

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE ENROLLED ACT No. 381

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

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

SECTION 1. IC 23-14-48-2, AS AMENDED BY P.L.14-2018, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The owner of each cemetery shall provide for the creation and establishment of an irrevocable perpetual care fund.

(b) The principal of a perpetual care fund established under this section shall permanently remain intact, except as provided in this chapter. ~~The principal shall be known as the "perpetual care fund" or "endowment care fund" of the cemetery.~~

(c) **The following apply to a perpetual care fund unless the perpetual care fund is a trust that has been converted into a total return unitrust under section 2.6 of this chapter:**

(1) Fifty percent (50%) of any appreciation of the principal of the fund may be withdrawn annually not more than forty-five (45) days after the end of the fund's fiscal year.

~~(1)~~ (2) Any income earned by the fund during the fiscal year may be withdrawn quarterly during the fund's fiscal year.

~~(e)~~ (d) **Any withdrawal of:**

(1) ~~the income from a perpetual care fund established under this section subsection (c)(2); and or~~

(2) ~~any withdrawal of the appreciation of the principal of a~~

SEA 381 — Concur



perpetual care fund under subsection ~~(e)~~ **(c)(1)**;
shall be devoted to the perpetual care of the cemetery, including the immediate maintenance needs of the cemetery.

~~(f)~~ **(e) A perpetual care** ~~The~~ fund established under this section is not subject to attachment by a creditor unless the underlying debt was incurred for the perpetual care or endowment care (as defined in IC 23-14-33-30) of the cemetery for which the fund was established.

SECTION 2. IC 23-14-48-2.2, AS ADDED BY P.L.163-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2.2. If:

**(1) the perpetual care fund of a cemetery is ~~established as a trust;~~
and**

(2) the perpetual care fund trust has not been converted into a total return unitrust under section 2.6 of this chapter;

the trustee of the trust may, to the extent allowed by section 2 of this chapter, withdraw funds from ~~it~~ **the trust** in amounts the trustee considers necessary to pay the cost of perpetual care of the cemetery, notwithstanding any provision in the terms of the trust **instrument** that would restrict withdrawals from the trust for perpetual care of the cemetery to less than the amounts allowed by section 2 of this chapter.

SECTION 3. IC 23-14-48-2.6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 2.6. (a) If a perpetual care fund established under this chapter is a trust, the trust may be converted into a total return unitrust under IC 30-2-15.**

(b) Withdrawals may be made from a trust converted into a total return unitrust as provided in:

(1) the governing trust instrument of the trust; and

(2) IC 30-2-15.

(c) Except for withdrawals for the payment of expenses as allowed by:

(1) the governing trust instrument of the trust; and

(2) IC 30-2-15;

all withdrawals from a trust converted into a total return unitrust shall be devoted to the perpetual care of the cemetery, including the immediate maintenance needs of the cemetery.

(d) This subsection applies to a unitrust distribution made in any given year. Before making a unitrust distribution, the trustee must do the following:

(1) Evaluate the change that a unitrust distribution will make to the trust's principal over time.

(2) Ensure that the current market value of the trust at the



time of the trustee's evaluation is greater than the sum of the following amounts:

(A) Eighty percent (80%) of the trust's principal amount at the time of the trust's conversion to a unitrust.

(B) Any required contributions made to the trust after the trust's conversion to a unitrust.

If the current market value of the trust is less than the amount required by this subsection, any distribution made from the trust shall be consistent with section 2 of this chapter.

SECTION 4. IC 23-14-48-4, AS AMENDED BY P.L.3-2008, SECTION 168, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) In addition to meeting the requirements of sections 1 through 3 of this chapter, a cemetery that:

- (1) is organized after March 6, 1953, and before July 1, 1997, by incorporation, association, individually, or any other means; or
- (2) has its first burial after March 6, 1953, and before July 1, 1997;

shall, before disposing of a burial lot or right, making a sale of a burial lot or right, or making its first burial, cause to be deposited in a financial institution the sum of twenty-five thousand dollars (\$25,000) in cash in the perpetual care fund ~~or endowment care fund~~ established under this chapter for the maintenance of the cemetery.

(b) The cemetery owner shall designate the financial institution as trustee of the fund. The financial institution must execute an affidavit stating that it has accepted the trusteeship of the fund and that the twenty-five thousand dollars (\$25,000) has been deposited in the fund. The cemetery shall:

- (1) exhibit the affidavit in the principal office of the cemetery;
- (2) keep the affidavit available at all times for examination; and
- (3) record the affidavit in the miscellaneous records in the office of the recorder in the county in which the cemetery is located.

