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## ENGROSSED HOUSE BILL No. 1038

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DIGEST OF HB 1038 (Updated February 23, 1998 7:32 pm - DI 44)

**Citations Affected:** IC 29-1; IC 29-3.

**Synopsis:** Surviving spouse's allowance, small estates and debts owed to a minor. Provides that a surviving spouse's allowance may be claimed against the personal property of the estate. (Current law provides that the allowance may be claimed against personal property of the estate or a residence of the surviving spouse, or a combination of both.) Provides that a personal representative of a decedent or a person acting on behalf of the distributees of a decedent whose gross estate, less liens and encumbrances, does not exceed \$25,000 in value may close the estate under the summary procedures for small estates. (Continued next page)

**Effective:** July 1, 1998.

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### Alevizos, Foley, D. Young

(SENATE SPONSOR — LANDSKE, RANDOLPH)

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January 6, 1998, read first time and referred to Committee on Judiciary.  
January 28, 1998, reported — Do Pass.  
February 2, 1998, read second time, ordered engrossed. Engrossed.  
February 3, 1998, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 9, 1998, read first time and referred to Committee on Judiciary.  
February 19, 1998, amended, reported favorably — Do Pass.  
February 23, 1998, read second time, amended, ordered engrossed.

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(Current law allows a person to close an estate under the summary procedures if the gross estate, less liens and encumbrances, does not exceed \$15,000 in value.) Increases from \$3,500 to \$5,000 the maximum amount of debt owed to a minor and the maximum value of property belonging to a minor that may be paid or delivered to a person having the care and custody of the minor without giving a bond or an order of the court.

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Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

## HOUSE ENROLLED ACT No. 1038

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AN ACT to amend the Indiana Code concerning probate.

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

SECTION 1. IC 29-1-4-1, AS AMENDED BY P.L.118-1997, SECTION 11, IS AMENDED TO READ AS FOLLOWS[EFFECTIVE JULY 1, 1998]: Sec. 1. The surviving spouse of a decedent who was domiciled in Indiana at his death is entitled from the estate to an allowance of fifteen thousand dollars (\$15,000). **The allowance may be claimed against the in personal property of the estate** or a residence of the surviving spouse, or a combination of both. If there is no surviving spouse, the decedent's children who are under eighteen (18) years of age at the time of the decedent's death are entitled to the same allowance to be divided equally among them. If there is less than fifteen thousand dollars (\$15,000) in personal property in the estate and residence of the surviving spouse, the spouse or decedent's children who are under eighteen (18) years of age at the time of the decedent's death, as the case may be, are entitled to any real estate of the estate to the extent necessary to make up the difference between the value of the personal property plus the residence of the surviving spouse and fifteen thousand dollars (\$15,000). The amount of that difference is a lien on the remaining real estate. An allowance under this section is not chargeable against the distributive shares of either the surviving spouse

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or the children.

SECTION 2. IC 29-1-8-3, AS AMENDED BY P.L.118-1997, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) If it appears that the value of a decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of:

- (1) ~~fifteen~~ **twenty-five** thousand dollars (~~\$15,000~~); (**\$25,000**);
- (2) the costs and expenses of administration; and
- (3) reasonable funeral expenses;

the personal representative or a person acting on behalf of the distributees, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to it and file a closing statement as provided in section 4 of this chapter.

(b) If an estate described in subsection (a) includes real property, an affidavit may be recorded in the office of the recorder in the county in which the real property is located. The affidavit must contain the following:

- (1) The legal description of the real property.
- (2) The following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: ~~the allowance, if any, provided by IC 29-1-4-1,~~ **twenty-five thousand dollars (\$25,000)**, the costs and expenses of administration, and reasonable funeral expenses."
- (3) The name of each person entitled to at least a part interest in the real property as a result of a decedent's death, the share to which each person is entitled, and whether the share is a divided or undivided interest.
- (4) A statement which explains how each person's share has been determined.

SECTION 3. IC 29-3-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) Any person indebted to a minor or having possession of property belonging to a minor in an amount not exceeding ~~three five thousand five hundred~~ dollars (~~\$3,500~~) (**\$5,000**) may pay the debt or deliver the property without the appointment of a guardian, giving of bond, or other order of court directly to any person having the care and custody of the minor with whom the minor resides.

(b) Persons receiving property for a minor under this section are obligated to apply the property to the support, use, and benefit of the minor.

(c) This section does not apply if the person paying or delivering the

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property knows that a guardian has been appointed for the minor or that proceedings for appointment of a guardian for the minor are pending.

(d) A person who pays or delivers property in accordance with this section in good faith is not responsible for the proper application of that property.

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