Reprinted
March 24, 2009

ENGROSSED
HOUSE BILL No. 1287

DIGEST OF HB 1287 (Updated March 23, 2009 3:14 pm - DI 106)

Citations Affected: IC 2-5; IC 6-4.1; IC 9-17; IC 9-31; IC 23-14; IC 25-15; IC 29-1; IC 29-2; IC 29-3; IC 30-2; IC 30-5; IC 32-17; IC 32-21; IC 34-9; IC 34-24; IC 34-30; IC 35-41; IC 35-45; noncode.

Synopsis: Various probate and trust issues. Provides that a person who knowingly or intentionally uses or disburses funds in certain trust or escrow accounts for purposes other than the accounts' lawful purposes commits a Class C felony. Provides that the violation, a similar violation involving cemetery perpetual care funds, and violations of similar provisions in the funeral trust laws constitute racketeering activity. Provides that property involved with the violations may be seized under the civil forfeiture law. Specifies that damages paid to a plaintiff's estate in a personal injury case maintained by the personal representative of a plaintiff who dies from causes other than the personal injury are subject to the statutes governing the inheritance tax, the Indiana estate tax, and the generation skipping transfer tax. Requires a person paying the damages to notify the department of state revenue of the payment within ten days. Requires the department to notify the county assessor of the county in which the plaintiff was

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Effective: Upon passage; July 1, 2009.

Van Haaften, Foley, Cheatham, Goodin

(SENATE SPONSORS — ZAKAS, BRODEN)

January 13, 2009, read first time and referred to Committee on Judiciary.
February 19, 2009, amended, reported — Do Pass.
February 23, 2009, read second time, amended, ordered engrossed.
February 24, 2009, engrossed. Read third time, passed. Yeas 96, nays 0.

SENATE ACTION

March 2, 2009, read first time and referred to Committee on Judiciary.
March 19, 2009, amended, reported favorably — Do Pass.
March 23, 2009, read second time, amended, ordered engrossed.

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Digest Continued

domiciled at the time of the plaintiff's death. Specifies the methods of satisfying the survivors' allowance. Provides separate procedures for the petitioned removal of a corporate personal representative following a change in the control of the corporate personal representative. Changes the mailing requirements for opening an estate or guardianship from certified mail to first class postage prepaid mail. Provides the method for determining the amount a joint owner or beneficiary of a protected person's multiple party account is entitled to receive from the protected person's estate when a guardian has used assets of the multiple party account. Makes numerous changes and additions to the power of attorney statutes. Specifies mailing address requirements for recording conveyances. Specifies that the statute of limitations period for the criminal offenses of misusing funeral trust or preneed escrow accounts is five years after the date of the death of the settlor or purchaser. Specifies that the statute of limitations period for the criminal offense of misusing a cemetery perpetual care fund is five years after the earlier of: (1) the date the state discovers evidence of the offense; or (2) the date the state could have discovered evidence of the offense through due diligence. Provides the method for determining the amount a joint owner or beneficiary of a protected person's multiple party account is entitled to receive from the protected person's estate when a guardian has used assets of the multiple party account. Authorizes individuals to designate beneficiaries to receive certain forms of property, including real property, upon the death of the individual. Establishes a statutory form for a funeral planning declaration that allows a person to provide instructions concerning the person's funeral arrangements. Provides that the declaration may be used to designate an individual who will make arrangements after the person's death. Provides that a person designated in a funeral planning declaration is first in the priority and that a person designated in a health care power of attorney is second in the priority of individuals who can authorize the cremation of another person's remains and who may authorize the owner of a cemetery to inter, entomb, or inurn the body or cremated remains of a deceased human. Specifies that a person acting as the attorney in fact under a health care power of attorney has the power to execute a funeral planning declaration on behalf of the principal. Provides that a person who relies in good faith on a funeral planning declaration is immune from liability to the same extent as if the person had dealt directly with the declarant and the declarant had been a competent and living person. Revises the law governing trusts to: (1) provide separate allocation procedures for payments made to a marital trust; and (2) permit the charging of tax payments to principal to the extent that receipts are allocated to principal. Specifies the transitional provisions. Provides that the chairman and vice chairman of the probate code study commission are appointed to serve two year terms. Makes a technical correction. (Repeals obsolete provisions). (The introduced version of this bill was prepared by the probate code study commission.)

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Reprinted
March 24, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1287

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

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

SECTION 1. IC 2-5-16-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) For calendar year 2009 and every fourth calendar year thereafter,** the ~~chairman of the legislative council~~ **president pro tempore of the senate** shall appoint a chairman and a vice chairman from among the commission's legislative members, each to serve a term of ~~one (1) year.~~ **two (2) years.**

(b) For calendar year 2011 and every fourth calendar year thereafter, the speaker of the house of representatives shall appoint a chairman and a vice chairman from among the commission's legislative members, each to serve a term of two (2) years.

SECTION 2. IC 6-4.1-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Within ten (10) days after life insurance proceeds are paid to a resident decedent's estate, the life insurance company shall give notice of the payment to the department of state revenue.

(b) Not later than ten (10) days after damages payable under a

cause of action maintained by a personal representative under IC 34-9-3-4 are paid to a resident decedent's estate, the person making the payment shall give notice of the payment to the department of state revenue.

~~(b)~~ **(c)** The department of state revenue shall send a copy of any notice which it receives under subsection (a) **or (b)** to the county assessor of the county in which the resident decedent was domiciled at the time of ~~his~~ **the resident decedent's** death.

SECTION 3. IC 9-17-3-9, AS ADDED BY P.L.83-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) An individual whose certificate of title for a vehicle indicates that the individual is the sole owner of the vehicle may create an interest in the vehicle that is transferrable on the death of the individual by obtaining a certificate of title conveying the interest in the vehicle to one (1) or more named individuals as transfer on death beneficiaries.

(b) Subject to subsection (e), an interest in a vehicle transferred under this section vests upon the death of the transferor.

(c) A certificate of title that is:

(1) worded in substance as "A.B. transfers on death to C.D."; and

(2) signed by the transferor;

is a good and sufficient conveyance on the death of the transferor to the transferee.

(d) A certificate of title obtained under this section is not required to be:

(1) supported by consideration; or

(2) delivered to the named transfer on death beneficiary;

to be effective.

(e) Upon the death of an individual conveying an interest in a vehicle in a certificate of title obtained under this section, the interest in the vehicle is transferred to each beneficiary who:

(1) is named in the certificate; and

(2) survives the transferor.

(f) A transfer of an interest in a vehicle under this section is subject to IC 6-4.1.

(g) A certificate of title designating a transfer on death beneficiary is not testamentary.

(h) In general, IC 32-17-14 applies to a certificate of title designating a transfer on death beneficiary. However, a particular provision of IC 32-17-14 does not apply if it is inconsistent with the requirements of this section or IC 9-17-2-2(b).

SECTION 4. IC 9-31-2-30, AS ADDED BY P.L.83-2008,

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SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 30. (a) An individual whose certificate of title for a watercraft indicates that the individual is the sole owner of the watercraft may create an interest in the watercraft that is transferrable on the death of the individual by obtaining a certificate of title conveying the interest in the watercraft to one (1) or more named individuals as transfer on death beneficiaries.

(b) Subject to subsection (e), an interest in a watercraft transferred under this section vests upon the death of the transferor.

(c) A certificate of title that is:

(1) worded in substance as "A.B. transfers on death to C.D."; and

(2) signed by the transferor;

is a good and sufficient conveyance on the death of the transferor to the transferee.

(d) A certificate of title obtained under this section is not required to be:

(1) supported by consideration; or

(2) delivered to the named transfer on death beneficiary;

to be effective.

(e) Upon the death of an individual conveying an interest in a watercraft in a certificate of title obtained under this section, the interest in the watercraft is transferred to each beneficiary who:

(1) is named in the certificate; and

(2) survives the transferor.

(f) A transfer of an interest in a watercraft under this section is subject to IC 6-4.1.

(g) A certificate of title designating a transfer on death beneficiary is not testamentary.

(h) In general, IC 32-17-14 applies to a certificate of title designating a transfer on death beneficiary. However, a particular provision of IC 32-17-14 does not apply if it is inconsistent with the requirements of this section or IC 9-31-2-16.

SECTION 5. IC 23-14-31-26, AS AMENDED BY P.L.102-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) Except as provided in subsection (c), the following persons, in the priority listed, have the right to serve as an authorizing agent:

(1) An individual granted the authority to serve in a funeral planning declaration executed by the decedent under IC 29-2-19.

~~(1)~~ **(2)** An individual ~~who possesses~~ **granted the authority to serve in** a health care power of attorney ~~of~~ **executed by** the

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decedent ~~unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.~~ **under IC 30-5-5-16.**

~~(2)~~ **(3)** The individual who was the spouse of the decedent at the time of the decedent's death.

~~(3)~~ **(4)** The decedent's surviving adult children. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the crematory authority receives a written objection to the cremation from another adult child.

~~(4)~~ **(5)** The decedent's surviving parent. If the decedent is survived by both parents, either parent may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from the other parent.

~~(5)~~ **(6)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree is surviving, any person of that degree may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from one (1) or more persons of the same degree.

~~(6)~~ **(7)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through ~~(5) of this section~~ **(6)** are available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

~~(7)~~ **(8)** In the absence of any person under subdivisions (1) through ~~(6),~~ **(7),** any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

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(A) murder (IC 35-42-1-1);
(B) voluntary manslaughter (IC 35-42-1-3); or
(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not serve as the authorizing agent.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the crematory authority of the determination referred to in subsection (c)(2).

SECTION 6. IC 23-14-55-2, AS AMENDED BY P.L.3-2008, SECTION 170, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in subsection (d), the owner of a cemetery is authorized to inter, entomb, or inurn the body or cremated remains of a deceased human upon the receipt of a written authorization of an individual who professes either of the following:

(1) To be (in the priority listed) one (1) of the following:

(A) An individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19.

~~(A)~~ **(B)** An individual ~~who possesses~~ **granted the authority in** a health care power of attorney ~~of~~ **executed by** the decedent ~~unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.~~ **under IC 30-5-5-16.**

~~(B)~~ **(C)** The individual who was the spouse of the decedent at the time of the decedent's death.

~~(C)~~ **(D)** The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the owner of the cemetery receives a written objection to the disposition from another adult child.

~~(D)~~ **(E)** The decedent's surviving parent. If the decedent is survived by both parents, either parent unless the cemetery owner receives a written objection to the disposition from the other parent.

~~(E)~~ **(F)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than

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one (1) individual of the same degree of kinship is surviving, any person of that degree unless the cemetery owner receives a written objection to the disposition from one (1) or more persons of the same degree of kinship.

(2) To have acquired **by court order** the right to control the disposition of the deceased human body or cremated remains.

The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (d), or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) A cemetery owner is not liable in any action for making an interment, entombment, or inurnment under a written authorization described in subsection (a) unless the cemetery owner had actual notice that the representation made under subsection (a) by the individual who issued the written authorization was untrue.

(c) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(d) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(e) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (d)(2).

SECTION 7. IC 25-15-9-18, AS AMENDED BY P.L.3-2008, SECTION 185, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Except as provided in subsection (b), the following persons, in the order of priority indicated,

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have the authority to designate the manner, type, and selection of the final disposition and interment of human remains:

(1) An individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19.

~~(1)~~ **(2)** An individual ~~who possesses~~ **granted the authority in** a health care power of attorney ~~of~~ **executed by** the decedent ~~unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.~~ **under IC 30-5-5-16.**

~~(2)~~ **(3)** The individual who was the spouse of the decedent at the time of the decedent's death.

~~(3)~~ **(4)** The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the licensed funeral director or licensed funeral home receives a written objection from another adult child.

~~(4)~~ **(5)** The decedent's surviving parent. If the decedent is survived by both parents, either parent has the authority unless the licensed funeral director or licensed funeral home receives a written objection from the other parent.

~~(5)~~ **(6)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree survives, any person of that degree has the authority unless the licensed funeral director or licensed funeral home receives a written objection from one (1) or more persons of the same degree.

~~(6)~~ **(7)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following:

(A) If none of the persons identified in subdivisions (1) through ~~(5)~~ **(6)** is available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

(b) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a

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reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize or designate the manner, type, or selection of the final disposition and internment of human remains.

(c) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2).

SECTION 8. IC 29-1-2-1, AS AMENDED BY P.L.101-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The 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 the decedent a child or children or the descendants of a child or children by a previous spouse, the surviving second or subsequent childless spouse shall take only an amount equal to twenty-five percent (25%) of the remainder of:

(1) the fair market value as of the date of death of the real property of the deceased spouse; minus

(2) the value of the liens and encumbrances on the real property of the deceased spouse.

The fee shall, at the decedent's death, vest at once in the decedent's surviving child or children, or the descendants of the decedent's child or children who may be dead. A second or subsequent childless spouse described in this subsection 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

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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) Except as provided in subsection (e), if there is a surviving spouse but no surviving issue of the intestate, then to the surviving parents of the intestate.

(3) Except as provided in subsection (e), 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 the decedent's 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 the distributees described in this subdivision 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 their 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.

(e) A parent may not receive an intestate share of the estate of the

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parent's minor or adult child if ~~(1)~~ the parent was convicted of causing the death of the other parent by:

~~(A)~~ **(1)** murder (IC 35-42-1-1);

~~(B)~~ **(2)** voluntary manslaughter (IC 35-42-1-3);

~~(C)~~ **(3)** another criminal act, if the death does not result from the operation of a vehicle; or

~~(D)~~ **(4)** a crime in any other jurisdiction in which the elements of the crime are substantially similar to the elements of a crime listed in ~~clauses (A)~~ **subdivisions (1)** through ~~(C), and~~ **(3).**

~~(2) the victim of the crime is the other parent of the child.~~

If a parent is disqualified from receiving an intestate share under this subsection, the estate of the deceased child shall be distributed as though the parent had predeceased the child.

SECTION 9. IC 29-1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a)** The surviving spouse of a decedent who was domiciled in Indiana at ~~his~~ **the decedent's** death is entitled from the estate to an allowance of twenty-five thousand dollars ($25,000). ~~The allowance may be claimed against the personal property of the estate or a residence that is a part of the decedent's estate, 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.

(b) The allowance under subsection (a) may be claimed against:

(1) the personal property of the decedent's estate;

(2) the real property that is part of the decedent's estate; or

(3) a combination of personal property under subdivision (1) and real property under subdivision (2).

(c) Not later than ninety (90) days after the order commencing the estate administration, an individual entitled to the allowance may file with the court an election specifying whether the allowance is being claimed under subsection (b) against the personal property of the estate or the real property that is part of the estate, or a combination of both. An interested party may file an objection to the manner in which the allowance is being claimed not later than thirty (30) days after the date the election is filed with the court. The court shall rule on the objection after notice and a hearing. If an election is not filed within ninety (90) days after the order commencing the estate administration, the allowance must be satisfied according to the following order of preference:

(1) From the intangible personal property of the estate.

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(2) From the tangible personal property of the estate.

(3) From the real property that is part of the estate.

(d) If the personal property ~~and a residence that is a part~~ of the ~~decedent's~~ estate ~~are~~ **is** less than twenty-five thousand dollars ($25,000) in value, 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 that is a part of the decedent's estate~~ and twenty-five thousand dollars ($25,000). The amount of that difference is a lien on the ~~remaining~~ real estate. **However, no real estate may be sold to satisfy the survivor's allowance unless the sale is approved:**

(1) in an agreement signed by all interested persons; or

(2) by court order following notice to all interested persons.

(e) An allowance under this section is not chargeable against the distributive shares of either the surviving spouse or the children.

(f) For purposes of this section, the value of the real property that is part of a decedent's estate must be determined as of the date of the decedent's death.

SECTION 10. IC 29-1-7-7, AS AMENDED BY P.L.95-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

(c) The notice required under subsection (a) shall be served by ~~certified~~ **first class postage prepaid** mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters, **except as otherwise ordered by the court.** The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

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(1) whose name is not set forth in the petition for probate or letters under subsection (c);

(2) who is known or reasonably ascertainable within one (1) month after the first publication of notice under subsection (a); and

(3) whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within one (1) month after the first publication of notice under subsection (a) or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within one (1) month after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____ was, on the ____ day of _____, 20 __, appointed personal representative of the estate of _____, deceased, who died on the ___ day of _____, 20 __.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

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Dated at _____, Indiana, this ___ day of _____, 20 __.

_____
CLERK OF THE _____ COURT
FOR _____ COUNTY, INDIANA

SECTION 11. IC 29-1-7.5-1.5, AS AMENDED BY P.L.238-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. (a) As soon as letters testamentary or letters of administration have been issued, the clerk of the court shall serve by mail notice of the petition on each of the decedent's heirs at law, if the decedent died intestate, or the devisees and legatees under the decedent's will. The mailing of notice under this subsection may not be waived.

(b) The notice required under subsection (a) shall read substantially as follows:

NOTICE OF UNSUPERVISED ADMINISTRATION TO BE MAILED TO A DISTRIBUTEE

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____, on the _____ day of _____, 20__, was appointed as the personal representative of the estate of _____, who died on the ____ day of _____, 20__, {leaving a will} {not leaving a will}. The estate will be administered without court supervision.

As an heir, a devisee, or a legatee of the estate (a "distributee"), you are advised of the following information:

(1) The personal representative has the authority to take actions concerning the estate without first consulting you.

(2) The personal representative may be serving without posting a bond with the court. You have the right to petition the court to set a bond for your protection. **You also have the right to petition the court to remove a corporate personal representative not later than thirty (30) days after this notice if the ownership or control of the corporate personal representative has changed since the execution of the decedent's will.**

(3) The personal representative will not obtain court approval of any action, including the amount of attorney's or personal representative's fees.

(4) Within two (2) months after the appointment of the personal representative, the personal representative must prepare an inventory of the estate's assets. You have the right to request and receive a copy of this inventory from the personal representative. However, if you do not participate in the residue of the estate and receive only a specific bequest in money or personal property that

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will be paid, you are entitled only to the information concerning your specific bequest and not to the assets of the estate as a whole.

(5) The personal representative is required to furnish you with a copy of the closing statement that will be filed with the court, and, if your interests are affected, with a full account in writing of the administration of the estate.

(6) You must file an objection to the closing statement within three (3) months after the closing statement is filed with the court if you want the court to consider your objection.

(7) If an objection to the closing statement is not filed with the court within three (3) months after the filing of the closing statement, the estate is closed and the court does not have a duty to audit or make an inquiry.

IF, AT ANY TIME BEFORE THE ESTATE IS CLOSED, YOU HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED ADMINISTRATION.

IF YOU DO NOT UNDERSTAND THIS NOTICE, YOU SHOULD ASK YOUR ATTORNEY TO EXPLAIN IT TO YOU.

The personal representative's address is _____, and telephone number is _____. The attorney for the personal representative is _____, whose address is _____ and telephone number is _____.

Dated at _____, Indiana, this _____ day of _____, 20__.

CLERK OF THE _____ COURT

SECTION 12. IC 29-1-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. **(a) This section does not apply to the removal of a corporate fiduciary after a change in control of the corporate fiduciary.**

(b) When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the representative ~~as provided:~~ **in accordance with either of the following:**

~~(a)~~ **(1)** The court on its own motion may, or on petition of any person interested in the estate shall, order the representative to

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appear and show cause why the representative should not be removed. ~~Such~~ **The** order shall set forth in substance the alleged grounds upon which such removal is based, the time and place of the hearing, and may be served upon the personal representative in the same manner as a notice is served under this article.

~~(b)~~ **(2)** The court may without motion, petition or application, for any such cause, in cases of emergency, remove such personal representative instantly without notice or citation.

(c) The removal of a personal representative after letters are duly issued does not invalidate official acts performed prior to removal.

SECTION 13. IC 29-1-10-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6.5. (a) This section does not apply to the removal of a personal representative under section 6 of this chapter.**

(b) An heir may petition the court for the removal of a corporate fiduciary appointed by the court as personal representative if there has been a change in the control of the corporate fiduciary and either of the following applies:

(1) The change in the control of the corporate fiduciary occurred after the date of the execution of the decedent's will but before the decedent's death.

(2) The change in the control of the corporate fiduciary occurred after the corporate fiduciary was appointed and during the administration of the decedent's estate.

(c) A petition described in subsection (b) must be filed:

(1) not later than thirty (30) days after an heir, a devisee, or a legatee receives notice under IC 29-1-7-7(c) or IC 29-1-7.5-1.5, in the case of a change of control described in subsection (b)(1); or

(2) not later than a reasonable time after the change of control, in the case of a change of control described in subsection (b)(2).

(d) The court may remove the corporate fiduciary if the court determines, after a hearing, that the removal is in the best interests of all the beneficiaries of the will. The court may replace the corporate fiduciary with another corporate fiduciary or an individual.

(e) For purposes of this section, a change in control of a corporate fiduciary occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of a total of at least twenty-five percent (25%) of the outstanding voting stock of:

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(1) a corporate fiduciary; or

(2) a corporation controlling a corporate fiduciary.

(f) The removal of a corporate fiduciary after letters are duly issued does not invalidate official acts performed before the removal.

(g) If a corporate fiduciary is replaced under this section, the corporate fiduciary is entitled to receive reasonable compensation for services rendered before the removal.

SECTION 14. IC 29-2-19 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 19. Funeral Planning Declaration

Sec. 1. As used in this chapter, "declarant" means an individual who signs a funeral planning declaration executed under this chapter.

Sec. 2. As used in this chapter, "declaration" means a funeral planning declaration executed under this chapter.

Sec. 3. As used in this chapter, "designee" means an individual directed by the terms of a declaration to:

(1) carry out the funeral plan of the declarant as set forth in the declaration; or

(2) make any arrangements concerning the disposition of the declarant's remains, funeral services, merchandise, and ceremonies that are delegated to the designee in the declaration.

Sec. 4. As used in this chapter, "disposition" has the meaning set forth in IC 25-15-2-7.

Sec. 5. As used in this chapter, "funeral services" has the meaning set forth in IC 25-15-2-17.

Sec. 6. As used in this chapter, "grave memorial" has the meaning set forth in IC 14-21-2-2.

Sec. 7. As used in this chapter, "merchandise" refers to personal property described in IC 30-2-13-8.

Sec. 8. (a) A person who is of sound mind and is at least eighteen (18) years of age may execute a funeral planning declaration substantially in the form set forth in section 13 of this chapter. A declaration may not be included in a will, a power of attorney, or a similar document.

(b) A declaration must meet the following conditions:

(1) Be voluntary.

(2) Be in writing.

(3) Direct an individual to serve as the declarant's designee.

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(4) Be signed by the person making the declaration or by another person in the declarant's presence and at the direction of the declarant.

(5) Be dated.

(6) Be signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age.

(c) The following may not be a witness to a declaration under subsection (b)(6):

(1) The person who signed the declaration on behalf of and at the direction of the declarant.

(2) A parent, spouse, or child of the declarant.

