



January 28, 2022

SENATE BILL No. 132

DIGEST OF SB 132 (Updated January 26, 2022 7:34 pm - DI 149)

Citations Affected: IC 29-1; IC 34-23; noncode.

Synopsis: Wrongful death. Provides that a person who has been found guilty, or guilty but mentally ill, on a charge of causing an unlawful death of a decedent is a constructive trustee of certain property acquired or entitled to be received by the culpable person. Includes a married individual who does not have any dependents and whose death was caused by a spouse within the definition of "adult person" for the purpose of a wrongful death action. Makes conforming changes.

Effective: July 1, 2022.

**Freeman, Sandlin, Brown L, Koch,
Bohacek, Glick, Gaskill, Buck,
Randolph Lonnie M**

January 4, 2022, read first time and referred to Committee on Judiciary.
January 27, 2022, amended, reported favorably — Do Pass.

SB 132—LS 6588/DI 149



January 28, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE BILL No. 132

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 29-1-2-12.1, AS AMENDED BY P.L.238-2005,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 12.1. (a) ~~A person is a constructive trustee of any~~
4 ~~property that is acquired by the person or that the person is otherwise~~
5 ~~entitled to receive as a result of an individual's death, including~~
6 ~~property from a trust, if that person has been found guilty, or guilty but~~
7 ~~mentally ill, of murder, causing suicide, or voluntary manslaughter,~~
8 ~~because of the individual's death. The following definitions apply~~
9 ~~throughout this section:~~
10 (1) "Culpable person" means any of the following:
11 (A) A person who:
12 (i) has been charged with causing an unlawful death; and
13 (ii) is found guilty, or guilty but mentally ill, on a charge
14 of causing an unlawful death under a guilty plea or
15 guilty verdict under IC 35-35-1 or IC 35-36-2.
16 (B) A person who is determined by a preponderance of the
17 evidence in a civil action to have knowingly or intentionally

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1 **caused an unlawful death.**

2 **(C) The estate of a person who:**

3 **(i) is described in clause (A) or (B); and**

4 **(ii) died after causing an unlawful death.**

5 **(2) "Decedent" means the victim of an unlawful death.**

6 **(3) "Unlawful death" means a death resulting from murder,**
 7 **voluntary manslaughter, or suicide caused by a person other**
 8 **than the decedent. The term includes a death resulting from**
 9 **an offense under IC 35-42-1-1, IC 35-42-1-2, or IC 35-42-1-3.**

10 **(b) A judgment of conviction is conclusive in a subsequent civil**
 11 **action to have ~~the~~ a culpable person declared a constructive trustee**
 12 **under subsection (e).**

13 **(c) A culpable person is a constructive trustee of any property**
 14 **that is acquired by the culpable person or that the culpable person**
 15 **is entitled to receive as a result of an unlawful death, including the**
 16 **following:**

17 **(1) Property from a trust.**

18 **(2) Property from a transfer on death transfer under**
 19 **IC 32-17-14.**

20 **(3) Proceeds under a policy or certificate of life insurance on**
 21 **the life of the decedent, if the culpable person:**

22 **(A) is a beneficiary; and**

23 **(B) would otherwise be entitled to receive the proceeds;**
 24 **under the policy or certificate.**

25 **(4) Proceeds under a policy or certificate of life insurance on**
 26 **the life of the culpable person, if the decedent:**

27 **(A) was a beneficiary; and**

28 **(B) would otherwise be entitled to receive the proceeds;**
 29 **under the policy or certificate.**

30 **(5) The decedent's interest in joint tenancy property that**
 31 **would otherwise pass by survivorship to the culpable person**
 32 **as a result of the decedent's death.**

33 **(6) Property passing under a contractual agreement upon the**
 34 **decedent's death.**

35 **(d) If a culpable person dies after causing an unlawful death, life**
 36 **insurance proceeds that would otherwise be subject to a**
 37 **constructive trust under subsection (c)(3) or (c)(4) may be paid in**
 38 **the same manner as the life insurance proceeds would be paid if the**
 39 **culpable person had predeceased the decedent.**

