

Bill as Introduced

SB 50 - AS AMENDED BY THE SENATE

03/30/11 1183s

2011 SESSION

11-1049
08/05

SENATE BILL **50**

AN ACT making various changes to laws regulating trusts and trust companies.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Sen. Odell, Dist 8; Sen. Gallus, Dist 1; Sen. Houde, Dist 5; Rep. Hunt, Ches 7

COMMITTEE: Commerce

ANALYSIS

This bill makes various changes to laws regulating trusts and trust companies.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT making various changes to laws regulating trusts and trust companies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Purpose. The general court finds:

2 I. The market for trusts and fiduciary services across the nation is a rapidly growing sector
3 of the nation's economy.

4 II. New Hampshire is uniquely positioned to provide the most attractive legal and financial
5 environment for individuals and families seeking to establish and locate their trusts and investment
6 assets.

7 III. This act will serve to continue New Hampshire's firm commitment to be the best and
8 most attractive legal environment in the nation for trusts and fiduciary services, an environment
9 that will continue to attract to our state good-paying jobs for trust and investment management,
10 legal and accounting professionals, and other professionals to provide the support and infrastructure
11 required to service this growing sector of the nation's economy.

12 2 New Section; Wills; Enforcement of No-Contest Provision. Amend RSA 551 by inserting after
13 section 21 the following new section:

14 551:22 Enforcement of No-Contest Provision.

15 I. For the purposes of this section, a "no-contest provision" means a provision of a will that, if
16 given effect, would reduce or eliminate the interest of any beneficiary of such will who, directly or
17 indirectly, initiates or otherwise pursues:

18 (a) Any action to contest the admission or validity of such will;

19 (b) Any action to set aside or vary the terms of such will;

20 (c) Any action to challenge the acts of the executor of such will or other fiduciary of such
21 will in the performance of such executor's or other fiduciary's duties as described in such will; or

22 (d) Any other act or proceedings to frustrate or defeat the testator's intent as expressed
23 in the terms of such will.

24 II. A no-contest provision shall be enforceable according to the express terms of the no-
25 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
26 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
27 beneficiary's interest in the will under the terms of the no-contest provision.

28 III. Paragraph II of this section shall not apply to:

29 (a) Any action brought by the executor or other fiduciary of any such will that
30 incorporates a no-contest provision, provided that such executor or other fiduciary is not a person

1 against whom the no-contest provision would be enforced for bringing the action;

2 (b) Any agreement among the beneficiaries under the will in settlement of a dispute or
3 resolution of any other matter relating to such will;

4 (c) Any action to determine whether a proposed or pending motion, petition, or other
5 proceeding constitutes a contest within the meaning of a no-contest provision;

6 (d) Any action brought by a beneficiary under a will or on behalf of any such beneficiary
7 for a construction or interpretation of the will; or

8 (e) Any action brought by the attorney general for a construction or interpretation of a
9 will containing a charitable trust or charitable bequests or if a provision exists in a will or trust
10 purporting to penalize a charity or charitable interest for contesting the will or trust or instituting
11 other proceedings relating to the estate or trust if probable cause exists for instituting proceedings.

12 IV. It is the intent of this section to enforce the testator's intentions as reflected in a no-
13 contest provision described in paragraph II of this section to the greatest extent possible. The
14 provisions of this section shall be construed and applied in a manner consistent with such intent.

15 V. This section shall apply to all judicial proceedings concerning the enforcement or
16 interpretation of a no-contest provision commenced on or after its effective date.

17 3 Testamentary Trusts; Bond and Surety Requirements for Trustees. Amend RSA 564:1 to read
18 as follows:

19 564:1 Bonds.

20 I. Every trustee to whom any estate, real or personal, is devised in trust for any person shall
21 give bond to the judge of probate, with sufficient sureties, or without sureties in estates of five
22 thousand dollars or less where the judge finds it in the interest of the estate, in such sum as the
23 judge may order, except as provided in RSA 564:2, conditioned:

24 ~~[I.]~~ (a) That ~~[he]~~ *the trustee* will make and file in the probate office a true inventory of the
25 real estate, goods, chattels, rights and credits so devised, at such time as the judge shall order.

26 ~~[II.]~~ (b) That ~~[he]~~ *the trustee* will annually render an account to the judge of the annual
27 income and profit thereof, unless excused by the judge of probate as provided by law.

28 ~~[III.]~~ (c) That at the expiration of the trust ~~[he]~~ *the trustee* will adjust and settle his *or her*
29 account with the judge, and pay and deliver over all balances, money, and property with which ~~[he]~~
30 *the trustee* has been intrusted.

31 ~~[IV.]~~ (d) That ~~[he]~~ *the trustee* will faithfully execute the trust according to the true intent of
32 the deviser.

33 II. *This section shall not apply with respect to any trust exempted from the*
34 *accounting requirements under RSA 564:19, II and III.*

35 4 Testamentary Trusts; Bonds of Banks. Amend RSA 564:5 to read as follows:

36 564:5 Bond of Banks. *Except as otherwise provided in RSA 564:1, such trust company or*
37 *national bank when appointed trustee shall give a surety company bond in such sum as the judge*

1 may order.

2 5 Testamentary Trusts; Filing Accounts. Amend RSA 564:19 to read as follows:

3 564:19 Filing Account.

4 *I. Except as otherwise provided in paragraphs II and III, every trustee shall file in the*
5 *probate court an annual account of administration, unless upon petition [he] the trustee is excused*
6 *by the judge of probate; but in no event shall [he] the trustee be excused for a period longer than*
7 *three years, except that in cases where such filing may be impractical and may work financial*
8 *hardship to the trust estate the judge of probate upon written approval of the attorney general may*
9 *extend said period not exceeding in the aggregate five years. Such annual account of administration*
10 *provided for herein may be allowed by the judge of probate without publication unless he or she*
11 *shall otherwise order. Before giving notice to settle a final account the trustee shall file it in the*
12 *probate office and shall cause the fact of such filing to appear in the notice and shall at the same*
13 *time file a statement of the names and residences of the beneficiaries in the trust estate.*

14 *II. The following trusts under will shall be exempt from the accounting*
15 *requirements of paragraph I:*

16 *(a) A trust created under a will admitted to probate on or after January 1, 2012,*
17 *under which the testator expressly waives the requirement for annual accountings under*
18 *the terms of the will creating the trust.*

19 *(b) A trust created under a will admitted to probate on or after January 1, 2012,*
20 *that is not exempt from the accounting requirement under subparagraph (a) with respect*
21 *to which one or more interested parties, including the director of charitable trusts if the*
22 *director is a "qualified beneficiary" of the trust under RSA 564-B:1-110(c) have petitioned*
23 *the court having jurisdiction over the trust for approval of the interested parties'*
24 *nonjudicial settlement agreement under RSA 564-B:1-111 seeking a waiver of the*
25 *requirement of future accountings. The presiding judge shall grant such petition and*
26 *approve the nonjudicial settlement agreement unless the presiding judge finds that doing*
27 *so would (i) jeopardize a material purpose of the testator of the will under which the trust*
28 *was created, based on the language of the will clearly indicating the intention of the*
29 *testator that the trust be subject to full judicial supervision, including the accounting*
30 *requirement; or (ii) adversely affect the interests of any stakeholder who is not a signatory*
31 *to the nonjudicial settlement agreement.*

32 *(c) A trust, if (i) the court grants a petition for the acceptance of jurisdiction*
33 *over that trust with respect to which a court of another state has released its jurisdiction,*
34 *and (ii) the court releasing jurisdiction did not require the trustee or trustees of that trust*
35 *to file accounts with that court, or required that the trustees of the trust file accounts less*
36 *frequently than annually, then the court accepting jurisdiction over such trust shall not*
37 *require accountings whatsoever, or shall require accountings less frequently than*

1 *annually, as the case may be, on the same basis as may have been required by the court*
2 *releasing jurisdiction.*

3 *III. A trust under will described in paragraph II, with respect to which no judicial*
4 *accountings will be required, shall in all respects be subject to the beneficiary reporting*
5 *and information requirements of RSA 564-B, the Uniform Trust Code, and all other*
6 *pertinent provisions of such Code, except to the extent that a contrary provision appears in*
7 *the will under which the trust was created, provided that such contrary provision does not*
8 *violate any of the mandatory rules of RSA 564-B:1-105. For these purposes, the pertinent*
9 *terms of the will shall have the same meaning as "terms of a trust" and the "will creating*
10 *the trust" shall have the same meaning as "trust instrument", as defined in RSA 564-B:1-*
11 *103(19) and (20), respectively. Nothing in this paragraph shall be interpreted to limit the*
12 *ability of persons with standing to petition the probate court having jurisdiction over a*
13 *trust under will to require any trustee of that will to make a judicial accounting, or the*
14 *jurisdiction of any such court to require an accounting on its own initiative.*

15 *IV. Nothing in this section shall limit the authority of the attorney general*
16 *otherwise provided by common law or other statute.*

17 6 New Section; Uniform Trust Code; Application to Testamentary Trusts. Amend RSA 564 by
18 inserting after section 24 the following new section:

19 564:25 Application of the Uniform Trust Code. The provisions of RSA 564-B, the Uniform Trust
20 Code, shall apply to all trusts under will governed by this chapter, except to the extent that any
21 provisions of the Uniform Trust Code conflict with the express provisions of this chapter, in which
22 case the provisions of this chapter shall control.

23 — 7 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-
24 105(b)(3) to read as follows:

25 (3) the requirement that a trust and its terms be for the benefit of its beneficiaries
26 *as their interests are defined under the terms of the trust*, and that the trust have a purpose
27 that is lawful, not contrary to public policy, and possible to achieve;

28 8 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-112
29 to read as follows:

30 564-B:1-112 Rules of Construction. The rules of construction that apply in this state to the
31 interpretation of and disposition of property by will also apply as appropriate to the interpretation of
32 the terms of a trust and the disposition of the trust property. *For the purposes of determining*
33 *the benefit of the beneficiaries, the settlor's intent as expressed in the terms of the trust*
34 *shall be paramount.*

35 9 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:2-
36 201(b) to read as follows:

37 (b) A trust~~], other than a trust created by a will,~~ is not subject to continuing judicial

1 supervision unless ordered by the court.

2 10 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:4-404
3 to read as follows:

4 564-B:4-404 Trust Purposes. A trust may be created only to the extent its purposes are lawful,
5 not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of
6 its beneficiaries, *as their interests are defined under the terms of the trust.*

7 11 Uniform Trust Code; Trust Purposes. Amend RSA 564-B:4-412(b) to read as follows:

8 (b) The court may modify the administrative terms of a trust if [~~continuation of the trust~~
9 ~~on its existing terms would be impracticable or wasteful or impair the trust's administration]~~
10 *modification will further the purposes of the trust.*

11 12 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005 to
12 read as follows:

13 564-B:10-1005 Limitation of Action Against a Trustee *by a Beneficiary.*

14 (a) A beneficiary may not commence a proceeding against a trustee for breach of trust
15 more than one year after the date the beneficiary or a representative of the beneficiary was sent a
16 report that adequately disclosed the existence of a potential claim for breach of trust and informed
17 the beneficiary of the time allowed for commencing a proceeding.

18 (b) A report adequately discloses the existence of a potential claim for breach of trust if it
19 provides sufficient information so that the beneficiary or representative knows of the potential claim
20 or should have inquired into its existence.

21 (c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a
22 trustee for breach of trust must be commenced within 3 years after the first to occur of:

23 ~~(1) The removal, resignation, or death of the trustee;~~

24 (2) The termination of the beneficiary's interest in the trust; ~~or~~

25 (3) The termination of the trust~~;~~; *or*

26 (4) *The date on which the beneficiary or a representative of the beneficiary*
27 *was sent a report that adequately disclosed the existence of a potential claim for breach of*
28 *trust.*

29 (d) *The periods of limitation under this section shall not be tolled for any*
30 *reason, except by a written agreement of the trustees and qualified beneficiaries or a court*
31 *order. Without limiting the circumstances under which a court may issue an order tolling*
32 *the period of limitations, a court may issue an order tolling the period of limitations under*
33 *this section during the pendency of any action described in RSA 564-B:10-1014(c)(3).*

34 (e) *Nothing in this section shall limit the authority of the attorney general*
35 *otherwise provided by common law or other statute.*

36 13 New Section; Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee, Trust
37 Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the following new

1 section:

2 564-B:10-1005A Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust
3 Protector.

4 (a) A trustee shall commence a proceeding against a cotrustee or a former trustee for
5 breach of trust within 3 years after the earlier of the date on which the trustee was sent a report that
6 adequately disclosed the existence of a potential claim for breach of trust or the removal, resignation,
7 or death of the cotrustee or former trustee. A trustee, however, shall not commence a proceeding
8 against a cotrustee or a former trustee if, under RSA 564-B:10-1005, none of the beneficiaries may
9 commence a proceeding against the cotrustee or former trustee for such breach of trust.

10 (b) A trust advisor or trust protector shall commence a proceeding against a trustee for
11 breach of trust within 3 years after earlier of the date on which the trust advisor or trust protector
12 was sent a report that adequately disclosed the existence of a potential claim for breach of trust or
13 the removal, resignation, or death of the trustee. A trust advisor or trust protector, however, shall
14 not commence a proceeding against a trustee for breach of trust if, under RSA 564-B:10-1005, none
15 of the beneficiaries may commence a proceeding against the trustee for such breach of trust.

16 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
17 provides sufficient information so that the recipient knows of the potential claim or should have
18 inquired into its existence.

19 (d) The periods of limitation under subsection (a) shall not be tolled except by either a
20 written agreement of the trustees or, in the case of a possible claim against a former trustee, the
21 trustees and the former trustee or a court order. The periods of limitation under subsection (b) shall
22 not be tolled except by a written agreement of the trust advisors, trust protectors, and trustees or a
23 court order. Without limiting the circumstances under which a court may issue an order tolling the
24 period of limitations, a court may issue an order tolling the period of limitations under this section
25 during the pendency of any action described in RSA 564-B:10-1014(c)(3).

26 14 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B
27 by inserting after section 10-1013 the following new section:

28 564-B:10-1014 Enforcement of No-Contest Provision.

29 (a) For the purposes of this section, a "no-contest provision" of a trust instrument means
30 a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such
31 trust who, directly or indirectly, initiates or otherwise pursues:

32 (1) Any action to contest the validity of the trust or the terms of the trust;

33 (2) Any action to set aside or vary the terms of the trust;

34 (3) Any action to challenge the acts of the trustee or other fiduciary of the trust in
35 the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

36 (4) Any other act or proceedings to frustrate or defeat the settlor's intent as
37 expressed in the terms of the trust.

1 (b) A no-contest provision shall be enforceable according to the express terms of the no-
2 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
3 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
4 beneficiary's interest in the trust under the terms of the no-contest provision.

5 (c) Subsection (b) shall not apply to:

6 (1) Any action brought by the trustee or any other fiduciary serving under the terms
7 of the trust, provided that the trustee or other fiduciary is not a person against whom the no-contest
8 provision would be enforced for bringing such action;

9 (2) Any agreement among the beneficiaries and other interested parties in
10 settlement of a dispute or resolution of any other matter relating to the trust, including without
11 limitation any nonjudicial settlement agreement;

12 (3) Any action to determine whether a proposed or pending motion, petition, or other
13 proceeding constitutes a contest within the meaning of a no-contest provision;

14 (4) Any action brought by a beneficiary or on behalf of any such beneficiary for a
15 construction or interpretation of the terms of the trust; or

16 (5) Any action brought by the attorney general for a construction or interpretation of
17 a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting
18 to penalize a charity or charitable interest for contesting the trust if probable cause exists for
19 instituting proceedings.

20 (d) It is the intent of this section to enforce the settlor's intent as reflected in a no-
21 contest provision to the greatest extent possible. The provisions of this section shall be construed
22 and applied in a manner consistent with such intent.

23 (e) This section shall apply to all judicial proceedings concerning the enforcement or
24 interpretation of a no-contest provision commenced on or after its effective date.

25 15 New Section; Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust
26 Protector. Amend RSA 564-B by inserting after section 12-1205 the following new section:

27 564-B:12-1206 Limitation of Action Against a Trust Advisor or Trust Protector.

