February 17, 2012

ENGROSSED
HOUSE BILL No. 1258

DIGEST OF HB 1258 (Updated February 15, 2012 1:04 pm - DI 106)

Citations Affected: IC 6-4.1; IC 12-15; IC 29-1; IC 29-3; IC 30-2; IC 30-4; IC 32-17; IC 35-45.

Synopsis: Various estate planning matters. Specifies that an individual holding a beneficial or ownership interest in an entity is considered the transferee when a transferor makes a transfer subject to the inheritance tax to the entity. Provides that the individual is liable for the same percentage of the inheritance tax as the individual's percentage of beneficial or ownership interest in the entity. Eliminates authority to file a recovery claim against the estate of the recipient's spouse. Eliminates rules of will construction that applied only to decedents dying in 2010. Authorizes foreign wills to be probated after the expiration of the probate deadlines for the same limited purposes for which Indiana wills may be probated after the deadlines. Provides that costs of administration include the fee of a surrogate attorney for purposes of determining the priority of claims when an estate's resources are insufficient to pay all claims. Eliminates the requirement

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Effective: Upon passage; July 1, 2012.

Foley, McMillin, DeLaney

(SENATE SPONSORS — ZAKAS, GLICK, BRODEN)

January 9, 2012, read first time and referred to Committee on Judiciary.
January 23, 2012, amended, reported — Do Pass; referred to Committee on Ways and Means pursuant to House Rule 127.
January 27, 2012, amended, reported — Do Pass.
January 30, 2012, read second time, ordered engrossed. Engrossed.
January 31, 2012, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Judiciary.
February 16, 2012, reported favorably — Do Pass.

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Digest Continued

that a declaration designating a standby guardian include the Social Security number of the child or protected person. Specifies that a standby guardian has all of the powers granted by the guardianship statute. Provides that amendments to the trust code apply to trusts created prior to the effective date of the amendment unless certain adverse events would occur because of the application of the amendment. Provides that amendments to the transfer on death (TOD) statute apply to TOD transfers created before the effective date of the amendment. Specifies that a testamentary trust receiving a TOD transfer is considered to have been in existence as of the owner's death if the owner's last will and testament is admitted to probate. Provides that the practice of law by a person who is not an attorney is considered racketeering activity for purposes of the law concerning racketeer influenced and corrupt organizations. Removes authority for a transferring entity to adopt rules concerning transfer on death transfers in whole or in part by incorporation by references. Removes possible exceptions concerning the rules that apply to a beneficiary designation. Provides that a guardian does not need to be appointed if custodial property is less than $10,000. Makes technical corrections. Repeals rules of trust construction that applied only to decedents dying in 2010. (The introduced version of this bill was prepared by the probate code study commission.)

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February 17, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1258

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

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

SECTION 1. IC 6-4.1-1-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 3.5. "Entity" refers to a partnership, limited partnership, limited liability partnership, association, corporation, limited liability company, trust, or similar entity.**

SECTION 2. IC 6-4.1-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 8. If a transferor makes a taxable transfer to an entity, each individual with a beneficial (whether discretionary or not) or ownership interest in the entity is considered a transferee. Each transferee is liable for the same percentage of the taxes imposed on the taxable transfer as that individual's percentage of beneficial (whether discretionary or not) or ownership interest in the entity.**

SECTION 3. IC 12-15-9-0.5, AS AMENDED BY P.L.246-2005,

SECTION 107, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 0.5. (a) As used in this chapter, "estate" includes:

(1) all real and personal property and other assets included within an individual's probate estate;

(2) any interest in real property owned by the individual at the time of death that was conveyed to the individual's survivor through joint tenancy with right of survivorship, if the joint tenancy was created after June 30, 2002;

(3) any real or personal property conveyed through a nonprobate transfer; and

(4) any sum due after June 30, 2005, to a person after the death of a Medicaid recipient that is under the terms of an annuity contract purchased after May 1, 2005, with the assets of

~~(A)~~ the Medicaid recipient. ~~or~~

~~(B) the Medicaid recipient's spouse.~~

(b) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

(1) whose last domicile was in Indiana; and

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

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

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

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

SECTION 4. IC 12-15-9-1, AS AMENDED BY P.L.246-2005, SECTION 108, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. ~~(a) Subject to subsection (b),~~ Upon the death of a Medicaid recipient, ~~or upon the death of a deceased Medicaid recipient's spouse,~~ the total amount of Medicaid paid on behalf of the recipient after the recipient became fifty-five (55) years of age must be allowed as a preferred claim against the estate of the recipient ~~or the recipient's spouse~~ in favor of the state. The affidavit of a person designated by the secretary to administer this section is evidence of the amount of the claim and is payable after the payment of the following in accordance with IC 29-1-14-9:

(1) Funeral expenses for the recipient and the recipient's spouse, not to exceed in each individual case three hundred fifty dollars ($350).

