



April 5, 2011

**ENGROSSED
SENATE BILL No. 169**

DIGEST OF SB 169 (Updated April 4, 2011 2:10 pm - DI 107)

Citations Affected: IC 9-17; IC 9-31; IC 29-1; IC 29-2; IC 30-4; IC 32-17.

Synopsis: Probate, trusts, and transfer on death transfers. Provides that joint owners and other entities that own motor vehicles and watercraft may transfer title to a motor vehicle or watercraft as a transfer on death transaction. (Current law restricts the procedures to individuals who are the sole owners of motor vehicles or watercraft.) Specifies that in the case of an unsupervised estate in which it has been determined that a decedent died intestate, a will may not be probated unless it is presented before a closing statement is filed. Provides that the will of a decedent may be presented to the court for probate and admitted to probate at any time if no estate proceedings have been commenced for the decedent and an asset of the decedent remains titled or registered in the name of the decedent, and that the will may be probated for the sole purpose of transferring ownership of the asset. Provides that a domiciliary foreign personal representative may exercise all powers of a local unsupervised personal representative. Defines "discretionary interest". Specifies that real property transferred to matrimonial trusts for estate planning purposes continues to enjoy the ownership protection of real property owned as joint tenants by the entireties.
(Continued next page)

Effective: Upon passage; July 1, 2011.

Zakas, Broden, Tomes

(HOUSE SPONSOR — FOLEY)

January 5, 2011, read first time and referred to Committee on Judiciary.
January 20, 2011, reported favorably — Do Pass.
January 25, 2011, read second time, ordered engrossed.
January 26, 2011, engrossed.
January 27, 2011, call withdrawn; returned to second reading.
January 31, 2011, re-read second time, amended, ordered engrossed.
February 3, 2011, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Judiciary.
April 5, 2011, reported — Do Pass.

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ES 169—LS 6446/DI 92+



Digest Continued

Provides that the terms of a matrimonial trust may restrict the transfer of matrimonial property. Specifies when property continues to be matrimonial property despite a settlor's death, when claims against the property are barred, and when matrimonial trusts cease to be matrimonial trusts. Specifies that the transfer at death of an individual retirement account or a similar account or plan or of benefits under an employee benefit plan is not considered a nonprobate transfer. Provides that the transfer on death act does not apply to certain transfers of retirement or employee benefits. Provides that the endorsement of the county auditor is not necessary to record a transfer on death deed. Removes a provision stating that a surviving spouse's election to take against a will does not apply to a valid transfer on death transfer. Provides that the affidavit certifying the death of the transferor and cross-referencing the transferor's transfer on death deed must be endorsed by the county auditor in order to be recorded. Makes technical corrections. (The introduced version of this bill was prepared by the probate code study commission.)

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April 5, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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ENGROSSED SENATE BILL No. 169

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

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

- 1 SECTION 1. IC 9-17-3-9, AS AMENDED BY P.L.6-2010,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 9. (a) ~~An individual whose certificate of title~~
4 ~~for a vehicle indicates that the individual is the sole owner of The~~
5 **owner or owners of a** vehicle may create an interest in the vehicle that
6 is transferrable on the death of the ~~individual~~ **owner or owners** by
7 obtaining a certificate of title conveying the interest in the vehicle to
8 one (1) or more named individuals as transfer on death beneficiaries.
9 (b) Subject to subsection (e), an interest in a vehicle transferred
10 under this section vests upon the death of the ~~transferor~~ **owner or**
11 **owners.**
12 (c) A certificate of title that is:
13 (1) worded in substance as "A.B. transfers on death to C.D." or
14 "A.B. and C.D. transfer on death to E.F."; and
15 (2) signed by the ~~transferor~~; **owner or owners**;

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1 is a good and sufficient conveyance on the death of the ~~transferor~~
2 **owner or owners** to the transferee **or transferees**.

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

- 5 (1) supported by consideration; or
- 6 (2) delivered to the named transfer on death beneficiary **or**
7 **beneficiaries;**

8 to be effective.

9 (e) Upon the death of ~~an individual~~ **the owner or owners** conveying
10 an interest in a vehicle in a certificate of title obtained under this
11 section, the interest in the vehicle is transferred to each beneficiary who
12 is described by either of the following:

- 13 (1) The beneficiary:
 - 14 (A) is named in the certificate; and
 - 15 (B) survives the transferor.
- 16 (2) The beneficiary:
 - 17 (A) survives the transferor; and
 - 18 (B) is entitled to an interest in the vehicle under
19 IC 32-17-14-22 following the death of a beneficiary who:
 - 20 (i) is named in the certificate; and
 - 21 (ii) did not survive the transferor.

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

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

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

30 SECTION 2. IC 9-31-2-30, AS AMENDED BY P.L.6-2010,
31 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 UPON PASSAGE]: Sec. 30. (a) ~~An individual whose certificate of title~~
33 ~~for a watercraft indicates that the individual is the sole owner of~~ The
34 **owner or owners of a** watercraft may create an interest in the
35 watercraft that is transferrable on the death of the ~~individual~~ **owner or**
36 **owners** by obtaining a certificate of title conveying the interest in the
37 watercraft to one (1) or more named individuals as transfer on death
38 beneficiaries.

