

Amendment to SB 225-FN

1 Amend the bill by replacing section 22 with the following:

2
3 22 New Subparagraph; Limitation of Action Against a Trust Advisor or Trust Protector.
4 Amend RSA 564-B:12-1206 by inserting after subparagraph (e) the following new paragraph:

5 (f) For purposes of determining whether, for purposes of this section, a trust has
6 terminated or a beneficiary's interest in a trust has terminated, trust property excludes any claim
7 against a trustee, trust advisor, or trust protector.

8
9 Amend RSA 383:9-d, I as inserted by section 24 of the bill by replacing it with the following:

10
11 I. Unless an exception is granted as provided in paragraph II, the commissioner shall
12 examine the condition and management of all **depository** banks[,] **and** credit unions[, ~~trust~~
13 ~~companies, and family trust companies,~~] every 18 months or more often when necessary in his or
14 her judgment. ***The commissioner shall examine the condition and management of all trust***
15 ***companies in accordance with RSA 383-C:14-1401. The commissioner shall examine the***
16 ***condition and management of all family trust companies in accordance with RSA 383-***
17 ***D:11-1101.***

18
19 Amend the bill by replacing sections 26-28 with the following:

20
21 26 New Paragraph; Liquidation Pledge. Amend RSA 383-C:5-503 by inserting after paragraph
22 (b) the following new paragraph:

23 (c) A trust company may apply to provide a letter of credit in lieu of pledging cash or
24 securities by filing with the commissioner an application to provide a letter of credit.

25 (1) In accordance with RSA 383-A:6-604, the commissioner shall make a
26 determination as to whether the trust company qualifies to provide a letter of credit.

27 (2) A trust company qualifies to provide a letter of credit if:

28 (A) Under the terms of the letter of credit, the issuing bank unconditionally
29 agrees to pay the liquidation pledge amount to the commissioner upon presentation of a written
30 instrument that is signed by the commissioner and states that the commissioner has commenced
31 the liquidation of a trust company under RSA 395;

32 (B) The issuing bank is:

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- 1 (i) A depository bank;
- 2 (ii) A national bank having a branch or office in this state;
- 3 (iii) A federal savings bank having a branch or office in this state; or
- 4 (iv) A foreign state bank having a branch or office in this state;
- 5 (C) The letter of credit is:
- 6 (i) Irrevocable during its term; and
- 7 (ii) On a form prescribed by the commissioner.
- 8 (D) For purposes of securing the trust company's obligation to pay to the issuing
- 9 bank any amounts that the commissioner draws against the letter of credit, the trust company or
- 10 other person:
- 11 (i) Grants to the issuing bank a security interest in money or other property
- 12 in an amount that is not less than 120 percent of the liquidation pledge amount;
- 13 (ii) Together with the issuing bank, executes a collateral pledge and security
- 14 agreement that:
- 15 (a) Is irrevocable during the term of the letter of credit;
- 16 (b) Requires the pledgor to transfer to the issuing bank money or other property
- 17 sufficient to maintain the minimum collateral amount under subsection (c)(2)(D)(i) at all times
- 18 during the term of the letter of credit; and
- 19 (c) Is in a form acceptable to the commissioner; and
- 20 (E) Under the collateral pledge and security agreement or other agreement the
- 21 issuing bank agrees that:
- 22 (i) If the commissioner draws against the letter of credit, then the issuing
- 23 bank may claim its right of reimbursement only against the collateral in which the issuing bank has
- 24 a security interest under the collateral pledge and security agreement, and not against the
- 25 liquidation estate;
- 26 (ii) Except as provided under subsection (c)(2)(E)(i), the issuing bank waives
- 27 any right of reimbursement against the trust company;
- 28 (iii) The letter of credit will be drawn in the event of a failure of the
- 29 institution requiring liquidation by the commissioner; and
- 30 (iv) If, for any reason, the letter of credit is terminated, it shall immediately
- 31 notify the commissioner.
- 32 (3) If the commissioner approves the trust company's application to provide a letter
- 33 of credit, then the trust company shall continuously maintain the letter of credit in accordance with
- 34 this subsection until it pledges cash or securities in accordance with subsection (a).
- 35 (4) The trust company shall pay any fees and expenses associated with obtaining
- 36 and maintaining the letter of credit and the collateral pledge and security agreement.
- 37 27 New Subdivisions; Trust Company Act. Amend RSA 383-C by inserting after section 12-

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1202 the following new subdivisions:

Article 13

Reports and Other Filings

383-C:13-1301 Reports and Other Filings. A trust company shall file with the commissioner reports of condition as required under RSA 383-A:5-510 and copies of other documents as required under RSA 383-A:5-511.

