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# HOUSE BILL No. 1258

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-4.1; IC 12-14-21-3; IC 12-15-9; IC 29-1; IC 29-3-3-7; IC 30-4; IC 32-17-14; IC 35-45-6-0.1; IC 35-45-6-1.

**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. Provides that reasonable funeral expenses have priority over claims to recover supplemental assistance for the aged and Medicaid from a recipient's estate. (Current law provides that only amounts of \$550 or less have priority over a claim for the recovery of aged assistance and that only amounts of \$350 or less have priority over a claim for the recovery of Medicaid.) Eliminates authority to file a recovery claim against the estate of the recipient's spouse. Specifies that for purposes of the Medicaid recovery statute, costs of administration include taxes, penalties, and interest paid by the estate. 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 when an estate's resources are insufficient to pay all claims, the amount given priority for reasonable funeral expenses is not subject to any reductions for various benefits received by the decedent. 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 that a declaration designating a standby guardian include the Social Security number of the child or protected  
(Continued next page)

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**Effective:** Upon passage; July 1, 2012.

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## Foley, McMillin, DeLaney

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January 9, 2012, read first time and referred to Committee on Judiciary.

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Digest Continued

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. 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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Introduced

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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## 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:*

- 1 SECTION 1. IC 6-4.1-1-3.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2012]: **Sec. 3.5. "Entity" refers to a partnership, limited**
- 4 **partnership, limited liability partnership, association, corporation,**
- 5 **limited liability company, trust, or similar entity.**
- 6 SECTION 2. IC 6-4.1-2-8 IS ADDED TO THE INDIANA CODE
- 7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 8 1, 2012]: **Sec. 8. If a transferor makes a taxable transfer to an**
- 9 **entity, each individual with a beneficial (whether discretionary or**
- 10 **not) or ownership interest in the entity is considered a transferee.**
- 11 **Each transferee is liable for the same percentage of the taxes**
- 12 **imposed on the taxable transfer as that individual's percentage of**
- 13 **beneficial (whether discretionary or not) or ownership interest in**
- 14 **the entity.**
- 15 SECTION 3. IC 12-14-21-3 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. Notwithstanding any  
 2 other law, a claim filed for recovery of aged assistance has priority in  
 3 order of payment from the estate over all other claims, except the  
 4 following:

- 5 (1) Prior recorded encumbrances.  
 6 (2) Taxes.  
 7 (3) Reasonable costs of administration.  
 8 (4) **Reasonable** funeral expenses. ~~in an amount not to exceed five~~  
 9 ~~hundred fifty dollars (\$550). However, this amount is zero (0) if~~  
 10 ~~the decedent has~~ **The court may consider the amount of funds**  
 11 **established for** prepaid funeral expenses that were excluded as  
 12 a resource for Medicaid eligibility under IC 12-15-2 **to determine**  
 13 **the amount of funeral expenses granted priority over the**  
 14 **claim under this section.**

15 SECTION 4. IC 12-15-9-0.5, AS AMENDED BY P.L.246-2005,  
 16 SECTION 107, IS AMENDED TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2012]: Sec. 0.5. (a) As used in this chapter,  
 18 "estate" includes:

- 19 (1) all real and personal property and other assets included within  
 20 an individual's probate estate;  
 21 (2) any interest in real property owned by the individual at the  
 22 time of death that was conveyed to the individual's survivor  
 23 through joint tenancy with right of survivorship, if the joint  
 24 tenancy was created after June 30, 2002;  
 25 (3) any real or personal property conveyed through a nonprobate  
 26 transfer; and  
 27 (4) any sum due after June 30, 2005, to a person after the death of  
 28 a Medicaid recipient that is under the terms of an annuity contract  
 29 purchased after May 1, 2005, with the assets of  
 30 ~~(A) the Medicaid recipient. or~~  
 31 ~~(B) the Medicaid recipient's spouse.~~

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

- 34 (1) whose last domicile was in Indiana; and  
 35 (2) who immediately before death had the power, acting alone, to  
 36 prevent transfer of the property by revocation or withdrawal and:  
 37 (A) use the property for the benefit of the transferor; or  
 38 (B) apply the property to discharge claims against the  
 39 transferor's probate estate.

