

Bill as
Introduced

HB 485 - AS AMENDED BY THE HOUSE

7Apr2021... 0409h

2021 SESSION

21-0626
08/04

HOUSE BILL

485

AN ACT

requiring law enforcement officers to inform a person of their right to refuse a consensual search.

SPONSORS:

Rep. Roy, Rock. 32; Rep. Abramson, Rock. 37; Rep. Andrew Bouldin, Hills. 12; Rep. Fellows, Graf. 8; Rep. Klein-Knight, Hills. 11; Rep. Potucek, Rock. 6; Rep. Avellani, Carr. 5; Rep. Binford, Graf. 15; Rep. Moran, Hills. 34; Rep. B. King, Hills. 23

COMMITTEE:

Criminal Justice and Public Safety

ANALYSIS

This bill requires a law enforcement officer to inform a person of their right to refuse a consensual search before conducting a consensual search.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT requiring law enforcement officers to inform a person of their right to refuse a consensual search.

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

1 1 New Section; Right to Refuse a Consensual Search. Amend RSA 595-A by inserting after
2 section 9 the following new section:

3 595-A:10 Consent to Search; Right to Refuse Consent.

4 I. Before an officer attempts to conduct a search of a person, his or her vehicle, home, or
5 other property, the officer shall inform such person of his or her right to refuse the search without
6 penalty. If the person consents to the search, the officer shall first document the person's consent
7 either in writing or by audio recording, and then may conduct the search. A person's refusal to
8 consent to the search shall not be used to establish probable cause for a warrantless search or in an
9 application for a search warrant, nor shall it be used to further extend any stop or interaction with a
10 member of the public, provided all other lawful reasons for the stop or interaction have been
11 concluded. An officer who fails to comply with the requirements of this paragraph, but proceeds with
12 a search shall, as a matter of law, be conducting a search without consent.

13 II. This section shall not preclude searches incident to arrest, those searches allowed under
14 the United States Constitution for officer safety, or inventory searches of lawfully-seized property,
15 including but not limited to vehicles towed in conjunction to the arrest of the operator.

16 2 Effective Date. This act shall take effect 60 days after its passage.

HB 485 - AS AMENDED BY THE SENATE

7Apr2021... 0409h
04/29/2021 1173s
05/27/2021. 1778s

2021 SESSION

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HOUSE BILL **485**

AN ACT relative to informed consent to search a motor vehicle and amending the statutory requirements for a search warrant; relative to prohibiting certain uses of laser pointing devices, and relative to various civil actions and criminal liability.

SPONSORS: Rep. Roy, Rock. 32; Rep. Abramson, Rock. 37; Rep. Andrew Bouldin, Hills. 12; Rep. Fellows, Graf. 8; Rep. Klein-Knight, Hills. 11; Rep. Potucek, Rock. 6; Rep. Avellani, Carr. 5; Rep. Binford, Graf. 15; Rep. Moran, Hills. 34; Rep. B. King, Hills. 23

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill adopts legislation relative to:

I. Warrantless search of a motor vehicle with the informed consent of the motor vehicle operator; the bill also amends the statutory requirements for a search warrant to allow consistency with the requirements for electronic warrants.

I. Prohibiting certain uses of laser pointing devices.

II. The revised uniform law on notarial acts and the uniform real property electronic recording act.

III. Incarceration under a suspended sentence.

IV. Civil liability for damage to highways.

V. Procedures for structured settlements.

VI. Establishing the New Hampshire collaborative law act.

VII. Probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.

VIII. School employee and school volunteer criminal history background checks and establishing a committee to study department of education oversight of criminal history background checks for private schools.

IX. Making an appropriation funding mental health intervention training programs.

X. Employer access to motor vehicle records.

XI. Authorization to grow industrial hemp.

HB 485 - AS AMENDED BY THE SENATE

Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

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

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to informed consent to search a motor vehicle and amending the statutory requirements for a search warrant; relative to prohibiting certain uses of laser pointing devices, and relative to various civil actions and criminal liability.

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

1 1 New Section; Search Warrants; Informed Consent Exception for Motor Vehicles. Amend RSA
2 595-A by inserting after section 9 the following new section:

3 595-A:10 Informed Consent Exception for Motor Vehicles.

4 I. A law enforcement officer may legally conduct a search of a motor vehicle without, a
5 warrant under this chapter if the law enforcement officer expressly informs the operator of the motor
6 vehicle that:

7 (a) The operator has the right to refuse to consent to a search;

8 (b) Any refusal to consent to a search shall not constitute a basis either for probable
9 cause to arrest the operator or reasonable suspicion to detain the operator;

10 (c) The operator cannot be charged with any crime or violation for refusing to consent to
11 a search; and

12 (d) The operator cannot be further detained for refusing to consent to a search.

13 II. If the operator of a motor vehicle refuses to consent to a search, the law enforcement
14 officer shall cease any further questioning concerning consent to a search.

15 III. A law enforcement officer shall document any consent to search either by the signature
16 of the motor vehicle operator on a consent-to-search form providing notice of the provisions of
17 paragraphs I and II at the time of the consent, or by means of a video and sound recording of the
18 consent at the time of the consent. Such form or video and sound recording shall be retained until
19 any criminal charge resulting from the consent to search is fully resolved.

20 IV. Any act of a law enforcement officer which violates a provision of this section shall result
21 in the inadmissibility in any criminal proceeding of any evidence of obtained by the law enforcement
22 officer.

23 2 Search Warrants; Form of Warrant; Written Statement Under Oath. Amend RSA 595-A:3 and
24 595-A:4 to read as follows:

25 595-A:3 Form of Warrant. The warrant shall be in substantially the following form:

26 The State of New Hampshire

27 (County), ss. (Name) Court.

1 To the Sheriffs of our several counties, or their deputies, any State Police Officer, or any Constable
2 or Police Officer of any city or town, within our said State.

3 Proof by [~~affidavit~~] **written statement under oath** (supplemented by oral statements under oath)
4 having been made this day before (name of person authorized to issue warrant) by (names of person
5 or persons whose [~~affidavits~~] **written statements under oath** have been taken) that there is
6 probable cause for believing that (certain property has been stolen, embezzled, or fraudulently
7 obtained; certain property is intended for use or has been used as the means of committing a crime;
8 contraband; evidence of the crime to which the probable cause upon which the search warrant is
9 issued relates.)

10 We therefore command you in the daytime (or at any time of the day or night) to make an immediate
11 search of (identify premises) (occupied by A.B.) and (of the person of A.B.) and of any person present
12 who may be found to have such property in his possession or under his control or to whom such
13 property may have been delivered, for the following property:

14 (description of property)

15 and if you find any such property or any part thereof to bring it and the persons in whose possession
16 it is found before (name of court and location).

17 Dated at (city or town) this day of, 20.....

18 595-A:4 [~~Affidavit~~] **Written Statement Under Oath** in Support of Application for Warrant;
19 Contents and Form.

20 A person seeking a search warrant shall appear [~~personally~~] before a court or justice authorized to
21 issue search warrants in criminal cases and shall give [~~an affidavit~~] **a written statement under**
22 **oath** in substantially the form hereinafter prescribed. Such [~~affidavit~~] **written statement under**
23 **oath** shall contain facts, information, and circumstances upon which such person relies to establish
24 probable cause for the issuance of the warrant and such [~~affidavit~~] **written statement under oath**
25 may be supplemented by oral statements under oath for the establishment of probable cause. The
26 person issuing the warrant shall retain the [~~affidavit~~] **written statement under oath** and shall
27 make notes, personally, of the substance, or arrange for a transcript, of any oral statements under
28 oath supplementing the [~~affidavit~~] **written statement under oath**. The person issuing the search
29 warrant shall deliver the [~~affidavit~~] **written statement under oath** and the notes or transcript
30 within 3 days after the issuance of the warrant to the court to which the warrant is returnable.
31 Upon the return of said warrant, the [~~affidavit~~] **written statement under oath** and the notes or
32 transcript shall be attached to it and shall be filed therewith, and they shall be a public document
33 when the warrant is returned, unless otherwise ordered by a court of record.

34 The [~~affidavit~~] **written statement under oath** in support of the application for a search warrant
35 shall be in substantially the following form:

36 The State of New Hampshire
37 (County), ss. (Name) Court.

1 , 20.....

2 I, (name of applicant) being duly sworn, depose and say:

3 1. I am (describe position, assignment, office, etc.).

4 2. I have information, based upon (describe source, facts indicating reliability of source and nature
5 of information; if based on personal knowledge, so state).

6 3. Based upon the foregoing reliable information (and upon my personal knowledge) there is
7 probable cause to believe that the property hereinafter described (has been stolen, etc.) and may be
8 found (in the possession of A.B. or any other person) at premises (identify).

9 4. The property for which I seek the issuance of a search warrant is the following: (here describe the
10 property as particularly as possible).

11 Wherefore, I request that the court issue a warrant and order of seizure, authorizing the search of
12 (identify premises and the persons to be searched) and directing that if such property or evidence or
13 any part thereof be found that it be seized and brought before the court; together with such other
14 and further relief that the court may deem proper.

15

16 Name

17 ~~I then personally appeared the above named and made oath that the foregoing affidavit by
18 him subscribed is true.~~

19 ~~Before me this day of, 20.....]~~

20 Return

21 I received the attached search warrant on, 20....., and have executed it as follows:

22 On, 20....., at o'clock ... M, I searched (the person) (the premises) described in the
23 warrant and I left a copy of the warrant with (name of person searched or owner) at (the place of
24 search) together with a receipt for the items seized.

25 The following is an inventory of property taken pursuant to the warrant:

26 This inventory was made in the presence of and

27 I swear that this inventory is a true and detailed account of all the property taken by me on the
28 warrant

29 ~~[Subscribed and sworn to and returned before me this day of, 20.....]~~

30

31 [Justice of the Court] Name

32 **Signed under penalty of perjury, the penalty for which may include a fine or imprisonment**
33 **or both.**

34

35 3 Assault and Related Offenses; Conduct Involving Laser Pointing Devices. RSA 631:3-a is
36 repealed and reenacted to read as follows:

37 631:3-a Conduct Involving Laser Pointing Devices.

1 I. As used in this section:

2 (a) "Government" means the federal government, the state government or any political
3 subdivision thereof, or a state or municipal agency or department, including any employee or agent.

4 (b) "Person" means any individual, partnership, limited liability company, corporation,
5 or any other organization, including a for-profit and not-for-profit entity, but excluding government.

6 II.(a) Any person in direct or remote control of a laser pointing device who knowingly shines
7 the beam of a laser pointing device at an occupied motor vehicle, off highway recreational vehicle,
8 snowmobile, vessel, window, or structure, or at a person shall be guilty of a violation and the laser
9 pointing device shall be seized and forfeited upon conviction.

10 (b) Any person in direct or remote control of a laser pointing device who knowingly
11 shines the beam of a laser pointing device at an occupied aircraft shall be guilty of a misdemeanor
12 and the laser pointing device shall be seized and forfeited upon conviction.

13 III. Any person in direct or remote control of a laser pointing device who knowingly shines
14 the beam of a laser pointing device at a law enforcement officer or law enforcement vehicle, off
15 highway recreational vehicle, or snowmobile shall be guilty of a class A misdemeanor and the laser
16 pointing device shall be seized and forfeited upon conviction.

17 IV. This section shall not prohibit aiming a beam of a laser pointing device at a motor
18 vehicle, aircraft, vessel, window, structure, or at a person by any of the following:

19 (a) An authorized person in the conduct of research and development or flight test
20 operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other
21 person authorized by the Federal Aviation Administration to conduct such research and
22 development or flight test operations.

23 (b) The government or persons authorized by the government, including defense and
24 aerospace contractors, engaged in research, development, operations, testing, or training.

25 (c) An individual using a laser emergency signaling device to send an emergency distress
26 signal, in an organized meeting or training class by the instructor or speaker, the use of medical
27 lasers by qualified medical personnel, sporting use related only to calibrate distance without
28 violating the prohibitions set forth in paragraph III, agricultural use, use related to land surveying,
29 construction lasers used by construction personnel in the course of their work or other use of lasers
30 for lawful business purposes, or lawful laser devices utilized by law enforcement personnel in the
31 performance of their official duties.

32 (d) Vehicle sensors, including those used for navigational aids, and research,
33 development, test, evaluation, and operation of autonomous vehicles, as permitted by law.

34 4 New Hampshire Aeronautics Act; Prohibitions. Amend RSA 422:28, XIV to read as follows:

35 XIV. ~~For any person to purposely or knowingly shine the beam of a laser pointing device at~~
36 ~~an aircraft that is in flight or in the process of takeoff, landing, or taxiing] For any person in direct~~
37 ~~or remote control of a laser pointing device to knowingly shine the beam of a laser pointing~~

1 *device at an aircraft that is in flight or in the process of takeoff, landing, or taxiing, except*
2 *as permitted under RSA 631:3-a, IV.*

3 5 Notaries Public. Amend RSA 455:3 to read as follows:

4 455:3 Powers.

5 *I.* Every notary public, in addition to the usual powers of the office, shall have the same
6 powers as a justice of the peace in relation to depositions and the acknowledgment of deeds and
7 other instruments and the administering of oaths.

8 *II.* All ~~[acknowledgments made]~~ *notarial acts performed* by a notary public *with respect*
9 *to a record* shall be either under an *embossed* official seal or shall carry the legible imprint of an
10 *electronic or rubber* official ~~[rubber]~~ stamp stating the name of the notary, the words "notary
11 public, New Hampshire" and the expiration date of the notary public's commission.

12 *III. As used in this section:*

13 *(a) "Electronic" has the same meaning given in RSA 456-B:1, VI;*

14 *(b) "Notarial Act" has the same meaning given in RSA 456-B:1, I;*

15 *(c) "Official stamp" has the same meaning given in RSA 456-B:1, IX; and*

16 *(d) "Record" has the same meaning given in RSA 456-B:1, XI.*

17 6 New Paragraph; Notarial Fees. Amend RSA 455:11 by inserting after paragraph II the
18 following new paragraph:

19 *III.* For performing notarial acts for a remotely located individual under RSA 456-B:6-a, a
20 notary public shall be entitled to a fee of \$25 per act.

21 7 Uniform Law on Notarial Acts; Definitions. Amend RSA 456-B:1 to read as follows:

22 456-B:1 Definitions.

23 *I.* "Notarial act" means ~~[any act that a notary public]~~ *an act, whether performed with*
24 *respect to a tangible or electronic record, that a notarial officer* is authorized to perform
25 *under the law of this state*, and includes taking an acknowledgment, administering an oath or
26 affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature,
27 certifying or attesting a copy, and noting a protest of a negotiable instrument.

28 *II.* "Acknowledgment" means a declaration by ~~[a person]~~ *an individual before a notarial*
29 *officer* that the ~~[person has executed an instrument]~~ *individual has signed a record* for the
30 purposes stated therein and, if ~~[the instrument is executed]~~ *the record is signed* in a
31 representative capacity, that the ~~[person]~~ *individual* signed the ~~[instrument]~~ *record* with proper
32 authority and ~~[executed]~~ *signed* it as the act of the ~~[person]~~ *individual* or entity ~~[represented and]~~
33 identified therein.

34 *III.* "Verification upon oath or affirmation" means a declaration that a statement is true
35 made by ~~[a person]~~ *an individual* upon oath or affirmation.

36 *IV.* "In a representative capacity" means *acting as*:

1 (a) ~~[For and on behalf of a corporation, partnership, trust, or other entity, as]~~ An
2 authorized officer, agent, partner, trustee, or other representative *for a person other than an*
3 *individual*;

4 (b) ~~[As]~~ A public officer, personal representative, guardian, or other representative, in
5 the capacity recited in the instrument;

6 (c) ~~[As]~~ An *agent or* attorney in fact for a principal; or

7 (d) In any other capacity as an authorized representative of another.

8 V. "Notarial officer" means a notary public, justice of the peace, or other officer authorized to
9 perform notarial acts.

10 VI. "*Electronic*" means relating to technology having electrical, digital, magnetic,
11 *wireless, optical, electromagnetic, or similar capabilities.*

12 VII. "*Electronic signature*" means an electronic symbol, sound, or process attached
13 to or logically associated with a record and executed or adopted by an individual with the
14 intent to sign the record.

15 VIII. "*Notary public*" means an individual appointed to perform a notarial act by
16 the governor and executive council.

17 IX. "*Official stamp*" means an official seal of office consisting of a physical image
18 affixed to or embossed on a tangible record or an electronic image attached to or logically
19 associated with an electronic record.

20 X. "*Person*" means an individual, corporation, business trust, statutory trust,
21 estate, trust, partnership, limited liability company, association, joint venture, public
22 corporation, government or governmental subdivision, agency, or instrumentality, or any
23 other legal or commercial entity.

24 XI. "*Record*" means information that is inscribed on a tangible medium or that is
25 stored in an electronic or other medium and is retrievable in perceivable form.

26 XII. "*Sign*" means, with present intent to authenticate or adopt a record:

27 (a) To execute or adopt a tangible symbol; or

28 (b) To attach to or logically associate with the record an electronic symbol,
29 sound, or process.

30 XIII. "*Signature*" means a tangible symbol or an electronic signature that evidences
31 the signing of a record.

32 XIV. "*Stamping device*" means:

33 (a) A physical device capable of affixing to or embossing on a tangible record an
34 official stamp; or

35 (b) An electronic device or process capable of attaching to or logically
36 associating with an electronic record an official stamp.

1 XV. *"State" means a state of the United States, the District of Columbia, Puerto*
2 *Rico, the United States Virgin Islands, or any territory or insular possession subject to the*
3 *jurisdiction of the United States.*

4 8 Uniform Law on Notarial Acts; Notarial Acts. Amend RSA 456-B:2 to read as follows:

5 456-B:2 Notarial Acts.

6 I. In taking an acknowledgment, the notarial officer must determine, either from personal
7 knowledge or from satisfactory evidence, that the ~~[person]~~ *individual* appearing before the officer
8 and making the acknowledgment ~~[is the person whose true]~~ *has the identity claimed and that*
9 *the signature [is] on the instrument is the signature of the individual.*

10 II. In taking a verification upon oath or affirmation, the notarial officer must determine,
11 either from personal knowledge or from satisfactory evidence, that the ~~[person]~~ *individual*
12 appearing before the officer and making the verification ~~[is the person whose true]~~ *has the identity*
13 *claimed and that the signature [is] on the statement verified is the signature of the individual.*

14 III. In witnessing or attesting a signature the notarial officer must determine, either from
15 personal knowledge or from satisfactory evidence, that the ~~[signature is that of the person]~~
16 *individual* appearing before the officer and ~~[named therein]~~ *signing the record has the identity*
17 *claimed.*

18 IV. In certifying or attesting a copy of a ~~[document]~~ *record* or other item *that was copied*,
19 the notarial officer must determine that the proffered copy is a full, true, and accurate transcription
20 or reproduction of ~~[that which was copied]~~ *the record or item.*

21 V. In making or noting a protest of a negotiable instrument the notarial officer must
22 determine the matters set forth in RSA 382-A:3-505.

23 VI. ~~[A notarial officer has satisfactory evidence that a person is the person whose true~~
24 ~~signature is on a document if that person is personally known to the notarial officer, is identified~~
25 ~~upon the oath or affirmation of a credible witness personally known to the notarial officer, or is~~
26 ~~identified on the basis of identification documents.] A notarial officer may certify that a~~
27 *tangible copy of an electronic record is an accurate copy of the electronic record.*

28 VII.(a) For the purposes of this section, but only in the context of executing an estate
29 planning instrument such as a will~~[, trust, or power of attorney]~~ *or estate planning trust*, the
30 requirement that a person appear before a notarial officer at the time of the notarial act is satisfied
31 if the notarial officer is:

32 (1) The attorney, licensed to practice law in New Hampshire and in good standing,
33 who drafted the estate planning instrument;

34 (2) Another attorney licensed to practice law in New Hampshire and in good
35 standing, under the drafting attorney's supervision; or

36 (3) A paralegal under the supervision of either such attorney; and

1 (b) The person and the notarial officer can communicate simultaneously by sight and
2 sound through an electronic device or process at the time of the notarial act.

3 (c) This paragraph shall apply only to notarial acts performed on or after March 23, 2020
4 ~~[and ending on the last day of the state of emergency declared by executive order 2020-04]~~. In
5 addition, a notarial act performed in compliance with emergency order #11 pursuant to executive
6 order 2020-04 from its effective date through the date of its expiration is valid.

7 9 New Sections; Personal Appearance Required; Identification of Individual. Amend RSA 456-B
8 by inserting after section 2 the following new sections:

9 456-B:2-a Personal Appearance Required. If a notarial act relates to a statement made in or a
10 signature executed on a record, the individual making the statement or executing the signature shall
11 appear personally before the notarial officer.

12 456-B:2-b Identification of Individual.

13 I. A notarial officer has personal knowledge of the identity of an individual appearing before
14 the officer if the individual is personally known to the officer through dealings sufficient to provide
15 reasonable certainty that the individual has the identity claimed.

16 II. A notarial officer has satisfactory evidence of the identity of an individual appearing
17 before the officer if the officer can identify the individual:

18 (a) By means of:

19 (1) A passport, driver's license, or government issued nondriver identification card,
20 which is current and unexpired; or

21 (2) Another form of government identification issued to an individual, which is
22 current and unexpired, contains the signature or a photograph of the individual, and is satisfactory
23 to the officer; or

24 (b) By a verification upon oath or affirmation of a credible witness personally appearing
25 before the officer and known to the officer or whom the officer can identify on the basis of a passport,
26 driver's license, or government issued nondriver identification card, which is current and unexpired.

27 III. A notarial officer may require an individual to provide additional information or
28 identification credentials necessary to assure the officer of the identity of the individual.

29 10 Notarial Acts. Amend RSA 456-B:3, III to read as follows:

30 III. The signature, *embossed* official seal or the legible imprint of an *electronic or rubber*
31 official ~~[rubber]~~ stamp stating the name of the notary, and the words "notary public, New
32 Hampshire" and the expiration date of the notary public's commission of a person performing a
33 notarial act or for a justice of the peace the name of the justice and the expiration date of his or her
34 commission typed, printed, or stamped on the document are prima facie evidence that the signature
35 is genuine and that the person holds the designated title.

36 11 New Section; Notarial Act Performed for Remotely Located Individual. Amend RSA 456-B by
37 inserting after section 6 the following new section:

1 456-B:6-a Notarial Act Performed for Remotely Located Individual.

2 I. In this section:

3 (a) "Communication technology" means an electronic device or process that:

4 (1) Allows a notary public and a remotely located individual to communicate with
5 each other simultaneously by sight and sound; and

6 (2) When necessary and consistent with other applicable law, facilitates
7 communication with a remotely located individual who has a vision, hearing, or speech impairment.

8 (b) "Foreign state" means a jurisdiction other than the United States, a state, or a
9 federally recognized Indian tribe.

10 (c) "Identity proofing" means a process or service by which a third person provides a
11 notary public with a means to verify the identity of a remotely located individual by a review of
12 personal information from public or private data sources.

13 (d) "Outside the United States" means a location outside the geographic boundaries of
14 the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular
15 possession, or other location subject to the jurisdiction of the United States.

16 (e) "Remotely located individual" means an individual who is not in the physical
17 presence of the notary public who performs a notarial act under paragraph III.

18 II. A remotely located individual may comply with RSA 456-B:2-a, and any other
19 requirement under the law of this state to appear before or be in the presence of a notary public at
20 the time of a notarial act, by using communication technology to appear before a notary public.

