



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4594

Introduced 1/31/2024, by Rep. Kam Buckner

SYNOPSIS AS INTRODUCED:

760 ILCS 3/103
760 ILCS 3/110
760 ILCS 3/402
760 ILCS 3/407
760 ILCS 3/409.5 new

Amends the Illinois Trust Code. Allows a virtuous trust to be created for a business or other noncharitable purpose without a definite or definitely ascertainable beneficiary. Requires a virtuous trust to be created by a written instrument. Allows a virtuous trust to hold an ownership interest of any corporation, partnership, limited partnership, cooperative, limited liability company, limited liability partnership, or joint venture. Provides that a trustee of a virtuous trust or a virtuous trust shall not be deemed to violate the trustee's duties by virtue of the trustee investing and managing the trust's assets pursuant to the terms and the purposes of the trust. Exempts a virtuous trust from the common law rule against perpetuities. Allows a virtuous trust to be enforced by one or more trust enforcers appointed in the trust instruction, and allows a virtuous trust instrument to provide for appointing successor trust enforcers. Requires a virtuous trust to have a trust purpose committee with at least 3 persons as members. Includes provisions related to the trust purpose committee, including appointment procedures, voting procedures, powers of the committee, resignation procedures, and reporting requirements. Provides that property of a virtuous trust may be applied only to its intended use. Allows the trust purpose committee and the trust enforcers to modify or terminate a virtuous trust by unanimous agreement. Prohibits a person serving as a trustee from servicing as a trust enforcer or as a member of the trust purpose committee. Makes conforming changes.

LRB103 34868 LNS 64730 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Trust Code is amended by changing
5 Sections 103, 110, 402, and 407 and by adding Section 409.5 as
6 follows:

7 (760 ILCS 3/103)

8 Sec. 103. Definitions. In this Code:

9 (1) "Action", with respect to an act of a trustee,
10 includes a failure to act.

11 (1.5) "Appointive property" means the property or property
12 interest subject to a power of appointment.

13 (2) "Ascertainable standard" means a standard relating to
14 an individual's health, education, support, or maintenance
15 within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of
16 the Internal Revenue Code and any applicable regulations.

17 (3) "Beneficiary" means a person that:

18 (A) has a present or future beneficial interest in a
19 trust, vested or contingent, assuming nonexercise of
20 powers of appointment, excluding the right of a settlor to
21 be reimbursed for tax obligations as provided in paragraph
22 (3) of subsection (a) of Section 505;

23 (B) in a capacity other than that of trustee, holds a

1 power of appointment over trust property; or

2 (C) is an identified charitable organization that will

3 or may receive distributions under the terms of the trust.

4 "Beneficiary" does not include a permissible appointee of

5 power of appointment, other than the holder of a presently

6 exercisable general power of appointment, until the power is

7 exercised in favor of such appointee.

8 (4) "Charitable interest" means an interest in a trust

9 that:

10 (A) is held by an identified charitable organization

11 and makes the organization a qualified beneficiary;

12 (B) benefits only charitable organizations and, if the

13 interest were held by an identified charitable

14 organization, would make the organization a qualified

15 beneficiary; or

16 (C) is held solely for charitable purposes and, if the

17 interest were held by an identified charitable

18 organization, would make the organization a qualified

19 beneficiary.

20 (5) "Charitable organization" means:

21 (A) a person, other than an individual, organized and

22 operated exclusively for charitable purposes; or

23 (B) a government or governmental subdivision, agency,

24 or instrumentality, to the extent it holds funds

25 exclusively for a charitable purpose.

26 (6) "Charitable purpose" means the relief of poverty, the

1 advancement of education or religion, the promotion of health,
2 municipal or other governmental purpose, or another purpose
3 the achievement of which is beneficial to the community.

4 (7) "Charitable trust" means a trust, or portion of a
5 trust, created for a charitable purpose.

6 (8) "Community property" means all personal property,
7 wherever situated, that was acquired as or became, and
8 remained, community property under the laws of another
9 jurisdiction, and all real property situated in another
10 jurisdiction that is community property under the laws of that
11 jurisdiction.

