



Reprinted  
February 25, 1999

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## HOUSE BILL No. 1980

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DIGEST OF HB 1980 (Updated February 24, 1999 9:54 pm - DI 92)

**Citations Affected:** IC 21-9; IC 36-1.

**Synopsis:** Conforming amendments for college savings plan. Amends the Indiana family college savings programs law to conform with federal law. Permits an education foundation that receives a donation from a unit to distribute both principal and income to the unit. Defines an education foundation. Exempts education foundations from provisions concerning a unit's donations to foundations generally.

**Effective:** January 1, 1999 (retroactive); July 1, 1999.

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### Klinker, Cochran, Buell, Harris

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January 26, 1999, read first time and referred to Committee on Education.  
February 15, 1999, reported — Do Pass.  
February 24, 1999, read second time, amended, ordered engrossed.

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HB 1980—LS 7921/DI 92+



Reprinted  
February 25, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

## HOUSE BILL No. 1980

A BILL FOR AN ACT to amend the Indiana Code concerning education finance.

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

- 1 SECTION 1. IC 21-9-2-3 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 1999]: Sec. 3. "Account beneficiary" means the  
3 individual to whom (or for whose benefit) the assets of an account  
4 transfer at the time the individual incurs allowable expenses: who is:  
5 (1) designated as the beneficiary of an account at the time the  
6 account is established under this article; and  
7 (2) designated as the new beneficiary when beneficiaries are  
8 changed.  
9 SECTION 2. IC 21-9-2-4 IS AMENDED TO READ AS FOLLOWS  
10 [EFFECTIVE JULY 1, 1999]: Sec. 4. "Account owner" means the  
11 individual (or individuals) designated at the time an account is opened  
12 as having the right to withdraw funds from the account before the  
13 account is disbursed to or for the benefit of an account beneficiary: do  
14 the following:  
15 (1) Select or change the designated beneficiary of an account.  
16 (2) Designate a person other than the designated beneficiary  
17 as a person to whom funds may be paid from the account.

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1           **(3) Receive distributions from the account if no other person**  
 2           **is designated.**

3           SECTION 3. IC 21-9-2-9.5 IS ADDED TO THE INDIANA CODE  
 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 5 1, 1999]: **Sec. 9.5. "Contribution" means a payment directly**  
 6 **allocated to an account for the benefit of an account beneficiary or**  
 7 **used to pay late fees or administrative fees associated with the**  
 8 **account.**

9           SECTION 4. IC 21-9-2-10.5 IS ADDED TO THE INDIANA CODE  
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 11 1, 1999]: **Sec. 10.5. "Distributee" means the designated beneficiary**  
 12 **or the account owner who receives or is treated as receiving a**  
 13 **distribution from an account established under this article.**

14           SECTION 5. IC 21-9-2-17.5 IS ADDED TO THE INDIANA CODE  
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 16 1, 1999]: **Sec. 17.5. (a) "Member of the family" means an individual**  
 17 **who is one (1) of the following relatives of a designated beneficiary:**

- 18           **(1) A lineal descendant of the designated beneficiary.**
- 19           **(2) A lineal ancestor of the designated beneficiary.**
- 20           **(3) A brother, sister, stepbrother, or stepsister of the**  
 21 **designated beneficiary.**
- 22           **(4) A stepparent of the designated beneficiary.**
- 23           **(5) A stepchild of the designated beneficiary.**
- 24           **(6) A niece or nephew of the designated beneficiary.**
- 25           **(7) An aunt or uncle of the designated beneficiary.**
- 26           **(8) An individual related to the designated beneficiary as**  
 27 **follows:**
  - 28           **(A) A daughter-in-law**
  - 29           **(B) A son-in-law.**
  - 30           **(C) A mother-in-law.**
  - 31           **(D) A father-in-law.**
  - 32           **(E) A sister-in-law.**
  - 33           **(F) A brother-in-law.**
- 34           **(9) The spouse of the designated beneficiary or the spouse of**  
 35 **an individual described in subdivisions (1) through (8).**