21 III. A notary public located in this state may perform a notarial act using communication
22 technology for a remotely located individual if:

23 (a) The notary public:

24 (1) Has personal knowledge under RSA 456-B:2-b, I, of the identity of the individual;

25 (2) Has satisfactory evidence of the identity of the remotely located individual by
26 oath or affirmation from a credible witness appearing before the notary public under RSA 456-B:2-b,
27 II, or this section; or

28 (3) Has obtained satisfactory evidence of the identity of the remotely located
29 individual by using at least 2 different types of identity proofing;

30 (b) The notary public is able reasonably to confirm that a record before the notary public
31 is the same record in which the remotely located individual made a statement or on which the
32 individual executed a signature;

33 (c) The notary public, or a person acting on behalf of the notary public, creates an audio-
34 visual recording of the performance of the notarial act; and

35 (d) For a remotely located individual located outside the United States:

36 (1) The record:

1 (A) Is to be filed with or relates to a matter before a public official or court,
2 governmental entity, or other entity subject to the jurisdiction of the United States; or

3 (B) Involves property located in the territorial jurisdiction of the United States
4 or involves a transaction substantially connected with the United States; and

5 (2) The act of making the statement or signing the record is not prohibited by the
6 foreign state in which the remotely located individual is located.

7 IV. If a notarial act is performed under this section, the certificate of notarial act required by
8 RSA 456-B:7 and the short-form certificate provided in RSA 456-B:8 must indicate that the notarial
9 act was performed using communication technology.

10 V. A short-form certificate provided in RSA 456-B:8 for a notarial act subject to this section
11 is sufficient if it:

12 (a) Complies with rules adopted under subparagraph VIII(a); or

13 (b) Is in the form provided in RSA 456-B:8 and contains a statement substantially as
14 follows: "This notarial act involved the use of communication technology."

15 VI. A notary public, a guardian, conservator, or agent of a notary public, or a personal
16 representative of a deceased notary public shall retain the audio-visual recording created under
17 subparagraph III(c) or cause the recording to be retained by a repository designated by or on behalf
18 of the person required to retain the recording. Unless a different period is required by rule adopted
19 under subparagraph VIII(d), the recording must be retained for a period of at least 10 years after the
20 recording is made.

21 VII. Before a notary public performs the notary public's initial notarial act under this
22 section, the notary public must notify the secretary of state that the notary public will be performing
23 notarial acts with respect to remotely located individuals and identify the technologies the notary
24 public intends to use. If the secretary of state has established standards under paragraph VIII and
25 RSA 456-B:8-b, IV, for approval of communication technology or identity proofing, the
26 communication technology and identity proofing must conform to the standards.

27 VIII. In addition to adopting rules under RSA 456-B:8-b, IV, the secretary of state may
28 adopt rules under RSA 541-A regarding performance of a notarial act under this section. The rules
29 may:

30 (a) Prescribe the means of performing a notarial act involving a remotely located
31 individual using communication technology;

32 (b) Establish standards for communication technology and identity proofing;

33 (c) Establish requirements or procedures to approve providers of communication
34 technology and the process of identity proofing; and

35 (d) Establish standards and a period for the retention of an audio-visual recording
36 created under subparagraph III(c).

1 IX. Before adopting, amending, or repealing a rule governing performance of a notarial act,
2 with respect to a remotely located individual, the secretary of state must consider:

3 (a) The most recent standards regarding the performance of a notarial act with respect
4 to a remotely located individual promulgated by national standard-setting organizations and the
5 recommendations of the National Association of Secretaries of State;

6 (b) Standards, practices, and customs of other jurisdictions that have laws substantially
7 similar to this section; and

8 (c) The views of governmental officials and entities and other interested persons.

9 X. Unless the secretary of state has adopted a rule establishing standards for identity
10 proofing under subparagraph VIII(b), a notary public shall comply with the credential analysis and
11 authentication provisions of the Standards for Remote Online Notarization (Version 1) adopted by
12 The Mortgage Industry Standards Maintenance Organization on August 28, 2019. Compliance with
13 this paragraph satisfies the requirement of using at least 2 different types of identity proofing when
14 performing a notarial act for a remotely located individual under this section.

15 12 New Sections; Official Stamp; Stamping Device; Notification Regarding Performance of
16 Notarial Act on Electronic Record; Selection of Technology; Rules; Journal; Validity of Notarial Acts;
17 Relation to Electronic Signatures in Global and National Commerce Act. Amend RSA 456-B by
18 inserting after section 8 the following new sections:

19 456-B:8-a Official Stamp; Stamping Device.

20 I. The electronic or rubber official stamp of a notary public shall:

21 (a) Include the information required by RSA 455:3; and

22 (b) Be capable of being copied together with the record to which it is affixed or attached
23 or with which it is logically associated.

24 II. A notary public is responsible for the security of the notary public's stamping device and
25 may not allow another individual to use the device to perform a notarial act. On resignation from, or
26 the revocation or expiration of, the notary public's commission, or on the expiration of the date set
27 forth in the stamping device, if any, the notary public shall disable the stamping device by
28 destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it
29 unusable. On the death or adjudication of incompetency of a notary public, the notary public's
30 personal representative or guardian or any other person knowingly in possession of the stamping
31 device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use
32 in a manner that renders it unusable.

33 III. If a notary public's stamping device is lost or stolen, the notary public or the notary
34 public's personal representative or guardian shall notify promptly the secretary of state on
35 discovering that the device is lost or stolen.

36 456-B:8-b Notification Regarding Performance of Notarial Act on Electronic Record; Selection of
37 Technology; Rules.

1 I. A notary public may select one or more tamper-evident technologies to perform notarial
2 acts with respect to electronic records. A person may not require a notary public to perform a
3 notarial act with respect to an electronic record with a technology that the notary public has not
4 selected.

5 II. Before a notary public performs the notary public's initial notarial act with respect to an
6 electronic record, a notary public shall notify the secretary of state that the notary public will be
7 performing notarial acts with respect to electronic records and identify the technology the notary
8 public intends to use. If the secretary of state has established standards for approval of technology,
9 the technology shall conform to the standards. If the technology conforms to the standards, the
10 secretary of state shall approve the use of the technology.

11 III. The secretary of state may adopt rules under RSA 541-A to implement this chapter.
12 Rules adopted regarding the performance of notarial acts with respect to electronic records may not
13 require, or accord greater legal status or effect to, the implementation or application of a specific
14 technology or technical specification.

15 IV. Unless the secretary of state has adopted a rule establishing standards for tamper-
16 evident technology, a notary public shall attach or logically associate the notary public's official
17 stamp to an electronic record by use of a digital certificate complying with the X.509 standard
18 adopted by the International Telecommunication Union or a similar industry-standard technology.

19 456-B:8-c Journal.

20 I. A notary public shall maintain a journal in which the notary public chronicles all notarial
21 acts the notary public performs with respect to a remotely located individual under RSA 456-B:6-a.
22 The notary public shall retain the journal for 10 years after the performance of the last notarial act
23 chronicled in the journal.

24 II. A journal may be created on a tangible medium or in an electronic format. A notary
25 public shall maintain only one journal at a time to chronicle all notarial acts performed regarding
26 tangible records and one or more journals to chronicle all notarial acts performed regarding
27 electronic records. If a journal is maintained on a tangible medium, it shall be a permanent, bound
28 register with numbered pages. If the journal is maintained in an electronic format, it shall be in a
29 permanent, tamper-evident electronic format complying with the rules of the secretary of state.

30 III. An entry in a journal shall be made contemporaneously with performance of the notarial
31 act and contain the following information:

32 (a) The date and time of the notarial act;

33 (b) A description of the record, if any, and type of notarial act;

34 (c) The full name and address of each individual for whom the notarial act is performed;

35 (d) If identity of the individual is based on personal knowledge, a statement to that
36 effect;

1 (e) If identity of the individual is based on satisfactory evidence, a brief description of
2 the method of identification and the identification credential presented, if any, including the date of
3 issuance and expiration of the identification credential; and

4 (f) The fee, if any, charged by the notary public.

5 IV. If the journal of a notary public is lost, the notary public loses access to the journal, or
6 the journal is stolen, the notary public promptly shall notify the secretary of state upon discovering
7 the journal is lost, access is lost, or the journal is stolen.

8 V. On resignation from, or the revocation or suspension of, the commission of a notary
9 public, the notary public shall retain the journal in accordance with paragraph I and inform the
10 secretary of state where the journal is located.

11 VI. Instead of retaining a journal as provided in paragraphs I and V, a current or former
12 notary public may transmit the journal to a repository approved by the secretary of state.

13 VII. Upon the death or adjudication of incompetency of a current or former notary public,
14 the personal representative or guardian of the notary public shall retain the journal as provided in
15 paragraphs I or V or transmit the journal to a repository approved by the secretary of state.

16 456-B:8-d Validity of Notarial Acts. The failure of a notarial officer to perform a duty or meet a
17 requirement specified in this chapter or RSA 455 does not invalidate a notarial act performed by the
18 notarial officer. The validity of a notarial act under this chapter or RSA 455 does not prevent an
19 aggrieved person from seeking to invalidate the record or transaction that is the subject of the
20 notarial act or from seeking other remedies based on law of this state other than this chapter or law
21 of the United States. This section does not validate a purported notarial act performed by an
22 individual who does not have the authority to perform notarial acts.

23 456-B:8-e Relation to Electronic Signatures in Global and National Commerce Act. This chapter
24 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
25 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15
26 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
27 103(b) of that act, 15 U.S.C. section 7003(b).

28 13 New Paragraph; Short Forms. Amend RSA 456-B:8 by inserting after paragraph V the
29 following new paragraph:

30 VI. For certifying a tangible copy of an electronic record:

31 State of _____

32 (County) of _____

33 I certify that this record is a true and correct copy of an electronic record printed by me or under my
34 supervision.

35 Dated _____

36 _____

37 (Signature of notarial officer)

1 (Seal, if any)

2 Title (and Rank)

3 [My commission expires: _____]

4 14 New Chapter; Uniform Real Property Electronic Recording Act. Amend RSA by inserting
5 after chapter 478 the following new chapter:

6 CHAPTER 478-A

7 UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

8 478-A:1 Short Title. This chapter may be cited as the Uniform Real Property Electronic
9 Recording Act.

10 478-A:2 Definitions. In this chapter:

11 I. "Document" means information that is:

12 (a) Inscribed on a tangible medium or that is stored in an electronic or other medium
13 and is retrievable in perceivable form; and

14 (b) Eligible to be recorded in the land records maintained by the register of deeds.

15 II. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
16 optical, electromagnetic, or similar capabilities.

17 III. "Electronic document" means a document that is received by the register of deeds in an
18 electronic form.

19 IV. "Electronic signature" means an electronic sound, symbol, or process attached to or
20 logically associated with a document and executed or adopted by a person with the intent to sign the
21 document.

22 V. "Person" means an individual, corporation, business trust, estate, trust, partnership,
23 limited liability company, association, joint venture, public corporation, government, or
24 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

25 VI. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
26 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
27 United States.

28 478-A:3 Validity of Electronic Documents; Recordation of Electronic Documents in Tangible
29 Form.

30 I. If a law requires, as a condition for recording, that a document be an original, be on paper
31 or another tangible medium, or be in writing, the requirement is satisfied by an electronic document
32 satisfying this section.

33 II. If a law requires, as a condition for recording, that a document be signed, the
34 requirement is satisfied by an electronic signature.

35 III. A requirement that a document or a signature associated with a document be notarized,
36 acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the
37 person authorized to perform that act, and all other information required to be included, is attached

1 to or logically associated with the document or signature. A physical or electronic image of a stamp,
2 impression, or seal need not accompany an electronic signature.

3 IV. A register of deeds shall accept for recording a tangible copy of an electronic document
4 containing a notarial certificate as satisfying any requirement that a document accepted for
5 recording be an original, if the notarial officer executing the notarial certificate certifies that the
6 tangible copy is an accurate copy of the electronic document. A notarial certificate in the form
7 provided in RSA 456-B:8, VI, satisfies the requirement of this paragraph.

8 478-A:4 Recording of Documents.

9 I. In this section, "paper document" means a document that is received by the register of
10 deeds in a form that is not electronic.

11 II. A register of deeds:

12 (a) May receive, index, store, archive, and transmit electronic documents;

13 (b) May provide for access to, and for search and retrieval of, documents and information
14 by electronic means;

15 (c) Shall, if accepting electronic documents for recording, continue to accept paper
16 documents as authorized by state law and shall place entries for both types of documents in the
17 same index;

18 (d) May convert paper documents accepted for recording into electronic form;

19 (e) May convert into electronic form information recorded before the register of deeds
20 began to record electronic documents;

21 (f) May accept electronically any fee or tax that the register of deeds is authorized to
22 collect; and

23 (g) May agree with other officials of a state or a political subdivision thereof, or of the
24 United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals
25 and conditions precedent to recording and the electronic payment of fees and taxes.

26 478-A:5 Uniformity of Application and Construction. In applying and construing this uniform
27 act, consideration shall be given to the need to promote uniformity of the law with respect to its
28 subject matter among states that enact it.

29 478-A:6 Relation to Electronic Signatures in Global and National Commerce Act. This chapter
30 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
31 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15
32 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
33 103(b) of that act, 15 U.S.C. section 7003(b).

34 15 Wills; Requirements. Amend RSA 551:2, III(b) to read as follows:

35 (b) Nothing in this paragraph shall be deemed to allow an electronic will or codicil. This
36 paragraph shall apply only to wills executed on or after March 23, 2020[~~and ending on the last day~~
37 ~~of the state of emergency declared by executive order 2020-04~~].

1 IX. "Payee" means an individual who is receiving tax free payments under a structured
2 settlement and proposes to make a transfer of payment rights thereunder.

3 X. "Periodic payments" includes both recurring payments and scheduled future lump sum
4 payments.

5 XI. "Qualified assignment agreement" means an agreement providing for a qualified
6 assignment within the meaning of United States Internal Revenue Code, 26 U.S.C. section 130, as
7 amended.

8 XII. "Settled claim" means the original tort claim resolved by a structured settlement.

9 XIII. "Structured settlement" means an arrangement for periodic payment of damages for
10 personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

11 XIV. "Structured settlement agreement" means the agreement, judgment, stipulation, or
12 release embodying the terms of a structured settlement.

13 XV. "Structured settlement obligor" means, with respect to any structured settlement, the
14 party that has the continuing obligation to make periodic payments to the payee under a structured
15 settlement agreement or a qualified assignment agreement.

16 XVI. "Structured settlement payment rights" means rights to receive periodic payments
17 under a structured settlement, whether from the structured settlement obligor or the annuity issuer,
18 where:

19 (a) The payee resides in this state; or

20 (b) The structured settlement agreement was approved by a court in this state.

21 XVII. "Terms of the structured settlement" include, with respect to any structured
22 settlement, the terms of the structured settlement agreement, the annuity contract, any qualified
23 assignment agreement and any order or other approval of any court or other government authority
24 that authorized or approved such structured settlement;

25 XVIII. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or
26 encumbrance of structured settlement payment rights made by a payee for consideration; provided
27 that the term "transfer" shall not include the creation or perfection of a security interest in
28 structured settlement payment rights under a blanket security agreement entered into with an
29 insured depository institution, in the absence of any action to redirect the structured settlement
30 payments to such insured depository institution, or an agent or successor in interest thereof, or
31 otherwise to enforce such blanket security interest against the structured settlement payment
32 rights.

33 XIX. "Transfer agreement" means the agreement providing for a transfer of structured
34 settlement payment rights.

35 XX. "Transfer expenses" means all expenses of a transfer that are required under the
36 transfer agreement to be paid by the payee or deducted from the gross advance amount, including,
37 without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and

1 lien search fees, finders' fees, commissions, and other payments to a broker or other
2 intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the
3 payee's account from the proceeds of a transfer.

4 XXI. "Transferee" means a party acquiring or proposing to acquire structured settlement
5 payment rights through a transfer.

6 408-G:2 Required Disclosure to Payee. Not less than 3 days prior to the date on which a payee
7 signs a transfer agreement, the transferee shall provide to the payee a separate disclosure
8 statement, in bold type no smaller than 14 points, setting forth the following:

9 I. The amounts and due dates of the structured settlement payments to be transferred.

10 II. The aggregate amount of such payments.

11 III. The discounted present value of the payments to be transferred, which shall be
12 identified as the "calculation of current value of the transferred structured settlement payments
13 under federal standards for valuing annuities and the amount of the Applicable Federal Rate used in
14 calculating such discounted present value.

15 IV. The gross advance amount.

16 V. An itemized listing of all applicable transfer expenses, other than attorneys' fees and
17 related disbursements payable in connection with the transferee's application for approval of the
18 transfer, and the transferee's best estimate of the amount of any such fees and disbursements.

19 VI. The effective annual interest rate, which must be disclosed in a statement in the
20 following form: "On the basis of the net amount that you will receive from us and the amounts and
21 timing of the structured settlement payments that you are transferring to us, you will, in effect be
22 paying interest to us at a rate of _____ percent per year."

23 VII. The net advance amount.

24 VIII. The amount of any penalties or liquidated damages payable by the payee in the event
25 of any breach of the transfer agreement by the payee.

26 IX. That the payee has the right to cancel the transfer agreement, without penalty or
27 further obligation, not later than the third business day after the date the agreement is signed by
28 the payee.

29 X. That the payee has the right to seek and receive independent professional advice
30 regarding the proposed transfer and should consider doing so before agreeing to transfer any
31 structured settlement payment rights.

32 408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect
33 transfer of structured settlement payment rights shall be effective and no structured settlement
34 obligor or annuity issuer shall be required to make any payment directly or indirectly to any
35 transferee or assignee of structured settlement payment rights unless the transfer has been
36 approved in advance in a final court order based on express findings by such court that:

1 I. The transfer is in the best interest of the payee, taking into account the welfare and
2 support of the payee's dependents; and

3 II. The payee has been advised in writing by the transferee to seek independent professional
4 advice regarding the transfer and has either received such advice or knowingly waived in writing the
5 opportunity to seek and receive such advice; and

6 III. The transfer does not contravene any applicable statute or the order of any court or
7 other government authority.

8 408-G:4 Effects of Transfer of Structured Settlement Payment Rights. Following a transfer of
9 structured settlement payment rights under this chapter:

10 I. The structured settlement obligor and the annuity issuer may rely on the court order
11 approving the transfer in redirecting periodic payments to an assignee or transferee in accordance
12 with the order approving the transfer and shall, as to all parties except the transferee or an assignee
13 designated by the transferee, be discharged and released from any and all liability for the redirected
14 payments; and such discharge and release shall not be affected by the failure of any party to the
15 transfer to comply with this chapter or with the court order approving the transfer;

16 II. The transferee shall be liable to the structured settlement obligor and the annuity issuer:

17 (a) If the transfer contravenes the terms of the structured settlement, for any taxes
18 incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

19 (b) For any other liabilities or costs, including reasonable costs and attorneys' fees,
20 arising from compliance by the structured settlement obligor or annuity issuer with the court order
21 approving the transfer or from the failure of any party to the transfer to comply with this chapter;

22 III. Neither the annuity issuer nor the structured settlement obligor may be required to
23 divide any periodic payment between the payee and any transferee or assignee or between 2 or more
24 transferees or assignees; and

25 IV. Any further transfer of structured settlement payment rights by the payee may be made
26 only after compliance with all of the requirements of this chapter.

27 408-G:5 Procedure For Approval of Transfers.

28 I. An application under this chapter for approval of a transfer of structured settlement
29 payment rights shall be made by the transferee and shall be brought in the superior court in the
30 county in which the payee resides, except that if the payee does not reside in this state, the
31 application may be brought in the court in this state that approved the structured settlement
32 agreement.

33 II. A timely hearing shall be held on an application for approval of a transfer of structured
34 settlement payment rights. The payee shall appear in person at the hearing unless the court
35 determines that good cause exists to excuse the payee from appearing in person.

36 III. Not less than 20 days prior to the scheduled hearing on any application for approval of a
37 transfer of structured settlement payment rights under RSA 408-G:3, the transferee shall file with

1 the court and serve on all interested parties, including a parent or other guardian or authorized legal
2 representative of any interested party who is not legally competent, a notice of the proposed transfer
3 and the application for its authorization, including with such notice:

4 (a) A copy of the transferee's application.

5 (b) A copy of the transfer agreement.

6 (c) A copy of the disclosure statement required under RSA 408-G:2.

7 (d) The payee's name, age, and county of residence and the number and ages of each of
8 the payee's dependents.

9 (e) A summary of:

10 (1) Any prior transfers by the payee to the transferee or an affiliate, or through the
11 transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer
12 agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the
13 transferee or an affiliate, applications for approval of which were denied within the 2 years
14 preceding the date of the transfer agreement; and

15 (2) Any prior transfers by the payee to any person or entity other than the transferee
16 or an affiliate or an assignee of the transferee or an affiliate within the 3 years preceding the date of
17 the transfer agreement and any prior proposed transfers by the payee to any person or entity other
18 than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval
19 of which were denied within the one year preceding the date of the current transfer agreement, to
20 the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee
21 in writing or otherwise are actually known to the transferee.

22 (f) Notification that any interested party is entitled to support, oppose or otherwise
23 respond to the transferee's application, either in person or by counsel, by submitting written
24 comments to the court or by participating in the hearing.

25 (g) Notification of the time and place of the hearing and notification of the manner in
26 which and the date by which written responses to the application must be filed, which date shall be
27 not less than 5 days prior to the hearing, in order to be considered by the court.

28 408-G:6 General Provisions; Construction.

29 I. The provisions of this chapter shall not be waived by any payee.

30 II. Any transfer agreement entered into on or after the effective date of this chapter by a
31 payee who resides in this state shall provide that disputes under such transfer agreement, including
32 any claim that the payee has breached the agreement, shall be determined in and under the laws of
33 this state. No such transfer agreement shall authorize the transferee or any other party to confess
34 judgment or consent to entry of judgment against the payee.

35 III. No transfer of structured settlement payment rights shall extend to any payments that
36 are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the
37 transferee has established and has agreed to maintain procedures reasonably satisfactory to the

1 annuity issuer and the structured settlement obligor for periodically confirming the payee's survival,
2 and giving the annuity issuer and the structured settlement obligor prompt written notice in the
3 event of the payee's death.

4 IV. If the payee cancels a transfer agreement, or if the transfer agreement otherwise
5 terminates, after an application for approval of a transfer of structured settlement payment rights
6 has been filed and before it has been granted or denied, the transferee shall promptly request
7 dismissal of the application.

8 V. No payee who proposes to make a transfer of structured settlement payment rights shall
9 incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the
10 proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of
11 this chapter.

12 VI. Nothing contained in this chapter shall be construed to authorize any transfer of
13 structured settlement payment rights in contravention of any applicable law or to imply that any
14 transfer under a transfer agreement entered into prior to the effective date of this chapter is valid or
15 invalid.

16 VII. Compliance with the requirements set forth in RSA 408-G:2 and fulfillment of the
17 conditions set forth in RSA 408-G:3 shall be solely the responsibility of the transferee in any transfer
18 of structured settlement payment rights, and neither the structured settlement obligor nor the
19 annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with
20 such requirements or failure to fulfill such conditions.

21 18 Applicability. RSA 408-G as inserted by section 17 of this act shall apply to any transfer of
22 structured settlement payment rights under a transfer agreement entered into on or after the 30th
23 day after the effective date of section 17 of this act.