28 (a) A beneficiary shall commence a proceeding against a trust advisor or trust protector
29 for breach of trust within the earlier of:

30 (1) One year after the date on which the beneficiary or the beneficiary's
31 representative was sent a report that adequately disclosed the existence of a potential claim for
32 breach of trust and informed the beneficiary of the time allowed for commencing a proceeding; or

33 (2) Three years after the date on which the beneficiary or the beneficiary's
34 representative was sent a report that adequately disclosed the existence of a potential claim for
35 breach of trust.

36 (b) A fiduciary shall commence a proceeding against a trust advisor or trust protector for
37 breach of trust within 3 years after the date on which the fiduciary was sent a report that adequately

1 disclosed the existence of a potential claim for breach of trust; provided, however, that a fiduciary
2 shall not commence a proceeding against a trust advisor or trust protector for breach of trust if,
3 under subsection (a), none of the beneficiaries may commence a proceeding against the trust advisor
4 or trust protector for such breach of trust. For purposes of this section, a "fiduciary" means any
5 trustee, trust advisor, or trust protector.

6 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
7 provides sufficient information so that the recipient knows of the potential claim or should have
8 inquired into its existence.

9 (d) The periods of limitation under subsection (a) shall not be tolled for any reason,
10 except by a written agreement of the qualified beneficiaries and each of the trust advisors and trust
11 protectors against whom a beneficiary may commence a proceeding or a court order. The periods of
12 limitation under subsection (b) shall not be tolled for any reason, except by a written agreement of
13 the trustees and each of the trust advisors and trust protectors against whom a fiduciary may
14 commence a proceeding or a court order. Without limiting the circumstances under which a court
15 may issue an order tolling the period of limitations, a court may issue an order tolling the period of
16 limitations under this section during the pendency of any action described in RSA 564-B:10-
17 1014(c)(3).

18 (e) Nothing in this section shall limit the authority of the attorney general provided by
19 common law or other statute.

20 16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-(b)
21 to read as follows:

22 (a) Unless expressly prohibited by the terms of the trust, a trustee may convert a trust
23 into a unitrust as described in this section if all of the following apply:

24 (1) The trustee determines that the conversion will enable the trustee to better carry
25 out the intent of the settlor ~~[or testator]~~, *as defined in RSA 564-B:1-103(15)*, and the purposes of
26 the trust.

27 (2) The trustee gives written notice of the trustee's intention to convert the trust into
28 a unitrust and of how the unitrust will operate, including what initial decisions the trustee will
29 make under this section, to all the ~~[sui-juris]~~ *qualified* beneficiaries, *as defined in RSA 564-B:1-
30 103(12) and including the director of charitable trusts if the director is a "qualified
31 beneficiary" of the trust under RSA 564-B:1-110(c).* ~~[who:~~

32 ~~(A) Are currently eligible to receive income from the trust;~~

33 ~~(B) Would be eligible, if a power of appointment were not exercised, to receive
34 income from the trust if the interest of all the beneficiaries eligible to receive income under
35 subparagraph (a)(2)(A) were to terminate immediately before the giving of notice; and~~

36 ~~(C) Would receive, if no powers of appointment were exercised, a distribution of
37 principal if the trust were to terminate immediately prior to the giving of notice.~~

1 ~~(3) There is at least one sui juris beneficiary under subparagraph (a)(2)(A) and at~~
 2 ~~least one sui juris beneficiary under subparagraph (a)(2)(B).~~

3 ~~(4) No sui-juris~~ (3) *No qualified* beneficiary objects to the conversion to a unitrust
 4 in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph
 5 (a)(2).

6 (b)(1) The trustee may petition the court to approve the conversion to a unitrust if ~~any~~
 7 ~~of the following apply:~~

8 ~~(A) A beneficiary timely objects to the conversion to a unitrust.~~

9 ~~(B) There are no sui-juris beneficiaries under subparagraph (a)(2)(A).~~

10 ~~(C) There are no sui-juris beneficiaries under subparagraph (a)(2)(C).~~ a
 11 *qualified beneficiary timely objects to the conversion of the unitrust.*

12 (2) A *qualified* beneficiary may request a trustee to convert to a unitrust. If the
 13 trustee does not convert, the beneficiary may petition the court to order the conversion.

14 (3) The court shall approve the conversion or direct the requested conversion if the
 15 court concludes that the conversion will enable the trustee to better carry out the intent of the settlor
 16 ~~[or testator]~~ and the purposes of the trust.

17 17 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-(l) to
 18 read as follows:

19 (j)(1) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ (i)(6) applies to a trustee and there is more
 20 than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the
 21 exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

22 (2) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ (i)(6) applies to all the trustees, the
 23 trustees may petition the court to direct a conversion.

24 (k) A trustee may permanently release the power conferred by paragraph (a) or may
 25 release the power conferred by paragraph (a) for a specified period including a period measured by
 26 the life of an individual to convert to a unitrust if any of the following apply:

27 (1) The trustee is uncertain about whether possessing or exercising the power will
 28 cause a result described in subparagraph (i)(3), (i)(4), or (i)(5).

29 (2) The trustee determines that possessing or exercising the power will or may
 30 deprive the trust of a tax benefit or impose a tax burden not described in paragraph (i).

31 (l) ~~[The provisions of RSA 564-B:3-304 shall apply with respect to beneficiaries other~~
 32 ~~than sui-juris beneficiaries]~~ *For the purposes of this section, a person may represent and bind*
 33 *another person in accordance with Article 3 of RSA 564-B.*

34 18 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor. Amend
 35 RSA 564-D:5 to read as follows:

36 564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the
 37 qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if [such]

1 *the* transferor serves as [the] a trust advisor, his or her rights and powers as a trust advisor shall be
2 limited to: [~~the right to disapprove distributions from the trust and the right to consent to a trustee's~~
3 ~~action or inaction relating to the investment of trust assets~~] *(i) the right to direct, consent to, or*
4 *veto a fiduciary's actual or proposed investment decisions; and (ii) the rights and powers*
5 *described in RSA 564-D:2, II excluding any power that would enable the transferor, acting*
6 *as trust advisor, to direct, consent to, veto, or otherwise participate in a distribution by the*
7 *trustee to or for the benefit of the transferor, the transferor's creditors, the transferor's*
8 *estate, or the creditors of the transferor's estate.*

9 19 Effective Date. This act shall take effect 60 days after its passage.

SB 50 - AS AMENDED BY THE HOUSE

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AN ACT making various changes to laws regulating trusts and trust companies.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Sen. Odell, Dist 8; Sen. Gallus, Dist 1; Sen. Houde, Dist 5; Rep. Hunt, Ches 7

COMMITTEE: Commerce

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14 551:22 Enforcement of No-Contest Provision.

15 I. For the purposes of this section, a "no-contest provision" means a provision of a will that, if
16 given effect, would reduce or eliminate the interest of any beneficiary of such will who, directly or
17 indirectly, initiates or otherwise pursues:

18 (a) Any action to contest the admission or validity of such will;

19 (b) Any action to set aside or vary the terms of such will;

20 (c) Any action to challenge the acts of the executor of such will or other fiduciary of such
21 will in the performance of such executor's or other fiduciary's duties as described in such will; or

22 (d) Any other act or proceedings to frustrate or defeat the testator's intent as expressed
23 in the terms of such will.

24 II. A no-contest provision shall be enforceable according to the express terms of the no-
25 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
26 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
27 beneficiary's interest in the will under the terms of the no-contest provision. A no-contest provision
28 shall be unenforceable to the extent that the will is invalid because of fraud, duress, undue influence,
29 lack of testamentary capacity, or any other reason. In the case of an action solely to challenge the

1 acts of the executor or other fiduciary of the will, a no-contest provision shall be unenforceable to the
 2 extent that the executor or other fiduciary has committed a breach of fiduciary duties or breach of
 3 trust.

4 III. Paragraph II of this section shall not apply to:

5 (a) Any action brought by the executor or other fiduciary of a will that incorporates a no-
 6 contest provision, unless the executor or other fiduciary is a beneficiary against whom the no-contest
 7 provision is otherwise enforceable;

8 (b) Any agreement among the beneficiaries and any other interested persons in
 9 settlement of a dispute or resolution of any other matter relating to such will;

10 (c) Any action to determine whether a proposed or pending motion, petition, or other
 11 proceeding constitutes a contest within the meaning of a no-contest provision;

12 (d) Any action brought by a beneficiary under a will or on behalf of any such beneficiary
 13 for a construction or interpretation of the will; or

14 (e) Any action brought by the attorney general for a construction or interpretation of a
 15 will containing a charitable trust or charitable bequests or if a provision exists in a will or trust
 16 purporting to penalize a charity or charitable interest for contesting the will or trust or instituting
 17 other proceedings relating to the estate or trust if probable cause exists for instituting proceedings.

18 IV. It is the intent of this section to enforce the testator's intentions as reflected in a no-
 19 contest provision described in paragraph II of this section to the greatest extent possible. The
 20 provisions of this section shall be construed and applied in a manner consistent with such intent.

21 V. This section shall apply to all judicial proceedings concerning the enforcement or
 22 interpretation of a no-contest provision commenced on or after its effective date.

23 3 Testamentary Trusts; Bond and Surety Requirements for Trustees. Amend RSA 564:1 to read
 24 as follows:

25 564:1 Bonds.

26 I. Every trustee to whom any estate, real or personal, is devised in trust for any person shall
 27 give bond to the judge of probate, with sufficient sureties, or without sureties in estates of five
 28 thousand dollars or less where the judge finds it in the interest of the estate, in such sum as the
 29 judge may order, except as provided in RSA 564:2, conditioned:

30 [I.] (a) That [he] *the trustee* will make and file in the probate office a true inventory of the
 31 real estate, goods, chattels, rights and credits so devised, at such time as the judge shall order.

32 [II.] (b) That [he] *the trustee* will annually render an account to the judge of the annual
 33 income and profit thereof, unless excused by the judge of probate as provided by law.

34 [III.] (c) That at the expiration of the trust [he] *the trustee* will adjust and settle his *or her*
 35 account with the judge, and pay and deliver over all balances, money, and property with which [he]
 36 *the trustee* has been intrusted.

37 [IV.] (d) That [he] *the trustee* will faithfully execute the trust according to the true intent of

1 the devisor.

2 *II. Except as provided in RSA 564:19, IV, this section shall not apply with respect to*
3 *any trust exempted from the accounting requirements under RSA 564:19, II.*

4 4 Testamentary Trusts; Bonds of Banks. Amend RSA 564:5 to read as follows:

5 564:5 Bond of Banks. *Except as otherwise provided in RSA 564:1, such trust company or*
6 *national bank when appointed trustee shall give a surety company bond in such sum as the judge*
7 *may order.*

8 5 Testamentary Trusts; Filing Accounts. Amend RSA 564:19 to read as follows:

9 564:19 Filing Account.

10 *I. Except as otherwise provided in paragraph II, every trustee shall file in the probate*
11 *court an annual account of administration, unless upon petition [he] the trustee is excused by the*
12 *judge of probate; but in no event shall [he] the trustee be excused for a period longer than [three] 3*
13 *years, except that in cases where such filing may be impractical and may work financial hardship to*
14 *the trust estate the judge of probate upon written approval of the attorney general may extend said*
15 *period not exceeding in the aggregate [five] 5 years. Such annual account of administration provided*
16 *for herein may be allowed by the judge of probate without publication unless he or she shall*
17 *otherwise order. Before giving notice to settle a final account the trustee shall file it in the probate*
18 *office and shall cause the fact of such filing to appear in the notice and shall at the same time file a*
19 *statement of the names and residences of the beneficiaries in the trust estate.*

20 *II. The following trusts created under will shall be exempt from the accounting*
21 *requirements of paragraph I:*

22 (a) *A trust created under a will admitted to probate on or after January 1, 2012,*
23 *shall be exempt from the accounting requirements of paragraph I if, under the terms of the*
24 *will, the testator expressly waives the requirement for annual accountings.*

25 (b) *A trust created under any will shall be exempt from the accounting*
26 *requirements of paragraph I if all of the interested persons agree to waive the trustee's*
27 *filing of accounts, and the probate court finds that the waiver of filing of accounts does not*
28 *violate a material purpose of the trust. The interested persons may agree to waive the*
29 *trustee's filing of accounts by means of a nonjudicial settlement agreement within the*
30 *meaning of RSA 564-B:1-111. For purposes of this subparagraph, the trustee's filing of*
31 *accounts is not a material purpose of a trust created under a will unless, under the terms*
32 *of the will, there is a clear and express manifestation of the testator's intent that the trust*
33 *shall be subject to full judicial supervision, including a requirement that the trustee file*
34 *accounts with the court.*

35 (c) *If the court grants a petition for the acceptance of jurisdiction over a trust*
36 *with respect to which a court of another state has released its jurisdiction, and the court*
37 *releasing jurisdiction did not require the trustee or trustees of the trust to file accounts*

1 *with that court, or required that the trustee or trustees of the trust file accounts less*
2 *frequently than annually, then the court accepting jurisdiction over such trust shall not*
3 *require accountings whatsoever, or shall require accountings less frequently than*
4 *annually, as the case may be, on the same basis as may have been required by the court*
5 *releasing jurisdiction.*

6 *III. A trust created under a will described in paragraph II, with respect to which no*
7 *judicial accountings will be required, shall in all respects be subject to the beneficiary*
8 *reporting and information requirements of RSA 564-B, the Uniform Trust Code, and all*
9 *other pertinent provisions of such code, except to the extent that a contrary provision*
10 *appears in the will under which the trust was created, provided that such contrary*
11 *provision does not violate any of the mandatory rules of RSA 564-B:1-105. For these*
12 *purposes, the pertinent terms of the will shall have the same meaning as "terms of a trust"*
13 *and the "will creating the trust" shall have the same meaning as "trust instrument", as*
14 *defined in RSA 564-B:1-103(19) and (20), respectively.*

15 *IV. Nothing in this section shall be interpreted to modify or limit the jurisdiction or*
16 *authority of the probate court to require any trustee of a trust created under a will to make*
17 *a judicial accounting or to give bond, either upon a motion on interested person, or on the*
18 *probate court's own action.*

19 *V. For purposes of this section, an "interested person" means any person who has*
20 *standing to petition the court to order the trustee to account, including the director of*
21 *charitable trusts if, with respect to the trust, the director has the rights of a qualified*
22 *beneficiary under RSA 564-B:1-110(c).*

23 *VI. Nothing in this section shall limit the authority of the attorney general or the*
24 *department of health and human services otherwise provided by common law or other*
25 *statute.*

26 *6 New Section; Uniform Trust Code; Application to Testamentary Trusts. Amend RSA 564 by*
27 *inserting after section 24 the following new section:*

28 *564:25 Application of the Uniform Trust Code. The provisions of RSA 564-B, the Uniform Trust*
29 *Code, shall apply to all trusts under will governed by this chapter, except to the extent that any*
30 *provisions of the Uniform Trust Code conflict with the express provisions of this chapter, in which*
31 *case the provisions of this chapter shall control.*

32 *7 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-*
33 *105(b)(3) to read as follows:*

34 *(3) the requirement that a trust and its terms be for the benefit of its beneficiaries*
35 *as their interests are defined under the terms of the trust, and that the trust have a purpose*
36 *that is lawful, not contrary to public policy, and possible to achieve;*

37 *8 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-112*

1 to read as follows:

2 564-B:1-112 Rules of Construction. The rules of construction that apply in this state to the
 3 interpretation of and disposition of property by will also apply as appropriate to the interpretation of
 4 the terms of a trust and the disposition of the trust property. *For the purposes of determining*
 5 *the benefit of the beneficiaries, the settlor's intent as expressed in the terms of the trust*
 6 *shall be paramount.*

7 9 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:2-
 8 201(b) to read as follows:

9 (b) A trust, other than a trust created by a will~~[-is not]~~ *subject to the provisions of*
 10 *RSA 564:19, shall not be* subject to continuing judicial supervision unless ordered by the court.

11 10 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:4-404
 12 to read as follows:

13 564-B:4-404 Trust Purposes. A trust may be created only to the extent its purposes are lawful,
 14 not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of
 15 its beneficiaries, *as their interests are defined under the terms of the trust.*

16 11 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005 to
 17 read as follows:

18 564-B:10-1005 Limitation of Action Against a Trustee by a Beneficiary.

