

1 S.173

2 Introduced by Senator Cummings

3 Referred to Committee on Judiciary

4 Date: January 5, 2010

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~~

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

**§ 113. JURISDICTION GENERALLY**

*Each superior court within the several counties shall have original and exclusive jurisdiction of all original civil actions, except those actions listed in section 437 of this title and those made cognizable by the probate court, the environmental court, the family court, judicial bureau, or the supreme court, and of such petitions as may by law be brought before the superior court; appellate jurisdiction of causes, civil and criminal, appealable to the court; and original jurisdiction, concurrent with the supreme court, of proceedings in certiorari, mandamus, prohibition, and quo warranto, and may render judgment thereon according to law. The superior court shall also have exclusive jurisdiction to hear and dispose of any requests to modify or enforce any orders in civil cases issued by the superior or district court other than orders relating to those actions listed in sections 437 and 454 of this title.*

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

**§ 311. JURISDICTION GENERALLY**

*The probate court shall have jurisdiction of the probate of wills, the settlement of estates, the administration of trusts ~~created by will~~ pursuant to Title 14A, trusts of absent person's estates, charitable, cemetery, and philanthropic trusts, ~~irrevocable trusts created by inter vivos agreements solely for the purpose of removal and replacement of trustees pursuant to subsection 2314(c) of Title 14~~, the appointment of guardians, and of the powers, duties, and rights of guardians and wards, proceedings concerning chapter 231 of Title 18, accountings of attorneys in fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent, relinquishment for adoption, adoptions, uniform gifts to minors, changes of name, issuance of new birth certificates, amendment of birth certificates, correction or amendment of civil marriage certificates, correction or amendment of death certificates, emergency waiver of premarital medical certificates, proceedings relating to cemetery lots, trusts relating to community mausoleums or columbariums, civil actions brought under subchapter 3 of chapter 107 of Title 18 relating to disposition of remains, proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability, the issuance of declaratory judgments, issuance of certificates of public good authorizing the civil marriage of persons under 16 years of age, appointment of administrators to discharge mortgages held by deceased mortgagees, appointment of trustees for persons confined under sentences of imprisonment, fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries, and as otherwise provided by law.*

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

§ 311a. VENUE GENERALLY

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

\* \* \*

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

\* \* \*

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

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

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

\* \* \*

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

§ 102. SCOPE

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

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

§ 103. DEFINITIONS

\* \* \*

*(13)(A) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined, is:*

*(i) a "first tier" beneficiary as a distributee or permissible distributee of trust income or principal;*

*(ii) a "second tier" beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees*

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

*(iii) a “final beneficiary” who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.*

*(B) Notwithstanding subdivisions ~~(i)~~(ii) and ~~(ii)~~(iii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary shall not be a “qualified beneficiary” if the beneficiary’s interest in the trust:*

*(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or*

*(ii) may be eliminated by an amendment to the trust.*

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

*§ 402. REQUIREMENTS FOR CREATION*

*(a) A trust is created only if:*

*\* \* \**

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

*\* \* \**

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

*§ 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD*

*\* \* \**

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

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

*§ 706. REMOVAL AND REPLACEMENT OF TRUSTEE*

*\* \* \**

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

\* \* \*

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

\* \* \*

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

*§ 802. DUTY OF LOYALTY*

\* \* \*

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

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

\* \* \*

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

\* \* \*

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

*§ 907. TOTAL RETURN UNITRUSTS*

\* \* \*

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

\* \* \*

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

\* \* \*

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

\* \* \*

*Sec. 11. 14A V.S.A. § 1013 is amended to read:*

§ 1013. CERTIFICATION OF TRUST

(a) *Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:*

\* \* \*

(3) *the name of each ~~grantor or~~ settlor;*

\* \* \*

(9) *a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the ~~trustees~~ trustee to act.*

\* \* \*

(c) *A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:*

(1) *a party dealing with the trustee ~~or trustees~~ has actual knowledge of facts to the contrary;*

\* \* \*

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.

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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  
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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,  
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