24 19 New Chapter; New Hampshire Collaborative Law Act. Amend RSA by inserting after
25 chapter 490-I the following new chapter:

26 CHAPTER 490-J

27 NEW HAMPSHIRE COLLABORATIVE LAW ACT

28 490-J:1 Short Title. This chapter may be cited as the New Hampshire collaborative law act.

29 490-J:2 Definitions. In this chapter:

30 I. "Collaborative law communication" means a statement, whether oral or in a document,
31 that:

32 (a) Is made as part of a collaborative law process;

33 (b) Occurs after the parties sign a collaborative law participation agreement and before
34 the collaborative law process is concluded; and

35 (c) Is not otherwise privileged pursuant to the attorney client relationship.

36 II. "Collaborative law participation agreement" means an agreement by persons to
37 participate in a collaborative law process.

1 III. "Collaborative law process" means a procedure intended to resolve a collaborative
2 matter without intervention by a court in which persons:

3 (a) Sign a collaborative law participation agreement; and

4 (b) Are represented by collaborative lawyers.

5 IV. "Collaborative lawyer" means a lawyer who represents a party in a collaborative law
6 process.

7 V. "Collaborative matter" means an issue for resolution which is described in a collaborative
8 law participation agreement and arises under the law of this state, including, but not limited to:

9 (a) Marriage, divorce, annulment, legal separation, and property distribution;

10 (b) Parental rights and responsibilities;

11 (c) Grandparent rights;

12 (d) Alimony, maintenance, and child support;

13 (e) Parentage;

14 (f) Premarital and post-marital agreements; and

15 (g) Any modifications of any orders arising out of the matters set forth in subparagraphs
16 (a)-(f).

17 VI. "Court" means a body acting in an adjudicative capacity which has jurisdiction to render
18 a decision affecting a party's interests in a matter.

19 VII. "Document" means information that is inscribed on a tangible medium or that is stored
20 in an electronic or other medium and is retrievable in perceivable form.

21 VIII. "Law firm" means lawyers who practice law together in a partnership, professional
22 corporation, sole proprietorship, limited liability company, association or legal services organization.

23 IX. "Neutral participant" means a person, other than a party and a party's collaborative
24 lawyer, that participates in a collaborative law process.

25 X. "Party" means a person that signs a collaborative law participation agreement and whose
26 consent is necessary to resolve a collaborative matter.

27 XI. "Proceeding" means a judicial or other adjudicative process.

28 XII. "Prospective party" means a person who discusses with a prospective collaborative
29 lawyer the possibility of signing a collaborative law participation agreement.

30 XIII. "Related to a collaborative matter" means involving the same parties, transaction or
31 occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

32 XIV. "Sign" means with present intent to authenticate or adopt a document by electronic or
33 non-electronic signature.

34 490-J:3 Applicability. This chapter applies to a collaborative law participation agreement that
35 meets the requirements of RSA 490-J:4 signed on or after the effective date of the chapter.

36 490-J:4 Collaborative Law Participation Agreement; Requirements.

37 I. A collaborative law participation agreement shall:

- 1 (a) Be in writing;
- 2 (b) Be signed by the parties;
- 3 (c) State the parties' intention to resolve a collaborative matter through a collaborative
4 law process under this chapter;
- 5 (d) Describe the nature and scope of the matter;
- 6 (e) Contain a statement by each collaborative lawyer confirming the lawyer's
7 representation of a party in the collaborative law process; and
- 8 (f) Disqualify the collaborative lawyer from representing a party in a case filed with a
9 court involving one or more of the same parties in the same or a related matter, except for the filing
10 needed to seek the court's approval of an agreement reached in the collaborative case or in pending
11 cases while stayed pursuant to RSA 490-J:6, I.

12 II. Parties may agree to include in a collaborative law participation agreement additional
13 provisions not inconsistent with this chapter or current law.

14 490-J:5 Beginning and Concluding Collaborative Law Process.

15 I. A collaborative law process begins when the parties sign a collaborative law participation
16 agreement.

17 II. A court shall not order a party to participate in a collaborative law process over that
18 party's objection.

19 III. A collaborative law process is concluded by a:

- 20 (a) Resolution of a collaborative matter as evidenced by a signed agreement;
- 21 (b) Resolution of a part of the collaborative matter, evidenced by a signed agreement, in
22 which the parties agree that the remaining parts of the matter will not be resolved in the process; or
- 23 (c) Termination of the process.

24 IV. A collaborative law process terminates:

- 25 (a) When a party gives written notice to other parties that the process is ended.
- 26 (b) Except as otherwise provided by paragraph VII, when a party discharges a
27 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

28 (c) When a party:

29 (1) Files a petition or other pleading related to a collaborative matter without the
30 agreement of all parties; or

31 (2) In a pending proceeding related to the matter:

32 (A) Initiates a pleading, motion, order to show cause, or request for a conference
33 with the court; or

34 (B) Requests that the proceeding be put on the court's active docket; or

35 (C) The matter is no longer stayed.

36 V. A party's collaborative lawyer shall give prompt written notice to all other parties if the
37 lawyer has been discharged or withdraws as counsel.

1 VI. A party may terminate a collaborative law process with or without cause.

2 VII. Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative
3 law process continues, if within 30 days or within a time agreed to by the team in writing:

4 (a) The unrepresented party engages a successor collaborative lawyer; and

5 (b) The parties consent in writing to continue the process by reaffirming the
6 collaborative law participation agreement, and the successor collaborative lawyer confirms the
7 lawyer's representation of a party in the collaborative process.

8 VIII. A collaborative law process shall not conclude if the parties jointly request the court to
9 approve a settlement of the collaborative matter or any part thereof.

10 IX. A collaborative law participation agreement may provide additional methods of
11 concluding a collaborative law process.

12 490-J:6 Cases Already Filed in Court.

13 I. Parties who have already initiated a proceeding by filing a petition with the court may
14 jointly request the court to stay future action in the matter so the parties may engage in a
15 collaborative process for resolution of the matter. Before signing a participation agreement, the
16 parties shall file an assented to motion to stay the proceedings with the court. The case shall not
17 proceed with the collaborative process unless the stay is granted by the court. An extension of the
18 stay may be requested of the court by written agreement to continue the collaborative process.

19 II. Either party can initiate a filing with the court to remove the stay and proceed with a
20 litigated solution in the matter at any time.

21 III. Any unilateral filing with the court terminates the collaborative case. The case shall be
22 returned to the active docket.

23 IV. A court shall provide parties notice and an opportunity to be heard before dismissing a
24 case in which a notice of collaborative process is filed.

25 490-J:7 Emergency Order. During a collaborative law process, a court may issue emergency
26 orders to protect the health, safety, welfare, or interest of a party; however, filing for such an order
27 terminates the pending collaborative law process. Nothing in this section prohibits parties from
28 exploring a return to the collaborative process after the issues that gave rise to the emergency order
29 have been resolved and process outlined in RSA 490-J:13, III have been followed.

30 490-J:8 Approval of Agreement by Court.

31 I. The terms of a collaborative law participation agreement shall be considered a binding
32 contract and shall be enforceable by the trial court.

33 II. Any agreements signed by the parties during the collaborative process are binding upon
34 the parties in the same manner as they are in other family law proceedings. The trial court fully
35 retains all rights and duties to ensure that the agreements reached are fair and reasonable to all
36 before being approved by the court.

1 III. Agreements reached during the collaborative process which are not signed by all parties
2 shall not be binding and shall be considered part of settlement discussions only.

3 490-J:9 Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

4 I. Except as otherwise provided in paragraph III, a collaborative lawyer is disqualified from
5 appearing before a court to represent a party in a proceeding related to a collaborative matter,
6 including related matters filed by third parties.

7 II. Except as otherwise provided in paragraph III, RSA 490-J:10, and RSA 490-J:11, a
8 lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing
9 before a court to represent a party in a proceeding related to a collaborative matter if the
10 collaborative lawyer is disqualified from doing so under paragraph I.

11 III. A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is
12 associated may represent a party:

13 (a) To ask a court to approve an agreement resulting from the collaborative law process;

14 or

15 (b) To seek or defend an emergency order to protect the health, safety, welfare, or
16 interest of a party, a minor child, family or household member as defined in RSA 173-B:1, X, if a
17 successor lawyer is not immediately available to represent that party and only until the person is
18 represented by a successor lawyer or reasonable measures are taken to protect the health, safety,
19 welfare, or interest of the person.

20 490-J:10 Disclosure of Information. During the collaborative law process, on the request of
21 another party, a party shall make timely, full, candid, and informal disclosure of information related
22 to a collaborative matter without formal discovery. A party also shall update promptly previously
23 disclosed information that has materially changed. The parties may define the scope of disclosure
24 during the collaborative law process.

25 490-J:11 Standards of Professional Responsibility and Mandatory Reporting Not Affected. This
26 chapter does not affect:

27 I. The professional responsibility obligations and standards applicable to a lawyer or other
28 licensed professional; or

29 II. The obligation of a person to report abuse or neglect, abandonment, or exploitation of an
30 adult or child under New Hampshire law.

31 490-J:12 Appropriateness of Collaborative Law Process. Before a prospective party signs a
32 collaborative law participation agreement, a prospective collaborative lawyer shall:

33 I. Assess with the prospective party factors the lawyer reasonably believes relate to whether
34 a collaborative law process is appropriate for the prospective party's matter;

35 II. Provide the prospective party with information that the lawyer reasonably believes is
36 sufficient for the party to make an informed decision about the material benefits and risks of a
37 collaborative law process as compared to the material benefits and risks of other reasonably

1 available alternatives for resolving the proposed collaborative matter, such as litigation, mediation,
2 arbitration, or neutral evaluation; and

3 III. Advise the prospective party that:

4 (a) After signing an agreement if a party initiates a proceeding or seeks court
5 intervention in a pending proceeding related to the collaborative matter, the collaborative law
6 process terminates;

7 (b) Participation in a collaborative law process is voluntary and any party has the right
8 to terminate unilaterally a collaborative law process with or without cause; and

9 (c) The collaborative lawyer and any lawyer in a law firm with which the collaborative
10 lawyer is associated may not appear before a court to represent a party in a proceeding related to the
11 collaborative matter, except as authorized by RSA 490-J:9, III.

12 490-J:13 Domestic Violence.

13 I. Before a prospective party signs a collaborative law participation agreement, a prospective
14 collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a
15 coercive or violent relationship with another prospective party.

16 II. Throughout the collaborative law process, a collaborative lawyer reasonably and
17 continuously shall assess whether the party the collaborative lawyer represents has a history of a
18 coercive or violent relationship with another party.

19 III. If a collaborative lawyer reasonably believes that the party the lawyer represents or the
20 prospective party who consults the lawyer has a history of a coercive or violent relationship with
21 another party or prospective party, the lawyer may not begin or continue the collaborative law
22 process unless both parties, after individual consultation with their attorneys, represent to their
23 individual attorney that he/she has no current concern for his/her safety or coercion and both wish to
24 proceed with the collaborative process.

25 490-J:14 Confidentiality of Collaborative Law Communication. A collaborative law
26 communication is confidential except as agreed by the parties in a signed document, or under the
27 circumstances set forth in RSA 490-J:15, IV.

28 490-J:15 Privilege Against Disclosure for Collaborative Law Communication.

29 I. Except as set forth in this section, a collaborative law communication is privileged, is not
30 subject to discovery, and is not admissible into evidence. Accordingly, a party or a party's lawyer or
31 a neutral participant may refuse to disclose, and may prevent any other person from disclosing, a
32 collaborative law communication.

33 II. Evidence or information that is otherwise admissible or subject to discovery does not
34 become inadmissible or protected from discovery solely because of its disclosure or use in a
35 collaborative law process.

36 III. Waiver of Privilege.

1 (a) The privilege may be waived wholly or in part in a document or orally during a
2 proceeding if it is expressly waived by all parties and, in the case of the privilege of a neutral
3 participant, it is also expressly waived by the neutral participant.

4 (b) A party who discloses a collaborative law communication for which the privilege has
5 not been waived under subparagraph (a) shall be deemed to have waived the privilege, but only to
6 the extent necessary to permit any other party to respond to the unauthorized disclosure.

7 IV. There is no privilege under this chapter for a collaborative law communication that is:

8 (a) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

9 (b) In an agreement resulting from the collaborative law process, evidenced by a
10 document signed by all parties to the agreement;

11 (c) Sought or offered to prove or disprove a claim or complaint of professional misconduct
12 or malpractice arising from or related to a collaborative law process; or

13 (d) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of
14 a child or adult.

15 V. There is no privilege under this chapter if a court finds, after a hearing in camera, that
16 the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise
17 available, the need for the evidence substantially outweighs the interest in protecting the privilege
18 and the collaborative law communication is sought or offered in:

19 (a) A court proceeding involving a felony; or

20 (b) A proceeding seeking rescission or clarification of an agreement arising out of the
21 collaborative law process or in which a defense to avoid liability on the contract is asserted.

22 VI. If a collaborative law communication is subject to an exception under paragraph IV or V,
23 only the part of the communication necessary for the application of the exception may be disclosed or
24 admitted.

25 VII. Disclosure or admission of evidence excepted from the privilege under paragraph IV or
26 V does not make the evidence or any other collaborative law communication discoverable or
27 admissible for any other purpose.

28 490-J:16 Authority of Court in Case of Noncompliance. Notwithstanding a failure to comply
29 with RSA 490-J:4, RSA 490-J:12, or RSA 490-J:13, a court may enforce an agreement, apply the
30 disqualification provisions of RSA 490-J:9, or apply a privilege under RSA 490-J:15 when the court
31 concludes that the parties intended to enter into a collaborative law participation agreement and to
32 participate in a collaborative law process. Such a conclusion shall be based upon the following
33 findings:

34 I. The parties signed a document indicating an intent to enter into a collaborative law
35 participation agreement;

36 II. The parties reasonably believed they were participating in a collaborative law process;
37 and

1 III. The interests of justice require finding that the parties were participating in
2 collaborative law process.

3 20 Administrators and Their Appointment; Subdivision Heading Amended. Amend the
4 subdivision heading preceding RSA 553:32 to read as follows:

5 ~~[Administration of Small Estates]~~ *Waiver of Administration*

6 21 Waiver of Administration. RSA 553:32, I-II are repealed and reenacted to read as follows:

7 I.(a) Notwithstanding any provision of law, there shall be no requirement for an inventory of
8 the estate, no requirement for a bond, and no requirement for an accounting for assets in any of the
9 following circumstances:

10 (1) Whenever a decedent dies testate and an individual is named in the will as the
11 sole beneficiary of the decedent's estate and is appointed to serve as administrator.

12 (2) Whenever a decedent dies testate and all individuals named in the will as
13 beneficiaries of the decedent's estate are appointed to serve as co-administrators or any appropriate
14 person is appointed to serve as administrator with the assent of all such beneficiaries.

15 (3) Whenever a decedent dies testate, a trust is named in the will as the sole
16 beneficiary of the estate, and any appropriate person, including one or more trustees of such trust, is
17 appointed to serve as administrator with the assent of all such trustees.

18 (4) Whenever a decedent dies intestate and an individual, including a surviving
19 spouse, is the sole heir of the decedent's estate and is appointed to serve as administrator.

20 (5) Whenever a decedent dies intestate and all heirs of the decedent's estate,
21 including a surviving spouse, if any, are appointed to serve as co-administrators or any appropriate
22 person is appointed to serve as administrator with the assent of all such heirs.

23 (6) Whenever, in the discretion of the court, the court determines it is appropriate
24 under the circumstances.

25 (b) Administration of the estate shall be completed upon the administrator's filing, and
26 the probate court's approval, of an affidavit of administration. Such filing shall occur not less than 6
27 months and no more than one year after the date of appointment of the administrator. Upon motion
28 of the administrator, for good cause shown, the court may extend the one year deadline for filing the
29 affidavit of administration. The affidavit of administration shall state that to the best of the
30 knowledge and belief of the administrator there are no outstanding debts or obligations attributable
31 to the decedent's estate and shall list all real estate owned by the decedent at the time of death,
32 including the location, book, and page.

33 (c) If the administrator fails to file the affidavit of administration within the time
34 prescribed in subparagraph (b), including any extensions granted, the court may take appropriate
35 action in the discretion of the court, including, but not limited to, issuing a notice of default, a show
36 cause order, or requiring full administration of the estate.

1 II.(a) Any interested person may petition for a full administration of the estate at any time
2 from the original grant of administration to the filing of the affidavit of administration, and such
3 petition may be granted by the probate court for good cause shown.

4 (b) Where full administration is granted subsequent to an original grant of
5 administration under this section, the deadlines for filing an inventory in RSA 554:1, RSA 554:26-a,
6 and RSA 553:13, I(a), and for filing an account of administration in RSA 554:26-a, shall run from the
7 date of the grant of full administration. All other deadlines, including but not limited to the deadline
8 to request proof in solemn form in RSA 552:7, the notice to legatees and heirs at law in RSA 552:15,
9 the publication of notice of appointment in RSA 553:16, the requirement that an estate be open for at
10 least 6 months before a motion for summary administration may be filed in RSA 553:33, II, for
11 petitioning to distribute assets of an insolvent estate in RSA 554:19-b, the deadline for waiver or
12 release of the will and homestead rights and election of statutory rights by a surviving spouse in
13 RSA 560:10 and RSA 560:14, and deadlines relating to suits in RSA 556, shall run from the original
14 grant of administration.

15 22 Distribution Upon Intestacy. Amend RSA 561:1, I(e) to read as follows:

16 (e) If there are surviving issue of the decedent one or more of whom are not issue of the
17 surviving spouse, the first \$100,000, plus 1/2 of the *balance of the* intestate estate.

18 23 Uniform Power of Attorney Act; Agent's Authority and Agent's Acceptance or Declination.
19 Amend RSA 564-E:113(a) to read as follows:

20 (a) A person designated as agent under a general power of attorney shall have no
21 authority to act as agent unless, at any time prior to exercising the power granted under the general
22 power of attorney and not necessarily at the time the general power of attorney is signed by the
23 principal, the person has signed (other than by electronic signature) and affixed to the general power
24 of attorney an acknowledgment in substantially the following form:

25 I, _____, have read the attached power of attorney and am the person identified
26 as the agent for the principal. I hereby acknowledge that when I act as agent, I am given power
27 under the power of attorney to make decisions about money, property, or both belonging to the
28 principal, and to spend the principal's money, property, or both on the principal's behalf, in
29 accordance with the terms of the power of attorney. When acting as agent, I have duties (called
30 "fiduciary duties") to act in *accordance with the principal's reasonable expectations to the*
31 *extent actually known by me and, otherwise, in* the principal's best interest, to act in good faith,
32 and to act only within the scope of authority granted in the power of attorney, as well as other duties
33 imposed by law to the extent not provided otherwise in the power of attorney. As an agent, I am not
34 entitled to use the money or property for my own benefit or to make gifts to myself or others unless
35 the power of attorney specifically gives me the authority to do so. As an agent, my authority under
36 the power of attorney will end when the principal dies and I will not have authority to manage or
37 dispose of any property or administer the estate of the principal. If I violate a fiduciary duty under

1 the power of attorney, I may be liable for damages and may be subject to criminal prosecution. If
 2 there is anything about the power of attorney, or my duties under it, that I do not understand, I
 3 understand that I should seek professional advice.

4 24 Uniform Powers of Attorney Act; Authority That Requires Specific Grant. Amend RSA 564-
 5 E:201(a)(8) to read as follows:

6 (8) exercise authority over the content of electronic communications sent or received
 7 by the principal *pursuant to RSA 554-A:9*.

8 25 Uniform Power of Attorney Act; Gifts. Amend RSA 564-E:217(a) to read as follows:

9 (a) In this section, [~~a "gift" for the benefit of a person~~] *"gift"* includes, without limitation,
 10 a gift *for the benefit of a person, including without limitation, a gift* to a trust, *a gift* to an
 11 account under the Uniform Transfers to Minors Act, and a *gift to a* tuition savings account or
 12 prepaid tuition plan as defined under Internal Revenue Code section 529, 26 U.S.C. section 529, as
 13 amended.

14 26 Uniform Power of Attorney Act; Statutory Form Power of Attorney. Amend RSA 564-E:301
 15 to read as follows:

16 564-E:301 Statutory Form Power of Attorney.

17 A document substantially in the following form may be used to create a power of attorney that is in
 18 compliance with the provisions of this chapter. *It is not required that a document be*
 19 *substantially in the following form in order to create a power of attorney that is in*
 20 *compliance with the provisions of this chapter:*

21 NEW HAMPSHIRE

22 STATUTORY POWER OF ATTORNEY

23 INFORMATION CONCERNING THE POWER OF ATTORNEY

24 THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT YOU
 25 SHOULD KNOW THESE IMPORTANT FACTS:

26 Notice to the Principal: As the "Principal," you are using this Power of Attorney to grant power to
 27 another person (called the "Agent") to make decisions, including, but not limited to, decisions
 28 concerning your money, property, or both, and to use your money, property, or both on your behalf.
 29 If this Power of Attorney does not limit the powers that you give to your Agent, your Agent will have
 30 broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money
 31 without advance notice to you or approval by you. Unless you have expressly provided otherwise in
 32 this Power of Attorney, your Agent will have these powers before you become incapacitated, and
 33 unless you have expressly provided otherwise in this Power of Attorney, your Agent will continue to
 34 have these powers after you become incapacitated. You have the right to retain this Power of
 35 Attorney and to release it later or to request that another person retain this Power of Attorney on
 36 your behalf and release it only if one or more conditions specified in advance by you are satisfied.
 37 You have the right to revoke or take back this Power of Attorney at any time, so long as you are of

1 sound mind. If there is anything about this Power of Attorney that you do not understand, you
2 should seek professional advice.

3 Principal's Signature:

4 Date:

5 1. DESIGNATION OF AGENT

6 I, (Name of Principal), of (Address of Principal), name the following person as my agent:

7 Name of Agent:

8 Agent's Address:

9 2. DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

10 If my agent is unable or unwilling to act for me, I name the following person as my successor agent:

11 Name of Successor Agent:

12 Successor Agent's Address:

13 If my successor agent is unable or unwilling to act for me, I name the following person as my second
14 successor agent:

15 Name of Second Successor Agent:

16 Second Successor Agent's Address:

17 3. REVOCATION OF EXISTING POWERS OF ATTORNEY

18 (Initial the following statement if it is your choice.)

19 _____ This Power of Attorney revokes all existing powers of attorney, *except for powers of*
20 *attorney relating to health care*, previously executed by me.

21 4. GRANT OF GENERAL AUTHORITY

22 (Initial beside your choice of A or B, but not both.)

23 _____ A. I grant my agent general authority to act for me in all matters, including, without
24 limitation, all of the subjects enumerated in B below.

25 _____ B. I grant my agent general authority over the following subjects [~~as defined in the following~~
26 ~~sections of the Uniform Power of Attorney Act~~]:

27 (Initial each subject you want to include in the agent's general authority.)