19 (a) A beneficiary may not commence a proceeding against a trustee for breach of trust
 20 more than one year after the date the beneficiary or a representative of the beneficiary was sent a
 21 report that adequately disclosed the existence of a potential claim for breach of trust and informed
 22 the beneficiary of the time allowed for commencing a proceeding.

23 ~~(b) A report adequately discloses the existence of a potential claim for breach of trust if it~~
 24 ~~provides sufficient information so that the beneficiary or representative knows of the potential claim~~
 25 ~~or should have inquired into its existence.~~

26 (c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a
 27 trustee for breach of trust must be commenced within 3 years after the first to occur of:

- 28 (1) The removal, resignation, or death of the trustee;
 29 (2) The termination of the beneficiary's interest in the trust; ~~[or]~~
 30 (3) The termination of the trust~~[-];~~ or

31 ~~(4) The date on which the beneficiary or a representative of the beneficiary~~
 32 ~~was sent a report that adequately disclosed the existence of a potential claim for breach of~~
 33 ~~trust.~~

34 (d) *The periods of limitation under this section shall not be tolled for any*
 35 *reason, except by a written agreement of the trustees and qualified beneficiaries or a court*
 36 *order. Without limiting the circumstances under which a court may issue an order tolling*
 37 *the period of limitations, a court may issue an order tolling the period of limitations under*

1 *this section during the pendency of any action described in RSA 564-B:10-1014(c)(3).*

2 *(e) Nothing in this section shall limit the authority of the attorney general or*
3 *the department of health and human services otherwise provided by common law or other*
4 *statute.*

5 12 New Section; Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee, Trust
6 Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the following new
7 section:

8 564-B:10-1005A Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust
9 Protector.

10 (a) A trustee shall commence a proceeding against a cotrustee or a former trustee for
11 breach of trust within 3 years after the earlier of the date on which the trustee was sent a report that
12 adequately disclosed the existence of a potential claim for breach of trust or the removal, resignation,
13 or death of the cotrustee or former trustee. A trustee, however, shall not commence a proceeding
14 against a cotrustee or a former trustee if, under RSA 564-B:10-1005, none of the beneficiaries may
15 commence a proceeding against the cotrustee or former trustee for such breach of trust.

16 (b) A trust advisor or trust protector shall commence a proceeding against a trustee for
17 breach of trust within 3 years after earlier of the date on which the trust advisor or trust protector
18 was sent a report that adequately disclosed the existence of a potential claim for breach of trust or
19 the removal, resignation, or death of the trustee. A trust advisor or trust protector, however, shall
20 not commence a proceeding against a trustee for breach of trust if, under RSA 564-B:10-1005, none
21 of the beneficiaries may commence a proceeding against the trustee for such breach of trust.

22 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
23 provides sufficient information so that the recipient knows of the potential claim or should have
24 inquired into its existence.

25 (d) The periods of limitation under subsection (a) shall not be tolled except by either a
26 written agreement of the trustees or, in the case of a possible claim against a former trustee, the
27 trustees and the former trustee or a court order. The periods of limitation under subsection (b) shall
28 not be tolled except by a written agreement of the trust advisors, trust protectors, and trustees or a
29 court order. Without limiting the circumstances under which a court may issue an order tolling the
30 period of limitations, a court may issue an order tolling the period of limitations under this section
31 ~~during the pendency of any action described in RSA 564-B:10-1014(c)(3).~~

32 13 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B
33 by inserting after section 10-1013 the following new section:

34 564-B:10-1014 Enforcement of No-Contest Provision.

35 (a) For the purposes of this section, a "no-contest provision" of a trust instrument means
36 a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such
37 trust who, directly or indirectly, initiates or otherwise pursues:

1 (1) Any action to contest the validity of the trust or the terms of the trust;

2 (2) Any action to set aside or vary the terms of the trust;

3 (3) Any action to challenge the acts of the trustee or other fiduciary of the trust in
4 the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

5 (4) Any other act or proceedings to frustrate or defeat the settlor's intent as
6 expressed in the terms of the trust.

7 (b) A no-contest provision shall be enforceable according to the express terms of the no-
8 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
9 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
10 beneficiary's interest in the trust under the terms of the no-contest provision. A no-contest provision
11 shall be unenforceable to the extent that the trust is invalid because of fraud, duress, undue
12 influence, lack of testamentary capacity, or any other reason. In the case of an action solely to
13 challenge the acts of the trustee or other fiduciary of the trust, a no-contest provision shall be
14 unenforceable to the extent that the trustee or other fiduciary has committed a breach of fiduciary
15 duties or breach of trust.

16 (c) Subsection (b) shall not apply to:

17 ~~----- (1) Any action brought by the trustee or any other fiduciary serving under the terms~~
18 ~~of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest~~
19 ~~provision is otherwise enforceable;~~

20 (2) Any agreement among the beneficiaries and any other interested persons in
21 settlement of a dispute or resolution of any other matter relating to the trust, including without
22 limitation any nonjudicial settlement agreement;

23 ~~----- (3) Any action to determine whether a proposed or pending motion, petition, or other~~
24 ~~proceeding constitutes a contest within the meaning of a no-contest provision;~~

25 (4) Any action brought by a beneficiary or on behalf of any such beneficiary for a
26 construction or interpretation of the terms of the trust; or

27 (5) Any action brought by the attorney general for a construction or interpretation of
28 a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting
29 to penalize a charity or charitable interest for contesting the trust if probable cause exists for
30 instituting proceedings.

31 ~~----- (d) It is the intent of this section to enforce the settlor's intent as reflected in a no-~~
32 ~~contest provision to the greatest extent possible. The provisions of this section shall be construed~~
33 ~~and applied in a manner consistent with such intent.~~

34 (e) This section shall apply to all judicial proceedings concerning the enforcement or
35 interpretation of a no-contest provision commenced on or after its effective date.

36 14 New Section; Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust
37 Protector. Amend RSA 564-B by inserting after section 12-1205 the following new section:

1 564-B:12-1206 Limitation of Action Against a Trust Advisor or Trust Protector.

2 (a) A beneficiary shall commence a proceeding against a trust advisor or trust protector
3 for breach of trust within the earlier of:

4 (1) One year after the date on which the beneficiary or the beneficiary's
5 representative was sent a report that adequately disclosed the existence of a potential claim for
6 breach of trust and informed the beneficiary of the time allowed for commencing a proceeding; or

7 (2) Three years after the date on which the beneficiary or the beneficiary's
8 representative was sent a report that adequately disclosed the existence of a potential claim for
9 breach of trust.

10 (b) A fiduciary shall commence a proceeding against a trust advisor or trust protector for
11 breach of trust within 3 years after the date on which the fiduciary was sent a report that adequately
12 disclosed the existence of a potential claim for breach of trust; provided, however, that a fiduciary
13 shall not commence a proceeding against a trust advisor or trust protector for breach of trust if,
14 under subsection (a), none of the beneficiaries may commence a proceeding against the trust advisor
15 or trust protector for such breach of trust. For purposes of this section, a "fiduciary" means any
16 trustee, trust advisor, or trust protector.

17 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
18 provides sufficient information so that the recipient knows of the potential claim or should have
19 inquired into its existence.

20 (d) The periods of limitation under subsection (a) shall not be tolled for any reason,
21 except by a written agreement of the qualified beneficiaries and each of the trust advisors and trust
22 protectors against whom a beneficiary may commence a proceeding or a court order. The periods of
23 limitation under subsection (b) shall not be tolled for any reason, except by a written agreement of
24 the trustees and each of the trust advisors and trust protectors against whom a fiduciary may
25 commence a proceeding or a court order. Without limiting the circumstances under which a court
26 may issue an order tolling the period of limitations, a court may issue an order tolling the period of
27 limitations under this section during the pendency of any action described in RSA 564-B:10-
28 1014(c)(3).

29 (e) Nothing in this section shall limit the authority of the attorney general or the
30 department of health and human services provided by common law or other statute.

31 15 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-(b)
32 to read as follows:

33 (a) Unless expressly prohibited by the terms of the trust, a trustee may convert a trust
34 into a unitrust as described in this section if all of the following apply:

35 (1) The trustee determines that the conversion will enable the trustee to better carry
36 out the intent of the settlor [~~or testator~~], *as defined in RSA 564-B:1-103(15)*, and the purposes of
37 the trust.

1 (2) The trustee gives written notice of the trustee's intention to convert the trust into
 2 a unitrust and of how the unitrust will operate, including what initial decisions the trustee will
 3 make under this section, to all the ~~[sui-juris]~~ *qualified* beneficiaries, *as defined in RSA 564-B:1-*
 4 *103(12) and including the director of charitable trusts if, with respect to the trust, the*
 5 *director has the right of a "qualified beneficiary" under RSA 564-B:1-110(c).* ~~[who:~~

6 (A) ~~Are currently eligible to receive income from the trust;~~

7 (B) ~~Would be eligible, if a power of appointment were not exercised, to receive~~
 8 ~~income from the trust if the interest of all the beneficiaries eligible to receive income under~~
 9 ~~subparagraph (a)(2)(A) were to terminate immediately before the giving of notice; and~~

10 (C) ~~Would receive, if no powers of appointment were exercised, a distribution of~~
 11 ~~principal if the trust were to terminate immediately prior to the giving of notice.~~

12 (3) ~~There is at least one sui-juris beneficiary under subparagraph (a)(2)(A) and at~~
 13 ~~least one sui-juris beneficiary under subparagraph (a)(2)(B).~~

14 (4) ~~No sui-juris]~~ (3) *No qualified* beneficiary objects to the conversion to a unitrust
 15 in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph
 16 (a)(2).

17 (b)(1) The trustee may petition the court to approve the conversion to a unitrust if ~~[any~~
 18 ~~of the following apply:~~

19 (A) ~~A beneficiary timely objects to the conversion to a unitrust.~~

20 (B) ~~There are no sui-juris beneficiaries under subparagraph (a)(2)(A).~~

21 (C) ~~There are no sui-juris beneficiaries under subparagraph (a)(2)(C).]~~ *a*
 22 *qualified beneficiary timely objects to the conversion of the unitrust.*

23 (2) A *qualified* beneficiary may request a trustee to convert to a unitrust. If the
 24 trustee does not convert, the beneficiary may petition the court to order the conversion.

25 (3) The court shall approve the conversion or direct the requested conversion if the
 26 court concludes that the conversion will enable the trustee to better carry out the intent of the settlor
 27 ~~[or testator]~~ and the purposes of the trust.

28 16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-(l) to
 29 read as follows:

30 (j)(1) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ (i)(6) applies to a trustee and there is more
 31 than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the
 32 exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

33 (2) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ (i)(6) applies to all the trustees, the
 34 trustees may petition the court to direct a conversion.

35 (k) A trustee may permanently release the power conferred by paragraph (a) or may
 36 release the power conferred by paragraph (a) for a specified period including a period measured by
 37 the life of an individual to convert to a unitrust if any of the following apply:

1 (1) The trustee is uncertain about whether possessing or exercising the power will
2 cause a result described in subparagraph (i)(3), (i)(4), or (i)(5).

3 (2) The trustee determines that possessing or exercising the power will or may
4 deprive the trust of a tax benefit or impose a tax burden not described in paragraph (i).

5 (1) ~~[The provisions of RSA 564-B:3-304 shall apply with respect to beneficiaries other~~
6 ~~than sui-juris beneficiaries]~~ **For the purposes of this section, a person may represent and bind**
7 **another person in accordance with Article 3 of RSA 564-B.**

8 17 Uniform Trust Code; Conforming Change. Amend RSA 564-B:3-304 to read as follows:

9 564-B:3-304 Representation by Person Having Substantially Identical Interest. Unless
10 otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or
11 location is unknown and not reasonably ascertainable, may be represented by and bound by another
12 having a substantially identical interest with respect to the particular question or dispute, but only
13 to the extent there is no conflict of interest between the representative and the person represented.
14 ~~[Nothing in this section shall expand or limit the virtual representation of sui-juris beneficiaries for~~
15 ~~purposes of RSA 564-C:1-106.]~~

16 18 New Paragraph; Uniform Trust Code; Notice for Minors and Incapacitated Persons. Amend
17 RSA 564-B:1-109 by inserting after paragraph (d) the following new paragraph:

18 (e) Notice to any minor or incapacitated individual shall not be effective unless such
19 notice is sent to a person who represents and can bind such minor or incapacitated individual in
20 accordance with the provisions of Article 3 of this chapter.

21 19 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor. Amend
22 RSA 564-D:5 to read as follows:

23 564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the
24 qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if such
25 transferor serves as the trust advisor, his or her rights and powers as a trust advisor shall be limited
26 to ~~[the right to disapprove distributions from the trust and the right to consent to a trustee's action~~
27 ~~or inaction relating to the investment of trust assets.]:~~

28 **I. The right to direct, consent to, or veto a fiduciary's actual or proposed investment**
29 **decisions; and**

30 **II. The rights and powers described in RSA 564-D:2, II excluding any power that**
31 **would enable the transferor, acting as trust advisor, to direct, consent to, veto, or otherwise**
32 **participate in a distribution by the trustee to or for the benefit of the transferor, the**
33 **transferor's creditors, the transferor's estate, or the creditors of the transferor's estate.**

34 20 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Amendment to SB 50

Not Adopted

1 Amend RSA 551:22, II as inserted by section 2 of the bill by replacing it with the following:

2

3 II. A no-contest provision shall be enforceable according to the express terms of the no-
4 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
5 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
6 beneficiary's interest in the will under the terms of the no-contest provision. A no-contest provision
7 shall be unenforceable to the extent that the will is invalid because of fraud, duress, undue influence,
8 lack of testamentary capacity, or any other reason. In the case of an action solely to challenge the
9 acts of the executor or other fiduciary of the will, a no-contest provision is unenforceable to the
10 extent that the executor or other fiduciary has committed a breach of fiduciary duties or breach of
11 trust.

12

13 Amend RSA 551:22, III(a)-(b) as inserted by section 2 of the bill by replacing it with the following:

14

15 (a) Any action brought by the executor or other fiduciary of a will that incorporates a no-
16 contest provision, unless the executor or other fiduciary is a beneficiary against whom the no-contest
17 provision if otherwise enforceable;

18 (b) Any agreement among the beneficiaries and any other interested persons in
19 settlement of a dispute or resolution of any other matter relating to such will;

20

21 Amend RSA 564:1, II as inserted by section 3 of the bill by replacing it with the following:

22

23 ***II. Except as provided in RSA 564:19, IV, this section shall not apply with respect to***
24 ***any trust exempted from the accounting requirements under RSA 564:19, II.***

25

26 Amend RSA 564:19 as inserted by section 5 of the bill by replacing it with the following:

27

28 564:19 Filing Account.

29

30 ***I. Except as otherwise provided in paragraph II, every trustee shall file in the probate***
31 ***court an annual account of administration, unless upon petition [he] the trustee is excused by the***
32 ***judge of probate; but in no event shall [he] the trustee be excused for a period longer than [three] 3***
years, except that in cases where such filing may be impractical and may work financial hardship to

1 the trust estate the judge of probate upon written approval of the attorney general may extend said
2 period not exceeding in the aggregate [five] 5 years. Such annual account of administration provided
3 for herein may be allowed by the judge of probate without publication unless he *or she* shall
4 otherwise order. Before giving notice to settle a final account the trustee shall file it in the probate
5 office and shall cause the fact of such filing to appear in the notice and shall at the same time file a
6 statement of the names and residences of the beneficiaries in the trust estate.

