
HOUSE BILL No. 1287

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1-2-1; IC 30-2-13-38; IC 34-24-1-1; IC 35-45-6-1.

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. Makes a technical correction. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: Upon passage; July 1, 2009.

Van Haaften, Foley, Cheatham

January 13, 2009, read first time and referred to Committee on Judiciary.

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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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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:

1 SECTION 1. IC 29-1-2-1, AS AMENDED BY P.L.101-2008,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1. (a) The estate of a person dying intestate
4 shall descend and be distributed as provided in this section.

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

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

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

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

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



1 second or subsequent childless spouse shall take only an amount equal
2 to twenty-five percent (25%) of the remainder of:

- 3 (1) the fair market value as of the date of death of the real
- 4 property of the deceased spouse; minus
- 5 (2) the value of the liens and encumbrances on the real property
- 6 of the deceased spouse.

7 The fee shall, at the decedent's death, vest at once in the decedent's
8 surviving child or children, or the descendants of the decedent's child
9 or children who may be dead. A second or subsequent childless spouse
10 described in this subsection shall, however, receive the same share of
11 the personal property of the decedent as is provided in subsection (b)
12 with respect to surviving spouses generally.

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

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

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

23 (3) Except as provided in subsection (e), if there is no surviving
24 spouse or issue of the intestate, then to the surviving parents,
25 brothers, and sisters, and the issue of deceased brothers and
26 sisters of the intestate. Each living parent of the intestate shall be
27 treated as of the same degree as a brother or sister and shall be
28 entitled to the same share as a brother or sister. However, the
29 share of each parent shall be not less than one-fourth (1/4) of the
30 decedent's net estate. Issue of deceased brothers and sisters shall
31 take by representation.

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

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

41 (6) If there is no surviving issue or parent or issue of a parent, or
42 grandparent of the intestate, then the estate of the decedent shall

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1 be divided into that number of shares equal to the sum of:
 2 (A) the number of brothers and sisters of the decedent's
 3 parents surviving the decedent; plus
 4 (B) the number of deceased brothers and sisters of the
 5 decedent's parents leaving issue surviving both them and the
 6 decedent;
 7 and one (1) of the shares shall pass to each of the brothers and
 8 sisters of the decedent's parents or their respective issue per
 9 stirpes.
 10 (7) If interests in real estate go to a husband and wife under this
 11 subsection, the aggregate interests so descending shall be owned
 12 by them as tenants by the entireties. Interests in personal property
 13 so descending shall be owned as tenants in common.
 14 (8) If there is no person mentioned in subdivisions (1) through
 15 (7), then to the state.
 16 (e) A parent may not receive an intestate share of the estate of the
 17 parent's minor or adult child if ~~(1)~~ the parent was convicted of causing
 18 the death of the other parent by:
 19 ~~(A)~~ (1) murder (IC 35-42-1-1);
 20 ~~(B)~~ (2) voluntary manslaughter (IC 35-42-1-3);
 21 ~~(C)~~ (3) another criminal act, if the death does not result from the
 22 operation of a vehicle; or
 23 ~~(D)~~ (4) a crime in any other jurisdiction in which the elements of
 24 the crime are substantially similar to the elements of a crime
 25 listed in ~~clauses (A) subdivisions (1) through (C); and (3).~~
 26 ~~(2) the victim of the crime is the other parent of the child.~~
 27 If a parent is disqualified from receiving an intestate share under this
 28 subsection, the estate of the deceased child shall be distributed as
 29 though the parent had predeceased the child.
 30 SECTION 2. IC 30-2-13-38, AS AMENDED BY P.L.61-2008,
 31 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2009]: Sec. 38. (a) A seller who violates a provision of this
 33 chapter commits an uncured deceptive act (as defined in
 34 IC 24-5-0.5-2).
 35 (b) A person doing business as a sole proprietor, a firm, a limited
 36 liability company, a corporation, an association, or a partnership, but
 37 not acting as a seller that:
 38 (1) sells or advertises prepaid services or merchandise or services
 39 or merchandise (as defined in section 8 of this chapter) and fails
 40 to obtain the certificate of authority required by section 33 of this
 41 chapter; or
 42 (2) sells or advertises prepaid services or merchandise or services