(3) An individual who is entitled to any part of the declarant's estate whether the declarant dies testate or intestate, including an individual who could take from the declarant's estate if the declarant's will is declared invalid.

For purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the estate in the declarant's will.

(d) A declaration is not binding upon a funeral home, a cemetery, any other person engaged in the business of providing funeral services, any other person selling merchandise or grave markers, or any other person providing a service or other property subject to the declaration until the person receives consideration for the service, merchandise, or other property. If any provision of a declaration conflicts with:

(1) IC 23-14-31;

(2) IC 23-14-33; or

(3) IC 25-15;

the provision contained in the declaration controls.

(e) Except as provided in subsection (f), a declarant may not direct an individual who is:

(1) a provider of funeral services;

(2) responsible for any aspect of the disposition of the declarant's remains; or

(3) associated with any entity that is responsible for providing funeral services or disposing of the declarant's remains;

to be the declarant's designee in a declaration executed under this chapter.

(f) Subsection (e) does not apply to an individual who is related to the declarant by birth, marriage, or adoption.

Sec. 9. A declaration may specify the declarant's preferences

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concerning any of the following:

(1) The disposition of the declarant's remains after the declarant's death.

(2) Who may direct the disposition of the declarant's remains.

(3) Who may provide funeral services after the declarant's death.

(4) The ceremonial arrangements to be performed after the declarant's death.

(5) The merchandise that the declarant prefers for the disposition of the declarant's remains and any ceremonial arrangements.

(6) Who may direct the ceremonial arrangements to be performed after the declarant's death.

(7) A grave memorial.

Sec. 10. The provisions of a declarant's most recent declaration prevail over any other document executed by the declarant concerning any preferences described in section 9 of this chapter. However, this section may not be construed to invalidate a power of attorney executed under IC 30-5-5 or an appointment of a health care representative under IC 16-36-1 with respect to any power or duty belonging to the attorney in fact or health care representative that is not related to a preference described in section 9 of this chapter.

Sec. 11. (a) A person who acts in good faith reliance on a declaration is immune from liability to the same extent as if the person had dealt directly with the declarant and the declarant had been a competent and living person.

(b) A person who deals with a declaration may presume, in the absence of actual knowledge to the contrary, that:

(1) the declaration was validly executed; and

(2) the declarant was competent at the time the declaration was executed.

(c) The directions of a declarant expressed in a declaration are binding as if the declarant were alive and competent.

Sec. 12. A declaration must be substantially in the form set forth in section 13 of this chapter, but the declaration may include additional, specific directions. The invalidity of any additional, specific direction does not affect the validity of the declaration.

Sec. 13. The following is the funeral planning declaration form:

FUNERAL PLANNING DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound

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mind, willfully and voluntarily make known my instructions concerning funeral services, ceremonies, and the disposition of my remains after my death.

I hereby declare and direct that after my death _____(name of designee) shall, as my designee, carry out the instructions that are set forth in this declaration. If my designee is unwilling or unable to act, I nominate _____ as an alternate designee.

I hereby declare and direct that after my death the following actions be taken (indicate your choice by initialing or making your mark before signing this declaration):

(1) My body shall be:

(A) _____ Buried. I direct that my body be buried at _____.

(B) _____ Cremated. I direct that my cremated remains be disposed of as follows:

_____

_____

(C) _____ Entombed. I direct that my body be entombed at _____.

(D) _____ I intentionally make no decision concerning the disposition of my body, leaving the decision to my designee (as named above).

(2) My arrangements shall be made as follows:

(A) I direct that funeral services be obtained from:

_____

_____

(B) I direct that the following ceremonial arrangements be made:

_____

_____

(C) I direct the selection of a grave memorial that:

_____

_____

(D) I direct that the following merchandise and other property be selected for the disposition of my remains, my funeral or other ceremonial arrangements:

_____

_____

_____

_____

(E) _____I direct that my designee (as

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named above) make all arrangements concerning ceremonies and other funeral services.

(3) In addition to the instructions listed above, I request the following:

_____

_____

(4) If it is impossible to make an arrangement specified in subdivisions (1) through (3) because:

(A) a funeral home or other service provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

(B) the specified arrangement is impossible, impractical, or illegal;

I direct my designee to make alternate arrangements to the best of the designee's ability.

It is my intention that this declaration be honored by my family and others as the final expression of my intentions concerning my funeral and the disposition of my body after my death. I understand the full import of this declaration.

Signed _____

_____

City, County, and State of Residence

The declarant is personally known to me, and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____

Sec. 14. A declaration may be revoked by the declarant in writing or by burning, tearing, canceling, obliterating, or destroying the declaration with the intent to revoke the declaration.

Sec. 15. Except as otherwise expressly provided in a declaration, a subsequent:

(1) dissolution of marriage;

(2) annulment of marriage; or

(3) legal separation of the declarant and the declarant's spouse;

automatically revokes a delegation of authority in a declaration to the declarant's spouse to direct the disposition of the declarant's

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body or to make all arrangements concerning funeral services and other ceremonies after the declarant's death.

Sec. 16. Except as otherwise provided in a declaration, section 17 of this chapter controls if a person to whom a declaration delegates the authority to make arrangements after a declarant's death is unable or unwilling to serve.

Sec. 17. The right to control the disposition of a decedent's body, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death devolves on the following, in the priority listed:

(1) An individual granted the authority in a funeral planning declaration executed by the decedent under this chapter.

(2) An individual granted the authority in a health care power of attorney executed by the decedent under IC 30-5-5-16.

(3) The decedent's surviving spouse.

(4) A surviving adult child of the decedent.

(5) A surviving parent of the decedent.

(6) An individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent.

Sec. 18. A person in Indiana may rely on a declaration or similar instrument that was executed in another state and that complies with the requirements of this chapter to the extent that an action requested by the declarant in the declaration or similar instrument does not violate any federal or Indiana law or any ordinance or regulation of a political subdivision.

Sec. 19. An action to contest the validity of any declaration made under this chapter must be:

(1) brought in the same manner as an action to contest the validity of a will under IC 29-1-7;

(2) filed in the circuit court of the county in which the declarant's remains are located;

(3) expedited on the docket of the circuit court as a matter requiring priority; and

(4) accompanied by a bond, cash deposit, or other surety sufficient to guarantee that the hospital, nursing home, funeral home, or other institution holding the declarant's remains is compensated for the storage charges incurred while the action is pending.

SECTION 15. IC 29-3-6-1, AS AMENDED BY P.L.95-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court,

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notice of the petition and the hearing on the petition shall be given by ~~certified~~ **first class postage prepaid** mail as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4(a).

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

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(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

SECTION 16. IC 29-3-8-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. (a) If:

(1) a guardian takes possession of property that is:

(A) jointly owned by or titled in the names of the protected person and another person with rights of survivorship; **or**

(B) owned as a multiple party account with another person as joint owner or beneficiary;

(2) the guardian:

(A) severs the joint ownership of the property; **or**

(B) uses the assets of the multiple party account; and

(3) the protected person subsequently dies while the other person is living;

the other person may elect to receive from the protected person's estate property in an amount determined under subsection (b).

(b) The amount of property the other person described in subsection (a) may elect to receive is determined in STEP THREE of the following formula:

STEP ONE: Subtract:

(A) the value of the severed **or used** property retained by the other person at the time ownership was severed **or used,** if any; from

(B) the value of the joint property **or multiple party account** at the time ownership was severed **or the assets were used.**

STEP TWO: Divide:

(A) the remainder determined under STEP ONE; by

(B) the value of the protected person's property, including the jointly held property **or multiple party account,** at the time ownership was severed **or the assets were used.**

STEP THREE: Multiply:

(A) the quotient determined under STEP TWO; by

(B) the value of the deceased protected person's net estate.

(c) As used in this section, "multiple party account" refers to

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both multiple party accounts described by IC 32-17-11 and transfer on death transfers completed under IC 32-17-14.

SECTION 17. IC 30-2-13-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) Except as provided in subsection (b), as used in this chapter, "purchaser" means a person or firm contracting with a seller for services or merchandise to be provided or delivered for a named individual.

(b) As used in section 13(b) of this chapter, "purchaser" means:

(1) an individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19;

~~(1)~~ **(2)** an individual described in subsection (a);

~~(2)~~ **(3)** the attorney in fact, appointed under IC 30-5, of an individual described in subsection (a);

~~(3)~~ **(4)** the guardian, appointed under IC 29-3, of an individual described in subsection (a); or

~~(4)~~ **(5)** if an individual described in subsection (a) is deceased:

(A) the surviving spouse of the individual;

(B) if there is no surviving spouse, the adult children of the individual;

(C) if there is no surviving spouse or surviving adult child, the surviving parent or parents of the individual; or

(D) if there is neither a surviving spouse nor adult children, nor a surviving parent, the personal representative (as defined in IC 29-1-1-3) of the individual.

SECTION 18. IC 30-2-13-38, AS AMENDED BY P.L.61-2008, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 38. (a) A seller who violates a provision of this chapter commits an uncured deceptive act (as defined in IC 24-5-0.5-2).

(b) A person doing business as a sole proprietor, a firm, a limited liability company, a corporation, an association, or a partnership, but not acting as a seller that:

(1) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) and fails to obtain the certificate of authority required by section 33 of this chapter; or

(2) sells or advertises prepaid services or merchandise or services or merchandise (as defined in section 8 of this chapter) after the entity's certificate of authority has:

(A) expired; or

(B) been rescinded, revoked, or suspended by the board;

commits a Class A misdemeanor. Each act committed in violation of

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this subsection constitutes a separate offense.

(c) The following may maintain an action to enjoin an individual or entity from continuing to violate this section:

(1) The board.

(2) The attorney general.

(3) The prosecuting attorney of a county in which a violation occurs.

(d) A purchaser has a private right of action against a seller who commits an uncured deceptive act.

(e) A trustee or escrow agent, acting as a fiduciary, that disburses funds in a trust or escrow account established under this chapter without verifying that the seller has delivered the services or merchandise for which the funds were deposited through the use of documentation required under rules adopted by the state board of funeral and cemetery service established by IC 25-15-9-1 commits a Class A infraction.

(f) A person who knowingly or intentionally uses or disburses funds in a trust or escrow account established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.

SECTION 19. IC 30-2-14-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31. (a) This section does not apply to ~~payments~~ **a payment** to which section 32 of this chapter applies.

(b) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments, regardless of whether the trustee also has the option to receive the ~~amount~~ **payment** in a lump sum or other form of payment, ~~The term includes a~~ **whether the** payment **is** made in money or **other** property, **and whether the payment is made** from the payer's general assets or from a separate fund created by the payer. ~~including~~ **For purposes of subsection (h), the term also includes any payment from any separate fund, regardless of the reason for the payment.**

(c) As used in this section, "separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan **(including an individual account under a plan and a separate share of any account described in this subsection).**

~~(c)~~ **(d)** To the extent that a payment is characterized as interest, ~~or~~ a dividend, or a payment made in lieu of interest or a dividend, a

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trustee shall allocate ~~it~~ **the payment** to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

~~(d)~~ **(e)** If a payment is not characterized as interest, ~~or~~ a dividend, ~~and if the~~ **or an equivalent** payment **and** is made from ~~an individual account corresponding to an original participant,~~ **a separate fund,** the payment shall be allocated between income and principal ~~by:~~ **as follows:**

~~(1) determining the income occurring within the individual account by treating the account as though it were a trust; and~~

~~(2) considering the income to be distributed as a pro rata portion of all payments made from the individual account during the year.~~

(1) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and allocate the balance of the payment to principal.

(2) If a trustee cannot determine the internal income of the separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal five percent (5%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee cannot determine the internal income of the separate fund or the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code, for the month preceding the accounting period for which the computation is made.

~~(e)~~ **(f)** If no part of a payment is characterized as interest, a dividend, or ~~allocated under subsection (d), and all or part of~~ **an equivalent payment, and** the payment is ~~required to be made, a~~ **made otherwise than from a separate fund, then the** trustee shall allocate to income ten percent (10%) of ~~the~~ **any** part **of the payment** that is required to be made during the accounting period and the balance to principal, ~~If~~ **unless** no part of ~~a~~ **the** payment is required to be made or the payment received is the entire amount to which the trustee is entitled, **in which case** the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises

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a right of withdrawal.

~~(f)~~ **(g)** Notwithstanding any other provision of this section, when a private or commercial deferred annuity is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of the acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee exercises a right of withdrawal or otherwise receives cash on account of the obligation. If the obligation is surrendered wholly or partially before annuitization, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

~~(g) If, to obtain a gift or estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the deduction.~~

(h) Except as provided in subdivision (2), trusts described in subdivision (1) are subject to the following special rules regarding allocations and distributions of income provided in subdivision (3):

(1) This subsection applies to:

(A) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code has been made; or

(B) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code.

(2) This subsection does not apply to a series of payments if and to the extent that the series of payments would, without the application of this subsection, qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code.

(3) Except as provided in subdivision (2), a payment made from a separate fund to a trust described in subdivision (1) shall be allocated between income and principal in accordance with subsection (e)(1) and (e)(2) and not in accordance with subsection (d) or (f), even if part or all of the payment is characterized as interest, a dividend, or an equivalent payment, and even if the payment is the entire amount to which the trustee is entitled. The trustee shall distribute to the surviving spouse the part of the payment allocated to income. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute all of the internal income of the fund to the trust.

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Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments from the separate fund to the trust during the accounting period.

SECTION 20. IC 30-2-14-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 42. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid: ~~proportionately.~~

(1) from income to the extent that receipts from the entity are allocated to income; ~~and~~

(2) from principal to the extent that

~~(A)~~ receipts from the entity are allocated **only** to principal; ~~and~~ ~~(B) the trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and clause (A).~~

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

~~(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.~~

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

SECTION 21. IC 30-5-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. "Attorney in fact" means the person designated to act for the principal under a power of attorney. **The term includes any of the following:**

(1) The original attorney in fact.

(2) A co-attorney in fact.

(3) A successor attorney in fact.

(4) A person to whom an attorney in fact has delegated authority.

SECTION 22. IC 30-5-2-6 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. "Person" means:

(1) an individual at least eighteen (18) years of age;

(2) a corporation;

(3) a trust;

(4) a limited liability company; ~~or~~

(5) a partnership;

(6) a business trust;

(7) an estate;

(8) an association;

(9) a joint venture;

(10) a government or political subdivision;

(11) an agency;

(12) an instrumentality; or

(13) any other legal or commercial entity.

SECTION 23. IC 30-5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. "Power of attorney" **means a writing or other record that grants authority to an attorney in fact or agent to act in place of a principal, whether the term "power of attorney" is used. The term** refers to all types of powers of attorney, including durable powers of attorney, **except for the following:**

(1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a credit in connection with a credit transaction.

(2) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.

(3) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

SECTION 24. IC 30-5-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. A power of attorney is valid if the power of attorney was valid at the time the power of attorney was executed under any of the following:

(1) This article.

(2) IC 30-2-11 **(repealed).**

(3) Common law.

(4) The law of another state or foreign country.

(5) The requirements for a military power of attorney under 10 U.S.C. 1044b.

SECTION 25. IC 30-5-3-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6. The meaning and effect of a power of attorney are**

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determined by the law of the jurisdiction indicated in the power of attorney. In the absence of an indication of jurisdiction, the meaning and effect of a power of attorney are determined by the law of the jurisdiction in which the power of attorney was executed.

SECTION 26. IC 30-5-3-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.). However, this article does not:**

(1) modify, limit, or supersede 15 U.S.C. 7001(c); or

(2) authorize the electronic delivery of a notice described in 15 U.S.C. 7003(b).

SECTION 27. IC 30-5-4-2, AS AMENDED BY P.L.101-2008, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in subsection (b), a power of attorney is effective on the date the power of attorney is signed in accordance with section 1(4) of this chapter.

(b) A power of attorney may:

(1) specify the date on which the power will become effective; or

(2) become effective upon the occurrence of an event.

(c) If a power of attorney becomes effective upon the principal's incapacity and:

(1) the principal has not authorized a person to determine whether the principal is incapacitated; or

(2) the person authorized is unable or unwilling to make the determination;

the power of attorney becomes effective upon a determination that the principal is incapacitated that is set forth in a writing or other record by a physician, licensed psychologist, or judge.

(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may:

(1) act as the principal's personal representative under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 201 et seq.) and any rules or regulations issued under that act; and

(2) obtain access to the principal's health care information and communicate with the principal's health care provider.

SECTION 28. IC 30-5-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Except as stated otherwise in the power of attorney, an attorney in fact fails to serve or ceases to serve when:

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(1) the attorney in fact dies;
(2) the attorney in fact resigns;
(3) the attorney in fact is adjudged incapacitated by a court;
(4) the attorney in fact cannot be located upon reasonable inquiry;
(5) the attorney in fact, if at one time the principal's spouse, legally is no longer the principal's spouse; or
(6) a physician familiar with the condition of the current attorney in fact certifies in writing to the immediate successor attorney in fact that the current attorney in fact is unable to transact a significant part of the business required under the power of attorney.

(b) Except as stated otherwise in the power of attorney, if the replaced attorney in fact reappears or is subsequently able to transact business, the successor attorney in fact shall remain as the attorney in fact.

(c) Except as otherwise stated in the power of attorney, an attorney in fact designated as a successor has the powers granted under the power of attorney to the original attorney in fact.

(d) Unless a power of attorney provides a different method for an attorney in fact's resignation, an attorney in fact may resign by giving notice to the principal, and, if the principal is incapacitated:

(1) to:

(A) the principal's guardian, if a guardian has been appointed for the principal; and

(B) a co-attorney in fact or successor attorney in fact; or

(2) if there is no person described in subdivision (1), to:

(A) the principal's care giver;

(B) another person reasonably believed by the attorney in fact to have sufficient interest in the principal's welfare; or

(C) a governmental agency having authority to protect the welfare of the principal.

SECTION 29. IC 30-5-5-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7.5. (a) Language conferring general authority with respect to transfer on death or payable on death transfers means the principal authorizes the attorney in fact to do the following:**

(1) Establish one (1) or more transfer on death transfers or payable on death transfers.

(2) Designate, amend, remove, modify, or change any designation of beneficiary in a transfer on death transfer or payable on death transfer, including those created by the principal before or after the execution of the power of

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attorney.

(3) Terminate any transfer on death transfer or payable on death transfer.

(4) Add to or withdraw from any transfer on death transfer or payable on death transfer.

(5) Exercise any right or authority that the principal may have in a transfer on death transfer or payable on death transfer during the principal's lifetime.

(b) The powers described in this section are equally exercisable with respect to transfer on death transfers and payable on death transfers that are established or operated in Indiana or another jurisdiction.

(c) A power of attorney that is executed before July 1, 2009, and that confers general authority with respect to all other matters under section 19 of this chapter also confers general authority with respect to transfer on death transfers and payable on death transfers as described in this section.

SECTION 30. IC 30-5-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) This section does not prohibit an individual capable of consenting to the individual's own health care or to the health care of another from consenting to health care administered in good faith under the religious tenets and practices of the individual requiring health care.

(b) Language conferring general authority with respect to health care powers means the principal authorizes the attorney in fact to do the following:

(1) Employ or contract with servants, companions, or health care providers to care for the principal.

(2) If the attorney in fact is an individual, consent to or refuse health care for the principal who is an individual in accordance with IC 16-36-4 and IC 16-36-1 by properly executing and attaching to the power of attorney a declaration or appointment, or both.

(3) Admit or release the principal from a hospital or health care facility.

(4) Have access to records, including medical records, concerning the principal's condition.

(5) Make anatomical gifts on the principal's behalf.

(6) Request an autopsy.

(7) Make plans for the disposition of the principal's body, **including executing a funeral planning declaration on behalf of the principal in accordance with IC 29-2-19.**

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SECTION 31. IC 30-5-9-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. An attorney in fact that violates this article is liable to the principal or the principal's successors in interest for damages and an amount required to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid as a result of the violation.**

SECTION 32. IC 30-5-10-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. Unless the power of attorney provides otherwise, an attorney in fact may exercise authority until the authority terminates under this chapter, even if time has passed since the execution of the power of attorney.**

SECTION 33. IC 32-17-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this chapter, "multiple party account" means any of the following types of accounts:

(1) A joint account.

~~(2) A P.O.D. account.~~

~~(3)~~ **(2)** A trust account.

(b) The term does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one (1) or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

SECTION 34. IC 32-17-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this chapter, "party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple party account. A ~~P.O.D. payee or~~ beneficiary of a trust account is a party only after the account becomes payable to the payee or beneficiary by reason of the payee's or beneficiary's surviving the original payee or trustee.

(b) Unless the context otherwise requires, the term includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. The term also includes a person identified as a trustee of an account for another whether or not a beneficiary is named.

(c) The term does not include:

(1) any named beneficiary unless the beneficiary has a present right of withdrawal; or

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(2) a person who is merely authorized to make a request as the agent of another.

SECTION 35. IC 32-17-11-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) The provisions of sections 17, 18, and 19 of this chapter concerning beneficial ownership as between parties, or as between parties and ~~P.O.D. payees or~~ beneficiaries of multiple party accounts:

(1) apply only to controversies between:

(A) the parties or the ~~P.O.D. payees or~~ beneficiaries of multiple party accounts; and

(B) creditors and other successors of:

(i) the parties; or

(ii) the ~~P.O.D. payees or~~ beneficiaries of multiple party accounts; and

(2) do not affect the power of withdrawal of the parties or the ~~P.O.D. payees or~~ beneficiaries of multiple party accounts as determined by the terms of account contracts.

(b) The provisions of sections 22 through 27 of this chapter govern the liability and set-off rights of financial institutions that make payments under sections 22 through 27 of this chapter.

SECTION 36. IC 32-17-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) Unless there is clear and convincing evidence of a different intent, during the lifetime of all parties, a joint account belongs to the parties in proportion to the net contributions by each party to the sums on deposit.

~~(b) A P.O.D. account belongs to the original payee during the original payee's lifetime and not to the P.O.D. payee or payees. If at least two (2) parties are named as original payees, subsection (a) governs the rights of the parties during their lifetimes.~~

~~(c)~~ **(b)** Unless:

(1) a contrary intent is manifested by the terms of the account or the deposit agreement; or

(2) there is other clear and convincing evidence of an irrevocable trust;

a trust account belongs beneficially to the trustee during the trustee's lifetime. If at least two (2) parties are named as trustee on the account, subsection (a) governs the beneficial rights of the trustees during their lifetimes. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

SECTION 37. IC 32-17-11-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Sums remaining on deposit at the death of a party to a joint account belong to the

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surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are at least two (2) surviving parties, their respective ownerships during lifetime are:

(1) in proportion to their previous ownership interests under section 17 of this chapter; and

(2) augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before the person's death.

The right of survivorship continues between the surviving parties.

