PRELIMINARY DRAFT
No. 3148

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 30-2-14.

Synopsis: Uniform principal and income act. Makes changes to the uniform principal and income act (act). Provides that a personal representative is a fiduciary under the act if provided for: (1) by the will; or (2) by a law allowing the personal representative to account for and distribute income received during the estate administration separately from the corpus of the estate. Provides the following with regard to distributions to beneficiaries after an income interest in a trust ends: (1) Upon the death of the settlor of a revocable living trust, the settlor's trust interest becomes a terminating income interest and the property transferred upon the settlor's death becomes a part of the trust when the property is received by the trust. (2) A decedent's estate is not a terminating income interest. Provides that an asset becomes subject to a trust on the date the asset is distributed to the trust from the decedent's estate: (1) if the income received during the administration of the estate was accounted for and distributed by the estate as part of the corpus of the estate; and (2) unless the will or other applicable law provides that income received during the estate administration is accounted for and distributed by the estate as income and not as part of the corpus of the estate. Specifies that provisions that determine the period in which an income beneficiary is entitled or eligible to receive net income of a trust do not control how receipts and disbursements are

(Continued next page)

Effective: July 1, 2014.

allocated to or between principal and income during that period. Specifies that provisions regarding which income receipts and disbursements of a trust are to be taken into account in determining the net income of the trust for the period after the beginning and before the end of a beneficiary's income interest do not control the initial classification of receipts and disbursements as between principal and income.

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:

SECTION 1. IC 30-2-14-0.1, AS ADDED BY P.L.220-2011, SECTION 486, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 0.1. (a) This chapter applies to **the following:**

(1) Every trust ~~or decedent's estate~~ existing on or created after January 1, 2003, except as otherwise expressly provided **in this chapter or by the terms of the trust.**

~~(1) in the decedent's will;~~

~~(2) by the terms of the trust; or~~

~~(3) in this chapter.~~

(2) Every decedent's estate existing on or created after January 1, 2003, to the extent that under other applicable law or the decedent's will, the personal representative of the estate is required or allowed to account for and distribute income received during administration of the estate separately from the corpus.

(b) The amendments made to section 31 of this chapter by P.L.143-2009 apply to a trust described in section 31(h) of this chapter, on and after the following dates:

(1) If the trust is not funded as of July 1, 2009, the date of the decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

(3) If the trust is not described in subdivision (1) or (2), January 1, 2009.

(c) The amendments made to this section and to sections 3, 12, 14, 18, 19, 20, 21, and 38 of this chapter and the addition of section 13.5 of this chapter by legislation enacted in the 2014 regular session of the general assembly apply to the following:

(1) The estate of a decedent dying on or after July 1, 2013.

(2) In the case of a trust existing on or created after January

1, 2003:

(A) to the principal and income receipts of the trust; and

(B) to distributions received and made by the trust, before, on, or after July 1, 2013.

SECTION 2. IC 30-2-14-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. As used in this chapter, "fiduciary" means **the following:**

(1) A personal representative, **including an executor, an administrator, a successor personal representative, a special administrator, or a person performing substantially the same function with respect to a decedent's estate that meets the requirements of section 13.5 of this chapter.** ~~or~~

(2) A trustee.

~~The term includes an executor, an administrator, a successor personal representative, a special administrator, and a person performing substantially the same function.~~

SECTION 3. IC 30-2-14-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. As used in this chapter, "terms of a trust" means the manifestation of the intent of:

(1) a settlor **with respect to a trust;** or

(2) a decedent with respect to ~~the~~ **a** trust **established under the decedent's will;**

expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

SECTION 4. IC 30-2-14-13.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 13.5. A personal representative, including an executor, an administrator, a successor personal representative, a special administrator, or a person performing substantially the same function with respect to a decedent's estate, is a fiduciary for purposes of this chapter if:**

(1) under the terms of a decedent's will this chapter applies to the administration of the estate; or

(2) under other applicable law, the personal representative is required or allowed to account for and distribute income received during administration of the estate separately from the corpus of the estate.

SECTION 5. IC 30-2-14-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. (a) The following applies to a fiduciary in allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of this chapter:

(1) A fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter.

(2) A fiduciary may administer a trust or estate by the exercise of

a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter. An inference that the fiduciary has improperly exercised the discretion does not arise from the fact that the fiduciary has made or has not made an allocation contrary to a provision of this chapter.

