

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:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 9-17-3-9, AS AMENDED BY P.L.143-2009,
4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2010]: Sec. 9. (a) An individual whose certificate of title for
6 a vehicle indicates that the individual is the sole owner of the vehicle
7 may create an interest in the vehicle that is transferrable on the death
8 of the individual by obtaining a certificate of title conveying the
9 interest in the vehicle to one (1) or more named individuals as transfer
10 on death beneficiaries.
11 (b) Subject to subsection (e), an interest in a vehicle transferred
12 under this section vests upon the death of the transferor.
13 (c) A certificate of title that is:
14 (1) worded in substance as "A.B. transfers on death to C.D."; and
15 (2) signed by the transferor;
16 is a good and sufficient conveyance on the death of the transferor to the
17 transferee.
18 (d) A certificate of title obtained under this section is not required
19 to be:
20 (1) supported by consideration; or
21 (2) delivered to the named transfer on death beneficiary;

1 to be effective.

2 (e) Upon the death of an individual conveying an interest in a
3 vehicle in a certificate of title obtained under this section, the interest
4 in the vehicle is transferred to each beneficiary who **is described by**
5 **either of the following:**

6 (1) **The beneficiary:**

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

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

9 (2) **The beneficiary:**

10 **(A) survives the transferor; and**

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

13 **(i) is named in the certificate; and**

14 **(ii) did not survive the transferor.**

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

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

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

23 SECTION 2. IC 9-31-2-30, AS AMENDED BY P.L.143-2009,
24 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2010]: Sec. 30. (a) An individual whose certificate of title for
26 a watercraft indicates that the individual is the sole owner of the
27 watercraft may create an interest in the watercraft that is transferrable
28 on the death of the individual by obtaining a certificate of title
29 conveying the interest in the watercraft to one (1) or more named
30 individuals as transfer on death beneficiaries.

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

33 (c) A certificate of title that is:

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

35 (2) signed by the transferor;

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

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

40 (1) supported by consideration; or

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

42 to be effective.

1 (e) Upon the death of an individual conveying an interest in a
 2 watercraft in a certificate of title obtained under this section, the
 3 interest in the watercraft is transferred to each beneficiary who **is**
 4 **described by either of the following:**

5 **(1) The beneficiary:**

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

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

8 **(2) The beneficiary:**

9 **(A) survives the transferor; and**

10 **(B) is entitled to an interest in the watercraft under**

11 **IC 32-17-14-22 following the death of a beneficiary who:**

12 **(i) is named in the certificate; and**

13 **(ii) did not survive the transferor.**

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

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

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

22 SECTION 3. IC 29-1-7-4.5 IS ADDED TO THE INDIANA CODE
 23 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 24 1, 2010]: **Sec. 4.5. Except as provided in section 4 of this chapter,**
 25 **each petition or other document that a personal representative files**
 26 **in the court with:**

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

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

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

33 SECTION 4. IC 29-1-10-6.5, AS ADDED BY P.L.143-2009,
 34 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2010]: Sec. 6.5. (a) This section does not apply to the removal
 36 of a personal representative under section 6 of this chapter.

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

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

1 decedent's death.

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

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

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

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

12 (d) The court may remove the corporate fiduciary if the court
13 determines, after a hearing, that the removal is in the best interests of
14 all ~~the beneficiaries of the will:~~ **interested persons**. The court may
15 replace the corporate fiduciary with another corporate fiduciary or an
16 individual.

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

21 (1) a corporate fiduciary; or

22 (2) a corporation controlling a corporate fiduciary.

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

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

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

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

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

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

- 1 (1) the incapacitated person:
- 2 (A) owns property or has income requiring management or
- 3 protection that cannot otherwise be provided;
- 4 (B) has or may have financial or business affairs that may be
- 5 jeopardized or impaired; or
- 6 (C) has property that needs to be managed to provide for the
- 7 support or protection of the incapacitated person;
- 8 (2) the incapacitated person is unable to manage the incapacitated
- 9 person's property and financial or business affairs effectively; and
- 10 (3) the protection sought is necessary.

11 The court shall make the orders that it considers proper and appropriate

12 to protect the person, business affairs, and property of the incapacitated

13 person.

