



January 20, 2006

SENATE BILL No. 114

DIGEST OF SB 114 (Updated January 18, 2006 6:47 pm - DI 106)

Citations Affected: IC 29-1; IC 30-2; IC 30-4; noncode.

Synopsis: Probate and trust matters. Provides that a surviving subsequent childless spouse who takes against the will of the decedent is entitled to take one-third of the net personal estate and an additional amount equal to 25% of the fair market value of the decedent's real property minus liens and encumbrances. (Current law bases the additional amount on the value of the decedent's lands.) Makes conforming changes to the intestate succession law. Specifies additional powers that a personal representative may exercise without order of the court in the administration of an unsupervised estate. Provides that income earned by a trust becomes a part of the principal and is not distributed to the beneficiaries of specific property. Removes references to estates to conform Indiana's version of the uniform principal and income act with current probate law. Specifies that a trustee may exercise a power that conflicts with an individual interest of the trustee if the trustee receives written authorization from all interested persons to exercise the power or if the exercise of the power is specifically authorized by the terms of the trust. (Current law permits the exercise of the power only with court authorization.) (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2005 (retroactive); July 1, 2006.

Zakas

January 9, 2006, read first time and referred to Committee on Judiciary.
January 19, 2006, amended, reported favorably — Do Pass.

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SB 114—LS 6288/DI 92+



January 20, 2006

Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

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SENATE BILL No. 114

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

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

1 SECTION 1. IC 29-1-2-1, AS AMENDED BY P.L.238-2005,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2005 (RETROACTIVE)]: Sec. 1. (a) The estate of a person
4 dying intestate shall descend and be distributed as provided in this
5 section.

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

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

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

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

15 (c) If the surviving spouse is a second or other subsequent spouse
16 who did not at any time have children by the decedent, and the
17 decedent left surviving the decedent a child or children or the

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1 descendants of a child or children by a previous spouse, ~~such~~ **the**
 2 surviving second or subsequent childless spouse shall take only an
 3 amount equal to twenty-five percent (25%) of **the remainder of:**
 4 (1) the fair market value as of the date of death of the real
 5 property of the deceased spouse; ~~less~~ **minus**
 6 (2) **the value of the** liens and encumbrances on the real property
 7 of the deceased spouse.
 8 ~~and~~ The fee shall, at the decedent's death, vest at once in ~~such~~ **the**
 9 **decedent's surviving** child or children, or the descendants of ~~such~~ **as**
 10 **the decedent's child or children who** may be dead. ~~Such~~ **A** second or
 11 subsequent childless spouse **described in this subsection** shall,
 12 however, receive the same share of the personal property of the
 13 decedent as is provided in subsection (b) with respect to surviving
 14 spouses generally.
 15 (d) The share of the net estate not distributable to the surviving
 16 spouse, or the entire net estate if there is no surviving spouse, shall
 17 descend and be distributed as follows:
 18 (1) To the issue of the intestate, if they are all of the same degree
 19 of kinship to the intestate, they shall take equally, or if of unequal
 20 degree, then those of more remote degrees shall take by
 21 representation.
 22 (2) If there is a surviving spouse but no surviving issue of the
 23 intestate, then to the surviving parents of the intestate.
 24 (3) If there is no surviving spouse or issue of the intestate, then to
 25 the surviving parents, brothers, and sisters, and the issue of
 26 deceased brothers and sisters of the intestate. Each living parent
 27 of the intestate shall be treated as of the same degree as a brother
 28 or sister and shall be entitled to the same share as a brother or
 29 sister. However, the share of each parent shall be not less than
 30 one-fourth (1/4) of ~~such~~ **the decedent's** net estate. Issue of
 31 deceased brothers and sisters shall take by representation.
 32 (4) If there is no surviving parent or brother or sister of the
 33 intestate, then to the issue of brothers and sisters. If ~~such~~ **the**
 34 distributees **described in this subdivision** are all in the same
 35 degree of kinship to the intestate, they shall take equally or, if of
 36 unequal degree, then those of more remote degrees shall take by
 37 representation.
 38 (5) If there is no surviving issue or parent of the intestate or issue
 39 of a parent, then to the surviving grandparents of the intestate
 40 equally.
 41 (6) If there is no surviving issue or parent or issue of a parent, or
 42 grandparent of the intestate, then the estate of the decedent shall

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1 be divided into that number of shares equal to the sum of:
 2 (A) the number of brothers and sisters of the decedent's
 3 parents surviving the decedent; plus
 4 (B) the number of deceased brothers and sisters of the
 5 decedent's parents leaving issue surviving both them and the
 6 decedent;
 7 and one (1) of the shares shall pass to each of the brothers and
 8 sisters of the decedent's parents or their respective issue per
 9 stipes.
 10 (7) If interests in real estate go to a husband and wife under this
 11 subsection, the aggregate interests so descending shall be owned
 12 by them as tenants by the entireties. Interests in personal property
 13 so descending shall be owned as tenants in common.
 14 (8) If there is no person mentioned in subdivisions (1) through
 15 (7), then to the state.