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

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

12 **(1) The expenses of administering the estate, including the**  
 13 **attorney's fees approved by the court and all taxes, interest,**  
 14 **and penalties imposed by one (1) or more of the following:**

15 **(A) The federal government.**

16 **(B) A state.**

17 **(C) A political subdivision (as defined in IC 36-1-2-13).**

18 ~~(+)~~ **(2) Reasonable** funeral expenses for the recipient. ~~and the~~  
 19 ~~recipient's spouse; not to exceed in each individual case three~~  
 20 ~~hundred fifty dollars (\$350):~~

21 ~~(2)~~ **(3)** The expenses of the last illness of the recipient ~~and the~~  
 22 ~~recipient's spouse~~ that are authorized or paid by the office.

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

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

28 SECTION 6. IC 12-15-9-5, AS AMENDED BY P.L.246-2005,  
 29 SECTION 109, IS AMENDED TO READ AS FOLLOWS  
 30 [EFFECTIVE JULY 1, 2012]: Sec. 5. ~~(a) The office may not recover~~  
 31 ~~on a claim filed~~ **file a claim** against the estate of a **recipient's**  
 32 ~~surviving spouse. while the individual is survived by a child who is:~~

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

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

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

39 SECTION 7. IC 29-1-6-1, AS AMENDED BY P.L.36-2011,  
 40 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 41 JULY 1, 2012]: Sec. 1. In the absence of a contrary intent appearing in  
 42 the will, wills shall be construed as to real and personal estate in

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1 accordance with the rules in this section.

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

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

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

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

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

41 (f) A will shall not operate as the exercise of a power of  
42 appointment which the testator may have with respect to any real or

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1 personal estate, unless by its terms the will specifically indicates that  
2 the testator intended to exercise the power.

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

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

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

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

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1 of the will and before or after the death of the testator.

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

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

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

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

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

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

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

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

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

32 (m) A written statement or list that:

33 (1) complies with this subsection; and

34 (2) is referred to in a will;

35 may be used to dispose of items of tangible personal property, other  
 36 than property used in a trade or business, not otherwise specifically  
 37 disposed of by the will. To be admissible under this subsection as  
 38 evidence of the intended disposition, the writing must be signed by the  
 39 testator and must describe the items and the beneficiaries with  
 40 reasonable certainty. The writing may be prepared before or after the  
 41 execution of the will. The writing may be altered by the testator after  
 42 the writing is prepared. The writing may have no significance apart

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1 from the writing's effect on the dispositions made by the will. If more  
 2 than one (1) otherwise effective writing exists, then, to the extent of a  
 3 conflict among the writings, the provisions of the most recent writing  
 4 revoke the inconsistent provisions of each earlier writing.

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

- 7 (1) the unified credit;  
 8 (2) the estate tax exemption;  
 9 (3) the applicable credit amount;  
 10 (4) the applicable exclusion amount;  
 11 (5) the generation-skipping transfer tax exemption;  
 12 (6) the GST exemption;  
 13 (7) the marital deduction;  
 14 (8) the maximum marital deduction;  
 15 (9) the unlimited marital deduction;  
 16 (10) the inclusion ratio;  
 17 (11) the applicable fraction;  
 18 (12) any section of the Internal Revenue Code:  
 19 (A) relating to the:  
 20 (i) federal estate tax; or  
 21 (ii) generation-skipping transfer tax; and  
 22 (B) that measures a share of:  
 23 (i) an estate; or  
 24 (ii) a trust;  
 25 based on the amount that can pass free of federal estate taxes  
 26 or the amount that can pass free of federal generation-skipping  
 27 transfer tax law; or  
 28 (13) a provision of federal estate tax or generation-skipping  
 29 transfer tax law that is similar to subdivisions (1) through (12);  
 30 refers to the federal estate tax and generation-skipping transfer tax laws  
 31 as they applied with respect to estates of decedents on December 31,  
 32 2009.

33 (o) Subsection (n) does not apply to a will:

- 34 (1) that is executed or amended after December 31, 2009; or  
 35 (2) that manifests an intent that a contrary rule apply if the  
 36 decedent dies on a date on which there is no then applicable  
 37 federal estate or generation-skipping transfer tax.