14 (e) The court may issue a protective order concerning a minor if the

15 court finds that:

- 16 (1) the minor:
- 17 (A) owns property or has income requiring management or
- 18 protection that cannot otherwise be provided;
- 19 (B) has or may have financial or business affairs that may be
- 20 jeopardized or impaired; or
- 21 (C) has property that needs to be managed to provide for the
- 22 support or protection of the minor; and
- 23 (2) the protection sought is necessary.

24 The court shall make the orders it considers proper and appropriate to

25 protect the person, business affairs, and property of the minor.

26 (f) If the court finds grounds for a protective order under subsection

27 (d) or (e), it may, without appointing a guardian, declare the person to

28 be a protected person and authorize or ratify any transaction necessary

29 or desirable to meet the needs of the protected person. Protective

30 arrangements include the following:

- 31 (1) The payment, delivery, deposit, or retention of property.
- 32 (2) The sale, mortgage, lease, or other transfer of property.
- 33 (3) The entry into an annuity contract, a contract for life care, a
- 34 deposit contract, or a contract for training and educating a person.
- 35 (4) The addition to or establishment of a suitable trust.

36 SECTION 6. IC 29-3-5-1 IS AMENDED TO READ AS FOLLOWS

37 [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) Any person may file a petition

38 for the appointment of a person to serve as guardian for an

39 incapacitated person or minor under this chapter or to have a protective

40 order issued under IC 29-3-4. The petition must state the following:

- 41 (1) The name, age, residence, and post office address of the
- 42 alleged incapacitated person or minor for whom the guardian is

- 1 sought to be appointed **or the protective order issued.**
- 2 (2) The nature of the incapacity.
- 3 (3) The approximate value and description of the property of the
- 4 incapacitated person or minor, including any compensation,
- 5 pension, insurance, or allowance to which the incapacitated
- 6 person or minor may be entitled.
- 7 (4) If a limited guardianship is sought, the particular limitations
- 8 requested.
- 9 (5) Whether a **protective order has been issued or** a guardian
- 10 has been appointed or is acting for the incapacitated person or
- 11 minor in any state.
- 12 (6) The residence and post office address of the proposed
- 13 guardian **or person to carry out the protective order** and the
- 14 ~~proposed guardian's~~ relationship to the alleged incapacitated
- 15 person **of:**
- 16 (A) **the proposed guardian; or**
- 17 (B) **the person proposed to carry out the protective order.**
- 18 (7) The names and addresses, as far as known or as can
- 19 reasonably be ascertained, of the persons most closely related by
- 20 blood or marriage to the person for whom the guardian is sought
- 21 to be appointed **or the protective order is issued.**
- 22 (8) The name and address of the person or institution having the
- 23 care and custody of the person for whom the guardian is sought
- 24 to be appointed **or the protective order is issued.**
- 25 (9) The names and addresses of any other incapacitated persons
- 26 or minors for whom the proposed guardian **or person to carry**
- 27 **out the protective order** is acting if the proposed guardian **or**
- 28 **person** is an individual.
- 29 (10) The reasons the appointment of a guardian **or issuance of a**
- 30 **protective order** is sought and the interest of the petitioner in the
- 31 appointment **or issuance.**
- 32 (11) The name and business address of the attorney who is to
- 33 represent the guardian **or person to carry out the protective**
- 34 **order.**
- 35 (b) Notice of a petition under this section for the appointment of a
- 36 guardian **or the issuance of a protective order** and the hearing on the
- 37 petition shall be given under IC 29-3-6.
- 38 (c) After the filing of a petition, the court shall set a date for hearing
- 39 on the issues raised by the petition. Unless an alleged incapacitated
- 40 person is already represented by counsel, the court may appoint an
- 41 attorney to represent the incapacitated person.
- 42 (d) A person alleged to be an incapacitated person must be present

1 at the hearing on the issues raised by the petition and any response to
2 the petition unless the court determines by evidence that:

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

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

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

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

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

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

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

37 NOTICE

38 TO: (name and address of person receiving notice)

39 On (date of hearing) at (time of hearing) in (place of hearing) at
40 (city), Indiana, the (name and address of court) will hold a hearing to
41 determine whether a guardian should be appointed **or a protective**
42 **order should be issued** for (name of alleged incapacitated person or

1 minor). A copy of the petition requesting appointment of a guardian **or**
 2 **for the issuance of a protective order** is attached to this notice.

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

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

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

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

30 _____
 31 (signature of clerk of the court)".