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1 or merchandise (as defined in section 8 of this chapter) after the
 2 entity's certificate of authority has:
 3 (A) expired; or
 4 (B) been rescinded, revoked, or suspended by the board;
 5 commits a Class A misdemeanor. Each act committed in violation of
 6 this subsection constitutes a separate offense.
 7 (c) The following may maintain an action to enjoin an individual or
 8 entity from continuing to violate this section:
 9 (1) The board.
 10 (2) The attorney general.
 11 (3) The prosecuting attorney of a county in which a violation
 12 occurs.
 13 (d) A purchaser has a private right of action against a seller who
 14 commits an uncured deceptive act.
 15 (e) A trustee or escrow agent, acting as a fiduciary, that disburses
 16 funds in a trust or escrow account established under this chapter
 17 without verifying that the seller has delivered the services or
 18 merchandise for which the funds were deposited through the use of
 19 documentation required under rules adopted by the state board of
 20 funeral and cemetery service established by IC 25-15-9-1 commits a
 21 Class A infraction.
 22 **(f) A person who knowingly or intentionally uses or disburses**
 23 **funds in a trust or escrow account established under this chapter**
 24 **for purposes other than the purposes required under this chapter**
 25 **commits a Class C felony.**
 26 SECTION 3. IC 34-24-1-1, AS AMENDED BY P.L.114-2008,
 27 SECTION 27, AND AS AMENDED BY P.L.119-2008, SECTION 13,
 28 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The following may be seized:
 30 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
 31 intended for use by the person or persons in possession of them to
 32 transport or in any manner to facilitate the transportation of the
 33 following:
 34 (A) A controlled substance for the purpose of committing,
 35 attempting to commit, or conspiring to commit any of the
 36 following:
 37 (i) Dealing in or manufacturing cocaine or a narcotic drug
 38 (IC 35-48-4-1).
 39 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).
 40 (iii) Dealing in a schedule I, II, or III controlled substance
 41 (IC 35-48-4-2).
 42 (iv) Dealing in a schedule IV controlled substance

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- 1 (IC 35-48-4-3).
 2 (v) Dealing in a schedule V controlled substance
 3 (IC 35-48-4-4).
 4 (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
 5 (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
 6 (viii) Possession of methamphetamine (IC 35-48-4-6.1).
 7 (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
 8 (x) Dealing in marijuana, hash oil, or hashish
 9 (IC 35-48-4-10).
 10 (B) Any stolen (IC 35-43-4-2) or converted property
 11 (IC 35-43-4-3) if the retail or repurchase value of that property
 12 is one hundred dollars (\$100) or more.
 13 (C) Any hazardous waste in violation of ~~IC 13-30-10-4~~.
 14 *IC 13-30-10-1.5*.
 15 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
 16 destruction (as defined in IC 35-41-1-29.4) used to commit,
 17 used in an attempt to commit, or used in a conspiracy to
 18 commit an offense under IC 35-47 as part of or in furtherance
 19 of an act of terrorism (as defined by IC 35-41-1-26.5).
 20 (2) All money, negotiable instruments, securities, weapons,
 21 communications devices, or any property used to commit, used in
 22 an attempt to commit, or used in a conspiracy to commit an
 23 offense under IC 35-47 as part of or in furtherance of an act of
 24 terrorism or commonly used as consideration for a violation of
 25 IC 35-48-4 (other than items subject to forfeiture under
 26 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
 27 (A) furnished or intended to be furnished by any person in
 28 exchange for an act that is in violation of a criminal statute;
 29 (B) used to facilitate any violation of a criminal statute; or
 30 (C) traceable as proceeds of the violation of a criminal statute.
 31 (3) Any portion of real or personal property purchased with
 32 money that is traceable as a proceed of a violation of a criminal
 33 statute.
 34 (4) A vehicle that is used by a person to:
 35 (A) commit, attempt to commit, or conspire to commit;
 36 (B) facilitate the commission of; or
 37 (C) escape from the commission of;
 38 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 39 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 40 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 41 under IC 35-47 as part of or in furtherance of an act of terrorism.
 42 (5) Real property owned by a person who uses it to commit any of

