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House Bill 4033 (H-1 as passed by the House)  
House Bill 4034 (H-2 as passed by the House)  
Sponsor: Representative Douglas Wozniak  
House Committee: Judiciary  
Senate Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 10-13-25

## **INTRODUCTION**

The bills would enact a version of Article 3 of the Uniform Law Commission's Uniform Fiduciary Income and Principal Act (UFIPA) to allow a trustee to convert an income trust to a unitrust, a unitrust to an income trust, or to adjust the unitrust amount. An income trust is an investment fund created to provide regular payments to its investors. A unitrust is a trust that pays current beneficiaries a set percentage of the value of the trust, calculated annually, rather than the net income earned by the trust. This allows the trust's principal investment to grow while continuing to pay out income.

Under the bills, a trustee could convert a trust or change a trust amount if it would benefit the interests of the trust's beneficiaries and after meeting certain requirements, including the adoption of a unitrust policy and the notification of certain beneficiaries. The bills would establish requirements for the calculation of unitrust rates and fair market values. They also would allow trustees to adopt in their unitrust policies certain standards and rules. Generally, trusts that were eligible for special tax benefits would face greater restrictions than ineligible trusts, including a required unitrust rate between 3% and 5%.

The bills would apply to a trust existing or created on or after the bills' effective date and that were administered in the State. The terms of a trust would prevail over any provisions of the bills.

## **PREVIOUS LEGISLATION**

*(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)*

House Bill 4033 is a reintroduction of House Bill 5110 from the 2023-2024 Legislative Session. House Bill 4034 is similar to House Bills 4864 and 5793 from the 2021-2022 Legislative Session.

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local courts. Any increase or decrease in court caseloads because of the bill would likely be minor.

MCL 554.73 et al. (H.B. 4034)

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## **CONTENT**

**House Bill 4033 (H-1) would enact the "Unitrust Act" to do the following:**

- **Allow a trustee to convert an income trust to a unitrust, a unitrust to an income trust, or to change the unitrust amount, if specific requirements were met.**
- **Require a trustee to adopt or amend a unitrust policy, for which the bill would establish requirements.**
- **Require a trustee seeking to convert a trust or change an unitrust amount to send notice to certain beneficiaries.**
- **Establish requirements concerning unitrust rates and fair market values for assets in trust.**
- **Require a unitrust policy to provide the period during which unitrust rates and fair market value could be determined.**
- **Establish notice requirements.**
- **Establish the conditions under which a trustee could be deemed to have abused the trustee's power under the Act, as well as relief for beneficiaries.**
- **Limit the unitrust rates, fair market value calculations, and rules concerning a trust that qualified for special tax benefits.**

**House Bill 4034 (H-2) would amend the Uniform Statutory Rule Against Perpetuities to exempt an interest or power of appointment created by a second power under the Personal Property Trust Perpetuities Act from a provision that establishes the creation date of a nonvested interest or power of appointment created by a second power as the date the original interest or power was created.**

### **House Bill 4033 (H-1)**

#### **Trusts; Generally**

A trust is a legal arrangement in which a person, called a settler, gives assets to a trustee (another person or an institution such as a bank or law firm) to manage for the benefit of the settler's beneficiaries. The legal rights of a settler, a trustee, and beneficiaries depend on the terms of a trust agreement. Trusts may be revokable, allowing a settler to modify the trust at any point. Often, a revokable trust becomes irrevocable upon the death of the settler, e.g., it may not be changed. There are two types of trust beneficiaries: current beneficiaries, who are entitled to income from the trust, and remainder beneficiaries, who are entitled to income from the trust after the current beneficiaries' interest ends, often upon death.

An income trust is an investment fund created to provide regular payments to its investors. There are two types of income trusts: personal income trusts, in which individuals are the beneficiaries, and publicly traded income trusts, in which corporations are the beneficiaries.

