



January 25, 2024

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## HOUSE BILL No. 1034

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DIGEST OF HB 1034 (Updated January 24, 2024 11:37 am - DI 141)

**Citations Affected:** IC 27-1; IC 32-17; IC 32-38.

**Synopsis:** Insurance and transfer on death deeds. Extends insurance coverage on property transferred by a transfer on death transfer by 120 days following the death of the insured after December 31, 2024 for casualty and liability insurance other than title insurance and certain insurance relating to bonds and mortgages. Allows certain warning language to be included in a transfer on death deed executed after December 31, 2024. Provides that a failure by a beneficiary to file an affidavit in the office of the recorder of the county in which the real property is located or a delay by the county recorder in recording the affidavit does not affect the validity of the transfer on death transfer to the beneficiary. Provides that until the affidavit is recorded, the transfer on death beneficiary or beneficiaries named in the transfer on death deed and the estate of the deceased owner are jointly and severally liable for property taxes assessed with respect to the real property for assessment years beginning with the assessment year in which the owner's death occurs.

**Effective:** July 1, 2024.

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January 8, 2024, read first time and referred to Committee on Insurance.  
January 25, 2024, amended, reported — Do Pass.

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HB 1034—LS 6244/DI 149





January 25, 2024

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

## HOUSE BILL No. 1034

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 27-1-13-18 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2024]: **Sec. 18. (a) This section applies to a loss or damages  
4 incurred after December 31, 2024, for a policy of insurance that is  
5 described in:**  
6 (1) Class 3 of IC 27-1-5-1; or  
7 (2) Class 2 of IC 27-1-5-1, except for a policy of insurance that  
8 is described in Class 2(j) of IC 27-1-5-1.  
9 (b) This section applies regardless of whether the policy of  
10 insurance was created before, on, or after January 1, 2025, unless  
11 the application of this section to the policy of insurance would:  
12 (1) for a policy issued before January 1, 2025, give a right to  
13 a beneficiary that the beneficiary was not reasonably intended  
14 to have, other than the beneficiary's right to insurance  
15 coverage until the time limitation described in subsection (e);  
16 or  
17 (2) for a policy issued at any time, relieve a beneficiary from

HB 1034—LS 6244/DI 149



- 1 a duty or liability imposed on the insured by the terms of the  
 2 policy.
- 3 (c) The following definitions apply throughout this section:
- 4 (1) "Beneficiary" has the meaning set forth in  
 5 IC 32-17-14-3(1).
- 6 (2) "Casualty insurance policy or liability insurance policy"  
 7 means a policy of insurance that is described in Class 2 or  
 8 Class 3 of IC 27-1-5-1.
- 9 (3) "Insurable interest" means an insured's interest in real or  
 10 personal property, concerning which the insured is entitled to  
 11 the benefits of insurance coverage under a casualty insurance  
 12 policy or liability insurance policy.
- 13 (4) "Insured" means a person who is entitled to the benefits  
 14 of insurance coverage under a casualty insurance policy or  
 15 liability insurance policy.
- 16 (5) "Named insured" means a person identified by name as an  
 17 insured under a casualty insurance policy or liability  
 18 insurance policy.
- 19 (6) "Transfer" means an ownership change in a named  
 20 insured's insurable interest in real or personal property to a  
 21 beneficiary of a transfer on death transfer that occurs as a  
 22 consequence of the named insured's death.
- 23 (7) "Transferee" means a person who has acquired or  
 24 received a named insured's insurable interest in real or  
 25 personal property through a transfer.
- 26 (8) "Transfer on death transfer" has the meaning set forth in  
 27 IC 32-17-14-3(17).
- 28 (d) Subject to subsection (e), each transferee of a named  
 29 insured's insurable interest in real or personal property is also an  
 30 insured to the extent of the named insured's insurable interest in  
 31 real or personal property that the transferee has acquired or  
 32 received through a transfer.
- 33 (e) Except as provided in IC 32-38-3-1, for a period of one  
 34 hundred twenty (120) days immediately following the death of the  
 35 insured, each transferee is an insured under a casualty insurance  
 36 policy or liability insurance policy insuring the real or personal  
 37 property the transferee acquired or received through a transfer. At  
 38 the time of the insured's death, the transferee succeeds to all rights  
 39 and obligations of the insured under the casualty insurance policy  
 40 or liability insurance policy for the one hundred twenty (120) day  
 41 period.
- 42 SECTION 2. IC 32-17-14-11, AS AMENDED BY P.L.36-2011,