~~(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of at least two (2) original payees, any sums remaining on deposit belong to the P.O.D. payee or payees who survive the original payee. If at least two (2) P.O.D. payees survive, there is no right of survivorship between the P.O.D. payees unless the terms of the account or deposit agreement expressly provide for survivorship.~~

~~(c)~~ **(b)** If the account is a trust account, on death of the trustee or the survivor of at least two (2) trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries who survive the trustee, unless there is clear and convincing evidence of a contrary intent. If at least two (2) beneficiaries survive, there is no right of survivorship between the beneficiaries unless the terms of the account or deposit agreement expressly provide for survivorship.

~~(d)~~ **(c)** Except as provided in subsections (a) ~~through (c),~~ **and (b),** the death of any party to a multiple party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent's estate.

~~(e)~~ **(d)** A right of survivorship arising:

(1) from the express terms of the account; or

(2) under:

(A) this section; **or**

(B) a beneficiary designation in a trust account; ~~or~~

~~(C) a P.O.D. payee designation;~~

cannot be changed by will.

SECTION 38. IC 32-17-11-21.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 21.1. The liability of a surviving party ~~P.O.D. payee,~~ or beneficiary for creditor claims and statutory allowances is determined under IC 32-17-13.

SECTION 39. IC 32-17-11-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) Payment made under section 22, 23, ~~24,~~ or 25 of this chapter discharges the financial institution from all claims for amounts paid whether or not the payment

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is consistent with the beneficial ownership of the account as between parties, ~~P.O.D. payees, or~~ beneficiaries, or their successors.

(b) The protection provided under this section does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted.

(c) Unless a notice described in subsection (b) is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section.

(d) No other notice or any other information shown to have been available to a financial institution affects the institution's right to the protection provided under this section.

(e) The protection provided under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in or withdrawn from multiple party accounts.

SECTION 40. IC 32-17-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

(1) whose last domicile was in Indiana; and

(2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

(A) use the property for the benefit of the transferor; or

(B) apply the property to discharge claims against the transferor's probate estate.

The term does not include transfer of a survivorship interest in a tenancy by the entireties real estate, transfer of a life insurance policy or annuity, or payment of the death proceeds of a life insurance policy or annuity.

(b) With respect to a security described in IC 32-17-9 "nonprobate transfer" means a transfer on death resulting from a registration in beneficiary form by an owner whose last domicile was in Indiana.

(c) With respect to a nonprobate transfer involving a multiple party account, a nonprobate transfer occurs if the last domicile of the depositor whose interest is transferred under IC 32-17-11 was in Indiana.

(d) With respect to a motor vehicle or a watercraft, a nonprobate transfer occurs if the transferee obtains a certificate of title in Indiana for:

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(1) the motor vehicle under IC 9-17-2-2(b); or

(2) the watercraft as required by IC 9-31-2-16(a)(1)(C).

(e) A transfer on death transfer completed under IC 32-17-14 is a nonprobate transfer.

SECTION 41. IC 32-17-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 14. Transfer on Death Property Act

Sec. 1. This chapter may be cited as the Transfer on Death Property Act.

Sec. 2. (a) Except as provided elsewhere in this chapter, this chapter applies to a transfer on death security, transfer on death securities account, and pay on death account created before July 1, 2009, unless the application of this chapter would:

(1) adversely affect a right given to an owner or beneficiary;

(2) give a right to any owner or beneficiary that the owner or beneficiary was not intended to have when the transfer on death security, transfer on death securities account, or pay on death account was created;

(3) impose a duty or liability on any person that was not intended to be imposed when the transfer on death security, transfer on death securities account, or pay on death account was created; or

(4) relieve any person from any duty or liability imposed:

(A) by the terms of the transfer on death security, transfer on death securities account, or pay on death account; or

(B) under prior law.

(b) Subject to section 32 of this chapter, this chapter applies to a transfer on death transfer if at the time the owner designated the beneficiary:

(1) the owner was a resident of Indiana;

(2) the property subject to the beneficiary designation was situated in Indiana;

(3) the obligation to pay or deliver arose in Indiana;

(4) the transferring entity was a resident of Indiana or had a place of business in Indiana; or

(5) the transferring entity's obligation to make the transfer was accepted in Indiana.

(c) Except for section 24 of this chapter, this chapter does not apply to property, money, or benefits paid or transferred at death under a life or accidental death insurance policy, annuity, contract, plan, or other product sold or issued by a life insurance company

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unless the provisions of this chapter are incorporated into the policy or beneficiary designation in whole or in part by express reference.

(d) Except for section 24 of this chapter, this chapter does not apply to a transfer on death transfer if the beneficiary designation or an applicable law expressly provides that this chapter does not apply to the transfer.

(e) Subject to IC 9-17-3-9(h) and IC 9-31-2-30(h), this chapter applies to a beneficiary designation for the transfer on death of a motor vehicle or a watercraft.

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

(1) "Beneficiary" means a person designated or entitled to receive property because of another person's death under a transfer on death transfer.

(2) "Beneficiary designation" means a written instrument other than a will or trust that designates the beneficiary of a transfer on death transfer.

(3) "Joint owners" refers to persons who hold property as joint tenants with a right of survivorship. However, the term does not include a husband and wife who hold property as tenants by the entirety.

(4) "LDPS" means an abbreviation of lineal descendants per stirpes, which may be used in a beneficiary designation to designate a substitute beneficiary as provided in section 22 of this chapter.

(5) "Owner" refers to a person or persons who have a right to designate the beneficiary of a transfer on death transfer.

(6) "Ownership in beneficiary form" means holding property under a registration in beneficiary form or other written instrument that:

(A) names the owner of the property;

(B) directs ownership of the property to be transferred upon the death of the owner to the designated beneficiary; and

(C) designates the beneficiary.

(7) "Person" means an individual, a sole proprietorship, a partnership, an association, a fiduciary, a trustee, a corporation, a limited liability company, or any other business entity.

(8) "Proof of death" means a death certificate or a record or report that is prima facie proof or evidence of an individual's death.

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(9) "Property" means any present or future interest in real property, intangible personal property (as defined in IC 6-4.1-1-5), or tangible personal property (as defined in IC 6-4.1-1-13). The term includes:

(A) a right to direct or receive payment of a debt;

(B) a right to direct or receive payment of money or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, or trust or by operation of law;

(C) a right to receive performance remaining due under a contract;

(D) a right to receive payment under a promissory note or a debt maintained in a written account record;

(E) rights under a certificated or uncertificated security;

(F) rights under an instrument evidencing ownership of property issued by a governmental agency; and

(G) rights under a document of title (as defined in IC 26-1-1-201).

(10) "Registration in beneficiary form" means titling of an account record, certificate, or other written instrument that:

(A) provides evidence of ownership of property in the name of the owner;

(B) directs ownership of the property to be transferred upon the death of the owner to the designated beneficiary; and

(C) designates the beneficiary.

(11) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer. The term includes a certificated security, an uncertificated security, and a security account.

(12) "Transfer on death deed" means a deed that conveys an interest in real property to a grantee by beneficiary designation.

(13) "Transfer on death transfer" refers to a transfer of property that takes effect upon the death of the owner under a beneficiary designation made under this chapter.

(14) "Transferring entity" means a person who:

(A) owes a debt or is obligated to pay money or benefits;

(B) renders contract performance;

(C) delivers or conveys property; or

(D) changes the record of ownership of property on the

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books, records, and accounts of an enterprise or on a certificate or document of title that evidences property rights.

The term includes a governmental agency, business entity, or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property. However, the term does not include a governmental office charged with endorsing, entering, or recording the transfer of real property in the public records.

Sec. 4. (a) The following transfers of ownership are not considered transfer on death transfers for purposes of this chapter:

(1) Transfers by rights of survivorship in property held as joint tenants or tenants by the entirety.

(2) A transfer to a remainderman on the termination of a life tenancy.

(3) An inter vivos or a testamentary transfer under a trust established by an individual.

(4) A transfer made under the exercise or nonexercise of a power of appointment.

(5) A transfer made on the death of a person who did not have the right to designate the person's estate as the beneficiary of the transfer.

(b) A beneficiary designation made under this chapter must do the following:

(1) Designate the beneficiary of a transfer on death transfer.

(2) Make the transfer effective upon the death of the owner of the property being transferred.

(3) Comply with this chapter, the conditions of any governing instrument, and any other applicable law.

(c) For purposes of construing this chapter or a beneficiary designation made under this chapter, the death of the last surviving owner of property held by joint owners is considered the death of the owner.

(d) Except as otherwise provided in this chapter, a transfer on death direction is accomplished in a form substantially similar to the following:

(1) Insert Name of the Owner or Owners.

(2) Insert "Transfer on death to" or "TOD" or "Pay on death to" or "POD".

(3) Insert the Name of the Beneficiary or Beneficiaries.

(e) An owner may revoke or change a beneficiary designation at any time before the owner's death.

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Sec. 5. A transfer on death transfer:

(1) is effective with or without consideration;

(2) is not considered testamentary;

(3) is not subject to the requirements for a will or for probating a will under IC 29-1; and

(4) may be subject to an agreement between the owner and a transferring entity to carry out the owner's intent to transfer the property under this chapter.

Sec. 6. For the purpose of discharging its duties under this chapter, the authority of a transferring entity acting as agent for an owner of property subject to a transfer on death transfer does not cease at the death of the owner. The transferring entity shall transfer the property to the designated beneficiary in accordance with the beneficiary designation and this chapter.

Sec. 7. (a) If any of the following are required, an agreement between the owner and the transferring entity is necessary to carry out a transfer on death transfer, which may be made in accordance with the rules, terms, and conditions set forth in the agreement:

(1) The submission to the transferring entity of a beneficiary designation under a governing instrument.

(2) Registration by a transferring entity of a transfer on death direction on any certificate or record evidencing ownership of property.

(3) Consent of a contract obligor for a transfer of performance due under the contract.

(4) Consent of a financial institution for a transfer of an obligation of the financial institution.

(5) Consent of a transferring entity for a transfer of an interest in the transferring entity.

(b) When subsection (a) applies, a transferring entity is not required to accept an owner's request to assist the owner in carrying out a transfer on death transfer.

(c) If a beneficiary designation, revocation, or change is subject to acceptance by a transferring entity, the transferring entity's acceptance of the beneficiary designation, revocation, or change relates back to and is effective as of the time the request was received by the transferring entity.

Sec. 8. (a) If a transferring entity accepts a beneficiary designation or beneficiary assignment or registers property in beneficiary form, the acceptance or registration constitutes the agreement of the owner and the transferring entity that, subject to this section, the owner's property will be transferred to and placed

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in the name and control of the beneficiary in accordance with the beneficiary designation or transfer on death direction, the agreement between the parties, and this chapter.

(b) An agreement described in subsection (a) is subject to the owner's power to revoke or change a beneficiary designation before the owner's death.

(c) A transferring entity's duties under an agreement described in subsection (a) are subject to the following:

(1) Receiving proof of the owner's death.

(2) Complying with the transferring entity's requirements for proof that the beneficiary is entitled to receive the property.

Sec. 9. (a) Except as provided in subsection (c), a beneficiary designation that satisfies the requirements of subsection (b):

(1) authorizes a transfer of property under this chapter;

(2) is effective on the death of the owner of the property; and

(3) transfers the right to receive the property to the designated beneficiary who survives the death of the owner.

(b) A beneficiary designation is effective under subsection (a) if the beneficiary designation is:

(1) executed; and

(2) delivered;

in proper form to the transferring entity before the death of the owner.

(c) A transferring entity shall make a transfer described in subsection (a)(3) unless there is clear and convincing evidence of the owner's different intention at the time the beneficiary designation was created.

Sec. 10. (a) A written assignment of a contract right that:

(1) assigns the right to receive any performance remaining due under the contract to an assignee designated by the owner; and

(2) expressly states that the assignment does not take effect until the death of the owner;

transfers the right to receive performance due under the contract to the designated assignee beneficiary if the assignment satisfies the requirements of subsection (b).

(b) A written assignment described in subsection (a) is effective upon the death of the owner if the assignment is:

(1) executed; and

(2) delivered;

in proper form to the contract obligor before the death of the owner.

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(c) A beneficiary assignment described in this section is not required to be supported by consideration or delivered to the assignee beneficiary.

(d) This section does not preclude other methods of assignment that are permitted by law and have the effect of postponing the enjoyment of the contract right until after the death of the owner.

Sec. 11. (a) A transfer on death deed transfers the interest provided to the beneficiary if the transfer on death deed is:

(1) executed in proper form; and

(2) recorded with the recorder of deeds in the county in which the real property is situated before the death of the owner.

(b) A transfer on death deed is void if it is not recorded with the recorder of deeds in the county in which the real property is situated before the death of the owner.

(c) A transfer on death deed is not required to be supported by consideration or delivered to the grantee beneficiary.

(d) A transfer on death deed may be used to transfer an interest in real property to either a revocable or an irrevocable trust.

(e) If the owner makes a transfer on death deed, the effect of the conveyance is determined as follows:

(1) If the owner's interest in the real property is as a tenant by the entirety, the conveyance is inoperable and void unless the other spouse joins in the conveyance.

(2) If the owner's interest in the real property is as a joint tenant with rights of survivorship, the conveyance severs the joint tenancy and the cotenancy becomes a tenancy in common.

(3) If the owner's interest in the real property is as a joint tenant with rights of survivorship and the property is subject to a beneficiary designation, a conveyance of any joint owner's interest has no effect on the original beneficiary designation for the nonsevering joint tenant.

(4) If the owner's interest is as a tenant in common, the owner's interest passes to the beneficiary as a transfer on death transfer.

(5) If the owner's interest is a life estate determined by the owner's life, the conveyance is inoperable and void.

(6) If the owner's interest is any other interest, the interest passes in accordance with this chapter and the terms and conditions of the conveyance establishing the interest. If a conflict exists between the conveyance establishing the interest and this chapter, the terms and conditions of the

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conveyance establishing the interest prevail.

(f) A beneficiary designation in a transfer on death deed may be worded in substance as "(insert owner's name) conveys and warrants (or quitclaims) to (insert owner's name), TOD to (insert beneficiary's name)". This example is not intended to be exhaustive.

(g) A transfer on death deed using the phrase "pay on death to" or the abbreviation "POD" may not be construed to require the liquidation of the real property being transferred.

(h) This section does not preclude other methods of conveying real property that are permitted by law and have the effect of postponing enjoyment of an interest in real property until after the death of the owner. This section applies only to transfer on death deeds and does not invalidate any deed that is otherwise effective by law to convey title to the interest and estates provided in the deed.

Sec. 12. (a) A deed of gift, bill of sale, or other writing intended to transfer an interest in tangible personal property is effective on the death of the owner and transfers ownership to the designated transferee beneficiary if the document:

(1) expressly creates ownership in beneficiary form;

(2) is in other respects sufficient to transfer the type of property involved; and

(3) is executed by the owner and acknowledged before a notary public or other person authorized to administer oaths.

(b) A beneficiary transfer document described in this section is not required to be supported by consideration or delivered to the transferee beneficiary.

(c) This section does not preclude other methods of transferring ownership of tangible personal property that are permitted by law and have the effect of postponing enjoyment of the property until after the death of the owner.

Sec. 13. (a) A transferor of property, with or without consideration, may execute a written instrument directly transferring the property to a transferee to hold as owner in beneficiary form.

(b) A transferee under an instrument described in subsection (a) is considered the owner of the property for all purposes and has all the rights to the property provided by law to the owner of the property, including the right to revoke or change the beneficiary designation.

(c) A direct transfer of property to a transferee to hold as owner

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in beneficiary form is effective when the written instrument perfecting the transfer becomes effective to make the transferee the owner.

Sec. 14. (a) Property may be held or registered in beneficiary form by including in the name in which the property is held or registered a direction to transfer the property on the death of the owner to a beneficiary designated by the owner.

(b) Property is registered in beneficiary form by showing on the account record, security certificate, or instrument evidencing ownership of the property:

(1) the name of the owner and, if applicable, the estate by which two (2) or more joint owners hold the property; and

(2) an instruction substantially similar in form to "transfer on death to (insert name of beneficiary)".

An instruction to "pay on death to (insert name of the beneficiary)" and the use of the abbreviations "TOD" and "POD" are also permitted by this section.

(c) Only a transferring entity or a person authorized by the transferring entity may place a transfer on death direction described by this section on an account record, a security certificate, or an instrument evidencing ownership of property.

(d) A transfer on death direction described by this section is effective on the death of the owner and transfers the owner's interest in the property to the designated beneficiary if:

(1) the property is registered in beneficiary form before the death of the owner; or

(2) the transfer on death direction is delivered in proper form to the transferring entity before the owner's death.

(e) An account record, security certificate, or instrument evidencing ownership of property that contains a transfer on death direction written as part of the name in which the property is held or registered is conclusive evidence, in the absence of fraud, duress, undue influence, lack of capacity, or mistake, that the direction was:

(1) regularly made by the owner;

(2) accepted by the transferring entity; and

(3) not revoked or changed before the owner's death.

Sec. 15. (a) Before the death of the owner, a beneficiary has no rights in the property because of the beneficiary designation. The signature or agreement of the beneficiary is not required for any transaction relating to property transferred under this chapter. If a lienholder takes action to enforce a lien, by foreclosure or

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otherwise through a court proceeding, it is not necessary to join the beneficiary as a party defendant in the action unless the beneficiary has another interest in the real property that has vested.

(b) On the death of one (1) of two (2) or more joint owners, property with respect to which a beneficiary designation has been made belongs to the surviving joint owner or owners. If at least two (2) joint owners survive, the right of survivorship continues as between the surviving owners.

(c) On the death of a tenant by the entireties, property with respect to which a beneficiary designation has been made belongs to the surviving tenant.

(d) On the death of the owner, property with respect to which a beneficiary designation has been made passes by operation of law to the beneficiary.

(e) If two (2) or more beneficiaries survive, there is no right of survivorship among the beneficiaries when the death of a beneficiary occurs after the death of the owner unless the beneficiary designation expressly provides for survivorship among the beneficiaries. Except as expressly provided otherwise, the surviving beneficiaries hold their separate interest in the property as tenants in common. The share of any beneficiary who dies after the owner dies belongs to the deceased beneficiary's estate.

(f) If no beneficiary survives the owner, the property belongs to the estate of the owner unless the beneficiary designation directs the transfer to a substitute beneficiary in the manner required by section 22 of this chapter.

Sec. 16. (a) A beneficiary designation may be revoked or changed during the lifetime of the owner.

(b) A revocation or change of a beneficiary designation involving property owned as tenants by the entirety must be made with the agreement of both tenants for so long as both tenants are alive. After an individual dies owning as a tenant by the entirety property that is subject to a beneficiary designation, the individual's surviving spouse may revoke or change the beneficiary designation.

(c) A revocation or change of a beneficiary designation involving property owned in a form of ownership (other than as tenants by the entirety) that restricts conveyance of the interest unless another person joins in the conveyance must be made with the agreement of each living owner required to join in a conveyance.

(d) A revocation or change of a beneficiary designation

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involving property owned by joint owners with a right of survivorship must be made with the agreement of each living owner.

(e) A subsequent beneficiary designation revokes a prior beneficiary designation unless the subsequent beneficiary designation expressly provides otherwise.

(f) A revocation or change in a beneficiary designation must comply with the terms of any governing instrument, this chapter, and any other applicable law.

(g) A beneficiary designation may not be revoked or changed by a will unless the beneficiary designation expressly grants the owner the right to revoke or change the beneficiary designation by a will.

(h) A transfer during the owner's lifetime of the owner's interest in the property, with or without consideration, terminates the beneficiary designation with respect to the property transferred.

(i) The effective date of a revocation or change in a beneficiary designation is determined in the same manner as the effective date of a beneficiary designation.

(j) An owner may revoke a beneficiary designation made in a transfer on death deed by executing and recording with the recorder of deeds in the county in which the real property is situated either:

(1) a subsequent deed of conveyance revoking, omitting, or changing the beneficiary designation; or

(2) an affidavit acknowledged or proved under IC 32-21-2-3 that revokes or changes the beneficiary designation.

(k) A physical act, such as a written modification on or the destruction of a transfer on death deed after the transfer on death deed has been recorded, has no effect on the beneficiary designation.

(l) A transfer on death deed may not be revoked or modified by will or trust.

Sec. 17. (a) An attorney in fact, guardian, conservator, or other agent acting on the behalf of the owner of property may make, revoke, or change a beneficiary designation if:

(1) the action complies with the terms of this chapter and any other applicable law; and

(2) the action is not expressly forbidden by the document establishing the agent's right to act on behalf of the owner.

(b) An attorney in fact, guardian, conservator, or other agent may withdraw, sell, pledge, or otherwise transfer property that is subject to a beneficiary designation notwithstanding the fact that

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the effect of the transaction may be to extinguish a beneficiary's right to receive a transfer of the property at the death of the owner.

(c) The rights of a beneficiary to any part of property that is subject to a beneficiary designation after the death of the owner are determined under IC 29-3-8-6.5 if:

(1) a guardian or conservator takes possession of the property;

(2) the guardian sells, transfers, encumbers, or consumes the property during the protected person's lifetime; and

(3) the owner subsequently dies.

Sec. 18. If property subject to a beneficiary designation is lost, destroyed, damaged, or involuntarily converted during the owner's lifetime, the beneficiary succeeds to any right with respect to the loss, destruction, damage, or involuntary conversion that the owner would have had if the owner had survived. However, the beneficiary has no interest in any payment or substitute property received by the owner during the owner's lifetime.

Sec. 19. (a) A beneficiary of a transfer on death transfer takes the owner's interest in the property at the death of the owner subject to all conveyances, assignments, contracts, set offs, licenses, easements, liens, and security interests made by the owner or to which the owner was subject during the owner's lifetime.

(b) A beneficiary of a transfer on death transfer of an account with a bank, savings and loan association, credit union, broker, or mutual fund takes the owner's interest in the property at the death of the owner subject to all requests for payment of money issued by the owner before the owner's death, whether paid by the transferring entity before or after the owner's death, or unpaid. The beneficiary is liable to the payee of an unsatisfied request for payment to the extent that the request represents an obligation that was enforceable against the owner during the owner's lifetime.

(c) Each beneficiary's liability with respect to an unsatisfied request for payment is limited to the same proportionate share of the request for payment as the beneficiary's proportionate share of the account under the beneficiary designation. Each beneficiary has the right of contribution from the other beneficiaries with respect to a request for payment that is satisfied after the owner's death, to the extent that the request for payment would have been enforceable by the payee during the owner's lifetime.

Sec. 20. An individual who is a beneficiary of a transfer on death transfer is not entitled to a transfer unless the individual:

(1) survives the owner; and

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(2) survives the owner by the time, if any, required by the terms of the beneficiary designation.

Sec. 21. (a) A trustee of a trust may be a designated beneficiary regardless of whether the trust is amendable, revocable, irrevocable, funded, unfunded, or amended after the designation is made.

(b) Unless a beneficiary designation provides otherwise, a trust that is revoked or terminated before the death of the owner is considered nonexistent at the owner's death.

(c) Unless a beneficiary designation provides otherwise, a legal entity or trust that does not:

(1) exist; or

(2) come into existence effective as of the owner's death;

is considered nonexistent at the owner's death.