(2) The expenses of the last illness of the recipient ~~and the~~

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~~recipient's spouse~~ that are authorized or paid by the office.

(3) The expenses of administering the estate, including the attorney's fees approved by the court.

~~(b) If a recipient's spouse remarries, the part of the estate of the recipient's spouse that is attributable to the subsequent spouse is not subject to a claim for Medicaid paid on behalf of the recipient.~~

SECTION 5. IC 12-15-9-5, AS AMENDED BY P.L.246-2005, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. ~~(a)~~ The office may not ~~recover on a claim filed~~ **file a claim** against the estate of a **recipient's** surviving spouse. ~~while the individual is survived by a child who is:~~

~~(1) less than twenty-one (21) years of age; or~~

~~(2) permanently and totally disabled under criteria established by the federal Supplemental Security Income program.~~

~~(b) The office may not recover on a claim filed against the estate of a surviving spouse from any part of the estate described in section 1(b) of this chapter.~~

SECTION 6. IC 29-1-6-1, AS AMENDED BY P.L.36-2011, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. In the absence of a contrary intent appearing in the will, wills shall be construed as to real and personal estate in accordance with the rules in this section.

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

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

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

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effect in enjoyment.

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

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

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

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

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

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

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

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

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

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

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

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

(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

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authority of a durable power of attorney are presumed to be for an incapacitated principal. If:

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

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

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

(m) A written statement or list that:

(1) complies with this subsection; and

(2) is referred to in a will;

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

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

~~(1) the unified credit;~~

~~(2) the estate tax exemption;~~

~~(3) the applicable credit amount;~~

~~(4) the applicable exclusion amount;~~

~~(5) the generation-skipping transfer tax exemption;~~

~~(6) the GST exemption;~~

~~(7) the marital deduction;~~

~~(8) the maximum marital deduction;~~

~~(9) the unlimited marital deduction;~~

~~(10) the inclusion ratio;~~

~~(11) the applicable fraction;~~

~~(12) any section of the Internal Revenue Code:~~

~~(A) relating to the:~~

~~(i) federal estate tax; or~~

~~(ii) generation-skipping transfer tax; and~~

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

~~(r) The personal representative 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 7. IC 29-1-7-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 25. **(a)** Any will that has been proved or allowed in any other state or in any foreign country, according to the laws of that state or country, may be received and recorded in this state: ~~within three (3) years after the decedent's death~~

(1) before the deadlines imposed by section 15.1(d) of this

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chapter, unless the will is probated for a purpose described in section 15.1(e) of this chapter; and

(2) in the manner and for the purpose stated in sections 26 and 27 of this chapter.

(b) A foreign will received and recorded for a purpose described in section 15.1(e) of this chapter may not be admitted to probate for any other purpose and is subject to all rules governing the admission of wills to probate.

SECTION 8. IC 29-1-14-9, AS AMENDED BY P.L.161-2007, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. (a) All claims shall be classified in one (1) of the following classes. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration.

(2) Reasonable funeral expenses. However, in any estate in which the decedent was a recipient of public assistance under IC 12-1-1 through IC 12-1-12 (before its repeal) or any of the following, the amount of funeral expenses having priority over any claim for the recovery of public assistance shall not exceed the limitations provided for under IC 12-14-6, IC 12-14-17, and IC 12-14-21:

TANF assistance.
TANF burials.
TANF IMPACT/J.O.B.S.
Temporary Assistance to Other Needy Families (TAONF) assistance.
ARCH.
Blind relief.
Child care.
Child welfare adoption assistance.
Child welfare adoption opportunities.
Child welfare assistance.
Child welfare child care improvement.
Child welfare child abuse.
Child welfare child abuse and neglect prevention.
Child welfare children's victim advocacy program.
Child welfare foster care assistance.
Child welfare independent living.
Child welfare medical assistance to wards.
Child welfare program review action group (PRAG).
Child welfare special needs adoption.
Food Stamp administration.