Generally, the bill would allow a trustee to convert an income trust to a unitrust and a unitrust to an income trust if specific requirements were met (see Trust Conversion; Specifically). A unitrust is an irrevocable trust that pays current beneficiaries a set percentage of the value of the trust, calculated annually, rather than the net income earned by the trust. This allows the trust's principal investment to grow while continuing to pay out income.

The bill would define "unitrust" as a trust for which net income is a unitrust amount. "Unitrust amount" means an amount computed by multiplying a determined value of a trust by a determined percentage.

The Act would apply to a trust existing or created on or after the bill's effective date and that was administered in the State. The terms of a trust would prevail over any provision of the Act. If the terms of a trust or unitrust included provisions contrary to or expressly prohibited under the Act, the Act would not apply.

The Act would not apply to certain trusts used for charitable purposes, including trusts that were pooled income funds<sup>1</sup> and charitable remainder annuity trusts.<sup>2</sup>

#### Trust Conversion; Specifically

To convert an income trust to a unitrust, the trustee would have to adopt in a record a unitrust policy that provided the following:

- That in administering the trust, the net income of the trust would be a unitrust amount rather than net income determined without regard to the Act.
- The percentage and method used to calculate the unitrust amount.

The bill also would allow a trustee to change the percentage or method used to calculate a unitrust amount if the trustee adopted in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount.

A trustee could convert a unitrust to an income trust if the trustee adopted in a record a determination that, in administering the trust, the net income of the trust would be net income determined without regard to the Act rather than a unitrust amount.

To convert a trust to a unitrust or vice versa, or to modify the unitrust amount, a trustee also would have to send notice (see Notice Requirements), describing the proposed conversion. This notice would have to be sent to at least one member of each class of the qualified trust beneficiaries.<sup>3</sup> Each notice recipient would have to be 1) a legally competent individual, 2) an existing entity, or 3) represented in the manner provided in Part 3 of Article VII of the Estates and Protected Individuals Code (EPIC). (Generally, Part 3 establishes the requirements for individuals who may represent, financially and non-financially, an individual who for reason of age or impairment cannot manage the individual's own affairs).

A beneficiary could consent in a record at any time to a proposed conversion or unitrust amount change, including without receiving notice. If the trustee seeking to convert a trust or change a unitrust amount did not receive an *objection* to the action within the applicable time period, the trustee could proceed with a proposed conversion or change.

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<sup>1</sup> A pooled income trust is a trust generally used by non-profit organizations to collate and invest donations.

<sup>2</sup> A charitable remainder annuity trust is a trust that pays income to a beneficiary until the beneficiary's passing, upon which the remainder of the trust passes to one or more charitable organizations. The remainder must be at least 10% of the initial net fair market value of all property placed in the trust.

<sup>3</sup> "Qualified trust beneficiary" would mean that term as defined in Section 7103 of EPIC: a trust beneficiary whom the settlor intends to benefit as a material purpose of the trust and to whom one or more of the following apply on the date the trust beneficiary's qualification is determined: 1) the trust beneficiary is a distributee or permissible distributee of trust income or principal, 2) the trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust terminated on that date without causing the trust to terminate, or 3) the trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. If, on the date a trust beneficiary's qualification is determined there is no trust beneficiary, the term would include a trust beneficiary to whom one or more of the previous conditions applied on the date the trust beneficiary's qualification is determined.

The bill would require the trustee to consider all factors relevant to the purposes of the trust and the interests of the beneficiaries when making this conversion or change.

If, after sending the required notice, a trustee decided *not to* proceed with the conversion or change, the trustee would have to notify each person previously notified of the decision and the reason for the decision.

In administering a unitrust, a trustee would have to follow the terms of the unitrust policy. A unitrust policy would have to provide all the following:

- The unitrust rate or the method for determining the unitrust rate (see Unitrust Rates).
- The method for determining the fair market value of an asset (see Fair Market Value of Assets).
- The rules that applied in the administration of the unitrust, either because the rules were mandatory, or because the rules were optional and the trustee had elected to adopt the rules (see Trust Administration).

