



Reprinted
January 24, 2023

HOUSE BILL No. 1075

DIGEST OF HB 1075 (Updated January 23, 2023 5:39 pm - DI 106)

Citations Affected: IC 4-6; IC 23-17.

Synopsis: Nonprofit organizations. Provides that the contents of an investigative demand issued by the attorney general are confidential. Expands the definition of "public benefit corporation" to include a domestic corporation that is supported by public funds or authorized to spend public funds in furtherance of its mission or that is a not-for-profit corporation that aims to serve a public benefit. Provides that a court may dissolve a nonprofit corporation under certain circumstances and provides exceptions to the types of corporations that may be dissolved under this procedure. Specifies procedural requirements that the attorney general must take before petitioning the court for dissolution for certain reasons. Permits a court to appoint a receiver to manage a nonprofit corporation even if an action to dissolve the corporation has not been filed. Provides additional remedies that the attorney general may seek for violations. Requires a nonprofit corporation to maintain certain records for three years. Provides that attorney general may not access records of specified nonprofits. Prevents a state agency from imposing certain filing or reporting requirements that are more burdensome than what is required by state law and provides certain exceptions. Makes conforming and clarifying changes.

Effective: Upon passage; July 1, 2023.

Jeter

January 9, 2023, read first time and referred to Committee on Judiciary.
January 19, 2023, amended, reported — Do Pass.
January 23, 2023, read second time, amended, ordered engrossed.

HB 1075—LS 6457/DI 148



Reprinted
January 24, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1075

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 4-6-3-9, AS AMENDED BY P.L.5-2015,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 9. (a) **The contents of an investigative demand**,
4 all documentary material, answers to written interrogatories, and
5 transcripts of oral testimony that are provided pursuant to ~~an~~ **the**
6 investigative demand shall be kept confidential by the attorney general
7 until an action is filed against a person for the violation under
8 investigation, unless:
9 (1) confidentiality is waived by the person being investigated and
10 the person who has testified, answered interrogatories, or
11 produced documentary material; or
12 (2) disclosure is made by the attorney general to another state or
13 federal attorney general or law enforcement agency for the
14 purposes of cooperation in law enforcement of state or federal
15 laws.
16 (b) All documentary material, answers to written interrogatories,
17 and transcripts of oral testimony that are provided to the attorney

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1 general pursuant to an investigative demand issued by another state or
 2 federal attorney general or law enforcement agency under similar
 3 authority shall be treated as if obtained pursuant to an investigative
 4 demand issued by the attorney general under section 3 of this chapter.

5 SECTION 2. IC 23-17-2-23 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. "Public benefit
 7 corporation" means a domestic corporation that is the following:

8 (1) Either:

9 (A) formed as a public benefit corporation under this title;

10 (B) designated as a public benefit corporation by another law;

11 (C) recognized as tax exempt under Section 501(c)(3) of the
 12 Internal Revenue Code of 1986; ~~or~~

13 **(D) a not-for-profit corporation that serves a public benefit**
 14 **with an operating budget that is supported in whole or in**
 15 **part by public funds, or is otherwise authorized to spend**
 16 **public funds in furtherance of its mission; or**

17 ~~(D)~~ (E) otherwise organized for a public or charitable purpose,
 18 including a veterans organization or a post, a unit, or an
 19 auxiliary of the veterans organization, that is chartered by a
 20 federal statute for patriotic, public, or charitable purposes and
 21 recognized as tax exempt under Section 501(c)(4) or Section
 22 501(c)(19) of the Internal Revenue Code.

23 (2) Restricted so that on dissolution the corporation must
 24 distribute the corporation's assets to an organization organized for
 25 a public or charitable purpose, a religious corporation, the United
 26 States, a state, or a person that is recognized as exempt under
 27 Section 501(c)(3) of the Internal Revenue Code of 1986.

28 (3) Not a religious corporation.

