

CHAPTER 195  
SB 289 – FINAL VERSION

02/19/14 0560s  
30Apr2014... 1296h  
05/22/14 1928EBA

2014 SESSION

14-2742  
08/03

SENATE BILL        **289**

AN ACT            relative to revising the uniform trust act.

SPONSORS:        Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3

COMMITTEE:      Commerce

---

AMENDED ANALYSIS

This bill makes various changes to the uniform trust act.

-----

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**CHAPTER 195**  
**SB 289 – FINAL VERSION**

02/19/14 0560s  
30Apr2014... 1296h  
05/22/14 1928EBA

14-2742  
08/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT                   relative to revising the uniform trust act.

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

1           195:1 Purpose. The general court finds:

2           I. Trust, fiduciary, and related services is a growing sector of this state's economy, and the  
3 national market for those services continues to grow.

4           II. Through the development of thoughtful, innovative laws, New Hampshire has  
5 established one of the best legal environments for trusts, trust companies, and fiduciary services.  
6 This legal environment attracts families and individuals to this state for purposes of creating new  
7 trusts or administering existing trusts, thereby supporting and encouraging the growth of this sector  
8 of the state's economy.

9           III. This act continues New Hampshire's firm commitment to being one of the best legal  
10 environments for trusts, trust companies, and fiduciary services. To that end, this act further  
11 reinforces this state's tradition of protecting settlor intent, it further enhances modern trust design,  
12 and it further facilitates the efficient administration of trusts.

13           IV. This act also continues to foster this state's fiduciary services sector and the well-paying  
14 jobs within that sector of trust, investment, legal, accounting, and other professionals.

15           195:2 Enforcement of No-Contest Provisions; Wills. Amend RSA 551:22, III to read as follows:

16           III. Paragraph II of this section shall not apply to ***the extent that a person initiates,***  
17 ***maintains, or cooperates in any of the following actions or proceedings:***

18           (a) Any action brought by the executor or other fiduciary of a will that incorporates a no-  
19 contest provision, unless the executor or other fiduciary is a beneficiary against whom the no-contest  
20 provision is otherwise enforceable;

21           (b) Any agreement among the beneficiaries and any other interested persons in  
22 settlement of a dispute or resolution of any other matter relating to such will;

23           (c) Any action to determine whether a proposed or pending motion, petition, or other  
24 proceeding constitutes a contest within the meaning of a no-contest provision;

25           (d) Any action brought by a beneficiary under a will or on behalf of any such beneficiary  
26 for a construction or interpretation of the will; ~~or~~

27           (e) Any action brought by the attorney general for a construction or interpretation of a

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 2 -**

1 will containing a charitable trust or charitable bequests or if a provision exists in a will or trust  
2 purporting to penalize a charity or charitable interest for contesting the will or trust or instituting  
3 other proceedings relating to the estate or trust if probable cause exists for instituting proceedings;  
4 **or**

5 ***(f) A proceeding described in paragraph VIII.***

6 195:3 New Paragraphs; Enforcement of No-Contest Provisions. Amend RSA 551:22 by inserting  
7 after paragraph V the following new paragraphs:

8 VI. In the executor's discretion, an executor may suspend distributions to a beneficiary to  
9 the extent that, under a no-contest provision, the beneficiary's action potentially would have caused  
10 the reduction or elimination of the beneficiary's interest in the will. In the executor's discretion, the  
11 executor may resume those distributions at any time or may continue to suspend those distributions  
12 until a court determines whether the beneficiary's interest in the will has been reduced or  
13 eliminated.

14 VII. In the executor's discretion, an executor may decline to distribute property in  
15 accordance with a person's purported exercise of a power of appointment or a power of withdrawal to  
16 the extent that, under a no-contest provision, the person's action potentially would have caused the  
17 reduction or elimination of the power of appointment or the power of withdrawal. In the executor's  
18 discretion, the executor may make those distributions at any time or may continue to decline to  
19 make those distributions until a court determines whether the person's power of appointment or  
20 power of withdrawal has been reduced or eliminated.

21 VIII. To the extent that the executor acts in good faith, the executor is not liable to any  
22 person for exercising the discretion under paragraph VI or VII or not exercising that discretion. An  
23 executor shall be presumed to have exercised the discretion in good faith if, in any judicial  
24 proceeding, an interested person other than the executor has requested a determination of whether,  
25 under the no-contest provision, a beneficiary's interest in the will, a person's power of appointment,  
26 or a person's power of withdrawal was reduced or eliminated. An executor or any other interested  
27 person may commence a judicial proceeding for purposes of determining whether the executor's  
28 exercise of discretion under paragraph VI or VII was made in good faith.

29 195:4 New Section; Probate of Wills; Proof of Wills During Life. Amend RSA 552 by inserting  
30 after section 17 the following new section:

31 552:18 Proof of Will During Life.

32 I. During his or her life, an individual may commence a judicial proceeding to determine the  
33 validity of his or her will, subject only to the will's subsequent modification or revocation. For  
34 purposes of commencing the proceeding under this section, the individual must be domiciled in this  
35 state or own real property located in this state. A person acting as an individual's guardian,  
36 conservator, or attorney-in-fact shall not commence the proceeding on behalf of the individual.

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 3 -**

1           II. If the petitioner is domiciled in this state, then the venue for the judicial proceeding shall  
2 be in the county where the petitioner has his or her domicile. If the petitioner is not domiciled in  
3 this state but owns real property located in this state, then the venue for the judicial proceeding  
4 shall be in the county where any of that real property is located.

5           III. In addition to the petitioner, each of the following persons is an interested person in the  
6 judicial proceeding:

7           (a) The petitioner's spouse;

8           (b) The persons who, if the petitioner had died on the date of filing the petition, would be  
9 the petitioner's heirs;

10           (c) The legatees and devisees under the terms of the will;

11           (d) The executors nominated in the will;

12           (e) If a charitable organization is a legatee or devisee or the will contains any charitable  
13 interest, the director of charitable trusts; and

14           (f) Any other persons who, if the petitioner had died on the date of filing the petition,  
15 would be interested parties in a judicial proceeding to prove the petitioner's will.

16           IV. For the purposes of this section, each of the interested parties shall be deemed possessed  
17 of inchoate property rights.

18           V. Notice shall be given to each of the interested parties. The court may order notice be  
19 given to other persons. In connection with the judicial proceeding, a person may represent and bind  
20 another person in accordance with Article 3 of RSA 564-B.

21           VI. In the judicial proceeding, the petitioner is the proponent of the will, the will shall be  
22 proved in solemn form, and the burden of proof and presumptions shall be the same as in a  
23 proceeding to prove the will in solemn form. After a hearing, the court shall declare whether the will  
24 is valid or invalid, and it may make other findings of fact and conclusions of law that are appropriate  
25 under the circumstances.

26           VII. After the individual's death, the will for which there is a declaration of validity under  
27 this section shall have full legal effect as the individual's will and, upon request, shall be admitted to  
28 probate and conclusively deemed proved, except to the extent that the will is modified or revoked  
29 after the court's declaration.

30           VIII. A will for which there is a declaration of validity under this section may be modified or  
31 revoked in the same manner as a will for which there is no declaration of validity under this section.

32           IX. An individual's failure to commence a judicial proceeding under this section shall not be  
33 construed as evidence or an admission that the individual's will is invalid for any reason.

34           195:5 New Section; Suits by and Against Administrators; Confidential Communications. Amend  
35 RSA 556 by inserting after section 30 the following new section:

36           556:31 Confidential Communications.

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 4 -**

1           I. A communication between an attorney and a client acting as an administrator is  
2 privileged and protected from disclosure to the same extent as if the client was acting in his, her, or  
3 its individual capacity and was not acting as an administrator.

4           II. The privilege under paragraph I is not waived by a fiduciary relationship between the  
5 administrator and a beneficiary of the decedent's estate or the use of any property comprising the  
6 estate to compensate the attorney for legal services rendered to the administrator.

7           III. If an attorney's client is an administrator, then the attorney's client is only the person  
8 acting as administrator. A successor administrator is not the attorney's client solely by reason of  
9 succeeding the person with whom the attorney had an attorney-client relationship.

10          IV. An administrator and a successor administrator may agree to share privileged  
11 communications relating to some or all matters involving the estate. The disclosure of privileged  
12 communications under the agreement does not waive the disclosing party's privilege. Unless the  
13 agreement provides otherwise, privileged communications disclosed under the agreement shall not  
14 be disclosed to a third party without the disclosing party's consent or a court order.

