

# Bill as Introduced

SB 50 – AS INTRODUCED

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

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ANALYSIS

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

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 I 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 Testamentary Trusts; Bond and Surety Requirements for Trustees. Amend RSA 564:1 to read  
13 as follows:

14 564:1 Bonds. Every trustee to whom any estate, real or personal, is devised in trust for any  
15 person shall give bond to the judge of probate, with sufficient sureties, or without sureties in estates  
16 of five thousand dollars or less where the judge finds it in the interest of the estate, in such sum as  
17 the judge may order, except as provided in RSA 564:2, conditioned:

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

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

22 III. That at the expiration of the trust [he] *the trustee* will adjust and settle his *or her*  
23 account with the judge, and pay and deliver over all balances, money, and property with which [he]  
24 *the trustee* has been entrusted.

25 IV. That [he] *the trustee* will faithfully execute the trust according to the true intent of the  
26 deviser.

27 V. *The conditions of paragraphs I through IV shall not apply if the trustee of a*  
28 *formerly non-New Hampshire supervised trust is not required to submit annual*  
29 *accountings as provided in RSA 564:19, II and III.*

30 3 Testamentary Trusts; Bonds of Banks. Amend RSA 564:5 to read as follows:

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

4       4 Testamentary Trusts; Filing Accounts. Amend RSA 564:19 to read as follows:

5       564:19 Filing Account. *Except as otherwise provided in paragraphs II and III*, every  
6 trustee shall file in the probate court an annual account of administration, unless upon petition he is  
7 excused by the judge of probate; but in no event shall [he] *the trustee* be excused for a period longer  
8 than three years, except that in cases where such filing may be impractical and may work financial  
9 hardship to the trust estate the judge of probate upon written approval of the attorney general may  
10 extend said period not exceeding in the aggregate five years. Such annual account of administration  
11 provided for herein may be allowed by the judge of probate without publication unless he shall  
12 otherwise order. Before giving notice to settle a final account the trustee shall file it in the probate  
13 office and shall cause the fact of such filing to appear in the notice and shall at the same time file a  
14 statement of the names and residences of the beneficiaries in the trust estate.

15       **II. Notwithstanding paragraph I, if (a) the probate court grants a petition for the**  
16 **acceptance of jurisdiction over a trust with respect to which a court of another state has**  
17 **released its jurisdiction, and (b) the court releasing jurisdiction did not require the**  
18 **trustee(s) of that trust to file accounts with that court, or required that the trustees of the**  
19 **trust file accounts less frequently than annually, then the court accepting jurisdiction over**  
20 **such trust shall not require accountings whatsoever, or shall require accountings less**  
21 **frequently than annually, as the case may be, on the same basis as were required, or not**  
22 **required, by the court releasing jurisdiction.**

23       **III. A trust under will described in paragraph II, with respect to which no judicial**  
24 **accountings will be required, shall in all respects be subject to the beneficiary reporting**  
25 **and information requirements of RSA 564-B, the Uniform Trust Code, except to the extent**  
26 **that a contrary provision appears in the will under which the trust was created, provided**  
27 **that such contrary provision does not violate any of the mandatory rules of RSA 564-B:1-**  
28 **105. For these purposes, the "will creating the trust" shall have the same meaning as "trust**  
29 **instrument," and the pertinent terms of the will shall have the same meaning as "terms of**  
30 **a trust" as defined in RSA 564-B:1-103 (19) and (20), respectively.**

31       5 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:2-201  
32 to read as follows:

33       564-B:2-201 Role of Court in Administration of Trust.

34       (a) The court may intervene in the administration of a trust to the extent its jurisdiction  
35 is invoked by an interested person or as provided by law.

36       (b) A trust~~[, other than a trust created by a will,]~~ is not subject to continuing judicial  
37 supervision unless ordered by the court.

1 (c) A judicial proceeding involving a trust may relate to any matter involving the trust's  
2 administration, including a request for instructions and an action to declare rights.

3 6 New Section; Uniform Trust Code; Application to Testamentary Trusts. Amend RSA 564 by  
4 inserting after section 24 the following new section:

5 564:25 Application of the Uniform Trust Code. The provisions of RSA 564-B, the Uniform Trust  
6 Code, shall apply to all trusts under will governed by this chapter, except to the extent that any  
7 provisions of the Uniform Trust Code conflict with the express provisions of this chapter, in which  
8 case the provisions of this chapter shall control.

9 7 New Section; Uniform Trust Code; Authority to Seal Confidential Records Under Limited  
10 Circumstances. Amend RSA 548 by inserting after section 5-a the following new section:

11 548:5-b Sealing of Records in Limited Circumstances.

12 I. Except as otherwise provided in this section, all pleadings and other papers including  
13 deposition transcripts and exhibits, answers to interrogatories and requests for admission, and  
14 affidavits of certificates and exhibits thereto, that are filed with the register of probate and relating  
15 to contested and uncontested trust matters shall become a part of the public record of the  
16 proceedings before this court.

17 II. Documents shall not be filed under seal unless and except to the extent that the person  
18 seeking such filing under seal shall have first obtained, for good cause shown, an order of this court  
19 specifying those documents or categories of documents which should be filed under seal; provided,  
20 however, the court may, in its discretion, receive and review any document in camera without public  
21 disclosure thereof and in connection with any such review, may determine whether good cause exists  
22 for the filing of such document under seal.

23 III. Notwithstanding the provisions of paragraph II, the court may, in its discretion, by  
24 order, authorize the parties or other persons to designate documents to be filed under seal pending a  
25 judicial determination of the specific documents or categories of documents to which such restriction  
26 on public access shall continue to apply. In all such cases the court shall require submission of the  
27 matter within 10 days of such initial order and shall make such a determination as soon as  
28 practicable.

29 IV. Whenever any brief or correspondence of any party to a contested matter is filed under  
30 seal with the court because it would disclose information from a document which is otherwise  
31 required to be filed under seal pursuant this section, the following procedures shall be followed:

32 (a) If the restricted documents had been designated by the party filing the brief or  
33 correspondence, the party shall also file a copy of the brief or correspondence for public inspection  
34 omitting only such restricted information which the party believes should continue to be sealed for  
35 good cause; or

36 (b) If the restricted documents had been designated by another person, the party filing  
37 the brief or correspondence under seal shall give written notice to such person that a copy of the

1 entire brief or correspondence will be filed for public inspection unless such person files, within 3  
2 days of the filing of the brief or correspondence under seal, a copy of the brief or correspondence for  
3 public inspection omitting only such restricted information which such person believes should  
4 continue to be sealed for good cause; or

5 (c) If the brief or correspondence discloses information from a restricted document which  
6 had been designated by the party filing the brief or correspondence and also discloses information  
7 from a restricted document which had been designated by another person, the party filing the brief  
8 or correspondence under seal and such other person shall jointly prepare and file, within 3 days of  
9 the filing of the brief or correspondence under seal, a copy of the brief or correspondence for public  
10 inspection omitting only such restricted information as each of them believes should continue to be  
11 sealed for good cause.

12 V. Any person who seeks the continued sealing of any portion of a brief or correspondence  
13 pursuant to paragraph IV shall also file a certification signed by such person's attorney of record, or  
14 in the event such person is not represented by an attorney, signed by such person, that said attorney  
15 has personally reviewed the brief or correspondence filed under seal and that said attorney believes  
16 to the best of the attorney's knowledge, information and belief that the restricted information should  
17 continue to be sealed for good cause. Said certificate shall briefly set for the  
18 reasons why said attorney believes that good cause exists for continued filing of the brief or  
19 correspondence under seal.