29 SECTION 3. IC 23-17-24-1 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A circuit
 31 court or superior court may dissolve a corporation as follows:

32 (1) In a proceeding by the attorney general if one (1) of the
 33 following is established:

34 (A) The corporation obtained the corporation's articles of
 35 incorporation through fraud.

36 (B) The corporation has continued to exceed or abuse the
 37 authority conferred upon the corporation by law.

38 (C) The corporation is a public benefit corporation and the
 39 corporate assets are being misapplied or wasted.

40 (D) The corporation is a public benefit corporation and is no
 41 longer able to carry out the corporation's purposes **or a**
 42 **requirement imposed upon the corporation by law.**



(E) The corporation is a public benefit corporation and fails to use solicited property or assets for the purpose solicited.

(F) The corporation is a public benefit corporation and has grossly mismanaged property or assets, or committed another breach of duty.

(G) The corporation fails to maintain a record required under IC 23-17-27-1.

(H) The corporation has failed to respond in a good faith manner to a reasonable written interrogatory from the attorney general to the corporation, its officers, or directors.

Clauses (E) through (H) do not apply to a community mental health center (as defined in IC 12-7-2-38), community intellectual disability and other developmental disabilities centers (as defined in IC 12-7-2-39), an ICF/IID (as defined in IC 16-29-4-2), a federally-qualified health center (as defined in 42 U.S.C. 1396d(l)(2)(B)), a hospital licensed under IC 12-25, IC 16-21, IC 16-22, or IC 16-23, a health carrier (as defined in IC 27-2-26-1), or a public utility (as defined in IC 8-1-2-1).

(2) Before commencing an action under subdivision (1)(G) or (1)(H), the attorney general shall:

(A) deliver written notice of the specific violation to the corporation; and

(B) give the corporation forty-five (45) days to execute a corrective plan to remedy the violation, including by:

(i) amending the corporation articles or bylaws; and

(ii) taking or ceasing an action.

The attorney general may commence an action against a corporation if the corporation fails to remedy the violation within forty-five (45) days after receiving a written notice under this subdivision.

(2) (3) Except as provided in the articles of incorporation or bylaws of a religious corporation, in a proceeding by fifty (50) members or members holding at least five percent (5%) of the voting power, whichever is less, or by a director or a person specified in articles of corporation, if one (1) of the following is established:

(A) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock.



(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

(C) The members have deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired.

(D) The corporate assets are being misapplied or wasted.

(E) The corporation is a public benefit or religious corporation and is no longer able to carry out the corporation's purposes.

~~(3)~~ (4) In a proceeding by a creditor if either of the following is established:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

~~(4)~~ (5) In a proceeding by the corporation to have the corporation's voluntary dissolution continued under court supervision.

(b) Before dissolving a corporation, a court must consider the following:

(1) Reasonable alternatives to dissolution.

(2) If dissolution is in the public interest if the corporation is a public benefit corporation.

(3) If dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

SECTION 4. IC 23-17-24-1.5, AS AMENDED BY P.L.65-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. (a) This section applies to the following:

(1) Notwithstanding IC 23-17-1-1, all corporations organized under Indiana law for a purpose for which a corporation may be organized under this article, regardless of the date of incorporation.

(2) A foreign corporation that desires to transact business in Indiana.

(b) In addition to a dissolution under section 1 of this chapter, the attorney general may petition a court to issue one (1) or more of the following remedies:

(1) Injunctive relief.

(2) Appointment of temporary or permanent receivers.

(3) Permanent removal of trustees, corporate officers, or directors



who have breached the fiduciary duty.

(4) Appointment of permanent court approved replacement trustees, corporate officers or directors, and members.

(5) Sequestration of assets.

(6) Reimbursement of donations to persons from whom contributions have been unlawfully solicited.

(7) Reimbursement of costs, to be payable to the attorney general on behalf of the state, including:

(A) reasonable attorney's fees for the action; and

(B) expenses related to the performance of an audit.

(8) Assessment of a civil penalty of not more than ten thousand dollars (\$10,000) per violation and not more than twenty thousand dollars (\$20,000) for each additional violation, which does not replace any other relief granted by the court.

