

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:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 2-5-16-4 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a) For**
5 **calendar year 2009 and every fourth calendar year thereafter,** the
6 ~~chairman of the legislative council~~ **president pro tempore of the**
7 **senate** shall appoint a chairman and a vice chairman from among the
8 commission's legislative members, each to serve a term of ~~one (1) year:~~
9 **two (2) years.**
10 **(b) For calendar year 2011 and every fourth calendar year**
11 **thereafter, the speaker of the house of representatives shall appoint**
12 **a chairman and a vice chairman from among the commission's**
13 **legislative members, each to serve a term of two (2) years."**
14 Page 17, line 14, after "property." insert "A **person providing**
15 **services, merchandise, or other property subject to a declaration**
16 **may not ignore or restrict a declaration on the basis of a conflicting**
17 **provision contained in IC 23-14-31, IC 23-14-33, or IC 25-1-11."**
18 Page 17, line 41, delete "(a) Except as provided in subsection (b),
19 the" and insert "**The**".
20 Page 18, delete lines 8 through 10.

1 Page 23, between lines 31 and 32, begin a new paragraph and insert:
 2 "SECTION 16. IC 30-2-13-9 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) Except as
 4 provided in subsection (b), as used in this chapter, "purchaser" means
 5 a person or firm contracting with a seller for services or merchandise
 6 to be provided or delivered for a named individual.

7 (b) As used in section 13(b) of this chapter, "purchaser" means:
 8 **(1) an individual granted the authority in a funeral planning**
 9 **declaration executed by the decedent under IC 29-2-19;**
 10 ~~(1)~~ **(2)** an individual described in subsection (a);
 11 ~~(2)~~ **(3)** the attorney in fact, appointed under IC 30-5, of an
 12 individual described in subsection (a);
 13 ~~(3)~~ **(4)** the guardian, appointed under IC 29-3, of an individual
 14 described in subsection (a); or
 15 ~~(4)~~ **(5)** if an individual described in subsection (a) is deceased:
 16 (A) the surviving spouse of the individual;
 17 (B) if there is no surviving spouse, the adult children of the
 18 individual;
 19 (C) if there is no surviving spouse or surviving adult child, the
 20 surviving parent or parents of the individual; or
 21 (D) if there is neither a surviving spouse nor adult children,
 22 nor a surviving parent, the personal representative (as defined
 23 in IC 29-1-1-3) of the individual."

24 Page 23, line 31, delete "securities described by IC 32-17-9." and
 25 insert "**transfers completed under IC 32-17-14.**"

26 Page 24, between lines 27 and 28, begin a new paragraph and insert:
 27 "SECTION 17. IC 30-2-14-31 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31. (a) This section
 29 does not apply to ~~payments a~~ **payment** to which section 32 of this
 30 chapter applies.

31 (b) As used in this section, "payment" means a payment that a
 32 trustee may receive over a fixed number of years or during the life of
 33 one (1) or more individuals because of services rendered or property
 34 transferred to the payer in exchange for future payments, regardless of
 35 whether the trustee also has the option to receive the ~~amount~~ **payment**
 36 in a lump sum or other form of payment, ~~The term includes a whether~~
 37 **the payment is made in money or other property, and whether the**
 38 **payment is made** from the payer's general assets or from a separate

1 fund created by the payer. ~~including~~ **For purposes of subsection (h),**
 2 **the term also includes any payment from any separate fund,**
 3 **regardless of the reason for the payment.**

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

9 ~~(c)~~ (d) **To the extent that a payment is characterized as interest, or**
 10 **a dividend, or a payment made in lieu of interest or a dividend, a**
 11 **trustee shall allocate it the payment to income. The trustee shall**
 12 **allocate to principal the balance of the payment and any other payment**
 13 **received in the same accounting period that is not characterized as**
 14 **interest, a dividend, or an equivalent payment.**

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

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

22 (2) **considering the income to be distributed as a pro rata portion**
 23 **of all payments made from the individual account during the year:**

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

30 (2) **If a trustee cannot determine the internal income of the**
 31 **separate fund but can determine the value of the separate**
 32 **fund, the internal income of the separate fund is deemed to**
 33 **equal five percent (5%) of the fund's value, according to the**
 34 **most recent statement of value preceding the beginning of the**
 35 **accounting period. If the trustee cannot determine the**
 36 **internal income of the separate fund or the fund's value, the**
 37 **internal income of the fund is deemed to equal the product of**
 38 **the interest rate and the present value of the expected future**

1 **payments, as determined under section 7520 of the Internal**
 2 **Revenue Code, for the month preceding the accounting period**
 3 **for which the computation is made.**

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

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

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

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

- 34 **(1) This subsection applies to:**
 35 **(A) a trust to which an election to qualify for a marital**
 36 **deduction under Section 2056(b)(7) of the Internal**
 37 **Revenue Code has been made; or**
 38 **(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

1 **that receipts from the entity are allocated to both income and**
 2 **principal; and**
 3 **(4) from principal to the extent that the tax exceeds the total**
 4 **receipts from the entity.**

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

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

13 Page 29, delete lines 9 through 20, begin a new paragraph and
 14 insert:

15 "SECTION 29. IC 32-17-11-5 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this
 17 chapter, "multiple party account" means any of the following types of
 18 accounts:

- 19 (1) A joint account.
 20 ~~(2) A P.O.D. account.~~
 21 ~~(3)~~ **(2)** A trust account.

