February 22, 2010

ENGROSSED
SENATE BILL No. 65

DIGEST OF SB 65 (Updated February 22, 2010 1:37 pm - DI 107)

Citations Affected: IC 6-4.1; IC 9-17; IC 9-31; IC 29-1; IC 29-3; IC 30-4; IC 30-5; IC 32-17; IC 32-17.5; noncode.

Synopsis: Guardianships, estate administration, trust matters, and wills. Specifies the requirements of an affidavit used to state that no inheritance tax is due after applying statutory exemptions to each transferee receiving property as a result of the decedent's death. Requires that inheritance tax returns include all taxable transfers known to the person filing the return. Specifies a guardian's powers concerning the estate planning of a protected person. Repeals the current statute governing a guardian's authority to engage in estate planning for a protected person. Makes various changes to statutes concerning the following: (1) The transfer on death of motor vehicles and watercraft. (2) Probate notice requirements. (3) Protected persons.
(Continued next page)

Effective: July 1, 2009 (retroactive); December 1, 2009 (retroactive); July 1, 2010.

Zakas, Broden
(HOUSE SPONSORS — VAN HAAFTEN, FOLEY)

January 5, 2010, read first time and referred to Committee on Judiciary.
January 19, 2010, amended, reported favorably — Do Pass.
January 21, 2010, read second time, amended, ordered engrossed.
January 22, 2010, engrossed.
January 26, 2010, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 2, 2010, read first time and referred to Committee on Judiciary.
February 22, 2010, amended, reported — Do Pass.

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Digest Continued

(4) Funeral declarations. (5) Attorneys in fact. (6) Nonprobate transferees. (7) The transfer on death act. (8) Disclaiming interests in property. Prescribes trust interpretation rules to protect discretionary interests held by beneficiaries. Precludes creditor actions against certain trust interests. Authorizes matrimonial trusts. Authorizes a trustee to decant a trust. Authorizes a trustee to close a trust when a beneficiary cannot be found by selling the beneficiary's share and depositing the proceeds with the clerk of the court. Requires the clerk to hold the proceeds for the use and benefit of the person or persons thereafter determined by law to be entitled to the proceeds. Provides that trusts and wills of decedents who die in 2010 that contain certain formulas refer to the federal estate tax and generation-skipping transfer tax laws as they applied to estates of decedents on December 31, 2009. (The introduced version of this bill was prepared by the probate code study commission.)

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February 22, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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ENGROSSED
SENATE BILL No. 65

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

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

SECTION 1. IC 6-4.1-4-0.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 0.5. (a) No inheritance tax return is required under this chapter unless the total fair market value of the property interests transferred by the decedent to a transferee under a taxable transfer or transfers exceeds the exemption provided to the transferee under IC 6-4.1-3-10 through IC 6-4.1-3-12. For purposes of this section, the fair market value of a property interest is its fair market value as of the appraisal date prescribed by IC 6-4.1-5-1.5.

(b) ~~The department of state revenue shall prescribe the~~ **An** affidavit ~~form that may be used to state that no inheritance tax is due after applying the exemptions under IC 6-4.1-3. The~~ **may be used to state that no inheritance tax is due after applying the exemptions under IC 6-4.1-3. The affidavit must contain the following information:**

(1) The decedent's name and date of death.

(2) The name of each known transferee and the transferee's relationship to the decedent.

(3) The total value of property transferred to each known transferee as a result of the decedent's death.

(4) A statement that the total value of property transferred to each known transferee as a result of the decedent's death is less than the amount of the exemption provided to the transferee under IC 6-4.1-3.

(c) An affidavit **described in subsection (b)** may be:

(1) recorded in the office of the county recorder if the affidavit concerns real property and includes the legal description of the real property in the decedent's estate; or

(2) submitted as required by IC 6-4.1-8-4 if the affidavit concerns personal property.

If consent by the department of state revenue or the appropriate county assessor is required under IC 6-4.1-8-4 for the transfer of personal property, the affidavit must be submitted with a request for a consent to transfer under IC 6-4.1-8-4.

~~(c)~~ **(d)** If consent by the department of state revenue or the appropriate county assessor is required under IC 6-4.1-8-4 before personal property may be transferred and the department of state revenue or the appropriate county assessor consents to a transfer of personal property under IC 6-4.1-8-4 after considering an affidavit described in subsection (b), the full value of the personal property may be transferred.

~~(d)~~ **(e)** The department of state revenue or the appropriate county assessor may rely upon an affidavit ~~prescribed by the department of state revenue under~~ **described in** subsection (b) to determine that a transfer will not jeopardize the collection of inheritance tax for purposes of IC 6-4.1-8-4(e).

~~(e)~~ **(f)** It is presumed that no inheritance tax is due and that no inheritance tax return is required if an affidavit described in subsection (b) was:

(1) properly executed; and

(2) recorded in the decedent's county of residence or submitted under IC 6-4.1-8-4.

~~(f)~~ **(g)** Except as provided in subsection ~~(h),~~ **(i),** a lien attached under IC 6-4.1-8-1 to the real property owned by a decedent terminates when an affidavit described in subsection (b) is:

(1) properly executed; and

(2) recorded in the county in which the real property is located.

~~(g)~~ **(h)** Except as provided in subsection ~~(h),~~ **(i),** a lien attached under IC 6-4.1-8-1 to personal property that is owned by the decedent terminates when:

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(1) an affidavit described in subsection (b) is properly executed;
(2) the affidavit described in subsection (b) is submitted to the department of state revenue or the appropriate county assessor in conformity with IC 6-4.1-8-4; and
(3) the department of state revenue or the appropriate county assessor consents to the transfer.

However, subdivision (3) does not apply if consent of the department of state revenue or the appropriate county assessor is not required under IC 6-4.1-8-4 before the property may be transferred.

~~(h)~~ **(i)** A lien terminated under subsection ~~(f)~~ **(g)** or ~~(g)~~ **(h)** is reattached to the property under IC 6-4.1-8-1 if the department of state revenue obtains an order that an inheritance tax is owed.

SECTION 2. IC 6-4.1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Except as otherwise provided in section 0.5 of this chapter or in IC 6-4.1-5-8, the personal representative of a resident decedent's estate or the trustee or transferee of property transferred by the decedent shall file an inheritance tax return with the appropriate probate court within nine (9) months after the date of the decedent's death. The person filing the return shall file it under oath on the forms prescribed by the department of state revenue. The return shall:

(1) contain a statement of all property interests transferred by the decedent under taxable transfers **known to the person filing the return;**
(2) indicate the fair market value, as of the appraisal date prescribed by IC 6-4.1-5-1.5, of each property interest included in the statement;
(3) contain an itemized list of all inheritance tax deductions claimed with respect to property interests included in the statement;
(4) contain a list which indicates the name and address of each transferee of the property interests included in the statement and which indicates the total value of the property interests transferred to each transferee; and
(5) contain the name and address of the attorney for the personal representative or for the person filing the return.

(b) If the decedent died testate, the person filing the return shall attach a copy of the decedent's will to the return.

SECTION 3. IC 6-4.1-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) Except as otherwise provided in section 0.5 of this chapter, the personal representative of a nonresident decedent's estate or the trustee or

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transferee of property transferred by the decedent shall file an inheritance tax return with the department of state revenue within nine (9) months after the date of the decedent's death. The person filing the return shall file it under oath on the forms prescribed by the department of state revenue. The return shall:

(1) contain a statement of all property interests transferred by the decedent under taxable transfers **known to the person filing the return;**

(2) indicate the fair market value, as of the appraisal date prescribed by IC 6-4.1-5-1.5, of each property interest included in the statement;

(3) contain an itemized list of all inheritance tax deductions claimed with respect to property interests included in the statement;

(4) contain a list which indicates the name and address of each transferee of the property interests included in the statement and which indicates the total value of the property interests transferred to each transferee; and

(5) contain the name and address of the attorney for the personal representative or for the person filing the return.

(b) If the decedent died testate, the person filing the return shall attach a copy of the decedent's will to the return.

SECTION 4. IC 9-17-3-9, AS AMENDED BY P.L.143-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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.

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(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 **is described by either of the following:**

(1) The beneficiary:

~~(1)~~ **(A)** is named in the certificate; and

~~(2)~~ **(B)** survives the transferor.

(2) The beneficiary:

(A) survives the transferor; and

(B) is entitled to an interest in the vehicle under IC 32-17-14-22 following the death of a beneficiary who:

(i) is named in the certificate; and

(ii) did not survive 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 5. IC 9-31-2-30, AS AMENDED BY P.L.143-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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

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watercraft in a certificate of title obtained under this section, the interest in the watercraft is transferred to each beneficiary who **is described by either of the following:**

(1) The beneficiary:

~~(1)~~ **(A)** is named in the certificate; and

~~(2)~~ **(B)** survives the transferor.

(2) The beneficiary:

(A) survives the transferor; and

(B) is entitled to an interest in the watercraft under IC 32-17-14-22 following the death of a beneficiary who:

(i) is named in the certificate; and

(ii) did not survive 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 6. IC 29-1-6-1, AS AMENDED BY P.L.238-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 1, 2009 (RETROACTIVE)]: Sec. 1. In the absence of a contrary intent appearing in the will, wills shall be construed as to real and personal estate in accordance with the rules in this section.

(a) Any estate, right, or interest in land or other things acquired by the testator after the making of the testator's will shall pass as if title was vested in the testator at the time of making of the will.

(b) All devises of real estate shall pass the whole estate of the testator in the premises devised, although there are no words of inheritance or of perpetuity, whether or not at the time of the execution of the will the decedent was the owner of that particular interest in the real estate devised. Such devise shall also pass any interest which the testator may have at the time of the testator's death as vendor under a contract for the sale of such real estate.