(9) Other relief the court deems appropriate.

(c) The attorney general may seek a remedy against any or all of the following:

(1) If the attorney general establishes a condition enumerated in section 1(a)(1) of this chapter, a corporation.

(2) For a violation of the officer's duties under IC 23-17-14-2, a corporate officer.

(3) For a violation of IC 23-17-13, a corporate director.

(d) In addition to any remedies described in subsection (b), the attorney general may accept a written assurance of voluntary compliance with respect to:

(1) a past, an existing, or an imminent condition enumerated in section 1(a)(1) of this chapter; or

(2) any past, existing, or imminent violation of a duty under this article by a corporation, director, officer, member, trustee, or other corporate principal.

(e) An assurance of voluntary compliance described in subsection (d) may include a stipulation for the voluntary payment by the person of:

(1) the costs of an investigation;

(2) an amount to be held in escrow pending the outcome of an action;

(3) an amount to be held in escrow pending the outcome of an action as restitution to an aggrieved nonprofit corporation or person; or

(4) both amounts described in subdivisions (2) and (3).

(f) An assurance of voluntary compliance described in subsection



(d):

- (1) must be filed with; and
 - (2) is subject to the approval of;
- the court having jurisdiction.

(g) An assurance of voluntary compliance described in subsection (d) is not considered an admission of a violation of any law.

(h) If the attorney general closes a matter by accepting an assurance of voluntary compliance described in subsection (d), the attorney general may reopen the matter for further proceedings within the period of the applicable statute of limitations.

SECTION 5. IC 23-17-24-3, AS AMENDED BY P.L.245-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A court in a judicial proceeding brought by the attorney general or by any other party named under section 1 of this chapter to dissolve a public benefit or mutual benefit corporation may appoint at least one (1):

- (1) receiver to wind up and liquidate; or
 - (2) custodian to manage;
- the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of the corporation's property wherever located.

(b) The court may appoint an individual or a domestic or foreign business or nonprofit corporation authorized to transact business in Indiana as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in the appointing order, which may be amended from time to time, including the following:

- (1) The receiver may do the following:
 - (A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the corporation is subject to a trust, an endowment, and other restrictions that would be applicable to the corporation.
 - (B) Sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all Indiana courts.
- (2) The custodian may exercise all of the powers of the corporation, through or in place of the corporation's board of directors or officers, to the extent necessary to manage the affairs



of the corporation in the best interests of the corporation's members and creditors or to carry out the corporation's lawful purposes.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and the corporation's members and creditors.

(e) The court may, during the receivership or custodianship, order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

(f) Upon a showing of reasonable cause by the attorney general or any other person, a circuit or superior court may appoint a receiver to manage the corporation or property of the corporation even if an action to dissolve the corporation has not been filed.

SECTION 6. IC 23-17-27-1, AS AMENDED BY P.L.118-2017, SECTION 94, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A corporation shall keep as permanent records a record of the following:

(1) Minutes of meetings of the corporation's members and board of directors.

(2) A record of actions taken by the members or directors without a meeting.

(3) A record of actions taken by committees of the board of directors as authorized under IC 23-17-15-6(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or the corporation's agent shall maintain a record of the corporation's members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain the corporation's records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at the corporation's principal office:

(1) The corporation's articles of incorporation or restated articles of incorporation and all amendments to the articles of incorporation currently in effect.

(2) The corporation's bylaws or restated bylaws and all amendments to the bylaws currently in effect.

(3) Resolutions adopted by the corporation's board of directors



1 relating to the characteristics, qualifications, rights, limitations,
2 and obligations of members or a class or category of members.

3 (4) The minutes of all meetings of members and records of all
4 actions approved by the members for the past three (3) years.

5 (5) Written communications to members generally within the past
6 three (3) years, including the financial statements furnished for
7 the past three (3) years under section 6 of this chapter.

8 (6) A list of the names and business or home addresses of the
9 corporation's current directors and officers.

10 (7) The corporation's most recent biennial report delivered to the
11 secretary of state under IC 23-0.5-2-13.