Article 14

Examination

383-C:14-1401 Regular Examination. Subject to RSA 383-C:14-1402, the commissioner shall examine the condition and management of a trust company every 18 months.

383-C:14-1402 Exemption from Regular Examination.

(a) A trust company may apply for an exemption from one regular examination under RSA 383-C:14-1401 by filing with the commissioner an application for exemption.

(b) In accordance with RSA 383-A:6-604, the commissioner shall make a determination as to whether the trust company qualifies for a conditional exemption from examination.

(c) A trust company qualifies for a conditional exemption from examination if:

(1) The commissioner has deemed the application for exemption substantially complete under RSA 383-A:6-603 no sooner than 12 months and no later than 15 months after the date the commissioner signs the most recent report of examination;

(2) The trust company has received high ratings in each of its 2 most recent prior examinations;

(3) The trust company files with the commissioner a copy of each financial audit report completed within 12 months after the conclusion of its most recent examination;

(4) Each financial audit report filed under subsection (c)(3) is:

(A) Made in accordance with RSA 383-A:5-509; and

(B) Is unqualified; and

(5) The trust company is not currently subject to any formal or informal enforcement proceeding or order of any regulatory authority.

(d) For purposes of subsection (c)(2), a trust company has received high ratings if it has received a rating of 1 or 2 in each of the components used under the Uniform Interagency Trust Rating System, provided there has not been a degradation in the composite rating from the prior examination.

(e) Subject to subsection (k), a trust company that qualifies for a conditional exemption from examination may be exempt from one regular examination under RSA 383-C:14-1401 if it satisfies the following conditions:

(1) The trust company files with the commissioner a copy of a fiduciary compliance audit report made in accordance with subsection (h) no sooner than 12 months and no later than 15

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1 months after the date the commissioner signs the most recent report of examination;

2 (2) The trust company files with the commissioner a copy of each financial audit
3 report completed after the trust company filed its application for exemption and on or before the
4 trust company files the fiduciary compliance audit under subsection (e)(1);

5 (3) Each financial audit report filed under subsection (e)(2) is:

6 (A) Made in accordance with RSA 383-A:5-509; and

7 (B) Is unqualified; and

8 (4) The trust company is not currently subject to any formal or informal
9 enforcement proceeding or order of any regulatory authority.

10 (f) Upon receipt of the reports described in subsections (e)(1) and (e)(2), the
11 commissioner shall make a determination whether the trust company is exempt from examination
12 under subsection (e).

13 (g) If, under subsection (f), the commissioner determines that the trust company is not
14 exempt from examination, then the commissioner shall examine the condition and management of
15 the trust company within 21 months after the conclusion of the trust company's most recent
16 examination.

17 (h) For purposes of subsection (e)(1), a fiduciary compliance audit report shall meet the
18 following requirements:

19 (1) The report includes a review of each material aspect of the trust company's
20 management, operations, internal controls and audit, compliance, and asset management;

21 (2) The report conforms to applicable generally accepted auditing standards;

22 (3) The report is unqualified; and

23 (4) The report is completed no later than 3 months before the date on which the
24 trust company files it with the commissioner.

25 (i) Based on the trust company's safety and soundness, the commissioner:

26 (1) May waive the requirement under subsection (e)(1); or

27 (2) May accept any documents or other information that the commissioner deems a
28 suitable substitute for a fiduciary compliance audit report made in accordance with subsection (h).

29 (j) The commissioner shall examine the condition and management of a trust company
30 that is exempt from examination under subsection (e) no later than 36 months after the conclusion
31 of its most recent prior examination.

32 (k) The commissioner may examine the condition and management of a trust company
33 that is exempt from examination under subsection (e) at any time if, after qualifying for the
34 exemption under subsection (e), the trust company receives anything other than an unqualified
35 financial audit report, or based on a determination by the commissioner that the trust company's
36 safety and soundness might have been materially impaired, or the trust company is currently
37 subject to any formal or informal enforcement proceeding or order of any regulatory authority.