28 _____ Real Property as defined in RSA 564-E:204

29 _____ Tangible Personal Property as defined in RSA 564-E:205

30 _____ Stocks and Bonds as defined in RSA 564-E:206

31 _____ Commodities and Options as defined in RSA 564-E:207

32 _____ Banks and Other Financial Institutions as defined in RSA 564-E:208

33 _____ Operation of Entity or Business as defined in RSA 564-E:209

34 _____ Insurance and Annuities as defined in RSA 564-E:210

35 _____ Estates, Trusts and Other Beneficial Interests as defined in RSA 564-E:211

36 _____ Claims and Litigation as defined in RSA 564-E:212

37 _____ Personal and Family Maintenance as defined in RSA 564-E:213

1 ____ Benefits from Governmental Programs or Civil or Military Service as defined in RSA 564-
2 E:214

3 ____ Retirement Plans as defined in RSA 564-E:215

4 ____ Taxes as defined in RSA 564-E:216

5 ____ Digital Assets *as defined in RSA 554-A:2(10)*

6 5. GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

7 (Initial each subject you want to include in the agent's authority. CAUTION: As to some of the
8 following subjects, granting your agent authority will give your agent the authority to take actions
9 that could significantly reduce your property or change how your property is distributed at your
10 death.)

11 My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the
12 specific authority listed below:

13 ____ Create, amend, revoke, or terminate an inter vivos trust

14 *(If you have granted your agent the authority to create, amend, revoke, or terminate an*
15 *inter vivos trust, then initial the following statement if it is your choice.)*

16 ____ *My agent may create, amend, revoke, or terminate an inter vivos trust to benefit*
17 *himself or herself or any individual to whom my agent owes a legal obligation of support.*

18 ____ Make a gift, subject to the limitations of RSA 564-E:217[~~of the Uniform Power of Attorney~~
19 ~~Act]~~

20 (If you have granted your agent the authority to make a gift, then as to each of the following
21 statements, initial beside it if it is your choice.)

22 ____ My agent may make a gift, even if it will leave me without sufficient assets or income to
23 provide for my care without relying on Medicaid, other public assistance or charity.

24 ____ My agent may make a gift to himself or herself and to any individual to whom my agent
25 owes a legal obligation of support.

26 ____ Create or change rights of survivorship

27 *(If you have granted your agent the authority to create or change rights of survivorship,*
28 *then initial the following statement if it is your choice.)*

29 ____ *My agent may create or change rights of survivorship to benefit himself or*
30 *herself or any individual to whom my agent owes a legal obligation of support.*

31 ____ Create or change a beneficiary designation

32 *(If you have granted your agent the authority to create or change a beneficiary*
33 *designation, then initial the following statement if it is your choice.)*

34 ____ *My agent may create or change a beneficiary designation to benefit himself or*
35 *herself or any individual to whom my agent owes a legal obligation of support.*

1 *Reject, renounce, disclaim, release, or consent to a reduction in or modification of my*
2 *share in, or a payment to me from, an estate, trust, or other beneficial interest, to benefit*
3 *my agent or any individual to whom my agent owes a legal obligation of support*

4 Delegate authority granted under this Power of Attorney to another person

5 Waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit
6 under a retirement plan

7 *(If you have granted your agent the authority to waive your right to be a beneficiary of a*
8 *joint and survivor annuity, including a survivor benefit under a retirement plan, then*
9 *initial the following statement if it is your choice.)*

10 *My agent may waive my right to be a beneficiary of a joint and survivor annuity,*
11 *including a survivor benefit under a retirement plan, to benefit himself or herself or any*
12 *individual to whom my agent owes a legal obligation of support.*

13 Exercise the fiduciary power(s) that I have the authority to delegate as specified in the
14 "Special Instructions" in Paragraph [7] 6 of this Power of Attorney

15 Exercise authority over the content of electronic communication sent or received by me
16 *pursuant to RSA 554-A:9*

17 Exercise authority with respect to intellectual property, including, without limitation,
18 copyrights, contracts for payment of royalties, and trademarks

19 ~~[6. LIMITATION ON AGENT'S AUTHORITY (OTHER THAN GIFTING)~~

20 ~~(If an agent (including successor agent) named in this Power of Attorney is someone other than an~~
21 ~~ancestor of yours, your spouse, or a descendant of yours, you must initial the following statement if it~~
22 ~~is your choice that such agent have the following authority. An agent who is an ancestor of yours,~~
23 ~~your spouse, or a descendant of yours already has the following authority under New Hampshire~~
24 ~~law.)~~

25 ~~My agent may exercise authority under this Power of Attorney to create in my agent, or in an~~
26 ~~individual to whom my agent owes a legal obligation of support, an interest in my property by any~~
27 ~~manner (other than a gift), including, without limitation, by right of survivorship, beneficiary~~
28 ~~designation, or disclaimer.~~

29 ~~7.] 6. SPECIAL INSTRUCTIONS (OPTIONAL)~~

30 ~~(Here you may include special instructions. You may leave this Paragraph blank. You may attach~~
31 ~~additional pages as necessary.)~~

32 ~~[8.] 7. EFFECTIVE DATE AND AUTHORITY OF AGENT~~

33 This Power of Attorney is effective immediately unless I have stated otherwise in the Special
34 Instructions in Paragraph [7] 6 of this Power of Attorney. An agent (including successor agent)
35 named in this Power of Attorney will have no authority to act as my agent until he or she has signed
36 and affixed to this Power of Attorney an acknowledgment that is substantially the same as the
37 Acknowledgment at the end of this Power of Attorney.

1 ~~[9.]~~ 8. GOVERNING LAW

2 This Power of Attorney shall be governed by the laws of the State of New Hampshire.

3 ~~[10.]~~ 9. RELIANCE ON THIS POWER OF ATTORNEY

4 Any person, including my agent, may rely upon this Power of Attorney if it is acknowledged before a
5 notary public or other individual authorized to take acknowledgments (or a copy of the acknowledged
6 Power of Attorney), unless that person knows it is void, invalid, or terminated.

7 SIGNATURE AND ACKNOWLEDGMENT

8 (You must date and sign this Power of Attorney. If you are physically unable to sign, it may be
9 signed by someone else writing your name, in your presence and at your express direction. This
10 Power of Attorney must be acknowledged before a notary public or other individual authorized by
11 law to take acknowledgments.)

12 Principal's Signature:

13 Principal's Printed Name:

14 Principal's Address:

15 Date:

16 STATE OF NEW HAMPSHIRE

17 COUNTY OF _____

18 The foregoing Power of Attorney was acknowledged before me on _____, by
19 _____, known to me or satisfactorily proven to be the person named herein

20 Signature of Notarial Officer:

21 Title (and Rank):

22 My commission expires:

23 AGENT ACKNOWLEDGMENT

24 Notice to Agent: You will have no authority to act as agent under this Power of Attorney until you
25 sign and affix this acknowledgment to the Power of Attorney.

26 I, _____, have read the attached power of attorney and am the person identified
27 as the agent for the principal. I hereby acknowledge that when I act as agent I am given power
28 under the power of attorney to make decisions about money, property, or both belonging to the
29 principal, and to spend the principal's money, property, or both on the principal's behalf, in
30 accordance with the terms of the power of attorney. When acting as agent, I have duties (called
31 "fiduciary duties") to act in *accordance with the principal's reasonable expectations to the*
32 *extent actually known by me and, otherwise, in the principal's best interest, to act in good faith,*
33 and to act only within the scope of authority granted in the power of attorney, as well as other duties
34 imposed by law to the extent not provided otherwise in the power of attorney. As an agent, I am not
35 entitled to use the money or property for my own benefit or to make gifts to myself or others unless
36 the power of attorney specifically gives me the authority to do so. As an agent, my authority under
37 the power of attorney will end when the principal dies and I will not have authority to manage or

1 dispose of any property or administer the estate of the principal. If I violate a fiduciary duty under
2 the power of attorney, I may be liable for damages and may be subject to criminal prosecution. If
3 there is anything about this power of attorney, or my duties under it, that I do not understand, I
4 understand that I should seek professional advice.

5 Agent's Signature:

6 Date:

7 27 Applicability.

8 I. Section 21 of this act shall apply to all petitions for estate administration filed on or after
9 July 1, 2021 regardless of the date of the decedent's death.

10 II. Section 22 of this act shall apply to decedents dying on or after July 1, 2021.

11 III. Section 23 of this act shall apply to general powers of attorney executed on or after July
12 1, 2021.

13 28 Findings. The general court finds:

14 I. Through the development of thoughtful, innovative laws, New Hampshire has become one
15 of the best legal environments for trusts, trust companies, fiduciaries, and fiduciary services.

16 II. This legal environment attracts individuals and families to the state and the revised
17 uniform disclaimer of property interests act further reinforces the state's long tradition of protecting
18 settlor intent and further facilitates the administrations of trusts and estates.

19 III. The revised uniform disclaimer of property interests act replaces New Hampshire's
20 existing and obsolete uniform disclaimer of property interests act by removing the 9-month time
21 limit for disclaimers, expanding the prior definition of "disclaimer" to include a broader range of
22 property, providing further instructions for when a disclaimer is delivered and under what
23 circumstances it becomes effective, clarifying the result of refusing property or powers through a
24 disclaimer, creating rules for several types of disclaimers that have not been explicitly addressed in
25 the prior act, providing rules for the disclaimer of powers held in a fiduciary capacity, specifically
26 allowing a partial disclaimer of an interest in property, and clarifying that the disclaimed interest
27 passes without direction by the disclaimant.

28 29 Uniform Disclaimer of Property Interests Act. RSA 563-B is repealed and reenacted to read
29 as follows:

30 CHAPTER 563-B

31 UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

32 Article 1

33 Short Title

34 563-B:1 Short Title. This chapter may be cited as the "Uniform Disclaimer of Property Interests
35 Act."

36 Article 2

37 Application

1 563-B:2 Application. This chapter applies to disclaimers of any interest in or power over
2 property, whenever created.

3 Article 3

4 Definitions

5 563-B:3 Definitions. For purpose of this chapter, the following definitions shall apply:

6 (a) "Disclaimant" means the person to whom a disclaimed interest or power would have
7 passed had the disclaimer not been made.

8 (b) "Disclaimed interest" means the interest that would have passed to the disclaimant
9 had the disclaimer not been made.

10 (c) "Disclaimer" means the refusal to accept an interest in or power over property.

11 (d) "Fiduciary" means a personal representative, administrator, trustee, agent acting
12 under a power of attorney, or other person authorized to act as a fiduciary with respect to the
13 property of another person.

14 (e) "Jointly held property" means property held in the name of 2 or more persons under
15 an arrangement in which all holders have concurrent interests and under which the last surviving
16 holder is entitled to the whole of the property.

17 (f) "Person" means an individual, corporation, business trust, estate, trust, partnership,
18 limited liability company, association, joint venture, government, governmental subdivision, agency,
19 or instrumentality; public corporation, or any other legal or commercial entity.

20 (g) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
21 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
22 United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by
23 federal law or formally acknowledged by a state.

24 (h) "Trust" means:

25 (1) An express trust, charitable or noncharitable, with additions thereto, whenever
26 and however created as defined in RSA 564-A:1; and

27 (2) A trust created pursuant to a statute, judgment, or decree which requires the
28 trust to be administered in the manner of an express trust.

29 Article 4

30 Power to Disclaim; General Requirements; When Irrevocable

31 563-B:4 Power to Disclaim; General requirements; When Irrevocable.

32 (a) Power to Disclaim.

33 (1) A person may disclaim, in whole or part, any interest in or power over property,
34 including a power of appointment. A person may disclaim the interest or power even if its creator
35 imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the
36 right to disclaim.

1 (2) Except to the extent a fiduciary's right to disclaim is expressly restricted or
2 limited by this chapter, another statute of this state, or by the instrument creating the fiduciary
3 relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property,
4 including a power of appointment, whether acting in a personal or representative capacity. A
5 fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or
6 similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument
7 other than the instrument that created the fiduciary relationship imposed a restriction or limitation
8 on the right to disclaim.

9 (b) General Requirements.

10 (1) To be effective, a disclaimer must be in a writing or other record, declare the
11 disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer,
12 and be delivered or filed in the manner provided in Article 12. In this Article:

13 (A) "Record" means information that is inscribed on a tangible medium or that is
14 stored in an electronic or other medium and is retrievable in perceivable form; and

15 (B) "Signed" means, with present intent to authenticate or adopt a record, to;

16 (i) Execute or adopt a tangible symbol; or

17 (ii) Attach to or logically associate with the record an electronic sound,
18 symbol, or process.

19 (2) A partial disclaimer may be expressed as a fraction, percentage, monetary
20 amount, term of years, limitation of a power, or any other interest or estate in the property.

21 (c) When Irrevocable.

22 (1) A disclaimer becomes irrevocable when it is delivered or filed pursuant to Article
23 10 or when it becomes effective as provided in Articles 5 through 9, whichever occurs later.

24 (2) A disclaimer made under this chapter is not a transfer, assignment, or release.

25 Article 5

26 Disclaimer of Interest in Property

27 563-B:5 Disclaimer of Interest in Property.

28 (a) In this section:

29 (1) "Future interest" means an interest that takes effect in possession or enjoyment,
30 if at all, later than the time of its creation.

31 (2) "Time of distribution" means the time when a disclaimed interest would have
32 taken effect in possession or enjoyment.

33 (b) Except for a disclaimer governed by Article 6 or 7, the following rules apply to a
34 disclaimer of an interest in property:

35 (1) The disclaimer takes effect as of the time the instrument creating the interest
36 becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of
37 the intestate's death.

1 (2) The disclaimed interest passes according to any provision in the instrument
2 creating the interest providing for the disposition of the interest, should it be disclaimed, or of
3 disclaimed interests in general.

4 (3) If the instrument does not contain a provision described in paragraph (2), the
5 following rules apply:

6 (A) If the disclaimant is not an individual, the disclaimed interest passes as if
7 the disclaimant did not exist.

8 (B) If the disclaimant is an individual, except as otherwise provided in
9 subparagraphs (C) and (D), the disclaimed interest passes as if the disclaimant had died
10 immediately before the time of distribution.

11 (C) If by law or under the instrument, the descendants of the disclaimant would
12 share in the disclaimed interest by any method of representation had the disclaimant died before the
13 time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who
14 survive the time of distribution.

15 (D) If the disclaimed interest would pass to the disclaimant's estate had the
16 disclaimant died before the time of distribution, the disclaimed interest instead passes by
17 representation to the descendants of the disclaimant who survive the time of distribution. If no
18 descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to
19 those persons, including the state but excluding the disclaimant, and in such shares as would
20 succeed to the transferor's intestate estate under the intestate succession law of the transferor's
21 domicile had the transferor died at the time of distribution. However, if the transferor's surviving
22 spouse is living but is remarried at the time of distribution, the transferor is deemed to have died
23 unmarried at the time of distribution.

24 (4) Upon the disclaimer of a preceding interest, a future interest held by a person
25 other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately
26 before the time of distribution, but a future interest held by the disclaimant is not accelerated in
27 possession or enjoyment.

28 Article 6

29 Disclaimer of Rights of Survivorship in Jointly Held Property

30 563-B:6 Disclaimer of Rights of Survivorship in Jointly Held Property.

31 (a) Upon the death of a holder of jointly held property, a surviving holder may disclaim,
32 in whole or part, the greater of:

33 (1) A fractional share of the property determined by dividing the number one by the
34 number of joint holders alive immediately before the death of the holder to whose death the
35 disclaimer relates; or

36 (2) all of the property except that part of the value of the entire interest attributable
37 to the contribution furnished by the disclaimant.

1 (b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly
2 held property to whose death the disclaimer relates.

3 (c) An interest in jointly held property disclaimed by a surviving holder of the property
4 passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

5 Article 7

6 Disclaimer of Interest by Trustee

7 563-B:7 Disclaimer of Interest by Trustee. If a trustee disclaims an interest in property that
8 otherwise would have become trust property, the interest does not become trust property.

9 Article 8

10 Disclaimer of Power of Appointment or Other Power

11 Not Held in a Fiduciary Capacity

12 563-B:8 Disclaimer of Power of Appointment or Other Power Not Held in a Fiduciary Capacity.
13 If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the
14 following rules apply:

15 (a) If the holder has not exercised the power, the disclaimer takes effect as of the time
16 the instrument creating the power becomes irrevocable.

17 (b) If the holder has exercised the power and the disclaimer is of a power other than a
18 presently exercisable general power of appointment, the disclaimer takes effect immediately after
19 the last exercise of the power.

20 (c) The instrument creating the power is construed as if the power expired when the
21 disclaimer became effective.

22 Article 9

23 Disclaimer by Appointee, Object, or Taker in Default of

24 Exercise of Power of Appointment

25 563-B:9 Disclaimer by Appointee, Object, or Taker in Default of Exercise of Power of
26 Appointment.

27 (a) A disclaimer of an interest in property by an appointee of a power of appointment
28 takes effect as of the time the instrument by which the holder exercises the power becomes
29 irrevocable.

30 (b) A disclaimer of an interest in property by an object or taker in default of an exercise
31 of a power of appointment takes effect as of the time the instrument creating the power becomes
32 irrevocable.

33 Article 10

34 Disclaimer of Power Held in Fiduciary Capacity

35 563-B:10 Disclaimer of Power Held in Fiduciary Capacity.

1 (a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been
2 exercised, the disclaimer takes effect as of the time the instrument creating the power becomes
3 irrevocable.

4 (b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised,
5 the disclaimer takes effect immediately after the last exercise of the power.

6 (c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so
7 provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for
8 whom the fiduciary is acting.

9 Article 11

10 Delivery or Filing

11 563-B:11 Delivery or Filing.

12 (a) In this section, "beneficiary designation" means an instrument, other than an
13 instrument creating a trust, naming the beneficiary of:

- 14 (1) An annuity or insurance policy;
15 (2) An account with a designation for payment on death;
16 (3) A security registered in beneficiary form;
17 (4) A pension, profit-sharing, retirement, or other employment-related benefit plan;

18 or

- 19 (5) Any other non-probate transfer at death.

20 (b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by
21 personal delivery, first-class mail, or any other method likely to result in its receipt.

22 (c) In the case of an interest created under the law of intestate succession or an interest
23 created by will, other than an interest in a testamentary trust:

- 24 (1) A disclaimer must be delivered to the administrator of the decedent's estate; or
25 (2) If no administrator is then serving, it must be filed with a court having

26 jurisdiction to appoint the administrator.

27 (d) In the case of an interest in a testamentary trust:

28 (1) A disclaimer must be delivered to the trustee then serving, or if no trustee is then
29 serving, to the administrator of the decedent's estate; or

30 (2) If no administrator is then serving, it must be filed with a court having
31 jurisdiction to enforce the trust.

32 (e) In the case of an interest in an inter vivos trust:

- 33 (1) A disclaimer must be delivered to the trustee then serving;

34 (2) If no trustee is then serving, it must be filed with a court having jurisdiction to
35 enforce the trust; or

1 (3) If the disclaimer is made before the time the instrument creating the trust
2 becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the
3 interest.

4 (f) In the case of an interest created by a beneficiary designation which is disclaimed
5 before the designation becomes irrevocable, the disclaimer must be delivered to the person making
6 the beneficiary designation.

7 (g) In the case of an interest created by a beneficiary designation which is disclaimed
8 after the designation becomes irrevocable:

9 (1) The disclaimer of an interest in personal property must be delivered to the
10 person obligated to distribute the interest; and

11 (2) An attested copy of the disclaimer of an interest in real property must be
12 recorded in the office of registry of deeds of the county where the real property that is the subject of
13 the disclaimer is located.

14 (h) In the case of a disclaimer by a surviving holder of jointly held property, the
15 disclaimer must be delivered to the person to whom the disclaimed interest passes.

16 (i) In the case of a disclaimer by an object or taker in default of exercise of a power of
17 appointment at any time after the power was created:

18 (1) The disclaimer must be delivered to the holder of the power or to the fiduciary
19 acting under the instrument that created the power; or

20 (2) If no fiduciary is then serving, it must be filed with a court having authority to
21 appoint the fiduciary.

22 (j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

23 (1) The disclaimer must be delivered to the holder, the administrator of the holder's
24 estate, or to the fiduciary under the instrument that created the power; or

25 (2) If no fiduciary is then serving, it must be filed with a court having authority to
26 appoint the fiduciary.

27 (k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the
28 disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were
29 an interest in property.

30 (l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to
31 the principal or the principal's representative.

32 (m) Notwithstanding any right to disclaim an interest in property as provided for in this
33 chapter, a person who has been devised real estate by testamentary instrument, or inherited under
34 the laws of intestacy, may waive his or her rights to the property pursuant to RSA 554:18-b.

35 Article 12

36 When Disclaimer Barred or Limited

37 563-B:12 When Disclaimer Barred or Limited.

1 (a) A disclaimer is barred by a written waiver of the right to disclaim.

2 (b) A disclaimer of an interest in property is barred if any of the following events occur
3 before the disclaimer becomes effective:

4 (1) The disclaimant accepts the interest sought to be disclaimed;

5 (2) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers
6 the interest sought to be disclaimed or contracts to do so; or

7 (3) A judicial sale of the interest sought to be disclaimed occurs.

8 (c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary
9 capacity is not barred by its previous exercise.

10 (d) A disclaimer, in whole or part, of the future exercise of a power not held in a
11 fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the
12 disclaimant.

13 (e) A disclaimer is barred or limited to the extent that it would impair the ability of the
14 department of health and human services to recover pursuant to Title XIX of the Social Security Act
15 or RSA 126-A, 135, 135-C, 130-A, 143, 143-A, 161, 161-B, 161-C, 161-E, 161-F, 161-H, 161-I, 165,
16 166, 167, 168-A, 169-B, 169-C, 169-D, 169-F, 170-A, 170-B, 170-E, 170-G, 171-B, 172, or 173-B.

17 (f) A disclaimer is barred or limited if so provided by law other than this chapter.

18 (g) A disclaimer of a power over property which is barred by this section is ineffective. A
19 disclaimer of an interest in property which is barred by this section takes effect as a transfer of the
20 interest disclaimed to the persons who would have taken the interest under this chapter had the
21 disclaimer not been barred.

22 Article 13

23 Tax Qualified Disclaimer

24 563-B:13 Tax Qualified Disclaimer. Notwithstanding any other provision of this chapter, if as a
25 result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the
26 provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor
27 statute thereto, and the regulations promulgated thereunder, as never having been transferred to
28 the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

29 Article 14

30 Recording of Disclaimer

31 563-B:14 Recording of Disclaimer. If an instrument transferring an interest in or power over
32 property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered,
33 the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in Article
34 11(g)(2), failure to file, record, or register the disclaimer does not affect its validity as between the
35 disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

36 Article 15

37 Application to Existing Relationships

1 563-B:15 Application to Existing Relationships. Except as otherwise provided in Article 12, an
2 interest in or power over property existing on the effective date of this chapter as to which the time
3 for delivering or filing a disclaimer under law superseded by this chapter has not expired may be
4 disclaimed after the effective date of this chapter.

5 Article 16

6 Supplemented by Other Law

7 563-B:16 Supplemented by Other Law.

8 (a) Unless displaced by a provision of this chapter, the principles of law and equity
9 supplement this chapter.

10 (b) This chapter does not limit any right of a person to waive, release, disclaim, or
11 renounce an interest in or power over property under a law other than this chapter.

12 Article 17

13 Uniformity of Application and Construction

14 563-B:17 Uniformity of Application and Construction. In applying and construing this uniform
15 act, consideration must be given to the need to promote uniformity of the law with respect to its
16 subject matter among states that enact it.

