

Adopted                  Rejected
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## COMMITTEE REPORT

YES:	7
NO:	0

**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:*

- 1           Page 8, line 27, after "15.1(e)" insert "of this chapter".
- 2           Page 11, between lines 17 and 18, begin a new paragraph and insert:
- 3           "SECTION 11. IC 30-2-8.5-33 IS AMENDED TO READ AS
- 4           FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 33. (a) A person
- 5           nominated under section 18 of this chapter or designated under section
- 6           24 of this chapter as custodian may decline to serve by delivering a
- 7           valid disclaimer to the person who made the nomination or to the
- 8           transferor or the transferor's legal representative. If:
- 9                 (1) the event giving rise to a transfer has not occurred; and
- 10                (2) no substitute custodian able, willing, and eligible to serve was
- 11                 nominated under section 18 of this chapter;
- 12           the person who made the nomination may nominate a substitute
- 13           custodian under section 18 of this chapter. Otherwise the transferor or
- 14           the transferor's legal representative shall designate a substitute
- 15           custodian at the time of the transfer from among the persons eligible to
- 16           serve as custodian for that kind of property under section 24(a) of this

1 chapter. The custodian designated has the rights of a successor  
2 custodian.

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

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

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

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

35 (f) A transferor, the legal representative of a transferor, an adult  
36 member of the minor's family, a guardian of the minor, or the minor if  
37 the minor is at least fourteen (14) years of age may petition the court to  
38 remove the custodian for cause and to designate a successor custodian

1 other than a transferor under section 19 of this chapter or to require the  
2 custodian to give appropriate bond.

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

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

7 "SECTION 16. IC 32-17-14-26, AS AMENDED BY P.L.36-2011,  
8 SECTION 16, IS AMENDED TO READ AS FOLLOWS  
9 [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) If an agreement between  
10 the owner and a transferring entity is required to carry out a transfer on  
11 death transfer as described in section 7 of this chapter, a transferring  
12 entity may not adopt rules for the making, execution, acceptance, and  
13 revocation of a beneficiary designation that are inconsistent with this  
14 chapter. ~~A transferring entity may adopt the rules imposed by~~  
15 ~~subsection (b) in whole or in part by incorporation by reference.~~

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

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

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

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

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

36 (5) Multiple surviving beneficiaries share equally in the property  
37 being transferred unless a different percentage or fractional share  
38 is stated for each beneficiary. If a percentage or fractional share is

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

- 1           have a substitute under section 22 of this chapter, the share of  
2           the nonsurviving contingent beneficiary is allocated among the  
3           surviving contingent beneficiaries in the proportion that their  
4           shares bear to each other.
- 5           (10) If a trustee designated as a beneficiary:  
6                 (A) does not survive the owner;  
7                 (B) resigns; or  
8                 (C) is unable or unwilling to execute the trust as trustee and  
9                 no successor trustee is appointed in the twelve (12) months  
10                following the owner's death;  
11           the transferring entity may make the distribution as if the trust did  
12           not survive the owner.
- 13           (11) If a trustee is designated as a beneficiary and no affidavit of  
14           certification of trust or probated will creating an express trust is  
15           presented to the transferring entity within the twelve (12) months  
16           after the owner's death, the transferring entity may make the  
17           distribution as if the trust did not survive the owner.
- 18           (12) If the transferring entity is not presented evidence during the  
19           twelve (12) months after the owner's death that there are lineal  
20           descendants of a nonsurviving beneficiary for whom LDPS  
21           distribution applies who survived the owner, the transferring  
22           entity may make the transfer as if the nonsurviving beneficiary's  
23           descendants also failed to survive the owner.
- 24           (13) If a beneficiary cannot be located at the time the transfer is  
25           made to located beneficiaries, the transferring entity shall hold the  
26           missing beneficiary's share. If the missing beneficiary's share is  
27           not claimed by the beneficiary or by the beneficiary's personal  
28           representative or successor during the twelve (12) months after the  
29           owner's death, the transferring entity shall transfer the share as if  
30           the beneficiary did not survive the owner.
- 31           (14) A transferring entity has no obligation to attempt to locate a  
32           missing beneficiary, to pay interest on the share held for a missing  
33           beneficiary, or to invest the share in any different property.
- 34           (15) Cash, interest, rent, royalties, earnings, or dividends payable  
35           to a missing beneficiary may be held by the transferring entity at  
36           interest or reinvested by the transferring entity in the account or  
37           in a dividend reinvestment account associated with a security held  
38           for the missing beneficiary.

- 1 (16) If a transferring entity is required to make a transfer on death  
2 transfer to a minor or an incapacitated adult, the transfer may be  
3 made under the Indiana Uniform Transfers to Minors Act, the  
4 Indiana Uniform Custodial Trust Act, or a similar law of another  
5 state.
- 6 (17) A written request for the execution of a transfer on death  
7 transfer may be made by any beneficiary, a beneficiary's legal  
8 representative or attorney in fact, or the owner's personal  
9 representative.
- 10 (18) A transfer under a transfer on death deed occurs  
11 automatically upon the owner's death subject to the requirements  
12 of subdivision (20) and does not require a request for the  
13 execution of the transfer.
- 14 (19) A written request for the execution of a transfer on death  
15 transfer must be accompanied by the following:
- 16 (A) A certificate or instrument evidencing ownership of the  
17 contract, account, security, or property.
- 18 (B) Proof of the deaths of the owner and any nonsurviving  
19 beneficiary.
- 20 (C) An inheritance tax waiver from states that require it.
- 21 (D) In the case of a request by a legal representative, a copy of  
22 the instrument creating the legal authority or a certified copy  
23 of the court order appointing the legal representative.
- 24 (E) Any other proof of the person's entitlement that the  
25 transferring entity may require.
- 26 (20) On the death of an owner whose transfer on death deed has  
27 been recorded, the beneficiary shall file an affidavit in the office  
28 of the recorder of the county in which the real property is located.  
29 The affidavit must be endorsed by the county auditor under  
30 IC 36-2-11-14 in order to be recorded. The affidavit must contain  
31 the following:
- 32 (A) The legal description of the property.
- 33 (B) A certified copy of the death certificate certifying the  
34 owner's death.
- 35 (C) The name and address of each designated beneficiary who  
36 survives the owner or is in existence on the date of the owner's  
37 death.
- 38 (D) The name of each designated beneficiary who has not

1           survived the owner's death or is not in existence on the date of  
2           the owner's death.

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

11          Renumber all SECTIONS consecutively.  
            (Reference is to HB 1258 as introduced.)

**and when so amended that said bill do pass.**

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Representative Foley