40 ~~(b)~~ **(e) A civil action may be initiated by an interested person to**
 41 **have a culpable person declared a constructive trustee of property that**
 42 **is acquired by the culpable person, or that the culpable person is**



1 otherwise entitled to receive ~~including property from a trust~~, as a result
 2 of an individual's death, ~~if:~~ **unlawful death.**

- 3 ~~(1) the person has been charged with murder, causing suicide, or~~
 4 ~~voluntary manslaughter, because of the individual's death; and~~
 5 ~~(2) the person has been found not responsible by reason of~~
 6 ~~insanity at the time of the crime.~~

7 If a civil action is initiated under this subsection, the court shall declare
 8 that the **culpable** person is a constructive trustee of the property if by
 9 a preponderance of the evidence it is determined that the **culpable**
 10 person ~~killed or caused the suicide of the individual:~~ **unlawful death.**

11 ~~(e)~~ **(f)** If a constructive trust is established under this section, the
 12 property that is subject to the trust may be used only to benefit those
 13 persons, other than the **culpable person and** constructive trustee,
 14 legally entitled to the property, determined as if the constructive trustee
 15 had died immediately before the decedent. However, if any property
 16 that the constructive trustee acquired as a result of the ~~decedent's~~
 17 **unlawful** death has been sold to an innocent purchaser for value who
 18 acted in good faith, that property is no longer subject to the
 19 constructive trust, but the property received from the purchaser under
 20 the transaction becomes subject to the constructive trust.

21 SECTION 2. IC 34-23-1-2 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. (a) As used in this
 23 section, "adult person" means:

- 24 **(1) an unmarried individual:**
 25 ~~(+)~~ **(A)** who does not have any dependents; and
 26 ~~(2)~~ **(B)** who is not a child (as defined in IC 34-23-2-1); **or**
 27 **(2) a married individual:**
 28 **(A) who does not have any dependents; and**
 29 **(B) whose death was caused by the married individual's**
 30 **spouse.**

31 (b) If the death of an adult person is caused by the wrongful act or
 32 omission of another person, only the personal representative of the
 33 adult person may maintain an action against the person whose wrongful
 34 act or omission caused the death of the adult person.

35 (c) In an action to recover damages for the death of an adult person,
 36 the damages:

- 37 (1) must be in an amount determined by a:
 38 (A) court; or
 39 (B) jury;
 40 (2) may not include:
 41 (A) damages awarded for a person's grief; or
 42 (B) punitive damages; and



- 1 (3) may include but are not limited to the following:
 2 (A) Reasonable medical, hospital, funeral, and burial expenses
 3 necessitated by the wrongful act or omission that caused the
 4 adult person's death.
 5 (B) Loss of the adult person's love and companionship.
 6 (d) Damages awarded under subsection (c)(3)(A) for medical,
 7 hospital, funeral, and burial expenses inure to the exclusive benefit of
 8 the adult person's estate for the payment of the expenses. The
 9 remainder of the damages inure to the exclusive benefit of a
 10 nondependent parent or nondependent child of the adult person.
 11 (e) Aggregate damages that may be recovered under subsection
 12 (c)(3)(B) may not exceed three hundred thousand dollars (\$300,000).
 13 A jury may not be advised of the monetary limits placed on damages
 14 under this subsection. If the jury awards the plaintiff damages under
 15 subsection (c)(3)(B) in an amount that exceeds three hundred thousand
 16 dollars (\$300,000), the court shall reduce that part of the damages
 17 awarded to the plaintiff to three hundred thousand dollars (\$300,000).
 18 (f) A parent or child who wishes to recover damages under this
 19 section has the burden of proving that the parent or child had a
 20 genuine, substantial, and ongoing relationship with the adult person
 21 before the parent or child may recover damages.
 22 (g) In an action brought under this section, a court or a jury may not
 23 hear evidence concerning the lost earnings of the adult person that
 24 occur as a result of the wrongful act or omission.
 25 (h) In awarding damages under this section to more than one (1)
 26 person, the court or the jury shall specify the amount of the damages
 27 that should be awarded to each person.
 28 (i) In an action brought under this section, the trier of fact shall
 29 make a separate finding with respect to damages awarded under
 30 subsection (c)(3)(B).
 31 **SECTION 3. [EFFECTIVE JULY 1, 2022] IC 34-23-1-2, as**
 32 **amended by this act, applies to a cause of action that accrues after**
 33 **June 30, 2022.**