36           **(b) For purposes of this section, an adopted child of an**  
 37 **individual is treated as a natural child of the individual.**

38           **(c) For purposes of this section, the terms brother and sister**  
 39 **include a brother or sister by the half blood.**

40           SECTION 6. IC 21-9-2-19.5 IS ADDED TO THE INDIANA CODE  
 41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 42 1, 1999]: **Sec. 19.5. (a) "Qualified higher education expenses"**



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1 means the following expenses required for the enrollment or  
 2 attendance of a designated beneficiary at a higher education  
 3 institution:

- 4 (1) Tuition.  
 5 (2) Fees.  
 6 (3) Costs of books, supplies, and equipment.  
 7 (4) Room and board.

8 (b) The amount of room and board treated as a qualified higher  
 9 education expense may not exceed the amount set forth in the  
 10 applicable federal regulations.

11 SECTION 7. IC 21-9-2-19.7 IS ADDED TO THE INDIANA CODE  
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 13 1, 1999]: **Sec. 19.7. "Rollover distribution" means a distribution or**  
 14 **transfer from an account of a designated beneficiary that is**  
 15 **transferred to or deposited within sixty (60) days of the**  
 16 **distribution or transfer into an account of another individual who**  
 17 **is a member of the family of the designated beneficiary. A**  
 18 **distribution is not a rollover distribution unless there is a change**  
 19 **in the beneficiary.**

20 SECTION 8. IC 21-9-4-7 IS AMENDED TO READ AS FOLLOWS  
 21 [EFFECTIVE JULY 1, 1999]: **Sec. 7.** In addition to any power granted  
 22 by this article, the board has all powers necessary or convenient to  
 23 carry out and effectuate the purposes and objectives of this article, the  
 24 purposes and objectives of the education savings programs, and the  
 25 powers delegated by law or executive order, including the following  
 26 powers:

- 27 (1) To develop and implement the education savings programs  
 28 and, notwithstanding any provision in this article to the contrary,  
 29 other savings programs and services consistent with the purposes  
 30 and objectives of this article, through:

- 31 (A) rules adopted under IC 4-22-2; or  
 32 (B) rules, guidelines, procedures, or policies established by the  
 33 board and approved by the higher education commission.

- 34 (2) **To conform the education savings programs and,**  
 35 **notwithstanding any provision in this article to the contrary,**  
 36 **other savings programs and services consistent with the**  
 37 **purposes and objectives of this article, to the requirements of**  
 38 **a qualified state tuition program set forth in Section 529 of the**  
 39 **Internal Revenue Code and all applicable federal regulations,**  
 40 **through:**

- 41 (A) rules adopted under IC 4-22-2; or  
 42 (B) rules, guidelines, procedures, or policies established by