(c) A devise of real or personal estate, whether directly or in trust, to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family", or to "the persons thereunto entitled under the intestate laws" or to persons described by words of similar import, shall mean those persons (including the spouse) who would take under the intestate laws if the testator or other designated person were to die intestate at the time when such class is to be ascertained, domiciled in

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this state, and owning the estate so devised. With respect to a devise which does not take effect at the testator's death, the time when such class is to be ascertained shall be the time when the devise is to take effect in enjoyment.

(d) In construing a will making a devise to a person or persons described by relationship to the testator or to another, any person adopted prior to the person's twenty-first birthday before the death of the testator shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents. However, if a natural parent or previous adopting parent marries the adopting parent before the testator's death, the adopted person shall also be considered the child of such natural or previous adopting parent. Any person adopted after the person's twenty-first birthday by the testator shall be considered the child of the testator, but no other person shall be entitled to establish relationship to the testator through such child.

(e) In construing a will making a devise to a person described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the child's mother, and also of the child's father, if, but only if, the child's right to inherit from the child's father is, or has been, established in the manner provided in IC 29-1-2-7.

(f) A will shall not operate as the exercise of a power of appointment which the testator may have with respect to any real or personal estate, unless by its terms the will specifically indicates that the testator intended to exercise the power.

(g) If a devise of real or personal property, not included in the residuary clause of the will, is void, is revoked, or lapses, it shall become a part of the residue, and shall pass to the residuary devisee. Whenever any estate, real or personal, shall be devised to any descendant of the testator, and such devisee shall die during the lifetime of the testator, whether before or after the execution of the will, leaving a descendant who shall survive such testator, such devise shall not lapse, but the property so devised shall vest in the surviving descendant of the devisee as if such devisee had survived the testator and died intestate. The word "descendant", as used in this section, includes children adopted during minority by the testator and by the testator's descendants and includes descendants of such adopted children. "Descendant" also includes children of the mother who are born out of wedlock, and children of the father who are born out of wedlock, if, but only if, such child's right to inherit from such father is, or has been, established in the manner provided in IC 29-1-2-7. This

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rule applies where the parent is a descendant of the testator as well as where the parent is the testator. Descendants of such children shall also be included.

(h) Except as provided in subsection (m), if a testator in the testator's will refers to a writing of any kind, such writing, whether subsequently amended or revoked, as it existed at the time of execution of the will, shall be given the same effect as if set forth at length in the will, if such writing is clearly identified in the will and is in existence both at the time of the execution of the will and at the testator's death.

(i) If a testator devises real or personal property upon such terms that the testator's intentions with respect to such devise can be determined at the testator's death only by reference to a fact or an event independent of the will, such devise shall be valid and effective if the testator's intention can be clearly ascertained by taking into consideration such fact or event even though occurring after the execution of the will.

(j) If a testator devises or bequeaths property to be added to a trust or trust fund which is clearly identified in the testator's will and which trust is in existence at the time of the death of the testator, such devise or bequest shall be valid and effective. Unless the will provides otherwise, the property so devised or bequeathed shall be subject to the terms and provisions of the instrument or instruments creating or governing the trust or trust fund, including any amendments or modifications in writing made at any time before or after the execution of the will and before or after the death of the testator.

(k) If a testator devises securities in a will and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(1) Securities of the same organization acquired because of an action initiated by the organization or any successor, related, or acquiring organization, excluding any security acquired by exercise of purchase options.

(2) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(3) Securities of the same organization acquired as a result of a plan of reinvestment.

Distributions in cash before death with respect to a described security are not part of the devise.

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(l) For purposes of this subsection, "incapacitated principal" means a principal who is an incapacitated person. An adjudication of incapacity before death is not necessary. The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal. If:

(1) specifically devised property is sold or mortgaged by; or

(2) a condemnation award, insurance proceeds, or recovery for injury to specifically devised property are paid to;

a guardian or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(m) A written statement or list that:

(1) complies with this subsection; and

(2) is referred to in a will;

may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the will. To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the will. The writing may be altered by the testator after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the will. If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

(n) A will of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:

(1) the unified credit;

(2) the estate tax exemption;

(3) the applicable credit amount;

(4) the applicable exclusion amount;

(5) the generation-skipping transfer tax exemption;

(6) the GST exemption;

(7) the marital deduction;

(8) the maximum marital deduction;

(9) the unlimited marital deduction;

(10) the inclusion ratio;

(11) the applicable fraction;

(12) any section of the Internal Revenue Code:

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(A) relating to the:
(i) federal estate tax; or
(ii) generation-skipping transfer tax; and
(B) that measures a share of:
(i) an estate; or
(ii) a trust;
based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer tax law; or
(13) a provision of federal estate tax or generation-skipping transfer tax law that is similar to subdivisions (1) through (12);
refers to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2009.

(o) Subsection (n) does not apply to a will:
(1) that is executed or amended after December 31, 2009; or
(2) that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable federal estate or generation-skipping transfer tax.

(p) If the federal estate or generation-skipping transfer tax becomes effective before January 1, 2011, the reference to January 1, 2011, in subsection (n) shall refer instead to the first date on which the tax becomes legally effective.

(q) Within three (3) months following the latest to occur of the:
(1) decedent's death;
(2) fiduciary's appointment; or
(3) enactment of this subsection;
the personal representative under a will to which subsection (n) applies shall give written notice regarding the affected beneficiary of the right to commence a proceeding under subsection (r) and to the present income beneficiary of any trust created under the will, of the existence of this statute, and the beneficiary's right to commence a proceeding under subsection (r).

(r) The personal representative of an affected beneficiary under a will described in subsection (n) may initiate a proceeding to determine whether the decedent intended that a formula described in subsection (n) be construed with respect to the law as it existed after December 31, 2009. A proceeding under this subsection must be commenced within nine (9) months after the death of the testator or grantor.

SECTION 7. IC 29-1-7-4.5 IS ADDED TO THE INDIANA CODE

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AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4.5. Except as provided in section 4 of this chapter, each petition or other document that a personal representative files in the court with:**

(1) a written consent to the petition or other document; or

(2) a written waiver of notice of proceedings in the estate;

must contain a statement that the personal representative has delivered a copy of the petition or other document to each person whose written consent or waiver of notice of proceedings is presented to the court in support of the petition or other document.

SECTION 8. IC 29-1-10-6.5, AS ADDED BY P.L.143-2009, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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~~ **interested person** 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~~ **interested person** 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.~~ **interested persons.** 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.

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(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 9. IC 29-3-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Upon petition by any person and after **a** hearing **under IC 29-3-5,** the court may issue, without the appointment of a guardian, any protective order for the benefit of a person who has been adjudicated an incapacitated person or is a minor. ~~under IC 29-3-5.~~

(b) Notice of the filing of a petition under this chapter for the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) Incapacitated persons and minors have the same rights at the hearing on a petition filed under this chapter for the issuance of a protective order as they would have at a hearing for the appointment of a guardian.

(d) The court may issue a protective order concerning an incapacitated person if the court finds that:

(1) the incapacitated person:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the incapacitated person;

(2) the incapacitated person is unable to manage the incapacitated person's property and financial or business affairs effectively; and

(3) the protection sought is necessary.

The court shall make the orders that it considers proper and appropriate to protect the person, business affairs, and property of the incapacitated person.

(e) The court may issue a protective order concerning a minor if the court finds that:

(1) the minor:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the minor; and

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(2) the protection sought is necessary.

The court shall make the orders it considers proper and appropriate to protect the person, business affairs, and property of the minor.

(f) If the court finds grounds for a protective order under subsection (d) or (e), it may, without appointing a guardian, declare the person to be a protected person and authorize or ratify any transaction necessary or desirable to meet the needs of the protected person. Protective arrangements include the following:

(1) The payment, delivery, deposit, or retention of property.

(2) The sale, mortgage, lease, or other transfer of property.

(3) The entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and educating a person.

(4) The addition to or establishment of a suitable trust.

SECTION 10. IC 29-3-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:

(1) The name, age, residence, and post office address of the alleged incapacitated person or minor for whom the guardian is sought to be appointed **or the protective order issued.**

(2) The nature of the incapacity.

(3) The approximate value and description of the property of the incapacitated person or minor, including any compensation, pension, insurance, or allowance to which the incapacitated person or minor may be entitled.

(4) If a limited guardianship is sought, the particular limitations requested.

(5) Whether a **protective order has been issued or a** guardian has been appointed or is acting for the incapacitated person or minor in any state.

(6) The residence and post office address of the proposed guardian **or person to carry out the protective order** and the ~~proposed guardian's~~ relationship to the alleged incapacitated person **of:**

(A) the proposed guardian; or

(B) the person proposed to carry out the protective order.

(7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed **or the protective order is issued.**

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(8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed **or the protective order is issued.**

(9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian **or person to carry out the protective order** is acting if the proposed guardian **or person** is an individual.

(10) The reasons the appointment of a guardian **or issuance of a protective order** is sought and the interest of the petitioner in the appointment **or issuance.**

(11) The name and business address of the attorney who is to represent the guardian **or person to carry out the protective order.**

(b) Notice of a petition under this section for the appointment of a guardian **or the issuance of a protective order** and the hearing on the petition shall be given under IC 29-3-6.

(c) After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.

(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:

(1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;

(2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;

(3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or

(4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.

(e) A person alleged to be an incapacitated person may present evidence and cross-examine witnesses at the hearing. The issues raised

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by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition. However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person or minor will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

SECTION 11. IC 29-3-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. A copy of the petition shall be attached to the notice, and the notice must be in substantially the following form:

NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), Indiana, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed **or a protective order should be issued** for (name of alleged incapacitated person or minor). A copy of the petition requesting appointment of a guardian **or for the issuance of a protective order** is attached to this notice.

