



February 15, 2005

HOUSE BILL No. 1453

DIGEST OF HB 1453 (Updated February 9, 2005 7:24 pm - DI 96)

Citations Affected: IC 23-7; IC 23-17; IC 30-4.

Synopsis: Professional fundraisers and solicitors. Defines "bona fide employee" for purposes of regulating professional fundraisers. Requires a professional solicitor to provide certain information to charitable organizations. Allows the attorney general to seek remedies against nonprofit corporations and benevolent trusts for certain violations and to recover attorney's fees and costs. Provides that venue in a proceeding by the attorney general against a trust lies in Marion County.

Effective: July 1, 2005.

Richardson

January 18, 2005, read first time and referred to Committee on Employment and Labor.
February 14, 2005, reported — Do Pass.

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February 15, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1453

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

- 1 SECTION 1. IC 23-7-8-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter:
3 "Bona fide employee" means a person who is a regular,
4 nontemporary employee of a charitable organization under the
5 direct and exclusive control of the organization. The term does not
6 include a person that:
7 (1) solicits contributions for a charitable organization under
8 the direction, supervision, instruction, or employ of a
9 professional solicitor;
10 (2) is engaged or employed as a professional solicitor by any
11 other person; or
12 (3) solicits contributions for more than one (1) charitable
13 organization.
14 "Charitable organization" means any organization described in
15 Section 501 of the federal Internal Revenue Code.
16 "Contribution" means a promise or pledge of money, a payment, or
17 any other rendition of property or service. It does not include the

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1 payment of membership dues, fines or assessments, or payments for
2 property sold or services rendered by the charitable organization, if not
3 sold or rendered in connection with a solicitation, and does not include
4 a charitable organization that resells used clothing or household items.

5 "Division" means the consumer protection division, office of the
6 attorney general.

7 "Person" includes any individual, organization, trust foundation,
8 association, partnership, limited liability company, or corporation.

9 "Professional fundraiser consultant" means any person who is hired
10 for a fee to plan, manage, advise, or act as a consultant in connection
11 with soliciting contributions for, or on behalf of, a charitable
12 organization, but who does not actually solicit contributions as a part
13 of the person's services or employ, procure, or engage a compensated
14 person to solicit contributions. The term does not include a charitable
15 organization, or a bona fide officer, employee, member, or volunteer of
16 a charitable organization, that solicits on its own behalf.

17 "Professional solicitor" means a person who, for a financial
18 consideration, solicits contributions for, or on behalf of, a charitable
19 organization, either personally or through agents or employees
20 specifically employed for that purpose, **including agents or employees**
21 **specifically employed by or for a charitable organization who**
22 **solicit contributions under the direction, supervision, or instruction**
23 **of a professional solicitor.** The term does not include a charitable
24 organization, or an officer, ~~an~~ **a bona fide** employee, ~~a member,~~ or a
25 volunteer of a charitable organization, that solicits on its own behalf.

26 "Solicit" means:

27 (1) to request, other than as described in subdivision (2), directly
28 or indirectly, financial assistance in any form on the
29 representation that the financial assistance will be used for a
30 charitable purpose; or

31 (2) to sell, offer, or attempt to sell any advertisement, advertising
32 space, membership, or tangible item:

33 (A) in connection with which any appeal is made for any
34 charitable organization or purpose;

35 (B) where the name of any charitable organization is used or
36 referred to in any appeal made for any charitable organization
37 as an inducement or reason for making a sale described in this
38 subdivision; or

39 (C) when or where in connection with a sale described in this
40 subdivision any statement is made that the whole or any part
41 of the proceeds from the sale will be used for any charitable
42 purpose or benefit any charitable organization.

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1 A solicitation shall be considered to have taken place whether or not
2 the person making the solicitation receives any contribution.

3 SECTION 2. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A person may not act as a
5 professional fundraiser consultant or professional solicitor for a
6 charitable organization unless the person has first registered with the
7 division. A person who applies for registration shall disclose the
8 following information while under oath:

9 (1) The names and addresses of all officers, employees, and
10 agents who are actively involved in fundraising or related
11 activities.

12 (2) The names and addresses of all persons who own a ten percent
13 (10%) or more interest in the registrant.

14 (3) A description of any other business related to fundraising
15 conducted by the registrant or any person who owns ten percent
16 (10%) or more interest.