7 *II. The following trusts created under will shall be exempt from the accounting*
8 *requirements of paragraph I:*

9 *(a) A trust created under a will admitted to probate on or after January 1, 2012,*
10 *shall be exempt from the accounting requirements of paragraph I if, under the terms of the*
11 *will, the testator expressly waives the requirement for annual accountings.*

12 *(b) A trust created under any will shall be exempt from the accounting*
13 *requirements of paragraph I if all of the interested persons agree to waive the trustee's*
14 *filing of accounts, and the probate court finds that the waiver of filing of accounts does not*
15 *violate a material purpose of the trust. The interested persons may agree to waive the*
16 *trustee's filing of accounts by means of a nonjudicial settlement agreement within the*
17 *meaning of RSA 564-B:1-111. For purposes of this subparagraph, the trustee's filing of*
18 *accounts is not a material purpose of a trust created under a will unless, under the terms*
19 *of the will, there is a clear and express manifestation of the testator's intent that the trust*
20 *shall be subject to full judicial supervision, including a requirement that the trustee file*
21 *accounts with the court.*

22 *(c) If the court grants a petition for the acceptance of jurisdiction over a trust*
23 *with respect to which a court of another state has released its jurisdiction, and the court*
24 *releasing jurisdiction did not require the trustee or trustees of the trust to file accounts*
25 *with that court, or required that the trustee or trustees of the trust file accounts less*
26 *frequently than annually, then the court accepting jurisdiction over such trust shall not*
27 *require accountings whatsoever, or shall require accountings less frequently than*
28 *annually, as the case may be, on the same basis as may have been required by the court*
29 *releasing jurisdiction.*

30 *III. A trust created under a will described in paragraph II, with respect to which no*
31 *judicial accountings will be required, shall in all respects be subject to the beneficiary*
32 *reporting and information requirements of RSA 564-B, the Uniform Trust Code, and all*
33 *other pertinent provisions of such code, except to the extent that a contrary provision*
34 *appears in the will under which the trust was created, provided that such contrary*
35 *provision does not violate any of the mandatory rules of RSA 564-B:1-105. For these*
36 *purposes, the pertinent terms of the will shall have the same meaning as "terms of a trust"*
37 *and the "will creating the trust" shall have the same meaning as "trust instrument", as*

1 *defined in RSA 564-B:1-103(19) and (20), respectively. Nothing in this paragraph shall be*
2 *interpreted to limit the ability of persons with standing to petition the probate court*
3 *having jurisdiction over a trust under will to require any trustee of that will to make a*
4 *judicial accounting, or the jurisdiction of any such court to require an accounting on its*
5 *own initiative.*

6 *IV. Nothing in this section shall be interpreted to modify or limit the jurisdiction or*
7 *authority of the probate court to require any trustee of a trust created under a will to make*
8 *a judicial accounting or to give bond, either upon a motion on interested person, or on the*
9 *probate court's own action.*

10 *V. For purposes of this section, an "interested person" means any person who has*
11 *standing to petition the court to order the trustee to account, including the director of*
12 *charitable trusts if, with respect to the trust, the director has the rights of a qualified*
13 *beneficiary under RSA 564-B:1-110(c).*

14 *VI. Nothing in this section shall limit the authority of the attorney general or the*
15 *department of health and human services otherwise provided by common law or other*
16 *statute.*

17

18 Amend RSA 564-B:2-201(b) as inserted by section 9 of the bill by replacing it with the following:

19

20 (b) A trust, other than a trust created by a will, ~~[is not]~~ *subject to the provisions of*
21 *RSA 564:19, shall not be* subject to continuing judicial supervision unless ordered by the court.

22

23 Amend the bill by replacing all after section 10 with the following:

24

25 11 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005 to
26 read as follows:

27 564-B:10-1005 Limitation of Action Against *a* Trustee *by a Beneficiary.*

28 (a) A beneficiary may not commence a proceeding against a trustee for breach of trust
29 more than one year after the date the beneficiary or a representative of the beneficiary was sent a
30 report that adequately disclosed the existence of a potential claim for breach of trust and informed
31 the beneficiary of the time allowed for commencing a proceeding.

32 (b) A report adequately discloses the existence of a potential claim for breach of trust if it
33 provides sufficient information so that the beneficiary or representative knows of the potential claim
34 or should have inquired into its existence.

35 (c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a
36 trustee for breach of trust must be commenced within 3 years after the first to occur of:

37

(1) The removal, resignation, or death of the trustee;



- 1 (2) The termination of the beneficiary's interest in the trust; [~~or~~]
2 (3) The termination of the trust[.]; **or**
3 (4) *The date on which the beneficiary or a representative of the beneficiary*
4 *was sent a report that adequately disclosed the existence of a potential claim for breach of*
5 *trust.*

6 (d) *The periods of limitation under this section shall not be tolled for any*
7 *reason, except by a written agreement of the trustees and qualified beneficiaries or a court*
8 *order. Without limiting the circumstances under which a court may issue an order tolling*
9 *the period of limitations, a court may issue an order tolling the period of limitations under*
10 *this section during the pendency of any action described in RSA 564-B:10-1014(c)(3).*

11 (e) *Nothing in this section shall limit the authority of the attorney general or*
12 *the department of health and human services otherwise provided by common law or other*
13 *statute.*

14 12 New Section; Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee, Trust
15 Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the following new
16 section:

17 564-B:10-1005A Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust
18 Protector.

19 (a) A trustee shall commence a proceeding against a cotrustee or a former trustee for
20 breach of trust within 3 years after the earlier of the date on which the trustee was sent a report that
21 adequately disclosed the existence of a potential claim for breach of trust or the removal, resignation,
22 or death of the cotrustee or former trustee. A trustee, however, shall not commence a proceeding
23 against a cotrustee or a former trustee if, under RSA 564-B:10-1005, none of the beneficiaries may
24 commence a proceeding against the cotrustee or former trustee for such breach of trust.

25 (b) A trust advisor or trust protector shall commence a proceeding against a trustee for
26 breach of trust within 3 years after earlier of the date on which the trust advisor or trust protector
27 was sent a report that adequately disclosed the existence of a potential claim for breach of trust or
28 the removal, resignation, or death of the trustee. A trust advisor or trust protector, however, shall
29 not commence a proceeding against a trustee for breach of trust if, under RSA 564-B:10-1005, none
30 of the beneficiaries may commence a proceeding against the trustee for such breach of trust.

31 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
32 provides sufficient information so that the recipient knows of the potential claim or should have
33 inquired into its existence.

34 (d) The periods of limitation under subsection (a) shall not be tolled except by either a
35 written agreement of the trustees or, in the case of a possible claim against a former trustee, the
36 trustees and the former trustee or a court order. The periods of limitation under subsection (b) shall
37 not be tolled except by a written agreement of the trust advisors, trust protectors, and trustees or a

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1 court order. Without limiting the circumstances under which a court may issue an order tolling the
2 period of limitations, a court may issue an order tolling the period of limitations under this section
3 during the pendency of any action described in RSA 564-B:10-1014(c)(3).

4 13 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B
5 by inserting after section 10-1013 the following new section:

6 564-B:10-1014 Enforcement of No-Contest Provision.

7 (a) For the purposes of this section, a "no-contest provision" of a trust instrument means
8 a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such
9 trust who, directly or indirectly, initiates or otherwise pursues:

10 (1) Any action to contest the validity of the trust or the terms of the trust;

11 (2) Any action to set aside or vary the terms of the trust;

12 (3) Any action to challenge the acts of the trustee or other fiduciary of the trust in
13 the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

14 (4) Any other act or proceedings to frustrate or defeat the settlor's intent as
15 expressed in the terms of the trust.

16 (b) A no-contest provision shall be enforceable according to the express terms of the no-
17 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
18 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
19 beneficiary's interest in the trust under the terms of the no-contest provision. A no-contest provision
20 shall be unenforceable to the extent that the trust is invalid because of fraud, duress, undue
21 influence, lack of testamentary capacity, or any other reason. In the case of an action solely to
22 challenge the acts of the trustee or other fiduciary of the trust, a no-contest provision shall be
23 unenforceable to the extent that the trustee or other fiduciary has committed a breach of fiduciary
24 duties or breach of trust.

25 (c) Subsection (b) shall not apply to:

26 (1) Any action brought by the trustee or any other fiduciary serving under the terms
27 of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest
28 provision is otherwise enforceable;

29 (2) Any agreement among the beneficiaries and any other interested persons in
30 settlement of a dispute or resolution of any other matter relating to the trust, including without
31 limitation any nonjudicial settlement agreement;

32 (3) Any action to determine whether a proposed or pending motion, petition, or other
33 proceeding constitutes a contest within the meaning of a no-contest provision;

34 (4) Any action brought by a beneficiary or on behalf of any such beneficiary for a
35 construction or interpretation of the terms of the trust; or

36 (5) Any action brought by the attorney general for a construction or interpretation of
37 a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting



1 to penalize a charity or charitable interest for contesting the trust if probable cause exists for
2 instituting proceedings.

3 (d) It is the intent of this section to enforce the settlor's intent as reflected in a no-
4 contest provision to the greatest extent possible. The provisions of this section shall be construed
5 and applied in a manner consistent with such intent.

6 (e) This section shall apply to all judicial proceedings concerning the enforcement or
7 interpretation of a no-contest provision commenced on or after its effective date.

8 14 New Section; Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust
9 Protector. Amend RSA 564-B by inserting after section 12-1205 the following new section:

10 564-B:12-1206 Limitation of Action Against a Trust Advisor or Trust Protector.

11 (a) A beneficiary shall commence a proceeding against a trust advisor or trust protector
12 for breach of trust within the earlier of:

13 (1) One year after the date on which the beneficiary or the beneficiary's
14 representative was sent a report that adequately disclosed the existence of a potential claim for
15 breach of trust and informed the beneficiary of the time allowed for commencing a proceeding; or

16 (2) Three years after the date on which the beneficiary or the beneficiary's
17 representative was sent a report that adequately disclosed the existence of a potential claim for
18 breach of trust.

19 (b) A fiduciary shall commence a proceeding against a trust advisor or trust protector for
20 breach of trust within 3 years after the date on which the fiduciary was sent a report that adequately
21 disclosed the existence of a potential claim for breach of trust; provided, however, that a fiduciary
22 shall not commence a proceeding against a trust advisor or trust protector for breach of trust if,
23 under subsection (a), none of the beneficiaries may commence a proceeding against the trust advisor
24 or trust protector for such breach of trust. For purposes of this section, a "fiduciary" means any
25 trustee, trust advisor, or trust protector.

26 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
27 provides sufficient information so that the recipient knows of the potential claim or should have
28 inquired into its existence.

29 (d) The periods of limitation under subsection (a) shall not be tolled for any reason,
30 except by a written agreement of the qualified beneficiaries and each of the trust advisors and trust
31 protectors against whom a beneficiary may commence a proceeding or a court order. The periods of
32 limitation under subsection (b) shall not be tolled for any reason, except by a written agreement of
33 the trustees and each of the trust advisors and trust protectors against whom a fiduciary may
34 commence a proceeding or a court order. Without limiting the circumstances under which a court
35 may issue an order tolling the period of limitations, a court may issue an order tolling the period of
36 limitations under this section during the pendency of any action described in RSA 564-B:10-
37 1014(c)(3).

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1 (e) Nothing in this section shall limit the authority of the attorney general or the
2 department of health and human services provided by common law or other statute.

3 15 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-(b)
4 to read as follows:

5 (a) Unless expressly prohibited by the terms of the trust, a trustee may convert a trust
6 into a unitrust as described in this section if all of the following apply:

7 (1) The trustee determines that the conversion will enable the trustee to better carry
8 out the intent of the settlor [~~or testator~~], *as defined in RSA 564-B:1-103(15)*, and the purposes of
9 the trust.

10 (2) The trustee gives written notice of the trustee's intention to convert the trust into
11 a unitrust and of how the unitrust will operate, including what initial decisions the trustee will
12 make under this section, to all the [sui-juris] *qualified* beneficiaries, *as defined in RSA 564-B:1-*
13 *103(12) and including the director of charitable trusts if, with respect to the trust, the*
14 *director has the right of a "qualified beneficiary" under RSA 564-B:1-110(c).* [who:

15 (A) ~~Are currently eligible to receive income from the trust;~~

16 (B) ~~Would be eligible, if a power of appointment were not exercised, to receive~~
17 ~~income from the trust if the interest of all the beneficiaries eligible to receive income under~~
18 ~~subparagraph (a)(2)(A) were to terminate immediately before the giving of notice; and~~

19 (C) ~~Would receive, if no powers of appointment were exercised, a distribution of~~
20 ~~principal if the trust were to terminate immediately prior to the giving of notice.~~

21 (3) ~~There is at least one sui-juris beneficiary under subparagraph (a)(2)(A) and at~~
22 ~~least one sui-juris beneficiary under subparagraph (a)(2)(B).~~

23 (4) ~~No sui-juris] (3) No qualified~~ beneficiary objects to the conversion to a unitrust
24 in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph
25 (a)(2).

26 (b)(1) The trustee may petition the court to approve the conversion to a unitrust if [any
27 of the following apply:

28 (A) ~~A beneficiary timely objects to the conversion to a unitrust.~~

29 (B) ~~There are no sui-juris beneficiaries under subparagraph (a)(2)(A).~~

30 (C) ~~There are no sui-juris beneficiaries under subparagraph (a)(2)(C).] a~~
31 *qualified beneficiary timely objects to the conversion of the unitrust.*

32 (2) A *qualified* beneficiary may request a trustee to convert to a unitrust. If the
33 trustee does not convert, the beneficiary may petition the court to order the conversion.

34 (3) The court shall approve the conversion or direct the requested conversion if the
35 court concludes that the conversion will enable the trustee to better carry out the intent of the settlor
36 [~~or testator~~] and the purposes of the trust.

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1 16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-(l) to
2 read as follows:

3 (j)(1) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ **(i)(6)** applies to a trustee and there is more
4 than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the
5 exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

6 (2) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ **(i)(6)** applies to all the trustees, the
7 trustees may petition the court to direct a conversion.

8 (k) A trustee may permanently release the power conferred by paragraph (a) or may
9 release the power conferred by paragraph (a) for a specified period including a period measured by
10 the life of an individual to convert to a unitrust if any of the following apply:

11 (1) The trustee is uncertain about whether possessing or exercising the power will
12 cause a result described in subparagraph (i)(3), (i)(4), or (i)(5).

13 (2) The trustee determines that possessing or exercising the power will or may
14 deprive the trust of a tax benefit or impose a tax burden not described in paragraph (i).

15 (l) ~~[The provisions of RSA 564-B:3-304 shall apply with respect to beneficiaries other~~
16 ~~than sui-juris beneficiaries]~~ **For the purposes of this section, a person may represent and bind**
17 **another person in accordance with Article 3 of RSA 564-B.**

18 17 Uniform Trust Code; Conforming Change. Amend RSA 564-B:3-304 to read as follows:

19 564-B:3-304 Representation by Person Having Substantially Identical Interest. Unless
20 otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or
21 location is unknown and not reasonably ascertainable, may be represented by and bound by another
22 having a substantially identical interest with respect to the particular question or dispute, but only
23 to the extent there is no conflict of interest between the representative and the person represented.
24 ~~[Nothing in this section shall expand or limit the virtual representation of sui-juris beneficiaries for~~
25 ~~purposes of RSA 564-C:1-106.]~~

26 18 New Paragraph; Uniform Trust Code; Notice for Minors and Incapacitated Persons. Amend
27 RSA 564-B:1-109 by inserting after paragraph (d) the following new paragraph:

28 (e) Notice to any minor or incapacitated individual shall not be effective unless such
29 notice is sent to a person who represents and can bind such minor or incapacitated individual in
30 accordance with the provisions of Article 3 of this chapter.

31 19 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor. Amend
32 RSA 564-D:5 to read as follows:

33 564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the
34 qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if such
35 transferor serves as the trust advisor, his or her rights and powers as a trust advisor shall be limited
36 to ~~[the right to disapprove distributions from the trust and the right to consent to a trustee's action~~
37 ~~or inaction relating to the investment of trust assets.]~~



1 *I. The right to direct, consent to, or veto a fiduciary's actual or proposed investment*
2 *decisions; and*

3 *II. The rights and powers described in RSA 564-D:2, II excluding any power that*
4 *would enable the transferor, acting as trust advisor, to direct, consent to, veto, or otherwise*
5 *participate in a distribution by the trustee to or for the benefit of the transferor, the*
6 *transferor's creditors, the transferor's estate, or the creditors of the transferor's estate.*

7 20 Effective Date. This act shall take effect 60 days after its passage.

