

1 S.173

2 Introduced by Senator Cummings

3 Referred to Committee on

4 Date:

5 Subject: Decedents' estates and fiduciary relations; trusts

6 Statement of purpose: This bill proposes to make technical corrections to
7 No. 20 of the Acts of 2009, the act which substantially revised Vermont trust
8 law.

9 An act relating to technical corrections to the trust laws

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 4 V.S.A. § 113 is amended to read:

12 § 113. JURISDICTION GENERALLY

13 Each superior court within the several counties shall have original and
14 exclusive jurisdiction of all original civil actions, except those actions listed in
15 section 437 of this title and those made cognizable by the probate court, the
16 environmental court, the family court, judicial bureau, or the supreme court,
17 and of such petitions as may by law be brought before the superior court;
18 appellate jurisdiction of causes, civil and criminal, appealable to the court; and
19 original jurisdiction, concurrent with the supreme court, of proceedings in
20 certiorari, mandamus, prohibition, and quo warranto, and may render judgment

1 thereon according to law. The superior court shall also have exclusive
2 jurisdiction to hear and dispose of any requests to modify or enforce any orders
3 in civil cases issued by the superior or district court other than orders relating
4 to those actions listed in sections 437 and 454 of this title.

5 Sec. 2. 4 V.S.A. § 311 is amended to read:

6 § 311. JURISDICTION GENERALLY

7 The probate court shall have jurisdiction of the probate of wills, the
8 settlement of estates, the administration of trusts ~~created by will~~ pursuant to
9 Title 14A, trusts of absent person's estates, charitable, cemetery, and
10 philanthropic trusts, ~~irrevocable trusts created by inter vivos agreements solely~~
11 ~~for the purpose of removal and replacement of trustees pursuant to subsection~~
12 ~~2314(e) of Title 14~~, the appointment of guardians, and of the powers, duties,
13 and rights of guardians and wards, proceedings concerning chapter 231 of
14 Title 18, accountings of attorneys in fact where no guardian has been appointed
15 and the agent has reason to believe the principal is incompetent,
16 relinquishment for adoption, adoptions, uniform gifts to minors, changes of
17 name, issuance of new birth certificates, amendment of birth certificates,
18 correction or amendment of civil marriage certificates, correction or
19 amendment of death certificates, emergency waiver of premarital medical
20 certificates, proceedings relating to cemetery lots, trusts relating to community
21 mausoleums or columbariums, civil actions brought under subchapter 3 of

1 chapter 107 of Title 18 relating to disposition of remains, proceedings relating
2 to the conveyance of a homestead interest of a spouse under a legal disability,
3 the issuance of declaratory judgments, issuance of certificates of public good
4 authorizing the civil marriage of persons under 16 years of age, appointment of
5 administrators to discharge mortgages held by deceased mortgagees,
6 appointment of trustees for persons confined under sentences of imprisonment,
7 fixation of compensation and expenses of boards of arbitrators of death taxes
8 of Vermont domiciliaries, and as otherwise provided by law.

9 Sec. 3. 4 V.S.A. § 311a is amended to read:

10 § 311a. VENUE GENERALLY

11 For proceedings authorized to probate courts, venue shall lie as provided in
12 Title 14A for the administration of trusts, and otherwise in a district of the
13 court as follows:

14 * * *

15 (4) ~~Trust estate created by will: in the district where the decedent's will~~
16 ~~is allowed.~~ [Repealed.]

17 * * *

18 (6) ~~Charitable, cemetery and philanthropic~~ Cemetery trusts:

19 (A) in the district where the trustee resides; or

20 (B) in the district where the creation of the trust is recorded.

21 * * *

1 Sec. 4. 14A V.S.A. § 102 is amended to read:

2 § 102. SCOPE

3 This title applies to express trusts, charitable or noncharitable, and trusts
4 created pursuant to a statute, judgment, or decree that requires the trust to be
5 administered in the manner of an express trust. This title shall not apply to
6 trusts described in the following provisions of Vermont Statutes Annotated:
7 chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of
8 Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11
9 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of
10 Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24,
11 ~~chapters 5 and chapter 7~~ of Title 27, chapter 11 of Title 28, chapter 16 of Title
12 29, and chapters 84 and 91 of Title 30, but section 1013 of this title
13 (certification of trust) shall apply to all such trusts.

14 Sec. 5. 14A V.S.A. § 103 is amended to read:

15 § 103. DEFINITIONS

16 * * *

17 (13)(A) “Qualified beneficiary” means a beneficiary who, on the date
18 the beneficiary’s qualification is determined, is:

19 * * *

20 (ii) a “second tier” beneficiary who would be a first tier
21 beneficiary of trust income or principal if the interests of the distributees

1 described in subdivision (A)(i) of this subdivision (13) terminated on that date
2 without causing the trust to terminate; or

3 * * *

4 Sec. 6. 14A V.S.A. § 402 is amended to read:

5 § 402. REQUIREMENTS FOR CREATION

6 (a) A trust is created only if:

7 * * *

8 (5) the same person is not the sole trustee and ~~current and~~ sole
9 beneficiary of all beneficial interests.

10 * * *

11 Sec. 7. 14A V.S.A. § 504 is amended to read:

12 § 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

13 * * *

14 (e) If the trustee's or cotrustee's discretion to make distributions for the
15 trustee's or cotrustee's own benefit is limited by an ascertainable standard, a
16 creditor may not reach or compel distribution of the beneficial interest except
17 to the extent the interest would be subject to the creditor's claim were the
18 beneficiary not acting as trustee or cotrustee.

1 Sec. 8. 14A V.S.A. § 706 is amended to read:

2 § 706. REMOVAL AND REPLACEMENT OF TRUSTEE

3 * * *

4 (c) The probate court may remove an existing trustee, and appoint a
5 replacement trustee subject to the provisions of section 704 of this title, if the
6 probate court finds that a change in trustee would be in keeping with the intent
7 of the settlor. In deciding whether to replace a trustee under this subsection, the
8 probate court may consider the following factors:

9 * * *

10 (2) The relationship between the ~~grantor~~ settlor and the trustee as it
11 existed at the time the trust was created;

12 * * *

13 Sec. 9. 14A V.S.A. § 802 is amended to read:

14 § 802. DUTY OF LOYALTY

15 * * *

16 (b) Subject to the rights of persons dealing with or assisting the trustee as
17 provided in section 1012 of this title, a sale, encumbrance, or other transaction
18 involving the investment or management of trust property entered into by the
19 trustee for the trustee's own personal account or which is otherwise affected by

1 a conflict between the trustee's fiduciary and personal interests is voidable by a
2 beneficiary affected by the transaction unless:

3 * * *

4 (5) the transaction involves a contract entered into or claim acquired by
5 the trustee before the person became or contemplated becoming trustee; or

6 * * *

7 Sec. 10. 14A V.S.A. § 907 is amended to read:

8 § 907. TOTAL RETURN UNITRUSTS

9 * * *

10 (b) A trustee, other than an interested trustee, or when two or more persons
11 are acting as trustee, a majority of the trustees who are not an interested trustee
12 (in either case referred to in this subsection as "trustee"), may, in its sole
13 discretion and without the approval of the probate court:

14 * * *

15 (3) Change the percentage used to calculate the unitrust amount and the
16 method used to determine the fair market value of the trust if:

17 * * *

18 (C) At least one person receiving such notice in each tier described in
19 subdivision 103(13) of this title (first tier, second tier, and final beneficiaries)
20 is legally competent; and

21 * * *