15          195:6 Uniform Trust Code; Scope. Amend RSA 564-B:1-102 to read as follows:

16          564-B:1-102 Scope.

17                **(a)** This chapter applies to express trusts, charitable or noncharitable, and trusts  
18 created pursuant to a statute, judgment, or decree that requires the trust to be administered in the  
19 manner of an express trust.

20                **(b)** *Without precluding other means for establishing that this chapter applies to*  
21 *a specific trust, this chapter applies to a trust to the extent that the terms of the trust*  
22 *provide that this state's laws govern the trust's validity, interpretation, or administration.*

23                **(c)** *Unless otherwise provided under the terms of the trust, New Hampshire law*  
24 *shall apply to the administrative matters of a trust that has its principal place of*  
25 *administration within this state.*

26                **(d)** *This chapter shall not limit the authority of the director of charitable trusts*  
27 *or the department of health and human services as otherwise provided by statute or*  
28 *common law.*

29          195:7 Uniform Trust Code; Definitions. Amend RSA 564-B:1-103(19) to read as follows:

30                (19) "Terms of a trust" means the manifestation of the settlor's intent regarding a  
31 trust's provisions as expressed in the trust instrument or as may be established by other evidence that  
32 would be admissible in a judicial proceeding. ***The terms of the trust may be interpreted, amended,***  
33 ***modified, and reformed as provided in this chapter, including by means of a court order or a***  
34 ***nonjudicial settlement agreement made in accordance with RSA 564-B:1-111.***

35          195:8 Uniform Trust Code; Definitions. RSA 564-B:1-103(23)-(24) is repealed and reenacted to  
36 read as follows:

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 5 -**

1                   (23) “Directed trust” means a directed trust as defined in RSA 564-B:7-711(a).

2                   (24) “Excluded fiduciary” means (1) a trustee who is an excluded fiduciary under  
3 RSA 564-B:7-711(b) or (2) a trust advisor or trust protector who is an excluded fiduciary under  
4 RSA 564-B:7-711(c).

5           195:9 Uniform Trust Code; Default and Mandatory Rules. Amend RSA 564-B:1-105(b) to read  
6 as follows:

7                   (b) The terms of a trust prevail over any provision of this chapter except:

8                   (1) the requirements for creating a trust;

9                   (2) the duty of a trustee to act in good faith and in accordance with the terms *of the*  
10 *trust*, ~~and~~ *the* purposes of the trust, and the interests of the beneficiaries;

11                   (3) the requirement that a trust and ~~its~~ *the* terms *of that trust* be for the benefit  
12 of its beneficiaries as their interests are defined under the terms of the trust, and that the trust have  
13 a purpose that is lawful, not contrary to public policy, and possible to achieve;

14                   (4) the power of the court to modify or terminate a trust under RSA 564-B:4-410  
15 through RSA 564-B:4-416;

16                   (5) the effect of a spendthrift provision and the rights of certain creditors and  
17 assignees to reach a trust as provided in article 5;

18                   (6) the power of the court under RSA 564-B:7-702 to require, dispense with, or  
19 modify or terminate a bond;

20                   (7) the power of the court under RSA 564-B:7-708(b) to adjust a trustee’s  
21 compensation specified in the terms of the trust which is unreasonably low or high;

22                   (8) the effect of an exculpatory term under RSA 564-B:10-1008;

23                   (9) the rights under RSA 564-B:10-1010 through RSA 564-B:10-1013 of a person  
24 other than a trustee or beneficiary;

25                   (10) statutory periods of limitation for commencing a judicial proceeding;

26                   (11) the power of the court to take such action and exercise such jurisdiction as may  
27 be necessary in the interests of justice; ~~and~~

28                   (12) the subject-matter jurisdiction of the court and venue for commencing a  
29 proceeding as provided in RSA 564-B:2-203 and RSA 564-B:2-204;

30                   **(13) an interested person’s rights under RSA 564-B:1-111A(b);**

31                   **(14) the extent to which a no-contest provision is unenforceable or**  
32 **inapplicable under RSA 564-B:10-1014;**

33                   **(15) if, under the terms of the trust, a trust advisor or trust protector is a**  
34 **fiduciary, the duty of the trust advisor or trust protector to act in good faith and in**  
35 **accordance with the terms of the trust, the purposes of the trust, and the interests of the**  
36 **beneficiaries; and**

CHAPTER 195  
SB 289 – FINAL VERSION  
- Page 6 -

1                   (16) *to the extent that the trust is a charitable trust, the requirement that a*  
2 *trust advisor or trust protector is a fiduciary, regardless of whether the charitable trust*  
3 *was created before, on, or after the effective date of this paragraph or the trust advisor or*  
4 *trust protector accepted his, her, or its appointment before, on, or after the effective date of*  
5 *this paragraph; and*

6                   (17) *to the extent that a trust is a charitable trust, the limitations on the*  
7 *trustee’s power to decant under RSA 564-B:4-418 and the limitations on the trustee’s power*  
8 *of modification under RSA 564-B:4-419.*

9           195:10 New Paragraph; Uniform Trust Code; Principal Place of Administration. Amend RSA  
10 564-B:1-108 by inserting after paragraph (e) the following new paragraph:

11                   (f) Unless otherwise provided under the terms of the trust or an agreement among the  
12 trustees, a trust has a principal place of administration in this state if (1) a trustee’s principal place  
13 of business is located in this state or, if a trustee is an individual, that trustee is a resident of this  
14 state and (2) all or part of the administration occurs in this state.

15           195:11 New Section; Uniform Trust Code; Nonjudicial Dispute Resolution. Amend RSA 564-B  
16 by inserting after section 1-111 the following new section:

17           564-B:1-111A Nonjudicial Dispute Resolution.

18                   (a) If the terms of the trust require the interested persons to resolve a trust dispute  
19 exclusively by reasonable nonjudicial procedures, then those interested persons shall resolve that  
20 trust dispute in accordance with the terms of the trust.

21                   (b) An interested person may commence a judicial proceeding to determine whether the  
22 nonjudicial procedures are reasonable. To the extent that the terms of the trust purport to prohibit  
23 an interested person from commencing a judicial proceeding under this subsection or penalize an  
24 interested person for commencing a judicial proceeding under this subsection, those terms of the  
25 trust are void.

26                   (c) For purposes of this section, “interested person” means any person who would be an  
27 interested person in a judicial proceeding to resolve the trust dispute.

28                   (d) For purposes of this section, “trust dispute” means any matter in which a court has  
29 subject-matter jurisdiction under RSA 564-B:2-203, excluding (1) a determination of the validity of  
30 the trust or (2) a determination of any material purpose of the trust, including a determination of  
31 whether any modification, termination, or other action is consistent with a material purpose of the  
32 trust.

33                   (e) Unless the director of charitable trust expressly consents to the nonjudicial  
34 procedures, those procedures shall not apply to any matter involving a charitable trust. Unless the  
35 department of health and human services expressly consents to the nonjudicial procedures, those  
36 procedures shall not apply any matter in which that department would be an interested person.

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 7 -**

1           195:12 Uniform Trust Code; Subject-Matter Jurisdiction. Amend RSA 564-B:2-203 to read as  
2 follows:

3           564-B:2-203 Subject-Matter Jurisdiction.

4           (a) Except as provided in subsection (b) [~~of this section~~], the probate *division of the*  
5 *circuit* court shall have exclusive jurisdiction of the creation by judgment or decree, interpretation,  
6 construction, modification, termination, and administration of those trusts described in RSA 564-A:1,  
7 I, and over the appointment, removal, and surcharge of trustees, *trust advisors, and trust*  
8 *protectors* of such trusts.

9           (b) The probate *division of the circuit* court has concurrent jurisdiction with the  
10 superior court of proceedings involving charitable uses and trusts other than those trusts described  
11 in RSA 564-A:1, I.

12           195:13 New Section; Uniform Trust Code; Confidential Communications. Amend RSA 564-B by  
13 inserting after section 2-204 the following new section:

14           564-B:2-205 Confidential Communications.

15           (a) A communication between an attorney and a client acting as a trustee, trust advisor,  
16 or trust protector is privileged and protected from disclosure to the same extent as if the client was  
17 acting in his, her, or its individual capacity and was not acting as a trustee, trust advisor, or trust  
18 protector.