20 VI. Any party who objects to the continued sealing of any document filed under seal  
21 pursuant to paragraphs II and III or to any portion of a brief or correspondence filed under seal  
22 pursuant to paragraph IV shall give written notice of such party's objection to the person who  
23 designated the document for filing under seal. To the extent that such person seeks to continue the  
24 restriction on public access to such document, said person shall serve and file an application with 7  
25 days after receipt of such written notice setting forth the grounds for such continued restriction and  
26 requesting a judicial determination whether good cause exists therefor. In such circumstances, the  
27 court shall promptly make such a determination.

28 VII. The register of probate shall promptly unseal any document or brief or  
29 correspondence in the absence of timely compliance with the provisions of this section. In  
30 addition, 30 days after final judgment has been entered without any appeal having been taken  
31 therefrom, the register of probate shall send a notice to any person who designated a document to  
32 be filed under seal that such document shall be released from confidential treatment, unless that  
33 person makes application to the court within 30 days for further confidential treatment for good  
34 cause shown.

35 VIII. Notwithstanding any provision of this section, any order permitting or requiring a  
36 document, brief, or letter to be filed or remain filed under seal shall expire 3 years after the final  
37 disposition of the action in which such order was entered, and any document, brief, or letter filed

1 under seal pursuant to such order shall become a part of the public record. Notwithstanding  
2 anything to the contrary in this paragraph, the time within which such order shall expire may be  
3 extended by the court for good cause shown.

4 8 New Section; Probate Courts; Authority to Seal Confidential Records Under Limited  
5 Circumstances. Amend RSA 547 by inserting after section 17 the following new section:

6 547:17-a Authority to Order Sealing of Records Under; Limited Circumstances. A judge of  
7 probate in any county may order that probate records be sealed under such terms and conditions as  
8 are described in RSA 548:5-b.

9 9 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-  
10 105(b)(3) to read as follows:

11 (3) The requirement that a trust [~~and its terms be for the benefit of its beneficiaries~~]  
12 ***exists, and its assets shall be held, for the benefit of the trust's beneficiaries in accordance***  
13 ***with the interests of the beneficiaries of the trust as defined in the trust instrument, and the***  
14 ***requirement*** that the trust have a purpose that is lawful, not contrary to public policy, and possible  
15 to achieve;

16 10 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 Trustee.

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 was***  
32 ***sent a report that adequately disclosed the existence of a potential claim for breach of trust.***

33 (d) ***The periods of limitation under this section shall not be tolled for any reason.***

34 11 Effective Date. This act shall take effect 60 days after its passage.

SB 50 - AS AMENDED BY THE SENATE

03/30/11 1183s

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08/05

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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 devisor.

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.

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03/30/11 1183s  
4May2011... 1583h  
1June2011... 1999h  
06/22/11 2376CofC  
06/22/11 2530EBA

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

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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.

CHAPTER 243  
SB 50 – FINAL VERSION

03/30/11 1183s  
4May2011... 1533h  
1June2011... 1999h  
06/22/11 2376CofC  
06/22/11 2530EBA

11-1049  
08/05

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:*

1 243:1 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.

12 243:2 New Section; Wills; Enforcement of No-Contest Provision. Amend RSA 551 by inserting  
13 after 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

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- Page 2 -

1 beneficiary's interest in the will under the terms of the no-contest provision. A no-contest provision  
2 shall be unenforceable to the extent that the will is invalid because of fraud, duress, undue influence,  
3 lack of testamentary capacity, or any other reason. In the case of an action solely to challenge the  
4 acts of the executor or other fiduciary of the will, a no-contest provision shall be unenforceable to the  
5 extent that the executor or other fiduciary has committed a breach of fiduciary duties or breach of  
6 trust.

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

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

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

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

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

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

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

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

26 243:3 Testamentary Trusts; Bond and Surety Requirements for Trustees. Amend RSA 564:1 to  
27 read as follows:

28 564:1 Bonds.

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

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

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

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

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

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

8           243:4 Testamentary Trusts; Bonds of Banks. Amend RSA 564:5 to read as follows:

9           564:5 Bond of Banks. **Except as otherwise provided in RSA 564:1**, such trust company or  
10 national bank when appointed trustee shall give a surety company bond in such sum as the judge  
11 may order.

12           243:5 Testamentary Trusts; Filing Accounts. Amend RSA 564:19 to read as follows:

13           564:19 Filing Account.

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

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

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

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

1 *shall be subject to full judicial supervision, including a requirement that the trustee file*  
2 *accounts with the court.*

3 *(c) If the court grants a petition for the acceptance of jurisdiction over a trust*  
4 *with respect to which a court of another state has released its jurisdiction, and the court*  
5 *releasing jurisdiction did not require the trustee or trustees of the trust to file accounts*  
6 *with that court, or required that the trustee or trustees of the trust file accounts less*  
7 *frequently than annually, then the court accepting jurisdiction over such trust shall not*  
8 *require accountings whatsoever, or shall require accountings less frequently than*  
9 *annually, as the case may be, on the same basis as may have been required by the court*  
10 *releasing jurisdiction.*

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

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

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

28 *VI. Nothing in this section shall limit the authority of the director of charitable*  
29 *trusts or the department of health and human services otherwise provided by common law*  
30 *or other statute.*

31 243:6 New Section; Uniform Trust Code; Application to Testamentary Trusts. Amend RSA 564  
32 by inserting after section 24 the following new section:

33 564:25 Application of the Uniform Trust Code. The provisions of RSA 564-B, the Uniform Trust  
34 Code, shall apply to all trusts under a will governed by this chapter, except to the extent that any  
35 provisions of the Uniform Trust Code conflict with the express provisions of this chapter, in which  
36 case the provisions of this chapter shall control.

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1       243:7 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-  
2 105(b)(3) to read as follows:

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

6       243:8 Uniform Trust Code; Rules of Construction. Amend RSA 564-B:1-112 to read as follows:

7       564-B:1-112 Rules of Construction. The rules of construction that apply in this state to the  
8 interpretation of and disposition of property by will also apply as appropriate to the interpretation of  
9 the terms of a trust and the disposition of the trust property. ***For the purposes of determining***  
10 ***the benefit of the beneficiaries, the settlor's intent as expressed in the terms of the trust***  
11 ***shall be paramount.***

12       243:9 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:2-  
13 201(b) to read as follows:

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

16       243:10 Uniform Trust Code; Trust Purposes. Amend RSA 564-B:4-404  
17 to read as follows:

18       564-B:4-404 Trust Purposes. A trust may be created only to the extent its purposes are lawful,  
19 not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of  
20 its beneficiaries, ***as their interests are defined under the terms of the trust.***

21       243:11 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005  
22 to 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***



1 *was sent a report that adequately disclosed the existence of a potential claim for breach of*  
2 *trust.*

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

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

11 243:12 New Section; Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee,  
12 Trust Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the  
13 following new section:

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

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

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

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

31 (d) The periods of limitation under subsection (a) shall not be tolled except by either a  
32 written agreement of the trustees or, in the case of a possible claim against a former trustee, the  
33 trustees and the former trustee or a court order. The periods of limitation under subsection (b) shall  
34 not be tolled except by a written agreement of the trust advisors, trust protectors, and trustees or a  
35 court order. Without limiting the circumstances under which a court may issue an order tolling the

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1 period of limitations, a court may issue an order tolling the period of limitations under this section  
2 during the pendency of any action described in RSA 564-B:10-1014(c)(3).

3 243:13 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA  
4 564-B by inserting after section 10-1013 the following new section:

5 564-B:10-1014 Enforcement of No-Contest Provision.

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

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

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

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

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

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

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

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

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

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

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

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

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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.

8 243:14 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

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1 limitations under this section during the pendency of any action described in RSA 564-B:10-  
2 1014(c)(3).

3 (e) Nothing in this section shall limit the authority of the director of charitable trusts or  
4 the department of health and human services provided by common law or other statute.

