

CHAPTER 272
SB 188-FN – FINAL VERSION

03/12/2015 0712s
03/26/2015 0999s
03/26/2015 1135s
06/24/2015 2366EBA

2015 SESSION

15-0388
08/04

SENATE BILL ***188-FN***

AN ACT revising banking, credit union, and trust laws.

SPONSORS: Sen. Bradley, Dist 3; Sen. Watters, Dist 4; Sen. D'Allesandro, Dist 20; Sen. Little, Dist 8; Sen. Fuller Clark, Dist 21; Sen. Soucy, Dist 18; Rep. Hunt, Ches 11; Rep. Butler, Carr 7

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill:

I. Amends RSA 383 relative to the banking department as part of the general revision of state laws relative to banks and credit unions.

II. Adds a new chapter RSA 383-A that consolidates, updates, and simplifies administrative procedures and enforcement actions relative to banks and credit unions.

III. Adds a new chapter RSA 383-B that consolidates, updates, and clarifies laws relative to depository banks and bank holding companies.

IV. Adds a new chapter RSA 383-C that consolidates, updates, and clarifies laws relative to trust companies.

V. Adds a new chapter RSA 383-D that consolidates, updates, and clarifies laws relative to family trust companies.

VI. Adds a new chapter RSA 383-E that consolidates, updates, and clarifies laws relative to credit unions.

VII. Amends miscellaneous banking statutes affected by these revisions.

VIII. Repeals laws superseded by the new chapters.

IX. Renames the uniform trust code as the New Hampshire trust code and amends provisions relative to limitation periods applicable to claims against trustees, trust advisors, and trust protectors.

X. Identifies the persons who are interested persons for purposes of a nonjudicial settlement agreement.

XI. Identifies the primacy of settler intent in construing or modifying the terms of a trust.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~

CHAPTER 272

SB 188-FN – FINAL VERSION

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 272
SB 188-FN – FINAL VERSION

03/12/2015 0712s
03/26/2015 0999s
03/26/2015 1135s
06/24/2015 2366EBA

15-0388
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT revising banking, credit union, and trust laws.

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

1 272:1 Bank Commissioner; Commissioner and Deputy. Amend RSA 383:1 to read as follows:

2 383:1 Commissioner and Deputy.

3 I. There shall be a bank commissioner who shall be appointed by the governor with the
4 advice and consent of the council, and whose term shall be for 6 years.

5 **II.** There shall be a deputy bank commissioner who shall be recommended by the ~~bank~~
6 commissioner and appointed by the governor with the advice and consent of the council, and whose
7 term shall be 6 years. The deputy may exercise the powers and perform the duties of the
8 commissioner during the commissioner's absence whenever and to the extent that he or she may be
9 so authorized by the commissioner. In case of the temporary disability of the commissioner, or of a
10 vacancy in the office, the deputy shall have the powers and perform the duties of the commissioner
11 until another commissioner is appointed and qualified.

12 ~~[H. The term "commissioner," as used in this title, means the bank commissioner unless the~~
13 ~~context clearly indicates otherwise.]~~

14 272:2 Bank Commissioner; Removal. Amend RSA 383:3 to read as follows:

15 383:3 Removal. The governor, with the advice and consent of the council, may remove either the
16 bank commissioner or a deputy bank commissioner at any time ~~[, for inefficiency, neglect of duty, or~~
17 ~~malfeasance in office, after hearing, with reasonable notice in writing of the charges against him] **as**~~
18 **provided for in RSA 4:1.**

19 272:3 New Section; Bank Commissioner; Definitions. Amend RSA 383 by inserting after section
20 3 the following new section:

21 383:3-a Definitions. Unless otherwise indicated, the definitions in RSA 383-A:2-201 shall apply
22 to this chapter.

23 272:4 Bank Commissioner; Qualifications. Amend RSA 383:6 to read as follows:

24 383:6 Qualifications. No person who is not a resident of the state at the time of his or her
25 appointment or who fails to become a resident of the state within one year after his or her
26 appointment, and no person who is indebted to any ~~[corporation or association]~~ **entity** under the
27 supervision of the commissioner, or who holds any stock or office in ~~[any such corporation or~~

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 2 -

1 ~~association]~~ **the entity**, or who is engaged as principal or agent in the business of selling or
2 negotiating ~~[in this state]~~ loans, stocks, or securities of any kind **in this state**, or who is an officer or
3 stockholder in any ~~[corporation]~~ **entity** engaged in ~~[such]~~ **that** business, shall be eligible to hold or
4 continue to hold the office of commissioner or deputy commissioner. The provisions of this section
5 relative to indebtedness to ~~[a corporation or association]~~ **an entity** under the supervision of the
6 commissioner shall not disqualify a person who, at the time of his or her appointment, is indebted to
7 ~~[such corporation or association]~~ **the entity** for a home mortgage loan, or if at a time subsequent to
8 his or her appointment a legal transfer of the loan or conversion of ~~[a corporation or association]~~ **an**
9 **entity** results in the loan being held by ~~[a corporation or association]~~ **an entity** under the
10 supervision of the commissioner or deputy commissioner, provided that the indebtedness shall be
11 limited to such pre-existing contracts.

12 272:5 Bank Commissioner; Compensation. Amend RSA 383:7 to read as follows:

13 383:7 Compensation; Assistants.

14 I. The annual salary of the ~~[bank]~~ commissioner, and that of the deputy commissioner, shall
15 be that prescribed by RSA 94:1-4. The commissioner may appoint examiners and such assistants as
16 may be necessary, within the limits of the appropriations therefor and the rules of the state
17 personnel system.

18 **II.** The commissioner, deputy commissioner, examiners, and other assistants shall be
19 allowed their actual traveling expenses when engaged in their official duties.

20 **III.** *The commissioner may adopt a policy to prohibit certain department employees*
21 *from performing outside work for any director or officer of a bank, trust company, or credit*
22 *union, or for an entity chartered or licensed by the commissioner.* ~~[No person shall serve as~~
23 ~~examiner who would be disqualified to serve as commissioner under the limitations of RSA 383:6.]~~

24 **IV.** *The commissioner may adopt a written policy to require certain department*
25 *employees to comply with the limitations of RSA 383:6* except that ~~[examiners]~~ **the employees** may
26 be indebted to ~~[such corporations and associations]~~ **a bank, trust company, or credit union or any**
27 **other entity chartered or licensed by the department** at the time of ~~[their]~~ **his or her** appointment,
28 or thereafter, provided ~~[any such]~~ **the** debt is incurred primarily for personal, household, or family
29 purposes and on terms no more favorable than those afforded to other borrowers, the ~~[examiner's]~~
30 **employee's** employment is disclosed to such ~~[corporation or association]~~ **entity**, and both the ~~[examiner]~~
31 **employee** and the ~~[corporation or association]~~ **entity** disclose to the commissioner that a debt has been
32 incurred.

33 ~~[H.]~~ **V.** The ~~[banking]~~ department shall complete a background investigation and a criminal
34 history records check on every selected applicant for employment in any position in the ~~[banking]~~
35 department prior to a final offer of employment. The ~~[banking]~~ department may extend a conditional
36 offer of employment to a selected applicant after completing a background investigation, with a final

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 3 -

1 offer of employment subject to a successfully completed criminal history records check. No selected
2 applicant may be extended a conditional offer of employment unless the [banking] department has
3 initiated a criminal history records check. The [banking] department shall not be held liable in any
4 lawsuit alleging that the extension of a conditional or final offer of employment to an applicant with
5 a criminal history was in any way negligent or deficient if the [banking] department fulfilled the
6 requirements of this section.

7 ~~III.]~~ **VI.** The selected applicant for employment shall submit to the [banking] department a
8 notarized criminal history records release form, as provided by the division of state police, which
9 authorizes the release of the person's criminal records, if any. The applicant shall submit with the
10 release form a complete set of fingerprints taken by a qualified law enforcement agency or an
11 authorized employee of the [banking] department. In the event that the first set of fingerprints is
12 invalid due to insufficient pattern and a second set of fingerprints is necessary in order to complete
13 the criminal history records check, the conditional offer of employment shall remain in effect. If,
14 after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the [banking] department
15 may, in lieu of the criminal history records check, accept police clearances from every city, town, or
16 county where an applicant has lived during the past 5 years.

17 ~~IV.]~~ **VII.** The [banking] department shall submit the criminal history records release form
18 to the New Hampshire division of state police, which shall conduct a criminal history records check
19 through its records and through the Federal Bureau of Investigation. Upon completion of the
20 background investigation, the division of state police shall release copies of the criminal conviction
21 records to the department. The department shall maintain the confidentiality of all criminal history
22 records information received ~~[pursuant to]~~ **under** this paragraph.

23 ~~[V. This section applies to any employee or selected applicant for employment of the banking~~
24 ~~department.]~~

25 272:6 Bank Commissioner; Delegation. Amend RSA 383:7-a to read as follows:

26 383:7-a Delegation of Duties and Responsibilities.

27 I. The commissioner may delegate to deputies, assistants, examiners, or employees of the
28 [banking] department the exercise or discharge in the commissioner's name of any power, duty, or
29 function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the
30 commissioner. However, ~~[he]~~ **the commissioner** shall not delegate his **or her** rulemaking powers.

31 II. The official act of ~~[any such]~~ **the** person acting in the commissioner's name and by his **or**
32 **her** authority **as provided in paragraph I** shall be deemed an official act of the commissioner.

33 III. ~~[The delegation of duties and responsibilities shall be made by the commissioner in~~
34 ~~writing, and shall state an effective date.~~

35 IV. ~~The delegation of duties and responsibilities made under this section shall expire one~~
36 ~~year from the effective date of the delegation unless renewed by the commissioner.~~

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 4 -

1 ~~V.~~] The commissioner shall provide any board or commission written notice of his or her
2 intent to delegate his or her duties and responsibilities to serve on such board or commission.

3 272:7 Bank Commissioner; Commissioner's Duties. Amend RSA 383:9 to read as follows:

4 383:9 Duties.

5 I. The commissioner shall have general supervision of ***and shall conduct examinations***
6 ***of all state*** banks [~~(except national banks)~~], trust companies, ***family trust companies***, [~~building~~
7 ~~and loan associations,~~] credit unions, [~~Morris plan banks, small loan companies, and other similar~~
8 ~~institutions in the state. Except as provided in RSA 383:9 d, he or she shall examine into the~~
9 ~~condition and management of all such institutions every 18 months, and more often when necessary~~
10 ~~in his or her judgment or when so directed by the governor. The commissioner may regulate the~~
11 ~~buying or selling of securities by banks for officers, employees, or customers. He or she shall assign~~
12 ~~to the deputy commissioner and the assistants appointed under RSA 383:7 such of his or her duties~~
13 ~~as he or she sees fit. In accordance with RSA 383:9 d, qualified institutions under RSA 383:9 a may~~
14 ~~be examined less often, but at no time shall the commissioner examine the condition and~~
15 ~~management of any institution less than every 36 months] ***and other entities licensed by the***
16 ***department as may be designated by law from time to time. He or she may inspect the***
17 ***books of those entities and their papers, notes, bonds, and other evidences of debt. By that***
18 ***examination, the commissioner shall determine the true financial condition of the entities,***
19 ***their ability to perform their engagements, and whether they have violated any provision of***
20 ***law.***~~

21 ***II. The commissioner may conduct investigations of the persons identified in***
22 ***paragraph I and of persons believed to be engaged in unlicensed activity in the state.***

23 ***III. The cost of any examination or investigation shall be borne by the person***
24 ***examined or investigated. In the case of an unlicensed person, investigative costs will be***
25 ***assessed only if the person is determined to have engaged in unlicensed activity.***

26 ***IV. In the course of conducting any examination or investigation of any entity and***
27 ***subject to the limitations of federal law, the commissioner shall have the jurisdiction and***
28 ***power to examine any affiliate of the entity, as defined in RSA 383-A:2-201(a). The***
29 ***examination of an entity's affiliate, shall be limited to those issues which, in the***
30 ***determination of the commissioner, affect the safe and sound operation of the entity and***
31 ***the relationship between the entity and the affiliate.***

32 ~~[H.]~~ V. The commissioner may conduct an examination ***or investigation during business***
33 ***hours, at any location*** of the [~~institution's~~] ***entity's*** operations, including any place where assets
34 are located or where records are made, posted, or kept. The commissioner shall have the power to
35 conduct such an examination ***or investigation*** outside the state of New Hampshire and outside the
36 United States and its territories.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 5 -

1 ~~III.~~ **VI.** The commissioner may adopt rules, ~~[pursuant to]~~ **under** RSA 541-A, relative to the
2 duties assigned to him or her by this ~~[section]~~ **chapter**.

3 272:8 Bank Commissioner; Joint Examination. Amend RSA 383:9-a to read as follows:

4 383:9-a Joint Examination. The commissioner is authorized to arrange for a joint examination
5 by the ~~[banking]~~ department and ~~[the primary federal regulator]~~ **any other federal or state**
6 **regulator or group of regulators with authority to conduct a similar type of examination of**
7 **the entity**, including **other state banking departments**, the Federal Deposit Insurance
8 Corporation, the Federal Reserve Bank, ~~[Office of Thrift Supervision,]~~ Office of the Comptroller of
9 the Currency, **the Consumer Financial Protection Bureau, the United States Department of**
10 **Treasury**, and the National Credit Union Administration~~[, of the insured institution]~~.

11 272:9 Examination of Qualified Institutions; Nondepository Trust Companies. RSA 383:9-d is
12 repealed and reenacted to read as follows:

13 383:9-d Examination of Banks, Credit Unions, Trust Companies, and Family Trust Companies.

14 I. Unless an exception is granted as provided in paragraph II, the commissioner shall
15 examine the condition and management of all banks, credit unions, trust companies, and family
16 trust companies, every 18 months or more often when necessary in his or her judgment.

17 II. For entities that qualify under paragraph III, the commissioner may alternate every 18
18 months between conducting an examination of the entity and either waiving one examination, or
19 accepting the examination report of a federal or state regulator or group of regulators with authority
20 to conduct a similar type of examination of the entity.

21 III. A bank, credit union, trust company, or family trust company qualifies for examination
22 treatment under paragraph II if:

23 (a) It has consistently been given high ratings in past exams;

24 (b) It is not currently subject to an enforcement proceeding or order; and

25 (c) The commissioner has deemed it prudent to apply this paragraph and paragraph II.

26 IV. The commissioner shall examine the condition and management of all consumer credit
27 licensees as required by law, every 18 months, or more often when necessary in his or her judgment.
28 In lieu of his or her own report, the commissioner may accept a report of a federal or state regulator
29 or group of regulators with authority to conduct a similar type of examination of the entity.

30 V. The commissioner may waive an examination of a licensee if:

31 (a) The licensee has consistently had examinations with few or no cited violations of law;

32 (b) The licensee is not currently subject to any enforcement proceeding or order from any
33 state or federal regulatory authority; and

34 (c) The commissioner has deemed it prudent to apply this paragraph and paragraph IV.

35 VI. In no event shall a licensee be examined less than every 36 months.

36 272:10 Bank Commissioner; Accountants or Experts. Amend RSA 383:10-a to read as follows:

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 6 -

1 383:10-a ~~[Other]~~ Accountants or Experts. Whenever he *or she* considers it necessary the
2 commissioner may engage the services of *one or more* outside accountants or other experts to perform
3 an audit or such further examination as he *or she* deems necessary, except that the engagement of
4 legal services shall be with the approval of the attorney general. The compensation and expenses of
5 ~~[such]~~ *each* outside ~~[accountants]~~ *accountant* or other ~~[experts]~~ *expert* shall be a charge against the
6 examined ~~[institution and]~~ *entity and* shall be paid directly by ~~[such institution]~~ *that entity*.

7 272:11 Bank Commissioner; Confidentiality of Consumer Complaints. Amend RSA 383:10-b to
8 read as follows:

9 383:10-b Confidential Information. All records of *the department's* investigations,
10 *examinations, visitations,* and reports ~~[of examinations by the banking department,]~~ *produced by*
11 *those investigations, examinations, and visitations* including any duly authenticated copy ~~[or~~
12 ~~copies thereof]~~ *of those records* in the possession of any ~~[institution]~~ *entity* under the supervision of
13 the ~~[bank]~~ commissioner, shall be confidential ~~[communications]~~, shall not be subject to subpoena and
14 shall not be made public unless, in the judgment of the commissioner, the ends of justice and the public
15 advantage will be ~~[served]~~ *served* by the publication ~~[thereof]~~ *of those records*. The commissioner
16 may furnish to the federal supervisory authorities and to independent insuring funds which he *or she*
17 deems qualified such information and reports relating to the ~~[institutions]~~ *entities* under his *or her*
18 supervision as he *or she* deems best. On motion for discovery filed in any court of competent
19 jurisdiction, in aid of any pending action, the court, after hearing the parties, may order the production
20 of ~~[such]~~ *those* records~~[- investigations and reports]~~ for use in ~~[such]~~ *that* action whenever it is found
21 that justice so requires, subject to such reasonable safeguards imposed by the court as may be
22 necessary to prevent use by unauthorized persons or publicity of irrelevant portions ~~[thereof]~~ *of those*
23 *records*.

24 272:12 Bank Commissioner; Confidentiality of Consumer Complaints. Amend RSA 383:10-e to
25 read as follows:

26 383:10-e Confidentiality of Consumer Complaints. The commissioner may disclose to the public
27 the number and type of complaints ~~[or inquiries]~~ *and disposition of complaints* filed by consumers
28 against a particular person or entity; provided, however, that no such disclosure shall abridge the
29 confidentiality of consumer complaints or inquiries.

30 272:13 Bank Commissioner; Examination Costs. Amend RSA 383:11 to read as follows:

31 383:11 ~~[Payment of Cost of]~~ Examination *Costs*.

32 I. The ~~[bank]~~ commissioner shall charge and collect from each ~~[institution]~~ *entity*, the condition
33 and management of which he or she is required to examine under the provisions of RSA 383:9, ~~and~~
34 ~~which he or she supervises under the provisions of RSA 361 A, RSA 397 A, RSA 397 B, RSA 399 A,~~
35 ~~RSA 399 D, and RSA 399 C,]~~ an examination fee, which shall be calculated as a sum equal to the product
36 of the average daily rate of overall salary costs, including the benefits portion thereof, and expenses of all

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 7 -

1 ~~[examining]~~ personnel employed in making examinations ~~[pursuant to]~~ *under* the provisions of
2 RSA 383:9, multiplied by the number of personnel days devoted to the examination of the particular
3 ~~[institution]~~ *entity*, provided, however, that no such ~~[institution]~~ *entity* shall be charged or pay for less
4 than one full day. Sums collected under this section shall be payable to the state treasurer as restricted
5 revenue and credited, in accordance with the ~~[banking]~~ department's accounting unit designation, to the
6 appropriation for the ~~[bank]~~ commissioner or the consumer credit administration division.

7 II. If, after the close of each fiscal year, there remains any deficiency between the sums
8 collected under paragraph I, combined with the other fees, fines, and penalties collected by the
9 department during the fiscal year just closed, and actual department expenditures for the fiscal year
10 just closed, the commissioner shall make an assessment of the ~~[institutions]~~ *entities* as follows:

11 (a) From banks ~~[and]~~, credit union, *and trust companies*. Each state-chartered
12 ~~[savings]~~ *depository* bank, ~~[commercial bank,]~~ trust company, ~~[cooperative bank, building and loan~~
13 ~~association,]~~ credit union, ~~[Morris Plan bank,]~~ or similar *entity, except family trust companies,*
14 ~~[institution required to be examined under the provisions of RSA 383:9]~~ shall be charged and pay
15 such proportion of said balance applicable to ~~[such institutions]~~ *the entity* under the ~~[banking]~~
16 department's accounting unit designation, as its total assets bear to the total assets of all ~~[such~~
17 ~~institutions]~~ *entities* as shown by their reports to the commissioner as of June 30 preceding such
18 charges, except that the percent of the fiduciary assets used in the calculation of the total assets of
19 each ~~[institution]~~ *entity* and all ~~[such institutions]~~ *entities* shall be determined as follows:

20 (1) Fiduciary assets up to \$5,000,000,000 shall be calculated at 25 percent;

21 (2) Fiduciary assets that are between ~~[\$5,000,000,000]~~ *\$5,000,000,001* and
22 \$10,000,000,000, shall be calculated at 20 percent;

23 (3) Fiduciary assets that are between ~~[\$10,000,000,000]~~ *\$10,000,000,001* and
24 \$15,000,000,000, shall be calculated at 15 percent;

25 (4) Fiduciary assets that are between ~~[\$15,000,000,000]~~ *\$15,000,000,001* and
26 \$20,000,000,000, shall be calculated at 10 percent;

27 (5) Fiduciary assets that are between ~~[\$20,000,000,000]~~ *\$20,000,000,001* and
28 \$25,000,000,000, shall be calculated at 5 percent;

29 (6) Fiduciary assets that are between ~~[\$25,000,000,000]~~ *\$25,000,000,001* and
30 \$50,000,000,000, shall be calculated at 2.5 percent;

31 (7) Fiduciary assets that are ~~[\$50,000,000,000]~~ *\$50,000,000,001* or more, shall be
32 calculated at one percent.

33 (8) *For purposes of this section, "fiduciary assets" means those assets*
34 *reported in accordance with RSA 383-A:5-511, except that the term excludes any fiduciary*
35 *asset that the entity holds, manages, or administers under an agreement with a*
36 *New Hampshire family trust company.*

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 8 -

1 (b) *From family trust companies. Each family trust company shall be charged*
2 *and pay such proportion of said balance applicable to all banks, credit unions, and trust*
3 *companies under the department's accounting unit designation, as its total assets bear to*
4 *the total assets of the entities as shown by their reports to the commissioner as of June 30*
5 *preceding such charges, except that the percent of the fiduciary assets used in the*
6 *calculation of the total assets of each family trust company shall be equal to 5 percent of*
7 *its fiduciary assets as reported on its report to the commissioner as of June 30 of the year*
8 *preceding the charges; however, the minimum amount chargeable shall be \$3,000 and the*
9 *maximum amount chargeable shall be established by the commissioner by rule, but shall*
10 *not exceed 5 percent of the total assessment for that year.*

11 (c) From ~~[non-depository lenders, debt adjusters, money transmitters, and brokers]~~
12 *consumer credit division entities.* Each ~~[licensee and registrant]~~ *entity* subject to the supervision
13 of the ~~[bank]~~ commissioner under the provisions of **RSA 361-A**, RSA 397-A, RSA 397-B, RSA 399-A,
14 RSA 399-D, **and** RSA 399-G, ~~[and sales finance companies under RSA 361-A,]~~ shall be charged and
15 shall pay such proportion of ~~[said]~~ *the* balance applicable to the consumer credit administration
16 division under the ~~[banking]~~ department's accounting unit designation as the gross revenue received
17 from the total dollar volume of loans made, originated, funded, or brokered, or debt adjustment
18 contracts entered into, or mortgage servicing fees received or money transmitted from each
19 ~~[licensee's]~~ *entity's* New Hampshire business bears to the total gross revenue received from the total
20 dollar volume of ~~[all such]~~ *the* loans made, originated, funded, or brokered, or debt adjustment
21 contracts entered into, or mortgage servicing fees received, or money transmitted, from
22 New Hampshire business by ~~[such licensees]~~ *all entities* during the preceding calendar year ending
23 December 31, as shown by their annual reports to the commissioner.

24 III. Except for ~~[institutions]~~ *entities* supervised under RSA 361-A, **RSA 397-A**, **RSA 397-B**,
25 **RSA 399-A**, **RSA 399-D** and **RSA 399-G** where the individual regulatory chapter specifies a shorter
26 time, payments of the charges provided for by paragraphs I and II shall be made within 60 days ~~[of]~~
27 *after the entity's* receipt of the notice ~~[thereof]~~ *of the charge.*

28 IV. Any excess collected in any fiscal year under the provisions of this section shall be used
29 to reduce the sum required to be collected in the next succeeding fiscal year.

30 272:14 New Section; Bank Commissioner; Special Assessment. Amend RSA 383 by inserting
31 after section 11-a the following new section:

32 383:11-b Special Assessment.

33 I. The commissioner may, as liquidator and in the name of any entity being liquidated, declare
34 and charge a special assessment to offset the cost of administering the liquidation from the group of all
35 other entities of the same type as the entity being liquidated in the manner set forth below:

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 9 -

1 (a) In the case of a liquidation of a depository bank, the commissioner as liquidator may
2 charge and collect the assessment from all other state-chartered depository banks.

3 (b) In the case of a liquidation of a credit union, the commissioner as liquidator may
4 charge and collect the assessment from all other state-chartered credit unions.

5 (c) In the case of a liquidation of a trust company, the commissioner as liquidator may
6 charge and collect the assessment from all other state-chartered trust companies.

7 II. Before declaring and charging the special assessment, the commissioner shall make
8 reasonable efforts to exhaust the liquid or near-liquid capital and assets of the entity being
9 liquidated, including in the case of a liquidation of a trust company, any assets that the trust
10 company pledged under RSA 383-C:5-503.

11 III. The commissioner shall only declare a special assessment in an amount that he or she
12 reasonably believes will be necessary for the administration of the liquidation, but in no event shall
13 the commissioner assess more than \$3,000,000 per liquidation of a depository bank, credit union, or
14 trust company. If, in connection with the liquidation of a specific entity, the commissioner
15 determines that additional funds above that limit are needed, then he or she may only make such
16 assessment in accordance with this section if he or she obtains prior approval from the governor and
17 executive council.

18 IV. The assessed moneys shall be designated for, and shall only be used for, the
19 administration expenses, as defined in RSA 395:30, I, of the liquidation. Any such funds used in
20 administration of the liquidation shall be entitled to be a priority claim as an administration cost in
21 the liquidation estate. Any such additional funds not used by the commissioner shall be returned to
22 each entity which paid into the assessment on a pro-rata basis in proportion to the amount that the
23 entities were charged.

24 V.(a) The special assessment shall be due and payable within 30 days after the
25 commissioner declares the assessment and so notifies each entity being assessed in writing. If any
26 entity refuses to obey the commissioner's order to pay the special assessment, then an action may be
27 brought by the attorney general on the commissioner's behalf in any superior court in this state. In
28 that action, an order, or judgment may be entered awarding:

29 (1) a temporary or permanent injunction,

30 (2) the assessed amount and any accumulated statutory fines to the commissioner,

31 and

32 (3) the costs in bringing the action to the attorney general.

33 (b) In addition to all of the court's customary powers, the court may enforce any
34 injunction issued under this paragraph by a fine not exceeding \$10,000 or by imprisonment, or both.

35 VI. The special assessment shall be calculated on a pro rata basis among the group of
36 entities in the same manner as the annual assessment is calculated in accordance with

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 10 -

1 RSA 383:11. The commissioner shall use the most recent June 30 figures for calculating the pro-
2 rata assessment.

3 VII. To satisfy its obligation to pay any special assessment, any trust company may
4 withdraw funds from its pledge account established under RSA 383-C:5-501. The trust company
5 shall replenish the amount withdrawn from that pledge account on the earlier of 18 months of the
6 withdrawal date or the date determined by the commissioner to be in the public interest. By petition
7 to the commissioner for approval, and upon showing of hardship, a trust company may seek to
8 lengthen the time of replenishment.

9 272:15 Bank Commissioner; Commissioner's Reports. Amend RSA 383:15 to read as follows:

10 383:15 Commissioner's Reports. The commissioner shall file with the governor and council his
11 or her annual report, which shall contain information concerning each ~~[institution]~~ **entity** under the
12 commissioner's supervision. The report shall also give the names of the officers of ~~[each institution]~~
13 **the banks, credit unions, and trust companies** and such other information as he or she may
14 deem necessary. The commissioner shall make such recommendations therein as he or she thinks
15 will promote the public good.

16 272:16 New Chapters; Banks, Credit Unions, Trust Companies, and Family Trust Companies.
17 Amend RSA by inserting after chapter 383 the following new chapters:

18 CHAPTER 383-A

19 BANK AND CREDIT UNION REGULATORY AND ENFORCEMENT

20 Article 1

21 General Provisions

22 383-A:1-101 Short Title. This chapter shall be known and cited as the "Bank and Credit Union Act."

23 383-A:1-102 Scope. Articles 1, 2, 4, 5, 6, and 7 of this chapter apply to state banks and credit
24 unions, except as otherwise expressly provided. Article 3 of this chapter applies only to state banks.
25 In addition, depository banks are governed by RSA 383-B, trust companies are governed by RSA 383-
26 C, family trust companies are governed by RSA 383-D, and credit unions are governed by RSA 383-
27 E. Article 6 of this chapter also applies to banks and bank holding companies involved in an act or
28 transaction with a state bank or credit union requiring the filing of a notice or an application with
29 the commissioner.

30 383-A:1-103 Reservation of Power to Amend or Repeal. The general court has power to amend
31 or repeal all or part of this chapter at any time, and all persons subject to this chapter are governed
32 by the amendment or repeal.

33 383-A:1-104 Commissioner. The commissioner shall have the powers necessary or incidental to
34 performing all of the commissioner's duties under this chapter, including the power to adopt rules as
35 provided in this chapter in accordance with RSA 541-A. All rules previously adopted by the
36 commissioner relating to the subject matter of this chapter shall be subject to RSA 541-A:17.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 11 -

Article 2

Definitions

383-A:2-201 Definitions.

(a) For purposes of RSA 383, RSA 383-A, RSA 383-B, RSA 383-C, RSA 383-D, and RSA 383-E, the following definitions shall apply:

(1) “Affiliate” shall have the same meaning as in 12 U.S.C. section 371c(b)(1), as amended from time to time.

(2) “Association member” means a person who has a right to vote in a savings association. The rights of association members are set forth in RSA 383-B:6-605(b).

(3) “Bank” means a state bank, national bank, federal savings bank, or foreign state bank.

(4) “Bank holding company” means an entity which is a bank holding company under the Federal Bank Holding Company Act of 1956, or a federal savings and loan company under the Federal Home Owners’ Loan Act, as may be amended from time to time.

(5) “Banking Acts” means the Bank and Credit Union Act (RSA 383-A), the Depository Bank Act (RSA 383-B), the Trust Company Act (RSA 383-C), and the Family Trust Company Act (RSA 383-D).

(6) “Banking business” means a banking business as described in article 3 of RSA 383-B.

(7) “Board of directors” means the board of directors or trustees of a corporation or the board of managers of a limited liability company.

(8) “Bond” means debt obligation issued under indenture or deed of trust.

(9) “Capital debenture” means an unsecured debt obligation issued by any bank to provide capital.

(10) “Combination” means a merger or consolidation by and between entities or a purchase and assumption of substantially all of the assets and liabilities by one entity of another entity.

(11) “Commissioner” means the New Hampshire bank commissioner.

(12) “Corporate security” means a debt security, preferred stock, or common stock of a publicly held corporation, except a government corporation, existing under the laws of the United States or any state thereof.

(13) “Corporation Act” means RSA 293-A or any replacement or successor New Hampshire statutes.

(14) “Corporator” means an incorporator of a mutual savings bank or mutual holding company, any person chosen as a successor to an incorporator, and any person who is elected by the other corporators of a mutual savings bank or mutual holding company to serve as a corporator of the mutual savings bank or mutual holding company in accordance with its organizational

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 12 -

1 documents. The rights and duties of incorporators are set forth in RSA 383-B:6-605(a).

2 (15) “Credit union” means (i) an entity that is organized under RSA 383-E, or (ii) an
3 entity that was organized under the prior laws of this state and was authorized to operate as a credit
4 union. If the term is modified by the words “federal” or “foreign,” then the modification is intended
5 to clarify distinctions between New Hampshire-chartered credit unions and credit unions chartered
6 by federal or other state regulatory authorities.

7 (16) “Debt security” means a bond, note, debenture, or other debt obligation.

8 (17) “Department” means the New Hampshire banking department.

9 (18) “Deposit” means a deposit defined under 12 U.S.C. section 1813(l).

10 (19) “Deposit account” means an account owned by a depositor.

11 (20) “Depositor” means any person who makes a deposit.

12 (21) “Depository bank” means (i) an entity that is organized under the laws of this
13 state and is authorized to engage in a banking business under RSA 383-B, or (ii) any type of entity
14 that was organized under the prior laws of this state as a trust company, mutual bank, guaranty
15 savings bank, or other banking entity and was authorized to accept deposits and make loans.

16 (22) “Director” means a member of a board of directors.

17 (23) “Entity” means a person other than a natural person.

18 (24) “Exchange” means the New York Stock Exchange, NASDAQ, the Over-The
19 Counter Market (as quoted on the OTC Bulletin Board), or any other exchange approved by the
20 commissioner on which securities are listed and traded.

21 (25) “Executive officer” means a president, executive vice president, senior vice
22 president, treasurer, or any other officer with discretion or ability to set policy or manage or direct
23 affairs of a bank.

24 (26) “Family trust company” means (i) a trust company that is organized under the
25 laws of this state and authorized to engage in trust business under RSA 383-D, or (ii) any entity that
26 was organized as a family trust company under the prior laws of this state.

27 (27) “Federal savings bank” means any savings bank or savings association
28 organized under federal law.

29 (28) “Foreign state bank” means a bank chartered by a state other than New
30 Hampshire which is authorized to accept deposits.

31 (29) “Include” or “including” means to comprise or comprehend any item listed
32 following the use of the term and any other item that is reasonably implied from the context of its
33 use. The term is intended to be expansive rather than restrictive.

34 (30) “Investment grade debt security” means a debt security that is issued by an
35 issuer which has an adequate capacity to meet financial commitments for the life of the security. An
36 issuer has adequate capacity to meet its financial commitments if the risk of default is low and the

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 13 -

1 full and timely repayment of principal and interest is expected.

2 (31) “Investor-owned bank” means a bank other than a mutual bank.

3 (32) “LLC Act” means RSA 304-C or any replacement or successor New Hampshire
4 statutes.

5 (33) “Mutual bank” means a mutual savings bank or savings association.

6 (34) “Mutual holding company” means (i) an entity that is organized under the laws
7 of this state to become, or continues in mutual form as, the majority shareholder of a mutual bank
8 following its reorganization into a bank holding company structure, or (ii) an entity that was
9 organized as a mutual holding company under the prior laws of this state.

10 (35) “Mutual savings bank” means (i) a depository bank that is organized under
11 the laws of this state, is owned by its depositors and has incorporators who elect directors and vote
12 on corporate matters as provided in RSA 383-B:6-605(a), or (ii) a depository bank that was
13 organized as a mutual savings bank under the prior laws of this state.

14 (36) “National bank” means any national bank or banking association organized
15 under the National Bank Act, as may be amended from time to time.

16 (37) “New Hampshire bank holding company” means a bank holding company that
17 owns or controls one or more depository banks with respect to which the largest amount of total
18 deposits of these banks is located in New Hampshire.

19 (38) “Note” means a debt obligation issued under terms and conditions specified in
20 the note instrument.

21 (39) “NRSRO” means a nationally recognized statistical rating organization
22 designated by the U.S. Securities and Exchange Commission. Ratings of any NRSRO relied upon
23 under this chapter shall be expressed in accordance with standard rating categories.

24 (40) “Obligation” means a debt security issued or assumed by an obligor and
25 unconditionally guaranteed as to the payment of principal and interest by the obligor.

26 (41) “Organizations Act” means either the Corporation Act or the LLC Act; and
27 “Organizations Acts” means the Corporation Act and the LLC Act.

28 (42) “Organizational instrument” means the articles of incorporation or articles of
29 agreement of a bank organized as a corporation, the certificate of formation of a bank organized as a
30 limited liability company, or the bylaws of a credit union.

31 (43) “Organizational documents” means the organizational instrument, the bylaws of
32 a corporation, the operating agreement of a limited liability company, the bylaws of a credit union,
33 and other documents governing the organization of a bank or a credit union or the conduct of its
34 business.

35 (44) “Organizer” means a person or persons who organize a bank under article 3 of
36 this chapter or a credit union under RSA 383-E.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 14 -

1 (45) “Person” means a natural person or entity.

2 (46) “Public obligation” means a debt security of the United States of America, any
3 state, any state entity, any sovereign nation, or any governmental unit of a sovereign nation.

4 (47) “Regulatory authority” means a state or federal governmental agency,
5 department or body, other than the commissioner and the department, having supervisory authority
6 over banks or credit unions or regulatory authority over their banking or credit union activities. The
7 term may be modified by the words “federal” or “foreign” to clarify its meaning.

8 (48) “Savings association” means (i) a depository bank that is organized under the
9 laws of this state, is owned by its depositors and has association members who elect directors and
10 vote on corporate matters as provided in RSA 383-B:6-605(b), or (ii) a depository bank that was
11 organized as a cooperative bank, building and loan association, or savings and loan association under
12 the prior laws of this state.

13 (49) “State bank” means a depository bank, a trust company, or family trust
14 company.

15 (50) “State entity” means any governmental unit of a state, such as a county, city,
16 town, district, village district, school district or precinct and shall be included in the definition of
17 “entity.”

18 (51) “Trust business” means a trust business as described in article 3 of RSA 383-C.

19 (52) “Trust company” means (i) an entity organized under the laws of this state that
20 is authorized to engage in a trust business under RSA 383-C, but is not authorized to accept
21 deposits, or (ii) any entity that was organized as a trust company under the prior laws of this state
22 but was not authorized to accept deposits.

23 (53) “Unit investment trust” means a fund created under a trust agreement which is
24 registered as a unit investment trust under the Investment Company Act of 1940, as amended from
25 time to time.

26 (54) “Years” means calendar years, fiscal years or nearer periods of 12 months next
27 preceding a referenced date.

28 (b) Whenever a federal law or rule is referenced by incorporation in the Bank and Credit
29 Union Regulatory Enforcement Act, the Depository Bank Act, the Trust Company Act, the Family
30 Trust Company Act, or the Credit Union Act, the reference is to the law or rule as may be amended
31 from time to time.

32 Article 3

33 Organization of State Banks

34 383-A:3-301 Organization of Banks. This article shall govern the organization of state banks.
35 The commissioner may adopt rules relating to the forms and procedures related to the organization
36 of state banks, amendment of their charters and the use of names under this article.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 15 -

1 383-A:3-302 Organizer. In the case of a state bank to be incorporated as a corporation, the
2 organizer shall be the person or persons who will be the incorporator or incorporators of the
3 corporation for purposes of the Corporation Act. In the case of a state bank to be organized as a
4 limited liability company, the organizer shall be the person or persons who will be an authorized
5 person or persons for purposes of the LLC Act.

6 383-A:3-303 Type of Entity; Conversion.

7 (a) A state bank may be organized as a corporation under the Corporation Act or as a
8 limited liability company under the LLC Act.

9 (b) A state bank organized as a corporation may convert to a limited liability company in
10 accordance with the Organizations Acts. A state bank organized as a limited liability company may
11 convert to a corporation in accordance with the Organizations Acts.

12 383-A:3-304 Organizational Instrument; Name.

13 (a) The organizational instrument shall comply with the requirements of the
14 Corporation Act if the state bank is organized as a corporation or the LLC Act if the state bank is
15 organized as a limited liability company. In addition to the information required by the applicable
16 Organizations Act, the organizational instrument shall set forth (i) the state bank's powers, (ii) a
17 statement describing any limitation on its powers, (iii) if there is any limit on transferability of
18 shares or ownership interests, a statement that the limitation shall exclude any transfer required by
19 lawful order of the commissioner, and (iv) any additional information or statements that the
20 commissioner may require as a condition of the state bank's charter.

21 (b) The organizer or any person seeking to file an application to organize a state bank
22 may reserve a name for the bank by requesting approval from the commissioner. If the
23 commissioner approves of the name, then the reserved name may be filed with the secretary of state,
24 together with a fee charged by the secretary of state for the filing of a corporate or limited liability
25 company name reservation. If an application to organize a state bank is filed with the commissioner,
26 then the secretary of state shall reserve the name for the exclusive use of the organizer for the
27 duration of the proceedings. If the organizer abandons the application or the commissioner denies
28 the application, then the organizer shall cancel the name reservation by filing with the secretary of
29 state a notice of cancellation. The state bank shall not have or use a name that is likely to mislead
30 the public concerning the nature or scope of its powers or purposes. The state bank shall not have or
31 use a name that is the same or confusingly similar to the name of another entity, unless the
32 commissioner and the other entity consent to the state bank's use of that name.

33 383-A:3-305 Application.