39 (b) Subject to subsection (e), an interest in a watercraft transferred
40 under this section vests upon the death of the ~~transferor~~ **owner or**
41 **owners**.

42 (c) A certificate of title that is:

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1 (1) worded in substance as "A.B. transfers on death to C.D." or
 2 **"A.B. and C.D. transfer on death to E.F.";** and
 3 (2) signed by the ~~transferor~~; **owner or owners;**
 4 is a good and sufficient conveyance on the death of the ~~transferor~~
 5 **owner or owners** to the transferee **or transferees.**
 6 (d) A certificate of title obtained under this section is not required
 7 to be:
 8 (1) supported by consideration; or
 9 (2) delivered to the named transfer on death beneficiary **or**
 10 **beneficiaries;**
 11 to be effective.
 12 (e) Upon the death of ~~an individual~~ **the owner or owners** conveying
 13 an interest in a watercraft in a certificate of title obtained under this
 14 section, the interest in the watercraft is transferred to each beneficiary
 15 who is described by either of the following:
 16 (1) The beneficiary:
 17 (A) is named in the certificate; and
 18 (B) survives the transferor.
 19 (2) The beneficiary:
 20 (A) survives the transferor; and
 21 (B) is entitled to an interest in the watercraft under
 22 IC 32-17-14-22 following the death of a beneficiary who:
 23 (i) is named in the certificate; and
 24 (ii) did not survive the transferor.
 25 (f) A transfer of an interest in a watercraft under this section is
 26 subject to IC 6-4.1.
 27 (g) A certificate of title designating a transfer on death beneficiary
 28 is not testamentary.
 29 (h) In general, IC 32-17-14 applies to a certificate of title
 30 designating a transfer on death beneficiary. However, a particular
 31 provision of IC 32-17-14 does not apply if it is inconsistent with the
 32 requirements of this section or IC 9-31-2-16.
 33 SECTION 3. IC 29-1-6-1, AS AMENDED BY P.L.6-2010,
 34 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 UPON PASSAGE]: Sec. 1. In the absence of a contrary intent
 36 appearing in the will, wills shall be construed as to real and personal
 37 estate in accordance with the rules in this section.
 38 (a) Any estate, right, or interest in land or other things acquired by
 39 the testator after the making of the testator's will shall pass as if title
 40 was vested in the testator at the time of making of the will.
 41 (b) All devises of real estate shall pass the whole estate of the
 42 testator in the premises devised, although there are no words of

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1 inheritance or of perpetuity, whether or not at the time of the execution
2 of the will the decedent was the owner of that particular interest in the
3 real estate devised. Such devise shall also pass any interest which the
4 testator may have at the time of the testator's death as vendor under a
5 contract for the sale of such real estate.

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

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

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

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

39 (g) If a devise of real or personal property, not included in the
40 residuary clause of the will, is void, is revoked, or lapses, it shall
41 become a part of the residue, and shall pass to the residuary devisee.
42 Whenever any estate, real or personal, shall be devised to any

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1 descendant of the testator, and such devisee shall die during the
2 lifetime of the testator, whether before or after the execution of the will,
3 leaving a descendant who shall survive such testator, such devise shall
4 not lapse, but the property so devised shall vest in the surviving
5 descendant of the devisee as if such devisee had survived the testator
6 and died intestate. The word "descendant", as used in this section,
7 includes children adopted during minority by the testator and by the
8 testator's descendants and includes descendants of such adopted
9 children. "Descendant" also includes children of the mother who are
10 born out of wedlock, and children of the father who are born out of
11 wedlock, if, but only if, such child's right to inherit from such father is,
12 or has been, established in the manner provided in IC 29-1-2-7. This
13 rule applies where the parent is a descendant of the testator as well as
14 where the parent is the testator. Descendants of such children shall also
15 be included.

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

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

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

38 (k) If a testator devises securities in a will and the testator then
39 owned securities that meet the description in the will, the devise
40 includes additional securities owned by the testator at death to the
41 extent the additional securities were acquired by the testator after the
42 will was executed as a result of the testator's ownership of the

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- 1 described securities and are securities of any of the following types:
- 2 (1) Securities of the same organization acquired because of an
- 3 action initiated by the organization or any successor, related, or
- 4 acquiring organization, excluding any security acquired by
- 5 exercise of purchase options.
- 6 (2) Securities of another organization acquired as a result of a
- 7 merger, consolidation, reorganization, or other distribution by the
- 8 organization or any successor, related, or acquiring organization.
- 9 (3) Securities of the same organization acquired as a result of a
- 10 plan of reinvestment.

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

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

- 18 (1) specifically devised property is sold or mortgaged by; or
- 19 (2) a condemnation award, insurance proceeds, or recovery for
- 20 injury to specifically devised property are paid to;
- 21 a guardian or an agent acting within the authority of a durable power
 22 of attorney for an incapacitated principal, the specific devisee has the
 23 right to a general pecuniary devise equal to the net sale price, the
 24 amount of the unpaid loan, the condemnation award, the insurance
 25 proceeds, or the recovery.