16 SECTION 2. IC 29-1-3-1 IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2005 (RETROACTIVE)]: Sec. 1. (a) When a
 18 married individual dies testate as to any part of the individual's estate,
 19 the surviving spouse is entitled to take against the will under the
 20 limitations and conditions stated in this chapter. The surviving spouse,
 21 upon electing to take against the will, is entitled to one-half (1/2) of the
 22 net personal and real estate of the testator. However, if the surviving
 23 spouse is a second or other subsequent spouse who did not at any time
 24 have children by the decedent and the decedent left surviving a child
 25 or children or the descendants of a child or children by a previous
 26 spouse, the surviving second or subsequent childless spouse shall upon
 27 such election take one-third (1/3) of the net personal estate of the
 28 testator plus an amount equal to twenty-five percent (25%) of **the**
 29 **remainder of:**

- 30 (1) the fair market value as of the date of death of the ~~lands~~ **real**
- 31 **property** of the testator; **minus**
- 32 **(2) the value of the liens and encumbrances on the real**
- 33 **property of the testator.**

34 In determining the net estate of a deceased spouse for the purpose of
 35 computing the amount due the surviving spouse electing to take against
 36 the will, the court shall consider only such property as would have
 37 passed under the laws of descent and distribution.

38 (b) When the value of the property given the surviving spouse under
 39 the will is less than the amount the surviving spouse would receive by
 40 electing to take against the will, the surviving spouse may elect to
 41 retain any or all specific bequests or devises given to the surviving
 42 spouse in the will at their fair market value as of the time of the

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1 decedent's death and receive the balance due in cash or property.
 2 (c) Except as provided in subsection (b), in electing to take against
 3 the will, the surviving spouse is deemed to renounce all rights and
 4 interest of every kind and character in the personal and real property of
 5 the deceased spouse, and to accept the elected award in lieu thereof.
 6 (d) When a surviving spouse elects to take against the will, the
 7 surviving spouse shall be deemed to take by descent, as a modified
 8 share, the part of the net estate as does not come to the surviving
 9 spouse by the terms of the will. Where by virtue of an election pursuant
 10 to this chapter it is determined that the surviving spouse has renounced
 11 the surviving spouse's rights in any devise, either in trust or otherwise,
 12 the will shall be construed with respect to the property so devised to the
 13 surviving spouse as if the surviving spouse had predeceased the
 14 testator.
 15 SECTION 3. IC 29-1-7.5-3 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) Subject to section
 17 2(d) of this chapter, a personal representative who administers an estate
 18 under this chapter may do the following without order of the court:
 19 (1) Retain assets owned by the decedent pending distribution or
 20 liquidation including those in which the representative is
 21 personally interested or which are otherwise improper for trust
 22 investment.
 23 (2) Receive assets from fiduciaries or other sources.
 24 (3) Perform, compromise, or refuse performance of the decedent's
 25 contracts that continue as obligations of the estate, as ~~the~~ **the**
 26 **personal representative** may determine under the circumstances.
 27 In performing enforceable contracts by the decedent to convey or
 28 lease land, the personal representative, among other possible
 29 courses of action, may:
 30 (i) (A) execute and deliver a deed of conveyance for cash
 31 payment of all sums remaining due or the purchaser's note for
 32 the sum remaining due secured by a mortgage or deed of trust
 33 on the land; or
 34 (ii) (B) deliver a deed in escrow with directions that the
 35 proceeds, when paid in accordance with the escrow agreement,
 36 be paid to the successors of the decedent, as designated in the
 37 escrow agreement.
 38 (4) Satisfy written charitable pledges of the decedent irrespective
 39 of whether the pledges constituted binding obligations of the
 40 decedent or were properly presented as claims, if in the judgment
 41 of the personal representative the decedent would have wanted
 42 the pledges completed under the circumstances.