34 (a) The organizer of a state bank shall apply for a charter by filing an application
35 under RSA 383-A:6-602. The commissioner shall prescribe the form of the application. The form
36 shall specify information required to process the application for the type of state bank to be

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 16 -

1 organized. The information shall include: the name of the state bank; the address of the state
2 bank's principal office; the state bank's registered agent and registered office; the name and
3 address of each organizer; the name, address, background, and experience of the proposed
4 directors and the executive officers; the name, address, and equity interest of each person
5 holding 10 percent or more of the state bank's voting interests or other beneficial interests; the
6 proposed organizational documents, including the organizational instrument executed by the
7 organizer; a capital plan for the first 5 years of operations, including a statement as to the
8 amount of the proposed initial capital, an explanation as to why that amount of capital is
9 adequate for its business operations, and the sources and uses of capital; a business plan
10 describing the business of the state bank, the customers or markets that it intends to serve, and
11 its business strategy for the first 5 years of operation; pro forma financial statements for the
12 first 5 years of operations; and any other facts or circumstances deemed relevant to the
13 application by the commissioner.

14 (b)(1) The commissioner shall review the application, and, within 30 days of its receipt,
15 determine if it is substantially complete. An application is complete if it contains all the information
16 required in subsection (a) and RSA 383-A:3-304, the organizer has paid the application fee, and the
17 application meets all other requirements as the commissioner may prescribe by rule. If the
18 application is deemed to be incomplete, then the commissioner shall notify the organizer, and the
19 organizer shall have 30 days to provide the required information.

20 (2) If the commissioner determines that the application is substantially complete
21 under subsection (b)(1), then he or she shall so notify the organizer, and, within 30 days, the
22 organizer shall cause a public notice of the application to be published in a newspaper of general
23 circulation or other media acceptable to the commissioner. The form of public notice shall be
24 prescribed by the commissioner. The notice shall state a date before which objections may be filed,
25 which date shall not be earlier than 14 days after the publication of the notice. Within the time
26 specified, any interested person may file with the commissioner a statement of objection to the
27 granting of the application.

28 (c) At any time after being submitted, the commissioner may deem the application to be
29 abandoned if the organizer fails to furnish required information and certifications or the required fee
30 within 30 days after a request made by the commissioner.

31 (d) If the commissioner determines that the application is substantially complete, then
32 he or she shall promptly conduct an examination of all relevant facts connected with the
33 organization of the state bank. The commissioner may examine the following factors:

34 (1) Whether the proposed organizational structure is adequate to manage the
35 proposed state bank.

36 (2) Whether the proposed capital as set forth in the capital plan is adequate in

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 17 -

1 relation to the proposed business of the proposed state bank.

2 (3) Whether the business plan sets forth a reasonable basis to indicate a reasonable
3 probability of success and profitability.

4 (4) Whether the proposed executive officers and directors collectively, have sufficient
5 experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the
6 proposed state bank will be free from improper or unlawful influence and otherwise will operate in
7 compliance with law.

8 (5) Whether the proposed name of the proposed state bank is likely to mislead the
9 public as to its character or purpose or is the same as a name already adopted by an existing state
10 bank in this state or so similar to a name already in use by a bank or another entity as to be likely to
11 mislead the public.

12 (6) Any other factor relevant to the type of state bank being proposed, as the
13 commissioner may determine.

14 (e)(1) The commissioner may require a background investigation and criminal history records
15 check on any one or more of the organizer, directors, and executive officers. The commissioner may
16 also require a background investigation and criminal history records check on any natural person
17 who directly or indirectly, or with a group of persons acting in concert, has the right to vote 10
18 percent or more of voting interests or owns 10 percent or more of the beneficial interests in the
19 proposed state bank. The commissioner may also require financial and other information from any
20 entity that on its own or collectively with its directors, executive officers, and other persons, holds 10
21 percent or more of the voting interests or 10 percent or more of the beneficial interests in the
22 proposed state bank.

23 (2) For purposes of this subsection, the following groups of persons shall be
24 presumed to be acting in concert: (i) an entity and any shareholder, member, partner, trustee, or
25 executive officer of the entity, if both the entity and the person hold directly or indirectly voting
26 interests or beneficial interests in the proposed state bank, (ii) a person and the person's immediate
27 family which hold directly or indirectly voting interests or beneficial interests in the proposed state
28 bank; or (iii) entities under common control of those persons.

29 (3) If required by the commissioner, the persons described in subsections (e)(1) and
30 (e)(2) shall submit to the department a notarized criminal history records release form, as provided
31 by the New Hampshire department of safety, division of state police, which authorizes the release of
32 the person's criminal records, if any, and a complete set of fingerprints taken by a qualified law
33 enforcement agency or an authorized employee of the department. If the first set of fingerprints is
34 invalid due to insufficient pattern, then a second set of fingerprints may be necessary in order to
35 complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due
36 to insufficient pattern, then, in lieu of the criminal history records check, the department may accept

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 18 -

1 police clearances from every city, town, or county where the person has lived during the past 5 years.

2 (4) The commissioner shall submit the criminal history records release form to the
3 division of state police which shall conduct a criminal history records check through its records and
4 through the Federal Bureau of Investigation. Upon completion of the background investigation, the
5 division of state police shall release copies of the criminal conviction records to the department. The
6 department shall maintain the confidentiality of all criminal history records information received
7 under this subsection.

8 (5) Notwithstanding subsections (e)(1) through (e)(4), if the state bank is organized
9 on an interim basis for the sole purpose of effecting either a reorganization of a state bank into a
10 holding company structure or the acquisition of a foreign state bank by a bank holding company,
11 then the holding company may organize and be the sole organizer of the interim state bank, and only
12 the persons who will serve as directors or executive officers of the resulting state bank and are not
13 already serving as directors or executive officers of the existing state bank shall be required to
14 comply with subsections (e)(1) through (e)(4).

15 (6) The commissioner may require the organizer to pay the actual costs of each
16 background investigation and criminal history records check.

17 (f) All documents and communications submitted in connection with an application,
18 which are classified as confidential under RSA 383:10-b, and all records of investigations and reports
19 of examinations by the commissioner related to the application shall be treated as confidential and
20 subject to RSA 383:10-b.

21 383-A:3-306 Investigative Powers. For the purpose of any investigation under RSA 383-A,
22 RSA 383-B, RSA 383-C, RSA 383-D, and RSA 383-E, the commissioner shall have the power to
23 subpoena witnesses and administer oaths in any adjudicative proceedings and the power to compel,
24 by subpoena duces tecum, the production of all books, records, files, and other documents and
25 materials relevant to his or her investigation.

26 383-A:3-307 Hearing. The commissioner may order within his or her discretion a public hearing
27 on the application. The commissioner may approve or deny the application with or without a public
28 hearing. Any required public hearing shall be held at the time and place fixed by the commissioner
29 and a notice of the hearing shall be published in accordance with RSA 91-A.

30 383-A:3-308 Action on Application.

31 (a) If the commissioner determines that the application meets all of the requirements of
32 this chapter and other applicable federal and state laws, then the commissioner shall grant a charter
33 to the state bank by (i) issuing a notice of approval of the organization of the state bank, subject to
34 the terms and conditions as determined by the commissioner, and (ii) endorsing the state bank's
35 organizational instrument to indicate the commissioner's approval.

36 (b) If the application is denied, then it shall be dismissed. After an application's

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 19 -

1 dismissal, no new application concerning the same proposal may be filed within one year thereafter,
2 unless, in his or her discretion for good cause shown, the commissioner consents to the filing of the
3 new application.

4 (c) If the commissioner determines that the application does not satisfy the standards in
5 subsection (a), but could satisfy the standards if the application were revised, then he or she shall so
6 notify the organizer, and the organizer may refile the application under RSA 383-A:6:602.

7 383-A:3-309 Record of Organizational Instrument. Within 90 days after the grant of the
8 charter, the organizer shall file with the secretary of state the executed organizational instrument
9 bearing the commissioner's endorsement. The secretary of state, upon payment of a fee equal to the
10 fee charged by the secretary of state to business corporations under the Corporation Act if the state
11 bank is organized as a corporation or the fee charged to limited liability companies under the LLC
12 Act if the state bank is organized as a limited liability company, shall cause the charter to be
13 recorded.

14 383-A:3-310 Certificate of Organization. Upon filing a state bank's charter under RSA 383-A:3-
15 309, the secretary shall issue a certificate of organization in the following form:

STATE OF NEW HAMPSHIRE

16
17 Be it known, that whereas (the name or names of the organizer of the state bank) (has or have)
18 the intention of forming a bank under the name of (the name of the state bank), for the purpose (the
19 purpose declared in the organizational instrument,) and (has or have) complied with the provisions
20 of the statutes of this state as duly approved by the commissioner and recorded in this office: Now,
21 therefore, I (the name of the secretary), secretary of state, do hereby certify that the (the name the
22 state bank), is legally organized and established as an existing bank, with the powers, rights and
23 privileges, and subject to the limitations, duties, and restrictions, which by law appertain thereto.

24 Witness my official signature hereunto subscribed, and the seal of the state hereunto affixed,
25 this _____ day of _____ in the year _____ (the date of the filing of the organizational
26 instrument).

27 The secretary of state shall sign the certificate of organization and cause the seal of the state to
28 be affixed to the certificate, and the certificate shall have the force and effect of a special charter.

29 383-A:3-311 Certificate or Record as Evidence. Upon filing a state bank's charter under
30 RSA 383-A:3-309, the secretary of state shall also cause a record of the certificate of organization to
31 be made, and the certificate, or a record or a certified copy of the certificate, shall be conclusive
32 evidence of the existence of the state bank.

33 383-A:3-312 When Organized; Beginning Business. The existence of the state bank shall begin
34 upon the filing of the organizational instrument with the secretary of state. Any state bank
35 organized under this chapter shall complete its organization and obtain a certificate to engage in
36 business under RSA 383-A:3-315 within 2 years from the date of its organization; otherwise its

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 20 -

1 charter shall be void, unless the commissioner, for good cause shown, grants one extension for not
2 more than one year.

3 383-A:3-313 Charter Rights; Liability.

4 (a) Following the approval of the application by the commissioner and the filing of the
5 organizational instrument with the secretary of state, the organizer of a state bank shall hold the
6 rights to the charter.

7 (b) The organizer and all persons purporting to act as or on behalf of a state bank shall
8 be personally, jointly, and severally liable for any liability created on behalf of the state bank before
9 the filing of the state bank's organizational instrument with the secretary of state.

10 (c) The organizer and all other persons purporting to act as or on behalf of a state bank
11 before the commissioner issues a certificate to the state bank authorizing it to begin the transaction
12 of business under RSA 383-A:315 shall be personally, jointly, and severally liable for all liabilities in
13 connection with engaging in any unauthorized banking business.

14 383-A:3-314 Completion of Organization. The organizer shall submit evidence to the
15 commissioner that it has (i) adopted bylaws if a corporation or an operating agreement if an LLC, (ii)
16 elected or caused to be elected, the directors and officers required by its organizational documents,
17 and (iii) satisfied all other requirements of the charter.

18 383-A:3-315 Authorizing Business. Upon receipt of the information described in RSA 383-A:3-
19 314, the commissioner shall cause an examination to be made. If the commissioner determines that
20 all requirements of the approval have been satisfied, then the commissioner shall issue a certificate
21 authorizing the state bank to begin the transaction of business. The cost of the examination shall be
22 paid by the state bank.

23 383-A:3-316 Amendment of Organizational Instrument.

24 (a) Except as provided in subsection (b), a state bank that intends to amend its
25 organizational instrument shall file with the commissioner an application to do so under RSA 383-
26 A:6-602 and ask for approval of the amended organizational instrument based on the considerations
27 set forth in RSA 383-A:3-305(d), as applicable.

28 (b) In the case of a change of a registered office or registered agent, the state bank shall
29 file a statement of change with the secretary of state in the manner required by the applicable
30 Organizations Act, and it shall file a copy with the commissioner.

31 383-A:3-317 Procedure for Filing Amended Organizational Instrument; Effect. If the application
32 for amendment of an organizational instrument of a state bank is approved by the commissioner,
33 then the state bank shall file with the secretary of state the approved amendment, certified by the
34 secretary of the state bank, with the approval of the commissioner endorsed on the amendment, and
35 pay the fee charged by the secretary of state under the applicable Organizations Act. The secretary
36 of state shall cause the amendment bearing the commissioner's endorsement to be recorded and shall

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 21 -

1 issue a certificate of the amended organizational instrument, which shall conform as nearly as may
2 be to the form prescribed in RSA 383-A:3-310. The state bank shall have all the powers and
3 privileges provided for by the amended organizational instrument.

4 383-A:3-318 Material Change in Operating Conditions. If a board of directors of a state bank
5 proposes to make a material change in the business plan, capital plan, or other factors considered by
6 the commissioner in granting a charter to the state bank within 5 years of its receipt of a certificate
7 to engage in business under RSA 383-A:3-315, then the board of directors may not make the change
8 unless it gives notice of the change to the commissioner as provided in RSA 383-A:6-602 and it is
9 permitted to do so by the commissioner.

10 383-A:3-319 Rules of Construction; Procedural Requirements Regarding Filings.

11 (a) The applicable Organizations Act shall govern the internal affairs of state banks,
12 except that, if there are any conflicts or inconsistencies under an Organizations Act with the
13 provisions of the Banking Acts, the applicable provisions of the Banking Acts shall prevail.

14 (b) Except as provided in subsection (c) or RSA 383-A:3-316(b), all documents that may
15 be filed or are required to be filed with the secretary of state under an Organizations Act shall be
16 filed first with the commissioner. The commissioner shall review the documents and may give his or
17 her approval to them subject to reasonable conditions that he or she may impose. Any documents so
18 approved by the commissioner shall be then filed with the secretary of state in conformity with the
19 applicable Organizations Act.

20 (c) A state bank organized as a corporation is exempt from filing annual reports and from
21 administrative dissolution under the Corporation Act, and a state bank organized as a limited liability
22 company is exempt from filing annual reports and from administrative dissolution under the LLC Act.

23 383-A:3-320 Names Relating to State Banks. Any state bank that intends to use a name in the
24 conduct of its business that differs from the name of the state bank and any person that intends to
25 use a name in New Hampshire that contains the words “banking,” “bank,” “trust company,” “bank
26 holding company,” “bancorp” or other names of similar import shall be required to obtain the
27 approval of the use of the name from the commissioner before registering the name with the
28 secretary of state. The approval shall accompany an application to register the name with the
29 secretary of state. A state bank or other person shall not have or use a name that is likely to mislead
30 the public concerning the nature or scope of its powers or purposes. A state bank or other person
31 shall not have or use a name that is the same or confusingly similar to the name of another entity,
32 unless the commissioner and the other entity consent to the use of that name.

33 Article 4

34 Capital, Fidelity Bond, and Errors and Omissions Insurance

35 383-A:4-401 Capital, Fidelity Bond, and Insurance Requirements. This article sets forth the
36 capital, fidelity bond, and errors and omissions insurance requirements for state banks and credit

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 22 -

1 unions. The commissioner shall have the power to adopt rules relating to the type and amount of
2 capital, fidelity bond, and insurance to meet the requirements of this article.

3 383-A:4-402 Capital Maintenance. After it is organized, a state bank shall maintain a minimum
4 level of capital required by the commissioner to operate in a safe and sound manner based upon his
5 or her examination of the bank. The commissioner may require any state bank to increase its capital
6 from time to time as may be necessary for its safe and sound operation. A board of directors may
7 increase the capital of the state bank at any time and shall give notice to the commissioner of any
8 increase within 30 days of receiving the additional capital. The board of directors of a state bank
9 may not reduce its capital, unless it files an application for approval of the proposed change to the
10 commissioner as provided in RSA 383-A:6-602 and it is permitted to do so by the commissioner.

11 383-A:4-403 Capital Debentures. For the purpose of strengthening its financial condition,
12 subject to the approval of its board of directors, a state bank may receive contributions to its capital
13 funds and in consideration for those funds may issue capital debentures to any person. The board of
14 directors may not issue the capital debentures unless (i) it files an application for approval of the
15 issuance of the capital debenture under RSA 383-A:6-602 specifying the principal amount of capital
16 debentures which it proposes to issue, the terms and conditions of the debentures including interest
17 rate and retirement provisions, the name of any bank or other persons proposing to purchase capital
18 debentures, the principal amount of debentures which it proposes to purchase, and its reasons for
19 issuing those debentures, and (ii) is permitted to issue the debentures by the commissioner. Capital
20 debenture shall be considered legal investments for any person named in the plan. Capital
21 debentures may be retired only from earnings unless otherwise authorized by the commissioner.

22 383-A:4-404 Redemption of Shares. A state bank may redeem shares of its capital stock if (i) the
23 redemption is conducted in accordance with the provisions of its organizational documents, (ii) the
24 remaining capital exceeds the minimum capital required by this chapter, and (iii) the board of
25 directors determines that the redemption will not jeopardize the safe and the sound operation of the
26 state bank based on a diligent review of all applicable facts and circumstances then known to them.
27 The board of directors shall not make a proposed redemption unless it gives notice of the proposed
28 redemption to the commissioner as provided in RSA 383-A:6-602 and it is permitted to do so by the
29 commissioner.

30 383-A:4-405 Fidelity Bond.

31 (a) A state bank or credit union shall maintain a fidelity bond that provides protection
32 against losses from (i) any dishonest or criminal act of any person, including any of its directors, officers,
33 employees, and agents, and (ii) any act such as robbery, burglary, or forgery by a person not associated
34 with the bank. The board of directors shall review the fidelity bond annually, or more often as
35 circumstances require, to evaluate the adequacy of the amount of coverage. A bank or credit union shall
36 give notice to the commissioner if the coverage is decreased by 25 percent or more under RSA 383-A:6-

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 23 -

1 602.

2 (b) From time to time, the commissioner may reduce or increase the amount of the
3 fidelity bond that a state bank or credit union is required to maintain. At no time shall the amount
4 fall below the minimum required by the commissioner.

5 (c) The policy shall require that the fidelity insurer notify the commissioner within 10
6 days after the cancellation or nonrenewal of the fidelity bond.

7 383-A:4-406 Errors and Omissions Liability Insurance.

8 (a) A state bank or credit union shall maintain a liability policy that insures against
9 losses that any of its customers incurs by reason of the errors and omissions of the state bank or
10 credit union or any of its directors, officers, employees, and agents. The board of directors shall
11 review the liability policy annually, or as circumstances require, to evaluate the adequacy of
12 coverage. A bank or credit union shall give notice to the commissioner if coverage is decreased by 25
13 percent or more under RSA 383-A:6-602.

14 (b) From time to time, the commissioner may reduce or increase the amount of insurance
15 coverage that a state bank or credit union is required to maintain. At no time shall the amount of
16 insurance fall below the minimum required by the commissioner.

17 (c) The policy shall require that the errors and omissions insurer notify the
18 commissioner within 10 days after the notice of cancellation or nonrenewal of the insurance policy.

19 Article 5

20 Management and Operations

21 383-A:5-501 Management and Operations. This article sets forth general provisions that apply
22 to state banks and credit unions as specified and is supplemented by other provisions in the Banking
23 Acts and the Credit Union Act. The commissioner shall have the power to adopt rules relating to the
24 forms and procedures related to filings required under this article.

25 383-A:5-502 Board of Directors. Each state bank and credit union shall have a board of
26 directors elected or appointed in accordance with its organizational documents. No director shall
27 serve on a board until he or she accepts his or her election or appointment in writing, which
28 acceptance shall be maintained in the records of the state bank or credit union.

29 383-A:5-503 Notice of Election. Within 30 days after the acceptance by a director of a state bank
30 or credit union of his or her election or appointment, the state bank or credit union shall notify the
31 commissioner of the name and residence address of the director who was elected or appointed.

32 383-A:5-504 Officers. The board of directors of a state bank or credit union shall elect or appoint
33 a president, a treasurer, a secretary, and the other officers as prescribed in its organizational
34 documents. The officers shall be elected or appointed no less frequently than once every 3 years and
35 shall hold office subject to the pleasure of the board of directors.

36 383-A:5-505 Responsibilities of Directors and Officers of State Banks.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 24 -

1 (a) All of a state bank’s powers shall be exercised by or under the authority of its board
2 of directors, and the business and affairs of the state bank shall be managed by or under the
3 direction, and subject to the oversight, of its board of directors, subject to any limitation set forth in
4 the organizational documents.

5 (b) The board shall establish the policies and procedures for the conduct of the affairs of the
6 state bank and shall supervise the affairs of the state bank to ensure that those policies and procedures
7 are being adhered to by its officers and employees and that its operations are in compliance with federal
8 and state laws and the state bank’s organizational documents. Neither the board of directors nor
9 individual directors may delegate their duty to supervise the affairs of the state bank.

10 (c) Subject to its oversight and any limitation set forth in the organizational documents,
11 the board of directors of a state bank may delegate to one or more persons any powers and duties
12 that the board of directors deems appropriate. The delegation of duties and powers to or the action
13 by a delegatee does not alone constitute a director’s compliance with the standards of conduct
14 described in subsection (b). Each delegatee shall be subject to the same standards of conduct to
15 which a director is subject under subsection (b).

16 (d) Each director of a state bank shall discharge his or her duties under the same
17 standards that exist for a director of a business corporation under the Corporation Act except that:

18 (1) A director of a state bank which serves as a fiduciary shall be subject to a
19 fiduciary duty when he or she is acting on matters related to the bank’s fiduciary activities; and

20 (2) A director of a mutual bank shall be subject to a fiduciary duty when he or she is
21 acting on matters related to the proprietary interests of depositors or association members, as applicable.

22 (e) The president shall be responsible for carrying out the policies and procedures of the
23 board and managing the day-to-day affairs of the state bank and shall be accountable to the board of
24 directors in the performance of his or her duties. Each officer with discretionary authority shall
25 discharge his or her duties under the same standards that exist for an officer of a business corporation
26 under RSA 293-A:8.42 except that an officer of a state bank which serves as a fiduciary shall be subject to
27 a fiduciary duty when he or she is acting on matters related to the bank’s fiduciary activities.

28 (f) The board of directors of a bank may declare dividends from the bank’s net earnings
29 remaining after deducting all losses and expenses from the 2 most recent fiscal years. The board of
30 directors may also declare dividends from its cumulative retained earnings from the previous fiscal
31 years, provided that it remains well capitalized after the declaration of the dividend under the
32 regulations of the Federal Deposit Insurance Corporation.

33 383-A:5-506 Committees.

34 (a) Subject to its oversight and any limitation set forth in the organizational documents,
35 the board of directors of a state bank may create one or more committees, delegate to each committee
36 any powers and duties that the board of directors deems appropriate, and appoint one or more

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 25 -

1 directors, officers, and other natural persons to serve on each committee.

2 (b) Each member of a committee shall be subject to the same standards of conduct to
3 which a director is subject under RSA 383-A:5-505(b).

4 (c) Each committee shall keep minutes of its activities and shall report to the board of
5 directors as frequently as the board of directors requires.

6 (d) The creation of, delegation of power or duties to, or action by a committee does not alone
7 constitute a director's compliance with the standards of conduct described in RSA 383-A:5-505(b).

8 **383-A:5-507 Meetings; Records.**

9 (a) The board of directors of a state bank or credit union shall meet on a regular basis as
10 often as necessary but not less than the minimum number of meetings required by applicable law.

11 (b) Minutes of each meeting shall be kept, showing the names of the directors who are
12 present and describe the activities, matters discussed, and votes taken at the meeting.

13 (c) The attendance of a majority of the board of directors shall be required for a quorum
14 to conduct business.

15 (d) The board of directors shall adopt a policy providing standards for determining the
16 number of absences by directors from meetings of the board or the committees which could result in
17 the removal of a director from office.

18 **383-A:5-508 Action Without Meeting.** Unless the organizational documents of a state bank or
19 credit union provide otherwise, any action to be taken at a meeting of the board of directors or
20 committee may be taken without a meeting under and consistent with any provision of the
21 applicable Organizations Act permitting the action.

22 **383-A:5-509 Annual Audits; Reports.**

23 (a) The board of directors of a state bank or credit union shall engage a certified public
24 accountant, at least annually, to serve as its auditor. Each state bank or credit union shall give
25 notice to the commissioner of its engagement of an auditor at the time of its engagement and shall
26 require its auditor to confirm the engagement to the commissioner within 30 days of the
27 engagement. Each state bank or credit union shall give notice to the commissioner of the
28 termination of the engagement of an auditor at the time of the termination and shall require the
29 auditor to confirm the termination to the commissioner within 30 days of the termination.

30 (b) Any auditor engaged under subsection (a) shall examine the books, accounts, and
31 operating systems of the state bank or credit union in such a manner as in his or her judgment will
32 result in an audit that is in agreement with generally accepted accounting standards.

33 (c) Each state bank or credit union shall direct its auditor to provide, and the auditor
34 shall provide, the commissioner with a copy of its audit report, within 60 days after each is made
35 available to the state bank or credit union. All reports, memoranda, and correspondence remain the
36 property of the individual state bank or credit union.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 26 -

1 (d) In the course of his or her regular official examination of the state bank or credit
2 union and at such other times that he or she considers advisable, the commissioner shall review and
3 analyze the work and reports of the accountants and auditors. The auditors shall provide the
4 commissioner with the work and reports as the commissioner may reasonably request provided the
5 request is limited to matters that relate to the safety and soundness of the state bank or credit
6 union. If the commissioner determines that any audit is inadequate or substantially violates the
7 provisions of this section, then the commissioner shall report his or her findings with instructions to
8 the board of directors, who, within 30 days after receiving that report, shall cause the state bank or
9 credit union to comply with the report and instructions.

10 383-A:5-510 Reports of Condition.

11 (a) Each state bank or credit union shall balance its books at the close of business on the
12 last business day in December in each year and, within 30 calendar days thereafter, shall make
13 reports to the commissioner, upon forms furnished by the commissioner, showing the true conditions
14 of the state bank or credit union at that time. The commissioner shall prescribe what information
15 the reports shall contain including those forms required by federal regulating agencies and shall
16 seasonably furnish forms upon which they shall be made.

17 (b) Each state bank or credit union shall balance its books at the close of business on the
18 last business day in March, June, and September each year and, within 30 calendar days after the
19 end of each of those calendar quarters, shall make reports to the commissioner, upon forms
20 furnished by the commissioner, showing the true conditions of the state bank or credit union at that
21 time. The commissioner shall prescribe what information the reports shall contain including those
22 forms required by federal regulating agencies and shall seasonably furnish forms upon which they
23 shall be made.

24 383-A:5-511 Copies of Reports and Notices.

25 (a) A state bank or credit union shall provide the commissioner with a copy of all reports
26 filed with any other regulatory authority at the time the report is filed.

27 (b) A state bank or credit union shall file with the commissioner notice of the filing of
28 reports required by the Federal Reserve Board's Regulation H, 12 C.F.R. section 208.62, of the
29 Federal Deposit Insurance Corporation's regulations, 12 C.F.R. section 353.1 et seq., the Department
30 of the Treasury, Financial Crimes Enforcement Network's regulations, 31 C.F.R. chapter X, and the
31 National Credit Union Administration's regulations, 12 C.F.R. section 748, as may be amended from
32 time to time. The notice shall be filed with the commissioner at the same time such reports are filed
33 with the state bank's federal regulators. A state bank or credit union, and any director, officer,
34 employee, or agent of the state bank or credit union, that files a notice shall be protected from
35 liability for any disclosure contained in the notice.

36 (c) All notices filed with the commissioner under this section shall be confidential and

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 27 -

1 shall not be subject to subpoena or to the requirements of RSA 91-A, except that the commissioner
2 shall provide copies of such notices upon request of the criminal bureau to the New Hampshire
3 department of justice.

4 (d) The commissioner may adopt rules to describe the contents of notices filed under this
5 subsection.

6 Article 6

7 Regulatory Approval Procedures

8 383-A:6-601 Notices and Applications. This article applies to all persons seeking to engage in an
9 act or transaction under the Banking Act or Credit Union Act that requires the prior review and
10 approval by the commissioner. The commissioner shall have the power to adopt rules relating to the
11 forms and procedures related to filings required under this article.

12 383-A:6-602 Filing Procedure.

13 (a) A person seeking to engage in any act or transaction under the Banking Acts and the
14 Credit Union Act, that requires the prior review of the commissioner shall make a notice filing or
15 submit a written application, as appropriate, with the commissioner. For purposes of this article,
16 “filer” means the person filing the notice or application.

17 (b) The filer shall provide such relevant information as the commissioner may require
18 with respect to the act or transaction under law or rules adopted by the commissioner.

19 (c) The filer shall pay an administrative fee in accordance with RSA 383-A:6-609. No
20 notice or application shall be considered by the commissioner until payment of the enumerated fee
21 has been received.

22 (d) The filer shall provide to the commissioner a copy of any application and notice filed
23 with any other regulatory authority relating to the act or transaction at the time the application and
24 notice is made.

25 383-A:6-603 Substantial Completeness of Filing.

26 (a) The commissioner shall examine each notice or application filed under RSA 383-A:6-602
27 to determine whether it complies with applicable filing requirements, including payment of any required
28 fee. No later than 30 days after receipt of the filing by the commissioner, the notice or application shall
29 be deemed substantially complete unless the commissioner notifies the filer within the 30-day period that
30 it is not substantially complete or requests the person to submit additional information.

31 (b) The filer may re-file the notice or application with required modifications or
32 submissions. If the re-filing is made within 90 days after receipt of commissioner’s notice, then the
33 initial filing fee shall cover the re-filing, and no additional filing fee shall be required to be paid. If
34 the re-filing is made after the expiration of the 90-day period, then a new fee must be paid. The
35 commissioner shall then determine whether the re-filed notice or application is substantially
36 complete within 30 days after receipt of the re-filing and shall so notify the person.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 28 -

1 (c) A notice or application deemed substantially complete under this section shall be
2 subject to final determination by the commissioner under RSA 383-A:6-604.

3 383-A:6-604 Determination. After a notice or application is deemed substantially complete
4 under RSA 383-A:6-603, the commissioner shall:

5 (a) For a notice, issue a no-objection letter within 30 days thereafter permitting the filer
6 to engage in the act or transaction without further action by the commissioner;

7 (b) For an application, issue a decision approving or denying application, in whole or in
8 part, including any conditions of approval as he or she may require, within 60 days thereafter; or

9 (c) For a notice or application, issue a notice that further investigation or examination is
10 required, including the possibility of soliciting public comment by hearing or otherwise, within 30
11 days for a notice and 60 days for an application after it has been deemed substantially complete.

12 383-A:6-605 Further Investigation or Examination. If further investigation or examination is
13 required under RSA 383-A:6-604(c), then, at the conclusion of the investigation or examination, the
14 commissioner shall issue a decision approving or denying the notice or application, in whole or in
15 part, including any conditions of approval as he or she may require.

16 383-A:6-606 Additional Information. At any time after any notice or application is determined
17 to be substantially complete under RSA 383-A:6-603 and before the issuance of a final determination
18 by the commissioner under RSA 383-A:6-604(a), RSA 383-A:6-604(b), or RSA 383-A:6-605, the
19 commissioner may request the filer to provide additional information and may deny any notice or
20 application for failure of the person to timely provide the requested information.

21 383-A:6-607 Time Limits. If the time limits prescribed by this article conflict with specific time
22 limits provided for by other provisions of RSA 383-A, RSA 383-B, RSA 383-C, RSA 383-D, or
23 RSA 383-E, then the specific time limits provided for by the other provisions shall control.

24 383-A:6-608 Appeal. The commissioner's final determination under RSA 383-A:6-604 or
25 RSA 383-A:6-604 may be appealed under RSA 541.

26 383-A:6-609 Fee Schedule. The commissioner shall charge a filing fee to each person for services
27 rendered by the department in reviewing a notice or application. Sums collected under this section
28 shall be payable to the state treasurer as restricted revenue and credited, in accordance with the
29 banking division's accounting unit designation, to the appropriation for the commissioner. Charges
30 for services shall be billed as follows:

31 (a) Fee for new state bank or credit union charter: \$10,000

32 (b) Fee for domestication of foreign trust company: \$7,500

33 (c) Fee for charter conversion, combination, acquisition, change in control, share
34 exchange, reorganization, or approval of trust powers: \$2,500

35 (d) Fee for the dissolution of a trust company: \$2,000

36 (e) Fee for a reduction in a depository bank's capital, change in business plan or change

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 29 -

1 in required capital of a trust company, amendment to a state bank's organizational instrument,
2 amendment of a credit union's bylaws, or formation of a subsidiary entity that requires approval of
3 the commissioner: \$500

4 (f) Fee for a new branch, loan production office and trust company office: \$500

5 (g) Fee for a relocation or termination of a branch, loan production office or trust
6 company office: \$100

7 (h) Fee to issue a certificate of existence: \$50

8 (i) Fee for a reservation or approval of a name or trade name: \$50

9 Article 7

10 Prohibited Acts

11 383-A:7-701 Prohibited Acts.

12 (a) It shall be unlawful for any person to willfully and maliciously, or with an intent to
13 deceive, make or transmit to another any false statement concerning the financial condition of any
14 state bank or credit union, or to induce another to make such a statement. Any person convicted of a
15 violation of this subsection shall be guilty of a misdemeanor if a natural person or a class B felony if an
16 entity.

17 (b) It shall be unlawful for any bank or credit union, or any person engaging in the
18 business of banking, to (i) employ any device, scheme, or artifice to defraud, (ii) make any untrue
19 statement of a material fact or to omit to state a material fact necessary in order to make the
20 statements made, in light of the circumstances under which they are made, not misleading, or (iii)
21 engage in any act, practice, or course of business which operates or would operate as a fraud or
22 deceit upon any person. Any person convicted of a violation of this subsection shall be guilty of a
23 misdemeanor if a natural person or a class B felony if an entity.

24 (c) No director, officer, or employee of a state bank or credit union shall directly or
25 indirectly receive any fee, gift, or benefit whatsoever from any borrower or applicant for a loan from
26 the state bank or credit union as an inducement to making the loan, or from anyone negotiating
27 securities to the entity, except the usual compensation for drawing mortgages and other papers
28 pertaining to the loan; nor shall any director, officer or employee negotiate loans in his or her own
29 behalf with himself or herself as an official of the state bank or credit union. Any director, officer, or
30 employee of the state bank or credit union who violates the provisions of this subsection shall be
31 guilty of a class A felony.

32 (d) If any director or officer embezzles, abstracts, or willfully misapplies any of the
33 money, funds, or credits of the state bank or credit union or makes any false entry in any book,
34 report, or statement of the state bank or credit union with intent in either case to injure or defraud
35 the state bank, credit union, or any other person or to deceive any officer or agent of the state bank,
36 credit union, any committee or examiner appointed to examine the affairs of the state bank or credit

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 30 -

1 union, or the commissioner, then the director or officer shall be guilty of a class A felony.

2 (e) If, in the opinion of the commissioner, a state bank, credit union, or any of its
3 directors or officers have violated any of subsections (a), (b), (c), or (d) or any other provision of
4 criminal law, then the commissioner shall forthwith report the violations, with such remarks as the
5 commissioner deems expedient, to the department of justice, which shall immediately institute a
6 prosecution of those violations on behalf of the state.

7 (f) No person, other than a state bank or credit union empowered by its charter to
8 accept deposits, shall solicit, receive, or accept deposits or transact business in the way or manner
9 that leads the public to believe that the business is that of a state bank or credit union empowered
10 by its charter to accept deposits. Whoever violates any provision of this subsection shall forfeit to
11 the state \$1,000 a day for every day or part of a day during which the violation continues. Any
12 violation of the provisions of this subsection shall forthwith be reported by the commissioner to the
13 department of justice, and the forfeiture may be recovered by an information or other appropriate
14 proceeding brought in the superior court in his or her name. Upon that information or other
15 proceeding, the court may issue an injunction restraining the person from further prosecution of
16 the prohibited business within this state during the pendency of the proceeding or for all time, and
17 may make such other order as justice may require.

18 383-A:7-702 Unauthorized and Deceptive Use.

19 (a) Without the prior authorization of a bank or credit union, no person shall:

20 (1) Use the full or abbreviated name, trade name, service mark, or trademark of any
21 bank or credit union in any written, electronic, or oral advertisement or solicitation for products and
22 services;

23 (2) Make reference to a loan number or other specific loan information on the outside
24 of an envelope, visible through an envelope window, on a postcard, or in electronic communication in
25 connection with any written or electronic solicitation; or

26 (3) Include a loan number or other specific loan information, other than a loan
27 amount, relative to a specifically identified consumer that is publicly available:

28 (A) In any written or electronic solicitation, unless the advertisement or
29 solicitation clearly and conspicuously states on the front page or introduction in bold-faced type that
30 is the same font size as is predominantly used in the advertisement or solicitation disclosing that the
31 person is not sponsored by or affiliated with, and that the solicitation is not authorized by, the bank
32 or credit union and that the information was retrieved from public records; or

33 (B) In an oral solicitation unless the same disclosure is made at the beginning of
34 the solicitation.

35 (b) The person shall furnish a copy of the authorization on request by the
36 commissioner.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 31 -

1 (c) The use of a bank or credit union’s full or abbreviated name, trade name, service
2 mark, or trademark in a comparative advertisement or solicitation by another person, which is
3 limited solely to comparing the relative attributes of similar products or services offered by the bank
4 or credit union and the person, shall be permitted under this section and shall not require prior
5 authorization of the bank or credit union, provided that the full or abbreviated name, trade name,
6 trademark, or service mark of the bank or credit union is not visible to the addressee:

7 (1) In the case of a letter or other form of written communication, before opening the
8 document containing the comparison or the envelope in which it is sent or delivered;

9 (2) In the case of a postcard, on its face; or

10 (3) In the case of an electronic transmission, within its subject line.

11 (d) For the purpose of this section, the term bank or credit union shall include a
12 mortgage lender as defined in RSA 397 and an affiliate or subsidiary thereof having a business
13 location in this state.

14 383-A:7-703 Enforcement. In addition to the commissioner’s authority under RSA 383-A:9, the
15 insurance commissioner may issue a cease and desist order, as provided in RSA 400-A:10, against
16 any person which engages in any act or conduct in violation of RSA 383-A:7-702 involving a state
17 bank or credit union under the jurisdiction of the insurance commissioner and may bring legal action
18 to enforce the order.

19 383-A:7-704 Jurisdiction. Any person that engages in any act or conduct in violation of this
20 article shall be subject to the jurisdiction of this state. Nothing in RSA 383-A:7-702 or RSA 383-A:7-
21 703 shall limit the authority of the New Hampshire secretary of state to enforce the laws under his
22 or her jurisdiction relating to trade names, trademarks, or service marks.

23 Article 8

24 Closure of Banks or Credit Unions

25 383-A:8-801 Suspension of Banking Activities.

26 (a) For purposes of this article, the following definitions shall apply:

27 (1) “Officers” means the person or persons designated by the board of directors of a
28 depository bank or credit union to act for the depository bank or credit union in carrying out the
29 provisions of this chapter or, in the absence of any designation or of the officer or officers so
30 designated, the president or any other officer currently in charge of the state bank or credit union or
31 of the office or offices in question.

32 (2) “Office” means any place at which a depository bank or credit union transacts its
33 business or conducts operations related to its business.

34 (3) “Emergency” means any condition or occurrence which may interfere
35 physically with the conduct of normal business operations at one or more or all of the offices of a
36 depository bank or credit union, or which poses an imminent or existing threat to the safety or

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 32 -

1 security of persons or property, or both. Without limiting the generality of the foregoing, an
2 emergency may arise as a result of any one or more of the following: fire, flood, earthquake,
3 hurricanes, wind, rain, or snow storms, labor disputes and strikes, power failures,
4 transportation failures, interruption of communication facilities, shortages of fuel, housing, food,
5 transportation or labor, robbery or attempted robbery, actual or threatened enemy attack,
6 epidemics or other catastrophes, riots, civil commotions, and other acts of lawlessness or
7 violence, actual or threatened.

8 (b) By proclamation, the commissioner may close all of the offices of all depository banks
9 or credit unions on any day or days designated in the proclamation, by proclamation of the president
10 of the United States or the governor of this state, as a day or days of mourning, rejoicing, or other
11 special observance.

12 (c) Whenever the officers of a depository bank or credit union are of the opinion that an
13 emergency exists, or is impending, which affects, or may affect, one or more or all of a depository
14 bank's or credit union's offices, they may, in the reasonable and proper exercise of their discretion,
15 determine not to open any one or more or all of the offices on any business or banking day or, if
16 having opened, to close any one or more or all of the offices during the continuation of the emergency.
17 The office or offices so closed shall remain closed until such time as the officers determine that the
18 emergency has ended and for such further time thereafter as may reasonably be required to reopen;
19 however, in no case shall the office or offices remain closed for more than 48 consecutive hours,
20 excluding other legal holidays, without requesting the approval of the commissioner.