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

33 "SECTION 13. IC 30-5-4-4, AS AMENDED BY P.L.143-2009,
 34 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2010]: Sec. 4. (a) Except as stated otherwise in the power of
 36 attorney, an attorney in fact fails to serve or ceases to serve when:

- 37 (1) the attorney in fact dies;
 38 (2) the attorney in fact resigns;
 39 (3) the attorney in fact is adjudged incapacitated by a court;
 40 (4) the attorney in fact cannot be located upon reasonable inquiry;
 41 (5) the attorney in fact, if at one time the principal's spouse,
 42 legally is no longer the principal's spouse; or

1 (6) a physician familiar with the condition of the current attorney
 2 in fact certifies in writing to the immediate successor attorney in
 3 fact that the current attorney in fact is unable to transact a
 4 significant part of the business required under the power of
 5 attorney.

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

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

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

16 (1) to:

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

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

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

21 (A) the principal's ~~care giver~~; **caregiver**;

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

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

26 SECTION 8. IC 32-17-13-1, AS AMENDED BY P.L.143-2009,
 27 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2010]: Sec. 1. (a) As used in this chapter, "nonprobate
 29 transfer" means a valid transfer, effective at death, by a transferor:

30 (1) whose last domicile was in Indiana; and

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

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

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

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

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

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

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

- 8 (1) the motor vehicle under IC 9-17-2-2(b); or
- 9 (2) the watercraft as required by IC 9-31-2-16(a)(1)(C).

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

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

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

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

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

- 32 **(1) sixty (60) days after final allowance of the claim; or**
- 33 **(2) ninety (90) days after demand is made under section 7 of**
 34 **this chapter if the personal representative declines or fails to**
 35 **commence a proceeding after receiving the demand.**

36 SECTION 11. IC 32-17-14-2, AS ADDED BY P.L.143-2009,
 37 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2009 (RETROACTIVE)]: Sec. 2. (a) Except as provided
 39 elsewhere in this chapter, this chapter applies to a transfer on death
 40 security, transfer on death securities account, and pay on death account
 41 created before July 1, 2009, unless the application of this chapter
 42 would:

- 1 (1) adversely affect a right given to an owner or beneficiary;
- 2 (2) give a right to any owner or beneficiary that the owner or
- 3 beneficiary was not intended to have when the transfer on death
- 4 security, transfer on death securities account, or pay on death
- 5 account was created;
- 6 (3) impose a duty or liability on any person that was not intended
- 7 to be imposed when the transfer on death security, transfer on
- 8 death securities account, or pay on death account was created; or
- 9 (4) relieve any person from any duty or liability imposed:
- 10 (A) by the terms of the transfer on death security, transfer on
- 11 death securities account, or pay on death account; or
- 12 (B) under prior law.
- 13 (b) Subject to section 32 of this chapter, this chapter applies to a
- 14 transfer on death transfer if at the time the owner designated the
- 15 beneficiary:
- 16 (1) the owner was a resident of Indiana;
- 17 (2) the property subject to the beneficiary designation was
- 18 situated in Indiana;
- 19 (3) the obligation to pay or deliver arose in Indiana;
- 20 (4) the transferring entity was a resident of Indiana or had a place
- 21 of business in Indiana; or
- 22 (5) the transferring entity's obligation to make the transfer was
- 23 accepted in Indiana.
- 24 (c) ~~Except for section 24 of this chapter,~~ This chapter does not apply
- 25 to property, money, or benefits paid or transferred at death under a life
- 26 or accidental death insurance policy, annuity, contract, plan, or other
- 27 product sold or issued by a life insurance company unless the
- 28 provisions of this chapter are incorporated into the policy or beneficiary
- 29 designation in whole or in part by express reference.
- 30 (d) ~~Except for section 24 of this chapter,~~ This chapter does not apply
- 31 to a transfer on death transfer if the beneficiary designation or an
- 32 applicable law expressly provides that this chapter does not apply to the
- 33 transfer.
- 34 (e) Subject to IC 9-17-3-9(h) and IC 9-31-2-30(h), this chapter
- 35 applies to a beneficiary designation for the transfer on death of a motor
- 36 vehicle or a watercraft.
- 37 **(f) The provisions of:**
- 38 **(1) section 22 of this chapter; and**
- 39 **(2) section 26(b)(9) of this chapter;**
- 40 **relating to distributions to lineal descendants per stirpes apply to**
- 41 **a transfer on death or payable on death transfer created before**
- 42 **July 1, 2009.**