26 (m) A written statement or list that:

- 27 (1) complies with this subsection; and
- 28 (2) is referred to in a will;

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

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

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- 1 (1) the unified credit;
 2 (2) the estate tax exemption;
 3 (3) the applicable credit amount;
 4 (4) the applicable exclusion amount;
 5 (5) the generation-skipping transfer tax exemption;
 6 (6) the GST exemption;
 7 (7) the marital deduction;
 8 (8) the maximum marital deduction;
 9 (9) the unlimited marital deduction;
 10 (10) the inclusion ratio;
 11 (11) the applicable fraction;
 12 (12) any section of the Internal Revenue Code:
 13 (A) relating to the:
 14 (i) federal estate tax; or
 15 (ii) generation-skipping transfer tax; and
 16 (B) that measures a share of:
 17 (i) an estate; or
 18 (ii) a trust;
 19 based on the amount that can pass free of federal estate taxes
 20 or the amount that can pass free of federal generation-skipping
 21 transfer tax law; or
 22 (13) a provision of federal estate tax or generation-skipping
 23 transfer tax law that is similar to subdivisions (1) through (12);
 24 refers to the federal estate tax and generation-skipping transfer tax laws
 25 as they applied with respect to estates of decedents on December 31,
 26 2009.
 27 (o) Subsection (n) does not apply to a will:
 28 (1) that is executed or amended after December 31, 2009; or
 29 (2) that manifests an intent that a contrary rule apply if the
 30 decedent dies on a date on which there is no then applicable
 31 federal estate or generation-skipping transfer tax.
 32 (p) If the federal estate or generation-skipping transfer tax becomes
 33 effective before January 1, 2011, the reference to January 1, 2011, in
 34 subsection (n) shall refer instead to the first date on which the tax
 35 becomes legally effective.
 36 (q) Within three (3) months following the latest to occur of the:
 37 (1) decedent's death;
 38 (2) fiduciary's appointment; or
 39 (3) enactment of this subsection;
 40 the personal representative under a will to which subsection (n) applies
 41 shall give written notice ~~regarding~~ to the affected beneficiary of the
 42 right to commence a proceeding under subsection (r) and to the present

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1 income beneficiary of any trust created under the will of the existence
2 of this ~~statute~~; **section** and the beneficiary's right to commence a
3 proceeding under subsection (r).

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

11 SECTION 4. IC 29-1-7-15.1, AS AMENDED BY P.L.95-2007,
12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2011]: Sec. 15.1. (a) When it has been determined that a
14 decedent died intestate and letters of administration have been issued
15 upon the decedent's estate, no will shall be probated unless it is
16 presented for probate:

- 17 (1) before the court decrees final distribution of the estate; **or**
18 (2) **in an unsupervised estate, before a closing statement has**
19 **been filed.**

20 (b) No real estate situate in Indiana of which any person may die
21 seized shall be sold by the executor or administrator of the deceased
22 person's estate to pay any debt or obligation of the deceased person,
23 which is not a lien of record in the county in which the real estate is
24 situate, or to pay any costs of administration of any decedent's estate,
25 unless letters testamentary or of administration upon the decedent's
26 estate are taken out within five (5) months after the decedent's death.

27 (c) The title of any real estate or interest therein purchased in good
28 faith and for a valuable consideration from the heirs of any person who
29 died seized of the real estate shall not be affected or impaired by any
30 devise made by the person of the real estate so purchased, unless:

- 31 (1) the will containing the devise has been probated and recorded
32 in the office of the clerk of the court having jurisdiction within
33 five (5) months after the death of the testator; or
34 (2) an action to contest the will's validity is commenced within the
35 time provided by law and, as a result, the will is ultimately
36 probated.

37 (d) **Except as provided in subsection (e)**, the will of the decedent
38 shall not be admitted to probate unless the will is presented for probate
39 before the latest of the following dates:

- 40 (1) Three (3) years after the individual's death.
41 (2) Sixty (60) days after the entry of an order denying the probate
42 of a will of the decedent previously offered for probate and

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1 objected to under section 16 of this chapter.
2 (3) Sixty (60) days after entry of an order revoking probate of a
3 will of the decedent previously admitted to probate and contested
4 under section 17 of this chapter.

5 However, in the case of an individual presumed dead under
6 IC 29-2-5-1, the three (3) year period commences with the date the
7 individual's death has been established by appropriate legal action.

8 **(e) This subsection applies with respect to the will of an**
9 **individual who dies after June 30, 2011. If:**

10 **(1) no estate proceedings have been commenced for a**
11 **decedent; and**

12 **(2) an asset of the decedent remains titled or registered in the**
13 **name of the decedent;**

14 **the will of the decedent may be presented to the court for probate**
15 **and admitted to probate at any time after the expiration of the**
16 **deadline determined under subsection (d) for the sole purpose of**
17 **transferring the asset described in subdivision (2). A will presented**
18 **for probate under this subsection is subject to all rules governing**
19 **the admission of wills to probate.**

20 SECTION 5. IC 29-2-1-6 IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2011]: Sec. 6. A domiciliary foreign personal
22 representative who has complied with section 5 may exercise as to
23 assets in this state all powers of a local **unsupervised** personal
24 representative and may maintain actions and proceedings in this state
25 subject to any conditions imposed upon non-resident parties generally.

