Bill as Introduced

HB 186 – VERSION ADOPTED BY BOTH BODIES

2003 SESSION

03-0671
01/09

HOUSE BILL ***186***

AN ACT relative to the effect of divorce or annulment upon trusts.

SPONSORS: Rep. J. Pratt, Ches 24; Rep. Craig, Hills 50; Rep. Rowe, Hills 47; Sen. Foster, Dist 13; Sen. Peterson, Dist 11

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies the effect that a divorce or annulment has upon a trust.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 186 – VERSION ADOPTED BY BOTH BODIES

03-0671
01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to the effect of divorce or annulment upon trusts.

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

1 New Paragraph; Revocation; Divorce or Annulment. Amend RSA 551:13 by inserting after paragraph II the following new paragraph:

III. If after executing a trust instrument in which a sole grantor reserves a power to alter, amend, revoke or terminate the provisions of the trust, the grantor is divorced or the marriage is annulled, the divorce or annulment revokes any disposition or appointment of property made by the trust to the former spouse, any provision conferring a general or special power of appointment to the former spouse, and any nomination of the former spouse as trustee, unless the trust expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse and all heirs in the descending line of such former spouse who are not also heirs at law of the decedent failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse and all heirs in the descending line of such former spouse who are not also heirs at law of the decedent failed to survive the decedent. Any devise or distribution to any such heirs in the descending line of such former spouse that is contingent upon such spouse predeceasing the grantor is revoked by this section, unless the trust expressly provides otherwise. If provisions are revoked solely by this paragraph, they are revived by the grantor's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for the purposes of this paragraph. No change of circumstances other than as described in this paragraph revokes a trust.

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

Committee Minutes

Date: April 8, 2003
Time: 1:40 p.m.
Room: SH 103

The Senate Committee on Banks held a hearing on the following:

HB 186 relative to the effect of divorce or annulment upon trusts.

Members of Committee present: Senator Flanders
Senator Peterson
Senator Barnes
Senator Odell

The Chair, Senator Robert B. Flanders, opened the hearing.

I recognize the prime sponsor, Representative Pratt.

Representative Pratt: Thank you Mr. Chairman. I am delighted to be here. I apologize for not being here on the last two bills. This is a bill, which deals with. For the record, my name is John Pratt. I represent the Northern tier of Chesire County, District 24. House Bill 186 is a bill, which cleans up a small piece of probate law. What it says in it's simplest form is that if there is an intervivous trust, you make a trust where you have the, I retain the power to change it anyway I want. An intervivous trust is often used these days where there is such a trust and then there is a divorce. If the trust has given certain matters to the spouse that trust will not prevail against the divorce unless the trustee expressly says, "I give to my divorced spouse the house". Under the present law you have confusion because the divorce says there's no marriage. The trust says that I'm bequeathing this or that to x. What this does is say unless the trustees says specifically that I want my former wife or former husband to get something, the divorce will automatically say that there is no gift made to the spouse or the heirs of the spouse. Is that simple enough?

Senator Robert B. Flanders, D. 7: Any questions? Senator Barnes.

Senator John S. Barnes, Jr., D. 17: Thank you.

Representative Pratt: I have a lot of experts sitting behind me that know a lot more than I do.

Senator John S. Barnes, Jr., D. 17: The trust is dissolved.

Representative Pratt: The rest of the trust wouldn't be dissolved but any disposition to someone who is a divorcee, any of the two parties in a divorce, that part of the trust would be dissolved. An intervivous trust would stay, as I understand it. If you have given the car to a kid or to an ex-wife. That would still go. If the intervivious trust gave to your wife and then you had a divorce subsequent to that and you never got around to changing it, that provision of the trust would not prevail as against the divorce. The divorce would automatically cancel it out unless you specifically said that you were going to give this to your ex-spouse.

Senator Robert B. Flanders, D. 7: Very clear.

Representative Pratt: He has another question.

Senator Robert B. Flanders, D. 7: Follow-up?

Senator John S. Barnes, Jr., D. 17: Thank you. This must cause a lot of problems in divorce proceedings.

Representative Pratt: My impression Senator is that it is mostly a matter of people forgetting when they get the divorce that they have the intervivous trust and they should have changed that at the same time and the lawyer forgot to tell them and one thing or another. It creates problems at the death of the ex-husband or the death of the one that got the divorce. That's when the problems start.

Senator Robert B. Flanders, D. 7: Senator Peterson.