#### Unitrust Rates

Under the bill, "unitrust rate" would mean the rate used to compute the unitrust amount for a unitrust administered under a unitrust policy. A unitrust rate could be either of the following:

- A fixed rate.
- A rate that was determined for each period using either a market index or other published data *or* a mathematical blend of market indices or other published data over a stated number of preceding periods (a variable unitrust rate).

A unitrust policy could provide one or more of the following:

- A limit on how high the unitrust rate could rise.
- A limit on how low the unitrust rate could fall.
- A limit on how much the unitrust rate could increase or decrease over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods.
- A mathematical blend of any of the variable unitrust rates and any of the listed limitations.

#### Fair Market Value of Assets

The bill would require a unitrust policy to provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including the following:

- The frequency of valuing the asset, which would not need to require a valuation in every period.
- The date for valuing the asset in each period in which the asset was to be valued.

A unitrust policy for a trust that did not qualify for a special tax benefit could provide methods for determining the amount of the net fair market value of the trust, including one or more of the following:

- Obtaining an appraisal of an asset for which fair market value was not readily available.
- Exclusion of specific assets or groups or types of assets.
- Other exceptions or modifications of the treatment of specific assets or groups or types of assets.
- Identification and treatment of cash or property held for distribution.

- An average of fair market values over a stated number of preceding periods *or* another mathematical blend of fair market values over a stated number of preceding periods.
- A limit on how much the applicable value of all assets, groups of assets, or individual assets could increase *or* decrease over either 1) the corresponding applicable value for the preceding period or 2) a mathematical blend of applicable values over a stated number of preceding periods.
- The treatment of accrued income and other features of an asset that affected value.
- Determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under the listed methods.

### Trust Administration

The bill would require a unitrust policy to provide the period during which unitrust rates and fair market value could be determined. That period could be any of the following:

- A calendar year.
- A 12-month period other than a calendar year.
- A calendar quarter.
- A 3-month period other than a calendar quarter.
- Another period.

A unitrust policy for a trust that was not qualified for a special tax benefit could provide standards for any of the following:

- Using fewer preceding periods for a unitrust rate calculated using preceding periods if 1) the trust were not in existence in a preceding period or 2) market indices or other published data were not available for a preceding period.
- Using fewer preceding periods for a fair market value calculated using preceding periods if 1) the trust were not in existence in a preceding period or 2) fair market values were not available for a preceding period.
- Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commenced or terminated.

A unitrust policy also could do one or more of the following:

- Provide methods and standards for 1) determining the timing of distributions, 2) making distributions in cash, in kind, or both, or 3) correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there were an error in calculating the unitrust amount.
- Specify sources and the order of sources, including categories of income for Federal income tax purposes, from which distributions of a unitrust amount were paid.
- Provide other standards and rules that the trustee determined served the interests of the beneficiaries.

### Notice Requirements

The bill would require notice of a proposed conversion or change to be sent to all the following:

- The qualified trust beneficiaries.
- Each person acting as a trust director.<sup>4</sup>

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<sup>4</sup> "Trust director" would mean that term as defined in Section 7703a of EPIC: an organization permitted to exercise trust powers in the State or an individual, if that person is granted a power of direction

- Each person that was not a trustee or trust director but had an exercisable power under the terms of the trust to appoint or remove a trustee or trust director.

One of the above persons could oppose the proposed action in a court proceeding based upon whether the person consented to the proposed conversion or change or objected.

A notice of conversion or unitrust amount change would have to comply with Section 7109 of EPIC. (Section 7109 generally requires notices and documents to be sent in a manner reasonably suitable under the circumstances to result in receipt. This includes first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed and identified facsimile or electronic message).

A notice also would have to include the following:

- A description of the action proposed.
- A statement that the person to which the notice was sent could object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the trustee.
- The date by which an objection would have to be received by the trustee, which would have to be at least 30 days after the date the notice was sent.
- The date on which the action was proposed to be taken and the date on which the action was proposed to take effect.
- The name and contact information of the trustee.