At the hearing the court will determine whether (name of alleged incapacitated person or minor) is an incapacitated person or minor under Indiana law. This proceeding may substantially affect the rights of (name of alleged incapacitated person or minor).

If the court finds that (name of alleged incapacitated person or minor) is an incapacitated person or minor, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person or minor). The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person or minor) to retain control over certain property and activities. The court may also determine whether a protective order should be entered on behalf of (name of alleged incapacitated person or minor).

(Name of alleged incapacitated person) may attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged

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incapacitated person) is not required. If (name of alleged incapacitated person) attends the hearing, opposes the petition, and is not represented by an attorney, the court may appoint an attorney to represent (name of alleged incapacitated person). The court may, where required, appoint a guardian ad litem to represent (name of alleged incapacitated person or minor) at the hearing.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

_____

(signature of clerk of the court)

SECTION 12. IC 29-3-9-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4.5. (a) After notice to interested persons and upon authorization of the court, a guardian may, if the protected person has been found by the court to lack testamentary capacity, do any of the following:**

(1) Make gifts.

(2) Exercise any power with respect to transfer on death or payable on death transfers that is described in IC 30-5-5-7.5.

(3) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties.

(4) Exercise or release a power of appointment.

(5) Create a revocable or irrevocable trust of all or part of the property of the estate, including a trust that extends beyond the duration of the guardianship.

(6) Revoke or amend a trust that is revocable by the protected person.

(7) Exercise rights to elect options and change beneficiaries under insurance policies, retirement plans, and annuities.

(8) Surrender an insurance policy or annuity for its cash value.

(9) Exercise any right to an elective share in the estate of the protected person's deceased spouse.

(10) Renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos.

(b) Before approving a guardian's exercise of a power listed in subsection (a), the court shall consider primarily the decision that the protected person would have made, to the extent that the decision of the protected person can be ascertained. If the protected person has a will, the protected person's distribution of

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assets under the will is prima facie evidence of the protected person's intent. The court shall also consider:

(1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support;

(2) the interests of creditors;

(3) the possible reduction of income taxes, estate taxes, inheritance taxes, or other federal, state, or local tax liabilities;

(4) the eligibility of the protected person for governmental assistance;

(5) the protected person's previous pattern of giving or level of support;

(6) the protected person's existing estate plan, if any;

(7) the protected person's life expectancy and the probability that the guardianship will terminate before the protected person's death; and

(8) any other factor the court considers relevant.

(c) A guardian may examine and receive, at the expense of the guardian, copies of the following documents of the protected person:

(1) A will.

(2) A trust.

(3) A power of attorney.

(4) A health care appointment.

(5) Any other estate planning document.

SECTION 13. IC 30-4-2.1-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE DECEMBER 1, 2009 (RETROACTIVE)]: **Sec. 13. (a) A trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:**

(1) the unified credit;

(2) the estate tax exemption;

(3) the applicable credit amount;

(4) the applicable exclusion amount;

(5) the generation-skipping transfer tax exemption;

(6) the GST exemption;

(7) the marital deduction;

(8) the maximum marital deduction;

(9) the unlimited marital deduction;

(10) the inclusion ratio;

(11) the applicable fraction;

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(12) any section of the Internal Revenue Code:
(A) relating to the:
(i) federal estate tax; or
(ii) generation-skipping transfer tax; and
(B) that measures a share of trust;
based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer tax law; or
(13) a provision of federal estate tax or generation-skipping transfer tax law that is similar to subdivisions (1) through (12);
refers to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2009.
(b) Subsection (a) does not apply to a trust:
(1) that is executed or amended after December 31, 2009; or
(2) that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable federal estate or generation-skipping transfer tax.
(c) If the federal estate or generation-skipping transfer tax becomes effective before January 1, 2011, the reference to January 1, 2011, in subsection (a) shall refer instead to the first date on which the tax becomes legally effective.
(d) Within three (3) months following the latest to occur of the:
(1) decedent's death;
(2) trustee's appointment; or
(3) enactment of this subsection;
the trustee of a trust to which subsection (a) applies shall give written notice regarding the beneficiary's right to commence a proceeding under subsection (e) to any beneficiary having a right to trust income or principal under subsection (a), of the existence of this statute, and of the beneficiary's right to commence a proceeding under subsection (e).
(e) The trustee of any beneficiary under the trust having a present right to income or principal of the trust may initiate a proceeding to determine whether the decedent intended that a formula described in subsection (a) be construed with respect to the law as it existed after December 31, 2009. A proceeding under this subsection must be commenced within nine (9) months after the death of the settlor.
SECTION 14. IC 30-4-2.1-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2010]: **Sec. 14. (a) The following rules apply only to discretionary interests:**

(1) A discretionary interest is a mere expectancy that is neither a property interest nor an enforceable right.

(2) A creditor may not:

(A) require a trustee to exercise the trustee's discretion to make a distribution; or

(B) cause a court to foreclose a discretionary interest.

(3) A court may review a trustee's distribution discretion only if the trustee acts dishonestly or with an improper motive.

(b) Words such as sole, absolute, uncontrolled, or unfettered discretion dispense with the trustee acting reasonably.

(c) Absent express language to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, a trustee may, in the trustee's discretion, distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary to the exclusion of the other beneficiaries.

(d) Regardless of whether a beneficiary has any outstanding creditors, a trustee of a discretionary interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary. A trustee is not liable to a creditor for paying the expenses of a beneficiary who holds a discretionary interest.

SECTION 15. IC 30-4-2.1-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 15. If a party challenges a settlor or a beneficiary's influence over a trust, none of the following factors, alone or in combination, may be considered dominion and control over a trust:**

(1) A beneficiary serving as a trustee or co-trustee.

(2) The settlor or beneficiary holds an unrestricted power to remove or replace a trustee.

(3) The settlor or a beneficiary:

(A) is a trust administrator, a general partner of a partnership, a manager of a limited liability company, or an officer of a corporation; or

(B) has any other managerial function in any other entity; that is owned in whole or in part by the trust.

(4) A person related by blood or adoption to a settlor or beneficiary is appointed as trustee.

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(5) An agent, accountant, attorney, financial adviser, or friend of the settlor or a beneficiary is appointed as trustee.

(6) A business associate of the settlor or a beneficiary is appointed as trustee.

(7) A beneficiary holds any power of appointment over part or all of the trust property.

(8) The settlor holds a power to substitute property of equivalent value.

(9) The trustee may loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security.

(10) The trust contains broad purposes or highly discretionary distribution language.

(11) The trust has only one (1) beneficiary eligible for current distributions.

SECTION 16. IC 30-4-2.1-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 16. Absent clear and convincing evidence otherwise, a settlor of an irrevocable trust may not be considered the alter ego of a trustee. The following factors, alone or in combination, are not sufficient evidence to conclude that the settlor controls a trustee or is the alter ego of the trustee:**

(1) Any combination of the factors listed in section 15 of this chapter.

(2) Isolated occurrences of the settlor signing checks, making disbursements, or executing other documents related to the trust as a trustee when the settlor is, in fact, not a trustee.

(3) Requesting a trustee to make distributions on behalf of a beneficiary.

(4) Requesting a trustee to hold, purchase, or sell any trust property.

SECTION 17. IC 30-4-2.1-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 17. (a) A creditor may not reach, exercise, or otherwise acquire an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee. A power described in this subsection is personal to a beneficiary or other person and may not be exercised by the person's creditors. A court may not direct a person to exercise the power.**

(b) A creditor may not:

(1) reach an interest of a beneficiary who is also a trustee or

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co-trustee; or

(2) otherwise compel a distribution to a beneficiary who is also a trustee or co-trustee.

(c) A court may not foreclose against an interest held by a beneficiary described in subsection (b).

SECTION 18. IC 30-4-3-35 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 35. (a) As used in this section, "joint matrimonial trust" means a single inter vivos trust established under this section by settlors who are related as husband and wife.**

(b) As used in this section, "matrimonial property" means real property that:

(1) is subject to a written election to treat the property as matrimonial property under this section; and

(2) is owned by a matrimonial trust.

(c) As used in this section, "matrimonial trust" means a trust established under this section to own matrimonial property.

(d) As used in this section, "separate matrimonial trust" means a separate trust that is also a matrimonial trust.

(e) As used in this section, "separate trust" means a trust established by one (1) individual.

(f) A matrimonial trust may be established:

(1) jointly by a husband and wife; or

(2) in two (2) or more separate trusts.

(g) A husband and wife may elect to treat real property as matrimonial property with a written statement of the election:

(1) in an instrument or instruments conveying the real property to a matrimonial trust or trusts; or

(2) in a separate writing that must be recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(h) A guardian of a husband and wife may make an election under this section:

(1) without the approval of the court if the guardian has unlimited powers under IC 29-3-8-4; and

(2) with the approval of the court in all other cases.

(i) An attorney in fact of a husband and wife may make an election under this section under the powers conferred upon the attorney in fact by IC 30-5-5-2 if the power of attorney is recorded in the county where the real property is situated and indexed in the

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records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(j) An interest in matrimonial property is not severable during the marriage of the husband and wife unless:

(1) both the husband and wife join in the severance in writing; or

(2) a third party owns and forecloses a mortgage or other lien against the interests of both the husband and wife in the matrimonial property.

(k) Notwithstanding any other provision of this section, the legal rights of a lienholder that exist at the time of an election to treat the real property subject to the lien as matrimonial property may not be subject to a severance described in subsection (j) without the lienholder's written consent.