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1 Amend RSA 551:22, II as inserted by section 2 of the bill by replacing it with the following:

2

3 II. A no-contest provision shall be enforceable according to the express terms of the no-
4 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
5 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
6 beneficiary's interest in the will under the terms of the no-contest provision. A no-contest provision
7 shall be unenforceable to the extent that the will is invalid because of fraud, duress, undue influence,
8 lack of testamentary capacity, or any other reason. In the case of an action solely to challenge the
9 acts of the executor or other fiduciary of the will, a no-contest provision shall be unenforceable to the
10 extent that the executor or other fiduciary has committed a breach of fiduciary duties or breach of
11 trust.

12

13 Amend RSA 551:22, III(a)-(b) as inserted by section 2 of the bill by replacing it with the following:

14

15 (a) Any action brought by the executor or other fiduciary of a will that incorporates a no-
16 contest provision, unless the executor or other fiduciary is a beneficiary against whom the no-contest
17 provision is otherwise enforceable;

18 (b) Any agreement among the beneficiaries and any other interested persons in
19 settlement of a dispute or resolution of any other matter relating to such will;

20

21 Amend RSA 564:1, II as inserted by section 3 of the bill by replacing it with the following:

22

23 ***II. Except as provided in RSA 564:19, IV, this section shall not apply with respect to***
24 ***any trust exempted from the accounting requirements under RSA 564:19, II.***

25

26 Amend RSA 564:19 as inserted by section 5 of the bill by replacing it with the following:

27

28 564:19 Filing Account.

29

30 ***I. Except as otherwise provided in paragraph II,*** every trustee shall file in the probate
31 court an annual account of administration, unless upon petition [he] ***the trustee*** is excused by the
32 judge of probate; but in no event shall [he] ***the trustee*** be excused for a period longer than ~~three~~ 3
years, except that in cases where such filing may be impractical and may work financial hardship to

1 the trust estate the judge of probate upon written approval of the attorney general may extend said
2 period not exceeding in the aggregate [five] 5 years. Such annual account of administration provided
3 for herein may be allowed by the judge of probate without publication unless he *or she* shall
4 otherwise order. Before giving notice to settle a final account the trustee shall file it in the probate
5 office and shall cause the fact of such filing to appear in the notice and shall at the same time file a
6 statement of the names and residences of the beneficiaries in the trust estate.

7 **II. The following trusts created under will shall be exempt from the accounting**
8 **requirements of paragraph I:**

9 (a) *A trust created under a will admitted to probate on or after January 1, 2012,*
10 *shall be exempt from the accounting requirements of paragraph I if, under the terms of the*
11 *will, the testator expressly waives the requirement for annual accountings.*

12 (b) *A trust created under any will shall be exempt from the accounting*
13 *requirements of paragraph I if all of the interested persons agree to waive the trustee's*
14 *filing of accounts, and the probate court finds that the waiver of filing of accounts does not*
15 *violate a material purpose of the trust. The interested persons may agree to waive the*
16 *trustee's filing of accounts by means of a nonjudicial settlement agreement within the*
17 *meaning of RSA 564-B:1-111. For purposes of this subparagraph, the trustee's filing of*
18 *accounts is not a material purpose of a trust created under a will unless, under the terms*
19 *of the will, there is a clear and express manifestation of the testator's intent that the trust*
20 *shall be subject to full judicial supervision, including a requirement that the trustee file*
21 *accounts with the court.*

22 (c) *If the court grants a petition for the acceptance of jurisdiction over a trust*
23 *with respect to which a court of another state has released its jurisdiction, and the court*
24 *releasing jurisdiction did not require the trustee or trustees of the trust to file accounts*
25 *with that court, or required that the trustee or trustees of the trust file accounts less*
26 *frequently than annually, then the court accepting jurisdiction over such trust shall not*
27 *require accountings whatsoever, or shall require accountings less frequently than*
28 *annually, as the case may be, on the same basis as may have been required by the court*
29 *releasing jurisdiction.*

30 **III. A trust created under a will described in paragraph II, with respect to which no**
31 **judicial accountings will be required, shall in all respects be subject to the beneficiary**
32 **reporting and information requirements of RSA 564-B, the Uniform Trust Code, and all**
33 **other pertinent provisions of such code, except to the extent that a contrary provision**
34 **appears in the will under which the trust was created, provided that such contrary**
35 **provision does not violate any of the mandatory rules of RSA 564-B:1-105. For these**
36 **purposes, the pertinent terms of the will shall have the same meaning as "terms of a trust"**
37 **and the "will creating the trust" shall have the same meaning as "trust instrument", as**

1 *defined in RSA 564-B:1-103(19) and (20), respectively.*

2 *IV. Nothing in this section shall be interpreted to modify or limit the jurisdiction or*
3 *authority of the probate court to require any trustee of a trust created under a will to make*
4 *a judicial accounting or to give bond, either upon a motion on interested person, or on the*
5 *probate court's own action.*

6 *V. For purposes of this section, an "interested person" means any person who has*
7 *standing to petition the court to order the trustee to account, including the director of*
8 *charitable trusts if, with respect to the trust, the director has the rights of a qualified*
9 *beneficiary under RSA 564-B:1-110(c).*

10 *VI. Nothing in this section shall limit the authority of the attorney general or the*
11 *department of health and human services otherwise provided by common law or other*
12 *statute.*

13
14 Amend RSA 564-B:2-201(b) as inserted by section 9 of the bill by replacing it with the following:

15
16 (b) A trust, other than a trust created by a will[~~-is not~~] *subject to the provisions of*
17 *RSA 564:19, shall not be* subject to continuing judicial supervision unless ordered by the court.

18
19 Amend the bill by replacing all after section 10 with the following:

20
21 11 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005 to
22 read as follows:

23 564-B:10-1005 Limitation of Action Against *a Trustee by a Beneficiary.*

24 (a) A beneficiary may not commence a proceeding against a trustee for breach of trust
25 more than one year after the date the beneficiary or a representative of the beneficiary was sent a
26 report that adequately disclosed the existence of a potential claim for breach of trust and informed
27 the beneficiary of the time allowed for commencing a proceeding.

28 (b) A report adequately discloses the existence of a potential claim for breach of trust if it
29 provides sufficient information so that the beneficiary or representative knows of the potential claim
30 or should have inquired into its existence.

31 (c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a
32 trustee for breach of trust must be commenced within 3 years after the first to occur of:

- 33 (1) The removal, resignation, or death of the trustee;
34 (2) The termination of the beneficiary's interest in the trust; [~~or~~]
35 (3) The termination of the trust[~~-~~]; *or*

36 (4) *The date on which the beneficiary or a representative of the beneficiary*
37 *was sent a report that adequately disclosed the existence of a potential claim for breach of*

1 *trust.*

2 *(d) The periods of limitation under this section shall not be tolled for any*
3 *reason, except by a written agreement of the trustees and qualified beneficiaries or a court*
4 *order. Without limiting the circumstances under which a court may issue an order tolling*
5 *the period of limitations, a court may issue an order tolling the period of limitations under*
6 *this section during the pendency of any action described in RSA 564-B:10-1014(c)(3).*

7 *(e) Nothing in this section shall limit the authority of the attorney general or*
8 *the department of health and human services otherwise provided by common law or other*
9 *statute.*

10 12 New Section; Uniform Trust Code; Limitation of Action Against a Trustee, Trust
11 Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the following new
12 section:

13 564-B:10-1005A Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust
14 Protector.

15 (a) A trustee shall commence a proceeding against a cotrustee or a former trustee for
16 breach of trust within 3 years after the earlier of the date on which the trustee was sent a report that
17 adequately disclosed the existence of a potential claim for breach of trust or the removal, resignation,
18 or death of the cotrustee or former trustee. A trustee, however, shall not commence a proceeding
19 against a cotrustee or a former trustee if, under RSA 564-B:10-1005, none of the beneficiaries may
20 commence a proceeding against the cotrustee or former trustee for such breach of trust.

21 (b) A trust advisor or trust protector shall commence a proceeding against a trustee for
22 breach of trust within 3 years after earlier of the date on which the trust advisor or trust protector
23 was sent a report that adequately disclosed the existence of a potential claim for breach of trust or
24 the removal, resignation, or death of the trustee. A trust advisor or trust protector, however, shall
25 not commence a proceeding against a trustee for breach of trust if, under RSA 564-B:10-1005, none
26 of the beneficiaries may commence a proceeding against the trustee for such breach of trust.

27 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
28 provides sufficient information so that the recipient knows of the potential claim or should have
29 inquired into its existence.

30 (d) The periods of limitation under subsection (a) shall not be tolled except by either a
31 written agreement of the trustees or, in the case of a possible claim against a former trustee, the
32 trustees and the former trustee or a court order. The periods of limitation under subsection (b) shall
33 not be tolled except by a written agreement of the trust advisors, trust protectors, and trustees or a
34 court order. Without limiting the circumstances under which a court may issue an order tolling the
35 period of limitations, a court may issue an order tolling the period of limitations under this section
36 during the pendency of any action described in RSA 564-B:10-1014(c)(3).

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1 13 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B
2 by inserting after section 10-1013 the following new section:

3 564-B:10-1014 Enforcement of No-Contest Provision.

4 (a) For the purposes of this section, a "no-contest provision" of a trust instrument means
5 a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such
6 trust who, directly or indirectly, initiates or otherwise pursues:

7 (1) Any action to contest the validity of the trust or the terms of the trust;

8 (2) Any action to set aside or vary the terms of the trust;

9 (3) Any action to challenge the acts of the trustee or other fiduciary of the trust in
10 the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

11 (4) Any other act or proceedings to frustrate or defeat the settlor's intent as
12 expressed in the terms of the trust.

13 (b) A no-contest provision shall be enforceable according to the express terms of the no-
14 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
15 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
16 beneficiary's interest in the trust under the terms of the no-contest provision. A no-contest provision
17 shall be unenforceable to the extent that the trust is invalid because of fraud, duress, undue
18 influence, lack of testamentary capacity, or any other reason. In the case of an action solely to
19 challenge the acts of the trustee or other fiduciary of the trust, a no-contest provision shall be
20 unenforceable to the extent that the trustee or other fiduciary has committed a breach of fiduciary
21 duties or breach of trust.

22 (c) Subsection (b) shall not apply to:

23 (1) Any action brought by the trustee or any other fiduciary serving under the terms
24 of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest
25 provision is otherwise enforceable;

26 (2) Any agreement among the beneficiaries and any other interested persons in
27 settlement of a dispute or resolution of any other matter relating to the trust, including without
28 limitation any nonjudicial settlement agreement;

29 (3) Any action to determine whether a proposed or pending motion, petition, or other
30 proceeding constitutes a contest within the meaning of a no-contest provision;

31 (4) Any action brought by a beneficiary or on behalf of any such beneficiary for a
32 construction or interpretation of the terms of the trust; or

33 (5) Any action brought by the attorney general for a construction or interpretation of
34 a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting
35 to penalize a charity or charitable interest for contesting the trust if probable cause exists for
36 instituting proceedings.

1 (d) It is the intent of this section to enforce the settlor's intent as reflected in a no-
2 contest provision to the greatest extent possible. The provisions of this section shall be construed
3 and applied in a manner consistent with such intent.

4 (e) This section shall apply to all judicial proceedings concerning the enforcement or
5 interpretation of a no-contest provision commenced on or after its effective date.

6 14 New Section; Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust
7 Protector. Amend RSA 564-B by inserting after section 12-1205 the following new section:

8 564-B:12-1206 Limitation of Action Against a Trust Advisor or Trust Protector.

9 (a) A beneficiary shall commence a proceeding against a trust advisor or trust protector
10 for breach of trust within the earlier of:

11 (1) One year after the date on which the beneficiary or the beneficiary's
12 representative was sent a report that adequately disclosed the existence of a potential claim for
13 breach of trust and informed the beneficiary of the time allowed for commencing a proceeding; or

14 (2) Three years after the date on which the beneficiary or the beneficiary's
15 representative was sent a report that adequately disclosed the existence of a potential claim for
16 breach of trust.

17 (b) A fiduciary shall commence a proceeding against a trust advisor or trust protector for
18 breach of trust within 3 years after the date on which the fiduciary was sent a report that adequately
19 disclosed the existence of a potential claim for breach of trust; provided, however, that a fiduciary
20 shall not commence a proceeding against a trust advisor or trust protector for breach of trust if,
21 under subsection (a), none of the beneficiaries may commence a proceeding against the trust advisor
22 or trust protector for such breach of trust. For purposes of this section, a "fiduciary" means any
23 trustee, trust advisor, or trust protector.

24 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
25 provides sufficient information so that the recipient knows of the potential claim or should have
26 inquired into its existence.

27 (d) The periods of limitation under subsection (a) shall not be tolled for any reason,
28 except by a written agreement of the qualified beneficiaries and each of the trust advisors and trust
29 protectors against whom a beneficiary may commence a proceeding or a court order. The periods of
30 limitation under subsection (b) shall not be tolled for any reason, except by a written agreement of
31 the trustees and each of the trust advisors and trust protectors against whom a fiduciary may
32 commence a proceeding or a court order. Without limiting the circumstances under which a court
33 may issue an order tolling the period of limitations, a court may issue an order tolling the period of
34 limitations under this section during the pendency of any action described in RSA 564-B:10-
35 1014(c)(3).

36 (e) Nothing in this section shall limit the authority of the attorney general or the
37 department of health and human services provided by common law or other statute.

Amendment to SB 50

- Page 7 -

1 15 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-(b)
2 to read as follows:

3 (a) Unless expressly prohibited by the terms of the trust, a trustee may convert a trust
4 into a unitrust as described in this section if all of the following apply:

5 (1) The trustee determines that the conversion will enable the trustee to better carry
6 out the intent of the settlor [~~or testator~~], *as defined in RSA 564-B:1-103(15)*, and the purposes of
7 the trust.

8 (2) The trustee gives written notice of the trustee's intention to convert the trust into
9 a unitrust and of how the unitrust will operate, including what initial decisions the trustee will
10 make under this section, to all the [~~sui-juris~~] *qualified* beneficiaries, *as defined in RSA 564-B:1-*
11 *103(12) and including the director of charitable trusts if, with respect to the trust, the*
12 *director has the right of a "qualified beneficiary" under RSA 564-B:1-110(c).* [~~who:~~

13 (A) ~~Are currently eligible to receive income from the trust;~~

14 (B) ~~Would be eligible, if a power of appointment were not exercised, to receive~~
15 ~~income from the trust if the interest of all the beneficiaries eligible to receive income under~~
16 ~~subparagraph (a)(2)(A) were to terminate immediately before the giving of notice; and~~

17 (C) ~~Would receive, if no powers of appointment were exercised, a distribution of~~
18 ~~principal if the trust were to terminate immediately prior to the giving of notice.~~

19 (3) ~~There is at least one sui-juris beneficiary under subparagraph (a)(2)(A) and at~~
20 ~~least one sui-juris beneficiary under subparagraph (a)(2)(B).~~

21 (4) ~~No sui-juris~~ (3) *No qualified* beneficiary objects to the conversion to a unitrust
22 in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph
23 (a)(2).

24 (b)(1) The trustee may petition the court to approve the conversion to a unitrust if [~~any~~
25 ~~of the following apply:~~

26 (A) ~~A beneficiary timely objects to the conversion to a unitrust.~~

27 (B) ~~There are no sui-juris beneficiaries under subparagraph (a)(2)(A).~~

28 (C) ~~There are no sui-juris beneficiaries under subparagraph (a)(2)(C).~~] *a*
29 *qualified beneficiary timely objects to the conversion of the unitrust.*

30 (2) A *qualified* beneficiary may request a trustee to convert to a unitrust. If the
31 trustee does not convert, the beneficiary may petition the court to order the conversion.

32 (3) The court shall approve the conversion or direct the requested conversion if the
33 court concludes that the conversion will enable the trustee to better carry out the intent of the settlor
34 [~~or testator~~] and the purposes of the trust.

35 16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-(l) to
36 read as follows:

37 (j)(1) If subparagraph (i)(3), (i)(4), or [~~(i)(5)~~] (i)(6) applies to a trustee and there is more

1 than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the
2 exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

3 (2) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ **(i)(6)** applies to all the trustees, the
4 trustees may petition the court to direct a conversion.

5 (k) A trustee may permanently release the power conferred by paragraph (a) or may
6 release the power conferred by paragraph (a) for a specified period including a period measured by
7 the life of an individual to convert to a unitrust if any of the following apply:

8 (1) The trustee is uncertain about whether possessing or exercising the power will
9 cause a result described in subparagraph (i)(3), (i)(4), or (i)(5).