For a conversion of an income trust to a unitrust, a notice also would have to include a copy of the adopted unitrust policy. For a change in the percentage or method used to calculate the unitrust amount, the notice would have to include a copy of the unitrust policy or amendment or replacement of the unitrust policy.

The Act would not create a duty to take or consider action under the Act or to inform a beneficiary about the applicability of the Act apart from the notice conditionally required. A trustee that in good faith took an action that was authorized by the Act would not be liable to a person affected by the action.

#### Delegation of Power

A trustee could release or delegate the power to convert an income trust to a unitrust, change the percentage or method used to calculate a unitrust amount, or convert a unitrust to an income trust, if the trustee were uncertain about whether the trustee's actions would negatively harm the trust. The release could be permanent or for a specified period, including a period measured by the life of an individual.

#### Cotrustees and Successor Trustees

The Act would allow a trustee that was not an independent person to exercise discretionary powers under the Act. If a trust did not have a trustee that was an independent person, the trustee could appoint one or more special trustees that were independent persons to exercise these discretionary powers if the appointment complied with any limits imposed by the terms of the trust on who was eligible to serve as a cotrustee or successor trustee. A trustee would not need court approval for this purpose. For special tax benefits associated with a trust that had no independent trustee, see Special Tax Benefits.

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whether or not either of the following applies: 1) the terms of the trust refer to the person as a trust director, or 2) the person is a beneficiary or settlor of the trust.

## Trustee Abuse of Powers

Upon petition by the trustee, the court that had jurisdiction over a trust would have to determine whether a proposed exercise or nonexercise by the trustee of a conversion or change in unitrust amount would result in an abuse of the trustee's discretion. The bill would prohibit a court from ordering a trustee to change a decision regarding trust conversion or unitrust amount adjustments unless the court determined that the decision was an abuse of the trustee's discretion. A court could not decide that a trustee's decision was an abuse of discretion solely because the court would have exercised the power in a different manner or would not have exercised the power.

If the court determined that a trustee had abused the trustee's discretion, the court could place the beneficiaries in the positions they would have occupied if the discretion had not been abused. In doing so, the court would have to consider the following rules outlined in the Uniform Principal and Income Act:

- To the extent that the abuse of discretion resulted in no distribution to a beneficiary or in a distribution that is too small, the court must order the fiduciary (in this case, trustee) to distribute from the trust or estate to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.
- To the extent that the abuse of discretion resulted in a distribution to a beneficiary which is too large, the court must place the beneficiaries, the trust or estate, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust or estate.
- To the extent that the court is unable, after applying the above provisions, to place the beneficiaries, the trust or estate, or both, in the positions they would have occupied if the discretion had not been abused, the court could order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or estate or both.

Additionally, the bill specifies that references in the terms of a trust to income, net income, unitrust amounts, or to the trustee's discretion in distributing any of these would not, in the absence of additional evidence, constitute a sufficient indication of an intent contrary to the application of the Act or to the doing of anything that the Act authorized a trustee to do.

## Special Tax Benefits

The Act would define "special tax benefit" as any of the following:

- Exclusion of a transfer to a trust from gifts excluded from the Federal gift tax (generally, gifts valued under \$19,000 per recipient for Fiscal Year 2025-2026), because of the qualification of an income interest in the trust as a present interest in property.
- Status as a qualified subchapter S trust (QSST) at a time the trust holds stock of an S corporation.<sup>5</sup>
- An estate or gift tax marital deduction for a transfer to a trust that depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust.

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<sup>5</sup> The Federal Internal Revenue Code (IRC) defines an "S corporation" as a small business corporation (generally, a domestic corporation with fewer than 100 shareholders) whose shareholders elect to become an S corporation. A QSST is a trust that owns stock in an S corporation. A QSST must have one income beneficiary, to whom distributions from the trust are exclusively made. This allows a beneficiary to receive income from a stock while a trustee manages the trust.