21 (d) Any day on which a depository bank or credit union, or any one or more of its offices,
22 is closed during all or any part of its normal banking hours under the authorization granted under
23 this chapter shall be, with respect to the depository bank or credit union or, if not all of its offices are
24 closed, then with respect to any office or offices which are closed, a legal holiday for all purposes with
25 respect to any banking business of any character. No liability, or loss of rights of any kind, on the
26 part of any depository bank or credit union, or any of its directors, officers, or employees, shall accrue
27 or result by virtue of any closing authorized by this section.

28 (e) The provisions of this section shall be construed and applied as being in addition to,
29 and not in substitution for or limitation of, any other law of this state or of the United States,
30 authorizing the closing of a state bank or credit union or excusing the delay by a depository bank or
31 credit union in the performance of its duties and obligations because of emergencies or conditions
32 beyond the depository bank or credit union's control, or otherwise.

33 383-A:8-802 Waiver. The commissioner may waive any provision of this article for good cause
34 shown.

Article 9

Enforcement and Administration

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 33 -

1 383-A:9-901 Purpose. This article sets forth enforcement and administrative authority of the
2 commissioner under this chapter. The commissioner shall have the power to adopt rules relating to
3 the forms and procedures related to proceedings under this article.

4 383-A:9-902 Removal of Director or Officer by Commissioner.

5 (a) If, in the opinion of the commissioner, any director or officer of a state bank or credit
6 union has continued to violate any law relative to the state bank or credit union or has continued
7 unsafe or unsound practices in conducting the business of the state bank or credit union after having
8 been warned by the commissioner to discontinue the violations of law or the unsafe or unsound
9 practices, then the commissioner may cause notice to be served upon the director or officer to show
10 cause why the director or officer should not be removed from office.

11 (b) A copy of the show cause notice shall be sent by certified mail to the director or officer
12 subject to removal and to each other director and officer of the state bank or credit union affected.

13 (c) If, after granting the director or officer a reasonable opportunity to be heard, the
14 commissioner finds that the director or officer has continued to violate the law or has continued
15 unsafe or unsound practices after having been warned, then the commissioner may order that the
16 director or officer be removed from office.

17 (d) A person who, under subsection (c), has been removed from office as director or
18 officer of a state bank or credit union shall not participate in any manner in the management or
19 operation of any state bank or credit union without the prior consent of the commissioner.

20 (e) A person who, under subsection (c), has been removed from office as director or officer
21 of a state bank or credit union may appeal a removal order under RSA 541. If appealed, the order of
22 removal shall continue in effect, subject to a decision of a court of last resort upholding or reversing
23 the order.

24 383-A:9-903 Order to Show Cause; Cease and Desist Order.

25 (a) The commissioner may issue (i) an order to show cause why fines and penalties
26 should not be applied, (ii) a cease and desist order, or (iii) both, in accordance with this provision to
27 any person that is engaged or that has engaged in any violation of the Banking Acts or the Credit
28 Union Act, including holding itself, himself, or herself out as a state bank or credit union without a
29 charter and authority issued under this chapter, or to any state bank or credit union or bank holding
30 company under the supervision of the commissioner that is engaging in or has engaged in any of the
31 following:

32 (1) An unsafe or unsound practice in conducting the business of the state bank or
33 credit union or company;

34 (2) Violation of any federal or state law, rule or regulation or agreement relating to
35 the supervision of the entity; or

36 (3) Violation of any condition, imposed in writing, in connection with the approval of

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 34 -

1 any application by the commissioner.

2 Each of the acts or conduct identified in the order shall constitute a separate violation. Any order
3 issued under this section shall comply with the procedures for adjudicative hearing under RSA 541-
4 A:31 through RSA 541-A:36.

5 (b) If the commissioner finds that the violation or practice set forth in subsection (a)
6 requires immediate action for the protection of depositors or the public, or where the violation or
7 practice, or the continuation of the violation or practice, is likely to cause insolvency or substantial
8 dissipation of the assets, capital or earnings of a state bank or credit union, then the commissioner
9 may issue orders under subsection (a) which shall become effective upon service of those orders,
10 without prior notice or hearing. Upon entry of the order, the commissioner shall promptly notify the
11 person (i) that the order has been entered, (ii) the reasons for the order, and (iii) that within 10
12 calendar days the matter will be scheduled for a hearing unless the time period is waived by the
13 person subject to the order.

14 (c) Valid delivery of any order under this article shall be by hand or certified mail to the
15 person at the last known principal office address, or by hand or certified mail to the legal
16 representative of the person.

17 (d) Upon notice and opportunity for hearing, any person who intentionally violates any
18 cease and desist order of the commissioner issued under this section may be subject to the imposition
19 of an additional administrative fine for each violation, and the fine shall be the greater of \$100 a day
20 for every day or part of a day during which the violation continues, or \$2,500.

21 (e) If the person to whom an order to show cause or other order is issued fails to request
22 a hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is ordered
23 by the commissioner, or the person fails to appear at a hearing after being duly notified, or cannot be
24 located after a reasonable search, then the person shall be deemed in default, and, on the thirty-first
25 day, the order shall become permanent and shall remain in full force and effect until and unless later
26 modified or vacated by the commissioner, for good cause shown.

27 (f) Decisions issued by the commissioner under this section may be appealed in
28 accordance with RSA 541.

29 (g) If any person refuses to obey the commissioner's order, an action may be brought by
30 the attorney general on the commissioner's behalf in any superior court in this state to enjoin such
31 person from engaging in or continuing such violation or from doing any act or acts in furtherance of
32 such violation. In any such action, an order or judgment may be entered awarding a temporary or
33 permanent injunction, and awarding the commissioner or the attorney general or both costs in
34 bringing such action.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 35 -

1 (h) A person who is subject to an order of the commissioner shall not have any civil or
2 criminal liability in an action brought by the state for any act or omission made in good faith in
3 reliance upon that order, even if a subsequent decision of any court invalidates that order.

4 (i) In addition to any other penalty provided for under this chapter, and after notice and
5 opportunity for hearing, the commissioner may impose:

6 (1) An administrative penalty of not more than \$2,500 upon any person who violates,
7 or participates in any act or conduct that violates, the Banking Acts, the Credit Union Act, or any
8 rule or order issued under the Banking Acts or Credit Union Act; and

9 (2) An additional penalty of \$25,000 upon any person who willfully violates the
10 Banking Acts, the Credit Union Act, or any rule or order issued under the Banking Acts or Credit
11 Union Act. Each of the acts specified shall constitute a separate violation.

12 (j) An enforcement action under this article shall be commenced within 6 years after the
13 date on which the violation occurred.

14 **CHAPTER 383-B**
15 **DEPOSITORY BANK ACT**

16 **Article 1**

17 **General Provisions**

18 383-B:1-101 Short Title. This chapter shall be known and cited as the “Depository Bank Act.”

19 383-B:1-102 Scope. This chapter applies to depository banks, national banks, federal savings
20 banks or foreign banks. This chapter also applies to bank holding companies. In addition, RSA 383-
21 A applies to the banks and bank holding companies covered by this chapter.

22 383-B:1-103 Reservation of Power to Amend or Repeal. The general court has power to amend
23 or repeal all or part of this chapter at any time and all persons subject to this chapter are governed
24 by the amendment or repeal.

25 383-B:1-104 Commissioner. The commissioner shall have the powers necessary or incidental to
26 performing all of the commissioner’s duties under this chapter, including the power to adopt rules as
27 provided in this chapter in accordance with RSA 541-A. All rules previously adopted by the
28 commissioner relating to the subject matter of this chapter shall be subject to RSA 541-A:17, except
29 for rules adopted under RSA 394-A:7 which shall continue in full force and effect until amended or
30 repealed.

31 **Article 2**

32 **General Definitions**

33 383-B:2-201 Definitions.

34 (a) Each term defined in RSA 383-A shall have the same meaning for purposes of this
35 chapter.

36 (b) For purposes of this chapter, the following definitions shall also apply.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 36 -

1 (1) “Acquisition” or “acquire” means any act or action with respect to the ownership
2 or control of a depository bank or the purchase of its assets and the assumption of its liabilities
3 which would require the approval of a federal regulatory authority.

4 (2) “Branch office” means any place of business or mobile facility of a depository
5 bank, other than its principal office, at which deposits are received, checks are paid, or loans are
6 made, or payments on loans are received but shall not include a loan production office or an office
7 that provides only administrative services or support for its banking business. The commissioner
8 may define by rule which administrative services or support for a banking business would qualify for
9 exemption from this definition and the procedure for requesting such exemption.

10 (3) “Capital and surplus” has the same meaning as the term is used in 12 U.S.C.
11 section 32.

12 (4) “Closely related activity” means any activity that is part of a banking business, is
13 closely related to a banking business, is convenient and useful to a banking business, is reasonably
14 related to the operation of a bank or is financial in nature or incidental to the financial activity, as
15 authorized under the Gramm-Leach-Bliley Act, 12 U.S.C. section 1811. Closely related activities
16 include, but are not limited to, custodial services; services as a fiscal agent for the United States or
17 any instrumentality of the United States or for this state or any instrumentality of this state;
18 services as an agent for the purpose of issuing, registering, or countersigning certificates of stock,
19 bonds, or other evidence of indebtedness of any entity or this state; business and professional
20 financial services; data processing, courier and messenger services; credit-related activities;
21 consumer financial services; real estate-related services; insurance and related services; securities
22 brokerage; investment advice; securities underwriting; mutual fund activities; financial consulting;
23 tax planning and preparation; community development; charitable activities; finder activities; and
24 any activities reasonably related or incidental to these activities, subject to any limitations under
25 federal or state laws. A closely related activity shall include any activity that may be authorized or
26 permissible for a national bank, a federal savings bank, or any service corporation or subsidiary of a
27 national bank or federal savings bank, including financial subsidiaries as defined in 12 U.S.C.
28 section 24A and 12 C.F.R. section 5.39 to engage in under federal law; and any additional activities
29 that the commissioner by rule or order determines to be a closely related activity.

30 (5) “Control” has the same meaning as the term is used in 12 U.S.C. section 1841(a).

31 (6) “Foreign bank” means:

32 (A) A national bank or a federal savings bank having its main office located in a
33 state other than New Hampshire; or

34 (B) A foreign state bank.

35 (7) “Foreign bank holding company” means a bank holding company that owns or
36 controls one or more depository banks and the largest amount of total deposits of these banks is

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 37 -

1 located in a state other than New Hampshire.

2 (8) “Foreign mutual holding company” means a holding company organized under
3 the laws of a state other than New Hampshire or under federal law as a mutual company.

4 (9) “Proprietary interest” means the inchoate interest of a depositor of a mutual
5 bank or a subsidiary bank of a mutual holding company as described in RSA 383-B:6-606(a).

6 (10) “Subsidiary bank” means a depository bank that is owned or controlled by a
7 bank holding company.

8 Article 3

9 Banking Business

10 383-B:3-301 Banking Business.

11 (a) A depository bank is authorized to solicit, receive, or accept deposits; to make loans;
12 to engage in a trust business in the same manner as a trust company is permitted under RSA 383-C;
13 and, in connection all of the foregoing, to provide services, offer products, and engage in closely
14 related activities. If an authorized activity or closely related activity requires a depository bank to
15 file an application with or give notice to federal regulators, then the depository bank shall file
16 concurrently a copy of the application or notice with the commissioner.

17 (b) The minimum capital of a depository bank shall comply with the requirements of the
18 Federal Deposit Insurance Corporation. The depository bank shall maintain deposit insurance in
19 accordance with the regulations of the Federal Deposit Insurance Corporation and comply with the
20 reserve requirements of the Federal Reserve System. A depository bank may borrow funds in
21 connection with the conduct of its banking business; provided, however, each borrowing shall be
22 approved by vote of the board of directors and duly recorded in its records, and any debt security of
23 the depository bank shall be signed by at least 2 officers designated in the vote or its bylaws for that
24 purpose. For the purpose of securing a loan or loans, a depository bank may pledge real estate
25 mortgages, notes, stocks, or other securities.

26 (c) A depository bank may directly or indirectly engage in any activity permitted for a
27 national bank or federal savings bank or their subsidiaries under federal laws, and otherwise
28 organize, invest in or loan funds to, any entity formed to engage in any activity that is financial in
29 nature or incidental to the financial activity authorized under the Gramm-Leach-Bliley Act, as
30 amended from time to time, and any activity that is complementary to a financial activity that is
31 authorized by federal regulatory authorities under the Gramm-Leach-Bliley Act.

32 (d) Any activity authorized under subsection (a) or (c) which is treated as insurance
33 under the laws of this state shall be subject to regulation by the insurance commissioner. A
34 depository bank seeking to engage in any insurance activity shall give prior written notice to the
35 insurance commissioner and shall comply with all insurance laws of the state. The provisions of this
36 subsection shall not be construed to prevent a depository bank or subsidiary from conducting

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 38 -

1 insurance activities, provided it does so in compliance with RSA 406-C. An affiliate of a depository
2 bank shall be bound by RSA 406-C with respect to sales of insurance in this state that are
3 recommended or sponsored by the depository bank or sold on the premises of the depository bank.

4 (e)(1) A depository bank is authorized to pledge assets to the United States, any
5 instrumentality of the United States, this state or any state entity of this state when the pledge is
6 necessary or desirable to secure its deposits at the depository bank. In lieu of such collateralization,
7 a depository bank is authorized to secure such public deposits by surety bonds and to pledge
8 securities to the surety in connection therewith. Any such deposit of public funds in any depository
9 bank may be evidenced by an agreement in such form and upon such terms and conditions as may be
10 agreed upon by the depositing public authority and the bank. The bank commissioner may, by rule,
11 limit the aggregate amount of securities which may be pledged by such a depository bank consistent
12 with safe and sound banking practices, based upon the adequacy of the surplus of the bank and other
13 criteria deemed material by the commissioner.

14 (2) The bank commissioner shall, by rules adopted under RSA 541-A, define and
15 classify by risk the nature of securities appropriate for collateral.

16 (f) A depository bank may become a member of the Federal Reserve System and
17 purchase stock in a Federal Reserve Bank under Federal Reserve Act, as amended from time to time,
18 and it shall be subject to the provisions relative to bank reserves, in substitution for the
19 requirements of this chapter, as long as it continues as a member of the Federal Reserve System.

20 (g) A depository bank may engage in a trust business as defined in RSA 383-C. The
21 depository bank shall establish a trust department and shall segregate all assets held in a fiduciary
22 capacity from its banking assets, except that the depository bank may deposit temporarily in its
23 deposit accounts any money so held in a fiduciary capacity awaiting distribution or investment and
24 may also deposit in its deposit accounts as an investment for any one trust an amount insurable and
25 insured by the Federal Deposit Insurance Corporation. The deposits shall be in the name of the
26 trust or in the name of the depository bank as trustee of the trust. Unless required by the order of a
27 court with proper jurisdiction, no depository bank authorized to act as trustee or executor in this
28 state shall be required to give bond to secure performance of the depository bank's duties as trustee
29 or executor. A depository bank may establish one or more trust offices in the same manner as is
30 permitted to a trust company under RSA 383-C.

31 (h) A depository bank may acquire and hold real estate for its own use, in whole or in
32 part. A depository bank may hold and lease real estate acquired in payment of a preexisting debt
33 owed to the bank by foreclosure of mortgage or otherwise.

34 (i) A depository bank may hold in escrow any written instrument, money, evidence of
35 title to real or personal property, or any other thing of value which may come into its possession in
36 the course of providing services as a depository bank.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 39 -

1 (j) A depository bank may sell, transfer, assign, purchase, and repurchase loans
2 authorized by this chapter and may act as servicing agent for the collection and application of
3 payments due on account of loans owned by others and may employ others to act as servicing agents
4 for the collection and application of payments due on account of loans owned by it.

5 (k) Deposits of cash may be made only in a bank authorized to accept deposits or the
6 Federal Home Loan Bank of Boston by depository banks which are members of the Federal Home
7 Loan Bank of Boston, provided the deposits are insured by the Federal Deposit Insurance
8 Corporation or repayment is assured by other security provided by the bank in which the cash is
9 deposited.

10 (l) All certificates for shares of stock, certificates of interest, uncertificated shares, or
11 registered bonds owned by a depository bank shall be registered in the name of the bank or the name
12 of a nominee without mention of the bank's name, provided that (i) the records of the bank clearly
13 show its ownership of the securities and the name and address of the nominee in whose name the
14 same are held, (ii) the nominee shall not have possession of, or uncontrolled access to, the securities,
15 and (iii) every nominee shall be properly bonded in a commercially reasonable amount.

16 (m) In order to increase income from investment securities, a depository bank may loan
17 any stocks, bonds or other securities in which the bank has invested under this chapter to brokerage
18 firms which are members of an exchange, provided that:

19 (1) The loan shall be executed through a correspondent bank having assets of not
20 less than \$500,000,000.

21 (2) At the inception of the loan at least 100 percent of the market value of the
22 securities lent shall be secured by cash, debt obligations of the United States, or debt obligations for
23 which the full faith and credit of the United States is pledged for the payment of the principal and
24 interest thereof;

25 (3) At all times during the term of the loan the collateral securing the loan shall be
26 equal in value to not less than 95 percent of the market value of the securities loaned by the
27 depository bank;

28 (4) The market value of the securities loaned by a depository bank under the
29 authority of this section shall not, at any one time, exceed 10 percent of the aggregate market value
30 of all stocks, bonds, or other securities then held by the bank as investments under this chapter; and

31 (5) No loan shall be made to any brokerage firm that is then listed for and under
32 special surveillance by an exchange in the belief that the brokerage firm is in or is approaching
33 financial difficulty, and that is, at the time, the subject of any pending notice given by any exchange
34 to the Securities Investor Protection Corporation and the Securities and Exchange Commission
35 under the Securities Investor Protection Act of 1970 15 U.S.C. section 78e(a)(1).

36 (6) The brokerage firm receiving the loan under this section shall be registered, and

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 40 -

1 every agent soliciting the loan shall be licensed, with the bureau of securities regulation of the
2 secretary of state.

3 (n) Subject to the regulation by the commissioner and compliance with federal and state
4 laws, a depository bank may buy or sell securities for officers, employees, or customers.

5 (o) A depository bank may purchase assets from and assume the liabilities of, or sell
6 assets and transfer liabilities to, banks, credit unions, federal credit unions, and foreign credit
7 unions if it files a notice with the commissioner under RSA 383-A:6-602 and is permitted to do so by
8 the commissioner under RSA 383-A:6-604, subject to other federal or state regulatory approvals.

9 (p) A depository bank shall retain any power that it held prior to the enactment of this
10 chapter under any federal or state authority.

11 383-B:3-302 Management.

12 (a) A depository bank shall have a board of not less than 5 directors, of which a majority
13 shall be residents of New Hampshire.

14 (b) The board of directors of a depository bank shall meet on a regular basis as often as
15 necessary but not less than 9 times per year, unless the commissioner shall issue an order requiring
16 the board to meet more frequently based on a finding that the safety and soundness of the depository
17 bank is likely to be impaired if meetings are not held more frequently.

18 383-B:3-303 Loans and Investments.

19 (a)(1) A depository bank shall at all times maintain a reserve in an amount that is not
20 less than the minimum reserve required by the Federal Reserve System.

21 (2) A depository bank may invest the balance of its banking assets (excluding assets
22 held in a fiduciary capacity) in the classes of securities, loans, derivatives, and other investments
23 described in this section in addition to any other authorities set forth in this chapter, subject to any
24 limitations imposed by the Federal Deposit Insurance Corporation. All investments shall be made in
25 a prudent manner consistent with federal and state laws.

26 (3) A depository bank's board of directors shall establish a written investment policy
27 that addresses, at a minimum, investment quality parameters, investment mix and diversification,
28 investment maturities, derivative exposure, and delegation of authority to officers and committees
29 responsible for administering the portfolio. The board shall review and ratify the policy annually or
30 more frequently if circumstances so warrant.

31 (4) Loans shall be made based on the creditworthiness of the borrowers and
32 guarantors, if any, the value of collateral, and other relevant factors relating to the repayment of the
33 loans in accordance with their terms. If the value of collateral is relevant to the repayment of a loan
34 to a depository bank, the collateral shall be appraised on the basis of commercially reasonable
35 standards.

36 (5) All investments in securities shall be supported by a documented credit and risk

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 41 -

1 analysis. The analysis shall be applied to securities as a part of a pre-purchase and ongoing due-
2 diligence process. Assessments of creditworthiness and risk shall not be solely reliant on external
3 credit ratings, if any, provided by one or more NRSROs. Any investment in a debt security shall
4 meet the investment grade debt security standard.

5 (6) A depository bank shall keep a record of all loans and securities investments of
6 every description made by the bank in such form as the commissioner may approve, which shall
7 show the loans or securities investments made under this article and shall indicate such detail
8 respecting the loans or securities investments as the commissioner shall direct. This record shall be
9 periodically submitted to the board of directors for its review and to the commissioner at each
10 examination required by law. The loans or securities investments shall be classified in this record in
11 such manner as the commissioner or other regulatory authorities shall direct.

12 (7)(A) A depository bank shall adopt prudent policies with respect to its lending
13 activities. The total liabilities of a person for money borrowed from a depository bank shall not
14 exceed the limitation prescribed for national banks under federal law. No depository bank shall
15 make a loan or loans to a borrower and its affiliates, if any, or in any group of a similar type of loans,
16 that would pose a risk to the safety and soundness of the bank.

17 (B) No depository bank shall make a loan or discount on the security of the shares of
18 stock or other equity interests, nor be the purchaser or holder of the shares or interests unless the
19 security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith;
20 and shares or interests so purchased or acquired shall within 6 months after their acquisition or
21 purchase be sold or disposed of at public or private sale, unless the time is extended by the commissioner.

22 (C) A depository bank shall not accept its own capital stock or the capital stock of
23 a bank holding company which controls the depository bank as collateral.

24 (D) A depository bank may make a loan to an executive officer or director and
25 accept an executive officer or director as surety, endorser, or guarantor of loans to other persons if
26 the loan is approved in accordance with Federal Reserve Board Regulation O. Loans made under
27 this section shall be on terms not more favorable than those afforded other borrowers.

28 (E) Any depository bank which requires or accepts moneys for deposit in escrow
29 accounts maintained for the payment of taxes or insurance premiums related to loans on property
30 secured by real estate mortgages shall credit each escrow account with interest at a minimum rate set
31 for a 6-month period by the commissioner on February 1 and August 1 of each year. The rate shall be
32 one percent below the mean interest rate paid by depository banks on regular savings accounts during
33 the applicable period. The commissioner shall post the rate on the department's website.

34 (F) Upon payment in full of the outstanding principal, interest, and other
35 charges due on any loan made by any depository bank or subsidiary, the depository bank or
36 subsidiary, or the assignee or successor in interest thereto, if any, shall plainly mark the note or a

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 42 -

1 copy thereof with the words “PAID IN FULL” or “CANCELLED” and release or provide the borrower
2 evidence to release any mortgage or security instrument no longer securing any indebtedness to the
3 depository bank or subsidiary, or the assignee or successor in interest thereto, if any. If the original
4 note is retained by the depository bank or subsidiary, the original shall be returned within a
5 reasonable period of time upon the written request of the borrower.

6 (b)(1)(A) Loans directly secured by mortgages on residential, commercial, or publicly-
7 owned real estate.

8 (B) The following shall be construed to be real estate for the purposes of
9 subsection A: Buildings on land at Hampton in the county of Rockingham owned by lessees of real
10 estate owned by the town of Hampton and leased by the town to Hampton Beach Improvement
11 Company or directly to other lessees, together with those owned by sublessees or lessees of Hampton
12 Beach Improvement Company or the town of Hampton, and improvements, buildings and structures
13 on land within national forests within this state upon which the mortgagor holds a term special use
14 permit from the United States Forest Service of not less than 20 years’ duration.

15 (C) For the purposes of subsection (A), the following described classes of property
16 appearing in the fixed capital accounts of electric, telephone, gas, and water utilities operating in
17 this state (as more particularly defined in the classification of accounts of utilities prescribed by the
18 public utilities commission), when all of these classes of property are included in a blanket mortgage
19 together with the utility’s franchise to operate as a public utility in this state, shall be construed to
20 be real estate: (i) electric utilities: land, structures, generating equipment for steam, hydro, internal
21 combustion, wind, solar, or any new technology, transmission and distribution equipment, and
22 unfinished construction; (ii) telephone utilities: land, structures, central office equipment, station
23 equipment, station wiring, poles, conduits, cables, wires, other radio-telephone plant, and unfinished
24 construction; (iii) gas utilities: land, structures, production equipment, distribution equipment, and
25 unfinished construction; and (iv) water utilities: land, structures, production equipment,
26 transmission and distribution equipment, and unfinished construction.

27 (D) Improvements, buildings, and structures on land leased from any person upon
28 which the mortgagor holds a lease shall be construed as real estate for purposes subsection (A).

29 (E) Equipment, machinery, and furnishings, which are declared by the
30 mortgagor to have been affixed to and become a part of the real estate, shall be construed as real
31 estate for purposes of subsection (A).

32 (F) Loans secured by mortgages on real estate without respect to the value of the
33 real estate if a department or agency of the United States or a federal government-sponsored
34 enterprise has insured, or made commitment to insure, the notes and bonds, provided the laws of the
35 United States entitle the mortgagees to receive payment of the insurance in cash or debentures
36 issued by the department or agency of the United States or the federal government-sponsored

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 43 -

1 enterprise which are fully guaranteed as to principal and interest.

2 (G) Loans secured by tangible personal property of any kind or description.

3 (2)(A) Notes secured by any deposit account in any bank, the deposits of which are
4 insured by the Federal Deposit Insurance Corporation, provided that the investment shall not be in
5 excess of 100 percent of the withdrawal value of the account.

6 (B) Notes secured by the policy of a life insurance company with a cash
7 surrender value, provided that the security shall have at all times a market or cash value of at least
8 10 percent in excess of the notes while held by the bank.

9 (C) Notes secured by the authorized obligations of the United States of America,
10 or notes secured by the authorized notes and bonds of this state or any of its state entities

11 (D) Notes secured by securities which are traded on an exchange and are ranked
12 among the 3 highest ratings of any NRSRO, or notes secured by other securities which are legal
13 investments in this state, provided that the market price of the securities shall at all times be at
14 least 20 percent in excess of the amount due on the notes while held by the bank.

15 (E) Notes eligible for insurance or guaranties by a department or agency of the
16 United States or a federal government-sponsored enterprise which is designated by written ruling of
17 the commissioner, provided a contract of insurance or guaranty exists between the holder and the
18 department or agency of the United States or the federal government-sponsored enterprise.

19 (F) Notes which are guaranteed as to payment of at least 80 percent of their
20 outstanding principal from time to time by the state of New Hampshire or the New Hampshire
21 Higher Education Assistance Foundation.

22 (G) Unsecured loans based on the creditworthiness of the borrower.

23 (c)(1) The obligations of the United States of America, or those for which the full faith and
24 credit of the United States is unconditionally pledged to provide for the payment of interest and principal.

25 (2) The authorized obligations issued or guaranteed by any department or agency of
26 the United States or a federal government-sponsored enterprise that are designated as an
27 authorized investment of the commissioner by rule or order.

28 (3) The authorized obligations of this state or any state entity of this state, provided:

29 (A) The obligations of this state or state entity are backed by the issuer's ability
30 to levy taxes for the repayment of principal and interest.

31 (B) Obligations secured by the revenues of the state entity are rated among the
32 first 4 ratings of any NRSRO.

33 (C) The obligations of any state entity, purchased or acquired prior to January 1,
34 1999 shall be a legal investment, notwithstanding the fact that an obligation is not backed by the
35 issuer's ability to levy taxes for the repayment of principal and interest as required by paragraph A.

36 (4) The authorized bonds and notes of any other state, commonwealth or territory of

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 44 -

1 the United States or any state entity of another state, provided:

2 (A) The direct obligations of any state, commonwealth or territory of the United
3 States or any state entity thereof are backed by the issuer's ability to levy taxes for repayment of
4 principal and interest and are rated among the first 3 ratings of any NRSRO.

5 (B) Obligations secured by the revenue of any state entity are rated among the
6 first 3 ratings of any NRSRO.

7 (5) The authorized bonds and notes issued or guaranteed by other sovereign nations,
8 provided the bonds or notes are rated among the 3 highest ratings of any NRSRO, and the bonds or
9 notes are repayable as to principal and interest in United States currency within this country.

10 (d)(1) Any investment grade debt security issued, assumed, or guaranteed by an entity
11 organized in the United States of America, provided it is rated among the 3 highest ratings of any
12 NRSRO. A convertible investment grade debt security of a lesser rating will be legal if the common
13 stock would otherwise qualify.

14 (2) Any preferred stock issued, assumed or guaranteed by an entity organized in the
15 United States, provided it is rated among the 3 highest ratings of any NRSRO.

16 (3) Any common stock or senior security convertible into common stock of an entity
17 organized in the United States of America is lawful provided:

18 (A) The stock is listed on an exchange and is ranked among the 3 highest ratings
19 of any NRSRO.

20 (B) At the time of purchase, any common stock investment under this subsection
21 when added to the book value of all other common stock securities presently owned of the same
22 entity shall not exceed 7 percent of a bank's capital and surplus, except for stock holdings in a
23 Federal Home Loan Bank or Federal Reserve Bank.

24 (4)(A) An investment grade debt security issued, assumed or guaranteed by an entity
25 organized under the laws of this state or carrying on its principal activities within this state,
26 provided the entity shall have, at the date of investment, a net worth of at least \$1,000,000 and in at
27 least 4 of the 5 years next preceding the date of investment, the net income available for interest
28 plus the federal income tax of the entity shall have been not less than twice the interest on its
29 obligations.

30 (B) The dividend-paying capital stock of an entity organized under the laws of
31 this state or carrying on its principal activities within this state, provided all securities, if any, senior
32 to the stock are legal investments hereunder, and the entity shall have, at the date of the
33 investment, a net worth of at least \$1,000,000 in at least 4 of the 5 years next preceding the date of
34 investment, the entity shall have earned net income available for dividends on the entire
35 outstanding issue of the stock in question of not less than 4 percent on the par or stated value of the
36 stock and the depository bank shall hold no more than 5 percent of the outstanding stock of the

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 45 -

1 entity.

2 (5)(A) The securities of a bank or bank holding company incorporated in the United
3 States, provided the bank or bank holding company shall have capital and surplus of at least
4 \$50,000,000, the capital and surplus shall represent not less than 4 percent of the total assets in at
5 least 4 of the 5 years immediately preceding investment, net earnings shall have averaged not less
6 than 0.4 percent of average total assets over the same 5 years immediately preceding investment,
7 and the total loans to total assets shall not be greater than 80 percent.

8 (B) The securities or special deposits of a bank or trust company chartered under the
9 laws of this state and doing business in this state, and the capital notes and the capital stock of any
10 national bank or federal savings bank having a principal office in this state; but the amount of the
11 notes or stock or special deposits held by a depository bank as an investment and as collateral for
12 loans shall not exceed 25 percent of the total capital and surplus of the bank and the securities of
13 any New Hampshire bank holding company which is registered as a bank holding company with the
14 board of governors of the Federal Reserve System, but the amount of capital stock held by a
15 depository bank in legal form or represented by voting trust certificates as an investment and as
16 collateral for loans shall not exceed 25 percent of the capital stock of the New Hampshire bank
17 holding company.

18 (6) The following types of investment trust shares if listed on an exchange or
19 authorized for sale in this state by the bureau of securities regulation of the secretary of state.

20 (A) The shares of any management type investment company, either open-end or
21 closed-end, provided if the company acts as its own investment manager, it shall have been in
22 business for at least 5 years, have at least \$50,000,000 of net assets and have paid dividends for at
23 least 4 of the 5 years immediately preceding investment, and in the event that the company employs
24 outside investment management, then those investment managers shall have a total of at least
25 \$100,000,000 under management and the company shall have been in business for at least 5 years,
26 have net assets of \$50,000,000 and have paid dividends for at least 4 of the 5 years immediately
27 preceding investment.

28 (B) The shares of any management type investment company that is a member
29 of a group of 3 or more mutual funds under the same investment manager, provided the manager
30 has at least \$100,000,000 of assets under management and the company has at least \$10,000,000 of
31 net assets.

32 (C) Units in unit investment trusts with principal of at least \$1,000,000 if
33 authorized for sale in this state.

34 (7)(A) Acceptances of member banks of the Federal Reserve System of the times and
35 maturities made eligible for rediscount and purchased by Federal Reserve Banks.

36 (B) Advances of federal funds to banks qualifying as cash depositories under

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 46 -

1 RSA 383-B:3-301(k), which the banks agree to repay one or more business days later, provided that
2 total advances of federal funds under this paragraph and any other authority shall not exceed 10
3 percent of the depository bank's assets and that the total of the advances by a depository bank to any
4 one bank shall not exceed 5 percent of the latter's capital and surplus. The agreement to repay may
5 have a specific maturity date or may be open-ended. An open-ended agreement has no specific
6 maturity date but requires repayment on any date that is specified by either the depository bank or
7 borrowing bank. Notwithstanding the foregoing, advances of federal funds that comply with the
8 requirements of Federal Reserve Board Regulation F, 12 C.F.R. section 206, as amended from time
9 to time, shall be deemed to fulfill the requirements of this paragraph and qualify as legal
10 investments for depository banks.

11 (8) Loans made by an entity qualified to originate a loan in which other qualified
12 entities may participate severally with the originating lender in making the loan, and in which they
13 have a part interest. The entity originating the loan shall be referred to as the originating lender
14 and any entity participating in the loan shall be referred to as a participating lender. Depository
15 banks, national banks, federal savings banks, foreign depository banks, the small business
16 administration, federally-chartered corporations which are agencies or instrumentalities of the
17 United States, the New Hampshire business finance authority, trustees of pension trusts and
18 retirement funds, credit unions, and insurance companies shall be deemed qualified to be originating
19 lenders or participating lenders. New Hampshire entities, nonprofit colleges, and nonprofit trusts
20 and funds shall be deemed qualified to be participating lenders, in participation with any of the
21 originating lenders. The participation shall be evidenced by an agreement and participation
22 certificates. The loan shall meet the underwriting standards of each originating or participating
23 depository bank.

24 (9) The capital stock, obligations, or other securities of real estate development
25 entities organized under the laws of this state, provided:

26 (A) At least 51 percent of the capital stock of the entity is held by one or more
27 depository banks; and none of the capital stock is owned by any director, officer, employee, or
28 incorporator of a depository bank.

29 (B) The activities of the entity consist solely of one or more of the following:
30 engaging in large-scale residential housing projects of all kinds, including acquisition, subdivision
31 and development of real estate, construction of residential housing of all kinds and related facilities,
32 or resale to others for the construction. For purposes of this subsection, a large-scale residential
33 housing project means a development containing at least 48 home building lots or a building or
34 buildings containing at least 48 dwelling units; engaging in urban redevelopment projects of all
35 kinds; and engaging in projects to provide housing for lower-income families; engaging in commercial
36 and industrial real estate ventures of direct community benefit, as approved by the commissioner

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 47 -

1 and in projects for the preservation or restoration of historically or architecturally significant
2 buildings or structures; and activities reasonably incidental to the activities described in this
3 subsection.

4 (C) Not more than \$10,000,000 or 5 percent of the assets of a depository bank,
5 whichever is less, are invested in securities authorized for investment by this subsection, and not
6 more than 2 1/2 percent of the assets of a depository bank are invested in the securities of a single
7 real estate development entity which qualifies for the investment under this subsection.

8 (D) No real estate development entity shall acquire for itself any opportunity
9 to engage in any project or venture permitted under subsection (B) if a depository bank which is a
10 stockholder of the entity has previously rejected a written application for a mortgage loan on the
11 security of the same project or venture, unless it appears that the mortgage loan so rejected
12 failed to qualify as a legal investment under this chapter, or unless the applicant for the
13 mortgage loan consents in writing to the acquisition of the opportunity by the real estate
14 development entity.

15 (E) The authority to invest in securities of certain real estate development
16 entities shall be limited to real estate holdings and development located in New Hampshire.

17 (10) A depository bank may invest in securities which are not authorized
18 investments under this section but are prudent investments, provided the securities being purchased
19 under the authorization of this section do not, when added to all other securities then owned by the
20 depository bank, the purchase of which would not then be authorized by the other sections of this
21 section, exceed 7 1/2 percent of its assets. Any security which at the time of its purchase constitutes
22 a legal investment under the laws and conditions then existing may be retained under the authority
23 of this subsection, notwithstanding the fact that because of conditions arising subsequent to the
24 purchase of the security, its purchase or holding might not then be legal. Any security held which
25 becomes unlawful because of changes in the law relating to legal investments may also be retained
26 under the authority of this subsection.

27 Article 4

28 Deposit Accounts

29 383-B:4-401 Deposit Accounts.

30 (a) A depository bank doing business in this state may continue to recognize the power of
31 an attorney-in-fact authorized in writing to make withdrawals either in whole or in part from the
32 account of a depositor, whether a minor or adult, until it receives written notice or is on actual notice
33 of the revocation of his or her authority. No depository bank shall be liable for damages, penalties,
34 or tax by reason of any payment made under this section.

35 (b) No assignment of a deposit which is evidenced by a passbook or certificate of deposit
36 shall be a valid transfer of the deposit unless the passbook or certificate of deposit is delivered to the

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 48 -

1 assignee accompanied by a written assignment or order for transfer.

2 (c) No assignment of a deposit, however evidenced, shall be effective to charge the
3 depository bank in which the deposit is maintained with a duty of payment to the assignee prior to
4 service by the assignee on the depository bank of written notice of the assignment. No depository
5 bank shall be liable to an assignee of a deposit maintained in that bank for any payment of the
6 deposit or portion thereof or dividend or interest thereon made to the depositor prior to service on the
7 depository bank by the assignee of the written notice of the assignment; except that the exemption
8 from liability shall not apply in the case of a payment to a depositor, with respect to a deposit
9 evidenced by a passbook, which is made without production of the passbook if the bylaws of the
10 depository bank require production of the passbook as a condition to payment.

11 (d)(1) A “payable on death” deposit account is created by a deposit in a depository bank in
12 the name of an account holder or several joint account holders with a designation that the account is
13 payable on death to one or more payees, or is in trust for another, and no other or further notice of
14 the existence and terms of a legal and valid trust is given in writing to the bank.

15 (2) Any person designated as a depositor is the owner of the deposit account. The
16 owner retains the right during the owner’s lifetime to withdraw, assign, or pledge the balance of the
17 deposit account, in whole or in part, as though no survivor payee or beneficiary had been named, and
18 to delete or change a survivor payee or beneficiary. No change in the designation of the survivor
19 payee or beneficiary is valid unless executed on a form and in the manner prescribed by the
20 depository bank.

21 (3) On the death of the sole account holder or the last surviving joint account holder,
22 any remaining balance in a payable on death account, including interest, shall vest solely in the
23 surviving payable on death payee, or the in trust for beneficiary, or equally and severally in the then
24 surviving payees or beneficiaries. If no payee or beneficiary survives, the deposit account shall
25 remain in the estate of the last surviving owner.

26 (4) Ninety days after the death of the sole account holder or the last surviving joint
27 account holder, the depository bank may pay the remaining balance in the deposit account to the
28 new owner or owners or their legal representatives without further liability for the amount or
29 amounts paid. If no payee or beneficiary is surviving 90 days after the last surviving account holder
30 dies, the balance of the account shall be payable to the personal representative of that account
31 holder. A depository bank which makes payment in accordance with this section shall, to the extent
32 of each payment so made, be released from all claims of any of the deposit account owners, the
33 named payees or beneficiaries, their respective legal representatives, and all others claiming through
34 or under them. Each payee, beneficiary or legal representative claiming under this section shall
35 provide the identification and other information as requested by the depository bank.

36 (e) The account holder or joint account holders of a payable on death deposit account

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 49 -

1 retain the right during the holder's or holders' lifetime to withdraw, assign or pledge the balance of
2 the deposit account, in whole or in part, as though no survivor payee or beneficiary had been named,
3 and to delete or change a survivor payee or beneficiary. No change in the designation of the survivor
4 payee or beneficiary is valid unless executed on a form and in the manner prescribed by the
5 depository bank. Unless otherwise required in writing by all of the joint account holders at the time
6 the deposit account is created, the withdrawal, assignment or pledge of one joint account holder shall
7 be binding on the other joint account holders. For purposes hereof, no payee or beneficiary shall be
8 deemed to be an account holder.

