Bill as Introduced

HB 160 – AS INTRODUCED

2003 SESSION

03-0424
01/09

HOUSE BILL ***160***

AN ACT relative to removal or replacement of trustees.

SPONSORS: Rep. Hunt, Ches 28; Sen. Kenney, Dist 3

COMMITTEE: Commerce

ANALYSIS

This bill clarifies the law relative to removal or replacement of trustees.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 160 – AS INTRODUCED

03-0424
01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to removal or replacement of trustees.

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

1 New Paragraph; Removal or Replacement of a Trustee; Application. Amend RSA 564:9 by inserting after paragraph II the following new paragraph:

III. This section shall apply to a trust or trustee of a trust, as defined in RSA 564-A:1.

2 Effective Date. This act shall take effect January 1, 2004.

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON HB 160

BILL TITLE: relative to removal or replacement of trustees.

DATE: January 21, 2003

LOB ROOM: 302 **Time Public Hearing Called to Order:** 10 am

Time Adjourned: 10:05 am

(please circle if present)

Committee Members: Reps. Hunt, J. Fraser, Francoeur, Belanger, Langley, DiFruscia, D. Flanders, Spiess, Holden, Liebl, Quandt, Charles Clark, Brady, Scamman, Stepanek, Reardon, Kathleen Taylor, Meader, DeStefano, Vachon and Kopka.

Bill Sponsors: Rep. Hunt and Sen. Kenney

TESTIMONY

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

***Rep. John Hunt, sponsor** – Introduced the bill. This bill is intended to clarify the statute. Intent is to apply the law to all Trustees.

John Nivus, NH Bankers' Association & Laconia Savings – Issue was raised in Probate Court. Judge uncertain if the law applied to all Trustees. Need to resolve the confusion.

Q: Rep. Dennis P. Vachon – Does this relate to contract or probate trustees?

A: Yes, trustees who are appointed by contract, ie, a will.

Respectfully Submitted:

Paul D. Spiess, Clerk

Testimony

TITLE LVI
PROBATE COURTS AND DECEDENTS' ESTATES

CHAPTER 564
TRUSTEES OF ESTATES

Section 564:9

564:9 Removal or Replacement. –

I. A trustee who, in the opinion of the judge, becomes incompetent, unsuitable, or who shall neglect or refuse to comply with the provisions of this chapter may be removed following a hearing which is preceded by notice to the trustee, all known beneficiaries, and such other persons determined by the judge to be interested in the trust.

II. A beneficiary or co-trustee of a trust who believes that the existing trustee should be replaced by a more suitable trustee may petition the court for such replacement. Upon receiving such a petition, and upon the court's determination that all other known beneficiaries have been notified, the court may remove the existing trustee and appoint a replacement trustee when, upon considering all relevant factors, the court finds that a change in trustee would be in keeping with the intent of the grantor, provided further that in deciding whether to replace a trustee, the court may consider the following additional factors in making such determination:

(a) It would substantially improve or benefit the administration of the trust.

(b) The relationship between the grantor and the trustee as it existed at the time the trust was created.

(c) Changes in the nature of the trustee since the creation of the trust.

(d) The relationship of the trustee with the beneficiaries.

(e) The responsiveness of the trustee to the beneficiaries.

(f) The experience and level of skill of the trustee.

(g) The investment performance of the trustee.

(h) The charges for services performed by the trustee.

(i) Any other reasonable factors pertaining to the administration of the trust.

Source. RS 168:7. CS 178:7. GS 186:7. GL 205:7. PS 198:8. PL 309:9. RL 363:9. RSA 564:9. 1998, 376:1, eff. Jan. 1, 1999.

TITLE LVI
PROBATE COURTS AND DECEDENTS' ESTATES

CHAPTER 564
TRUSTEES OF ESTATES

Section 564:1

564:1 Bonds. – Every trustee to whom any estate, real or personal, is devised in trust for any person shall give bond to the judge of probate, with sufficient sureties, or without sureties in estates of five thousand dollars or less where the judge finds it in the interest of the estate, in such sum as the judge may order, except as provided in RSA 564:2 and in RSA 553:15, conditioned:

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

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

III. That at the expiration of the trust he will adjust and settle his account with the judge, and pay and deliver over all balances, money, and property with which he has been intrusted.

IV. That he will faithfully execute the trust according to the true intent of the devisor.

Source. RS 168:1. CS 178:1. GS 186:1. GL 205:1. 1879, 49:1. 1881, 52:1. 1889, 32:1. PS 198:1. PL 309:1. RL 363:1. 1947, 264:3. RSA 564:1. 1955, 20:1, eff. March 5, 1955.

564:2 Exemption. – No town or city in this state shall be required to give a bond when appointed trustee.

Source. PS 198:2. PL 309:2. RL 363:2.

564:2-a Public Trustees. – The judge of probate shall be empowered to appoint a suitable person as public trustee to hold office during the court's pleasure whose duty shall be to administer all such small charitable trusts as the court may assign to him, where it is found that the practical difficulties or the unreasonable expense involved in each trust would tend to defeat its purpose, provided, however, that in each instance the trustee of the fund assigned shall give his consent.

Source. 1955, 183:1, eff. June 9, 1955.

564:2-b Citation. – Upon application the court may, in its discretion waive publication of citations and notices in such trusts where it is found in the interest of the state.

Source. 1955, 183:2, eff. June 9, 1955.

