SENATE BILL No. 169

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-17-3-9; IC 9-31-2-30; IC 29-1; IC 29-2; IC 30-4; IC 32-17-13-1; IC 32-17-14.

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. 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

(Continued next page)

Effective: Upon passage; July 1, 2009 (retroactive); July 1, 2011.

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January 5, 2011, read first time and referred to Committee on Judiciary.

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Digest Continued

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 prohibiting a surviving spouse's election to take against a will from applying 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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Introduced

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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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:

SECTION 1. IC 9-17-3-9, AS AMENDED BY P.L.6-2010, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) ~~An individual whose certificate of title for a vehicle indicates that the individual is the sole owner of~~ The **owner or owners of a** vehicle may create an interest in the vehicle that is transferrable on the death of the ~~individual~~ **owner or owners** by obtaining a certificate of title conveying the interest in the vehicle to one (1) or more named individuals as transfer on death beneficiaries.

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

(c) A certificate of title that is:

(1) worded in substance as "A.B. transfers on death to C.D." **or "A.B. and C.D. transfer on death to E.F.";** and

(2) signed by the ~~transferor;~~ **owner or owners;**

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

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

(1) supported by consideration; or

(2) delivered to the named transfer on death beneficiary **or beneficiaries;**

to be effective.

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

(1) The beneficiary:

(A) is named in the certificate; and

(B) survives the transferor.

(2) The beneficiary:

(A) survives the transferor; and

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

(i) is named in the certificate; and

(ii) did not survive the transferor.

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

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

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

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

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

(c) A certificate of title that is:

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(1) worded in substance as "A.B. transfers on death to C.D." **or "A.B. and C.D. transfer on death to E.F.";** and

(2) signed by the ~~transferor;~~ **owner or owners;**

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

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

(1) supported by consideration; or

(2) delivered to the named transfer on death beneficiary **or beneficiaries;**

to be effective.

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

(1) The beneficiary:

(A) is named in the certificate; and

(B) survives the transferor.

(2) The beneficiary:

(A) survives the transferor; and

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

(i) is named in the certificate; and

(ii) did not survive the transferor.

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

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

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

SECTION 3. IC 29-1-6-1, AS AMENDED BY P.L.6-2010, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. In the absence of a contrary intent appearing in the will, wills shall be construed as to real and personal estate in accordance with the rules in this section.

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

(b) All devises of real estate shall pass the whole estate of the testator in the premises devised, although there are no words of

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

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

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

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

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

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

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

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

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

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

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

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described securities and are securities of any of the following types:

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

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

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

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

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

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

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

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

(m) A written statement or list that:

(1) complies with this subsection; and

(2) is referred to in a will;

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

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

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

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

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

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

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

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

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

(1) before the court decrees final distribution of the estate; **or**

(2) in an unsupervised estate, before a closing statement has been filed.

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

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

(1) the will containing the devise has been probated and recorded in the office of the clerk of the court having jurisdiction within five (5) months after the death of the testator; or

(2) an action to contest the will's validity is commenced within the time provided by law and, as a result, the will is ultimately probated.

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

(1) Three (3) years after the individual's death.

(2) Sixty (60) days after the entry of an order denying the probate of a will of the decedent previously offered for probate and

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objected to under section 16 of this chapter.

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

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

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

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

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

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

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

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

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

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

(2) A creditor may not:

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

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

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

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

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

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

SECTION 8. IC 30-4-2.1-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14.5. (a) As used in this section and section 14 of this chapter, "discretionary interest" refers to any interest over which the trustee has any discretion to make or withhold a distribution.**

(b) A discretionary interest may be evidenced by permissive language such as "may make distributions" or may be evidenced by mandatory distribution language that is negated by the discretionary language of the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion".

(c) An interest that includes distribution language that appears mandatory but is subsequently qualified by discretionary distribution language is considered a discretionary interest.

(d) Trust provisions that create discretionary interests include the following examples:

(1) "The trustee may, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support.".

(2) "The trustee shall, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support.".

(3) "The trustee may make distributions for health, education, maintenance, and support.".

(4) "The trustee shall make distributions for health,

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education, maintenance, and support. The trustee may exclude any beneficiary or make unequal distributions among the beneficiaries.".

(5) "The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare.".

SECTION 9. IC 30-4-3-35, AS ADDED BY P.L.6-2010, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 35. **(a) This section is intended to ensure that if real property is transferred to one (1) or more revocable trusts created by a husband and wife for estate planning purposes, the husband and wife will enjoy the real estate ownership protections that they would otherwise enjoy if they owned that real property in an estate by the entireties including an estate by the entireties created under IC 32-17-3-1.**

~~(a)~~ **(b)** As used in this section, "joint matrimonial trust" means a single inter vivos trust established under this section by settlors who are related as husband and wife.

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

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

(2) is owned by a matrimonial trust.

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

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

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

~~(f)~~ **(g)** A matrimonial trust may be established:

(1) jointly by a husband and wife; or

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

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

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

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

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

(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) A matrimonial trust established by an individual~~ **(n) 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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property for each settlor when they conveyed the matrimonial property to the matrimonial trust or trusts; or

(2) if the deceased settlor's separate trust provides to the surviving ~~spouse.~~ **settlor:**

~~(1)~~ **(A)** a life estate;

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

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

~~(m)~~ **(p)** A separate matrimonial trust **established by a deceased settlor** ceases to be a matrimonial trust upon the termination of payments to the surviving ~~spouse~~ **settlor** as a result of the surviving ~~spouse's~~ **settlor's** death or **as a result of** the surviving ~~spouse's~~ **settlor's valid** disclaimer of all interests in the ~~separate~~ matrimonial **property held in the deceased settlor's** trust.