(l) A matrimonial trust established by an individual continues to be a matrimonial trust after the death of the settlor if the deceased settlor's separate trust provides to the surviving spouse:

(1) a life estate;

(2) an interest that qualifies for a deduction from the gross estate of the decedent under Section 2056 of the Internal Revenue Code regardless of whether an election is made to qualify the interest for the deduction; or

(3) in some respect the current right to occupy or receive rent, royalties, or other kinds of income with respect to the matrimonial property.

(m) A separate matrimonial trust ceases to be a matrimonial trust upon the termination of payments to the surviving spouse as a result of the surviving spouse's death or the surviving spouse's disclaimer of all interests in the separate matrimonial trust.

(n) A joint matrimonial trust ceases to be a matrimonial trust upon the death of one (1) of the settlors.

(o) A matrimonial trust ceases to be a matrimonial trust upon the dissolution of the marriage of the settlors.

(p) A husband and wife may revoke a matrimonial trust by together executing a writing expressing the revocation.

SECTION 19. IC 30-4-3-36 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 36. (a) Unless a trust expressly provides otherwise, a trustee who has absolute power under the terms of a trust (referred to in this section as the "first trust") to invade the principal of the trust to make distributions to or for the benefit of**

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one (1) or more persons may instead exercise the power by appointing all or part of the principal of the first trust in favor of a trustee of another trust (referred to in this section as the "second trust") for the benefit of one (1) or more persons under the same trust instrument or under a different trust instrument as long as:

(1) the beneficiaries of the second trust are the same as the beneficiaries of the first trust;

(2) the second trust does not reduce any income, annuity, or unitrust interest in the assets of the first trust; and

(3) if any contributions to the first trust qualified for a marital or charitable deduction for purposes of the federal income, gift, or estate taxes, the second trust does not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for a deduction or reduced the amount of a deduction.

(b) For purposes of this section, an absolute power to invade principal includes a power to invade principal that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support regardless of whether the term "absolute" is used.

(c) The exercise of a power to invade principal under subsection (a) must be by an instrument that is:

(1) in writing;

(2) signed and acknowledged by the trustee; and

(3) filed with the records of the first trust.

(d) The exercise of a power to invade principal under subsection (a) is considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate. The exercise of the power does not extend the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the first trust.

(e) The trustee shall notify in writing all qualified beneficiaries of the first trust at least sixty (60) days before the effective date of the trustee's exercise of the power to invade principal under subsection (a) of the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power satisfies the trustee's notice obligation under this subsection. If all qualified beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee's power to invade principal may be exercised immediately. The

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trustee's notice under this subsection does not limit the right of any beneficiary to object to the exercise of the trustee's power to invade principal, except as otherwise provided by this article.

(f) The exercise of the power to invade principal under subsection (a) is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amending or revoking the trust.

(g) This section is not intended to create or imply a duty to exercise a power to invade principal. No inference of impropriety may be made as a result of a trustee not exercising the power to invade principal conferred under subsection (a).

(h) This section may not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust, under any other provision of this article or any other statute, or under common law.

SECTION 20. IC 30-4-3-37 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 37. (a) If a beneficiary of a trust cannot be found after a reasonable search, the trustee may file a petition setting out the facts of the unsuccessful search. The court may order the trustee to sell the shares of the trust to which the beneficiary is entitled and to pay the proceeds to the clerk of the court. The clerk shall hold the proceeds for the use and benefit of the person or persons thereafter determined by law to be entitled to the proceeds.**

(b) If a trustee pays any money to the clerk of the court under this section, the trustee shall file a receipt with the court. Filing the receipt is sufficient to discharge the trustee in the same manner and to the same extent as though the trustee had paid or distributed the appropriate share of the trust to the unlocated beneficiary.

(c) This section does not apply to stocks, dividends, capital credits, patronage, refunds, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural telephone cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-12-1.

SECTION 21. IC 30-5-4-4, AS AMENDED BY P.L.143-2009, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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;

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(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;~~ **caregiver;**
(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 32-17-13-1, AS AMENDED BY P.L.143-2009, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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

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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)~~ **(b)** 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)~~ **(c)** 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)~~ **(d)** A transfer on death transfer completed under IC 32-17-14 is a nonprobate transfer.

SECTION 23. IC 32-17-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) A proceeding under this chapter may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a surviving child, to the extent that statutory allowances are affected, or a creditor.

(b) If the personal representative declines or fails to commence a proceeding **within sixty (60) days** after **receiving the** demand, a person making **the** demand may commence the proceeding in the name of the decedent's estate at the expense of the person making the demand and not of the estate.

(c) A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

SECTION 24. IC 32-17-13-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. A proceeding under this chapter must be commenced not later than nine (9) months after the person's death, but a proceeding on behalf of a creditor whose claim was ~~allowed after proceedings challenging disallowance of the claim~~ **timely filed** may be commenced within:

(1) sixty (60) days after final allowance of the claim; **or**

(2) ninety (90) days after demand is made under section 7 of this chapter if the personal representative declines or fails to commence a proceeding after receiving the demand.

SECTION 25. IC 32-17-14-2, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2009 (RETROACTIVE)]: 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 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.

(f) The provisions of:

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(1) section 22 of this chapter; and

(2) section 26(b)(9) of this chapter;

relating to distributions to lineal descendants per stirpes apply to a transfer on death or payable on death transfer created before July 1, 2009.

SECTION 26. IC 32-17-14-3, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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) "Governing instrument" refers to a written instrument agreed to by an owner that establishes the terms and conditions of an ownership in beneficiary form.

~~(3)~~ **(4)** "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)~~ **(5)** "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)~~ **(6)** "Owner" refers to a person or persons who have a right to designate the beneficiary of a transfer on death transfer.

~~(6)~~ **(7)** "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)~~ **(8)** "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)~~ **(9)** "Proof of death" means a death certificate or a record or report that is prima facie proof or evidence of an individual's death.

~~(9)~~ **(10)** "Property" means any present or future interest in real

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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)~~ **(11)** "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)~~ **(12)** "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)~~ **(13)** "Transfer on death deed" means a deed that conveys an interest in real property to a grantee by beneficiary designation.

~~(13)~~ **(14)** "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)~~ **(15)** "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 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

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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.

SECTION 27. IC 32-17-14-7, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) If any of the following are required **by the transferring entity,** 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.

SECTION 28. IC 32-17-14-9, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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:

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(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.

SECTION 29. IC 32-17-14-10, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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.

(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.

SECTION 30. IC 32-17-14-11, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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,~~ **by the owner or owner's legal representative;** 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.

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(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~~ **records** a transfer on death deed, the effect of the ~~conveyance~~ **recording the transfer on death deed** 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 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.

SECTION 31. IC 32-17-14-14, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. (a) Property may be held or registered in

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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.

SECTION 32. IC 32-17-14-16, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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.

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(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 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 **or trust** unless the beneficiary designation expressly grants the owner the right to revoke or change the beneficiary designation by a will **or trust.**

(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 **before the death of the owner** 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.

SECTION 33. IC 32-17-14-25, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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.~~ **An election under IC 29-1-3-1 does not apply to**

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a valid transfer on death transfer. In accordance with IC 32-17-13, a transfer on death transfer may be subject to the payment of the surviving spouse and family allowances under IC 29-1-4-1.

(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.

SECTION 34. IC 32-17-14-26, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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 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

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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.

(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

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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 **affidavit of certification of** trust ~~instrument~~ or probated will creating an express trust is presented to the transferring entity **within the twelve (12) months after the owner's death,** 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 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.

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(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 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

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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.

SECTION 35. IC 32-17-14-28, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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 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.

In addition, the transferee is liable for the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(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; **and**

(3) the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(d) If a transferee of money or property under a transfer on death transfer that was improperly distributed or paid encumbers the

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property, the transferee:

(1) shall satisfy the debt incurred in an amount sufficient to release any security interest, lien, or other encumbrance on the property; **and**

(2) is liable for the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(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.

SECTION 36. IC 32-17.5-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. This article applies to a disclaimer of an interest in or power over property ~~regardless of when the interest or power was~~ created **after June 30, 2003.**

SECTION 37. IC 32-17.5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. This chapter does not limit the right of a person to waive, release, disclaim, or renounce an interest in or power over property under a ~~law~~ **statute** other than this article.

SECTION 38. IC 32-17.5-4-1, AS AMENDED BY P.L.238-2005, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. Except for a disclaimer under IC 32-17.5-5 or

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IC 32-17.5-6-1, the following rules apply to a disclaimer of an interest in property:

(1) A disclaimer takes effect:

(A) when the instrument creating the interest becomes irrevocable; or

(B) upon the intestate's death if the interest arose under the law of intestate succession.

(2) A disclaimed interest passes according to any provision in the instrument creating the interest:

(A) that provides for the disposition of the interest should the interest be disclaimed; or

(B) that concerns disclaimed interests in general.

(3) If the instrument creating the disclaimed interest does not contain a provision described in subdivision (2), the following rules apply:

(A) If the disclaimant is an individual, the following rules apply:

(i) Except as provided in ~~item~~ **items** (ii) **and (iii),** the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(ii) If, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.

(iii) If the disclaimed interest would have passed to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest passes by representation to the descendants of the disclaimant who survive at the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest becomes part of the residue under the instrument creating the disclaimed interest.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) If the disclaimed interest arose under the law of intestate succession, the disclaimed interest passes as if the disclaimant had died immediately before the intestate's death.

(5) Upon the disclaimer of a preceding interest:

(A) a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or

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ceased to exist immediately before the time of distribution; and

(B) a future interest held by the disclaimant is not accelerated in possession or enjoyment.