9 (f) The rights of a surviving payee or beneficiary to the funds in a payable on death
10 deposit account shall not be denied, abridged or in any way affected because the rights have not been
11 created by a writing executed in accordance with the laws of this state prescribing the requirements
12 to effect a valid testamentary disposition of property or because of any absence of delivery or
13 compliance with other requirements to effect a valid gift or transfer in trust.

14 (g) The provisions of this section shall also apply to deposits maintained in this state by
15 foreign banks.

16 Article 5
17 Safe Deposit Boxes

18 383-B:5-501 Safe Deposit Boxes.

19 (a) If the amount due for the rent or use of a safe deposit box has not been paid for 6
20 consecutive months, or if the renter thereof shall not have removed the contents thereof within 30
21 days from the termination of the lease therefor for any reason other than for the non-payment of
22 rent, the depository bank shall send a written notice to the renter at his or her last known mailing
23 address by registered or certified mail, return receipt requested. The notice shall state that the
24 renter has 60 days from the date the letter is sent to pay the rent and/or remove all contents, or the
25 depository bank will follow the procedure as set forth in subsection (b) below. The letter shall set
26 forth in detail the procedure to be followed.

27 (b) At the expiration of 60 days from the date of mailing the notice, if the renter of the
28 safe deposit box failed to pay all of the amounts due for the rental to the date of payment, and/or
29 remove the contents, all right of the person in the safe deposit box and of access to the box shall
30 cease. The depository bank shall be required to use only the degree of care required of a bailee for
31 the sole benefit of the bailor notwithstanding the contract of renting requires a higher degree of care
32 during the period of renting. In the presence of an officer of the depository bank and a notary public
33 who is not an officer or employee, the depository bank shall cause the safe deposit box to be opened.
34 The notary public shall remove the contents thereof, make a list of them, seal the contents in a
35 package, and write on the package the name and address of the person in whose name the safe
36 deposit box was recorded on the books of the depository bank. In the presence of the notary public

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 50 -

1 and the bank officer, the package shall be placed in one of the storage vaults of the depository bank.
2 The proceedings of the notary public, including the list of the contents of the safe deposit box of the
3 contents, shall be recorded under his or her official seal and maintained in written or electronic form
4 by the depository bank.

5 (c) The record of the notary public shall be prima facie evidence of the facts stated
6 therein in all proceedings at law and in equity wherein evidence of the facts would be competent.

7 (d) If the contents of the safe deposit box have not been claimed or redeemed by the
8 payment of charges within 5 years after the removal of the contents, the depository bank shall,
9 without any requirement to appraise the contents of the safe deposit box and, notwithstanding the
10 right to inspection under RSA 471-C:19, II(c), sell the contents of the safe deposit box at public
11 auction, public sale, or nationally recognized internet auction to the highest bidder after providing
12 the notice to the apparent owner as required by RSA 471-C:19, V. For all sales or auctions, the time
13 and place of any auction or sale shall be posted conspicuously on the premises of the depository bank
14 and shall be published in a newspaper of general circulation once weekly for 3 consecutive weeks, the
15 last publication being no less than 10 days before the auction or sale, in a newspaper published in
16 the place where the safe deposit box is located. Any documents, letters or other papers of a private
17 nature and any property or articles of no apparent value among the contents of the safe deposit box
18 shall not be sold, but shall be retained for the 5 years from the time of the opening of the safe deposit
19 box, and unless sooner claimed by the renter of the safe deposit box, may thereafter be destroyed
20 without the need to provide notice to the apparent owner under RSA 471-C:19, V. Contents of a safe
21 deposit box offered for sale for which no purchaser exists may be destroyed by the depository bank.
22 United States coin or currency among the contents of any safe deposit box so opened need not be
23 sold, but may be used by the depository bank to pay for its charges as set forth below. U.S. Savings
24 Bonds shall not be sold or destroyed, but instead delivered to the administrator under RSA 471-C. If
25 property is destroyed under this section, no action or proceeding may be maintained against the
26 depository bank or any of its employees, officers or directors for or on account of the action.

27 (e) From the proceeds of the sale, the depository bank shall deduct all its charges for
28 rental up to the time of opening the safe deposit box, including the amount which shall have been
29 due for rental up to the time of opening the safe deposit box, the cost of the opening thereof, and the
30 fees of the notary public for his or her proceedings and shall pay from time to time the further
31 charges and costs of safe keeping, selling, and destroying the contents of the safe deposit box so
32 opened, including reasonable expenses for notices, advertising, sale, and destruction. After
33 deduction of costs, the depository bank shall remit the net cash proceeds to the state treasurer under
34 RSA 471-C:21.

35 (f) When a safe deposit box is rented to 2 or more persons under a rental contract
36 granting a separate right of access to either or any one of the persons or the survivor or survivors of

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 51 -

1 them, the survivor or survivors of the joint renters shall have a right of access to the safe deposit box
2 for any purpose; and the depository bank shall be protected against all renters of the box, their heirs,
3 assigns, executors, and administrators, in recognizing that right.

4 (g) When a safe deposit box is rented to a person, and the renter appoints a
5 representative on the records of the depository bank by written power of attorney expressly
6 providing that the representative shall have a continued right of access to the safe deposit box after
7 the death of the renter, and the renter dies survived by the representative, then, notwithstanding
8 any rule of law to the effect that a power of attorney is terminated by the death of the principal, the
9 surviving representative shall have a right of access to the box for any purpose; and the depository
10 bank, its employees, officers, and directors shall be protected against the heirs, assigns, executors,
11 and administrators of the deceased renter in recognizing that right.

12 (h) The provisions of subsections (f) and (g) shall not be construed to create a joint
13 tenancy in or otherwise establish ownership in any of the contents of a safe deposit box.

14 (i) A depository bank engaged in the business of renting safe deposit boxes, which in
15 good faith allows the department of revenue administration access to a taxpayer's safe deposit box
16 under the department's distraint powers under RSA 80 shall be discharged, as well as its employees,
17 officers and directors, from any obligation or liability to the taxpayer with respect to the property
18 contained in the safe deposit box.

19 (j) The provisions of this section shall also apply to safe deposit boxes maintained in this
20 state by foreign banks.

21 Article 6

22 Mutual Banks and Mutual Holding Companies

23 383-B:6-601 This article sets forth the special requirements for mutual banks and mutual
24 holding companies in this state.

25 383-B:6-602 Capital Debentures; Special Deposits. The initial capital required to organize a
26 mutual bank shall be in the form of capital debentures or special deposits. The commissioner shall
27 first approve the maturity, interest rate, and repayment provisions of each debenture or special
28 deposit. No retirement of capital debentures or special deposits, in whole or in part, shall be
29 permitted which would leave its capital less than the minimum amount required by the
30 commissioner. The total amount of the capital debentures or special deposits of a mutual bank held
31 by any other bank shall not at any time exceed 10 percent of the total amount of capital debentures
32 or special deposits issued by the mutual bank. The capital debentures shall be transferable only on
33 the books of the mutual bank and shall be subordinate to all general deposits and to all other debts,
34 claims and obligations of the mutual bank. The issuance of capital debentures and special deposits,
35 including increases therein, shall be governed by RSA 383-A:4-403.

36 383-B:6-603 Authority to Invest in Other Mutual Banks and Mutual Holding Companies.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 52 -

1 Notwithstanding any other law to the contrary, a mutual bank and mutual holding company may invest
2 an amount not to exceed 25 percent of its capital and surplus in the capital debentures, bonds, special
3 deposits, or other debt securities of any other mutual bank or mutual holding company located in this
4 state or in any other state, whether the other bank is in organization or in existence. For purposes of this
5 section, if the investment constitutes more than 50 percent of the capital and surplus of the mutual bank
6 or mutual holding company issuing the capital debentures, bonds, special deposits or other debt
7 securities, the banks involved in the investment transaction shall be deemed affiliates and may receive
8 deposits, renew time deposits, close loans, service loans, and receive payments on loans and other
9 obligations as an agent for each other in the same manner as bank subsidiaries of a bank holding
10 company may do so under subsection (r) of the Federal Deposit Insurance Act, 12 U.S.C. section 1828.
11 The banks shall not be considered branches of each other nor shall the bank making the investment be
12 considered a bank holding company.

13 383-B:6-604 Board of Directors of Mutual Banks and Mutual Holding Companies. The
14 governance of a mutual bank or mutual holding company shall be vested in its board of directors.
15 The board of directors shall have all powers and authorities granted under the organizational
16 documents of the mutual bank or mutual holding company and applicable federal and state laws.
17 The board of directors shall elect officers and shall supervise management of the mutual bank or
18 mutual holding company. The board of directors shall be required to review and approve by majority
19 vote, or by higher vote if required by applicable state laws or by the organizational documents, any
20 matter expressly reserved for the approval of corporators under RSA 383-B:6-605(a) prior to
21 submitting the matter to the corporators for their approval or association members under RSA 383-
22 B:6-605(b) prior to submitting the matter for association members for their approval. In exercising
23 their duties as directors, the directors shall consider the interests of the depositors, borrowers, and
24 other customers of the mutual bank or mutual holding company, the general benefit, and economic
25 well-being of the communities served by the mutual bank or mutual holding company and the safety,
26 soundness, and general business needs of the mutual bank or mutual holding company. The
27 directors shall be accountable to the corporators or association members, as applicable, for the proper
28 discharge of their duties.

29 383-B:6-605 Corporators or Association Members of Mutual Banks and Mutual Holding Companies.

30 (a) The corporators shall be deemed to be exclusively representative of, and shall exclusively
31 represent, the various interests and communities served by the mutual savings bank or mutual holding
32 company. Each corporator shall be entitled to cast one vote and may vote in person or by proxy. The
33 corporators shall elect persons to serve as corporators and directors, and may remove any corporator or
34 director who has failed to properly discharge his or her duties, in the manner prescribed by its
35 organizational documents. Except as expressly provided in RSA 383-B:6-618, the following corporate
36 powers of a mutual savings bank or mutual holding company shall be vested solely in the corporators:

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 53 -

1 the incorporators shall have authority to approve by majority vote, or by higher vote if required by
2 applicable state laws or rules or by the organizational documents, the amendment of the organizational
3 documents, the conversion of the mutual savings bank or mutual holding company from mutual to stock
4 form, the formation of a mutual holding company, the combination of the mutual savings bank or mutual
5 holding company with any other entity, the voluntary liquidation of the mutual savings bank or mutual
6 holding company, and any other matter expressly reserved for the approval of incorporators under
7 applicable state laws or the organizational documents of the mutual savings bank or holding company.
8 The incorporators shall consider the interests of the depositors, the borrowers, and other customers of the
9 mutual savings bank or mutual holding company, the general benefit and economic well-being of the
10 communities served by the mutual savings bank or mutual holding company, and the safety, soundness,
11 and general business needs of the mutual savings bank or mutual holding company in exercising their
12 duties as incorporators.

13 (b) The voting rights and interests of association members of a savings association or mutual
14 holding company are governed by the organizational documents of the savings association or the mutual
15 holding company only, and not subsection (a). In any case requiring a vote of the incorporators of a mutual
16 savings bank or mutual holding company, the vote shall be cast by the association members instead.

17 383-B:6-606 Rights of Depositors of Mutual Banks or Mutual Holding Companies.

18 (a) A depositor at a mutual bank shall have an undivided inchoate interest in the net
19 worth of the mutual bank in proportion to the amount of the person's funds in the account or
20 accounts divided by the aggregate amount of all funds of persons on deposit in time, savings, and
21 demand accounts at the mutual bank at the time the interest ripens into a vested estate. The
22 inchoate interest shall terminate upon the withdrawal of a depositor's funds in a time, savings, or
23 demand account or accounts from the mutual bank. The inchoate interest shall be of no force or
24 effect unless and until a dividend is declared or liquidation proceedings are commenced under
25 RSA 383-B:6-607. If a bank is owned by a mutual holding company, the depositors of the bank shall
26 have the same inchoate interest in the net worth of the mutual holding company.

27 (b) In the event that a mutual bank or mutual holding company converts from mutual to
28 stock form, the proprietary interest of depositors shall be transferred to the liquidation account of
29 the converted bank in the same manner as prescribed for a federal savings bank or federal mutual
30 holding company under federal law.

31 (c) Depositors of a mutual savings bank or association members of a savings association
32 shall have the right to vote to give approval to a conversion of a mutual bank or mutual holding
33 company from mutual to stock form in a transaction involving the issuance of securities of any bank
34 or bank holding company other than the securities of the converting mutual bank or the securities of
35 a mutual holding company organized by the converting mutual bank in order to acquire its capital
36 stock, as required in RSA 383-B:6-608. Except as otherwise provided in the organizational

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 54 -

1 documents of the mutual savings bank or savings association, each depositor or association member
2 shall be entitled to cast one vote and may vote in person or by proxy.

3 383-B:6-607 Dividends to Depositors of Mutual Banks and Mutual Holding Companies. Except as
4 may be limited or otherwise required by applicable federal or state laws, and subject to its management
5 duties as provided in RSA 383-B:6-604, the board of directors of a mutual bank or mutual holding
6 company through its subsidiary bank or subsidiary banks may declare a dividend and distribute the
7 capital, surplus, and retained earnings to the depositors of the bank or banks, in proportion to the
8 average amount of their respective funds on deposit during the 30-day period immediately preceding the
9 time at which a dividend is declared, in such amounts, at such times, and under such conditions as are
10 determined by the directors in the exercise of their reasonable discretion. In the event of liquidation of a
11 mutual bank or mutual holding company, the assets, if any, of the mutual bank or mutual holding
12 company remaining after payment of all liabilities and the costs and expenses of the liquidation shall be
13 distributed as a dividend to the depositors of the mutual bank or subsidiary bank or subsidiary banks, in
14 proportion to the average amount of their respective funds on deposit during the 30-day period
15 immediately preceding the time at which the liquidation proceedings are commenced.

16 383-B:6-608 Conversion from Mutual to Stock Form.

17 (a) Any mutual bank or mutual holding company may convert to stock form in the same
18 manner as prescribed for a federal savings bank or a federal mutual holding company under federal law.
19 However, no conversion under this subsection shall be permitted that includes as part of the conversion
20 transaction the issuance of securities of any bank or holding company other than securities of the
21 converting bank or holding company or the securities of a holding company organized by the converting
22 bank in order to acquire its capital stock, unless in addition to procedures required by the rules adopted
23 under this section, it is ratified by the depositors of a mutual bank or the depositors of a subsidiary bank
24 or subsidiary banks of a mutual holding company. Ratification by depositors shall not be required if the
25 conversion is part of a reorganization into a mutual holding company or the conversion is required by
26 federal or state regulatory authorities.

27 (b) The depositor voting procedures shall be the same as those prescribed for a federal
28 savings bank or a federal mutual holding company under federal law.

29 (c) In connection with a proposed conversion under the provisions of this section, no new
30 compensation arrangement shall be provided for directors, officers, or employees unless the commissioner
31 finds that it is fair and reasonable, based upon all of the facts and circumstances of the conversion and
32 the future management and operational needs of the mutual bank or mutual holding company, including
33 comparable compensation arrangements at similarly situated banks or holding companies. In addition,
34 no conversion or reorganization shall be approved by the commissioner unless the commissioner finds
35 that the process of obtaining corporate decisions and approvals was conducted in a lawful, informed, and
36 independent manner, the rights of the depositors of the converting mutual bank or of the subsidiary bank

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 55 -

1 or subsidiary banks of the converting mutual holding company are not impaired under the plan of
2 conversion or reorganization, the depositors are not treated detrimentally or inequitably under the terms
3 of the proposed conversion or reorganization, and the plan of conversion or reorganization does not
4 provide corporators, if any, directors, officers, or employees with any benefit, privilege, or advantage with
5 respect to the purchase, if any, of the capital stock in the conversion or reorganization which is not
6 generally available to the depositors.

7 383-B:6-609 Reorganization of a Mutual Bank as a Mutual Holding Company. A mutual bank
8 may reorganize as a mutual holding company owning a subsidiary bank, by taking or causing to be
9 taken the following actions:

10 (a) The mutual bank shall organize a wholly-owned subsidiary bank in accordance with
11 the procedures of RSA 383-B:6-617.

12 (b) The mutual bank shall transfer to the subsidiary bank a substantial part of its assets
13 and liabilities, including all of its insured liabilities, in exchange for all of the capital stock of the
14 subsidiary bank.

15 (c) The mutual bank shall adopt an amended and restated organizational instrument
16 changing its name, and conforming its organization, governance, and powers to those prescribed for
17 a mutual holding company by RSA 383-B:6-616.

18 383-B:6-610 Reorganization of Mutual Bank by Merger. As an alternative to the procedure set
19 forth in RSA 383-B:6-609, a mutual bank may reorganize into a mutual holding company structure
20 under a plan of reorganization, by taking or causing to be taken the following actions:

21 (a) The mutual bank shall organize a mutual holding company conforming its
22 organization, governance and powers to those prescribed for a mutual holding company by RSA 383-
23 B:6-616 in the same manner as a bank under RSA 383-A. The mutual bank may provide funds to
24 the mutual holding company for the purpose of enabling it to capitalize the subsidiary bank, to cover
25 the expenses of organization, and to provide initial working capital. If the organizational instrument
26 is approved by the commissioner, he or she shall certify the approval on the organizational
27 instrument, which shall be thereupon filed in the office of the secretary of state.

28 (b) The mutual bank and the newly organized mutual holding company shall organize a
29 subsidiary bank to be wholly-owned by the mutual holding company upon completion of the
30 reorganization in accordance with the procedures of RSA 383-B:6-617.

31 (c) The mutual bank shall combine with the subsidiary bank. As part of the
32 combination, the proprietary interests of the depositors in the mutual bank immediately prior to the
33 combination shall be exchanged for identical proprietary interests in the mutual holding company.

34 383-B:6-611 Procedure for Adopting a Plan of Reorganization. The plan of reorganization shall be
35 approved by the board of directors of the mutual bank by resolution adopted by a vote of 2/3 of the full
36 board. The plan of reorganization shall then be submitted for adoption at a special meeting of the

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 56 -

1 corporators of the mutual savings bank or association members of a savings association called in the
2 manner provided by its organizational documents. Copies or summaries of the plan of reorganization
3 shall be enclosed with the notice of the special meeting. The plan of reorganization shall be adopted by a
4 vote of 2/3 of the corporators or association members, as applicable. Except as otherwise provided in the
5 organizational documents of the mutual savings bank or savings association, each depositor or
6 association member shall be entitled to cast one vote and may vote in person or by proxy.

7 383-B:6-612 Review by Commissioner. A mutual bank that has adopted a plan of reorganization
8 in accordance with RSA 383-B:6-611 shall apply to the commissioner for approval under RSA 383-
9 A:6-602. The depository bank may complete the reorganization if it is permitted to do so by the
10 commissioner under RSA 383-A:6-604.

11 383-B:6-613 Notice to Depositors. A mutual bank that has obtained approval from the
12 commissioner to complete the reorganization shall give its depositors written notice of the
13 reorganization at least 30 days prior to the effective date of the reorganization. The notice shall
14 include a brief description of the plan of reorganization. Any depositor of the mutual bank who fails
15 to withdraw the amount deposited to his or her credit at the bank prior to the effective date of the
16 reorganization shall be deemed to have assented to the reorganization.

17 383-B:6-614 Retention of Capital Assets at Holding Company Level. With the approval of the
18 commissioner, the plan of reorganization of a mutual bank may provide for the retention of assets at, or
19 transfer of assets to, the mutual holding company, provided the retention will not cause the subsidiary
20 bank to fail to meet any applicable net worth or capital adequacy requirement prescribed by federal or
21 state regulatory authorities and the retention of the assets complies with federal and state laws.

22 383-B:6-615 Continuation of Depositor Interest. The depositors of the mutual bank immediately
23 prior to the reorganization shall be entitled to deposits in the subsidiary bank of the mutual holding
24 company of like amounts, interest rates, and other terms, without interruption of interest, and the
25 deposits shall continue to be insured by the Federal Deposit Insurance Corporation up to the
26 maximum amount provided by law. The depositors of the mutual bank immediately before the
27 reorganization, shall, by virtue of the reorganization, have proprietary interests in the net worth of
28 the mutual holding company of the same nature, rights, and proportions as the proprietary interests
29 which they had in the mutual bank, in lieu of the former interests.

30 383-B:6-616 Ownership, Governance, and Powers of Mutual Holding Companies.

31 (a) A mutual holding company organized under this article shall not be a capital stock
32 corporation, shall not be subject to RSA 292, nor shall it be subject to RSA 293-A, except as is
33 otherwise expressly provided in RSA 383-A with respect to banks. The net earnings and net worth of
34 a mutual holding company shall inure to the benefit of depositors of its subsidiary bank or subsidiary
35 banks. The persons shall have the same rights in the mutual holding company as depositors of a
36 mutual bank have in the bank under RSA 383-B:6-606.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 57 -

1 (b) Except as otherwise provided in this subsection, the corporate powers of a mutual
2 holding company shall be vested solely in its corporators, who shall consist of the persons who are named
3 as corporators in the plan of reorganization, and such additional persons as may be chosen to serve as
4 corporators from time to time as provided in the organizational documents of the mutual holding
5 company. The corporators of a mutual holding company shall have the same rights and duties in the
6 mutual holding company as the corporators of a mutual bank have in the bank under RSA 383-B:6-605.
7 The governance of a mutual holding company shall be vested solely in its board of directors. The
8 directors shall be elected by the corporators. The board of directors of the mutual holding company shall
9 have all powers and authorities granted under its organizational documents and applicable federal and
10 state laws. The board of directors shall elect officers and shall supervise management of the mutual
11 holding company. The directors of a mutual holding company shall have the same rights and duties in
12 the mutual holding company as the directors of a mutual bank have in the bank under RSA 383-B:6-604.
13 The initial board of directors shall consist of the persons named in the plan of reorganization. The
14 directors shall hold office until the first annual meeting of the corporators and until their successors have
15 been chosen and qualified. The board of directors shall hold an organization meeting immediately
16 following consummation of the reorganization for the adoption of organizational documents and the
17 election of officers. Any action by a mutual holding company which, if taken by a business corporation,
18 would require the approval of its shareholders under the Corporation Act shall require the vote or
19 concurrence of the corporators of the mutual holding company and in such proportion of the corporators
20 as would be required for the approval of similar action by shareholders of a business corporation. In the
21 case of a savings association converting into a mutual holding company, the rights of the corporators
22 described in this subsection shall be held instead by the association members.

23 (c) The general purpose of a mutual holding company shall be conducting and carrying
24 on the business and activities of a bank holding company. A mutual holding company shall not
25 accept deposits. It shall have the general powers of business corporations as set forth in the
26 Corporation Act. A mutual holding company may:

- 27 (1) Invest in the stocks and securities of banks or bank holding companies;
- 28 (2) Organize a bank in any jurisdiction and directly or indirectly acquire a bank by
29 purchase, combination, or any other manner in any jurisdiction;
- 30 (3) Combine with or acquire another mutual holding company or foreign mutual
31 holding company;
- 32 (4) Combine any subsidiary of the mutual holding company with and into another
33 subsidiary thereof;
- 34 (5) Make capital contributions and loans to its subsidiaries and affiliates and
35 otherwise assist them financially;
- 36 (6) Engage either directly or indirectly in any non-banking activity authorized for a

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 58 -

1 bank holding company under federal law; and

2 (7) Issue capital debentures for the purpose of strengthening its financial condition.
3 With the approval of the commissioner, the debentures shall be considered as legal investments for banks.

4 (d) The limitations of RSA 383-B:9-906 on the acquisition of affiliates by a bank holding
5 company shall apply to a mutual holding company.

6 (e) A mutual holding company may convert from mutual to stock form under RSA 383-B:6-608.
7 383-B:6-617 Chartering of Subsidiary Bank. The procedures for the organization of a subsidiary
8 bank shall be as prescribed in RSA 383-A, except that:

9 (a) The reorganizing mutual bank or mutual holding company may serve as the organizer of
10 the subsidiary bank being formed and as the applicant seeking approval of its incorporation.

11 (b) The organizational instrument shall contain a restriction to the effect that no shares
12 of the capital stock of the subsidiary bank may be directly or indirectly issued to or held by a person
13 other than the mutual holding company unless the issuance or holding of the shares is first approved
14 by a 2/3 majority of the board of directors of the mutual holding company and its corporators or
15 association members and then is approved by the commissioner in compliance with the provisions of
16 this subsection. The commissioner shall adopt rules governing the issuance of shares of the capital
17 stock of the subsidiary bank to any person other than the mutual holding company which are
18 comparable to rules adopted by the commissioner governing the conversion of depository banks from
19 mutual to stock form. In no event shall shares of the capital stock of the subsidiary bank be held by
20 any person other than the mutual holding company if the commissioner determines that the
21 corporators, if any, directors, officers, and employees of the mutual holding company or of the
22 subsidiary bank are provided with a benefit, privilege, or advantage not generally available to
23 depositors or otherwise impairs the rights of the depositors.

24 383-B:6-618 Supervision and Examinations. The commissioner may require such reports from,
25 and make such examinations of, each mutual holding company as he or she deems necessary to
26 determine the true condition of the subsidiaries and affiliates thereof over which he or she has
27 general supervision, the ability of the subsidiaries and affiliates to perform their engagements, and
28 the inter-company relationship of the mutual holding company and its subsidiaries and affiliates.
29 The cost of the examinations shall be assessed against, and paid by, the mutual holding company.
30 Mutual holding companies shall furnish the commissioner with copies of the reports filed by them
31 with their federal supervisory authorities, and the commissioner shall, as far as possible, rely upon
32 the reports for the purposes of this article.

33 Article 7

34 Branch Offices

35 383-B:7-701 Branch Offices. This article sets forth the requirements for branching of depository
36 banks in this state.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 59 -

1 383-B:7-702 Branching Authority. No depository bank shall transact any part of its usual
2 business of banking at any branch office except as follows:

3 (a) Subject to RSA 383-B:7-702(b), a depository bank may establish one or more
4 branch offices or acquire branch offices from any depository bank, national bank, federal savings
5 bank or foreign bank in any location within the state. The commissioner shall not permit a
6 depository bank to establish or acquire a branch office if the dollar volume of the total deposits of
7 the bank is greater than 30 percent of the dollar volume of the total deposits of all banks doing
8 business in this state as determined by the commissioner on the basis of the most recent annual
9 deposit reports of the Federal Deposit Insurance Corporation; nor shall the commissioner permit
10 a depository bank to establish or acquire a branch office if the bank is an affiliate of a bank
11 holding company which with all its affiliates then holds a dollar volume of total deposits greater
12 than 30 percent of the dollar volume of total deposits of all banks doing business in this state as
13 determined by the commissioner on the basis of the most recent annual deposit reports of the
14 Federal Deposit Insurance Corporation.

15 (b) A depository bank that is well-capitalized under applicable federal law and has a
16 composite CAMELS rating of at least 2 as a result of its most recent examination by its federal
17 regulatory authority or the commissioner, shall provide the commissioner with written notice of its
18 proposal to establish a new branch office or acquire a branch office as required under RSA 383-A:6-
19 602. All other depository banks shall submit an application to establish a branch office under
20 RSA 383-A:6-602. A depository bank may proceed to establish or acquire the branch office if it is
21 permitted to do so by the commissioner under RSA 383-A:6-604.

22 383-B:7-703 Branch Closings and Relocations.

23 (a) A depository bank may close a branch office upon the affirmative vote of a majority of
24 its board of directors, but the closing shall not occur until the depository bank has filed notice of the
25 branch office closing with the commissioner under RSA 383-A:6-602 and it is permitted to do so by
26 the commissioner under RSA 383-A:6-604. The depository bank shall be required to comply with
27 federal requirements for branch closings.

28 (b) A depository bank may relocate a branch office upon the affirmative vote of a
29 majority of its board of directors, but the relocation shall not occur until the depository bank has
30 filed notice of the branch office relocation with the commissioner under RSA 383-A:6-602 and it is
31 permitted to do so by the commissioner under RSA 383-A:6-604. The depository bank shall comply
32 with federal requirements for branch relocations.

33 383-B:7-704 Loan Production Offices. A depository bank and foreign bank that is authorized to
34 make loans may engage in the business of loan production in this state. A loan production office is
35 any place of business located within this state at which the bank engages solely in activities relating
36 to loan production. A loan production office is not a branch office. A depository bank or foreign bank

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 60 -

1 shall provide the commissioner with written notice of its intent to establish a loan production office
2 under RSA 383-A:6-602 and may proceed to establish a loan production office after filing the notice
3 without further action by the commissioner.

4 383-B:7-705 Automated Teller Machines; Fee Disclosure.

5 (a) A depository bank may own and operate automated teller machines in any location
6 within or without the state. An automated teller machine is not a branch. A depository bank is not
7 required to file a notice or application with the commissioner to establish, own or operate an
8 automated teller machine. No fee shall be charged by a depository bank for the use of an automated
9 teller machine unless the amount of the fee is disclosed clearly and conspicuously:

10 (1) On a sign posted on the automated teller machine or in clear view of a customer
11 while using the automated teller machine; or

12 (2) Electronically during the course of the transaction in a manner that permits the
13 user to cancel the transaction without incurring the fee.

14 (b) The depository bank shall not be required to include in a disclosure under subsection
15 (a) any fee that any company may charge the user under separate agreement with the user for
16 engaging in such transaction.

17 (c) This section shall apply to automated teller machines owned or operated by foreign
18 banks in this state.

19 (d) For the purposes of this section, “automated teller machine” means any terminal,
20 machine, or device that dispenses cash or its equivalent to a user or enables a user to engage in any
21 electronic financial transaction involving an account of the user at any depository bank.

22 383-B:7-706 Existing Branch Offices. Nothing herein shall be construed to make unlawful the
23 continued operation of any branch office lawfully existing on October 1, 2015.

24 Article 8

25 Conversion of Federal Banks and State Depository Banks

26 383-B:8-801 Conversion. This article shall govern the conversion of a depository bank into a
27 national bank or federal savings bank and the conversion of a national bank or federal savings bank
28 into a depository bank.

29 383-B:8-802 Conversion of State Depository Bank into a National Bank or Federal Savings
30 Bank. A depository bank may convert into a national bank or federal savings bank. The
31 conversion shall be governed by federal law and not the law of this state, except that the
32 conversions shall be approved by a majority of the holders of each class of voting stock of an
33 investor-owned depository bank, the corporators of a mutual savings bank, or the association
34 members of a savings association, or by a higher percentage if required by the entity’s
35 organizational documents.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 61 -

1 383-B:8-803 Conversion of a National Bank or Federal Savings Bank into a Depository Bank. A
2 national bank or federal savings bank located in this state which follows the procedure prescribed by
3 federal laws to convert into a depository bank, shall be granted a charter in this state if the commissioner
4 finds that the bank meets the standards as to office location, capital structure, and business experience of
5 officers and directors for the incorporation of a depository bank under RSA 383-A.

6 383-B:8-804 Conversion of a Mutual Bank or Mutual Bank into a Credit Union. A mutual
7 savings bank or mutual bank may convert to a credit union if the incorporators of a mutual savings
8 bank or the association members of a savings association approve the conversion by majority vote, or
9 by a higher percentage if required by its organizational documents.

10 383-B:8-805 Procedural Requirements. A converting bank shall apply to the commissioner for
11 approval of its conversion proposal under RSA 383-A:6-602. If the commissioner permits it to do so
12 under RSA 383-A:6-604, the converting bank may complete the proposed conversion, subject to other
13 federal or state approvals. The converted bank or credit union shall make any filings with the
14 secretary of state that are required under RSA 383-A or RSA 383-E.

15 383-B:8-806 Rules. The commissioner may adopt rules governing the terms and conditions of
16 conversions under this article.

17 Article 9

18 Combinations and Acquisitions

19 383-B:9-901 Depository Bank Combinations and Acquisition. This article shall govern the
20 combination and acquisitions of depository banks.

21 383-B:9-902 Procedural Requirements.

22 (a) If a depository bank proposes to combine with another depository bank, national
23 bank, federal savings bank, or foreign bank, the banks shall apply to the commissioner for approval
24 of the proposed combination as required under RSA 383-A:6-602 and may complete the combination
25 if they are permitted to do so by the commissioner under RSA 383-A:6-604, subject to other federal or
26 state approvals. If resulting bank is a depository bank, it shall make any filings with the secretary
27 of state that are required under RSA 383-A.

28 (b) A New Hampshire bank holding company may directly or indirectly acquire a
29 depository bank, national bank, federal savings bank, or out-of state depository bank. A
30 New Hampshire bank holding company may also organize, and be the sole incorporator of, an
31 interim depository bank for the purpose of effecting an acquisition of the investor-owned bank under
32 RSA 383-A. Any New Hampshire bank holding company proposing the acquisition shall apply to the
33 commissioner for approval of the proposed acquisition as required under RSA 383-A:6-602 and may
34 complete the acquisition if it is permitted to do so by the commissioner under RSA 383-A:6-604,
35 subject to other federal or state approvals.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 62 -

1 383-B:9-903 Required Vote. The combination of depository banks or the acquisition of an
2 investor-owned depository bank by a New Hampshire bank holding company is required to be
3 approved by a majority of the owners of the shares having a right to vote of an investor-owned
4 depository bank, a majority of the incorporators of a mutual savings bank, a majority of association
5 members of a savings association, or a higher percentage if required by their respective
6 organizational documents, as applicable.

7 383-B:9-904 Name Change. The bank resulting from a combination may change the name of the
8 resulting bank. In such event, it shall comply with the requirements of RSA 383-A:3-316, if applicable.

9 383-B:9-905 Branch Offices. As part of the proceedings for the combination authorized by this
10 article, the bank resulting from the combination shall be authorized to operate any branch office or
11 other office of the other bank or banks acquired in the combination unless otherwise ordered by the
12 commissioner.

13 383-B:9-906 Bank Holding Company Affiliates. No bank holding company shall directly or
14 indirectly acquire ownership or control of any voting stock of a depository bank, national bank, or
15 federal savings bank, and no depository bank shall combine with another depository bank or foreign
16 bank, if upon making the acquisition the bank holding company would have more than 12 affiliates
17 in this state, or the dollar volume of the total deposits in this state of the bank holding company and
18 all its affiliates or the bank resulting from the combination would exceed 30 percent of the dollar
19 volume of total deposits in this state of all banks in this state as determined by the commissioner on
20 the basis of the most recent annual deposit reports of the Federal Deposit Insurance Corporation
21 available at the time of acquisition.

22 383-B:9-907 Waiver of Deposit Limitation. In any transaction involving the combination of
23 any banks or bank holding companies, if one or more of such banks or bank holding companies is
24 in such condition that the Federal Deposit Insurance Corporation or any other federal agency
25 having supervisory authority over banks or bank holding companies in New Hampshire could take
26 action which would result in a combination or other similar structural change, and in the absence
27 of such federal action such a change would be prevented by any deposit limitation contained in this
28 article, the commissioner may waive such deposit limitation. The waiver shall be binding upon the
29 commissioner in any proceeding involving the combination of such bank, banks, or bank holding
30 company.

31 383-B:9-908 Rules. The commissioner may adopt rules governing the terms and conditions of
32 acquisitions and combinations under this article.

Article 10

Interstate Banking

33
34
35 383-B:10-1001 Interstate Banking. This article sets forth the requirements for interstate
36 banking and branching in this state and other states by New Hampshire bank holding companies

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 63 -

1 and depository banks and foreign depository banks and foreign bank holding companies.

2 383-B:10-1002 Interstate Acquisition of a Bank by a Bank Holding Company.

3 (a) A New Hampshire bank holding company may directly or indirectly acquire a foreign
4 bank holding company or a foreign bank.

5 (b) A foreign bank holding company may directly or indirectly acquire a New Hampshire
6 bank holding company, a depository bank, or a national bank or a federal savings bank having its
7 principal place of business in New Hampshire. A foreign bank holding company may also organize,
8 and be the sole incorporator of, a depository bank. No direct or indirect acquisition of a depository
9 bank shall be permitted which will result in a violation of the deposit limitation contained in
10 RSA 383-B:9-906 and 907.

11 (c) A New Hampshire bank holding company or a foreign bank holding company
12 engaging in an acquisition under subsection (a) or (b) of this section shall apply to the commissioner
13 for approval of the proposed acquisition as required under RSA 383-A:6-602 and file with the
14 commissioner a copy of each application or notice filed with federal or other state regulatory
15 authorities relating to the acquisition at the same time such application or notice is filed with such
16 federal or other state regulatory authorities. If permitted by the commissioner under RSA 383-A:6-
17 604, the bank holding company may complete the acquisition, subject to federal and other state
18 approvals.

19 383-B:10-1003 Interstate Bank Combination.

20 (a) A depository bank may combine with any foreign bank. No combination shall be
21 permitted which will result in a violation of the deposit limitation contained in RSA 383-B:9-906,
22 except as provided in RSA 383-B:9-907.

23 (b) The depository bank shall be required to obtain all approvals necessary to combine
24 with the foreign bank under New Hampshire law. The depository bank shall apply to the
25 commissioner for approval of the proposed combination as required under RSA 383-A:6-602 and file
26 with the commissioner a copy of each application or notice filed with federal or other state regulatory
27 authorities relating to the combination at the same time such application or notice is filed with the
28 federal or other state regulatory authorities. If it is permitted to do so by the commissioner under
29 RSA 383-A:6-604, the depository bank may complete the combination with the foreign bank, subject
30 to federal and other state approvals.

31 (c) If the resulting bank is a depository bank, it shall have all the powers held by the
32 foreign bank with which it combined under the laws of the state in which each branch office is
33 located, subject to the duties and restrictions thereof. In addition to any regulation by regulatory
34 authorities in the state where a branch office is located, each branch office of the depository bank
35 located outside of New Hampshire shall be subject to regulation by the commissioner as if such
36 branch office were located in New Hampshire and shall comply with New Hampshire law in the

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 64 -

1 conduct of its business in such other state unless otherwise required or permitted under the laws of
2 such other state.

3 (d) If the resulting bank is a foreign bank, it shall have all the powers held by the
4 depository bank with which it combined under New Hampshire law, subject to the duties and
5 restrictions thereof. Any branch office located in New Hampshire of a foreign bank, other than a
6 national bank or federal savings association, shall be regulated by the commissioner as if the branch
7 office were a branch office of a depository bank. Any foreign bank having a branch office located in
8 New Hampshire shall comply with New Hampshire law in the conduct of its business in New
9 Hampshire. No branch office of a foreign bank shall be permitted to engage in any activity not
10 permissible for a depository bank. Notwithstanding the foregoing, if the foreign bank is a national
11 bank or a federal savings association, it shall comply with New Hampshire law to the maximum
12 extent allowed under federal law.

13 383-B:10-1004 Interstate Establishment or Acquisition of Branch Offices by Depository Banks.

14 (a) A depository bank may establish a branch in any state or may acquire one or more
15 branch offices of a foreign bank in any state under federal law and the laws of the other state. The
16 depository bank shall be required to follow all procedures and to obtain all approvals necessary to
17 establish or acquire a branch office under New Hampshire law. The depository bank shall provide
18 the commissioner with written notice of the proposed establishment or acquisition of a branch as
19 required under RSA 383-A:6-602 and file with the commissioner a copy of each application or notice
20 filed with federal or other state regulatory authorities relating to the transaction at the same time
21 such application or notice is filed with such federal or other state regulatory authorities. A
22 depository bank may proceed to establish or acquire the branch if it is permitted to do so by the
23 commissioner under RSA 383-A:6-604. The depository bank shall have all the powers under the
24 laws of the state in which each branch office is located, subject to the duties and restrictions thereof.
25 In addition to any regulation by regulatory authorities in the state where a branch office is located,
26 each branch of the depository bank located outside of New Hampshire shall be subject to regulation
27 by the commissioner as if such branch office were located in New Hampshire and shall comply with
28 New Hampshire law in the conduct of its banking business in such other state unless otherwise
29 required or permitted under the laws of such other state.