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

42 (q) Within three (3) months following the latest to occur of the:

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- (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 8. 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 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) may not be admitted to probate for any other purpose and is subject to all rules governing the admission of wills to probate.**

SECTION 9. 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:~~

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- 1 TANF assistance:  
 2 TANF burials:  
 3 TANF IMPACT/J.O.B.S:  
 4 Temporary Assistance to Other Needy Families (TAONF)  
 5 assistance:  
 6 ARCH:  
 7 Blind relief:  
 8 Child care:  
 9 Child welfare adoption assistance:  
 10 Child welfare adoption opportunities:  
 11 Child welfare assistance:  
 12 Child welfare child care improvement:  
 13 Child welfare child abuse:  
 14 Child welfare child abuse and neglect prevention:  
 15 Child welfare children's victim advocacy program:  
 16 Child welfare foster care assistance:  
 17 Child welfare independent living:  
 18 Child welfare medical assistance to wards:  
 19 Child welfare program review action group (PRAG):  
 20 Child welfare special needs adoption:  
 21 Food Stamp administration:  
 22 Health care for indigent (HCI):  
 23 ICES:  
 24 IMPACT (food stamps):  
 25 Title IV-D (ICETS):  
 26 Title IV-D child support administration:  
 27 Title IV-D child support enforcement (parent locator):  
 28 Medicaid assistance:  
 29 Medical services for inmates and patients (590):  
 30 Room and board assistance (RBA):  
 31 Refugee social service:  
 32 Refugee resettlement:  
 33 Repatriated citizens:  
 34 SSI burials and disabled examinations:  
 35 Title XIX certification:  
 36 (3) Allowances made under IC 29-1-4-1.  
 37 (4) All debts and taxes having preference under the laws of the  
 38 United States.  
 39 (5) Reasonable and necessary medical expenses of the last  
 40 sickness of the decedent, including compensation of persons  
 41 attending ~~him~~: **the decedent**.  
 42 (6) All debts and taxes having preference under the laws of this

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1 state; but no personal representative shall be required to pay any  
2 taxes on any property of the decedent unless such taxes are due  
3 and payable before possession thereof is delivered by the personal  
4 representative pursuant to the provisions of IC 29-1.

5 (7) All other claims allowed.

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

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

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

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

15 SECTION 10. IC 29-3-3-7, AS ADDED BY P.L.178-2011,  
16 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2012]: Sec. 7. (a) Subject to subsection (e), a parent of a  
18 minor or the guardian of a protected person may designate a standby  
19 guardian by making a written declaration naming the individual  
20 designated to serve as a standby guardian. A declarant may name an  
21 alternate to the designated standby guardian if the designated standby  
22 guardian is unable to serve, refuses to serve, renounces the  
23 appointment, dies, or becomes incapacitated after the death of the  
24 declarant.

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

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

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

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

34 (B) The person's date of birth.

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

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

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

42 (c) A declaration executed under this section must be signed by the

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

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

- 13 (1) an allegation of child abuse or neglect under IC 31-33;
- 14 (2) an open child in need of services case under IC 31-34; or
- 15 (3) an open delinquency case under IC 31-37.

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

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

- 24 (1) adversely affect a right given to any beneficiary;
- 25 (2) give a right to any beneficiary which ~~he~~ **the beneficiary** was  
 26 not intended to have when the trust was created;
- 27 (3) impose a duty or liability on any person which was not  
 28 intended to be imposed when the trust was created; or
- 29 (4) relieve any person from any duty or liability imposed by the  
 30 terms of the trust or under prior law.

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

- 35 (1) adversely affect a right given to any beneficiary;
- 36 (2) give a right to any beneficiary that the beneficiary was not  
 37 intended to have when the trust was created;
- 38 (3) impose a duty or liability on any person that was not  
 39 intended to be imposed when the trust was created; or
- 40 (4) relieve any person from any duty or liability imposed by  
 41 the terms of the trust or under prior law.

42 SECTION 12. IC 30-4-2.1-13 IS REPEALED [EFFECTIVE JULY

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1 2012]. Sec. 13: (a) A trust of a decedent who dies after December 31,  
2 2009; and before January 1, 2011; that contains a formula referring to:

- 3 (1) the unified credit;  
4 (2) the estate tax exemption;  
5 (3) the applicable credit amount;  
6 (4) the applicable exclusion amount;  
7 (5) the generation-skipping transfer tax exemption;  
8 (6) the GST exemption;  
9 (7) the marital deduction;  
10 (8) the maximum marital deduction;  
11 (9) the unlimited marital deduction;  
12 (10) the inclusion ratio;  
13 (11) the applicable fraction;  
14 (12) any section of the Internal Revenue Code:

15 (A) relating to the:

- 16 (i) federal estate tax; or  
17 (ii) generation-skipping transfer tax; and  
18 (B) that measures a share of trust;

19 based on the amount that can pass free of federal estate taxes or  
20 the amount that can pass free of federal generation-skipping  
21 transfer tax law; or

- 22 (13) a provision of federal estate tax or generation-skipping  
23 transfer tax law that is similar to subdivisions (1) through (12);

24 refers to the federal estate tax and generation-skipping transfer tax laws  
25 as they applied with respect to estates of decedents on December 31,  
26 2009.