12 (9) "Current beneficiary" means a beneficiary that on the
13 date the beneficiary's qualification is determined is a
14 distributee or permissible distributee of trust income or
15 principal. The term "current beneficiary" includes the holder
16 of a presently exercisable general power of appointment but
17 does not include a person who is a beneficiary only because the
18 person holds any other power of appointment. In a revocable
19 trust, "current beneficiary" does not include a person who may
20 receive trust assets only through the exercise of a power to
21 make a gift on behalf of the settlor.

22 (10) "Directing party" means any investment trust advisor,
23 distribution trust advisor, or trust protector.

24 (11) "Donor", with reference to a power of appointment,
25 means a person that creates a power of appointment.

26 (12) "Environmental law" means a federal, state, or local

1 law, rule, regulation, or ordinance relating to protection of
2 the environment.

3 (13) "General power of appointment" means a power of
4 appointment exercisable in favor of a powerholder, the
5 powerholder's estate, a creditor of the powerholder, or a
6 creditor of the powerholder's estate.

7 (14) "Guardian of the estate" means a person appointed by
8 a court to administer the estate of a minor or adult
9 individual.

10 (15) "Guardian of the person" means a person appointed by
11 a court to make decisions regarding the support, care,
12 education, health, and welfare of a minor or adult individual.

13 (16) "Incapacitated" or "incapacity" means the inability
14 of an individual to manage property or business affairs
15 because the individual is a minor, adjudicated incompetent,
16 has an impairment in the ability to receive and evaluate
17 information or make or communicate decisions even with the use
18 of technological assistance; or is at a location that is
19 unknown and not reasonably ascertainable. Without limiting the
20 ways in which incapacity may be established, an individual is
21 incapacitated if:

22 (i) a plenary guardian has been appointed for the
23 individual under subsection (c) of Section 11a-12 of the
24 Probate Act of 1975;

25 (ii) a limited guardian has been appointed for the
26 individual under subsection (b) of Section 11a-12 of the

1 Probate Act of 1975 and the court has found that the
2 individual lacks testamentary capacity; or

3 (iii) the individual was examined by a licensed
4 physician who determined that the individual was
5 incapacitated and the physician made a signed written
6 record of the physician's determination within 90 days
7 after the examination and no licensed physician
8 subsequently made a signed written record of the
9 physician's determination that the individual was not
10 incapacitated within 90 days after examining the
11 individual.

12 (17) "Internal Revenue Code" means the Internal Revenue
13 Code of 1986 as amended from time to time and includes
14 corresponding provisions of any subsequent federal tax law.

15 (18) "Interested persons" means: (A) the trustee; and (B)
16 all beneficiaries, or their respective representatives
17 determined after giving effect to the provisions of Article 3,
18 whose consent or joinder would be required in order to achieve
19 a binding settlement were the settlement to be approved by the
20 court. "Interested persons" includes a trust advisor,
21 investment advisor, distribution advisor, trust protector, or
22 other holder, or committee of holders, of fiduciary or
23 nonfiduciary powers, if the person then holds powers material
24 to a particular question or dispute to be resolved or affected
25 by a nonjudicial settlement in accordance with Section 111 or
26 by a judicial proceeding. "Interested persons" includes the

1 members of a trust purpose committee and trust enforcers of a
2 virtuous trust created under Section 409.5.

3 (19) "Interests of the beneficiaries" means the beneficial
4 interests provided in the trust instrument.

5 (20) "Jurisdiction", with respect to a geographic area,
6 includes a State or country.

7 (21) "Legal capacity" means that the person is not
8 incapacitated.

9 (22) "Nongeneral power of appointment" means a power of
10 appointment that is not a general power of appointment.

11 (22.5) "Permissible appointee" means a person in whose
12 favor a powerholder may exercise a power of appointment.

13 (23) "Person" means an individual, estate, trust, business
14 or nonprofit entity, public corporation, government or
15 governmental subdivision, agency, or instrumentality, or other
16 legal entity.

17 (24) "Power of appointment" means a power that enables a
18 powerholder acting in a nonfiduciary capacity to designate a
19 recipient of an ownership interest in or another power of
20 appointment over the appointive property. The term "power of
21 appointment" does not include a power of attorney.

