

# SB3583



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3583

Introduced 2/9/2024, by Sen. Laura Fine

### SYNOPSIS AS INTRODUCED:

760 ILCS 3/103

Amends the Illinois Trust Code. Amends the definition of "charitable trust" to exclude: (i) a testamentary trust that provides for ancillary charitable gifts or distributions in addition to posthumous distributions to persons, not charitable organizations, that has become irrevocable through the death of the testator and is capable of being settled and terminated within 18 months of such death, during such period of settlement and termination; or (ii) a testamentary estate that provides for ancillary charitable gifts or bequests in addition to bequests to persons not charitable organizations.

LRB103 37527 JRC 67650 b

A BILL FOR

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 Section 103 as follows:

6 (760 ILCS 3/103)

7 Sec. 103. Definitions. In this Code:

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

10 (1.5) "Appointive property" means the property or property  
11 interest subject to a power of appointment.

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

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

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

22 (B) in a capacity other than that of trustee, holds a  
23 power of appointment over trust property; or

1 (C) is an identified charitable organization that will  
2 or may receive distributions under the terms of the trust.  
3 "Beneficiary" does not include a permissible appointee of  
4 power of appointment, other than the holder of a presently  
5 exercisable general power of appointment, until the power is  
6 exercised in favor of such appointee.

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

9 (A) is held by an identified charitable organization  
10 and makes the organization a qualified beneficiary;

11 (B) benefits only charitable organizations and, if the  
12 interest were held by an identified charitable  
13 organization, would make the organization a qualified  
14 beneficiary; or

15 (C) is held solely for charitable purposes and, if the  
16 interest were held by an identified charitable  
17 organization, would make the organization a qualified  
18 beneficiary.

19 (5) "Charitable organization" means:

20 (A) a person, other than an individual, organized and  
21 operated exclusively for charitable purposes; or

22 (B) a government or governmental subdivision, agency,  
23 or instrumentality, to the extent it holds funds  
24 exclusively for a charitable purpose.

25 (6) "Charitable purpose" means the relief of poverty, the  
26 advancement of education or religion, the promotion of health,

1 municipal or other governmental purpose, or another purpose  
2 the achievement of which is beneficial to the community.

3 (7) "Charitable trust" means a trust, or portion of a  
4 trust, created for a charitable purpose but excludes:

5 (A) a testamentary trust that provides for ancillary  
6 charitable gifts or distributions in addition to  
7 posthumous distributions to persons, not charitable  
8 organizations, that has become irrevocable through the  
9 death of the testator and is capable of being settled and  
10 terminated within 18 months of such death, during such  
11 period of settlement and termination; or

12 (B) a testamentary estate that provides for ancillary  
13 charitable gifts or bequests in addition to bequests to  
14 persons not charitable organizations.

15 (8) "Community property" means all personal property,  
16 wherever situated, that was acquired as or became, and  
17 remained, community property under the laws of another  
18 jurisdiction, and all real property situated in another  
19 jurisdiction that is community property under the laws of that  
20 jurisdiction.

21 (9) "Current beneficiary" means a beneficiary that on the  
22 date the beneficiary's qualification is determined is a  
23 distributee or permissible distributee of trust income or  
24 principal. The term "current beneficiary" includes the holder  
25 of a presently exercisable general power of appointment but  
26 does not include a person who is a beneficiary only because the

1 person holds any other power of appointment. In a revocable  
2 trust, "current beneficiary" does not include a person who may  
3 receive trust assets only through the exercise of a power to  
4 make a gift on behalf of the settlor.

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

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

9 (12) "Environmental law" means a federal, state, or local  
10 law, rule, regulation, or ordinance relating to protection of  
11 the environment.

12 (13) "General power of appointment" means a power of  
13 appointment exercisable in favor of a powerholder, the  
14 powerholder's estate, a creditor of the powerholder, or a  
15 creditor of the powerholder's estate.

16 (14) "Guardian of the estate" means a person appointed by  
17 a court to administer the estate of a minor or adult  
18 individual.

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

22 (16) "Incapacitated" or "incapacity" means the inability  
23 of an individual to manage property or business affairs  
24 because the individual is a minor, adjudicated incompetent,  
25 has an impairment in the ability to receive and evaluate  
26 information or make or communicate decisions even with the use

1 of technological assistance; or is at a location that is  
2 unknown and not reasonably ascertainable. Without limiting the  
3 ways in which incapacity may be established, an individual is  
4 incapacitated if:

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

8 (ii) a limited guardian has been appointed for the  
9 individual under subsection (b) of Section 11a-12 of the  
10 Probate Act of 1975 and the court has found that the  
11 individual lacks testamentary capacity; or

12 (iii) the individual was examined by a licensed  
13 physician who determined that the individual was  
14 incapacitated and the physician made a signed written  
15 record of the physician's determination within 90 days  
16 after the examination and no licensed physician  
17 subsequently made a signed written record of the  
18 physician's determination that the individual was not  
19 incapacitated within 90 days after examining the  
20 individual.