Sec. 22. (a) Notwithstanding sections 9 and 20 of this chapter, a designated beneficiary's rights under this chapter are not extinguished when the designated beneficiary does not survive the owner if:

(1) subsection (b) applies in the case of a designated beneficiary who is a lineal descendant of the owner; or

(2) subsection (d) applies in the case of a designated beneficiary who is not a lineal descendant of the owner.

(b) If a designated beneficiary who is a lineal descendant of the owner:

(1) is deceased at the time the beneficiary designation is made;

(2) does not survive the owner; or

(3) is treated as not surviving the owner;

the beneficiary's right to a transfer on death transfer belongs to the beneficiary's lineal descendants per stirpes who survive the owner unless the owner provides otherwise under subsection (c).

(c) An owner may execute a beneficiary designation to which subsection (b) does not apply by:

(1) making the notation "No LDPS" after a beneficiary's name; or

(2) including other words negating an intention to direct the transfer to the lineal descendant substitutes of the nonsurviving beneficiary.

(d) An owner may execute a beneficiary designation that provides that the right to a transfer on death transfer belonging to a beneficiary who is not a lineal descendant of the owner and does not survive the owner belongs to the beneficiary's lineal descendants per stirpes who survive the owner. An owner's intent

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to direct the transfer to the nonsurviving beneficiary's lineal descendants must be shown by either of the following on the beneficiary designation after the name of the beneficiary:

(1) The words "and lineal descendants per stirpes".

(2) The notation "LDPS".

(e) When two (2) or more individuals receive a transfer on death transfer as substitute beneficiaries under subsection (b) or (d), the individuals are entitled to equal shares of the property if they are of the same degree of kinship to the nonsurviving beneficiary. If the substitute beneficiaries are of unequal degrees of kinship, an individual of a more remote degree is entitled by representation to the share that would otherwise belong to the individual's parent.

(f) If:

(1) a designated beneficiary of a transfer on death transfer does not survive the owner;

(2) either subsection (b) or (d) applies; and

(3) no lineal descendant of the designated beneficiary survives the owner;

the right to receive the property transferred belongs to the other surviving beneficiaries. If no other beneficiary survives the owner, the property belongs to the owner's estate.

Sec. 23. (a) If, after an owner makes a beneficiary designation, the owner's marriage is dissolved or annulled, any provision of the beneficiary designation in favor of the owner's former spouse is revoked on the date the marriage is dissolved or annulled. Revocation under this subsection is effective regardless of whether the beneficiary designation refers to the owner's marital status. The beneficiary designation is given effect as if the former spouse had not survived the owner.

(b) Subsection (a) does not apply to a provision of a beneficiary designation that:

(1) has been made irrevocable, or revocable only with the spouse's consent;

(2) is made after the marriage is dissolved or annulled; or

(3) expressly states that the dissolution or annulment of the marriage does not affect the designation of a spouse or a relative of the spouse as a beneficiary.

(c) A provision of a beneficiary designation that is revoked solely by subsection (a) is revived by the owner's remarriage to the former spouse or by a nullification of the dissolution or annulment of the marriage.

(d) This section does not apply to any employee benefit plan

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governed by the Employee Retirement Income Security Act of 1974.

Sec. 24. (a) A beneficiary designation or a revocation of a beneficiary designation that is procured by fraud, duress, undue influence, or mistake or because the owner lacked capacity is void.

(b) A beneficiary designation made under this chapter is subject to IC 29-1-2-12.1.

Sec. 25. (a) No law intended to protect a spouse or child from disinheritance by the will of a testator applies to a transfer on death transfer.

(b) A beneficiary designation designating the children of the owner or children of any other person as a class and not by name includes all children of the person regardless of whether the child is born or adopted before or after the beneficiary designation is made.

(c) Except as provided in subsection (d), a child of the owner born or adopted after the owner makes a beneficiary designation that names another child of the owner as the beneficiary is entitled to receive a fractional share of the property that would otherwise be transferred to the named beneficiary. The share of the property to which each child of the owner is entitled to receive is expressed as a fraction in which the numerator is one (1) and the denominator is the total number of the owner's children.

(d) A beneficiary designation or a governing instrument may provide that subsection (c) does not apply to an owner's beneficiary designation. In addition, a transferring entity is not obligated to apply subsection (c) to property registered in beneficiary form.

(e) If a beneficiary designation does not name any child of the owner as the designated beneficiary with respect to a particular property interest, a child of the owner born or adopted after the owner makes the beneficiary designation is not entitled to any share of the property interest subject to the designation.

Sec. 26. (a) If an agreement between the owner and a transferring entity is required to carry out a transfer on death transfer as described in section 7 of this chapter, a transferring entity may not adopt rules for the making, execution, acceptance, and revocation of a beneficiary designation that are inconsistent with this chapter. A transferring entity may adopt the rules imposed by subsection (b) in whole or in part by incorporation by reference.

(b) Except as otherwise provided in a beneficiary designation, a governing instrument, or any other applicable law, the following

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rules apply to a beneficiary designation:

(1) A beneficiary designation or a request for registration of property in beneficiary form must be made in writing, signed by the owner, dated, and, in the case of a transfer on death deed, compliant with all requirements for the recording of deeds.

(2) A security that is not registered in the name of the owner may be registered in beneficiary form on instructions given by a broker or person delivering the security.

(3) A beneficiary designation may designate one (1) or more primary beneficiaries and one (1) or more contingent beneficiaries.

(4) On property registered in beneficiary form, a primary beneficiary is the person shown immediately following the transfer on death direction. Words indicating that the person is a primary beneficiary are not required. The name of a contingent beneficiary in the registration must have the words "contingent beneficiary" or words of similar meaning to indicate the contingent nature of the interest being transferred.

(5) Multiple surviving beneficiaries share equally in the property being transferred unless a different percentage or fractional share is stated for each beneficiary. If a percentage or fractional share is designated for multiple beneficiaries, the surviving beneficiaries share in the proportion that their designated shares bear to each other.

(6) A transfer of unequal shares to multiple beneficiaries for property registered in beneficiary form may be expressed in numerical form following the name of the beneficiary in the registration.

(7) A transfer on death transfer of property also transfers any interest, rent, royalties, earnings, dividends, or credits earned or declared on the property but not paid or credited before the owner's death.

(8) If a distribution by a transferring entity under a transfer on death transfer results in fractional shares in a security or other property that is not divisible, the transferring entity may distribute the fractional shares in the name of all beneficiaries as tenants in common or as the beneficiaries may direct, or the transferring entity may sell the property that is not divisible and distribute the proceeds to the beneficiaries in the proportions to which they are entitled.

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(9) On the death of the owner, the property, minus all amounts and charges owed by the owner to the transferring entity, belongs to the surviving beneficiaries and, in the case of substitute beneficiaries permitted under section 22 of this chapter, the lineal descendants of designated beneficiaries who did not survive the owner are entitled to the property as follows:

(A) If there are multiple primary beneficiaries and a primary beneficiary does not survive the owner and does not have a substitute under section 22 of this chapter, the share of the nonsurviving beneficiary is allocated among the surviving beneficiaries in the proportion that their shares bear to each other.

(B) If there are no surviving primary beneficiaries and there are no substitutes for the nonsurviving primary beneficiaries under section 22 of this chapter, the property belongs to the surviving contingent beneficiaries in equal shares or according to the percentages or fractional shares stated in the registration.

(C) If there are multiple contingent beneficiaries and a contingent beneficiary does not survive the owner and does not have a substitute under section 22 of this chapter, the share of the nonsurviving contingent beneficiary is allocated among the surviving contingent beneficiaries in the proportion that their shares bear to each other.

(10) If a trustee designated as a beneficiary:

(A) does not survive the owner;

(B) resigns; or

(C) is unable or unwilling to execute the trust as trustee and no successor trustee is appointed in the twelve (12) months following the owner's death;

the transferring entity may make the distribution as if the trust did not survive the owner.

(11) If a trustee is designated as a beneficiary and no trust instrument or probated will creating an express trust is presented to the transferring entity, the transferring entity may make the distribution as if the trust did not survive the owner.

(12) If the transferring entity is not presented evidence during the twelve (12) months after the owner's death that there are lineal descendants of a nonsurviving beneficiary for whom LDPS distribution applies who survived the owner, the

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transferring entity may make the transfer as if the nonsurviving beneficiary's descendants also failed to survive the owner.

(13) If a beneficiary cannot be located at the time the transfer is made to located beneficiaries, the transferring entity shall hold the missing beneficiary's share. If the missing beneficiary's share is not claimed by the beneficiary or by the beneficiary's personal representative or successor during the twelve (12) months after the owner's death, the transferring entity shall transfer the share as if the beneficiary did not survive the owner.

(14) A transferring entity has no obligation to attempt to locate a missing beneficiary, to pay interest on the share held for a missing beneficiary, or to invest the share in any different property.

(15) Cash, interest, rent, royalties, earnings, or dividends payable to a missing beneficiary may be held by the transferring entity at interest or reinvested by the transferring entity in the account or in a dividend reinvestment account associated with a security held for the missing beneficiary.

(16) If a transferring entity is required to make a transfer on death transfer to a minor or an incapacitated adult, the transfer may be made under the Indiana Uniform Transfers to Minors Act, the Indiana Uniform Custodial Trust Act, or a similar law of another state.

(17) A written request for the execution of a transfer on death transfer may be made by any beneficiary, a beneficiary's legal representative or attorney in fact, or the owner's personal representative.

(18) A transfer under a transfer on death deed occurs automatically upon the owner's death subject to the requirements of subdivision (20) and does not require a request for the execution of the transfer.

(19) A written request for the execution of a transfer on death transfer must be accompanied by the following:

(A) A certificate or instrument evidencing ownership of the contract, account, security, or property.

(B) Proof of the deaths of the owner and any nonsurviving beneficiary.

(C) An inheritance tax waiver from states that require it.

(D) In the case of a request by a legal representative, a

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copy of the instrument creating the legal authority or a certified copy of the court order appointing the legal representative.

(E) Any other proof of the person's entitlement that the transferring entity may require.

(20) On the death of an owner whose transfer on death deed has been recorded, the beneficiary shall file an affidavit in the office of the recorder of the county in which the real property is located. The affidavit must contain the following:

(A) The legal description of the property.

(B) A certified copy of the death certificate certifying the owner's death.

(C) The name and address of each designated beneficiary who survives the owner or is in existence on the date of the owner's death.

(D) The name of each designated beneficiary who has not survived the owner's death or is not in existence on the date of the owner's death.

(E) A cross-reference to the recorded transfer on death deed.

(c) A beneficiary designation is presumed to be valid. A party may rely on the presumption of validity unless the party has actual knowledge that the beneficiary designation was not validly executed. A person who acts in good faith reliance on a transfer on death deed is immune from liability to the same extent as if the person had dealt directly with the named owner and the named owner had been competent and not incapacitated.

Sec. 27. (a) An owner who makes arrangements for a transfer on death transfer under this chapter gives to the transferring entity the protections provided in this section for executing the owner's beneficiary designation.

(b) A transferring entity may execute a transfer on death transfer with or without a written request for execution.

(c) A transferring entity may rely and act on:

(1) a certified or authenticated copy of a death certificate issued by an official or an agency of the place where the death occurred as showing the fact, place, date, and time of death and the identity of the decedent; and

(2) a certified or authenticated copy of a report or record of any governmental agency that a person is missing, detained, dead, or alive, and the dates, circumstances, and places disclosed by the record or report.

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(d) A transferring entity has no duty to verify the information contained within a written request for the execution of a beneficiary designation. The transferring entity may rely and act on a request made by a beneficiary or a beneficiary's attorney in fact, guardian, conservator, or other agent.

(e) A transferring entity has no duty to:

(1) except as provided in subsection (g), give notice to any person of the date, manner, and persons to whom a transfer will be made under beneficiary designation;

(2) attempt to locate any beneficiary or lineal descendant substitute;

(3) determine whether a nonsurviving beneficiary or descendant had a lineal descendant who survived the owner;

(4) locate a trustee or custodian;

(5) obtain the appointment of a successor trustee or custodian;

(6) discover the existence of a trust instrument or will that creates an express trust; or

(7) determine any fact or law that would:

(A) cause the beneficiary designation to be revoked in whole or in part as to any person because of a change in marital status or other reason; or

(B) cause a variation in the distribution provided in the beneficiary designation.

(f) A transferring entity has no duty to withhold making a transfer based on knowledge of any fact or claim adverse to the transfer to be made unless before making the transfer the transferring entity receives a written notice that:

(1) in manner, place, and time affords a reasonable opportunity to act on the notice before making the transfer; and

(2) does the following:

(A) Asserts a claim of beneficial interest in the transfer adverse to the transfer to be made.

(B) Gives the name of the claimant and an address for communications directed to the claimant.

(C) Identifies the deceased owner.

(D) States the nature of the claim as it affects the transfer.

(g) If a transferring entity receives a timely notice meeting the requirements of subsection (f), the transferring entity may discharge any duty to the claimant by sending a notice by certified mail to the claimant at the address provided by the claimant's notice of claim. The notice must advise the claimant that a transfer

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to the claimant's asserted claim will be made at least forty-five (45) days after the date of the mailing unless the transfer is restrained by a court order. If the transferring entity mails the notice described by this subsection to the claimant, the transferring entity shall withhold making the transfer for at least forty-five (45) days after the date of the mailing. Unless the transfer is restrained by court order, the transferring entity may make the transfer at least forty-five (45) days after the date of the mailing.

(h) Neither notice that does not comply with the requirements of subsection (f) nor any other information shown to have been available to a transferring entity, its transfer agent, or its employees affects the transferring entity's right to the protections provided by this chapter.

(i) A transferring entity is not responsible for the application or use of property transferred to a fiduciary entitled to receive the property.

(j) Notwithstanding the protections provided a transferring entity by this chapter, a transferring entity may require parties engaged in a dispute over the propriety of a transfer to:

(1) adjudicate their respective rights; or

(2) furnish an indemnity bond protecting the transferring entity.

(k) A transfer by a transferring entity made in accordance with this chapter and under the beneficiary designation in good faith and reliance on information the transferring entity reasonably believes to be accurate discharges the transferring entity from all claims for the amounts paid and the property transferred.

(l) All protections provided by this chapter to a transferring entity are in addition to the protections provided by any other applicable Indiana law.

Sec. 28. (a) The protections provided to a transferring entity or to a purchaser or lender for value by this chapter do not affect the rights of beneficiaries or others involved in disputes that:

(1) are with parties other than a transferring entity or purchaser or lender for value; and

(2) concern the ownership of property transferred under this chapter.

(b) Unless the payment or transfer can no longer be challenged because of adjudication, estoppel, or limitations, a transferee of money or property under a transfer on death transfer that was improperly distributed or paid is liable for:

(1) the return of the money or property, including income

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earned on the money or property, to the transferring entity; or

(2) the delivery of the money or property, including income earned on the money or property, to the rightful transferee.

(c) If a transferee of money or property under a transfer on death transfer that was improperly distributed or paid does not have the property, the transferee is liable for an amount equal to the sum of:

(1) the value of the property as of the date of the disposition; and

(2) the income and gain that the transferee received from the property and its proceeds.

(d) If a transferee of money or property under a transfer on death transfer that was improperly distributed or paid encumbers the property, the transferee shall satisfy the debt incurred in an amount sufficient to release any security interest, lien, or other encumbrance on the property.

(e) A purchaser for value of property or a lender who acquires a security interest in the property from a beneficiary of a transfer on death transfer:

(1) in good faith; or

(2) without actual knowledge that:

(A) the transfer was improper; or

(B) information in an affidavit provided under section 26(b)(20) of this chapter was not true;

takes the property free of any claims of or liability to the owner's estate, creditors of the owner's estate, persons claiming rights as beneficiaries of the transfer on death transfer, or heirs of the owner's estate. A purchaser or lender for value has no duty to verify sworn information relating to the transfer on death transfer.

(f) The protection provided by subsection (e) applies to information that relates to the beneficiary's ownership interest in the property and the beneficiary's right to sell, encumber, and transfer good title to a purchaser or lender but does not relieve a purchaser or lender from the notice provided by instruments of record with respect to the property.

(g) A transfer on death transfer that is improper under section 22, 23, 24, or 25 of this chapter imposes no liability on the transferring entity if the transfer is made in good faith. The remedy of a rightful transferee must be obtained in an action against the improper transferee.

Sec. 29. (a) This chapter does not limit the rights of an owner's

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creditors against beneficiaries and other transferees that may be available under any other applicable Indiana law.

(b) The liability of a beneficiary for creditor claims and statutory allowances is determined under IC 32-17-13.

Sec. 30. Except as otherwise provided by law, a transfer on death transfer and the obligation of a transferring entity to execute the transfer on death transfer that are subject to this chapter under section 2(b) of this chapter remain subject to this chapter notwithstanding a change in the:

(1) beneficiary designation;

(2) residency of the owner;

(3) residency or place of business of the transferring entity; or

(4) location of the property.

Sec. 31. (a) The probate court shall hear and determine questions and issue appropriate orders concerning the determination of the beneficiary who is entitled to receive a transfer on death transfer and the proper share of each beneficiary.

(b) The probate court shall hear and determine questions and issue appropriate orders concerning any action to:

(1) obtain the distribution of any money or property from a transferring entity; or

(2) with respect to money or property that was improperly distributed to any person, obtain the return of:

(A) any money or property and income earned on the money or property; or

(B) an amount equal to the sum of the value of the money or property plus income and gain realized from the money or property.

Sec. 32. (a) Except for transfer on death deeds, a beneficiary designation that purports to have been made and is valid under:

(1) the Uniform Probate Code as enacted by another state;

(2) the Uniform TOD Security Registration Law as enacted by another state; or

(3) a similar law of another state;

is governed by the law of that state.

(b) A transfer on death transfer subject to a law described in subsection (a) may be executed and enforced in Indiana.

(c) Except for transfer on death deeds, the meaning and legal effect of a transfer on death transfer is determined by the law of the state selected in a governing instrument or beneficiary designation.

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SECTION 42. IC 32-21-2-3, AS AMENDED BY P.L.194-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) For a conveyance, a mortgage, or an instrument of writing to be recorded, it must be:

(1) acknowledged by the grantor; or

(2) proved before a:

(A) judge;

(B) clerk of a court of record;

(C) county auditor;

(D) county recorder;

(E) notary public;

(F) mayor of a city in Indiana or any other state;

(G) commissioner appointed in a state other than Indiana by the governor of Indiana;

(H) minister, charge d'affaires, or consul of the United States in any foreign country;

(I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;

(J) clerk-treasurer for a town; or

(K) person authorized under IC 2-3-4-1.

(b) In addition to the requirements under subsection (a), a conveyance may not be recorded after June 30, 2007, unless it meets the requirements of this subsection. ~~If~~ **The conveyance must include** the mailing address ~~on the conveyance~~ **to which statements should be mailed under IC 6-1.1-22-8.1. If the mailing address for statements under IC 6-1.1-22-8.1** is not a street address or a rural route address of the grantee, the conveyance must also include a street address or rural route address of the grantee after the mailing address **for statements mailed under IC 6-1.1-22-8.1. A conveyance complies with this subsection if it contains the address or addresses required by this subsection at the end of the conveyance and immediately preceding or following the statements required by IC 36-2-11-15.**

SECTION 43. IC 34-9-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) This section applies when a person:

(1) receives personal injuries caused by the wrongful act or omission of another; and

(2) subsequently dies from causes other than those personal injuries.

(b) The personal representative of the decedent who was injured may maintain an action against the wrongdoer to recover all damages

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resulting before the date of death from those injuries that the decedent would have been entitled to recover had the decedent lived. The damages:

(1) inure to the exclusive benefit of the decedent's estate; **and**

(2) are subject to IC 6-4.1.

SECTION 44. IC 34-24-1-1, AS AMENDED BY P.L.114-2008, SECTION 27, AND AS AMENDED BY P.L.119-2008, SECTION 13, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars ($100) or more.

(C) Any hazardous waste in violation of ~~*IC 13-30-10-4.*~~ *IC 13-30-10-1.5.*

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons,

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communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

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(10) Any equipment, ~~*used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.*~~ *including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.*

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of

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motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(16) The following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(B) Property constituting, derived from, or traceable to the gross proceeds that a person obtains directly or indirectly as a result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).

(2) IC 35-48-4-1.1 (dealing in methamphetamine).

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

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(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 45. IC 34-30-2-125.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 125.4. IC 29-2-19-11 (Concerning a person who relies on a funeral planning declaration).**

SECTION 46. IC 34-30-2-134.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 134.8. IC 32-17-14-26(c) (Concerning a person acting in good faith reliance on a transfer on death deed).**

SECTION 47. IC 35-41-4-2, AS AMENDED BY P.L.173-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:

(1) within five (5) years after the commission of the offense, in the case of a Class B, Class C, or Class D felony; or

(2) within two (2) years after the commission of the offense, in the case of a misdemeanor.

(b) A prosecution for a Class B or Class C felony that would otherwise be barred under this section may be commenced within one (1) year after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis; or

(2) could have discovered evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis by the exercise of due diligence.

(c) A prosecution for a Class A felony may be commenced at any time.

(d) A prosecution for murder may be commenced:

(1) at any time; and

(2) regardless of the amount of time that passes between:

(A) the date a person allegedly commits the elements of

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murder; and

(B) the date the alleged victim of the murder dies.

(e) A prosecution for the following offenses is barred unless commenced before the date that the alleged victim of the offense reaches thirty-one (31) years of age:

(1) IC 35-42-4-3(a) (Child molesting).

(2) IC 35-42-4-5 (Vicarious sexual gratification).

(3) IC 35-42-4-6 (Child solicitation).

(4) IC 35-42-4-7 (Child seduction).

(5) IC 35-46-1-3 (Incest).

(f) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(g) If a complaint, indictment, or information is dismissed because of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the period of limitation has expired at the time of dismissal, or will expire within ninety (90) days after the dismissal.

(h) The period within which a prosecution must be commenced does not include any period in which:

(1) the accused person is not usually and publicly resident in Indiana or so conceals himself or herself that process cannot be served;

(2) the accused person conceals evidence of the offense, and evidence sufficient to charge the person with that offense is unknown to the prosecuting authority and could not have been discovered by that authority by exercise of due diligence; or

(3) the accused person is a person elected or appointed to office under statute or constitution, if the offense charged is theft or conversion of public funds or bribery while in public office.

(i) For purposes of tolling the period of limitation only, a prosecution is considered commenced on the earliest of these dates:

(1) The date of filing of an indictment, information, or complaint before a court having jurisdiction.

(2) The date of issuance of a valid arrest warrant.

(3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer has authority to make the arrest.

(j) A prosecution is considered timely commenced for any offense to which the defendant enters a plea of guilty, notwithstanding that the period of limitation has expired.

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(k) The following apply to the specified offenses:

(1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-9).

(2) A prosecution for an offense under IC 30-2-10-9(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-10).