30 (b) A foreign bank may establish one or more new branch offices in New Hampshire or
31 may acquire one or more branch offices from a depository bank or a national bank or federal savings
32 bank having its principal place of business in New Hampshire. The foreign bank shall be required to
33 obtain all approvals necessary to establish or acquire a branch office under RSA 383-B:7-702. No
34 branch office may be established or acquired if it will result in a violation of the deposit limitation
35 contained in RSA 383-B:7-702(a). The foreign bank shall provide the commissioner with written notice
36 of the proposed establishment or acquisition of a branch office as required under RSA 383-A:6-602 and

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 65 -

1 file with the commissioner a copy of each application or notice filed with federal or other state
2 regulatory authorities relating to the establishment or acquisition of a branch office or branch offices at
3 the same time such application or notice is filed with such federal or other state regulatory authorities.
4 A foreign bank may proceed to establish or acquire the branch if it is permitted to do so by the
5 commissioner under RSA 383-A:6-604. The foreign bank shall have all the powers held by a depository
6 bank with respect to the operation of the branch office or branch offices located in New Hampshire
7 under New Hampshire law, subject to the duties and restrictions thereof. Each branch office located in
8 New Hampshire of a foreign bank, other than a national bank or federal savings association, shall be
9 regulated by the commissioner as if the branch office were a branch office of a depository bank. Any
10 foreign bank having a branch office located in New Hampshire shall comply with New Hampshire law
11 in the conduct of its banking business in New Hampshire. No branch office of a foreign bank shall be
12 permitted to engage in any activity not permissible for a depository bank. Notwithstanding the
13 foregoing, if the foreign bank is a national bank or a federal savings association, it shall comply with
14 New Hampshire law to the maximum extent allowed under federal law.

15 383-B:10-1005 Examination of Foreign banks and Foreign Bank Holding Companies.

16 (a) The commissioner may examine New Hampshire branch offices of (i) foreign banks,
17 other than national banks and federal savings banks, and (ii) foreign bank holding companies. The
18 commissioner may, as an adjunct to such authority, enter into agreements with federal and other
19 state regulatory authorities to examine or participate in the examination of New Hampshire branch
20 offices of foreign banks and foreign bank holding companies. Notwithstanding RSA 98-B:5, or any
21 other provision of law to the contrary, the commissioner is authorized to permit one or more
22 department employees to travel outside this state for purposes of conducting or participating in the
23 examination of a foreign bank or foreign bank holding companies without the necessity of obtaining
24 the separate consent of the governor and executive council for such out-of-state travel. The
25 commissioner is further authorized to enter into agreements with federal and other state regulatory
26 authorities for purposes of sharing and protecting the confidentiality of any department examination
27 report, work papers, or other examination information and the examination report, work papers, or
28 other examination information of the other state or federal regulatory authority.

29 (b) The cost of any examination conducted under subsection (a) shall be the same as that
30 provided by RSA 383:11, I, except that the actual cost of travel, lodging, meals, and other expenses of
31 examination personnel employed in making examinations under the provisions of subsection (a) shall
32 be chargeable to the foreign bank or foreign bank holding company examined and shall be paid by such
33 entity in addition to the per diem charge for examination personnel set forth in RSA 383:11, I.

34 (c) The commissioner and examination personnel making an examination, either
35 individually or as a group, may mutually agree to flexible or alternative work schedules, similar to
36 Federal Deposit Insurance Corporation and Federal Reserve Bank examiner work schedules, that

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 66 -

1 will permit department examiners assigned to an out-of-state examination to work less than 5 days
2 per calendar week, provided that the examiner shall work no less than 75 hours per scheduled pay
3 period. Neither the commissioner nor any employee affected hereby shall be required or compelled,
4 as a condition of continued employment or otherwise, to consent to such flexible or alternative work
5 schedule. The commissioner shall be entitled to establish policies that set forth the number of hours
6 in each work day and the days of the week that constitute work days, or other conditions applicable
7 to flexible and alternative work schedules, and any flexible or alternative work schedule agreements
8 entered into between the commissioner and examiners shall be subject to such policies.

9 383-B:10-1006 Examination of Out-of-State Branch Offices of Depository Banks. The
10 commissioner shall be authorized to conduct or to enter into agreements with federal bank or foreign
11 regulatory authorities to examine out-of-state branch offices of depository banks. The cost of such
12 examinations shall be chargeable and paid in accordance with RSA 383-B:10-1005 and RSA 383:11, I.
13 RSA 383-B:10-1005 shall apply to department examination personnel employed in making such
14 examinations.

15 383-B:10-1007 Insurance Not Affected. This chapter shall not be interpreted to limit or to enlarge
16 the power of any depository bank, national bank, federal savings bank or foreign depository bank to
17 engage in the business of insurance or in any activity requiring licensing under RSA 401 or RSA 405.

18 CHAPTER 383-C

19 TRUST COMPANY ACT

20 Article 1

21 General Provisions

22 383-C:1-101 Short Title. This chapter shall be known and may be cited as the "Trust Company Act."

23 383-C:1-102 Scope. This chapter applies to trust companies, foreign trust companies, and
24 qualified trust advisors. A trust company is a nondepository state bank that engages in trust
25 business and that is chartered under this chapter or prior law. Except as otherwise provided in this
26 chapter, RSA 383-A applies to trust companies, foreign trust companies, and, as provided in article
27 12 of this chapter, qualified trust advisors.

28 383-C:1-103 Reservation of Power to Amend or Repeal. The general court has power to amend
29 or repeal all or part of this chapter at any time, and all persons subject to this chapter are governed
30 by the amendment or repeal.

31 383-C:1-104 Commissioner. The commissioner shall have the powers necessary or incidental to
32 performing all of the commissioner's duties under this chapter, including the power to adopt rules as
33 provided in this chapter in accordance with RSA 541-A. All rules previously adopted by the
34 commissioner relating to the subject matter of this chapter shall be subject to RSA 541-A:17, except for
35 rules adopted under RSA 394-A:7 which shall continue in full force and effect until amended or repealed.

36 Article 2

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 67 -

1 Definitions

2 383-C:2-201 Definitions.

3 (a) Each term defined under RSA 383-A shall have the same meaning for purposes of
4 this chapter.

5 (b) For purposes of this chapter, the following definitions shall also apply:

6 (1) “Change of ownership of a trust company” means the acquisition through a single
7 transaction or a series of related transactions of 10 percent or more of a trust company’s equity. The
8 acquirer or acquirers of trust company equity under a change of ownership of a trust company is or
9 are referred to as a new owner or new owners.

10 (2) “Change of control of a trust company” means a single transaction or a series of
11 related transactions that results in any of the following consequences: (i) a direct or indirect transfer
12 of ownership of more than 50 percent of the issued and outstanding voting equity of a trust company;
13 (ii) a combination to which any trust company is a party; (iii) the transfer by a trust company to any
14 other person of all or substantially all of the assets held in trust or otherwise under management by
15 the trust company; or (iv) conversion of a trust company to another entity form. The acquirer or
16 acquirers of trust company equity or assets, the successor, or the survivor with respect to any change
17 of control of a trust company is or are referred to as the acquirer or acquirers of control.

18 (3) “Foreign trust company” means an entity that is formed under the laws of a state
19 or jurisdiction other than this state and is authorized to engage in trust business.

20 (4) “Qualified trust advisor” has the meaning specified in RSA 383-C:12-1201.

21 (5) “Required capital” means the total amount of capital that a trust company is
22 required to maintain under RSA 383-C:5-502.

23 (6) “Trust business” shall include the business of doing any or all of the things
24 specified in RSA 383-C:3-301(b) through RSA 383-C:3-301(q).

25 (7) “Trust office” means a place of business of a trust company, other than its
26 principal office, at which trust business is conducted, but shall not include an office that provides
27 only administrative services or support for its trust business. The commissioner may define by rule
28 which administrative services or support for a trust business would qualify for exemption from this
29 definition and the procedure for requesting such exemption.

30 Article 3

31 Trust Business

32 383-C:3-301 Trust Business Generally. Consistent with a business plan and capital plan
33 approved by the commissioner and for so long as it is authorized to transact business in this state
34 and holds a valid charter as a trust company, a trust company shall have power:

35 (a) To execute all the powers and possess all the privileges conferred on state banks,
36 other than the power to accept deposits;

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 68 -

1 (b) To be appointed and to act as trustee, trust advisor, or trust protector of any trust or
2 as executor of any estate;

3 (c) To be appointed and to act as receiver, assignee, or agent for any person or entity;

4 (d) To act as fiscal or transfer agent of the United States or any other person or entity
5 and, in that capacity, to receive and disburse money;

6 (e) To transfer, register, and countersign certificates of stock, bonds, or other evidences
7 of indebtedness and to act as attorney-in-fact or agent of any entity for any purpose, statutory or
8 otherwise;

9 (f) To act as trustee under any mortgage, bonds, or debentures issued by any person, and
10 to accept and execute any municipal or corporate trust;

11 (g) To receive and manage any sinking fund of any entity upon those terms as may be
12 agreed upon between the entity and those dealing with, or having an interest in, the sinking fund;

13 (h) To collect coupons on, or interest upon, all manner of securities, when authorized so
14 to do, by the parties depositing the securities;

15 (i) To accept trusts from and execute trusts for married persons in respect of the
16 separate property of the married persons, to be their individual or joint agent in the management of
17 the property, and to transact any business in relation to the property;

18 (j) To act as receiver or trustee of the estate of any person, or to be appointed to any
19 trust by any court; to act as assignee under any assignment for the benefit of creditors of any debtor,
20 whether made under statute or otherwise, and to be the custodian of any moneys or assets paid into
21 court;

22 (k) To be appointed and to act under the order or appointment of any court of competent
23 jurisdiction or otherwise (i) as guardian, receiver, trustee, committee, or conservator of the estate of
24 any minor, any person deemed by law to be incompetent to manage his or her affairs, or any other
25 conservatee, or in any other fiduciary capacity, or (ii) as receiver, trustee, or committee of the
26 property or estate of any person in insolvency or bankruptcy proceedings; but this power shall not be
27 construed to deprive any other person of any legal right to have issued to the person a letter of
28 guardianship or of administration;

29 (l) To be appointed and to accept the appointment of executor of, or trustee under, the
30 last will and testament, or administrator with or without the will annexed, of the estate of any
31 deceased person;

32 (m) To act in a fiduciary capacity, including (i) to take, and accept, and execute any and
33 all trusts, duties, or powers of whatever nature or description that may be conferred upon or
34 entrusted or committed to the trust company by any person; (ii) to exercise any other authority,
35 trust, or power conferred upon or entrusted or committed to the trust company by grant, assignment,
36 transfer, devise, bequest, or otherwise; (iii) to exercise any power or authority that may be granted to

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 69 -

1 the trust company by order of any court of competent jurisdiction or any surrogate; and (iv) to
2 receive, take, use, manage, hold, and dispose of, according to the terms of any trust, duty, or powers
3 any property or estate, real or personal, that is the subject of the trust, duty, or power;

4 (n) Generally to execute trusts of every description not inconsistent with law;

5 (o) To purchase, invest in, sell, and otherwise transact in securities, promissory notes,
6 bills of exchange, bonds, debentures, or mortgages and, when moneys are borrowed or received for
7 investment, to provide security for the borrowing or receipt of money for investment, so long as the
8 trust company does not issue any surety or insurance for investment or engage in the business of
9 receiving or holding deposits;

10 (p) To act as trustee for a New Hampshire investment trust organized under RSA 293-B;

11 (q) To act as a custodian for any person to hold the property, including the person's
12 securities, bonds, and cash, in custody for safekeeping, so long as a trust company does not engage in
13 the business of receiving of deposits; and

14 (r) To purchase for the fiduciary estate directly from underwriters or distributors or in
15 the secondary market:

16 (1) Bonds or other securities underwritten or distributed by the trust company or an
17 affiliate of the trust company or by a syndicate which includes the trust company or affiliate,
18 provided that the trust company discloses in any written communication or account statement
19 reflecting the purchase of the bonds or securities the nature of the interest of such trust company or
20 affiliate in the underwriting or distribution of the bonds and securities and whether the trust
21 company or affiliate received any fee in connection with the purchase; and

22 (2) Securities of any investment company as defined under the federal Investment
23 Company Act of 1940 for which the trust company or affiliate acts as advisor, distributor, transfer
24 agent, registrar, sponsor, manager, shareholder servicing agent, or custodian, provided that the trust
25 company discloses in any written communication or account statement reflecting the purchase of the
26 securities the nature of the relationship and whether the trust company or affiliate received any fee
27 for providing such services.

28 (3) The authority granted in paragraphs (1) and (2) of this subsection may be
29 exercised only if:

30 (i) The investment is not expressly prohibited by the instrument, judgment, decree, or
31 order establishing the fiduciary relationship;

32 (ii) The trust company discloses in writing to the person or persons to whom it sends
33 account statements its intent to exercise the authority granted in paragraphs (i) and (ii) prior to the
34 first exercise of that authority; and

35 (iii) The trust company procures in writing the consent of its cofiduciaries with
36 discretionary investment powers, if any, to the investment.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 70 -

1 (4) A trust company, acting in a fiduciary capacity pursuant to paragraphs (1) and
2 (2), may:

3 (i) Invest in the securities of an investment company, investment trust, or other
4 company to which the fiduciary or its affiliate provides services in a capacity other than as trustee,
5 such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing
6 agent, administrator, or custodian, and the investment is not presumed to be affected by a conflict
7 between personal and fiduciary interests if the investment complies with the prudent investor
8 standard pursuant to article 9 of RSA 564-B.

9 (ii) Be compensated by the investment company, investment trust, or other company for
10 providing services in a capacity other than as trustee, such as advisor, distributor, transfer agent,
11 registrar, sponsor, manager, shareholder servicing agent, administrator, or custodian, if the
12 fiduciary at least annually notifies each person to whom it is required to send account statements
13 under RSA 564-B:8-813 of the rate and method by which the compensation was determined.

14 (5) Nothing in this subsection shall affect the degree of prudence which is required of
15 fiduciaries under the laws of this state. Any bonds or securities purchased under authority of this
16 section shall have sufficient liquidity and investment quality to satisfy the principles of fiduciary
17 investment and the terms of the instrument, judgment, decree, or order establishing the fiduciary
18 relationship.

19 (6) No trust company which is acting in a fiduciary capacity shall purchase for the
20 fiduciary estate any fixed income or equity security issued by the trust company or an affiliate
21 thereof, unless the trust company is expressly authorized to do so by the terms of the instrument
22 creating the trust, a court order, the written consent of the grantor of the trust, or the written
23 consent of the qualified beneficiaries of the trust, as defined in RSA 564-B:1-103.

24 383-C:3-302 No Acceptance of Deposits. A trust company shall not have the power to accept
25 deposits, and a trust company's organizational instrument shall include a statement that the trust
26 company does not have the power to accept deposits.

27 383-C:3-303 No Bond. Unless required by the order of a court with proper jurisdiction, no trust
28 company authorized to act as trustee or executor in this state shall be required to give bond to secure
29 performance of the trust company's duties as trustee or executor.

30 383-C:3-304 Nominees. Any trust company while acting in a fiduciary or custodial capacity,
31 either alone or jointly with a person or persons, may cause any stock or other securities to be
32 registered and held in the name of a nominee without mention of the fiduciary or custodial
33 relationship.

34 383-C:3-305 Depositing Securities. Any trust company while acting in a fiduciary capacity, or as
35 an agent or custodian or any fiduciary acting for itself, is authorized to deposit or arrange for the
36 deposit of securities with a bank or other regulated financial-service entity. At all time, the records

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 71 -

1 of any trust company shall show the name of the party for whose account the securities are so
2 deposited.

3 383-C:3-306 Denial of Charter. No person shall be granted a charter to transact business as a
4 trust company if the commissioner determines that the applicant for a charter will not conduct the
5 proposed trust business by the applicant in a safe and sound manner.

6 383-C:3-307 Trust Company Business Plan; Amendments to Business Plan. A trust company's
7 board of directors shall adopt a business plan that specifies (i) the trust business and other business
8 in which the trust company will engage, (ii) the trust company's management and operation
9 structures, including information technology, (iii) the trust company's disaster recovery or
10 contingency plan, and (iv) other information relevant to the governance, operation, equity ownership,
11 and business of the trust company, including other information as may be prescribed by the
12 commissioner. A trust company's business plan shall be such as will assure the safety and
13 soundness of the trust company. A trust company's board of directors shall obtain the
14 commissioner's approval of any material amendment of its business plan as provided in RSA 383-
15 C:8-801.

16 383-C:3-308 Trust Company Capital Plan and Amendments to Capital Plan. A trust
17 company's board of directors shall adopt a capital plan that specifies (i) the amount of the trust
18 company's capital, (ii) including its required capital, the quality, liquidity, and sources of the
19 trust company's capital, (iii) the proposed investment of the trust company's capital and
20 (iv) other information relevant to the capital of the trust company, including other information
21 as may be prescribed by the commissioner. A trust company's capital plan shall be such as will
22 assure the safety and soundness of the trust company. A trust company's board of directors also
23 shall approve and adopt each amendment to the trust company's capital plan. A trust company
24 shall obtain the commissioner's approval of any material amendment of its capital plan as
25 provided in RSA 383-C:8-801.

26 383-C:3-309 Change to Approved Business Plan or Capital Plan. No trust company shall engage
27 in trust business that is materially different from, or inconsistent with, the business plan or capital
28 plan approved by the commissioner. A trust company may effect a material amendment to the trust
29 company's business plan or capital plan under RSA 383-C:8-801.

30 Article 4

31 Safety and Soundness

32 383-C:4-401 Safety and Soundness. For purposes of determining the safety or soundness of a
33 trust company or any act that a trust company has taken or proposes to take, the commissioner shall
34 consider the following factors:

35 (a) The nature and type of fiduciary activities that the trust company conducts or
36 proposes to conduct;

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 72 -

- 1 (b) The complexity of fiduciary duties that the trust company has or proposes to have;
- 2 (c) The degree of discretion that the trust company has or proposes to have;
- 3 (d) The amount, nature, and types of fiduciary assets that the trust company holds or
- 4 manages, or projects to hold or manage;
- 5 (e) The nature and type of non-fiduciary activities that the trust company conducts or
- 6 proposes to conduct;
- 7 (f) The character, qualifications, competence, and experience of the trust company's
- 8 directors, and executive officers;
- 9 (g) The extent and adequacy of the trust company's proposed or existing internal
- 10 controls and risk management procedures;
- 11 (h) The amount of the trust company's capital, fidelity bond, and errors and omissions
- 12 insurance, and the adequacy of those resources for purposes of protecting the trust company's clients;
- 13 (i) The ability of a parent or affiliate of the trust company to serve as a source of
- 14 strength for the trust company;
- 15 (j) The quality, liquidity, amount, and source of the trust company's capital;
- 16 (k) The market or markets that the trust company serves or proposes to serve;
- 17 (l) The trust company's financial success, the prospects for future financial success, and
- 18 the reasonableness of its business plans;
- 19 (m) The existence and adequacy of insurance obtained or held by the trust company for
- 20 the purpose of protecting the trust company's clients and the settlors and beneficiaries of any trust of
- 21 which the trust company is serving or proposes to serve as a trustee;
- 22 (n) The quality and results of prior financial audits and any fiduciary compliance audits,
- 23 and the results of prior examinations;
- 24 (o) The adequacy of the trust company's operating systems, such as the trust company's
- 25 information technology systems, the trust company's cybersecurity systems, and the trust company's
- 26 disaster protection and recovery systems;
- 27 (p) The trust company's past experience complying with applicable laws and its potential
- 28 for compliance with applicable laws in the future; and
- 29 (q) Any other relevant factors under rules that the commissioner may adopt.

30 383-C:4-402 Consideration of Safety and Soundness of Trust Companies. The commissioner

31 shall consider the safety and soundness of a trust company and may make findings relative to a trust

32 company's safety and soundness: (i) when considering any application or notice submitted by a trust

33 company or by any person proposing to be chartered as a trust company; (ii) when examining or

34 investigating the trust company; (iii) when determining whether or not to initiate any proceeding or

35 issue any no-objection letter, notice, determination; (iv) or order in respect of a trust company, its

36 directors, or its officers, or otherwise as required by this chapter or as the commissioner determines

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 73 -

1 in the commissioner’s discretion.

2 Article 5

3 Required Capital; Fidelity Bond; Liability Insurance; Liquidation Pledge

4 383-C:5-501 Required Capital, Fidelity Bond, Liability Insurance Generally. A trust company
5 shall maintain the level of capital required under RSA 383-C:5-502, a fidelity bond under RSA 383-
6 A:4-405, an errors and omissions liability insurance policy under RSA 383-A:4-406, and a liquidation
7 pledge under RSA 383-C:5-503. The commissioner shall consider a trust company’s safety and
8 soundness and the protection of the trust company’s clients in determining the appropriate amounts
9 of required capital, fidelity bond coverage, liability insurance coverage, and liquidation pledge for the
10 trust company.

11 383-C:5-502 Required Capital.

12 (a) The minimum required capital of a trust company is \$500,000. The commissioner
13 may require a trust company to maintain required capital in excess of the minimum required capital.

14 (b) After a trust company is granted authority to transact business, a trust company
15 shall maintain capital consistent with the trust company’s capital plan and not less than the
16 required capital determined by the commissioner for the trust company. Upon notice to a trust
17 company and in consideration of the trust company’s safety and soundness, the commissioner may:
18 increase the amount of the trust company’s required capital, or the commissioner may reduce the
19 amount of trust company’s required capital. All changes to the trust company’s required capital
20 shall be reflected in one or more amendments to the trust company’s capital plan.

21 (c) After a trust company is granted authority to transact business, a trust company
22 shall hold and invest its capital, including the trust company’s required capital, in accordance with
23 the trust company’s capital plan. The investment of a trust company’s capital shall be in manner
24 consistent with the prudent investor standard under RSA 564-B:9-902. Consistent with trust
25 company safety and soundness and the prudent investor standard, a trust company’s capital plan
26 may permit a trust company to invest a portion of its capital, including a portion of the trust
27 company’s required capital, in any investment that has principal risk.

28 383-C:5-503 Liquidation Pledge.

29 (a) To defray the costs of liquidation of a trust company by the commissioner under
30 RSA 395, a trust company shall pledge to the commissioner cash or securities in accordance with this
31 section. In the event of a liquidation of a trust company under RSA 395 and without regard to any
32 priorities, preferences, or adverse claims, the commissioner may claim all or any amount of the cash
33 or securities so pledged, as applicable, liquidate the claimed securities, and, as soon as practicable,
34 utilize the cash claimed or received upon liquidation of pledged securities to defray the costs of the
35 trust company liquidation. To satisfy the obligation of a trust company to provide liquidation pledge,
36 the trust company’s parent or affiliate may pledge cash or securities on behalf of the trust company.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 74 -

1 The commissioner may specify the types of securities that may be pledged, or the commissioner may
2 require a pledge of cash. The pledged cash or securities shall be held at a bank located in this state,
3 a Federal Reserve Bank, or any other depository entity approved by the commissioner in the
4 commissioner's discretion. Any fees associated with establishing and maintaining a pledge under
5 this section shall be the responsibility of the trust company.

6 (b) In consideration of the safety and soundness of a trust company, the commissioner
7 shall determine and, upon notice to a trust company, may increase or reduce the amount of cash or
8 the value of securities pledged to the commissioner under this section so long as the amount of cash
9 or value of securities required to be pledged is not less than \$250,000 nor more than \$1,000,000. If
10 the commissioner requires a trust company to increase the trust company's required liquidation
11 pledge, then the commissioner shall afford the trust company a reasonable time within which to
12 achieve the increase in the trust company's required liquidation pledge and shall specify the
13 reasonable time in the notice of increase provided to the trust company under this section. The
14 amount of cash or value of securities pledged by a trust company shall not be reduced below the level
15 determined by the commissioner, as adjusted by the commissioner, except (i) upon liquidation of the
16 trust company under RSA 395, or (ii) as permitted to fund a special assessment under RSA 383:11-b.

Article 6

Directors and Officers

17
18
19 383-C:6-601 Number of Directors. The board of directors of a trust company shall be composed
20 of at least 5 directors. A director need not be a resident of New Hampshire or a citizen of the United
21 States, unless otherwise required by the commissioner in consideration of the trust company's safety
22 and soundness.

23 383-C:6-602 Board Meetings. A trust company's board of directors shall meet on a regular basis no
24 less than once each calendar quarter or with greater frequency as the board determines is necessary or as
25 the commissioner requires in consideration of the trust company's safety and soundness.

26 383-C:6-603 Officers.

27 (a) In the case of a trust company organized as a corporation, the trust company shall
28 have a president, a treasurer, and a secretary and may appoint one or more other officers.

29 (b) In the case of a trust company organized as a limited liability company, the trust
30 company shall have one or more officers, whose titles, duties, and powers are set forth in the trust
31 company's governing documents. The trust company shall designate each officer whose duties and
32 powers are functionally equivalent to the duties and powers customarily held by the president,
33 treasurer, or secretary of a corporation.

34 (c) The board of directors shall appoint each officer in accordance with the trust
35 company's governing documents. The board of the directors shall have the power to remove each
36 officer. Except as otherwise provided in the governing documents, an officer shall serve for a term

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 75 -

1 that that does not exceed 3 years.

2 (d) RSA 383-A:5-504 shall not apply to trust companies.

3 Article 7

4 Offices

5 383-C:7-701 Offices Generally. A trust company may operate out of one or more trust offices
6 and other offices located within the state or in any other state or jurisdiction consistent with the
7 trust company's business plan.

8 383-C:7-702 Opening or Relocation of Trust Office. Before opening or relocating a trust office,
9 other than an opening or relocation that is expressly provided in the trust company's business plan
10 approved by the commissioner, a trust company that, under the MOECA components under the
11 Uniform Interagency Trust Rating System, has a composite rating of at least 2 as a result of its most
12 recent examination by the commissioner, shall provide the commissioner with written notice of its
13 proposal to open or relocate a trust office as required under RSA 383-A:6-602. All other trust
14 companies shall submit an application to establish a trust office under RSA 383-A:6-602. A trust
15 company may proceed with the opening or relocation of the trust office if permitted by the
16 commissioner under RSA 383-A:6-604.

17 383-C:7-703 Trust Office Closure. At least 10 days before closing a trust office, a trust company
18 shall provide notice of the closure to the commissioner under RSA 383-A:6-602 and may proceed to
19 close the trust office after filing the notice without further action by the commissioner.

20 383-C:7-704 Examination of Out-of-State Trust Offices. The commissioner may enter into
21 agreements with any regulatory authority having jurisdiction to examine out-of-state trust offices of
22 trust companies. For those examinations, a trust company shall pay (i) an examination fee
23 calculated in accordance with RSA 383:11, I, and (ii) the actual cost of travel, lodging, meals, and
24 other expenses of examination personnel employed in making examinations under this section.

25 Article 8

26 Trust Company Changes

27 383-C:8-801 Application for Change of Trust Company Business Plan or Capital Plan.

28 (a) Before the effective date of any material, proposed change to the business plan or the
29 capital plan of a trust company, the trust company shall file an application with the commissioner
30 describing the material, proposed amendment to its business plan or capital plan as required under
31 RSA 383-A:6-602 and this section.

32 (b) The application concerning a material, proposed change of business plan or capital
33 plan of a trust company shall include the following information:

34 (1) The terms and conditions of each material, proposed change to the business plan
35 or the capital plan of the trust company and the proposed effective date of the change.

36 (2) A description of any impact of the each material, proposed change to the business

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 76 -

1 plan or to the capital plan of the trust company on the trust company's safety and soundness.

2 (c) No material, proposed change to the business plan or the capital plan of a trust company
3 shall be effective until the commissioner, acting under RSA 383-A:6-604, approves the proposed change.

4 383-C:8-802 Application for Change of Ownership of Trust Company.

5 (a) Before consummation of any proposed change of ownership of a trust company, the
6 new owner or new owners of trust company equity shall file an application with the commissioner
7 describing the proposed change of ownership of the trust company as required under RSA 383-A:6-
8 602 and this section. The application for a proposed change of ownership of a trust company shall be
9 in the form prescribed by the commissioner and shall include the following information:

10 (1) The identity, personal history, business background, and experience of the
11 proposed new owner or new owners, including (i) each new owner's material business activities and
12 affiliations during the past 5 years, (ii) a description of any material pending legal or administrative
13 proceedings in which the new owner is a party and (iii) a description of any criminal indictment or
14 conviction of the new owner by a state or federal court;

15 (2) A statement of the assets and liabilities of each new owner as of the end of the
16 fiscal year for each of the 3 fiscal years immediately preceding the date of the notice and an interim
17 statement of the assets and liabilities of the new owner as of a date not more than 90 days before the
18 date of the notice;

19 (3) The material terms and conditions of the proposed change of ownership of the
20 trust company and the manner in which the transaction is to be consummated.

21 (b) Except as provided in subsection (c), a change of ownership of a trust company shall
22 not be effective until the commissioner, acting under RSA 383-A:6-604, approves the proposed
23 change of ownership.

24 (c) If a change of ownership of a trust company occurs by reason of an involuntary
25 change of ownership outside the reasonable control of the owner of trust company equity, then the
26 trust company, either alone or with the new owner or new owners, shall file with the commissioner
27 the application described in subsection (a) as promptly as reasonably practicable after the occurrence
28 of that involuntary change of ownership. Any new owner or new owners holding trust company
29 equity as a result of an involuntary change of ownership shall hold the trust company equity subject
30 to determination of the commissioner under RSA 383-C:8-804.

31 383-C:8-803 Application for Change of Control of Trust Company.

32 (a) Before consummation of any proposed change of control of a trust company, the trust
33 company, either alone or with the acquirer or acquirers of control, shall file an application with the
34 commissioner describing the proposed change of control of the trust company as required under
35 RSA 383-A:6-602 and this section. The application for a proposed change of control of a trust
36 company shall be in the form prescribed by the commissioner and shall include the following

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 77 -

1 information:

2 (1) The identity, personal history, business background, and experience of the
3 proposed acquirer or acquirers of control, including (i) each acquirer’s material business activities
4 and affiliations during the past 5 years, (ii) a description of any material pending legal or
5 administrative proceedings in which the acquirer is a party and (iii) a description of any criminal
6 indictment or conviction of the acquirer by a state or federal court;

7 (2) A statement of the assets and liabilities of any acquirer of control as of the end of
8 the fiscal year for each of the 5 fiscal years immediately preceding the date of the notice, together
9 with related statements of income and source and application of funds for each of the fiscal years
10 then concluded, and an interim statement of the assets and liabilities for any person, together with
11 related statements of income and source and application of funds, as of a date not more than 90 days
12 before the date of the notice;

13 (3) The material terms and conditions of the proposed change of control of the trust
14 company and the manner in which the transaction is to be made;

15 (4) The identity, source, and amount of the funds or other consideration used or to be
16 used in consummating the change of control of a trust company and, if any part of these funds or
17 other consideration has been or is to be borrowed or otherwise obtained for the purpose of effecting
18 the change of control, a description of the transaction, the names of the parties to the transaction,
19 and any arrangements, agreements, or understandings with these transaction parties;

20 (5) Any plans or proposals which any acquirer may have to liquidate the trust
21 company, to sell its assets or combine it with any company, or to make any other material change in
22 the business, structure, operations, capital, or management of the trust company; and

23 (6) Any additional relevant information in such forms as the commissioner may
24 require by specific request in connection with any particular notice.

25 (b) Except as provided in subsection (c), a change of control of a trust company shall not
26 be effective until the commissioner, acting under RSA 383-A:6-604, approves the proposed change of
27 control.

28 (c) If a change of control of a trust company occurs by reason of an involuntary change of
29 control outside the reasonable control of the trust company and each of the owners of trust company
30 equity, then the trust company, either alone or with the acquirer or acquirers of control, shall file
31 with the commissioner the application described in subsection (a) as promptly as reasonably
32 practicable after the occurrence of that involuntary change of control. Any acquirer or acquirers of
33 control acquiring control over a trust company as a result of an involuntary change of control shall
34 hold control, including equity, assets, or other rights so acquired in trust, pending determination of
35 the commissioner under RSA 383-C:8-804.

36 383-C:8-804 Commissioner Determination. After receipt of an application under RSA 383-C:8-

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 78 -

1 801, RSA 383-C:8-802, or RSA 383-C:8-803 that is deemed substantially complete under RSA 383-
2 A:6-603, the commissioner shall make a determination under RSA 383-A:6-604.

3 383-C:8-805 Disapproval.

4 (a) If the proposed change would adversely affect the safety and soundness of the trust
5 company, then the commissioner may make a decision under RSA 383-A:6-604 to disapprove a
6 proposed change to a capital plan or business plan, a proposed change of ownership of a trust
7 company, or a proposed change of control of a trust company.

8 (b) In addition to the reasons for disapproval under subsection (a), the commissioner
9 may make a decision under RSA 383-A:6-604 to disapprove a proposed change of ownership of a
10 trust company or a proposed change of control of a trust company for any of the following reasons:

11 (1) The proposed change of ownership of the trust company or the proposed change of
12 control of the trust company would violate any law, including any securities law of this state;

13 (2) The financial condition, competence, experience, or integrity of any acquirer is
14 such as might jeopardize the safety and soundness of the trust company, including any successor to
15 the trust company, or prejudice the interests of the clients of the trust company; and

16 (3) Any acquirer neglects, fails, or refuses to furnish the commissioner all the
17 information required by the commissioner.

18 383-C:8-806 Internal Reorganization not a Change in Ownership or Change in Control. The
19 acquisition or transfer of the equity or indirect ownership of a trust company between entities under
20 common control that are affiliated with the trust company, so that, after giving effect to the
21 acquisition or transfer, the ultimate, indirect ownership of the trust company remains the same,
22 shall not be considered a change of ownership of the trust company or a change in control of the trust
23 company for purposes of this chapter.

24 383-C:8-807 Interim Trust Company. If an interim entity is formed solely for the purpose of
25 effecting a change in control of any trust company that is authorized to conduct trust business under
26 a valid charter, the interim entity shall not be obligated to obtain a charter or authority to transact
27 business as a state bank subject to the supervision of the commissioner so long as the only business
28 or activity in which the interim entity engages is to effect a change of control of a trust company
29 permitted under this chapter.

30 Article 9

31 Conservatorship to Address Safety and Soundness Issues

32 383-C:9-901 Appointment of Conservator. If the commissioner determines that the business of
33 any trust company is being conducted in an unsafe or unsound manner, then the commissioner may
34 appoint a conservator for the trust company under RSA 396 who shall immediately take charge of
35 the operation of the trust company for the purpose of correcting any unsafe or unsound condition or
36 operation. After appointment, the conservator shall continue to serve under the direction of the

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 79 -

1 commissioner for a period of time as the commissioner determines is reasonable and necessary or
2 until relieved by order of the commissioner or of a court of competent jurisdiction. The conservator's
3 salary, which shall be determined by the commissioner, and expenses shall be borne by the trust
4 company under conservatorship. Except as provided in this section, a conservatorship of a trust
5 company shall be governed by RSA 396.

6 Article 10

7 Dissolution

8 383-C:10-1001 Authority to Dissolve. A trust company may voluntarily dissolve in the manner
9 provided in this article. Upon dissolution under this section, a trust company shall surrender its
10 trust company charter to the commissioner and shall not have authority to transact business as a
11 state bank or to engage in trust business in this state. Dissolution of a trust company may be
12 accomplished by the liquidation of the trust company or by reorganizing the trust company into an
13 entity that does not have authority to transact business as a state bank or conduct trust business in
14 this state.

15 383-C:10-1002 Voluntary Dissolution by Liquidation. A trust company that voluntarily
16 dissolves by means of liquidation shall comply with the procedures for a voluntary dissolution set
17 forth in the applicable the Organizational Acts, but any filing required by applicable law to be
18 submitted to the secretary of state instead shall be submitted to the commissioner.

19 383-C:10-1003 Voluntary Dissolution by Reorganization. A trust company that voluntarily
20 dissolves by means of a reorganization into an entity that is not authorized to engage in trust
21 business shall be subject to the provisions of this article and the procedures for a reorganization into
22 the type of entity as set forth in the provisions of state and foreign law applicable to that type of
23 entity. Any filing required by applicable law of this state to be submitted to the secretary of state
24 shall first be submitted to the commissioner under this article.

25 383-C:10-1004 Dissolution Notice. A trust company seeking to dissolve its charter shall file a
26 dissolution notice with the commissioner under RSA 383-A:6-602 and this section. The dissolution
27 notice shall include a comprehensive plan of dissolution setting forth the proposed disposition of all
28 assets and liabilities in reasonable detail to effect the liquidation or reorganization. Among other
29 things, the plan of dissolution shall provide for the discharge or assumption of all of the trust
30 company's known or unknown claims and liabilities and the transfer of all of its responsibilities as a
31 trustee or other fiduciary to a successor trustee or trustees or other fiduciaries. Additionally, the
32 dissolving trust company shall provide to the commissioner such other certifications, affidavits,
33 documents, or information with respect to the dissolution as the commissioner may require to
34 understand how assets and liabilities will be disposed of, the timetable for effecting disposition of
35 trust company assets and liabilities, and the dissolving trust company's proposal for dealing with
36 any claims that are asserted after the dissolution has been completed.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 80 -

1 383-C:10-1005 Commissioner Determination. After receipt of a notice of trust company
2 dissolution under RSA 383-C:10-1004, the commissioner shall make a determination under RSA 383-
3 A:6-604.

4 383-C:10-1006 Completion of Plan of Dissolution. Upon issuance by the commissioner of a no-
5 objection letter or a determination of approval in response to a dissolution notice under RSA 383-
6 C:10-1004, the trust company may dissolve in accordance with the terms of its dissolution notice and
7 plan for dissolution. Upon completion of all actions required under the plan for dissolution and any
8 conditions prescribed by the commissioner, the dissolving trust company shall submit a report of its
9 actions to the commissioner and the dissolving trust company's board of directors shall certify, under
10 oath, that it is true and correct. Following receipt of the report, the commissioner may examine the
11 trust company to determine whether the commissioner is satisfied that all required actions have
12 been taken to liquidate or reorganize the trust company in accordance with the plan for dissolution
13 and any conditions prescribed. Following receipt of the dissolving trust company's report and after
14 determining that the plan for dissolution and any conditions prescribed have been satisfied, the
15 commissioner shall notify the dissolving trust that the dissolution has been completed and is final,
16 which notice shall supplement the prior no-objection or approval of dissolution issued by the
17 commissioner under RSA 383-A:6-604. Thereupon, the dissolving trust company shall surrender its
18 charter to the commissioner, and the commissioner shall issue a certificate of dissolution to be filed
19 with the secretary of state. If the commissioner is not satisfied that all required actions have been
20 taken, then the commissioner shall notify the dissolving trust company what additional actions shall
21 be taken to be eligible for a certificate of dissolution, which notice shall supplement the prior no-
22 objection or approval of dissolution issued by the commissioner under RSA 383-A:6-604. In the
23 notice, the commissioner may establish a deadline for the submission of evidence that the additional
24 actions have been taken. The commissioner may extend the deadline for good cause shown. If the
25 applicant fails to file a supplemental report showing that the additional actions have been taken
26 before the deadline, or submits a report that is found not to be satisfactory by the commissioner,
27 then the commissioner may issue an order under RSA 383-A:6-604 denying the dissolution and
28 reversing any prior approval or no-objection.

29 383-C:10-1007 Procedure; Effect; Recording Fee. After the commissioner issues a certificate of
30 dissolution under RSA 383-C:10-1006, the applicant shall file with the secretary of state the certificate
31 of dissolution and shall pay to the secretary of state any filing a fee required by the applicable
32 Organizations Act. In the case of a reorganization, the applicant shall also file with the secretary of
33 state the documents that, under the applicable Organization Act, are required to complete the
34 statutory reorganization as approved by the commissioner, including the organizational documents for
35 the reorganized entity. The secretary of state shall record the certificate and other documents, if any,
36 and, consistent with its practice and applicable law, the secretary of state may issue a certificate

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 81 -

1 evidencing the liquidation or reorganization. Upon acceptance by the secretary of state of the filing of
2 a certificate of dissolution issued under RSA 383-C:10-1006, and the issuance of any certificate or
3 acknowledgment by the secretary of state, the dissolving trust company shall be deemed to have been
4 voluntarily dissolved or reorganized, as applicable, with the same effect as if the voluntary dissolution
5 or reorganization had been effected by an entity subject to the applicable Organizational Act.

6 Article 11

7 Foreign Trust Companies

8 383-C:11-1101 Engagement in Trust Business.

9 (a) A foreign trust company may engage in trust business in this state.

10 (b) A foreign trust company that engages in trust business in this state is subject to RSA
11 383-A and this chapter.

12 383-C:11-1102 Trust Office.