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Health care for indigent (HCI).
ICES.
IMPACT (food stamps).
Title IV-D (ICETS).
Title IV-D child support administration.
Title IV-D child support enforcement (parent locator).
Medicaid assistance.
Medical services for inmates and patients (590).
Room and board assistance (RBA).
Refugee social service.
Refugee resettlement.
Repatriated citizens.
SSI burials and disabled examinations.
Title XIX certification.

(3) Allowances made under IC 29-1-4-1.

(4) All debts and taxes having preference under the laws of the United States.

(5) Reasonable and necessary medical expenses of the last sickness of the decedent, including compensation of persons attending ~~him.~~ **the decedent.**

(6) All debts and taxes having preference under the laws of this state; but no personal representative shall be required to pay any taxes on any property of the decedent unless such taxes are due and payable before possession thereof is delivered by the personal representative pursuant to the provisions of IC 29-1.

(7) All other claims allowed.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, nor shall a claim due and payable be entitled to a preference over claims not due.

(c) For purposes of subsection (a), costs and expenses of administration include the fee of a surrogate attorney that has been:

(1) approved by a court under the rules of the Indiana Supreme Court governing surrogate attorneys; and

(2) filed as a claim in the estate of a deceased attorney.

SECTION 9. IC 29-3-3-7, AS ADDED BY P.L.178-2011, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) Subject to subsection (e), a parent of a minor or the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby

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guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

(b) A declaration under this section must contain the following information:

(1) The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any.

(2) The following information concerning each minor child or protected person for whom a standby guardian is designated by the declaration:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

(B) The person's date of birth.

~~(C) The person's Social Security number, if any.~~

(3) A statement that the declaration becomes effective upon the death or incapacity of the declarant.

(4) A statement that the declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period.

(c) A declaration executed under this section must be signed by the declarant in the presence of a notary public.

(d) A declaration executed under this section becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminates ninety (90) days after the declaration becomes effective. However, if the designated standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period, the declaration remains in effect until the court rules on the petition.

(e) A declaration executed under this section must be considered by, but is not binding upon, the department of child services, a probation department, or a juvenile court for purposes of determining the placement of a child who is the subject of:

(1) an allegation of child abuse or neglect under IC 31-33;

(2) an open child in need of services case under IC 31-34; or

(3) an open delinquency case under IC 31-37.

(f) A standby guardian shall have all the powers granted to a guardian under this article.

SECTION 10. IC 30-2-8.5-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 33. (a) A person nominated under section 18 of this chapter or designated under section 24 of this chapter as custodian may decline to serve by delivering a

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valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If:

(1) the event giving rise to a transfer has not occurred; and

(2) no substitute custodian able, willing, and eligible to serve was nominated under section 18 of this chapter;

the person who made the nomination may nominate a substitute custodian under section 18 of this chapter. Otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer from among the persons eligible to serve as custodian for that kind of property under section 24(a) of this chapter. The custodian designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section 19 of this chapter as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor is at least fourteen (14) years of age and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is at least fourteen (14) years of age, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a guardian of the minor, or a trust company. **Except as provided in subsection (g),** if the minor is less than fourteen (14) years of age or fails to act within sixty (60) days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce

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the obligation to deliver custodial property and records and is responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor is at least fourteen (14) years of age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 19 of this chapter or to require the custodian to give appropriate bond.

(g) If the custodial property, including a custodial account, is worth less than ten thousand dollars ($10,000), a guardian does not need to be appointed as set forth in IC 29-3-3-1.

SECTION 11. IC 30-4-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. ~~(Application of the Article with Respect to Pre-Existing Trusts)~~ **(a)** Except as provided elsewhere in this article, the rules of law contained in this article shall apply to all trusts created prior to September 2, 1971, unless to do so would:

(1) adversely affect a right given to any beneficiary;

(2) give a right to any beneficiary which ~~he~~ **the beneficiary** was not intended to have when the trust was created;

(3) impose a duty or liability on any person which was not intended to be imposed when the trust was created; or

(4) relieve any person from any duty or liability imposed by the terms of the trust or under prior law.

