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**PRELIMINARY DRAFT**  
**No. 3399**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2009 GENERAL ASSEMBLY**

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DIGEST

**Citations Affected:** IC 29-1-2-1; IC 30-2-13-38; IC 34-24-1-1;  
IC 35-45-6-1.

**Synopsis:** Various probate and trust issues. Provides that a person who knowingly or intentionally uses or disburses funds in certain trust or escrow accounts for purposes other than the accounts' lawful purposes commits a Class C felony. Provides that the violation, a similar violation involving cemetery perpetual care funds, and violations of similar provisions in the funeral trust laws are acts of racketeering activity. Provides that property involved with the violations may be seized under the civil forfeiture law. Makes a technical correction.

**Effective:** Upon passage; July 1, 2009.



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

*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.101-2008,  
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 1. (a) The estate of a person dying intestate  
4 shall descend and be distributed as provided in this section.

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

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

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

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

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

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

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

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

30 (d) The share of the net estate not distributable to the surviving  
31 spouse, or the entire net estate if there is no surviving spouse, shall



- 1 descend and be distributed as follows:
- 2 (1) To the issue of the intestate, if they are all of the same degree
- 3 of kinship to the intestate, they shall take equally, or if of unequal
- 4 degree, then those of more remote degrees shall take by
- 5 representation.
- 6 (2) Except as provided in subsection (e), if there is a surviving
- 7 spouse but no surviving issue of the intestate, then to the
- 8 surviving parents of the intestate.
- 9 (3) Except as provided in subsection (e), if there is no surviving
- 10 spouse or issue of the intestate, then to the surviving parents,
- 11 brothers, and sisters, and the issue of deceased brothers and
- 12 sisters of the intestate. Each living parent of the intestate shall be
- 13 treated as of the same degree as a brother or sister and shall be
- 14 entitled to the same share as a brother or sister. However, the
- 15 share of each parent shall be not less than one-fourth (1/4) of the
- 16 decedent's net estate. Issue of deceased brothers and sisters shall
- 17 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 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 (e) A parent may not receive an intestate share of the estate of the
- 45 parent's minor or adult child if (†) the parent was convicted of causing
- 46 the death of the other parent by:



- 1           ~~(A)~~ **(1)** murder (IC 35-42-1-1);  
 2           ~~(B)~~ **(2)** voluntary manslaughter (IC 35-42-1-3);  
 3           ~~(C)~~ **(3)** another criminal act, if the death does not result from the  
 4           operation of a vehicle; or  
 5           ~~(D)~~ **(4)** a crime in any other jurisdiction in which the elements of  
 6           the crime are substantially similar to the elements of a crime  
 7           listed in ~~clauses (A)~~ **subdivisions (1)** through ~~(C)~~; **and (3)**.  
 8           ~~(2) the victim of the crime is the other parent of the child.~~

9           If a parent is disqualified from receiving an intestate share under this  
 10          subsection, the estate of the deceased child shall be distributed as  
 11          though the parent had predeceased the child.

12          SECTION 2. IC 30-2-13-38, AS AMENDED BY P.L.61-2008,  
 13          SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14          JULY 1, 2009]: Sec. 38. (a) A seller who violates a provision of this  
 15          chapter commits an uncured deceptive act (as defined in  
 16          IC 24-5-0.5-2).

17          (b) A person doing business as a sole proprietor, a firm, a limited  
 18          liability company, a corporation, an association, or a partnership, but  
 19          not acting as a seller that:

- 20               (1) sells or advertises prepaid services or merchandise or services  
 21               or merchandise (as defined in section 8 of this chapter) and fails  
 22               to obtain the certificate of authority required by section 33 of this  
 23               chapter; or  
 24               (2) sells or advertises prepaid services or merchandise or services  
 25               or merchandise (as defined in section 8 of this chapter) after the  
 26               entity's certificate of authority has:

27                       (A) expired; or

28                       (B) been rescinded, revoked, or suspended by the board;

29          commits a Class A misdemeanor. Each act committed in violation of  
 30          this subsection constitutes a separate offense.

31          (c) The following may maintain an action to enjoin an individual or  
 32          entity from continuing to violate this section:

33               (1) The board.

34               (2) The attorney general.

35               (3) The prosecuting attorney of a county in which a violation  
 36               occurs.

37          (d) A purchaser has a private right of action against a seller who  
 38          commits an uncured deceptive act.

39          (e) A trustee or escrow agent, acting as a fiduciary, that disburses  
 40          funds in a trust or escrow account established under this chapter  
 41          without verifying that the seller has delivered the services or  
 42          merchandise for which the funds were deposited through the use of  
 43          documentation required under rules adopted by the state board of  
 44          funeral and cemetery service established by IC 25-15-9-1 commits a  
 45          Class A infraction.

