

Amendment to HB 1127

1 Amend RSA 545-B:1, XIII - XVII as inserted by section 1 of the bill by replacing it with the following:

2

3 XIII. "Qualified New Hampshire trust" means an irrevocable trust that:

4 (a) Expressly provides that the validity, construction, and administration of the trust are
5 governed by the laws of this state;

6 (b) Includes a spendthrift provision;

7 (c) Has at least one trustee who is a resident of or whose place of business is in this
8 state; and

9 (d) Provides that some or all of the administration of the trust is performed in this state.

10 XIV. "Record" means information that is inscribed on a tangible medium or that is stored in
11 an electronic or other medium and is retrievable in perceivable form.

12 XV. "Relative" means an individual related by consanguinity within the third degree as
13 determined by the common law, a spouse, or an individual related to a spouse within the third
14 degree as so determined, and includes an individual in an adoptive relationship within the third
15 degree.

16 XVI. "Sign" means, with present intent to authenticate or adopt a record:

17 (a) To execute or adopt a tangible symbol; or

18 (b) To attach to or logically associate with the record an electronic symbol, sound, or
19 process.

20 XVII. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or
21 involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment
22 of money, release, lease, license, and creation of a lien or other encumbrance.

23 XVIII. "Transfer to a qualified New Hampshire trust" means a transfer of an asset by a
24 debtor to a qualified New Hampshire trust.

25 XIX. "Valid lien" means a lien that is effective against the holder of a judicial lien
26 subsequently obtained by legal or equitable process or proceedings.

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28 Amend RSA 545-B:4, III as inserted by section 1 of the bill by replacing it with the following:

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30 III. Except as provided in paragraph IV, a creditor making a claim for relief under
31 paragraph I has the burden of proving the elements of the claim for relief by a preponderance of the
32 evidence.

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1 IV. A creditor making a claim for relief under subparagraph I(a) against a qualified New
2 Hampshire trust has the burden of proving the elements of the claim for relief by clear and
3 convincing evidence.

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5 Amend RSA 545-B:10, II as inserted by section 1 of the bill by replacing it with the following:

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7 II. Except as provided in paragraph III, a claim for relief in the nature of a claim for relief
8 under this chapter is governed by the local law of the jurisdiction in which the debtor is located when
9 the transfer is made or the obligation is incurred.

10 III. A claim for relief under this chapter arising out of a transfer to a qualified New
11 Hampshire trust is governed by the law of this state if the transferee was a qualified New
12 Hampshire trust when the transfer was made.

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14 Amend RSA 545-B:12 and 545-B:13 as inserted by section 1 of the bill by replacing it with the
15 following:

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17 545-B:12 Supplementary Provisions.

18 I. Unless displaced by the provisions of this chapter, the principles of law and equity,
19 including the law merchant and the law relating to principal and agent, estoppel, laches, fraud,
20 misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause,
21 supplement its provisions.

22 II. The replacement of the term “fraudulent” used in former RSA chapter 545-A with the
23 term “voidable” in this chapter is a matter of style and has no substantive effect and makes no
24 change in meaning.

25 III. Although this chapter is derived, in part, from the Uniform Voidable Transactions Act as
26 promulgated by the National Conference of Commissioners on Uniform State Laws, the Official
27 Comments to the Uniform Voidable Transactions Act, as amended from time to time, do not have the
28 force of law and do not reflect any legislative intent relating to, or provide any other basis for
29 interpreting or applying, this chapter in a manner that is inconsistent with New Hampshire law, as
30 judicially interpreted and applied, including without limitation law relating to qualified New
31 Hampshire trusts and the elements of a claim for relief under this chapter.

32 545-B:13 Uniformity of Application and Construction. This chapter shall be applied and
33 construed to effectuate its general purpose to make uniform the law with respect to the subject of
34 this chapter among states enacting the Uniform Voidable Transactions Act, as promulgated by the
35 National Conference of Commissioners on Uniform State Laws, but only to make uniform among
36 states the provisions of this chapter that conform to that Act, and not to make uniform among states
37 the non-uniform provisions of this chapter that deviate from the provisions of that Act and that

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1 deviate from and make inapplicable the Official Comments to that Act. That general purpose is in
2 all respects subject to and does not apply to those non-uniform provisions of this chapter and does
3 not apply to any other provisions of this chapter to the extent that the application would impair or
4 diminish the effects of those non-uniform provisions.

