

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR EHB 1258**

**Citations Affected:** IC 32-36-1.

**Synopsis:** Various estate administration matters. Conference committee report for EHB 1258. 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 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 TOD 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. Provides that a personality does not have rights of publicity if the personality has commercial value solely because the personality has been charged with or convicted of a crime. Provides that: (1) a deceased personality's rights of publicity apply to the personality whether the personality died before, on, or after July 1, 1994 (the original effective date of the rights of publicity law); (2) if the personality died before July 1, 1994, the deceased personality's rights of publicity are considered to have existed on and after the date the personality died; (3) a claim for a violation of a personality's right of publicity may not be

asserted unless the alleged act or event of violation occurs within Indiana; and (4) a claim for a violation of the personality's right of publicity may not be asserted under this chapter unless the alleged act or event of violation occurs after June 30, 1994. 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.) **(This conference committee report does the following: (1) Makes technical corrections. (2) Provides that a personality does not have rights of publicity if the personality has commercial value solely because the personality has been charged with or convicted of a crime. (3) Provides that: (A) a deceased personality's rights of publicity apply to the personality whether the personality died before, on, or after July 1, 1994 (the original effective date of the rights of publicity law); (B) if the personality died before July 1, 1994, the deceased personality's rights of publicity are considered to have existed on and after the date the personality died; (C) a claim for a violation of a personality's right of publicity may not be asserted unless the alleged act or event of violation occurs within Indiana; and (D) a claim for a violation of the personality's right of publicity may not be asserted under this chapter unless the alleged act or event of violation occurs after June 30, 1994.)**

**Effective:** July 1, 2012.

# CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1258 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Page 2, line 39, after "recipient" insert ",".
- 2 Page 2, line 39, strike "and the recipient's spouse,".
- 3 Page 2, line 40, strike "in each individual case".
- 4 Page 20, between lines 14 and 15, begin a new paragraph and insert:
- 5 "SECTION 17. IC 32-36-1-1 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) This chapter
- 7 applies to an act or event that occurs within Indiana, regardless of a
- 8 personality's domicile, residence, or citizenship.
- 9 (b) This chapter does not affect rights and privileges recognized
- 10 under any other law that apply to a news reporting or an entertainment
- 11 medium.
- 12 (c) This chapter does not apply to the following:
- 13 (1) The use of a personality's name, voice, signature, photograph,
- 14 image, likeness, distinctive appearance, gestures, or mannerisms
- 15 in any of the following:
- 16 (A) Literary works, theatrical works, musical compositions,
- 17 film, radio, or television programs.
- 18 (B) Material that has political or newsworthy value.
- 19 (C) Original works of fine art.
- 20 (D) Promotional material or an advertisement for a news
- 21 reporting or an entertainment medium that:

- 1 (i) uses all or part of a past edition of the medium's own  
 2 broadcast or publication; and  
 3 (ii) does not convey or reasonably suggest that a personality  
 4 endorses the news reporting or entertainment medium.  
 5 (E) An advertisement or commercial announcement for a use  
 6 described in this subdivision.
- 7 (2) The use of a personality's name to truthfully identify the  
 8 personality as:  
 9 (A) the author of a written work; or  
 10 (B) a performer of a recorded performance;  
 11 under circumstances in which the written work or recorded  
 12 performance is otherwise rightfully reproduced, exhibited, or  
 13 broadcast.
- 14 (3) The use of a personality's:  
 15 (A) name;  
 16 (B) voice;  
 17 (C) signature;  
 18 (D) photograph;  
 19 (E) image;  
 20 (F) likeness;  
 21 (G) distinctive appearance;  
 22 (H) gestures; or  
 23 (I) mannerisms;  
 24 in connection with the broadcast or reporting of an event or a  
 25 topic of general or public interest.
- 26 **(4) A personality whose:**  
 27 **(A) name;**  
 28 **(B) voice;**  
 29 **(C) signature;**  
 30 **(D) photograph;**  
 31 **(E) image;**  
 32 **(F) likeness;**  
 33 **(G) distinctive appearance;**  
 34 **(H) gesture; or**  
 35 **(I) mannerisms;**  
 36 **have commercial value solely because the personality has been**  
 37 **formally charged with or convicted of a crime.**
- 38 SECTION 18. IC 32-36-1-8 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) A person may not  
 40 use an aspect of a personality's right of publicity for a commercial  
 41 purpose during the personality's lifetime or for one hundred (100) years  
 42 after the date of the personality's death without having obtained  
 43 previous written consent from a person specified in section 17 of this  
 44 chapter. **If a personality is deceased, the following apply to the**  
 45 **rights described in this subsection:**  
 46 **(1) The rights apply to the personality whether the personality**  
 47 **died before, on, or after July 1, 1994.**  
 48 **(2) If the personality died before July 1, 1994, the rights are**  
 49 **considered to have existed on and after the date the**  
 50 **personality died.**  
 51 **(3) Consistent with section 1(a) of this chapter, a claim for a**

- 1           **violation of a personality's right of publicity may not be**  
2           **asserted under this chapter unless the alleged act or event of**  
3           **violation occurs within Indiana.**  
4           **(4) A claim for a violation of a personality's right of publicity**  
5           **may not be asserted under this chapter unless the alleged act**  
6           **or event of violation occurs after June 30, 1994.**  
7           (b) A written consent solicited or negotiated by an athlete agent (as  
8           defined in IC 25-5.2-1-2) from a student athlete (as defined in  
9           IC 25-5.2-1-2) is void if the athlete agent obtained the consent as the  
10          result of an agency contract that:  
11           (1) was void under IC 25-5.2-2-2 or under the law of the state  
12           where the agency contract was entered into;  
13           (2) was voided by the student athlete under IC 25-5.2-2-8 or a  
14           similar law in the state where the agency contract was entered  
15           into; or  
16           (3) was entered into without the notice required under  
17           IC 35-46-4-4 or a similar law in the state where the agency  
18           contract was entered into.  
19          (c) A written consent for an endorsement contract (as defined in  
20          IC 35-46-4-1.5) is void if notice is not given as required by  
21          IC 35-46-4-4 or a similar law in the state where the endorsement  
22          contract is entered into."  
23          Renumber all SECTIONS consecutively.  
            (Reference is to EHB 1258 as reprinted February 21, 2012.)

**Conference Committee Report**  
**on**  
**Engrossed House Bill 1258**

**S**igned by:

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Representative Foley  
Chairperson

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Senator Zakas

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Representative DeLaney

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Senator Broden

**House Conferees**

**Senate Conferees**