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1 28 Family Trust Company Act; Safety and Soundness. Amend RSA 383-D:3-302 to read as
2 follows:

3 383-D:3-302 Safety and Soundness.

4 **(a)** For purposes of determining the safety or soundness of a family trust company or
5 any act that a family trust company has taken or proposes to take, ***the following shall apply:***

6 **(1) Subject to subsection (b),** the commissioner shall consider the factors
7 described in RSA 383-C:4-401[-];

8 **(2) The commissioner shall give primary consideration to whether the**
9 ***family trust company poses a harm to the general public; and***

10 **(3) To the extent that the family trust company does not pose a harm to the**
11 ***general public and subject to the requirements of this chapter, the family trust company***
12 ***shall have broad latitude to determine how it is organized and how it will operate its***
13 ***affairs.***

14 **(b)** For purposes of ~~[those factors, a]~~ ***applying the factors described in RSA 383-C:4-***
15 ***401 to a family trust company, the commissioner shall consider that:***

16 **(1) The** family trust company's market is serving family clients[-]; and [a]

17 **(2) The** family trust company's financial success is determined by the avoidance of
18 net losses over multiple years.

19 **(c) A family trust company poses a harm to the general public if the family**
20 ***trust company:***

21 **(1) Transacts business with the general public;**

22 **(2) Fails to establish and maintain procedures reasonably designed to**
23 ***assure and monitor its compliance with applicable anti-money laundering and similar***
24 ***laws; or***

25 **(3) Engages in any other activity that the commissioner determines poses a**
26 ***direct, material harm to the general public.***

27
28 Amend the bill by deleting section 29 and section 30, and renumbering sections 31-52 to read as 29-
29 50 respectively.

30
31 Amend the bill by replacing sections 29-30 with the following:

32
33 29 Family Trust Company Act; Required Capital. Amend RSA 383-D:6-602(a)-(c) to read as
34 follows:

35 (a) The minimum required capital of a family trust company is ~~[\$250,000]~~ ***\$50,000.*** The
36 commissioner may require a family trust company to maintain additional capital. From time to
37 time, the commissioner may reduce or increase the amount of additional capital that a family trust

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1 company is required to maintain.

2 (b) After it obtains the authority to exercise trust powers, a family trust company shall
3 maintain an amount of capital that equals or exceeds the required capital.

4 (c) A family trust company shall not make any distribution to the extent that, upon
5 making the distribution, the family trust company's total capital would be less than the required
6 capital.

7 (d) For purposes of ~~[this]~~ subsection (c), "distribution" means a direct or indirect
8 transfer of money or other property (except an equity interest in the family trust company) to or for
9 the benefit of family trust company's equity owners in respect of any of equity interests in the
10 family trust company.

11 ~~[(e)]~~ (e) RSA 383-C:5-502(a) and (b) shall not apply to family trust companies.

12 30 New Section; Effects of Transacting Business with the General Public. Amend RSA 383-D
13 by inserting after section 7-703 the following new section:

14 383-D:7-704 Effects of Transacting Business with the General Public.

15 (a) Any action by a family trust company in its capacity as a trustee or other fiduciary
16 shall not be void or voidable solely by reason of the entity transacting business with the general
17 public.

18 (b) To the extent that a family trust company transacts business with the general
19 public, each of its directors and executive officers shall be personally, jointly, and severally liable for
20 all liabilities created by transacting business with the general public, including any breach of a
21 fiduciary duty to a member of the general public.

22 (c) The directors' and officers' liability under subsection (b) is in addition to any civil or
23 criminal penalties imposed by this title or other applicable law.

24 (d) This section shall not limit the commissioner's enforcement powers under this title
25 or other applicable law, including, but not limited to prohibiting the family trust company from
26 requesting a waiver of examination for 72 months and ordering restitution to persons affected by
27 such conduct pursuant to RSA 383:10-d.

28
29 Amend the bill by replacing section 32 with the following:

30
31 32 New Section; Exemption from Annual Audits. Amend RSA 383-D by inserting after section
32 10-1004 the following new section:

33 383-D:10-1005 Exemption from Annual Audits.

