) The power to:
- 19 (A) borrow money, to be repaid from trust property or
 20 otherwise; and
 21 (B) encumber, mortgage, pledge, or grant a security interest in
 22 trust property in connection with the exercise of any power.
- 23 (10) The power to:
- 24 (A) advance money for the benefit of the trust estate and for all
 25 expenses or losses sustained in the administration of the trust;
 26 and
 27 (B) collect any money advanced, without interest or with
 28 interest, at no more than the lowest rate prevailing when
 29 advanced.
- 30 (11) The power to prosecute or defend actions, claims, or
 31 proceedings for the protection of:
- 32 (A) trust property; and
 33 (B) the trustee in the performance of the trustee's duties.
- 34 (12) The power to:
- 35 (A) pay or contest any claim;
 36 (B) settle a claim by or against the trust by compromise or
 37 arbitration; and
 38 (C) abandon or release, totally or partially, any claim
 39 belonging to the trust.
- 40 (13) The power to insure the:
- 41 (A) trust estate against damage or loss; and
 42 (B) trustee against liability with respect to third persons.



- 1 (14) The power to pay taxes, assessments, and other expenses
 2 incurred in the:
 3 (A) acquisition, retention, and maintenance of the trust
 4 property; and
 5 (B) administration of the trust.
- 6 (15) The power to:
 7 (A) vote securities, in person or by a general or special proxy;
 8 (B) hold the securities in the name of a nominee if the trustee
 9 is a corporate trustee; and
 10 (C) effect or approve, and deposit securities in connection
 11 with, any change in the form of the corporation, including:
 12 (i) dissolution;
 13 (ii) liquidation;
 14 (iii) reorganization;
 15 (iv) acquisition; and
 16 (v) merger.
- 17 (16) The power to employ persons, including:
 18 (A) attorneys;
 19 (B) accountants;
 20 (C) investment advisors; and
 21 (D) agents;
 22 to advise and assist the trustee in the performance of the trustee's
 23 duties.
- 24 (17) The power to effect distribution of property in cash, in kind,
 25 or partly in cash and partly in kind, in divided or undivided
 26 interests.
- 27 (18) The power to execute and deliver all instruments necessary
 28 or appropriate to accomplishing or facilitating the exercise of the
 29 trustee's powers.
- 30 (19) With respect to an interest in a proprietorship, partnership,
 31 limited liability company, business trust, corporation, or another
 32 form of business or enterprise, the power to:
 33 (A) continue the business or enterprise; and
 34 (B) take any action that may be taken by shareholders,
 35 members, or property owners, including:
 36 (i) merging;
 37 (ii) dissolving; or
 38 (iii) changing the form of business organization or
 39 contributing additional capital.
- 40 (20) With respect to possible liability for violation of
 41 environmental law, the power to:
 42 (A) inspect or investigate property:



- 1 (i) the trustee holds or has been asked to hold; or
- 2 (ii) owned or operated by an organization in which the
- 3 trustee holds an interest or has been asked to hold an
- 4 interest;
- 5 to determine the application of environmental law with respect
- 6 to the property;
- 7 (B) take action to prevent, abate, or remedy an actual or
- 8 potential violation of an environmental law affecting property
- 9 held directly or indirectly by the trustee before or after the
- 10 assertion of a claim or the initiation of governmental
- 11 enforcement;
- 12 (C) decline to accept property into the trust or disclaim any
- 13 power with respect to property that is or may be burdened with
- 14 liability for violation of environmental law;
- 15 (D) compromise claims against the trust that may be asserted
- 16 for an alleged violation of environmental law; and
- 17 (E) pay the expense of any inspection, review, abatement, or
- 18 remedial action to comply with environmental law.
- 19 (21) The power to exercise elections with respect to federal, state,
- 20 and local taxes.
- 21 (22) The power to select a mode of payment under any employee
- 22 benefit plan or retirement plan, annuity, or life insurance payable
- 23 to the trustee and exercise rights under the plan, annuity, or
- 24 insurance, including the right to:
- 25 (A) indemnification:
- 26 (i) for expenses; and
- 27 (ii) against liabilities; and
- 28 (B) take appropriate action to collect the proceeds.
- 29 (23) The power to make loans out of trust property, including
- 30 loans to a beneficiary on terms and conditions the trustee
- 31 determines fair and reasonable under the circumstances. The
- 32 trustee has a lien on future distributions for repayment of the
- 33 loans.
- 34 (24) The power to pledge trust property to guarantee loans made
- 35 by others to the beneficiary on terms and conditions the trustee
- 36 considers to be fair and reasonable under the circumstances. The
- 37 trustee has a lien on future distributions for repayment of the
- 38 loans.
- 39 (25) The power to:
- 40 (A) appoint a trustee to act in another jurisdiction with respect
- 41 to trust property located in the other jurisdiction;
- 42 (B) confer on the appointed trustee all the appointing trustee's



