
HOUSE BILL No. 1125

DIGEST OF INTRODUCED BILL

Citations Affected: IC 30-4.

Synopsis: Charitable trusts. Provides that the trust code applies to charitable trusts. Defines "charitable trust". Defines "trust for a benevolent public purpose". Requires the trustee of a trust for a benevolent public purpose to certify to the attorney general that a written statement of accounts has been prepared and is available to the attorney general and the general public upon request. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2000.

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January 10, 2000, read first time and referred to Committee on Judiciary.

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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.

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HOUSE BILL No. 1125



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

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

- 1 SECTION 1. IC 30-4-1-1 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) A trust is a fiduciary
- 3 relationship between a person who, as trustee, holds title to property
- 4 and another person for whom, as beneficiary, the title is held.
- 5 (b) Subject to IC 30-4-2-8, the same person may be both the trustee
- 6 and a beneficiary.
- 7 (c) The rules of law contained in this article do not apply to:
- 8 (1) trusts created by operation of law;
- 9 (2) business trusts (as defined in IC 23-5-1);
- 10 (3) security instruments and creditor arrangements;
- 11 (4) voting trusts;
- 12 (5) religious, educational, and cultural institutions, **created in**
- 13 **other than trust form**, except with respect to ~~IC 30-4-5~~; **the**
- 14 **application of IC 30-4-5-18 through IC 30-4-5-23** as it relates
- 15 **those sections relate** to the maintenance of federal income tax
- 16 exemption privileges **to which an institution is entitled**;
- 17 (6) ~~nonprofit charitable foundations~~; corporations and other



1 ~~associations entities governed by IC 23-17~~, except with respect
 2 to ~~IC 30-4-5~~ **IC 30-4-5-18 through IC 30-4-5-23** as it relates
 3 **those sections relate** to the maintenance of federal income tax
 4 exemption privileges **to which a corporation or other entity is**
 5 **entitled;**

6 (7) prepaid funeral plans;

7 (8) trusts for the care and upkeep of cemeteries;

8 (9) agreements to furnish funeral services; and

9 (10) trusts created or authorized by statute other than this article.

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

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

15 (1) "Adult" means any person eighteen (18) years of age or older.

16 (2) "Affiliate" means a parent, descendant, spouse, spouse of a
 17 descendant, brother, sister, spouse of a brother or sister,
 18 employee, director, officer, partner, joint venturer, a corporation
 19 subject to common control with the trustee, a shareholder, or
 20 corporation who controls the trustee or a corporation controlled
 21 by the trustee other than as a fiduciary.

22 (3) "Beneficiary" means any cestui que trust or person named or
 23 a member of the class designated in the terms of the trust to be
 24 any person or class of persons for whose benefit the title to the
 25 trust property is held and for whom the trust is to be administered.

26 (4) "Breach of trust" means a violation by the trustee of any duty
 27 which is owed to the settlor or beneficiary.

28 (5) **"Charitable trust" means a trust in which all the**
 29 **beneficiaries are the general public or organizations,**
 30 **including trusts, corporations, and associations, and that is**
 31 **organized and operated wholly for religious, charitable,**
 32 **scientific, public safety testing, literary, or educational**
 33 **purposes. The term does not include charitable remainder**
 34 **trusts, charitable lead trusts, pooled income funds, or any**
 35 **other form of split-interest charitable trust that has at least**
 36 **one (1) noncharitable beneficiary.**

37 (6) "Court" means a court having jurisdiction over trust matters.

38 ~~(6)~~ (7) "Income beneficiary" means a beneficiary to whom income
 39 is presently payable or for whom it is accumulated for distribution
 40 as income.

41 ~~(7)~~ (8) "Inventory value" means the cost of property to the settlor
 42 or the trustee at the time of acquisition or the market value of the

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1 property at the time it is delivered to the trustee, or the value of
 2 the property as finally determined for purposes of an estate or
 3 inheritance tax.

4 ~~(8)~~ (9) "Minor" means any person under the age of eighteen (18)
 5 years.

6 ~~(9)~~ (10) "Person" means a natural person, corporation, or a unit,
 7 agency, or other subdivision of national, state, or local
 8 government.

9 ~~(10)~~ (11) "Personal representative" means an executor or
 10 administrator of a decedent's or absentee's estate, guardian of the
 11 person or estate, guardian ad litem or other court appointed
 12 representative, next friend, parent or custodian of a minor,
 13 attorney in fact, or custodian of an incapacitated person (as
 14 defined in IC 29-3-1-7.5).