34 (a) A family trust company may apply for an exemption from RSA 383-A:5-509 if the
35 family trust company demonstrates that:

36 (1) It can maintain its safety and soundness without the audit;

37 (2) The cost of an audit would be an undue financial burden on the family trust

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company; and

(3) It has an alternate audit arrangement in place that will assure the commissioner that its financial statements are true and accurate.

(b) The commissioner may revoke any exemption granted if, in his or her judgment, the safety and soundness of the family trust company requires it.

Amend the bill by deleting sections 34-36 and renumbering the original sections 37-50 to read as 34-47, respectively.

Amend RSA 564-E:4-401(c)(1) as inserted by section 34 of the bill by replacing it with the following:

(1) The name of an entity incorporated, authorized, formed, or registered to transact business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, RSA 383-E , RSA 349, or this chapter;

Amend RSA 564-E:8-802 as inserted by section 34 by replacing it with the following:

564-E:8-802 Trust Powers.

(a) Subject to subsection (b), a foundation shall not have the power to act as a trustee or otherwise engage in a trust business as defined in RSA 383-A:2-201(a)(51).

(b) To the extent permitted under RSA 383-A and RSA 383-D, a foundation shall have the power to act as a trustee or otherwise engage in a trust business as defined in RSA 383-A:2-201(a)(51) if it is:

(1) A family trust company as defined in RSA 383-A:2-201(a)(26);

(2) A foreign family trust company that is authorized to engage in trust business in this state under RSA 383-D:13-1301; or

(3) An exempt family trust company as defined in RSA 383-D:14-1401(a).

(c) A foundation that is described in subsection (b) is subject to the bank commissioner's supervision in accordance with title 35 and any other applicable law.

Amend the bill by replacing sections 35-37 with the following:

35 Income from Trusts. Amend RSA 77:10 to read as follows:

77:10 Income From Trusts **and Foundations**. Interest and dividend income received by ~~[estates held by trustees]~~ **trusts and foundations** treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their grantor, to the extent that the grantor is an inhabitant or resident of this state. Income reported by, and taxed

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1 federally as interest or dividends to, a trust **or foundation** beneficiary who is an individual
2 inhabitant or resident of this state with respect to distributions from a trust **or foundation** that is
3 not treated as a grantor trust under section 671 of the United States Internal Revenue Code shall
4 be included as interest or dividends in the return of such beneficiary and subject to taxation in
5 accordance with the provisions of this chapter.

6 36 Definitions; Business Organization. Amend RSA 77-A:1, I to read as follows:

7 I. "Business organization" means any enterprise, whether corporation, partnership, limited
8 liability company, proprietorship, association, business trust, real estate trust or other form of
9 organization; organized for gain or profit, carrying on any business activity within the state, except
10 such enterprises as are expressly made exempt from income taxation under the United States
11 Internal Revenue Code as defined in RSA 77-A:1, XX. Each enterprise under this definition shall be
12 subject to taxation under RSA 77-A:2 as a separate entity, unless specifically authorized by this
13 chapter to be treated otherwise, such as, but not limited to, combined reporting. Trusts **or**
14 **foundations** treated as grantor trusts under section 671 of the United States Internal Revenue
15 Code shall be included in the return of their owners, and such owners shall be subject to the tax
16 thereon to the extent such owners would be considered a business organization hereunder
17 notwithstanding the existence of the trust **or foundation**. The use of consolidated returns as
18 defined in the United States Internal Revenue Code as defined in RSA 77-A:1, XX is not permitted.
19 Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as
20 a business organization and shall be excluded from taxation at the entity level if it elects to be
21 treated as a qualified investment company as defined in RSA 77-A:1, XXI. A partnership, limited
22 liability company, estate, trust, **or foundation** except grantor trusts pursuant to section 671 of the
23 United States Internal Revenue Code, "S" corporation, real estate investment trust, or any other
24 such entity, other than an organization electing to be treated as a qualified investment company as
25 defined in RSA 77-A:1, XXI whose net income is reportable by the true owners either directly or
26 indirectly shall be subject to tax at the entity level, and no part of such earnings or loss shall be
27 included in the calculation of the gross business profits of the owners of such entity.

