

**HOUSE . . . . . No. 1380**

By Mr. Dempsey of Haverhill, petition of Brian S. Dempsey relative to trust instruments. The Judiciary.

**The Commonwealth of Massachusetts**

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO TRUST INSTRUMENTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 203 of the General Laws, as appearing in the 2004 Offi-  
2 cial Edition, is hereby amended by inserting after Section 14B, the  
3 following two new sections:—

4 Section 14C. With respect to a third person dealing with a trustee  
5 or assisting a trustee in the conduct of a transaction, if the third  
6 person acts in good faith and for a valuable consideration and  
7 without actual knowledge that the trustee is exceeding the trustee’s  
8 powers or improperly exercising them:—

9 (a) The third person is not bound to inquire whether the trustee  
10 has power to act or is properly exercising a power and may assume  
11 without inquiry the existence of a trust power and its proper exer-  
12 cise.

13 (b) The third person is fully protected in dealing with or assisting  
14 the trustee just as if the trustee has and is properly exercising the  
15 power the trustee purports to exercise.

16 Section 14D. (a) A third person may receive a certification of  
17 trust in lieu of receiving a copy of the trust instrument to establish  
18 the existence or terms of the trust. A certification of trust may be  
19 executed voluntarily or at the request of the person with whom the  
20 trustee is dealing.

21 (b) The certification of trust may confirm the following facts or  
22 contain the following information:—

23 (1) The existence of the trust and date of execution of the trust  
24 instrument.

25 (2) The identity of the settlor or settlors of the trust.

26 (3) The identity of the currently acting trustee or trustees of the  
27 trust.

28 (4) The powers of the trustee.

29 (5) The revocability or irrevocability of the trust and the identity  
30 of any person holding any power to revoke the trust.

31 (6) When there are multiple trustees, the signature authority of the  
32 trustees, indicating whether all or less than all of the currently acting  
33 trustees are required to sign in order to exercise various powers of  
34 the trustee.

35 (7) The trust identification number, whether a social security  
36 number or an employer identification number.

37 (8) The manner in which title to trust assets should be taken.

38 (c) The certification shall contain a statement that the trust has not  
39 been revoked, modified, or amended in any manner which would  
40 cause the representations contained in the certification of trust to be  
41 incorrect and shall contain a statement that it is being signed by all  
42 of the currently acting trustees of the trust. The certification shall be  
43 in the form of an acknowledged declaration signed by all currently  
44 acting trustees of the trust.

45 (d) The certification of trust shall not be required to contain the  
46 dispositive provisions of the trust which set forth the distribution of  
47 the trust estate.

48 (e) A person may require that the trustee offering the certification  
49 of trust provide copies of those excerpts from the original trust docu-  
50 ments and amendments thereto which designate the trustee and  
51 confer upon the trustee the power to act in the pending transaction.  
52 Nothing in this section is intended to require or imply an obligation  
53 to provide the dispositive provisions of the trust or the entire trust  
54 and amendments thereto.

55 (f) A person who acts in reliance upon a certification of trust  
56 without actual knowledge that the representations contained therein  
57 are incorrect is not liable to any person for so acting and the reliant  
58 will be fully protected and released to the same extent as though all  
59 such representations had been correct. A person who does not have  
60 actual knowledge that the facts contained in the certification of trust  
61 are incorrect may assume without inquiry the existence of the facts  
62 contained in the certification of trust. Actual knowledge shall not be  
63 inferred solely from the fact that a copy of all or part of the trust

64 instrument is held by the person relying upon the trust certification.  
65 Any transaction, and any lien created thereby, entered into by the  
66 trustee named in the certification of trust and a person acting in  
67 reliance upon a certification of trust shall be enforceable against the  
68 trust assets. However, if the person has actual knowledge that such  
69 trustee is acting outside the scope of the trust, then the transaction is  
70 not enforceable against the trust assets. Nothing contained herein  
71 shall limit the rights of the beneficiaries of the trust against the  
72 trustee.

73 (g) A third person who acts in good faith pursuant to a certifica-  
74 tion under this section is not bound to ensure the proper application  
75 of trust property paid or delivered to the recipient thereof.

76 (h) A person's failure to demand a certification of trust does not  
77 affect the protection provided that person by Section fourteen C, and  
78 no inference as to whether that person has acted in good faith may  
79 be drawn from the failure to demand a certification of trust.

80 Nothing in this section is intended to create an implication that a  
81 person is liable for acting in reliance upon a certification of trust  
82 under circumstances where the requirements of this section are not  
83 satisfied.