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1 the following as a Class A felony, a Class B felony, or a Class C
2 felony:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (B) Property constituting, derived from, or traceable to the
42 gross proceeds that the person obtained directly or indirectly

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- 1 as a result of the offense.
- 2 (15) Except as provided in subsection (e), a motor vehicle used by
- 3 a person who operates the motor vehicle:
- 4 (A) while intoxicated, in violation of IC 9-30-5-1 through
- 5 IC 9-30-5-5, if in the previous five (5) years the person has two
- 6 (2) or more prior unrelated convictions:
- 7 (i) for operating a motor vehicle while intoxicated in
- 8 violation of IC 9-30-5-1 through IC 9-30-5-5; or
- 9 (ii) for an offense that is substantially similar to IC 9-30-5-1
- 10 through IC 9-30-5-5 in another jurisdiction; or
- 11 (B) on a highway while the person's driver's license is
- 12 suspended in violation of IC 9-24-19-2 through IC 9-24-19-4,
- 13 if in the previous five (5) years the person has two (2) or more
- 14 prior unrelated convictions:
- 15 (i) for operating a motor vehicle while intoxicated in
- 16 violation of IC 9-30-5-1 through IC 9-30-5-5; or
- 17 (ii) for an offense that is substantially similar to IC 9-30-5-1
- 18 through IC 9-30-5-5 in another jurisdiction.
- 19 If a court orders the seizure of a motor vehicle under this
- 20 subdivision, the court shall transmit an order to the bureau of
- 21 motor vehicles recommending that the bureau not permit a motor
- 22 vehicle to be registered in the name of the person whose motor
- 23 vehicle was seized until the person possesses a current driving
- 24 license (as defined in IC 9-13-2-41).
- 25 **(16) The following real or personal property:**
- 26 **(A) Property used or intended to be used to commit,**
- 27 **facilitate, or promote the commission of an offense**
- 28 **specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b),**
- 29 **or IC 30-2-13-38(f).**
- 30 **(B) Property constituting, derived from, or traceable to the**
- 31 **gross proceeds that a person obtains directly or indirectly**
- 32 **as a result of an offense specified in IC 23-14-48-9,**
- 33 **IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).**
- 34 (b) A vehicle used by any person as a common or contract carrier in
- 35 the transaction of business as a common or contract carrier is not
- 36 subject to seizure under this section, unless it can be proven by a
- 37 preponderance of the evidence that the owner of the vehicle knowingly
- 38 permitted the vehicle to be used to engage in conduct that subjects it to
- 39 seizure under subsection (a).
- 40 (c) Equipment under subsection (a)(10) may not be seized unless it
- 41 can be proven by a preponderance of the evidence that the owner of the
- 42 equipment knowingly permitted the equipment to be used to engage in

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1 conduct that subjects it to seizure under subsection (a)(10).
 2 (d) Money, negotiable instruments, securities, weapons,
 3 communications devices, or any property commonly used as
 4 consideration for a violation of IC 35-48-4 found near or on a person
 5 who is committing, attempting to commit, or conspiring to commit any
 6 of the following offenses shall be admitted into evidence in an action
 7 under this chapter as prima facie evidence that the money, negotiable
 8 instrument, security, or other thing of value is property that has been
 9 used or was to have been used to facilitate the violation of a criminal
 10 statute or is the proceeds of the violation of a criminal statute:
 11 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a
 12 narcotic drug).
 13 (2) IC 35-48-4-1.1 (dealing in methamphetamine).
 14 (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 15 substance).
 16 (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
 17 (5) IC 35-48-4-4 (dealing in a schedule V controlled substance)
 18 as a Class B felony.
 19 (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a
 20 Class A felony, Class B felony, or Class C felony.
 21 (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class
 22 A felony, Class B felony, or Class C felony.
 23 (8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
 24 a Class C felony.
 25 (e) A motor vehicle operated by a person who is not:
 26 (1) an owner of the motor vehicle; or
 27 (2) the spouse of the person who owns the motor vehicle;
 28 is not subject to seizure under subsection (a)(15) unless it can be
 29 proven by a preponderance of the evidence that the owner of the
 30 vehicle knowingly permitted the vehicle to be used to engage in
 31 conduct that subjects it to seizure under subsection (a)(15).
 32 SECTION 4. IC 35-45-6-1, AS AMENDED BY P.L.3-2008,
 33 SECTION 253, IS AMENDED TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The definitions in this section
 35 apply throughout this chapter.
 36 (b) "Documentary material" means any document, drawing,
 37 photograph, recording, or other tangible item containing compiled data
 38 from which information can be either obtained or translated into a
 39 usable form.
 40 (c) "Enterprise" means:
 41 (1) a sole proprietorship, corporation, limited liability company,
 42 partnership, business trust, or governmental entity; or