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- 1 (5) If funds are not needed to meet debts and expenses currently
 2 payable and are not immediately distributable, deposit or invest
 3 liquid assets of the estate, including moneys received from the
 4 sale of other assets, in federally insured interest-bearing accounts,
 5 readily marketable secured loan arrangements or other prudent
 6 investments which would be reasonable for use by trustees
 7 generally.
- 8 (6) Acquire or dispose of an asset, including land in this or
 9 another state, for cash or on credit, at public or private sale; and
 10 manage, develop, improve, exchange, partition, change the
 11 character of, or abandon an estate asset.
- 12 (7) Make ordinary or extraordinary repairs or alterations in
 13 buildings or other structures, demolish any improvements, raze
 14 existing or erect new party walls or buildings.
- 15 (8) Subdivide, develop, or dedicate land to public use; make or
 16 obtain the vacation of plats and adjust boundaries; or adjust
 17 differences in valuation on exchange or partition by giving or
 18 receiving considerations; or dedicate easements to public use
 19 without consideration.
- 20 (9) Enter for any purpose into a lease as lessor or lessee, with or
 21 without option to purchase or renew, for a term within or
 22 extending beyond the period of administration.
- 23 (10) Enter into a lease or arrangement for exploration and
 24 removal of minerals or other natural resources or enter into a
 25 pooling or unitization agreement.
- 26 (11) Abandon property when, in the opinion of the personal
 27 representatives, it is valueless, or is so encumbered, or is in
 28 condition that it is of no benefit to the estate.
- 29 (12) Vote stocks or other securities in person or by general or
 30 limited proxy.
- 31 (13) Pay calls, assessments, and other sums chargeable or
 32 accruing against or on account of securities, unless barred by the
 33 provisions relating to claims.
- 34 (14) Hold a security in the name of a nominee or in other form
 35 without disclosure of the interest of the estate but the personal
 36 representative is liable for any act of the nominee in connection
 37 with the security so held.
- 38 (15) **Hold, manage, safeguard, and control the estate's real**
 39 **and personal property**, insure the assets of the estate against
 40 damage, loss, and liability, and **himself insure the personal**
 41 **representative personally** against liability as to third persons.
- 42 (16) Borrow money with or without security to be repaid from the

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estate assets or otherwise and advance money for the protection of the estate.

(17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, ~~he~~ **the personal representative** may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate.

~~(19) sell or exercise stock subscription or conversion rights and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;~~

(19) Do any of the following:

(A) Hold an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or another domestic or foreign form of business or enterprise.

(B) Continue a business.

(C) Take any action that may be taken by shareholders, partners, members, or property owners, including contributing additional capital to or merging, consolidating, reorganizing, recapitalizing, dissolving, or otherwise changing the form of the business organization.

(20) Allocate items of income or expense to either estate income or principal, as permitted or provided by IC 30-2-14.

(21) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of ~~his~~ **the personal representative's** administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary.

~~(22) prosecute or defend claims or proceedings in any jurisdiction~~
Do any of the following concerning a claim or demand made in favor of or against the estate for the protection of the estate and of the personal representative in the performance of ~~his~~ **the personal representative's** duties:

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- (A) Release, assign, settle, compromise, or contest the claim or demand.**
 - (B) Participate in mediation or submit to arbitration to resolve any dispute concerning the claim or demand.**
 - (C) Extend the time for payment of the claim or demand.**
 - (D) Abandon the claim or demand.**
- (23) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances.
- ~~(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:~~
- ~~(i) in the same business form for a period of not more than five (5) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;~~
 - ~~(ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or~~
 - ~~(iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporations and retention in the estate;~~
- (24) Select a settlement option under any qualified or nonqualified benefit or retirement plan, annuity, or life insurance payable to the estate, and take appropriate action to collect the proceeds.**
- ~~(25) incorporate any business or venture in which the decedent was engaged at the time of his death;~~
- ~~(26) satisfy and settle claims;~~
- (25) Inspect and investigate property held, directly or indirectly, by the personal representative for the purpose of:**
- (A) determining the application of environmental law with respect to the property; and**
 - (B) doing the following:**
 - (i) Take action to prevent, abate, or remedy an actual or a potential violation of an environmental law affecting the property, whether taken before or after the assertion of a claim or the initiation of governmental enforcement by federal, state, or local authorities.**
 - (ii) Compromise claims against the estate that may be asserted for an alleged violation of environmental law.**

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(iii) Pay the expense of inspection, review, abatement, or remedial action to comply with the environmental law.

~~(27)~~ **(26)** Distribute assets of the estate upon such terms as ~~he~~ **the personal representative** may impose. ~~and~~ **To the extent practicable, taking into account the decedent's probable intention, the power to distribute assets includes the power to:**

(A) pay an amount to a distributee who is under a legal disability or whom the personal representative reasonably believes to be incapacitated by:

(i) paying the amount directly to the distributee or applying the amount for the distributee's use and benefit;

(ii) paying the amount to the guardian appointed for the distributee;

(iii) paying the amount to a custodian under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) or a custodial trustee under the Uniform Custodial Trust Act (IC 30-2-8.6); or

(iv) paying the amount to the trustee of a trust established by the decedent or by the personal representative under subsection (b); and

(B) make distributions of estate income and principal in kind, in cash, or partly in each, in shares of differing composition, without regard to the income tax basis of specific property allocated to a distributee in divided or undivided interests.

~~(28)~~ **(27)** Perform any other act necessary or appropriate to administer the estate.