(3) A prosecution for an offense under IC 30-2-13-38(f) (misuse of funeral trust or escrow account funds) is barred unless commenced within five (5) years after the date of death of the purchaser (as defined in IC 30-2-13-9).

(l) A prosecution for an offense under IC 23-14-48-9 is barred unless commenced within five (5) years after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense; or

(2) could have discovered evidence sufficient to charge the offender with the offense by the exercise of due diligence.

SECTION 48. IC 35-45-6-1, AS AMENDED BY P.L.3-2008, SECTION 253, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

(c) "Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or merely associated in fact.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

(e) "Racketeering activity" means to commit, to attempt to commit,

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to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

(1) A provision of IC 23-19, or of a rule or order issued under IC 23-19.
(2) A violation of IC 35-45-9.
(3) A violation of IC 35-47.
(4) A violation of IC 35-49-3.
(5) Murder (IC 35-42-1-1).
(6) Battery as a Class C felony (IC 35-42-2-1).
(7) Kidnapping (IC 35-42-3-2).
(8) Human and sexual trafficking crimes (IC 35-42-3.5).
(9) Child exploitation (IC 35-42-4-4).
(10) Robbery (IC 35-42-5-1).
(11) Carjacking (IC 35-42-5-2).
(12) Arson (IC 35-43-1-1).
(13) Burglary (IC 35-43-2-1).
(14) Theft (IC 35-43-4-2).
(15) Receiving stolen property (IC 35-43-4-2).
(16) Forgery (IC 35-43-5-2).
(17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
(18) Bribery (IC 35-44-1-1).
(19) Official misconduct (IC 35-44-1-2).
(20) Conflict of interest (IC 35-44-1-3).
(21) Perjury (IC 35-44-2-1).
(22) Obstruction of justice (IC 35-44-3-4).
(23) Intimidation (IC 35-45-2-1).
(24) Promoting prostitution (IC 35-45-4-4).
(25) Professional gambling (IC 35-45-5-3).
(26) Maintaining a professional gambling site (IC 35-45-5-3.5(b)).
(27) Promoting professional gambling (IC 35-45-5-4).
(28) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
(29) Dealing in or manufacturing methamphetamine (IC 35-48-4-1.1).
(30) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
(31) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
(32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
(33) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
(34) Money laundering (IC 35-45-15-5).

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(35) A violation of IC 35-47.5-5.

(36) A violation of any of the following:

(A) IC 23-14-48-9.

(B) IC 30-2-9-7(b).

(C) IC 30-2-10-9(b).

(D) IC 30-2-13-38(f).

SECTION 49. [EFFECTIVE JULY 1, 2009] **IC 30-2-13-38 and IC 35-45-6-1, both as amended by this act, apply only to crimes committed after June 30, 2009.**

SECTION 50. [EFFECTIVE JULY 1, 2009] **IC 35-41-4-2, as amended by this act, applies only to crimes committed after June 30, 2009.**

SECTION 51. [EFFECTIVE JULY 1, 2009] **IC 30-2-14-31, as amended by this act, applies to a trust described in IC 30-2-14-31(h), as amended by this act, on and after the following dates:**

(1) If the trust is not funded as of July 1, 2009, the date of the decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

(3) If the trust is not described in subdivision (1) or (2), January 1, 2009.

SECTION 52. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 32-17-9; IC 32-17-11-10; 32-17-11-11; IC 32-17-11-24.

SECTION 53. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1287, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-4.1-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Within ten (10) days after life insurance proceeds are paid to a resident decedent's estate, the life insurance company shall give notice of the payment to the department of state revenue.

(b) Not later than ten (10) days after damages payable under a cause of action maintained by a personal representative under IC 34-9-3-4 are paid to a resident decedent's estate, the person making the payment shall give notice of the payment to the department of state revenue.

~~(b)~~ **(c)** The department of state revenue shall send a copy of any notice which it receives under subsection (a) **or (b)** to the county assessor of the county in which the resident decedent was domiciled at the time of ~~his~~ **the resident decedent's** death.

SECTION 2. IC 23-14-31-26, AS AMENDED BY P.L.102-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) Except as provided in subsection (c), the following persons, in the priority listed, have the right to serve as an authorizing agent:

(1) An individual granted the authority to serve in a funeral planning declaration executed by the decedent under IC 29-2-19.

~~(1)~~ **(2)** An individual ~~who possesses~~ **granted the authority to serve in** a health care power of attorney ~~of~~ **executed by** the decedent ~~unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.~~ **under IC 30-5-5-16.**

~~(2)~~ **(3)** The individual who was the spouse of the decedent at the time of the decedent's death.

~~(3)~~ **(4)** The decedent's surviving adult children. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the crematory authority receives a written objection to the cremation from another adult child.

~~(4)~~ **(5)** The decedent's surviving parent. If the decedent is

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survived by both parents, either parent may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from the other parent.

~~(5)~~ **(6)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree is surviving, any person of that degree may serve as the authorizing agent unless the crematory authority receives a written objection to the cremation from one (1) or more persons of the same degree.

~~(6)~~ **(7)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through ~~(5) of this section~~ **(6)** are available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

~~(7)~~ **(8)** In the absence of any person under subdivisions (1) through ~~(6),~~ **(7),** any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not serve as the authorizing agent.

(d) The coroner, in consultation with the law enforcement agency

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investigating the death of the decedent, shall inform the crematory authority of the determination referred to in subsection (c)(2).

SECTION 3. IC 23-14-55-2, AS AMENDED BY P.L.3-2008, SECTION 170, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in subsection (d), the owner of a cemetery is authorized to inter, entomb, or inurn the body or cremated remains of a deceased human upon the receipt of a written authorization of an individual who professes either of the following:

(1) To be (in the priority listed) one (1) of the following:

(A) An individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19.

~~(A)~~ **(B)** An individual ~~who possesses~~ **granted the authority in** a health care power of attorney ~~of~~ **executed by** the decedent ~~unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.~~ **under IC 30-5-5-16.**

~~(B)~~ **(C)** The individual who was the spouse of the decedent at the time of the decedent's death.

~~(C)~~ **(D)** The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the owner of the cemetery receives a written objection to the disposition from another adult child.

~~(D)~~ **(E)** The decedent's surviving parent. If the decedent is survived by both parents, either parent unless the cemetery owner receives a written objection to the disposition from the other parent.

~~(E)~~ **(F)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree of kinship is surviving, any person of that degree unless the cemetery owner receives a written objection to the disposition from one (1) or more persons of the same degree of kinship.

(2) To have acquired **by court order** the right to control the disposition of the deceased human body or cremated remains.

The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (d), or are physically or mentally

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incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) A cemetery owner is not liable in any action for making an interment, entombment, or inurnment under a written authorization described in subsection (a) unless the cemetery owner had actual notice that the representation made under subsection (a) by the individual who issued the written authorization was untrue.

(c) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(d) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(e) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (d)(2).

SECTION 4. IC 25-15-9-18, AS AMENDED BY P.L.3-2008, SECTION 185, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Except as provided in subsection (b), the following persons, in the order of priority indicated, have the authority to designate the manner, type, and selection of the final disposition and interment of human remains:

(1) An individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19.

~~(1)~~ **(2)** An individual ~~who possesses~~ **granted the authority in** a health care power of attorney ~~of~~ **executed by** the decedent ~~unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.~~ **under IC 30-5-5-16.**

~~(2)~~ **(3)** The individual who was the spouse of the decedent at the time of the decedent's death.

~~(3)~~ **(4)** The decedent's surviving adult child. If more than one (1)

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adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the licensed funeral director or licensed funeral home receives a written objection from another adult child.

~~(4)~~ **(5)** The decedent's surviving parent. If the decedent is survived by both parents, either parent has the authority unless the licensed funeral director or licensed funeral home receives a written objection from the other parent.

~~(5)~~ **(6)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree survives, any person of that degree has the authority unless the licensed funeral director or licensed funeral home receives a written objection from one (1) or more persons of the same degree.

~~(6)~~ **(7)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following:

(A) If none of the persons identified in subdivisions (1) through ~~(5)~~ **(6)** is available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

(b) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize or designate the manner, type, or selection of the final disposition and internment of human remains.

(c) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2).".

Page 3, between lines 29 and 30, begin a new paragraph and insert:

"SECTION 6. IC 29-1-4-1 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a)** The surviving spouse of a decedent who was domiciled in Indiana at ~~his~~ **the decedent's** death is entitled from the estate to an allowance of twenty-five thousand dollars ($25,000). ~~The allowance may be claimed against the personal property of the estate or a residence that is a part of the decedent's estate, 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.

(b) The allowance under subsection (a) may be claimed against:

(1) the personal property of the decedent's estate;

(2) the real property that is part of the decedent's estate; or

(3) a combination of personal property under subdivision (1) and real property under subdivision (2).

(c) Not later than ninety (90) days after the order commencing the estate administration, an individual entitled to the allowance may file with the court an election specifying whether the allowance is being claimed under subsection (b) against the personal property of the estate or the real property that is part of the estate, or a combination of both. An interested party may file an objection to the manner in which the allowance is being claimed not later than thirty (30) days after the date the election is filed with the court. The court shall rule on the objection after notice and a hearing. If an election is not filed within ninety (90) days after the order commencing the estate administration, the allowance must be satisfied according to the following order of preference:

(1) From the intangible personal property of the estate.

(2) From the tangible personal property of the estate.

(3) From the real property that is part of the estate.

(d) If the personal property ~~and a residence that is a part~~ of the ~~decedent's~~ estate ~~are~~ **is** less than twenty-five thousand dollars ($25,000) in value, 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 that is a part of the decedent's estate~~ and twenty-five thousand dollars ($25,000). The amount of that difference is a lien on the ~~remaining~~ real estate. **However, no real estate may be sold to satisfy the survivor's allowance unless the sale is approved:**

(1) in an agreement signed by all interested persons; or

(2) by court order following notice to all interested persons.

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(e) An allowance under this section is not chargeable against the distributive shares of either the surviving spouse or the children.

(f) For purposes of this section, the value of the real property that is part of a decedent's estate must be determined as of the date of the decedent's death.

SECTION 7. IC 29-1-7-7, AS AMENDED BY P.L.95-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

(c) The notice required under subsection (a) shall be served by ~~certified~~ **first class postage prepaid** mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters, **except as otherwise ordered by the court.** The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

(1) whose name is not set forth in the petition for probate or letters under subsection (c);

(2) who is known or reasonably ascertainable within one (1) month after the first publication of notice under subsection (a); and

(3) whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within one (1) month after the first publication of notice under subsection (a) or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d)

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within one (1) month after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____ was, on the ____ day of _____, 20 __, appointed personal representative of the estate of _____, deceased, who died on the ___ day of _____, 20 __.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ___ day of _____, 20 __.

CLERK OF THE _____ COURT, Chair
FOR _____ COUNTY, INDIANA

SECTION 8. IC 29-1-7.5-1.5, AS AMENDED BY P.L.238-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. (a) As soon as letters testamentary or letters of administration have been issued, the clerk of the court shall serve by mail notice of the petition on each of the decedent's heirs at law, if the decedent died intestate, or the devisees and legatees under the decedent's will. The mailing of notice under this subsection may not be waived.

(b) The notice required under subsection (a) shall read substantially as follows:

NOTICE OF UNSUPERVISED ADMINISTRATION TO BE

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MAILED TO A DISTRIBUTEE

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____, on the _____ day of _____, 20__, was appointed as the personal representative of the estate of _____, who died on the ____ day of _____, 20__, {leaving a will} {not leaving a will}. The estate will be administered without court supervision.

As an heir, a devisee, or a legatee of the estate (a "distributee"), you are advised of the following information:

(1) The personal representative has the authority to take actions concerning the estate without first consulting you.

(2) The personal representative may be serving without posting a bond with the court. You have the right to petition the court to set a bond for your protection. **You also have the right to petition the court to remove a corporate personal representative not later than thirty (30) days after this notice if the ownership or control of the corporate personal representative has changed since the execution of the decedent's will.**

(3) The personal representative will not obtain court approval of any action, including the amount of attorney's or personal representative's fees.

(4) Within two (2) months after the appointment of the personal representative, the personal representative must prepare an inventory of the estate's assets. You have the right to request and receive a copy of this inventory from the personal representative. However, if you do not participate in the residue of the estate and receive only a specific bequest in money or personal property that will be paid, you are entitled only to the information concerning your specific bequest and not to the assets of the estate as a whole.

(5) The personal representative is required to furnish you with a copy of the closing statement that will be filed with the court, and, if your interests are affected, with a full account in writing of the administration of the estate.

(6) You must file an objection to the closing statement within three (3) months after the closing statement is filed with the court if you want the court to consider your objection.

(7) If an objection to the closing statement is not filed with the court within three (3) months after the filing of the closing statement, the estate is closed and the court does not have a duty to audit or make an inquiry.

IF, AT ANY TIME BEFORE THE ESTATE IS CLOSED, YOU

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HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED ADMINISTRATION.

IF YOU DO NOT UNDERSTAND THIS NOTICE, YOU SHOULD ASK YOUR ATTORNEY TO EXPLAIN IT TO YOU.

The personal representative's address is _____, and telephone number is _____. The attorney for the personal representative is _____, whose address is _____ and telephone number is _____.

Dated at _____, Indiana, this _____ day of _____, 20__.

CLERK OF THE _____ COURT

SECTION 9. IC 29-1-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. **(a) This section does not apply to the removal of a corporate fiduciary after a change in control of the corporate fiduciary.**

(b) When the personal representative becomes incapacitated (unless the incapacity is caused only by a physical illness, infirmity, or impairment), disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged the estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the court may remove the representative ~~as provided:~~ **in accordance with either of the following:**

~~(a)~~ **(1)** The court on its own motion may, or on petition of any person interested in the estate shall, order the representative to appear and show cause why the representative should not be removed. ~~Such~~ **The** order shall set forth in substance the alleged grounds upon which such removal is based, the time and place of the hearing, and may be served upon the personal representative in the same manner as a notice is served under this article.

~~(b)~~ **(2)** The court may without motion, petition or application, for any such cause, in cases of emergency, remove such personal representative instantly without notice or citation.

(c) The removal of a personal representative after letters are duly issued does not invalidate official acts performed prior to removal.

SECTION 10. IC 29-1-10-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6.5. (a) This section does not apply to the removal of a personal representative under section 6 of this chapter.**

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(b) An heir may petition the court for the removal of a corporate fiduciary appointed by the court as personal representative if there has been a change in the control of the corporate fiduciary and either of the following applies:

(1) The change in the control of the corporate fiduciary occurred after the date of the execution of the decedent's will but before the decedent's death.

(2) The change in the control of the corporate fiduciary occurred after the corporate fiduciary was appointed and during the administration of the decedent's estate.

(c) A petition described in subsection (b) must be filed:

(1) not later than thirty (30) days after an heir, a devisee, or a legatee receives notice under IC 29-1-7-7(c) or IC 29-1-7.5-1.5, in the case of a change of control described in subsection (b)(1); or

(2) not later than a reasonable time after the change of control, in the case of a change of control described in subsection (b)(2).

(d) The court may remove the corporate fiduciary if the court determines, after a hearing, that the removal is in the best interests of all the beneficiaries of the will. The court may replace the corporate fiduciary with another corporate fiduciary or an individual.

(e) For purposes of this section, a change in control of a corporate fiduciary occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of a total of at least twenty-five percent (25%) of the outstanding voting stock of:

(1) a corporate fiduciary; or

(2) a corporation controlling a corporate fiduciary.

(f) The removal of a corporate fiduciary after letters are duly issued does not invalidate official acts performed before the removal.

(g) If a corporate fiduciary is replaced under this section, the corporate fiduciary is entitled to receive reasonable compensation for services rendered before the removal.

SECTION 11. IC 29-2-19 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 19. Funeral Planning Declaration

Sec. 1. As used in this chapter, "declarant" means an individual who signs a funeral planning declaration executed under this chapter.

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Sec. 2. As used in this chapter, "declaration" means a funeral planning declaration executed under this chapter.

Sec. 3. As used in this chapter, "designee" means an individual directed by the terms of a declaration to:

(1) carry out the funeral plan of the declarant as set forth in the declaration; or

(2) make any arrangements concerning the disposition of the declarant's remains, funeral services, merchandise, and ceremonies that are delegated to the designee in the declaration.

Sec. 4. As used in this chapter, "disposition" has the meaning set forth in IC 25-15-2-7.

Sec. 5. As used in this chapter, "funeral services" has the meaning set forth in IC 25-15-2-17.

Sec. 6. As used in this chapter, "grave memorial" has the meaning set forth in IC 14-21-2-2.

Sec. 7. As used in this chapter, "merchandise" refers to personal property described in IC 30-2-13-8.

Sec. 8. (a) A person who is of sound mind and is at least eighteen (18) years of age may execute a funeral planning declaration substantially in the form set forth in section 13 of this chapter. A declaration may be included in a will, a power of attorney, or a similar document.

(b) A declaration must meet the following conditions:

(1) Be voluntary.

(2) Be in writing.

(3) Direct an individual to serve as the declarant's designee.

(4) Be signed by the person making the declaration or by another person in the declarant's presence and at the direction of the declarant.

(5) Be dated.

(6) Be signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age.

(c) The following may not be a witness to a declaration under subsection (b)(6):

(1) The person who signed the declaration on behalf of and at the direction of the declarant.

(2) A parent, spouse, or child of the declarant.

(3) An individual who is entitled to any part of the declarant's estate whether the declarant dies testate or intestate, including an individual who could take from the declarant's estate if the declarant's will is declared invalid.

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For purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the estate in the declarant's will.

(d) A declaration is not binding upon a funeral home, a cemetery, any other person engaged in the business of providing funeral services, any other person selling merchandise or grave markers, or any other person providing a service or other property subject to the declaration until the person receives consideration for the service, merchandise, or other property.

(e) Except as provided in subsection (f), a declarant may not direct an individual who is:

(1) a provider of funeral services;

(2) responsible for any aspect of the disposition of the declarant's remains; or

(3) associated with any entity that is responsible for providing funeral services or disposing of the declarant's remains;

to be the declarant's designee in a declaration executed under this chapter.

(f) Subsection (e) does not apply to an individual who is related to the declarant by birth, marriage, or adoption.

Sec. 9. A declaration may specify the declarant's preferences concerning any of the following:

(1) The disposition of the declarant's remains after the declarant's death.

(2) Who may direct the disposition of the declarant's remains.

(3) Who may provide funeral services after the declarant's death.

(4) The ceremonial arrangements to be performed after the declarant's death.

(5) The merchandise that the declarant prefers for the disposition of the declarant's remains and any ceremonial arrangements.

(6) Who may direct the ceremonial arrangements to be performed after the declarant's death.

(7) A grave memorial.

Sec. 10. (a) Except as provided in subsection (b), the provisions of a declarant's most recent declaration prevail over any other document executed by the declarant concerning any preferences described in section 9 of this chapter. However, this section may not be construed to invalidate a power of attorney executed under IC 30-5-5 or an appointment of a health care representative under

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IC 16-36-1 with respect to any power or duty belonging to the attorney in fact or health care representative that is not related to a preference described in section 9 of this chapter.

(b) A funeral trust established under IC 30-2-9 or IC 30-2-10 or a contract entered into under IC 30-2-13 prevails over a declaration that conflicts with the trust or contract.

Sec. 11. (a) A person who acts in good faith reliance on a declaration is immune from liability to the same extent as if the person had dealt directly with the declarant and the declarant had been a competent and living person.

(b) A person who deals with a declaration may presume, in the absence of actual knowledge to the contrary, that:

(1) the declaration was validly executed; and

(2) the declarant was competent at the time the declaration was executed.

(c) The directions of a declarant expressed in a declaration are binding as if the declarant were alive and competent.

Sec. 12. A declaration must be substantially in the form set forth in section 13 of this chapter, but the declaration may include additional, specific directions. The invalidity of any additional, specific direction does not affect the validity of the declaration.

Sec. 13. The following is the funeral planning declaration form:

FUNERAL PLANNING DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my instructions concerning funeral services, ceremonies, and the disposition of my remains after my death.

I hereby declare and direct that after my death _____(name of designee) shall, as my designee, carry out the instructions that are set forth in this declaration. If my designee is unwilling or unable to act, I nominate _____ as an alternate designee.

I hereby declare and direct that after my death the following actions be taken (indicate your choice by initialing or making your mark before signing this declaration):

(1) My body shall be:

(A) _____ Buried. I direct that my body be buried at _____.

(B) _____ Cremated. I direct that my cremated remains be disposed of as follows:

_____

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_____

(C) _____ Entombed. I direct that my body be entombed at _____.

(D) _____ I intentionally make no decision concerning the disposition of my body, leaving the decision to my designee (as named above).

(2) My arrangements shall be made as follows:

(A) I direct that funeral services be obtained from:

_____

_____

(B) I direct that the following ceremonial arrangements be made:

_____

_____

(C) I direct the selection of a grave memorial that:

_____

_____

(D) I direct that the following merchandise and other property be selected for the disposition of my remains, my funeral or other ceremonial arrangements:

_____

_____

_____

_____

(E) _____I direct that my designee (as named above) make all arrangements concerning ceremonies and other funeral services.

(3) In addition to the instructions listed above, I request the following:

_____

_____

(4) If it is impossible to make an arrangement specified in subdivisions (1) through (3) because:

(A) a funeral home or other service provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

(B) the specified arrangement is impossible, impractical, or illegal;

I direct my designee to make alternate arrangements to the best of the designee's ability.

It is my intention that this declaration be honored by my family and others as the final expression of my intentions concerning my

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funeral and the disposition of my body after my death. I understand the full import of this declaration.

Signed _____

_____

City, County, and State of Residence

The declarant is personally known to me, and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____

Sec. 14. A declaration may be revoked by the declarant in writing or by burning, tearing, canceling, obliterating, or destroying the declaration with the intent to revoke the declaration.

Sec. 15. Except as otherwise expressly provided in a declaration, a subsequent:

(1) dissolution of marriage;

(2) annulment of marriage; or

(3) legal separation of the declarant and the declarant's spouse;

automatically revokes a delegation of authority in a declaration to the declarant's spouse to direct the disposition of the declarant's body or to make all arrangements concerning funeral services and other ceremonies after the declarant's death.

Sec. 16. Except as otherwise provided in a declaration, section 17 of this chapter controls if a person to whom a declaration delegates the authority to make arrangements after a declarant's death is unable or unwilling to serve.

Sec. 17. The right to control the disposition of a decedent's body, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death devolves on the following, in the priority listed:

(1) An individual granted the authority in a funeral planning declaration executed by the decedent under this chapter.

(2) An individual granted the authority in a health care power of attorney executed by the decedent under IC 30-5-5-16.

(3) The decedent's surviving spouse.

(4) A surviving adult child of the decedent.

(5) A surviving parent of the decedent.

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(6) An individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent.

Sec. 18. A person in Indiana may rely on a declaration or similar instrument that was executed in another state and that complies with the requirements of this chapter to the extent that an action requested by the declarant in the declaration or similar instrument does not violate any federal or Indiana law or any ordinance or regulation of a political subdivision.

