SB 52 - AS INTRODUCED

2025 SESSION

25-1071
07/05

SENATE BILL ***52***

AN ACT relative to default provisions in New Hampshire trusts.

SPONSORS: Sen. Innis, Dist 7; Rep. Hunt, Ches. 14; Rep. Lynn, Rock. 17

COMMITTEE: Commerce

ANALYSIS

This bill:

I. Prevents a beneficiary of a trust from removing a trustee or fiduciary and replacing them with a relative or subordinate.

II. Expands the scope of whom may be considered a trustee under RSA 564-B:8-814.

III. Repeals limitations imposed on certain trustees who are also beneficiaries.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to default provisions in New Hampshire trusts.

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

1 New Hampshire Trust Code; Duties and Powers of Trustee; Discretionary Powers; Tax Savings. Amend RSA 564-B:8-814 to read as follows:

564-B:8-814 Discretionary Powers; Tax Savings.

(a) Notwithstanding the breadth of discretion granted to a trustee***, trust advisor, or trust protector, individually or collectively referred to in this section as a "fiduciary", whether or not exercising fiduciary powers,*** in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the [~~trustee~~] ***fiduciary*** shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to the provisions of paragraph (a), if a distribution to or for the benefit of a beneficiary is subject to the exercise of the [~~trustee's~~] ***fiduciary's*** discretion, whether or not the terms of a trust include a standard to guide the [~~trustee~~] ***fiduciary*** in making distribution decisions, then the beneficiary's interest is neither a property interest nor an enforceable right, but a mere expectancy.

(c) Subject to the provisions of paragraph (a), unless the terms of the trust expressly provide otherwise, if the terms of a trust permit distributions among a class of beneficiaries, distributions to or for the benefit of whom are subject to the exercise of the [~~trustee's~~] ***fiduciary's*** discretion without a standard to guide the ***fiduciary*** [~~trustee~~] in making distribution decisions, then the [~~trustee~~] ***fiduciary*** may make distributions unequally among the beneficiaries and may make distributions entirely to one beneficiary to the exclusion of the other beneficiaries.

(d) Subject to paragraph (f), and unless the terms of the trust expressly indicate that a rule in this paragraph does not apply:

(1) ***A*** [~~a~~] person other than a settlor who is a beneficiary and ***fiduciary*** [~~trustee~~] of a trust that confers on the ***fiduciary*** [~~trustee~~] a power to make discretionary distributions to or for the ***fiduciary's*** [~~trustee's~~] personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) ***A fiduciary*** [~~a trustee~~] may not exercise a power to make discretionary distributions to satisfy ***any*** [~~a~~] legal obligation [~~of support that~~] the ***fiduciary*** [~~trustee~~] personally owes another person***, including a legal obligation of support***.

(3) A beneficiary of a trust acting in any capacity may not remove a fiduciary and replace such fiduciary with a fiduciary who is related or subordinate to the beneficiary within the meaning of section 672(c) of the Internal Revenue Code unless:

(A) The fiduciary's discretionary power to make distributions to or for the benefit of the beneficiary is limited by an ascertainable standard;

(B) The fiduciary's discretionary power may not be exercised to satisfy any of the beneficiary's legal obligations for support or other purposes; and

(C) The fiduciary's discretionary power may not be exercised to grant to the beneficiary a general power to appoint property of the trust to the beneficiary, the beneficiary's estate, or the creditors thereof within the meaning of section 2041 of the Internal Revenue Code;

(4) Subparagraph (3) shall not apply if the appointment of the fiduciary by the beneficiary may be made only in conjunction with another person having substantial interest in the property of the trust subject to the power which is adverse to the exercise of the power in favor of the beneficiary within the meaning of section 2041(b)(1)(C)(ii) of the Internal Revenue Code.

(e) A power***,*** [~~whose~~] ***the*** exercise ***of which*** is limited or prohibited by paragraph (d)***,*** may be exercised by a majority of the remaining ***fiduciaries*** [~~trustees~~] whose exercise of the power is not so limited or prohibited. If the power of all ***fiduciaries*** [~~trustees~~] is so limited or prohibited, the court may appoint a special trustee with authority to exercise the power.

(f) Paragraph (d) does not apply to:

(1) a power held by the settlor's spouse who is the ***fiduciary*** [~~trustee~~] of a trust for which a marital deduction was previously allowed under section 2056(b)(5) or 2523(e) of the Internal Revenue Code;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

2 New Hampshire Trust Code; Duties and Powers of Trustee; General Powers of Trustee. Amend RSA 564-B:8-815, (c) to read as follows:

(c) The powers of a trustee are subject to the provisions of [~~RSA 564-B:8-818~~] ***RSA 564-B:8-814***.

3 Repeal. RSA 564-B:8-818, relative to limitations on certain trustees who are beneficiaries, is repealed.

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