22 (25) "Power of withdrawal" means a presently exercisable
23 general power of appointment other than a power:

24 (A) exercisable by the powerholder as trustee that is
25 limited by an ascertainable standard; or

26 (B) exercisable by another person only upon consent of

1 the trustee or a person holding an adverse interest.

2 (26) "Powerholder" means a person in which a donor creates
3 a power of appointment.

4 (27) "Presently exercisable power of appointment" means a
5 power of appointment exercisable by the powerholder at the
6 relevant time. The term "presently exercisable power of
7 appointment":

8 (A) includes a power of appointment exercisable only
9 after the occurrence of a specified event, the
10 satisfaction of an ascertainable standard, or the passage
11 of a specified time only after:

12 (i) the occurrence of the specified event;

13 (ii) the satisfaction of the ascertainable
14 standard; or

15 (iii) the passage of the specified time; and

16 (B) does not include a power exercisable only at the
17 powerholder's death.

18 (28) "Presumptive remainder beneficiary" means a
19 beneficiary of a trust, as of the date of determination and
20 assuming nonexercise of all powers of appointment, who either:

21 (A) would be a distributee or permissible distributee of trust
22 income or principal if the trust terminated on that date; or

23 (B) would be a distributee or permissible distributee of trust
24 income or principal if the interests of all distributees
25 currently eligible to receive income or principal from the
26 trust terminated on that date without causing the trust to

1 terminate.

2 (29) "Property" means anything that may be the subject of
3 ownership, whether real or personal, legal or equitable, or
4 any interest therein.

5 (30) "Qualified beneficiary" means each current
6 beneficiary and presumptive remainder beneficiary.

7 (31) "Revocable", as applied to a trust, means revocable
8 by the settlor without the consent of the trustee or a person
9 holding an adverse interest. A revocable trust is deemed
10 revocable during the settlor's lifetime.

11 (32) "Settlor", except as otherwise provided in Sections
12 113 and 1225, means a person, including a testator, who
13 creates, or contributes property to, a trust. If more than one
14 person creates or contributes property to a trust, each person
15 is a settlor of the portion of the trust property attributable
16 to that person's contribution except to the extent another
17 person has the power to revoke or withdraw that portion.

18 (33) "Sign" means, with present intent to authenticate or
19 adopt a record:

20 (A) to execute or adopt a tangible symbol; or

21 (B) to attach to or logically associate with the
22 record an electronic symbol, sound, or process.

23 (34) "Spendthrift provision" means a term of a trust that
24 restrains both voluntary and involuntary transfer of a
25 beneficiary's interest.

26 (35) "State" means a State of the United States, the

1 District of Columbia, Puerto Rico, the United States Virgin
2 Islands, or any territory or insular possession subject to the
3 jurisdiction of the United States. The term "state" includes
4 an Indian tribe or band recognized by federal law or formally
5 acknowledged by a state.

6 (36) "Terms of the trust" means:

7 (A) except as otherwise provided in paragraph (B), the
8 manifestation of the settlor's intent regarding a trust's
9 provisions as:

10 (i) expressed in the trust instrument; or

11 (ii) established by other evidence that would be
12 admissible in a judicial proceeding; or

13 (B) the trust's provisions as established, determined,
14 or modified by:

15 (i) a trustee or other person in accordance with
16 applicable law;

17 (ii) a court order; or

18 (iii) a nonjudicial settlement agreement under
19 Section 111.

20 (37) "Trust" means (A) a trust created by will, deed,
21 agreement, declaration, or other written instrument, or (B) an
22 oral trust under Section 407.

23 (38) "Trust accounting" means one or more written
24 communications from the trustee with respect to the accounting
25 year that describe: (A) the trust property, liabilities,
26 receipts, and disbursements, including the amount of the

1 trustee's compensation; (B) the value of the trust assets on
2 hand at the close of the accounting period, to the extent
3 feasible; and (C) all other material facts related to the
4 trustee's administration of the trust.

5 (39) "Trust instrument" means the written instrument
6 stating the terms of a trust, including any amendment, any
7 court order or nonjudicial settlement agreement establishing,
8 construing, or modifying the terms of the trust in accordance
9 with Section 111, Sections 410 through 416, or other
10 applicable law, and any additional trust instrument under
11 Article 12.