(b) A personal representative who administers an estate under this chapter may, without court order, establish a trust to make distributions to a distributee who is under a legal disability or whom the personal representative reasonably believes is incapacitated. In establishing a trust under this subsection, a personal representative may exercise:

(1) the authority given to custodians under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) to create a trust that satisfies the requirements of Section 2503 of the Internal Revenue Code and the regulations adopted under that Section; or

(2) the authority given to an attorney in fact under IC 30-5-5-15(a)(3) to establish a revocable trust for the benefit of a principal.

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1 SECTION 4. IC 30-2-14-18 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. After ~~an individual~~
 3 ~~dies, in the case of an estate, or after~~ an income interest in a trust ends,
 4 the following rules apply:

5 (1) A fiduciary ~~of an estate or~~ of a terminating income interest
 6 shall determine the amount of net income and net principal
 7 receipts received from property specifically given to a beneficiary
 8 under the rules in sections 20 through 43 of this chapter that apply
 9 to trustees and the rules in subdivision (5). The fiduciary shall
 10 distribute the net income and net principal receipts to the
 11 beneficiary who is to receive the specific property.

12 (2) A fiduciary shall determine the remaining net income of a
 13 ~~decedent's estate or~~ a terminating income interest under the rules
 14 in sections 20 through 43 of this chapter that apply to trustees and
 15 by:

16 (A) including in net income all income from property used to
 17 discharge liabilities;

18 (B) paying from income or principal, in the fiduciary's
 19 discretion:

20 (i) fees of attorneys, accountants, and fiduciaries;

21 (ii) court costs and other expenses of administration; and

22 (iii) interest on death taxes;

23 but the fiduciary may pay those expenses from income of
 24 property passing to a trust for which the fiduciary claims an
 25 estate tax marital or charitable deduction only to the extent
 26 that the payment of those expenses from income will not cause
 27 the reduction or loss of the deduction; and

28 (C) paying from principal all other disbursements made or
 29 incurred in connection with the ~~settlement of a decedent's~~
 30 ~~estate or the~~ winding up of a terminating income interest,
 31 including debts; funeral expenses; disposition of remains;
 32 family allowances; and death taxes and related penalties that
 33 are apportioned to the ~~estate or~~ terminating income interest by
 34 ~~the will;~~ the terms of the trust or applicable law.

35 (3) A fiduciary shall ~~distribute to a beneficiary who receives a~~
 36 ~~pecuniary amount outright the interest or any other amount~~
 37 ~~provided by the will, the terms of the trust, or applicable law from~~
 38 ~~net income determined under subdivision (2) or from principal to~~
 39 ~~the extent that net income is insufficient.~~ If a beneficiary is to
 40 receive a pecuniary amount outright from a trust after an income
 41 interest ends and no interest or other amount is provided for by
 42 the terms of the trust or applicable law, the fiduciary shall

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distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) in the manner described in section 19 of this chapter to all ~~other residuary~~ beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) because of a payment described in section 38 or 39 of this chapter to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by:

(A) including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts:

(i) accrued or became due before, on, or after the date of an individual's death; or

(ii) an income interest's terminating event; and

(B) making a reasonable provision for amounts that the fiduciary believes the ~~estate~~ or terminating income interest may become obligated to pay after the property is distributed.

SECTION 5. IC 30-4-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (~~Conflict of Interest in Exercise of Powers~~) (a) If the duty of the trustee in the exercise of any power conflicts with ~~his~~ **the trustee's** individual interest or ~~his~~ **the trustee's** interest as trustee of another trust, the power may be exercised only ~~with~~ **under one (1) of the following circumstances:**

(1) The trustee receives court authorization to exercise the power with notice to interested persons as the court may direct.

(2) The trustee gives notice of the proposed action in accordance with IC 30-2-14-16 and:

(A) the trustee receives the written authorization of all interested persons to the proposed action within the period specified in the notice of the proposed action; or

(B) a beneficiary objects to the proposed action within the period specified in the notice of the proposed action, but

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1 **the trustee receives court authorization to exercise the**
 2 **power.**
 3 **(3) The exercise of the power is specifically authorized by the**
 4 **terms of the trust.**
 5 (b) For the purposes of subsection (a) of this section, the interest of
 6 an affiliate of the trustee will be deemed to be the interest of the
 7 trustee.
 8 SECTION 6. [EFFECTIVE JULY 1, 2005 (RETROACTIVE)]
 9 **IC 29-1-2-1 and IC 29-1-3-1, both as amended by this act, apply to**
 10 **the estate of an individual who dies after June 30, 2005.**
 11 SECTION 7. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 114, 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 10, line 38, delete "no objections" and insert "**the written authorization of all interested persons**".

and when so amended that said bill do pass.

(Reference is to SB 114 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0.

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