19           (b) The privilege is not waived by (1) a fiduciary relationship between the trustee, trust  
20 advisor, or trust protector and a beneficiary of the trust or (2) the use of trust property to compensate  
21 the attorney for legal services rendered to the trustee, trust advisor, or trust protector.

22           (c) If an attorney's client is a trustee, trust advisor, or trust protector, then the  
23 attorney's client is only the person acting as trustee, trust advisor, or trust protector. A successor  
24 trustee, successor trust advisor, or successor trust protector is not the attorney's client solely by  
25 reason of succeeding the person with whom the attorney had an attorney-client relationship.

26           (d) A trustee, trust advisor, or trust protector and his, her, or its successor may agree to  
27 share privileged communications relating to some or all matters involving the trust. The disclosure  
28 of privileged communications under the agreement does not waive the disclosing party's privilege.  
29 Unless the agreement provides otherwise, privileged communications disclosed under the agreement  
30 shall not be disclosed to a third party without the disclosing party's consent or a court order.

31           (e) This section shall not impair or abridge the law governing exceptions to the attorney-  
32 client privilege relative to claimants through the same deceased.

33           195:14 New Section; Uniform Trust Code; Duration of Trusts. Amend RSA 564-B by inserting  
34 after section 4-402 the following new section:

35           564-B:4-402A Duration of Trusts.

36           (a) Unless a trust is subject to the rule against perpetuities or is a trust for the care of an



**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 8 -**

1 animal under RSA 564-B:4-408, a trust may be perpetual or may exist for any shorter period of time.

2 (b) The rule against perpetuities shall not apply to a trust or any disposition of trust  
3 property if:

4 (1) the terms of the trust expressly exempt the trust from the application of the rule  
5 against perpetuities; and

6 (2) under the terms of the trust, an applicable statute, or common law, the trustee or  
7 other person to whom the power is properly granted or delegated has the power to sell, mortgage, or  
8 lease trust property for any period of time beyond the period that, if this section did not apply to the  
9 trust, would be required for an interest in the trust to vest in order to be valid under the rule against  
10 perpetuities.

11 (c) The rule against accumulations shall not apply to any trust to which the rule against  
12 perpetuities does not apply.

13 (d) Subsections (b) and (c) apply to any trust created on or after January 1, 2004. This  
14 section otherwise applies to any trust created before, on, or after the effective date of this chapter.

15 195:15 Uniform Trust Code; Validity of Trusts. RSA 564-B:4-406 is repealed and reenacted to  
16 read as follows:

17 564-B:4-406 Validity of Trusts.

18 (a) A trust is void to the extent that it was not validly created in accordance with this  
19 chapter or its creation was induced by fraud, duress, or undue influence.

20 (b) A person may commence a judicial proceeding to contest the validity of a trust within  
21 the earlier of:

22 (1) in the case of a trust that was revocable at the settlor's death, 3 years after the  
23 settlor's death;

24 (2) in the case of an irrevocable trust, including a formerly revocable trust that has  
25 become irrevocable, 3 years after the trustee sent to the beneficiary a notice described in RSA 564-  
26 B:8-813(c)(3); or

27 (3) in the case of an irrevocable trust, including a trust that was revocable at the  
28 settlor's death or a formerly revocable trust that has become irrevocable, 180 days after the trustee  
29 sent the person a copy of the trust instrument and a notice informing the person of the trust's  
30 existence, the trustee's name, address, and telephone number, and the time allowed for commencing  
31 a proceeding to contest the validity of a trust.

32 (c) A trustee may send the notice described in subsection (b)(3) for purposes of  
33 commencing the 180-day limitation period, but the trustee does not have a duty to do so. A trustee  
34 shall not be liable to any person for not sending the notice described in subsection (b)(3).

35 (d) During his or her life, a settlor may commence a judicial proceeding to determine the  
36 validity of a trust that he or she created, subject only to the trust's subsequent amendment or

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 9 -**

1 revocation if the trust is revocable.

2                   (1) The trust instrument must expressly provide that this state’s laws govern the  
3 trust’s validity, interpretation, and administration, and the trust must have its principal place of  
4 administration within this state.

5                   (2) The venue for the judicial proceeding is in the county where the trust has its  
6 principal place of administration.

7                   (3) In addition to the settlor, each of the following persons is an interested person in  
8 the judicial proceeding:

9                           (A) the settlor’s spouse;

10                           (B) the persons who, if the settlor had died on the date of filing the petition,  
11 would be the settlor’s heirs;

12                           (C) the qualified beneficiaries;

13                           (D) the trustees, trust advisors, and trust protectors;

14                           (E) if the trust is wholly or partially a charitable trust, the director of charitable  
15 trusts;

16                           (F) if the trust is a trust for the care of an animal under RSA 564-B:4-408, the  
17 persons who, under the terms of the trust, have the power to enforce the trust;

18                           (G) if the trust is a trust authorized under RSA 564-B:4-409, the persons who,  
19 under the terms of the trust, have the power to enforce the trust; and

20                           (H) any other persons who would be an interested person in a judicial proceeding  
21 to determine the validity of the trust.

22                   (4) In the case of a revocable trust, the qualified beneficiaries and other interested  
23 persons shall be determined as if the trust was irrevocable on the date of filing the petition, and each  
24 of the qualified beneficiaries and other interested persons shall be deemed possessed of inchoate  
25 property rights.

26                   (5) Notice shall be given to each of the interested persons. The court may order  
27 notice be given to other persons.

28                   (6) After a hearing, the court shall declare whether the trust is valid or invalid, and  
29 it may make other findings of fact and conclusions of law that are appropriate under the  
30 circumstances.

31                   (7) A trust for which there is a declaration of validity under this subsection may be  
32 modified or revoked in the same manner as a trust for which there is no declaration of validity under  
33 this subsection.

34                   (8) A settlor’s failure to commence a judicial proceeding under this subsection shall  
35 not be construed as evidence or as an admission that the trust is invalid for any reason.

36                   (e) A trustee may proceed to distribute the trust property in accordance with the terms

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 10 -**

1 of the trust even though the period for contesting the validity of the trust has not expired. The  
2 trustee is not subject to liability for doing so unless:

3 (1) the trustee knows of a pending judicial proceeding contesting the validity of the  
4 trust; or

5 (2) a potential contestant has notified the trustee of a possible judicial proceeding to  
6 contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the  
7 notification.

8 (f) A beneficiary of a trust that is determined to have been invalid is liable to return any  
9 distribution received.

10 195:16 Uniform Trust Code; Trustee's Power to Decant Trust. RSA 564-B:4-418 is repealed and  
11 reenacted to read as follows:

12 564-B:4-418 Trustee's Power to Decant Trust.

13 (a) Subject to the limitations provided in this section, a trustee has the power to decant a  
14 trust. The power to decant is the power to appoint some or all of the trust property of a trust ("first  
15 trust") to another trust ("second trust"). A trustee's power to decant is a power with respect to an  
16 administrative matter of the trust.

17 (b) The beneficiaries of the second trust may include only one or more of the  
18 beneficiaries of the first trust. The second trust may exclude one or more of the beneficiaries of the  
19 first trust. A person is not a beneficiary of the second trust solely by reason of being a permissible  
20 appointee of a power of appointment under the terms of the second trust.

21 (c) Under the terms of the second trust, a person may have a power of appointment if (1)  
22 that person was a beneficiary of the first trust or (2) under the terms of the first trust, that person  
23 held a power of appointment either in a fiduciary or nonfiduciary capacity.

24 (d) Except as otherwise provided in this subsection, the terms of the second trust may  
25 provide that a trustee has discretion to distribute income or principal, and the terms of the second  
26 trust may impose a standard or no standard on the trustee's discretion regardless of whether the  
27 terms of the first trust imposed a standard on the trustee's discretion to distribute income or  
28 principal. If the first trust is a charitable trust and the terms of the first trust impose a standard on  
29 the trustee's discretion to distribute income or principal, then the terms of the second trust shall  
30 impose the same standard on the trustee's discretion to distribute income or principal, unless the  
31 director of charitable trusts expressly consents to the modification or elimination of that standard.

32 (e) The second trust may have a term that is longer than the first trust.

33 (f) A trustee may not decant to the extent that the terms of the second trust are  
34 inconsistent with a material purpose of the first trust.

35 (g)(1) A trustee may not decant to the extent that the terms of the second trust reduce or  
36 eliminate a vested interest of a beneficiary of the first trust.