564:2-c Collective Investments. – The public trustee may establish common trust funds, in which may be combined money and property belonging to the various trusts in his care, for the purpose of facilitating investments, providing diversification and obtaining reasonable income; and provided, further, that the participating interests of said trusts are properly evidenced by appropriate bookkeeping entries showing on an annual basis the contribution, the profits, the income, the expenses, the fees and withdrawals allocable to each trust.

Source. 1955, 183:2, eff. June 9, 1955.

564:3 Majority to Act. – [Repealed 1969, 312:2, eff. Aug. 29, 1969.]

564:4 Banks, etc. – Any trust company or national bank, being authorized under RSA 390, may be appointed trustee. Immediately upon the qualification of such a trustee it shall be the duty of the register of probate to notify the bank commissioner of such appointment.

Source. 1917, 193:1. PL 309:4. 1933, 67:9. RL 363:4.

564:5 Bond of Banks. – Such trust company or national bank when appointed trustee shall give a surety company bond in such sum as the judge may order.

Source. 1917, 193:3. PL 309:5. RL 363:5.

564:6 Jurisdiction of Probate Court, Acknowledgment of. – Any national bank desiring to be appointed trustee shall first file with the attorney general, in such form as he may direct, its consent to an examination of its trust department by the bank commissioners of this state, and acknowledge itself amenable to the jurisdiction of the probate courts of this state.

Source. 1917, 193:4. PL 309:6. RL 363:6.

564:7 Neglect to Give Bond. – Any person appointed a trustee who shall neglect or refuse to give bond when required shall be considered as having declined the acceptance of the trust.

Source. RS 168:3. CS 178:3. GS 186:3. GL 205:3. PS 198:4. PL 309:7. RL 363:7.

564:8 Resignation. – A trustee appointed by will or by the judge in pursuance of this chapter may, upon request in writing to the judge, be permitted to resign the trust if the judge thinks it expedient.

Source. RS 168:4. CS 178:4. GS 186:4. GL 205:4. PS 198:5. PL 309:8. RL 363:8.

564:9 Removal or Replacement. –

I. A trustee who, in the opinion of the judge, becomes incompetent, unsuitable, or who shall neglect or refuse to comply with the provisions of this chapter may be removed following a hearing which is preceded by notice to the trustee, all known beneficiaries, and such other persons determined by the judge to be interested in the trust.

II. A beneficiary or co-trustee of a trust who believes that the existing trustee should be replaced by a more suitable trustee may petition the court for such replacement. Upon receiving such a petition, and upon the court's determination that all other known beneficiaries have been notified, the court may remove the existing trustee and appoint a replacement trustee when, upon considering all relevant factors, the court finds that a change in trustee would be in keeping with the intent of the grantor, provided further that in deciding whether to replace a trustee, the court may consider the following additional factors in making such determination:

(a) It would substantially improve or benefit the administration of the trust.

(b) The relationship between the grantor and the trustee as it existed at the time the trust was created.

(c) Changes in the nature of the trustee since the creation of the trust.

(d) The relationship of the trustee with the beneficiaries.

(e) The responsiveness of the trustee to the beneficiaries.

(f) The experience and level of skill of the trustee.

(g) The investment performance of the trustee.

(h) The charges for services performed by the trustee.

(i) Any other reasonable factors pertaining to the administration of the trust.

Source. RS 168:7. CS 178:7. GS 186:7. GL 205:7. PS 198:8. PL 309:9. RL 363:9. RSA 564:9. 1998, 376:1, eff. Jan. 1, 1999.

564:10 Appointing New Trustee. – If a trustee appointed in a will, no provision being made therein for perpetuating the trust, shall decline to accept it, or shall die, resign or be removed, a trustee may be appointed by the judge in his stead, after notice to the persons interested in the trust estate.

Source. RS 168:5. CS 178:5. GS 186:5. GL 205:5. PS 198:6. PL 309:10. RL 363:10.

564:10-a Cemetery Trusts. – If a trustee appointed in a will over a trust for the benefit of a cemetery lot or lots, for which trustees of trust funds of a city or town may accept trust funds, shall resign, die, or be removed, the court of probate, on petition by the trustees of trust funds of the town or city where said cemetery lot or lots are located, and after notice to all other persons

interested, may appoint said trustees of trust funds as trustees of said fund, the same to be held by said trustees as though they were originally bequeathed to the town or city for the uses and purposes in said will set forth.

Source. 1955, 27:1, eff. March 7, 1955.

564:11 Effect of Appointment. – Every trustee appointed by the judge shall be bound by the provisions of this chapter in the same manner as if he were appointed by the will, and the estate given in trust shall vest in such trustee in like manner, to all intents and purposes, as the same vested in the original trustee under the will.

Source. RS 168:6. CS 178:6. GS 186:6. GL 205:6. PS 198:7. PL 309:11. RL 363:11.

564:12 Agent to be Appointed by Trustee. – Every resident trustee who removes from the state or who goes out of the state with the intention of being absent more than a year, and every resident of another state who is appointed trustee within this state, shall forthwith appoint some person residing in this state as his agent, to receive notice of claims against the estate and service of process against him as trustee. The appointment shall be in writing, and shall state the full name and post office address of the agent, and shall be filed in the office of the register of probate.

Source. 1953, 70:1, eff. April 2, 1953.