Senator Andrew R. Peterson, D. 11: Thank you Mr. Chairman. Representative Pratt, the, how did the house amend the bill?

Representative Pratt: I think this bill did not get amended. I think this came through. The one this morning did get amended.

Senator Robert B. Flanders, D. 7: I just have a question. I know of a case it may not have anything to do with this. A divorce took place after a gentleman had a severe stroke and as a result of the injury got almost a $6,000,000 malpractice settlement. Then at this time the ex-wife showed

back up and said "wow". That wouldn't have anything to do with this would it? He eventually passed, he died shortly after he got this settlement.

Representative Pratt: If he had the stroke and he had an intervivous trust and was not capable of changing it. Prior to this bill, she's got a legitimate claim. Whether she'd prevail or not I'm not quite sure. But prior to this bill because she was named in the intervivous trust she could get a piece of that $6,000,000.

Senator Robert B. Flanders, D. 7: Based upon this she could not.

Representative Pratt: She could not because the divorce would revoke the intervivous trust unless he specifically said I give this to my ex-wife.

Senator Andrew R. Peterson, D. 11: I see in here Representative Pratt that you can specify in the trust that the spouses children are due something even if a divorce occurs later. My question to you would be this, is it possible to specify in the trust under this legislation that the wife would be due something irrespective if she was divorced later.

Representative Pratt: The person in the intervivous trust can expressly give to the ex-wife and to the ex-wife's children.

Senator Andrew R. Peterson, D. 11: Or anybody else.

Representative Pratt: Or anybody else. Absent that express provision it is if the ex-wife and any children that the ex-wife had not by this spouse, would not take whereas prior to this they would take. That's really the essence of it.

Senator Robert B. Flanders, D. 7: You keep saying ex-wife but it could also be ex-husband.

Representative Pratt: It could be ex-husband. You're quite right.

Senator Robert B. Flanders, D. 7: If the wife's got all the money it could be vice-versa. Thank you for testimony. Charles Degrandpre.

Charles Degrandpre: My name is Charles Degrandpre of Portsmouth New Hampshire. I practice in the estate and trust field and have written in the area. I was asked to be here when Judge John Mahar could not be of the Probate Court. This is a bill that I asked, worked with the judge to come up with. Four years ago we rectified this problem with wills. We passed a bill four years ago, this legislature did, that did the same thing as to a provision in the will as to a trust. We didn't take the step regarding trusts because the

bill was felt to be too complicated. Let's divide it into parts. So we did the first thing first.

Last year, two years ago we forgot to get the bill into the legislature in time so here we are. It is a serious problem. I have had in my practice parties die. I had a client die in a divorce litigation. The other spouse took property under his or her will. In that case it was her will and the husband took, obviously she didn't intend that. She was in the process of getting a divorce from him. More often than not though that's not the situation. The situation is where they fail to take the advice of their attorney which is after this is all done or even during the process, change your will. Obviously you don't want to benefit a spouse who you just settled a property settlement on and who you obviously are no longer intending to benefit because you have benefited him or her in the process of the divorce proceedings.

I've had provisions ten years later, a divorce ten years ago and a divorced man remarried and low and behold there were provisions in a trust that he had forgotten about for his former spouse. The way that works is that until this bill, that trust provision would be carried out to the spouse, former spouse in that case. Just as, this language is identical to the provision 2 Roman numeral 2 above which isn't here but is the same language we did for wills. We said if there's a beneficial provision in a will for a spouse and then the parties are divorced that beneficial provision or appointment to an office, such as executor or trustee, is automatically revoked. This is the law in most states. Our state law never had gone that far. It's called circumstantial revocation of a trust. This law would provide that the circumstances, this one particular circumstance, a divorce, the parties remarry then the trust provision or the will provision comes into play.

Senator Robert B. Flanders, D. 7: Senator Peterson.

Senator Andrew R. Peterson, D. 11: I can see here that you're talking about trusts that are revocable as well as trusts that are permanent. Is that correct?

Mr. Degrandpre: This is just a power, this is where a trust is amendable or revocable.

Senator Andrew R. Peterson, D. 11: So is my mind straying into territory that makes no sense when I put out the example of someone who doesn't have a prenuptial agreement and puts the majority of their assets into a trust. Goes through a divorce. Is able to revoke the trust after the divorce and rescue the lions' share of their wherewithal out of this circumstance? Wouldn't this allow for that?