27 (b) Subsection (a) does not apply to a trust:

- 28 (1) that is executed or amended after December 31, 2009; or  
29 (2) that manifests an intent that a contrary rule apply if the  
30 decedent dies on a date on which there is no then applicable  
31 federal estate or generation-skipping transfer tax.

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

36 (d) Within three (3) months following the latest to occur of the:

- 37 (1) decedent's death;  
38 (2) trustee's appointment; or  
39 (3) enactment of this subsection;

40 the trustee of a trust to which subsection (a) applies shall give written  
41 notice regarding the beneficiary's right to commence a proceeding  
42 under subsection (c) to any beneficiary having a right to trust income

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1 or principal under subsection (a); of the existence of this statute, and of  
2 the beneficiary's right to commence a proceeding under subsection (c):

3 (e) The trustee of any beneficiary under the trust having a present  
4 right to income or principal of the trust may initiate a proceeding to  
5 determine whether the decedent intended that a formula described in  
6 subsection (a) be construed with respect to the law as it existed after  
7 December 31, 2009. A proceeding under this subsection must be  
8 commenced within nine (9) months after the death of the settlor.

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

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

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

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

- 26 (1) exist; or
  - 27 (2) come into existence effective as of the owner's death;
- 28 is considered nonexistent at the owner's death.

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

32 SECTION 15. IC 32-17-14-27, AS ADDED BY P.L.143-2009,  
33 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
34 UPON PASSAGE]: Sec. 27. (a) An owner who makes arrangements for  
35 a transfer on death transfer under this chapter gives to the transferring  
36 entity the protections provided in this section for executing the owner's  
37 beneficiary designation.

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

- 40 (c) A transferring entity may rely and act on:
  - 41 (1) a certified or authenticated copy of a death certificate issued
  - 42 by an official or an agency of the place where the death occurred

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1 as showing the fact, place, date, and time of death and the identity  
2 of the decedent; and

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

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

12 (e) A transferring entity has no duty to:

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

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

18 (3) determine whether a nonsurviving beneficiary or descendant  
19 had a lineal descendant who survived the owner;

20 (4) locate a trustee or custodian;

21 (5) obtain the appointment of a successor trustee or custodian;

22 (6) discover the existence of a trust instrument or will that creates  
23 an express trust; or

24 (7) determine any fact or law that would:

25 (A) cause the beneficiary designation to be revoked in whole  
26 or in part as to any person because of a change in marital  
27 status or other reason; or

28 (B) cause a variation in the distribution provided in the  
29 beneficiary designation.

30 (f) A transferring entity has no duty to withhold making a transfer  
31 based on knowledge of any fact or claim adverse to the transfer to be  
32 made unless before making the transfer the transferring entity receives  
33 a written notice that:

34 (1) in manner, place, and time affords a reasonable opportunity to  
35 act on the notice before making the transfer; and

36 (2) does the following:

37 (A) Asserts a claim of beneficial interest in the transfer  
38 adverse to the transfer to be made.

39 (B) Gives the name of the claimant and an address for  
40 communications directed to the claimant.

41 (C) Identifies the deceased owner.

42 (D) States the nature of the claim as it affects the transfer.

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

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

17 (i) A transferring entity is not responsible for the application or use  
 18 of property transferred to a fiduciary entitled to receive the property.

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

- 22 (1) adjudicate their respective rights; or
- 23 (2) furnish an indemnity bond protecting the transferring entity.