SECTION 39. IC 32-17.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) **This subsection applies** upon the death of a holder of jointly held property ~~a surviving holder may disclaim, in whole or part, the greater of the following:~~ **only if, during the deceased holder's lifetime, the deceased holder could have unilaterally regained a part of the property attributable to the deceased holder's contribution without consent of any other holder. Another holder may disclaim an amount that may not exceed the amount determined in STEP THREE of the following formula:**

STEP ONE: Determine the amount of the property attributable to the deceased holder's contributions.

~~(1) A fractional share of the property determined by dividing~~

STEP TWO: Determine the quotient of:

(A) one (1); **divided** by

(B) the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates.

STEP THREE: Determine the product of:

(1) the STEP ONE amount; multiplied by

(2) the STEP TWO quotient.

~~(2) All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.~~

(b) This subsection applies in the case of the death of a holder of jointly held property that is not subject to subsection (a). Another holder may disclaim an amount that may not exceed the amount determined in STEP FOUR of the following formula:

STEP ONE: Determine the value of the total amount of the jointly held property.

STEP TWO: Determine the product of:

(A) the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; multiplied by

(B) the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

STEP THREE: Determine the quotient of:

(A) one (1); divided by

(B) the STEP TWO result.

STEP FOUR: Determine the product of:

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(A) the value determined in STEP ONE; multiplied by

(B) the quotient determined in STEP THREE.

~~(b)~~ **(c)** A disclaimer under subsection (a) **or (b)** takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

~~(c)~~ **(d)** An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

SECTION 40. IC 29-3-9-4 IS REPEALED [EFFECTIVE JULY 1, 2010].

SECTION 41. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 65, 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 9-17-3-9, AS AMENDED BY P.L.143-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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 **is described by either of the following:**

(1) The beneficiary:

~~(1)~~ **(A)** is named in the certificate; and

~~(2)~~ **(B)** survives the transferor.

(2) The beneficiary:

(A) survives the transferor; and

(B) is entitled to an interest in the vehicle under IC 32-17-14-22 following the death of a beneficiary who:

(i) is named in the certificate; and

(ii) did not survive the transferor.

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

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(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 2. IC 9-31-2-30, AS AMENDED BY P.L.143-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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 **is described by either of the following:**

(1) The beneficiary:

~~(1)~~ **(A)** is named in the certificate; and

~~(2)~~ **(B)** survives the transferor.

(2) The beneficiary:

(A) survives the transferor; and

(B) is entitled to an interest in the watercraft under IC 32-17-14-22 following the death of a beneficiary who:

(i) is named in the certificate; and

(ii) did not survive 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

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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 3. IC 29-1-7-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4.5. Except as provided in section 4 of this chapter, each petition or other document that a personal representative files in the court with:**

(1) a written consent to the petition or other document; or

(2) a written waiver of notice of proceedings in the estate;

must contain a statement that the personal representative has delivered a copy of the petition or other document to each person whose written consent or waiver of notice of proceedings is presented to the court in support of the petition or other document.

SECTION 4. IC 29-1-10-6.5, AS ADDED BY P.L.143-2009, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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~~ **interested person** 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~~ **interested person** 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.~~ **interested persons.** The court may replace the corporate fiduciary with another corporate fiduciary or an individual.

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(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 5. IC 29-3-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Upon petition by any person and after **a** hearing **under IC 29-3-5,** the court may issue, without the appointment of a guardian, any protective order for the benefit of a person who has been adjudicated an incapacitated person or is a minor. ~~under IC 29-3-5.~~

(b) Notice of the filing of a petition under this chapter for the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) Incapacitated persons and minors have the same rights at the hearing on a petition filed under this chapter for the issuance of a protective order as they would have at a hearing for the appointment of a guardian.

(d) The court may issue a protective order concerning an incapacitated person if the court finds that:

(1) the incapacitated person:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the incapacitated person;

(2) the incapacitated person is unable to manage the incapacitated person's property and financial or business affairs effectively; and

(3) the protection sought is necessary.

The court shall make the orders that it considers proper and appropriate to protect the person, business affairs, and property of the incapacitated person.

(e) The court may issue a protective order concerning a minor if the court finds that:

(1) the minor:

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(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the minor; and

(2) the protection sought is necessary.

The court shall make the orders it considers proper and appropriate to protect the person, business affairs, and property of the minor.

(f) If the court finds grounds for a protective order under subsection (d) or (e), it may, without appointing a guardian, declare the person to be a protected person and authorize or ratify any transaction necessary or desirable to meet the needs of the protected person. Protective arrangements include the following:

(1) The payment, delivery, deposit, or retention of property.

(2) The sale, mortgage, lease, or other transfer of property.

(3) The entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and educating a person.

(4) The addition to or establishment of a suitable trust.

SECTION 6. IC 29-3-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:

(1) The name, age, residence, and post office address of the alleged incapacitated person or minor for whom the guardian is sought to be appointed **or the protective order issued.**

(2) The nature of the incapacity.

(3) The approximate value and description of the property of the incapacitated person or minor, including any compensation, pension, insurance, or allowance to which the incapacitated person or minor may be entitled.

(4) If a limited guardianship is sought, the particular limitations requested.

(5) Whether a **protective order has been issued or a** guardian has been appointed or is acting for the incapacitated person or minor in any state.

(6) The residence and post office address of the proposed guardian **or person to carry out the protective order** and the ~~proposed guardian's~~ relationship to the alleged incapacitated person **of:**

(A) the proposed guardian; or

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(B) the person proposed to carry out the protective order.

(7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed **or the protective order is issued.**

(8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed **or the protective order is issued.**

(9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian **or person to carry out the protective order** is acting if the proposed guardian **or person** is an individual.

(10) The reasons the appointment of a guardian **or issuance of a protective order** is sought and the interest of the petitioner in the appointment **or issuance.**

(11) The name and business address of the attorney who is to represent the guardian **or person to carry out the protective order.**

(b) Notice of a petition under this section for the appointment of a guardian **or the issuance of a protective order** and the hearing on the petition shall be given under IC 29-3-6.

(c) After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.

(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:

(1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;

(2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;

(3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or

(4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the

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incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.

(e) A person alleged to be an incapacitated person may present evidence and cross-examine witnesses at the hearing. The issues raised by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition. However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person or minor will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

SECTION 7. IC 29-3-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. A copy of the petition shall be attached to the notice, and the notice must be in substantially the following form:

NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), Indiana, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed **or a protective order should be issued** for (name of alleged incapacitated person or minor). A copy of the petition requesting appointment of a guardian **or for the issuance of a protective order** is attached to this notice.

At the hearing the court will determine whether (name of alleged incapacitated person or minor) is an incapacitated person or minor under Indiana law. This proceeding may substantially affect the rights of (name of alleged incapacitated person or minor).

If the court finds that (name of alleged incapacitated person or minor) is an incapacitated person or minor, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person or minor). The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person or minor) to retain control over certain property and activities. The court may also determine whether a protective order should be entered on behalf of (name of alleged incapacitated person

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or minor).

(Name of alleged incapacitated person) may attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not required. If (name of alleged incapacitated person) attends the hearing, opposes the petition, and is not represented by an attorney, the court may appoint an attorney to represent (name of alleged incapacitated person). The court may, where required, appoint a guardian ad litem to represent (name of alleged incapacitated person or minor) at the hearing.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

_____
(signature of clerk of the court)".

Page 2, between lines 41 and 42, begin a new paragraph and insert:

"SECTION 13. IC 30-5-4-4, AS AMENDED BY P.L.143-2009, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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;

(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:

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(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;~~ **caregiver;**

(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 8. IC 32-17-13-1, AS AMENDED BY P.L.143-2009, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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)~~ **(b)** 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)~~ **(c)** 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)~~ **(d)** A transfer on death transfer completed under IC 32-17-14 is a nonprobate transfer.

SECTION 9. IC 32-17-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) A proceeding under this chapter may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a surviving child, to

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the extent that statutory allowances are affected, or a creditor.

(b) If the personal representative declines or fails to commence a proceeding **within sixty (60) days** after **receiving the** demand, a person making **the** demand may commence the proceeding in the name of the decedent's estate at the expense of the person making the demand and not of the estate.

(c) A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

SECTION 10. IC 32-17-13-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. A proceeding under this chapter must be commenced not later than nine (9) months after the person's death, but a proceeding on behalf of a creditor whose claim was ~~allowed after proceedings challenging disallowance of the claim~~ **timely filed** may be commenced within:

(1) sixty (60) days after final allowance of the claim; **or**

(2) ninety (90) days after demand is made under section 7 of this chapter if the personal representative declines or fails to commence a proceeding after receiving the demand.

SECTION 11. IC 32-17-14-2, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009 (RETROACTIVE)]: 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;

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(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 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.

(f) The provisions of:

(1) section 22 of this chapter; and

(2) section 26(b)(9) of this chapter;

relating to distributions to lineal descendants per stirpes apply to a transfer on death or payable on death transfer created before July 1, 2009.

SECTION 12. IC 32-17-14-3, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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) "Governing instrument" refers to a written instrument agreed to by an owner that establishes the terms and conditions of an ownership in beneficiary form.

~~(3)~~ **(4)** "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

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entirety.

~~(4)~~ **(5)** "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)~~ **(6)** "Owner" refers to a person or persons who have a right to designate the beneficiary of a transfer on death transfer.

~~(6)~~ **(7)** "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)~~ **(8)** "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)~~ **(9)** "Proof of death" means a death certificate or a record or report that is prima facie proof or evidence of an individual's death.

~~(9)~~ **(10)** "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)~~ **(11)** "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

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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)~~ **(12)** "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)~~ **(13)** "Transfer on death deed" means a deed that conveys an interest in real property to a grantee by beneficiary designation.

