

**CHAPTER 103**  
**SB 49 - FINAL VERSION**

06/10/2021 1893EBA

2021 SESSION

21-0760  
11/05

SENATE BILL           **49**

AN ACT               relative to the New Hampshire trust code.

SPONSORS:       Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Rep. Hunt, Ches. 11

COMMITTEE:   Ways and Means

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ANALYSIS

This bill expands the list of persons who may represent the interests of certain beneficiaries, clarifies the meaning of “second trust” in a decanting, and allows trustees to engage in investing strategies focused on social, environmental, governance, or other values or beliefs of the persons interested in the trust, at the express direction of those persons.

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                          Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                      relative to the New Hampshire trust code.

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

1            103:1 New Hampshire Trust Code; Representation by Fiduciaries and Parents. Amend RSA  
2            564-B:3-303(6)-(7) to read as follows:

3                            (6) a personal representative of a decedent's estate may represent and bind persons  
4            interested in the estate except as to matters relating to the administration or distribution of the  
5            estate; ~~and~~

6                            (7) a parent may represent and bind (i) the parent's minor, incapacitated or unborn  
7            child if neither a guardian of the estate nor guardian of the person for the child has been appointed  
8            and (ii) a minor, incapacitated or unborn descendent of such child if neither a guardian of the estate  
9            of the descendent nor a guardian of the person of the descendent has been appointed; **and**

10                          (8) ***a representative who is expressly appointed under the terms of the***  
11 ***governing trust instrument, either directly or by appointment of one or more persons who***  
12 ***are expressly authorized under the terms of the trust instrument to do so, may represent***  
13 ***and bind one or more beneficiaries of the trust as to any matter involving the trust. A***  
14 ***representative appointed pursuant to this paragraph shall be presumed to be a fiduciary***  
15 ***and, unless otherwise provided under the terms of the trust, must deliver to the trustee a***  
16 ***written acceptance of appointment as representative. A representative may not be***  
17 ***appointed pursuant to this paragraph to represent the interests of a charitable beneficiary***  
18 ***subject to the authority of the director of charitable trusts, as provided in statute and***  
19 ***common law.***

20            103:2 New Paragraph; New Hampshire Trust Code; Trustee's Power to Decant Trust. Amend  
21            RSA 564-B:4-418 by inserting after paragraph (a) the following new paragraph:

22                          (a-1)(1) For purposes of this section, "second trust" means: (A) an irrevocable trust  
23            already in existence, whether created by the settlor of the first trust or a different settlor; (B) a trust  
24            that is a complete restatement of the first trust, which may be created by the authorized fiduciary of  
25            the first trust or another person as the nominal grantor; (C) the first trust as modified to create the  
26            second trust; or (D) a new trust created by the authorized fiduciary or another person as the nominal  
27            settlor for the purpose of decanting.

28                          (2) If a second trust is created by restating or modifying the first trust: (A) the  
29            second trust may, but need not, have the same name as the first trust; and (B) the second trust may,  
30            but need not, obtain a new taxpayer identification number. If no new taxpayer identification

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number is obtained, the second trust may continue to use the taxpayer identification number of the first trust.

103:3 New Hampshire Trust Code; Decanting; Second Trust. Amend RSA 564-B:4-418(q)(3) to read as follows:

(3) All title to real property and other property owned by the first trust and all contractual rights possessed by the first trust are vested in the second trust without reversion or impairment, ***subject to the provisions of paragraph (b)***; and

103:4 Uniform Prudent Investor Act; Prudent Investor Rule. Amend RSA 564-B:9-901(b) to read as follows:

(b) The prudent investor rule may be expanded, restricted, eliminated, or otherwise altered by the terms of the trust except as provided in RSA 564-B:1-105(b)(2) and (3). A trustee is not liable to a beneficiary to the extent that the trustee acted in ***good faith and*** reasonable reliance on ***(1)*** the ~~provisions~~ ***express terms*** of the trust, ~~or~~ ***(2)*** a court order, ~~or determined not to diversify the investments of a trust in good faith in reliance on the express terms of the trust or a court order or pursuant to~~ ***(3)*** RSA 564-B:9-903, ***or (4) RSA 564-B:9-902(c)(10)***.

103:5 Uniform Prudent Investor Act; Standard of Care; Portfolio Strategy; Risk and Return Objectives. Amend RSA 564-B:9-902(c)(8)-(9) to read as follows:

(8) needs for liquidity, regularity of income, and preservation or appreciation of capital; ~~and~~

(9) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries~~[-]~~; ***and***

***(10) unless contrary to settlor intent or otherwise prohibited by RSA 564-B:1-111(c), for a trust not subject to RSA 292-B, the expressed wishes of the interested persons of the trust, including where applicable the director of charitable trusts as described in RSA 564-B:1-111(a), as reflected in a nonjudicial settlement agreement pursuant to RSA 564-B:1-111, to have the trustee, trust advisor, or trust protector engage in investing strategies that align with the interested persons' social, environmental, or governance objectives or other values or beliefs of the interested persons, regardless of investment performance.***

103:6 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 01, 2021  
Effective Date: August 30, 2021