17 30 School Employee and Designated School Volunteer Criminal History Records Check. Amend
18 RSA 189:13-a, III to read as follows:

19 III. The superintendent of the school administrative unit or the chief executive officer of the
20 chartered public school or public academy shall maintain the confidentiality of all criminal history
21 records information received pursuant to this paragraph. ~~[If the criminal history records~~
22 ~~information indicates no criminal record, the superintendent of the school administrative unit or the~~
23 ~~chief executive officer of the chartered public school or public academy shall destroy the information~~
24 ~~received immediately following review of the information.] *The superintendent of the school*
25 *administrative unit, or chief executive officer of the chartered public school or public*
26 *academy shall review the criminal history records information in accordance with*
27 *paragraph V. If the criminal history records information indicates that the applicant has been*
28 *convicted of any crime or has been charged pending disposition for or convicted of a crime listed in*
29 *paragraph V, the superintendent of the school administrative unit or the chief executive officer of the*
30 *chartered public school or public academy shall review the information for a hiring decision*~~[and the~~
31 ~~division of state police shall notify the department of education of any such charges pending~~
32 ~~disposition or convictions. The superintendent of the school administrative unit or the chief~~
33 ~~executive officer of the chartered public school or public academy shall destroy any criminal history~~
34 ~~record information that indicates a criminal record within 60 days of receiving such information.] *If*
35 *the applicant's criminal history records information indicates that the applicant has been*
36 *charged pending disposition for or has been convicted of a crime listed in paragraph V, the*~~~~

1 *superintendent of the school administrative unit or the chief executive officer of the*
 2 *chartered public school or public academy shall notify the department of education.*

3 *III-a. The superintendent of the school administrative unit or chief executive officer*
 4 *of the chartered public school or public academy shall destroy any criminal history record*
 5 *information within 60 days of receipt. The superintendent of the school administrative*
 6 *unit or chief executive officer of the chartered public school or public academy shall*
 7 *destroy any criminal history record information that indicates a criminal record within 60*
 8 *days of receiving said information.*

9 31 School Employee and Designated School Volunteer Criminal History Records Check. Amend
 10 RSA 189:13-a, VI to read as follows:

11 VI. *In accordance with paragraphs I-V*, this section shall apply to any employee,
 12 *including substitute teachers*, selected applicant for employment, designated volunteer, [ex]
 13 volunteer organization, *or individual or entity* which contracts with a school administrative unit,
 14 school district, chartered public school, or public academy to provide services, including but not
 15 limited to cafeteria workers, school bus drivers, custodial personnel, or any other service where the
 16 contractor or employees of the contractor provide services directly to students of the district,
 17 chartered public school, or public academy. The employing school administrative unit, school
 18 district, or chartered public school shall be responsible for completing the criminal history records
 19 check on the people identified in this paragraph, except for school bus drivers and transportation
 20 monitors, as provided in RSA 189:13-b. The cost for criminal history records checks for employees or
 21 selected applicants for employment with such contractors shall be borne by the contractor.

22 32 School Employee and Designated School Volunteer Criminal History Records Check. Amend
 23 RSA 189:13-a, IX to read as follows:

24 IX.(a) [~~Substitute teachers and other educational staff, not otherwise addressed in this~~
 25 ~~section, shall apply for a criminal history records check at the employing school administrative unit,~~
 26 ~~school district, chartered public school, or public academy. The division of state police shall complete~~
 27 ~~the criminal history records check, as established in paragraph II, and, upon completion, shall issue~~
 28 ~~a report to the applicant. The report shall be valid for 30 days from the date of issuance and shall~~
 29 ~~constitute satisfactory proof of compliance with this section.~~

30 (b) ~~Upon enrollment in an educator preparation program at an institution of higher~~
 31 ~~education, a candidate shall submit to a criminal history records check. The institution of higher~~
 32 ~~education in which the candidate is enrolled shall conduct the criminal history records check.] Upon~~
 33 placement of a candidate, *as defined in RSA 189:13-c*, as a student teacher, the receiving school
 34 administrative unit, school district, or chartered public school shall conduct [another] a criminal
 35 history records check of the candidate and shall follow the same procedures for assessing the
 36 candidate's criminal history background as for applicants for employment. [~~The governing body of~~
 37 ~~the institution of higher education may adopt a policy relative to how often a candidate shall submit~~

1 ~~to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is~~
2 ~~enrolled in an educator preparation program at an institution of higher education in New~~
3 ~~Hampshire.]~~

4 *(b) A receiving school administrative unit, school district, or chartered public*
5 *school may conduct a criminal history records check upon a candidate, as defined in RSA*
6 *189:13-c.*

7 33 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
8 inserting after section 13-b the following new section:

9 189:13-c Credentialing Applicant and Candidate Criminal History Records Check.

10 I. Definitions:

11 (a) "Credentialing applicant" means a first-time applicant for a New Hampshire
12 teaching credential.

13 (b) "Candidate" means a student at an institution of higher education in New
14 Hampshire who has been selected to participate in a K-12 educator preparation program.

15 II.(a) The department shall complete a confidential criminal history records check on all
16 first-time applicants for a teaching license, under RSA 21-N:9, II(s), as shall school administrative
17 units, school districts, and chartered public schools pursuant to RSA 189:13-a.

18 (b) The department shall complete a confidential criminal history records check on all
19 candidates as shall school administrative units, school districts, and chartered public schools
20 pursuant to RSA 189:13-a. The department shall adopt rules pursuant to RSA 541-A relative to
21 coordination with institutions of higher education in New Hampshire on procedures for conducting
22 clearances for candidates for K-12 educator preparation programs.

23 (c) The criminal history records check on a candidate shall valid for a period of 3 years.

24 III.(a) The credentialing applicant or candidate shall submit to the department a criminal
25 history records release form, as provided by the division of state police, which authorizes the division
26 of state police to conduct a criminal history records check through its state records and through the
27 Federal Bureau of Investigation and to release a report of the credentialing applicant's or candidate's
28 criminal history record information, including confidential criminal history record information, to
29 the background check coordinator of the department, as described in RSA 21-N:8-a, I-a.

30 (b) The credentialing applicant or candidate shall submit with the release form a
31 complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee
32 of the department of education. In the event that the first set of fingerprints is invalid due to
33 insufficient pattern, a second set of fingerprints shall be taken in order to complete the criminal
34 history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern,
35 the department may, in lieu of the criminal history records check, accept police clearance from every
36 city, town, or county where an applicant or candidate has lived during the past 5 years.

1 IV.(a) The department shall maintain the confidentiality of all criminal history records
2 information received pursuant to this paragraph. The department shall destroy all criminal history
3 record information within 60 days of receiving said information.

4 (b) The department may require the credentialing applicant or candidate to pay the
5 actual costs of the criminal history records check.

6 V. Any person who has been charged pending disposition for or convicted of any violation or
7 attempted violation of RSA 630:1; 630:1-a; 630:1-b; 630:2; 632-A:2; 632-A:3; 632-A:4; 633:1; 639:2;
8 639:3; 645:1, II or III; 645:2; 649-A:3; 649-A:3-a; 649-A:3-b; 649-B:3; or 649-B:4; or any violation or
9 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene in
10 this state, or under any statute prohibiting the same conduct in another state, territory, or
11 possession of the United States, shall not be granted a teaching credential by the department nor
12 shall candidates be granted clearance.

13 VI. The department shall adopt rules, pursuant to RSA 541-A, governing the rights of a
14 credentialing applicant and candidate and their ability to appeal a denial of a teaching credential or
15 clearance pursuant to a charge pending disposition for or a conviction of any of the offenses under
16 paragraph V.

17 VII. If a credentialing applicant had submitted to a criminal history records check within
18 the prior 6 months as a candidate, that check shall be deemed valid for purposes of this section.

19 34 Committee Established. There is established a committee to study department of education
20 oversight of criminal history background checks by private schools.

21 35 Membership and Compensation.

22 I. The members of the committee shall be as follows:

23 (a) Three members of the house of representatives, appointed by the speaker of the
24 house of representatives.

25 (b) Two members of the senate, appointed by the president of the senate.

26 II. The commissioner of the department of education, or designee, shall serve as a non-
27 voting, ex officio member of the committee.

28 III. Members of the committee shall receive mileage at the legislative rate when attending
29 to the duties of the committee.

30 36 Duties. The committee shall:

31 I. Review current statutes regarding criminal history background checks in private schools.

32 II. Review department of education rules and oversight of private schools regarding criminal
33 history background checks.

34 III. Review annual reporting on criminal history background checks to the department of
35 education by private schools.

36 IV. Review other states' statutes and rules regarding criminal history background checks in
37 private schools.

1 V. Make recommendations for updating statutes and department of education rules
2 regarding criminal history background checks in private schools.

3 37 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
4 among the members. The first meeting of the committee shall be called by the first-named house
5 member. The first meeting of the committee shall be held within 45 days of the effective date of this
6 section. Three members of the committee shall constitute a quorum.

7 38 Report. The committee shall report its findings and any recommendations for proposed
8 legislation to the speaker of the house of representatives, the president of the senate, the house
9 clerk, the senate clerk, the commissioner of the department of education, the governor, and the state
10 library on or before November 1, 2021.

11 39 Mental Health Intervention Training; Appropriation. The sum of \$210,000 for the biennium
12 ending June 30, 2023, is hereby appropriated to the police standards and training council for the
13 purposes of funding mental health intervention training programs. The appropriations shall be in
14 addition to any other funds appropriated to the police standards and training council. The governor
15 is authorized to draw a warrant for said sums out of any money in the treasury not otherwise
16 appropriated.

17 40 Industrial Hemp Research; Authorization. Amend RSA 433-C:2 to read as follows:

18 433-C:2 Authorization. An institution of higher education, as defined in 20 U.S.C. section 1001,
19 may grow or cultivate *or may contract with a private party to grow or cultivate*, industrial
20 hemp, on site or off site, for purposes of research under an agricultural pilot program or other
21 agricultural or academic research. In addition to studying the plant's growth and cultivation, the
22 research shall also study the economics of industrial hemp, including markets and processing.
23 Industrial hemp grown or cultivated in accordance with this chapter shall not be considered a
24 controlled drug or controlled substance under RSA 318-B.

25 41 Effective Date.

26 I. RSA 456-B:2, VII as inserted by section 8 of this act and section 15 of this act shall take
27 effect upon its passage.

28 II. The remainder of sections 5-15 of this act shall take effect 180 days after its passage.

29 III. Sections 20-27, and section 39 of this act shall take effect July 1, 2021.

30 IV. Sections 28, 29, 34-38, and 40 of this act shall take effect upon its passage.

31 V. Sections 3, 4, and 30-33 shall take effect January 1, 2022.

32 VI. The remainder of this act shall take effect 60 days after its passage.

Amendments

Sen. Carson, Dist 14
April 12, 2021
2021-1123s
08/04

Amendment to HB 485

1 Amend RSA 595-A:10, II as inserted by section 1 of the bill by replacing it with the following:

2

3 II. This section shall not preclude searches incident to arrest, those searches allowed under
4 the United States Constitution for officer safety, on any grounds, lands, or parking areas of any state
5 correctional facility or transitional housing unit operated by the department of corrections, or
6 inventory searches of lawfully-seized property, including but not limited to vehicles towed in
7 conjunction to the arrest of the operator.

UNAPPROVED

Senate Judiciary
April 21, 2021
2021-1173s
08/06

Amendment to HB 485

1 Amend RSA 595-A:10, II as inserted by section 1 of the bill by replacing it with the following:

2

3 II. This section shall not preclude searches incident to arrest, those searches allowed under
4 the United States Constitution for officer safety, on any grounds, lands, or parking areas of any state
5 correctional facility or transitional housing unit operated by the department of corrections, or
6 inventory searches of lawfully-seized property, including but not limited to vehicles towed in
7 conjunction to the arrest of the operator.

Floor Amendment to HB 485

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

2

3 AN ACT relative to informed consent to search a motor vehicle and amending the statutory
4 requirements for a search warrant; relative to prohibiting certain uses of laser
5 pointing devices, and relative to various civil actions and criminal liability.
6

7 Amend the bill by replacing all after the enacting clause with the following:

8

9 1 New Section; Search Warrants; Informed Consent Exception for Motor Vehicles. Amend RSA
10 595-A by inserting after section 9 the following new section:

11 595-A:10 Informed Consent Exception for Motor Vehicles.

12 I. A law enforcement officer may legally conduct a search of a motor vehicle without a
13 warrant under this chapter if the law enforcement officer expressly informs the operator of the motor
14 vehicle that:

15 (a) The operator has the right to refuse to consent to a search;

16 (b) Any refusal to consent to a search shall not constitute a basis either for probable
17 cause to arrest the operator or reasonable suspicion to detain the operator;

18 (c) The operator cannot be charged with any crime or violation for refusing to consent to
19 a search; and

20 (d) The operator cannot be further detained for refusing to consent to a search.

21 II. If the operator of a motor vehicle refuses to consent to a search, the law enforcement
22 officer shall cease any further questioning concerning consent to a search.

23 III. A law enforcement officer shall document any consent to search either by the signature
24 of the motor vehicle operator on a consent-to-search form providing notice of the provisions of
25 paragraphs I and II at the time of the consent, or by means of a video and sound recording of the
26 consent at the time of the consent. Such form or video and sound recording shall be retained until
27 any criminal charge resulting from the consent to search is fully resolved.

28 IV. Any act of a law enforcement officer which violates a provision of this section shall result
29 in the inadmissibility in any criminal proceeding of any evidence of obtained by the law enforcement
30 officer.

31 2 Search Warrants; Form of Warrant; Written Statement Under Oath. Amend RSA 595-A:3 and
32 595-A:4 to read as follows:

33 595-A:3 Form of Warrant. The warrant shall be in substantially the following form:

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1 The State of New Hampshire
2 (County), ss. (Name) Court.

3 To the Sheriffs of our several counties, or their deputies, any State Police Officer, or any Constable
4 or Police Officer of any city or town, within our said State.

5 Proof by [~~affidavit~~] **written statement under oath** (supplemented by oral statements under oath)
6 having been made this day before (name of person authorized to issue warrant) by (names of person
7 or persons whose [~~affidavits~~] **written statements under oath** have been taken) that there is
8 probable cause for believing that (certain property has been stolen, embezzled, or fraudulently
9 obtained; certain property is intended for use or has been used as the means of committing a crime;
10 contraband; evidence of the crime to which the probable cause upon which the search warrant is
11 issued relates.)

12 We therefore command you in the daytime (or at any time of the day or night) to make an immediate
13 search of (identify premises) (occupied by A.B.) and (of the person of A.B.) and of any person present
14 who may be found to have such property in his possession or under his control or to whom such
15 property may have been delivered, for the following property:

16 (description of property)

17 and if you find any such property or any part thereof to bring it and the persons in whose possession
18 it is found before (name of court and location).

19 Dated at (city or town) this day of, 20.....

20 595-A:4 [~~Affidavit~~] **Written Statement Under Oath** in Support of Application for Warrant;
21 Contents and Form.

22 A person seeking a search warrant shall appear [~~personally~~] before a court or justice authorized to
23 issue search warrants in criminal cases and shall give [~~an affidavit~~] **a written statement under**
24 **oath** in substantially the form hereinafter prescribed. Such [~~affidavit~~] **written statement under**
25 **oath** shall contain facts, information, and circumstances upon which such person relies to establish
26 probable cause for the issuance of the warrant and such [~~affidavit~~] **written statement under oath**
27 may be supplemented by oral statements under oath for the establishment of probable cause. The
28 person issuing the warrant shall retain the [~~affidavit~~] **written statement under oath** and shall
29 make notes, personally, of the substance, or arrange for a transcript, of any oral statements under
30 oath supplementing the [~~affidavit~~] **written statement under oath**. The person issuing the search
31 warrant shall deliver the [~~affidavit~~] **written statement under oath** and the notes or transcript
32 within 3 days after the issuance of the warrant to the court to which the warrant is returnable.
33 Upon the return of said warrant, the [~~affidavit~~] **written statement under oath** and the notes or
34 transcript shall be attached to it and shall be filed therewith, and they shall be a public document
35 when the warrant is returned, unless otherwise ordered by a court of record.

36 The [~~affidavit~~] **written statement under oath** in support of the application for a search warrant
37 shall be in substantially the following form:

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1 The State of New Hampshire
2 (County), ss. (Name) Court.
3, 20.....

- 4 I, (name of applicant) being duly sworn, depose and say:
- 5 1. I am (describe position, assignment, office, etc.).
 - 6 2. I have information, based upon (describe source, facts indicating reliability of source and nature
7 of information; if based on personal knowledge, so state).
 - 8 3. Based upon the foregoing reliable information (and upon my personal knowledge) there is
9 probable cause to believe that the property hereinafter described (has been stolen, etc.) and may be
10 found (in the possession of A.B. or any other person) at premises (identify).
 - 11 4. The property for which I seek the issuance of a search warrant is the following: (here describe the
12 property as particularly as possible).

13 Wherefore, I request that the court issue a warrant and order of seizure, authorizing the search of
14 (identify premises and the persons to be searched) and directing that if such property or evidence or
15 any part thereof be found that it be seized and brought before the court; together with such other
16 and further relief that the court may deem proper.

17
18 Name

19 ~~[Then personally appeared the above named and made oath that the foregoing affidavit by~~
20 ~~him subscribed is true.~~
21 ~~Before me this day of, 20.....]~~

22 Return

23 I received the attached search warrant on, 20....., and have executed it as follows:
24 On, 20....., at o'clock ... M, I searched (the person) (the premises) described in the
25 warrant and I left a copy of the warrant with (name of person searched or owner) at (the place of
26 search) together with a receipt for the items seized.

27 The following is an inventory of property taken pursuant to the warrant:
28 This inventory was made in the presence of and

29 I swear that this inventory is a true and detailed account of all the property taken by me on the
30 warrant

31 ~~[Subscribed and sworn to and returned before me this day of, 20.....]~~
32

33 [Justice of the Court] Name

34 ***Signed under penalty of perjury, the penalty for which may include a fine or imprisonment***
35 ***or both.***

36

1 3 Assault and Related Offenses; Conduct Involving Laser Pointing Devices. RSA 631:3-a is
2 repealed and reenacted to read as follows:

3 631:3-a Conduct Involving Laser Pointing Devices.

4 I. As used in this section:

5 (a) "Government" means the federal government, the state government or any political
6 subdivision thereof, or a state or municipal agency or department, including any employee or agent.

7 (b) "Person" means any individual, partnership, limited liability company, corporation,
8 or any other organization, including a for-profit and not-for-profit entity, but excluding government.

9 II.(a) Any person in direct or remote control of a laser pointing device who knowingly shines
10 the beam of a laser pointing device at an occupied motor vehicle, off highway recreational vehicle,
11 snowmobile, vessel, window, or structure, or at a person shall be guilty of a violation and the laser
12 pointing device shall be seized and forfeited upon conviction.

13 (b) Any person in direct or remote control of a laser pointing device who knowingly
14 shines the beam of a laser pointing device at an occupied aircraft shall be guilty of a misdemeanor
15 and the laser pointing device shall be seized and forfeited upon conviction.

16 III. Any person in direct or remote control of a laser pointing device who knowingly shines
17 the beam of a laser pointing device at a law enforcement officer or law enforcement vehicle, off
18 highway recreational vehicle, or snowmobile shall be guilty of a class A misdemeanor and the laser
19 pointing device shall be seized and forfeited upon conviction.

20 IV. This section shall not prohibit aiming a beam of a laser pointing device at a motor
21 vehicle, aircraft, vessel, window, structure, or at a person by any of the following:

22 (a) An authorized person in the conduct of research and development or flight test
23 operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other
24 person authorized by the Federal Aviation Administration to conduct such research and
25 development or flight test operations.

26 (b) The government or persons authorized by the government, including defense and
27 aerospace contractors, engaged in research, development, operations, testing, or training.

28 (c) An individual using a laser emergency signaling device to send an emergency distress
29 signal, in an organized meeting or training class by the instructor or speaker, the use of medical
30 lasers by qualified medical personnel, sporting use related only to calibrate distance without
31 violating the prohibitions set forth in paragraph III, agricultural use, use related to land surveying,
32 construction lasers used by construction personnel in the course of their work or other use of lasers
33 for lawful business purposes, or lawful laser devices utilized by law enforcement personnel in the
34 performance of their official duties.

35 (d) Vehicle sensors, including those used for navigational aids, and research,
36 development, test, evaluation, and operation of autonomous vehicles, as permitted by law.

37 4 New Hampshire Aeronautics Act; Prohibitions. Amend RSA 422:28, XIV to read as follows:

1 XIV. ~~For any person to purposely or knowingly shine the beam of a laser pointing device at~~
2 ~~an aircraft that is in flight or in the process of takeoff, landing, or taxiing]~~ **For any person in direct**
3 **or remote control of a laser pointing device to knowingly shine the beam of a laser pointing**
4 **device at an aircraft that is in flight or in the process of takeoff, landing, or taxiing, except**
5 **as permitted under RSA 631:3-a, IV.**

6 5 Notaries Public. Amend RSA 455:3 to read as follows:

7 455:3 Powers.

8 I. Every notary public, in addition to the usual powers of the office, shall have the same
9 powers as a justice of the peace in relation to depositions and the acknowledgment of deeds and
10 other instruments and the administering of oaths.

11 II. All ~~acknowledgments made]~~ **notarial acts performed** by a notary public **with respect**
12 **to a record** shall be either under an **embossed** official seal or shall carry the legible imprint of an
13 **electronic or rubber** official ~~rubber]~~ stamp stating the name of the notary, the words "notary
14 public, New Hampshire" and the expiration date of the notary public's commission.

15 III. **As used in this section:**

16 (a) **"Electronic" has the same meaning given in RSA 456-B:1, VI;**

17 (b) **"Notarial Act" has the same meaning given in RSA 456-B:1, I;**

18 (c) **"Official stamp" has the same meaning given in RSA 456-B:1, IX; and**

19 (d) **"Record" has the same meaning given in RSA 456-B:1, XI.**

20 6 New Paragraph; Notarial Fees. Amend RSA 455:11 by inserting after paragraph II the
21 following new paragraph:

22 III. For performing notarial acts for a remotely located individual under RSA 456-B:6-a, a
23 notary public shall be entitled to a fee of \$25 per act.

24 7 Uniform Law on Notarial Acts; Definitions. Amend RSA 456-B:1 to read as follows:

25 456-B:1 Definitions.

26 I. "Notarial act" means ~~any act that a notary public]~~ **an act, whether performed with**
27 **respect to a tangible or electronic record, that a notarial officer** is authorized to perform
28 **under the law of this state**, and includes taking an acknowledgment, administering an oath or
29 affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature,
30 certifying or attesting a copy, and noting a protest of a negotiable instrument.

31 II. "Acknowledgment" means a declaration by ~~a person]~~ **an individual before a notarial**
32 **officer** that the ~~person has executed an instrument]~~ **individual has signed a record** for the
33 purposes stated therein and, if ~~the instrument is executed]~~ **the record is signed** in a
34 representative capacity, that the ~~person]~~ **individual** signed the ~~instrument]~~ **record** with proper
35 authority and ~~executed]~~ **signed** it as the act of the ~~person]~~ **individual** or entity ~~represented and]~~
36 identified therein.

1 III. "Verification upon oath or affirmation" means a declaration that a statement is true
2 made by ~~[a person]~~ ***an individual*** upon oath or affirmation.

3 IV. "In a representative capacity" means ***acting as***:

4 (a) ~~[For and on behalf of a corporation, partnership, trust, or other entity, as]~~ An
5 authorized officer, agent, partner, trustee, or other representative ***for a person other than an***
6 ***individual***;

7 (b) ~~[As]~~ A public officer, personal representative, guardian, or other representative, in
8 the capacity recited in the instrument;

9 (c) ~~[As]~~ An ***agent or*** attorney in fact for a principal; or

10 (d) In any other capacity as an authorized representative of another.