1 SECTION 12. IC 32-17-14-3, AS ADDED BY P.L.143-2009,
 2 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2010]: Sec. 3. The following definitions apply throughout this
 4 chapter:

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

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

11 **(3) "Governing instrument" refers to a written instrument**
 12 **agreed to by an owner that establishes the terms and**
 13 **conditions of an ownership in beneficiary form.**

14 ~~(3)~~ (4) "Joint owners" refers to persons who hold property as joint
 15 tenants with a right of survivorship. However, the term does not
 16 include a husband and wife who hold property as tenants by the
 17 entirety.

18 ~~(4)~~ (5) "LDPS" means an abbreviation of lineal descendants per
 19 stirpes, which may be used in a beneficiary designation to
 20 designate a substitute beneficiary as provided in section 22 of this
 21 chapter.

22 ~~(5)~~ (6) "Owner" refers to a person or persons who have a right to
 23 designate the beneficiary of a transfer on death transfer.

24 ~~(6)~~ (7) "Ownership in beneficiary form" means holding property
 25 under a registration in beneficiary form or other written
 26 instrument that:

27 (A) names the owner of the property;

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

30 (C) designates the beneficiary.

31 ~~(7)~~ (8) "Person" means an individual, a sole proprietorship, a
 32 partnership, an association, a fiduciary, a trustee, a corporation,
 33 a limited liability company, or any other business entity.

34 ~~(8)~~ (9) "Proof of death" means a death certificate or a record or
 35 report that is prima facie proof or evidence of an individual's
 36 death.

37 ~~(9)~~ (10) "Property" means any present or future interest in real
 38 property, intangible personal property (as defined in
 39 IC 6-4.1-1-5), or tangible personal property (as defined in
 40 IC 6-4.1-1-13). The term includes:

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

42 (B) a right to direct or receive payment of money or other

- 1 benefits due under a contract, account agreement, deposit
 2 agreement, employment contract, compensation plan, pension
 3 plan, individual retirement plan, employee benefit plan, or
 4 trust or by operation of law;
 5 (C) a right to receive performance remaining due under a
 6 contract;
 7 (D) a right to receive payment under a promissory note or a
 8 debt maintained in a written account record;
 9 (E) rights under a certificated or uncertificated security;
 10 (F) rights under an instrument evidencing ownership of
 11 property issued by a governmental agency; and
 12 (G) rights under a document of title (as defined in
 13 IC 26-1-1-201).

14 ~~(10)~~ **(11)** "Registration in beneficiary form" means titling of an
 15 account record, certificate, or other written instrument that:

- 16 (A) provides evidence of ownership of property in the name of
 17 the owner;
 18 (B) directs ownership of the property to be transferred upon
 19 the death of the owner to the designated beneficiary; and
 20 (C) designates the beneficiary.

21 ~~(11)~~ **(12)** "Security" means a share, participation, or other interest
 22 in property, in a business, or in an obligation of an enterprise or
 23 other issuer. The term includes a certificated security, an
 24 uncertificated security, and a security account.

25 ~~(12)~~ **(13)** "Transfer on death deed" means a deed that conveys an
 26 interest in real property to a grantee by beneficiary designation.

27 ~~(13)~~ **(14)** "Transfer on death transfer" refers to a transfer of
 28 property that takes effect upon the death of the owner under a
 29 beneficiary designation made under this chapter.

30 ~~(14)~~ **(15)** "Transferring entity" means a person who:

- 31 (A) owes a debt or is obligated to pay money or benefits;
 32 (B) renders contract performance;
 33 (C) delivers or conveys property; or
 34 (D) changes the record of ownership of property on the books,
 35 records, and accounts of an enterprise or on a certificate or
 36 document of title that evidences property rights.