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

29 SECTION 30. IC 32-17-11-7 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this
 31 chapter, "party" means a person who, by the terms of the account, has
 32 a present right, subject to request, to payment from a multiple party
 33 account. A ~~P.O.D. payee~~ or beneficiary of a trust account is a party only
 34 after the account becomes payable to the payee or beneficiary by reason
 35 of the payee's or beneficiary's surviving the original payee or trustee.

36 (b) Unless the context otherwise requires, the term includes a
 37 guardian, conservator, personal representative, or assignee, including
 38 an attaching creditor, of a party. The term also includes a person

1 identified as a trustee of an account for another whether or not a
2 beneficiary is named.

3 (c) The term does not include:

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

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

8 SECTION 31. IC 32-17-11-16 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) The provisions
10 of sections 17, 18, and 19 of this chapter concerning beneficial
11 ownership as between parties, or as between parties and ~~P.O.D. payees~~
12 ~~or~~ beneficiaries of multiple party accounts:

13 (1) apply only to controversies between:

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

16 (B) creditors and other successors of:

17 (i) the parties; or

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

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

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

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

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

35 ~~(c)~~ (b) Unless:

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

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

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

7 SECTION 33. IC 32-17-11-18 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Sums remaining
 9 on deposit at the death of a party to a joint account belong to the
 10 surviving party or parties as against the estate of the decedent unless
 11 there is clear and convincing evidence of a different intention at the
 12 time the account is created. If there are at least two (2) surviving
 13 parties, their respective ownerships during lifetime are:

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

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

19 The right of survivorship continues between the surviving parties.

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

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

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

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

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

- 1 (2) under:
 2 (A) this section; **or**
 3 (B) a beneficiary designation in a trust account; **or**
 4 ~~(C) a P.O.D. payee designation;~~
 5 cannot be changed by will.

6 SECTION 34. IC 32-17-11-21.1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 21.1. The liability of a
 8 surviving party ~~P.O.D. payee~~, or beneficiary for creditor claims and
 9 statutory allowances is determined under IC 32-17-13.

10 SECTION 35. IC 32-17-11-26 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) Payment made
 12 under section 22, 23, ~~24~~, or 25 of this chapter discharges the financial
 13 institution from all claims for amounts paid whether or not the payment
 14 is consistent with the beneficial ownership of the account as between
 15 parties, ~~P.O.D. payees~~, or beneficiaries, or their successors.

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

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

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

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

32 Page 29, line 35, reset in roman "described in".

33 Page 29, line 35, delete "registered:".

34 Page 29, line 36, delete "(1) under".

35 Page 29, line 36, delete "(in the case of a security registered".

36 Page 29, delete lines 37 through 39.

37 Page 29, run in lines 35 through 40.

38 Page 30, line 3, delete "(in the case".

- 1 Page 30, delete line 4.
- 2 Page 30, line 5, delete "the case of an account established after June
- 3 30, 2009)".
- 4 Page 30, line 20, delete "This chapter applies to property subject to
- 5 a" and insert "**Except as provided elsewhere in this chapter, this**
- 6 **chapter applies to a transfer on death security, transfer on death**
- 7 **securities account, and pay on death account created before July**
- 8 **1, 2009, unless the application of this chapter would:**
- 9 (1) adversely affect a right given to an owner or beneficiary;
- 10 (2) give a right to any owner or beneficiary that the owner or
- 11 beneficiary was not intended to have when the transfer on
- 12 death security, transfer on death securities account, or pay on
- 13 death account was created;
- 14 (3) impose a duty or liability on any person that was not
- 15 intended to be imposed when the transfer on death security,
- 16 transfer on death securities account, or pay on death account
- 17 was created; or
- 18 (4) relieve any person from any duty or liability imposed:
- 19 (A) by the terms of the transfer on death security, transfer
- 20 on death securities account, or pay on death account; or
- 21 (B) under prior law."
- 22 Page 30, delete line 21.
- 23 Page 31, delete lines 2 through 8.
- 24 Page 31, line 9, delete "(f)" and insert "(e)".
- 25 Page 62, between lines 13 and 14, begin a new paragraph and insert:
- 26 "SECTION 45. [EFFECTIVE JULY 1, 2009] **IC 30-2-14-31, as**
- 27 **amended by this act, applies to a trust described in**
- 28 **IC 30-2-14-31(h), as amended by this act, on and after the following**
- 29 **dates:**
- 30 (1) **If the trust is not funded as of July 1, 2009, the date of the**
- 31 **decedent's death.**
- 32 (2) **If the trust is initially funded in the calendar year**
- 33 **beginning January 1, 2009, the date of the decedent's death.**
- 34 (3) **If the trust is not described in subdivision (1) or (2),**
- 35 **January 1, 2009.**

1 SECTION 46. THE FOLLOWING ARE REPEALED [EFFECTIVE
2 JULY 1, 2009]: IC 32-17-9; IC 32-17-11-10; 32-17-11-11;
3 IC 32-17-11-24.".

4 Renumber all SECTIONS consecutively.
(Reference is to HB 1287 as reprinted February 24, 2009.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 0.

Bray

Chairperson