(c) When the cemetery has deposited in the perpetual care ~~fund~~ ~~or endowment care fund~~, as required by this section, fifty thousand dollars (\$50,000):

- (1) the cemetery shall submit proof of this fact to its trustee; and
- (2) the trustee shall pay over to the cemetery the amount of twenty-five thousand dollars (\$25,000) that the cemetery deposited in the fund under subsection (a).

SECTION 5. IC 23-14-48-5, AS AMENDED BY P.L.3-2008, SECTION 169, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) In addition to meeting the requirements of sections 1 through 3 of this chapter, a cemetery that:



(1) is organized after June 30, 1997, by incorporation, or any other means; or

(2) has its first burial, entombment, or inurnment after June 30, 1997;

shall, before disposing of a burial lot or right, making a sale of a burial lot or right, or making its first burial, entombment, or inurnment cause to be deposited in a financial institution one hundred thousand dollars (\$100,000) in cash in the perpetual care fund ~~or endowment care fund~~ established under this chapter for the maintenance of the cemetery.

(b) The cemetery owner shall designate the financial institution as trustee of the fund. The financial institution must execute an affidavit stating that it has accepted the trusteeship of the fund and that the one hundred thousand dollars (\$100,000) has been deposited in the fund. The cemetery shall:

(1) exhibit the affidavit in the principal office of the cemetery;

(2) keep the affidavit available at all times for examination; and

(3) record the affidavit in the miscellaneous records in the office of the recorder of the county in which the cemetery is located.

(c) When the cemetery has deposited in the perpetual care fund ~~or endowment care fund~~, as required by this section, two hundred thousand dollars (\$200,000):

(1) the cemetery shall submit proof of this fact to its trustee; and

(2) the trustee shall pay over to the cemetery one hundred thousand dollars (\$100,000) that the cemetery deposited in the fund under subsection (a).

SECTION 6. IC 23-14-48-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. A perpetual care ~~or endowment care~~ fund may be increased by adding to the fund surplus money or property that the cemetery receives by will, deed, gift, or otherwise.

SECTION 7. IC 23-14-48-9, AS AMENDED BY P.L.158-2013, SECTION 266, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) Except as **otherwise** provided in subsections (b) and (c), a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who makes a false or fraudulent representation as to the existence, amount, investment, control, or condition of a perpetual care fund of a cemetery for the purpose of inducing another to purchase any burial right commits a Class C infraction.

(c) A person who knowingly or intentionally uses funds in a perpetual care fund ~~or an endowment care fund~~ established under this chapter for purposes other than the perpetual care of the cemetery for



which the perpetual care fund ~~or endowment fund~~ was established commits a Level 5 felony.

SECTION 8. IC 30-2-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. As used in this chapter, "income trust" means:

- (1) a trust created by an inter vivos or a testamentary instrument that has terms that describe the amount that may or must be distributed to a beneficiary by referring to the trust's income; **or**
- (2) a cemetery perpetual care fund established under IC 23-14-48-2.**

SECTION 9. IC 30-2-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) Unless expressly prohibited in the governing trust instrument, and if the trustee would not be prohibited from exercising the power to adjust under IC 30-2-14-15(a) because at least one (1) of the provisions of IC 30-2-14-15(c)(3) through IC 30-2-14-15(c)(7) would be applicable, a trustee may, without the approval of the court having jurisdiction of the trust, take an action set forth in section 9 of this chapter: ~~if:~~

(1) if, in the case of a trust described in section 2(1) of this chapter:

(A) the trustee sends written notice of the trustee's proposed action to:

- ~~(A)~~ **(i)** the settlor of the trust, if the settlor is living; and
 - ~~(B)~~ **(ii)** the trust beneficiaries described in IC 30-2-14-16(b);
- and

~~(2)~~ **(B)** no person who receives a written notice under subdivision ~~(1)~~ **(A)** objects to the proposed action; **or**

(2) if, in the case of a trust described in section 2(2) of this chapter, the owner of the cemetery:

- (A) directs the trustee to take the action; or**
- (B) consents to the action of the trustee.**

(b) To the extent applicable, the notice **provided under subsection (a)(1)(A)** must:

- (1) state the trustee's intent to release the power to adjust under IC 30-2-14-15 and to convert the trust to a total return unitrust; and
- (2) describe how the unitrust will operate and any decisions made by the trustee under this chapter.

In the notice, the trustee shall also specify an effective date of the conversion, reconversion, or change in the unitrust rate.