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- 1           **the board and approved by the higher education**  
 2           **commission.**  
 3           **(3)** To retain professional services, including the following:  
 4           (A) Financial advisers and managers.  
 5           (B) Custodians and other fiduciaries.  
 6           (C) Investment advisers and managers.  
 7           (D) Accountants and auditors.  
 8           (E) Consultants or other experts.  
 9           (F) Actuarial services providers.  
 10          (G) Attorneys.  
 11          ~~(3)~~ **(4)** To establish minimum account deposit amounts (both  
 12          initial and periodic).  
 13          ~~(4)~~ **(5)** To employ persons, if the board chooses, and as may be  
 14          necessary, and to fix the terms of their employment.  
 15          ~~(5)~~ **(6)** To recommend legislation to the governor and general  
 16          assembly.  
 17          ~~(6)~~ **(7)** To apply for designation as a tax exempt entity under the  
 18          Internal Revenue Code.  
 19          ~~(7)~~ **(8)** To adopt such rules, bylaws, procedures, guidelines, and  
 20          policies as are necessary to carry out the education savings  
 21          programs and other savings programs and services and the  
 22          authority's management and operations.  
 23          ~~(8)~~ **(9)** To sue and be sued.  
 24          ~~(9)~~ **(10)** To provide or facilitate provision of benefits and  
 25          incentives for the benefit of qualified beneficiaries, account  
 26          owners, contributors, or account beneficiaries as the board's  
 27          resources allow or as are directed or provided for by the general  
 28          assembly.  
 29          ~~(10)~~ **(11)** To conform the education savings programs and other  
 30          savings programs to federal tax advantages or incentives, as in  
 31          existence periodically, to the extent consistent with the purposes  
 32          and objectives of this article.  
 33          ~~(11)~~ **(12)** To interpret, in rules, policies, guidelines, and  
 34          procedures, the provisions of this article broadly in light of the  
 35          purposes and objectives of this article.  
 36          ~~(12)~~ **(13)** To charge, impose, and collect administrative fees and  
 37          service charges in connection with any agreement, contract, or  
 38          transaction under an education savings program or other savings  
 39          program or services.  
 40          ~~(13)~~ **(14)** To have perpetual succession.  
 41          SECTION 9. IC 21-9-7-1 IS AMENDED TO READ AS FOLLOWS  
 42          [EFFECTIVE JULY 1, 1999]: Sec. 1. In addition to any other powers

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1 granted by this article, the board has all powers necessary or  
 2 convenient to carry out and effectuate the purposes and objectives of  
 3 this chapter, IC 21-9-8, and IC 21-9-9, the purposes and objectives of  
 4 the family college savings programs that may be established under this  
 5 article, and the powers delegated by other laws or executive orders,  
 6 including the following:

7 (1) To establish policies and procedures ~~including penalties~~; to  
 8 govern ~~withdrawals~~ **distributions** from accounts ~~in the event of:~~  
 9 **that are not:**

10 (A) **made on account of** the death or disability of an account  
 11 beneficiary;

12 (B) ~~the denial of admission or acceptance by a higher~~  
 13 ~~education institution of an account beneficiary; and made on~~  
 14 **account of the receipt of a scholarship (or allowance or**  
 15 **payment described in Section 135(d)(1)(B) or (C) of the**  
 16 **Internal Revenue Code) by the account beneficiary to the**  
 17 **extent the amount of the distribution does not exceed the**  
 18 **amount of the scholarship, allowance, or payment; or**

19 (C) ~~other hardships or special circumstances affecting account~~  
 20 ~~owners and account beneficiaries:~~ **rollover distributions.**

21 (2) ~~However, the authority must To establish penalties for early~~  
 22 ~~withdrawal~~ **withdrawals** of money from accounts ~~in~~  
 23 ~~circumstances other than hardships described in this subdivision:~~  
 24 **that are not used exclusively for the qualified higher**  
 25 **education expenses of an account beneficiary unless a**  
 26 **circumstance described in subdivision (1) applies.**

27 ~~(3)~~ (3) To establish policies and procedures regarding the transfer  
 28 of individual accounts and the designation of substitute account  
 29 beneficiaries.

30 ~~(4)~~ (4) To establish policies and procedures for withdrawal of  
 31 money from accounts for, or in reimbursement of, ~~allowable~~  
 32 ~~expenditures:~~ **qualified higher education expenses.**

33 ~~(5)~~ (5) To establish policies and procedures regarding recapture  
 34 of all or a part of prior or current benefits or incentives allocated  
 35 or allocable to accounts, including, in appropriate circumstances  
 36 in the board's judgment, recapture as a precondition to  
 37 withdrawal.