26 SECTION 6. IC 29-2-12-4 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The portion of
28 ~~such the~~ federal estate tax ~~2001 et seq.)~~ to be paid by each person, heir,
29 or beneficiary of ~~said a~~ **decedent's** estate shall be determined by
30 dividing the value of the property received by ~~such the~~ person, heir, or
31 beneficiary, which is included in the net taxable estate, by the amount
32 of the net taxable estate, and multiplying the result by the amount of the
33 total federal estate tax paid.

34 SECTION 7. IC 30-4-2.1-14, AS ADDED BY P.L.6-2010,
35 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 UPON PASSAGE]: Sec. 14. (a) The following rules apply only to
37 discretionary interests **(as defined in IC 30-4-2.1-14.5):**

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

40 (2) A creditor may not:
41 (A) require a trustee to exercise the trustee's discretion to make
42 a distribution; or

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1 (B) cause a court to foreclose a discretionary interest.
 2 (3) A court may review a trustee's distribution discretion only if
 3 the trustee acts dishonestly or with an improper motive.
 4 (b) Words such as sole, absolute, uncontrolled, or unfettered
 5 discretion dispense with the trustee acting reasonably.
 6 (c) Absent express language to the contrary, if the distribution
 7 language in a discretionary interest permits unequal distributions
 8 between beneficiaries or distributions to the exclusion of other
 9 beneficiaries, a trustee may, in the trustee's discretion, distribute all of
 10 the accumulated, accrued, or undistributed income and principal to one
 11 (1) beneficiary to the exclusion of the other beneficiaries.
 12 (d) Regardless of whether a beneficiary has any outstanding
 13 creditors, a trustee of a discretionary interest may directly pay any
 14 expense on behalf of the beneficiary and may exhaust the income and
 15 principal of the trust for the benefit of the beneficiary. A trustee is not
 16 liable to a creditor for paying the expenses of a beneficiary who holds
 17 a discretionary interest.
 18 SECTION 8. IC 30-4-2.1-14.5 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE UPON PASSAGE]: **Sec. 14.5. (a) As used in this**
 21 **section and section 14 of this chapter, "discretionary interest"**
 22 **refers to any interest over which the trustee has any discretion to**
 23 **make or withhold a distribution.**
 24 **(b) A discretionary interest may be evidenced by permissive**
 25 **language such as "may make distributions" or may be evidenced**
 26 **by mandatory distribution language that is negated by the**
 27 **discretionary language of the trust such as "the trustee shall make**
 28 **distributions in the trustee's sole and absolute discretion".**
 29 **(c) An interest that includes distribution language that appears**
 30 **mandatory but is subsequently qualified by discretionary**
 31 **distribution language is considered a discretionary interest.**
 32 **(d) Trust provisions that create discretionary interests include**
 33 **the following examples:**
 34 **(1) "The trustee may, in the trustee's sole and absolute**
 35 **discretion, make distributions for health, education,**
 36 **maintenance, and support."**
 37 **(2) "The trustee shall, in the trustee's sole and absolute**
 38 **discretion, make distributions for health, education,**
 39 **maintenance, and support."**
 40 **(3) "The trustee may make distributions for health, education,**
 41 **maintenance, and support."**
 42 **(4) "The trustee shall make distributions for health,**

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1 education, maintenance, and support. The trustee may
 2 exclude any beneficiary or make unequal distributions among
 3 the beneficiaries."
 4 (5) "The trustee may make distributions for health, education,
 5 maintenance, support, comfort, and general welfare."
 6 SECTION 9. IC 30-4-3-35, AS ADDED BY P.L.6-2010, SECTION
 7 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 8 PASSAGE]: Sec. 35. (a) This section is intended to ensure that if
 9 real property is transferred to one (1) or more revocable trusts
 10 created by a husband and wife for estate planning purposes, the
 11 husband and wife will enjoy the real estate ownership protections
 12 that they would otherwise enjoy if they owned that real property
 13 in an estate by the entireties including an estate by the entireties
 14 created under IC 32-17-3-1.
 15 (a) (b) As used in this section, "joint matrimonial trust" means a
 16 single inter vivos trust established under this section by settlors who
 17 are related as husband and wife.
 18 (b) (c) As used in this section, "matrimonial property" means real
 19 property that:
 20 (1) is subject to a written election to treat the property as
 21 matrimonial property under this section; and
 22 (2) is owned by a matrimonial trust.
 23 (c) (d) As used in this section, "matrimonial trust" means a trust
 24 established under this section to own matrimonial property.
 25 (d) (e) As used in this section, "separate matrimonial trust" means
 26 a separate trust that is also a matrimonial trust.
 27 (e) (f) As used in this section, "separate trust" means a trust
 28 established by one (1) individual.
 29 (f) (g) A matrimonial trust may be established:
 30 (1) jointly by a husband and wife; or
 31 (2) in two (2) or more separate trusts.
 32 (g) (h) A husband and wife may elect to treat real property as
 33 matrimonial property with a written statement of the election:
 34 (1) in an instrument or instruments conveying the real property to
 35 a matrimonial trust or trusts; or
 36 (2) in a separate writing that must be recorded in the county
 37 where the real property is situated and indexed in the records of
 38 the county recorder's office to the instrument or instruments that
 39 convey the real property to a matrimonial trust or trusts.
 40 (h) (i) A guardian of a husband and or wife may make an election
 41 under this section:
 42 (1) without the approval of the court if the guardian has unlimited

