

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

## HOUSE ENROLLED ACT No. 1125

AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

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

SECTION 1. IC 30-4-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) A trust is a fiduciary relationship between a person who, as trustee, holds title to property and another person for whom, as beneficiary, the title is held.

(b) Subject to IC 30-4-2-8, the same person may be both the trustee and a beneficiary.

(c) The rules of law contained in this article do not apply to:

- (1) trusts created by operation of law;
- (2) business trusts (as defined in IC 23-5-1);
- (3) security instruments and creditor arrangements;
- (4) voting trusts;
- (5) religious, educational, and cultural institutions, **created in other than trust form**, except with respect to ~~IC 30-4-5~~, **the application of IC 30-4-5-18 through IC 30-4-5-23 as it relates those sections relate** to the maintenance of federal income tax exemption privileges **to which an institution is entitled**;
- (6) ~~nonprofit charitable foundations, corporations and other associations entities governed by IC 23-17~~, except with respect to ~~IC 30-4-5~~ **IC 30-4-5-18 through IC 30-4-5-23 as it relates those sections relate** to the maintenance of federal income tax exemption privileges **to which a corporation or other entity is entitled**;

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- (7) prepaid funeral plans;
- (8) trusts for the care and upkeep of cemeteries;
- (9) agreements to furnish funeral services; and
- (10) trusts created or authorized by statute other than this article.

(d) IC 30-4-3-2(a) applies to an employee benefit trust that meets the requirements set forth in IC 30-4-3-2(c). However, no other provision of this article applies to an employee benefit trust.

SECTION 2. IC 30-4-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. As used in this article:

- (1) "Adult" means any person eighteen (18) years of age or older.
- (2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary.
- (3) "Beneficiary" means any cestui que trust or person named or a member of the class designated in the terms of the trust to be any person or class of persons for whose benefit the title to the trust property is held and for whom the trust is to be administered.
- (4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.
- (5) **"Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.**
- (6) "Court" means a court having jurisdiction over trust matters.
- ~~(6)~~ (7) "Income beneficiary" means a beneficiary to whom income is presently payable or for whom it is accumulated for distribution as income.
- ~~(7)~~ (8) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.
- ~~(8)~~ (9) "Minor" means any person under the age of eighteen (18) years.

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~~(9)~~ **(10)** "Person" means a natural person, corporation, or a unit, agency, or other subdivision of national, state, or local government.

~~(10)~~ **(11)** "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

~~(11)~~ **(12)** "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

~~(12)~~ **(13)** "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

~~(13)~~ **(14)** "Trust estate" means the trust property and the income derived from its use.

**(15) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.**

~~(14)~~ **(16)** "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

~~(15)~~ **(17)** "Trustee" means the person who is charged with the responsibility of administering the trust and includes a successor or added trustee.

SECTION 3. IC 30-4-3-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 27. (Cy Pres Doctrine)

**(a) If property is given in to a trust for a benevolent public purpose and the property is to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust need not fail, but the court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.**

**(b) A living heir of the settlor or a living beneficiary named in the original trust agreement may present evidence to the court of:**

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- (1) the heir's or beneficiary's opinion of the settlor's intent;  
and  
(2) the heir's or beneficiary's wishes;  
regarding the property given in trust.

SECTION 4. IC 30-4-3-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 31. (a) This section is enacted for the purpose of confirming the power of Indiana courts to modify ~~charitable~~ trusts **for a benevolent public purpose**, and transfers not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, to effect compliance with Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code so that these trusts and transfers may obtain the income tax exemption afforded by Section 664 of the Internal Revenue Code and donors or other contributors of gifts or contributions to these trusts and transfers may secure the income, estate, and gift tax charitable deductions granted by Sections 170, 2055, 2106, and 2522 of the Internal Revenue Code.

(b) Upon petition, any court of general or probate jurisdiction in Indiana may, in its discretion, modify the instrument of an inter vivos or testamentary ~~charitable~~ trust **for a benevolent public purpose**, or transfer not in trust as described in Section 170(f)(3)(A) of the Internal Revenue Code, so that the trust or transfer complies with and conforms to the provisions of Sections 170, 664, 2055, 2106, and 2522 of the Internal Revenue Code and regulations thereunder from the date of the trust's or transfer's creation, if consent to the modification is given by:

- (1) all beneficiaries of the trust or transfer; and  
(2) the settlor of the trust or transfer if the settlor is living at the date of modification.

SECTION 5. IC 30-4-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 12. (Accounting by Trustees)

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least:

- (1) all receipts and disbursements since the last statement; and  
(2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) **If property or money is devised or bequeathed or donated for a benevolent public purpose, the trustee shall file a verified written statement annually with the court of the county in which the venue lies under 30-4-6-3 showing at least the items listed in 30-4-5-13(a). This subsection applies to a charitable trust with assets of at least five**



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**hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal Revenue Code.**

(c) Upon petition by the settlor, a beneficiary or his personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in ~~30-4-5-13(a)~~ **section 13(a) of this chapter**. The petition may be filed at any time, provided, however, that the court will not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

(d) If the court's jurisdiction is of a continuing nature as provided in **IC 30-4-6-2**, the trustee shall file a verified written statement of accounts containing the items shown in ~~30-4-5-13(a)~~ **section 13(a) of this chapter** with the court biennially, and the court may, on its own motion, require the trustee to file such a statement at any other time provided there is good cause for requiring a statement to be filed.

**SECTION 6. IC 30-4-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:** Sec. 21. Subject to the provisions of this section and of section 23 of this chapter, every trust subject to the laws of this state which is a private foundation as defined in Section 509(a) of the Internal Revenue Code; a charitable trust treated as a private foundation under Section 4947(a)(1) of the Internal Revenue Code; or a split-interest trust as defined in Section 4947(a)(2) of the Internal Revenue Code **for a benevolent public purpose that is subject to the provisions of Subchapter A of Chapter 42 of Subtitle D of the Internal Revenue Code** shall:

(~~a~~) **(1)** distribute each taxable year amounts sufficient for such



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trust to avoid liability for the tax imposed by Section 4942 of the Internal Revenue Code, except that this subdivision shall not apply to split-interest trusts;

~~(b)~~ (2) not engage in any act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4941 of the Internal Revenue Code;

~~(c)~~ (3) not retain any excess business holding (as defined in Section 4943(c) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4943 of the Internal Revenue Code;

~~(d)~~ (4) not make any investment which would jeopardize the carrying out of any of such trust's exempt purposes (within the meaning of Section 4944 of the Internal Revenue Code) and which would subject such trust to liability for the taxes imposed by Section 4944 of the Internal Revenue Code; and

~~(e)~~ (5) not make any taxable expenditure (as defined in Section 4945(d) of the Internal Revenue Code) which would subject such trust to liability for the taxes imposed by Section 4945 of the Internal Revenue Code.

The provisions of this section shall not apply to split-interest trusts or amounts thereof to the extent that such split-interest trusts and amounts are not, under Section 4947 of the Internal Revenue Code, subject to the prohibitions applicable to private foundations.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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