(c) A person who receives notice under subsection ~~(a)~~ **(a)(1)(A)** of a trustee's proposed action may object to the proposed action by



delivering a written objection to the trustee not later than sixty (60) days after receiving the notice.

SECTION 10. IC 30-2-15-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. If the court finds that the conversion, reconversion, or change in the unitrust rate under this chapter will enable the trustee to better carry out:

(1) in the case of a trust described in section 2(1) of this chapter, the intent of the settlor or testator and the purposes of the trust; **or**

(2) in the case of a trust described in section 2(2) of this chapter, the perpetual care (as defined in IC 23-14-33-30) of the cemetery;

the court shall approve the conversion, reconversion, or change in the unitrust rate under this chapter.

SECTION 11. IC 30-2-15-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 15. (a) **This section applies to a trust described in section 2(1) of this chapter.**

(b) When a trustee gives notice of a proposed action under section ~~10(a)(1)(A)~~ of this chapter to convert a trust to a unitrust, the trustee must include the unitrust rate in the notice of proposed action.

~~(b)~~ **(c)** If:

(1) the trustee proposes a unitrust rate of four percent (4%) in the notice of proposed action; and

(2) no beneficiary entitled to notice of the proposed action makes a written objection to the unitrust rate under section ~~10(a)(1)(B)~~ of this chapter;

the unitrust rate must be four percent (4%).

~~(c)~~ **(d)** A trust may have a unitrust rate that represents a reasonable current return from the trust and best reflects the goals of the trust and the intent of the settlor or testator, but that is not less than three percent (3%) or more than five percent (5%), if the rate is:

(1) agreed upon in writing by the trustee and the beneficiaries entitled to notice under section 11 of this chapter; or

(2) ordered by the court having jurisdiction of the trust.

SECTION 12. IC 30-2-15-15.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 15.2. (a) This section applies to a trust described in section 2(2) of this chapter.**

(b) A trust may have a unitrust rate that represents a reasonable current return from the trust and best serves the purpose of the perpetual care (as defined in IC 23-14-33-30) of the cemetery, but that is not less than three percent (3%) or more than



five percent (5%), if the rate is:

(1) agreed upon in writing by the trustee and the owner of the cemetery; or

(2) ordered by the court having jurisdiction of the trust.

SECTION 13. IC 30-4-1-2, AS AMENDED BY P.L.163-2018, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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, an attorney, or an agent.

(3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.

(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.

(7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.

(8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.

(9) "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.

(10) "Minor" means any person under the age of eighteen (18) years.

(11) "No contest provision" refers to a provision of a trust instrument that, if given effect, would reduce or eliminate the interest of a beneficiary of the trust who, directly or indirectly, initiates or otherwise pursues:

(A) an action to contest the validity of:

SEA 381 — Concur



- (i) the trust; or
 - (ii) the terms of the trust;
 - (B) an action to set aside or vary any term of the trust; or
 - (C) any other act to frustrate or defeat the settlor's intent as expressed in the terms of the trust.
- (12) "Person" has the meaning set forth in IC 30-2-14-9.
- (13) "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).
- (14) "Principal" has the meaning set forth in IC 30-2-14-10.
- (15) "Qualified beneficiary" means:
- (A) a beneficiary who, on the date the beneficiary's qualification is determined:
 - (i) is a distributee or permissible distributee of trust income or principal;
 - (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;
 - (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;
 - (iv) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;
 - (v) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or
 - (vi) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or
 - (B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.
- (16) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.
- (17) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.
- (18) "Terms of a trust", "terms of the trust", or "terms of a charitable trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.
- (19) "Trust estate" means the trust property and the income



derived from its use.

(20) "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), a perpetual care fund ~~or an endowment care fund~~ established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13, 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.

(21) "Trust instrument" means an instrument, agreement, or other written document executed by the settlor that contains the terms of the trust, including any amendments to the terms of the trust.

(22) "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.

(23) "Trustee" has the meaning set forth in IC 30-2-14-13.

SECTION 14. IC 30-4-3.5-1, AS AMENDED BY P.L.61-2008, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provision of the trust.

(c) This chapter applies to a trustee or escrow agent, acting as fiduciary, of:

- (1) a perpetual care fund ~~or an endowment care fund~~ established under IC 23-14-48-2;
- (2) a prepaid funeral plan or funeral trust established under IC 30-2-9;
- (3) a funeral trust established under IC 30-2-10; or
- (4) a trust or escrow account created from payments of funeral, burial services, or merchandise in advance of need, as described in IC 30-2-13.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 381 — Concur