17 (4) The name or names under which it intends to solicit
18 contributions.

19 (5) Whether the organization has ever had its registration denied,
20 suspended, revoked, or enjoined by any court or other
21 governmental authority.

22 (b) A registrant shall notify the division in writing within one
23 hundred eighty (180) days of any change in the information contained
24 in the registration. However, if requested by the division, the solicitor
25 has fifteen (15) days to notify the division of any change in the
26 information.

27 (c) Before acting as a professional fundraiser consultant for a
28 particular charitable organization, the consultant must enter into a
29 written contract with the organization and file this contract with the
30 division. The contract must identify the services that the professional
31 fundraiser consultant is to provide, including whether the professional
32 fundraiser consultant will at any time have custody of contributions.

33 (d) Before a professional solicitor engages in a solicitation, the
34 professional solicitor must have a contract which is filed with the
35 division. This contract must specify the percentage of gross
36 contributions which the charitable organization will receive or the
37 terms upon which a determination can be made as to the amount of the
38 gross revenue from the solicitation campaign that the charitable
39 organization will receive. The amount of gross revenue from the
40 solicitation campaign that the charitable organization will receive must
41 be expressed as a fixed percentage of the gross revenue or expressed
42 as a reasonable estimate of the percentage of the gross revenue. If a

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1 reasonable estimate is used, the contract must clearly disclose the
 2 assumptions or a formula upon which the estimate is based. If a fixed
 3 percentage is used, the percentage must exclude any amount that the
 4 charitable organization is to pay as expenses of the solicitation
 5 campaign, including the cost of the merchandise or services sold. If
 6 requested by the charitable organization, the person who solicits must
 7 at the conclusion of a charitable appeal provide to the charitable
 8 organization ~~the names and addresses of all contributors, the amount~~
 9 ~~of each contribution, and a final accounting of all expenditures. Such~~
 10 ~~information~~ **The final accounting** may not be used in violation of any
 11 trade secret laws. The contract must disclose the average percentage of
 12 gross contributions collected on behalf of charitable organizations that
 13 the charitable organizations received from the professional solicitor for
 14 the three (3) years preceding the year in which the contract is formed.
 15 **The contract also must specify that, at least every ninety (90) days,**
 16 **the professional solicitor shall provide the charitable organization**
 17 **with access to and use of information concerning contributors,**
 18 **including the name, address, and telephone number of each**
 19 **contributor and the date and amount of each contribution. A**
 20 **professional solicitor may not restrict a charitable organization's**
 21 **use of contributor information.**

22 (e) Before beginning a solicitation campaign, a professional solicitor
 23 must file a solicitation notice with the division. The notice must include
 24 the following:

- 25 (1) A copy of the contract described in subsection (d).
- 26 (2) The projected dates when soliciting will begin and end.
- 27 (3) The location and telephone number from where solicitation
 28 will be conducted.
- 29 (4) The name and residence address of each person responsible
 30 for directing and supervising the conduct of the campaign.
 31 However, the division shall not divulge the residence address
 32 unless ordered to do so by a court of competent jurisdiction, or in
 33 furtherance of the prosecution of a violation under this chapter.
- 34 (5) If the solicitation is one described under section 7(a)(3) of this
 35 chapter, the solicitation notice must include a copy of the required
 36 written authorization.

37 (f) Not later than ninety (90) days after a solicitation campaign has
 38 ended and not later than ninety (90) days after the anniversary of the
 39 commencement of a solicitation campaign lasting more than one (1)
 40 year, a professional solicitor shall submit the following information
 41 concerning the campaign to the division:

- 42 (1) The total gross amount of money raised by the professional

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- 1 solicitor and the charitable organization from donors.
- 2 (2) The total amount of money paid to or retained by the
- 3 professional solicitor.
- 4 (3) The total amount of money, not including the amount
- 5 identified under subdivision (2), paid by the charitable
- 6 organization as expenses as part of the solicitation campaign.
- 7 (4) The total amount of money paid to or retained by the
- 8 charitable organization after the amounts identified under
- 9 subdivisions (2) and (3) are deducted.

10 The division may deny or revoke the registration of a professional
 11 solicitor who fails to comply with this subsection.

12 (g) The charitable organization on whose behalf the professional
 13 solicitor is acting must certify that the information filed under
 14 subsections (e) and (f) is true and complete to the best of its
 15 knowledge.