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 11 -**

1                   (2) A vested interest is:

2                   (A) a current right to a mandatory distribution of income or principal, a  
3 mandatory annuity interest, or a mandatory unitrust interest;

4                   (B) a currently-exercisable power of withdrawal; or

5                   (C) a noncontingent, unconditional right to receive an ascertainable portion of  
6 the trust property upon the trust's termination.

7                   (3) In addition to other possible contingencies, a beneficiary's right to receive a  
8 portion of the trust property upon the trust's termination is contingent if, by reason of the trustee's  
9 discretionary power to make distributions or under other terms of the trust, any person other than  
10 the beneficiary or the beneficiary's estate could receive that portion unless the beneficiary survives a  
11 specified date or a specified event.

12                   (h) If a transfer to the first trust qualified for a deduction, credit, exclusion, or exemption  
13 for purposes of any income, gift, estate, or generation-skipping transfer tax, then a trustee may  
14 decant only to the extent that the decanting would not jeopardize that deduction, credit, exclusion, or  
15 exemption.

16                   (i) If a settlor of the first trust or a beneficiary of the first trust is an applicant for public  
17 benefits or receives public benefits and the settlor's or beneficiary's eligibility or qualification for  
18 those public benefits is dependent on the nature and scope of his or her rights, powers, and interests  
19 in the first trust, then a trustee may decant only to the extent that the decanting would not  
20 jeopardize the settlor's or beneficiary's eligibility or qualification for those public benefits.

21                   (j) A trustee may not decant to the extent that, under the terms of the second trust:

22                   (1) one or more beneficiaries can remove the trustee;

23                   (2) those beneficiaries can appoint a successor trustee who, with respect to any of  
24 them, is a related or subordinate party within the meaning of section 672(c) of the Internal Revenue  
25 Code;

26                   (3) the trustee may distribute trust property to any one or more of those  
27 beneficiaries; and

28                   (4) the trustee's discretion to make those distributions is not limited by an  
29 ascertainable standard.

30                   (k) A trustee who is a beneficiary of the first trust does not have the power to decant to  
31 the extent that, under the terms of the first trust:

32                   (1) the trustee does not have the discretion to make or participate in making  
33 distributions to himself or herself;

34                   (2) the trustee's discretion to make or participate in making distributions to himself  
35 or herself is limited by an ascertainable standard;

36                   (3) the trustee's discretion to make or participate in making distributions to himself

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 12 -**

1 or herself is exercisable only with the consent of a cotrustee or a person holding an adverse interest,  
2 unless the terms of second trust impose the same limitation on that trustee's discretion; or

3 (4) the trustee does not have the discretion to make or participate in making  
4 distributions in a manner that will discharge his or her legal support obligations, unless the terms of  
5 second trust impose the same limitation on that trustee's discretion.

6 (l) A trustee is not prohibited from decanting solely because:

7 (1) the first trust is irrevocable;

8 (2) the terms of the first trust provide that the trust may not be amended or  
9 modified;

10 (3) the first trust contains a spendthrift provision;

11 (4) under the terms of the first trust, the trustee does not have any discretion in  
12 making distributions of income or principal; or

13 (5) except as provided in subsection (d), the terms of the first trust impose a  
14 standard on the trustee's discretion to distribute income or principal.

15 (m) A trustee of a charitable trust or a trust in which a charitable organization has a  
16 vested interest shall notify the director of charitable trusts of a proposed decanting, and the trustee  
17 shall provide that notice in writing at least 30 days before the effective date of the decanting. A  
18 trustee of a noncharitable trust may notify a beneficiary of a proposed decanting, but does not have  
19 any duty to do so. The right of any beneficiary to object to a proposed decanting terminates if the  
20 beneficiary does not notify the trustee of an objection within 60 days after the proposal was sent to  
21 the beneficiary but only if the proposal informed the beneficiary of the right to object and the time  
22 allowed for objection.

23 (n) A trustee's power to decant may be expanded, restricted, eliminated, or otherwise  
24 altered by the terms of the trust. A nonjudicial settlement agreement made in accordance with RSA  
25 564-B:1-111, however, may only restrict or eliminate a trustee's power to decant. Except as  
26 otherwise provided under the terms of the trust, a trustee's power to decant is in addition to any  
27 other powers conferred by the terms of the trust, this chapter, or the laws of this state. This section  
28 does not expand, restrict, eliminate, or otherwise alter any power that, with respect to a trust, a  
29 person holds in a nonfiduciary capacity.

30 (o) A trustee does not have a duty to decant or an ongoing duty to consider whether to  
31 decant. In exercising the power to decant, a trustee has a duty to exercise the power in a manner  
32 that is consistent with the settlor's intent as expressed in the terms of the trust, and the trustee  
33 shall act in accordance with the trustee's duties under this chapter and the terms of the first trust.

34 (p) A trustee may exercise the power to decant, without court approval, the consent of  
35 the settlor, or the consent of any of the beneficiaries of the first trust. A trustee or any other  
36 interested person may ask a court to approve a trustee's exercise of the power to decant.

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 13 -**

1           195:17 New Section; Uniform Trust Code; Trustee’s Power of Modification. Amend RSA 564-B  
2 by inserting after section 4-418 the following new section:

3           564-B:4-419 Trustee’s Power of Modification.

4           (a) Subject to the limitations provided in this section, a trustee may modify a trust. A  
5 trustee may exercise that power of modification for any reason, including:

6                   (1) furthering the settlor’s intent or a material purpose of the trust;

7                   (2) preserving any favorable tax treatment for the trust, the settlor, or the  
8 beneficiaries;

9                   (3) enhancing the efficient administration of the trust; or

10                  (4) minimizing the costs of administration.

11           (b) A trustee’s power under this section is a power with respect to an administrative  
12 matter of the trust.

13           (c) A trustee shall not modify a trust to that extent that:

14                   (1) the terms of the trust expressly prohibit the trustee’s modification of the trust;

15                   (2) the modification is inconsistent with the settlor’s intent or a material purpose of  
16 the trust;

17                   (3) the modification expands, restricts, eliminates, or otherwise alters any right or  
18 power that the settlor has under this chapter or the terms of the trust;

19                   (4) the modification adds a beneficiary, unless the modification is expressly  
20 permitted under the terms of the trust;

21                   (5) the modification reduces or eliminates a beneficiary’s vested interest in the trust;

22                   (6) the modification reduces or eliminates a beneficiary’s interest in the trust (other  
23 than a vested interest), unless the modification is consistent with the settlor’s intent as clearly  
24 expressed under the terms of the trust;

25                   (7) the modification adds a power of withdrawal or a power of appointment, unless  
26 the modification is consistent with the settlor’s intent as clearly expressed under the terms of the  
27 trust;

28                   (8) the modification reduces or eliminates a currently-exercisable power of  
29 appointment held by any person other than a beneficiary, unless the modification is consistent with  
30 the settlor’s intent as clearly expressed under the terms of the trust; or

31                   (9) the modification modifies any of the dispositive terms of a charitable trust, unless  
32 the director of charitable trusts consents to the modification.

33           (d) If the trust or a transfer to the trust qualified for a deduction, credit, exclusion, or  
34 exemption for purposes of any income, gift, estate, or other tax, then a trustee may modify a trust  
35 only to that extent that the modification would not jeopardize that deduction, credit, exclusion, or  
36 exemption.

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 14 -**

1           (e) If a settlor of the trust or a beneficiary of the trust is an applicant for public benefits  
2 or receives public benefits and the settlor's or beneficiary's eligibility or qualification for those public  
3 benefits is dependent on the nature and scope of his or her rights, powers, and interests in the trust,  
4 then a trustee may modify the trust only to the extent that the modification would not jeopardize the  
5 settlor's or beneficiary's eligibility or qualification for those public benefits.

6           (f) A trustee does not have the power of modification under this section if the trustee is  
7 any of the following persons, either before or after the modification: (1) the settlor; (2) a beneficiary of  
8 the trust; (3) a person who, with respect to the settlor or a beneficiary of the trust, is a related or  
9 subordinate party within the meaning of section 672(c) of the Internal Revenue Code; or (4) a trustee  
10 whom any one or more of the settlor and the beneficiaries can remove if the persons exercising the  
11 removal power can appoint as a successor trustee (i) the settlor, (ii) a beneficiary of the trust, or (iii)  
12 a person who, with respect to the settlor or a beneficiary of the trust, is a related or subordinate  
13 party within the meaning of section 672(c) of the Internal Revenue Code.

