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**PRELIMINARY DRAFT**  
**No. 3263**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2006 GENERAL ASSEMBLY**

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DIGEST

**Citations Affected:** IC 29-1-2-1; IC 29-1-3-1.

**Synopsis:** Surviving spouse allowance. Provides that a surviving subsequent childless spouse who takes against the will of the decedent is entitled to take 1/3 of the net personal estate and an additional amount equal to 25% of the fair market value of the decedent's real property minus liens and encumbrances. (Current law bases the additional amount on the value of the decedent's lands.) Makes conforming changes to the intestate succession law.

**Effective:** July 1, 2005 (retroactive).



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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 29-1-2-1, AS AMENDED BY P.L.238-2005,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2005 (RETROACTIVE)]: Sec. 1. (a) The estate of a person  
4 dying intestate shall descend and be distributed as provided in this  
5 section.

6 (b) Except as otherwise provided in subsection (c), the surviving  
7 spouse shall receive the following share:

8 (1) One-half (1/2) of the net estate if the intestate is survived by  
9 at least one (1) child or by the issue of at least one (1) deceased  
10 child.

11 (2) Three-fourths (3/4) of the net estate, if there is no surviving  
12 issue, but the intestate is survived by one (1) or both of the  
13 intestate's parents.

14 (3) All of the net estate, if there is no surviving issue or parent.

15 (c) If the surviving spouse is a second or other subsequent spouse  
16 who did not at any time have children by the decedent, and the  
17 decedent left surviving the decedent a child or children or the  
18 descendants of a child or children by a previous spouse, ~~such~~ **the**  
19 surviving second or subsequent childless spouse shall take only an  
20 amount equal to twenty-five percent (25%) of **the remainder of:**

21 **(1) the fair market value as of the date of death of the real**  
22 **property of the deceased spouse; less minus**

23 **(2) the value of the** liens and encumbrances on the real property  
24 **of the deceased spouse.**

25 ~~and~~ The fee shall, at the decedent's death, vest at once in ~~such~~ **the**  
26 **decedent's surviving** child or children, or the descendants of ~~such~~ **as**  
27 **the decedent's child or children who** may be dead. ~~Such~~ **A** second or  
28 subsequent childless spouse **described in this subsection** shall,  
29 however, receive the same share of the personal property of the  
30 decedent as is provided in subsection (b) with respect to surviving  
31 spouses generally.



1 (d) The share of the net estate not distributable to the surviving  
 2 spouse, or the entire net estate if there is no surviving spouse, shall  
 3 descend and be distributed as follows:

4 (1) To the issue of the intestate, if they are all of the same degree  
 5 of kinship to the intestate, they shall take equally, or if of unequal  
 6 degree, then those of more remote degrees shall take by  
 7 representation.

8 (2) If there is a surviving spouse but no surviving issue of the  
 9 intestate, then to the surviving parents of the intestate.

10 (3) If there is no surviving spouse or issue of the intestate, then to  
 11 the surviving parents, brothers, and sisters, and the issue of  
 12 deceased brothers and sisters of the intestate. Each living parent  
 13 of the intestate shall be treated as of the same degree as a brother  
 14 or sister and shall be entitled to the same share as a brother or  
 15 sister. However, the share of each parent shall be not less than  
 16 one-fourth (1/4) of ~~such~~ **the decedent's** net estate. Issue of  
 17 deceased brothers and sisters shall take by representation.

18 (4) If there is no surviving parent or brother or sister of the  
 19 intestate, then to the issue of brothers and sisters. If ~~such~~ **the**  
 20 distributees **described in this subdivision** are all in the same  
 21 degree of kinship to the intestate, they shall take equally or, if of  
 22 unequal degree, then those of more remote degrees shall take by  
 23 representation.

24 (5) If there is no surviving issue or parent of the intestate or issue  
 25 of a parent, then to the surviving grandparents of the intestate  
 26 equally.

27 (6) If there is no surviving issue or parent or issue of a parent, or  
 28 grandparent of the intestate, then the estate of the decedent shall  
 29 be divided into that number of shares equal to the sum of:

30 (A) the number of brothers and sisters of the decedent's  
 31 parents surviving the decedent; plus

32 (B) the number of deceased brothers and sisters of the  
 33 decedent's parents leaving issue surviving both them and the  
 34 decedent;

35 and one (1) of the shares shall pass to each of the brothers and  
 36 sisters of the decedent's parents or their respective issue per  
 37 stirpes.

38 (7) If interests in real estate go to a husband and wife under this  
 39 subsection, the aggregate interests so descending shall be owned  
 40 by them as tenants by the entireties. Interests in personal property  
 41 so descending shall be owned as tenants in common.

42 (8) If there is no person mentioned in subdivisions (1) through  
 43 (7), then to the state.

44 SECTION 2. IC 29-1-3-1 IS AMENDED TO READ AS FOLLOWS  
 45 [EFFECTIVE JULY 1, 2005 (RETROACTIVE)]: Sec. 1. (a) When a  
 46 married individual dies testate as to any part of the individual's estate,



1 the surviving spouse is entitled to take against the will under the  
 2 limitations and conditions stated in this chapter. The surviving spouse,  
 3 upon electing to take against the will, is entitled to one-half (1/2) of the  
 4 net personal and real estate of the testator. However, if the surviving  
 5 spouse is a second or other subsequent spouse who did not at any time  
 6 have children by the decedent and the decedent left surviving a child  
 7 or children or the descendants of a child or children by a previous  
 8 spouse, the surviving second or subsequent childless spouse shall upon  
 9 such election take one-third (1/3) of the net personal estate of the  
 10 testator plus an amount equal to twenty-five percent (25%) of **the**  
 11 **remainder of:**

12 **(1) the fair market value as of the date of death of the ~~lands~~ real**  
 13 **property of the testator; minus**

14 **(2) the value of the liens and encumbrances on the real**  
 15 **property of the testator.**

16 In determining the net estate of a deceased spouse for the purpose of  
 17 computing the amount due the surviving spouse electing to take against  
 18 the will, the court shall consider only such property as would have  
 19 passed under the laws of descent and distribution.

20 (b) When the value of the property given the surviving spouse under  
 21 the will is less than the amount the surviving spouse would receive by  
 22 electing to take against the will, the surviving spouse may elect to  
 23 retain any or all specific bequests or devises given to the surviving  
 24 spouse in the will at their fair market value as of the time of the  
 25 decedent's death and receive the balance due in cash or property.

26 (c) Except as provided in subsection (b), in electing to take against  
 27 the will, the surviving spouse is deemed to renounce all rights and  
 28 interest of every kind and character in the personal and real property of  
 29 the deceased spouse, and to accept the elected award in lieu thereof.

30 (d) When a surviving spouse elects to take against the will, the  
 31 surviving spouse shall be deemed to take by descent, as a modified  
 32 share, the part of the net estate as does not come to the surviving  
 33 spouse by the terms of the will. Where by virtue of an election pursuant  
 34 to this chapter it is determined that the surviving spouse has renounced  
 35 the surviving spouse's rights in any devise, either in trust or otherwise,  
 36 the will shall be construed with respect to the property so devised to the  
 37 surviving spouse as if the surviving spouse had predeceased the  
 38 testator.

39 **SECTION 3. [EFFECTIVE JULY 1, 2005 (RETROACTIVE)]**  
 40 **IC 29-1-2-1 and IC 29-1-3-1, both as amended by this act, apply to**  
 41 **the estate of an individual who dies after June 30, 2005.**

42 **SECTION 4. An emergency is declared for this act.**