13 (a) Before opening or relocating a trust office within this state, a foreign trust company
14 shall submit notice to the commissioner describing the opening or relocation under RSA 383-A:6-602.
15 A foreign trust company may only proceed with the opening or relocation of a trust office if permitted
16 to do so by the commissioner under RSA 383-A:6-604.

17 (b) At least 10 days before closing a trust office within this state, a foreign trust company
18 shall provide notice of the closure to the commissioner.

19 383-C:11-1103 Examination.

20 (a) The commissioner may examine a foreign trust company's trust offices either on-site
21 or off-site for purposes of confirming the foreign trust company's safety and soundness, including its
22 compliance with applicable laws.

23 (b) The commissioner may enter into a cooperative or information-sharing agreement
24 with any regulatory authority having jurisdiction with respect to the periodic examination or other
25 supervision of any foreign trust company. In lieu of conducting an examination, the commissioner
26 may accept that agency's or organization's report of examination or investigation.

27 383-C:11-1104 Filings with the Secretary of State.

28 (a) A foreign trust company shall file with the commissioner (i) a true and complete copy
29 of each document that the foreign trust company submits for filing with this state's secretary of
30 state, and (ii) a copy of any notice or other document that the foreign trust company receives from
31 this state's secretary of state.

32 (b) A foreign trust company organized as a corporation that domesticates in this state
33 under RSA 383-C:11-1105 is exempt from filing annual report under the Corporation Act. A foreign
34 trust company organized as a limited liability company that domesticates in this state under
35 RSA 383-C:11-1105 is exempt from filing annual reports under the LLC Act.

36 383-C:11-1105 Domestication.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 82 -

1 (a) With the commissioner’s prior approval, a foreign trust company organized as a
2 corporation or a limited liability company may become a trust company through domestication in
3 accordance with the applicable Organization Act and this section.

4 (b) A foreign trust company that proposes to domesticate shall file with the
5 commissioner an application for a charter under RSA 383-A:3-305 and this section. The application
6 shall include all documents required to be submitted under RSA 383-A:3-305, except that, instead of
7 submitting organizational documents, the foreign trust company shall submit domestication
8 documents, in accordance with the applicable Organizations Act and a plan of domestication.

9 (c) After receipt of a complete application for state charter under RSA 383-C:11-
10 1105(b), and consistent with RSA 383-A:3-305(b), the commissioner may conduct an investigation
11 under RSA 383-A:3-306 and may conduct a hearing under RSA 383-A:3-307. The commissioner
12 shall take action on the application under RSA 383-A:3-308, subject to any conditions that he or
13 she may impose with respect to the domestication, including establishing a date by which the
14 domestication must be completed. In all domestication proceedings under this article, the foreign
15 trust company shall act as organizer of the trust company subject to domestication for purposes of
16 article 3 of RSA 383-A. Upon the foreign trust company’s request, the commissioner subsequently
17 may extend the domestication completion date.

18 (d) If the commissioner approves a foreign trust company’s application for a state charter
19 under RSA 383-A:3-308(a), then the foreign trust company shall file with the secretary of state the
20 charter bearing the commissioner’s endorsement. The secretary of state, upon payment of a fee
21 equal to the fee charged by the secretary of state to entities domesticating under the applicable
22 Organizations Act, shall cause the charter to be recorded.

23 (e) Upon the secretary of state accepting the domestication filing, the secretary of state
24 shall issue a certificate to the domesticated trust company as provided in RSA 383-A:3-310.

25 (f) A foreign trust company becomes a trust company authorized to transact trust
26 business when the domestication is effective under the applicable Organizations Act and this
27 chapter, consistent with any determination by the commissioner.

28 (g) A trust company chartered in this state may domesticate as a foreign trust company
29 and transact trust business in another jurisdiction in accordance with the applicable laws of the
30 other jurisdiction.

Article 12

Qualified Trust Advisors

31
32
33 383-C:12-1201 Definitions. For purposes of this article, the following definitions shall apply:

34 (a) “Limited-scope discretionary power” means discretionary power with respect to a
35 trust if: (i) the terms of the trust confer simultaneous, discretionary authority on two or more
36 persons; (ii) the power represents only a portion of the full range of discretionary powers conferred by

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 83 -

1 the terms of the trust instrument on all persons that can exercise discretionary powers under the
2 terms of the trust; and (iii) the power generally is directed toward a singular area of discretion.
3 Limited-scope discretionary power may be any one of the following powers, but generally would not
4 include more than one of the following: the power to make or direct discretionary distributions, the
5 power to decant, the power to add or remove beneficiaries, the power to veto decisions by another
6 fiduciary.

7 (b) “Qualified trust advisor” means (i) any person that serves as a trust advisor or as a
8 trust protector and, in that capacity, exercises only limited-scope discretionary power as to a trust,
9 and (ii) any other person designated as a qualified trust advisor pursuant to rules adopted by the
10 commissioner under this article.

11 (c) “Registered advisor” means an entity that is (i) an investment advisor or broker-
12 dealer that maintains a valid registration under state or federal law or (ii) a commodity trading
13 advisor registered under federal law.

14 (d) “Trust advisor” means a trust advisor as defined in RSA 564-B:1-103(27).

15 (e) “Trust protector” means a trust protector as defined in RSA 564-B:1-103(28).

16 383-C:12-1202 Qualified trust advisor powers.

17 (a) A qualified trust advisor that acts as a trust advisor or trust protector in this state,
18 either by acting in such capacity from an office in this state or by acting in such capacity for a trust
19 administered in this state, is not a bank and shall not be required to obtain a charter as a bank, so
20 long as the qualified trust advisor exercises only limited-scope discretionary power as to each trust
21 the qualified trust advisor serves as trust advisor or trust protector.

22 (b) Except as provided under this article, a qualified trust advisor shall not engage in
23 trust business or banking business. Before engaging in any banking business or trust business that
24 is not permitted under this article, a qualified trust advisor shall obtain a charter as a bank.

25 (c) Nothing in this article shall limit a registered advisor from serving as trust advisor or
26 trust protector in this state.

27 **CHAPTER 383-D**
28 **FAMILY TRUST COMPANY ACT**
29 **Article 1**
30 **General Provisions**

31 383-D:1-101 Short Title. This chapter shall be known and may be cited as the “Family Trust
32 Company Act.”

33 383-D:1-102 Scope. This chapter applies to family trust companies. A family trust company is a
34 state bank and also is a trust company. Except as otherwise provided in this chapter, RSA 383-A
35 and RSA 383-C apply to family trust companies.

36 383-D:1-103 Reservation of Power to Amend or Repeal. The general court has power to amend

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 84 -

1 or repeal all or part of this chapter at any time, and all persons subject to this chapter are governed
2 by the amendment or repeal.

3 383-D:1-104 Commissioner. The commissioner shall have the powers necessary or incidental to
4 performing all of the commissioner’s duties under this chapter, including the power to adopt rules as
5 provided in this chapter in accordance with RSA 541-A. All rules previously adopted by the
6 commissioner relating to the subject matter of this chapter shall be subject to RSA 541-A:17.

7 383-D:1-105 Confidential Information.

8 (a) Except to the extent that disclosure of confidential information is permissible under
9 RSA 383:10-b, RSA 383-A:3-305(f), or RSA 383-A:5-511(c), family trust company information is
10 confidential, is not subject to subpoena, and is not subject to public disclosure.

11 (b) For purposes of this section, “family trust company information” includes the
12 following information:

- 13 (1) Any of its information that is confidential under RSA 383:10-b or RSA 383-A:5-
14 511(c);
- 15 (2) The name, date of birth, and any other identifying information of the designated
16 relative;
- 17 (3) The names, addresses, and equity interests of the family trust company’s equity
18 owners;
- 19 (4) Capital contributions to the family trust company;
- 20 (5) The family trust company’s directors and officers;
- 21 (6) The addresses of the family trust company’s offices;
- 22 (7) The names and addresses of the family trust company’s affiliates;
- 23 (8) The family trust company’s business affiliations;
- 24 (9) Any information that the family trust company provides to the commissioner
25 (whether in an application, in a report, in the course of an examination, or otherwise);
- 26 (10) Any information that the commissioner obtains in the course of an examination;
- 27 (11) An examination report;
- 28 (12) Any person’s nonpublic personal financial information as defined in 15 U.S.C.
29 section 6809(4);
- 30 (13) Any information relating to any conversion, combination, reorganization,
31 domestication, or dissolution of a family trust company; and
- 32 (14) Any information relating to any transfer of an equity interest in a family trust
33 company.

34 Article 2

35 Definitions

36 383-D:2-201 Definitions.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 85 -

1 (a) Except as provided in subsection (b), each term defined under RSA 383-A and
2 RSA 383-C shall have the same meaning for purposes of this chapter.

3 (b) For purposes of this chapter, the following definitions shall apply:

4 (1) “Affiliate” means an entity that controls, is controlled by, or is under common
5 control with another entity.

6 (2) “Designated relative” means the individual who is designated as the designated
7 relative in the application under RSA 383-D:5-502 or the application for change of designated
8 relative under RSA 383-D:10-1002.

9 (3) “Eligible trust” means:

10 (A) A trust of which each settlor is a family member;

11 (B) A trust of which a settlor is a person other than a family member if
12 noncharitable beneficiaries who are family members represent a majority of interest in the trust;

13 (C) A trust of which a settlor is a person other than a family member if a
14 majority of the trust’s noncharitable qualified beneficiaries are family members;

15 (D) A trust in which one or more eligible trusts or other family clients are the only
16 persons who currently are distributees or permissible distributees of trust income or principal; or

17 (E) A trust of which the settlor is one or more of (i) a key employee, (ii) a former
18 key employee, or (iii) a spouse of a key employee or former key employee.

19 (4) “Family charitable organization” means a nonprofit corporation, charitable trust,
20 or other nonprofit or charitable entity if (i) it was created by a family client or (ii) one or more family
21 clients contributed all or substantially all of the money or other property that the entity has received
22 as contributions. For purposes of this subsection, a nonprofit corporation includes any voluntary
23 corporation incorporated under RSA 292. For purposes of this subsection, a charitable entity
24 includes an entity organized for any charitable, educational, or religious purpose or any exempt
25 purpose under Section 501(c)(3) of the Internal Revenue Code of 1986.

26 (5) “Family client” means any of the following persons:

27 (A) A family member;

28 (B) A former family member;

29 (C) A key employee;

30 (D) A former key employee;

31 (E) An estate of any incompetent or deceased family member, former family
32 member, key employee, or former key employee;

33 (F) An eligible trust;

34 (G) A family charitable organization;

35 (H) A family entity;

36 (I) A person designated as a family client under RSA 383-D:4-401(a); or

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 86 -

1 (J) A person who qualifies as a family client under RSA 383-D:4-401(b).

2 (6) “Family entity” means an entity controlled by one or more family clients other
3 than key employees and former key employees.

4 (7) “Family member” is defined in RSA 383-D:4-402.

5 (8) “Former family member” means (i) a spouse or stepchild who was a family
6 member but ceased to qualify as a family member as the result of a divorce, death, or any other
7 reason or (ii) an individual who was a family member but ceased to qualify as a family member as
8 the result of his or her adoption by an individual who is not a family member.

9 (9) “Former key employee” means any of the following individuals:

10 (A) An individual who, under subsection (b)(10)(A) or (b)(10)(B), was a key
11 employee but ceased to qualify as a key employee as the result of a change of duties, termination of
12 employment, or any other reason; or

13 (B) The spouse of an individual described in subsection (b)(9)(A).

14 (10) “Key employee” means any of the following individuals:

15 (A) An individual who is a director or executive officer, or employee of a family
16 trust company or its affiliate and, in connection with his or her regular functions or duties,
17 participates in trust services or the entity’s management;

18 (B) An individual who is a director, officer, or employee of an eligible trust, a
19 family entity, or family charitable organization and, in connection with his or her regular functions
20 or duties, participates in the entity’s management;

21 (C) An individual designated as a key employee under RSA 383-D:4-403(b); or

22 (D) The spouse of an individual described in subsection (b)(10)(A), (b)(10)(B), or
23 (b)(10)(C).

24 (11) “Qualified beneficiary” means qualified beneficiary as defined in RSA 564-B:1-
25 103(12).

26 (12) “Required capital” means the amount of capital that a family trust company is
27 required to maintain under RSA 383-D:6-602. RSA 383-C:2-202(d) shall not apply for purposes of
28 this chapter.

29 (13) “Settlor” means settlor as defined in RSA 564-B:1-103(15).

30 (14) “Terms of a trust” means terms of a trust as defined in RSA 564-B:1-103(19).

31 (15) “Transact business with the general public” means engaging in any solicitation,
32 agreement, or transaction to exercise trust powers or otherwise provide trust, investment, or other
33 services (whether or not for a fee) to any person other than a family client.

Article 3

Qualifications; Safety and Soundness

34
35
36 383-D:3-301 Qualifications. A family trust company shall provide trust, investment, and other

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 87 -

1 services only to family clients. A family trust company's organizational documents shall prohibit the
2 family trust company from transacting business with the general public.

3 383-D:3-302 Safety and Soundness. For purposes of determining the safety or soundness of a
4 family trust company or any act that a family trust company has taken or proposes to take, the
5 commissioner shall consider the factors described in RSA 383-C:4-401. For purposes of those factors,
6 a family trust company's market is serving family clients, and a family trust company's financial
7 success is determined by the avoidance of net losses over multiple years.

8 Article 4

9 Family Clients

10 383-D:4-401 Family Client.

11 (a) With the commissioner's prior approval, a family trust company may designate a person
12 as a family client if that person has a close and continuous relationship with one or more family clients.

13 (b) A person is a family client for one year after an involuntary event that otherwise
14 would cause the person to cease to qualify as a family client. If, as the result of an involuntary
15 event, a person becomes a client of the family trust company but does not otherwise qualify as a
16 family client, then the person is a family client for one year after the involuntary event. For
17 purposes of this subsection, an involuntary event means an event that is not within the reasonable
18 control of the family trust company or a family client, including the divorce or death of a family
19 member, a former family member, a key employee, or former key employee. The revocation of an
20 individual's designation as a key employee under RSA 383-D:4-403(b) is not an involuntary event.

21 (c) If a person who, immediately before a change of the designated relative as provided
22 in RSA 383-D:10-1002 or a change of the method of determining family members as provided in
23 RSA 383-D:10-1003, was a family client and a client of the family trust company, then that person is
24 a family client for one year after the effective date of the change.

25 383-D:4-402 Family Member.

26 (a) Subject to subsections (a) and (b), "family member" means any of the following
27 individuals:

28 (1) The designated relative;

29 (2) Except as otherwise provided in subsection (b), an individual who is within (i) the
30 fifth degree of lineal kinship to the designated relative or (ii) the ninth degree of collateral kinship to
31 the designated relative; or

32 (3) A spouse or former spouse of an individual described in subsection (a)(1) or (a)(2).

33 (b) In lieu of the method for determining family members under subsection (a)(2), a
34 family trust company may elect to treat as a family member any individual who is the designated
35 relative's lineal descendant and is not more than 10 generations removed from the designated
36 relative. A family trust company that wishes to use this alternate method shall make the election on

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 88 -

1 its application under RSA 383-D:5-502 or file with the commissioner a notice in accordance with
2 RSA 383-D:10-1003.

3 (c) For purposes of subsections (a)(2) and (b), a family member's child includes the family
4 member's adopted child, stepchild, or foster child or an individual who was a minor when the family
5 member became that individual's guardian.

6 (d) For purposes of this section, "lineal kinship" means a family member who is in the
7 direct line of ascent or descent from the designated relative, and "collateral kinship" means a
8 relationship that is not lineal, but stems from a common ancestor. Degrees are calculated by adding
9 the number of steps from the designated relative through each person to the family member either
10 directly in the case of lineal kinship or through the common ancestor in the case of collateral kinship.

11 383-D:4-403 Key Employee.

12 (a) For purposes of RSA 383-D:2-201(b)(10)(A), an individual who solely performs
13 clerical, secretarial, or administrative functions for the family trust company, eligible trust, family
14 entity, or family charitable organization does not participate in trust services or the entity's
15 management.

16 (b) In addition to any individual who is a key employee under RSA 383-D:2-
17 201(b)(10)(A) or (B), a family trust company may designate as a key employee an individual who
18 is a current or former employee of the family trust company, an eligible trust, a family entity, or
19 a family charitable organization. A family trust may revoke any designation of an individual as
20 a key employee. At any time, the number of individuals designated as key employees under this
21 subsection shall not exceed 35.

22 383-D:4-404 Former Key Employee.

23 (a) After an individual becomes a former key employee, that individual does not qualify
24 as a former key employee with respect to any new trust, investment, or other service, except as
25 otherwise provided in subsection (b).

26 (b) An individual is a former key employee only to the extent of (i) trust, investment, or
27 other services that the family trust company was providing to that individual (or an eligible trust of
28 which the individual or the individual's spouse was a settlor) immediately before the individual
29 became a former key employee and (ii) any trust, investment, or other service in connection with any
30 additional investments that, with respect to an investment that the family trust company advises or
31 manages, the individual (or an eligible trust of which the individual or the individual's spouse was a
32 settlor) was contractually obligated to make before the individual became a former key employee.

33 383-D:4-405 Eligible Trust. A trust is not an eligible trust if the commissioner determines that
34 the trust was formed or is administered for the primary purpose of evading the limitations of this
35 chapter.

36 383-D:4-406 Family Entity. An entity is not a family client if the commissioner determines that

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 89 -

1 the entity was organized or is operated for the primary purpose of evading the limitations of this
2 chapter.

3 383-D:4-407 Family Charitable Organization. A charitable organization is not a family client if
4 the commissioner determines that it was organized or is operated for the primary purpose of evading
5 the limitations of this chapter.

6 Article 5

7 Organization and Conversion

8 383-D:5-501 General. Except as otherwise provided in this chapter, a family trust company
9 shall be organized in accordance with RSA 383-A.

10 383-D:5-502 Application. In addition to any other information that the application may or must
11 contain under RSA 383-A:3-305, the application shall include (i) the designated relative's name and
12 date of birth and (ii) any request for exemption under RSA 383-D:7-702. For purposes of
13 determining family members, the application may include an election to use the alternate method
14 described in RSA 383-D:4-402(b). Unless the application includes that election or the family trust
15 company elects the alternate method in accordance with RSA 383-D:10-1003, the method described
16 in RSA 383-D:4-402(a) shall apply.

17 383-D:5-503 Review of Application.

18 (a) In considering whether to approve or deny an application for a family trust company
19 charter, the commissioner shall consider the trust company's safety and soundness in accordance
20 with RSA 383-D:3-302.

21 (b) During the course of his or her review of an application, the commissioner may
22 propose that the organizer amend or supplement the application for purposes of ensuring that
23 the family trust company meets the requirements of a family trust company under this chapter,
24 RSA 383-A, and RSA 383-C and ensuring the family trust company's safety and soundness. The
25 organizer may amend or supplement the application in accordance with the commissioner's
26 proposal.

27 383-D:5-504 Exemptions from Public Notice and Hearing.

28 (a) The organizer of a family trust company is exempt from publishing any notice of their
29 application for a family trust company charter. RSA 383-A:3-305(b)(2) shall not apply to the
30 organizer of a family trust company.

31 (b) The commissioner shall not order a hearing in connection with any application for a
32 family trust company charter. RSA 383-A:3-307 shall not apply to the organizer of a family trust
33 company.

34 383-D:5-505 Action on Application. Upon the completion of his or her review of the application,
35 the commissioner shall issue a notice of decision and a charter in accordance with RSA 383-A:3-
36 308(a) or a notice of denial in accordance with RSA 383-A:3-308(b). If the commissioner approves the

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 90 -

1 application, then, in addition to the information that the notice must include under RSA 383-A:3-
2 308(a), the notice of decision shall include a statement specifying each exemption granted or denied.

3 383-D:5-506 Conversion into a Trust Company. A family trust company may apply to convert to
4 a trust company that is authorized to transact business with the general public by filing an
5 application for a trust company charter in accordance with article 3 of RSA 383-A. RSA 383-A and
6 RSA 383-C shall govern the application, and this chapter shall not apply to the application. The
7 conversion shall be effective upon the issuance of a certificate authority granting the entity the
8 authority to transact trust business, including transacting business with the general public. Upon
9 the conversion's effective date, the entity shall cease to be a family trust company, and any
10 exemptions granted under this chapter shall terminate.

11 Article 6

12 Capital and Insurance

13 383-D:6-601 General. A family trust company shall maintain the required capital under RSA
14 383-D:6-602 and an errors and omissions liability insurance policy under RSA 383-A:4-406. For
15 purposes of determining the appropriate amounts of required capital and liability insurance, the
16 commissioner shall consider the family trust company's safety and soundness and shall give primary
17 consideration to the liability insurance, which provide the primary protections for a family trust
18 company's family clients. RSA 383-C:5-501 shall not apply to family trust companies.

19 383-D:6-602 Required Capital.

20 (a) The minimum required capital of a family trust company is \$250,000. The
21 commissioner may require a family trust company to maintain additional capital. From time to
22 time, the commissioner may reduce or increase the amount of additional capital that a family trust
23 company is required to maintain.

24 (b) After it obtains the authority to exercise trust powers, a family trust company shall
25 maintain an amount of capital that equals or exceeds the required capital. A family trust company
26 shall not make any distribution to the extent that, upon making the distribution, the family trust
27 company's total capital would be less than the required capital. For purposes of this subsection,
28 "distribution" means a direct or indirect transfer of money or other property (except an equity
29 interest in the family trust company) to or for the benefit of family trust company's equity owners in
30 respect of any of equity interests in the family trust company.

31 (c) RSA 383-C:5-502(a) and (b) shall not apply to family trust companies.

32 383-D:6-603 Liquidation Pledge. A family trust company is exempt from RSA 383-C:5-503.

33 Article 7

34 Powers and Exemptions

35 383-D:7-701 Powers. A family trust company shall have the powers granted to a trust company
36 under RSA 383-C, excluding the power to transact business with the general public. A family trust

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 91 -

1 company shall not transact business with the general public.

2 383-D:7-702 Grant of Exemptions.

3 (a) Subject to subsection (b), the commissioner may exempt a family trust company from
4 any one or more requirements of RSA 383-A, RSA 383-C, and this chapter.

5 (b) The commissioner shall not have the power to exempt a family trust company from
6 any of the following requirements:

7 (1) the qualifications of a family trust company under RSA 383-D:3-301;

8 (2) the requirements for organization under article 5 of this chapter;

9 (3) the requirement to maintain capital that equals or exceeds the minimum
10 required capital under RSA 383-D:6-602;

11 (4) the requirement to maintain an errors and omissions liability insurance policy
12 under RSA 383-A:4-406; and

13 (5) the prohibition against accepting deposits under RSA 383-C:3-302.

14 (c) In the application under RSA 383-D:5-502, a family trust company's organizer may
15 request one or more exemptions. After obtaining its certificate of authority to exercise trust powers,
16 a family trust company may request one or more exemptions by filing with the commissioner an
17 application for exemption.

18 (d) The commissioner may grant or deny, in whole or in part, any requested exemption,
19 and the commissioner may impose one or more reasonable conditions or limitations on any
20 exemption that the commissioner grants.

21 383-D:7-703 Modification or Revocation of Exemptions. The commissioner may modify or revoke
22 any exemption granted to a family trust company under RSA 383-D:7-702 if (i) the commissioner
23 determines that, based upon the safety and soundness of the family trust company or any action that
24 the family trust company has taken or proposes to take, modification or revocation is necessary or
25 advisable or (ii) the family trust company fails to comply with this chapter or any other applicable
26 laws. A modification of an exemption includes the imposition of one or more reasonable conditions or
27 limitations on that exemption.

28 Article 8

29 Directors and Officers

30 383-D:8-801 Board of Directors.

31 (a) A family trust company shall have a board of directors, and that board of directors
32 must have not less than three members. A director need not be a resident of New Hampshire or a
33 citizen of the United States, unless otherwise required by the commissioner in consideration of the
34 family trust company's safety and soundness. RSA 383-C:6-601 shall not apply to family trust
35 companies.

36 (b) Subject to any limitations set forth in its organizational documents, this chapter, and

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 92 -

1 RSA 383-C, all of the family trust company's powers shall be exercised by or under the authority of
2 the family trust company's board of directors.

3 383-D:8-802 Standard of Care.

4 (a) Except as provided in subsections (b) and (c), RSA 383-A:5-505 applies to a director or
5 officer of a family trust company.

6 (b) A director or officer of a family trust company shall not be personally liable to any
7 person to the extent that, in the performance of his or her duties, the director or officer acts in good
8 faith. In connection with any matter involving a trust, a director or officer acts in good faith to the
9 extent that he or she acts in reasonable reliance on the terms of the trust, a nonjudicial settlement
10 agreement under RSA 564-B:1-111, or a court order.

11 (c) A family trust company may indemnify a director or officer against any liability,
12 except to the extent that a court determines that the director or officer failed to act in good faith.

13 Article 9

14 Trust Offices

15 383-D:9-901 Trust Offices. In accordance with RSA 383-C:7-701 through RSA 383-C:7-703, a
16 family trust company may open, close, or relocate any trust office at which it exercises trust powers
17 or otherwise transacts business.

18 Article 10

19 Reports, Certifications, and Other Filings

20 383-D:10-1001 Reports and Certification.

21 (a) In addition to filing an annual report in accordance with RSA 383-A:5-511, a family
22 trust company shall file with the commissioner an annual certification certifying that the family
23 trust company is in compliance with the provisions of this chapter and the conditions and limitations
24 of all granted exemptions. In its annual certification, a family trust company may change its
25 designated relative in accordance with RSA 383-D:10-1002. The annual certification is due on the
26 same day as its annual report.

27 (b) A family trust company shall file quarterly reports in accordance with RSA 383-A:5-
28 510, and it shall file copies of other documents as required under RSA 383-A:5-511.

29 383-D:10-1002 Change of Designated Relative.

30 (a) A family trust company may change its designated relative by filing with the
31 commissioner notice in which the family trust company designates a new designated relative.

32 (b) Except with the commissioner's prior approval, a family trust company cannot change its
33 designated relative more than once every 10 years after the issuance of its certificate of authority.

34 (c) Except with the commissioner's prior approval, the change of a family trust
35 company's designated relative is effective on January 1 of the year after in which the family trust
36 company files its notice with the commissioner.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 93 -

1 383-D:10-1003 Change of Method of Determining Family Members.

2 (a) For purposes of determining family members, a family trust company may elect to
3 use the method described in RSA 383-D:4-402(a) or the alternate method described in RSA 383-D:4-
4 402(b). The family trust company may change its election by filing with the commissioner a notice of
5 the change.

6 (b) Except with the commissioner's prior approval, a family trust company cannot
7 change its election more than once every 10 years after the issuance of its certificate of authority.

8 (c) Except with the commissioner's prior approval, the new method is effective on
9 January 1 of the year after which the family trust company files its notice with the commissioner.

10 383-D:10-1004 Exemption from Public Hearings. In connection with any matter subject to the
11 procedural rules under article 6 of RSA 383-A, the commissioner shall not order a public hearing. To
12 the extent that RSA 383-A:6-604 authorizes the commissioner to hold a public hearing, RSA 383-A:6-
13 604 shall not apply to a family trust company.

14 Article 11

15 Examinations

16 383-D:11-1101 Examination. Except as provided in RSA 383-D:11-1102, the commissioner shall
17 examine a family trust company in accordance with RSA 383:13 and RSA 383-C:7-704.

18 383-D:11-1102 Audits in Lieu of Examination.

19 (a) In lieu of an examination, the commissioner may accept (i) a financial audit report
20 made in accordance with RSA 383-A:5-510 and (ii) a fiduciary compliance audit report that includes
21 a review of each material aspect of the family trust company's management, operations, compliance,
22 and asset management and conforms to applicable generally accepted auditing standards.

23 (b) A family trust company may apply for an exemption from regular examination under
24 RSA 383:13. In determining whether to grant an exemption, the commissioner shall consider (i) the
25 quality of the family trust company's management, operations, compliance, and asset management
26 as determined under any prior examinations and reports described in subsection (a), (ii) the quality,
27 scope, and amount of coverage under the errors and omissions liability insurance policy that the
28 family trust company maintains, and (iii) any other relevant factors affecting the family trust
29 company's safety and soundness. A family trust company exempt from regular examination shall
30 annually file the reports described in subsection (a).

31 (c) If the commissioner determines that a family trust company is or may have engaged in
32 any activity that adversely affects the family trust company's safety and soundness, then the
33 commissioner may examine the family trust company and may revoke any exemption under subsection (b).

34 Article 12

35 Dissolution

36 383-D:12-1201 Voluntary Dissolution. A family trust company may voluntarily dissolve in

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 94 -

1 accordance with RSA 383-C:10-1001 through RSA 383-C:10-1007.

2 383-D:12-1202 Revocation of Authority to Conduct Trust Business.

3 (a) If the commissioner determines that a family trust company is or has engaged in any
4 activity that jeopardizes its safety or soundness, then the commissioner may revoke the family trust
5 company's authority to conduct trust business.

6 (b) The commissioner shall issue a notice to the family trust company following the
7 revocation of its authority granting it an opportunity for a hearing in accordance with RSA 541-A.
8 The family trust company may appeal the commissioner's decision under RSA 541.

9 (c) The revocation of a family trust company's authority to conduct trust business
10 removes the family trust company as a trustee, trust advisor, or trust protector of each trust of which
11 it is serving as a trustee, trust advisor, or trust protector.

12 (d) Within a reasonable time after the revocation of its authority to conduct trust
13 business, a family trust company shall dissolve in accordance with its organizational documents.

14 383-D:12-1203 Judicial Dissolution.

15 (a) The commissioner or any interested person may commence a judicial proceeding for
16 purposes of seeking the dissolution of a family trust company. Each interested person shall be a party to
17 that judicial proceeding. For purposes of this section, "interested person" means a person who is (i) a
18 shareholder of a family trust company organized as a corporation, (ii) a member of a family trust
19 company organized as a limited liability company, or (iii) a director or officer of the family trust company.

20 (b) The commissioner shall have the right to intervene in a judicial proceeding under
21 this section. Unless the commissioner commences a judicial proceeding under this section or
22 exercises his or her right to intervene, the commissioner shall not be a party to a judicial proceeding
23 under this section.

24 (c) The probate division of the circuit court shall have exclusive jurisdiction over any
25 judicial proceeding under this section.

26 (d) Venue for a judicial proceeding under this section is in the county of this state in
27 which the family trust company's principal office is located or, if it does not have a principal office in
28 this state, its registered office.

29 (e) The court may dissolve the family trust company if it is established that:

30 (1) The family trust company has materially violated any applicable law, including
31 the requirement to maintain its required capital under RSA 383-C:5-502 or the requirement to
32 maintain an errors and omissions liability insurance policy under RSA 383-A:4-406;

33 (2) The family trust company is or has engaged in any activity that jeopardizes its
34 safety or soundness;

35 (3) The directors are deadlocked in the management of the family trust company's
36 affairs, the family trust company's equity owners are unable to break the deadlock, and irreparable

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 95 -

1 injury to the family trust company or one or more of the family trust company's clients is threatened
2 or being suffered;

3 (4) The directors, its executive officers, or those in control of the family trust
4 company have acted, are acting, or will act in a manner that is illegal or fraudulent;

5 (5) The family trust company's equity owners are deadlocked in voting power and
6 have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors
7 to directors whose terms have expired;

8 (6) The family trust company's assets are being misapplied or wasted;

9 (7) An agreement of all of the family trust company's equity owners requires the
10 dissolution and the family trust company has not been dissolved in accordance with that agreement;

11 (8) The family trust company's authority to conduct trust business has terminated
12 under RSA 383-D:12-1202 and the family trust company has failed within a reasonable time to
13 liquidate and distribute its assets and dissolve; or

14 (9) The family trust company has abandoned its business and has failed within a
15 reasonable time to liquidate and distribute its assets and dissolve.

16 (f) If, after a hearing, the court determines that one or more grounds for judicial
17 dissolution described under subsection (e) exist, then it shall issue an order dissolving the family
18 trust company, specifying the effective date of the dissolution, and specifying the effective date on
19 which the family trust company's authority to conduct trust business terminates. The clerk of the
20 court shall deliver certified copies of the order to the commissioner and the secretary of state, and
21 the clerk of the court shall mail notice of the order to the department of revenue administration. The
22 secretary of state shall file the certified copy that he or she receives. After entering the order of
23 dissolution, the court shall direct the winding up and liquidation of the family trust company's
24 affairs in accordance with the Corporation Act if the family trust company is organized as a
25 corporation or the LLC Act if the family trust company is organized as a limited liability company.

26 (g) In a judicial proceeding under this section, the court may order any appropriate
27 relief, including relief under RSA 547:3-b.

28 (h) If the commissioner is a party in a judicial proceeding under this section, then the
29 court shall award the commissioner's costs and expenses, including reasonable attorney's fees, to be
30 paid by the family trust company or to the extent that the family trust company's assets are
31 insufficient, one or more of the family trust company's clients, apportioned among them as justice
32 and equity requires.

33 (i) As justice and equity may require in a judicial proceeding under this section, the
34 court may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by
35 (i) the family trust company, (ii) to the extent that the family trust company's assets are insufficient,
36 one or more of the family trust company's clients, or (iii) another party other than the commissioner.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 96 -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

Article 13

Foreign Family Trust Companies

383-D:13-1301 Authority to Exercise Trust Powers.

(a) A foreign family trust company may engage in trust business in this state. A foreign family trust company that exercises trust powers in this state is subject to this chapter and, except as otherwise provided in this chapter, RSA 383-A and RSA 383-C. RSA 383-C:11-1101 shall not apply to foreign family trust companies.

(b) For purposes of this chapter, “foreign family trust company” means a foreign trust company that (i) is organized in a state or jurisdiction other than New Hampshire and (ii) is authorized under the laws of that state or jurisdiction to provide trust, investment, and other services principally to members of one or two families and entities in which one or more of those family members have substantial interests. Under those laws, a trust company meeting those qualifications commonly is called a family trust company or a private trust company.

(c) A foreign trust company is not a foreign family trust company if the commissioner determines that the foreign trust company was organized or is operated for the primary purpose of evading the limitations of this chapter.

383-D:13-1302 Trust Offices. In accordance with RSA 383-C:11-1102, a foreign family trust company may open, close, or relocate any trust office at which it exercises trust powers or otherwise transacts business.

383-D:13-1303 Examination. The commissioner may examine a foreign family trust company as provided in RSA 383-D:11-1101. RSA 383-C:11-1103 shall not apply to foreign family trust companies.

383-D:13-1304 Filings with the Secretary of State. A foreign family trust company shall file with the commissioner (i) a true and complete copy of each document that the foreign family trust company submits for filing with the New Hampshire secretary of state and (ii) a copy of any notice or other document that the foreign family trust company receives from the New Hampshire secretary of state. RSA 383-C:11-1104 shall not apply to foreign family trust companies.

383-D:13-1305 Domestication. A foreign family trust company may domesticate in accordance with RSA 383-C:11-1104 if, upon its domestication, it will qualify as a family trust company under RSA 383-D:3-301.

CHAPTER 383-E
CREDIT UNION ACT
Article 1
General Provisions

383-E:1-101 Short Title. This chapter shall be known and may be cited as the “Credit Union Act.”

383-E:1-102 Scope. This chapter applies to state and foreign credit unions. RSA 383-A also

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 97 -

1 applies to credit unions, except as otherwise provided in that chapter.

2 383-E:1-103 Reservation of Power to Amend or Repeal. The general court has power to amend
3 or repeal all or part of this chapter at any time and all persons subject to this chapter are governed
4 by the amendment or repeal.

5 383-E:1-104 Commissioner. The commissioner has the powers necessary or incidental to
6 performing all of the commissioner’s duties under this chapter, including the power to adopt rules as
7 provided in this chapter in accordance with RSA 541-A. All rules previously adopted by the
8 commissioner relating to the subject matter of this chapter shall be subject to RSA 541-A:17, except
9 for rules adopted under RSA 394-A:7 which shall continue in full force and effect until amended or
10 repealed.

11 Article 2

12 Definitions

13 383-E:2-201 Definitions.

14 (a) Each term defined under RSA 383-A shall have the same meaning for purposes of
15 this chapter.

16 (b) For purposes of this chapter, the following definitions apply:

17 (1) “Branch office” means a place or location, other than its principal office, at which
18 a credit union receives the money of its members on deposit and in payment of shares or makes loans
19 or receives payments on loans, but shall not include an office that provides only administrative
20 services or support for its activities. The commissioner may define by rule which administrative
21 services or support for a credit union’s activities would qualify for exemption from this definition and
22 the procedure for requesting such exemption.

23 (2) “Federal credit union” means a credit union chartered under federal law.

24 (3) “Foreign credit union” means a credit union that is chartered by another state.

25 (4) “State credit union” means a credit union chartered by this state.

26 Article 3

27 Organization

28 383-E:3-301 Agreement; Bylaws. Seven or more persons, resident in this state, who have
29 associated themselves by an agreement in writing with the intention of organizing a corporation
30 for the purpose of accumulating and investing the savings of its members and making loans to
31 members for provident purposes, may apply to the commissioner under RSA 383-E:3-304 to
32 become a corporation which complies with the provisions of this chapter. The organizer shall
33 prepare bylaws to govern the credit union. The bylaws shall prescribe the name of the
34 corporation, the purposes for which it was formed, the conditions of residence, occupation, or
35 association which qualify persons for membership, the par value of the paid-in shares, the
36 number of directors, the number of members of the supervisory committee, and the number of

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 98 -

1 members of the credit committee, if such committee is to be established, the duties of the several
2 officers, the fines, if any, which shall be charged for failure to meet obligations to the corporation
3 punctually, the date of the annual meeting of members, the manner in which members shall be
4 notified of meetings, the number of members which shall constitute a quorum at meetings and
5 such other regulations as may seem necessary.

6 383-E:3-302 Name. A corporation organized under this chapter shall be known as a credit
7 union, and its corporate name shall include the 2 words “credit union.” Other distinguishing words
8 may be used by permission of the commissioner.

9 383-E:3-303 Limitation on Use of Words “Credit Union.” Except associations heretofore
10 incorporated, no person shall use a name or title containing the words “credit union” or any
11 derivation thereof or be represented in the person’s advertising or otherwise, as conducting business
12 as a credit union, except a credit union organized under the provisions of this chapter, or under the
13 Federal Credit Union Act, or except organizations whose membership is composed exclusively of
14 credit unions.

15 383-E:3-304 Application.

16 (a) The organizer of a credit union shall apply for a charter by filing an application
17 under RSA 383-A:6-602. The commissioner shall prescribe the form of the application. The form
18 shall specify information required to process the application. Such information shall include:
19 the name of the credit union; the address of the credit union’s main office; the credit union’s
20 registered agent and registered office; the name and address of each organizer; the name,
21 address, background and experience of the proposed directors and the executive officers; the
22 proposed organizational documents, including the organizer’s agreement and the proposed
23 bylaws; a funding plan for the first 5 years of operations, including a statement as to the amount
24 of the proposed initial funding of the guaranty fund, why such funding is adequate for its
25 operations, and the sources and uses of funds; a strategic plan describing the activities the credit
26 union intends to engage in, the qualifications of members and the markets that it intends to
27 serve and its strategy for the first 5 years of operation; pro forma financial statements for the
28 first 5 years of operations; and any other facts or circumstances deemed relevant to the
29 application by the commissioner. The organizer shall also file with the commissioner a copy of
30 any application to the National Credit Union Administration or any insurance fund for
31 insurance of the shares and deposits of the members.

32 (b)(1) The commissioner shall review the application, and within 30 days of its receipt,
33 determine if it is substantially complete. An application is substantially complete if it contains all
34 the information required in RSA 383-E:3-304(a), the applicant has paid the application fee, and the
35 application meets all other requirements as the commissioner may prescribe by rule. If the
36 application is deemed to be incomplete, the commissioner shall notify the applicant, and the

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 99 -

1 applicant shall have 30 days to supply the required information.

2 (2) If the commissioner determines that the application is substantially complete
3 under RSA 383:3-304(b)(1), he or she shall so notify the applicant, and the applicant shall within 30
4 days, cause a public notice of the application to be published in a newspaper of general circulation or
5 other media acceptable to the commissioner. The notice shall state a date before which objections
6 may be filed, which date shall not be earlier than 14 days after the publication of the notice. Any
7 interested person may, within the time specified, file with the commissioner a statement of objection
8 to the granting of such application. The form of public notice shall be prescribed by the
9 commissioner.