1 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2024]: Sec. 11. (a) A transfer on death deed transfers the  
3 interest provided to the beneficiary if the transfer on death deed is:

- 4 (1) executed by the owner or owner's legal representative; and  
5 (2) recorded with the recorder of deeds in the county in which the  
6 real property is situated before the death of the owner.

7 (b) A transfer on death deed is void if it is not recorded with the  
8 recorder of deeds in the county in which the real property is situated  
9 before the death of the owner.

10 (c) A transfer on death deed is not required to be supported by  
11 consideration or delivered to the grantee beneficiary.

12 (d) A transfer on death deed may be used to transfer an interest in  
13 real property to either a revocable or an irrevocable trust.

14 (e) If the owner records a transfer on death deed, the effect of the  
15 recording the transfer on death deed is determined as follows:

16 (1) If the owner's interest in the real property is as a tenant by the  
17 entirety, the conveyance is inoperable and void unless the other  
18 spouse joins in the conveyance.

19 (2) If the owner's interest in the real property is as a joint tenant  
20 with rights of survivorship, the conveyance severs the joint  
21 tenancy and the cotenancy becomes a tenancy in common.

22 (3) If the owner's interest in the real property is as a joint tenant  
23 with rights of survivorship and the property is subject to a  
24 beneficiary designation, a conveyance of any joint owner's interest  
25 has no effect on the original beneficiary designation for the  
26 nonsevering joint tenant.

27 (4) If the owner's interest is as a tenant in common, the owner's  
28 interest passes to the beneficiary as a transfer on death transfer.

29 (5) If the owner's interest is a life estate determined by the owner's  
30 life, the conveyance is inoperable and void.

31 (6) If the owner's interest is any other interest, the interest passes  
32 in accordance with this chapter and the terms and conditions of  
33 the conveyance establishing the interest. If a conflict exists  
34 between the conveyance establishing the interest and this chapter,  
35 the terms and conditions of the conveyance establishing the  
36 interest prevail.

37 (f) A beneficiary designation in a transfer on death deed may be  
38 worded in substance as "(insert owner's name) conveys and warrants  
39 (or quitclaims) to (insert owner's name), TOD to (insert beneficiary's  
40 name)". This example is not intended to be exhaustive.

41 (g) A transfer on death deed using the phrase "pay on death to" or  
42 the abbreviation "POD" may not be construed to require the liquidation



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of the real property being transferred.

(h) This section does not preclude other methods of conveying real property that are permitted by law and have the effect of postponing enjoyment of an interest in real property until after the death of the owner. This section applies only to transfer on death deeds and does not invalidate any deed that is otherwise effective by law to convey title to the interest and estates provided in the deed.

(i) The endorsement of the auditor under IC 36-2-11-14 is not necessary to record a transfer on death deed.

**(j) For a transfer on death deed executed after December 31, 2024, the transfer on death deed may include the following warning:**

**"WARNING: After the death of the owner, the owner's insurance policy is required by IC 27-1-13-18 to cover the real property transferred for only one hundred twenty (120) days. Once the one hundred twenty (120) day period expires, the insurance policy may no longer cover the real property and the beneficiary of a transfer on death deed and the real property may become uninsured."**

**A transfer on death deed is not invalid due to the failure to include the warning described in this subsection, or due to a defect in the wording of the warning described in this subsection.**

SECTION 3. IC 32-17-14-26, AS AMENDED BY P.L.51-2014, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 26. (a) If an agreement between the owner and a transferring entity is required to carry out a transfer on death transfer as described in section 7 of this chapter, a transferring entity may not adopt rules for the making, execution, acceptance, and revocation of a beneficiary designation that are inconsistent with this chapter.