Sec. 19. An action to contest the validity of any declaration made under this chapter must be:

(1) brought in the same manner as an action to contest the validity of a will under IC 29-1-7;

(2) filed in the circuit court of the county in which the declarant's remains are located;

(3) expedited on the docket of the circuit court as a matter requiring priority; and

(4) accompanied by a bond, cash deposit, or other surety sufficient to guarantee that the hospital, nursing home, funeral home, or other institution holding the declarant's remains is compensated for the storage charges incurred while the action is pending.

SECTION 12. IC 29-3-6-1, AS AMENDED BY P.L.95-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by ~~certified~~ **first class postage prepaid** mail as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4(a).

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the

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filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

SECTION 13. IC 29-3-8-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. (a) If:

(1) a guardian takes possession of property that is:

(A) jointly owned by or titled in the names of the protected person and another person with rights of survivorship; **or**

(B) owned as a multiple party account with another person as joint owner or beneficiary;

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(2) the guardian:

(A) severs the joint ownership of the property; **or**

(B) uses the assets of the multiple party account; and

(3) the protected person subsequently dies while the other person is living;

the other person may elect to receive from the protected person's estate property in an amount determined under subsection (b).

(b) The amount of property the other person described in subsection (a) may elect to receive is determined in STEP THREE of the following formula:

STEP ONE: Subtract:

(A) the value of the severed **or used** property retained by the other person at the time ownership was severed **or used,** if any; from

(B) the value of the joint property **or multiple party account** at the time ownership was severed **or the assets were used.**

STEP TWO: Divide:

(A) the remainder determined under STEP ONE; by

(B) the value of the protected person's property, including the jointly held property **or multiple party account,** at the time ownership was severed **or the assets were used.**

STEP THREE: Multiply:

(A) the quotient determined under STEP TWO; by

(B) the value of the deceased protected person's net estate.

(c) As used in this section, "multiple party account" refers to both multiple party accounts described by IC 32-17-11 and transfer on death securities described by IC 32-17-9.".

Page 4, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 14. IC 30-5-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. "Attorney in fact" means the person designated to act for the principal under a power of attorney. **The term includes any of the following:**

(1) The original attorney in fact.

(2) A co-attorney in fact.

(3) A successor attorney in fact.

(4) A person to whom an attorney in fact has delegated authority.

SECTION 15. IC 30-5-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. "Person" means:

(1) an individual at least eighteen (18) years of age;

(2) a corporation;

(3) a trust;

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(4) a limited liability company; ~~or~~

(5) a partnership;

(6) a business trust;

(7) an estate;

(8) an association;

(9) a joint venture;

(10) a government or political subdivision;

(11) an agency;

(12) an instrumentality; or

(13) any other legal or commercial entity.

SECTION 16. IC 30-5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. "Power of attorney" **means a writing or other record that grants authority to an attorney in fact or agent to act in place of a principal, whether the term "power of attorney" is used. The term** refers to all types of powers of attorney, including durable powers of attorney, **except for the following:**

(1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a credit in connection with a credit transaction.

(2) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.

(3) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

SECTION 17. IC 30-5-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. A power of attorney is valid if the power of attorney was valid at the time the power of attorney was executed under any of the following:

(1) This article.

(2) IC 30-2-11 **(repealed).**

(3) Common law.

(4) The law of another state or foreign country.

(5) The requirements for a military power of attorney under 10 U.S.C. 1044b.

SECTION 18. IC 30-5-3-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6. The meaning and effect of a power of attorney are determined by the law of the jurisdiction indicated in the power of attorney. In the absence of an indication of jurisdiction, the meaning and effect of a power of attorney are determined by the law of the jurisdiction in which the power of attorney was**

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executed.

SECTION 19. IC 30-5-3-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.). However, this article does not:**

(1) modify, limit, or supersede 15 U.S.C. 7001(c); or

(2) authorize the electronic delivery of a notice described in 15 U.S.C. 7003(b).

SECTION 20. IC 30-5-4-2, AS AMENDED BY P.L.101-2008, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in subsection (b), a power of attorney is effective on the date the power of attorney is signed in accordance with section 1(4) of this chapter.

(b) A power of attorney may:

(1) specify the date on which the power will become effective; or

(2) become effective upon the occurrence of an event.

(c) If a power of attorney becomes effective upon the principal's incapacity and:

(1) the principal has not authorized a person to determine whether the principal is incapacitated; or

(2) the person authorized is unable or unwilling to make the determination;

the power of attorney becomes effective upon a determination that the principal is incapacitated that is set forth in a writing or other record by a physician, licensed psychologist, or judge.

(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may:

(1) act as the principal's personal representative under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 201 et seq.) and any rules or regulations issued under that act; and

(2) obtain access to the principal's health care information and communicate with the principal's health care provider.

SECTION 21. IC 30-5-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Except as stated otherwise in the power of attorney, an attorney in fact fails to serve or ceases to serve when:

(1) the attorney in fact dies;

(2) the attorney in fact resigns;

(3) the attorney in fact is adjudged incapacitated by a court;

(4) the attorney in fact cannot be located upon reasonable inquiry;

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(5) the attorney in fact, if at one time the principal's spouse, legally is no longer the principal's spouse; or

(6) a physician familiar with the condition of the current attorney in fact certifies in writing to the immediate successor attorney in fact that the current attorney in fact is unable to transact a significant part of the business required under the power of attorney.

(b) Except as stated otherwise in the power of attorney, if the replaced attorney in fact reappears or is subsequently able to transact business, the successor attorney in fact shall remain as the attorney in fact.

(c) Except as otherwise stated in the power of attorney, an attorney in fact designated as a successor has the powers granted under the power of attorney to the original attorney in fact.

(d) Unless a power of attorney provides a different method for an attorney in fact's resignation, an attorney in fact may resign by giving notice to the principal, and, if the principal is incapacitated:

(1) to:

(A) the principal's guardian, if a guardian has been appointed for the principal; and

(B) a co-attorney in fact or successor attorney in fact; or

(2) if there is no person described in subdivision (1), to:

(A) the principal's care giver;

(B) another person reasonably believed by the attorney in fact to have sufficient interest in the principal's welfare; or

(C) a governmental agency having authority to protect the welfare of the principal.

SECTION 22. IC 30-5-5-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7.5. (a) Language conferring general authority with respect to transfer on death or payable on death transfers means the principal authorizes the attorney in fact to do the following:**

(1) Establish one (1) or more transfer on death transfers or payable on death transfers.

(2) Designate, amend, remove, modify, or change any designation of beneficiary in a transfer on death transfer or payable on death transfer, including those created by the principal before or after the execution of the power of attorney.

(3) Terminate any transfer on death transfer or payable on death transfer.

(4) Add to or withdraw from any transfer on death transfer

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or payable on death transfer.

(5) Exercise any right or authority that the principal may have in a transfer on death transfer or payable on death transfer during the principal's lifetime.

(b) The powers described in this section are equally exercisable with respect to transfer on death transfers and payable on death transfers that are established or operated in Indiana or another jurisdiction.

(c) A power of attorney that is executed before July 1, 2009, and that confers general authority with respect to all other matters under section 19 of this chapter also confers general authority with respect to transfer on death transfers and payable on death transfers as described in this section.

SECTION 23. IC 30-5-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) This section does not prohibit an individual capable of consenting to the individual's own health care or to the health care of another from consenting to health care administered in good faith under the religious tenets and practices of the individual requiring health care.

(b) Language conferring general authority with respect to health care powers means the principal authorizes the attorney in fact to do the following:

(1) Employ or contract with servants, companions, or health care providers to care for the principal.

(2) If the attorney in fact is an individual, consent to or refuse health care for the principal who is an individual in accordance with IC 16-36-4 and IC 16-36-1 by properly executing and attaching to the power of attorney a declaration or appointment, or both.

(3) Admit or release the principal from a hospital or health care facility.

(4) Have access to records, including medical records, concerning the principal's condition.

(5) Make anatomical gifts on the principal's behalf.

(6) Request an autopsy.

(7) Make plans for the disposition of the principal's body, **including executing a funeral planning declaration on behalf of the principal in accordance with IC 29-2-19.**

SECTION 24. IC 30-5-9-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. An attorney in fact that violates this article is liable to the principal or the principal's successors in interest for**

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damages and an amount required to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid as a result of the violation.

SECTION 25. IC 30-5-10-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. Unless the power of attorney provides otherwise, an attorney in fact may exercise authority until the authority terminates under this chapter, even if time has passed since the execution of the power of attorney.**

SECTION 26. IC 32-17-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. This chapter applies to registrations of securities:

(1) in beneficiary form ~~regardless of the date of registration;~~ **that are made before July 1, 2009;** and

(2) by persons who die after June 30, 1997.

SECTION 27. IC 32-17-11-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. (a) This chapter applies to a P.O.D. account established before July 1, 2009.**

(b) A P.O.D. account established after June 30, 2009, is subject to IC 32-17-14.

SECTION 28. IC 32-17-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

(1) whose last domicile was in Indiana; and

(2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

(A) use the property for the benefit of the transferor; or

(B) apply the property to discharge claims against the transferor's probate estate.

The term does not include transfer of a survivorship interest in a tenancy by the entireties real estate, transfer of a life insurance policy or annuity, or payment of the death proceeds of a life insurance policy or annuity.

(b) With respect to a security ~~described in~~ **registered:**

(1) under IC 32-17-9 **(in the case of a security registered before July 1, 2009); or**

(2) under IC 32-17-14 (in the case of a security registered after June 30, 2009);

"nonprobate transfer" means a transfer on death resulting from a registration in beneficiary form by an owner whose last domicile was

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in Indiana.

(c) With respect to a nonprobate transfer involving a multiple party account, a nonprobate transfer occurs if the last domicile of the depositor whose interest is transferred under IC 32-17-11 **(in the case of an account established before July 1, 2009) or IC 32-17-14 (in the case of an account established after June 30, 2009)** was in Indiana.

(d) With respect to a motor vehicle or a watercraft, a nonprobate transfer occurs if the transferee obtains a certificate of title in Indiana for:

(1) the motor vehicle under IC 9-17-2-2(b); or

(2) the watercraft as required by IC 9-31-2-16(a)(1)(C).

(e) A transfer on death transfer completed under IC 32-17-14 is a nonprobate transfer.

SECTION 29. IC 32-17-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 14. Transfer on Death Property Act

Sec. 1. This chapter may be cited as the Transfer on Death Property Act.

Sec. 2. (a) This chapter applies to property subject to a beneficiary designation made after June 30, 2009.

(b) Subject to section 32 of this chapter, this chapter applies to a transfer on death transfer if at the time the owner designated the beneficiary:

(1) the owner was a resident of Indiana;

(2) the property subject to the beneficiary designation was situated in Indiana;

(3) the obligation to pay or deliver arose in Indiana;

(4) the transferring entity was a resident of Indiana or had a place of business in Indiana; or

(5) the transferring entity's obligation to make the transfer was accepted in Indiana.

(c) Except for section 24 of this chapter, this chapter does not apply to property, money, or benefits paid or transferred at death under a life or accidental death insurance policy, annuity, contract, plan, or other product sold or issued by a life insurance company unless the provisions of this chapter are incorporated into the policy or beneficiary designation in whole or in part by express reference.

(d) Except for section 24 of this chapter, this chapter does not apply to a transfer on death transfer if the beneficiary designation

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or an applicable law expressly provides that this chapter does not apply to the transfer.

(e) This chapter does not apply to beneficiary designations that are subject to the following:

(1) IC 9-17-3-9 (for motor vehicles).

(2) IC 9-31-2-30 (for watercraft).

(3) IC 32-17-9 (for securities registered before July 1, 2009, under the Indiana Uniform Act on Transfer on Death Securities).

(4) IC 32-17-11 (for pay on death accounts established before July 1, 2009).

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

(1) "Beneficiary" means a person designated or entitled to receive property because of another person's death under a transfer on death transfer.

(2) "Beneficiary designation" means a written instrument other than a will or trust that designates the beneficiary of a transfer on death transfer.

(3) "Joint owners" refers to persons who hold property as joint tenants with a right of survivorship. However, the term does not include a husband and wife who hold property as tenants by the entirety.

(4) "LDPS" means an abbreviation of lineal descendants per stirpes, which may be used in a beneficiary designation to designate a substitute beneficiary as provided in section 22 of this chapter.

(5) "Owner" refers to a person or persons who have a right to designate the beneficiary of a transfer on death transfer.

(6) "Ownership in beneficiary form" means holding property under a registration in beneficiary form or other written instrument that:

(A) names the owner of the property;

(B) directs ownership of the property to be transferred upon the death of the owner to the designated beneficiary; and

(C) designates the beneficiary.

(7) "Person" means an individual, a sole proprietorship, a partnership, an association, a fiduciary, a trustee, a corporation, a limited liability company, or any other business entity.

(8) "Proof of death" means a death certificate or a record or report that is prima facie proof or evidence of an individual's

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death.

(9) "Property" means any present or future interest in real property, intangible personal property (as defined in IC 6-4.1-1-5), or tangible personal property (as defined in IC 6-4.1-1-13). The term includes:

(A) a right to direct or receive payment of a debt;

(B) a right to direct or receive payment of money or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, or trust or by operation of law;

(C) a right to receive performance remaining due under a contract;

(D) a right to receive payment under a promissory note or a debt maintained in a written account record;

(E) rights under a certificated or uncertificated security;

(F) rights under an instrument evidencing ownership of property issued by a governmental agency; and

(G) rights under a document of title (as defined in IC 26-1-1-201).

(10) "Registration in beneficiary form" means titling of an account record, certificate, or other written instrument that:

(A) provides evidence of ownership of property in the name of the owner;

(B) directs ownership of the property to be transferred upon the death of the owner to the designated beneficiary; and

(C) designates the beneficiary.

(11) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer. The term includes a certificated security, an uncertificated security, and a security account.

(12) "Transfer on death deed" means a deed that conveys an interest in real property to a grantee by beneficiary designation.

(13) "Transfer on death transfer" refers to a transfer of property that takes effect upon the death of the owner under a beneficiary designation made under this chapter.

(14) "Transferring entity" means a person who:

(A) owes a debt or is obligated to pay money or benefits;

(B) renders contract performance;

(C) delivers or conveys property; or

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(D) changes the record of ownership of property on the books, records, and accounts of an enterprise or on a certificate or document of title that evidences property rights.

The term includes a governmental agency, business entity, or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property. However, the term does not include a governmental office charged with endorsing, entering, or recording the transfer of real property in the public records.

Sec. 4. (a) The following transfers of ownership are not considered transfer on death transfers for purposes of this chapter:

(1) Transfers by rights of survivorship in property held as joint tenants or tenants by the entirety.

(2) A transfer to a remainderman on the termination of a life tenancy.

(3) An inter vivos or a testamentary transfer under a trust established by an individual.

(4) A transfer made under the exercise or nonexercise of a power of appointment.

(5) A transfer made on the death of a person who did not have the right to designate the person's estate as the beneficiary of the transfer.

(b) A beneficiary designation made under this chapter must do the following:

(1) Designate the beneficiary of a transfer on death transfer.

(2) Make the transfer effective upon the death of the owner of the property being transferred.

(3) Comply with this chapter, the conditions of any governing instrument, and any other applicable law.

(c) For purposes of construing this chapter or a beneficiary designation made under this chapter, the death of the last surviving owner of property held by joint owners is considered the death of the owner.

(d) Except as otherwise provided in this chapter, a transfer on death direction is accomplished in a form substantially similar to the following:

(1) Insert Name of the Owner or Owners.

(2) Insert "Transfer on death to" or "TOD" or "Pay on death to" or "POD".

(3) Insert the Name of the Beneficiary or Beneficiaries.

(e) An owner may revoke or change a beneficiary designation at

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any time before the owner's death.

Sec. 5. A transfer on death transfer:

(1) is effective with or without consideration;

(2) is not considered testamentary;

(3) is not subject to the requirements for a will or for probating a will under IC 29-1; and

(4) may be subject to an agreement between the owner and a transferring entity to carry out the owner's intent to transfer the property under this chapter.

Sec. 6. For the purpose of discharging its duties under this chapter, the authority of a transferring entity acting as agent for an owner of property subject to a transfer on death transfer does not cease at the death of the owner. The transferring entity shall transfer the property to the designated beneficiary in accordance with the beneficiary designation and this chapter.

Sec. 7. (a) If any of the following are required, an agreement between the owner and the transferring entity is necessary to carry out a transfer on death transfer, which may be made in accordance with the rules, terms, and conditions set forth in the agreement:

(1) The submission to the transferring entity of a beneficiary designation under a governing instrument.

(2) Registration by a transferring entity of a transfer on death direction on any certificate or record evidencing ownership of property.

(3) Consent of a contract obligor for a transfer of performance due under the contract.

(4) Consent of a financial institution for a transfer of an obligation of the financial institution.

(5) Consent of a transferring entity for a transfer of an interest in the transferring entity.

(b) When subsection (a) applies, a transferring entity is not required to accept an owner's request to assist the owner in carrying out a transfer on death transfer.

(c) If a beneficiary designation, revocation, or change is subject to acceptance by a transferring entity, the transferring entity's acceptance of the beneficiary designation, revocation, or change relates back to and is effective as of the time the request was received by the transferring entity.

Sec. 8. (a) If a transferring entity accepts a beneficiary designation or beneficiary assignment or registers property in beneficiary form, the acceptance or registration constitutes the agreement of the owner and the transferring entity that, subject to

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this section, the owner's property will be transferred to and placed in the name and control of the beneficiary in accordance with the beneficiary designation or transfer on death direction, the agreement between the parties, and this chapter.

(b) An agreement described in subsection (a) is subject to the owner's power to revoke or change a beneficiary designation before the owner's death.

(c) A transferring entity's duties under an agreement described in subsection (a) are subject to the following:

(1) Receiving proof of the owner's death.

(2) Complying with the transferring entity's requirements for proof that the beneficiary is entitled to receive the property.

Sec. 9. (a) Except as provided in subsection (c), a beneficiary designation that satisfies the requirements of subsection (b):

(1) authorizes a transfer of property under this chapter;

(2) is effective on the death of the owner of the property; and

(3) transfers the right to receive the property to the designated beneficiary who survives the death of the owner.

(b) A beneficiary designation is effective under subsection (a) if the beneficiary designation is:

(1) executed; and

(2) delivered;

in proper form to the transferring entity before the death of the owner.

(c) A transferring entity shall make a transfer described in subsection (a)(3) unless there is clear and convincing evidence of the owner's different intention at the time the beneficiary designation was created.

Sec. 10. (a) A written assignment of a contract right that:

(1) assigns the right to receive any performance remaining due under the contract to an assignee designated by the owner; and

(2) expressly states that the assignment does not take effect until the death of the owner;

transfers the right to receive performance due under the contract to the designated assignee beneficiary if the assignment satisfies the requirements of subsection (b).

(b) A written assignment described in subsection (a) is effective upon the death of the owner if the assignment is:

(1) executed; and

(2) delivered;

in proper form to the contract obligor before the death of the

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owner.

(c) A beneficiary assignment described in this section is not required to be supported by consideration or delivered to the assignee beneficiary.

(d) This section does not preclude other methods of assignment that are permitted by law and have the effect of postponing the enjoyment of the contract right until after the death of the owner.

Sec. 11. (a) A transfer on death deed transfers the interest provided to the beneficiary if the transfer on death deed is:

(1) executed in proper form; and

(2) recorded with the recorder of deeds in the county in which the real property is situated before the death of the owner.

(b) A transfer on death deed is void if it is not recorded with the recorder of deeds in the county in which the real property is situated before the death of the owner.

(c) A transfer on death deed is not required to be supported by consideration or delivered to the grantee beneficiary.

(d) A transfer on death deed may be used to transfer an interest in real property to either a revocable or an irrevocable trust.

(e) If the owner makes a transfer on death deed, the effect of the conveyance is determined as follows:

(1) If the owner's interest in the real property is as a tenant by the entirety, the conveyance is inoperable and void unless the other spouse joins in the conveyance.

(2) If the owner's interest in the real property is as a joint tenant with rights of survivorship, the conveyance severs the joint tenancy and the cotenancy becomes a tenancy in common.

(3) If the owner's interest in the real property is as a joint tenant with rights of survivorship and the property is subject to a beneficiary designation, a conveyance of any joint owner's interest has no effect on the original beneficiary designation for the nonsevering joint tenant.

(4) If the owner's interest is as a tenant in common, the owner's interest passes to the beneficiary as a transfer on death transfer.

(5) If the owner's interest is a life estate determined by the owner's life, the conveyance is inoperable and void.

(6) If the owner's interest is any other interest, the interest passes in accordance with this chapter and the terms and conditions of the conveyance establishing the interest. If a conflict exists between the conveyance establishing the

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interest and this chapter, the terms and conditions of the conveyance establishing the interest prevail.

(f) A beneficiary designation in a transfer on death deed may be worded in substance as "(insert owner's name) conveys and warrants (or quitclaims) to (insert owner's name), TOD to (insert beneficiary's name)". This example is not intended to be exhaustive.

(g) A transfer on death deed using the phrase "pay on death to" or the abbreviation "POD" may not be construed to require the liquidation of the real property being transferred.

(h) This section does not preclude other methods of conveying real property that are permitted by law and have the effect of postponing enjoyment of an interest in real property until after the death of the owner. This section applies only to transfer on death deeds and does not invalidate any deed that is otherwise effective by law to convey title to the interest and estates provided in the deed.

Sec. 12. (a) A deed of gift, bill of sale, or other writing intended to transfer an interest in tangible personal property is effective on the death of the owner and transfers ownership to the designated transferee beneficiary if the document:

(1) expressly creates ownership in beneficiary form;

(2) is in other respects sufficient to transfer the type of property involved; and

(3) is executed by the owner and acknowledged before a notary public or other person authorized to administer oaths.

(b) A beneficiary transfer document described in this section is not required to be supported by consideration or delivered to the transferee beneficiary.

(c) This section does not preclude other methods of transferring ownership of tangible personal property that are permitted by law and have the effect of postponing enjoyment of the property until after the death of the owner.

Sec. 13. (a) A transferor of property, with or without consideration, may execute a written instrument directly transferring the property to a transferee to hold as owner in beneficiary form.

(b) A transferee under an instrument described in subsection (a) is considered the owner of the property for all purposes and has all the rights to the property provided by law to the owner of the property, including the right to revoke or change the beneficiary designation.

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(c) A direct transfer of property to a transferee to hold as owner in beneficiary form is effective when the written instrument perfecting the transfer becomes effective to make the transferee the owner.

Sec. 14. (a) Property may be held or registered in beneficiary form by including in the name in which the property is held or registered a direction to transfer the property on the death of the owner to a beneficiary designated by the owner.

(b) Property is registered in beneficiary form by showing on the account record, security certificate, or instrument evidencing ownership of the property:

(1) the name of the owner and, if applicable, the estate by which two (2) or more joint owners hold the property; and

(2) an instruction substantially similar in form to "transfer on death to (insert name of beneficiary)".