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- 1 (2) a union, an association, or a group, whether a legal entity or
 2 merely associated in fact.
- 3 (d) "Pattern of racketeering activity" means engaging in at least two
 4 (2) incidents of racketeering activity that have the same or similar
 5 intent, result, accomplice, victim, or method of commission, or that are
 6 otherwise interrelated by distinguishing characteristics that are not
 7 isolated incidents. However, the incidents are a pattern of racketeering
 8 activity only if at least one (1) of the incidents occurred after August
 9 31, 1980, and if the last of the incidents occurred within five (5) years
 10 after a prior incident of racketeering activity.
- 11 (e) "Racketeering activity" means to commit, to attempt to commit,
 12 to conspire to commit a violation of, or aiding and abetting in a
 13 violation of any of the following:
- 14 (1) A provision of IC 23-19, or of a rule or order issued under
 15 IC 23-19.
 - 16 (2) A violation of IC 35-45-9.
 - 17 (3) A violation of IC 35-47.
 - 18 (4) A violation of IC 35-49-3.
 - 19 (5) Murder (IC 35-42-1-1).
 - 20 (6) Battery as a Class C felony (IC 35-42-2-1).
 - 21 (7) Kidnapping (IC 35-42-3-2).
 - 22 (8) Human and sexual trafficking crimes (IC 35-42-3.5).
 - 23 (9) Child exploitation (IC 35-42-4-4).
 - 24 (10) Robbery (IC 35-42-5-1).
 - 25 (11) Carjacking (IC 35-42-5-2).
 - 26 (12) Arson (IC 35-43-1-1).
 - 27 (13) Burglary (IC 35-43-2-1).
 - 28 (14) Theft (IC 35-43-4-2).
 - 29 (15) Receiving stolen property (IC 35-43-4-2).
 - 30 (16) Forgery (IC 35-43-5-2).
 - 31 (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
 - 32 (18) Bribery (IC 35-44-1-1).
 - 33 (19) Official misconduct (IC 35-44-1-2).
 - 34 (20) Conflict of interest (IC 35-44-1-3).
 - 35 (21) Perjury (IC 35-44-2-1).
 - 36 (22) Obstruction of justice (IC 35-44-3-4).
 - 37 (23) Intimidation (IC 35-45-2-1).
 - 38 (24) Promoting prostitution (IC 35-45-4-4).
 - 39 (25) Professional gambling (IC 35-45-5-3).
 - 40 (26) Maintaining a professional gambling site
 41 (IC 35-45-5-3.5(b)).
 - 42 (27) Promoting professional gambling (IC 35-45-5-4).

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- 1 (28) Dealing in or manufacturing cocaine or a narcotic drug
- 2 (IC 35-48-4-1).
- 3 (29) Dealing in or manufacturing methamphetamine
- 4 (IC 35-48-4-1.1).
- 5 (30) Dealing in a schedule I, II, or III controlled substance
- 6 (IC 35-48-4-2).
- 7 (31) Dealing in a schedule IV controlled substance
- 8 (IC 35-48-4-3).
- 9 (32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 10 (33) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 11 (34) Money laundering (IC 35-45-15-5).
- 12 (35) A violation of IC 35-47.5-5.
- 13 **(36) A violation of any of the following:**
- 14 (A) IC 23-14-48-9.
- 15 (B) IC 30-2-9-7(b).
- 16 (C) IC 30-2-10-9(b).
- 17 (D) IC 30-2-13-38(f).
- 18 SECTION 5. [EFFECTIVE JULY 1, 2009] IC 30-2-13-38 and
- 19 IC 35-45-6-1, both as amended by this act, apply only to crimes
- 20 committed after June 30, 2009.
- 21 SECTION 6. An emergency is declared for this act.

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