- 1 powers and duties;
- 2 (C) require the appointed trustee to furnish security; and
- 3 (D) remove the appointed trustee.
- 4 (26) With regard to a beneficiary who is under a legal disability
- 5 or whom the trustee reasonably believes is incapacitated, the
- 6 power to pay an amount distributable to the beneficiary by:
- 7 (A) paying the amount directly to the beneficiary;
- 8 (B) applying the amount for the beneficiary's benefit;
- 9 (C) paying the amount to the beneficiary's guardian;
- 10 (D) paying the amount to the beneficiary's custodian under
- 11 IC 30-2-8.5 to create a custodianship or custodial trust;
- 12 (E) paying the amount to an adult relative or another person
- 13 having legal or physical care or custody of the beneficiary to
- 14 be expended on the beneficiary's behalf, if the trustee does not
- 15 know of a guardian, custodian, or custodial trustee; or
- 16 (F) managing the amount as a separate fund on the
- 17 beneficiary's behalf, subject to the beneficiary's continuing
- 18 right to withdraw the distribution.
- 19 (27) The power to:
- 20 (A) combine at least two (2) trusts into one (1) trust; or
- 21 (B) divide one (1) trust into at least two (2) trusts;
- 22 after notice to the qualified beneficiaries, if the result does not
- 23 impair the rights of any beneficiary or adversely affect
- 24 achievement of the purposes of the trust.
- 25 (b) Any act under subsection (a)(4), an option under subsection
- 26 (a)(5), a lease under subsection (a)(6), an arrangement under
- 27 subsection (a)(7), and an encumbrance, mortgage, pledge, or security
- 28 interest under subsection (a)(9) may be for a term either within or
- 29 extending beyond the term of the trust.
- 30 (c) In acquiring, investing, reinvesting, exchanging, retaining,
- 31 selling, and managing property for any trust, the trustee thereof shall
- 32 exercise the judgment and care required by IC 30-4-3.5. Within the
- 33 limitations of the foregoing standard, the trustee is authorized to
- 34 acquire and retain every kind of property, real, personal, or mixed, and
- 35 every kind of investment, including specifically, but without in any way
- 36 limiting the generality of the foregoing, bonds, debentures, and other
- 37 corporate obligations, stocks, preferred or common, and real estate
- 38 mortgages, which persons of prudence, discretion, and intelligence
- 39 acquire or retain for their own account, and within the limitations of the
- 40 foregoing standard, the trustee is authorized to retain property properly
- 41 acquired, without limitation as to time and without regard to its
- 42 suitability for original purchase. Within the limitations of the foregoing



1 standard, the trustee is authorized to sell covered security options and
2 to purchase back previously sold covered security options.

3 (d) If a distribution of particular trust assets is to be made to two (2)
4 or more beneficiaries entitled to receive fractional shares in those
5 assets, the trustee may distribute the particular assets without
6 distributing to each beneficiary a pro rata share of each asset. However,
7 the trustee shall:

8 (1) distribute to each beneficiary a pro rata share of the total fair
9 market value of all of the particular assets as of the date of
10 distribution; and

11 (2) cause the distribution to result in a fair and equitable division
12 among the beneficiaries of capital gain or loss on the assets.

13 (e) If the trust is terminated or partially terminated, the trustee may
14 send to the beneficiaries a proposal for distribution. If the proposal for
15 distribution informs the beneficiary that the beneficiary:

16 (1) has a right to object to the proposed distribution; and

17 (2) must object not later than thirty (30) days after the proposal
18 for distribution was sent;

19 the right of the beneficiary to object to the proposed distribution
20 terminates if the beneficiary fails to notify the trustee of an objection
21 within the time limit set forth in subdivision (2).