46          **(f) A person who knowingly or intentionally uses or disburses**



1 **funds in a trust or escrow account established under this chapter**  
 2 **for purposes other than the purposes required under this chapter**  
 3 **commits a Class C felony.**

4 SECTION 3. IC 34-24-1-1, AS AMENDED BY P.L.114-2008,  
 5 SECTION 27, AND AS AMENDED BY P.L.119-2008, SECTION 13,  
 6 IS CORRECTED AND AMENDED TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The following may be seized:

8 (1) All vehicles (as defined by IC 35-41-1), if they are used or are  
 9 intended for use by the person or persons in possession of them to  
 10 transport or in any manner to facilitate the transportation of the  
 11 following:

12 (A) A controlled substance for the purpose of committing,  
 13 attempting to commit, or conspiring to commit any of the  
 14 following:

15 (i) Dealing in or manufacturing cocaine or a narcotic drug  
 16 (IC 35-48-4-1).

17 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).

18 (iii) Dealing in a schedule I, II, or III controlled substance  
 19 (IC 35-48-4-2).

20 (iv) Dealing in a schedule IV controlled substance  
 21 (IC 35-48-4-3).

22 (v) Dealing in a schedule V controlled substance  
 23 (IC 35-48-4-4).

24 (vi) Dealing in a counterfeit substance (IC 35-48-4-5).

25 (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

26 (viii) Possession of methamphetamine (IC 35-48-4-6.1).

27 (ix) Dealing in paraphernalia (IC 35-48-4-8.5).

28 (x) Dealing in marijuana, hash oil, or hashish  
 29 (IC 35-48-4-10).

30 (B) Any stolen (IC 35-43-4-2) or converted property  
 31 (IC 35-43-4-3) if the retail or repurchase value of that property  
 32 is one hundred dollars (\$100) or more.

33 (C) Any hazardous waste in violation of ~~IC 13-30-10-4.~~  
 34 *IC 13-30-10-1.5.*

35 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass  
 36 destruction (as defined in IC 35-41-1-29.4) used to commit,  
 37 used in an attempt to commit, or used in a conspiracy to  
 38 commit an offense under IC 35-47 as part of or in furtherance  
 39 of an act of terrorism (as defined by IC 35-41-1-26.5).

40 (2) All money, negotiable instruments, securities, weapons,  
 41 communications devices, or any property used to commit, used in  
 42 an attempt to commit, or used in a conspiracy to commit an  
 43 offense under IC 35-47 as part of or in furtherance of an act of  
 44 terrorism or commonly used as consideration for a violation of  
 45 IC 35-48-4 (other than items subject to forfeiture under  
 46 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):



- 1 (A) furnished or intended to be furnished by any person in  
 2 exchange for an act that is in violation of a criminal statute;  
 3 (B) used to facilitate any violation of a criminal statute; or  
 4 (C) traceable as proceeds of the violation of a criminal statute.  
 5 (3) Any portion of real or personal property purchased with  
 6 money that is traceable as a proceed of a violation of a criminal  
 7 statute.  
 8 (4) A vehicle that is used by a person to:  
 9 (A) commit, attempt to commit, or conspire to commit;  
 10 (B) facilitate the commission of; or  
 11 (C) escape from the commission of;  
 12 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal  
 13 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting  
 14 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense  
 15 under IC 35-47 as part of or in furtherance of an act of terrorism.  
 16 (5) Real property owned by a person who uses it to commit any of  
 17 the following as a Class A felony, a Class B felony, or a Class C  
 18 felony:  
 19 (A) Dealing in or manufacturing cocaine or a narcotic drug  
 20 (IC 35-48-4-1).  
 21 (B) Dealing in methamphetamine (IC 35-48-4-1.1).  
 22 (C) Dealing in a schedule I, II, or III controlled substance  
 23 (IC 35-48-4-2).  
 24 (D) Dealing in a schedule IV controlled substance  
 25 (IC 35-48-4-3).  
 26 (E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).  
 27 (6) Equipment and recordings used by a person to commit fraud  
 28 under IC 35-43-5-4(10).  
 29 (7) Recordings sold, rented, transported, or possessed by a person  
 30 in violation of IC 24-4-10.  
 31 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as  
 32 defined by IC 35-45-6-1) that is the object of a corrupt business  
 33 influence violation (IC 35-45-6-2).  
 34 (9) Unlawful telecommunications devices (as defined in  
 35 IC 35-45-13-6) and plans, instructions, or publications used to  
 36 commit an offense under IC 35-45-13.  
 37 (10) Any equipment, *used or intended for use in preparing,*  
 38 *photographing, recording, videotaping, digitizing, printing,*  
 39 *copying, or disseminating matter in violation of IC 35-42-4-4,*  
 40 *including computer equipment and cellular telephones, used for*  
 41 *or intended for use in preparing, photographing, recording,*  
 42 *videotaping, digitizing, printing, copying, or disseminating matter*  
 43 *in violation of IC 35-42-4.*  
 44 (11) Destructive devices used, possessed, transported, or sold in  
 45 violation of IC 35-47.5.  
 46 (12) Tobacco products that are sold in violation of IC 24-3-5,



