PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION ____

MR. SPEAKER:

I move that Engrossed Senate Bill 190 be amended to read as follows:

Page 5, between lines 30 and 31, begin a new paragraph and insert:

SECTION 10. IC 29-1-2-1 IS AMENDED TO READ AS FOLLOWS: [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) The net estate of a person dying intestate shall descend and be distributed as provided in this section.

(b) Except as otherwise provided in subsection (c), the surviving spouse shall receive the following share:

(1) One-half (1/2) of the net estate if the intestate is survived by at least one (1) child or by the issue of at least one (1) deceased child.

(2) Three-fourths (3/4) of the net estate, if there is no surviving issue, but the intestate is survived by one (1) or both of the intestate's parents.

(3) All of the net estate, if there is no surviving issue or parent.

(c) If the surviving spouse is a second or other subsequent spouse who did not at any time have children by the decedent, and the decedent left surviving him a child or children or the descendants of a child or children by a previous spouse, such surviving second or subsequent childless spouse shall take only **the appraised value of thirty-three percent (33%)** ~~a life estate in one-third (1/3)~~ of the lands of the deceased spouse, and the fee shall, at the decedent's death, vest at once in such child or children, or the descendants of such as may be dead~~; subject only to the life estate of the surviving spouse.~~ Such second or subsequent childless spouse shall, however, receive the same share of the personal property of the decedent as is provided in subsection (b)

with respect to surviving spouses generally.

(d) The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

(1) To the issue of the intestate, if they are all of the same degree of kinship to the intestate, they shall take equally; or if of unequal degree, then those of more remote degrees shall take by representation.

(2) If there is a surviving spouse but no surviving issue of the intestate, then to the surviving parents of the intestate.

(3) If there is no surviving spouse or issue of the intestate, then to the surviving parents, brothers, and sisters, and the issue of deceased brothers and sisters of the intestate. Each living parent of the intestate shall be treated as of the same degree as a brother or sister and shall be entitled to the same share as a brother or sister. However, the share of each parent shall be not less than one-fourth (1/4) of such net estate. Issue of deceased brothers and sisters shall take by representation.

(4) If there is no surviving parent or brother or sister of the intestate, then to the issue of brothers and sisters. If such distributees are all in the same degree of kinship to the intestate, they shall take equally or, if of unequal degree, then those of more remote degrees shall take by representation.

(5) If there is no surviving issue, or parent of the intestate, or issue of a parent, then to the surviving grandparents of the intestate equally.

(6) If there is no surviving issue, or parent, or issue of a parent, or grandparent of the intestate, then the estate of the decedent shall be divided into that number of shares equal to the sum of:

(A) the number of brothers and sisters of the decedent's parents surviving the decedent; plus

(B) the number of deceased brothers and sisters of the decedent's parents leaving issue surviving both them and the decedent; and

one (1) of the shares shall pass to each of the brothers and sisters of the decedent's parents, or heir respective issue, per stirpes.

(7) If interests in real estate go to a husband and wife under this subsection, the aggregate interests so descending shall be owned by them as tenants by the entireties. Interests in personal property so descending shall be owned as tenants in common.

(8) If there is no person mentioned in subdivisions (1) through (7), then to the state.

SECTION 11. IC 29-1-3-1 IS AMENDED TO READ AS FOLLOWS: [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) When a married individual dies testate as to any part of the individual's estate, the surviving spouse is entitled to take against the will under the limitations

and conditions stated in this chapter. The surviving spouse, upon electing to take against the will, is entitled to one-half (1/2) of the net personal and real estate of the testator. However, if the surviving spouse is a second or other subsequent spouse who did not at any time have children by the decedent and the decedent left surviving a child or children or the descendants of a child or children by a previous spouse, the surviving second or subsequent childless spouse shall upon such election take one-third (1/3) of the net personal estate of the testator plus **the appraised value of thirty-three percent (33%)** ~~a life estate in one-third (1/3)~~ of the lands of the testator. In determining the net estate of a deceased spouse for the purpose of computing the amount due the surviving spouse electing to take against the will, the court shall consider only such property as would have passed under the laws of descent and distribution.

(b) When the value of the property given the surviving spouse under the will is less than the amount the surviving spouse would receive by electing to take against the will, the surviving spouse may elect to retain any or all specific bequests or devises given to the surviving spouse in the will at their fair market value as of the time of the decedent's death and receive the balance due in cash or property.

(c) Except as provided in subsection (b), in electing to take against the will, the surviving spouse is deemed to renounce all rights and interest of every kind and character in the personal and real property of the deceased spouse, and to accept the elected award in lieu thereof.

(d) When a surviving spouse elects to take against the will, the surviving spouse shall be deemed to take by descent, as a modified share, the part of the net estate as does not come to the surviving spouse by the terms of the will. Where by virtue of an election pursuant to this chapter it is determined that the surviving spouse has renounced the surviving spouse's rights in any devise, either in trust or otherwise, the will shall be construed with respect to the property so devised to the surviving spouse as if the surviving spouse had predeceased the testator.

SECTION 12. IC 29-1-3-4 IS AMENDED TO READ AS FOLLOWS: [EFFECTIVE JULY 1, 2001]: Sec. 4. The right of election of the surviving spouse is personal to the spouse. It is not transferable and cannot be exercised subsequent to the spouse's death. **A person with a valid power of attorney for the surviving spouse may elect for the spouse if the power of attorney has general authority with respect to estates as provided in IC 30-5-5-15(a)(4).** If the surviving spouse is a protected person, the court may order the guardian of the spouse's estate to elect for the spouse.

Page 21, line 4, delete "legal and factual" and insert "**reason**".

Page 21, line 5, delete "basis for asserting"

Renumber all SECTIONS consecutively.

(Reference is to ESB as printed March 22, 2001.)

Representative WEINZAPFEL