



February 18, 2005

## SENATE BILL No. 424

DIGEST OF SB 424 (Updated February 16, 2005 1:43 pm - DI 106)

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

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

**Effective:** July 1, 2005.

Clark

January 13, 2005, read first time and referred to Committee on Judiciary.  
February 17, 2005, amended, reported favorably — Do Pass.

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February 18, 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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## SENATE BILL No. 424



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, not less frequently than every**  
 16 **ninety (90) days, the professional solicitor shall provide the**  
 17 **charitable organization with access to and use of information**  
 18 **concerning contributors, including the name, address, and**  
 19 **telephone number of each contributor and the date and amount of**  
 20 **each contribution. A professional solicitor may not restrict a**  
 21 **charitable organization's 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) Not less frequently than every ninety (90) days, a professional**  
 30 **solicitor shall provide each charitable organization on whose behalf**  
 31 **the professional solicitor is acting with access to and use of**  
 32 **information concerning contributors, including the name, address,**  
 33 **and telephone number of each contributor and the date and**  
 34 **amount of each contribution. A professional solicitor may not**  
 35 **restrict a charitable organization's use of information provided**  
 36 **under this 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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1 **homeowners association (as defined in IC 34-6-2-58).**  
2 SECTION 4. IC 23-17-24-1.5 IS ADDED TO THE INDIANA  
3 CODE AS A NEW SECTION TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. (a) This section applies to the**  
5 **following:**  
6 (1) **Notwithstanding IC 23-17-1-1, all public benefit**  
7 **corporations organized under Indiana law for a purpose for**  
8 **which a corporation may be organized under this article,**  
9 **regardless of the date of incorporation.**  
10 (2) **A foreign corporation that desires to transact business in**  
11 **Indiana.**  
12 (b) **In addition to a dissolution under section 1 of this chapter,**  
13 **the attorney general may petition a court to issue one (1) or more**  
14 **of the following remedies:**  
15 (1) **Injunctive relief.**  
16 (2) **Appointment of temporary or permanent receivers.**  
17 (3) **Permanent removal of trustees, corporate officers, or**  
18 **directors who have breached the fiduciary duty.**  
19 (4) **Appointment of permanent court approved replacement**  
20 **trustees or corporate officers or directors.**  
21 (c) **The attorney general may seek a remedy against any or all**  
22 **of the following:**  
23 (1) **If the attorney general establishes a condition enumerated**  
24 **in section 1(a)(1) of this chapter, a corporation.**  
25 (2) **For a violation of the officer's duties under IC 23-17-14-2,**  
26 **a corporate officer.**  
27 (3) **For a violation of IC 23-17-13, a corporate director.**  
28 (d) **If the attorney general is successful in an action under this**  
29 **section, the attorney general may recover reasonable attorney's**  
30 **fees and costs.**  
31 SECTION 5. IC 23-17-24-2 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. (a) Venue for a**  
33 **proceeding brought by the attorney general to dissolve against a**  
34 **corporation or its officers or directors lies in Marion County. Venue**  
35 **for a proceeding brought by any other party named under section 1 of**  
36 **this chapter lies in the county where:**  
37 (1) **a corporation's principal office is or was last located; or**  
38 (2) **if the principal office is not located in Indiana, the**  
39 **corporation's registered office is or was last located.**  
40 (b) **A director or a member does not have to be made a party to a**  
41 **proceeding to dissolve a corporation unless relief is sought against a**  
42 **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 trust for a**  
20 **benevolent purpose does any of the following:**

- 21 (1) **Commits 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. ~~(Venue)~~ **(a) Venue in a**  
40 **proceeding brought by the attorney general against a trustee or a**  
41 **trust lies in Marion County, unless a court determines that venue**  
42 **in Marion County would be a hardship for a trustee or a trust.**

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

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

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

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 424, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 8, line 21, delete "or threatens to commit".

Page 8, line 41, after "County" insert ", **unless a court determines that venue in Marion County would be a hardship for a trustee or a trust**".

and when so amended that said bill do pass.

(Reference is to SB 424 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 1.

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