15 ~~(11)~~ (12) "Remainderman" means a beneficiary entitled to
 16 principal, including income which has been accumulated and
 17 added to the principal.

18 ~~(12)~~ (13) "Settlor" means a person who establishes a trust
 19 including the testator of a will under which a trust is created.

20 ~~(13)~~ (14) "Trust estate" means the trust property and the income
 21 derived from its use.

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

29 ~~(14)~~ (16) "Trust property" means property either placed in trust or
 30 purchased or otherwise acquired by the trustee for the trust
 31 regardless of whether the trust property is titled in the name of the
 32 trustee or the name of the trust.

33 ~~(15)~~ (17) "Trustee" means the person who is charged with the
 34 responsibility of administering the trust and includes a successor
 35 or added trustee.

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

38 If property is given in to a trust for a benevolent public purpose
 39 and the property is to be applied to a particular charitable purpose,
 40 and it is or becomes impossible, impracticable, or illegal to carry out
 41 the particular purpose, and if the settlor manifested a more general
 42 intention to devote the property to charitable purposes, the trust need



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1 not fail, but the court may direct the application of the property to some
 2 charitable purpose which falls within the general charitable intention
 3 of the settlor.

4 SECTION 4. IC 30-4-3-31 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 31. (a) This section is
 6 enacted for the purpose of confirming the power of Indiana courts to
 7 modify ~~charitable~~ trusts **for a benevolent public purpose**, and
 8 transfers not in trust as described in Section 170(f)(3)(A) of the Internal
 9 Revenue Code, to effect compliance with Sections 170, 664, 2055,
 10 2106, and 2522 of the Internal Revenue Code so that these trusts and
 11 transfers may obtain the income tax exemption afforded by Section 664
 12 of the Internal Revenue Code and donors or other contributors of gifts
 13 or contributions to these trusts and transfers may secure the income,
 14 estate, and gift tax charitable deductions granted by Sections 170,
 15 2055, 2106, and 2522 of the Internal Revenue Code.

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

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

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

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

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

37 (b) **If property or money is devised or bequeathed or donated for a**
 38 **benevolent public purpose; the trustee shall file a verified written**
 39 **statement annually with the court of the county in which the venue lies**
 40 **under 30-4-6-3 showing at least the items listed in 30-4-5-13(a): The**
 41 **trustee of a charitable trust shall annually file a verified written**
 42 **certification with the attorney general stating that a written**



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1 statement of accounts has been prepared showing at least the items
 2 listed in section 13(a) of this chapter. The certification must state
 3 that the statement of accounts is available to the attorney general
 4 and any member of the general public upon request. A charitable
 5 trust may not be exempted from this requirement by a provision in
 6 a will, trust agreement, indenture, or other governing instrument.
 7 This subsection does not prevent a trustee from docketing a
 8 charitable trust to finalize a written statement of account or any
 9 other lawful purpose in the manner provided in this article.
 10 However, this subsection does not apply to an organization that is
 11 not required to file a federal information return under Section
 12 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal
 13 Revenue Code.

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

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

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

40 (a) (1) distribute each taxable year amounts sufficient for such
 41 trust to avoid liability for the tax imposed by Section 4942 of the
 42 Internal Revenue Code, except that this subdivision shall not

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1 apply to split-interest trusts;
2 ~~(b)~~ **(2)** not engage in any act of self-dealing (as defined in Section
3 4941(d) of the Internal Revenue Code) which would subject such
4 trust to liability for the taxes imposed by Section 4941 of the
5 Internal Revenue Code;
6 ~~(c)~~ **(3)** not retain any excess business holding (as defined in
7 Section 4943(c) of the Internal Revenue Code) which would
8 subject such trust to liability for the taxes imposed by Section
9 4943 of the Internal Revenue Code;
10 ~~(d)~~ **(4)** not make any investment which would jeopardize the
11 carrying out of any of such trust's exempt purposes (within the
12 meaning of Section 4944 of the Internal Revenue Code) and
13 which would subject such trust to liability for the taxes imposed
14 by Section 4944 of the Internal Revenue Code; and
15 ~~(e)~~ **(5)** not make any taxable expenditure (as defined in Section
16 4945(d) of the Internal Revenue Code) which would subject such
17 trust to liability for the taxes imposed by Section 4945 of the
18 Internal Revenue Code.
19 The provisions of this section shall not apply to split-interest trusts or
20 amounts thereof to the extent that such split-interest trusts and amounts
21 are not, under Section 4947 of the Internal Revenue Code, subject to
22 the prohibitions applicable to private foundations.

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