- Exemption in whole or in part of a trust from the Federal generation-skipping transfer tax (for which a beneficiary would be eligible if the trust was considered irrevocable on September 25, 1985) if there were a possibility that a taxable distribution or termination would not be exempt in whole or in part from the Federal generation-skipping transfer tax.
- An inclusion ratio<sup>6</sup> of the trust that was less than one, if there was any possibility that a taxable distribution could be made from the trust or a taxable termination enacted.

If a trust qualified for a special tax benefit or had no trustee that was an independent person, the unitrust rate for that trust would have to be between 3% and 5%. The trustee of a trust that qualified for a given special tax benefit could provide methods and standards for determining the timing of distributions only to the extent consistent with the trust's qualification for that benefit.

Additionally, such a trust could only use the methods listed under Fair Market Value of Assets to do the following:

- Obtain an appraisal of any asset for which fair market value was not readily available.
- Identify and treat cash or property held for distribution.
- Calculate the average of fair market values over a stated number of preceding periods.
- Determine the liabilities of the trust.

The period during which a unitrust rate and fair market value rate could be calculated would be the calendar year. Additionally, a unitrust policy could only provide the standards listed under Trust Administration for the following:

- Using fewer preceding periods to calculate variable unitrust rates if the trust were not in existence in a preceding period.
- Prorating the unitrust amount daily for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commenced or terminated.

If a trust that did *not* qualify for any special tax benefit had cotrustees, and one or more of the cotrustees was an independent person, a majority of the cotrustees that were independent persons could convert or adjust unitrust amounts without regard to the previous limitations.

#### Additional Provisions

Substituting a unitrust amount for net income or net income for a unitrust amount under the Act would not otherwise affect terms of the trust concerning distributions, including discretionary terms.

#### Other Legislation

The Act specifies that it should be enforced in a way that created uniformity among states that enacted laws similarly based on Article 3 of the UFIPA (see **BACKGROUND**).

### **House Bill 4034 (H-2)**

A nonvested property interest, e.g., an interest yet to be conveyed, is also called a future interest. It includes contingent remainders and powers of appointment. Section 2 of the

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<sup>6</sup> The inclusion ratio is the fraction of a distribution from an individual or trust that is subject to the Federal generation-skipping transfer tax.



Uniform Statutory Rule Against Perpetuities establishes the circumstances in which a nonvested property interest or power or appointment is invalid. Generally, an interest must vest or terminate within 21 years after the death of an individual or vest or terminate within 90 years of the interest's *creation*.

Currently, the Act provides that a nonvested property interest or power of appointment that arose from a transfer of property to a previously funded trust or other existing property arrangement is considered created when the original contribution was created. The bill would exempt from this provision an interest or power of appointment created, or to which property was subjected, by the exercise of a second power subject to Section 2(1) of the Personal Property Trust Perpetuities Act. (Generally, Section 2(1) of the Act establishes the period during which the vesting of a future interest in property may be postponed by the exercise of a second power.)

"Second power" means a power of appointment over personal property held in trust, other than a presently exercisable general power, that is created or to which property is subjected by the exercise of either a first power or a second-order fiduciary power. "First power" means a nonfiduciary, nongeneral power of appointment over personal property held in trust that is exercised so as to subject the property to, or to create, another power of appointment. "Second-order fiduciary power" means a fiduciary power of appointment that is created or has property subjected to it by the exercise of one of the following:

- A first power.
- A fiduciary power of appointment that was created or had property subjected to it by the exercise of a first power.
- A fiduciary power of appointment whose creation or control over property subject to the power is traceable through an unbroken succession of previous exercises of fiduciary powers to the exercise of a fiduciary power that was created or had property subjected to it by the exercise of a first power.

## **BACKGROUND**

In 2018, the Uniform Law Commission, a non-profit organization that seeks to standardize statutory law across the country, published the UFIPA, a revision of the earlier Uniform Principal and Income Act (UPIA). Unlike previous versions of the model law, the UFIPA includes an article solely dedicated to Unitrusts, Article 3, upon which House Bill 4033 is based. As of September 2024, eight states have enacted versions of the UFIPA: Arkansas, California, Colorado, Florida, Kansas, Utah, Virginia, and Washington.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.