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

1 SECTION 13. IC 32-17-14-7, AS ADDED BY P.L.143-2009,
 2 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2010]: Sec. 7. (a) If any of the following are required **by the**
 4 **transferring entity**, an agreement between the owner and the
 5 transferring entity is necessary to carry out a transfer on death transfer,
 6 which may be made in accordance with the rules, terms, and conditions
 7 set forth in the agreement:

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

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

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

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

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

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

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

27 SECTION 14. IC 32-17-14-9, AS ADDED BY P.L.143-2009,
 28 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2010]: Sec. 9. (a) Except as provided in subsection (c), a
 30 beneficiary designation that satisfies the requirements of subsection
 31 (b):

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

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

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

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

38 (1) executed; and

39 (2) delivered;

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

41 (c) A transferring entity shall make a transfer described in
 42 subsection (a)(3) unless there is clear and convincing evidence of the

1 owner's different intention at the time the beneficiary designation was
2 created.

3 SECTION 15. IC 32-17-14-10, AS ADDED BY P.L.143-2009,
4 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2010]: Sec. 10. (a) A written assignment of a contract right
6 that:

7 (1) assigns the right to receive any performance remaining due
8 under the contract to an assignee designated by the owner; and
9 (2) expressly states that the assignment does not take effect until
10 the death of the owner;

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

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

16 (1) executed; and
17 (2) delivered;

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

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

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

25 SECTION 16. IC 32-17-14-11, AS ADDED BY P.L.143-2009,
26 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2010]: Sec. 11. (a) A transfer on death deed transfers the
28 interest provided to the beneficiary if the transfer on death deed is:

29 (1) executed ~~in proper form~~, **by the owner or owner's legal**
30 **representative**; and

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

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

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

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

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

42 (1) If the owner's interest in the real property is as a tenant by the

- 1 entirety, the conveyance is inoperable and void unless the other
2 spouse joins in the conveyance.
- 3 (2) If the owner's interest in the real property is as a joint tenant
4 with rights of survivorship, the conveyance severs the joint
5 tenancy and the cotenancy becomes a tenancy in common.
- 6 (3) If the owner's interest in the real property is as a joint tenant
7 with rights of survivorship and the property is subject to a
8 beneficiary designation, a conveyance of any joint owner's interest
9 has no effect on the original beneficiary designation for the
10 nonsevering joint tenant.
- 11 (4) If the owner's interest is as a tenant in common, the owner's
12 interest passes to the beneficiary as a transfer on death transfer.
- 13 (5) If the owner's interest is a life estate determined by the owner's
14 life, the conveyance is inoperable and void.
- 15 (6) If the owner's interest is any other interest, the interest passes
16 in accordance with this chapter and the terms and conditions of
17 the conveyance establishing the interest. If a conflict exists
18 between the conveyance establishing the interest and this chapter,
19 the terms and conditions of the conveyance establishing the
20 interest prevail.
- 21 (f) A beneficiary designation in a transfer on death deed may be
22 worded in substance as "(insert owner's name) conveys and warrants
23 (or quitclaims) to (insert owner's name), TOD to (insert beneficiary's
24 name)". This example is not intended to be exhaustive.
- 25 (g) A transfer on death deed using the phrase "pay on death to" or
26 the abbreviation "POD" may not be construed to require the liquidation
27 of the real property being transferred.
- 28 (h) This section does not preclude other methods of conveying real
29 property that are permitted by law and have the effect of postponing
30 enjoyment of an interest in real property until after the death of the
31 owner. This section applies only to transfer on death deeds and does
32 not invalidate any deed that is otherwise effective by law to convey title
33 to the interest and estates provided in the deed.
- 34 SECTION 17. IC 32-17-14-14, AS ADDED BY P.L.143-2009,
35 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2010]: Sec. 14. (a) Property may be held or registered in
37 beneficiary form by including in the name in which the property is held
38 or registered a direction to transfer the property on the death of the
39 owner to a beneficiary designated by the owner.
- 40 (b) Property is registered in beneficiary form by showing on the
41 account record, security certificate, or instrument evidencing
42 ownership of the property:

- 1 (1) the name of the owner and, if applicable, the estate by which
 2 two (2) or more joint owners hold the property; and
 3 (2) an instruction substantially similar in form to "transfer on
 4 death to (insert name of beneficiary)".

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

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

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

- 15 (1) the property is registered in beneficiary form before the death
 16 of the owner; or
 17 (2) the transfer on death direction is delivered ~~in proper form~~
 18 to the transferring entity before the owner's death.

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

- 24 (1) regularly made by the owner;
 25 (2) accepted by the transferring entity; and
 26 (3) not revoked or changed before the owner's death.

27 SECTION 18. IC 32-17-14-16, AS ADDED BY P.L.143-2009,
 28 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2010]: Sec. 16. (a) A beneficiary designation may be revoked
 30 or changed during the lifetime of the owner.