16 (h) At the beginning of each solicitation call, a professional
 17 fundraiser consultant and a professional solicitor must state all of the
 18 following:

- 19 (1) The name of the company for whom the professional
- 20 fundraiser consultant or professional solicitor is calling.
- 21 (2) The name of the professional fundraiser consultant or
- 22 professional solicitor.
- 23 (3) The phone number and address of the location from which the
- 24 professional fundraiser consultant or professional solicitor is
- 25 making the telephone call.
- 26 (4) The percentage of the charitable contribution that will be
- 27 expended for charitable purposes after administrative costs and
- 28 the costs of making the solicitation have been satisfied.

29 **(i) At least every ninety (90) days, a professional solicitor shall**
 30 **provide each charitable organization on whose behalf the**
 31 **professional solicitor is acting with access to and use of information**
 32 **concerning contributors, including the name, address, and**
 33 **telephone number of each contributor and the date and amount of**
 34 **each contribution. A professional solicitor may not restrict a**
 35 **charitable organization's use of information provided under this**
 36 **subsection.**

37 SECTION 3. IC 23-17-2-7 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) "Corporation"
 39 means a public benefit, mutual benefit, or religious corporation
 40 incorporated under or subject to this article.

- 41 (b) The term does not include a foreign corporation.
- 42 (c) For purposes of IC 23-17-24, the term does not include a

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homeowners association (as defined in IC 34-6-2-58).

SECTION 4. IC 23-17-24-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. (a) This section applies to the following:**

(1) Notwithstanding IC 23-17-1-1, all corporations organized under Indiana law for a purpose for which a corporation may be organized under this article, regardless of the date of incorporation.

(2) A foreign corporation that desires to transact business in Indiana.

(b) In addition to a dissolution under section 1 of this chapter, the attorney general may petition a court to issue one (1) or more of the following remedies:

(1) Injunctive relief.

(2) Appointment of temporary or permanent receivers.

(3) Permanent removal of trustees, corporate officers, or directors who have breached the fiduciary duty.

(4) Appointment of permanent court approved replacement trustees, corporate officers or directors, and members.

(c) The attorney general may seek a remedy against any or all of the following:

(1) If the attorney general establishes a condition enumerated in section 1(a)(1) of this chapter, a corporation.

(2) For a violation of the officer's duties under IC 23-17-14-2, a corporate officer.

(3) For a violation of IC 23-17-13, a corporate director.

(d) If the attorney general is successful in an action under this section, the attorney general may recover reasonable attorney's fees and costs.

SECTION 5. IC 23-17-24-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. (a) Venue for a proceeding brought by the attorney general to dissolve against a corporation or its officers or directors lies in Marion County. Venue for a proceeding brought by any other party named under section 1 of this chapter lies in the county where:**

(1) a corporation's principal office is or was last located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is or was last located.

(b) A director or a member does not have to be made a party to a proceeding to dissolve a corporation unless relief is sought against a director or a member individually.

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1 (c) A court in a proceeding brought to dissolve a corporation may
2 do the following:

- 3 (1) Issue injunctions.
4 (2) Appoint a receiver or custodian pendente lite with all powers
5 and duties the court directs.
6 (3) Take other action required to preserve the corporate assets
7 wherever located.
8 (4) Carry on the activities of the corporation until a full hearing
9 can be held.

10 (d) A person other than the attorney general who brings an
11 involuntary dissolution proceeding for a public benefit or religious
12 corporation shall give written notice without delay of the proceeding to
13 the attorney general who may intervene.

14 SECTION 6. IC 23-17-24-3 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A court in a
16 judicial proceeding brought **by the attorney general or by any other**
17 **party named under section 1 of this chapter** to dissolve a public
18 benefit or mutual benefit corporation may appoint at least one (1):

- 19 (1) receiver to wind up and liquidate; or
20 (2) custodian to manage;

21 the affairs of the corporation. The court shall hold a hearing, after
22 notifying all parties to the proceeding and any interested persons
23 designated by the court, before appointing a receiver or custodian. The
24 court appointing a receiver or custodian has exclusive jurisdiction over
25 the corporation and all of the corporation's property wherever located.

26 (b) The court may appoint an individual or a domestic or foreign
27 business or nonprofit corporation authorized to transact business in
28 Indiana as a receiver or custodian. The court may require the receiver
29 or custodian to post bond, with or without sureties, in an amount the
30 court directs.