(3) A fiduciary shall administer a trust ~~or an estate~~ in accordance with this chapter if the terms of the trust ~~or the will~~ do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(4) A fiduciary shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust or the will and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under section 15 of this chapter or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or an estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one (1) or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

SECTION 6. IC 30-2-14-18, AS AMENDED BY P.L.61-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 18. **(a)** After an income interest in a trust ends, the following rules apply:

(1) A fiduciary of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in sections 20 through 43 of this chapter that apply to trustees and the rules in subdivision (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a terminating income interest under the rules in sections 20 through 43 of this chapter that apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion:

(i) fees of attorneys, accountants, and fiduciaries;

(ii) court costs and other expenses of administration; and

(iii) interest on death taxes;

but the fiduciary may pay those expenses from income of

property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the winding up of a terminating income interest, including debts; funeral expenses; disposition of remains; family allowances; and death taxes and related penalties that are apportioned to the terminating income interest by the terms of the trust or applicable law.

(3) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subdivision (3) in the manner described in section 19 of this chapter to all residuary beneficiaries, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subdivision (1) because of a payment described in section 38 or 39 of this chapter to the extent that the ~~will, the~~ terms of the trust or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by:

(A) including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts

~~(i)~~ accrued or became due before, on, or after the date of ~~an individual's death; or~~

~~(ii)~~ an income interest's terminating event; and

(B) making a reasonable provision for amounts that the fiduciary believes the terminating income interest may become obligated to pay after the property is distributed.

(b) For purposes of this section, the interest of a settlor in a revocable living trust ends and becomes a terminating income interest when the settlor dies. Property that:

(1) becomes part of the trust by reason of the settlor's death; or

(2) is distributed to the trust from the settlor's estate;

becomes part of the terminating income interest when the property is received by the trust.

(c) For purposes of this section, a decedent's estate is not a terminating income interest.

SECTION 7. IC 30-2-14-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 19. (a) Each beneficiary described in section ~~18(4)~~ **18(a)(4)** of this chapter is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including a beneficiary who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

SECTION 8. IC 30-2-14-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 20. (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the

terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust **on the following dates:**

(1) On the date ~~it~~ **the asset** is transferred to the trust, in the case of an asset that is transferred to a trust during the transferor's life.

(2) On the date the asset is distributed to the trust from the decedent's estate, if the income received during the administration of the estate was accounted for and distributed by the estate as part of the corpus of the estate in accordance with IC 29-1-17-7.

~~(2)~~ **(3)** On the date of ~~a testator's~~ **the decedent's** death ~~in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of~~ **if, under the terms of the decedent's will or other applicable law, income received during** administration of the ~~testator's~~ **decedent's** estate ~~or~~ **was accounted for and distributed by the estate as income, and not as part of the corpus of the estate.**

~~(3)~~ **(4)** On the date of an individual's death, in the case of an asset **that is not part of the probate estate (as defined in IC 29-1-1-3) and** that is transferred to a ~~fiduciary by a third party~~ **trust or becomes a part of a trust** because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

(e) This section applies only for purposes of determining the period in which an income beneficiary is entitled or eligible to receive any net income of a trust. This section does not control how receipts and disbursements are allocated to or between principal and income during that period. Amounts received by a trust from a decedent's estate or another trust as a distribution of principal may be allocable to principal under section 24 of this chapter even to the extent the amounts received include income of the distributing estate or trust received or accrued after the beneficiary's income interest begins.

SECTION 9. IC 30-2-14-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 21. (a) A trustee shall allocate an income receipt or disbursement other than one to which section ~~18(1)~~ **18(a)(1)** of this chapter applies to principal if its due date occurs before:

(1) an individual dies in the case of an estate; or

(2) an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which an individual dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which an individual dies or an income interest begins must be allocated to principal, and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 23 of this chapter applies are considered to be due on:

(1) the date fixed by the entity for determining who is entitled to receive the distribution; or

(2) if no date is fixed, the declaration date for the distribution.

A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

(d) This section applies only for purposes of determining which income receipts and disbursements of a trust are to be taken into account in determining the net income of the trust for the period after the beginning and before the end of a beneficiary's income interest. Although this section provides for certain income receipts and disbursements to be allocated to principal, this section does not control the initial classification of receipts and disbursements as between principal and income. Amounts received by a trust from a decedent's estate or another trust as a distribution of principal may be allocable to principal under section 24 of this chapter, even to the extent the amounts received include income receipts of the distributing estate or trust received or accrued after the beneficiary's income interest begins.

SECTION 10. IC 30-2-14-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 38. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section ~~18(2)(B) or 18(2)(C)~~ **18(a)(2)(B) or 18(a)(2)(C)** of this chapter applies:

(1) one-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) one-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with

the administration, management, or preservation of trust property and the distribution of income, including:

(A) interest;

(B) ordinary repairs;

(C) regularly recurring taxes assessed against principal; and

(D) expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.