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

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

42 (d) A revocation or change of a beneficiary designation involving

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

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

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

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

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

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

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

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

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

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

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

32 SECTION 19. IC 32-17-14-25, AS ADDED BY P.L.143-2009,
33 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2010]: Sec. 25. (a) ~~No law intended to protect a spouse or~~
35 ~~child from disinheritance by the will of a testator applies to a transfer~~
36 ~~on death transfer. An election under IC 29-1-3-1 does not apply to~~
37 ~~a valid transfer on death transfer. In accordance with IC 32-17-13,~~
38 ~~a transfer on death transfer may be subject to the payment of the~~
39 ~~surviving spouse and family allowances under IC 29-1-4-1.~~

40 (b) A beneficiary designation designating the children of the owner
41 or children of any other person as a class and not by name includes all
42 children of the person regardless of whether the child is born or

1 adopted before or after the beneficiary designation is made.

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

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

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

19 SECTION 20. IC 32-17-14-26, AS ADDED BY P.L.143-2009,
20 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2010]: Sec. 26. (a) If an agreement between the owner and a
22 transferring entity is required to carry out a transfer on death transfer
23 as described in section 7 of this chapter, a transferring entity may not
24 adopt rules for the making, execution, acceptance, and revocation of a
25 beneficiary designation that are inconsistent with this chapter. A
26 transferring entity may adopt the rules imposed by subsection (b) in
27 whole or in part by incorporation by reference.

28 (b) Except as otherwise provided in a beneficiary designation, a
29 governing instrument, or any other applicable law, the following rules
30 apply to a beneficiary designation:

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

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

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

41 (4) On property registered in beneficiary form, a primary
42 beneficiary is the person shown immediately following the

1 transfer on death direction. Words indicating that the person is a
2 primary beneficiary are not required. The name of a contingent
3 beneficiary in the registration must have the words "contingent
4 beneficiary" or words of similar meaning to indicate the
5 contingent nature of the interest being transferred.

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

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

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

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

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

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

40 (B) If there are no surviving primary beneficiaries and there
41 are no substitutes for the nonsurviving primary beneficiaries
42 under section 22 of this chapter, the property belongs to the

1 surviving contingent beneficiaries in equal shares or according
 2 to the percentages or fractional shares stated in the
 3 registration.

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

10 (10) If a trustee designated as a beneficiary:

11 (A) does not survive the owner;

12 (B) resigns; or

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

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

18 (11) If a trustee is designated as a beneficiary and no **affidavit of**
 19 **certification of trust instrument** or probated will creating an
 20 express trust is presented to the transferring entity **within the**
 21 **twelve (12) months after the owner's death**, the transferring
 22 entity may make the distribution as if the trust did not survive the
 23 owner.

24 (12) If the transferring entity is not presented evidence during the
 25 twelve (12) months after the owner's death that there are lineal
 26 descendants of a nonsurviving beneficiary for whom LDPS
 27 distribution applies who survived the owner, the transferring
 28 entity may make the transfer as if the nonsurviving beneficiary's
 29 descendants also failed to survive the owner.

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

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

40 (15) Cash, interest, rent, royalties, earnings, or dividends payable
 41 to a missing beneficiary may be held by the transferring entity at
 42 interest or reinvested by the transferring entity in the account or

1 in a dividend reinvestment account associated with a security held
2 for the missing beneficiary.

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

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

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

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

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

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

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

23 (D) In the case of a request by a legal representative, a copy of
24 the instrument creating the legal authority or a certified copy
25 of the court order appointing the legal representative.

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

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

32 (A) The legal description of the property.

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

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

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

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

42 (c) A beneficiary designation is presumed to be valid. A party may

1 rely on the presumption of validity unless the party has actual
 2 knowledge that the beneficiary designation was not validly executed.
 3 A person who acts in good faith reliance on a transfer on death deed is
 4 immune from liability to the same extent as if the person had dealt
 5 directly with the named owner and the named owner had been
 6 competent and not incapacitated.