~~(13)~~ **(14)** "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)~~ **(15)** "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 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.

SECTION 13. IC 32-17-14-7, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) If any of the following are required **by the transferring entity,** 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.

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(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.

SECTION 14. IC 32-17-14-9, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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.

SECTION 15. IC 32-17-14-10, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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

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(2) delivered;

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

SECTION 16. IC 32-17-14-11, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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,~~ **by the owner or owner's legal representative;** 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

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the conveyance establishing the interest. If a conflict exists between the conveyance establishing the 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.

SECTION 17. IC 32-17-14-14, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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

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(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.

SECTION 18. IC 32-17-14-16, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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 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 **or trust** unless the beneficiary designation expressly grants the owner the right to revoke or change the beneficiary designation by a will **or trust.**

(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

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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 **before the death of the owner** 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.

SECTION 19. IC 32-17-14-25, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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.~~ **An election under IC 29-1-3-1 does not apply to a valid transfer on death transfer. In accordance with IC 32-17-13, a transfer on death transfer may be subject to the payment of the surviving spouse and family allowances under IC 29-1-4-1.**

(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

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makes the beneficiary designation is not entitled to any share of the property interest subject to the designation.

SECTION 20. IC 32-17-14-26, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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 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

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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.

(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

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not survive the owner.

(11) If a trustee is designated as a beneficiary and no **affidavit of certification of** trust ~~instrument~~ or probated will creating an express trust is presented to the transferring entity **within the twelve (12) months after the owner's death,** 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 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

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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 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.

SECTION 21. IC 32-17-14-28, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: 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

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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 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.

In addition, the transferee is liable for the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(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; **and**

(3) the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(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:

(1) shall satisfy the debt incurred in an amount sufficient to release any security interest, lien, or other encumbrance on the property; **and**

(2) is liable for the amount of attorney's fees and costs incurred by the rightful transferee in bringing the action in court.

(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

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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.

SECTION 22. IC 32-17.5-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. This article applies to a disclaimer of an interest in or power over property ~~regardless of when the interest or power was~~ created **after June 30, 2003.**

SECTION 23. IC 32-17.5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. This chapter does not limit the right of a person to waive, release, disclaim, or renounce an interest in or power over property under a ~~law~~ **statute** other than this article.

SECTION 24. IC 32-17.5-4-1, AS AMENDED BY P.L.238-2005, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. Except for a disclaimer under IC 32-17.5-5 or IC 32-17.5-6-1, the following rules apply to a disclaimer of an interest in property:

(1) A disclaimer takes effect:

(A) when the instrument creating the interest becomes irrevocable; or

(B) upon the intestate's death if the interest arose under the law of intestate succession.

(2) A disclaimed interest passes according to any provision in the instrument creating the interest:

(A) that provides for the disposition of the interest should the interest be disclaimed; or

(B) that concerns disclaimed interests in general.

(3) If the instrument creating the disclaimed interest does not contain a provision described in subdivision (2), the following rules apply:

(A) If the disclaimant is an individual, the following rules apply:

(i) Except as provided in ~~item~~ **items** (ii) **and (iii),** the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(ii) If, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any

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method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.

(iii) If the disclaimed interest would have passed to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest passes by representation to the descendants of the disclaimant who survive at the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest becomes part of the residue under the instrument creating the disclaimed interest.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) If the disclaimed interest arose under the law of intestate succession, the disclaimed interest passes as if the disclaimant had died immediately before the intestate's death.

(5) Upon the disclaimer of a preceding interest:

(A) a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution; and

(B) a future interest held by the disclaimant is not accelerated in possession or enjoyment.

SECTION 25. IC 32-17.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) **This subsection applies** upon the death of a holder of jointly held property ~~a surviving holder may disclaim, in whole or part, the greater of the following:~~ **only if, during the deceased holder's lifetime, the deceased holder could have unilaterally regained a part of the property attributable to the deceased holder's contribution without consent of any other holder. Another holder may disclaim an amount that may not exceed the amount determined in STEP THREE of the following formula:**

STEP ONE: Determine the amount of the property attributable to the deceased holder's contributions.

~~(1) A fractional share of the property determined by dividing~~

STEP TWO: Determine the quotient of:

(A) one (1); **divided** by

(B) the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates.

STEP THREE: Determine the product of:

(1) the STEP ONE amount; multiplied by

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(2) the STEP TWO quotient.

~~(2) All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.~~

(b) This subsection applies in the case of the death of a holder of jointly held property that is not subject to subsection (a). Another holder may disclaim an amount that may not exceed the amount determined in STEP FOUR of the following formula:

STEP ONE: Determine the value of the total amount of the jointly held property.

STEP TWO: Determine the product of:

(A) the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; multiplied by

(B) the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

STEP THREE: Determine the quotient of:

(A) one (1); divided by

(B) the STEP TWO result.

STEP FOUR: Determine the product of:

(A) the value determined in STEP ONE; multiplied by

(B) the quotient determined in STEP THREE.

~~(b)~~ **(c)** A disclaimer under subsection (a) **or (b)** takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

~~(c)~~ **(d)** An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.".

Page 3, after line 1, begin a new paragraph and insert:

"SECTION 26. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 65 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 65 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-4.1-4-0.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 0.5. (a) No inheritance tax return is required under this chapter unless the total fair market value of the property interests transferred by the decedent to a transferee under a taxable transfer or transfers exceeds the exemption provided to the transferee under IC 6-4.1-3-10 through IC 6-4.1-3-12. For purposes of this section, the fair market value of a property interest is its fair market value as of the appraisal date prescribed by IC 6-4.1-5-1.5.

(b) ~~The department of state revenue shall prescribe the~~ **An** affidavit ~~form that may be used to state that no inheritance tax is due after applying the exemptions under IC 6-4.1-3. The~~ **may be used to state that no inheritance tax is due after applying the exemptions under IC 6-4.1-3. The affidavit must contain the following information:**

(1) The decedent's name and date of death.

(2) The name of each known transferee and the transferee's relationship to the decedent.

(3) The total value of property transferred to each known transferee as a result of the decedent's death.

(4) A statement that the total value of property transferred to each known transferee as a result of the decedent's death is less than the amount of the exemption provided to the transferee under IC 6-4.1-3.

(c) An affidavit **described in subsection (b)** may be:

(1) recorded in the office of the county recorder if the affidavit concerns real property and includes the legal description of the real property in the decedent's estate; or

(2) submitted as required by IC 6-4.1-8-4 if the affidavit concerns personal property.

If consent by the department of state revenue or the appropriate county assessor is required under IC 6-4.1-8-4 for the transfer of personal property, the affidavit must be submitted with a request for a consent to transfer under IC 6-4.1-8-4.

~~(c)~~ **(d)** If consent by the department of state revenue or the appropriate county assessor is required under IC 6-4.1-8-4 before personal property may be transferred and the department of state revenue or the appropriate county assessor consents to a transfer of

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personal property under IC 6-4.1-8-4 after considering an affidavit described in subsection (b), the full value of the personal property may be transferred.

~~(d)~~ **(e)** The department of state revenue or the appropriate county assessor may rely upon an affidavit ~~prescribed by the department of state revenue under~~ **described in** subsection (b) to determine that a transfer will not jeopardize the collection of inheritance tax for purposes of IC 6-4.1-8-4(e).

~~(e)~~ **(f)** It is presumed that no inheritance tax is due and that no inheritance tax return is required if an affidavit described in subsection (b) was:

(1) properly executed; and

(2) recorded in the decedent's county of residence or submitted under IC 6-4.1-8-4.

~~(f)~~ **(g)** Except as provided in subsection ~~(h),~~ **(i),** a lien attached under IC 6-4.1-8-1 to the real property owned by a decedent terminates when an affidavit described in subsection (b) is:

(1) properly executed; and

(2) recorded in the county in which the real property is located.

~~(g)~~ **(h)** Except as provided in subsection ~~(h),~~ **(i),** a lien attached under IC 6-4.1-8-1 to personal property that is owned by the decedent terminates when:

(1) an affidavit described in subsection (b) is properly executed;

(2) the affidavit described in subsection (b) is submitted to the department of state revenue or the appropriate county assessor in conformity with IC 6-4.1-8-4; and

(3) the department of state revenue or the appropriate county assessor consents to the transfer.

However, subdivision (3) does not apply if consent of the department of state revenue or the appropriate county assessor is not required under IC 6-4.1-8-4 before the property may be transferred.

~~(h)~~ **(i)** A lien terminated under subsection ~~(f)~~ **(g)** or ~~(g)~~ **(h)** is reattached to the property under IC 6-4.1-8-1 if the department of state revenue obtains an order that an inheritance tax is owed.

SECTION 2. IC 6-4.1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Except as otherwise provided in section 0.5 of this chapter or in IC 6-4.1-5-8, the personal representative of a resident decedent's estate or the trustee or transferee of property transferred by the decedent shall file an inheritance tax return with the appropriate probate court within nine (9) months after the date of the decedent's death. The person filing the return shall file it under oath on the forms prescribed by the department

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of state revenue. The return shall:

(1) contain a statement of all property interests transferred by the decedent under taxable transfers **known to the person filing the return;**

(2) indicate the fair market value, as of the appraisal date prescribed by IC 6-4.1-5-1.5, of each property interest included in the statement;

(3) contain an itemized list of all inheritance tax deductions claimed with respect to property interests included in the statement;

(4) contain a list which indicates the name and address of each transferee of the property interests included in the statement and which indicates the total value of the property interests transferred to each transferee; and

(5) contain the name and address of the attorney for the personal representative or for the person filing the return.

(b) If the decedent died testate, the person filing the return shall attach a copy of the decedent's will to the return.