12 (40) "Trustee" includes an original, additional, and
13 successor trustee, and a co-trustee.

14 (41) "Unascertainable beneficiary" means a beneficiary
15 whose identity is uncertain or not reasonably ascertainable.

16 (Source: P.A. 101-48, eff. 1-1-20; 102-279, eff. 1-1-22.)

17 (760 ILCS 3/110)

18 Sec. 110. Others treated as qualified beneficiaries.

19 (a) A person appointed to enforce a trust created for the
20 care of an animal or another noncharitable purpose as provided
21 in Section 408 or 409 has the rights of a qualified beneficiary
22 under this Code.

23 (b) The Attorney General has the rights of a qualified
24 beneficiary with respect to a charitable trust having its
25 principal place of administration in this State.

1 (c) A trust enforcer of a virtuous trust as provided in
2 Section 409.5 has the rights of a qualified beneficiary under
3 this Code.

4 (Source: P.A. 101-48, eff. 1-1-20.)

5 (760 ILCS 3/402)

6 Sec. 402. Requirements for creation.

7 (a) A trust is created only if:

8 (1) the settlor or other person creating the trust has
9 capacity to create a trust;

10 (2) the settlor or other person creating the trust
11 indicates an intention to create the trust;

12 (3) the trust has a definite beneficiary or is:

13 (A) a charitable trust;

14 (B) a trust for the care of an animal, as provided
15 in Section 408; ~~or~~

16 (C) a trust for a noncharitable purpose, as
17 provided in Section 409; or

18 (D) a virtuous trust, as provided in Section
19 409.5;

20 (4) the trustee has duties to perform; and

21 (5) the same person is not the sole trustee and sole
22 beneficiary.

23 (b) A beneficiary is definite if the beneficiary can be
24 ascertained now or in the future, subject to any applicable
25 rule against perpetuities.

1 (c) A power in a trustee to select a beneficiary from an
2 indefinite class is valid. If the power is not exercised
3 within a reasonable time, the power fails and the property
4 subject to the power passes to the persons who would have taken
5 the property had the power not been conferred.

6 (Source: P.A. 101-48, eff. 1-1-20; 102-279, eff. 1-1-22.)

7 (760 ILCS 3/407)

8 Sec. 407. Evidence of oral trust. Except as required by a
9 statute other than this Code or by Section 409.5, a trust need
10 not be evidenced by a trust instrument, but the creation of an
11 oral trust and its terms may be established only by clear and
12 convincing evidence.

13 (Source: P.A. 101-48, eff. 1-1-20.)

14 (760 ILCS 3/409.5 new)

15 Sec. 409.5. Virtuous trust.

16 (a) A trust may be created for a business or other
17 noncharitable purpose without a definite or definitely
18 ascertainable beneficiary. The business purpose may seek
19 economic and noneconomic benefits.

20 (b) A trust authorized by this Section shall be created by
21 a written instrument. The trust instrument may designate one
22 or more categories of stakeholders for whose benefit the trust
23 is created, which may include, but shall not be limited to,
24 employees, suppliers, and customers of the corporation or its

1 subsidiaries or communities in which offices or other
2 establishments of the corporation or its subsidiaries are
3 located.

4 (c) A trust authorized by this Section may hold an
5 ownership interest of any corporation, partnership, limited
6 partnership, cooperative, limited liability company, limited
7 liability partnership, or joint venture.

8 (d) A trustee of a trust created under this Section shall
9 not be deemed to violate the trustee's duties under Article 9
10 by virtue of the trustee investing and managing the trust's
11 assets pursuant to the terms and the purposes of the trust,
12 which may include retaining an ownership interest in a
13 specific corporation, partnership, limited partnership,
14 cooperative, limited liability company, limited liability
15 partnership, or joint venture.

16 (e) A trust authorized by this Section shall be exempt
17 from the common law rule against perpetuities.

18 (f) A trust authorized by this Section may be enforced by
19 one or more trust enforcers appointed in the trust instrument,
20 and the trust instrument may provide a process for appointing
21 successor trust enforcers. If at any time no person is acting
22 as trust enforcer, the court shall appoint one or more trust
23 enforcers. Each trust enforcer shall enforce the purpose and
24 the terms of the trust and shall exercise authority as a
25 fiduciary. If more than one person is acting as a trust
26 enforcer, action may be taken by a majority of the persons

1 acting as trust enforcers. A trust enforcer is not a
2 beneficiary of a trust created pursuant to this Section, but a
3 trust enforcer has the rights of a qualified beneficiary.