5 243:15 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-  
6 (b) to read as follows:

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

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

12 (2) The trustee gives written notice of the trustee's intention to convert the trust into  
13 a unitrust and of how the unitrust will operate, including what initial decisions the trustee will  
14 make under this section, to all the [~~sui-juris~~] *qualified* beneficiaries, *as defined in RSA 564-B:1-*  
15 *103(12) and including the director of charitable trusts if, with respect to the trust, the*  
16 *director has the right of a "qualified beneficiary" under RSA 564-B:1-110(c).* [~~who:~~

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

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

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

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

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

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

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

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

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

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

36 (3) The court shall approve the conversion or direct the requested conversion if the

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1 court concludes that the conversion will enable the trustee to better carry out the intent of the settlor  
2 [~~or testator~~] and the purposes of the trust.

3 243:16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-  
4 (l) to read as follows:

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

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

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

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

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

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

20 243:17 Uniform Trust Code; Conforming Change. Amend RSA 564-B:3-304 to read as follows:

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

28 243:18 New Paragraph; Uniform Trust Code; Notice for Minors and Incapacitated Persons.  
29 Amend RSA 564-B:1-109 by inserting after paragraph (d) the following new paragraph:

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

33 243:19 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor.  
34 Amend RSA 564-D:5 to read as follows:

35 564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the  
36 qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if such

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1 transferor serves as the trust advisor, his or her rights and powers as a trust advisor shall be limited  
2 to ~~[the right to disapprove distributions from the trust and the right to consent to a trustee's action~~  
3 ~~or inaction relating to the investment of trust assets.]~~:

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

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

10 243:20 Effective Date. This act shall take effect 60 days after its passage.

11 Approved: July 13, 2011

12 Effective Date: September 11, 2011

# Amendments

Amendment to SB 50

1 Amend the bill by replacing all after section 1 with the following:

2

3 2 New Section; Wills; Enforcement of No-Contest Provision. Amend RSA 551 by inserting after  
4 section 21 the following new section:

5 551:22 Enforcement of No-Contest Provision.

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

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

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

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

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

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

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

20 (a) Any action brought by the executor or other fiduciary of any such will that  
21 incorporates a no-contest provision, provided that such executor or other fiduciary is not a person  
22 against whom the no-contest provision would be enforced for bringing the action;

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

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

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

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



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

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

8 564:1 Bonds.

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

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

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

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

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

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

24 4 Testamentary Trusts; Bonds of Banks. Amend RSA 564:5 to read as follows:

25 564:5 Bond of Banks. *Except as otherwise provided in RSA 564:1*, such trust company or  
26 national bank when appointed trustee shall give a surety company bond in such sum as the judge  
27 may order.

28 5 Testamentary Trusts; Filing Accounts. Amend RSA 564:19 to read as follows:

29 564:19 Filing Account.

30 I. *Except as otherwise provided in paragraphs II and III*, every trustee shall file in the  
31 probate court an annual account of administration, unless upon petition ~~[he]~~ *the trustee* is excused  
32 by the judge of probate; but in no event shall ~~[he]~~ *the trustee* be excused for a period longer than  
33 three years, except that in cases where such filing may be impractical and may work financial  
34 hardship to the trust estate the judge of probate upon written approval of the attorney general may  
35 extend said period not exceeding in the aggregate five years. Such annual account of administration  
36 provided for herein may be allowed by the judge of probate without publication unless he *or she*  
37 shall otherwise order. Before giving notice to settle a final account the trustee shall file it in the

1 probate office and shall cause the fact of such filing to appear in the notice and shall at the same  
2 time file a statement of the names and residences of the beneficiaries in the trust estate.

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

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

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

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

29 *III. A trust under will described in paragraph II, with respect to which no judicial*  
30 *accountings will be required, shall in all respects be subject to the beneficiary reporting*  
31 *and information requirements of RSA 564-B, the Uniform Trust Code, and all other*  
32 *pertinent provisions of such Code, except to the extent that a contrary provision appears in*  
33 *the will under which the trust was created, provided that such contrary provision does not*  
34 *violate any of the mandatory rules of RSA 564-B:1-105. For these purposes, the pertinent*  
35 *terms of the will shall have the same meaning as "terms of a trust" and the "will creating*  
36 *the trust" shall have the same meaning as "trust instrument", as defined in RSA 564-B:1-*  
37 *103(19) and (20), respectively. Nothing in this paragraph shall be interpreted to limit the*

1 *ability of persons with standing to petition the probate court having jurisdiction over a*  
2 *trust under will to require any trustee of that will to make a judicial accounting, or the*  
3 *jurisdiction of any such court to require an accounting on its own initiative.*

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

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

8 564:25 Application of the Uniform Trust Code. The provisions of RSA 564-B, the Uniform Trust  
9 Code, shall apply to all trusts under will governed by this chapter, except to the extent that any  
10 provisions of the Uniform Trust Code conflict with the express provisions of this chapter, in which  
11 case the provisions of this chapter shall control.

12 7 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-  
13 105(b)(3) to read as follows:

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

17 8 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-112  
18 to read as follows:

19 564-B:1-112 Rules of Construction. The rules of construction that apply in this state to the  
20 interpretation of and disposition of property by will also apply as appropriate to the interpretation of  
21 the terms of a trust and the disposition of the trust property. *For the purposes of determining*  
22 *the benefit of the beneficiaries, the settlor's intent as expressed in the terms of the trust*  
23 *shall be paramount.*

24 9 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:2-  
25 201(b) to read as follows:

26 (b) A trust~~[, other than a trust created by a will,]~~ is not subject to continuing judicial  
27 supervision unless ordered by the court.

28 10 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:4-404  
29 to read as follows:

30 564-B:4-404 Trust Purposes. A trust may be created only to the extent its purposes are lawful,  
31 not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of  
32 its beneficiaries, *as their interests are defined under the terms of the trust.*

33 11 Uniform Trust Code; Trust Purposes. Amend RSA 564-B:4-412(b) to read as follows:

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

37 12 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005 to

1 read as follows:

2 564-B:10-1005 Limitation of Action Against *a Trustee by a Beneficiary.*

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

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

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

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

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

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

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

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

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

25 13 New Section; Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee, Trust  
26 Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the following new  
27 section:

28 564-B:10-1005A Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust  
29 Protector.

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

36 (b) A trust advisor or trust protector shall commence a proceeding against a trustee for  
37 breach of trust within 3 years after earlier of the date on which the trust advisor or trust protector

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1 was sent a report that adequately disclosed the existence of a potential claim for breach of trust or  
2 the removal, resignation, or death of the trustee. A trust advisor or trust protector, however, shall  
3 not commence a proceeding against a trustee for breach of trust if, under RSA 564-B:10-1005, none  
4 of the beneficiaries may commence a proceeding against the trustee for such breach of trust.

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

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

15 14 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B  
16 by inserting after section 10-1013 the following new section:

17 564-B:10-1014 Enforcement of No-Contest Provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 15 New Section; Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust  
15 Protector. Amend RSA 564-B by inserting after section 12-1205 the following new section:

16 564-B:12-1206 Limitation of Action Against a Trust Advisor or Trust Protector.

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

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

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

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

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

35 (d) The periods of limitation under subsection (a) shall not be tolled for any reason,  
36 except by a written agreement of the qualified beneficiaries and each of the trust advisors and trust  
37 protectors against whom a beneficiary may commence a proceeding or a court order. The periods of

1 limitation under subsection (b) shall not be tolled for any reason, except by a written agreement of  
2 the trustees and each of the trust advisors and trust protectors against whom a fiduciary may  
3 commence a proceeding or a court order. Without limiting the circumstances under which a court  
4 may issue an order tolling the period of limitations, a court may issue an order tolling the period of  
5 limitations under this section during the pendency of any action described in RSA 564-B:10-  
6 1014(c)(3).