10 (2) The trustee determines that possessing or exercising the power will or may
11 deprive the trust of a tax benefit or impose a tax burden not described in paragraph (i).

12 (l) ~~[The provisions of RSA 564-B:3-304 shall apply with respect to beneficiaries other~~
13 ~~than sui-juris beneficiaries]~~ **For the purposes of this section, a person may represent and bind**
14 **another person in accordance with Article 3 of RSA 564-B.**

15 17 Uniform Trust Code; Conforming Change. Amend RSA 564-B:3-304 to read as follows:

16 564-B:3-304 Representation by Person Having Substantially Identical Interest. Unless
17 otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or
18 location is unknown and not reasonably ascertainable, may be represented by and bound by another
19 having a substantially identical interest with respect to the particular question or dispute, but only
20 to the extent there is no conflict of interest between the representative and the person represented.
21 ~~[Nothing in this section shall expand or limit the virtual representation of sui-juris beneficiaries for~~
22 ~~purposes of RSA 564-C:1-106.]~~

23 18 New Paragraph; Uniform Trust Code; Notice for Minors and Incapacitated Persons. Amend
24 RSA 564-B:1-109 by inserting after paragraph (d) the following new paragraph:

25 (e) Notice to any minor or incapacitated individual shall not be effective unless such
26 notice is sent to a person who represents and can bind such minor or incapacitated individual in
27 accordance with the provisions of Article 3 of this chapter.

28 19 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor. Amend
29 RSA 564-D:5 to read as follows:

30 564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the
31 qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if such
32 transferor serves as the trust advisor, his or her rights and powers as a trust advisor shall be limited
33 to ~~[the right to disapprove distributions from the trust and the right to consent to a trustee's action~~
34 ~~or inaction relating to the investment of trust assets.]~~

35 **I. The right to direct, consent to, or veto a fiduciary's actual or proposed investment**
36 **decisions; and**

1 *II. The rights and powers described in RSA 564-D:2, II excluding any power that*
2 *would enable the transferor, acting as trust advisor, to direct, consent to, veto, or otherwise*
3 *participate in a distribution by the trustee to or for the benefit of the transferor, the*
4 *transferor's creditors, the transferor's estate, or the creditors of the transferor's estate.*

5 20 Effective Date. This act shall take effect 60 days after its passage.

Rep. McClarren, Hills. 21
May 18, 2011
2011-1999h
08/04

Amendment to SB 50

- 1 Amend RSA 564:19 inserted by section 5 of the bill by deleting paragraph VI.
- 2
- 3 Amend RSA 564-B:10-1005 as inserted by section 11 of the bill by deleting subparagraph (e).

Speakers

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON SB 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: 4-19-11

LOB ROOM: 302 **Time Public Hearing Called to Order:** 1404

Time Adjourned: 1445

(please circle if present)

Committee Members: Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Headd, Nevins, Palfrey, Sullivan, Bergevin, Manuse, Mauro, McGuinness, Rice, Taylor, Meader, Gidge and Schlachman.

Bill Sponsors: Sens. D'Allesandro, Bradley, Odell, Gallus, Houde and Rep. Hunt

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Lou D'Allesandro, prime sponsor – Changing laws on trusts in New Hampshire. Purpose is to make New Hampshire a vital place to grow a business.

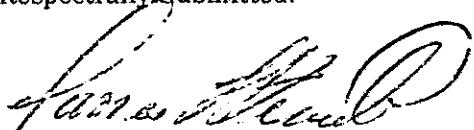
Sen. Jeb Bradley, co-sponsor – Here to echo the words of Sen. D'Allesandro. Important that we modernize our trust laws. Helpful tool to attract good business to New Hampshire.

Rep. John Hunt, co-sponsor – Supports the bill. Discussed rules of perpetuity of trusts and introduced amendment # 1461h. There are reasons why Fidelity is leaving Massachusetts and moving to New Hampshire. We are definitely in the top five in trusts in the country – Delaware, New Hampshire and South Dakota.

Anne Edwards, Attorney General's Office, Director of Charitable Trusts – Supports the bill as amended. We are satisfied with the amendment to SB 50, so we support the bill as amended. Reviewed the changes of concern to her office.

Bill Ardinger, attorney representing NH Trust Council; Amy Kanyuk, attorney; Todd D. Mayo, Cambridge Trust Company of NH – All support the bill. This bill at its core is about attracting good jobs to New Hampshire; attempts to grow New Hampshire in the financial services market. In 2002 the state authorized trusts to use modern investment practices.; in 2003, rules on perpetuity; 2004, Uniform Trust Code established; 2005 technical corrections; 2006 trust modernization bill pushed New Hampshire to top of trusts in the country.; 2008 improvements to 2006 act; 2010 codified new chapters establishing trust companies. Trust companies are financial institutions, have employees and charge fees. We now have 25 trust companies in the state. Handed out a summary sheet explaining the amendment; copy in file.

Respectfully Submitted:



James F. Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON SB 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: 4-19-11

LOB ROOM: 302

Time Public Hearing Called to Order:

1404

Time Adjourned:

1445

(please circle if present)

Committee Members: Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Heald, Nevins, Palfrey, Sullivan, Bergevin, Manuse, Mauro, McGuinness, Rice, Taylor, Meader, Gidge and Schlachman.

Bill Sponsors: Sens. D'Allesandro, Bradley, Odell, Gallus, Houde and Rep. Hunt

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

- #1 Sen Lou D'Allesandro - prime sponsor
Change laws on trusts in NH -
purpose is to make NH a VITAL
Place to grow a business
- #2 Sen Jeb BRADLEY - here to echo
the words of Sen D'Allesandro - important
that we modernize our trust laws -
helpful tool to attract good business to NH.
- #3 Rep John Hunt - supports the Bill
discussed Rules of perpetuity & trusts

P2 AP 30

introduced Amended # 1461h
There are reasons why Fidelity is
leaving ~~the~~ Mass and moving to NH
No one definitely in the top 5
in trusts in the country -
Delaware NH + South Dakota

#4

Anna Edwards - AG charitable
TRUST -

We are satisfied with the
Amendment to SB 30 - so we support
the Bill as amended.

Reviewed the change of concern to
her office

#5

3 in tandem: 1) Bill Ardinger - act
with Ruth - Guy + Pignatelli
2) Amy Kan yuk - act
3) Todd May - on
Cambridge Trust Company NH

The Bill at its core is about
attracting good jobs to NH -
attempts to attract NH in the
financial services market

P 3 LB 50

2002 - State authorized overseas of
Trusts to use modern investment
practices

2003 - Rules on perpetuity =

2004 - Uniform Trust Code established

2005 technical technical correction

2006 - Trust modernization - bill -
pushed NH to top of Trusts in
country -

2008 - improvement to 2006 bill

2010 - codified New Chapter
Establishing Trust Companies

TRUST Companies are financial institutions
have employees - a charge fees
we now have 26 Trust companies in
the STATE -

hand out a summary sheet
explaining the amendment - copy in file

HOUSE COMMITTEE ON JUDICIARY
PUBLIC HEARING ON SENATE BILL 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: May 17, 2011

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:00 am

Time Adjourned: 10:52 am

(please circle if present)

Committee Members: Reps. Rowe, Sore, Souza, Hagan, Silva, Andolina, Giudo, LaCasse,
McClarren, Murphy, Palmer, Peterson, Tregenza, Wall, Potter, Weber, Watrous and G. Richardson

Bill Sponsors: Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Sen Odell, Dist 8; Sen. Gallas, Dist 1; Sen. Houde, Dist 5; Rep. Hunt, Ches 7

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. D'Allesandro, sponsor, introduced the bill.

First introduced trust bills eight (8) years ago. It has been amended yearly to fine tune it. Wall Street Journal posts New Hampshire top in trust funds. This is a jobs bill. South Dakota is our big competitor. This amendment will keep us at #1. The bill which came from the Commerce Committee with a unanimous vote closes some loopholes to keep New Hampshire in the top tier.

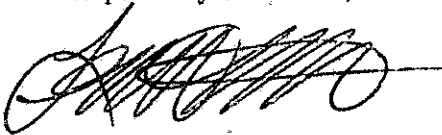
Robert Wells, Hopkinton, NH – supports

Speaking on cost from state's perspective, trusts under wills. Significant costs to courts to review these and it's unnecessary. They are duplications from the trust companies. Clients have to pay for the duplications. Confidentiality is also compromised due to the postings by the probate court.

***Amy Kanyuk/Todd Mayo**, Cambridge Trust Company of New Hampshire, - supports

Both involved in drafting of the bill. Trying to make New Hampshire #1 on top tier on trust funds. Bill is in line with statute laws on trusts. See written testimony for six points (six key elements of the bill).

Respectfully submitted,



Rep. Lenette M. Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SENATE BILL 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: 5-17-11

LOB ROOM: 208

Time Public Hearing Called to Order: 10:00 am

Time Adjourned: 10:52 am

(please circle if present)

Committee Members: Reps. ~~Rowe~~, ~~Sorg~~, ~~Souza~~, ~~Hagan~~, ~~Silva~~, ~~Andolina~~, ~~Giuda~~, ~~LaCasse~~, ~~McClarren~~, ~~Murphy~~, ~~Palmer~~, ~~Peterson~~, ~~Tregenza~~, ~~Wall~~, ~~Potter~~, ~~Weber~~ and ~~Watrous~~ Richardson

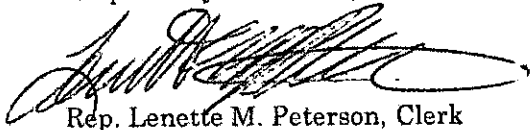
Bill Sponsors: Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Sen Odell, Dist 8; Sen. Gallas, Dist 1; Sen. Houde, Dist 5; Rep. Hunt, Ches 7

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. D'Allesandro - introduced bill, prime sponsor. First intro. Trust Bills 8 yrs ago. It is been amended yearly to fine tune it. Wall St. Journal posts NH top in Trust Funds. This is a jobs bill. SD is our big competitor. This amend. will Keep us at #1. This bill came from Commerce Com. with a unanimous vote. This bill closes some loopholes to keep NH in the first tier.

Respectfully submitted,


Rep. Lenette M. Peterson, Clerk

Robert Wells - (S) speaking on cost - from states perspective trusts under wills. Significant costs to courts to review these and its unnecessary they are a duplications from the Trust Cos. Clients have to pay for the duplications. Confidentiality is also compromised due to the parties by the probate court.

Amy Kanyuk/Todd Mayo* - (S) both involved in drafting bill. Trying to make NH #1 on top tier on trust funds. Bill is in line w/ State laws on trusts. See written testimony for 6 points. Six Key Elements of the bill

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON SB 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: 4-21-11

Subcommittee Members: Reps. Rice, Mauro, Sullivan, Palfrey, Coffey, Meader, McGuinness and Schlachman

Comments and Recommendations:

Amendments:

| | | | |
|--------------------|-----------------|------|-------|
| Sponsor: Rep. HUnt | OLS Document #: | 2011 | 1461h |
| Sponsor: Rep. | OLS Document #: | | |
| Sponsor: Rep. | OLS Document #: | | |

Motions: OTP OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Palfrey

Seconded by Rep. Sullivan

Vote: 8-0

Motions: OTP, OTP/A ITL, Retained (Please circle one.)

Moved by Rep. Palfrey

Seconded by Rep. Sullivan

Vote: 8-0

Respectfully submitted,

Rep. Jennifer Coffey
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS
SUBCOMMITTEE WORK SESSION ON SB 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: 4/21/11

Subcommittee Members: Reps. Rice, Marco, Sullivan, Paulroy, Hunt, Laffey ~~Reps~~
Muller, Mc Guinness, Schickman

Comments and Recommendations:

Amendments:

Sponsor: Rep. Hunt

OLS Document #: 2011-1461h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. ~~Paulroy~~ OTP - Amendment 2011-1461h

Seconded by Rep. Sullivan

Vote: 8-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

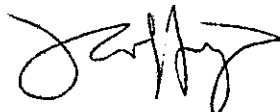
Moved by Rep. Paulroy

Seconded by Rep. Sullivan

Vote: 8-0

Respectfully submitted,

Rep. {Type NAME}
Subcommittee Chairman/Clerk



Amendment to SB 50

Not Adopted

1 Amend RSA 551:22, II as inserted by section 2 of the bill by replacing it with the following:

2
3 II. A no-contest provision shall be enforceable according to the express terms of the no-
4 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
5 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
6 beneficiary's interest in the will under the terms of the no-contest provision. A no-contest provision
7 shall be unenforceable to the extent that the will is invalid because of fraud, duress, undue influence,
8 lack of testamentary capacity, or any other reason. In the case of an action solely to challenge the
9 acts of the executor or other fiduciary of the will, a no-contest provision is unenforceable to the
10 extent that the executor or other fiduciary has committed a breach of fiduciary duties or breach of
11 trust.

12
13 Amend RSA 551:22, III(a)-(b) as inserted by section 2 of the bill by replacing it with the following:

14
15 (a) Any action brought by the executor or other fiduciary of a will that incorporates a no-
16 contest provision, unless the executor or other fiduciary is a beneficiary against whom the no-contest
17 provision if otherwise enforceable;

18 (b) Any agreement among the beneficiaries and any other interested persons in
19 settlement of a dispute or resolution of any other matter relating to such will;

20
21 Amend RSA 564:1, II as inserted by section 3 of the bill by replacing it with the following:

22
23 *II. Except as provided in RSA 564:19, IV, this section shall not apply with respect to*
24 *any trust exempted from the accounting requirements under RSA 564:19, II.*

25
26 Amend RSA 564:19 as inserted by section 5 of the bill by replacing it with the following:

27
28 564:19 Filing Account.

29 *I. Except as otherwise provided in paragraph II, every trustee shall file in the probate*
30 *court an annual account of administration, unless upon petition [he] the trustee is excused by the*
31 *judge of probate; but in no event shall [he] the trustee be excused for a period longer than [three] 3*
32 *years, except that in cases where such filing may be impractical and may work financial hardship to*

1 the trust estate the judge of probate upon written approval of the attorney general may extend said
2 period not exceeding in the aggregate [five] 5 years. Such annual account of administration provided
3 for herein may be allowed by the judge of probate without publication unless he *or she* shall
4 otherwise order. Before giving notice to settle a final account the trustee shall file it in the probate
5 office and shall cause the fact of such filing to appear in the notice and shall at the same time file a
6 statement of the names and residences of the beneficiaries in the trust estate.

