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**PRELIMINARY DRAFT  
No. 3151**

**PREPARED BY  
LEGISLATIVE SERVICES AGENCY  
2014 GENERAL ASSEMBLY**

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DIGEST

**Citations Affected:** IC 30-4-3-36.

**Synopsis:** Trust administration. Provides that a trustee's power under certain circumstances to appoint all or part of the principal of a trust into a second trust is available when the trustee has discretion to invade the principal of the first trust to make distributions to or for the benefit of at least one person. (Current law grants the power of appointment to a trustee who has absolute power to invade the principal of the first trust to make such distributions.)

**Effective:** July 1, 2014.



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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 30-4-3-36, AS ADDED BY P.L.6-2010, SECTION  
2 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2014]: Sec. 36. (a) Unless a trust expressly provides otherwise, a  
4 trustee who has ~~absolute power~~ **discretion** under the terms of a trust  
5 (referred to in this section as the "first trust") to invade the principal of  
6 the trust to make distributions to or for the benefit of one (1) or more  
7 persons may instead exercise the power by appointing all or part of the  
8 principal of the first trust in favor of a trustee of another trust (referred  
9 to in this section as the "second trust") for the benefit of one (1) or  
10 more persons under the same trust instrument or under a different trust  
11 instrument as long as:

12 (1) the beneficiaries of the second trust are the same as the  
13 beneficiaries of the first trust;

14 (2) the second trust does not reduce any income, annuity, or  
15 unitrust interest in the assets of the first trust; and

16 (3) if any contributions to the first trust qualified for a marital or  
17 charitable deduction for purposes of the federal income, gift, or  
18 estate taxes, the second trust does not contain any provision that,  
19 if included in the first trust, would have prevented the first trust  
20 from qualifying for a deduction or reduced the amount of a  
21 deduction.

22 ~~(b) For purposes of this section, an absolute power to invade~~  
23 ~~principal includes a power to invade principal that is not limited to~~  
24 ~~specific or ascertainable purposes, such as health, education,~~  
25 ~~maintenance, and support regardless of whether the term "absolute" is~~  
26 ~~used.~~

27 ~~(c)~~ **(b)** The exercise of a power to invade principal under subsection  
28 (a) must be by an instrument that is:

29 (1) in writing;

30 (2) signed and acknowledged by the trustee; and

31 (3) filed with the records of the first trust.



1           ~~(d)~~ (c) The exercise of a power to invade principal under subsection  
2 (a) is considered the exercise of a power of appointment, other than a  
3 power to appoint to the trustee, the trustee's creditors, the trustee's  
4 estate, or the creditors of the trustee's estate. The exercise of the power  
5 does not extend the time at which the permissible period of the rule  
6 against perpetuities begins and the law that determines the permissible  
7 period of the rule against perpetuities of the first trust.

8           ~~(e)~~ (d) The trustee shall notify in writing all qualified beneficiaries  
9 of the first trust at least sixty (60) days before the effective date of the  
10 trustee's exercise of the power to invade principal under subsection (a)  
11 of the manner in which the trustee intends to exercise the power. A  
12 copy of the proposed instrument exercising the power satisfies the  
13 trustee's notice obligation under this subsection. If all qualified  
14 beneficiaries waive the notice period by signed written instrument  
15 delivered to the trustee, the trustee's power to invade principal may be  
16 exercised immediately. The trustee's notice under this subsection does  
17 not limit the right of any beneficiary to object to the exercise of the  
18 trustee's power to invade principal, except as otherwise provided by  
19 this article.

20           ~~(f)~~ (e) The exercise of the power to invade principal under  
21 subsection (a) is not prohibited by a spendthrift clause or by a provision  
22 in the trust instrument that prohibits amending or revoking the trust.

23           ~~(g)~~ (f) This section is not intended to create or imply a duty to  
24 exercise a power to invade principal. No inference of impropriety may  
25 be made as a result of a trustee not exercising the power to invade  
26 principal conferred under subsection (a).

27           ~~(h)~~ (g) This section may not be construed to abridge the right of any  
28 trustee who has a power of invasion to appoint property in further trust  
29 that arises under the terms of the first trust, under any other provision  
30 of this article or any other statute, or under common law.