564:13 Duties. – Any trustee appointed by the judge shall demand and receive of the original trustee all such estate as may have come to his hands by virtue of the trust, and shall manage, pay, and deliver over such property, or the income thereof, in the same manner and under the same obligations and duties as guardians, except as otherwise provided in the instrument creating the trust.

Source. RS 168:8. CS 178:8. GS 186:8. GL 205:8. PS 198:9. PL 309:12. RL 363:12.

564:14 Authority to Sell, etc. – The judge, on application of a trustee or of any person interested, may, after notice to all persons interested, authorize and require the trustee to sell any property holden in trust, and to invest the proceeds of the sale in such manner as will be most for the interest of all persons concerned therein; and the judge may, from time to time, make such orders and decrees as he may think just and reasonable, in relation to the sale, management, investment, and disposition of the trust property and the settlement of the account of the trustee.

Source. RS 168:9. CS 178:9. GS 186:9. GL 205:9. PS 198:10. PL 309:13. RL 363:13.

564:15 Termination of Trust. – When the purposes for which any trust was created have been performed, the judge may, by license and decree, authorize the trustee to transfer, by suitable deed or conveyance, any property remaining in his hands to such person as shall be entitled thereto.

Source. 1903, 130:1. PL 309:14. RL 363:14.

564:15-a Termination of Small Trusts. –

I. A trustee of a trust, as defined in RSA 564-A:1, with a market value of principal, at the time of filing the petition, equal to or less than $50,000, who believes the administration of the trust is impracticable, may petition the court for permission to terminate said trust and distribute the principal and accumulated and undistributed income thereof, outright and free of the trust.

II. The petition to terminate the trust shall propose a schedule of distribution. The trustee shall include assents to the petition for termination and the proposed distribution from all known beneficiaries, or the trustee shall provide notice of the petition to those beneficiaries who have not signed an assent.

III. (a) Upon receiving such a petition for a testamentary trust, the court shall schedule a hearing and notify all known beneficiaries of the date and time of the hearing, unless assents have been filed from all known beneficiaries. Upon receiving such a petition for any other trust, the court shall issue orders of notice, unless assents have been filed from all known beneficiaries.

(b) The court may grant the petition and order termination of the trust and distribution of the assets, or deny the petition.

(c) For the purposes of this section, the term "small trust' shall not include a fund held by a town or other municipality under RSA 31:19 or a fund created by a town or other municipality under RSA 31:19-a.

Source. 2001, 261:1, eff. Jan. 1, 2002.

564:16 Authority to Mortgage, etc. – The judge, upon petition of a trustee, may authorize a mortgage or a lease of the trust property, as provided in the case of guardians by RSA 462.

Source. 1915, 11:1. PL 309:15. RL 363:15.

564:17 Purchase of Fractional Part. – When a trust estate is seized of an undivided fractional part of real estate the judge, upon petition of the trustee, notice and hearing, may authorize the trustee to purchase any other undivided fractional part of such real estate when it will be conducive to the interests of the trust estate to do so; and when the trustee shall be so authorized he may make the purchase and use the funds of the trust to pay the purchase money.

Source. 1915, 11:3. PL 309:16. RL 363:16.

564:18 Investments. – Trustees of estates, unless it is otherwise provided by the instrument creating the trust, shall invest the assets of the trust as provided in RSA 564-A.

Source. 1877, 24:2. GL 205:2. PS 198:11. PL 309:17. 1941, 93:1, 2, 3. RL 363:17. RSA 564:18. 1949, 134:1. 1961, 94:1, eff. July 1, 1961; 212:1, eff. Aug. 27, 1961. 1998, 128:1, eff. Jan. 1, 1999.

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

Source. 1881, 59:1. PS 198:12. PL 309:18. RL 363:18. 1947, 264:4. 1949, 40:1, eff. March 3, 1949.

564:20 Conveyance by Administrator. – When any person deceased shall, at the time of his death, hold any real estate in trust for the use of another, and there is no dispute as to the trust or title of the deceased therein, the judge for the county in which such real estate is situate, upon application and notice, may license the executor or administrator of such deceased person to convey such real estate to the person for whose use the same was holden in trust by the deceased, or to such other person as may be designated by the judge.

Source. 1848, 732:1. CS 178:10. GS 186:10. GL 205:10. PS 198:13. PL 309:19. RL 363:19.

564:21 Compensation for Trustees of Non-Charitable Trusts. –

I. A trustee of a non-charitable trust shall be allowed reasonable expenses incurred in the execution of the trust; and unless otherwise expressly provided in the trust instrument, such trustee shall have such reasonable compensation for services as the judge may allow.

II. In the case of any corporate or professional trustee of a non-charitable trust, the probate court recognizes a rebuttable presumption that reasonable compensation for the trustee's services shall be defined by that institution's or professional's published inter vivos fee schedule or fee agreement, in effect at the time services are rendered. Corporate or professional trustees shall submit an affidavit to the probate court reciting their inter vivos fee schedule or fee agreement, in effect at the time services were rendered; a statement that the charges for the services rendered in this account are in accordance with the charges in that fee schedule or fee agreement; and a certification that the beneficiaries were notified of that fee schedule or fee agreement. Preparation of any trustee account or appearance at probate court, by a corporate or

professional trustee, if required, shall not ordinarily be an additional charge.

III. Unless otherwise expressly provided in the trust instrument, such compensation and expenses shall be apportioned between income and principal as the trustee shall determine to be equitable, and shall be reviewed by the probate court.