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 132, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 16, and begin a new paragraph and insert:

"SECTION 2. IC 29-1-2-12.1, AS AMENDED BY P.L.238-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 12.1. (a) A person is a constructive trustee of any property that is acquired by the person or that the person is otherwise entitled to receive as a result of an individual's death, including property from a trust, if that person has been found guilty, or guilty but mentally ill, of murder, causing suicide, or voluntary manslaughter, because of the individual's death. The following definitions apply throughout this section:

(1) "Culpable person" means any of the following:

(A) A person who:

- (i) has been charged with causing an unlawful death; and
- (ii) is found guilty, or guilty but mentally ill, on a charge of causing an unlawful death under a guilty plea or guilty verdict under IC 35-35-1 or IC 35-36-2.

(B) A person who is determined by a preponderance of the evidence in a civil action to have knowingly or intentionally caused an unlawful death.

(C) The estate of a person who:

- (i) is described in clause (A) or (B); and
- (ii) died after causing an unlawful death.

(2) "Decedent" means the victim of an unlawful death.

(3) "Unlawful death" means a death resulting from murder, voluntary manslaughter, or suicide caused by a person other than the decedent. The term includes a death resulting from an offense under IC 35-42-1-1, IC 35-42-1-2, or IC 35-42-1-3.

(b) A judgment of conviction is conclusive in a subsequent civil action to have the a culpable person declared a constructive trustee under subsection (e).

(c) A culpable person is a constructive trustee of any property that is acquired by the culpable person or that the culpable person is entitled to receive as a result of an unlawful death, including the following:

(1) Property from a trust.

(2) Property from a transfer on death transfer under



IC 32-17-14.

(3) Proceeds under a policy or certificate of life insurance on the life of the decedent, if the culpable person:

(A) is a beneficiary; and

(B) would otherwise be entitled to receive the proceeds; under the policy or certificate.

(4) Proceeds under a policy or certificate of life insurance on the life of the culpable person, if the decedent:

(A) was a beneficiary; and

(B) would otherwise be entitled to receive the proceeds; under the policy or certificate.

(5) The decedent's interest in joint tenancy property that would otherwise pass by survivorship to the culpable person as a result of the decedent's death.

(6) Property passing under a contractual agreement upon the decedent's death.

(d) If a culpable person dies after causing an unlawful death, life insurance proceeds that would otherwise be subject to a constructive trust under subsection (c)(3) or (c)(4) may be paid in the same manner as the life insurance proceeds would be paid if the culpable person had predeceased the decedent.

~~(b)~~ **(e)** A civil action may be initiated by **an interested person** to have a **culpable** person declared a constructive trustee of property that is acquired by the **culpable** person, or that the **culpable** person is otherwise entitled to receive ~~including property from a trust;~~ as a result of an ~~individual's death;~~ **if: unlawful death.**

~~(1) the person has been charged with murder, causing suicide, or voluntary manslaughter, because of the individual's death; and~~

~~(2) the person has been found not responsible by reason of insanity at the time of the crime.~~

If a civil action is initiated under this subsection, the court shall declare that the **culpable** person is a constructive trustee of the property if by a preponderance of the evidence it is determined that the **culpable** person ~~killed or caused the suicide of the individual;~~ **unlawful death.**

~~(e)~~ **(f)** If a constructive trust is established under this section, the property that is subject to the trust may be used only to benefit those persons, other than the **culpable person and** constructive trustee, legally entitled to the property, determined as if the constructive trustee had died immediately before the decedent. However, if any property that the constructive trustee acquired as a result of the ~~decedent's~~ **unlawful** death has been sold to an innocent purchaser for value who acted in good faith, that property is no longer subject to the



constructive trust, but the property received from the purchaser under the transaction becomes subject to the constructive trust."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 132 as introduced.)

BROWN L, Chairperson

Committee Vote: Yeas 11, Nays 0.