28 37 Definitions; Business Enterprise. Amend RSA 77-E:1, III to read as follows:

29 III. "Business enterprise" means any profit or nonprofit enterprise or organization, whether
30 corporation, partnership, limited liability company, proprietorship, association, trust, **foundation**,
31 business trust, real estate trust or other form of organization engaged in or carrying on any
32 business activity within this state, except such enterprises as are expressly made exempt from
33 income taxation under section 501(c)(3) of the United States Internal Revenue Code to the extent
34 such enterprise does not engage in any business activity constituting unrelated business activity as
35 defined by section 513 of the United States Internal Revenue Code. Each business enterprise under
36 this definition shall be subject to the tax imposed under RSA 77-E as a separate entity except that
37 trusts **and foundations** treated as grantor trusts under section 671 of the United States Internal

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Revenue Code shall be included in the return of their owners, and such owners shall be subject to the tax thereon to the extent any such owners would be considered a business enterprise hereunder notwithstanding the existence of the trust ***or foundation***. The use of consolidated returns as defined in the United States Internal Revenue Code or of combined reporting is not permitted. Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as a business enterprise and shall be excluded from taxation at the entity level if it is a qualified investment company as defined in RSA 77-E:1, XIV.

Amend the bill by replacing all after section 46 with the following:

47 Trustee's Power to Decant Trust. Amend RSA 564-B:4-418(b) to read as follows:

(b)(1) The beneficiaries of the second trust may include only one or more of the beneficiaries of the first trust.

(2) The second trust may exclude one or more of the beneficiaries of the first trust.

(3) A person is not a beneficiary of the second trust solely by reason of being a permissible appointee of a power of appointment under the terms of the second trust.

(4) The current distributees and current permissible distributees of the second trust may include one or more persons who, under the terms of the first trust, are not current distributives or current permissible distributives, but would be distributees or permissible distributees upon the occurrence of a future date or event.

48 Rights of Beneficiary's Creditor or Assignee. RSA 564-B:5-501 is repealed and reenacted to read as follows:

564-B:5-501 Creditor's Claim Against a Beneficiary.

(a) To the extent that a beneficiary's interest in a trust is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by:

(1) Attachment of present or future distributions to or for the benefit of the beneficiary; or

(2) Subject to RSA 564-B:5-504, any other means.

(b) The court may limit the relief under subsection (a) as is appropriate under the circumstances.

(c) Subject to RSA 564-B:5-504(b) and (c), a creditor or assignee of a beneficiary may not compel the beneficiary to exercise any right or power that, in any fiduciary or nonfiduciary capacity, the beneficiary has under the terms of the trust, including any of the following:

(1) Any power of appointment;

(2) Any power to direct or veto a distribution;

(3) Any power to appoint or remove a trustee, trust advisor, or trust protector; or

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1 (4) Any right to receive reports, notices, or other information concerning the trust
2 and its administration.

3 49 Spendthrift Provision RSA 564-B:5-502 is repealed and reenacted to read as follows:

4 564-B:5-502 Creditor's Claim Against a Beneficiary of a Trust Containing a Spendthrift
5 Provision.

6 (a) A spendthrift provision is valid only if it restrains both voluntary and involuntary
7 transfer of a beneficiary's interest.

8 (b) A term of a trust providing that the interest of a beneficiary is held subject to a
9 "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and
10 involuntary transfer of the beneficiary's interest.

11 (c) A beneficiary may not transfer an interest in a trust in violation of a valid
12 spendthrift provision.

13 (d) To the extent that a beneficiary's interest in a trust is subject to a spendthrift
14 provision, a creditor or assignee of the beneficiary may not reach:

15 (1) The beneficiary's interest in the trust; or

16 (2) A distribution from the trust before its receipt by the beneficiary.

17 (e) To the extent that a beneficiary's interest in a trust is subject to a spendthrift
18 provision, the beneficiary's interest:

19 (1) Is not property for purposes of RSA 458:16-a, I; and

20 (2) Shall not be subject to any forced heirship, legitime, forced share, or any similar
21 heirship rights under the laws of any jurisdiction.

22 (f) A spendthrift provision is unenforceable against a claim of this state or the United
23 States to the extent that a statute of this state or federal law so provides.

24 50 Discretionary Trusts; Effect of Standard RSA 564-B:5-504 is repealed and reenacted to read
25 as follows:

26 564-B:5-504 Creditor's Claim Against a Beneficiary of a Discretionary Trust.