(b) Except as provided elsewhere in this article, an amendment to the rules of law contained in this article applies to all trusts created prior to the effective date of the applicable amendment unless to do so would:

(1) adversely affect a right given to any beneficiary;

(2) give a right to any beneficiary that the beneficiary was not intended to have when the trust was created;

(3) impose a duty or liability on any person that was not intended to be imposed when the trust was created; or

(4) relieve any person from any duty or liability imposed by the terms of the trust or under prior law.

SECTION 12. IC 30-4-2.1-13 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 13. (a) A trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to:~~

~~(1) the unified credit;~~

~~(2) the estate tax exemption;~~

~~(3) the applicable credit amount;~~

~~(4) the applicable exclusion amount;~~

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

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

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

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

~~(e) The trustee of any beneficiary under the trust having a present right to income or principal of the trust may initiate a proceeding to determine whether the decedent intended that a formula described in subsection (a) be construed with respect to the law as it existed after~~

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~~December 31, 2009. A proceeding under this subsection must be commenced within nine (9) months after the death of the settlor.~~

SECTION 13. IC 32-17-14-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. An amendment to the rules of law contained in this chapter applies to all transfer on death transfers created prior to the effective date of the applicable amendment.**

SECTION 14. IC 32-17-14-21, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) A trustee of a trust may be a designated beneficiary regardless of whether the trust is amendable, revocable, irrevocable, funded, unfunded, or amended after the designation is made.

(b) Unless a beneficiary designation provides otherwise, a trust that is revoked or terminated before the death of the owner is considered nonexistent at the owner's death.

(c) Unless a beneficiary designation provides otherwise, a legal entity or trust that does not:

(1) exist; or

(2) come into existence effective as of the owner's death;

is considered nonexistent at the owner's death.

(d) For purposes of this section, an owner's testamentary trust is considered to have come into existence as of the owner's death if the owner's last will and testament is admitted to probate.

SECTION 15. IC 32-17-14-26, AS AMENDED BY P.L.36-2011, SECTION 16, 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

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be registered in beneficiary form on instructions given by a broker or person delivering the security.

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

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

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

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

(7) A transfer on death transfer of property also transfers any 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

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substitute under section 22 of this chapter, the share of the nonsurviving beneficiary is allocated among the surviving beneficiaries in the proportion that their shares bear to each other.

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

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

(10) If a trustee designated as a beneficiary:

(A) does not survive the owner;

(B) resigns; or

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

the transferring entity may make the distribution as if the trust did 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.

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

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

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

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

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

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

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

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

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

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

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

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

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(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 16. IC 32-17-14-27, AS ADDED BY P.L.143-2009, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) An owner who makes arrangements for a transfer on death transfer under this chapter gives to the transferring entity the protections provided in this section for executing the owner's beneficiary designation.

(b) A transferring entity may execute a transfer on death transfer with or without a written request for execution.

(c) A transferring entity may rely and act on:

(1) a certified or authenticated copy of a death certificate issued by an official or an agency of the place where the death occurred as showing the fact, place, date, and time of death and the identity of the decedent; and

(2) a certified or authenticated copy of a report or record of any governmental agency that a person is missing, detained, dead, or alive, and the dates, circumstances, and places disclosed by the record or report.

(d) A transferring entity has no duty to verify the information contained within a written request for the execution of a beneficiary designation. The transferring entity may rely and act on a request made by a beneficiary or a beneficiary's attorney in fact, guardian, conservator, or other agent.

(e) A transferring entity has no duty to:

(1) except as provided in subsection (g), give notice to any person of the date, manner, and persons to whom a transfer will be made under beneficiary designation;

(2) attempt to locate any beneficiary or lineal descendant substitute;

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(3) determine whether a nonsurviving beneficiary or descendant had a lineal descendant who survived the owner;
(4) locate a trustee or custodian;
(5) obtain the appointment of a successor trustee or custodian;
(6) discover the existence of a trust instrument or will that creates an express trust; or
(7) determine any fact or law that would:
(A) cause the beneficiary designation to be revoked in whole or in part as to any person because of a change in marital status or other reason; or
(B) cause a variation in the distribution provided in the beneficiary designation.