14           (g) A trustee is not prohibited from exercising the power of modification, and the exercise  
15 of that power is not inconsistent with the settlor's intent, solely because:

16                   (1) the trust is irrevocable;

17                   (2) the terms of the trust provide that the trust may not be amended by the settlor;

18 or

19                   (3) the trust contains a spendthrift provision.

20           (h) A trustee of a charitable trust or a trust in which a charitable organization has a  
21 vested interest shall notify the director of charitable trusts of a proposed modification under this  
22 section, and the trustee shall provide that notice in writing at least 30 days before the effective date  
23 of that modification. A trustee of a noncharitable trust may notify a beneficiary of a proposed  
24 modification under this section, but does not have any duty to do so. The right of any beneficiary to  
25 object to a proposed modification terminates if the beneficiary does not notify the trustee of an  
26 objection within 60 days after the proposal was sent to the beneficiary but only if the proposal  
27 informed the beneficiary of the right to object and the time allowed for objection.

28           (i) A trustee's power of modification under this section may be expanded, restricted,  
29 eliminated, or otherwise altered by the terms of the trust. A nonjudicial settlement agreement made  
30 in accordance with RSA 564-B:1-111, however, may only restrict or eliminate a trustee's power of  
31 modification under this section. Except as otherwise provided under the terms of the trust, a  
32 trustee's power of modification under this section is in addition to any other powers conferred by the  
33 terms of the trust, this chapter, or the laws of this state. This section does not expand, restrict,  
34 eliminate, or otherwise alter any power that, with respect to a trust, a person holds in a nonfiduciary  
35 capacity.

36           (j) A trustee does not have a duty to modify a trust or an ongoing duty to consider

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 15 -**

1 whether to modify a trust. In exercising the power of modification under this section, a trustee has a  
2 duty to exercise the power in a manner that is consistent with the settlor’s intent as expressed in the  
3 terms of the trust, and the trustee shall act in accordance with the trustee’s duties under this  
4 chapter and the terms of the trust.

5 (k) A trustee may exercise the power of modification under this section without court  
6 approval, the consent of the settlor, or the consent of any of the beneficiaries of the trust. A trustee  
7 or any other interested person may ask a court to approve a trustee’s exercise of the power of  
8 modification.

9 (l) For purposes of this section, “vested interest” means a vested interest as defined in  
10 RSA 564-B:4-418(g).

11 195:18 New Subparagraph; Uniform Trust Code; Creditor’s Claim Against Settlor. Amend RSA  
12 564-B:5-505(a) by inserting after subparagraph (3) the following new subparagraph:

13 (4) To the extent a claim against a settlor is barred under RSA 564-B:5-508, this  
14 section shall not apply to that claim.

15 195:19 Uniform Trust Code; Creditor’s Claim Against Settlor. Amend RSA 564-B:5-505(a)(2) to  
16 read as follows:

17 (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may  
18 reach the maximum amount that can be distributed to or for the settlor’s benefit. If a trust has more  
19 than one settlor, the amount the creditor or assignee of a particular settlor may reach may not  
20 exceed the settlor’s interest in the portion of the trust attributable to that settlor’s contribution. This  
21 subparagraph shall not apply to:

22 (A) *a charitable remainder annuity trust within the meaning of section*  
23 *664(d)(1) of the Internal Revenue Code;*

24 (B) *a charitable remainder unitrust within the meaning of section*  
25 *664(d)(2) of the Internal Revenue Code;*

26 (C) *a trust described in section 2523(e) of the Internal Revenue Code;*

27 (D) *a trust described in section 2523(f) of the Internal Revenue Code;*

28 [A](E) an irrevocable “special needs trust” established for a disabled person as  
29 described in 42 U.S.C. 1396p(d)(4) or similar federal law governing the transfer to such a trust; or

30 (B)(F) an irrevocable trust solely because of the existence or exercise of a  
31 discretionary power granted to the trustee by the terms of the trust, court order, *nonjudicial*  
32 *settlement* agreement [~~of the qualified beneficiaries,~~] or any other provision of law (or the existence  
33 or exercise of a discretionary power granted to a trust advisor or trust protector by the terms of the  
34 trust, court order, *nonjudicial settlement* agreement [~~of the qualified beneficiaries,~~] or any other  
35 provision of law, to direct the trustee) to pay directly to the taxing authorities or to reimburse the  
36 settlor for any tax on trust income or principal which is payable by the settlor under the law



**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 16 -**

1 imposing such tax.

2 195:20 Uniform Trust Code; Creditor's Claim Against Settlor. RSA 564-B:5-505(b) is repealed  
3 and reenacted to read as follows:

4 (b) During only the period that the power may be exercised, the holder of a power of  
5 withdrawal is treated in the same manner under this section as the settlor of a revocable trust to the  
6 extent of the property subject to the power.

7 195:21 New Sections; Uniform Trust Code; Creditor's Claims Against the Settlor. Amend RSA  
8 564-B by inserting after sections 5-507 the following new sections:

9 564-B:5-508 Disposition of Claims Against the Settlor.

10 (a) Upon the death of a settlor of a trust, a trustee may dispose of a known claim against  
11 the settlor if the trustee sends to the claimant a notice described in subsection (c). For purposes of  
12 this section, a "known claim" is an actual or potential claim of which the trustee has knowledge, but  
13 excludes a contingent liability or a claim based on an event occurring after the date of the settlor's  
14 death.

15 (b) Upon the death of a settlor of a trust, a trustee may dispose of any unknown claims  
16 against the settlor if the trustee publishes a notice described in subsection (c). The notice shall be  
17 published once in a newspaper of general circulation in the county in which, at the time of his or her  
18 death, the settlor was domiciled. For purposes of this section, an unknown claim is a claim that is  
19 not a known claim, but excludes a contingent liability or a claim based on an event occurring after  
20 the date of the settlor's death.

21 (c) For purposes of subsections (a) and (b), the notice shall contain the following  
22 information and statements:

23 (1) The notice shall state that the settlor has died. The notice shall provide the  
24 trustee's name and mailing address, and the notice shall provide the settlor's name, the settlor's  
25 place of domicile at the time of his or her death, and the settlor's date of death.

26 (2) In the case of a notice under subsection (a), the notice shall state that any claim  
27 against the settlor will be barred unless a proceeding to enforce the claim is commenced within one  
28 year after the date on which the trustee sent the notice.

29 (3) In the case of a notice under subsection (b), the notice shall state that any claim  
30 against the settlor will be barred unless a proceeding to enforce the claim is commenced within one  
31 year after the publication date of the notice.

32 (d) If a trustee sends a notice in accordance with subsection (a), then a known claim  
33 against the settlor shall be barred unless the claimant commences a proceeding to enforce the claim  
34 within one year after the date on which the trustee sent the notice. If a trustee publishes a notice in  
35 accordance with subsection (b), then an unknown claim against the settlor shall be barred unless the  
36 claimant commences a proceeding to enforce the claim within one year after the publication date of

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 17 -**

1 the notice. The trustee and a claimant may agree to toll the limitation period under this subsection.

2 (e) To the extent that the trustee acts in good faith, the trustee is not liable to any  
3 person for exercising the discretion to dispose of claims under this section or not exercising that  
4 discretion.

5 (f) This section shall not bar any claim that the director of charitable trusts or the  
6 department of health and human services has the authority to enforce.

7 564-B:5-509 Disposition of Claims Against a Trust.

8 (a) Upon the termination of an irrevocable trust, a trustee may dispose of a known claim  
9 against the trust if the trustee sends to the claimant a notice described in subsection (c). For  
10 purposes of this section, a known claim is an actual or potential claim of which the trustee has  
11 knowledge, but excludes a contingent liability or a claim based on an event occurring after the date  
12 of the trust's termination.

13 (b) Upon the termination of an irrevocable trust, a trustee may dispose of any unknown  
14 claims against the trust if the trustee publishes a notice described in subsection (c). The notice shall  
15 be published once in a newspaper of general circulation in the county in which the trust's principal  
16 place of administration is located. For purposes of this section, an unknown claim is a claim that is  
17 not a known claim, but excludes a contingent liability or a claim based on an event occurring after  
18 the date of the trust's termination.