An instruction to "pay on death to (insert name of the beneficiary)" and the use of the abbreviations "TOD" and "POD" are also permitted by this section.

(c) Only a transferring entity or a person authorized by the transferring entity may place a transfer on death direction described by this section on an account record, a security certificate, or an instrument evidencing ownership of property.

(d) A transfer on death direction described by this section is effective on the death of the owner and transfers the owner's interest in the property to the designated beneficiary if:

(1) the property is registered in beneficiary form before the death of the owner; or

(2) the transfer on death direction is delivered in proper form to the transferring entity before the owner's death.

(e) An account record, security certificate, or instrument evidencing ownership of property that contains a transfer on death direction written as part of the name in which the property is held or registered is conclusive evidence, in the absence of fraud, duress, undue influence, lack of capacity, or mistake, that the direction was:

(1) regularly made by the owner;

(2) accepted by the transferring entity; and

(3) not revoked or changed before the owner's death.

Sec. 15. (a) Before the death of the owner, a beneficiary has no rights in the property because of the beneficiary designation. The signature or agreement of the beneficiary is not required for any transaction relating to property transferred under this chapter. If

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a lienholder takes action to enforce a lien, by foreclosure or otherwise through a court proceeding, it is not necessary to join the beneficiary as a party defendant in the action unless the beneficiary has another interest in the real property that has vested.

(b) On the death of one (1) of two (2) or more joint owners, property with respect to which a beneficiary designation has been made belongs to the surviving joint owner or owners. If at least two (2) joint owners survive, the right of survivorship continues as between the surviving owners.

(c) On the death of a tenant by the entireties, property with respect to which a beneficiary designation has been made belongs to the surviving tenant.

(d) On the death of the owner, property with respect to which a beneficiary designation has been made passes by operation of law to the beneficiary.

(e) If two (2) or more beneficiaries survive, there is no right of survivorship among the beneficiaries when the death of a beneficiary occurs after the death of the owner unless the beneficiary designation expressly provides for survivorship among the beneficiaries. Except as expressly provided otherwise, the surviving beneficiaries hold their separate interest in the property as tenants in common. The share of any beneficiary who dies after the owner dies belongs to the deceased beneficiary's estate.

(f) If no beneficiary survives the owner, the property belongs to the estate of the owner unless the beneficiary designation directs the transfer to a substitute beneficiary in the manner required by section 22 of this chapter.

Sec. 16. (a) A beneficiary designation may be revoked or changed during the lifetime of the owner.

(b) A revocation or change of a beneficiary designation involving property owned as tenants by the entirety must be made with the agreement of both tenants for so long as both tenants are alive. After an individual dies owning as a tenant by the entirety property that is subject to a beneficiary designation, the individual's surviving spouse may revoke or change the beneficiary designation.

(c) A revocation or change of a beneficiary designation involving property owned in a form of ownership (other than as tenants by the entirety) that restricts conveyance of the interest unless another person joins in the conveyance must be made with the agreement of each living owner required to join in a conveyance.

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(d) A revocation or change of a beneficiary designation involving property owned by joint owners with a right of survivorship must be made with the agreement of each living owner.

(e) A subsequent beneficiary designation revokes a prior beneficiary designation unless the subsequent beneficiary designation expressly provides otherwise.

(f) A revocation or change in a beneficiary designation must comply with the terms of any governing instrument, this chapter, and any other applicable law.

(g) A beneficiary designation may not be revoked or changed by a will unless the beneficiary designation expressly grants the owner the right to revoke or change the beneficiary designation by a will.

(h) A transfer during the owner's lifetime of the owner's interest in the property, with or without consideration, terminates the beneficiary designation with respect to the property transferred.

(i) The effective date of a revocation or change in a beneficiary designation is determined in the same manner as the effective date of a beneficiary designation.

(j) An owner may revoke a beneficiary designation made in a transfer on death deed by executing and recording with the recorder of deeds in the county in which the real property is situated either:

(1) a subsequent deed of conveyance revoking, omitting, or changing the beneficiary designation; or

(2) an affidavit acknowledged or proved under IC 32-21-2-3 that revokes or changes the beneficiary designation.

(k) A physical act, such as a written modification on or the destruction of a transfer on death deed after the transfer on death deed has been recorded, has no effect on the beneficiary designation.

(l) A transfer on death deed may not be revoked or modified by will or trust.

Sec. 17. (a) An attorney in fact, guardian, conservator, or other agent acting on the behalf of the owner of property may make, revoke, or change a beneficiary designation if:

(1) the action complies with the terms of this chapter and any other applicable law; and

(2) the action is not expressly forbidden by the document establishing the agent's right to act on behalf of the owner.

(b) An attorney in fact, guardian, conservator, or other agent may withdraw, sell, pledge, or otherwise transfer property that is

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subject to a beneficiary designation notwithstanding the fact that the effect of the transaction may be to extinguish a beneficiary's right to receive a transfer of the property at the death of the owner.

(c) The rights of a beneficiary to any part of property that is subject to a beneficiary designation after the death of the owner are determined under IC 29-3-8-6.5 if:

(1) a guardian or conservator takes possession of the property;

(2) the guardian sells, transfers, encumbers, or consumes the property during the protected person's lifetime; and

(3) the owner subsequently dies.

Sec. 18. If property subject to a beneficiary designation is lost, destroyed, damaged, or involuntarily converted during the owner's lifetime, the beneficiary succeeds to any right with respect to the loss, destruction, damage, or involuntary conversion that the owner would have had if the owner had survived. However, the beneficiary has no interest in any payment or substitute property received by the owner during the owner's lifetime.

Sec. 19. (a) A beneficiary of a transfer on death transfer takes the owner's interest in the property at the death of the owner subject to all conveyances, assignments, contracts, set offs, licenses, easements, liens, and security interests made by the owner or to which the owner was subject during the owner's lifetime.

(b) A beneficiary of a transfer on death transfer of an account with a bank, savings and loan association, credit union, broker, or mutual fund takes the owner's interest in the property at the death of the owner subject to all requests for payment of money issued by the owner before the owner's death, whether paid by the transferring entity before or after the owner's death, or unpaid. The beneficiary is liable to the payee of an unsatisfied request for payment to the extent that the request represents an obligation that was enforceable against the owner during the owner's lifetime.

(c) Each beneficiary's liability with respect to an unsatisfied request for payment is limited to the same proportionate share of the request for payment as the beneficiary's proportionate share of the account under the beneficiary designation. Each beneficiary has the right of contribution from the other beneficiaries with respect to a request for payment that is satisfied after the owner's death, to the extent that the request for payment would have been enforceable by the payee during the owner's lifetime.

Sec. 20. An individual who is a beneficiary of a transfer on death transfer is not entitled to a transfer unless the individual:

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(1) survives the owner; and

(2) survives the owner by the time, if any, required by the terms of the beneficiary designation.

Sec. 21. (a) A trustee of a trust may be a designated beneficiary regardless of whether the trust is amendable, revocable, irrevocable, funded, unfunded, or amended after the designation is made.

(b) Unless a beneficiary designation provides otherwise, a trust that is revoked or terminated before the death of the owner is considered nonexistent at the owner's death.

(c) Unless a beneficiary designation provides otherwise, a legal entity or trust that does not:

(1) exist; or

(2) come into existence effective as of the owner's death;

is considered nonexistent at the owner's death.

Sec. 22. (a) Notwithstanding sections 9 and 20 of this chapter, a designated beneficiary's rights under this chapter are not extinguished when the designated beneficiary does not survive the owner if:

(1) subsection (b) applies in the case of a designated beneficiary who is a lineal descendant of the owner; or

(2) subsection (d) applies in the case of a designated beneficiary who is not a lineal descendant of the owner.

(b) If a designated beneficiary who is a lineal descendant of the owner:

(1) is deceased at the time the beneficiary designation is made;

(2) does not survive the owner; or

(3) is treated as not surviving the owner;

the beneficiary's right to a transfer on death transfer belongs to the beneficiary's lineal descendants per stirpes who survive the owner unless the owner provides otherwise under subsection (c).

(c) An owner may execute a beneficiary designation to which subsection (b) does not apply by:

(1) making the notation "No LDPS" after a beneficiary's name; or

(2) including other words negating an intention to direct the transfer to the lineal descendant substitutes of the nonsurviving beneficiary.

(d) An owner may execute a beneficiary designation that provides that the right to a transfer on death transfer belonging to a beneficiary who is not a lineal descendant of the owner and does not survive the owner belongs to the beneficiary's lineal

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descendants per stirpes who survive the owner. An owner's intent to direct the transfer to the nonsurviving beneficiary's lineal descendants must be shown by either of the following on the beneficiary designation after the name of the beneficiary:

(1) The words "and lineal descendants per stirpes".

(2) The notation "LDPS".

(e) When two (2) or more individuals receive a transfer on death transfer as substitute beneficiaries under subsection (b) or (d), the individuals are entitled to equal shares of the property if they are of the same degree of kinship to the nonsurviving beneficiary. If the substitute beneficiaries are of unequal degrees of kinship, an individual of a more remote degree is entitled by representation to the share that would otherwise belong to the individual's parent.

(f) If:

(1) a designated beneficiary of a transfer on death transfer does not survive the owner;

(2) either subsection (b) or (d) applies; and

(3) no lineal descendant of the designated beneficiary survives the owner;

the right to receive the property transferred belongs to the other surviving beneficiaries. If no other beneficiary survives the owner, the property belongs to the owner's estate.

Sec. 23. (a) If, after an owner makes a beneficiary designation, the owner's marriage is dissolved or annulled, any provision of the beneficiary designation in favor of the owner's former spouse is revoked on the date the marriage is dissolved or annulled. Revocation under this subsection is effective regardless of whether the beneficiary designation refers to the owner's marital status. The beneficiary designation is given effect as if the former spouse had not survived the owner.

(b) Subsection (a) does not apply to a provision of a beneficiary designation that:

(1) has been made irrevocable, or revocable only with the spouse's consent;

(2) is made after the marriage is dissolved or annulled; or

(3) expressly states that the dissolution or annulment of the marriage does not affect the designation of a spouse or a relative of the spouse as a beneficiary.

(c) A provision of a beneficiary designation that is revoked solely by subsection (a) is revived by the owner's remarriage to the former spouse or by a nullification of the dissolution or annulment of the marriage.

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(d) This section does not apply to any employee benefit plan governed by the Employee Retirement Income Security Act of 1974.

Sec. 24. (a) A beneficiary designation or a revocation of a beneficiary designation that is procured by fraud, duress, undue influence, or mistake or because the owner lacked capacity is void.

(b) A beneficiary designation made under this chapter is subject to IC 29-1-2-12.1.

Sec. 25. (a) No law intended to protect a spouse or child from disinheritance by the will of a testator applies to a transfer on death transfer.

(b) A beneficiary designation designating the children of the owner or children of any other person as a class and not by name includes all children of the person regardless of whether the child is born or adopted before or after the beneficiary designation is made.

(c) Except as provided in subsection (d), a child of the owner born or adopted after the owner makes a beneficiary designation that names another child of the owner as the beneficiary is entitled to receive a fractional share of the property that would otherwise be transferred to the named beneficiary. The share of the property to which each child of the owner is entitled to receive is expressed as a fraction in which the numerator is one (1) and the denominator is the total number of the owner's children.

(d) A beneficiary designation or a governing instrument may provide that subsection (c) does not apply to an owner's beneficiary designation. In addition, a transferring entity is not obligated to apply subsection (c) to property registered in beneficiary form.

(e) If a beneficiary designation does not name any child of the owner as the designated beneficiary with respect to a particular property interest, a child of the owner born or adopted after the owner makes the beneficiary designation is not entitled to any share of the property interest subject to the designation.

Sec. 26. (a) If an agreement between the owner and a transferring entity is required to carry out a transfer on death transfer as described in section 7 of this chapter, a transferring entity may not adopt rules for the making, execution, acceptance, and revocation of a beneficiary designation that are inconsistent with this chapter. A transferring entity may adopt the rules imposed by subsection (b) in whole or in part by incorporation by reference.

(b) Except as otherwise provided in a beneficiary designation,

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a governing instrument, or any other applicable law, the following rules apply to a beneficiary designation:

(1) A beneficiary designation or a request for registration of property in beneficiary form must be made in writing, signed by the owner, dated, and, in the case of a transfer on death deed, compliant with all requirements for the recording of deeds.

(2) A security that is not registered in the name of the owner may be registered in beneficiary form on instructions given by a broker or person delivering the security.

(3) A beneficiary designation may designate one (1) or more primary beneficiaries and one (1) or more contingent beneficiaries.

(4) On property registered in beneficiary form, a primary beneficiary is the person shown immediately following the transfer on death direction. Words indicating that the person is a primary beneficiary are not required. The name of a contingent beneficiary in the registration must have the words "contingent beneficiary" or words of similar meaning to indicate the contingent nature of the interest being transferred.

(5) Multiple surviving beneficiaries share equally in the property being transferred unless a different percentage or fractional share is stated for each beneficiary. If a percentage or fractional share is designated for multiple beneficiaries, the surviving beneficiaries share in the proportion that their designated shares bear to each other.

(6) A transfer of unequal shares to multiple beneficiaries for property registered in beneficiary form may be expressed in numerical form following the name of the beneficiary in the registration.

(7) A transfer on death transfer of property also transfers any interest, rent, royalties, earnings, dividends, or credits earned or declared on the property but not paid or credited before the owner's death.

(8) If a distribution by a transferring entity under a transfer on death transfer results in fractional shares in a security or other property that is not divisible, the transferring entity may distribute the fractional shares in the name of all beneficiaries as tenants in common or as the beneficiaries may direct, or the transferring entity may sell the property that is not divisible and distribute the proceeds to the beneficiaries

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in the proportions to which they are entitled.

(9) On the death of the owner, the property, minus all amounts and charges owed by the owner to the transferring entity, belongs to the surviving beneficiaries and, in the case of substitute beneficiaries permitted under section 22 of this chapter, the lineal descendants of designated beneficiaries who did not survive the owner are entitled to the property as follows:

(A) If there are multiple primary beneficiaries and a primary beneficiary does not survive the owner and does not have a substitute under section 22 of this chapter, the share of the nonsurviving beneficiary is allocated among the surviving beneficiaries in the proportion that their shares bear to each other.

(B) If there are no surviving primary beneficiaries and there are no substitutes for the nonsurviving primary beneficiaries under section 22 of this chapter, the property belongs to the surviving contingent beneficiaries in equal shares or according to the percentages or fractional shares stated in the registration.

(C) If there are multiple contingent beneficiaries and a contingent beneficiary does not survive the owner and does not have a substitute under section 22 of this chapter, the share of the nonsurviving contingent beneficiary is allocated among the surviving contingent beneficiaries in the proportion that their shares bear to each other.

(10) If a trustee designated as a beneficiary:

(A) does not survive the owner;

(B) resigns; or

(C) is unable or unwilling to execute the trust as trustee and no successor trustee is appointed in the twelve (12) months following the owner's death;

the transferring entity may make the distribution as if the trust did not survive the owner.

(11) If a trustee is designated as a beneficiary and no trust instrument or probated will creating an express trust is presented to the transferring entity, the transferring entity may make the distribution as if the trust did not survive the owner.

(12) If the transferring entity is not presented evidence during the twelve (12) months after the owner's death that there are lineal descendants of a nonsurviving beneficiary for whom

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LDPS distribution applies who survived the owner, the transferring entity may make the transfer as if the nonsurviving beneficiary's descendants also failed to survive the owner.

(13) If a beneficiary cannot be located at the time the transfer is made to located beneficiaries, the transferring entity shall hold the missing beneficiary's share. If the missing beneficiary's share is not claimed by the beneficiary or by the beneficiary's personal representative or successor during the twelve (12) months after the owner's death, the transferring entity shall transfer the share as if the beneficiary did not survive the owner.

(14) A transferring entity has no obligation to attempt to locate a missing beneficiary, to pay interest on the share held for a missing beneficiary, or to invest the share in any different property.

(15) Cash, interest, rent, royalties, earnings, or dividends payable to a missing beneficiary may be held by the transferring entity at interest or reinvested by the transferring entity in the account or in a dividend reinvestment account associated with a security held for the missing beneficiary.

(16) If a transferring entity is required to make a transfer on death transfer to a minor or an incapacitated adult, the transfer may be made under the Indiana Uniform Transfers to Minors Act, the Indiana Uniform Custodial Trust Act, or a similar law of another state.

(17) A written request for the execution of a transfer on death transfer may be made by any beneficiary, a beneficiary's legal representative or attorney in fact, or the owner's personal representative.

(18) A transfer under a transfer on death deed occurs automatically upon the owner's death subject to the requirements of subdivision (20) and does not require a request for the execution of the transfer.

(19) A written request for the execution of a transfer on death transfer must be accompanied by the following:

(A) A certificate or instrument evidencing ownership of the contract, account, security, or property.

(B) Proof of the deaths of the owner and any nonsurviving beneficiary.

(C) An inheritance tax waiver from states that require it.

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(D) In the case of a request by a legal representative, a copy of the instrument creating the legal authority or a certified copy of the court order appointing the legal representative.

(E) Any other proof of the person's entitlement that the transferring entity may require.

(20) On the death of an owner whose transfer on death deed has been recorded, the beneficiary shall file an affidavit in the office of the recorder of the county in which the real property is located. The affidavit must contain the following:

(A) The legal description of the property.

(B) A certified copy of the death certificate certifying the owner's death.

(C) The name and address of each designated beneficiary who survives the owner or is in existence on the date of the owner's death.

(D) The name of each designated beneficiary who has not survived the owner's death or is not in existence on the date of the owner's death.

(E) A cross-reference to the recorded transfer on death deed.

(c) A beneficiary designation is presumed to be valid. A party may rely on the presumption of validity unless the party has actual knowledge that the beneficiary designation was not validly executed. A person who acts in good faith reliance on a transfer on death deed is immune from liability to the same extent as if the person had dealt directly with the named owner and the named owner had been competent and not incapacitated.

Sec. 27. (a) An owner who makes arrangements for a transfer on death transfer under this chapter gives to the transferring entity the protections provided in this section for executing the owner's beneficiary designation.

(b) A transferring entity may execute a transfer on death transfer with or without a written request for execution.

(c) A transferring entity may rely and act on:

(1) a certified or authenticated copy of a death certificate issued by an official or an agency of the place where the death occurred as showing the fact, place, date, and time of death and the identity of the decedent; and

(2) a certified or authenticated copy of a report or record of any governmental agency that a person is missing, detained, dead, or alive, and the dates, circumstances, and places

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disclosed by the record or report.

(d) A transferring entity has no duty to verify the information contained within a written request for the execution of a beneficiary designation. The transferring entity may rely and act on a request made by a beneficiary or a beneficiary's attorney in fact, guardian, conservator, or other agent.

(e) A transferring entity has no duty to:

(1) except as provided in subsection (g), give notice to any person of the date, manner, and persons to whom a transfer will be made under beneficiary designation;

(2) attempt to locate any beneficiary or lineal descendant substitute;

(3) determine whether a nonsurviving beneficiary or descendant had a lineal descendant who survived the owner;

(4) locate a trustee or custodian;

(5) obtain the appointment of a successor trustee or custodian;

(6) discover the existence of a trust instrument or will that creates an express trust; or

(7) determine any fact or law that would:

(A) cause the beneficiary designation to be revoked in whole or in part as to any person because of a change in marital status or other reason; or

(B) cause a variation in the distribution provided in the beneficiary designation.

(f) A transferring entity has no duty to withhold making a transfer based on knowledge of any fact or claim adverse to the transfer to be made unless before making the transfer the transferring entity receives a written notice that:

(1) in manner, place, and time affords a reasonable opportunity to act on the notice before making the transfer; and

(2) does the following:

(A) Asserts a claim of beneficial interest in the transfer adverse to the transfer to be made.

(B) Gives the name of the claimant and an address for communications directed to the claimant.

(C) Identifies the deceased owner.

(D) States the nature of the claim as it affects the transfer.

(g) If a transferring entity receives a timely notice meeting the requirements of subsection (f), the transferring entity may discharge any duty to the claimant by sending a notice by certified mail to the claimant at the address provided by the claimant's

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notice of claim. The notice must advise the claimant that a transfer to the claimant's asserted claim will be made at least forty-five (45) days after the date of the mailing unless the transfer is restrained by a court order. If the transferring entity mails the notice described by this subsection to the claimant, the transferring entity shall withhold making the transfer for at least forty-five (45) days after the date of the mailing. Unless the transfer is restrained by court order, the transferring entity may make the transfer at least forty-five (45) days after the date of the mailing.

(h) Neither notice that does not comply with the requirements of subsection (f) nor any other information shown to have been available to a transferring entity, its transfer agent, or its employees affects the transferring entity's right to the protections provided by this chapter.

(i) A transferring entity is not responsible for the application or use of property transferred to a fiduciary entitled to receive the property.

(j) Notwithstanding the protections provided a transferring entity by this chapter, a transferring entity may require parties engaged in a dispute over the propriety of a transfer to:

(1) adjudicate their respective rights; or

(2) furnish an indemnity bond protecting the transferring entity.

(k) A transfer by a transferring entity made in accordance with this chapter and under the beneficiary designation in good faith and reliance on information the transferring entity reasonably believes to be accurate discharges the transferring entity from all claims for the amounts paid and the property transferred.

(l) All protections provided by this chapter to a transferring entity are in addition to the protections provided by any other applicable Indiana law.

Sec. 28. (a) The protections provided to a transferring entity or to a purchaser or lender for value by this chapter do not affect the rights of beneficiaries or others involved in disputes that:

(1) are with parties other than a transferring entity or purchaser or lender for value; and

(2) concern the ownership of property transferred under this chapter.

(b) Unless the payment or transfer can no longer be challenged because of adjudication, estoppel, or limitations, a transferee of money or property under a transfer on death transfer that was improperly distributed or paid is liable for:

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(1) the return of the money or property, including income earned on the money or property, to the transferring entity; or

(2) the delivery of the money or property, including income earned on the money or property, to the rightful transferee.

(c) If a transferee of money or property under a transfer on death transfer that was improperly distributed or paid does not have the property, the transferee is liable for an amount equal to the sum of:

(1) the value of the property as of the date of the disposition; and

(2) the income and gain that the transferee received from the property and its proceeds.

(d) If a transferee of money or property under a transfer on death transfer that was improperly distributed or paid encumbers the property, the transferee shall satisfy the debt incurred in an amount sufficient to release any security interest, lien, or other encumbrance on the property.

(e) A purchaser for value of property or a lender who acquires a security interest in the property from a beneficiary of a transfer on death transfer:

(1) in good faith; or

(2) without actual knowledge that:

(A) the transfer was improper; or

(B) information in an affidavit provided under section 26(b)(20) of this chapter was not true;

takes the property free of any claims of or liability to the owner's estate, creditors of the owner's estate, persons claiming rights as beneficiaries of the transfer on death transfer, or heirs of the owner's estate. A purchaser or lender for value has no duty to verify sworn information relating to the transfer on death transfer.