7 *II. The following trusts created under will shall be exempt from the accounting*
8 *requirements of paragraph I:*

9 *(a) A trust created under a will admitted to probate on or after January 1, 2012,*
10 *shall be exempt from the accounting requirements of paragraph I if, under the terms of the*
11 *will, the testator expressly waives the requirement for annual accountings.*

12 *(b) A trust created under any will shall be exempt from the accounting*
13 *requirements of paragraph I if all of the interested persons agree to waive the trustee's*
14 *filing of accounts, and the probate court finds that the waiver of filing of accounts does not*
15 *violate a material purpose of the trust. The interested persons may agree to waive the*
16 *trustee's filing of accounts by means of a nonjudicial settlement agreement within the*
17 *meaning of RSA 564-B:1-111. For purposes of this subparagraph, the trustee's filing of*
18 *accounts is not a material purpose of a trust created under a will unless, under the terms*
19 *of the will, there is a clear and express manifestation of the testator's intent that the trust*
20 *shall be subject to full judicial supervision, including a requirement that the trustee file*
21 *accounts with the court.*

22 *(c) If the court grants a petition for the acceptance of jurisdiction over a trust*
23 *with respect to which a court of another state has released its jurisdiction, and the court*
24 *releasing jurisdiction did not require the trustee or trustees of the trust to file accounts*
25 *with that court, or required that the trustee or trustees of the trust file accounts less*
26 *frequently than annually, then the court accepting jurisdiction over such trust shall not*
27 *require accountings whatsoever, or shall require accountings less frequently than*
28 *annually, as the case may be, on the same basis as may have been required by the court*
29 *releasing jurisdiction.*

30 *III. A trust created under a will described in paragraph II, with respect to which no*
31 *judicial accountings will be required, shall in all respects be subject to the beneficiary*
32 *reporting and information requirements of RSA 564-B, the Uniform Trust Code, and all*
33 *other pertinent provisions of such code, except to the extent that a contrary provision*
34 *appears in the will under which the trust was created, provided that such contrary*
35 *provision does not violate any of the mandatory rules of RSA 564-B:1-105. For these*
36 *purposes, the pertinent terms of the will shall have the same meaning as "terms of a trust"*
37 *and the "will creating the trust" shall have the same meaning as "trust instrument", as*



1 *defined in RSA 564-B:1-103(19) and (20), respectively. Nothing in this paragraph shall be*
2 *interpreted to limit the ability of persons with standing to petition the probate court*
3 *having jurisdiction over a trust under will to require any trustee of that will to make a*
4 *judicial accounting, or the jurisdiction of any such court to require an accounting on its*
5 *own initiative.*

6 *IV. Nothing in this section shall be interpreted to modify or limit the jurisdiction or*
7 *authority of the probate court to require any trustee of a trust created under a will to make*
8 *a judicial accounting or to give bond, either upon a motion on interested person, or on the*
9 *probate court's own action.*

10 *V. For purposes of this section, an "interested person" means any person who has*
11 *standing to petition the court to order the trustee to account, including the director of*
12 *charitable trusts if, with respect to the trust, the director has the rights of a qualified*
13 *beneficiary under RSA 564-B:1-110(c).*

14 *VI. Nothing in this section shall limit the authority of the attorney general or the*
15 *department of health and human services otherwise provided by common law or other*
16 *statute.*

17
18 Amend RSA 564-B:2-201(b) as inserted by section 9 of the bill by replacing it with the following:

19
20 (b) A trust, other than a trust created by a will, ~~[is not]~~ *subject to the provisions of*
21 *RSA 564:19, shall not be* subject to continuing judicial supervision unless ordered by the court.
22

23 Amend the bill by replacing all after section 10 with the following:

24
25 11 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005 to
26 read as follows:

27 564-B:10-1005 Limitation of Action Against *a Trustee by a Beneficiary.*

28 (a) A beneficiary may not commence a proceeding against a trustee for breach of trust
29 more than one year after the date the beneficiary or a representative of the beneficiary was sent a
30 report that adequately disclosed the existence of a potential claim for breach of trust and informed
31 the beneficiary of the time allowed for commencing a proceeding.

32 (b) A report adequately discloses the existence of a potential claim for breach of trust if it
33 provides sufficient information so that the beneficiary or representative knows of the potential claim
34 or should have inquired into its existence.

35 (c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a
36 trustee for breach of trust must be commenced within 3 years after the first to occur of:

37 (1) The removal, resignation, or death of the trustee;

1 (2) The termination of the beneficiary's interest in the trust; ~~or~~

2 (3) The termination of the trust~~[-]~~; or

3 (4) *The date on which the beneficiary or a representative of the beneficiary*
4 *was sent a report that adequately disclosed the existence of a potential claim for breach of*
5 *trust.*

6 (d) *The periods of limitation under this section shall not be tolled for any*
7 *reason, except by a written agreement of the trustees and qualified beneficiaries or a court*
8 *order. Without limiting the circumstances under which a court may issue an order tolling*
9 *the period of limitations, a court may issue an order tolling the period of limitations under*
10 *this section during the pendency of any action described in RSA 564-B:10-1014(c)(3).*

11 (e) *Nothing in this section shall limit the authority of the attorney general or*
12 *the department of health and human services otherwise provided by common law or other*
13 *statute.*

14 12 New Section; Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee, Trust
15 Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the following new
16 section:

17 564-B:10-1005A Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust
18 Protector.

19 (a) A trustee shall commence a proceeding against a cotrustee or a former trustee for
20 breach of trust within 3 years after the earlier of the date on which the trustee was sent a report that
21 adequately disclosed the existence of a potential claim for breach of trust or the removal, resignation,
22 or death of the cotrustee or former trustee. A trustee, however, shall not commence a proceeding
23 against a cotrustee or a former trustee if, under RSA 564-B:10-1005, none of the beneficiaries may
24 commence a proceeding against the cotrustee or former trustee for such breach of trust.

25 (b) A trust advisor or trust protector shall commence a proceeding against a trustee for
26 breach of trust within 3 years after earlier of the date on which the trust advisor or trust protector
27 was sent a report that adequately disclosed the existence of a potential claim for breach of trust or
28 the removal, resignation, or death of the trustee. A trust advisor or trust protector, however, shall
29 not commence a proceeding against a trustee for breach of trust if, under RSA 564-B:10-1005, none
30 of the beneficiaries may commence a proceeding against the trustee for such breach of trust.

31 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
32 provides sufficient information so that the recipient knows of the potential claim or should have
33 inquired into its existence.

34 (d) The periods of limitation under subsection (a) shall not be tolled except by either a
35 written agreement of the trustees or, in the case of a possible claim against a former trustee, the
36 trustees and the former trustee or a court order. The periods of limitation under subsection (b) shall
37 not be tolled except by a written agreement of the trust advisors, trust protectors, and trustees or a

1 court order. Without limiting the circumstances under which a court may issue an order tolling the
2 period of limitations, a court may issue an order tolling the period of limitations under this section
3 during the pendency of any action described in RSA 564-B:10-1014(c)(3).

4 13 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B
5 by inserting after section 10-1013 the following new section:

6 564-B:10-1014 Enforcement of No-Contest Provision.

7 (a) For the purposes of this section, a "no-contest provision" of a trust instrument means
8 a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such
9 trust who, directly or indirectly, initiates or otherwise pursues:

10 (1) Any action to contest the validity of the trust or the terms of the trust;

11 (2) Any action to set aside or vary the terms of the trust;

12 (3) Any action to challenge the acts of the trustee or other fiduciary of the trust in
13 the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

14 (4) Any other act or proceedings to frustrate or defeat the settlor's intent as
15 expressed in the terms of the trust.

16 (b) A no-contest provision shall be enforceable according to the express terms of the no-
17 contest provision without regard to the presence or absence of probable cause for, or the beneficiary's
18 good or bad faith in, taking the action that would justify the complete or partial forfeiture of the
19 beneficiary's interest in the trust under the terms of the no-contest provision. A no-contest provision
20 shall be unenforceable to the extent that the trust is invalid because of fraud, duress, undue
21 influence, lack of testamentary capacity, or any other reason. In the case of an action solely to
22 challenge the acts of the trustee or other fiduciary of the trust, a no-contest provision shall be
23 unenforceable to the extent that the trustee or other fiduciary has committed a breach of fiduciary
24 duties or breach of trust.

25 (c) Subsection (b) shall not apply to:

26 (1) Any action brought by the trustee or any other fiduciary serving under the terms
27 of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest
28 provision is otherwise enforceable;

29 (2) Any agreement among the beneficiaries and any other interested persons in
30 settlement of a dispute or resolution of any other matter relating to the trust, including without
31 limitation any nonjudicial settlement agreement;

32 (3) Any action to determine whether a proposed or pending motion, petition, or other
33 proceeding constitutes a contest within the meaning of a no-contest provision;

34 (4) Any action brought by a beneficiary or on behalf of any such beneficiary for a
35 construction or interpretation of the terms of the trust; or

36 (5) Any action brought by the attorney general for a construction or interpretation of
37 a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting

1 to penalize a charity or charitable interest for contesting the trust if probable cause exists for
2 instituting proceedings.

3 (d) It is the intent of this section to enforce the settlor's intent as reflected in a no-
4 contest provision to the greatest extent possible. The provisions of this section shall be construed
5 and applied in a manner consistent with such intent.

6 (e) This section shall apply to all judicial proceedings concerning the enforcement or
7 interpretation of a no-contest provision commenced on or after its effective date.

8 14 New Section; Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust
9 Protector. Amend RSA 564-B by inserting after section 12-1205 the following new section:

10 564-B:12-1206 Limitation of Action Against a Trust Advisor or Trust Protector.

11 (a) A beneficiary shall commence a proceeding against a trust advisor or trust protector
12 for breach of trust within the earlier of:

13 (1) One year after the date on which the beneficiary or the beneficiary's
14 representative was sent a report that adequately disclosed the existence of a potential claim for
15 breach of trust and informed the beneficiary of the time allowed for commencing a proceeding; or

16 (2) Three years after the date on which the beneficiary or the beneficiary's
17 representative was sent a report that adequately disclosed the existence of a potential claim for
18 breach of trust.

19 (b) A fiduciary shall commence a proceeding against a trust advisor or trust protector for
20 breach of trust within 3 years after the date on which the fiduciary was sent a report that adequately
21 disclosed the existence of a potential claim for breach of trust; provided, however, that a fiduciary
22 shall not commence a proceeding against a trust advisor or trust protector for breach of trust if,
23 under subsection (a), none of the beneficiaries may commence a proceeding against the trust advisor
24 or trust protector for such breach of trust. For purposes of this section, a "fiduciary" means any
25 trustee, trust advisor, or trust protector.

26 (c) A report adequately discloses the existence of a potential claim for breach of trust if it
27 provides sufficient information so that the recipient knows of the potential claim or should have
28 inquired into its existence.

29 (d) The periods of limitation under subsection (a) shall not be tolled for any reason,
30 except by a written agreement of the qualified beneficiaries and each of the trust advisors and trust
31 protectors against whom a beneficiary may commence a proceeding or a court order. The periods of
32 limitation under subsection (b) shall not be tolled for any reason, except by a written agreement of
33 the trustees and each of the trust advisors and trust protectors against whom a fiduciary may
34 commence a proceeding or a court order. Without limiting the circumstances under which a court
35 may issue an order tolling the period of limitations, a court may issue an order tolling the period of
36 limitations under this section during the pendency of any action described in RSA 564-B:10-
37 1014(c)(3).

1 (e) Nothing in this section shall limit the authority of the attorney general or the
2 department of health and human services provided by common law or other statute.

3 15 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-(b)
4 to read as follows:

5 (a) Unless expressly prohibited by the terms of the trust, a trustee may convert a trust
6 into a unitrust as described in this section if all of the following apply:

7 (1) The trustee determines that the conversion will enable the trustee to better carry
8 out the intent of the settlor [~~or testator~~], *as defined in RSA 564-B:1-103(15)*, and the purposes of
9 the trust.

10 (2) The trustee gives written notice of the trustee's intention to convert the trust into
11 a unitrust and of how the unitrust will operate, including what initial decisions the trustee will
12 make under this section, to all the [~~sui-juris~~] *qualified* beneficiaries, *as defined in RSA 564-B:1-*
13 *103(12) and including the director of charitable trusts if, with respect to the trust, the*
14 *director has the right of a "qualified beneficiary" under RSA 564-B:1-110(c).* [~~who:~~

15 ~~(A) Are currently eligible to receive income from the trust;~~

16 ~~(B) Would be eligible, if a power of appointment were not exercised, to receive~~
17 ~~income from the trust if the interest of all the beneficiaries eligible to receive income under~~
18 ~~subparagraph (a)(2)(A) were to terminate immediately before the giving of notice; and~~

19 ~~(C) Would receive, if no powers of appointment were exercised, a distribution of~~
20 ~~principal if the trust were to terminate immediately prior to the giving of notice.~~

21 ~~(3) There is at least one sui-juris beneficiary under subparagraph (a)(2)(A) and at~~
22 ~~least one sui-juris beneficiary under subparagraph (a)(2)(B).~~

23 ~~(4) No sui-juris~~ (3) *No qualified* beneficiary objects to the conversion to a unitrust
24 in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph
25 (a)(2).

26 (b)(1) The trustee may petition the court to approve the conversion to a unitrust if [~~any~~
27 ~~of the following apply:~~

28 ~~(A) A beneficiary timely objects to the conversion to a unitrust.~~

29 ~~(B) There are no sui-juris beneficiaries under subparagraph (a)(2)(A).~~

30 ~~(C) There are no sui-juris beneficiaries under subparagraph (a)(2)(C).]~~ *a*
31 *qualified beneficiary timely objects to the conversion of the unitrust.*

32 (2) A *qualified* beneficiary may request a trustee to convert to a unitrust. If the
33 trustee does not convert, the beneficiary may petition the court to order the conversion.

34 (3) The court shall approve the conversion or direct the requested conversion if the
35 court concludes that the conversion will enable the trustee to better carry out the intent of the settlor
36 [~~or testator~~] and the purposes of the trust.

1 16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-(l) to
2 read as follows:

3 (j)(1) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ **(i)(6)** applies to a trustee and there is more
4 than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the
5 exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

6 (2) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ **(i)(6)** applies to all the trustees, the
7 trustees may petition the court to direct a conversion.

8 (k) A trustee may permanently release the power conferred by paragraph (a) or may
9 release the power conferred by paragraph (a) for a specified period including a period measured by
10 the life of an individual to convert to a unitrust if any of the following apply:

11 (1) The trustee is uncertain about whether possessing or exercising the power will
12 cause a result described in subparagraph (i)(3), (i)(4), or (i)(5).

13 (2) The trustee determines that possessing or exercising the power will or may
14 deprive the trust of a tax benefit or impose a tax burden not described in paragraph (i).

15 (l) ~~[The provisions of RSA 564-B:3-304 shall apply with respect to beneficiaries other~~
16 ~~than sui-juris beneficiaries]~~ **For the purposes of this section, a person may represent and bind**
17 **another person in accordance with Article 3 of RSA 564-B.**

18 17 Uniform Trust Code; Conforming Change. Amend RSA 564-B:3-304 to read as follows:

19 564-B:3-304 Representation by Person Having Substantially Identical Interest. Unless
20 otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or
21 location is unknown and not reasonably ascertainable, may be represented by and bound by another
22 having a substantially identical interest with respect to the particular question or dispute, but only
23 to the extent there is no conflict of interest between the representative and the person represented.
24 ~~[Nothing in this section shall expand or limit the virtual representation of sui-juris beneficiaries for~~
25 ~~purposes of RSA 564-C:1-106.]~~

26 18 New Paragraph; Uniform Trust Code; Notice for Minors and Incapacitated Persons. Amend
27 RSA 564-B:1-109 by inserting after paragraph (d) the following new paragraph:

28 (e) Notice to any minor or incapacitated individual shall not be effective unless such
29 notice is sent to a person who represents and can bind such minor or incapacitated individual in
30 accordance with the provisions of Article 3 of this chapter.

31 19 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor. Amend
32 RSA 564-D:5 to read as follows:

33 564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the
34 qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if such
35 transferor serves as the trust advisor, his or her rights and powers as a trust advisor shall be limited
36 to ~~[the right to disapprove distributions from the trust and the right to consent to a trustee's action~~
37 ~~or inaction relating to the investment of trust assets.]~~



1 *I. The right to direct, consent to, or veto a fiduciary's actual or proposed investment*
2 *decisions; and*

3 *II. The rights and powers described in RSA 564-D:2, II excluding any power that*
4 *would enable the transferor, acting as trust advisor, to direct, consent to, veto, or otherwise*
5 *participate in a distribution by the trustee to or for the benefit of the transferor, the*
6 *transferor's creditors, the transferor's estate, or the creditors of the transferor's estate.*

7 20 Effective Date. This act shall take effect 60 days after its passage.

Testimony

Summary of Proposed Amendment by Representative Hunt to SB 50

Overview of SB 50. SB 50, as introduced on January 19, and first heard before the Senate Commerce Committee on February 1, would make several changes to New Hampshire's statutes that govern trusts. This bill is part of a continuing effort, pursued over the last decade, to establish New Hampshire as a leading jurisdiction nationally for the provision of trust, fiduciary and financial services.

Development of Amendment to SB 50. The Senate Commerce Committee recommended SB 50 "ought to pass as amended" and the Senate approved this recommendation. Since the Senate action, various interested parties (attorneys specializing in trust, estate and probate law; the Charitable Trust Division of the Department of Justice; the Chief Judge of the Probate Court; the New Hampshire Trust Council; and others) have worked to develop the subsequent amendment proposed by Representative Hunt.