19 (c) For purposes of subsections (a) and (b), the notice shall contain the following  
20 information and statements:

21 (1) The notice shall state that the trust has terminated. The notice shall provide the  
22 trustee's name and mailing address, and the notice shall reasonably identify the trust.

23 (2) In the case of a notice under subsection (a), the notice shall state that any claim  
24 against the trust will be barred unless a proceeding to enforce the claim is commenced within one  
25 year after the date on which the trustee sent the notice.

26 (3) In the case of a notice under subsection (b), the notice shall state that any claim  
27 against the trust will be barred unless a proceeding to enforce the claim is commenced within one  
28 year after the publication date of the notice.

29 (d) If a trustee sends a notice in accordance with subsection (a), then a known claim  
30 against the trust shall be barred unless the claimant commences a proceeding to enforce the claim  
31 within one year after the date on which the trustee sent the notice. If a trustee publishes a notice in  
32 accordance with subsection (b), then an unknown claim against the trust shall be barred unless the  
33 claimant commences a proceeding to enforce the claim within one year after the publication date of  
34 the notice. The trustee and a claimant may agree to toll the limitation period under this subsection  
35 (d).

36 (e) A claim against the trust does not include:

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 18 -**

1           (1) any claim against a trustee, trust advisor, or trust protector by a beneficiary,  
2 trustee, trust advisor, or trust protector for a breach of trust; or

3           (2) any claim against a trustee, trust advisor, or trust protector under RSA 564-B:10-  
4 1003(a).

5           (f) To the extent that the trustee acts in good faith, the trustee is not liable to any person  
6 for exercising the discretion to dispose of claims under this section or not exercising that discretion.

7           (g) This section shall not bar any claim that the director of charitable trusts or the  
8 department of health and human services has the authority to enforce.

9           564-B:5-510 Limitation on Personal Liability of Beneficiaries.

10          (a) A beneficiary is not personally liable on a contract into which a trustee, trust advisor,  
11 or trust protector properly enters in the course of administering the trust, unless the beneficiary  
12 expressly agrees to be personally liable on that contract.

13          (b) A beneficiary is not personally liable for torts committed by a trustee, trust advisor,  
14 or trust protector in the course of administering the trust, unless the beneficiary is personally at  
15 fault.

16          (c) A beneficiary is not personally liable for claims or obligations arising from the  
17 ownership or control of trust property by a trustee, trust advisor, or trust protector, unless the  
18 beneficiary is personally at fault. Claims arising from the ownership or control of trust property  
19 include liability for any violation of environmental law.

20          (d) This section does not apply to a revocable trust to the extent that the beneficiary is  
21 the settlor of that trust.

22          (e) This section does not limit or otherwise affect a beneficiary's liability to return a  
23 distribution under the terms of the trust, the beneficiary's agreement with a trustee, or RSA 564-  
24 B:4-406(f), RSA 564-B:8-812, RSA 564-B:8-817(d), or any other provision of this chapter.

25          195:22 Limitation on Action Contesting Validity of Revocable Trusts; Distribution of Trust  
26 Property. RSA 564-B:6-604 is repealed and reenacted to read as follows:

27          564-B:6-604 Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust  
28 Property. If a trust was revocable at the settlor's death, then a person may commence a judicial  
29 proceeding to contest the validity of that trust in accordance with RSA 564-B:4-406, and the trustee  
30 may proceed to distribute the trust property in accordance with RSA 564-B:4-406.

31          195:23 Uniform Trust Code; Directed Trusts. RSA 564-B:7-711 is repealed and reenacted to  
32 read as follows:

33          RSA 564-B:7-711 Directed Trusts.

34          (a) A directed trust is trust in which, under the terms of the trust, one or more persons  
35 have the power to direct an action by a trustee, trust advisor, or trust protector or the power to veto  
36 or consent to any actual or proposed action by a trustee, trust advisor, or trust protector. The action

CHAPTER 195  
SB 289 – FINAL VERSION  
- Page 19 -

1 may relate to the investment of trust assets, distributions, or any other aspects of the trust's  
2 administration.

3 (b) A trustee is an excluded fiduciary to the extent that:

4 (1) under the terms of the trust, the trustee must follow the direction of a trust  
5 advisor, trust protector, cotrustee, or other person; and

6 (2) the trustee acts in accordance with that direction.

7 (c) A trust advisor or trust protector is an excluded fiduciary to the extent that:

8 (1) under the terms of the trust, the trust advisor or trust protector must follow the  
9 direction of a trustee, trust advisor, trust protector, or other person; and

10 (2) the trust advisor or trust protector acts in accordance with that direction.

11 195:24 Uniform Trust Code; Collecting Trust Property. Amend RSA 564-B:8-812 to read as  
12 follows:

13 564-B:8-812 Collecting Trust Property.

14 (a) A trustee shall take reasonable steps to compel a former trustee or other person to  
15 deliver trust property to the trustee. ~~and~~

16 (b) *Except as otherwise provided under the terms of the trust, the trustee shall*  
17 *take reasonable steps* to redress a breach of trust known to the trustee to have been committed by  
18 a *cotrustee or a* former trustee.

19 (c) *Except as otherwise provided under the terms of the trust, the trustee shall*  
20 *take reasonable steps to redress a breach of trust actually known to the trustee to have*  
21 *been committed by a trust advisor, a former trust advisor, a trust protector, or a former*  
22 *trust protector. This subsection does not impose upon a trustee who is an excluded*  
23 *fiduciary any duty to monitor, duty to advise, or duty to warn as described under RSA 564-*  
24 *B:12-1204.*

25 (d) *A person who receives a distribution from a trust is liable to return the*  
26 *distribution to the extent that a court subsequently determines that the person was not*  
27 *entitled to the distribution.*

28 195:25 Uniform Trust Code; Specific Powers of Trustees. Amend RSA 564-B:8-816(b) to read as  
29 follows:

30 (b)(1) *Without limiting the authority conveyed by RSA 564-B:8-815, a trustee of a*  
31 *charitable remainder annuity trust may pay an amount distributable to a beneficiary who is*  
32 *financially disabled by paying that amount to a separate trust if under the terms of that*  
33 *separate trust, the trustee must administer those amounts on behalf of that beneficiary and,*  
34 *upon the beneficiary's death, must distribute the remaining trust property either to:*

35 (A) *the beneficiary's estate; or*

36 (B) *after reimbursing the state for any Medicaid benefits provided to the*

CHAPTER 195  
SB 289 – FINAL VERSION  
- Page 20 -

1 *individual, in accordance with the exercise of the beneficiary's general power of appointment.*

2           (2) *For purposes of this paragraph, "charitable remainder trust" means a*  
3 *charitable remainder annuity trust within the meaning of section 664(d)(1) of the Internal*  
4 *Revenue Code or a charitable remainder unitrust within the meaning of section 664(d)(2) of*  
5 *the Internal Revenue Code.*

6           (3) *For the purposes of this paragraph "financially disabled" means financially*  
7 *disabled within the meaning of section 6511(h)(2)(A) of the Internal Revenue Code.*

8           (c) *Except as otherwise provided under the terms of the trust, a trustee shall*  
9 *have the discretionary power to reimburse the settlor for the portion of the settlor's income*  
10 *tax liability attributable to the trust under section 671 of the Internal Revenue Code or any*  
11 *similar tax law.*

12           (d) An executor or other fiduciary administering a will has all powers conferred by this  
13 section unless limited in the will, subject to the fiduciary duties prescribed by the will or by other  
14 laws of this state.

15       195:26 New Subparagraph; Uniform Trust Code; Distribution upon Termination. Amend RSA  
16 564-B:8-817 by inserting after subparagraph (c) the following new subparagraph:

17           (d) A person who receives a distribution from a trust that has terminated is liable to  
18 return the distribution to the extent that a court subsequently determines that the person was not  
19 entitled to the distribution.

20       195:27 Uniform Trust Code; Standard of Care; Portfolio Strategy. Amend RSA 564-B:9-902(c) to  
21 read as follows:

22           (c) Among circumstances that a trustee shall consider in investing and managing trust  
23 assets are such of the following as are relevant to the trust or its beneficiaries:

24                   (1) general economic conditions;

25                   (2) the possible effect of inflation or deflation;

26                   (3) the expected tax consequences of investment decisions or strategies;

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

30                   (5) the expected total return from income and the appreciation of capital;

31                   (6) other resources of the beneficiaries;

32           (7) *any other trust if one or more of the beneficiaries also are beneficiaries of*  
33 *that trust;*

34           ~~(7)~~ (8) needs for liquidity, regularity of income, and preservation or appreciation of  
35 capital; and

36           ~~(8)~~ (9) an asset's special relationship or special value, if any, to the purposes of the

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 21 -**

1 trust or to one or more of the beneficiaries.