4 (g) A trust authorized by this Section must have a trust
5 purpose committee with at least 3 persons as members. Each
6 member of the trust purpose committee shall exercise authority
7 as a fiduciary. The trust instrument may appoint the initial
8 members of the trust purpose committee and may provide a
9 process for appointing successor members. A vacancy on the
10 trust purpose committee must be filled if the trust purpose
11 committee has fewer than 3 members.

12 (h) A vacancy on the trust purpose committee that is
13 required to be filled must be filled in the following order of
14 priority:

15 (1) by a person designated in the trust instrument or
16 selected through a process provided in the trust
17 instrument;

18 (2) by a person appointed by unanimous agreement of
19 the trust enforcers; or

20 (3) by a person appointed by the court.

21 (i) Unless the trust instrument provides otherwise and
22 except as provided in paragraph (4) of subsection (j) or
23 subsection (o), the trust purpose committee may take action by
24 a majority vote of its members.

25 (j) Unless the trust instrument provides otherwise, the
26 trust purpose committee has the power, in carrying out the

1 purposes of the trust and after notice to the trust enforcers,
2 to:

3 (1) remove a trustee, with or without cause;

4 (2) appoint one or more successor trustees or
5 co-trustees;

6 (3) remove a trust enforcer, with or without cause;

7 (4) remove a member of the trust purpose committee, by
8 unanimous vote of all other members of the trust purpose
9 committee; and

10 (5) direct distributions from the trust.

11 (k) Property of a trust authorized by this Section may be
12 applied only to its intended use. No court shall have
13 authority to determine that the value of the trust property
14 exceeds the amount required for the intended use.

15 (l) Unless the trust instrument provides otherwise, a
16 member of the trust purpose committee or a trust enforcer may
17 resign:

18 (1) after at least 30 days' notice to the trustee, all
19 other trust enforcers, and all other members of the trust
20 purpose committee; or

21 (2) at any time with the approval of the court.

22 (m) The trust purpose committee must send a report to the
23 trustee and to the trust enforcers at least annually showing
24 receipts and disbursements and listing the trust property and
25 liabilities. The trust purpose committee shall keep the
26 trustee and the trust enforcers reasonably informed about the

1 administration of the trust and of the material facts
2 necessary for the trustee to comply with the trustee's duties
3 under Section 813.1 and for the trust enforcers to protect the
4 purposes of the trust.

5 (n) A trustee of a trust authorized by this Section shall
6 act in accordance with a direction from the trust purpose
7 committee unless the action is manifestly contrary to the
8 terms of the trust or the trustee knows that the action would
9 constitute a serious breach of a fiduciary duty that the trust
10 purpose committee, the trust enforcer, or the trustee owes to
11 the trust. A trustee is liable only for willful misconduct and
12 is not liable for reliance on documents provided by the trust
13 purpose committee or the trust enforcer.

14 (o) Unless the terms of the trust provide otherwise, the
15 trust purpose committee and the trust enforcers, acting
16 together, may modify or terminate a trust authorized by this
17 Section by unanimous agreement of the members of the trust
18 purpose committee and unanimous agreement of the trust
19 enforcers.

20 (p) Upon termination of a trust authorized by this
21 Section, the trustee shall distribute all remaining trust
22 property as the terms of the trust provide, or if the terms of
23 the trust do not provide for complete distribution of the
24 property, as a court determines to be consistent with the
25 purposes for which the trust was created.

26 (q) A person serving as a trustee may not serve as a trust

1 enforcer or as a member of the trust purpose committee, and a
2 person serving as a trust enforcer may not serve as a member of
3 the trust purpose committee.

4 (r) This Section does not apply to trusts created pursuant
5 to Section 7.65 of the Business Corporation Act of 1983.

6 (s) A trust created under this Section may be referred to
7 as a "virtuous trust".

8 (t) Section 808 shall not apply to a virtuous trust.