38 ~~(6)~~ (6) To enter into agreements with account owners, account  
 39 beneficiaries, and contributors, with the agreements naming:

40 (A) the account owner, who must be an adult or emancipated  
 41 minor; and

42 (B) the account beneficiary, who may also be the account

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- 1 owner, if qualified.
- 2 ~~(6)~~ (7) To establish accounts for account beneficiaries. However:
- 3 (A) the authority shall establish a separate account for each
- 4 account beneficiary; and
- 5 (B) an individual may be the beneficiary of more than one (1)
- 6 account.
- 7 ~~(7)~~ (8) To enter into agreements with financial institutions
- 8 relating to accounts as well as deposits, withdrawals, penalties,
- 9 recaptures of benefits or incentives, allocation of benefits or
- 10 incentives, and transfers of accounts, account owners, and
- 11 account beneficiaries.
- 12 ~~(8)~~ (9) To conform the trust program and the account program to
- 13 federal tax advantages or incentives, as the advantages or
- 14 incentives may exist periodically, to the extent consistent with the
- 15 purposes and objectives of this article.
- 16 ~~(9)~~ (10) To interpret, in rules, policies, guidelines, and
- 17 procedures, the provisions of this article broadly considering the
- 18 purposes and objectives of this article.
- 19 SECTION 10. IC 21-9-7-5 IS ADDED TO THE INDIANA CODE
- 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 21 1, 1999]: **Sec. 5. Contributions by an account owner shall be made**
- 22 **in cash only, with available contribution payment options**
- 23 **determined by the authority. These options may include payroll**
- 24 **deductions, electronic funds transfers, or other methods**
- 25 **determined by the authority.**
- 26 SECTION 11. IC 21-9-7-6 IS ADDED TO THE INDIANA CODE
- 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 28 1, 1999]: **Sec. 6. An account owner or beneficiary may not direct**
- 29 **the investment of any contributions or the earnings on any**
- 30 **contribution. However, the account owner or beneficiary may**
- 31 **select an investment strategy from among different investment**
- 32 **strategies designed by the board at the time an initial contribution**
- 33 **is made to establish the account.**
- 34 SECTION 12. IC 21-9-7-7 IS ADDED TO THE INDIANA CODE
- 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 36 1, 1999]: **Sec. 7. Funds held in the family college savings trust**
- 37 **program or the family college savings account program may not be**
- 38 **used by an account owner or beneficiary as security for a loan.**
- 39 SECTION 13. IC 21-9-7-8 IS ADDED TO THE INDIANA CODE
- 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 41 1, 1999]: **Sec. 8. (a) Contributions to an individual account may not**
- 42 **exceed the amount necessary to provide for the qualified higher**

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1 education expenses of the account beneficiary.

2 (b) The authority shall adopt rules under IC 4-22-2 to determine  
3 the maximum account balance applicable to all accounts of account  
4 beneficiaries with the same expected year of enrollment. The  
5 maximum account balance may not exceed the amount determined  
6 by actuarial estimates that is necessary to pay the account  
7 beneficiary's qualified higher education expenses for five (5) years  
8 of enrollment at the highest cost institution identified by the  
9 authority.

10 SECTION 14. IC 21-9-7-9 IS ADDED TO THE INDIANA CODE  
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
12 1, 1999]: **Sec. 9. (a) The authority shall adopt rules under IC 4-22-2**  
13 **to establish a penalty for a distribution that is not used exclusively**  
14 **for the qualified higher education expenses of an account**  
15 **beneficiary. However, the authority may not establish a penalty for**  
16 **distributions described in IC 21-9-7-1(1).**

17 (b) The penalty imposed under this section must equal at least  
18 ten percent (10%) of the earnings portion of the distribution.

19 SECTION 15. IC 36-1-14-1 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:  
21 **Sec. 1. (a) This section does not apply to an education foundation**  
22 **described in section 1.5 of this chapter.**

23 (b) Notwithstanding IC 8-1.5-2-6(d), a unit may donate the proceeds  
24 from the sale of a utility or facility or from a grant, a gift, a donation,  
25 an endowment, a bequest, or a trust to a foundation under the following  
26 conditions:

27 (1) The foundation is a charitable nonprofit community  
28 foundation.

29 (2) The foundation retains all rights to the donation, including  
30 investment powers.

31 (3) The foundation agrees to do the following:

32 (A) Hold the donation as a permanent endowment.

33 (B) Distribute the income from the donation only to the unit as  
34 directed by resolution of the fiscal body of the unit.