11 V. "Notarial officer" means a notary public, justice of the peace, or other officer authorized to
12 perform notarial acts.

13 VI. "***Electronic***" means relating to technology having electrical, digital, magnetic,
14 ***wireless, optical, electromagnetic, or similar capabilities.***

15 VII. "***Electronic signature***" means an electronic symbol, sound, or process attached
16 to or logically associated with a record and executed or adopted by an individual with the
17 intent to sign the record.

18 VIII. "***Notary public***" means an individual appointed to perform a notarial act by
19 the governor and executive council.

20 IX. "***Official stamp***" means an official seal of office consisting of a physical image
21 affixed to or embossed on a tangible record or an electronic image attached to or logically
22 associated with an electronic record.

23 X. "***Person***" means an individual, corporation, business trust, statutory trust,
24 estate, trust, partnership, limited liability company, association, joint venture, public
25 corporation, government or governmental subdivision, agency, or instrumentality, or any
26 other legal or commercial entity.

27 XI. "***Record***" means information that is inscribed on a tangible medium or that is
28 stored in an electronic or other medium and is retrievable in perceivable form.

29 XII. "***Sign***" means, with present intent to authenticate or adopt a record:

30 (a) To execute or adopt a tangible symbol; or

31 (b) To attach to or logically associate with the record an electronic symbol,
32 sound, or process.

33 XIII. "***Signature***" means a tangible symbol or an electronic signature that evidences
34 the signing of a record.

35 XIV. "***Stamping device***" means:

36 (a) A physical device capable of affixing to or embossing on a tangible record an
37 official stamp; or

1 (b) *An electronic device or process capable of attaching to or logically*
2 *associating with an electronic record an official stamp.*

3 XV. *“State” means a state of the United States, the District of Columbia, Puerto*
4 *Rico, the United States Virgin Islands, or any territory or insular possession subject to the*
5 *jurisdiction of the United States.*

6 8 Uniform Law on Notarial Acts; Notarial Acts. Amend RSA 456-B:2 to read as follows:
7 456-B:2 Notarial Acts.

8 I. In taking an acknowledgment, the notarial officer must determine, either from personal
9 knowledge or from satisfactory evidence, that the ~~[person]~~ *individual* appearing before the officer
10 and making the acknowledgment ~~[is the person whose true]~~ *has the identity claimed and that*
11 *the signature [is] on the instrument is the signature of the individual.*

12 II. In taking a verification upon oath or affirmation, the notarial officer must determine,
13 either from personal knowledge or from satisfactory evidence, that the ~~[person]~~ *individual*
14 appearing before the officer and making the verification ~~[is the person whose true]~~ *has the identity*
15 *claimed and that the signature [is] on the statement verified is the signature of the individual.*

16 III. In witnessing or attesting a signature the notarial officer must determine, either from
17 personal knowledge or from satisfactory evidence, that the ~~[signature is that of the person]~~
18 *individual* appearing before the officer and ~~[named therein]~~ *signing the record has the identity*
19 *claimed.*

20 IV. In certifying or attesting a copy of a ~~[document]~~ *record* or other item *that was copied*,
21 the notarial officer must determine that the proffered copy is a full, true, and accurate transcription
22 or reproduction of ~~[that which was copied]~~ *the record or item.*

23 V. In making or noting a protest of a negotiable instrument the notarial officer must
24 determine the matters set forth in RSA 382-A:3-505.

25 VI. ~~[A notarial officer has satisfactory evidence that a person is the person whose true~~
26 ~~signature is on a document if that person is personally known to the notarial officer, is identified~~
27 ~~upon the oath or affirmation of a credible witness personally known to the notarial officer, or is~~
28 ~~identified on the basis of identification documents.]~~ *A notarial officer may certify that a*
29 *tangible copy of an electronic record is an accurate copy of the electronic record.*

30 VII.(a) For the purposes of this section, but only in the context of executing an estate
31 planning instrument such as a will~~[, trust, or power of attorney]~~ *or estate planning trust*, the
32 requirement that a person appear before a notarial officer at the time of the notarial act is satisfied
33 if the notarial officer is:

34 (1) The attorney, licensed to practice law in New Hampshire and in good standing,
35 who drafted the estate planning instrument;

36 (2) Another attorney licensed to practice law in New Hampshire and in good
37 standing, under the drafting attorney's supervision; or

1 (3) A paralegal under the supervision of either such attorney; and

2 (b) The person and the notarial officer can communicate simultaneously by sight and
3 sound through an electronic device or process at the time of the notarial act.

4 (c) This paragraph shall apply only to notarial acts performed on or after March 23, 2020
5 ~~[and ending on the last day of the state of emergency declared by executive order 2020-04]~~. In
6 addition, a notarial act performed in compliance with emergency order #11 pursuant to executive
7 order 2020-04 from its effective date through the date of its expiration is valid.

8 9 New Sections; Personal Appearance Required; Identification of Individual. Amend RSA 456-B
9 by inserting after section 2 the following new sections:

10 456-B:2-a Personal Appearance Required. If a notarial act relates to a statement made in or a
11 signature executed on a record, the individual making the statement or executing the signature shall
12 appear personally before the notarial officer.

13 456-B:2-b Identification of Individual.

14 I. A notarial officer has personal knowledge of the identity of an individual appearing before
15 the officer if the individual is personally known to the officer through dealings sufficient to provide
16 reasonable certainty that the individual has the identity claimed.

17 II. A notarial officer has satisfactory evidence of the identity of an individual appearing
18 before the officer if the officer can identify the individual:

19 (a) By means of:

20 (1) A passport, driver's license, or government issued nondriver identification card,
21 which is current and unexpired; or

22 (2) Another form of government identification issued to an individual, which is
23 current and unexpired, contains the signature or a photograph of the individual, and is satisfactory
24 to the officer; or

25 (b) By a verification upon oath or affirmation of a credible witness personally appearing
26 before the officer and known to the officer or whom the officer can identify on the basis of a passport,
27 driver's license, or government issued nondriver identification card, which is current and unexpired.

28 III. A notarial officer may require an individual to provide additional information or
29 identification credentials necessary to assure the officer of the identity of the individual.

30 10 Notarial Acts. Amend RSA 456-B:3, III to read as follows:

31 III. The signature, *embossed* official seal or the legible imprint of an *electronic or rubber*
32 official ~~[rubber]~~ stamp stating the name of the notary, and the words "notary public, New
33 Hampshire" and the expiration date of the notary public's commission of a person performing a
34 notarial act or for a justice of the peace the name of the justice and the expiration date of his or her
35 commission typed, printed, or stamped on the document are prima facie evidence that the signature
36 is genuine and that the person holds the designated title.

1 11 New Section; Notarial Act Performed for Remotely Located Individual. Amend RSA 456-B by
2 inserting after section 6 the following new section:

3 456-B:6-a Notarial Act Performed for Remotely Located Individual.

4 I. In this section:

5 (a) "Communication technology" means an electronic device or process that:

6 (1) Allows a notary public and a remotely located individual to communicate with
7 each other simultaneously by sight and sound; and

8 (2) When necessary and consistent with other applicable law, facilitates
9 communication with a remotely located individual who has a vision, hearing, or speech impairment.

10 (b) "Foreign state" means a jurisdiction other than the United States, a state, or a
11 federally recognized Indian tribe.

12 (c) "Identity proofing" means a process or service by which a third person provides a
13 notary public with a means to verify the identity of a remotely located individual by a review of
14 personal information from public or private data sources.

15 (d) "Outside the United States" means a location outside the geographic boundaries of
16 the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular
17 possession, or other location subject to the jurisdiction of the United States.

18 (e) "Remotely located individual" means an individual who is not in the physical
19 presence of the notary public who performs a notarial act under paragraph III.

20 II. A remotely located individual may comply with RSA 456-B:2-a, and any other
21 requirement under the law of this state to appear before or be in the presence of a notary public at
22 the time of a notarial act, by using communication technology to appear before a notary public.

23 III. A notary public located in this state may perform a notarial act using communication
24 technology for a remotely located individual if:

25 (a) The notary public:

26 (1) Has personal knowledge under RSA 456-B:2-b, I, of the identity of the individual;

27 (2) Has satisfactory evidence of the identity of the remotely located individual by
28 oath or affirmation from a credible witness appearing before the notary public under RSA 456-B:2-b,
29 II, or this section; or

30 (3) Has obtained satisfactory evidence of the identity of the remotely located
31 individual by using at least 2 different types of identity proofing;

32 (b) The notary public is able reasonably to confirm that a record before the notary public
33 is the same record in which the remotely located individual made a statement or on which the
34 individual executed a signature;

35 (c) The notary public, or a person acting on behalf of the notary public, creates an audio-
36 visual recording of the performance of the notarial act; and

37 (d) For a remotely located individual located outside the United States:

1 (1) The record:

2 (A) Is to be filed with or relates to a matter before a public official or court,
3 governmental entity, or other entity subject to the jurisdiction of the United States; or

4 (B) Involves property located in the territorial jurisdiction of the United States
5 or involves a transaction substantially connected with the United States; and

6 (2) The act of making the statement or signing the record is not prohibited by the
7 foreign state in which the remotely located individual is located.

8 IV. If a notarial act is performed under this section, the certificate of notarial act required by
9 RSA 456-B:7 and the short-form certificate provided in RSA 456-B:8 must indicate that the notarial
10 act was performed using communication technology.

11 V. A short-form certificate provided in RSA 456-B:8 for a notarial act subject to this section
12 is sufficient if it:

13 (a) Complies with rules adopted under subparagraph VIII(a); or

14 (b) Is in the form provided in RSA 456-B:8 and contains a statement substantially as
15 follows: "This notarial act involved the use of communication technology."

16 VI. A notary public, a guardian, conservator, or agent of a notary public, or a personal
17 representative of a deceased notary public shall retain the audio-visual recording created under
18 subparagraph III(c) or cause the recording to be retained by a repository designated by or on behalf
19 of the person required to retain the recording. Unless a different period is required by rule adopted
20 under subparagraph VIII(d), the recording must be retained for a period of at least 10 years after the
21 recording is made.

22 VII. Before a notary public performs the notary public's initial notarial act under this
23 section, the notary public must notify the secretary of state that the notary public will be performing
24 notarial acts with respect to remotely located individuals and identify the technologies the notary
25 public intends to use. If the secretary of state has established standards under paragraph VIII and
26 RSA 456-B:8-b, IV, for approval of communication technology or identity proofing, the
27 communication technology and identity proofing must conform to the standards.

28 VIII. In addition to adopting rules under RSA 456-B:8-b, IV, the secretary of state may
29 adopt rules under RSA 541-A regarding performance of a notarial act under this section. The rules
30 may:

31 (a) Prescribe the means of performing a notarial act involving a remotely located
32 individual using communication technology;

33 (b) Establish standards for communication technology and identity proofing;

34 (c) Establish requirements or procedures to approve providers of communication
35 technology and the process of identity proofing; and

36 (d) Establish standards and a period for the retention of an audio-visual recording
37 created under subparagraph III(c).

1 IX. Before adopting, amending, or repealing a rule governing performance of a notarial act
2 with respect to a remotely located individual, the secretary of state must consider:

3 (a) The most recent standards regarding the performance of a notarial act with respect
4 to a remotely located individual promulgated by national standard-setting organizations and the
5 recommendations of the National Association of Secretaries of State;

6 (b) Standards, practices, and customs of other jurisdictions that have laws substantially
7 similar to this section; and

8 (c) The views of governmental officials and entities and other interested persons.

9 X. Unless the secretary of state has adopted a rule establishing standards for identity
10 proofing under subparagraph VIII(b), a notary public shall comply with the credential analysis and
11 authentication provisions of the Standards for Remote Online Notarization (Version 1) adopted by
12 The Mortgage Industry Standards Maintenance Organization on August 28, 2019. Compliance with
13 this paragraph satisfies the requirement of using at least 2 different types of identity proofing when
14 performing a notarial act for a remotely located individual under this section.

15 12 New Sections; Official Stamp; Stamping Device; Notification Regarding Performance of
16 Notarial Act on Electronic Record; Selection of Technology; Rules; Journal; Validity of Notarial Acts;
17 Relation to Electronic Signatures in Global and National Commerce Act. Amend RSA 456-B by
18 inserting after section 8 the following new sections:

19 456-B:8-a Official Stamp; Stamping Device.

20 I. The electronic or rubber official stamp of a notary public shall:

21 (a) Include the information required by RSA 455:3; and

22 (b) Be capable of being copied together with the record to which it is affixed or attached
23 or with which it is logically associated.

24 II. A notary public is responsible for the security of the notary public's stamping device and
25 may not allow another individual to use the device to perform a notarial act. On resignation from, or
26 the revocation or expiration of, the notary public's commission, or on the expiration of the date set
27 forth in the stamping device, if any, the notary public shall disable the stamping device by
28 destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it
29 unusable. On the death or adjudication of incompetency of a notary public, the notary public's
30 personal representative or guardian or any other person knowingly in possession of the stamping
31 device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use
32 in a manner that renders it unusable.

33 III. If a notary public's stamping device is lost or stolen, the notary public or the notary
34 public's personal representative or guardian shall notify promptly the secretary of state on
35 discovering that the device is lost or stolen.

36 456-B:8-b Notification Regarding Performance of Notarial Act on Electronic Record; Selection of
37 Technology; Rules.

1 I. A notary public may select one or more tamper-evident technologies to perform notarial
2 acts with respect to electronic records. A person may not require a notary public to perform a
3 notarial act with respect to an electronic record with a technology that the notary public has not
4 selected.

5 II. Before a notary public performs the notary public's initial notarial act with respect to an
6 electronic record, a notary public shall notify the secretary of state that the notary public will be
7 performing notarial acts with respect to electronic records and identify the technology the notary
8 public intends to use. If the secretary of state has established standards for approval of technology,
9 the technology shall conform to the standards. If the technology conforms to the standards, the
10 secretary of state shall approve the use of the technology.

11 III. The secretary of state may adopt rules under RSA 541-A to implement this chapter.
12 Rules adopted regarding the performance of notarial acts with respect to electronic records may not
13 require, or accord greater legal status or effect to, the implementation or application of a specific
14 technology or technical specification.

15 IV. Unless the secretary of state has adopted a rule establishing standards for tamper-
16 evident technology, a notary public shall attach or logically associate the notary public's official
17 stamp to an electronic record by use of a digital certificate complying with the X.509 standard
18 adopted by the International Telecommunication Union or a similar industry-standard technology.

19 456-B:8-c Journal.

20 I. A notary public shall maintain a journal in which the notary public chronicles all notarial
21 acts the notary public performs with respect to a remotely located individual under RSA 456-B:6-a.
22 The notary public shall retain the journal for 10 years after the performance of the last notarial act
23 chronicled in the journal.

24 II. A journal may be created on a tangible medium or in an electronic format. A notary
25 public shall maintain only one journal at a time to chronicle all notarial acts performed regarding
26 tangible records and one or more journals to chronicle all notarial acts performed regarding
27 electronic records. If a journal is maintained on a tangible medium, it shall be a permanent, bound
28 register with numbered pages. If the journal is maintained in an electronic format, it shall be in a
29 permanent, tamper-evident electronic format complying with the rules of the secretary of state.

30 III. An entry in a journal shall be made contemporaneously with performance of the notarial
31 act and contain the following information:

- 32 (a) The date and time of the notarial act;
- 33 (b) A description of the record, if any, and type of notarial act;
- 34 (c) The full name and address of each individual for whom the notarial act is performed;
- 35 (d) If identity of the individual is based on personal knowledge, a statement to that
36 effect;

1 (e) If identity of the individual is based on satisfactory evidence, a brief description of
2 the method of identification and the identification credential presented, if any, including the date of
3 issuance and expiration of the identification credential; and

4 (f) The fee, if any, charged by the notary public.

5 IV. If the journal of a notary public is lost, the notary public loses access to the journal, or
6 the journal is stolen, the notary public promptly shall notify the secretary of state upon discovering
7 the journal is lost, access is lost, or the journal is stolen.

8 V. On resignation from, or the revocation or suspension of, the commission of a notary
9 public, the notary public shall retain the journal in accordance with paragraph I and inform the
10 secretary of state where the journal is located.

11 VI. Instead of retaining a journal as provided in paragraphs I and V, a current or former
12 notary public may transmit the journal to a repository approved by the secretary of state.

13 VII. Upon the death or adjudication of incompetency of a current or former notary public,
14 the personal representative or guardian of the notary public shall retain the journal as provided in
15 paragraphs I or V or transmit the journal to a repository approved by the secretary of state.

16 456-B:8-d Validity of Notarial Acts. The failure of a notarial officer to perform a duty or meet a
17 requirement specified in this chapter or RSA 455 does not invalidate a notarial act performed by the
18 notarial officer. The validity of a notarial act under this chapter or RSA 455 does not prevent an
19 aggrieved person from seeking to invalidate the record or transaction that is the subject of the
20 notarial act or from seeking other remedies based on law of this state other than this chapter or law
21 of the United States. This section does not validate a purported notarial act performed by an
22 individual who does not have the authority to perform notarial acts.

23 456-B:8-e Relation to Electronic Signatures in Global and National Commerce Act. This chapter
24 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
25 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15
26 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
27 103(b) of that act, 15 U.S.C. section 7003(b).

28 13 New Paragraph; Short Forms. Amend RSA 456-B:8 by inserting after paragraph V the
29 following new paragraph:

30 VI. For certifying a tangible copy of an electronic record:

31 State of _____

32 (County) of _____

33 I certify that this record is a true and correct copy of an electronic record printed by me or under my
34 supervision.

35 Dated _____

36 _____

37 (Signature of notarial officer)

1 (Seal, if any)

2 Title (and Rank)

3 [My commission expires: _____]

4 14 New Chapter; Uniform Real Property Electronic Recording Act. Amend RSA by inserting
5 after chapter 478 the following new chapter:

6 CHAPTER 478-A

7 UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

8 478-A:1 Short Title. This chapter may be cited as the Uniform Real Property Electronic
9 Recording Act.

10 478-A:2 Definitions. In this chapter:

11 I. "Document" means information that is:

12 (a) Inscribed on a tangible medium or that is stored in an electronic or other medium
13 and is retrievable in perceivable form; and

14 (b) Eligible to be recorded in the land records maintained by the register of deeds.

15 II. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
16 optical, electromagnetic, or similar capabilities.

17 III. "Electronic document" means a document that is received by the register of deeds in an
18 electronic form.

19 IV. "Electronic signature" means an electronic sound, symbol, or process attached to or
20 logically associated with a document and executed or adopted by a person with the intent to sign the
21 document.

22 V. "Person" means an individual, corporation, business trust, estate, trust, partnership,
23 limited liability company, association, joint venture, public corporation, government, or
24 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

25 VI. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
26 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
27 United States.

28 478-A:3 Validity of Electronic Documents; Recordation of Electronic Documents in Tangible
29 Form.

30 I. If a law requires, as a condition for recording, that a document be an original, be on paper
31 or another tangible medium, or be in writing, the requirement is satisfied by an electronic document
32 satisfying this section.

33 II. If a law requires, as a condition for recording, that a document be signed, the
34 requirement is satisfied by an electronic signature.

35 III. A requirement that a document or a signature associated with a document be notarized,
36 acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the
37 person authorized to perform that act, and all other information required to be included, is attached

1 to or logically associated with the document or signature. A physical or electronic image of a stamp,
2 impression, or seal need not accompany an electronic signature.

3 IV. A register of deeds shall accept for recording a tangible copy of an electronic document
4 containing a notarial certificate as satisfying any requirement that a document accepted for
5 recording be an original, if the notarial officer executing the notarial certificate certifies that the
6 tangible copy is an accurate copy of the electronic document. A notarial certificate in the form
7 provided in RSA 456-B:8, VI, satisfies the requirement of this paragraph.

8 478-A:4 Recording of Documents.

9 I. In this section, "paper document" means a document that is received by the register of
10 deeds in a form that is not electronic.

11 II. A register of deeds:

12 (a) May receive, index, store, archive, and transmit electronic documents;

13 (b) May provide for access to, and for search and retrieval of, documents and information
14 by electronic means;

15 (c) Shall, if accepting electronic documents for recording, continue to accept paper
16 documents as authorized by state law and shall place entries for both types of documents in the
17 same index;

18 (d) May convert paper documents accepted for recording into electronic form;

19 (e) May convert into electronic form information recorded before the register of deeds
20 began to record electronic documents;

21 (f) May accept electronically any fee or tax that the register of deeds is authorized to
22 collect; and

23 (g) May agree with other officials of a state or a political subdivision thereof, or of the
24 United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals
25 and conditions precedent to recording and the electronic payment of fees and taxes.

26 478-A:5 Uniformity of Application and Construction. In applying and construing this uniform
27 act, consideration shall be given to the need to promote uniformity of the law with respect to its
28 subject matter among states that enact it.

29 478-A:6 Relation to Electronic Signatures in Global and National Commerce Act. This chapter
30 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
31 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15
32 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
33 103(b) of that act, 15 U.S.C. section 7003(b).

34 15 Wills; Requirements. Amend RSA 551:2, III(b) to read as follows:

35 (b) Nothing in this paragraph shall be deemed to allow an electronic will or codicil. This
36 paragraph shall apply only to wills executed on or after March 23, 2020 [~~and ending on the last day~~
37 ~~of the state of emergency declared by executive order 2020-04~~].

1 16 Incarceration Under a Suspended Sentence. Amend the introductory paragraph of RSA
2 651:20, I(a) to read as follows:

3 (a) Any person sentenced to state prison for a minimum term of 6 years or more shall
4 not bring a petition to suspend sentence until such person [~~has served at least 4 years or 2/3 of his~~
5 ~~minimum sentence, whichever is greater,~~] *is within 12 months of serving 2/3 of the minimum*
6 *sentence*, and not more frequently than every 3 years thereafter. Any person sentenced to state
7 prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until
8 such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by
9 the sentencing court. For the purposes of this subparagraph:

10 17 New Chapter; Structured Settlement Protection. Amend RSA by inserting after chapter 408-
11 F the following new chapter:

12 CHAPTER 408-G

13 STRUCTURED SETTLEMENT PROTECTION

14 408-G:1 Definitions. In this chapter:

15 I. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments
16 under a structured settlement.

17 II. "Assignee" means a party acquiring or proposing to acquire structured settlement
18 payment rights from a transferee of such rights.

19 III. "Dependents" include a payee's spouse and minor children and all other persons for
20 whom the payee is legally obligated to provide support, including alimony.

21 IV. "Discounted present value" means the present value of future payments determined by
22 discounting such payments to the present using the most recently published applicable federal rate
23 for determining the present value of an annuity, as issued by the United States Internal Revenue
24 Service.

25 V. "Gross advance amount" means the sum payable to the payee or for the payee's account
26 as consideration for a transfer of structured settlement payment rights before any reductions for
27 transfer expenses or other deductions to be made from such consideration.

28 VI. "Independent professional advice" means advice of an attorney, certified public
29 accountant, actuary or other licensed professional adviser.

30 VII. "Interested parties" means, with respect to any structured settlement, the payee, any
31 beneficiary irrevocably designated under the annuity contract to receive payments following the
32 payee's death, the annuity issuer, the structured settlement obligor, and any other party to such
33 structured settlement that has continuing rights or obligations to receive or make payments under
34 such structured settlement.