27 (a) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a
28 beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

29 (1) The discretion is expressed in the form of a standard of distribution; or

30 (2) The trustee has abused the discretion.

31 (b) Subject to subsection (c), a creditor or assignee of a beneficiary may not compel a
32 distribution to the beneficiary solely by reason that the beneficiary:

33 (1) Is a trustee; or

34 (2) In any fiduciary capacity, has the power to direct distributions.

35 (c) Upon petition by a creditor or assignee of a beneficiary, a court may compel a
36 distribution to the beneficiary to the extent that:

37 (1) The beneficiary:

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- 1 (A) Is a trustee; or
- 2 (B) In any fiduciary capacity, has the power to direct distributions;
- 3 (2) In the capacity described in subsection (c)(1), the beneficiary has:
- 4 (A) The discretionary power to make distributions to himself, herself, or itself;
- 5 or
- 6 (B) The discretionary power to direct distributions to himself, herself, or itself;
- 7 (3) The discretion is expressed in the form of a standard of distribution;
- 8 (4) The beneficiary can exercise the power without the consent of any trustee, trust
- 9 advisor, trust protector, or person holding an adverse interest; and
- 10 (5) The beneficiary has abused the discretion.
- 11 (d) This section does not limit the right of a beneficiary to commence a judicial
- 12 proceeding against a trustee, trust advisor, or trust protector for:
- 13 (1) An abuse of discretion; or
- 14 (2) A failure to comply with a standard for distribution.
- 15 51 Creditor's Claim Against a Settlor of a Revocable Trust. RSA 564-B:5-505 is repealed and
- 16 reenacted to read as follows:
- 17 564-B:5-505 Creditor's Claim Against a Settlor of a Revocable Trust.
- 18 (a) During the settlor's life, the property of a revocable trust is subject to claims of the
- 19 settlor's creditors regardless of whether the trust contains a spendthrift provision.
- 20 (b) After the settlor's death and subject to the settlor's right to direct the source from
- 21 which liabilities will be paid, the property of a trust that was revocable immediately before the
- 22 settlor's death is subject to the following claims to the extent that the settlor's probate estate is
- 23 inadequate to satisfy those claims:
- 24 (1) Claims of the settlor's creditors;
- 25 (2) Costs of administration of the settlor's estate; and
- 26 (3) Expenses of the settlor's funeral and disposal of remains.
- 27 (c) Subsection (b) shall apply to a trust regardless of whether the trust contains a
- 28 spendthrift provision.
- 29 (d) Subsection (b) shall not apply to:
- 30 (1) The proceeds and any other benefits of a policy of life or endowment insurance
- 31 effected by a settlor, a trustee, or any other person on the settlor's life or another individual's life as
- 32 provided in RSA 408:2; or
- 33 (2) Any claim barred under RSA 564-B:5-508.
- 34 (e) During only the period that the power of withdrawal may be exercised, the holder of
- 35 a power of withdrawal shall be treated in the same manner under this section as the settlor of a
- 36 revocable trust to the extent of the property subject to the power of withdrawal.
- 37 52 New Sections; Creditor's Claim Against a Settlor of an Irrevocable Trust. Amend RSA 564-B

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1 by inserting after section 5-505 the following new sections:

2 564-B:5-505A Creditor's Claim Against a Settlor of an Irrevocable Trust.

3 (a) To the extent that a settlor's interest in an irrevocable trust is not subject to a
4 spendthrift provision, a creditor or assignee of the settlor may reach the maximum amount of trust
5 property that can be distributed to or for the benefit of the settlor.

6 (b) If the trust has more than one settlor, then the amount that a creditor or assignee of
7 a particular settlor may reach under subsection (a) may not exceed the settlor's interest in the
8 portion of the trust attributable to that settlor's contribution.

9 (c) A settlor may not transfer the settlor's interest in an irrevocable trust in violation of
10 a spendthrift provision.

11 (d) To the extent that a settlor's interest in an irrevocable trust is subject to a
12 spendthrift provision, a creditor or assignee of the settlor may not reach:

13 (1) The settlor's interest in the trust; or

14 (2) A distribution from the trust before its receipt by the settlor.

