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FISCAL IMPACT STATEMENT

LS 6318

BILL NUMBER: HB 1153

NOTE PREPARED: Jan 19, 2005

BILL AMENDED: Jan 18, 2005

SUBJECT: Probate, Trust, and Inheritance Tax Matters.

FIRST AUTHOR: Rep. Foley

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: The bill provides that a subsequent childless spouse's share of the deceased spouse's real property is calculated less liens and encumbrances. The bill allows custodial property to be transferred under the Uniform Transfers to Minors Act to a trust if the minor is the sole beneficiary and the trust terms meet Internal Revenue Code requirements for not treating the transfer as a gift of a future interest. The bill changes the annual maximum value of gifts that an attorney in fact or a person the attorney in fact is legally obligated to support may receive under the attorney in fact's gift making powers from \$10,000 to the amount allowed as an exclusion from gifts under the Internal Revenue Code. The bill allows an attorney in fact to exercise powers regarding retirement plans. The bill extends a power of attorney after the death of the principal as to the authority to donate organs, request an autopsy, and plan for the disposition of the principal's body. The bill prohibits a will from admission for probate unless the will is presented for probate within three years after the testator dies. The bill allows a will or revocable trust to incorporate by reference a list of items for disposition that may be amended after incorporation. The bill removes limitations on naming an attorney in fact as a beneficiary of an insurance contract. The bill validates, with court approval, a transaction that affects a protected person's property and the guardian's interest. The bill provides that a disclaimed interest that arose under the law of intestate succession passes as if the disclaimant had died immediately before the intestate's death. The bill prohibits an abandoning or adulterous spouse from acquiring property from the deceased spouse's trust. The bill imposes a constructive trust to prevent a person charged in or convicted of an individual's death from acquiring trust property because of the individual's death. The bill voids a transaction in which the personal representative acquires an interest in the estate's real property, unless authorized by a will, a trust, the consent of all heirs, legatees, or beneficiaries, or an adjudicated compromise agreement. The bill repeals a statute that requires a personal representative to file a report of sale. The bill allows a person who receives only a specific bequest to receive an estate inventory limited to the bequest. The bill allows a decedent's

adult child to consent to disinterment, if the decedent does not have a spouse. The bill requires a petition for probate of a will or for the appointment of an administrator to state whether the decedent, heirs, legatees, and devisees are adults or minors. The bill requires, absent litigation, a spouse to elect against a will within three months after the will is admitted to probate. The bill provides that a trust is presumed to be revocable. The bill allows an agent or attorney in fact to amend a trust if authorized in a power of attorney. The bill authorizes the creation of a pet trust and a noncharitable trust with the beneficiary determined by the trustee. The bill requires a settlor to have the same capacity for making a will. The bill allows an uneconomic trust to be modified or terminated. The bill limits actions to contest a revocable trust. The bill adds provisions concerning filling a trustee vacancy. The bill repeals and adds provisions about modifying and terminating trust terms. The bill provides that a transaction benefiting an attorney in fact is not presumptively valid or invalid if made by the principal and not by the attorney in fact acting for the principal. The bill allows a trustee or an interested person to petition the court to determine a trust's heirs and the heirs' interests. The bill allows a court to determine the heirs and heirs' interests by evidence or by affidavit after a hearing. The bill provides that a trustee's good faith acts are valid if the trustee acts in accordance with the facts as determined by the court and the law. The bill adds the trustee's duty to determine the trust beneficiaries. The bill makes a technical amendment. The bill provides immunity to a person who relies on a power of attorney or an affidavit concerning a power of attorney. The bill automatically extends the due date for the Indiana Inheritance Tax return if the Internal Revenue Service allows an extension for a federal estate tax return. The bill makes other changes to the trust law. (The introduced version of this bill was prepared by the Probate Code Study Commission.)

Effective Date: (Amended) July 1, 2004 (retroactive); July 1, 2005; January 1, 2006.

Explanation of State Expenditures: *Extension for Filing Inheritance Tax Return:* The bill provides for an automatic filing extension for the Inheritance Tax return provided the filer also has received an extension from the Internal Revenue Service for filing the federal Estate Tax return. The current federal filing extension is 6 months. However, the bill does not change the deadlines for payment of the Inheritance Tax. As a result, the additional filing extension would not delay payment of Inheritance Tax, but could potentially lead to additional filings for Inheritance Tax refunds. Currently, the federal Estate Tax return is due within 9 months of a decedent's date of death. However, a 6-month filing extension is available. Under current statute, the Inheritance Tax does not have to be paid until a maximum of 12 months after the decedent's death (within 9 months of the date of death to receive the 5% early payment discount).

Explanation of State Revenues: *Construction of Trusts:* The bill would prevent property transfers from a decedent's trust to his or her surviving spouse, if the surviving spouse abandoned the decedent or lived in adultery before the decedent's death. This could potentially result in a minimal increase in Inheritance Tax collections by the state if, as a result, such property interests are transferred to other taxable beneficiaries of the decedent. Under current statute property interest transfers to a surviving spouse are exempt from Inheritance Tax. The bill also would prevent property transfers from a decedent's trust to any person otherwise entitled to the property under the trust, if that person is charged with or convicted of murder, causing the suicide, or voluntary manslaughter of the decedent. The fiscal impact of this change is indeterminable.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Construction of Trusts:* This bill could potentially result in a minimal increase in Inheritance Tax collections by counties, as they retain 8% of the Inheritance Tax collected on transfers made by Indiana residents.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected: Counties

Information Sources:

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