~~(n)~~ **(q)** A ~~joint~~ **separate** matrimonial trust ~~ceases~~ **established by a settlor who remains alive continues** to be a matrimonial trust ~~upon the death of one (1) of the settlors.~~ **during that settlor's remaining lifetime, so long as the settlor retains the right to use or occupy matrimonial property held in the settlor's separate trust.**

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

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

SECTION 10. IC 32-17-13-1, AS AMENDED BY P.L.6-2010, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

(1) whose last domicile was in Indiana; and

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

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

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

(b) The term does not include **a** transfer **at death (other than a transfer to or from the decedent's probate estate)** of:

(1) a survivorship interest in a tenancy by the entireties real estate; ~~transfer of~~

(2) a life insurance policy or annuity; ~~or payment of~~

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(3) the death proceeds of a life insurance policy or annuity;

(4) an individual retirement account or a similar account or plan; or

(5) benefits under an employee benefit plan.

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

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

(1) the motor vehicle under IC 9-17-2-2(b); or

(2) the watercraft as required by IC 9-31-2-16(a)(1)(C).

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

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

(1) an employee benefit plan governed by the Employees Retirement Income Security Act of 1974;

(2) an individual retirement account; or

(3) a similar account or plan intended to qualify for a tax exemption or deferral under the Internal Revenue Code;

unless the provisions of this chapter are incorporated into the governing instrument or beneficiary designation in whole or in part by express reference.

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

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

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

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

(4) "Joint owners" refers to persons who hold property as joint

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tenants with a right of survivorship. However, the term does not include a husband and wife who hold property as tenants by the entirety.

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

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

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

(A) names the owner of the property;

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

(C) designates the beneficiary.

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

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

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

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

(B) a right to direct or receive payment of money or other benefits due under a contract, account agreement, deposit agreement, employment contract, ~~compensation plan, pension plan, individual retirement plan, employee benefit plan,~~ or trust or by operation of law;

(C) a right to receive performance remaining due under a contract;

(D) a right to receive payment under a promissory note or a debt maintained in a written account record;

(E) rights under a certificated or uncertificated security;

(F) rights under an instrument evidencing ownership of property issued by a governmental agency; and

(G) rights under a document of title (as defined in IC 26-1-1-201).

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

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(A) provides evidence of ownership of property in the name of the owner;

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

(C) designates the beneficiary.

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

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

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

(15) "Transferring entity" means a person who:

(A) owes a debt or is obligated to pay money or benefits;

(B) renders contract performance;

(C) delivers or conveys property; or

(D) changes the record of ownership of property on the books, records, and accounts of an enterprise or on a certificate or document of title that evidences property rights.

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

SECTION 13. IC 32-17-14-11, AS AMENDED BY P.L.6-2010, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) A transfer on death deed transfers the interest provided to the beneficiary if the transfer on death deed is:

(1) executed by the owner or owner's legal representative; and

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

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

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

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

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

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

(1) has been made irrevocable, or revocable only with the spouse's consent;

(2) is made after the marriage is dissolved or annulled; or

(3) expressly states that the dissolution or annulment of the marriage does not affect the designation of a spouse or a relative of the spouse as a beneficiary.

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

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

SECTION 15. IC 32-17-14-25, AS AMENDED BY P.L.6-2010, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009 (RETROACTIVE)]: Sec. 25. (a) ~~An election under IC 29-1-3-1 does not apply to a valid transfer on death transfer.~~ In accordance with IC 32-17-13, a transfer on death transfer may be subject to the payment of the surviving spouse and family allowances under IC 29-1-4-1.

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

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

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

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

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

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

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

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

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

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

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

(6) A transfer of unequal shares to multiple beneficiaries for property registered in beneficiary form may be expressed in

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numerical form following the name of the beneficiary in the registration.

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

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

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

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

(B) If there are no surviving primary beneficiaries and there are no substitutes for the nonsurviving primary beneficiaries under section 22 of this chapter, the property belongs to the surviving contingent beneficiaries in equal shares or according to the percentages or fractional shares stated in the registration.

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

(10) If a trustee designated as a beneficiary:

(A) does not survive the owner;

(B) resigns; or

(C) is unable or unwilling to execute the trust as trustee and

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no successor trustee is appointed in the twelve (12) months following the owner's death;

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

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

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

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

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

(15) Cash, interest, rent, royalties, earnings, or dividends payable to a missing beneficiary may be held by the transferring entity at interest or reinvested by the transferring entity in the account or in a dividend reinvestment account associated with a security held for the missing beneficiary.

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

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

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

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execution of the transfer.

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

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

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

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

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

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

(20) On the death of an owner whose transfer on death deed has been recorded, the beneficiary shall file an affidavit in the office of the recorder of the county in which the real property is located. **The affidavit must be endorsed by the county auditor under IC 36-2-11-14 in order to be recorded.** The affidavit must contain the following:

(A) The legal description of the property.

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

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

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

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

(c) A beneficiary designation is presumed to be valid. A party may rely on the presumption of validity unless the party has actual knowledge that the beneficiary designation was not validly executed. A person who acts in good faith reliance on a transfer on death deed is immune from liability to the same extent as if the person had dealt directly with the named owner and the named owner had been competent and not incapacitated.

SECTION 17. **An emergency is declared for this act.**

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