2 195:28 Uniform Trust Code; Reviewing Compliance. Amend RSA 564-B:9-905 to read as follows:  
3 564-B:9-905 Reviewing Compliance.

4 **(a)** Compliance with the prudent investor rule is determined:

5 **(1)** in light of the facts and circumstances existing at the time of a trustee's decision  
6 or action and not by hindsight; **and**

7 **(2)** *by the trustee's conduct and not by the return realized from the*  
8 *investment and management of the trust assets.*

9 **(b)** *A trustee's failure to realize a return that equals or exceeds any financial*  
10 *index is not evidence of a trustee's failure to comply with the prudent investor rule.*

11 195:29 Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B:10-  
12 1014(c) to read as follows:

13 (c) Subsection (b) shall not apply to ***the extent that a person initiates, maintains, or***  
14 ***cooperates in any of the following actions or proceedings:***

15 (1) Any action brought by the trustee or any other fiduciary serving under the terms  
16 of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest  
17 provision is otherwise enforceable;

18 (2) Any agreement among the beneficiaries and any other interested persons in  
19 settlement of a dispute or resolution of any other matter relating to the trust, including without  
20 limitation any nonjudicial settlement agreement;

21 (3) Any action to determine whether a proposed or pending motion, petition, or other  
22 proceeding constitutes a contest within the meaning of a no-contest provision;

23 (4) Any action brought by a beneficiary or on behalf of any such beneficiary for a  
24 construction or interpretation of the terms of the trust; [~~or~~]

25 (5) Any action brought by the attorney general for a construction or interpretation of  
26 a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting  
27 to penalize a charity or charitable interest for contesting the trust if probable cause exists for  
28 instituting proceedings; **or**

29 **(6)** *A proceeding described in subsection (h).*

30 195:30 New Paragraphs; Uniform Trust Code; Enforcement of No-Contest Provision. Amend  
31 RSA 564-B:10-1014 by inserting after paragraph (e) the following new paragraphs:

32 (f) In the trustee's discretion, a trustee may suspend distributions to a beneficiary to the  
33 extent that, under a no-contest provision, the beneficiary's action potentially would have caused the  
34 reduction or elimination of the beneficiary's interest in the trust. In the trustee's discretion, the  
35 trustee may resume those distributions at any time or may continue to suspend those distributions  
36 until a court determines whether the beneficiary's interest in the trust has been reduced or

CHAPTER 195  
SB 289 – FINAL VERSION  
- Page 22 -

1 eliminated.

2 (g) In the trustee’s discretion, a trustee may decline to distribute trust property in  
3 accordance with a person’s purported exercise of a power of appointment or a power of withdrawal to  
4 the extent that, under a no-contest provision, the person’s action potentially would have caused the  
5 reduction or elimination of the power of appointment or the power of withdrawal. In the trustee’s  
6 discretion, the trustee may make those distributions at any time or may continue to decline to make  
7 those distributions until a court determines whether the person’s power of appointment or power of  
8 withdrawal has been reduced or eliminated.

9 (h) To the extent that the trustee acts in good faith, the trustee is not liable to any  
10 person for exercising the discretion under subsection (f) or (g) or not exercising that discretion. A  
11 trustee shall be presumed to have exercised the discretion in good faith if, in any judicial proceeding,  
12 an interested person other than the trustee has requested a determination of whether, under the no-  
13 contest provision, a beneficiary’s interest in the trust, a person’s power of appointment, or a person’s  
14 power of withdrawal was reduced or eliminated. A trustee or any other interested person may  
15 commence a judicial proceeding for purposes of determining whether a trustee’s exercise of discretion  
16 under subsection (f) or (g) was made in good faith.

17 195:31 Uniform Trust Code; Uniformity of Application and Construction. Amend RSA 564-B:11-  
18 1101 to read as follows:

19 564-B:11-1101 Uniformity of Application and Construction. ***In applying and construing this***  
20 ***chapter, primary consideration shall be given to the preservation of the settlor’s intent as***  
21 ***expressed in the terms of the trust. Secondary consideration shall be given to the following***  
22 ***objectives, in no order of priority among them: (1) the protection of the interests of the***  
23 ***beneficiaries consistent with the settlor’s intent as expressed in the terms of the trust; (2)***  
24 ***the promotion of certainty concerning the duties and liabilities of trustees, trust advisors,***  
25 ***and trust protectors, including the division of those duties and liabilities among trustees,***  
26 ***trust advisors, and trust protectors; and (3) the promotion of the efficient administration***  
27 ***of a trust. Tertiary consideration may*** [~~In applying and construing this uniform act,~~  
28 ~~consideration must~~] be given to the [~~need to promote~~] ***promotion of*** uniformity of the law with  
29 respect to its subject matter among states that enact [it] ***the uniform act upon which this***  
30 ***chapter is based.***

31 195:32 Uniform Trust Code; Powers of Trust Advisors and Trust Protectors. RSA 564-B:12-  
32 1201(b) is repealed and reenacted to read as follows:

33 (b) To the extent that a trust advisor or trust protector exercises a power in accordance  
34 with the terms of the trust, the trust advisor’s or trust protector’s action is binding upon all other  
35 persons.

36 195:33 Uniform Trust Code; Powers of Trust Advisors and Trust Protectors. Amend RSA 564-

CHAPTER 195  
SB 289 – FINAL VERSION  
- Page 23 -

1 B:12-1202(a) to read as follows:

2 (a) ***Except as otherwise provided under the terms of the trust,*** a trust advisor ***of a***  
3 ***noncharitable trust*** or trust protector ***of a noncharitable trust*** [~~other than a beneficiary,~~] is a  
4 fiduciary with respect to each power granted to such trust advisor or trust protector. ***A trust***  
5 ***advisor of a charitable trust or a trust protector of a charitable trust is a fiduciary with***  
6 ***respect to each power granted to that trust advisor or trust protector.*** [~~In exercising any~~  
7 ~~power or refraining from exercising any power,~~] ***Notwithstanding the breadth of discretion***  
8 ***granted to a trust advisor or trust protector under the terms of the trust, including the use***  
9 ***of such terms as “absolute,” “sole,” or “uncontrolled,”*** a trust advisor or trust protector ***must***  
10 ***exercise a discretionary power and otherwise*** [~~shall~~] act in good faith and in accordance with the  
11 terms ***of the trust,*** [~~and~~] ***the*** purposes of the trust, and the interests of the beneficiaries.

12 195:34 New Section; Uniform Principal and Income Act; Charitable Remainder Unitrusts.  
13 Amend RSA 564-C by inserting after section 4-407 the following new section:

14 564-C:4-407A Charitable Remainder Unitrusts.

15 (a) In the case of a charitable remainder unitrust within the meaning of section 664(d)(2)  
16 of the Internal Revenue Code, in which the trust instrument contains an income exception described  
17 in section 664(d)(3) of the Internal Revenue Code, the trustee shall allocate receipts from each of the  
18 following assets in accordance with subsection (b), notwithstanding any other provision of this  
19 chapter:

20 (1) an entity within the meaning of RSA 564-C:4-401(a);

21 (2) an obligation to pay money to the trustee, including an obligation whose purchase  
22 price or value when it is acquired is less than its value at maturity;

23 (3) a life insurance policy, unless the insured has died;

24 (4) a private or commercial annuity, unless the payments within the meaning of RSA  
25 564-C:4-409(a), have commenced;

26 (5) a derivative within the meaning of RSA 564-C:4-414(a), except to the extent that  
27 the trustee accounts under RSA 564-C:4-403 for a transaction in that derivative; or

28 (6) an asset-backed security within the meaning of RSA 564-C:4-415(a).

29 (b) A trustee shall allocate to income the amount in excess of the asset's purchase price  
30 or the asset's value when it was acquired. A trustee shall allocate to principal the balance of the  
31 money or other property received.

32 (c) This section shall apply to any charitable remainder unitrust created before, on, or  
33 after the effective date of this section.

34 195:35 Qualified Dispositions in Trust Act; Trust Instrument Defined. RSA 564-D:2 is repealed  
35 and reenacted to read as follows:

36 564-D:2 Trust Instrument.