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

9 16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-(b)  
10 to read as follows:

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

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

16 (2) The trustee gives written notice of the trustee's intention to convert the trust into  
17 a unitrust and of how the unitrust will operate, including what initial decisions the trustee will  
18 make under this section, to all the [~~sui-juris~~] *qualified* beneficiaries, *as defined in RSA 564-B:1-  
19 103(12) and including the director of charitable trusts if the director is a "qualified  
20 beneficiary" of the trust under RSA 564-B:1-110(c).* [~~who:~~

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

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

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

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

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

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

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

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

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

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

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

6 17 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-(l) to  
7 read as follows:

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

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

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

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

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

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

23 18 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor. Amend  
24 RSA 564-D:5 to read as follows:

25 564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the  
26 qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if [~~such~~]  
27 **the** transferor serves as [~~the~~] **a** trust advisor, his or her rights and powers as a trust advisor shall be  
28 limited to: [~~the right to disapprove distributions from the trust and the right to consent to a trustee's~~  
29 ~~action or inaction relating to the investment of trust assets]~~ **(i) the right to direct, consent to, or**  
30 **veto a fiduciary's actual or proposed investment decisions; and (ii) the rights and powers**  
31 **described in RSA 564-D:2, II excluding any power that would enable the transferor, acting**  
32 **as trust advisor, to direct, consent to, veto, or otherwise participate in a distribution by the**  
33 **trustee to or for the benefit of the transferor, the transferor's creditors, the transferor's**  
34 **estate, or the creditors of the transferor's estate.**

35 19 Effective Date. This act shall take effect 60 days after its passage.



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1 Amend the bill by replacing all after section 1 with the following:

2  
3 2 New Section; Wills; Enforcement of No-Contest Provision. Amend RSA 551 by inserting after  
4 section 21 the following new section:

5 551:22 Enforcement of No-Contest Provision.

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

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

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

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

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

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

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

20 (a) Any action brought by the executor or other fiduciary of any such will that  
21 incorporates a no-contest provision, provided that such executor or other fiduciary is not a person  
22 against whom the no-contest provision would be enforced for bringing the action;

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

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

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

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

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

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

8 564:1 Bonds.

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

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

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

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

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

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

24 4 Testamentary Trusts; Bonds of Banks. Amend RSA 564:5 to read as follows:

25 564:5 Bond of Banks. *Except as otherwise provided in RSA 564:1*, such trust company or  
26 national bank when appointed trustee shall give a surety company bond in such sum as the judge  
27 may order.

28 5 Testamentary Trusts; Filing Accounts. Amend RSA 564:19 to read as follows:

29 564:19 Filing Account.

30 I. *Except as otherwise provided in paragraphs II and III*, every trustee shall file in the  
31 probate court an annual account of administration, unless upon petition ~~he~~ *the trustee* is excused  
32 by the judge of probate; but in no event shall ~~he~~ *the trustee* be excused for a period longer than  
33 three years, except that in cases where such filing may be impractical and may work financial  
34 hardship to the trust estate the judge of probate upon written approval of the attorney general may  
35 extend said period not exceeding in the aggregate five years. Such annual account of administration  
36 provided for herein may be allowed by the judge of probate without publication unless he *or she*  
37 shall otherwise order. Before giving notice to settle a final account the trustee shall file it in the

1 probate office and shall cause the fact of such filing to appear in the notice and shall at the same  
2 time file a statement of the names and residences of the beneficiaries in the trust estate.

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

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

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

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

29 *III. A trust under will described in paragraph II, with respect to which no judicial*  
30 *accountings will be required, shall in all respects be subject to the beneficiary reporting*  
31 *and information requirements of RSA 564-B, the Uniform Trust Code, and all other*  
32 *pertinent provisions of such Code, except to the extent that a contrary provision appears in*  
33 *the will under which the trust was created, provided that such contrary provision does not*  
34 *violate any of the mandatory rules of RSA 564-B:1-105. For these purposes, the pertinent*  
35 *terms of the will shall have the same meaning as "terms of a trust" and the "will creating*  
36 *the trust" shall have the same meaning as "trust instrument", as defined in RSA 564-B:1-*  
37 *103(19) and (20), respectively. Nothing in this paragraph shall be interpreted to limit the*

1 *ability of persons with standing to petition the probate court having jurisdiction over a*  
2 *trust under will to require any trustee of that will to make a judicial accounting, or the*  
3 *jurisdiction of any such court to require an accounting on its own initiative.*

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

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

8 564:25 Application of the Uniform Trust Code. The provisions of RSA 564-B, the Uniform Trust  
9 Code, shall apply to all trusts under will governed by this chapter, except to the extent that any  
10 provisions of the Uniform Trust Code conflict with the express provisions of this chapter, in which  
11 case the provisions of this chapter shall control.

12 7 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-  
13 105(b)(3) to read as follows:

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

17 8 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-112  
18 to read as follows:

19 564-B:1-112 Rules of Construction. The rules of construction that apply in this state to the  
20 interpretation of and disposition of property by will also apply as appropriate to the interpretation of  
21 the terms of a trust and the disposition of the trust property. *For the purposes of determining*  
22 *the benefit of the beneficiaries, the settlor's intent as expressed in the terms of the trust*  
23 *shall be paramount.*

24 9 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:2-  
25 201(b) to read as follows:

26 (b) A trust~~[other than a trust created by a will,]~~ is not subject to continuing judicial  
27 supervision unless ordered by the court.

28 10 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:4-404  
29 to read as follows:

30 564-B:4-404 Trust Purposes. A trust may be created only to the extent its purposes are lawful,  
31 not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of  
32 its beneficiaries, *as their interests are defined under the terms of the trust.*

33 11 Uniform Trust Code; Trust Purposes. Amend RSA 564-B:4-412(b) to read as follows:

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

37 12 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005 to

1 read as follows:

2 564-B:10-1005 Limitation of Action Against *a* Trustee by *a Beneficiary*.

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

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

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

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

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

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

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

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

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

25 13 New Section; Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee, Trust  
26 Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the following new  
27 section:

28 564-B:10-1005A Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust  
29 Protector.

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

36 (b) A trust advisor or trust protector shall commence a proceeding against a trustee for  
37 breach of trust within 3 years after earlier of the date on which the trust advisor or trust protector

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1 was sent a report that adequately disclosed the existence of a potential claim for breach of trust or  
2 the removal, resignation, or death of the trustee. A trust advisor or trust protector, however, shall  
3 not commence a proceeding against a trustee for breach of trust if, under RSA 564-B:10-1005, none  
4 of the beneficiaries may commence a proceeding against the trustee for such breach of trust.

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

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

15 14 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B  
16 by inserting after section 10-1013 the following new section:

17 564-B:10-1014 Enforcement of No-Contest Provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 15 New Section; Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust  
15 Protector. Amend RSA 564-B by inserting after section 12-1205 the following new section:

16 564-B:12-1206 Limitation of Action Against a Trust Advisor or Trust Protector.

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

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

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

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

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

35 (d) The periods of limitation under subsection (a) shall not be tolled for any reason,  
36 except by a written agreement of the qualified beneficiaries and each of the trust advisors and trust  
37 protectors against whom a beneficiary may commence a proceeding or a court order. The periods of

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1 limitation under subsection (b) shall not be tolled for any reason, except by a written agreement of  
2 the trustees and each of the trust advisors and trust protectors against whom a fiduciary may  
3 commence a proceeding or a court order. Without limiting the circumstances under which a court  
4 may issue an order tolling the period of limitations, a court may issue an order tolling the period of  
5 limitations under this section during the pendency of any action described in RSA 564-B:10-  
6 1014(c)(3).