Source. 1947, 283:1. RSA 564:21. 1965, 176:1, eff. Aug. 22, 1965. 1997, 278:1, eff. Jan. 1, 1998.

564:21-a Compensation for Trustees of Charitable Trusts. – A trustee of a charitable trust shall be allowed reasonable expenses incurred in the execution of the trust; and unless otherwise expressly provided in the trust instrument, the trustee shall have such reasonable compensation for services as the judge may allow. Such compensation and expenses shall be payable as provided in the trust instrument, or in the absence of such direction, shall be payable out of income. Such compensation may also be payable out of principal, or both income and principal, if approved annually in writing by a duly authorized representative of the governing body of the charitable beneficiary or beneficiaries. Any such compensation and fee schedules shall be subject to approval of the court.

Source. 1997, 278:2, eff. Jan. 1, 1998. 1998, 376:2, eff. Jan. 1, 1999.

564:22 Charitable Trusts, Internal Revenue Laws. –

I. In the administration of any trust which is a "private foundation' as defined in section 509 of the United States Internal Revenue Code of 1954, or which is a "charitable trust' as defined in section 4947(a)(1) of the Internal Revenue Code of 1954, or which is a "split interest trust' as defined in section 4947(a)(2) of that code, the following acts are prohibited:

(a) engaging in any act of "self-dealing' (as defined in section 4941(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(b) retaining any "excess business holdings' (as defined in section 4943(c) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(c) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

(d) making any "taxable expenditures' (as defined in section 4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954. However, this paragraph does not apply to those split-interest trusts or to any amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1954.

II. In the administration of any trust which is a "private foundation' as defined in section 509 of the Internal Revenue Code of 1954, or which is a "charitable trust' as defined in section 4947(a)(1) of the Internal Revenue Code of 1954, there shall be distributed, for the purposes

specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954.

III. The provisions of paragraphs I and II shall apply to any trust except to the extent that a court of competent jurisdiction determines that the application of those paragraphs to a trust would be contrary to the terms of the instrument governing the trust, and that the instrument cannot properly be changed to conform to those paragraphs.

IV. Nothing in this section impairs the rights and powers of the courts or the attorney general with respect to any trust.

V. All references to sections of the Internal Revenue Code of 1954 include amendments to those sections which are made after the effective date of this section, and include all corresponding provisions of any United States internal revenue laws which replace the Internal Revenue Code of 1954.

Source. 1971, 380:1, eff. Aug. 27, 1971.

564:23 Creditors and Assignees of Beneficiaries. –

I. In the event the governing instrument so provides, a beneficiary of a trust shall not be able to transfer his or her right to future payments of income and principal, and a creditor of a beneficiary shall not be able to subject the beneficiary's interest to the payment of its claim.

II. The provisions of paragraph I shall not apply to a beneficiary's interest in a trust to the extent that the beneficiary is the settlor and the trust is not a special needs trust established for a person with disabilities. "Special needs trust' means a trust established for a disabled person as described in 42 U.S.C. section 1396p(d)(4) or similar federal law governing the transfer to such a trust.

III. Paragraph I shall not be construed to prevent the application of RSA 545-A or a similar law of another state having jurisdiction over a transfer of property to the trust.

Source. 1996, 180:2, eff. June 3, 1996.

TITLE LVI
PROBATE COURTS AND DECEDENTS' ESTATES

CHAPTER 564-A
UNIFORM TRUSTEES' POWERS ACT

564-A:1 Definitions. – As used in this chapter:

I. "Trust' means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust' does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration;

II. "Trustee' means an original, added, or successor trustee;

III. "Prudent man' means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which men of ordinary prudence, diligence, discretion, and judgment would act in the management of their own affairs.

Source. 1969, 312:1, eff. Aug. 29, 1969.

564-A:2 Powers of Trustee Conferred by Trust or Law. –

I. The trustee has all powers conferred upon him by the provisions of this chapter unless limited in the trust instrument.

II. An instrument which is not a trust within the meaning of section 1 may incorporate any part of this chapter by reference.

Source. 1969, 312:1, eff. Aug. 29, 1969.

564-A:3 Powers of Trustees Conferred by This Chapter. –

I. Except as provided in paragraph IV, from time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent person would perform for the purposes of the trust including but not limited to the powers specified in paragraph III.

II. In the exercise of his powers including the powers granted by this chapter, a

trustee has a duty to act with due regard to his obligation as a fiduciary including a duty not to exercise any power under this chapter in such a way as to deprive the trust of an otherwise available tax exemption, deduction or credit for tax purposes or deprive a donor of a trust asset of a tax exemption, deduction or credit or operate to impose a tax upon a donor or other person as owner of any portion of the trust. "Tax' includes, but is not limited to, federal, state or local income, gift, estate, or inheritance tax.