15 (e) Subsection (d) shall apply to any type of irrevocable trust, including:

16 (1) A charitable remainder annuity trust within the meaning of section 664(d)(1) of
17 the Internal Revenue Code;

18 (2) A charitable remainder unitrust within the meaning of section 664(d)(2) of the
19 Internal Revenue Code;

20 (3) A trust described in section 2523(e) of the Internal Revenue Code;

21 (4) A trust described in section 2523(f) of the Internal Revenue Code;

22 (5) An irrevocable special needs trust established for a disabled person as described
23 in 42 U.S.C. section 1396p(d)(4) or similar federal law governing the transfer to such a trust;

24 (6) A trust in which a trustee, trust advisor, or trust protector has a duty or a
25 discretionary power to:

26 (A) Pay directly to any taxing authority any tax that is:

27 (i) Imposed on the trust's income or principal; and

28 (ii) Payable by the settlor under the law imposing the tax;

29 (B) Reimburse the settlor for any tax described in subsection (g)(6)(A); or

30 (C) Direct a trustee, trust advisor, or trust protector to take the action described
31 in subsection (e)(6)(A) or (e)(6)(B); and

32 (7) A trust in which the settlor has:

33 (A) The power to reacquire trust property by substituting other property of an
34 equivalent value; or

35 (B) Any power of administration within the meaning of section 675(4) of the
36 Internal Revenue Code.

37 (f) Notwithstanding RSA 545-A:9, a creditor or assignee of a settlor may not commence

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1 a judicial proceeding with respect to the settlor's transfer of property to an irrevocable trust that
2 contains a spendthrift provision after the later of:

3 (1) Two years after the transfer is made; or

4 (2) If the creditor or assignee is a creditor or assignee of the settlor when the
5 transfer is made, six months after the creditor or assignee discovers or reasonably should have
6 discovered the transfer.

7 (g) For purposes of subsection (f), a person shall be deemed to have discovered the
8 existence of a transfer at the time any public record is made of the transfer, including:

9 (1) A conveyance of real property that is recorded in the office of the register of
10 deeds of the county in which the property is located;

11 (2) The filing of a financing statement under article 9 of RSA 382-A; or

12 (3) Any equivalent recording or filing of a similar instrument with the appropriate
13 official or person under the laws of a jurisdiction other than this state.

14 (h) For purposes of subsection (f) and RSA 545-A:4, a creditor or assignee of a settlor
15 shall prove by clear and convincing evidence that, with respect to the creditor or assignee, the
16 settlor's transfer to the trust was fraudulent.

17 (i) Notwithstanding any law to the contrary, a person shall not have any claim against
18 any of the following persons to the extent that the claim is based in any way on a settlor or other
19 person availing or seeking to avail himself, herself, or itself of the benefits of this section:

20 (1) A trustee;

21 (2) A trust advisor;

22 (3) A trust protector;

23 (4) A person who advised a settlor, trustee, trust advisor, or trust protector
24 concerning trust, the trust's formation, any transfer of property to the trust, or the application of
25 this section; or

26 (5) A person who was involved in counseling, drafting, preparing, or executing:

27 (A) With respect to the trust, a trust instrument; or

28 (B) A governing instrument of a corporation, partnership, limited partnership,
29 limited liability company, or other entity, the interests of which a settlor transferred to the trust.

30 (j) Notwithstanding any law to the contrary, a person may not commence a judicial
31 proceeding seeking the enforcement of a judgment entered by a court or other body having
32 adjudicative authority or asserting any other claim if:

33 (1) The judgment or claim is based in any way on a settlor's transfer of property to
34 an irrevocable trust that contains a spendthrift provision; and

35 (2) With respect to the transfer, a claim of the creditor or assignee of the settlor
36 would be barred under subsection (f).