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

9 16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-(b)  
10 to read as follows:

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

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

16 (2) The trustee gives written notice of the trustee's intention to convert the trust into  
17 a unitrust and of how the unitrust will operate, including what initial decisions the trustee will  
18 make under this section, to all the ~~[sui-juris]~~ *qualified* beneficiaries, *as defined in RSA 564-B:1-  
19 103(12) and including the director of charitable trusts if the director is a "qualified  
20 beneficiary" of the trust under RSA 564-B:1-110(c).* ~~[who:~~

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

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

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

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

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

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

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

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

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



Amendment to SB 50

- Page 9 -

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

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

6 17 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-(l) to  
7 read as follows:

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

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

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

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

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

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

23 18 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor. Amend  
24 RSA 564-D:5 to read as follows:

25 564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the  
26 qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if ~~[such]~~  
27 ***the*** transferor serves as ~~[the]~~ ***a*** trust advisor, his or her rights and powers as a trust advisor shall be  
28 limited to: ~~[the right to disapprove distributions from the trust and the right to consent to a trustee's~~  
29 ~~action or inaction relating to the investment of trust assets]~~ ***(i) the right to direct, consent to, or***  
30 ***veto a fiduciary's actual or proposed investment decisions; and (ii) the rights and powers***  
31 ***described in RSA 564-D:2, II excluding any power that would enable the transferor, acting***  
32 ***as trust advisor, to direct, consent to, veto, or otherwise participate in a distribution by the***  
33 ***trustee to or for the benefit of the transferor, the transferor's creditors, the transferor's***  
34 ***estate, or the creditors of the transferor's estate.***

35 19 Effective Date. This act shall take effect 60 days after its passage.

# Committee Minutes

**SENATE CALENDAR NOTICE  
COMMERCE**

Senator Russell Prescott Chairman  
 Senator Raymond White V Chairman  
 Senator Tom De Blois  
 Senator Matthew Houde  
 Senator Andy Sanborn

|                                       |                                   |                                      |
|---------------------------------------|-----------------------------------|--------------------------------------|
| For Use by Senate Clerk's Office ONLY |                                   |                                      |
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**Date: January 25, 2011**

**HEARINGS**

**Tuesday**

**2/1/2011**

**COMMERCE**

**LOB 102**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

9:00 AM SB49  
 9:25 AM SB50  
 9:50 AM SB54  
 10:15 AM SB57

relative to tip pooling arrangements.  
 making various changes to laws regulating trusts and trust companies.  
 repealing certain condominium registration and filing requirements.  
 relative to regulation of title loan lenders.

**Sponsors:**

**SB49**

Sen. Nancy Stiles

Rep. Laura Pantelakos

Rep. Kevin Sullivan

**SB50**

Sen. Lou D'Allesandro

Sen. Jeb Bradley

Sen. Bob Odell

Sen. John Gallus

Sen. Matthew Houde

Rep. John Hunt

**SB54**

Sen. Tom De Blois

Rep. Richard Hinch

**SB57**

Sen. Sharon Carson

Rep. Marshall Quandt

Rep. John Hunt

Rep. Kenneth Gidge

Rep. Alfred Baldasaro

Rep. Barbara Shaw

Sen. Andy Sanborn

Sen. Tom De Blois

Sen. David Boutin

# Commerce Committee Hearing Report

**To:** Member of the Senate

**From:** Patrick Murphy, *Legislative Aide*

**Re:** Hearing Report on SENATE BILL 50 making various changes to laws regulating trusts and trust companies.

**Hearing Date:** February 1, 2011

**Members of the Committee Present:**

Senator Prescott, Senator White, Senator De Blois, Senator Sanborn, Senator Houde

**Members of the Committee Absent:**

None

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**Sponsor(s):**

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

**What the bill does:**

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

**Supporters of the bill:**

Senator D'Allesandro, Dist. 20; Senator Bradley, Dist. 3; Senator Gallus, Dist 1; Senator Odell, Dist. 8; Todd Mayo, Cambridge Trust Company of NH; Amy Kanyuk, McDonald & Kanyuk PLLC; Bill Ardinger, NH Trust Council

**Those in opposition to the bill:**

None

**Speaking to the bill (Neutral):**

Pat Quigly, NH Probate Court; Anne Edwards, NH AG; Terry Knowles, NH AG; Jennifer Jones, NH DHHS; Janelle Laylagian, NH DHHS

## **Summary of testimony received:**

### **Senator D'Allesandro**

- SB 50 continues to develop NH's reputation as a business friendly environment. An amendment is currently being drafted to bring all parties together and make this bill even more effective.
- States across the country are under increasing pressure to maintain a legal environment that attracts and retains good, high paying jobs. NH needs to take advantage of a unique opportunity to develop a niche in a growing national market for trust and wealth services.
- The Boston College Social Welfare Research Institute estimates that \$41 trillion of wealth will be transferred from baby boomers to the next generation over the next 50 years. This is the largest intergenerational transfer of wealth in the history of the world. This transfer will be accomplished using banks, trust companies, trusts, lawyers, custodians, investment managers, lawyers, accountants and other advisors.
- SB 50 is the next step in what has been a multi-year strategy designed to create a legal environment that attracts this economic activity, and the good, clean jobs it brings to NH.
- SB 50 would send a positive message to the national market for trust services that NH remains committed to establishing a legal environment that is the best in the country for financial services, trust companies and trust law.
- SB 50 addresses four points that would represent clear improvements to our laws.
  - Sections 2, 3, 4, 5 and 6 of the bill would clarify that testamentary trusts and out-of-state trusts that migrate their administration to NH will not become subject to annual reporting or bonding requirements at the Probate Court.
  - Sections 7 and 8 of the bill would clarify the Probate Court's authority to treat certain documents as confidential.
  - Section 9 of the bill would clarify that beneficiary rights are only as specified in the trust instrument and not in accordance with a vague benefit of the beneficiary rule found by some courts.
  - Section 10 of the bill would clarify the statute of limitations on lawsuits against trustees.
- The amendment will reflect a consensus on all points among all parties interested in this bill.

### **Anne Edwards and Terry Knowles, Office of the Attorney General**

- While we take no position on SB 50 we respectfully offer an amendment to the bill as introduced.
- The Attorney General has the common law and statutory authority to supervise, enforce, and administer charitable trusts. NH was the first state to codify the AG's common law powers to regulate charitable trusts in 1943. Since that time approximately 42 other states have enacted similar laws.
- The Attorney General receives copies of all wills containing charitable bequests as well as copies of the annual accountings filed by trustees administering testamentary charitable trusts.

- The Attorney General reviews these annual accountings in order to insure fees charges by trustees are reasonable and the charitable intent of the donor as expressed in his/her will is being carried out. If there is an alleged breach of fiduciary duties the AG protects the public interest in investigating and occasionally litigating the matter in order to insure charities receive the fullest possible measure of public benefit intended by the donors.
- We are also concerned by the language in the bill permitting some records in the probate court to be sealed from public view. Charitable trusts receive tax benefits and are created to serve the public interest and in our opinion, it would be contrary to public policy to seal charitable trust records from oversight by the AG and from review by the public.

Jennifer Jones, DHHS

- The Department doesn't oppose or support SB 50. DHHS determines eligibility for state services. The Department has the following concerns relative to applicants and recipients of state benefits:
- DHHS evaluates trusts for 3 reasons: 1 – to determine initial eligibility if an applicant is the beneficiary or settler of a trust. 2 – To evaluate disbursements of a trust, and 3 – to recover monies upon the death of a beneficiary.
- This may have the unintended consequence of letting people think they don't need to report to the Department. Individuals would still need to report to the DHHS. This could be solved by creating a carve out for DHHS
- Senator White disclosed that he is the parent of a special needs child and party to a special needs trust.

Todd Mayo – President of Cambridge Trust Company

- This continues a tradition of making NH laws more attractive to setting up trusts. This is important to make NH more attractive and more competitive with states like Delaware.
- In response to questions from the Committee, the witness responded that this bill would eliminate the requirement to file with probate but not the requirement to notify charitable trusts. This is in no way intended to impact information being sent to DHHS.
- Living trusts make accounting publicly available. Public disclosure limits would only apply to probate and not impact governmental rights to information. If this needs to be clarified in the bill we can include that in the amendment.
- Senator White disclosed that he is party to a living trust.