SECTION 3. IC 6-4.1-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) Except as otherwise provided in section 0.5 of this chapter, the personal representative of a nonresident decedent's estate or the trustee or transferee of property transferred by the decedent shall file an inheritance tax return with the department of state revenue within nine (9) months after the date of the decedent's death. The person filing the return shall file it under oath on the forms prescribed by the department of state revenue. The return shall:

(1) contain a statement of all property interests transferred by the decedent under taxable transfers **known to the person filing the return;**

(2) indicate the fair market value, as of the appraisal date prescribed by IC 6-4.1-5-1.5, of each property interest included in the statement;

(3) contain an itemized list of all inheritance tax deductions claimed with respect to property interests included in the statement;

(4) contain a list which indicates the name and address of each transferee of the property interests included in the statement and which indicates the total value of the property interests transferred to each transferee; and

(5) contain the name and address of the attorney for the personal representative or for the person filing the return.

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(b) If the decedent died testate, the person filing the return shall attach a copy of the decedent's will to the return.".

Renumber all SECTIONS consecutively.

(Reference is to SB 65 as printed January 20, 2010.)

ZAKAS

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 65, 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 6, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 6. IC 29-1-6-1, AS AMENDED BY P.L.238-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 1, 2009 (RETROACTIVE)]: Sec. 1. In the absence of a contrary intent appearing in the will, wills shall be construed as to real and personal estate in accordance with the rules in this section.

(a) Any estate, right, or interest in land or other things acquired by the testator after the making of the testator's will shall pass as if title was vested in the testator at the time of making of the will.

(b) All devises of real estate shall pass the whole estate of the testator in the premises devised, although there are no words of inheritance or of perpetuity, whether or not at the time of the execution of the will the decedent was the owner of that particular interest in the real estate devised. Such devise shall also pass any interest which the testator may have at the time of the testator's death as vendor under a contract for the sale of such real estate.

(c) A devise of real or personal estate, whether directly or in trust, to the testator's or another designated person's "heirs", "next of kin", "relatives", or "family", or to "the persons thereunto entitled under the intestate laws" or to persons described by words of similar import, shall mean those persons (including the spouse) who would take under the intestate laws if the testator or other designated person were to die intestate at the time when such class is to be ascertained, domiciled in this state, and owning the estate so devised. With respect to a devise which does not take effect at the testator's death, the time when such class is to be ascertained shall be the time when the devise is to take effect in enjoyment.

(d) In construing a will making a devise to a person or persons

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described by relationship to the testator or to another, any person adopted prior to the person's twenty-first birthday before the death of the testator shall be considered the child of the adopting parent or parents and not the child of the natural or previous adopting parents. However, if a natural parent or previous adopting parent marries the adopting parent before the testator's death, the adopted person shall also be considered the child of such natural or previous adopting parent. Any person adopted after the person's twenty-first birthday by the testator shall be considered the child of the testator, but no other person shall be entitled to establish relationship to the testator through such child.

(e) In construing a will making a devise to a person described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the child's mother, and also of the child's father, if, but only if, the child's right to inherit from the child's father is, or has been, established in the manner provided in IC 29-1-2-7.

(f) A will shall not operate as the exercise of a power of appointment which the testator may have with respect to any real or personal estate, unless by its terms the will specifically indicates that the testator intended to exercise the power.

(g) If a devise of real or personal property, not included in the residuary clause of the will, is void, is revoked, or lapses, it shall become a part of the residue, and shall pass to the residuary devisee. Whenever any estate, real or personal, shall be devised to any descendant of the testator, and such devisee shall die during the lifetime of the testator, whether before or after the execution of the will, leaving a descendant who shall survive such testator, such devise shall not lapse, but the property so devised shall vest in the surviving descendant of the devisee as if such devisee had survived the testator and died intestate. The word "descendant", as used in this section, includes children adopted during minority by the testator and by the testator's descendants and includes descendants of such adopted children. "Descendant" also includes children of the mother who are born out of wedlock, and children of the father who are born out of wedlock, if, but only if, such child's right to inherit from such father is, or has been, established in the manner provided in IC 29-1-2-7. This rule applies where the parent is a descendant of the testator as well as where the parent is the testator. Descendants of such children shall also be included.

(h) Except as provided in subsection (m), if a testator in the testator's will refers to a writing of any kind, such writing, whether

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subsequently amended or revoked, as it existed at the time of execution of the will, shall be given the same effect as if set forth at length in the will, if such writing is clearly identified in the will and is in existence both at the time of the execution of the will and at the testator's death.

(i) If a testator devises real or personal property upon such terms that the testator's intentions with respect to such devise can be determined at the testator's death only by reference to a fact or an event independent of the will, such devise shall be valid and effective if the testator's intention can be clearly ascertained by taking into consideration such fact or event even though occurring after the execution of the will.

(j) If a testator devises or bequeaths property to be added to a trust or trust fund which is clearly identified in the testator's will and which trust is in existence at the time of the death of the testator, such devise or bequest shall be valid and effective. Unless the will provides otherwise, the property so devised or bequeathed shall be subject to the terms and provisions of the instrument or instruments creating or governing the trust or trust fund, including any amendments or modifications in writing made at any time before or after the execution of the will and before or after the death of the testator.

(k) If a testator devises securities in a will and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(1) Securities of the same organization acquired because of an action initiated by the organization or any successor, related, or acquiring organization, excluding any security acquired by exercise of purchase options.

(2) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(3) Securities of the same organization acquired as a result of a plan of reinvestment.

Distributions in cash before death with respect to a described security are not part of the devise.

(l) For purposes of this subsection, "incapacitated principal" means a principal who is an incapacitated person. An adjudication of incapacity before death is not necessary. The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal. If:

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(1) specifically devised property is sold or mortgaged by; or

(2) a condemnation award, insurance proceeds, or recovery for injury to specifically devised property are paid to;

a guardian or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(m) A written statement or list that:

(1) complies with this subsection; and

(2) is referred to in a will;

may be used to dispose of items of tangible personal property, other than property used in a trade or business, not otherwise specifically disposed of by the will. To be admissible under this subsection as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the beneficiaries with reasonable certainty. The writing may be prepared before or after the execution of the will. The writing may be altered by the testator after the writing is prepared. The writing may have no significance apart from the writing's effect on the dispositions made by the will. If more than one (1) otherwise effective writing exists, then, to the extent of a conflict among the writings, the provisions of the most recent writing revoke the inconsistent provisions of each earlier writing.

(n) A will of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:

(1) the unified credit;

(2) the estate tax exemption;

(3) the applicable credit amount;

(4) the applicable exclusion amount;

(5) the generation-skipping transfer tax exemption;

(6) the GST exemption;

(7) the marital deduction;

(8) the maximum marital deduction;

(9) the unlimited marital deduction;

(10) the inclusion ratio;

(11) the applicable fraction;

(12) any section of the Internal Revenue Code:

(A) relating to the:

(i) federal estate tax; or

(ii) generation-skipping transfer tax; and

(B) that measures a share of:

(i) an estate; or

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(ii) a trust;

based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer tax law; or

(13) a provision of federal estate tax or generation-skipping transfer tax law that is similar to subdivisions (1) through (12);

refers to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2009.

(o) Subsection (n) does not apply to a will:

(1) that is executed or amended after December 31, 2009; or

(2) that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable federal estate or generation-skipping transfer tax.

(p) If the federal estate or generation-skipping transfer tax becomes effective before January 1, 2011, the reference to January 1, 2011, in subsection (n) shall refer instead to the first date on which the tax becomes legally effective.

(q) Within three (3) months following the latest to occur of the:

(1) decedent's death;

(2) fiduciary's appointment; or

(3) enactment of this subsection;

the personal representative under a will to which subsection (n) applies shall give written notice regarding the affected beneficiary of the right to commence a proceeding under subsection (r) and to the present income beneficiary of any trust created under the will, of the existence of this statute, and the beneficiary's right to commence a proceeding under subsection (r).

(r) The personal representative of an affected beneficiary under a will described in subsection (n) may initiate a proceeding to determine whether the decedent intended that a formula described in subsection (n) be construed with respect to the law as it existed after December 31, 2009. A proceeding under this subsection must be commenced within nine (9) months after the death of the testator or grantor.".

Page 13, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 13. IC 30-4-2.1-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE DECEMBER 1, 2009 (RETROACTIVE)]: **Sec. 13. (a) A trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:**

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(1) the unified credit;
(2) the estate tax exemption;
(3) the applicable credit amount;
(4) the applicable exclusion amount;
(5) the generation-skipping transfer tax exemption;
(6) the GST exemption;
(7) the marital deduction;
(8) the maximum marital deduction;
(9) the unlimited marital deduction;
(10) the inclusion ratio;
(11) the applicable fraction;
(12) any section of the Internal Revenue Code:
(A) relating to the:
(i) federal estate tax; or
(ii) generation-skipping transfer tax; and
(B) that measures a share of trust;
based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer tax law; or
(13) a provision of federal estate tax or generation-skipping transfer tax law that is similar to subdivisions (1) through (12);
refers to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents on December 31, 2009.

(b) Subsection (a) does not apply to a trust:
(1) that is executed or amended after December 31, 2009; or
(2) that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then applicable federal estate or generation-skipping transfer tax.

(c) If the federal estate or generation-skipping transfer tax becomes effective before January 1, 2011, the reference to January 1, 2011, in subsection (a) shall refer instead to the first date on which the tax becomes legally effective.

(d) Within three (3) months following the latest to occur of the:
(1) decedent's death;
(2) trustee's appointment; or
(3) enactment of this subsection;
the trustee of a trust to which subsection (a) applies shall give written notice regarding the beneficiary's right to commence a proceeding under subsection (e) to any beneficiary having a right to trust income or principal under subsection (a), of the existence

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of this statute, and of the beneficiary's right to commence a proceeding under subsection (e).