III. A trustee has the power, subject to paragraphs I and II:

(a) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested;

(b) to receive additions to the assets of the trust;

(c) to continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided in RSA 564-A:3-b;

(f) to deposit trust funds in a bank, including a bank operated by the trustee;

(g) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(h) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plots and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(j) to enter into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust for any purpose;

(k) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(*l*) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(m) to vote a security, in person or by general or limited proxy;

(n) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) to hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery; the trustee is liable for any act of the nominee in connection with the stock so held;

(q) to insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(r) to borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(s) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(t) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(u) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, amortization, or for depletion in mineral or timber properties;

(v) to pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;

(w) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(x) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(y) to prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(z) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

IV. (a)(1) Due to the inherent conflict of interest that exists between a trustee who is a beneficiary and other beneficiaries of the trust, unless the terms of a trust refer specifically to this paragraph and provide expressly to the contrary, any power conferred upon a trustee (other than the settlor of a revocable or amendable trust or a decedent's or settlor's spouse who is a trustee of a testamentary or inter vivos trust for which a marital deduction has been allowed) shall not include the following:

(A) To make discretionary distributions of either principal or income to or for the benefit of such trustee, except to provide for that trustee's health, education, maintenance, or support as described under Internal Revenue Code sections 2041 and 2514.

(B) To make discretionary allocations of receipts or expenses as between principal and income, unless such trustee acts in a fiduciary capacity whereby such trustee has no power to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of such trustee's fiduciary duties.

(C) To make discretionary distributions of either principal or income to satisfy any legal support obligations of such trustee.

(D) To exercise any other power, including the right to remove or to replace any

trustee, so as to cause the powers enumerated under subparagraph (A)-(C) to be exercised on behalf of, or for the benefit of, a beneficiary who is also a trustee.

(2) Any of the powers described in subparagraph (1) that are conferred upon 2 or more trustees may be exercised by the trustees who are not so disqualified. If there is no trustee qualified to exercise such power, any party in interest, as defined in subparagraph (c), may apply to a court of competent jurisdiction to appoint an independent trustee and such power may be exercised by the independent trustee appointed by the court.

(b)(1) This paragraph applies to:

(A) Any trust executed after the effective date of this paragraph, unless the terms of the trust refer specifically to this subparagraph and provide expressly to the contrary;

(B) Any testamentary trust created under a will executed after the effective date of this paragraph, unless the terms of the trust refer specifically to this subparagraph and provide expressly to the contrary; and

(C) Any trust created under a document executed on or before the effective date of this paragraph, unless:

(i) If the trust is revocable or amendable, the settlor revokes or amends the trust at any time to provide otherwise; or

(ii) If the trust is irrevocable, all parties in interest, as defined in subparagraph (c), elect affirmatively, in the manner prescribed in subparagraph (d), not to be subject to this paragraph. Such election must be made on or before the later of 3 years after the effective date of this paragraph, or 3 years after the date on which the trust becomes irrevocable.

(2) The provisions of this subparagraph neither create a new cause of action nor impair any existing cause of action which, in either case, relates to any power prescribed by subparagraph (a) that was exercised before the effective date of this paragraph.

(c) For the purpose of this paragraph:

(1) If the trust is revocable or amendable and the settlor is not incapacitated, the party in interest is the settlor.

(2) If the trust is revocable or amendable and the settlor is incapacitated, the party in interest is the settlor's legal representative under applicable law or the settlor's agent under a durable power of attorney that is sufficient to grant such authority.

(3) If the trust is not revocable or amendable, the parties in interest are:

(A) Each trustee then serving;

(B) Each income beneficiary then in existence or if any such beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney that is sufficient to grant such authority; and

(C) Each remainder beneficiary then in existence or, if any such remainder beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's agent under a durable power of attorney that is sufficient to grant such authority.

(d) The affirmative election required under subparagraph (b) shall be made:

(1) If the settlor is not incapacitated and the trust is revocable or amendable, through a revocation of or an amendment to the trust;

(2) If the settlor is incapacitated and the trust is revocable or amendable, through a written declaration executed in the manner prescribed for the recordation of deeds and

delivered to the trustee; or

(3) If the trust is not revocable or amendable, through a written declaration executed in the manner prescribed for the recordation of deeds and delivered to the trustee.

(e) A person who has the right to remove or to replace a trustee does not possess, nor may that person be deemed to possess by virtue of having that right, the powers of a trustee who is subject to removal or replacement.

Source. 1969, 312:1, eff. Aug. 29, 1969. 1996, 96:1, 2, eff. July 1, 1996. 1998, 128:2, eff.

564-A:3-a Powers of Fiduciaries in Environmental Matters; Costs; Liability. –

I. The general court has determined that it will benefit the public health, safety, and welfare to empower fiduciaries to assess fiduciary property to determine environmental condition, to prevent and remediate contamination, and to otherwise bring fiduciary property into compliance with environmental laws.

II. In this section:

(a) "Environmental laws' means any federal, state or local law, rule, regulation, or ordinance relating to protection of the environment or human health.

(b) "Fiduciary' means any individual, partnership, corporation, firm, or any other entity and any officer, employee, or agent of such fiduciary, who is acting in any of the following capacities:

(1) Executor, administrator, guardian, or conservator.

(2) Trustee under a will or inter vivos instrument creating a trust under which the trustee takes title to, or otherwise controls or manages, property for the purpose of protecting or conserving such property under the ordinary rules applied in the probate courts of this state.

(3) Court-appointed receiver.

(4) Trustee appointed in proceedings under federal bankruptcy laws.

(5) Assignee or trustee acting under an assignment made for the benefit of creditors under the laws of this state.

(6) Trustee pursuant to an indenture agreement or similar financing agreement for debt securities, certificates of interest of participation in any such debt securities, or any successor to any of the foregoing.

(c) "Hazardous substances' mean oil as defined in RSA 146-A:2, III or any substance defined as hazardous or toxic under RSA 147-A:2, VII or otherwise regulated by any environmental laws.