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

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

32 SECTION 16. IC 35-45-6-0.1, AS ADDED BY P.L.220-2011,  
 33 SECTION 607, IS AMENDED TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2012]: Sec. 0.1. **(a)** The following amendments  
 35 to this chapter apply as follows:

- 36 (1) The amendments made to section 1 of this chapter by  
 37 P.L.112-1998 apply only to offenses committed after June 30,  
 38 1998.
- 39 (2) The amendments made to section 1 of this chapter by  
 40 P.L.17-2001 apply only to offenses committed after June 30,  
 41 2001.
- 42 (3) The amendments made to section 1 of this chapter by

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1 P.L.227-2007 apply only to crimes committed after June 30, 2007.

2 (4) The amendments made to section 1 of this chapter by

3 P.L.143-2009 apply only to crimes committed after June 30, 2009.

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

6 SECTION 17. IC 35-45-6-1, AS AMENDED BY P.L.182-2011,  
 7 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2012]: Sec. 1. (a) The definitions in this section apply  
 9 throughout this chapter.

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

14 (c) "Enterprise" means:

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

17 (2) a union, an association, or a group, whether a legal entity or  
 18 merely associated in fact.

19 (d) "Pattern of racketeering activity" means engaging in at least two  
 20 (2) incidents of racketeering activity that have the same or similar  
 21 intent, result, accomplice, victim, or method of commission, or that are  
 22 otherwise interrelated by distinguishing characteristics that are not  
 23 isolated incidents. However, the incidents are a pattern of racketeering  
 24 activity only if at least one (1) of the incidents occurred after August  
 25 31, 1980, and if the last of the incidents occurred within five (5) years  
 26 after a prior incident of racketeering activity.

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

30 (1) A provision of IC 23-19, or of a rule or order issued under  
 31 IC 23-19.

32 (2) A violation of IC 35-45-9.

33 (3) A violation of IC 35-47.

34 (4) A violation of IC 35-49-3.

35 (5) Murder (IC 35-42-1-1).

36 (6) Battery as a Class C felony (IC 35-42-2-1).

37 (7) Kidnapping (IC 35-42-3-2).

38 (8) Human and sexual trafficking crimes (IC 35-42-3.5).

39 (9) Child exploitation (IC 35-42-4-4).

40 (10) Robbery (IC 35-42-5-1).

41 (11) Carjacking (IC 35-42-5-2).

42 (12) Arson (IC 35-43-1-1).

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- 1 (13) Burglary (IC 35-43-2-1).  
 2 (14) Theft (IC 35-43-4-2).  
 3 (15) Receiving stolen property (IC 35-43-4-2).  
 4 (16) Forgery (IC 35-43-5-2).  
 5 (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).  
 6 (18) Bribery (IC 35-44-1-1).  
 7 (19) Official misconduct (IC 35-44-1-2).  
 8 (20) Conflict of interest (IC 35-44-1-3).  
 9 (21) Perjury (IC 35-44-2-1).  
 10 (22) Obstruction of justice (IC 35-44-3-4).  
 11 (23) Intimidation (IC 35-45-2-1).  
 12 (24) Promoting prostitution (IC 35-45-4-4).  
 13 (25) Professional gambling (IC 35-45-5-3).  
 14 (26) Maintaining a professional gambling site  
 15 (IC 35-45-5-3.5(b)).  
 16 (27) Promoting professional gambling (IC 35-45-5-4).  
 17 (28) Dealing in or manufacturing cocaine or a narcotic drug  
 18 (IC 35-48-4-1).  
 19 (29) Dealing in or manufacturing methamphetamine  
 20 (IC 35-48-4-1.1).  
 21 (30) Dealing in a schedule I, II, or III controlled substance  
 22 (IC 35-48-4-2).  
 23 (31) Dealing in a schedule IV controlled substance  
 24 (IC 35-48-4-3).  
 25 (32) Dealing in a schedule V controlled substance (IC 35-48-4-4).  
 26 (33) Dealing in marijuana, hash oil, hashish, salvia, or a synthetic  
 27 cannabinoid (IC 35-48-4-10).  
 28 (34) Money laundering (IC 35-45-15-5).  
 29 (35) A violation of IC 35-47.5-5.  
 30 (36) A violation of any of the following:  
 31 (A) IC 23-14-48-9.  
 32 (B) IC 30-2-9-7(b).  
 33 (C) IC 30-2-10-9(b).  
 34 (D) IC 30-2-13-38(f).  
 35 **(37) Practice of law by a person who is not an attorney**  
 36 **(IC 33-43-2-1).**  
 37 **SECTION 18. An emergency is declared for this act.**

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