

Sen. Reynolds, Dist. 2
Sen. Cilley, Dist. 6
Sen. Hassan, Dist. 23
Sen. DeVries, Dist. 18
May 4, 2010
2010-1830s
01/03

Amendment to HB 1393

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to the treatment of New Hampshire investment trusts, and relative to
4 pooled risk management programs.
5

6 Amend the bill by replacing all after section 2 with the following:

7
8 3 New Section; Pooled Risk Management Programs; Authority of Secretary of State. Amend
9 RSA 5-B by inserting after section 4 the following new section:

10 5-B:4-a Authority of the Secretary of State; Investigations; Cease and Desist Orders; Penalties.

11 I. Notwithstanding any other provision of law, the secretary of state shall have exclusive
12 authority and jurisdiction:

13 (a) To bring administrative actions to enforce this chapter.

14 (b) To investigate and impose penalties for violations of this chapter, including but not
15 limited to:

16 (1) Fines.

17 (2) Rescission, restitution, or disgorgement.

18 II. The secretary of state shall have all powers specifically granted or reasonably implied in
19 order to perform the substantive responsibilities imposed by this chapter.

20 III. For the purpose of any investigation, hearing, or proceeding under this chapter, the
21 secretary of state or any officer designated by him or her may administer oaths and affirmations,
22 subpoena witnesses, compel their attendance, take evidence and require the production of any books,
23 papers, correspondence, memoranda, agreements, or other documents or records which the secretary
24 of state deems relevant or material to the inquiry.

25 IV. In the event that a person refuses to obey a subpoena issued to him or her or any order
26 or determination the secretary of state is authorized to make, the superior court, upon application by
27 the attorney general or secretary of state or any officer designated by the secretary of state, may
28 issue to the person an order directing him or her to appear before the attorney general or secretary of
29 state, or the officer designated by him or her, to produce documentary evidence if so ordered or to
30 give evidence relative to the matter under investigation or in question. Failure to obey the order of

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the court may be punished by the court as contempt of court.

V. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under this chapter.

VI. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter the secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with RSA 421-B:26-a.

VII. The following fines and penalties may be imposed on any person who has violated this chapter.

(a) Any person who, either knowingly or negligently, violates any provision of this chapter or any rule or order thereunder, may, upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500. Each of the acts specified shall constitute a separate violation.

(b) After notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated this chapter, or rule or order under this chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under this chapter.

VIII. Decisions of the secretary of state may be appealed to the supreme court pursuant to RSA 541.

4 New Paragraphs; Pooled Risk Management Programs; Standards of Organization and Operation. Amend RSA 5-B:5 by inserting after paragraph II the following new paragraphs:

III. The pooled risk management program shall maintain a reserve of no greater than the sum of:

(a) Five percent of estimated annual claims of the health plan; and

(b) The amount determined annually by a qualified actuary to be necessary to fund the unpaid portion of ultimate expected losses, including incurred but not reported claims, and related expenses incurred in the provision of benefits for eligible participants, less any credit, as determined by a qualified actuary, for excess or stop-loss insurance.

IV. Any reserve amount in excess of the calculation in paragraph III shall be distributed to the participant political subdivisions.

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1 5 Distribution Plan; 2010. Within 30 days of calculating the reserve amount under RSA 5-B:5,
2 III as inserted by this act, the pooled risk management program shall submit to the secretary of
3 state a plan for distribution of excess funds under RSA 5-B:5, IV that shall include but not be limited
4 to the name of each political subdivision, the number of years that the political subdivision has
5 participated in the risk pool and the amount of surplus paid by the political subdivision for each year
6 of participation in the risk pool. If the secretary of state determines that the plan for distribution
7 adequately and accurately represents the apportionment to the political subdivisions of the funds in
8 excess of the reserves then he or she shall approve the plan and notify the pooled risk management
9 program in writing of his or her approval. The excess funds shall be distributed to the political
10 subdivisions within 20 days following receipt of the written approval from the secretary of state.

11 6 Repeal. 2009, 128:4, relative to the 2011 amendment of the pooled risk management program
12 informational filing fee, is repealed.

13 7 Effective Date.

14 I. Sections 1, 2, 6 and RSA 5-B:5, IV as inserted by section 4 of this act shall take effect 60
15 days after its passage.

16 II. The remainder of this act shall take effect upon its passage.