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powers under IC 29-3-8-4; and

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

~~(i)~~ **(j)** An attorney in fact of a husband and wife may ~~make~~ **join in the making of** 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.

(k) The terms of a separate matrimonial trust or a joint matrimonial trust may (but are not required to) restrict the sale or transfer of the matrimonial property for:

(1) the lifetime of the settlor who dies first;

(2) the lifetime of the surviving settlor; or

(3) another defined time period.

~~(j)~~ **(l)** 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)~~ **(m)** 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)~~ **(l)** without the lienholder's written consent.

~~(l)~~ **(n)** ~~A matrimonial trust established by an individual~~ **To the extent that a matrimonial trust continues to be a matrimonial trust after the death of the a settlor (as provided by subsections (o) and (q)):**

(1) real property held or owned in a separate trust and for which an earlier election was made under this section, continues to be matrimonial property; and

(2) an unsecured creditor or judgment lien creditor who has a claim only against the deceased settlor but not against the surviving settlor cannot enforce that claim against the deceased settlor's interest or the surviving settlor's interest in the matrimonial property.

(o) Matrimonial property held in a separate matrimonial trust or in a joint matrimonial trust continues to be matrimonial property after the death of one (1) settlor:

(1) if the settlors reserved a life estate in the matrimonial

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1 **property for each settlor when they conveyed the matrimonial**
 2 **property to the matrimonial trust or trusts; or**
 3 **(2) if the deceased settlor's separate trust provides to the surviving**
 4 **spouse: settlor:**
 5 ~~(1)~~ **(A)** a life estate;
 6 ~~(2)~~ **(B)** an interest that qualifies for a deduction from the gross
 7 estate of the decedent under Section 2056 of the Internal
 8 Revenue Code regardless of whether an election is made to
 9 qualify the interest for the deduction; or
 10 ~~(3)~~ **(C)** in some respect the current right to occupy or receive
 11 rent, royalties, or other kinds of income with respect to the
 12 matrimonial property.
 13 ~~(m)~~ **(p)** A separate matrimonial trust **established by a deceased**
 14 **settlor** ceases to be a matrimonial trust upon the termination of
 15 payments to the surviving ~~spouse~~ **settlor** as a result of the surviving
 16 ~~spouse's~~ **settlor's** death or **as a result of** the surviving ~~spouse's~~
 17 **settlor's valid** disclaimer of all interests in the ~~separate~~ matrimonial
 18 **property held in the deceased settlor's** trust.
 19 ~~(n)~~ **(q)** A ~~joint separate~~ matrimonial trust ~~ceases~~ **established by a**
 20 **settlor who remains alive continues** to be a matrimonial trust ~~upon~~
 21 ~~the death of one (1) of the settlors:~~ **during that settlor's remaining**
 22 **lifetime, so long as the settlor retains the right to use or occupy**
 23 **matrimonial property held in the settlor's separate trust.**
 24 ~~(o)~~ **(r)** A matrimonial trust ceases to be a matrimonial trust upon the
 25 dissolution of the marriage of the settlors.
 26 ~~(p)~~ **(s)** A husband and wife may revoke a matrimonial trust by
 27 together executing a writing expressing the revocation.
 28 SECTION 10. IC 32-17-13-1, AS AMENDED BY P.L.6-2010,
 29 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 UPON PASSAGE]: Sec. 1. (a) As used in this chapter, "nonprobate
 31 transfer" means a valid transfer, effective at death, by a transferor:
 32 (1) whose last domicile was in Indiana; and
 33 (2) who immediately before death had the power, acting alone, to
 34 prevent transfer of the property by revocation or withdrawal and:
 35 (A) use the property for the benefit of the transferor; or
 36 (B) apply the property to discharge claims against the
 37 transferor's probate estate.
 38 **(b)** The term does not include **a transfer at death (other than a**
 39 **transfer to or from the decedent's probate estate) of:**
 40 **(1)** a survivorship interest in a tenancy by the entireties real
 41 estate; ~~transfer of~~
 42 **(2)** a life insurance policy or annuity; ~~or payment of~~

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- 1 **(3) the death proceeds of a life insurance policy or annuity;**
- 2 **(4) an individual retirement account or a similar account or**
- 3 **plan; or**
- 4 **(5) benefits under an employee benefit plan.**