III. Unless expressly limited by the instrument, judgment, decree, or order establishing the fiduciary relationship, a fiduciary shall have, in its discretion, the following powers, provided that the fiduciary shall disclose in writing to the person or persons to whom the fiduciary sends communications or statements relating to the property held in a fiduciary capacity, the fiduciary's intent to exercise any or all of the authority granted in this section prior to the first exercise of such authority:

(a) To inspect and monitor real and personal property to which the fiduciary takes legal title (including, without limitation, interests in sole proprietorships, partnerships, or corporations and any assets owned by such business enterprises) or over which a fiduciary may exercise control, for the purposes of determining compliance with

environmental laws affecting such property, and to respond to actual or threatened violations of any environmental laws affecting such property held or controlled by the fiduciary.

(b) To take, on behalf of an estate, person or business, any action necessary to prevent, abate, or otherwise remedy any actual or threatened release of hazardous substances or violation of any environmental laws affecting real or personal property held or controlled by the fiduciary, either before or after the initiation of an enforcement action by any government body.

(c) To refuse to accept real or personal property in trust if:

(1) Such property either is or may be contaminated by any hazardous substances, or such property is being used or has been used for any activities directly or indirectly involving hazardous substances, which could impair the value of the assets therein held or controlled; or

(2) Such property may be in violation of any environmental laws.

(d) To settle or compromise, at any time, any and all claims against the estate, trust, person or business which may be asserted by any governmental body or private body, involving the alleged release or threatened release of hazardous substances and the alleged violation of any environmental laws affecting real or personal property held by the estate or trust or owned by the person or business.

(e) To release or disclaim at any time or times any power granted by any document or any statute or rule of law which, in the sole discretion of the fiduciary, may expose the fiduciary to liability in the fiduciary's individual capacity under the environmental laws or impair the value of the assets retained or controlled by the fiduciary.

IV. A fiduciary may charge the reasonable cost of any abatement, cleanup, inspection, assessment, insurance, database review, monitoring, or any other response or remedial action, as authorized under this chapter, against the income or principal for the estate, trust, personal estate, or business assets, and shall not be personally responsible therefor.

V. (a) Nothing in this section shall be construed to alter or affect a fiduciary's liability or obligations as otherwise established by environmental laws. The fiduciary's failure to exercise powers granted under this section in and of itself shall not create a cause of action against the fiduciary. A fiduciary shall not be liable in its individual capacity to any beneficiary or any other party for any action taken with the approval of a governmental agency with responsibility for environmental compliance. A fiduciary shall not be liable in its individual capacity to a beneficiary or any other party for any other action taken to:

(1) Assess potential environmental contamination of fiduciary property; or

(2) Bring fiduciary property into compliance with environmental laws where the fiduciary acts reasonably and prudently.

(b) In particular, a fiduciary shall not be liable for any decrease in value or exhaustion of assets by reason of actions taken in accordance with this section.

Source. 1995, 38:1, eff. June 23, 1995. Jan. 1, 1999.

564-A:3-b General Standards of Prudent Investment. –

I. A trustee is under a duty to the beneficiaries to invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust.

II. This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust.

III. In making and implementing investment decisions, a trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so.

IV. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(a) General economic conditions;

(b) The possible effect of inflation or deflation;

(c) The expected tax consequences of investment decisions or strategies;

(d) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(e) The expected total return from income and the appreciation of capital;

(f) Other resources of the beneficiaries;

(g) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

V. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust property.

VI. A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

VII. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

VIII. In addition, a trustee must:

(a) Conform to fundamental fiduciary duties of loyalty and impartiality; and

(b) Incur only costs that are reasonable in amount and appropriate to the investment responsibilities of the trusteeship.

IX. (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subparagraph (a) is not liable to

the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Source. 1998, 128:3, eff. Jan. 1, 1999.

564-A:3-c Power to Convert to Unitrust. –

I. Unless expressly prohibited by the governing instrument, a trustee may convert a trust into a unitrust as described in this section if all of the following apply:

(a) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(b) The trustee gives written notice of the trustee's intention to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the sui juris beneficiaries who:

(1) Are currently eligible to receive income from the trust; and

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

(c) There is at least one sui juris beneficiary under subparagraph (b)(1) and at least one sui juris beneficiary under subparagraph (b)(2).

(d) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph (b).

II. (a) The trustee may petition the court to approve the conversion to a unitrust if any of the following apply:

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

(2) There are no sui juris beneficiaries under subparagraph I(b)(1).

(3) There are no sui juris beneficiaries under subparagraph I(b)(2).

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

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

III. In deciding whether to exercise the power conferred by paragraph I, a trustee may consider, among other things, all of the following:

(a) The size of the trust.

(b) The nature and estimated duration of the trust.

(c) The liquidity and distribution requirements of the trust.

(d) The needs for regular distributions and preservation and appreciation of capital.

(e) The expected tax consequences of the conversion.

(f) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary.

(g) To the extent reasonably known to the trustee, the needs of the beneficiaries for

present and future distributions authorized or required by the governing instrument.

(h) Whether and to what extent the governing instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(i) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

IV. After a trust is converted to a unitrust, all of the following apply:

(a) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(1) From appreciation of capital;

(2) From earnings and distributions from capital; or

(3) From both.