10 (c) At any time after being submitted, the commissioner may deem the application to be
11 abandoned if the organizer fails to furnish required information and certifications or the required fee
12 within 30 days after a request made by the commissioner.

13 (d) If the commissioner determines that the application is substantially complete, he or
14 she shall promptly conduct an examination of all relevant facts connected with the organization of
15 the credit union. The commissioner may examine the following factors:

16 (1) Whether the proposed organizational structure is adequate to manage the
17 proposed credit union.

18 (2) Whether the proposed capital as set forth in the capital plan is adequate in
19 relation to the proposed activities of the proposed credit union.

20 (3) Whether the strategic plan sets forth a reasonable basis to indicate a reasonable
21 probability of success and profitability.

22 (4) Whether the proposed executive officers and directors as a group, have sufficient
23 experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the
24 proposed credit union will be free from improper or unlawful influence and otherwise will operate in
25 compliance with law.

26 (5) Whether the proposed name of the proposed credit union is likely to mislead the
27 public as to its character or purpose or is the same as a name already adopted by an existing credit
28 union in this state, or so similar thereto as to be likely to mislead the public.

29 (6) Whether the deposits and shares of members of the credit union will be insured by
30 the National Credit Union Administration or other insurance fund deemed acceptable by the
31 commissioner.

32 (7) Any other factor relevant to the type of credit union being proposed, as the
33 commissioner may determine.

34 (e)(1) The commissioner may require a background investigation and criminal history
35 records check on the organizer, directors, and executive officers.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 100 -

1 (2) If required by the commissioner, the persons described in subsection (1)
2 hereof shall submit to the department a notarized criminal history records release form, as
3 provided by the New Hampshire department of safety, division of state police, which authorizes
4 the release of the person’s criminal records, if any, and a complete set of fingerprints taken by a
5 qualified law enforcement agency or an authorized employee of the department. In the event
6 that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints
7 may be necessary in order to complete the criminal history records check. If, after 2 attempts, a
8 set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the
9 criminal history records check, accept police clearances from every city, town, or county where
10 the person has lived during the past 5 years.

11 (3) The commissioner shall submit the criminal history records release form to the
12 division of state police which shall conduct a criminal history records check through its records and
13 through the Federal Bureau of Investigation. Upon completion of the background investigation, the
14 division of state police shall release copies of the criminal conviction records to the department. The
15 department shall maintain the confidentiality of all criminal history records information received
16 under this subsection.

17 (4) The commissioner may require the organizer to pay the actual costs of each
18 background investigation and criminal history records check.

19 (f) All documents and communications submitted in connection with an application,
20 which are classified as confidential under RSA 383:10-b, and all records of investigations and reports
21 of examinations by the department related to the application shall be treated as confidential and
22 subject to RSA 383:10-b.

23 383-E:3-305 Investigative Powers. For the purpose of any investigation under this chapter, the
24 commissioner shall have the power to subpoena witnesses and administer oaths in any adjudicative
25 proceedings, and to compel, by subpoena duces tecum, the production of all books, records, files, and
26 other documents and materials relevant to his or her investigation.

27 383-E:3-306 Hearing. The commissioner may order within his or her discretion a public hearing
28 on the application. The commissioner may approve or deny the application with or without a public
29 hearing. Any required public hearing shall be held at the time and place fixed by the commissioner
30 and a notice of the hearing shall be published in accordance with RSA 91-A. The commissioner may
31 prescribe reasonable procedural rules to govern the proceedings, including rules for maintaining the
32 confidentiality of the portions of the application, the commissioner’s investigation, and the
33 proceedings of the commissioner that include confidential information or are determined by the
34 commissioner or otherwise determined by law to be confidential.

35 383-E:3-307 Action on Application.

36 (a) If the commissioner determines that the application meets all of the requirements of
37 this chapter and other applicable federal and state laws, the commissioner shall grant a charter to

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 101 -

1 the credit union by issuing a notice of approval of the organization of the credit union, subject to such
2 terms and conditions as determined by the commissioner, and endorsing the credit union's bylaws to
3 indicate the commissioner's approval.

4 (b) If the application is denied, it shall be dismissed and no new application concerning
5 the same proposal may be filed within one year thereafter.

6 (c) If the commissioner determines that the application does not satisfy the standards in
7 RSA 383-E:3-307(a), but could satisfy the standards if the application were revised, he or she shall so
8 notify the organizer; and in such case the organizer may refile the application under RSA 383-A:6:602.

9 383-E:3-308 Charter Rights; Liability. Following the approval of the application by the
10 commissioner and the filing of the bylaws with the secretary of state, the organizer of a credit union
11 shall hold the rights to the charter. The organizer and all persons purporting to act for the credit
12 union shall be jointly and severally liable for any liability created on its behalf until the organization
13 is completed and a certificate to commence operations is issued by the commissioner.

14 383-E:3-309 Completion of Organization. The organizer shall submit evidence to the
15 commissioner that it has adopted bylaws, elected, or caused to be elected, the directors and officers
16 required by its organizational documents and satisfied all other requirements of the charter.

17 383-E:3-310 Authorizing Commencement of Operations. Upon receipt of the information
18 described in RSA 383-E:3-309, the commissioner shall cause an examination to be made. If the
19 commissioner determines that all requirements of the approval have been satisfied, the
20 commissioner shall issue a certificate authorizing the credit union to commence operations. The cost
21 of such examination shall be paid by the credit union.

22 383-E:3-311 Amendment of Bylaws. The board of directors of a credit union may, by majority
23 vote, amend the bylaws if the credit union files a notice of the proposed amendment under RSA 383-
24 A:601 and it is permitted to do so by the commissioner based on the considerations set forth in
25 RSA 383-E:3-301, as applicable.

26 383-E:3-312 Material Change in Operating Conditions. If a board of directors of a credit union
27 proposes to make a material change in the strategic plan, funding plan or other factors considered by
28 the commissioner in granting a charter to the credit union within 5 years of its receipt of a certificate
29 to engage in business under RSA 383-E:3-310, the board may not make such change unless it gives
30 notice thereof to the commissioner as provided in RSA 383-A:6-602 and it is permitted to do so by the
31 commissioner.

32 Article 4

33 Powers of Credit Unions

34 383-E:4-401 Deposits; Loans. A credit union may receive the money of its members on deposit
35 and in payment of shares, upon such terms and in such amounts as its board of directors may
36 prescribe. It may make loans to its members on such terms and upon such security, real or personal,

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 102 -

1 as its written lending policy may prescribe.

2 383-E:4-402 Use of Funds. While awaiting call of its members for loans, a credit union may
3 make use of its funds as described in and according to the limitations of the following
4 subsections:

5 (a) It may deposit its money in any corporate credit union whose shares and deposits
6 are insured by the National Credit Union Administration or other qualified share and deposit
7 insurance fund deemed acceptable by the commissioner, and may deposit its money in any
8 federally insured bank.

9 (b) It may invest any surplus in obligations of the United States government, including
10 any loans included in the Participation Sales Act of 1966, 12 U.S.C. section 1701, or of the state, or of
11 any county, city or town of the state issued under authority of law.

12 (c) It may invest in securities, obligations, participations, or other instruments of or
13 issued by or fully guaranteed as to principal and interest by the United States or any agency thereof
14 or in any trust or trusts established for investing directly or collectively in the same.

15 (d) Any credit union with assets of \$3,000,000 or more may purchase real estate
16 mortgages secured by real estate wherever situate which are guaranteed by the Federal Housing
17 Administration and may purchase real estate mortgages secured by real estate in this state and in
18 any state which are guaranteed by the United States government through the insured loan program
19 of the Farmer's Home Administration. It may be an originator or participating lender in
20 participating loans as defined in RSA 383-B:3-303(d)(8), provided that its participation in such loans
21 shall be within such limits as are prescribed in RSA 383-E:4-403.

22 (e) The board of directors shall establish and maintain a written investment policy
23 which shall be reviewed not less than annually. The board of directors may, by majority vote of such
24 board, delegate investment authority as prescribed in the credit union's written investment policy to
25 a committee established by, or officers designated by, the board for such purpose. All investments
26 will be reviewed in every meeting of the board of directors.

27 (f) All investments in securities shall be supported by a documented credit and risk
28 analysis. Such analysis shall be applied to securities as a part of a pre-purchase and ongoing due-
29 diligence process. Assessments of creditworthiness and risk shall not be solely reliant on external
30 credit ratings, if any, provided by one or more NRSROs. Any investment in a debt security shall
31 meet the investment grade debt security standard.

32 383-E:4-403 Limitations. The following limitations shall be observed with respect to the
33 investments of credit unions:

34 (a) Not exceeding 5 percent of total assets shall be invested in preferred or common
35 stock.

36 (b) Not exceeding 5 percent of total assets shall be invested in bonds of the Dominion of

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 103 -

1 Canada, its provinces and cities.

2 (c) Not exceeding 20 percent in aggregate of the total assets shall be invested in
3 corporate securities, New Hampshire securities, banks and bank holding company securities, and
4 investment trust shares; provided, however, that not exceeding 5 percent of the total assets may be
5 invested in preferred and common stock, including shares of investment trusts.

6 (d) Unless the value of a credit union's assets as determined by the commissioner shall
7 exceed the amount of the shares and deposits by at least 5 percent, it shall be unlawful for such
8 credit union to invest in any preferred or common stocks, including shares of investment trusts,
9 without the written permission of the commissioner.

10 (e) Whenever in the opinion of the commissioner the condition of any credit union is such
11 that the commissioner deems it unwise for the credit union to invest in any preferred or common
12 stocks, including shares of investment trusts, he or she may by written order forbid such credit union
13 to make such investment, and said credit union shall not thereafter make such investment until
14 such order shall be revoked in writing.

15 (f) No investment shall be made which, when added to investments of the same category
16 then held, shall cause the investments in that category to exceed the percentages permitted for such
17 category.

18 (g) In determining whether an investment complies with the limitations imposed by this
19 section, the applicable limitation shall be applied to the condition of the credit union at the time of
20 making such investment.

21 383-E:4-404 Public Obligations. The following described securities are legal investments:

22 (a) The authorized bonds and notes of the state of New Hampshire or of any municipal
23 government in New Hampshire, including all authorities, commissions, districts or similar divisions
24 of state or municipal government, provided that:

25 (1) The direct obligations of the state of New Hampshire or any state entity in New
26 Hampshire are backed by the issuer's ability to levy taxes for the repayment of principal and
27 interest.

28 (2) Obligations secured by the revenues of any authorities, commissions, districts or
29 similar divisions of state or municipal government are ranked among the 4 highest ratings of any
30 NRSRO.

31 (b) The authorized bonds and notes of any other state, commonwealth or territory of the
32 United States or any municipality therein or authorities, commissions, districts or similar divisions
33 of state or municipal government therein, provided:

34 (1) The direct obligations of any state, commonwealth or territory of the United
35 States or any municipality located therein are backed by the issuer's ability to levy taxes for
36 repayment of principal and interest and are ranked among the 3 highest ratings of any NRSRO.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 104 -

1 (2) Obligations secured by the revenue of any authorities, commissions, districts or
2 similar divisions of state or municipal government are ranked among the 3 highest ratings of any
3 NRSRO.

4 383-E:4-405 Corporate Securities. The following described securities are legal investments:

5 (a) Obligations in the form of bonds and notes issued, assumed, or guaranteed by entities
6 incorporated in the United States of America. The obligations shall be among the 3 highest ratings
7 of any NRSRO. Convertible bonds of a lesser rating will be legal if the common stock would
8 otherwise qualify.

9 (b) All preferred stocks issued, assumed or guaranteed by entities incorporated in the
10 United States. The obligations shall be rated among the 3 highest ratings of any NRSRO.

11 (c) The common stock or senior securities convertible into common stock of entities
12 incorporated in the United States of America provided:

13 (1) The stock is listed on an exchange and is ranked among the 3 highest ratings of
14 any NRSRO.

15 (2) At the time of purchase, any common stock investment under this section when
16 added to the book value of all other common stock securities presently owned of the same entity shall
17 not exceed 5 percent of a credit union's capital funds.

18 (d) The bonds and notes issued, assumed or guaranteed by any entity organized under
19 the laws of this state or carrying on its principal manufacturing within this state, provided that:

20 (1) The entity shall have, at the date of investment, a net worth of at least
21 \$1,000,000; and

22 (2) In at least 4 of the 5 years next preceding the date of investment, the net income
23 available for interest plus the federal income tax of the entity shall have been not less than twice the
24 interest on its obligations.

25 (e) The dividend-paying capital stock of any entity organized under the laws of this state
26 or carrying on its principal manufacturing within this state, provided:

27 (1) All securities, if any, senior to such stock are legal investments hereunder, and
28 the entity shall have at the date of such investment a net worth of at least \$1,000,000.

29 (2) In at least 4 of the 5 years next preceding the date of investment, the entity shall
30 have earned net income available for dividends on the entire outstanding issue of the stock in
31 question of not less than 4 percent on the par or stated value of such stock.

32 (3) No credit union shall hold more than 5 percent of the outstanding stock of any entity.

33 383-E:4-406 Bank Stock. The following described securities are legal investments:

34 (a) The securities of any bank or bank holding company incorporated in the United
35 States, provided that:

36 (1) Such bank or bank holding company shall have a total capital and surplus of at

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 105 -

1 least \$50,000,000.

2 (2) The capital and surplus shall represent not less than 4 percent of the total assets
3 in at least 4 of the 5 years immediately preceding investment.

4 (3) Net earnings shall have averaged not less than 4/10 of one percent of average
5 total assets over the same 5 years immediately preceding investment.

6 (4) The total loans to total deposits shall not be greater than 80 percent.

7 (b) The securities of any bank or trust company, or the special deposits of any investor-
8 owned savings bank incorporated under the laws of this state and doing business herein, and the capital
9 notes and the capital stock of any federally chartered bank in this state; but the amount of such notes or
10 stock or special deposits held by any credit union as an investment and as collateral for loans shall not
11 exceed 1/4 of the total capital notes and capital stock of the bank, except if held on or before June 1, 1979.

12 (c) The securities of any New Hampshire bank holding company which is registered with
13 the board of governors of the Federal Reserve System under 12 U.S.C. section 1844, but the amount
14 of capital stock held by any credit union in legal form or represented by voting trust certificates as an
15 investment and as collateral for loans shall not exceed 1/4 of the total capital stock of such New
16 Hampshire bank holding company.

17 383-E:4-407 Investment Trust Shares. The following described shares or units are legal
18 investments if listed on an exchange or authorized for sale in this state by the bureau of securities
19 regulation of the secretary of state:

20 (a) The shares of any management type investment company, either open-end or close-
21 end, provided that:

22 (1) If the company acts as its own investment manager it must have been in business
23 for at least 5 years, have at least \$50,000,000 of net assets and have paid dividends for at least 4 of
24 the 5 years immediately preceding investment.

25 (2) In the event that the company employs outside investment management then
26 those investment managers must have a total of at least \$100,000,000 under management and the
27 fund must have been in business for at least 5 years, have net assets of \$50,000,000 and have paid
28 dividends for at least 4 of the 5 years immediately preceding investment.

29 (b) The shares of any management type investment company that is a member of a
30 group of 3 or more mutual funds under the same investment manager, provided that:

31 (1) Such manager has at least \$100,000,000 of assets under management, and

32 (2) The Company has at least \$10,000,000 of net assets.

33 (c) Unit investment trusts with principal of at least \$1,000,000, if authorized for sale in
34 this state.

35 383-E:4-408 Other Legal Investments. The following described securities are legal investments:

36 (a) Acceptances of member banks of the Federal Reserve System of the times and

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 106 -

1 maturities made eligible for rediscount and purchased by Federal Reserve Banks.

2 (b) Advances of federal funds to banks which also qualify as cash depositories under RSA
3 383-B:3-301(k), provided that total advances of federal funds under this subsection shall not exceed
4 20 percent of the credit union's shares and deposits, and the total of such advances by a credit union
5 to any one bank shall not exceed 10 percent of the bank's capital funds.

6 (c) The obligations issued or guaranteed by the International Bank for Reconstruction
7 and Development provided that such obligations are payable in dollars in the United States, and
8 that the principal office of the obligor is, at the time of making such investment, located within the
9 United States.

10 383-E:4-409 Loan of Securities. In order to increase income from investment securities, any
11 credit union may loan to brokerage firms which are members of an exchange any stocks, bonds or
12 other securities in which the credit union has invested under this chapter provided that:

13 (a) Each loan shall be executed through a correspondent bank having assets of not less
14 than \$500,000,000;

15 (b) At the inception of the loan at least 100 percent of the market value of the securities
16 lent shall be secured by cash or debt obligations of the United States or debt obligations for which
17 the faith and credit of the United States is pledged for the payment of the principal and interest
18 thereof;

19 (c) At all times during the term of the loan the collateral securing the same shall be equal in
20 value to not less than 95 percent of the market value of the securities loans by the credit union;

21 (d) The market value of the securities loaned by the credit union under the authority of
22 this action shall not, at any one time, exceed 10 percent of the aggregate market value of all stocks,
23 bonds or other securities then held by the credit union as investments under this chapter; and

24 (e) No loan shall be made to any brokerage firm which is then listed for and under
25 special surveillance by an exchange in the belief that such brokerage firm is in or is approaching
26 financial difficulty, and which is, at the time, the subject of any pending notice given by any
27 exchange to the Securities Investor Protection Corporation and the Securities and Exchange
28 Commission under 15 U.S.C. section 78eee(a)(1).

29 (f) Every brokerage firm receiving the loan under this section shall be registered, and
30 every agent soliciting the loan shall be licensed, with the bureau of securities regulation of the
31 secretary of state.

32 383-E:4-410 Retention of Securities. Any security held under RSA 383-E:4-404 through 409
33 which becomes nonlegal because of changes in the law relating to legal investments or because of
34 conditions arising subsequent to the purchase of such security, may be retained upon application to
35 the commissioner for approval to retain the security.

36 383-E:4-411 Advantageous Federal Powers. A credit union shall have and may exercise any

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 107 -

1 power, right, benefit or privilege, now or hereafter authorized for federal credit unions by federal
2 legislation, regulation or ruling, provided that, if federal law requires a federal credit union to apply
3 to the National Credit Union Administration before exercising a power, the credit union shall make
4 the same application to the commissioner for permission to exercise such power.

5 383-E:4-412 Minors. Shares may be issued and deposits received in the name of a minor, and
6 such shares and deposits may, in the discretion of the directors, be withdrawn by such minor, or by
7 his parent or guardian, and in either case payments made on such withdrawals shall be valid, and
8 shall release the credit union from any liability to the minor, parent or guardian. A minor shall not
9 have the right to vote.

10 383-E:4-413 Deposit Accounts. Deposits of a credit union shall be subject to Article 4 of RSA 383-B.

11 383-E:4-414 Retirement Accounts. A credit union may act as trustee of pension and profit-
12 sharing plans. A credit union may also act as trustee or custodian of:

13 (a) Individual retirement accounts authorized by federal and state law;

14 (b) Pension funds of self-employed individuals or of an entity or organization sponsoring
15 the credit union;

16 (c) Deferred compensation plans; and

17 (d) Other similar retirement or pension plans.

18 383-E:4-415 Interest on Escrow Accounts. Escrow accounts of credit unions, federal credit
19 unions and foreign credit unions having escrow accounts in this state shall be subject to RSA 383-
20 B:3-303(a)(7)(E).

21 383-E:4-416 Safe Deposit Boxes. Safe deposit boxes of credit unions, federal credit unions, and
22 foreign credit unions having safe deposit boxes in this state shall be subject to Article 5 of RSA 383-B.

23 383-E:4-417 Transactions Involving Assets and Liabilities. A credit union may purchase assets
24 from and assume liabilities of, or sell assets and transfer liabilities to, a bank, state credit union,
25 federal credit union, or foreign credit union if it files an application with the commissioner under
26 RSA 383-A:6-602 and is permitted to do so by the commissioner under RSA 383-A:6-604, subject to
27 other federal or state regulatory approvals.

28 Article 5

29 Directors and Officers

30 383-E:5-501 Elections and Appointments. The business and affairs of a credit union shall be
31 managed by a board of not less than 5 directors elected by the members, a credit committee, if
32 established, of not less than 3 members appointed by the board of directors, and a supervisory
33 committee of not less than 3 members to be elected by the members at the annual meeting.

34 383-E:5-502 Qualifications. No more than one member of the board of directors of a credit union
35 shall be a member of the supervisory committee of the credit union nor shall the director be an
36 employee of the credit union.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 108 -

1 383-E:5-503 Terms of Directors and Officials. Directors and supervisory committee members
2 shall be elected for a term of not less than one year nor more than 3 years, as provided in the bylaws.
3 If the term of the directors or supervisory committee members or both is more than one year, the
4 directors or supervisory committee members or both shall be divided into classes, each class to be as
5 equal in number as possible, and one class of directors or supervisory committee members or both
6 shall be elected each year. Except as provided in RSA 383-E:5-504, directors and supervisory
7 committee members shall hold their several offices until others are elected and qualified in their
8 stead. The members of the credit committee shall be appointed for a term not to exceed one year.

9 383-E:5-504 Vacancies. If a director or member of the credit or supervisory committee of any
10 credit union ceases to be a member of the credit union, his office shall thereupon become vacant.

11 383-E:5-505 Electing Officers. The directors, at their first meeting after the annual meeting of
12 the corporation, shall elect from their own number such officers as are deemed necessary and
13 provided for in the bylaws, who shall be the executive officers of the corporation, and who shall hold
14 office until their successors shall have been elected and qualified.

15 383-E:5-506 Responsibilities of Directors and Officers.

16 (a) The governance of a credit union shall be the responsibility of the board of directors.
17 The board shall establish the policies for the conduct of the affairs of the credit union and shall
18 supervise the affairs of the credit union to ensure that such policies are being adhered to by its
19 officers and employees and that its operations are in compliance with federal and state laws and
20 regulations and the credit union's organizational documents. Neither the board nor individual
21 directors may delegate their duties to govern the credit union. Each director shall discharge his or
22 her duties under the same standards that exist for a director of a business corporation under the
23 Corporation Act except that director shall be subject to a fiduciary duty when he or she is acting on
24 matters related to the proprietary interests of members.

25 (b) The president shall be responsible for carrying out the policies of the board and
26 managing the day-to-day affairs of the credit union and shall be accountable to the board of directors
27 in the performance of his or her duties. Each officer with discretionary authority shall discharge his
28 or her duties under the same standards that exist for an officer of a business corporation under
29 RSA 293-A:8.42 except that an officer of a credit union which serves as a fiduciary shall be subject to
30 a fiduciary duty when he or she is acting on matters related to the proprietary interests of members.

31 383-E:5-507 Loan Officers. When so provided by the bylaws, the board of directors may appoint
32 and may provide for the compensation of loan officers to act under the supervision of the credit
33 committee or, if none, the board of directors, and the loan officers, when so appointed and when
34 authorized by the credit committee, or, if none, the board of directors, may approve or disapprove
35 loans as prescribed in the lending policy, without the necessity for a meeting or approval by any
36 member of the credit committee or, if none, the board of directors. A member whose application was

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 109 -

1 disapproved by a loan officer may appeal the action to the credit committee or, if none, the board of
2 directors, which may, by majority vote, reverse the loan officer’s decision.

3 383-E:5-508 Borrowing. The board of directors at any regular or special meeting may, by
4 majority vote, authorize borrowing of specified amounts of money. At no time may the total
5 borrowing exceed 30 percent of its total paid-in shares and deposits, guaranty fund, and undivided
6 earnings without approval of the commissioner.

7 383-E:5-509 Dividends. At such intervals and for such periods as the board of directors may
8 authorize, and after any required transfers to the required reserves, the board of directors may
9 declare dividends on shares and interest on deposits from current earnings. Dividends may be paid
10 at various rates with due regard to the conditions that pertain to each type of share or deposit
11 account such as minimum balance, notice and time requirements. Dividends may be paid from the
12 undivided earnings of previous years if the payment of the dividends does not cause the net worth of
13 the credit union to fall below “Well Capitalized,” as set forth in 12 C.F.R. part 702 Prompt Corrective
14 Action (PCA). Payment of these dividends from prior years’ undivided earnings shall be reported to
15 the commissioner within 30 days of dividend declaration. With prior approval of the commissioner,
16 dividends may be paid from the undivided earnings of previous years if the payment of the dividends
17 does cause the credit union’s net worth to fall below “Well Capitalized” as set forth in 12 C.F.R. part
18 702 Prompt Corrective Action (PCA).

19 383-E:5-510 Loans to Officials. Members of the board of directors, credit committee, or
20 supervisory committee may borrow from the credit union. Members of the board of directors, credit
21 committee, and supervisory committee may borrow or become surety for loans in excess of their
22 holdings in the credit union provided the loans are approved by a majority of the members of the
23 board of directors; provided, that no member of a credit committee or supervisory committee shall
24 have a vote concerning his or her own loan application, or be entitled to participate in the
25 deliberations regarding said loan. No loan to the official shall receive terms more favorable than
26 those extended to other persons borrowing from said credit union.

27 383-E:5-511 Grounds for Expulsion. The board of directors may, after notice and an opportunity
28 to be heard, expel from a credit union any member who:

- 29 (a) Has not carried out his engagements with the credit union;
- 30 (b) Has been convicted of a criminal offense;
- 31 (c) Neglects or refuses to comply with the provisions of this chapter or the bylaws of the
32 credit union;
- 33 (d) Habitually neglects to pay his debts;
- 34 (e) Shall become insolvent or bankrupt; or
- 35 (f) Shall have deceived the credit union or any committee of the credit union with regard

36 to the use of borrowed money.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 110 -

1 383-E:5-512 Order of Payments. The amounts paid on shares or deposited by members who have
2 withdrawn or have been expelled shall be paid to them in the order of withdrawal or expulsion, but only
3 as funds for the payments become available and after deducting any amounts due from the member.

4 383-E:5-513 Lien and Right of Set-off. The credit union shall have a lien on the shares, share
5 certificates, deposits, deposit certificates, and accumulated dividends or interest of a member in his
6 individual, joint or trust account, for any sum past due the credit union from said member or for any
7 loan endorsed by him or her. The credit union shall also have a right of immediate set-off with
8 respect to every account.

9 Article 6

10 Supervisory Committee

11 383-E:6-601 Supervisory Committee. The supervisory committee shall inspect from time to time the
12 accounts of the credit union and shall keep fully informed of its financial condition, and shall supervise
13 the acts of its board of directors, credit committee, and officers, as may be provided in the bylaws.

14 383-E:6-602 Annual Audits. The supervisory committee of every credit union under the
15 supervision of the commissioner shall conduct or cause to be conducted annual audits as is required
16 by RSA 383-A:5-509 and submit reports of condition as is required by RSA 383-A:5-510.

17 383-E:6-603 Exemption to Annual Audit Requirement.

18 (a) The commissioner may exempt a credit union from the annual audit requirement of
19 RSA 383-E:6-602 if the credit union demonstrates that:

20 (1) It can maintain its safety and soundness without the audit;

21 (2) The cost of an audit would be an undue financial burden on the credit union; and

22 (3) It has an alternate audit arrangement in place that will assure the commissioner

23 that its financial statements are true and accurate.

24 (b) The commissioner may revoke any exemption granted if, in his or her judgment, the
25 safety and soundness of the exempt credit union requires it.

26 383-E:6-604 Report. The supervisory committee chairman or his designee shall make a full
27 report at the annual meeting, and it shall be filed and preserved with the records of the credit union.

28 383-E:6-605 Violations.

29 (a) The supervisory committee may, by a unanimous vote, suspend any officer of the
30 credit union or any member of the credit committee or of the board of directors.

31 (b) The supervisory committee may, by a majority vote, call a meeting of the members to
32 consider any violation of this chapter or of the bylaws of the credit union, or any practice of the credit
33 union, which, in the opinion of the committee, is unsafe or unauthorized.

34 383-E:6-606 Special Meeting After Suspension. Within 7 days after the suspension of any
35 officer, or any member of the credit committee or of the board of directors, the supervisory committee
36 shall cause notice to be given of a special meeting of the members of the credit union to take such

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 111 -

1 action relative to the suspension as may seem necessary.

2 383-E:6-607 Compensation.

3 (a) No member of the board of directors or of either the credit or supervisory committee
4 shall receive any compensation for his or her services as a member of the board or the committee;
5 provided, however, that if at any time any credit union organized under the provisions of this
6 chapter shall have enlarged its business to such extent that this section may create an impediment
7 to its proper functioning, the commissioner, upon petition of the board of directors, may permit the
8 board of directors to pay the credit committee such compensation as he or she shall consider
9 proper. The reimbursement of reasonable expenses in the execution of the duties of the position
10 shall not be considered compensation.

11 (b) The officers elected by the board of directors may receive such compensation as the
12 board shall authorize.

13 Article 7

14 Meetings

15 383-E:7-701 Annual Meeting. The annual meetings of the corporation shall be held at such
16 time and place as the bylaws prescribe, but must be held within 120 days after the close of the
17 fiscal year.

18 383-E:7-702 Special Meetings. Special meetings of members may be called by a majority of the
19 directors, or of the supervisory committee, and shall be called by the clerk upon written application
20 of 10 percent of the members entitled to vote.

21 383-E:7-703 Voting. No member shall be entitled to have more than one vote.

22 383-E:7-704 Supervisory Powers. At an annual or special meeting the members may review the
23 acts of the credit committee or of the board of directors, and may reverse any decision of the
24 committee or directors by a 75 percent vote of its members present and entitled to vote; provided,
25 that the 75 percent vote comprises a majority of all the members of the credit union.

26 383-E:7-705 Filling Vacancies. In the event of the death or the resignation or removal from
27 office of any member of the board of directors, or of the supervisory committee, the board of directors
28 shall fill the vacancy until the next annual meeting, at which the unexpired term shall be filled by
29 vote of the members.

30 Article 8

31 Guaranty Fund

32 383-E:8-801 Regular Reserves. At the end of each quarterly reporting period, a transfer from
33 current earnings shall be made to the regular reserve as set forth in 12 C.F.R. part 702. In the event
34 that current earnings are insufficient to allow the required transfer, undivided earnings shall be
35 utilized to augment the amount transferred from current earnings. The credit union shall notify the
36 commissioner within 30 days of any required transfers made from undivided earnings to the regular

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 112 -

1 reserve. Prior approval of the commissioner is required before any disbursements from the regular
2 reserve.

3 Article 9

4 Branch Offices

5 383-E:9-901 Branching Authority. No credit union shall conduct any part of its operations at
6 any branch office except as follows:

7 (a) A credit union may establish one or more branch offices or acquire branch offices
8 from any credit union in any location within the state or without the state consistent with the
9 membership qualifications of its bylaws.

10 (b) A credit union that is well capitalized under applicable federal law and has a
11 composite CAMELS rating of at least 2 as a result of its most recent examination by its federal
12 regulatory authority or the commissioner, shall provide the commissioner with notice of its proposal
13 to establish or acquire a branch office as required under RSA 383-A:6-602. All other credit unions
14 shall submit an application to establish a trust office under RSA 383-A:6-602. A credit union may
15 proceed to establish or acquire the branch office if it is permitted to do so by the commissioner.

16 (c) A foreign credit union may establish or acquire a branch office in this state if a state
17 credit union would be permitted to do so in the state in which its principal office is located under
18 conditions no more restrictive than those imposed by the laws of this state as determined by the
19 commissioner. The foreign credit union shall submit a notice or application to establish or acquire a
20 branch to the commissioner under RSA 383-A:6-602 and may proceed to do so if permitted by the
21 commissioner.

22 383-E:9-902 Branch Closings and Relocations.

23 (a) A credit union may close a branch office upon the affirmative vote of a majority of its
24 board of directors, but the closing shall not occur until the credit union has filed notice of the branch
25 office closing with the commissioner under RSA 383-A:6-602 and it is permitted to do so by the
26 commissioner. The credit union shall be required to comply with federal requirements for branch
27 closings.

28 (b) A credit union may relocate a branch office upon the affirmative vote of a majority of
29 its board of directors, but the relocation shall not occur until the credit union has filed notice of the
30 branch office relocation with the commissioner under RSA 383-A:6-602 and it is permitted to do so by
31 the commissioner. The credit union shall be required to comply with federal requirements for
32 branch relocations.

33 383-E:9-903 Automated Teller Machines; Fee Disclosure. A credit union, federal credit union or
34 foreign credit union that owns or operates an automated teller machine in this state shall be subject
35 to RSA 383-B:7-705.

36 Article 10

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 114 -

1 (d) Upon ceasing to be a state credit union, the credit union shall no longer be subject to
2 any of the provisions of this chapter. The successor federal credit union shall be vested with all of
3 the assets and shall continue responsible for all of the obligations of the state credit union to the
4 same extent as though the conversion had not taken place.

5 383-E:11-1102 Federal Credit Union to State Credit Union. A federal credit union may be
6 converted into a state credit union by complying with such requirements of this chapter as would have
7 enabled it to have originally qualified for organization as a state credit union. When the commissioner
8 has been satisfied that the requirements, and all other requirements of this chapter, have been
9 complied with, he shall approve the organization certificate. Upon approval, the federal credit union
10 shall become a state credit union as of the date it ceases to be a federal credit union. The state credit
11 union shall be vested with all of the assets and shall continue responsible for all of the obligations of
12 the federal credit union to the same extent as though the conversion had not taken place.

13 383-E:11-1103 Rules. The commissioner may adopt rules governing the terms and conditions of
14 conversions under this Article.

15 Article 12

16 Dissolution

17 383-E:12-1201 Dissolution. If a special meeting is called for the purpose of addressing
18 dissolution of a credit union and a majority of the members are in attendance, upon recommendation
19 of not less than 2/3 of the board of directors, the members may dissolve the credit union by the vote
20 of 2/3 of the members present and voting at a meeting called for that purpose.

21 383-E:12-1202 Procedure. Upon a vote dissolving the credit union, the members shall elect a
22 committee of 3 persons to liquidate the assets of the credit union. The committee shall act under the
23 control of the commissioner. Each paid-in share according to the amount paid in shall be entitled to
24 its proportional part of the assets in liquidation after all deposits and debts have been paid.

25 Article 13

26 Corporate Credit Union

27 383-E:13-1301 Corporate Credit Union. A corporate credit union may be incorporated under
28 this chapter and shall be subject to all parts of this chapter not inconsistent with this subdivision.

29 383-E:13-1302 Purposes. A corporate credit union is a cooperative nonprofit association whose
30 members consist primarily of other credit unions and whose purposes are:

31 (a) To accumulate and prudently manage the liquidity of its member credit unions
32 through interlending and investment services;

33 (b) To act as an intermediary for credit union funds between members and other
34 corporate credit unions;

35 (c) To obtain liquid funds from other credit union organizations, financial
36 intermediaries, and other sources;

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 115 -

1 (d) To foster and promote in cooperation with other state, regional, and national
2 corporate credit unions and credit union organizations or associations the economic security, growth
3 and development of member credit unions; and

4 (e) To perform such other financial services of benefit to its members which are
5 authorized by the commissioner.

6 383-E:13-1303 Membership.

7 (a) Membership in the corporate credit union shall consist of and be limited to the
8 subscribers to the articles of incorporation, credit unions organized under this chapter, credit unions
9 organized under the Federal Credit Union Act or under any other credit union act, organizations or
10 associations of credit unions, and such other persons or organizations provided for in the articles of
11 incorporation.

12 (b) The board of directors of each credit union, organization or association becoming a
13 member of the corporate credit union shall designate one person to be a voting representative in the
14 corporate credit union. The voting representative shall be eligible to hold office in the corporate
15 credit union as if the person were himself or herself a member of the corporate credit union.

16 383-E:13-1304 Charter and Name Exclusive. Only one corporate credit union shall be
17 incorporated under this chapter and no other credit union may use the term “corporate credit union”
18 as a part of its name.

19 383-E:13-1305 Application; Organization. Application to form a corporate credit union shall be
20 made in writing to the commissioner. The application shall contain the names of at least 15 credit
21 unions which have agreed to subscribe to shares in the corporate credit union at the time the
22 application is made.

23 (a) The application shall be accompanied by articles of incorporation, bylaws, and other
24 appropriate documents.

25 (b) The bylaws shall provide for the selection of a board of directors of at least 5
26 members and shall require credit unions applying for membership to subscribe to shares in a
27 minimum amount as specified in the bylaws.

28 383-E:13-1306 Powers and Privileges. A corporate credit union shall enjoy the powers and
29 privileges of any other credit union incorporated under this chapter. In addition to such powers and
30 privileges, and notwithstanding any limitations or restrictions found elsewhere in this chapter, a
31 corporate credit union may:

32 (a) Accept shares or deposits in any form from its members, from other state, regional or
33 national credit unions, and from credit union organizations or associations;

34 (b) Make loans to credit unions, to other state, regional or national corporate credit
35 unions, organizations or associations of credit unions, and to other members;

36 (c) Establish lines of credit for members and participate with other credit unions in
37 making loans to its members under the terms and conditions determined by the board of directors;

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 116 -

- 1 (d) Invest in the shares of or make deposits in credit unions;
- 2 (e) Buy and sell any form of marketable debt obligations of domestic or foreign
3 corporations or of federal, state or local government units;
- 4 (f) Borrow from any source without limitation, accept demand deposits from any source,
5 and issue notes or debentures;
- 6 (g) Acquire or sell the assets and assume the liabilities of a member; and
- 7 (h) Enter into agreements with credit unions to discount or purchase loans made under
8 government-guaranteed loan programs, real estate loans made by members or any obligations of the
9 United States or any agency thereof held by members.

10 383-E:13-1307 Powers. The corporate credit union may exercise such incidental powers or
11 privileges as are conferred upon federal corporate credit unions, subject to the approval of the
12 commissioner.

13 383-E:13-1308 Participation in Central System. The corporate credit union may enter into
14 agreements for the purpose of participation in any state or federal central liquidity facility or central
15 financial system for credit unions, and for the purpose of aiding credit unions in establishing
16 concentrated lines of credit with other financial entities, and may act as a depositor and transmitter
17 of funds to carry out the agreements.

18 383-E:13-1309 Right of Set-off; Security Interest. The corporate credit union shall have a right
19 of immediate set-off against the balances of the share and deposit accounts of each member for any
20 amounts due from the member to the corporate credit union.

21 (a) The corporate credit union shall have a lien on all share and deposit accounts of each
22 member in the amount of the total indebtedness of the member to the corporate credit union. The
23 lien created by this subsection shall attach to the accounts and be effective whenever the member is
24 indebted to the corporate credit union. The lien shall have priority over any interests of all members
25 and unsecured creditors of the member credit unions of the corporate credit union.

26 (b) The board of directors or credit committee may require and accept additional security
27 for loans to a member in the form of a pledge, assignment, hypothecation or mortgage of any assets
28 of the member or a guarantor.

29 383-E:13-1310 Meetings. The board of directors of a corporate credit union shall meet at least
30 every 90 days in person or by means of telephone, as provided in the bylaws. The annual meeting of
31 the members of the corporate credit union shall be held at such time as is prescribed in the bylaws.
32 Each member shall be entitled to one vote irrespective of the number of shares held by the member.

33 383-E:13-1311 Fees. The operating fees established by the commissioner under RSA 383:11
34 shall make allowances for the special purposes and operations of a corporate credit union.

35 383-E:13-1312 Reserves. A corporate credit union shall be exempt from the regular reserve
36 requirements of RSA 383-E:9-901 but shall be required to establish and maintain an equity reserve

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 117 -

1 to meet losses, in accordance with rules adopted by the commissioner, under RSA 541-A.

2 383-E:13-1313 Exemptions. The corporate credit union shall be exempt from the securities laws
3 of New Hampshire.

4 272:17 New Paragraph; Regulation of Manufactured Housing Parks; Notice to Lienholders.
5 Amend RSA 205-A:4-a by inserting after paragraph VII the following new paragraph:

6 VIII. Any lender may treat manufactured housing the same as realty for the purposes of
7 securing loans for the financing of such housing. When a lender does treat manufactured housing as
8 realty, no certificate of title shall be required under RSA 261:1 et seq.; however, all of the provisions
9 with regard to conveyances, deeds, foreclosure and any other provisions of law applicable to
10 mortgages of realty shall apply to manufactured housing.