35 VIII. "Net advance amount" means the gross advance amount less the aggregate amount of
36 the actual and estimated transfer expenses required to be disclosed pursuant to this chapter.

1 IX. "Payee" means an individual who is receiving tax free payments under a structured
2 settlement and proposes to make a transfer of payment rights thereunder.

3 X. "Periodic payments" includes both recurring payments and scheduled future lump sum
4 payments.

5 XI. "Qualified assignment agreement" means an agreement providing for a qualified
6 assignment within the meaning of United States Internal Revenue Code, 26 U.S.C. section 130, as
7 amended.

8 XII. "Settled claim" means the original tort claim resolved by a structured settlement.

9 XIII. "Structured settlement" means an arrangement for periodic payment of damages for
10 personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

11 XIV. "Structured settlement agreement" means the agreement, judgment, stipulation, or
12 release embodying the terms of a structured settlement.

13 XV. "Structured settlement obligor" means, with respect to any structured settlement, the
14 party that has the continuing obligation to make periodic payments to the payee under a structured
15 settlement agreement or a qualified assignment agreement.

16 XVI. "Structured settlement payment rights" means rights to receive periodic payments
17 under a structured settlement, whether from the structured settlement obligor or the annuity issuer,
18 where:

19 (a) The payee resides in this state; or

20 (b) The structured settlement agreement was approved by a court in this state.

21 XVII. "Terms of the structured settlement" include, with respect to any structured
22 settlement, the terms of the structured settlement agreement, the annuity contract, any qualified
23 assignment agreement and any order or other approval of any court or other government authority
24 that authorized or approved such structured settlement;

25 XVIII. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or
26 encumbrance of structured settlement payment rights made by a payee for consideration; provided
27 that the term "transfer" shall not include the creation or perfection of a security interest in
28 structured settlement payment rights under a blanket security agreement entered into with an
29 insured depository institution, in the absence of any action to redirect the structured settlement
30 payments to such insured depository institution, or an agent or successor in interest thereof, or
31 otherwise to enforce such blanket security interest against the structured settlement payment
32 rights.

33 XIX. "Transfer agreement" means the agreement providing for a transfer of structured
34 settlement payment rights.

35 XX. "Transfer expenses" means all expenses of a transfer that are required under the
36 transfer agreement to be paid by the payee or deducted from the gross advance amount, including,
37 without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and

1 lien search fees, finders' fees, commissions, and other payments to a broker or other
2 intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the
3 payee's account from the proceeds of a transfer.

4 XXI. "Transferee" means a party acquiring or proposing to acquire structured settlement
5 payment rights through a transfer.

6 408-G:2 Required Disclosure to Payee. Not less than 3 days prior to the date on which a payee
7 signs a transfer agreement, the transferee shall provide to the payee a separate disclosure
8 statement, in bold type no smaller than 14 points, setting forth the following:

9 I. The amounts and due dates of the structured settlement payments to be transferred.

10 II. The aggregate amount of such payments.

11 III. The discounted present value of the payments to be transferred, which shall be
12 identified as the "calculation of current value of the transferred structured settlement payments
13 under federal standards for valuing annuities and the amount of the Applicable Federal Rate used in
14 calculating such discounted present value.

15 IV. The gross advance amount.

16 V. An itemized listing of all applicable transfer expenses, other than attorneys' fees and
17 related disbursements payable in connection with the transferee's application for approval of the
18 transfer, and the transferee's best estimate of the amount of any such fees and disbursements.

19 VI. The effective annual interest rate, which must be disclosed in a statement in the
20 following form: "On the basis of the net amount that you will receive from us and the amounts and
21 timing of the structured settlement payments that you are transferring to us, you will, in effect be
22 paying interest to us at a rate of _____ percent per year."

23 VII. The net advance amount.

24 VIII. The amount of any penalties or liquidated damages payable by the payee in the event
25 of any breach of the transfer agreement by the payee.

26 IX. That the payee has the right to cancel the transfer agreement, without penalty or
27 further obligation, not later than the third business day after the date the agreement is signed by
28 the payee.

29 X. That the payee has the right to seek and receive independent professional advice
30 regarding the proposed transfer and should consider doing so before agreeing to transfer any
31 structured settlement payment rights.

32 408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect
33 transfer of structured settlement payment rights shall be effective and no structured settlement
34 obligor or annuity issuer shall be required to make any payment directly or indirectly to any
35 transferee or assignee of structured settlement payment rights unless the transfer has been
36 approved in advance in a final court order based on express findings by such court that:

1 I. The transfer is in the best interest of the payee, taking into account the welfare and
2 support of the payee's dependents; and

3 II. The payee has been advised in writing by the transferee to seek independent professional
4 advice regarding the transfer and has either received such advice or knowingly waived in writing the
5 opportunity to seek and receive such advice; and

6 III. The transfer does not contravene any applicable statute or the order of any court or
7 other government authority.

8 408-G:4 Effects of Transfer of Structured Settlement Payment Rights. Following a transfer of
9 structured settlement payment rights under this chapter:

10 I. The structured settlement obligor and the annuity issuer may rely on the court order
11 approving the transfer in redirecting periodic payments to an assignee or transferee in accordance
12 with the order approving the transfer and shall, as to all parties except the transferee or an assignee
13 designated by the transferee, be discharged and released from any and all liability for the redirected
14 payments; and such discharge and release shall not be affected by the failure of any party to the
15 transfer to comply with this chapter or with the court order approving the transfer;

16 II. The transferee shall be liable to the structured settlement obligor and the annuity issuer:
17 (a) If the transfer contravenes the terms of the structured settlement, for any taxes
18 incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

19 (b) For any other liabilities or costs, including reasonable costs and attorneys' fees,
20 arising from compliance by the structured settlement obligor or annuity issuer with the court order
21 approving the transfer or from the failure of any party to the transfer to comply with this chapter;

22 III. Neither the annuity issuer nor the structured settlement obligor may be required to
23 divide any periodic payment between the payee and any transferee or assignee or between 2 or more
24 transferees or assignees; and

25 IV. Any further transfer of structured settlement payment rights by the payee may be made
26 only after compliance with all of the requirements of this chapter.

27 408-G:5 Procedure For Approval of Transfers.

28 I. An application under this chapter for approval of a transfer of structured settlement
29 payment rights shall be made by the transferee and shall be brought in the superior court in the
30 county in which the payee resides, except that if the payee does not reside in this state, the
31 application may be brought in the court in this state that approved the structured settlement
32 agreement.

33 II. A timely hearing shall be held on an application for approval of a transfer of structured
34 settlement payment rights. The payee shall appear in person at the hearing unless the court
35 determines that good cause exists to excuse the payee from appearing in person.

36 III. Not less than 20 days prior to the scheduled hearing on any application for approval of a
37 transfer of structured settlement payment rights under RSA 408-G:3, the transferee shall file with

1 the court and serve on all interested parties, including a parent or other guardian or authorized legal
2 representative of any interested party who is not legally competent, a notice of the proposed transfer
3 and the application for its authorization, including with such notice:

4 (a) A copy of the transferee's application.

5 (b) A copy of the transfer agreement.

6 (c) A copy of the disclosure statement required under RSA 408-G:2.

7 (d) The payee's name, age, and county of residence and the number and ages of each of
8 the payee's dependents.

9 (e) A summary of:

10 (1) Any prior transfers by the payee to the transferee or an affiliate, or through the
11 transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer
12 agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the
13 transferee or an affiliate, applications for approval of which were denied within the 2 years
14 preceding the date of the transfer agreement; and

15 (2) Any prior transfers by the payee to any person or entity other than the transferee
16 or an affiliate or an assignee of the transferee or an affiliate within the 3 years preceding the date of
17 the transfer agreement and any prior proposed transfers by the payee to any person or entity other
18 than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval
19 of which were denied within the one year preceding the date of the current transfer agreement, to
20 the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee
21 in writing or otherwise are actually known to the transferee.

22 (f) Notification that any interested party is entitled to support, oppose or otherwise
23 respond to the transferee's application, either in person or by counsel, by submitting written
24 comments to the court or by participating in the hearing.

25 (g) Notification of the time and place of the hearing and notification of the manner in
26 which and the date by which written responses to the application must be filed, which date shall be
27 not less than 5 days prior to the hearing, in order to be considered by the court.

28 408-G:6 General Provisions; Construction.

29 I. The provisions of this chapter shall not be waived by any payee.

30 II. Any transfer agreement entered into on or after the effective date of this chapter by a
31 payee who resides in this state shall provide that disputes under such transfer agreement, including
32 any claim that the payee has breached the agreement, shall be determined in and under the laws of
33 this state. No such transfer agreement shall authorize the transferee or any other party to confess
34 judgment or consent to entry of judgment against the payee.

35 III. No transfer of structured settlement payment rights shall extend to any payments that
36 are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the
37 transferee has established and has agreed to maintain procedures reasonably satisfactory to the

1 annuity issuer and the structured settlement obligor for periodically confirming the payee's survival,
2 and giving the annuity issuer and the structured settlement obligor prompt written notice in the
3 event of the payee's death.

4 IV. If the payee cancels a transfer agreement, or if the transfer agreement otherwise
5 terminates, after an application for approval of a transfer of structured settlement payment rights
6 has been filed and before it has been granted or denied, the transferee shall promptly request
7 dismissal of the application.

8 V. No payee who proposes to make a transfer of structured settlement payment rights shall
9 incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the
10 proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of
11 this chapter.

12 VI. Nothing contained in this chapter shall be construed to authorize any transfer of
13 structured settlement payment rights in contravention of any applicable law or to imply that any
14 transfer under a transfer agreement entered into prior to the effective date of this chapter is valid or
15 invalid.

16 VII. Compliance with the requirements set forth in RSA 408-G:2 and fulfillment of the
17 conditions set forth in RSA 408-G:3 shall be solely the responsibility of the transferee in any transfer
18 of structured settlement payment rights, and neither the structured settlement obligor nor the
19 annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with
20 such requirements or failure to fulfill such conditions.

21 18. Applicability. RSA 408-G as inserted by section 17 of this act shall apply to any transfer of
22 structured settlement payment rights under a transfer agreement entered into on or after the 30th
23 day after the effective date of section 17 of this act.

24 19 New Chapter; New Hampshire Collaborative Law Act. Amend RSA by inserting after
25 chapter 490-I the following new chapter:

26 CHAPTER 490-J

27 NEW HAMPSHIRE COLLABORATIVE LAW ACT

28 490-J:1 Short Title. This chapter may be cited as the New Hampshire collaborative law act.

29 490-J:2 Definitions. In this chapter:

30 I. "Collaborative law communication" means a statement, whether oral or in a document,
31 that:

32 (a) Is made as part of a collaborative law process;

33 (b) Occurs after the parties sign a collaborative law participation agreement and before
34 the collaborative law process is concluded; and

35 (c) Is not otherwise privileged pursuant to the attorney client relationship.

36 II. "Collaborative law participation agreement" means an agreement by persons to
37 participate in a collaborative law process.

1 III. - "Collaborative law process" means a procedure intended to resolve a collaborative
2 matter without intervention by a court in which persons:

- 3 (a) Sign a collaborative law participation agreement; and
4 (b) Are represented by collaborative lawyers.

5 IV. "Collaborative lawyer" means a lawyer who represents a party in a collaborative law
6 process.

7 V. "Collaborative matter" means an issue for resolution which is described in a collaborative
8 law participation agreement and arises under the law of this state, including, but not limited to:

- 9 (a) Marriage, divorce, annulment, legal separation, and property distribution;
10 (b) Parental rights and responsibilities;
11 (c) Grandparent rights;
12 (d) Alimony, maintenance, and child support;
13 (e) Parentage;
14 (f) Premarital and post-marital agreements; and
15 (g) Any modifications of any orders arising out of the matters set forth in subparagraphs

16 (a)-(f).

17 VI. "Court" means a body acting in an adjudicative capacity which has jurisdiction to render
18 a decision affecting a party's interests in a matter.

19 VII. "Document" means information that is inscribed on a tangible medium or that is stored
20 in an electronic or other medium and is retrievable in perceivable form.

21 VIII. "Law firm" means lawyers who practice law together in a partnership, professional
22 corporation, sole proprietorship, limited liability company, association or legal services organization.

23 IX. "Neutral participant" means a person, other than a party and a party's collaborative
24 lawyer, that participates in a collaborative law process.

25 X. "Party" means a person that signs a collaborative law participation agreement and whose
26 consent is necessary to resolve a collaborative matter.

27 XI. "Proceeding" means a judicial or other adjudicative process.

28 XII. "Prospective party" means a person who discusses with a prospective collaborative
29 lawyer the possibility of signing a collaborative law participation agreement.

30 XIII. "Related to a collaborative matter" means involving the same parties, transaction or
31 occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

32 XIV. "Sign" means with present intent to authenticate or adopt a document by electronic or
33 non-electronic signature.

34 490-J:3 Applicability. This chapter applies to a collaborative law participation agreement that
35 meets the requirements of RSA 490-J:4 signed on or after the effective date of the chapter.

36 490-J:4 Collaborative Law Participation Agreement; Requirements.

37 I. A collaborative law participation agreement shall:

- 1 (a) Be in writing;
- 2 (b) Be signed by the parties;
- 3 (c) State the parties' intention to resolve a collaborative matter through a collaborative
4 law process under this chapter;
- 5 (d) Describe the nature and scope of the matter;
- 6 (e) Contain a statement by each collaborative lawyer confirming the lawyer's
7 representation of a party in the collaborative law process; and
- 8 (f) Disqualify the collaborative lawyer from representing a party in a case filed with a
9 court involving one or more of the same parties in the same or a related matter, except for the filing
10 needed to seek the court's approval of an agreement reached in the collaborative case or in pending
11 cases while stayed pursuant to RSA 490-J:6, I.

12 II. Parties may agree to include in a collaborative law participation agreement additional
13 provisions not inconsistent with this chapter or current law.

14 490-J:5 Beginning and Concluding Collaborative Law Process.

15 I. A collaborative law process begins when the parties sign a collaborative law participation
16 agreement.

17 II. A court shall not order a party to participate in a collaborative law process over that
18 party's objection.

19 III. A collaborative law process is concluded by a:

- 20 (a) Resolution of a collaborative matter as evidenced by a signed agreement;
- 21 (b) Resolution of a part of the collaborative matter, evidenced by a signed agreement, in
22 which the parties agree that the remaining parts of the matter will not be resolved in the process; or
- 23 (c) Termination of the process.

24 IV. A collaborative law process terminates:

- 25 (a) When a party gives written notice to other parties that the process is ended.
- 26 (b) Except as otherwise provided by paragraph VII, when a party discharges a
27 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

28 (c) When a party:

29 (1) Files a petition or other pleading related to a collaborative matter without the
30 agreement of all parties; or

31 (2) In a pending proceeding related to the matter:

32 (A) Initiates a pleading, motion, order to show cause, or request for a conference
33 with the court; or

34 (B) Requests that the proceeding be put on the court's active docket; or

35 (C) The matter is no longer stayed.

36 V. A party's collaborative lawyer shall give prompt written notice to all other parties if the
37 lawyer has been discharged or withdraws as counsel.

1 VI. A party may terminate a collaborative law process with or without cause.

2 VII. Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative
3 law process continues, if within 30 days or within a time agreed to by the team in writing:

4 (a) The unrepresented party engages a successor collaborative lawyer; and

5 (b) The parties consent in writing to continue the process by reaffirming the
6 collaborative law participation agreement, and the successor collaborative lawyer confirms the
7 lawyer's representation of a party in the collaborative process.

8 VIII. A collaborative law process shall not conclude if the parties jointly request the court to
9 approve a settlement of the collaborative matter or any part thereof.

10 IX. A collaborative law participation agreement may provide additional methods of
11 concluding a collaborative law process.

12 490-J:6 Cases Already Filed in Court.

13 I. Parties who have already initiated a proceeding by filing a petition with the court may
14 jointly request the court to stay future action in the matter so the parties may engage in a
15 collaborative process for resolution of the matter. Before signing a participation agreement, the
16 parties shall file an assented to motion to stay the proceedings with the court. The case shall not
17 proceed with the collaborative process unless the stay is granted by the court. An extension of the
18 stay may be requested of the court by written agreement to continue the collaborative process.

19 II. Either party can initiate a filing with the court to remove the stay and proceed with a
20 litigated solution in the matter at any time.

21 III. Any unilateral filing with the court terminates the collaborative case. The case shall be
22 returned to the active docket.

23 IV. A court shall provide parties notice and an opportunity to be heard before dismissing a
24 case in which a notice of collaborative process is filed.

25 490-J:7 Emergency Order. During a collaborative law process, a court may issue emergency
26 orders to protect the health, safety, welfare, or interest of a party; however, filing for such an order
27 terminates the pending collaborative law process. Nothing in this section prohibits parties from
28 exploring a return to the collaborative process after the issues that gave rise to the emergency order
29 have been resolved and process outlined in RSA 490-J:13, III have been followed.

30 490-J:8 Approval of Agreement by Court.

31 I. The terms of a collaborative law participation agreement shall be considered a binding
32 contract and shall be enforceable by the trial court.

33 II. Any agreements signed by the parties during the collaborative process are binding upon
34 the parties in the same manner as they are in other family law proceedings. The trial court fully
35 retains all rights and duties to ensure that the agreements reached are fair and reasonable to all
36 before being approved by the court.

1 III. Agreements reached during the collaborative process which are not signed by all parties
2 shall not be binding and shall be considered part of settlement discussions only.

3 490-J:9 Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

4 I. Except as otherwise provided in paragraph III, a collaborative lawyer is disqualified from
5 appearing before a court to represent a party in a proceeding related to a collaborative matter,
6 including related matters filed by third parties.

7 II. Except as otherwise provided in paragraph III, RSA 490-J:10, and RSA 490-J:11, a
8 lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing
9 before a court to represent a party in a proceeding related to a collaborative matter if the
10 collaborative lawyer is disqualified from doing so under paragraph I.

11 III. A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is
12 associated may represent a party:

13 (a) To ask a court to approve an agreement resulting from the collaborative law process;

14 or

15 (b) To seek or defend an emergency order to protect the health, safety, welfare, or
16 interest of a party, a minor child, family or household member as defined in RSA 173-B:1, X, if a
17 successor lawyer is not immediately available to represent that party and only until the person is
18 represented by a successor lawyer or reasonable measures are taken to protect the health, safety,
19 welfare, or interest of the person.

20 490-J:10 Disclosure of Information. During the collaborative law process, on the request of
21 another party, a party shall make timely, full, candid, and informal disclosure of information related
22 to a collaborative matter without formal discovery. A party also shall update promptly previously
23 disclosed information that has materially changed. The parties may define the scope of disclosure
24 during the collaborative law process.

25 490-J:11 Standards of Professional Responsibility and Mandatory Reporting Not Affected. This
26 chapter does not affect:

27 I. The professional responsibility obligations and standards applicable to a lawyer or other
28 licensed professional; or

29 II. The obligation of a person to report abuse or neglect, abandonment, or exploitation of an
30 adult or child under New Hampshire law.

31 490-J:12 Appropriateness of Collaborative Law Process. Before a prospective party signs a
32 collaborative law participation agreement, a prospective collaborative lawyer shall:

33 I. Assess with the prospective party factors the lawyer reasonably believes relate to whether
34 a collaborative law process is appropriate for the prospective party's matter;

35 II. Provide the prospective party with information that the lawyer reasonably believes is
36 sufficient for the party to make an informed decision about the material benefits and risks of a
37 collaborative law process as compared to the material benefits and risks of other reasonably

1 available alternatives for resolving the proposed collaborative matter, such as litigation, mediation,
2 arbitration, or neutral evaluation; and

3 III. Advise the prospective party that:

4 (a) After signing an agreement if a party initiates a proceeding or seeks court
5 intervention in a pending proceeding related to the collaborative matter, the collaborative law
6 process terminates;

7 (b) Participation in a collaborative law process is voluntary and any party has the right
8 to terminate unilaterally a collaborative law process with or without cause; and

9 (c) The collaborative lawyer and any lawyer in a law firm with which the collaborative
10 lawyer is associated may not appear before a court to represent a party in a proceeding related to the
11 collaborative matter, except as authorized by RSA 490-J:9, III.

12 490-J:13 Domestic Violence.

13 I. Before a prospective party signs a collaborative law participation agreement, a prospective
14 collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a
15 coercive or violent relationship with another prospective party.

16 II. Throughout the collaborative law process, a collaborative lawyer reasonably and
17 continuously shall assess whether the party the collaborative lawyer represents has a history of a
18 coercive or violent relationship with another party.

19 III. If a collaborative lawyer reasonably believes that the party the lawyer represents or the
20 prospective party who consults the lawyer has a history of a coercive or violent relationship with
21 another party or prospective party, the lawyer may not begin or continue the collaborative law
22 process unless both parties, after individual consultation with their attorneys, represent to their
23 individual attorney that he/she has no current concern for his/her safety or coercion and both wish to
24 proceed with the collaborative process.

25 490-J:14 Confidentiality of Collaborative Law Communication. A collaborative law
26 communication is confidential except as agreed by the parties in a signed document, or under the
27 circumstances set forth in RSA 490-J:15, IV.

28 490-J:15 Privilege Against Disclosure for Collaborative Law Communication.

29 I. Except as set forth in this section, a collaborative law communication is privileged, is not
30 subject to discovery, and is not admissible into evidence. Accordingly, a party or a party's lawyer or
31 a neutral participant may refuse to disclose, and may prevent any other person from disclosing, a
32 collaborative law communication.

33 II. Evidence or information that is otherwise admissible or subject to discovery does not
34 become inadmissible or protected from discovery solely because of its disclosure or use in a
35 collaborative law process.

36 III. Waiver of Privilege.

1 (a) The privilege may be waived wholly or in part in a document or orally during a
2 proceeding if it is expressly waived by all parties and, in the case of the privilege of a neutral
3 participant, it is also expressly waived by the neutral participant.

4 (b) A party who discloses a collaborative law communication for which the privilege has
5 not been waived under subparagraph (a) shall be deemed to have waived the privilege, but only to
6 the extent necessary to permit any other party to respond to the unauthorized disclosure.

7 IV. There is no privilege under this chapter for a collaborative law communication that is:

8 (a) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

9 (b) In an agreement resulting from the collaborative law process, evidenced by a
10 document signed by all parties to the agreement;

11 (c) Sought or offered to prove or disprove a claim or complaint of professional misconduct
12 or malpractice arising from or related to a collaborative law process; or

13 (d) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of
14 a child or adult.

15 V. There is no privilege under this chapter if a court finds, after a hearing in camera, that
16 the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise
17 available, the need for the evidence substantially outweighs the interest in protecting the privilege
18 and the collaborative law communication is sought or offered in:

19 (a) A court proceeding involving a felony; or

20 (b) A proceeding seeking rescission or clarification of an agreement arising out of the
21 collaborative law process or in which a defense to avoid liability on the contract is asserted.

22 VI. If a collaborative law communication is subject to an exception under paragraph IV or V,
23 only the part of the communication necessary for the application of the exception may be disclosed or
24 admitted.

25 VII. Disclosure or admission of evidence excepted from the privilege under paragraph IV or
26 V does not make the evidence or any other collaborative law communication discoverable or
27 admissible for any other purpose.