37 (k) Subsections (i) and (j) shall not affect:

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- 1 (1) Any claim by a settlor;
- 2 (2) Any claim by a beneficiary against a current or former trustee, trust advisor, or
- 3 trust protector for a breach of trust; or
- 4 (3) Any claim by a trustee, trust advisor, or trust protector.
- 5 (l) If two or more transfers of property are made to a trust that contains a spendthrift
- 6 provision, then the following shall apply:
- 7 (1) For the purpose of determining whether, under this section, a creditor or other
- 8 person may commence a judicial proceeding with respect to a specific transfer, any subsequent
- 9 transfer shall be disregarded; and
- 10 (2) Any distribution from a trust to a settlor or other beneficiary shall be deemed to
- 11 have been made from:
- 12 (A) First, the most recent transfer to the extent of the previously undistributed
- 13 portion of that transfer; and
- 14 (B) Subsequently, each preceding transfer in reverse chronological order to the
- 15 extent of the previously undistributed portion of that transfer.
- 16 (m) A creditor or assignee of a settlor may not compel the settlor to exercise any right or
- 17 power that, in any fiduciary or nonfiduciary capacity, the settlor has under the terms of the trust,
- 18 including:
- 19 (1) Any power of appointment;
- 20 (2) Any power to direct or veto a distribution;
- 21 (3) Any power to reacquire trust property by substituting other property of an
- 22 equivalent value;
- 23 (4) Any power of administration within the meaning of section 675(4) of the Internal
- 24 Revenue Code;
- 25 (5) Any power to appoint or remove a trustee, trust advisor, or trust protector; or
- 26 (6) Any right to receive reports, notices, or other information concerning the trust
- 27 and its administration.
- 28 (n) This section shall not affect the application of:
- 29 (1) In the case of a trust that was revocable immediately before the settlor's death,
- 30 RSA 564-B:5-505(b);
- 31 (2) RSA 564-B:5-505(e); or
- 32 (3) Except as otherwise provided in this section, RSA 545-A or a similar law of
- 33 another state having jurisdiction over a transfer of property.
- 34 (o) To the extent that a settlor's interest in an irrevocable trust is subject to a
- 35 spendthrift provision, the settlor's interest:
- 36 (1) Is not property for purposes of RSA 458:16-a, I, to the extent that:
- 37 (A) The settlor's interest is subject to a spendthrift provision; and

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1 (B) The settlor transferred the property to the trust more than 30 days before
2 his or her marriage to the individual seeking to claim that the settlor's interest is property for
3 purposes of RSA 458:16-a, I, unless that individual expressly consented to the transfer; and

4 (2) Shall not be subject to any forced heirship, legitime, forced share, or any similar
5 heirship rights under the laws of any jurisdiction.

6 (p) A spendthrift provision is unenforceable against a claim of this state or the United
7 States to the extent that a statute of this state or federal law so provides.

8 (q) A spendthrift provision is a restriction on the transfer of the settlor's beneficial
9 interest that is enforceable under nonbankruptcy law within the meaning of 11 U.S.C. section
10 541(c)(2).

11 564-B:5-505B Coordination with Qualified Dispositions in Trusts.

12 (a) On the effective date of RSA 564-B:5-505A, RSA 564-B:5-505A shall apply to:

13 (1) Any transfer that:

14 (A) Was made before the effective date of RSA 564-B:5-505A; and

15 (B) Qualified as a qualified disposition within the meaning of RSA 564-D:1, VII,
16 as in effect immediately before the effective date of RSA 564-B:5-505A; and

17 (2) Any trust into which, before the effective date of RSA 564-B:5-505A, there was a
18 transfer described in subsection (a)(1).

19 (b) Except as otherwise permitted under RSA 564-B:5-505A, a creditor or assignee of a
20 settlor may not avoid a transfer described in subsection (a)(1) if the creditor or assignee could not
21 have avoided the transfer under RSA 564-D as in effect immediately before the effective date of RSA
22 564-B:5-505A.

23 (c) Except as otherwise permitted under RSA 564-B:5-505A, a creditor or assignee of a
24 settlor may not reach any property of a trust described in subsection (a)(2) if the creditor or assignee
25 could not have reached the property under RSA 564-D as in effect immediately before the effective
26 date of RSA 564-B:5-505A.

27 53 Repeal. The following are hereby repealed:

28 I. RSA 564-B:5-503, relative to exceptions to a spendthrift provision, is repealed.

29 II. RSA 564-D, relative to qualified dispositions in trusts.

30 54 Effective Date.

31 I. Sections 2, 4, 5, 9, 10, 13, 18, 19, 20, 21, 22, and 31 of this act shall take effect upon its
32 passage.

33 II. Sections 34 through 46 of this act shall take effect October 1, 2017.

34 III. The remainder of this act shall take effect 60 days after its passage.