Mr. Degrandpre: No. It has nothing to do with prenuptial. In a prenuptial that person would have had to reveal that he had set up this trust. If that trust is revocable then this provision would apply. It would.

Senator Andrew R. Peterson, D. 11: What I'm saying, not to cloud the issue with prenuptial, but simply could someone hide assets in this trust and have them outside of the divorce and is there an unintended consequence there or do you see no problem?

Mr. Degrandpre: This has nothing to do with hiding of assets. If assets are hidden then there's a fraud on the court and a fraud on the other party. This does not address that situation. Simply nowadays most people leave their properties out of probate through a revocable trust. A revocable trust is revocable, alterable and it's better than a will because it's easier to set up and it passes, property in a trust passes outside of the probate court. Most clients want that now. Probate court, settlement of estates can be a long process. It can be expensive. It involves a lot of lawyer time in court. Most clients ask for, I want to set up a revocable trust to avoid probate. So this is designed to cover those cases.

Senator John S. Barnes, Jr., D. 17: Are you trying to put lawyers out of business?

Mr. Degrandpre: I am in the probate area and I am a lawyer for 42 years but I don't think that you need to go through probate, Senator Barnes. Most of my clients come in. I don't have to give them that kind of advice. They've read about it and they want it that way.

Senator Robert B. Flanders, D. 7: Basically what you're saying is that this bill is designed to help somebody who forgets to change their trust at the time of a divorce. That's the main idea?

Mr. Degrandpre: Absolutely. If you don't think that happens it in fact happens. Even if they're mad as hornets changing a trust means you have to come up with a new plan. Maybe they don't have one. Or they're going to it next month. These cases go to the Supreme Court around the country and sure enough it happens. More and more states are doing what we're proposing to do here.

Senator Andrew R. Peterson, D. 11: Do you know how many states have it this way?

Mr. Degrandpre: I don't but it's a majority of the states. We're very old fashioned in the way. Our will statute is a very good will statute but it has not been changed for years. This is a slight change. That's all.

Senator Robert B. Flanders, D. 7: Any other questions of this witness? If not thank you for your testimony.

Mr. Degrandpre: Thank you for your consideration.

Senator Robert B. Flanders, D. 7: Any one else wishing to testify on House Bill 186? If not, I'll declare the hearing closed.

Hearing closed at 2:55 p.m.

Respectfully submitted

Pamela Manocchi

Pamela Manocchi
April 9, 2003

Speakers

SENATE BANKS

Date April 8, 2003 Time 1:40 Public Hearing on
Bill # HB 186 relative to the effect of divorce or annulment upon trusts

(Please print) Please check box(es) at left that apply.

SPEAKING?	FAVOR	OPPOSED	NAME	REPRESENTING
☒	☒	☐	Rep. John Pratt	Ches 24
☒	☒	☐	CHARLES A. DeGRANDPRE,	SELF
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Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: April 8, 2003

THE COMMITTEE ON Banks

to which was referred House Bill 186

AN ACT relative to the effect of divorce or annulment upon trusts.

VOTE: 4_0

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Andrew R. Peterson
For the Committee

HB186 Docket

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Bill Title: relative to the effect of divorce or annulment upon trusts.

Date	Body	Description
1/9/2003	**H**	Introduced and ref to Judiciary; HJ8, p110
1/9/2003	**H**	Copy to Chairman on 1/9/2003
1/9/2003	**H**	Hearing Jan 23 11:30 RM208,LOB
1/23/2003	**H**	Maj Report OTP for Jan 30 (Vote 18-0;CC)
1/30/2003	**H**	Passed; HJ 12, p218 + 231
3/27/2003	**S**	Introduced and Ref. to Banks; SJ 10, Pg.216
4/4/2003	**S**	Hearing; April 8, 2003, Room 103, SH, 1:40 p.m.; SC17
4/11/2003	**S**	Committee Report; Ought to Pass, [04/17/03]; SC18
4/17/2003	**S**	Ought to Pass; MA, VV; OT3rdg; SJ 13, Pg.319
4/17/2003	**S**	Passed by 3rd Reading Resolution; SJ 13, Pg.327
4/17/2003	**H**	Enrolled; HJ40, p1273
4/24/2003	**S**	Enrolled; SJ 14, Pg.348
5/2/2003	**H**	Signed by the Governor on 5/2/2003 Eff: 1/1/2004 Chap: 0031

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Docket Abbreviations