(f) A transferring entity has no duty to withhold making a transfer based on knowledge of any fact or claim adverse to the transfer to be made unless before making the transfer the transferring entity receives a written notice that:
(1) in manner, place, and time affords a reasonable opportunity to act on the notice before making the transfer; and
(2) does the following:
(A) Asserts a claim of beneficial interest in the transfer adverse to the transfer to be made.
(B) Gives the name of the claimant and an address for communications directed to the claimant.
(C) Identifies the deceased owner.
(D) States the nature of the claim as it affects the transfer.

(g) If a transferring entity receives a timely notice meeting the requirements of subsection (f), the transferring entity may discharge any duty to the claimant by sending a notice by certified mail to the claimant at the address provided by the claimant's notice of claim. The notice must advise the claimant that a transfer **adverse** to the claimant's asserted claim will be made at least forty-five (45) days after the date of the mailing unless the transfer is restrained by a court order. If the transferring entity mails the notice described by this subsection to the claimant, the transferring entity shall withhold making the transfer for at least forty-five (45) days after the date of the mailing. Unless the transfer is restrained by court order, the transferring entity may make the transfer at least forty-five (45) days after the date of the mailing.

(h) Neither notice that does not comply with the requirements of subsection (f) nor any other information shown to have been available to a transferring entity, its transfer agent, or its employees affects the transferring entity's right to the protections provided by this chapter.

(i) A transferring entity is not responsible for the application or use

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of property transferred to a fiduciary entitled to receive the property.

(j) Notwithstanding the protections provided a transferring entity by this chapter, a transferring entity may require parties engaged in a dispute over the propriety of a transfer to:

(1) adjudicate their respective rights; or

(2) furnish an indemnity bond protecting the transferring entity.

(k) A transfer by a transferring entity made in accordance with this chapter and under the beneficiary designation in good faith and reliance on information the transferring entity reasonably believes to be accurate discharges the transferring entity from all claims for the amounts paid and the property transferred.

(l) All protections provided by this chapter to a transferring entity are in addition to the protections provided by any other applicable Indiana law.

SECTION 17. IC 35-45-6-0.1, AS ADDED BY P.L.220-2011, SECTION 607, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 0.1. **(a)** The following amendments to this chapter apply as follows:

(1) The amendments made to section 1 of this chapter by P.L.112-1998 apply only to offenses committed after June 30, 1998.

(2) The amendments made to section 1 of this chapter by P.L.17-2001 apply only to offenses committed after June 30, 2001.

(3) The amendments made to section 1 of this chapter by P.L.227-2007 apply only to crimes committed after June 30, 2007.

(4) The amendments made to section 1 of this chapter by P.L.143-2009 apply only to crimes committed after June 30, 2009.

(b) Section 1(e)(37) of this chapter applies only to crimes committed after June 30, 2012.

SECTION 18. IC 35-45-6-1, AS AMENDED BY P.L.182-2011, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

(c) "Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or

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merely associated in fact.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

(e) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

(1) A provision of IC 23-19, or of a rule or order issued under IC 23-19.
(2) A violation of IC 35-45-9.
(3) A violation of IC 35-47.
(4) A violation of IC 35-49-3.
(5) Murder (IC 35-42-1-1).
(6) Battery as a Class C felony (IC 35-42-2-1).
(7) Kidnapping (IC 35-42-3-2).
(8) Human and sexual trafficking crimes (IC 35-42-3.5).
(9) Child exploitation (IC 35-42-4-4).
(10) Robbery (IC 35-42-5-1).
(11) Carjacking (IC 35-42-5-2).
(12) Arson (IC 35-43-1-1).
(13) Burglary (IC 35-43-2-1).
(14) Theft (IC 35-43-4-2).
(15) Receiving stolen property (IC 35-43-4-2).
(16) Forgery (IC 35-43-5-2).
(17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
(18) Bribery (IC 35-44-1-1).
(19) Official misconduct (IC 35-44-1-2).
(20) Conflict of interest (IC 35-44-1-3).
(21) Perjury (IC 35-44-2-1).
(22) Obstruction of justice (IC 35-44-3-4).
(23) Intimidation (IC 35-45-2-1).
(24) Promoting prostitution (IC 35-45-4-4).
(25) Professional gambling (IC 35-45-5-3).
(26) Maintaining a professional gambling site (IC 35-45-5-3.5(b)).
(27) Promoting professional gambling (IC 35-45-5-4).
(28) Dealing in or manufacturing cocaine or a narcotic drug