5
6 Amend the bill by inserting after section 1 the following and renumbering the original sections 2-4 to
7 read as 7-9, respectively:

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9 2 Creditor's Claim Against a Settlor of an Irrevocable Trust. Amend the introductory paragraph
10 of RSA 564-B:5-505A, (f) to read as follows:

11 (f) Notwithstanding RSA ~~[545-A:9]~~ **545-B:9**, a creditor or assignee of a settlor may not
12 commence a judicial proceeding with respect to the settlor's transfer of property to an irrevocable
13 trust that contains a spendthrift provision after the later of:

14 3 Creditor's Claim Against a Settlor of an Irrevocable Trust. Amend RSA 564-B:5-505A, (g) to
15 read as follows:

16 (g) For purposes of subsection (f) and RSA ~~[545-A:4]~~ **545-B:4**, a creditor or assignee of a
17 settlor shall prove that, with respect to the creditor or assignee, the settlor's transfer to the trust
18 was fraudulent.

19 4 Creditor's Claim Against a Settlor of an Irrevocable Trust. Amend RSA 564-B:5-505A, (m)(3)
20 to read as follows:

21 (3) Except as otherwise provided in this section, RSA ~~[545-A]~~ **545-B** or a similar law
22 of another state having jurisdiction over a transfer of property.

23 5 New Hampshire Worker Adjustment and Retraining Notification Act; Liability. Amend RSA
24 275-F:8, VIII to read as follows:

25 VIII. In addition to asserting the lien as provided in subparagraph I(d), the state of New
26 Hampshire, through the department, shall be deemed to be a creditor under RSA ~~[545-A]~~ **545-B** for
27 the liability of the employer as determined under paragraph I and may assert claims pursuant to
28 RSA ~~[545-A:4]~~ **545-B:4** and RSA ~~[545-A:5]~~ **545-B:5**, as applicable, and shall have the remedies set
29 forth in RSA ~~[545-A]~~ **545-B** for such claims under RSA ~~[545-A]~~ **545-B** which are established by the
30 state.

31 6 Attachments; Attachable Property and Exemptions; Exemptions. Amend RSA 511:2, XIX to
32 read as follows:

33 XIX. Subject to the ~~[Uniform Fraudulent Transfer Act, RSA 545-A]~~ **uniform voidable**
34 **transactions act, RSA 545-B**, any interest in a retirement plan or arrangement qualified for tax
35 exemption purposes under present or future acts of Congress; provided, any transfer or rollover
36 contribution between retirement plans shall not be deemed a transfer which is fraudulent as to a
37 creditor under the ~~[Uniform Fraudulent Transfer Act]~~ **uniform voidable transactions act.**

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1 "Retirement plan or arrangement qualified for tax exemption purposes" shall include without
2 limitation, trusts, custodial accounts, insurance, annuity contracts, and other properties and rights
3 constituting a part thereof. By way of example and not by limitation, retirement plans or
4 arrangements qualified for tax exemption purposes permitted under present acts of Congress include
5 defined contribution plans and defined benefit plans as defined under the Internal Revenue Code
6 (IRC), individual retirement accounts including Roth IRAs and education IRAs, individual
7 retirement annuities, simplified employee pension plans, Keogh plans, IRC section 403(a) annuity
8 plans, IRC section 403(b) annuities, and eligible state deferred compensation plans governed under
9 IRC section 457. This paragraph shall be in addition to and not a limitation of any other provision of
10 New Hampshire law which grants an exemption from attachment or execution and every other
11 species of forced sale for the payment of debts. This paragraph shall be effective for retirement plans
12 and arrangements in existence on, or created after January 1, 1999, but shall apply only to
13 extensions of credit made, and debts arising, after January 1, 1999.