35 (C) Return the donation to the general fund of the unit if the  
36 foundation:

37 (i) loses the foundation's status as a public charitable  
38 organization;

39 (ii) is liquidated; or

40 (iii) violates any condition of the endowment set by the  
41 fiscal body of the unit.

42 SECTION 16. IC 36-1-14-1.5 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 2 [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 1.5. (a) As**  
 3 **used in this section, "education foundation" means a foundation**  
 4 **that is:**

5 (1) **organized under the Indiana Nonprofit Corporation Act**  
 6 **of 1991 (IC 23-17);**

7 (2) **organized exclusively for educational, charitable, and**  
 8 **scientific purposes; and**

9 (3) **formed for the purpose of providing educational resources**  
 10 **to:**

11 (A) **a particular school corporation or school corporations;**

12 **or**

13 (B) **the schools in a particular geographic area.**

14 (b) **Notwithstanding IC 8-1.5-2-6(d), a unit may donate the**  
 15 **proceeds from the sale of a utility or facility or from a grant, a gift,**  
 16 **a donation, an endowment, a bequest, or a trust to an education**  
 17 **foundation under the following conditions:**

18 (1) **The education foundation retains all rights to the donation,**  
 19 **including investment powers.**

20 (2) **The education foundation agrees to return the donation to**  
 21 **the general fund of the unit if the foundation:**

22 (A) **loses the foundation's status as a public charitable**  
 23 **organization;**

24 (B) **is liquidated; or**

25 (C) **violates any condition of the endowment set by the**  
 26 **fiscal body of the unit.**

27 (c) **An education foundation may distribute both principal and**  
 28 **income to the unit as directed by the fiscal body of the unit.**

29 SECTION 17. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1980, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

PORTER, Chair

Committee Vote: yeas 13, nays 0.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1980 be amended to read as follows:

Page 7, after line 18, begin a new paragraph and insert:

"SECTION 15. IC 36-1-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]:  
Sec. 1. **(a) This section does not apply to an education foundation described in section 1.5 of this chapter.**

**(b)** Notwithstanding IC 8-1.5-2-6(d), a unit may donate the proceeds from the sale of a utility or facility or from a grant, a gift, a donation, an endowment, a bequest, or a trust to a foundation under the following conditions:

- (1) The foundation is a charitable nonprofit community foundation.
- (2) The foundation retains all rights to the donation, including investment powers.
- (3) The foundation agrees to do the following:
  - (A) Hold the donation as a permanent endowment.
  - (B) Distribute the income from the donation only to the unit as directed by resolution of the fiscal body of the unit.
  - (C) Return the donation to the general fund of the unit if the foundation:
    - (i) loses the foundation's status as a public charitable organization;
    - (ii) is liquidated; or
    - (iii) violates any condition of the endowment set by the fiscal body of the unit.

SECTION 16. IC 36-1-14-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 1.5. (a) As used in this section, "education foundation" means a foundation that is:**

- (1) organized under the Indiana Nonprofit Corporation Act of 1991 (IC 23-17);**
  - (2) organized exclusively for educational, charitable, and scientific purposes; and**
  - (3) formed for the purpose of providing educational resources to:**
    - (A) a particular school corporation or school corporations;**  
or
    - (B) the schools in a particular geographic area.**
- (b) Notwithstanding IC 8-1.5-2-6(d), a unit may donate the**

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proceeds from the sale of a utility or facility or from a grant, a gift, a donation, an endowment, a bequest, or a trust to an education foundation under the following conditions:

(1) The education foundation retains all rights to the donation, including investment powers.

(2) The education foundation agrees to return the donation to the general fund of the unit if the foundation:

(A) loses the foundation's status as a public charitable organization;

(B) is liquidated; or

(C) violates any condition of the endowment set by the fiscal body of the unit.

(c) An education foundation may distribute both principal and income to the unit as directed by the fiscal body of the unit.

SECTION 17. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to HB 1980 as printed February 16, 1999.)

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