12 (f) Except as otherwise provided in articles of incorporation or
13 bylaws, ballots must be retained by a corporation until the earlier of the
14 following:

15 (1) The date of the next annual meeting.

16 (2) One (1) year after the date the ballot was received.

17 **(g) The records required by subsections (a) through (e) must be**
18 **maintained for at least three (3) years.**

19 **a county hospital licensed under IC 16-22**

20 **(h) Unless required or authorized by federal law, a state agency**
21 **(as defined in IC 4-6-3-1) may not impose an annual filing**
22 **requirement or reporting requirement upon a public benefit**
23 **corporation that is more burdensome than what is required by**
24 **state law. This subsection does not apply to a state grant or**
25 **contract, a fraud investigation, or a legal enforcement action.**

26 **SECTION 7. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1075, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 2. IC 4-6-3-9, AS AMENDED BY P.L.5-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) **The contents of an investigative demand**, all documentary material, answers to written interrogatories, and transcripts of oral testimony that are provided pursuant to ~~an~~ **the** investigative demand shall be kept confidential by the attorney general until an action is filed against a person for the violation under investigation, unless:

(1) confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced documentary material; ~~or~~

(2) disclosure is made by the attorney general to another state or federal attorney general or law enforcement agency for the purposes of cooperation in law enforcement of state or federal laws; **or**

(3) the attorney general makes a public announcement about an investigation or that an investigative demand has been issued.

(b) All documentary material, answers to written interrogatories, and transcripts of oral testimony that are provided to the attorney general pursuant to an investigative demand issued by another state or federal attorney general or law enforcement agency under similar authority shall be treated as if obtained pursuant to an investigative demand issued by the attorney general under section 3 of this chapter."

Page 2, line 12, after "(D)" insert **"a not-for-profit corporation that serves a public benefit with an operating budget that is"**.

Page 2, line 12, after "funds, or" insert **"is"**.

Page 2, line 14, after "mission;" insert **"or"**.

Page 2, delete lines 15 and 16.

Page 2, line 17, delete "(F)" and insert **"(E)"**.

Page 3, line 4, delete "Gross mismanagement of" and insert **"The corporation is a public benefit corporation and has grossly mismanaged"**.

Page 3, line 4, delete "other" and insert **"committed another"**.

Page 3, line 6, delete "Failure" and insert **"The corporation fails"**.



Page 3, between lines 11 and 12, begin a new line block indented and insert:

"Clauses (E) through (H) do not apply to a community mental health center (as defined in IC 12-7-2-38), community intellectual disability and other developmental disabilities centers (as defined in IC 12-7-2-39), an ICF/IID (as defined in IC 16-29-4-2), a federally-qualified health center (as defined in 42 U.S.C. 1396d(l)(2)(B)), a hospital licensed under IC 12-25, IC 16-21, IC 16-22, or IC 16-23, a health carrier (as defined in IC 27-2-26-1), or a public utility (as defined in IC 8-1-2-1)."

Page 3, line 16, delete "thirty (30)" and insert **"forty-five (45)"**.

Page 3, delete lines 20 through 22, begin a new line block indented and insert:

"The attorney general may commence an action against a corporation if the corporation fails to remedy the violation within forty-five (45) days after receiving a written notice under this subdivision."

Page 5, delete lines 13 through 25.

Page 5, line 26, reset in roman "(d)".

Page 5, line 26, delete "(e)".

Page 5, line 34, reset in roman "(e)".

Page 5, line 34, delete "(f)".

Page 5, line 35, reset in roman "(d)".

Page 5, line 35, delete "(e)".

Page 6, line 2, reset in roman "(f)".

Page 6, line 2, delete "(g)".

Page 6, line 3, reset in roman "(d):".

Page 6, line 3, delete "(e):".

Page 6, line 7, reset in roman "(g)".

Page 6, line 7, delete "(h)".

Page 6, line 8, reset in roman "(d)".

Page 6, line 8, delete "(e)".