(b) The following rules apply to a beneficiary designation:

(1) A beneficiary designation or a request for registration of property in beneficiary form must be made in writing, signed by the owner, dated, and, in the case of a transfer on death deed, compliant with all requirements for the recording of deeds.

(2) A security that is not registered in the name of the owner may be registered in beneficiary form on instructions given by a broker or person delivering the security.

(3) A beneficiary designation may designate one (1) or more primary beneficiaries and one (1) or more contingent beneficiaries.

(4) On property registered in beneficiary form, a primary beneficiary is the person shown immediately following the



- 1 transfer on death direction. Words indicating that the person is a  
2 primary beneficiary are not required. The name of a contingent  
3 beneficiary in the registration must have the words "contingent  
4 beneficiary" or words of similar meaning to indicate the  
5 contingent nature of the interest being transferred.
- 6 (5) Multiple surviving beneficiaries share equally in the property  
7 being transferred unless a different percentage or fractional share  
8 is stated for each beneficiary. If a percentage or fractional share  
9 is designated for multiple beneficiaries, the surviving  
10 beneficiaries share in the proportion that their designated shares  
11 bear to each other.
- 12 (6) A transfer of unequal shares to multiple beneficiaries for  
13 property registered in beneficiary form may be expressed in  
14 numerical form following the name of the beneficiary in the  
15 registration.
- 16 (7) A transfer on death transfer of property also transfers any  
17 interest, rent, royalties, earnings, dividends, or credits earned or  
18 declared on the property but not paid or credited before the  
19 owner's death.
- 20 (8) If a distribution by a transferring entity under a transfer on  
21 death transfer results in fractional shares in a security or other  
22 property that is not divisible, the transferring entity may distribute  
23 the fractional shares in the name of all beneficiaries as tenants in  
24 common or as the beneficiaries may direct, or the transferring  
25 entity may sell the property that is not divisible and distribute the  
26 proceeds to the beneficiaries in the proportions to which they are  
27 entitled.
- 28 (9) On the death of the owner, the property, minus all amounts  
29 and charges owed by the owner to the transferring entity, belongs  
30 to the surviving beneficiaries and, in the case of substitute  
31 beneficiaries permitted under section 22 of this chapter, the lineal  
32 descendants of designated beneficiaries who did not survive the  
33 owner are entitled to the property as follows:
- 34 (A) If there are multiple primary beneficiaries and a primary  
35 beneficiary does not survive the owner and does not have a  
36 substitute under section 22 of this chapter, the share of the  
37 nonsurviving beneficiary is allocated among the surviving  
38 beneficiaries in the proportion that their shares bear to each  
39 other.
- 40 (B) If there are no surviving primary beneficiaries and there  
41 are no substitutes for the nonsurviving primary beneficiaries  
42 under section 22 of this chapter, the property belongs to the