Pat Quigly – Probate Court

- SB 50 does change procedures in probate about how to seal records. In all probate courts the procedure to seal or unseal records is a complicated procedure.
- Would like to work on this with the parties involved.

Amy Kenwac

- Offered general support for the legislation, is trustee with her business partner on over 200 trusts. Will be looking to work on this with all parties involved.

**Bill Ardinger, NH Trust Council**

- NH has always shown a commitment to move forward on these issues.
- We have good and modern laws on trusts, we have sound regulations and laws from banking department, and we have a good tax environment. We have one of the best tax environments east of the Mississippi which makes it easier to compete for businesses.
- Has been asked by the prime sponsor to work with everyone who wants to work on this to build a consensus.
- In response to questions from the committee, the witness responded that there are provisions in this bill that address special needs family members and will keep the committee in the loop on these issues going forward. The uniform trust code was adopted in 2004 and this bill is focused more on probate procedures than on the uniform trust code.
- SB 50 would place NH in line with how other states have addressed the uniform code to meet states specific concerns.

Recessed

**Funding:**

None

**Action:**

SB 50 was recessed until Tuesday, February 22<sup>nd</sup> at 9:00 a.m.

**AMENDED**  
**SENATE CALENDAR NOTICE**  
**COMMERCE**

Printed: 03/17/2011 at 10:33 am

Senator Russell Prescott Chairman  
Senator Raymond White V Chairman  
Senator Tom De Blois  
Senator Matthew Houde  
Senator Andy Sanborn

|  |                                   |                                      |
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| For Use by Senate Clerk's<br>Office ONLY |                                   |                                      |
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| Proof:                                   | <input type="checkbox"/> Calendar | <input type="checkbox"/> Bill Status |

**Date: March 17, 2011**

**HEARINGS**

**Tuesday**

**3/22/2011**

**COMMERCE**

**SH 100**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** Please note the room change to SH 100.

|          |       |   |
|----------|-------|---|
| 9:00 AM  | SB50  | making various changes to laws regulating trusts and trust companies.                 |
| 9:15 AM  | SB189 | relative to the definition of mortgage loan originator.                               |
| 9:45 AM  | SB121 | relative to the application of the worker adjustment and retraining notification act. |
| 10:15 AM | SB120 | relative to alcoholic beverage advertising restrictions.                              |

**Sponsors:**

**SB50**

Sen. Lou D'Allesandro  
Sen. Matthew Houde

Sen. Jeb Bradley  
Rep. John Hunt

Sen. Bob Odell

Sen. John Gallus

**SB189**

Sen. Lou D'Allesandro

Sen. Bob Odell

Rep. Gene Chandler

Sen. Jeb Bradley

**SB121**

Sen. Jim Luther  
Sen. John Gallus

Sen. John Barnes, Jr.  
Sen. Gary Lambert

Sen. Peter Bragdon  
Sen. Andy Sanborn

Sen. Tom De Blois  
Sen. Raymond White

**SB120**

Sen. Nancy Stiles  
Sen. John Barnes, Jr.  
Sen. Lou D'Allesandro  
Sen. Bob Odell

Rep. Laura Pantelakos  
Sen. David Boutin  
Sen. Tom De Blois  
Sen. Raymond White

Rep. David Bettencourt  
Sen. Jeb Bradley  
Sen. John Gallus

Rep. Lawrence Kappler  
Sen. Sharon Carson  
Sen. Gary Lambert

Patrick Murphy 271-3067

Sen. Russell Prescott

Chairman



# Commerce Committee Hearing Report

**To:** Member of the Senate

**From:** Patrick Murphy, *Legislative Aide*

**Re:** **Second** Hearing Report on SENATE BILL 50 making various changes to laws regulating trusts and trust companies.

**Hearing Date:** March 22, 2011

**Members of the Committee Present:**

Senator Prescott, Senator White, Senator De Blois, Senator Sanborn, Senator Houde

**Members of the Committee Absent:**

None

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**Sponsor(s):**

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

**What the bill does:**

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

**Supporters of the bill:**

Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Sen. Odell, Dist 8; Sen. Gallus, Dist 1; Christiana Thornton, NH Bankers Association; Bill Ardinger, NH Trust Council; Amy Kanyuk, McDonald & Kanyuk; Todd Mayo, Cambridge Trust

**Those in opposition to the bill:**

Janelle Laylagian, DHHS

**Speaking to the bill (Neutral):**

Anne Edwards & Terry Knowles, Office of the Attorney General; Pat Quigley, Probate Court

## Summary of testimony received:

Sen. D'Allesandro, Dist 20

- We started working on trust legislation 6 years ago with the goal of creating jobs. We intended at the time to improve NH's competitiveness. In subsequent legislative session we have improved on that original statute. Trusts have moved into NH so we have seen some success. Since the original hearing many stakeholders have come together to work on the proposed amendment; introduced amendment 1913s.
- This effort has created jobs in NH and has been recognized nationally for doing so.

Sen. Bradley, Dist 3

- The goal is to become the Delaware North and encourage the creation of good high paying jobs. This issue is very important to create good jobs in NH.

Bill Ardinger, NH Trust Council; Todd Mayo and Amy Kanyuk

- This bill addresses 6 subjects in the area of trust law in NH.
- Subject one addresses enforcement of no-contest provisions. If you make a will, you can write in the will that if anyone makes a challenge they can lose their claim on the will. NH probate court has a history of enforcing no-contest provisions in wills.
- Subject two includes an opt-out arrangement. If you create a will that creates a trust that trust is subject to filing an annual accounting with the probate court. Only trusts that are created by a will are subject to probate court. When a trust is created outside of a will there are reporting requirements in the uniform trust code. This provision says you can opt-out of the reporting requirements and move to the standard UPC type requirement.
- Subject three addresses enforcement of the settlers' intent at the time of creation of the trust. The Massachusetts Supreme Court has a history of not enforcing the original intent of the trust. In NH we believe in the private property owner.
- Subject four addresses a three year statute of limitations. Currently it is unclear if there is any statute of limitations. It is a glitch in our current law. This corrects that and states clearly that there is a three year statute of limitations. Without this there is just too much uncertainty.
- Subject five corrects bad statutory references.
- Subject six corrects some current statutory glitches.
- The goal is to address everyone's concerns as has been the practice over the last decade in the reforms that the state has adopted.
- Todd Mayo commented that we are reaching out nationally to draw business to NH. This effort won't work unless we strike the appropriate balance and we believe this language does that.
- Amy Kanyuk commented that this continues the work that has been done over the last several years. We are trying to create deliberate and modern laws for NH.
- **Senator White disclosed that he is the parent of a special needs child and party to a special needs trust and plans to participate.**
- **Senator Sanborn disclosed that he is party to several trusts and plans to participate.**

- In response to questions from the Committee, the witnesses responded that page 8; lines 7 and 8 address the concerns raised by the Attorney General's Office. The statute of limitations would only begin after a report was issued. Opt-outs would be subject to the UPC. DHHS was not involved in the amendment process and that was a mistake, there is no intent to change the current level of authority the Department has.

Janelle Laylagian, DHHS

- Confident that the Department can work together with other stakeholders to carve out a section for the DHHS. The Department is concerned with the elimination of the bond requirement. The accounting requirement relative to the probate court is also a concern. This amendment doesn't allow the court the discretion it needs.
- Concerned with the section on the statute of limitations. Welcomes the opportunity to work on addressing the DHHS concerns.
- The Committee expressed an interest in hearing from the DHHS as this bill moves forward to make sure their concerns are addressed.
- In response to questions from the Committee, the witness responded that the Probate Court is not given the discretion they need. There is no ceiling on the size of the trust that must be bonded; the Department would like to see one.