(e) The trustee of any beneficiary under the trust having a present right to income or principal of the trust may initiate a proceeding to determine whether the decedent intended that a formula described in subsection (a) be construed with respect to the law as it existed after December 31, 2009. A proceeding under this subsection must be commenced within nine (9) months after the death of the settlor.

SECTION 14. IC 30-4-2.1-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 14. (a) The following rules apply only to discretionary interests:**

(1) A discretionary interest is a mere expectancy that is neither a property interest nor an enforceable right.

(2) A creditor may not:

(A) require a trustee to exercise the trustee's discretion to make a distribution; or

(B) cause a court to foreclose a discretionary interest.

(3) A court may review a trustee's distribution discretion only if the trustee acts dishonestly or with an improper motive.

(b) Words such as sole, absolute, uncontrolled, or unfettered discretion dispense with the trustee acting reasonably.

(c) Absent express language to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, a trustee may, in the trustee's discretion, distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary to the exclusion of the other beneficiaries.

(d) Regardless of whether a beneficiary has any outstanding creditors, a trustee of a discretionary interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary. A trustee is not liable to a creditor for paying the expenses of a beneficiary who holds a discretionary interest.

SECTION 15. IC 30-4-2.1-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 15. If a party challenges a settlor or a beneficiary's influence over a trust, none of the following factors, alone or in combination, may be considered dominion and control over a trust:**

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(1) A beneficiary serving as a trustee or co-trustee.

(2) The settlor or beneficiary holds an unrestricted power to remove or replace a trustee.

(3) The settlor or a beneficiary:

(A) is a trust administrator, a general partner of a partnership, a manager of a limited liability company, or an officer of a corporation; or

(B) has any other managerial function in any other entity; that is owned in whole or in part by the trust.

(4) A person related by blood or adoption to a settlor or beneficiary is appointed as trustee.

(5) An agent, accountant, attorney, financial adviser, or friend of the settlor or a beneficiary is appointed as trustee.

(6) A business associate of the settlor or a beneficiary is appointed as trustee.

(7) A beneficiary holds any power of appointment over part or all of the trust property.

(8) The settlor holds a power to substitute property of equivalent value.

(9) The trustee may loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security.

(10) The trust contains broad purposes or highly discretionary distribution language.

(11) The trust has only one (1) beneficiary eligible for current distributions.

SECTION 16. IC 30-4-2.1-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 16. Absent clear and convincing evidence otherwise, a settlor of an irrevocable trust may not be considered the alter ego of a trustee. The following factors, alone or in combination, are not sufficient evidence to conclude that the settlor controls a trustee or is the alter ego of the trustee:**

(1) Any combination of the factors listed in section 15 of this chapter.

(2) Isolated occurrences of the settlor signing checks, making disbursements, or executing other documents related to the trust as a trustee when the settlor is, in fact, not a trustee.

(3) Requesting a trustee to make distributions on behalf of a beneficiary.

(4) Requesting a trustee to hold, purchase, or sell any trust property.

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SECTION 17. IC 30-4-2.1-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 17. (a) A creditor may not reach, exercise, or otherwise acquire an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee. A power described in this subsection is personal to a beneficiary or other person and may not be exercised by the person's creditors. A court may not direct a person to exercise the power.**

(b) A creditor may not:

(1) reach an interest of a beneficiary who is also a trustee or co-trustee; or

(2) otherwise compel a distribution to a beneficiary who is also a trustee or co-trustee.

(c) A court may not foreclose against an interest held by a beneficiary described in subsection (b).

SECTION 18. IC 30-4-3-35 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 35. (a) As used in this section, "joint matrimonial trust" means a single inter vivos trust established under this section by settlors who are related as husband and wife.**

(b) As used in this section, "matrimonial property" means real property that:

(1) is subject to a written election to treat the property as matrimonial property under this section; and

(2) is owned by a matrimonial trust.

(c) As used in this section, "matrimonial trust" means a trust established under this section to own matrimonial property.

(d) As used in this section, "separate matrimonial trust" means a separate trust that is also a matrimonial trust.

(e) As used in this section, "separate trust" means a trust established by one (1) individual.

(f) A matrimonial trust may be established:

(1) jointly by a husband and wife; or

(2) in two (2) or more separate trusts.

(g) A husband and wife may elect to treat real property as matrimonial property with a written statement of the election:

(1) in an instrument or instruments conveying the real property to a matrimonial trust or trusts; or

(2) in a separate writing that must be recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or

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instruments that convey the real property to a matrimonial trust or trusts.

(h) A guardian of a husband and wife may make an election under this section:

(1) without the approval of the court if the guardian has unlimited powers under IC 29-3-8-4; and

(2) with the approval of the court in all other cases.

(i) An attorney in fact of a husband and wife may make an election under this section under the powers conferred upon the attorney in fact by IC 30-5-5-2 if the power of attorney is recorded in the county where the real property is situated and indexed in the records of the county recorder's office to the instrument or instruments that convey the real property to a matrimonial trust or trusts.

(j) An interest in matrimonial property is not severable during the marriage of the husband and wife unless:

(1) both the husband and wife join in the severance in writing; or

(2) a third party owns and forecloses a mortgage or other lien against the interests of both the husband and wife in the matrimonial property.

(k) Notwithstanding any other provision of this section, the legal rights of a lienholder that exist at the time of an election to treat the real property subject to the lien as matrimonial property may not be subject to a severance described in subsection (j) without the lienholder's written consent.

(l) A matrimonial trust established by an individual continues to be a matrimonial trust after the death of the settlor if the deceased settlor's separate trust provides to the surviving spouse:

(1) a life estate;

(2) an interest that qualifies for a deduction from the gross estate of the decedent under Section 2056 of the Internal Revenue Code regardless of whether an election is made to qualify the interest for the deduction; or

(3) in some respect the current right to occupy or receive rent, royalties, or other kinds of income with respect to the matrimonial property.

(m) A separate matrimonial trust ceases to be a matrimonial trust upon the termination of payments to the surviving spouse as a result of the surviving spouse's death or the surviving spouse's disclaimer of all interests in the separate matrimonial trust.

(n) A joint matrimonial trust ceases to be a matrimonial trust

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upon the death of one (1) of the settlors.

(o) A matrimonial trust ceases to be a matrimonial trust upon the dissolution of the marriage of the settlors.

(p) A husband and wife may revoke a matrimonial trust by together executing a writing expressing the revocation.

SECTION 19. IC 30-4-3-36 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 36. (a) Unless a trust expressly provides otherwise, a trustee who has absolute power under the terms of a trust (referred to in this section as the "first trust") to invade the principal of the trust to make distributions to or for the benefit of one (1) or more persons may instead exercise the power by appointing all or part of the principal of the first trust in favor of a trustee of another trust (referred to in this section as the "second trust") for the benefit of one (1) or more persons under the same trust instrument or under a different trust instrument as long as:**

(1) the beneficiaries of the second trust are the same as the beneficiaries of the first trust;

(2) the second trust does not reduce any income, annuity, or unitrust interest in the assets of the first trust; and

(3) if any contributions to the first trust qualified for a marital or charitable deduction for purposes of the federal income, gift, or estate taxes, the second trust does not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for a deduction or reduced the amount of a deduction.

(b) For purposes of this section, an absolute power to invade principal includes a power to invade principal that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support regardless of whether the term "absolute" is used.

(c) The exercise of a power to invade principal under subsection (a) must be by an instrument that is:

(1) in writing;

(2) signed and acknowledged by the trustee; and

(3) filed with the records of the first trust.

(d) The exercise of a power to invade principal under subsection (a) is considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate. The exercise of the power does not extend the time at which the permissible period of the rule against perpetuities begins and the law that

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determines the permissible period of the rule against perpetuities of the first trust.

(e) The trustee shall notify in writing all qualified beneficiaries of the first trust at least sixty (60) days before the effective date of the trustee's exercise of the power to invade principal under subsection (a) of the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power satisfies the trustee's notice obligation under this subsection. If all qualified beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee's power to invade principal may be exercised immediately. The trustee's notice under this subsection does not limit the right of any beneficiary to object to the exercise of the trustee's power to invade principal, except as otherwise provided by this article.

(f) The exercise of the power to invade principal under subsection (a) is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amending or revoking the trust.

(g) This section is not intended to create or imply a duty to exercise a power to invade principal. No inference of impropriety may be made as a result of a trustee not exercising the power to invade principal conferred under subsection (a).

(h) This section may not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust, under any other provision of this article or any other statute, or under common law.

SECTION 20. IC 30-4-3-37 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 37. (a) If a beneficiary of a trust cannot be found after a reasonable search, the trustee may file a petition setting out the facts of the unsuccessful search. The court may order the trustee to sell the shares of the trust to which the beneficiary is entitled and to pay the proceeds to the clerk of the court. The clerk shall hold the proceeds for the use and benefit of the person or persons thereafter determined by law to be entitled to the proceeds.**

(b) If a trustee pays any money to the clerk of the court under this section, the trustee shall file a receipt with the court. Filing the receipt is sufficient to discharge the trustee in the same manner and to the same extent as though the trustee had paid or distributed the appropriate share of the trust to the unlocated beneficiary.

(c) This section does not apply to stocks, dividends, capital

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credits, patronage, refunds, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural telephone cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-12-1.".

Page 20, line 12, strike "makes" and insert "**records**".

Page 20, line 13, strike "conveyance" and insert "**recording the transfer on death deed**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 65 as reprinted January 22, 2010.)

LAWSON L, Chair

Committee Vote: yeas 12, nays 0.

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