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

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

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

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

16 SECTION 11. IC 32-17-14-2.5 IS ADDED TO THE INDIANA
17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
18 [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. This chapter does not**
19 **apply to property, money, or benefits paid or transferred at death**
20 **under:**

- 21 **(1) an employee benefit plan governed by the Employees**
- 22 **Retirement Income Security Act of 1974;**
- 23 **(2) an individual retirement account; or**
- 24 **(3) a similar account or plan intended to qualify for a tax**
- 25 **exemption or deferral under the Internal Revenue Code;**
- 26 **unless the provisions of this chapter are incorporated into the**
- 27 **governing instrument or beneficiary designation in whole or in**
- 28 **part by express reference.**

29 SECTION 12. IC 32-17-14-3, AS AMENDED BY P.L.6-2010,
30 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 UPON PASSAGE]: **Sec. 3.** The following definitions apply throughout
32 this chapter:

- 33 (1) "Beneficiary" means a person designated or entitled to receive
34 property because of another person's death under a transfer on
35 death transfer.
- 36 (2) "Beneficiary designation" means a written instrument other
37 than a will or trust that designates the beneficiary of a transfer on
38 death transfer.
- 39 (3) "Governing instrument" refers to a written instrument agreed
40 to by an owner that establishes the terms and conditions of an
41 ownership in beneficiary form.
- 42 (4) "Joint owners" refers to persons who hold property as joint

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- 1 tenants with a right of survivorship. However, the term does not
- 2 include a husband and wife who hold property as tenants by the
- 3 entirety.
- 4 (5) "LDPS" means an abbreviation of lineal descendants per
- 5 stirpes, which may be used in a beneficiary designation to
- 6 designate a substitute beneficiary as provided in section 22 of this
- 7 chapter.
- 8 (6) "Owner" refers to a person or persons who have a right to
- 9 designate the beneficiary of a transfer on death transfer.
- 10 (7) "Ownership in beneficiary form" means holding property
- 11 under a registration in beneficiary form or other written
- 12 instrument that:
- 13 (A) names the owner of the property;
- 14 (B) directs ownership of the property to be transferred upon
- 15 the death of the owner to the designated beneficiary; and
- 16 (C) designates the beneficiary.
- 17 (8) "Person" means an individual, a sole proprietorship, a
- 18 partnership, an association, a fiduciary, a trustee, a corporation,
- 19 a limited liability company, or any other business entity.
- 20 (9) "Proof of death" means a death certificate or a record or report
- 21 that is prima facie proof or evidence of an individual's death.
- 22 (10) "Property" means any present or future interest in real
- 23 property, intangible personal property (as defined in
- 24 IC 6-4.1-1-5), or tangible personal property (as defined in
- 25 IC 6-4.1-1-13). The term includes:
- 26 (A) a right to direct or receive payment of a debt;
- 27 (B) a right to direct or receive payment of money or other
- 28 benefits due under a contract, account agreement, deposit
- 29 agreement, employment contract, ~~compensation plan; pension~~
- 30 ~~plan; individual retirement plan; employee benefit plan;~~ or
- 31 trust or by operation of law;
- 32 (C) a right to receive performance remaining due under a
- 33 contract;
- 34 (D) a right to receive payment under a promissory note or a
- 35 debt maintained in a written account record;
- 36 (E) rights under a certificated or uncertificated security;
- 37 (F) rights under an instrument evidencing ownership of
- 38 property issued by a governmental agency; and
- 39 (G) rights under a document of title (as defined in
- 40 IC 26-1-1-201).
- 41 (11) "Registration in beneficiary form" means titling of an
- 42 account record, certificate, or other written instrument that:

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- 1 (A) provides evidence of ownership of property in the name of
- 2 the owner;
- 3 (B) directs ownership of the property to be transferred upon
- 4 the death of the owner to the designated beneficiary; and
- 5 (C) designates the beneficiary.
- 6 (12) "Security" means a share, participation, or other interest in
- 7 property, in a business, or in an obligation of an enterprise or
- 8 other issuer. The term includes a certificated security, an
- 9 uncertificated security, and a security account.
- 10 (13) "Transfer on death deed" means a deed that conveys an
- 11 interest in real property to a grantee by beneficiary designation.
- 12 (14) "Transfer on death transfer" refers to a transfer of property
- 13 that takes effect upon the death of the owner under a beneficiary
- 14 designation made under this chapter.
- 15 (15) "Transferring entity" means a person who:
- 16 (A) owes a debt or is obligated to pay money or benefits;
- 17 (B) renders contract performance;
- 18 (C) delivers or conveys property; or
- 19 (D) changes the record of ownership of property on the books,
- 20 records, and accounts of an enterprise or on a certificate or
- 21 document of title that evidences property rights.
- 22 The term includes a governmental agency, business entity, or
- 23 transfer agent that issues certificates of ownership or title to
- 24 property and a person acting as a custodial agent for an owner's
- 25 property. However, the term does not include a governmental
- 26 office charged with endorsing, entering, or recording the transfer
- 27 of real property in the public records.
- 28 SECTION 13. IC 32-17-14-11, AS AMENDED BY P.L.6-2010,
- 29 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 30 UPON PASSAGE]: Sec. 11. (a) A transfer on death deed transfers the
- 31 interest provided to the beneficiary if the transfer on death deed is:
- 32 (1) executed by the owner or owner's legal representative; and
- 33 (2) recorded with the recorder of deeds in the county in which the
- 34 real property is situated before the death of the owner.
- 35 (b) A transfer on death deed is void if it is not recorded with the
- 36 recorder of deeds in the county in which the real property is situated
- 37 before the death of the owner.
- 38 (c) A transfer on death deed is not required to be supported by
- 39 consideration or delivered to the grantee beneficiary.
- 40 (d) A transfer on death deed may be used to transfer an interest in
- 41 real property to either a revocable or an irrevocable trust.
- 42 (e) If the owner records a transfer on death deed, the effect of the