Summary of Amendment to SB 50. Under the proposed amendment, SB 50 would have a total of 20 sections, including a purpose statement and an effective date rule. For the most part, the proposed amendment addresses the same subjects as were addressed in the bill as passed by the Senate. The seven subject areas addressed by the amendment (and their corresponding sections of the amendment) are:

- **Enforcement of No-Contest Clauses.** The amendment codifies enforcement of the intent of the testator or settlor (the creator of a will or trust) when the testator or settlor includes a "no contest" clause in the will or trust. [Sections 2 and 13]
- **Opt Out of Probate Court Reporting Requirements.** The amendment allows testamentary trusts (trusts created by wills) to "opt-out" of annual reporting obligations at the Probate court (and related bond requirements), and instead makes such trusts subject to the reporting requirements of the Uniform Trust Code. [Sections 3, 4, 5, 6 and 9]
- **Enforcement of Settlor's Intent and Terms of Trust.** The amendment makes changes intended to emphasize that the terms of the trust (reflecting settlor intent) control over any vague, equitable notion of disregarding trust terms in favor of the "benefit of beneficiaries", as that notion might be interpreted by a court from time to time. [Sections 7, 8, and 10]
- **Application of 3-Year Statute of Limitations to Actions Against Fiduciaries.** The amendment clarifies the application of the general 3-year statute of limitation for actions against trustees and other fiduciaries. [Sections 11, 12 and 14]
- **Technical Corrections to the UPIA.** The amendment corrects erroneous cross-references and unclear expressions in the Uniform Principal and Income Act. [Sections 15, 16 and 17]
- **Clarification of Effect of Notice to Minors or Incapacitated Persons.** The amendment clarifies that notice to minors or incapacitated persons is not effective. [Section 18]
- **Technical Correction to the ODTA.** The amendment clarifies the rights and powers of trust advisors with respect to a trust established pursuant to the Qualified Dispositions in Trust Act (so-called "self-settled" trusts created by a person for the benefit of that person). [Section 19]

Items Deleted from Original SB 50. The proposed amendment to SB 50 eliminates one section of the bill as passed by the Senate [section 11] to reflect discussions with the Probate Court.

Summary of Proposed SB 50 As Amended by House

Overview of SB 50. SB 50, as introduced on January 19, and first heard before the Senate Commerce Committee on February 1, would make several changes to New Hampshire's statutes that govern trusts. This bill is part of a continuing effort, pursued over the last decade, to establish New Hampshire as a leading jurisdiction nationally for the provision of trust, fiduciary and financial services.

Development of SB 50. The Senate Commerce Committee recommended SB 50 "ought to pass as amended" and the Senate approved this recommendation. Since the Senate action, various interested parties (attorneys specializing in trust, estate and probate law; the Charitable Trust Division of the Department of Justice; the Chief Judge of the Probate Court; the New Hampshire Trust Council; and others) have worked to develop the subsequent amendment proposed by Representative Hunt. The Commerce Committee unanimously approved the amended bill, and the House referred the bill to the Judiciary Committee.

Summary of SB 50. Under the bill as passed by the House, SB 50 would have a total of 20 sections, including a purpose statement and an effective date rule. For the most part, the proposed amendment addresses the same subjects as were addressed in the bill as passed by the Senate. The seven subject areas addressed by the amendment (and their corresponding sections of the amendment) are:

- **Enforcement of No-Contest Clauses.** The amendment codifies enforcement of the intent of the testator or settlor (the creator of a will or trust) when the testator or settlor includes a "no contest" clause in the will or trust. [Sections 2 and 13]
- **Opt Out of Probate Court Reporting Requirements.** The amendment allows testamentary trusts (trusts created by wills) to "opt-out" of annual reporting obligations at the Probate court (and related bond requirements), and instead makes such trusts subject to the reporting requirements of the Uniform Trust Code. [Sections 3, 4, 5, 6 and 9]
- **Enforcement of Settlor's Intent and Terms of Trust.** The amendment makes changes intended to emphasize that the terms of the trust (reflecting settlor intent) control over any vague, equitable notion of disregarding trust terms in favor of the "benefit of beneficiaries", as that notion might be interpreted by a court from time to time. [Sections 7, 8, and 10]
- **Application of 3-Year Statute of Limitations to Actions Against Fiduciaries.** The amendment clarifies the application of the general 3-year statute of limitation for actions against trustees and other fiduciaries. [Sections 11, 12 and 14]
- **Technical Corrections to the UPLA.** The amendment corrects erroneous cross-references and unclear expressions in the Uniform Principal and Income Act. [Sections 15, 16 and 17]
- **Clarification of Effect of Notice to Minors or Incapacitated Persons.** The amendment clarifies that notice to minors or incapacitated persons is not effective. [Section 18]
- **Technical Correction to the ODTA.** The amendment clarifies the rights and powers of trust advisors with respect to a trust established pursuant to the Qualified Dispositions in Trust Act (so-called "self-settled" trusts created by a person for the benefit of that person). [Section 19]

Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on SB 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: 4-21-11

LOB ROOM: 302

Amendments:

| | | | |
|--------------------|-----------------|------|-------|
| Sponsor: Rep. Hunt | OLS Document #: | 2011 | 1533h |
| Sponsor: Rep. | OLS Document #: | | |
| Sponsor: Rep. | OLS Document #: | | |

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Palfrey

Seconded by Rep. Coffey

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Palfrey

Seconded by Rep. Coffey

Vote: 18-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on SB 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: 4-21-11

LOB ROOM: 302

Amendments:

1533h

Sponsor: Rep.

PAH Frey

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions:

ⓐ

OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

PAH Frey

Seconded by Rep.

Coffey

Vote: 18-0 (Please attach record of roll call vote.)

Motions:

ⓐ

OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

PAH Frey

Seconded by Rep.

Coffey

Vote: 18-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

18-0

Statement of Intent:

Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk

COMMERCE AND CONSUMER AFFAIRS

Bill #: SB 50 Title: _____

PH Date: ~~4/21/11~~

Exec Session Date: 4/21/11

Motion: OTY

Amendment #: 15336

| MEMBER | YEAS | NAYS |
|---|------|------|
| Hunt, John B, Chairman | / | |
| Coffey, Jennifer R, V Chairman | / | |
| Belanger, Ronald J <i>SONA</i> | / | |
| Flanders, Donald H | / | |
| Quandt, Matt J | / | |
| Headd, James F, Clerk | / | |
| Nevins, Chris F | / | |
| Palfrey, David J | / | |
| Sullivan, James M | / | |
| Bergevin, Jerry E <i>MIKE KAPLER</i> | / | |
| Manuse, Andrew J | / | |
| Mauro, Donna C | / | |
| McGuinness, Sean M | / | |
| Rice, Frederick C | / | |
| Taylor, Kathleen N | / | |
| Meador, David R | / | |
| Gidge, Kenneth N | / | |
| Schlachman, Donna L | / | |
| | 18 | 0 |
| TOTAL VOTE: | | |

COMMERCE AND CONSUMER AFFAIRS

Bill #: SB 50 Title: _____

PH Date: / /

Exec Session Date: 4/26/11

Motion: OT P/A

Amendment #: _____

| MEMBER | YEAS | NAYS |
|---------------------------------|------|------|
| Hunt, John B, Chairman | / | |
| Coffey, Jennifer R, V Chairman | / | |
| Belanger, Ronald J <i>SOVA</i> | / | |
| Flanders, Donald H | / | |
| Quandt, Matt J | / | |
| Headd, James F, Clerk | / | |
| Nevins, Chris F | / | |
| Palfrey, David J | / | |
| Sullivan, James M | / | |
| Bergevin, Jerry E <i>KAPLER</i> | / | |
| Manuse, Andrew J | / | |
| Mauro, Donna C | / | |
| McGuinness, Sean M | / | |
| Rice, Frederick C | / | |
| Taylor, Kathleen N | / | |
| Meador, David R | / | |
| Gidge, Kenneth N | / | |
| Schlachman, Donna L | / | |

18-0
18-0

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION on SENATE BILL 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.

DATE: May 24, 2011

LOB ROOM: 208

Amendments:

Sponsor: Rep. McClarren OLS Document #: 2011 1999h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. B. Palmer

Seconded by Rep. B. Giuda

Vote: 14-1 (Show of hands) (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

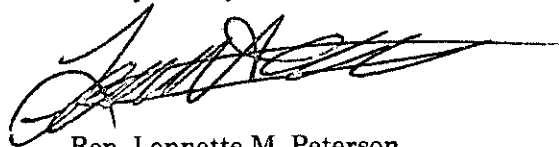
Vote: 15-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep. Lennette M. Peterson

HOUSE COMMITTEE ON JUDICIARY
EXECUTIVE SESSION on SENATE BILL 50

BILL TITLE: making various changes to laws regulating trusts and trust companies.
DATE: {Type DATE} 5-24-11
LOB ROOM: 208

Amendments:

Sponsor: Rep. McClarren OLS Document #: 1999h
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Palmer

Seconded by Rep. Giuda

Vote: *unanimous* (Please attach record of roll call vote.) 10/0/1

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Song

Seconded by Rep. McClarren

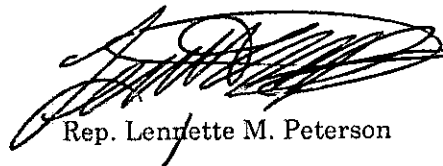
Vote: 130 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep. Lenette M. Peterson

JUDICIARY

Bill #: SB50 Title: making various changes to laws regulating trusts & trust companies
 PH Date: 5 / 17 / 11 Exec Session Date: 5 / 24 / 11
 Motion: OTPA Amendment #: 1999h

| MEMBER | YEAS | NAYS |
|-----------------------------|------|------|
| Rowe, Robert H, Chairman | ✓ | |
| Sorg, Gregory M, V Chairman | ✓ | |
| Souza, Kathleen F | ✓ | |
| Hagan, Joseph M | — | — |
| Silva, Peter L | — | — |
| Andolina, Donald C | ✓ | |
| Giuda, J. Brandon | ✓ | |
| LaCasse, Paul D | ✓ | |
| McClarren, Donald B | ✓ | |
| Murphy, Brian JX | ✓ | |
| Palmer, Barry J | ✓ | |
| Peterson, Lenette M, Clerk | ✓ | |
| Tregenza, Norman A | ✓ | |
| Wall, Janet G | ✓ | |
| Potter, Frances D | ✓ | |
| Weber, Lucy M | ✓ | |
| Watrous, Rick H | ✓ | |
| | 15 | 0 |
| TOTAL VOTE: | | |

Committee Report

CONSENT CALENDAR

May 4, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on COMMERCE AND CONSUMER
AFFAIRS to which was referred SB50,

AN ACT making various changes to laws regulating trusts and trust companies. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. David J Palfrey

FOR THE COMMITTEE

COMMITTEE REPORT

| | |
|-------------------|--|
| Committee: | COMMERCE AND CONSUMER AFFAIRS |
| Bill Number: | SB50 |
| Title: | making various changes to laws regulating trusts and trust companies. |
| Date: | April 26, 2011 |
| Consent Calendar: | YES |
| Recommendation: | OUGHT TO PASS WITH AMENDMENT |

STATEMENT OF INTENT

This bill continues the long-standing legislative initiative to establish New Hampshire as a leading jurisdiction in the national market for financial, trust and fiduciary services and to attract the good, clean financial service jobs of that marketplace to New Hampshire. SB 50 makes changes to the statutes governing wills and trusts that will continue to maintain New Hampshire's competitiveness among states in this growing economic sector. The committee amendment clarifies the authority of the probate court and the certain state agencies and makes several minor editing and technical corrections to the bill as it passed the Senate.

Vote 18-0.

Rep. David J Palfrey
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

COMMERCE AND CONSUMER AFFAIRS

SB50, making various changes to laws regulating trusts and trust companies. OUGHT TO PASS WITH AMENDMENT.

Rep. David J Palfrey for COMMERCE AND CONSUMER AFFAIRS. This bill continues the long-standing legislative initiative to establish New Hampshire as a leading jurisdiction in the national market for financial, trust and fiduciary services and to attract the good, clean financial service jobs of that marketplace to New Hampshire. SB 50 makes changes to the statutes governing wills and trusts that will continue to maintain New Hampshire's competitiveness among states in this growing economic sector. The committee amendment clarifies the authority of the probate court and the certain state agencies and makes several minor editing and technical corrections to the bill as it passed the Senate. **Vote 18-0.**

Original: House Clerk
Cc: Committee Bill File

SB 50, relative to the laws regarding trusts and trust companies in New Hampshire. OUGHT TO PASS WITH AMENDMENT.

This bill

Rep. David Palfrey for Commerce and Consumer Affairs: ~~SB~~ 50 continues the long-standing legislative initiative to establish New Hampshire as a leading jurisdiction in the national market for financial, trust and fiduciary services and to attract the good, clean financial service jobs of that marketplace to New Hampshire. SB 50 makes changes to the statutes governing wills and trusts that will continue to maintain New Hampshire's competitiveness among states in this growing economic sector. The committee amendment clarifies the authority of the probate court and the certain state agencies and makes several minor editing and technical corrections to the bill as it passed the Senate. Vote _____.



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COMMITTEE REPORT

COMMITTEE: COMMERCE + CONSUMER AFFAIRS

BILL NUMBER: SB 50

TITLE: MAKING VARIOUS CHANGES TO LAWS REGULATING TRUSTS AND TRUST COMPANIES

DATE: 4/21/11 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- RE-REFER
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

SEE ATTACHED

COMMITTEE VOTE: 18-0

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. David Delpy
For the Committee

CONSENT CALENDAR

May 24, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on JUDICIARY to which was referred SB 50,
AN ACT making various changes to laws regulating trusts and
trust companies. Having considered the same, report the same
with the following amendment, and the recommendation that
the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Gregory M. Sorg

FOR THE COMMITTEE

COMMITTEE REPORT

| | |
|-------------------|---|
| Committee: | JUDICIARY |
| Bill Number: | SB 50 |
| Title: | making various changes to laws regulating trusts and trust companies. |
| Date: | May 24, 2011 |
| Consent Calendar: | YES |
| Recommendation: | OUGHT TO PASS WITH AMENDMENT |

STATEMENT OF INTENT

This is a second committee referral of this bill, which, as amended by the Commerce and Consumer Affairs Committee, passed that Committee 18-0 and passed the House on the Consent Calendar on May 4th. This bill makes changes to the statutes governing trusts and trust administration in order to maintain New Hampshire's competitiveness among the states in this growing economic sector, in furtherance of this state's policy of establishing and maintaining New Hampshire as a leading jurisdiction in the national market for financial, trust and fiduciary services, and in the creation of the financial service jobs that will bring. The Judiciary Committee amendment merely eliminates certain redundant statutory references.

Vote 15-0.

Rep. Gregory M. Sorg
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

SB 50, making various changes to laws regulating trusts and trust companies. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Gregory M. Sorg for JUDICIARY. This is a second committee referral of this bill, which, as amended by the Commerce and Consumer Affairs Committee, passed that Committee 18-0 and passed the House on the Consent Calendar on May 4th. This bill makes changes to the statutes governing trusts and trust administration in order to maintain New Hampshire's competitiveness among the states in this growing economic sector, in furtherance of this state's policy of establishing and maintaining New Hampshire as a leading jurisdiction in the national market for financial, trust and fiduciary services, and in the creation of the financial service jobs that will bring. The Judiciary Committee amendment merely eliminates certain redundant statutory references. **Vote 15-0.**

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Judiciary

BILL NUMBER: SB 50

TITLE: Making various changes to laws regulating trusts and trust companies.

DATE: 5.24.11 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. 1999h

STATEMENT OF INTENT:

SB 50, making various changes to laws regulating trusts and trust companies.

Ought to Pass as Amended

Rep Gregory M. Sorg for the Majority of Judiciary:

This is a second committee referral of this bill, which, as amended by the Commerce and Consumer Affairs Committee, passed that Committee 18-0 and passed the House on the Consent Calendar on May 4th. This bill makes changes to the statutes governing trusts and trust administration in order to maintain New Hampshire's competitiveness among the states in this growing economic sector, in furtherance of this state's policy of establishing and maintaining New Hampshire as a leading jurisdiction in the national market for financial, trust and fiduciary services, and in the creation of the financial service jobs that will bring. The Judiciary Committee amendment merely eliminates certain redundant statutory references.

Vote: 15-0

COMMITTEE VOTE: 15-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. G. Sorg For the Committee