Ann Edwards and Terry Knowles, Attorney General's Office

- Our concern has not been completely addressed. We oversee all NH charities. Sometimes we only learn of a trust when we receive the first accounting. If accountings are not coming in on a regular basis how would the Attorney General's office do their job properly.
- Page 3, line 3 is a concern. Sometimes this issue is a judgment call, and this language removes the judge's discretion. This shall language carries over to other sections. The opt-out language was changed to address concerns the AG's office expressed.
- The Committee expressed an interest in hearing from the Attorney General's office as this bill moves forward to make sure their concerns are addressed.

Pat Quigley, Probate Court

- No position on this bill. If someone wants to completely opt out of probate oversight all that needs to be done is to create a living will. In this bill we are only talking about trusts created in a will. Probate oversight is intended to provide protection. Accountings are sent in annually to the courts. The uniform trust code would still apply. There are some mandatory provisions under the uniform trust code but reporting is not one of the mandatory requirements.

Bill Ardinger, NH Trust Council

- Offered to work with anyone and everyone on this bill as it moves forward.

**Funding:**

None

**Action:**

On a motion of ought to pass with amendment the vote was 3-0; Senator Houde will report this bill to the floor.

# Speakers

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Senate Commerce Committee: Sign-In Sheet

Date: March 22, 2011

Time: 9:00 a.m.

2<sup>nd</sup> Public Hearing on Senate Bill 50

Senate Bill 50

Making various changes to laws regulating trusts and trust companies.

| Name                          | Representing                | Support                             |                                     | Oppose                              |                          | Speaking                            |                                     |
|-------------------------------|-----------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|-------------------------------------|
|                               |                             | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | Yes                                 | No                                  |
| Christiana Thornton           | NH Bankers Association      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Bill Ardinger                 | New Hampshire Trust Council | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Amy Kanyuk                    | McDonald & Kanyuk           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Todd Mayo                     | Cambridge Trust             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| SEN. GALLUS                   | SD #1                       | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Janelle L'Amour               | DHHS                        | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Anne Edwards<br>Terry Knowles | AGO                         | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Pat Quigley                   | Probate Court               | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
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speaking for info

info





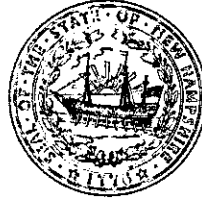


# Testimony

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY  
ATTORNEY GENERAL



February 1, 2011

Hon. Russell E. Prescott, Chair  
Senate Commerce Committee  
Concord, NH 03301

RE: SB 50

Dear Senator Prescott and Members of the Committee:

For the record we are Anne M. Edwards, Director of Charitable Trusts and Terry M. Knowles, Assistant Director of Charitable Trusts, Office of the Attorney General. While we take no position on HB 50 we respectfully offer an amendment to the bill as introduced.

The Attorney General has the common law and statutory authority to supervise, enforce, and administer charitable trusts. New Hampshire was the first state to codify the Attorney General's common law powers to regulate charitable trusts in 1943. Since that time approximately 42 other states have enacted similar laws.

Prior to the enactment of the 1943 laws the Attorney General conducted an exhaustive search of the 10 registries of probate in New Hampshire in order to develop a registry of the charitable trusts in existence at that time. The study found many of the charitable trusts had become dormant and were not serving the charitable purposes specified by donors leading to the amendment of RSA 7:29 (attached) requiring registries of probate to provide the attorney general with: "copies of papers and such information as to the records and files in his office relating to charitable trusts as the attorney general may require." The Attorney General receives copies of all wills containing charitable bequests as well as copies of the annual accountings filed by trustees administering testamentary charitable trusts.

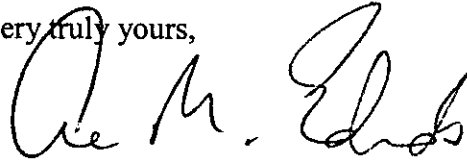
The Attorney General reviews these annual accountings in order to insure fees charged by trustees are reasonable and the charitable intent of the donor as expressed in his/her will is being carried out. If there is an alleged breach of fiduciary duties the Attorney General protects the public interest in investigating and occasionally litigating the matter in order to insure charities receive the fullest possible measure of public benefit intended by the donors.

We are also concerned by the language in the bill permitting some records in the probate court to be sealed from public view. Charitable trusts receive tax benefits and are created to serve the public interest and, in our opinion, it would be contrary to public policy to seal charitable trust records from oversight by the Attorney General and from review by the public.

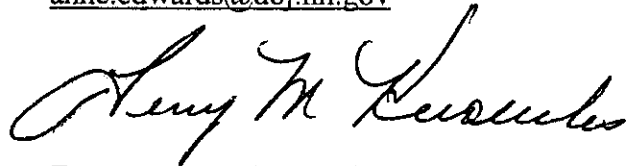
For these reasons the Attorney General respectfully requests SB 50 be amended to state the changes proposed will not apply to charitable testamentary trusts or to trusts containing charitable provisions.

We are pleased to answer any questions the Committee may have.

Very truly yours,



Anne M. Edwards, Director  
[anne.edwards@doj.nh.gov](mailto:anne.edwards@doj.nh.gov)



Terry M. Knowles, Assistant Director  
[terry.knowles@doj.nh.gov](mailto:terry.knowles@doj.nh.gov)  
603-271-3591

Enclosure

# TITLE I

## THE STATE AND ITS GOVERNMENT

### CHAPTER 7

#### ATTORNEYS GENERAL, DIRECTOR OF CHARITABLE TRUSTS, AND COUNTY ATTORNEYS

##### Director of Charitable Trusts

###### Section 7:29

**7:29 Information From Register of Probate.** – Each register of probate shall furnish such copies of papers and such information as to the records and files in his office relating to charitable trusts as the attorney general may require. Such register shall also permit an examination of the files and records in the probate office by representatives of the attorney general for the purpose of establishing and maintaining said register of charitable trusts. A refusal or neglect by the register of probate so to send such copies or refuse such information or to refuse access to the probate records relating to charitable trusts shall be a breach of his official bond. Upon the offering for probate in solemn form of any document purporting to be a will or testament containing clauses creating a charitable trust as defined herein, and upon presentation of any petition or other matter concerning a charitable trust and in all proceedings related thereto, the register of probate shall seasonably notify the attorney general of the pendency thereof in advance of hearing thereon. As soon as possible after the probate in common form of any will containing clauses creating a charitable trust, the register of probate shall notify the attorney general thereof. No charitable trust shall be terminated by decree of the probate court until the attorney general has been given an opportunity to be heard, if he so desires.

**Source.** 1943, 181:1, par. 13j. 1947, 94:3, eff. April 16, 1947.

# Committee Report

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STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: March 24, 2011