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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.

(i) The endorsement of the auditor under IC 36-2-11-14 is not necessary to record a transfer on death deed.

SECTION 14. IC 32-17-14-23, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) If, after an owner makes a beneficiary designation, the owner's marriage is dissolved or annulled, any provision of the beneficiary designation in favor of the owner's former

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1 spouse is revoked on the date the marriage is dissolved or annulled.
2 Revocation under this subsection is effective regardless of whether the
3 beneficiary designation refers to the owner's marital status. The
4 beneficiary designation is given effect as if the former spouse had not
5 survived the owner.

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

- 8 (1) has been made irrevocable, or revocable only with the spouse's
9 consent;
- 10 (2) is made after the marriage is dissolved or annulled; or
- 11 (3) expressly states that the dissolution or annulment of the
12 marriage does not affect the designation of a spouse or a relative
13 of the spouse as a beneficiary.

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

18 (d) This section does not apply to any employee benefit plan
19 governed by the Employee Retirement Income Security Act of 1974.

20 SECTION 15. IC 32-17-14-25, AS AMENDED BY P.L.6-2010,
21 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 UPON PASSAGE]: Sec. 25. (a) ~~An election under IC 29-1-3-1 does not~~
23 ~~apply to a valid transfer on death transfer.~~ In accordance with
24 IC 32-17-13, a transfer on death transfer may be subject to the payment
25 of the surviving spouse and family allowances under IC 29-1-4-1.

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

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

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

42 (e) If a beneficiary designation does not name any child of the

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1 owner as the designated beneficiary with respect to a particular
2 property interest, a child of the owner born or adopted after the owner
3 makes the beneficiary designation is not entitled to any share of the
4 property interest subject to the designation.

5 SECTION 16. IC 32-17-14-26, AS AMENDED BY P.L.6-2010,
6 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 UPON PASSAGE]: Sec. 26. (a) If an agreement between the owner and
8 a transferring entity is required to carry out a transfer on death transfer
9 as described in section 7 of this chapter, a transferring entity may not
10 adopt rules for the making, execution, acceptance, and revocation of a
11 beneficiary designation that are inconsistent with this chapter. A
12 transferring entity may adopt the rules imposed by subsection (b) in
13 whole or in part by incorporation by reference.

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

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

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

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

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

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

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

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- 1 registration.
- 2 (7) A transfer on death transfer of property also transfers any
- 3 interest, rent, royalties, earnings, dividends, or credits earned or
- 4 declared on the property but not paid or credited before the
- 5 owner's death.
- 6 (8) If a distribution by a transferring entity under a transfer on
- 7 death transfer results in fractional shares in a security or other
- 8 property that is not divisible, the transferring entity may distribute
- 9 the fractional shares in the name of all beneficiaries as tenants in
- 10 common or as the beneficiaries may direct, or the transferring
- 11 entity may sell the property that is not divisible and distribute the
- 12 proceeds to the beneficiaries in the proportions to which they are
- 13 entitled.
- 14 (9) On the death of the owner, the property, minus all amounts
- 15 and charges owed by the owner to the transferring entity, belongs
- 16 to the surviving beneficiaries and, in the case of substitute
- 17 beneficiaries permitted under section 22 of this chapter, the lineal
- 18 descendants of designated beneficiaries who did not survive the
- 19 owner are entitled to the property as follows:
- 20 (A) If there are multiple primary beneficiaries and a primary
- 21 beneficiary does not survive the owner and does not have a
- 22 substitute under section 22 of this chapter, the share of the
- 23 nonsurviving beneficiary is allocated among the surviving
- 24 beneficiaries in the proportion that their shares bear to each
- 25 other.
- 26 (B) If there are no surviving primary beneficiaries and there
- 27 are no substitutes for the nonsurviving primary beneficiaries
- 28 under section 22 of this chapter, the property belongs to the
- 29 surviving contingent beneficiaries in equal shares or according
- 30 to the percentages or fractional shares stated in the
- 31 registration.
- 32 (C) If there are multiple contingent beneficiaries and a
- 33 contingent beneficiary does not survive the owner and does not
- 34 have a substitute under section 22 of this chapter, the share of
- 35 the nonsurviving contingent beneficiary is allocated among the
- 36 surviving contingent beneficiaries in the proportion that their
- 37 shares bear to each other.
- 38 (10) If a trustee designated as a beneficiary:
- 39 (A) does not survive the owner;
- 40 (B) resigns; or
- 41 (C) is unable or unwilling to execute the trust as trustee and
- 42 no successor trustee is appointed in the twelve (12) months