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(IC 35-48-4-1).
(29) Dealing in or manufacturing methamphetamine (IC 35-48-4-1.1).
(30) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
(31) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
(32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
(33) Dealing in marijuana, hash oil, hashish, salvia, or a synthetic cannabinoid (IC 35-48-4-10).
(34) Money laundering (IC 35-45-15-5).
(35) A violation of IC 35-47.5-5.
(36) A violation of any of the following:
(A) IC 23-14-48-9.
(B) IC 30-2-9-7(b).
(C) IC 30-2-10-9(b).
(D) IC 30-2-13-38(f).
(37) Practice of law by a person who is not an attorney (IC 33-43-2-1).

SECTION 19. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1258, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 8, line 27, after "15.1(e)" insert "of this chapter".

Page 11, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 11. IC 30-2-8.5-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 33. (a) A person nominated under section 18 of this chapter or designated under section 24 of this chapter as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If:

(1) the event giving rise to a transfer has not occurred; and

(2) no substitute custodian able, willing, and eligible to serve was nominated under section 18 of this chapter;

the person who made the nomination may nominate a substitute custodian under section 18 of this chapter. Otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer from among the persons eligible to serve as custodian for that kind of property under section 24(a) of this chapter. The custodian designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section 19 of this chapter as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor is at least fourteen (14) years of age and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor is at least fourteen (14) years of age, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a guardian of the minor, or a trust company. **Except as provided in subsection (g),** if the minor is less than

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fourteen (14) years of age or fails to act within sixty (60) days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and is responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor is at least fourteen (14) years of age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 19 of this chapter or to require the custodian to give appropriate bond.

(g) If the custodial property, including a custodial account, is worth less than ten thousand dollars ($10,000), a guardian does not need to be appointed as set forth in IC 29-3-3-1.".

Page 13, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 16. IC 32-17-14-26, AS AMENDED BY P.L.36-2011, SECTION 16, 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

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or person delivering the security.

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

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

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

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

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

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

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

(A) If there are multiple primary beneficiaries and a primary beneficiary does not survive the owner and does not have a substitute under section 22 of this chapter, the share of the

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nonsurviving beneficiary is allocated among the surviving beneficiaries in the proportion that their shares bear to each other.

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

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

(10) If a trustee designated as a beneficiary:

(A) does not survive the owner;

(B) resigns; or

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

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

(11) If a trustee is designated as a beneficiary and no affidavit of certification of trust 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

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missing beneficiary, to pay interest on the share held for a missing beneficiary, or to invest the share in any different property.

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

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

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

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

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

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

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

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

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

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

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

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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.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1258 as introduced.)

FOLEY, Chair

Committee Vote: yeas 7, nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1258, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete line 15.

Page 2, delete lines 1 through 14.

Page 3, delete lines 1 through 27, begin a new paragraph and insert:

"SECTION 5. IC 12-15-9-1, AS AMENDED BY P.L.246-2005, SECTION 108, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. ~~(a) Subject to subsection (b),~~ Upon the death of a Medicaid recipient, ~~or upon the death of a deceased Medicaid recipient's spouse,~~ the total amount of Medicaid paid on behalf of the recipient after the recipient became fifty-five (55) years of age must be allowed as a preferred claim against the estate of the recipient ~~or the recipient's spouse~~ in favor of the state. The affidavit of a person designated by the secretary to administer this section is evidence of the amount of the claim and is payable after the payment of the following in accordance with IC 29-1-14-9:

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(1) Funeral expenses for the recipient and the recipient's spouse, not to exceed in each individual case three hundred fifty dollars ($350).

(2) The expenses of the last illness of the recipient ~~and the recipient's spouse~~ that are authorized or paid by the office.

(3) The expenses of administering the estate, including the attorney's fees approved by the court.

~~(b) If a recipient's spouse remarries, the part of the estate of the recipient's spouse that is attributable to the subsequent spouse is not subject to a claim for Medicaid paid on behalf of the recipient.~~".

Page 8, line 37, reset in roman "However, in any estate in which".

Page 8, reset in roman lines 38 through 42.

Page 9, reset in roman lines 1 through 35.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1258 as printed January 23, 2012.)

ESPICH, Chair

Committee Vote: yeas 17, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1258, 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 House Bill 1258 as printed January 28, 2012.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0.

C o p y