7 SECTION 21. IC 32-17-14-28, AS ADDED BY P.L.143-2009,
 8 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2010]: Sec. 28. (a) The protections provided to a transferring
 10 entity or to a purchaser or lender for value by this chapter do not affect
 11 the rights of beneficiaries or others involved in disputes that:

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

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

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

20 (1) the return of the money or property, including income earned
 21 on the money or property, to the transferring entity; or

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

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

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

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

31 (2) the income and gain that the transferee received from the
 32 property and its proceeds; **and**

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

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

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

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

1 **court.**

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

5 (1) in good faith; or

6 (2) without actual knowledge that:

7 (A) the transfer was improper; or

8 (B) information in an affidavit provided under section
9 26(b)(20) of this chapter was not true;

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

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

20 (g) A transfer on death transfer that is improper under section 22,
21 23, 24, or 25 of this chapter imposes no liability on the transferring
22 entity if the transfer is made in good faith. The remedy of a rightful
23 transferee must be obtained in an action against the improper
24 transferee.

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

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

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

39 (1) A disclaimer takes effect:

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

42 (B) upon the intestate's death if the interest arose under the law

- 1 of intestate succession.
- 2 (2) A disclaimed interest passes according to any provision in the
3 instrument creating the interest:
- 4 (A) that provides for the disposition of the interest should the
5 interest be disclaimed; or
- 6 (B) that concerns disclaimed interests in general.
- 7 (3) If the instrument creating the disclaimed interest does not
8 contain a provision described in subdivision (2), the following
9 rules apply:
- 10 (A) If the disclaimant is an individual, the following rules
11 apply:
- 12 (i) Except as provided in ~~item~~ **items (ii) and (iii)**, the
13 disclaimed interest passes as if the disclaimant had died
14 immediately before the time of distribution.
- 15 (ii) If, by law or under the instrument, the descendants of the
16 disclaimant would share in the disclaimed interest by any
17 method of representation had the disclaimant died before the
18 time of distribution, the disclaimed interest passes only to
19 the descendants of the disclaimant who survive at the time
20 of distribution.
- 21 **(iii) If the disclaimed interest would have passed to the**
22 **disclaimant's estate had the disclaimant died before the**
23 **time of distribution, the disclaimed interest passes by**
24 **representation to the descendants of the disclaimant who**
25 **survive at the time of distribution. If no descendant of**
26 **the disclaimant survives the time of distribution, the**
27 **disclaimed interest becomes part of the residue under the**
28 **instrument creating the disclaimed interest.**
- 29 (B) If the disclaimant is not an individual, the disclaimed
30 interest passes as if the disclaimant did not exist.
- 31 (4) If the disclaimed interest arose under the law of intestate
32 succession, the disclaimed interest passes as if the disclaimant
33 had died immediately before the intestate's death.
- 34 (5) Upon the disclaimer of a preceding interest:
- 35 (A) a future interest held by a person other than the
36 disclaimant takes effect as if the disclaimant had died or
37 ceased to exist immediately before the time of distribution;
38 and
- 39 (B) a future interest held by the disclaimant is not accelerated
40 in possession or enjoyment.

41 SECTION 25. IC 32-17.5-5-1 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) **This subsection**

1 **applies** upon the death of a holder of jointly held property a surviving
 2 holder may disclaim, in whole or part, the greater of the following: **only**
 3 **if, during the deceased holder's lifetime, the deceased holder could**
 4 **have unilaterally regained a part of the property attributable to the**
 5 **deceased holder's contribution without consent of any other holder.**
 6 **Another holder may disclaim an amount that may not exceed the**
 7 **amount determined in STEP THREE of the following formula:**

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

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

11 **STEP TWO: Determine the quotient of:**

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

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

15 **STEP THREE: Determine the product of:**

16 (1) the STEP ONE amount; **multiplied by**

17 (2) the STEP TWO quotient.

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

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

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

27 **STEP TWO: Determine the product of:**

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

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

33 **STEP THREE: Determine the quotient of:**

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

35 (B) the STEP TWO result.

36 **STEP FOUR: Determine the product of:**

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

38 (B) the quotient determined in STEP THREE.

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

42 ~~(c)~~ (d) An interest in jointly held property disclaimed by a surviving

- 1 holder of the property passes as if the disclaimant predeceased the
- 2 holder to whose death the disclaimer relates."
- 3 Page 3, after line 1, begin a new paragraph and insert:
- 4 "SECTION 26. **An emergency is declared for this act.**".
- 5 Renumber all SECTIONS consecutively.
(Reference is to SB 65 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Bray, Chairperson