Page 6, line 10, reset in roman "(h)".

Page 6, line 10, delete "(i)".

Page 6, line 11, reset in roman "(d),".

Page 6, line 11, delete "(e),".

Page 7, line 17, after "IC 4-6-3-3." insert **"This subsection does not apply to a community mental health center (as defined in IC 12-7-2-38), community intellectual disability and other developmental disabilities centers (as defined in IC 12-7-2-39), an ICF/IID (as defined in IC 16-29-4-2), a federally-qualified health**



center (as defined in 42 U.S.C. 1396d(l)(2)(B)), a hospital licensed under IC 12-25, IC 16-21, IC 16-22, or IC 16-23, a health carrier (as defined in IC 27-2-26-1), or a public utility (as defined in IC 8-1-2-1).".

Page 7, between lines 17 and 18, begin a new paragraph and insert:

"(i) Notwithstanding IC 4-6-3-4(2), a corporation must produce records under this chapter:

(1) not later than forty-five (45) days; or

(2) not later than ninety (90) days, if agreed by the corporation and the attorney general;

from the date of service of the investigative demand served under IC 4-6-3-3."

Page 7, line 18, delete "(i)" and insert "(j)".

Page 7, between lines 20 and 21, begin a new paragraph and insert:

"(k) Unless required or authorized by federal law, a state agency (as defined in IC 4-6-3-1) may not impose an annual filing requirement or reporting requirement upon a public benefit corporation that is more burdensome than what is required by state law. This subsection does not apply to a state grant or contract, a fraud investigation, or a legal enforcement action."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1075 as introduced.)

TORR

Committee Vote: yeas 11, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1075 be amended to read as follows:

Page 2, line 14, reset in roman "or".

Page 2, line 18, after "laws" delete ";" and insert ".".

Page 2, line 18, delete "or".

Page 2, delete lines 19 through 21.

Page 7, line 38, delete "a community mental health center (as" and insert **"a county hospital licensed under IC 16-22"**.

Page 7, delete lines 39 through 42.

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Page 8, delete lines 1 through 2.

(Reference is to HB 1075 as printed January 19, 2023.)

JETER

HOUSE MOTION

Mr. Speaker: I move that House Bill 1075 be amended to read as follows:

Page 6, between lines 33 and 34, begin a new paragraph and insert:
 "SECTION 6. IC 23-17-24-3, AS AMENDED BY P.L.245-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A court in a judicial proceeding brought by the attorney general or by any other party named under section 1 of this chapter to dissolve a public benefit or mutual benefit corporation may appoint at least one (1):

- (1) receiver to wind up and liquidate; or
- (2) custodian to manage;

the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of the corporation's property wherever located.

(b) The court may appoint an individual or a domestic or foreign business or nonprofit corporation authorized to transact business in Indiana as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in the appointing order, which may be amended from time to time, including the following:

- (1) The receiver may do the following:
 - (A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the corporation is subject to a trust, an endowment, and other restrictions that would be applicable to the corporation.
 - (B) Sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all Indiana courts.
- (2) The custodian may exercise all of the powers of the



corporation, through or in place of the corporation's board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of the corporation's members and creditors or to carry out the corporation's lawful purposes.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and the corporation's members and creditors.

(e) The court may, during the receivership or custodianship, order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

(f) Upon a showing of reasonable cause by the attorney general or any other person, a circuit or superior court may appoint a receiver to manage the corporation or property of the corporation even if an action to dissolve the corporation has not been filed."

Renumber all SECTIONS consecutively.

(Reference is to HB 1075 as printed January 19, 2023.)

MOED

HOUSE MOTION

Mr. Speaker: I move that House Bill 1075 be amended to read as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 3.

Page 7, delete lines 36 through 42.

Page 8, delete lines 1 through 13.

Page 8, line 14, delete "(k)" and insert "(h)".

Page 8, delete lines 20 through 23.

Renumber all SECTIONS consecutively.

(Reference is to HB 1075 as printed January 19, 2023.)

HATFIELD