(b) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

(c) The term "income' in the governing instrument shall mean an annual distribution (the unitrust distribution) equal to 5 percent (the payout percentage) of the net fair market value of the trust's assets as determined at the end of the calendar year, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(1) The 3 preceding years; or

(2) The period during which the trust has been in existence.

V. The trustee may in the trustee's discretion from time to time determine all of the following:

(a) The effective date of a conversion to a unitrust.

(b) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

(c) The frequency of unitrust distributions during the year.

(d) The effect of other payments from or contributions to the trust on the trust's valuation.

(e) How frequently to value nonliquid assets and whether to estimate their value.

(f) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(g) Any other matters necessary for the proper functioning of the unitrust.

VI. (a) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(b) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

VII. The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

(a) Select a payout percentage different than 5 percent.

(b) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

(c) Average the valuation of the trust's net assets over a period other than 3 years.

(d) Reconvert from a unitrust.

VIII. A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

IX. A trustee may not convert a trust into a unitrust in any of the following circumstances:

(a) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(b) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

(c) If:

(1) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

(2) The individual would not be treated as the owner if the trustee did not possess the power to convert.

(d) If:

(1) Possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual; and

(2) The assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

(e) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

(f) If the trustee is a beneficiary of the trust.

X. (a) If subparagraph IX(c), (d), or (f) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(b) If subparagraph IX(c), (d), or (f) applies to all the trustees, the trustees may petition the court to direct a conversion.

XI. (a) A trustee may release the power conferred by paragraph I to convert to a unitrust if any of the following apply:

(1) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subparagraph IX(c), (d), or (f).

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

(b) The release may be permanent or for a specified period, including a period measured by the life of an individual.

Source. 2002, 191:1, eff. Jan. 1, 2003.

564-A:4 Trustee's Office Not Transferable. – The trustee shall not transfer his office to another or delegate the entire administration of the trust to a cotrustee or another.

Source. 1969, 312:1, eff. Aug. 29, 1969.

564-A:5 Power of Court to Permit Deviation or to Approve Transactions Involving Conflict of Interest. –

I. This chapter does not affect the power of the probate court for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on the trustee's power that would otherwise be placed upon the trustee by the trust or by this chapter.

II. If the duty of the trustee and his or her individual interest or his or her interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by probate court authorization (except as provided in subparagraphs (a), (d), (f), (r) and (x) of RSA 564-A:3, III) upon petition of the trustee. For purposes of this section, in the case of a corporate trustee personal profit or advantage to an affiliated or subsidiary company or association is personal profit to the trustee.

Source. 1969, 312:1. 1992, 284:72, eff. Jan. 1, 1993.

564-A:6 Powers Exercisable by Joint Trustees; Liability. –

I. Any power vested in three or more trustees may be exercised by a majority, unless the instrument or authority creating the trust shall otherwise provide, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees, if he expressed his dissent in writing to any of his cotrustees at or before the time of the joinder.

II. If two or more trustees are appointed to perform a trust, and one or more of them for any reason is unable to, or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

III. This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

Source. 1969, 312:1, eff. Aug. 29, 1969.

564-A:7 Third Persons Protected in Dealing With Trustee. –

I. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power, and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them,

is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

II. The filing by a trustee of a written certificate signed by the trustee, filed and recorded as hereinafter set forth and in substantially the following form shall be conclusive evidence and notice to all third parties that the trustee named therein and the trustee's successors have full and absolute power to convey any interest in real estate and improvements thereon held by the trustee and no third person or purchaser, without actual knowledge to the contrary, shall be obligated to further inquire as to the power or authority of the trustee to convey or to see to the application of any trust assets paid or delivered to the trustee.

The undersigned trustee(s) as Trustee(s) under the _____ Trust created by _____ as grantor under trust agreement dated _____, and thereto have full and absolute power in said trust agreement to convey any interest in real estate and improvements thereon held in said trust and no purchaser or third party shall be bound to inquire whether the trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the trustee for a conveyance thereof.

_____

, Trustee

III. A similar certificate filed by any successor to the trustee named in an original or any subsequent certificate shall have the same effect as the original certificate. Such a certificate, in writing, executed with the formalities required for a deed of real property by the trustee or trustees of the trust and recorded in the registry of deeds in the county in which the real estate and improvements lie shall conclusively establish the power of the trustee to convey said real estate and improvements as set forth above.

IV. A written certificate signed by a trustee with signature sworn to before a notary public, delivered to the transferee or a transfer agent in substantially the following form, shall be conclusive evidence and notice to all third parties that the trustee named therein and the trustee's successors have full and absolute power to convey any interest in personal property, tangible or intangible, held by the trustee and no third person or purchaser, without actual knowledge to the contrary, shall be obligated to further inquire as to the power or authority of the trustee to convey or to see to the application of any trust assets paid or delivered to the trustee.

The undersigned trustee(s) as Trustee(s) under the _____ Trust created by _____ as grantor under trust agreement dated _____, and thereto have full and absolute power in said trust agreement to convey any interest in personal property held in said trust and no purchaser or third party shall be bound to inquire whether the trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the trustee for a conveyance thereof.

V. A similar certificate signed by any successor to the trustee named in an original or any subsequent certificate shall have the same effect as the original certificate. Such a certificate, in writing, sworn to, and delivered in the same manner as the prior trustee's

certificate, shall conclusively establish the power of the successor trustee to convey said personal property.
Source. 1969, 312:1. 1977, 84:1. 1995, 216:4, eff. Aug. 11, 1995. 1999, 111:1, eff. Jan. 1, 2000.