- 1 surviving contingent beneficiaries in equal shares or according  
 2 to the percentages or fractional shares stated in the  
 3 registration.
- 4 (C) If there are multiple contingent beneficiaries and a  
 5 contingent beneficiary does not survive the owner and does not  
 6 have a substitute under section 22 of this chapter, the share of  
 7 the nonsurviving contingent beneficiary is allocated among the  
 8 surviving contingent beneficiaries in the proportion that their  
 9 shares bear to each other.
- 10 (10) If a trustee designated as a beneficiary:
- 11 (A) does not survive the owner;
- 12 (B) resigns; or
- 13 (C) is unable or unwilling to execute the trust as trustee and no  
 14 successor trustee is appointed in the twelve (12) months  
 15 following the owner's death;
- 16 the transferring entity may make the distribution as if the trust did  
 17 not survive the owner.
- 18 (11) If a trustee is designated as a beneficiary and no affidavit of  
 19 certification of trust or probated will creating an express trust is  
 20 presented to the transferring entity within the twelve (12) months  
 21 after the owner's death, the transferring entity may make the  
 22 distribution as if the trust did not survive the owner.
- 23 (12) If the transferring entity is not presented evidence during the  
 24 twelve (12) months after the owner's death that there are lineal  
 25 descendants of a nonsurviving beneficiary for whom LDPS  
 26 distribution applies who survived the owner, the transferring  
 27 entity may make the transfer as if the nonsurviving beneficiary's  
 28 descendants also failed to survive the owner.
- 29 (13) If a beneficiary cannot be located at the time the transfer is  
 30 made to located beneficiaries, the transferring entity shall hold the  
 31 missing beneficiary's share. If the missing beneficiary's share is  
 32 not claimed by the beneficiary or by the beneficiary's personal  
 33 representative or successor during the twelve (12) months after  
 34 the owner's death, the transferring entity shall transfer the share  
 35 as if the beneficiary did not survive the owner.
- 36 (14) A transferring entity has no obligation to attempt to locate a  
 37 missing beneficiary, to pay interest on the share held for a missing  
 38 beneficiary, or to invest the share in any different property.
- 39 (15) Cash, interest, rent, royalties, earnings, or dividends payable  
 40 to a missing beneficiary may be held by the transferring entity at  
 41 interest or reinvested by the transferring entity in the account or  
 42 in a dividend reinvestment account associated with a security held





- 1 for the missing beneficiary.
- 2 (16) If a transferring entity is required to make a transfer on death
- 3 transfer to a minor or an incapacitated adult, the transfer may be
- 4 made under the Indiana Uniform Transfers to Minors Act, the
- 5 Indiana Uniform Custodial Trust Act, or a similar law of another
- 6 state.
- 7 (17) A written request for the execution of a transfer on death
- 8 transfer may be made by any beneficiary, a beneficiary's legal
- 9 representative or attorney in fact, or the owner's personal
- 10 representative.
- 11 (18) A transfer under a transfer on death deed occurs
- 12 automatically upon the owner's death ~~subject to the requirements~~
- 13 ~~of subdivision (20)~~ and does not require a request for the
- 14 execution of the transfer.
- 15 (19) A written request for the execution of a transfer on death
- 16 transfer must be accompanied by the following:
- 17 (A) A certificate or instrument evidencing ownership of the
- 18 contract, account, security, or property.
- 19 (B) Proof of the deaths of the owner and any nonsurviving
- 20 beneficiary.
- 21 (C) An inheritance tax waiver from states that require it.
- 22 (D) In the case of a request by a legal representative, a copy of
- 23 the instrument creating the legal authority or a certified copy
- 24 of the court order appointing the legal representative.
- 25 (E) Any other proof of the person's entitlement that the
- 26 transferring entity may require.
- 27 (20) **For purposes of providing notice to the county**, on the
- 28 death of an owner whose transfer on death deed has been
- 29 recorded, the beneficiary shall file an affidavit in the office of the
- 30 recorder of the county in which the real property is located. The
- 31 affidavit must be endorsed by the county auditor under
- 32 IC 36-2-11-14 in order to be recorded. The affidavit must contain
- 33 the following:
- 34 (A) The legal description of the property.
- 35 (B) The date of death of the owner.
- 36 (C) The name and address of each designated beneficiary who
- 37 survives the owner or is in existence on the date of the owner's
- 38 death.
- 39 (D) The name of each designated beneficiary who has not
- 40 survived the owner's death or is not in existence on the date of
- 41 the owner's death.
- 42 (E) A cross-reference to the recorded transfer on death deed.