22 (f) When any real or personal property subject to a lien (as defined
23 by IC 29-1-17-9(a)) is specifically distributable, the distributee shall
24 take the property subject to the lien unless the terms of the trust provide
25 expressly or by necessary implication that the lien be otherwise paid.
26 If:

27 (1) an event occurs that makes the property distributable; and

28 (2) the holder of a lien on the property receives payment on a
29 claim based upon the obligation secured by the lien;

30 the property subject to the lien shall be charged with the reimbursement
31 to the trust of the amount of the payment for the benefit of the
32 beneficiaries entitled to the distribution, unless the terms of the trust
33 provide expressly or by necessary implication that the payment be
34 charged against the residue of the trust estate.

35 (g) For purposes of subsection (f), a general directive or authority
36 in the trust for payment of debts does not imply an intent that the
37 distribution of property subject to a lien be made free from the lien.

38 **(h) IC 30-2-17-7 applies to the right of a trustee acting under a**
39 **trust to access:**

40 **(1) the content of an electronic communication (as defined in**
41 **IC 30-2-17-3);**

42 **(2) a catalogue of electronic communications (as defined in**



- 1 **IC 30-2-17-3); or**
 2 **(3) any other digital asset (as defined in IC 30-2-17-3).**
 3 SECTION 10. IC 30-5-2-2.3 IS ADDED TO THE INDIANA CODE
 4 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 5 **1, 2015]: Sec. 2.3. "Catalogue of electronic communications" has**
 6 **the meaning set forth in IC 30-2-17-3.**
 7 SECTION 11. IC 30-5-2-2.7 IS ADDED TO THE INDIANA CODE
 8 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 9 **1, 2015]: Sec. 2.7. "Content of an electronic communication" has**
 10 **the meaning set forth in IC 30-2-17-3.**
 11 SECTION 12. IC 30-5-2-3.5 IS ADDED TO THE INDIANA CODE
 12 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 13 **1, 2015]: Sec. 3.5. "Digital asset" has the meaning set forth in**
 14 **IC 30-2-17-3.**
 15 SECTION 13. IC 30-5-3-8 IS ADDED TO THE INDIANA CODE
 16 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 17 **1, 2015]: Sec. 8. (a) IC 30-2-17-6(a) applies to the right of an**
 18 **attorney in fact to access the content of an electronic**
 19 **communication of the principal.**
 20 **(b) IC 30-2-17-6(b) applies to the right of an attorney in fact to**
 21 **access:**
 22 **(1) a catalogue of electronic communications sent or received**
 23 **by the principal; and**
 24 **(2) a digital asset in which the principal has a right or interest**
 25 **other than:**
 26 **(A) the information described in subsection (a); or**
 27 **(B) a digital asset described in subdivision (1).**
 28 SECTION 14. IC 30-5-5-14.5 IS ADDED TO THE INDIANA
 29 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 30 **[EFFECTIVE JULY 1, 2015]: Sec. 14.5. (a) Language conferring**
 31 **general authority with respect to electronic records, reports, and**
 32 **statements authorizes the attorney in fact to do the following:**
 33 **(1) Gain access to any computer, storage device, network,**
 34 **communications device, or other computing machinery that**
 35 **the principal owns, leases, or otherwise has license to access.**
 36 **(2) Gain access to any user account the principal maintains**
 37 **with an online service provider.**
 38 **(3) Access, retrieve, copy, or store:**
 39 **(A) the content of an electronic communication of the**
 40 **principal;**
 41 **(B) a catalogue of electronic communications sent or**
 42 **received by the principal; or**



1 (C) any other digital asset in which the principal has a
2 right or interest.
3 (4) Perform any act in connection with the preparation,
4 execution, filing, storage, or other use of electronic records,
5 reports, and statements of or concerning the principal's
6 affairs that the attorney in fact may perform in connection
7 with the preparation, execution, filing, storage, or other use of
8 written records, reports, and statements of or concerning the
9 principal's affairs.
10 (b) The powers described in this section are exercisable equally
11 with respect to electronic records, reports, or statements of or
12 concerning the affairs of the principal at the time of the giving of
13 the power of attorney or are created after that time, whether
14 arising in Indiana or in another jurisdiction.
15 SECTION 15. IC 34-30-2-129.9 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2015]: **Sec. 129.9. IC 30-2-17-10 (Concerning**
18 **actions done in good faith in compliance with the Uniform**
19 **Fiduciary Access to Digital Assets Act).**



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 368, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 368 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 0