1 tobacco products that a person attempts to sell in violation of  
 2 IC 24-3-5, and other personal property owned and used by a  
 3 person to facilitate a violation of IC 24-3-5.

4 (13) Property used by a person to commit counterfeiting or  
 5 forgery in violation of IC 35-43-5-2.

6 (14) After December 31, 2005, if a person is convicted of an  
 7 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the  
 8 following real or personal property:

9 (A) Property used or intended to be used to commit, facilitate,  
 10 or promote the commission of the offense.

11 (B) Property constituting, derived from, or traceable to the  
 12 gross proceeds that the person obtained directly or indirectly  
 13 as a result of the offense.

14 (15) Except as provided in subsection (e), a motor vehicle used by  
 15 a person who operates the motor vehicle:

16 (A) while intoxicated, in violation of IC 9-30-5-1 through  
 17 IC 9-30-5-5, if in the previous five (5) years the person has two

18 (2) or more prior unrelated convictions:

19 (i) for operating a motor vehicle while intoxicated in  
 20 violation of IC 9-30-5-1 through IC 9-30-5-5; or

21 (ii) for an offense that is substantially similar to IC 9-30-5-1  
 22 through IC 9-30-5-5 in another jurisdiction; or

23 (B) on a highway while the person's driver's license is  
 24 suspended in violation of IC 9-24-19-2 through IC 9-24-19-4,  
 25 if in the previous five (5) years the person has two (2) or more  
 26 prior unrelated convictions:

27 (i) for operating a motor vehicle while intoxicated in  
 28 violation of IC 9-30-5-1 through IC 9-30-5-5; or

29 (ii) for an offense that is substantially similar to IC 9-30-5-1  
 30 through IC 9-30-5-5 in another jurisdiction.

31 If a court orders the seizure of a motor vehicle under this  
 32 subdivision, the court shall transmit an order to the bureau of  
 33 motor vehicles recommending that the bureau not permit a motor  
 34 vehicle to be registered in the name of the person whose motor  
 35 vehicle was seized until the person possesses a current driving  
 36 license (as defined in IC 9-13-2-41).

37 **(16) The following real or personal property:**

38 **(A) Property used or intended to be used to commit,**  
 39 **facilitate, or promote the commission of an offense**  
 40 **specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b),**  
 41 **or IC 30-2-13-38(f).**

42 **(B) Property constituting, derived from, or traceable to the**  
 43 **gross proceeds that a person obtains directly or indirectly**  
 44 **as a result of an offense specified in IC 23-14-48-9,**  
 45 **IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).**

46 (b) A vehicle used by any person as a common or contract carrier in



1 the transaction of business as a common or contract carrier is not  
 2 subject to seizure under this section, unless it can be proven by a  
 3 preponderance of the evidence that the owner of the vehicle knowingly  
 4 permitted the vehicle to be used to engage in conduct that subjects it to  
 5 seizure under subsection (a).

6 (c) Equipment under subsection (a)(10) may not be seized unless it  
 7 can be proven by a preponderance of the evidence that the owner of the  
 8 equipment knowingly permitted the equipment to be used to engage in  
 9 conduct that subjects it to seizure under subsection (a)(10).

10 (d) Money, negotiable instruments, securities, weapons,  
 11 communications devices, or any property commonly used as  
 12 consideration for a violation of IC 35-48-4 found near or on a person  
 13 who is committing, attempting to commit, or conspiring to commit any  
 14 of the following offenses shall be admitted into evidence in an action  
 15 under this chapter as prima facie evidence that the money, negotiable  
 16 instrument, security, or other thing of value is property that has been  
 17 used or was to have been used to facilitate the violation of a criminal  
 18 statute or is the proceeds of the violation of a criminal statute:

19 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a  
 20 narcotic drug).

21 (2) IC 35-48-4-1.1 (dealing in methamphetamine).

22 (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled  
 23 substance).

24 (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

25 (5) IC 35-48-4-4 (dealing in a schedule V controlled substance)  
 26 as a Class B felony.

27 (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a  
 28 Class A felony, Class B felony, or Class C felony.

29 (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class  
 30 A felony, Class B felony, or Class C felony.