564-A:8 Applicability of Chapter. – Except as specifically provided in the trust, the provisions of this chapter apply to any trust established after the effective date of this chapter and to any trust asset acquired by the trustee after the effective date of this chapter.

Source. 1969, 312:1, eff. Aug. 29, 1969.

564-A:9 Uniformity of Interpretation. – This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it..

Source. 1969, 312:1, eff. Aug. 29, 1969.

564-A:10 Title. – This chapter may be cited as the "Uniform Trustees' Powers Act.'

Source. 1969, 312:1, eff. Aug. 29, 1969.

564-A:11 Severability. – If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Source. 1969, 312:1, eff. Aug. 29, 1969.

Voting Sheets

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on HB 260

BILL TITLE: **relative to removal or replacement of trustees.**

DATE: January 22, 2003

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep.

Seconded by Rep.

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

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

Moved by Rep. Fraser

Seconded by Rep. Flanders

Vote: 16-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 16-0

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Paul D. Spiess, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

COMMERCE

Bill #: HB 160 **Title:** Relative to removal or replacement of trustees

PH Date: __/__/__ **Exec Session Date:** 1/22/03

Motion: OTP **Amendment #:**

MEMBER	YEAS	NAYS
Hunt. John B. Chairman		
Fraser. Leo W. V Chairman	✓	
Francoeur. Sheila T		
Belanger. Ronald J		
Langley. Jane S	✓	
DiFruscia. Anthony R		
Flanders. Donald H	✓	
Spiess. Paul D	✓	
Holden. Randolph N	✓	
Liebl. George J	✓	
Quandt. Matthew J	✓	
Clark. Charles L	✓	
Brady. Mark A	✓	
Scamman. Stella		
Stepanek. Stephen B	✓	
Reardon. Tara G	✓	
Taylor. Kathleen N	✓	
Meader. David R	✓	
DeStefano. Stephen T	✓	
Vachon. Dennis P	✓	
Kopka. Angeline A	✓	
	16	0
TOTAL VOTE:		

Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Commerce**

BILL NUMBER: **HB 160**

TITLE: relative to removal or replacement of trustees.

DATE: January 22, 2003 CONSENT CALENDAR YES ☒ NO ☐

☒ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

In 1998 lawmakers passed a bill to expand the circumstances under which beneficiaries or co-trustees could petition the probate court for the replacement or removal of an existing trustee. The bill was intended to apply to all trusts as defined in the Uniform Trustees' Powers Act (RSA 564-A), which is the chapter in state law that describes the powers conferred and exercised by trustees. The law that passed in 1998 amended an existing provision in RSA 564, which was the original New Hampshire statute governing the jurisdiction of the probate court as it applies to trusts and which contained a provision pertaining to the removal of a trustee. The intent of the bill passed in 1998 was that the removal and replacement provisions did apply to all trusts. This bill clarifies that the provision in state law allowing beneficiaries of a trust to petition the court for removal or replacement of an existing trustee applies to trustees of all trusts, as defined in the Uniform Trustees Powers Act, and not just trustees appointed by the probate court.

Vote 16-0.

Rep. Leo W. Fraser
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Commerce

HB 160, relative to removal or replacement of trustees. **OUGHT TO PASS**

Rep. Leo W. Fraser for Commerce: In 1998 lawmakers passed a bill to expand the circumstances under which beneficiaries or co-trustees could petition the probate court for the replacement or removal of an existing trustee. The bill was intended to apply to all trusts as defined in the Uniform Trustees' Powers Act (RSA 564-A), which is the chapter in state law that describes the powers conferred and exercised by trustees. The law that passed in 1998 amended an existing provision in RSA 564, which was the original New Hampshire statute governing the jurisdiction of the probate court as it applies to trusts and which contained a provision pertaining to the removal of a trustee. The intent of the bill passed in 1998 was that the removal and replacement provisions did apply to all trusts. This bill clarifies that the provision in state law allowing beneficiaries of a trust to petition the court for removal or replacement of an existing trustee applies to trustees of all trusts, as defined in the Uniform Trustees Powers Act, and not just trustees appointed by the probate court. **Vote 16-0.**

Rep. Paul Spiess

HB 160

SPONSOR EXPLANATION

Removal or Replacement of Trustee

3 This bill clarifies that the provision in state law allowing beneficiaries of a trust to petition the court for removal or replacement of an existing trustee applies to trustees of all trusts, as defined in the Uniform Trustees Powers Act, and not just trustees appointed by the probate court.

The bill would confirm that the state's trust portability provision does include trustees of trusts created by a trust instrument whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary or both.

1 In 1998, lawmakers passed a bill to expand the circumstances under which beneficiaries or co-trustees could petition the probate court for the replacement or removal of an existing trustee. The bill was intended to apply to all trusts as defined in the Uniform Trustees' Powers Act, RSA 564-A, which is the chapter in state law that describes the powers conferred and exercised by trustees. The law that passed in 1998 amended an existing provision in RSA 564, which was the original New Hampshire statute governing the jurisdiction of the Probate Court as it applies to trusts and which contained a provision pertaining to the removal of a trustee.

2 At least one attorney has objected to a removal petition on the basis that the removal and replacement language only applied to a trustee appointed by the probate court. The intent of the bill passed in 1998 was that the removal and replacement provisions did apply to all trusts.

SBH