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- 1 following the owner's death;
2 the transferring entity may make the distribution as if the trust did
3 not survive the owner.
4 (11) If a trustee is designated as a beneficiary and no affidavit of
5 certification of trust or probated will creating an express trust is
6 presented to the transferring entity within the twelve (12) months
7 after the owner's death, the transferring entity may make the
8 distribution as if the trust did not survive the owner.
9 (12) If the transferring entity is not presented evidence during the
10 twelve (12) months after the owner's death that there are lineal
11 descendants of a nonsurviving beneficiary for whom LDPS
12 distribution applies who survived the owner, the transferring
13 entity may make the transfer as if the nonsurviving beneficiary's
14 descendants also failed to survive the owner.
15 (13) If a beneficiary cannot be located at the time the transfer is
16 made to located beneficiaries, the transferring entity shall hold the
17 missing beneficiary's share. If the missing beneficiary's share is
18 not claimed by the beneficiary or by the beneficiary's personal
19 representative or successor during the twelve (12) months after
20 the owner's death, the transferring entity shall transfer the share
21 as if the beneficiary did not survive the owner.
22 (14) A transferring entity has no obligation to attempt to locate a
23 missing beneficiary, to pay interest on the share held for a missing
24 beneficiary, or to invest the share in any different property.
25 (15) Cash, interest, rent, royalties, earnings, or dividends payable
26 to a missing beneficiary may be held by the transferring entity at
27 interest or reinvested by the transferring entity in the account or
28 in a dividend reinvestment account associated with a security held
29 for the missing beneficiary.
30 (16) If a transferring entity is required to make a transfer on death
31 transfer to a minor or an incapacitated adult, the transfer may be
32 made under the Indiana Uniform Transfers to Minors Act, the
33 Indiana Uniform Custodial Trust Act, or a similar law of another
34 state.
35 (17) A written request for the execution of a transfer on death
36 transfer may be made by any beneficiary, a beneficiary's legal
37 representative or attorney in fact, or the owner's personal
38 representative.
39 (18) A transfer under a transfer on death deed occurs
40 automatically upon the owner's death subject to the requirements
41 of subdivision (20) and does not require a request for the
42 execution of the transfer.

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- 1 (19) A written request for the execution of a transfer on death
- 2 transfer must be accompanied by the following:
- 3 (A) A certificate or instrument evidencing ownership of the
- 4 contract, account, security, or property.
- 5 (B) Proof of the deaths of the owner and any nonsurviving
- 6 beneficiary.
- 7 (C) An inheritance tax waiver from states that require it.
- 8 (D) In the case of a request by a legal representative, a copy of
- 9 the instrument creating the legal authority or a certified copy
- 10 of the court order appointing the legal representative.
- 11 (E) Any other proof of the person's entitlement that the
- 12 transferring entity may require.
- 13 (20) On the death of an owner whose transfer on death deed has
- 14 been recorded, the beneficiary shall file an affidavit in the office
- 15 of the recorder of the county in which the real property is located.
- 16 **The affidavit must be endorsed by the county auditor under**
- 17 **IC 36-2-11-14 in order to be recorded.** The affidavit must
- 18 contain the following:
- 19 (A) The legal description of the property.
- 20 (B) A certified copy of the death certificate certifying the
- 21 owner's death.
- 22 (C) The name and address of each designated beneficiary who
- 23 survives the owner or is in existence on the date of the owner's
- 24 death.
- 25 (D) The name of each designated beneficiary who has not
- 26 survived the owner's death or is not in existence on the date of
- 27 the owner's death.
- 28 (E) A cross-reference to the recorded transfer on death deed.
- 29 (c) A beneficiary designation is presumed to be valid. A party may
- 30 rely on the presumption of validity unless the party has actual
- 31 knowledge that the beneficiary designation was not validly executed.
- 32 A person who acts in good faith reliance on a transfer on death deed is
- 33 immune from liability to the same extent as if the person had dealt
- 34 directly with the named owner and the named owner had been
- 35 competent and not incapacitated.
- 36 SECTION 17. **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. 169, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 169 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed Senate Bill 169, which is eligible for third reading, be returned to second reading for purposes of amendment.

ZAKAS

SENATE MOTION

Madam President: I move that Senate Bill 169 be amended to read as follows:

Replace the effective date in SECTION 15 with "[EFFECTIVE UPON PASSAGE]".

(Reference is to SB 169 as printed January 21, 2011.)

ZAKAS

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 169, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

FOLEY, Chair

Committee Vote: yeas 11, nays 0.

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