11 272:18 Regulation of Revolving Credit Plans; Definition. RSA 384-G:1, I is repealed and
12 reenacted to read as follows:

13 I. "Bank" means a bank as defined in RSA 383-A:2-201(a)(3).

14 272:19 Licensing of Nondepository First Mortgage Bankers and Brokers; Application of Chapter.
15 Amend RSA 399-A:2, III, to read as follows:

16 III. This chapter shall not apply to any person lawfully engaged in business as permitted by
17 the laws of this state or of the United States relative to banks, trust companies, insurance
18 companies, [~~savings or building and loan associations,~~] or credit unions, or to loans made by them, or
19 to any other person not within the intent of this chapter as the commissioner may designate by rule
20 or order, nor shall this chapter apply to any person engaged solely in the business of making loans
21 for educational purposes or to the loans made by such persons.

22 272:20 Licensing of Nondepository First Mortgage Bankers and Brokers; Lender's Rights and
23 Broker's Rights. RSA 397-A:16, II is repealed and reenacted to read as follows:

24 II. Persons subject to this chapter that require or accept moneys for deposit in escrow
25 accounts maintained for the payment of taxes or insurance premiums related to loans on single
26 family homes secured by real estate mortgages on property located in New Hampshire shall credit
27 each such escrow account with interest on all existing and future escrow accounts at a rate set for a
28 6-month period by the commissioner on February 1 and August 1 of each year which shall be one
29 percent below the mean interest rate paid by New Hampshire-chartered depository banks on regular
30 savings accounts. The commissioner shall post the rate on the department's website.

31 272:21 Regulation of Mortgage Loan Servicers; Exemption. Amend RSA 397-B:10, I, to read as
32 follows:

33 I. The provisions of this chapter shall not apply to any bank, trust company, [~~savings and
34 loan association, or cooperative bank, savings bank,~~] or credit union which may be chartered by this
35 state or any other state or by any agency of the United States, or to any other person not within the
36 intent of this chapter as the commissioner may designate by rule or order. No registration

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 118 -

1 provisions of this chapter shall apply to any individual or entity licensed by the banking department
2 as a mortgage banker in accordance with RSA 397-A, provided that such mortgage banker abides by
3 the provisions of this chapter and rules adopted by the department.

4 272:22 Licensing of Money Transmitters; Exemption. Amend RSA 399-G:4, I to read as follows:

5 I. Any bank, trust company, [~~savings and loan association,~~] profit sharing and pension trust,
6 credit union, [~~thrift company,~~] insurance company, or receivership, which may be chartered by this
7 state or any other state or by any agency of the United States.

8 272:23 Lenders of Money; Additional Fee or Charge for Substitution of Insurance Policy
9 Prohibited. Amend RSA 399-C:1 to read as follows:

10 399-C:1 Additional Fee or Charge for Substitution of Insurance Policy Prohibited. It shall be
11 unlawful for any person, partnership, association, corporation, unincorporated organization, [~~savings~~
12 ~~bank or institution, trust company, national bank, building and loan association,~~] **bank, or** credit
13 union, [~~or any other type of bank, whether federal or state chartered,~~] **whether federally or state**
14 **chartered**, that makes a loan secured by real or personal property in connection with such a
15 transaction, to make any separate or additional charge to, or to require any fee from, or to require
16 the payment of any money by an insurance company, insurance agency, borrower, mortgagor, or
17 purchaser, other than the insurance premium on insurance written as additional security for the
18 loan, for the substitution by a borrower, a mortgagor, or a purchaser of one insurance policy on the
19 property for an existing policy on the property, when the existing or substituted policy is provided
20 through an insurance company or insurance agent or broker licensed to do business in this state.
21 However, nothing in this section prevents the payment of interest which may be charged on
22 premium loans or premium advancements in accordance with the security agreement.

23 272:24 New Section; Lenders of Money. Amend RSA 399-C by inserting after section 1 the
24 following new section:

25 399-C:1-a. Inducement Check Disclosure. No person subject to the provisions of this chapter
26 shall induce any potential borrower who is not a loan customer of the person to enter into a closed-
27 end loan agreement, by delivering in the first instance a negotiable check for such loan to such
28 potential borrower, without including the following information clearly printed on the endorsement
29 side of the check:

30 I. A statement which reads, “By endorsing this check, you become legally liable for repaying
31 all moneys, including interest, as specified in the following loan agreement/disclosure statement”;

32 II. The amount financed;

33 III. The annual percentage rate;

34 IV. The number of installments; and

35 V. The amount of each installment payment.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 119 -

1 272:25 Definition of Bank or Credit Union. RSA 399-F:1, I is repealed and reenacted to read as
2 follows:

3 I. “Bank or credit union” means a bank as defined in RSA 383-A:2-201(a)(3) and a credit
4 union defined in RSA 383-A:2-201(a)(15).

5 272:26 Exemption. Amend RSA 399-F:2, II to read as follows:

6 II. Paragraph I shall not apply to and this chapter shall not govern any cash dispensing
7 machine or similar electronic device established by a bank.

8 272:27 New Section; Pre-Judgment Attachment Procedure. Amend RSA 511-A by inserting
9 after section 11 the following new section:

10 511-A:12 Prohibition Against Pre-Judgment Attachment Against a Bank or Credit Union. No
11 attachment shall be issued against a bank, as defined in RSA 383-A:2-201(a)(3), a credit union, as
12 defined in RSA 383-A:2-201(a)(15), or property of a bank or credit union before final judgment in any
13 suit, action or proceeding is rendered.

14 272:28 Cross Reference Changed. Amend RSA 293-B:2, I to read as follows:

15 I. “Bank” means bank as such term is defined in [~~RSA 384-B:1, I~~] **RSA 383-A:2-201(a)(3)**
16 and [~~shall also include any national banking association authorized to conduct~~] **refers to any bank**
17 **engaging in** business in this state.

18 272:29 Cross Reference Changed. Amend RSA 395:30, VII to read as follows:

19 VII. The payment of capital debentures issued under [~~RSA 384:14-a~~] **RSA 383-A:4-403** and
20 any other obligations expressly subordinated to deposits and to claims entitled to the priority
21 established in the preceding paragraphs.

22 272:30 Cross Reference Changed. Amend RSA 397-A:1, VII to read as follows:

23 VII. “First mortgage loan” means a loan secured in whole or in part by a mortgage upon any
24 interest in real property used or intended to be used as a dwelling with accommodations for not more
25 than 4 families, which property is not subject to the lien of any prior mortgage, and shall include
26 retail installment contracts secured by manufactured housing as defined in [~~RSA 384:16-d, II~~]
27 **RSA 205-A:1, I** and the renewal, modification, or refinancing of an existing first mortgage loan.

28 272:31 Cross Reference Changed. Amend RSA 399-F:1, I to read as follows:

29 I. “Bank” [~~means any bank, commercial bank, savings bank, trust company, building and~~
30 ~~loan association, savings and loan association, savings association, cooperative bank, credit union, or~~
31 ~~similar banking or credit union organization chartered by this or any other state or by the federal~~
32 ~~government]~~ **shall have the same meaning as in RSA 383-A:2-201(a)(3).**

33 272:32 Cross Reference Changed. Amend RSA 406-C:4 to read as follows:

34 406-C:4 Prohibition on Underwriting. Neither this chapter, nor [~~RSA 384:16-b, III~~] **RSA 383-**
35 **B:3-301(d)** shall be construed to authorize any financial institution to engage in the underwriting of

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 120 -

1 any insurance product or in any insurance underwriting activity requiring licensure under RSA 402
2 or RSA 405.

3 272:33 Cross Reference Changed. Amend RSA 406-C:13 to read as follows:

4 406-C:13 Application of State and Federal Consumer Protection Provisions. Any financial
5 institution which solicits or sells insurance products pursuant to ~~[RSA 384:16-b, III]~~ **RSA 383-B:3-**
6 **301(d)** and this chapter shall be subject to all applicable federal and state consumer protection laws,
7 including the federal anti-tying provisions of 12 U.S.C. section 1972.

8 272:34 Cross Reference Changed. Amend RSA 406-C:15 to read as follows:

9 406-C:15 Examination Authority. The insurance activities of financial institutions pursuant to
10 ~~[RSA 384:16-b, III]~~ **RSA 383-B:3-301(d)** and this chapter shall be subject to examination by the
11 commissioner and the commissioner is authorized to impose reasonable and customary assessments
12 on the financial institution for such examination.

13 272:35 Cross Reference Changed. Amend RSA 421-B:17, II(q) to read as follows:

14 (q) Any acquisitions or ~~[mergers]~~ **combinations** made pursuant to ~~[RSA 384:57-60]~~
15 **RSA 383-B or RSA 383-C**, governing interstate acquisitions and ~~[mergers]~~ **combinations** of banks
16 and bank holding companies.

17 272:36 Cross Reference Changed. Amend RSA 563-C:2, V to read as follows:

18 V. "Registering entity" means a person who originates or transfers a security title by
19 registration, and includes a broker, a bank defined in ~~[RSA 384-B:1, I, or a national bank or federal~~
20 ~~savings bank authorized to conduct]~~ **RSA 383-A:2-201(a)(3) which engages in** business in this
21 state ~~[maintaining]~~ **and maintains** security accounts for customers ~~[and]~~, a transfer agent or other
22 person acting for or as an issuer of securities.

23 272:37 Cross Reference Changed. Amend RSA 29:1, IV to read as follows:

24 IV. Whenever the county treasurer has in custody an excess of funds which are not
25 immediately needed for the purpose of expenditure, the treasurer shall, with the approval of the
26 commissioners, invest the same in obligations of the United States government, in participation
27 units in the public deposit investment pool established pursuant to RSA 383:22, or in deposits,
28 including money market accounts, or certificates of deposit, or repurchase agreements, and all other
29 types of interest bearing accounts, of federally insured banks chartered under the laws of the state of
30 New Hampshire or the federal government with a branch within the state. Any person who directly
31 or indirectly receives any such funds or moneys for deposit or for investment in securities of any kind
32 shall, prior to acceptance of such funds, make available at the time of such deposit or investment, an
33 option to have such funds secured by collateral having a value at least equal to the amount of such
34 funds. Such collateral shall be segregated for the exclusive benefit of the county. Only securities
35 defined by the bank commissioner in rules adopted pursuant to ~~[RSA 386:57]~~ **RSA 383-B:3-301(e)**
36 shall be eligible to be pledged as collateral. At least yearly, the county treasurer, with the approval

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 121 -

1 of the county commissioners, shall review and adopt an investment policy for the investment of
2 public funds in conformance with the provisions of applicable statutes.

3 272:38 Cross Reference Changed. Amend RSA 29:3 to read as follows:

4 29:3 Excess Funds. Whenever the county treasurer has in custody an excess of funds which are
5 not immediately needed for the purpose of expenditure the county treasurer may, with the approval
6 of the county commissioners and county executive committee and upon such terms as shall be
7 approved by the county commissioners, invest the same in participation units in the public deposit
8 investment pool established pursuant to RSA 383:22, or in units of pooled money market mutual
9 funds which invest solely in obligations of the United States Treasury, or in obligations fully
10 guaranteed as to principal and interest by the United States government. The obligations may be
11 held directly or in the form of securities of or other interests in any open-end or closed-end
12 management-type investment company or investment trust registered under 15 U.S.C. section 80a-1
13 et seq., if the portfolio of the investment company or investment trust is limited to such obligations
14 and repurchase agreements fully collateralized by such obligations. Any person who directly or
15 indirectly receives any such funds or moneys for deposit or for investment in securities of any kind
16 shall, prior to acceptance of such funds, make available at the time of such deposit or investment, an
17 option to have such funds secured by collateral having a value at least equal to the amount of such
18 funds. Such collateral shall be segregated for the exclusive benefit of the county. Only securities
19 defined by the bank commissioner in rules adopted pursuant to ~~[RSA 386:57]~~ **RSA 383-B:3-301(e)**
20 shall be eligible to be pledged as collateral. At least yearly, the county treasurer, with the approval
21 of the county commissioners, shall review and adopt an investment policy for the investment of
22 public funds in conformance with the provisions of applicable statutes.

23 272:39 Cross Reference Changed. Amend RSA 31:25 to read as follows:

24 31:25 Custody; Investment. The trustees shall have the custody of all trust funds held by their
25 town. Any person who directly or indirectly receives any such trust funds for deposit or for
26 investment in securities of any kind shall, prior to acceptance of such funds, make available at the
27 time of such deposit or investment an option to have such funds secured by collateral having value at
28 least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit
29 of the town depositing or investing such funds. Only securities defined by the bank commissioner, as
30 provided by rules adopted pursuant to ~~[RSA 386:57]~~ **RSA 383-B:3-301(e)**, shall be eligible to be
31 pledged as collateral. The funds shall be invested only in deposits in any federally or state-chartered
32 bank or association authorized to engage in a banking business in this state, or in deposits in any
33 credit union in this state, or in state, county, town, city, school district, water and sewer district
34 bonds and the notes of towns or cities in this state; and such stocks and bonds as are legal for
35 investment by any bank or association chartered by this state to engage in a banking business; and
36 in participation units in the public deposit investment pool established pursuant to RSA 383:22; or in

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 122 -

1 obligations with principal and interest fully guaranteed by the United States government. The
2 obligations may be held directly or in the form of securities of or other interests in any open-end or
3 closed-end management-type investment company or investment trust registered under 15 U.S.C.
4 section 80a-1 et seq., if the portfolio of the investment company or investment trust is limited to such
5 obligations and repurchase agreements fully collateralized by such obligations. Deposits in a
6 federally or state-chartered bank or association or credit union shall be made in the name of the
7 town which holds the same as a trust, and it shall appear upon the books thereof as a trust fund.
8 Shares of mutual funds are also permitted if they are registered with the Securities and Exchange
9 Commission, qualified for sale in the state of New Hampshire in accordance with the
10 New Hampshire uniform securities act of the New Hampshire secretary of state's office, and which
11 have in their prospectus a stated investment policy which is consistent with the investment policy
12 adopted by the trustees of trust funds in accordance with this chapter, and when so invested, the
13 trustees shall not be liable for the loss thereof. The trustees may retain investments as received
14 from donors, until the maturity thereof. The trustees shall formally adopt an investment policy for
15 all investments made by them or by their agents for any trust funds in their custody in conformance
16 with the provisions of applicable statutes. Such investment policy shall be reviewed and confirmed
17 at least annually. A copy of the investment policy shall be filed with the attorney general.

18 272:40 Cross Reference Changed. Amend RSA 31:26 to read as follows:

19 31:26 Investments by Single Trustee. In towns which have chosen a single trustee of trust funds
20 such funds shall be invested only by deposit in any federally or state-chartered bank or association
21 authorized to engage in a banking business in this state, or in state, county, town, city, school
22 district, water and sewer district bonds and the notes of towns or cities in this state and when so
23 invested the trustee shall not be liable for the loss thereof; and in any common trust fund established
24 by the New Hampshire Charitable Foundation in accordance with RSA 292:23; or in obligations fully
25 guaranteed as to principal and interest by the United States government. The obligations may be
26 held directly or in the form of securities of or other interests in any open-end or closed-end
27 management-type investment company or investment trust registered under 15 U.S.C. section 80a-1
28 et seq., if the portfolio of the investment company or investment trust is limited to such obligations
29 and repurchase agreements fully collateralized by such obligations. Deposits in a federally or state-
30 chartered bank or association shall be made in the name of the town which holds the same as a
31 trust, and it shall appear upon the books thereof as a trust fund. Any person who directly or
32 indirectly receives any such trust funds for deposit or for investment in securities of any kind shall,
33 prior to acceptance of such funds, make available at the time of such deposit or investment an option
34 to have such funds secured by collateral having value at least equal to the amount of such funds.
35 Such collateral shall be segregated for the exclusive benefit of the town depositing or investing such
36 funds. Only securities defined by the bank commissioner as provided by rules adopted pursuant to

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 123 -

1 ~~[RSA 386:57]~~ ***RSA 383-B:3-301(e)*** shall be eligible to be pledged as collateral. The trustee may
2 retain investments as received from donors until the maturity thereof.

3 272:41 Cross Reference Changed. Amend RSA 34:5 to read as follows:

4 34:5 Investment. The moneys in such fund shall be kept in a separate account and not
5 intermingled with the other funds of the city. Said capital reserve fund shall be invested only by
6 deposit in some savings bank or in the savings department of a national bank or trust company, or in
7 the shares of a cooperative bank, building and loan association, or federal savings and loan
8 association, in this state or in bonds or notes of this state, in such stocks and bonds as are legal for
9 investment by New Hampshire savings banks, or in participation units in the public deposit
10 investment pool established pursuant to RSA 383:22, or in obligations with principal and interest
11 fully guaranteed by the United States government. The obligations may be held directly or in the
12 form of securities of or other interests in any open-end or closed-end management-type investment
13 company or investment trust registered under 15 U.S.C. section 80a-1 et seq., if the portfolio of the
14 investment company or investment trust is limited to such obligations and repurchase agreements
15 fully collateralized by such obligations. When so invested in good faith the trustees hereinafter
16 named shall not be liable for the loss of such moneys. Any interest earned or capital gains realized
17 on the moneys so invested shall accrue to and become a part of the fund. Deposits in banks shall be
18 made in the name of the city, and it shall appear upon the book thereof that the same is a capital
19 reserve fund. Any person who directly or indirectly receives any such funds or moneys for deposit or
20 for investment in securities of any kind shall, prior to acceptance of such funds, make available at
21 the time of such deposit or investment, an option to have such funds secured by collateral having a
22 value at least equal to the amount of such funds. Such collateral shall be segregated for the
23 exclusive benefit of the city. Only securities defined by the bank commissioner in rules adopted
24 pursuant to ~~[RSA 386:57]~~ ***RSA 383-B:3-301(e)*** shall be eligible to be pledged as collateral. The
25 trustees shall formally adopt an investment policy for all investments made by them or by their
26 agents for any trust funds in their custody in conformance with the provisions of applicable statutes.
27 The trustees shall review and confirm the investment policy at least annually. A copy of the
28 investment policy shall be filed with the attorney general.

29 272:42 Cross Reference Changed. Amend RSA 35:9 to read as follows:

30 35:9 Investment. Each capital reserve fund shall be maintained separately on the books of
31 the town. The assets of such funds may be pooled in order to invest in a broader range of
32 investments to maximize growth and mitigate risk. Said capital reserve funds shall be invested
33 only in deposits in any federally or state-chartered bank or association authorized to engage in a
34 banking business in this state, or in bonds or notes of this state, in such stocks and bonds as are
35 legal for investment by banks and associations chartered by this state to engage in a banking
36 business, or in participation units in the public deposit investment pool established pursuant to

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 124 -

1 RSA 383:22, or in obligations with principal and interest fully guaranteed by the United States
2 government. The obligations may be held directly or in the form of securities of or other
3 interests in any open-end or closed-end management-type investment company or investment
4 trust registered under 15 U.S.C. section 80a-1 et seq., if the portfolio of the investment company
5 or investment trust is limited to such obligations and repurchase agreements fully collateralized
6 by such obligations. When so invested the trustees hereinafter named shall not be liable for the
7 loss thereof. Any interest earned or capital gains realized on the moneys so invested shall
8 accrue to and become a part of the individual funds on a pro rata basis. Deposits in federally or
9 state-chartered banks and associations shall be made in the name of the town, district, or county
10 which holds the same as a reserve, and it shall appear upon the books thereof that the same is a
11 capital reserve fund. Any person who directly or indirectly receives any such capital reserve
12 funds for deposit or for investment in securities of any kind shall, prior to acceptance of such
13 funds, make available at the time of such deposit or investment an option to have such funds
14 secured by collateral having a value at least equal to the amount of such funds. Such collateral
15 shall be segregated for the exclusive benefit of the town, school district, village district, or county
16 depositing or investing such funds. Only securities defined by the bank commissioner as
17 provided by rules adopted pursuant to ~~[RSA 386:57]~~ ***RSA 383-B:3-301(e)*** shall be eligible to be
18 pledged as collateral. The trustees shall formally adopt an investment policy for all investments
19 made by them or by their agents for any trust funds in their custody in conformance with the
20 provisions of applicable statutes. The trustees shall review and confirm the investment policy at
21 least annually. A copy of the investment policy shall be filed with the attorney general.

22 272:43 Cross Reference Changed. Amend RSA 41:29, V(a) to read as follows:

23 (a) The treasurer shall insure that prior to acceptance of any moneys for deposit or
24 investment, including repurchase agreements, the federally insured bank shall make available at
25 the time of such deposit or investment an option to have such funds secured by collateral having a
26 value at least equal to the amount of such funds. Such collateral shall be segregated for the
27 exclusive benefit of the town. Only securities defined by the bank commissioner as provided by rules
28 adopted pursuant to ~~[RSA 386:57]~~ ***RSA 383-B:3-301(e)*** shall be eligible to be pledged as collateral.

29 272:44 Cross Reference Changed. Amend RSA 48:16, V to read as follows:

30 V. The treasurer shall insure that prior to acceptance of any moneys for deposit or
31 investment, including repurchase agreements, the federally insured bank shall make available at
32 the time of such deposit or investment an option to have such funds secured by collateral having a
33 value at least equal to the amount of such funds. Such collateral shall be segregated for the
34 exclusive benefit of the city. Only securities defined by the bank commissioner as provided by rules
35 adopted pursuant to ~~[RSA 386:57]~~ ***RSA 383-B:3-301(e)*** shall be eligible to be pledged as collateral.

36 272:45 Cross Reference Changed. Amend RSA 197:23-a, IV to read as follows:

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 125 -

1 IV. Whenever the treasurer has in custody an excess of funds which are not immediately
2 needed for the purpose of expenditure, the treasurer shall, with the approval of the school board,
3 invest the same in participation units in the public deposit investment pool established pursuant to
4 RSA 383:22, or in deposits, including money market accounts, or certificates of deposit, or
5 repurchase agreements, and all other types of interest bearing accounts, of federally insured banks
6 incorporated under the laws of the state of New Hampshire or the federal government with a branch
7 within the state and in obligations fully guaranteed as to principal and interest by the United States
8 government. The obligations may be held directly or in the form of securities of or other interests in
9 any open-end or closed-end management-type investment company or investment trust registered
10 under 15 U.S.C. section 80a-1 et seq., if the portfolio of the investment company or investment trust
11 is limited to such obligations and repurchase agreements fully collateralized by such obligations.
12 Any person who directly or indirectly receives any such funds for deposit or for investment in
13 securities of any kind shall, prior to acceptance of such funds, make available at the time of such
14 deposit or investment an option to have such funds secured by collateral having a value at least
15 equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the
16 district. Only securities defined by the bank commissioner as provided by rules adopted pursuant to
17 ~~[RSA 386:57]~~ ***RSA 383-B:3-301(e)*** shall be eligible to be pledged as collateral. At least yearly, the
18 school board shall review and adopt an investment policy for the investment of public funds in
19 conformance with the provisions of applicable statutes.

20 272:46 Cross Reference Changed. Amend RSA 6:8, I to read as follows:

21 I. All funds over which the state has exclusive control, aside from such sums of money as the
22 treasurer may deem necessary to hold or deposit for meeting current expenses, shall be invested by
23 the treasurer, with the approval of the governor and council, in obligations of the United States
24 government, in obligations of any county government, municipal government, or district or division
25 thereof within the state of New Hampshire, in obligations which are legal investments for ~~[savings]~~
26 ***depository*** banks pursuant to ~~[RSA 386:57]~~ ***RSA 383-B:3-301(e)***, in participation units in the public
27 deposit investment pool established pursuant to RSA 383:22, or in deposits, including money market
28 accounts, or certificates of deposit, or repurchase agreements, and all other types of interest bearing
29 accounts, of federally insured banks chartered under the laws of New Hampshire or the federal
30 government with a branch within the state.

31 272:47 Cross Reference Changed. Amend RSA 162-A:6, VIII to read as follows:

32 VIII. Acquire, in the name of the authority, security by way of mortgage deed or otherwise any
33 property, title to which may be in any corporation, partnership, limited partnership, individual or group
34 of individuals, or other entity other than the authority and upon which projects may be developed or
35 constructed as provided in this chapter. Such security may be acquired by the authority solely in its own
36 name, with community development organizations, with other governmental entities, or with a non-

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 126 -

1 governmental entity, whether operated for profit or as a charity. If the security is acquired with any
2 other entity, then the authority shall act in conformance to ~~[RSA 386:57]~~ ***RSA 383-B:3-301(e)***.

3 272:48 Cross Reference Changed. Amend RSA 292:23, I to read as follows:

4 I. Public Common Trust Funds. The New Hampshire Charitable Foundation is authorized to
5 establish one or more public common trust funds and to accept funds for investment in such public
6 common trust funds from public trustees including municipal trustees, provided however, that any
7 investment in such public common trust fund may be withdrawn at such times and upon such notice as
8 rules and regulations promulgated by the New Hampshire Charitable Foundation with the approval of
9 the bank commissioner shall provide. The New Hampshire Charitable Foundation shall have full power
10 to invest and reinvest such public common trust fund or funds, only (a) in ~~[securities contained in the List~~
11 ~~of Legal Securities provided in RSA 387:25, (b) New Hampshire savings banks, (e)]~~ ***obligations and***
12 ***securities permitted for investment by depository banks under RSA 383-B:3-303(c) and***
13 ***RSA 383-B:3-303(d)(1), (2), (3), and (6); (b)*** obligations of the United States~~[-];~~ and ~~[(c)]~~ ***(c)*** obligations
14 of the state of New Hampshire and its subdivisions, providing however, that not more than 10 percent of
15 any fund shall be invested in the obligations of any one corporation or organization, excepting deposits in
16 ~~[savings banks]~~ ***a bank as defined in RSA 383-A:2-201(a)(3) which accepts deposits, and,***
17 obligations of the United States and of the state of New Hampshire and its subdivisions.

18 272:49 Cross Reference Changed. Amend RSA 564:4 to read as follows:

19 564:4 Banks, etc. Any ~~[trust company or national bank, being authorized under RSA 390]~~ ***bank***
20 ***as defined in RSA 383-A:2-201(a)(3) that holds trust powers,*** may be appointed trustee.
21 Immediately upon the qualification of such a trustee it shall be the duty of the clerk to notify the
22 bank commissioner of such appointment.

23 272:50 Cross Reference Changed. Amend RSA 564-B:7-702(c)(2) to read as follows:

24 (2) Any ~~[trust company, bank, or savings association incorporated under the laws of~~
25 ~~any other state, or any national bank or federally chartered savings association having its principal~~
26 ~~place of business in any other state, if such entity is permitted to exercise fiduciary powers in this~~
27 ~~state pursuant to RSA 390:13, II]~~ ***bank as defined in RSA 383-A:2-201(a)(3), if that bank is***
28 ***permitted to conduct a trust business, as defined in RSA 383-A:2-201(a)(51), in this state.***

29 272:51 Cross Reference Changed. Amend RSA 541-A:21, II to read as follows:

30 II. Rules adopted under RSA 394-A:7 ***prior to the effective date of the repeal of that***
31 ***chapter*** shall be exempt from committee review under RSA 541-A:13.

32 272:52 Repeal. The following are hereby repealed:

- 33 I. RSA 383:9-h, relative to the change in control of a nondepository trust company.
34 II. RSA 383:9-i, relative to affiliates of institutions.
35 III. RSA 383:9-j, relative to criminal history records checks for certain officers of
36 nondepository financial institutions.

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 127 -

- 1 IV. RSA 383:10, relative to methods of examination.
- 2 V. RSA 383:10-c, relative to qualifications of bank examiners.
- 3 VI. RSA 383:13, relative to bank reports.
- 4 VII. RSA 383:13-a, relative to the requirement of financial institutions to display certain
5 information.
- 6 VIII. RSA 383:14, relative to the purchase of fidelity bond coverage.
- 7 IX. RSA 384, relative to general provisions as to savings banks, trust companies, and
8 depositories.
- 9 X. RSA 384-B, relative to branch banking and holding company affiliates.
- 10 XI. RSA 384-C, relative to the suspension of banking activities.
- 11 XII. RSA 384-D, relative to trust deposits in banks.
- 12 XIII. RSA 384-E, relative to complimentary facilities of banks.
- 13 XIV. RSA 385, relative to safe deposit boxes.
- 14 XV. RSA 386, relative to savings banks.
- 15 XVI. RSA 386-A, relative to the incorporation of savings banks.
- 16 XVII. RSA 386-B, relative to the reorganization of mutual savings banks into mutual
17 holding companies.
- 18 XVIII. RSA 387, relative to the investments of savings banks.
- 19 XIX. RSA 388, relative to the consolidation of banks.
- 20 XX. RSA 389, relative to the conversion between state and national banks.
- 21 XXI. RSA 389-A, relative to the conversion between mutual savings banks, cooperative
22 banks building and loan associations, guaranty savings banks, commercial banks, trust companies,
23 and savings and loan associations.
- 24 XXII. RSA 390, relative to the regulation of trust and banking companies.
- 25 XXIII. RSA 392, relative to the incorporation and management of trust companies.
- 26 XXIV. RSA 392-A, relative to merchant banking.
- 27 XXV. RSA 392-B, relative to the incorporation and management of family trust companies.
- 28 XXVI. RSA 393, relative to building and loan associations.
- 29 XXVII. RSA 393-A, relative to capital stock conversion.
- 30 XXVIII. RSA 394-A, relative to the powers of corresponding federally chartered financial
31 institutions.
- 32 XXIX. RSA 394-B, relative to credit unions.
- 33 XXX. RSA 288:3 relative to banking holidays.
- 34 272:53 Purposes. The purposes of sections 54-67 of this act are to clarify the limitation periods
35 applicable to claims against trustees, trust advisors, and trust protectors, clarify the persons who are
36 interested persons for purposes of a nonjudicial settlement agreement, clarify the primacy of settlor

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 128 -

1 intent in construing or modifying the terms of a trust, and make other changes to this state's trust
2 laws.

3 272:54 Uniform Trust Code; Limitation of Action Against a Trustee by a Beneficiary. Amend
4 RSA 564-B:10-1005 by inserting after subsection (e) the following new subsections:

5 (f) In the case of a claim against a deceased trustee for breach of trust, this section shall
6 apply to the extent that the claim is not barred by a limitation period under RSA 556, RSA 564-B:5-
7 508, or other applicable law.

8 (g) For purposes of determining whether, for purposes of this section, a trust has
9 terminated or a beneficiary's interest in a trust has terminated, trust property excludes any claim
10 against a trustee, trust advisor, or trust protector.

11 272:55 Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee, Trust Advisor,
12 or Trust Protector. Amend RSA 564-B:10-1005A by inserting after subsection (d) the following new
13 subsections:

14 (e) In the case of a claim against a deceased trustee for breach of trust, this section shall
15 apply to the extent that the claim is not barred by a limitation period under RSA 556, RSA 564-B:5-
16 508, or other applicable law.

17 (f) For purposes of determining whether, for purposes of this section, a trust has
18 terminated or a beneficiary's interest in a trust has terminated, trust property excludes any claim
19 against a trustee, trust advisor, or trust protector.

20 272:56 Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust Protector.
21 Amend RSA 564-B:12-1206(a) to read as follows:

22 (a) A beneficiary shall commence a proceeding against a trust advisor or trust protector
23 for breach of trust within the earlier of:

24 (1) One year after the date on which the beneficiary or the beneficiary's
25 representative was sent a report that adequately disclosed the existence of a potential claim for
26 breach of trust and informed the beneficiary of the time allowed for commencing a proceeding; ~~or~~

27 (2) Three years after the date on which the beneficiary or the beneficiary's
28 representative was sent a report that adequately disclosed the existence of a potential claim for
29 breach of trust~~[-]~~;

30 (3) *Three years after the trust advisor's or trust protector's resignation or*
31 *removal;*

32 (4) *To the extent that the claim is not barred by a limitation period under*
33 *RSA 556, RSA 564-B:5-508, or other applicable law, three years after the trust advisor's or*
34 *trust protector's death;*

35 (5) *Three years after termination of the beneficiary's interest in the trust; or*

36 (6) *Three years after the termination of the trust.*

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 129 -

1 272:57 Uniform Trust Code; Nonjudicial Settlement Agreements. Amend RSA 564-B:1-111(a)
2 and (b) to read as follows:

3 (a) For purposes of this section, “interested [~~persons~~] **person**” means ***each of the***
4 ***following persons: a trustee; a person who, under the terms of the trust, has the power to***
5 ***enforce the trust; if the trust is a charitable trust, the director of charitable trusts; and any***
6 ***other*** [~~persons~~] **person**, other than the settlor, whose consent would be required in order to achieve
7 a binding settlement were the settlement to be approved by a court.

8 (b) Except as otherwise provided in subsection (c), ***all of the*** interested persons may
9 enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

10 272:58 Uniform Trust Code; Rules of Construction. Amend RSA 564-B:1-112 to read as follows:

11 564-B:1-112 Rules of Construction. The rules of construction that apply in this state to the
12 interpretation of and disposition of property by will also apply as appropriate to the interpretation of
13 the terms of a trust and the disposition of the trust property. ***In interpreting or construing the***
14 ***terms of a trust, the settlor’s intent shall be sovereign to the extent that the settlor’s intent***
15 ***is lawful, not contrary to public policy, and possible to achieve.*** For the purposes of
16 determining the benefit of the beneficiaries, the settlor’s intent as expressed in the terms of the trust
17 shall be paramount.

18 272:59 Uniform Trust Code; Role of Court in Administration of Trust. Amend 564-B:2-201 by
19 inserting after subsection (c) the following new subsection:

20 (d) Each of the following persons may commence a judicial proceeding for the purpose of
21 enforcing the terms of the trust: a settlor; a qualified beneficiary; a trustee; a person who, under the
22 terms of the trust, has the power to enforce the terms of the trust; and in the case of a charitable
23 trust, the director of charitable trusts.

24 272:60 Uniform Trust Code; Modification or Termination of Trust; Proceedings for Approval or
25 Disapproval. Amend RSA 564-B:4-410 by inserting after subsection (b) the following new subsection:

26 (c) A modification or termination under RSA 564-B:4-410, RSA 564-B:4-411, RSA 564-
27 B:4-412, RSA 564-B:4-413, RSA 564-B:4-415, or RSA 564-B:4-416 shall not violate any of the trust’s
28 material purposes.

29 272:61 Uniform Trust Code; Exceptions to Spendthrift Provision. Amend RSA 564-B:5-503(c) to
30 read as follows:

31 (c) A claimant against whom a spendthrift provision [~~cannot be enforced~~] ***is***
32 ***uninforceable*** may obtain from a court an order attaching present or future distributions to or for
33 the benefit of the beneficiary. ***Attachment of distributions is the claimant’s exclusive remedy***
34 ***against the beneficiary’s interest in the trust.*** The court may limit [~~the award to such~~] ***that***
35 relief as is appropriate under the circumstances.

36 272:62 Uniform Trust Code; Specific Powers of Trustees. Amend the introductory paragraph of

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 130 -

1 RSA 564-B:8-816(b)(1) to read as follows:

2 (1) Without limiting the authority conveyed by RSA 564-B:8-815, a trustee of a
3 charitable remainder [~~annuity~~] trust may pay an amount distributable to a beneficiary who is
4 financially disabled by paying that amount to a separate trust if under the terms of that separate
5 trust, the trustee must administer those amounts on behalf of that beneficiary and, upon the
6 beneficiary's death, must distribute the remaining trust property either to:

7 272:63 New Section; Uniform Trust Code; Beneficiary's Disclaimer of an Interest in a Trust.

8 Amend RSA 564-B by inserting after RSA 564-B:10-1014 the following new section:

9 564-B:10-1015 Beneficiary's Disclaimer of an Interest in a Trust.

10 (a) In addition to a beneficiary's right to disclaim an interest in a trust under RSA 563-B
11 and any other method for refusing to accept an interest in a trust, a beneficiary may disclaim an
12 interest in a trust, including a trust that contains a spendthrift provision. An interest may be less
13 than the beneficiary's entire interest in the trust. The disclaimer must be made by a written
14 instrument delivered to a trustee.

15 (b) Unless the trustee has made a distribution to or for the benefit of the beneficiary, a
16 disclaimer under subsection (a) is effective as of the interest's creation and is not a transfer,
17 assignment, or release of the disclaimed interest.

18 (c) A beneficiary's right to disclaim an interest in a trust does not affect the validity or
19 effect of a spendthrift provision.

20 272:64 Uniform Trust Code; Definitions. Amend RSA 564-B:1-103 by inserting after subsection
21 (29) the following new sections:

22 (30) "Good faith" means:

23 (A) with respect to a trustee, trust advisor, or trust protector, the observance of
24 common standards of honesty, decency, fairness, and reasonableness in accordance with the terms of
25 the trust, the trust's purposes, and the interests of the beneficiaries as their interests are defined
26 under the terms of the trust; or

27 (B) with respect to a person other than a trustee, trust advisor, trust protector,
28 or beneficiary for purposes of RSA 564-B:10-1012 and RSA 564-B:10-1013, honesty in fact and the
29 observance of reasonable commercial standards of fair dealing.

30 (31) "Resident" means an individual who is domiciled in the state or jurisdiction in
31 which he or she has his or her principal place of physical presence.

32 272:65 Uniform Trust Code; Governing Law. Amend RSA 564-B:1-107 to read as follows:

33 564-B:1-107 Governing Law.

34 (a) The meaning and effect of the terms of a trust are determined by:

35 (1) the law of the jurisdiction designated in the terms *of the trust* unless the
36 designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 131 -

1 the most significant relationship to the matter at issue; or

2 (2) in the absence of a controlling designation in the terms of the trust, the law of the
3 jurisdiction having the most significant relationship to the matter at issue.

4 (b) *Without precluding other circumstances under which this state has the most*
5 *significant relationship to a matter affecting a trust, this state has the most significant*
6 *relationship to a matter involving a trust’s validity, construction, or administration if:*

7 (1) *under the terms of the trust, this state’s laws govern that matter; and*

8 (2) *the trust has its principal place of administration in this state.*

9 272:66 Uniform Trust Code; Trustee’s Power to Decant Trust. Amend RSA 564-B:4-418(k)(1)
10 and (2) to read as follows:

11 (1) the trustee does not have the discretion to make or participate in making
12 distributions to himself or herself *unless the terms of second trust impose the same limitation*
13 *on that trustee’s discretion;*

14 (2) the trustee’s discretion to make or participate in making distributions to himself
15 or herself is limited by an ascertainable standard *unless the terms of second trust impose the*
16 *same limitation on that trustee’s discretion;*

17 272:67 Uniform Trust Code; Short Title. Amend RSA 564-B:1-101 to read as follows:

18 564-B:1-101 Short Title. This chapter may be cited as the [Uniform] *New Hampshire* Trust
19 Code.

20 272:68 Uniform Trust Code; Chapter Title. Amend the chapter title of RSA 564-B to read as
21 follows:

CHAPTER 564-B

[UNIFORM] *NEW HAMPSHIRE* TRUST CODE

22 272:69 Cross Reference Change. Amend RSA 564:19, III to read as follows:

23
24 III. A trust created under a will described in paragraph II, with respect to which no judicial
25 accountings will be required, shall in all respects be subject to the beneficiary reporting and
26 information requirements of RSA 564-B, the [Uniform] *New Hampshire* Trust Code, and all other
27 pertinent provisions of such code, except to the extent that a contrary provision appears in the will
28 under which the trust was created, provided that such contrary provision does not violate any of the
29 mandatory rules of RSA 564-B:1-105. For these purposes, the pertinent terms of the will shall have
30 the same meaning as “terms of a trust” and the “will creating the trust” shall have the same
31 meaning as “trust instrument,” as defined in RSA 564-B:1-103(19) and (20), respectively.

32 272:70 Cross Reference Change. Amend RSA 564:25 to read as follows:

33 564:25 Application of the [Uniform] *New Hampshire* Trust Code. The provisions of RSA 564-B,
34 the [Uniform] *New Hampshire* Trust Code, shall apply to all trusts under a will governed by this
35 chapter, except to the extent that any provisions of the [Uniform] *New Hampshire* Trust Code
36

CHAPTER 272
SB 188-FN – FINAL VERSION
- Page 132 -

1 conflict with the express provisions of this chapter, in which case the provisions of this chapter shall
2 control.

3 272:71 Effective Date.

4 I. Section 13 of this act shall become effective on July 1, 2015.

5 II. Sections 54, 55, 57, 61 and 62 of this act shall take upon its passage.

6 III. Sections 53 and 56 shall take effect 60 days after its passage.

7 IV. The remainder of this act shall become effective on October 1, 2015.

8

9 Approved: July 27, 2015

10 Effective Date: I. Section 13 shall take effect July 1, 2015

11 II. Sections 54, 55, 57, 61 and 62 shall take effect July 27, 2015

12 III. Sections 53 and 56 shall take effect September 25, 2015

13 IV. Remainder shall take effect October 1, 2015

14