31 (8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as  
 32 a Class C felony.

33 (e) A motor vehicle operated by a person who is not:

34 (1) an owner of the motor vehicle; or

35 (2) the spouse of the person who owns the motor vehicle;

36 is not subject to seizure under subsection (a)(15) unless it can be  
 37 proven by a preponderance of the evidence that the owner of the  
 38 vehicle knowingly permitted the vehicle to be used to engage in  
 39 conduct that subjects it to seizure under subsection (a)(15).

40 SECTION 4. IC 35-45-6-1, AS AMENDED BY P.L.3-2008,  
 41 SECTION 253, IS AMENDED TO READ AS FOLLOWS  
 42 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The definitions in this section  
 43 apply throughout this chapter.

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





- 1 usable form.
- 2 (c) "Enterprise" means:
- 3 (1) a sole proprietorship, corporation, limited liability company,
- 4 partnership, business trust, or governmental entity; or
- 5 (2) a union, an association, or a group, whether a legal entity or
- 6 merely associated in fact.
- 7 (d) "Pattern of racketeering activity" means engaging in at least two
- 8 (2) incidents of racketeering activity that have the same or similar
- 9 intent, result, accomplice, victim, or method of commission, or that are
- 10 otherwise interrelated by distinguishing characteristics that are not
- 11 isolated incidents. However, the incidents are a pattern of racketeering
- 12 activity only if at least one (1) of the incidents occurred after August
- 13 31, 1980, and if the last of the incidents occurred within five (5) years
- 14 after a prior incident of racketeering activity.
- 15 (e) "Racketeering activity" means to commit, to attempt to commit,
- 16 to conspire to commit a violation of, or aiding and abetting in a
- 17 violation of any of the following:
- 18 (1) A provision of IC 23-19, or of a rule or order issued under
- 19 IC 23-19.
- 20 (2) A violation of IC 35-45-9.
- 21 (3) A violation of IC 35-47.
- 22 (4) A violation of IC 35-49-3.
- 23 (5) Murder (IC 35-42-1-1).
- 24 (6) Battery as a Class C felony (IC 35-42-2-1).
- 25 (7) Kidnapping (IC 35-42-3-2).
- 26 (8) Human and sexual trafficking crimes (IC 35-42-3.5).
- 27 (9) Child exploitation (IC 35-42-4-4).
- 28 (10) Robbery (IC 35-42-5-1).
- 29 (11) Carjacking (IC 35-42-5-2).
- 30 (12) Arson (IC 35-43-1-1).
- 31 (13) Burglary (IC 35-43-2-1).
- 32 (14) Theft (IC 35-43-4-2).
- 33 (15) Receiving stolen property (IC 35-43-4-2).
- 34 (16) Forgery (IC 35-43-5-2).
- 35 (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
- 36 (18) Bribery (IC 35-44-1-1).
- 37 (19) Official misconduct (IC 35-44-1-2).
- 38 (20) Conflict of interest (IC 35-44-1-3).
- 39 (21) Perjury (IC 35-44-2-1).
- 40 (22) Obstruction of justice (IC 35-44-3-4).
- 41 (23) Intimidation (IC 35-45-2-1).
- 42 (24) Promoting prostitution (IC 35-45-4-4).
- 43 (25) Professional gambling (IC 35-45-5-3).
- 44 (26) Maintaining a professional gambling site
- 45 (IC 35-45-5-3.5(b)).
- 46 (27) Promoting professional gambling (IC 35-45-5-4).



- 1 (28) Dealing in or manufacturing cocaine or a narcotic drug  
2 (IC 35-48-4-1).  
3 (29) Dealing in or manufacturing methamphetamine  
4 (IC 35-48-4-1.1).  
5 (30) Dealing in a schedule I, II, or III controlled substance  
6 (IC 35-48-4-2).  
7 (31) Dealing in a schedule IV controlled substance  
8 (IC 35-48-4-3).  
9 (32) Dealing in a schedule V controlled substance (IC 35-48-4-4).  
10 (33) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).  
11 (34) Money laundering (IC 35-45-15-5).  
12 (35) A violation of IC 35-47.5-5.  
13 **(36) A violation of any of the following:**  
14 **(A) IC 23-14-48-9.**  
15 **(B) IC 30-2-9-7(b).**  
16 **(C) IC 30-2-10-9(b).**  
17 **(D) IC 30-2-13-38(f).**  
18 SECTION 5. [EFFECTIVE JULY 1, 2009] **IC 30-2-13-38 and**  
19 **IC 35-45-6-1, both as amended by this act, apply only to crimes**  
20 **committed after June 30, 2009.**  
21 SECTION 6. **An emergency is declared for this act.**