**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 24 -**

1           I. For the purposes of this chapter, a trust instrument is a trust instrument, within the  
2 meaning of RSA 564-B:1-103(20), that meets the following requirements:

3           (a) The trust instrument appoints a qualified trustee for the property that is the subject  
4 of a disposition;

5           (b) The trust instrument expressly provides that this state's laws govern the validity,  
6 construction, and administration of the trust;

7           (c) The trust instrument is irrevocable; and

8           (d) The trust instrument contains a spendthrift provision within the meaning of RSA  
9 564-B:1-103(17).

10          II. For purposes of subparagraph I(c), a trust instrument is revocable only to the extent that  
11 (1) the transferor can revoke the trust without the consent of the qualified trustee or any person  
12 holding an adverse interest and, upon the trust's revocation, the transferor would be a distributee of  
13 trust property or (2) the transferor can appoint the trust property, without the consent of the  
14 qualified trustee or any person holding an adverse interest, to any one or more of the transferor, the  
15 transferor's creditors, the transferor's estate, or the creditors of the transferor's estate.

16          III. Except as provided in paragraph II, a trust instrument is irrevocable regardless of  
17 whether the transferor retained any right, power, or interest, including, without limitation, the  
18 following rights, powers, and interests:

19           (a) A transferor's power to veto a distribution from the trust;

20           (b) A power of appointment;

21           (c) The transferor's potential or actual receipt or use of income or principal, including,  
22 without limitation, by reason of (i) a right to income or principal, (ii) a right to receive an annual  
23 amount equal to a percentage, as set forth in the trust instrument, of the initial value of the trust  
24 property or the value of the trust property as determined from time to time, (iii) a qualified trustee's  
25 exercise of its discretion to distribute income or principal, whether or not subject to a standard, or  
26 (iv) a qualified trustee acting in accordance with the direction of a trust advisor described in RSA  
27 564-D:4;

28           (d) The transferor's potential or actual receipt of income or principal from a charitable  
29 remainder annuity trust within the meaning of section 664(d)(1) of the Internal Revenue Code or a  
30 charitable remainder unitrust within the meaning of section 664(d)(2) of the Internal Revenue Code;

31           (e) The transferor's right to release all or any part of the transferor's retained interest in  
32 a charitable remainder unitrust or charitable remainder annuity trust in favor of one or more  
33 charitable organizations that have an interest in that trust;

34           (f) The transferor's potential or actual use of real property held under a personal  
35 residence trust as described in section 2702(a)(3)(A)(ii) of the Internal Revenue Code;

36           (g) The transferor's potential or actual receipt or use of a qualified interest within the

**CHAPTER 195**  
**SB 289 – FINAL VERSION**  
**- Page 25 -**

1 meaning of section 2702(b) of the Internal Revenue Code;

2 (h) The transferor's potential or actual receipt of income or principal to pay income taxes  
3 on the trust's income, as determined for purposes of those taxes, to the extent that the trust  
4 instrument expressly provides that (i) the trustee must pay those amounts to the transferor or the  
5 taxing authority, (ii) the qualified trustee has the discretion to pay those amounts to the transferor  
6 or the taxing authority, or (iii) a trust advisor or trust protector has the power to direct the qualified  
7 trustee to pay those amounts to the transferor or the taxing authority;

8 (i) The transferor's right to remove a trustee, trust advisor, or trust protector;

9 (j) The transferor's right to appoint an additional or successor trustee, trust advisor, or  
10 trust protector if, with respect to the transferor, the trustee, trust advisor, or trust protector is not  
11 related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code; and

12 (k) After the transferor's death, a qualified trustee may or must pay all or any part of  
13 the transferor's debts outstanding at the time of the transferor's death, the expenses of  
14 administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to  
15 the transferor's estate.

16 IV. A disposition by a trustee who is not a qualified trustee to a qualified trustee will not fail  
17 to qualify a qualified disposition solely because the trust instrument fails to meet the requirements  
18 of subparagraph I(b).

19 V. A spendthrift provision within the meaning of RSA 564-B:1-103(17) is a restriction on the  
20 transfer of the transferor's beneficial interest in the trust that is enforceable under applicable  
21 nonbankruptcy law, within the meaning of 11 U.S.C. section 541(c)(2).

22 195:36 Qualified Dispositions in Trust Act; Transferor May Serve as Trust Advisor. RSA 564-  
23 D:5 is repealed and reenacted to read as follows:

24 564-D:5 Qualified Dispositions in Trust Act; Transferor May Serve as Trust Advisor. With  
25 respect to a trust that includes property that is subject to a disposition, a transferor or any other  
26 person may serve as a trust advisor or trust protector, including a trust advisor described in RSA  
27 564-D:4. If a transferor serves as a trust advisor or trust protector, then the transferor may have  
28 any right or power, except any right or power that, under RSA 564-D:2, would cause the trust to be  
29 revocable.

30 195:37 Qualified Dispositions in Trust Act; Transferor's Powers and Rights. Amend RSA 564-  
31 D:8 to read as follows:

32 564-D:8 Transferor's Powers and Rights. A qualified disposition is subject to RSA 564-D:9 to  
33 RSA 564-D:14, inclusive, notwithstanding a transferor's retention of any or all of the powers and  
34 rights [~~described in RSA 564-D:2, H~~] **that, under RSA 564-D:2, the transferor may retain**  
35 **without causing the trust to be revocable** or the transferor's service as trust advisor pursuant to  
36 RSA 564-D:5. The transferor has only such powers and rights as are conferred by the trust

CHAPTER 195  
SB 289 – FINAL VERSION  
- Page 26 -

1 instrument. Except as permitted by RSA 564-D:2 and RSA 564-D:5, a transferor has no rights or  
2 authority with respect to the property that is the subject of a qualified disposition or the income  
3 therefrom, and any agreement or understanding purporting to grant or permit the retention of any  
4 greater rights or authority is void.

5 195:38 Qualified Dispositions in Trust Act; Qualified Disposition Made by Transferor Who Is  
6 Trustee. Amend RSA 564-D:11 to read as follows:

7 564-D:11 Qualified Disposition Made by Transferor Who is Trustee. A qualified disposition that  
8 is made by means of a disposition by a transferor who is a trustee is deemed to have been made as of  
9 the time, whether before, on, or after the effective date of this chapter, the property that is the  
10 subject of the qualified disposition was originally transferred to the transferor (or any predecessor  
11 trustee), in a form that meets the requirements of ~~[RSA 564-D:2, I(b), I(e), and II]~~ **RSA 564-D:2,**  
12 **I(a), I(c), and I(d).**

13 195:39 Repeal. The following are repealed:

- 14 I. RSA 564:24, II relative to the rule against perpetuities.
- 15 II. RSA 564-B:10-1005(e), relative to trusts.
- 16 III. RSA 564-B:12-1206(e), relative to trusts.

17 195:40 Uniform Trust Code; Standard of Care; Portfolio Strategy. Amend RSA 564-B:9-902(d) to  
18 read as follows:

19 (d) A trustee shall make a reasonable effort to verify facts relevant to the investment  
20 and management of trust assets. ***For purposes of subsections (c)(6) and (c)(7), the trustee has***  
21 ***a duty to investigate the relevant information and a duty to monitor the relevant***  
22 ***information, and the trustee is not liable to any person to the extent that the trustee***  
23 ***performs those duties in good faith and, in accordance with this section, considers the***  
24 ***information that the trustee obtains through the good faith performance of those duties.***

25 195:41 Uniform Trust Code; Damages in the Absence of Breach. Amend RSA 564-B:10-1003 to  
26 read as follows:

27 564-B:10-1003 Damages in Absence of Breach.

28 (a) A trustee, ***trust advisor, or trust protector*** is accountable to an affected  
29 beneficiary for any profit made by ~~the~~ ***that*** trustee, ***trust advisor, or trust protector*** arising from  
30 the administration of the trust, even absent a breach of trust. This section does not preclude the  
31 payment of reasonable ~~trustee~~ compensation ***to a trustee, trust advisor, or trust protector.***

32 (b) Absent a breach of trust, a trustee, ***trust advisor, or trust protector*** is not liable to  
33 a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

34 195:42 Effective Date. This act shall take effect July 1, 2014.

35 Approved: July 11, 2014

36 Effective Date: July 1, 2014