31 (c) The court shall describe the powers and duties of the receiver or
32 custodian in the appointing order, which may be amended from time to
33 time, including the following:

- 34 (1) The receiver may do the following:
35 (A) Dispose of all or any part of the assets of the corporation
36 wherever located, at a public or private sale, if authorized by
37 the court. However, the corporation is subject to a trust, an
38 endowment, and other restrictions that would be applicable to
39 the corporation.
40 (B) Sue and defend in the receiver's or custodian's name as
41 receiver or custodian of the corporation in all Indiana courts.
42 (2) The custodian may exercise all of the powers of the

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1 corporation, through or in place of the corporation's board of
2 directors or officers, to the extent necessary to manage the affairs
3 of the corporation in the best interests of the corporation's
4 members and creditors or to carry out the corporation's lawful
5 purposes.

6 (d) The court during a receivership may redesignate the receiver a
7 custodian, and during a custodianship may redesignate the custodian
8 a receiver if doing so is in the best interests of the corporation and the
9 corporation's members and creditors.

10 (e) The court may, during the receivership or custodianship, order
11 compensation paid and expense disbursements or reimbursements
12 made to the receiver or custodian and the receiver's or custodian's
13 counsel from the assets of the corporation or proceeds from the sale of
14 the assets.

15 SECTION 7. IC 30-4-5.5 IS ADDED TO THE INDIANA CODE
16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2005]:

18 **Chapter 5.5. Enforcement Powers of the Attorney General**

19 **Sec. 1. (a) This section applies if a trustee of a benevolent trust
20 does any of the following:**

- 21 (1) **Commits or threatens to commit a breach of trust.**
- 22 (2) **Violates the mandate of a charitable trust.**
- 23 (3) **Violates a duty listed in this article.**

24 **(b) The attorney general may petition a court to issue one (1) or
25 more of the following remedies for an action enumerated in
26 subsection (a):**

- 27 (1) **Injunctive relief.**
- 28 (2) **Appointment of temporary or permanent receivers.**
- 29 (3) **Permanent removal of trustees.**
- 30 (4) **Appointment of permanent replacement trustees subject
31 to court approval.**

32 **A remedy under this subsection is in addition to any other remedy.**

33 **(c) The attorney general may seek a remedy listed in subsection
34 (b) against a trustee or a trust.**

35 **(d) If the attorney general is successful in an action under this
36 section, the attorney general may recover reasonable attorney's
37 fees and court costs.**

38 SECTION 8. IC 30-4-6-3 IS AMENDED TO READ AS FOLLOWS
39 [EFFECTIVE JULY 1, 2005]: **Sec. 3. (a) Venue in a proceeding
40 brought by the attorney general against a trustee or a trust lies in
41 Marion County.**

42 ~~(a)~~ **(b) Unless the terms of the trust provide otherwise, venue in this**

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1 **state in a proceeding brought by a party other than the attorney**
 2 **general** for matters arising under this article shall be exclusively in the
 3 county in which the principal place of administration of the trust is
 4 located. The principal place of administration of a trust is that usual
 5 place at which the records pertaining to the trust are kept or, if there is
 6 no such place, the trustee's residence. If there are cotrustees, the
 7 principal place of administration is either that of the corporate trustee,
 8 if there is only one (1); that of the individual trustee who has custody
 9 of the records, if there is but one (1) such person and there is no
 10 corporate cotrustee; or, if neither of these alternatives apply, that of any
 11 of the cotrustees.

12 ~~(b)~~ **(c)** If the principal place of administration is maintained in
 13 another state, venue in this state for any matters arising under this
 14 article shall be in the county stipulated in writing by the parties to the
 15 trust or, if there is no such stipulation, in the county where the trust
 16 property, or the evidence of the trust property, which is the subject of
 17 the action is either situated or generally located.

18 ~~(c)~~ **(d)** Any party to an action or proceeding shall be entitled to a
 19 change of venue or change of judge as provided in the Indiana Rules of
 20 Procedure. A change of venue in any action shall not be construed to
 21 authorize a permanent change of venue for all matters arising under
 22 this article, and, upon conclusion of the action, venue shall return to the
 23 court where the action was initiated.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment and Labor, to which was referred House Bill 1453, 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.

TORR, Chair

Committee Vote: yeas 12, nays 0.

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