THE COMMITTEE ON Commerce

to which was referred Senate Bill 50

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

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF:    3-0

AMENDMENT # 1183s

Senator Matthew Houde  
For the Committee

Patrick Murphy 271-3067

## New Hampshire General Court - Bill Status System

**Docket of SB50**

Docket Abbreviations

**Bill Title:** making various changes to laws regulating trusts and trust companies.**Official Docket of SB50:**

| <b>Date</b> | <b>Body</b> | <b>Description</b>  |
|-------------|-------------|---|
| 1/19/2011   | S           | Introduced and Referred to Commerce, <b>SJ 3</b> , Pg.33  |
| 1/26/2011   | S           | Hearing: 2/1/2011, Room 102, LOB, 9:25 a.m.; <b>SC9</b>   |
| 2/2/2011    | S           | Hearing: === RECESSED === 2/1/11, Room 102, LOB, 9:25 a.m.  |
| 2/2/2011    | S           | Hearing: === RECONVENE === 2/22/11, Room 102, LOB, 9:00 a.m.; <b>SC10</b>                                       |
| 2/10/2011   | S           | Hearing: === CANCELLED === 2/22/11, Room 102, LOB, 9:00 a.m.; <b>SC11</b>                                       |
| 3/10/2011   | S           | Hearing: === RESCHEDULED === 3/22/11, Room 102, LOB, 9:00 a.m.; <b>SC15</b>                                     |
| 3/17/2011   | S           | Hearing: === ROOM CHANGE === 3/22/11, Room 100, State House, 9:00 a.m.; <b>SC16</b>                             |
| 3/24/2011   | S           | Committee Report: Ought to Pass with Amendment #2011-1183s, 3/30/11; <b>SC17</b>                                |
| 3/30/2011   | S           | Committee Amendment 1183s, AA, VV; <b>SJ 11</b> , Pg.202  |
| 3/30/2011   | S           | Ought to Pass with Amendment 1183s, MA, VV; OT3rdg; <b>SJ 11</b> , Pg.202                                       |
| 3/30/2011   | S           | Passed by Third Reading Resolution; <b>SJ 11</b> , Pg.239   |
| 3/31/2011   | H           | Introduced and Referred to Commerce and Consumer Affairs; <b>HJ 35</b> , PG.1240                                |
| 4/5/2011    | H           | Public Hearing: 4/19/2011 2:00 PM LOB 302 Banking/Business Div<br>==Work Session May Follow==                   |
| 4/12/2011   | H           | Executive Session: 4/21/2011 1:15 PM LOB 302  |
| 4/26/2011   | H           | Committee Report: Ought to Pass with Amendment #1533h for May 4 (Vote 18-0; CC); <b>HC 36</b> , PG.1244         |
| 4/26/2011   | H           | Proposed Committee Amendment #2011-1533h; <b>HC 36</b> , PG.1270-1274   |
| 5/4/2011    | H           | Amendment #1533h Adopted, VV; <b>HJ 42</b> , PG.1413-1417   |
| 5/4/2011    | H           | Ought to Pass with Amendment #1533h: MA VV; <b>HJ 42</b> , PG.1413-1417   |
| 5/4/2011    | H           | Referred to Judiciary; <b>HJ 42</b> , PG.1417   |
| 5/10/2011   | H           | Public Hearing: 5/17/2011 10:00 AM LOB 208  |
| 5/10/2011   | H           | Executive Session: 5/24/2011 11:00 AM LOB 208 ==TIME CHANGE (Orig 10:00 AM)==                                   |
| 5/24/2011   | H           | Committee Report: Ought to Pass with Amendment #1999h for June 1 (Vote 15-0; CC); <b>HC 43</b> , PG.1497        |
| 5/24/2011   | H           | Proposed Committee Amendment #2011-1999h; <b>HC 43</b> , PG.1513  |
| 6/1/2011    | H           | Amendment #1999h Adopted, VV; <b>HJ 48</b> , PG.1630-1631   |
| 6/1/2011    | H           | Ought to Pass with Amendment #1999h: MA VV; <b>HJ 48</b> , PG.1630-1631   |
| 6/8/2011    | S           | Sen. Prescott Moved Nonconcur with House Amendment #1533, 1999h; Requests C of C, MA, VV; <b>SJ 20</b> , Pg.548 |



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|-----------|---|--|
| 6/8/2011  | S | President Appoints: Senators Bradley, White and D'Allesandro; <b>SJ 20</b> , Pg.548                |
| 6/8/2011  | H | House Accedes to Senate Request for C of C (Reps Hunt and Rowe): MA VV; <b>HJ 51</b> , PG.1723     |
| 6/8/2011  | H | Speaker Appoints: Reps Hunt, Jennifer Coffey, McClarren, and Schlachman; <b>HJ 51</b> , PG.1723    |
| 6/9/2011  | S | Committee of Conference Meeting: 6/13/2011, 10:00 a.m., Room 102, LOB                              |
| 6/15/2011 | H | Conference Committee Report # <b>2011-2376c</b> , House AM + New AM, Filed; <b>HC 49</b> , PG.1674 |
| 6/22/2011 | H | Conference Committee Report #2376c Adopted, VV   |
| 6/22/2011 | S | Conference Committee Report 2376c; Adopted, VV   |
| 6/22/2011 | H | Enrolled Bill Amendment #2530e Adopted   |
| 6/22/2011 | S | Enrolled Bill Amendment # <b>2011-2530e</b> Adopted, VV  |
| 6/22/2011 | H | Enrolled   |
| 6/22/2011 | S | Enrolled   |
| 7/13/2011 | S | Signed by the Governor on 07/13/2011; Effective 09/11/2011; Chapter 0243                           |

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 NH House

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 NH Senate
 

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# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB 50 ORIGINAL REFERRAL \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- HANDOUTS FROM THE PUBLIC HEARING
- PREPARED TESTIMONY AND OTHER SUBMISSIONS
- SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 11835 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
 - AMENDMENT # 10135 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED \_\_\_\_\_ AS AMENDED BY THE HOUSE  
 FINAL VERSION  AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): Committee of Conference Report 2376 CofC  
Enrolled Bill Amendment 2530 EBA

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 8/10/11

Patrick Murphy  
BY COMMITTEE AIDE

June 13, 2011  
2011-2376-CofC  
08/04

Committee of Conference Report on SB 50, an act making various changes to laws regulating trusts and trust companies.

Recommendation:

That the Senate recede from its position of nonconcurrency with the House amendment, and concur with the House amendment, and

That the Senate and House adopt the following new amendment to the bill as amended by the House, and pass the bill as so amended:

Amend RSA 564-B:12-1206(e) as inserted by section 14 of the bill by replacing it with the following:

(e) Nothing in this section shall limit the authority of the director of charitable trusts or the department of health and human services provided by common law or other statute.

Amend RSA 564-B:10-1005 as inserted by section 11 of the bill by inserting after paragraph (d) the following new paragraph:

*(e) Nothing in this section shall limit the authority of the director of charitable trusts or the department of health and human services otherwise provided by common law or other statute.*

Amend RSA 564:19 as inserted by section 5 of the bill by inserting after paragraph V the following new paragraph:

*VI. Nothing in this section shall limit the authority of the director of charitable trusts or the department of health and human services otherwise provided by common law or other statute.*

2011-2376-CofC

The signatures below attest to the authenticity of this Report on SB 50, an act making various changes to laws regulating trusts and trust companies.

Conferees on the Part of the Senate

Conferees on the Part of the House

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Sen. Bradley, Dist. 3

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Rep. Hunt, Ches. 7

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Sen. White, Dist. 9

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Rep. Jennifer Coffey, Merr. 6

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Sen. D'Allesandro, Dist. 20

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Rep. McClarren, Hills. 21

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Rep. Schlachman, Rock. 13

June 28, 2011  
2011-2530-EBA  
03/10

Enrolled Bill Amendment to SB 50

The Committee on Enrolled Bills 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 as amended ought to pass.

FOR THE COMMITTEE

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Explanation to Enrolled Bill Amendment to SB 50

This enrolled bill amendment makes technical corrections.

Enrolled Bill Amendment to SB 50

Amend RSA 564:19, II as inserted by section 5 of the bill by replacing line 1 with the following:

***II. The following trusts created under a will shall be exempt from the accounting***

Amend RSA 564:19, IV as inserted by section 5 of the bill by replacing line 3 with the following:

***a judicial accounting or to give bond, either upon a motion of an interested person, or on the***

Amend RSA 564:25 as inserted by section 6 of the bill by replacing line 2 with the following:

Code, shall apply to all trusts under a will governed by this chapter, except to the extent that any

Amend section 8 of the bill by replacing line 1 with the following:

8 Uniform Trust Code; Rules of Construction. Amend RSA 564-B:1-112

Amend section 10 of the bill by replacing line 1 with the following:

10 Uniform Trust Code; Trust Purposes. Amend RSA 564-B:4-404