1           **A failure by the beneficiary to file the affidavit under this**  
 2           **subdivision or a delay by the county recorder in recording the**  
 3           **affidavit does not affect the validity of the transfer on death**  
 4           **transfer to the beneficiary under this chapter. However, until**  
 5           **the affidavit is recorded, the transfer on death beneficiary or**  
 6           **beneficiaries named in the transfer on death deed and the**  
 7           **estate of the deceased owner are jointly and severally liable**  
 8           **for property taxes assessed with respect to the real property**  
 9           **under IC 6-1.1 for assessment years beginning with the**  
 10           **assessment year in which the owner's death occurs.**

11           (c) A beneficiary designation is presumed to be valid. A party may  
 12           rely on the presumption of validity unless the party has actual  
 13           knowledge that the beneficiary designation was not validly executed.  
 14           A person who acts in good faith reliance on a transfer on death deed is  
 15           immune from liability to the same extent as if the person had dealt  
 16           directly with the named owner and the named owner had been  
 17           competent and not incapacitated.

18           SECTION 4. IC 32-38-3-1, AS ADDED BY P.L.95-2007,  
 19           SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20           JULY 1, 2024]: Sec. 1. **Notwithstanding any other law**, the trustee of  
 21           a trust is considered to be the insured owner under a policy or  
 22           commitment that insures or proposes to insure an interest in real  
 23           property that is transferred to the trust if:

24           (1) the transferee of the interest in real property is the trustee of  
 25           the trust, the trust was established by the named insured owner,  
 26           and the transferor is the named insured owner;

27           (2) the named insured owner reserves the right to amend or  
 28           revoke the trust during the named insured owner's lifetime;

29           (3) the named insured owner is a natural person; and

30           (4) the transfer of the interest in real property is made by the  
 31           named insured owner personally or by:

32           (A) the named insured owner's attorney in fact;

33           (B) the named insured owner's guardian or other similar  
 34           person in a guardianship or protective proceeding in which the  
 35           named insured owner is an incapacitated or a protected person;  
 36           or

37           (C) the personal representative of the deceased named insured  
 38           owner's estate under the terms and conditions of the named  
 39           insured owner's last will and testament;

40           even if the named insured owner transfers the interest in real property  
 41           to the trustee described in this section after the effective date of the  
 42           policy or commitment.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1034, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 4 through 11 and insert "**incurred after December 31, 2024, for a policy of insurance that is described in:**

**(1) Class 3 of IC 27-1-5-1; or**

**(2) Class 2 of IC 27-1-5-1, except for a policy of insurance that is described in Class 2(j) of IC 27-1-5-1."**

Page 4, line 13, delete "January 1, 2025," and insert "**December 31, 2024,"**

Page 7, delete lines 13 through 23, begin a new line block indented and insert:

"(18) A transfer under a transfer on death deed occurs automatically upon the owner's death ~~subject to the requirements of subdivision (20)~~ and does not require a request for the execution of the transfer."

Page 7, line 24, reset in roman "(19)".

Page 7, line 24, delete "(20)".

Page 7, delete lines 36 through 42.

Page 8, delete lines 1 through 24, begin a new line block indented and insert:

"(20) **For purposes of providing notice to the county**, on the death of an owner whose transfer on death deed has been recorded, the beneficiary shall file an affidavit in the office of the recorder of the county in which the real property is located. The affidavit must be endorsed by the county auditor under IC 36-2-11-14 in order to be recorded. The affidavit must contain the following:

(A) The legal description of the property.

(B) The date of death of the owner.

(C) The name and address of each designated beneficiary who survives the owner or is in existence on the date of the owner's death.

(D) The name of each designated beneficiary who has not survived the owner's death or is not in existence on the date of the owner's death.

(E) A cross-reference to the recorded transfer on death deed.

**A failure by the beneficiary to file the affidavit under this subdivision or a delay by the county recorder in recording the**



**affidavit does not affect the validity of the transfer on death transfer to the beneficiary under this chapter. However, until the affidavit is recorded, the transfer on death beneficiary or beneficiaries named in the transfer on death deed and the estate of the deceased owner are jointly and severally liable for property taxes assessed with respect to the real property under IC 6-1.1 for assessment years beginning with the assessment year in which the owner's death occurs."**

Page 8, delete lines 32 through 42.

Delete pages 9 through 10.

Page 11, delete line 1.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1034 as introduced.)

CARBAUGH

Committee Vote: yeas 13, nays 0.