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

24 (18) "Interested persons" means: (A) the trustee; and (B)  
25 all beneficiaries, or their respective representatives  
26 determined after giving effect to the provisions of Article 3,

1 whose consent or joinder would be required in order to achieve  
2 a binding settlement were the settlement to be approved by the  
3 court. "Interested persons" includes a trust advisor,  
4 investment advisor, distribution advisor, trust protector, or  
5 other holder, or committee of holders, of fiduciary or  
6 nonfiduciary powers, if the person then holds powers material  
7 to a particular question or dispute to be resolved or affected  
8 by a nonjudicial settlement in accordance with Section 111 or  
9 by a judicial proceeding.

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

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

14 (21) "Legal capacity" means that the person is not  
15 incapacitated.

16 (22) "Nongeneral power of appointment" means a power of  
17 appointment that is not a general power of appointment.

18 (22.5) "Permissible appointee" means a person in whose  
19 favor a powerholder may exercise a power of appointment.

20 (23) "Person" means an individual, estate, trust, business  
21 or nonprofit entity, public corporation, government or  
22 governmental subdivision, agency, or instrumentality, or other  
23 legal entity.

24 (24) "Power of appointment" means a power that enables a  
25 powerholder acting in a nonfiduciary capacity to designate a  
26 recipient of an ownership interest in or another power of

1 appointment over the appointive property. The term "power of  
2 appointment" does not include a power of attorney.

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

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

7 (B) exercisable by another person only upon consent of  
8 the trustee or a person holding an adverse interest.

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

11 (27) "Presently exercisable power of appointment" means a  
12 power of appointment exercisable by the powerholder at the  
13 relevant time. The term "presently exercisable power of  
14 appointment":

15 (A) includes a power of appointment exercisable only  
16 after the occurrence of a specified event, the  
17 satisfaction of an ascertainable standard, or the passage  
18 of a specified time only after:

19 (i) the occurrence of the specified event;

20 (ii) the satisfaction of the ascertainable  
21 standard; or

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

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

25 (28) "Presumptive remainder beneficiary" means a  
26 beneficiary of a trust, as of the date of determination and



1 assuming nonexercise of all powers of appointment, who either:  
2 (A) would be a distributee or permissible distributee of trust  
3 income or principal if the trust terminated on that date; or  
4 (B) would be a distributee or permissible distributee of trust  
5 income or principal if the interests of all distributees  
6 currently eligible to receive income or principal from the  
7 trust terminated on that date without causing the trust to  
8 terminate.

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

12 (30) "Qualified beneficiary" means each current  
13 beneficiary and presumptive remainder beneficiary.

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

18 (32) "Settlor", except as otherwise provided in Sections  
19 113 and 1225, means a person, including a testator, who  
20 creates, or contributes property to, a trust. If more than one  
21 person creates or contributes property to a trust, each person  
22 is a settlor of the portion of the trust property attributable  
23 to that person's contribution except to the extent another  
24 person has the power to revoke or withdraw that portion.

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

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

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

4 (34) "Spendthrift provision" means a term of a trust that  
5 restrains both voluntary and involuntary transfer of a  
6 beneficiary's interest.

7 (35) "State" means a State of the United States, the  
8 District of Columbia, Puerto Rico, the United States Virgin  
9 Islands, or any territory or insular possession subject to the  
10 jurisdiction of the United States. The term "state" includes  
11 an Indian tribe or band recognized by federal law or formally  
12 acknowledged by a state.

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

14 (A) except as otherwise provided in paragraph (B), the  
15 manifestation of the settlor's intent regarding a trust's  
16 provisions as:

17 (i) expressed in the trust instrument; or

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

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

22 (i) a trustee or other person in accordance with  
23 applicable law;

24 (ii) a court order; or

25 (iii) a nonjudicial settlement agreement under  
26 Section 111.

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

4           (38) "Trust accounting" means one or more written  
5 communications from the trustee with respect to the accounting  
6 year that describe: (A) the trust property, liabilities,  
7 receipts, and disbursements, including the amount of the  
8 trustee's compensation; (B) the value of the trust assets on  
9 hand at the close of the accounting period, to the extent  
10 feasible; and (C) all other material facts related to the  
11 trustee's administration of the trust.

12           (39) "Trust instrument" means the written instrument  
13 stating the terms of a trust, including any amendment, any  
14 court order or nonjudicial settlement agreement establishing,  
15 construing, or modifying the terms of the trust in accordance  
16 with Section 111, Sections 410 through 416, or other  
17 applicable law, and any additional trust instrument under  
18 Article 12.

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

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

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