(f) The protection provided by subsection (e) applies to information that relates to the beneficiary's ownership interest in the property and the beneficiary's right to sell, encumber, and transfer good title to a purchaser or lender but does not relieve a purchaser or lender from the notice provided by instruments of record with respect to the property.

(g) A transfer on death transfer that is improper under section 22, 23, 24, or 25 of this chapter imposes no liability on the transferring entity if the transfer is made in good faith. The remedy of a rightful transferee must be obtained in an action against the improper transferee.

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Sec. 29. (a) This chapter does not limit the rights of an owner's creditors against beneficiaries and other transferees that may be available under any other applicable Indiana law.

(b) The liability of a beneficiary for creditor claims and statutory allowances is determined under IC 32-17-13.

Sec. 30. Except as otherwise provided by law, a transfer on death transfer and the obligation of a transferring entity to execute the transfer on death transfer that are subject to this chapter under section 2(b) of this chapter remain subject to this chapter notwithstanding a change in the:

(1) beneficiary designation;

(2) residency of the owner;

(3) residency or place of business of the transferring entity; or

(4) location of the property.

Sec. 31. (a) The probate court shall hear and determine questions and issue appropriate orders concerning the determination of the beneficiary who is entitled to receive a transfer on death transfer and the proper share of each beneficiary.

(b) The probate court shall hear and determine questions and issue appropriate orders concerning any action to:

(1) obtain the distribution of any money or property from a transferring entity; or

(2) with respect to money or property that was improperly distributed to any person, obtain the return of:

(A) any money or property and income earned on the money or property; or

(B) an amount equal to the sum of the value of the money or property plus income and gain realized from the money or property.

Sec. 32. (a) Except for transfer on death deeds, a beneficiary designation that purports to have been made and is valid under:

(1) the Uniform Probate Code as enacted by another state;

(2) the Uniform TOD Security Registration Law as enacted by another state; or

(3) a similar law of another state;

is governed by the law of that state.

(b) A transfer on death transfer subject to a law described in subsection (a) may be executed and enforced in Indiana.

(c) Except for transfer on death deeds, the meaning and legal effect of a transfer on death transfer is determined by the law of the state selected in a governing instrument or beneficiary

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designation.

SECTION 30. IC 32-21-2-3, AS AMENDED BY P.L.194-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) For a conveyance, a mortgage, or an instrument of writing to be recorded, it must be:

(1) acknowledged by the grantor; or

(2) proved before a:

(A) judge;

(B) clerk of a court of record;

(C) county auditor;

(D) county recorder;

(E) notary public;

(F) mayor of a city in Indiana or any other state;

(G) commissioner appointed in a state other than Indiana by the governor of Indiana;

(H) minister, charge d'affaires, or consul of the United States in any foreign country;

(I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;

(J) clerk-treasurer for a town; or

(K) person authorized under IC 2-3-4-1.

(b) In addition to the requirements under subsection (a), a conveyance may not be recorded after June 30, 2007, unless it meets the requirements of this subsection. ~~If~~ **The conveyance must include** the mailing address ~~on the conveyance~~ **to which statements should be mailed under IC 6-1.1-22-8.1. If the mailing address for statements under IC 6-1.1-22-8.1** is not a street address or a rural route address of the grantee, the conveyance must also include a street address or rural route address of the grantee after the mailing address **for statements mailed under IC 6-1.1-22-8.1. A conveyance complies with this subsection if it contains the address or addresses required by this subsection at the end of the conveyance and immediately preceding or following the statements required by IC 36-2-11-15.**

SECTION 31. IC 34-9-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) This section applies when a person:

(1) receives personal injuries caused by the wrongful act or omission of another; and

(2) subsequently dies from causes other than those personal injuries.

(b) The personal representative of the decedent who was injured

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may maintain an action against the wrongdoer to recover all damages resulting before the date of death from those injuries that the decedent would have been entitled to recover had the decedent lived. The damages:

(1) inure to the exclusive benefit of the decedent's estate; **and**

(2) are subject to IC 6-4.1.".

Page 8, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 33. IC 34-30-2-125.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 125.4. IC 29-2-19-11 (Concerning a person who relies on a funeral planning declaration).**

SECTION 34. IC 34-30-2-134.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 134.8. IC 32-17-14-26(c) (Concerning a person acting in good faith reliance on a transfer on death deed).**

SECTION 35. IC 35-41-4-2, AS AMENDED BY P.L.173-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:

(1) within five (5) years after the commission of the offense, in the case of a Class B, Class C, or Class D felony; or

(2) within two (2) years after the commission of the offense, in the case of a misdemeanor.

(b) A prosecution for a Class B or Class C felony that would otherwise be barred under this section may be commenced within one (1) year after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis; or

(2) could have discovered evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis by the exercise of due diligence.

(c) A prosecution for a Class A felony may be commenced at any time.

(d) A prosecution for murder may be commenced:

(1) at any time; and

(2) regardless of the amount of time that passes between:

(A) the date a person allegedly commits the elements of murder; and

(B) the date the alleged victim of the murder dies.

(e) A prosecution for the following offenses is barred unless commenced before the date that the alleged victim of the offense

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reaches thirty-one (31) years of age:

(1) IC 35-42-4-3(a) (Child molesting).

(2) IC 35-42-4-5 (Vicarious sexual gratification).

(3) IC 35-42-4-6 (Child solicitation).

(4) IC 35-42-4-7 (Child seduction).

(5) IC 35-46-1-3 (Incest).

(f) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(g) If a complaint, indictment, or information is dismissed because of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the period of limitation has expired at the time of dismissal, or will expire within ninety (90) days after the dismissal.

(h) The period within which a prosecution must be commenced does not include any period in which:

(1) the accused person is not usually and publicly resident in Indiana or so conceals himself or herself that process cannot be served;

(2) the accused person conceals evidence of the offense, and evidence sufficient to charge the person with that offense is unknown to the prosecuting authority and could not have been discovered by that authority by exercise of due diligence; or

(3) the accused person is a person elected or appointed to office under statute or constitution, if the offense charged is theft or conversion of public funds or bribery while in public office.

(i) For purposes of tolling the period of limitation only, a prosecution is considered commenced on the earliest of these dates:

(1) The date of filing of an indictment, information, or complaint before a court having jurisdiction.

(2) The date of issuance of a valid arrest warrant.

(3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer has authority to make the arrest.

(j) A prosecution is considered timely commenced for any offense to which the defendant enters a plea of guilty, notwithstanding that the period of limitation has expired.

(k) The following apply to the specified offenses:

(1) A prosecution for an offense under IC 30-2-9-7(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in

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IC 30-2-9).

(2) A prosecution for an offense under IC 30-2-10-9(b) (misuse of funeral trust funds) is barred unless commenced within five (5) years after the date of death of the settlor (as described in IC 30-2-10).

(3) A prosecution for an offense under IC 30-2-13-38(f) (misuse of funeral trust or escrow account funds) is barred unless commenced within five (5) years after the date of death of the purchaser (as defined in IC 30-2-13-9).

(l) A prosecution for an offense under IC 23-14-48-9 is barred unless commenced within five (5) years after the earlier of the date on which the state:

(1) first discovers evidence sufficient to charge the offender with the offense; or

(2) could have discovered evidence sufficient to charge the offender with the offense by the exercise of due diligence.".

Page 10, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 37. [EFFECTIVE JULY 1, 2009] **IC 35-41-4-2, as amended by this act, applies only to crimes committed after June 30, 2009.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1287 as introduced.)

LAWSON L

Committee Vote: yeas 10, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1287 be amended to read as follows:

Page 1, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 2. IC 9-17-3-9, AS ADDED BY P.L.83-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) An individual whose certificate of title for a vehicle indicates that the individual is the sole owner of the vehicle may create an interest in the vehicle that is transferrable on the death of the individual by obtaining a certificate of title conveying the interest in the

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vehicle to one (1) or more named individuals as transfer on death beneficiaries.

(b) Subject to subsection (e), an interest in a vehicle transferred under this section vests upon the death of the transferor.

(c) A certificate of title that is:

(1) worded in substance as "A.B. transfers on death to C.D."; and

(2) signed by the transferor;

is a good and sufficient conveyance on the death of the transferor to the transferee.

(d) A certificate of title obtained under this section is not required to be:

(1) supported by consideration; or

(2) delivered to the named transfer on death beneficiary;

to be effective.

(e) Upon the death of an individual conveying an interest in a vehicle in a certificate of title obtained under this section, the interest in the vehicle is transferred to each beneficiary who:

(1) is named in the certificate; and

(2) survives the transferor.

(f) A transfer of an interest in a vehicle under this section is subject to IC 6-4.1.

(g) A certificate of title designating a transfer on death beneficiary is not testamentary.

(h) In general, IC 32-17-14 applies to a certificate of title designating a transfer on death beneficiary. However, a particular provision of IC 32-17-14 does not apply if it is inconsistent with the requirements of this section or IC 9-17-2-2(b).

SECTION 3. IC 9-31-2-30, AS ADDED BY P.L.83-2008, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 30. (a) An individual whose certificate of title for a watercraft indicates that the individual is the sole owner of the watercraft may create an interest in the watercraft that is transferrable on the death of the individual by obtaining a certificate of title conveying the interest in the watercraft to one (1) or more named individuals as transfer on death beneficiaries.

(b) Subject to subsection (e), an interest in a watercraft transferred under this section vests upon the death of the transferor.

(c) A certificate of title that is:

(1) worded in substance as "A.B. transfers on death to C.D."; and

(2) signed by the transferor;

is a good and sufficient conveyance on the death of the transferor to the transferee.

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(d) A certificate of title obtained under this section is not required to be:

(1) supported by consideration; or

(2) delivered to the named transfer on death beneficiary;

to be effective.

(e) Upon the death of an individual conveying an interest in a watercraft in a certificate of title obtained under this section, the interest in the watercraft is transferred to each beneficiary who:

(1) is named in the certificate; and

(2) survives the transferor.

(f) A transfer of an interest in a watercraft under this section is subject to IC 6-4.1.

(g) A certificate of title designating a transfer on death beneficiary is not testamentary.

(h) In general, IC 32-17-14 applies to a certificate of title designating a transfer on death beneficiary. However, a particular provision of IC 32-17-14 does not apply if it is inconsistent with the requirements of this section or IC 9-31-2-16.".

Page 15, line 2, after "may" insert "**not**".

Page 29, delete lines 22 through 23.

Page 29, line 24, delete "(3)" and insert "**(1)**".

Page 29, line 27, delete "(4)" and insert "**(2)**".

Page 29, between lines 28 and 29, begin a new paragraph and insert:

"**(f) Subject to IC 9-17-3-9(h) and IC 9-31-2-30(h), this chapter applies to a beneficiary designation for the transfer on death of a motor vehicle or a watercraft.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1287 as printed February 20, 2009.)

VAN HAAFTEN

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1287, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 2-5-16-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) For**

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calendar year 2009 and every fourth calendar year thereafter, the ~~chairman of the legislative council~~ **president pro tempore of the senate** shall appoint a chairman and a vice chairman from among the commission's legislative members, each to serve a term of ~~one (1) year.~~ **two (2) years.**

(b) For calendar year 2011 and every fourth calendar year thereafter, the speaker of the house of representatives shall appoint a chairman and a vice chairman from among the commission's legislative members, each to serve a term of two (2) years.".

Page 17, line 14, after "property." insert "**A person providing services, merchandise, or other property subject to a declaration may not ignore or restrict a declaration on the basis of a conflicting provision contained in IC 23-14-31, IC 23-14-33, or IC 25-1-11.**".

Page 17, line 41, delete "(a) Except as provided in subsection (b), the" and insert "**The**".

Page 18, delete lines 8 through 10.

Page 23, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 16. IC 30-2-13-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) Except as provided in subsection (b), as used in this chapter, "purchaser" means a person or firm contracting with a seller for services or merchandise to be provided or delivered for a named individual.

(b) As used in section 13(b) of this chapter, "purchaser" means:

(1) an individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19;

~~(1)~~ **(2)** an individual described in subsection (a);

~~(2)~~ **(3)** the attorney in fact, appointed under IC 30-5, of an individual described in subsection (a);

~~(3)~~ **(4)** the guardian, appointed under IC 29-3, of an individual described in subsection (a); or

~~(4)~~ **(5)** if an individual described in subsection (a) is deceased:

(A) the surviving spouse of the individual;

(B) if there is no surviving spouse, the adult children of the individual;

(C) if there is no surviving spouse or surviving adult child, the surviving parent or parents of the individual; or

(D) if there is neither a surviving spouse nor adult children, nor a surviving parent, the personal representative (as defined in IC 29-1-1-3) of the individual.".

Page 23, line 31, delete "securities described by IC 32-17-9." and insert "**transfers completed under IC 32-17-14.**".

Page 24, between lines 27 and 28, begin a new paragraph and insert:

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"SECTION 17. IC 30-2-14-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31. (a) This section does not apply to ~~payments~~ **a payment** to which section 32 of this chapter applies.

(b) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments, regardless of whether the trustee also has the option to receive the ~~amount~~ **payment** in a lump sum or other form of payment, ~~The term includes a~~ **whether the** payment **is** made in money or **other** property, **and whether the payment is made** from the payer's general assets or from a separate fund created by the payer. ~~including~~ **For purposes of subsection (h), the term also includes any payment from any separate fund, regardless of the reason for the payment.**

(c) As used in this section, "separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan **(including an individual account under a plan and a separate share of any account described in this subsection).**

~~(c)~~ **(d)** To the extent that a payment is characterized as interest, ~~or~~ a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ **the payment** to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

~~(d)~~ **(e)** If a payment is not characterized as interest, ~~or~~ a dividend, ~~and if the~~ **or an equivalent** payment **and** is made from ~~an individual account corresponding to an original participant,~~ **a separate fund,** the payment shall be allocated between income and principal ~~by:~~ **as follows:**

~~(1) determining the income occurring within the individual account by treating the account as though it were a trust; and~~

~~(2) considering the income to be distributed as a pro rata portion of all payments made from the individual account during the year.~~

(1) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and allocate the balance of the payment to principal.

(2) If a trustee cannot determine the internal income of the

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separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal five percent (5%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee cannot determine the internal income of the separate fund or the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code, for the month preceding the accounting period for which the computation is made.

~~(e)~~ **(f)** If no part of a payment is characterized as interest, a dividend, or ~~allocated under subsection (d), and all or part of~~ **an equivalent payment, and** the payment is ~~required to be made, a~~ **made otherwise than from a separate fund, then the** trustee shall allocate to income ten percent (10%) of ~~the~~ **any** part **of the payment** that is required to be made during the accounting period and the balance to principal, ~~If~~ **unless** no part of ~~a~~ **the** payment is required to be made or the payment received is the entire amount to which the trustee is entitled, **in which case** the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

~~(f)~~ **(g)** Notwithstanding any other provision of this section, when a private or commercial deferred annuity is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of the acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee exercises a right of withdrawal or otherwise receives cash on account of the obligation. If the obligation is surrendered wholly or partially before annuitization, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

~~(g) If, to obtain a gift or estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the deduction.~~

(h) Except as provided in subdivision (2), trusts described in subdivision (1) are subject to the following special rules regarding allocations and distributions of income provided in subdivision (3):

(1) This subsection applies to:

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(A) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code has been made; or

(B) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code.

(2) This subsection does not apply to a series of payments if and to the extent that the series of payments would, without the application of this subsection, qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code.

(3) Except as provided in subdivision (2), a payment made from a separate fund to a trust described in subdivision (1) shall be allocated between income and principal in accordance with subsection (e)(1) and (e)(2) and not in accordance with subsection (d) or (f), even if part or all of the payment is characterized as interest, a dividend, or an equivalent payment, and even if the payment is the entire amount to which the trustee is entitled. The trustee shall distribute to the surviving spouse the part of the payment allocated to income. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute all of the internal income of the fund to the trust. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments from the separate fund to the trust during the accounting period.

SECTION 18. IC 30-2-14-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 42. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid: ~~proportionately:~~

(1) from income to the extent that receipts from the entity are allocated to income; ~~and~~

(2) from principal to the extent that

~~(A)~~ receipts from the entity are allocated **only** to principal; ~~and~~

~~(B) the trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and clause (A).~~

(3) proportionately from principal and income to the extent

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that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

~~(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.~~

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.".

Page 29, delete lines 9 through 20, begin a new paragraph and insert:

"SECTION 29. IC 32-17-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this chapter, "multiple party account" means any of the following types of accounts:

(1) A joint account.

~~(2) A P.O.D. account.~~

~~(3)~~ **(2)** A trust account.

(b) The term does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one (1) or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

SECTION 30. IC 32-17-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this chapter, "party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple party account. A ~~P.O.D. payee or~~ beneficiary of a trust account is a party only after the account becomes payable to the payee or beneficiary by reason of the payee's or beneficiary's surviving the original payee or trustee.

(b) Unless the context otherwise requires, the term includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. The term also includes a person identified as a trustee of an account for another whether or not a beneficiary is named.

(c) The term does not include:

(1) any named beneficiary unless the beneficiary has a present

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right of withdrawal; or

(2) a person who is merely authorized to make a request as the agent of another.

SECTION 31. IC 32-17-11-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) The provisions of sections 17, 18, and 19 of this chapter concerning beneficial ownership as between parties, or as between parties and ~~P.O.D. payees or~~ beneficiaries of multiple party accounts:

(1) apply only to controversies between:

(A) the parties or the ~~P.O.D. payees or~~ beneficiaries of multiple party accounts; and

(B) creditors and other successors of:

(i) the parties; or

(ii) the ~~P.O.D. payees or~~ beneficiaries of multiple party accounts; and

(2) do not affect the power of withdrawal of the parties or the ~~P.O.D. payees or~~ beneficiaries of multiple party accounts as determined by the terms of account contracts.

(b) The provisions of sections 22 through 27 of this chapter govern the liability and set-off rights of financial institutions that make payments under sections 22 through 27 of this chapter.

SECTION 32. IC 32-17-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) Unless there is clear and convincing evidence of a different intent, during the lifetime of all parties, a joint account belongs to the parties in proportion to the net contributions by each party to the sums on deposit.

~~(b) A P.O.D. account belongs to the original payee during the original payee's lifetime and not to the P.O.D. payee or payees. If at least two (2) parties are named as original payees, subsection (a) governs the rights of the parties during their lifetimes.~~

~~(c)~~ **(b)** Unless:

(1) a contrary intent is manifested by the terms of the account or the deposit agreement; or

(2) there is other clear and convincing evidence of an irrevocable trust;

a trust account belongs beneficially to the trustee during the trustee's lifetime. If at least two (2) parties are named as trustee on the account, subsection (a) governs the beneficial rights of the trustees during their lifetimes. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

SECTION 33. IC 32-17-11-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Sums remaining

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on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are at least two (2) surviving parties, their respective ownerships during lifetime are:

(1) in proportion to their previous ownership interests under section 17 of this chapter; and

(2) augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before the person's death.

The right of survivorship continues between the surviving parties.

~~(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of at least two (2) original payees, any sums remaining on deposit belong to the P.O.D. payee or payees who survive the original payee. If at least two (2) P.O.D. payees survive, there is no right of survivorship between the P.O.D. payees unless the terms of the account or deposit agreement expressly provide for survivorship.~~

~~(c)~~ **(b)** If the account is a trust account, on death of the trustee or the survivor of at least two (2) trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries who survive the trustee, unless there is clear and convincing evidence of a contrary intent. If at least two (2) beneficiaries survive, there is no right of survivorship between the beneficiaries unless the terms of the account or deposit agreement expressly provide for survivorship.

~~(d)~~ **(c)** Except as provided in subsections (a) ~~through (c),~~ **and (b),** the death of any party to a multiple party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent's estate.

~~(e)~~ **(d)** A right of survivorship arising:

(1) from the express terms of the account; or

(2) under:

(A) this section; **or**

(B) a beneficiary designation in a trust account; ~~or~~

~~(C) a P.O.D. payee designation;~~

cannot be changed by will.

SECTION 34. IC 32-17-11-21.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 21.1. The liability of a surviving party ~~P.O.D. payee,~~ or beneficiary for creditor claims and statutory allowances is determined under IC 32-17-13.

SECTION 35. IC 32-17-11-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) Payment made under section 22, 23, ~~24,~~ or 25 of this chapter discharges the financial

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institution from all claims for amounts paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, ~~P.O.D. payees, or~~ beneficiaries, or their successors.

(b) The protection provided under this section does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted.

(c) Unless a notice described in subsection (b) is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section.

(d) No other notice or any other information shown to have been available to a financial institution affects the institution's right to the protection provided under this section.

(e) The protection provided under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in or withdrawn from multiple party accounts.".

Page 29, line 35, reset in roman "described in".

Page 29, line 35, delete "registered:".

Page 29, line 36, delete "(1) under".

Page 29, line 36, delete "(in the case of a security registered".

Page 29, delete lines 37 through 39.

Page 29, run in lines 35 through 40.

Page 30, line 3, delete "(in the case".

Page 30, delete line 4.

Page 30, line 5, delete "the case of an account established after June 30, 2009)".

Page 30, line 20, delete "This chapter applies to property subject to a" and insert "**Except as provided elsewhere in this chapter, this chapter applies to a transfer on death security, transfer on death securities account, and pay on death account created before July 1, 2009, unless the application of this chapter would:**

(1) adversely affect a right given to an owner or beneficiary;

(2) give a right to any owner or beneficiary that the owner or beneficiary was not intended to have when the transfer on death security, transfer on death securities account, or pay on death account was created;

(3) impose a duty or liability on any person that was not intended to be imposed when the transfer on death security, transfer on death securities account, or pay on death account

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was created; or

(4) relieve any person from any duty or liability imposed:

(A) by the terms of the transfer on death security, transfer on death securities account, or pay on death account; or

(B) under prior law.".

Page 30, delete line 21.

Page 31, delete lines 2 through 8.

Page 31, line 9, delete "(f)" and insert "**(e)**".

Page 62, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 45. [EFFECTIVE JULY 1, 2009] **IC 30-2-14-31, as amended by this act, applies to a trust described in IC 30-2-14-31(h), as amended by this act, on and after the following dates:**

(1) If the trust is not funded as of July 1, 2009, the date of the decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

(3) If the trust is not described in subdivision (1) or (2), January 1, 2009.

SECTION 46. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 32-17-9; IC 32-17-11-10; 32-17-11-11; IC 32-17-11-24.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1287 as reprinted February 24, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1287 be amended to read as follows:

Page 17, line 25, delete "A person" and insert "**If any provision of a declaration conflicts with:**

(1) IC 23-14-31;

(2) IC 23-14-33; or

(3) IC 25-15;

the provision contained in the declaration controls.".

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Page 17, delete lines 26 through 29.

(Reference is to EHB 1287 as printed March 20, 2009.)

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