28 490-J:16 Authority of Court in Case of Noncompliance. Notwithstanding a failure to comply
29 with RSA 490-J:4, RSA 490-J:12, or RSA 490-J:13, a court may enforce an agreement, apply the
30 disqualification provisions of RSA 490-J:9, or apply a privilege under RSA 490-J:15 when the court
31 concludes that the parties intended to enter into a collaborative law participation agreement and to
32 participate in a collaborative law process. Such a conclusion shall be based upon the following
33 findings:

34 I. The parties signed a document indicating an intent to enter into a collaborative law
35 participation agreement;

36 II. The parties reasonably believed they were participating in a collaborative law process;
37 and

1 III. The interests of justice require finding that the parties were participating in
2 collaborative law process.

3 20 Administrators and Their Appointment; Subdivision Heading Amended. Amend the
4 subdivision heading preceding RSA 553:32 to read as follows:

5 ~~[Administration of Small Estates]~~ *Waiver of Administration*

6 21 Waiver of Administration. RSA 553:32, I-II are repealed and reenacted to read as follows:

7 I.(a) Notwithstanding any provision of law, there shall be no requirement for an inventory of
8 the estate, no requirement for a bond, and no requirement for an accounting for assets in any of the
9 following circumstances:

10 (1) Whenever a decedent dies testate and an individual is named in the will as the
11 sole beneficiary of the decedent's estate and is appointed to serve as administrator.

12 (2) Whenever a decedent dies testate and all individuals named in the will as
13 beneficiaries of the decedent's estate are appointed to serve as co-administrators or any appropriate
14 person is appointed to serve as administrator with the assent of all such beneficiaries.

15 (3) Whenever a decedent dies testate, a trust is named in the will as the sole
16 beneficiary of the estate, and any appropriate person, including one or more trustees of such trust, is
17 appointed to serve as administrator with the assent of all such trustees.

18 (4) Whenever a decedent dies intestate and an individual, including a surviving
19 spouse, is the sole heir of the decedent's estate and is appointed to serve as administrator.

20 (5) Whenever a decedent dies intestate and all heirs of the decedent's estate,
21 including a surviving spouse, if any, are appointed to serve as co-administrators or any appropriate
22 person is appointed to serve as administrator with the assent of all such heirs.

23 (6) Whenever, in the discretion of the court, the court determines it is appropriate
24 under the circumstances.

25 (b) Administration of the estate shall be completed upon the administrator's filing, and
26 the probate court's approval, of an affidavit of administration. Such filing shall occur not less than 6
27 months and no more than one year after the date of appointment of the administrator. Upon motion
28 of the administrator, for good cause shown, the court may extend the one year deadline for filing the
29 affidavit of administration. The affidavit of administration shall state that to the best of the
30 knowledge and belief of the administrator there are no outstanding debts or obligations attributable
31 to the decedent's estate and shall list all real estate owned by the decedent at the time of death,
32 including the location, book, and page.

33 (c) If the administrator fails to file the affidavit of administration within the time
34 prescribed in subparagraph (b), including any extensions granted, the court may take appropriate
35 action in the discretion of the court, including, but not limited to, issuing a notice of default, a show
36 cause order, or requiring full administration of the estate.

1 II.(a) Any interested person may petition for a full administration of the estate at any time
2 from the original grant of administration to the filing of the affidavit of administration, and such
3 petition may be granted by the probate court for good cause shown.

4 (b) Where full administration is granted subsequent to an original grant of
5 administration under this section, the deadlines for filing an inventory in RSA 554:1, RSA 554:26-a,
6 and RSA 553:13, I(a), and for filing an account of administration in RSA 554:26-a, shall run from the
7 date of the grant of full administration. All other deadlines, including but not limited to the deadline
8 to request proof in solemn form in RSA 552:7, the notice to legatees and heirs at law in RSA 552:15,
9 the publication of notice of appointment in RSA 553:16, the requirement that an estate be open for at
10 least 6 months before a motion for summary administration may be filed in RSA 553:33, II, for
11 petitioning to distribute assets of an insolvent estate in RSA 554:19-b, the deadline for waiver or
12 release of the will and homestead rights and election of statutory rights by a surviving spouse in
13 RSA 560:10 and RSA 560:14, and deadlines relating to suits in RSA 556, shall run from the original
14 grant of administration.

15 22 Distribution Upon Intestacy. Amend RSA 561:1, I(e) to read as follows:

16 (e) If there are surviving issue of the decedent one or more of whom are not issue of the
17 surviving spouse, the first \$100,000, plus 1/2 of the *balance of the* intestate estate.

18 23 Uniform Power of Attorney Act; Agent's Authority and Agent's Acceptance or Declination.
19 Amend RSA 564-E:113(a) to read as follows:

20 (a) A person designated as agent under a general power of attorney shall have no
21 authority to act as agent unless, at any time prior to exercising the power granted under the general
22 power of attorney and not necessarily at the time the general power of attorney is signed by the
23 principal, the person has signed (other than by electronic signature) and affixed to the general power
24 of attorney an acknowledgment in substantially the following form:

25 I, _____, have read the attached power of attorney and am the person identified
26 as the agent for the principal. I hereby acknowledge that when I act as agent, I am given power
27 under the power of attorney to make decisions about money, property, or both belonging to the
28 principal, and to spend the principal's money, property, or both on the principal's behalf, in
29 accordance with the terms of the power of attorney. When acting as agent, I have duties (called
30 "fiduciary duties") to act in *accordance with the principal's reasonable expectations to the*
31 *extent actually known by me and, otherwise, in* the principal's best interest, to act in good faith,
32 and to act only within the scope of authority granted in the power of attorney, as well as other duties
33 imposed by law to the extent not provided otherwise in the power of attorney. As an agent, I am not
34 entitled to use the money or property for my own benefit or to make gifts to myself or others unless
35 the power of attorney specifically gives me the authority to do so. As an agent, my authority under
36 the power of attorney will end when the principal dies and I will not have authority to manage or
37 dispose of any property or administer the estate of the principal. If I violate a fiduciary duty under

1 the power of attorney, I may be liable for damages and may be subject to criminal prosecution. If
2 there is anything about the power of attorney, or my duties under it, that I do not understand, I
3 understand that I should seek professional advice.

4 24 Uniform Powers of Attorney Act; Authority That Requires Specific Grant. Amend RSA 564-
5 E:201(a)(8) to read as follows:

6 (8) exercise authority over the content of electronic communications sent or received
7 by the principal *pursuant to RSA 554-A:9*.

8 25 Uniform Power of Attorney Act; Gifts. Amend RSA 564-E:217(a) to read as follows:

9 (a) In this section, [~~a "gift" for the benefit of a person~~] *"gift"* includes, without limitation,
10 a gift *for the benefit of a person, including without limitation, a gift* to a trust, *a gift* to an
11 account under the Uniform Transfers to Minors Act, and a *gift to a* tuition savings account or
12 prepaid tuition plan as defined under Internal Revenue Code section 529, 26 U.S.C. section 529, as
13 amended.

14 26 Uniform Power of Attorney Act; Statutory Form Power of Attorney. Amend RSA 564-E:301
15 to read as follows:

16 564-E:301 Statutory Form Power of Attorney.

17 A document substantially in the following form may be used to create a power of attorney that is in
18 compliance with the provisions of this chapter. *It is not required that a document be*
19 *substantially in the following form in order to create a power of attorney that is in*
20 *compliance with the provisions of this chapter:*

21 NEW HAMPSHIRE

22 STATUTORY POWER OF ATTORNEY

23 INFORMATION CONCERNING THE POWER OF ATTORNEY

24 THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT YOU
25 SHOULD KNOW THESE IMPORTANT FACTS:

26 Notice to the Principal: As the "Principal," you are using this Power of Attorney to grant power to
27 another person (called the "Agent") to make decisions, including, but not limited to, decisions
28 concerning your money, property, or both, and to use your money, property, or both on your behalf.
29 If this Power of Attorney does not limit the powers that you give to your Agent, your Agent will have
30 broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money
31 without advance notice to you or approval by you. Unless you have expressly provided otherwise in
32 this Power of Attorney, your Agent will have these powers before you become incapacitated, and
33 unless you have expressly provided otherwise in this Power of Attorney, your Agent will continue to
34 have these powers after you become incapacitated. You have the right to retain this Power of
35 Attorney and to release it later or to request that another person retain this Power of Attorney on
36 your behalf and release it only if one or more conditions specified in advance by you are satisfied.
37 You have the right to revoke or take back this Power of Attorney at any time, so long as you are of

1 sound mind. If there is anything about this Power of Attorney that you do not understand, you
2 should seek professional advice.

3 Principal's Signature:

4 Date:

5 1. DESIGNATION OF AGENT

6 I, (Name of Principal), of (Address of Principal), name the following person as my agent:

7 Name of Agent:

8 Agent's Address:

9 2. DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

10 If my agent is unable or unwilling to act for me, I name the following person as my successor agent:

11 Name of Successor Agent:

12 Successor Agent's Address:

13 If my successor agent is unable or unwilling to act for me, I name the following person as my second
14 successor agent:

15 Name of Second Successor Agent:

16 Second Successor Agent's Address:

17 3. REVOCATION OF EXISTING POWERS OF ATTORNEY

18 (Initial the following statement if it is your choice.)

19 This Power of Attorney revokes all existing powers of attorney, *except for powers of*
20 *attorney relating to health care*, previously executed by me.

21 4. GRANT OF GENERAL AUTHORITY

22 (Initial beside your choice of A or B, but not both.)

23 A. I grant my agent general authority to act for me in all matters, including, without
24 limitation, all of the subjects enumerated in B below.

25 B. I grant my agent general authority over the following subjects [~~as defined in the following~~
26 ~~sections of the Uniform Power of Attorney Act~~]:

27 (Initial each subject you want to include in the agent's general authority.)

28 Real Property as defined in RSA 564-E:204

29 Tangible Personal Property as defined in RSA 564-E:205

30 Stocks and Bonds as defined in RSA 564-E:206

31 Commodities and Options as defined in RSA 564-E:207

32 Banks and Other Financial Institutions as defined in RSA 564-E:208

33 Operation of Entity or Business as defined in RSA 564-E:209

34 Insurance and Annuities as defined in RSA 564-E:210

35 Estates, Trusts and Other Beneficial Interests as defined in RSA 564-E:211

36 Claims and Litigation as defined in RSA 564-E:212

37 Personal and Family Maintenance as defined in RSA 564-E:213

1 ____ Benefits from Governmental Programs or Civil or Military Service as defined in RSA 564-
2 E:214

3 ____ Retirement Plans as defined in RSA 564-E:215

4 ____ Taxes as defined in RSA 564-E:216

5 ____ Digital Assets *as defined in RSA 554-A:2(10)*

6 5. GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

7 (Initial each subject you want to include in the agent's authority. CAUTION: As to some of the
8 following subjects, granting your agent authority will give your agent the authority to take actions
9 that could significantly reduce your property or change how your property is distributed at your
10 death.)

11 My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the
12 specific authority listed below:

13 ____ Create, amend, revoke, or terminate an inter vivos trust

14 *(If you have granted your agent the authority to create, amend, revoke, or terminate an*
15 *inter vivos trust, then initial the following statement if it is your choice.)*

16 ____ *My agent may create, amend, revoke, or terminate an inter vivos trust to benefit*
17 *himself or herself or any individual to whom my agent owes a legal obligation of support.*

18 ____ Make a gift, subject to the limitations of RSA 564-E:217[~~of the Uniform Power of Attorney~~
19 ~~Act]~~

20 (If you have granted your agent the authority to make a gift, then as to each of the following
21 statements, initial beside it if it is your choice.)

22 ____ My agent may make a gift, even if it will leave me without sufficient assets or income to
23 provide for my care without relying on Medicaid, other public assistance or charity.

24 ____ My agent may make a gift to himself or herself and to any individual to whom my agent
25 owes a legal obligation of support.

26 ____ Create or change rights of survivorship

27 *(If you have granted your agent the authority to create or change rights of survivorship,*
28 *then initial the following statement if it is your choice.)*

29 ____ *My agent may create or change rights of survivorship to benefit himself or*
30 *herself or any individual to whom my agent owes a legal obligation of support.*

31 ____ Create or change a beneficiary designation

32 *(If you have granted your agent the authority to create or change a beneficiary*
33 *designation, then initial the following statement if it is your choice.)*

34 ____ *My agent may create or change a beneficiary designation to benefit himself or*
35 *herself or any individual to whom my agent owes a legal obligation of support.*

1 *Reject, renounce, disclaim, release, or consent to a reduction in or modification of my*
2 *share in, or a payment to me from, an estate, trust, or other beneficial interest, to benefit*
3 *my agent or any individual to whom my agent owes a legal obligation of support*

4 Delegate authority granted under this Power of Attorney to another person

5 Waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit
6 under a retirement plan

7 *(If you have granted your agent the authority to waive your right to be a beneficiary of a*
8 *joint and survivor annuity, including a survivor benefit under a retirement plan, then*
9 *initial the following statement if it is your choice.)*

10 *My agent may waive my right to be a beneficiary of a joint and survivor annuity,*
11 *including a survivor benefit under a retirement plan, to benefit himself or herself or any*
12 *individual to whom my agent owes a legal obligation of support.*

13 Exercise the fiduciary power(s) that I have the authority to delegate as specified in the
14 "Special Instructions" in Paragraph [7] 6 of this Power of Attorney

15 Exercise authority over the content of electronic communication sent or received by me
16 *pursuant to RSA 554-A:9*

17 Exercise authority with respect to intellectual property, including, without limitation,
18 copyrights, contracts for payment of royalties, and trademarks

19 ~~[6. LIMITATION ON AGENT'S AUTHORITY (OTHER THAN GIFTING)~~

20 ~~(If an agent (including successor agent) named in this Power of Attorney is someone other than an~~
21 ~~ancestor of yours, your spouse, or a descendant of yours, you must initial the following statement if it~~
22 ~~is your choice that such agent have the following authority. An agent who is an ancestor of yours,~~
23 ~~your spouse, or a descendant of yours already has the following authority under New Hampshire~~
24 ~~law.)~~

25 ~~My agent may exercise authority under this Power of Attorney to create in my agent, or in an~~
26 ~~individual to whom my agent owes a legal obligation of support, an interest in my property by any~~
27 ~~manner (other than a gift), including, without limitation, by right of survivorship, beneficiary~~
28 ~~designation, or disclaimer.~~

29 ~~7.] 6. SPECIAL INSTRUCTIONS (OPTIONAL)~~

30 ~~(Here you may include special instructions. You may leave this Paragraph blank. You may attach~~
31 ~~additional pages as necessary.)~~

32 ~~[8.] 7. EFFECTIVE DATE AND AUTHORITY OF AGENT~~

33 ~~This Power of Attorney is effective immediately unless I have stated otherwise in the Special~~
34 ~~Instructions in Paragraph [7] 6 of this Power of Attorney. An agent (including successor agent)~~
35 ~~named in this Power of Attorney will have no authority to act as my agent until he or she has signed~~
36 ~~and affixed to this Power of Attorney an acknowledgment that is substantially the same as the~~
37 ~~Acknowledgment at the end of this Power of Attorney.~~

1 ~~[9.]~~ 8. GOVERNING LAW

2 This Power of Attorney shall be governed by the laws of the State of New Hampshire.

3 ~~[10.]~~ 9. RELIANCE ON THIS POWER OF ATTORNEY

4 Any person, including my agent, may rely upon this Power of Attorney if it is acknowledged before a
5 notary public or other individual authorized to take acknowledgments (or a copy of the acknowledged
6 Power of Attorney), unless that person knows it is void, invalid, or terminated.

7 SIGNATURE AND ACKNOWLEDGMENT

8 (You must date and sign this Power of Attorney. If you are physically unable to sign, it may be
9 signed by someone else writing your name, in your presence and at your express direction. This
10 Power of Attorney must be acknowledged before a notary public or other individual authorized by
11 law to take acknowledgments.)

12 Principal's Signature:

13 Principal's Printed Name:

14 Principal's Address:

15 Date:

16 STATE OF NEW HAMPSHIRE

17 COUNTY OF _____

18 The foregoing Power of Attorney was acknowledged before me on _____, by
19 _____, known to me or satisfactorily proven to be the person named herein

20 Signature of Notarial Officer:

21 Title (and Rank):

22 My commission expires:

23 AGENT ACKNOWLEDGMENT

24 Notice to Agent: You will have no authority to act as agent under this Power of Attorney until you
25 sign and affix this acknowledgment to the Power of Attorney.

26 I, _____, have read the attached power of attorney and am the person identified
27 as the agent for the principal. I hereby acknowledge that when I act as agent I am given power
28 under the power of attorney to make decisions about money, property, or both belonging to the
29 principal, and to spend the principal's money, property, or both on the principal's behalf, in
30 accordance with the terms of the power of attorney. When acting as agent, I have duties (called
31 "fiduciary duties") to act in *accordance with the principal's reasonable expectations to the*
32 *extent actually known by me and, otherwise, in* the principal's best interest, to act in good faith,
33 and to act only within the scope of authority granted in the power of attorney, as well as other duties
34 imposed by law to the extent not provided otherwise in the power of attorney. As an agent, I am not
35 entitled to use the money or property for my own benefit or to make gifts to myself or others unless
36 the power of attorney specifically gives me the authority to do so. As an agent, my authority under
37 the power of attorney will end when the principal dies and I will not have authority to manage or

1 dispose of any property or administer the estate of the principal. If I violate a fiduciary duty under
2 the power of attorney, I may be liable for damages and may be subject to criminal prosecution. If
3 there is anything about this power of attorney, or my duties under it, that I do not understand, I
4 understand that I should seek professional advice.

5 Agent's Signature:

6 Date:

7 27 Applicability.

8 I. Section 21 of this act shall apply to all petitions for estate administration filed on or after
9 July 1, 2021 regardless of the date of the decedent's death.

10 II. Section 22 of this act shall apply to decedents dying on or after July 1, 2021.

11 III. Section 23 of this act shall apply to general powers of attorney executed on or after July
12 1, 2021.

13 28 Findings. The general court finds:

14 I. Through the development of thoughtful, innovative laws, New Hampshire has become one
15 of the best legal environments for trusts, trust companies, fiduciaries, and fiduciary services.

16 II. This legal environment attracts individuals and families to the state and the revised
17 uniform disclaimer of property interests act further reinforces the state's long tradition of protecting
18 settlor intent and further facilitates the administrations of trusts and estates.

19 III. The revised uniform disclaimer of property interests act replaces New Hampshire's
20 existing and obsolete uniform disclaimer of property interests act by removing the 9-month time
21 limit for disclaimers, expanding the prior definition of "disclaimer" to include a broader range of
22 property, providing further instructions for when a disclaimer is delivered and under what
23 circumstances it becomes effective, clarifying the result of refusing property or powers through a
24 disclaimer, creating rules for several types of disclaimers that have not been explicitly addressed in
25 the prior act, providing rules for the disclaimer of powers held in a fiduciary capacity, specifically
26 allowing a partial disclaimer of an interest in property, and clarifying that the disclaimed interest
27 passes without direction by the disclaimant.

28 29 Uniform Disclaimer of Property Interests Act. RSA 563-B is repealed and reenacted to read
29 as follows:

30 CHAPTER 563-B

31 UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

32 Article 1

33 Short Title

34 563-B:1 Short Title. This chapter may be cited as the "Uniform Disclaimer of Property Interests
35 Act."

36 Article 2

37 Application

1 563-B:2 Application. This chapter applies to disclaimers of any interest in or power over
2 property, whenever created.

3 Article 3

4 Definitions

5 563-B:3 Definitions. For purpose of this chapter, the following definitions shall apply:

6 (a) "Disclaimant" means the person to whom a disclaimed interest or power would have
7 passed had the disclaimer not been made.

8 (b) "Disclaimed interest" means the interest that would have passed to the disclaimant
9 had the disclaimer not been made.

10 (c) "Disclaimer" means the refusal to accept an interest in or power over property.

11 (d) "Fiduciary" means a personal representative, administrator, trustee, agent acting
12 under a power of attorney, or other person authorized to act as a fiduciary with respect to the
13 property of another person.

14 (e) "Jointly held property" means property held in the name of 2 or more persons under
15 an arrangement in which all holders have concurrent interests and under which the last surviving
16 holder is entitled to the whole of the property.

17 (f) "Person" means an individual, corporation, business trust, estate, trust, partnership,
18 limited liability company, association, joint venture, government, governmental subdivision, agency,
19 or instrumentality; public corporation, or any other legal or commercial entity.

20 (g) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
21 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
22 United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by
23 federal law or formally acknowledged by a state.

24 (h) "Trust" means:

25 (1) An express trust, charitable or noncharitable, with additions thereto, whenever
26 and however created as defined in RSA 564-A:1; and

27 (2) A trust created pursuant to a statute, judgment, or decree which requires the
28 trust to be administered in the manner of an express trust.

29 Article 4

30 Power to Disclaim; General Requirements; When Irrevocable

31 563-B:4 Power to Disclaim; General requirements; When Irrevocable.

32 (a) Power to Disclaim.

33 (1) A person may disclaim, in whole or part, any interest in or power over property,
34 including a power of appointment. A person may disclaim the interest or power even if its creator
35 imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the
36 right to disclaim.

1 (2) Except to the extent a fiduciary's right to disclaim is expressly restricted or
2 limited by this chapter, another statute of this state, or by the instrument creating the fiduciary
3 relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property,
4 including a power of appointment, whether acting in a personal or representative capacity. A
5 fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or
6 similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument
7 other than the instrument that created the fiduciary relationship imposed a restriction or limitation
8 on the right to disclaim.

9 (b) General Requirements.

10 (1) To be effective, a disclaimer must be in a writing or other record, declare the
11 disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer,
12 and be delivered or filed in the manner provided in Article 12. In this Article:

13 (A) "Record" means information that is inscribed on a tangible medium or that is
14 stored in an electronic or other medium and is retrievable in perceivable form; and

15 (B) "Signed" means, with present intent to authenticate or adopt a record, to;

16 (i) Execute or adopt a tangible symbol; or

17 (ii) Attach to or logically associate with the record an electronic sound,
18 symbol, or process.

19 (2) A partial disclaimer may be expressed as a fraction, percentage, monetary
20 amount, term of years, limitation of a power, or any other interest or estate in the property.

21 (c) When Irrevocable.

22 (1) A disclaimer becomes irrevocable when it is delivered or filed pursuant to Article
23 10 or when it becomes effective as provided in Articles 5 through 9, whichever occurs later.

24 (2) A disclaimer made under this chapter is not a transfer, assignment, or release.

25 Article 5

26 Disclaimer of Interest in Property

27 563-B:5 Disclaimer of Interest in Property.

28 (a) In this section:

29 (1) "Future interest" means an interest that takes effect in possession or enjoyment,
30 if at all, later than the time of its creation.

31 (2) "Time of distribution" means the time when a disclaimed interest would have
32 taken effect in possession or enjoyment.

33 (b) Except for a disclaimer governed by Article 6 or 7, the following rules apply to a
34 disclaimer of an interest in property:

35 (1) The disclaimer takes effect as of the time the instrument creating the interest
36 becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of
37 the intestate's death.

1 (2) The disclaimed interest passes according to any provision in the instrument
2 creating the interest providing for the disposition of the interest, should it be disclaimed, or of
3 disclaimed interests in general.

4 (3) If the instrument does not contain a provision described in paragraph (2), the
5 following rules apply:

6 (A) If the disclaimant is not an individual, the disclaimed interest passes as if
7 the disclaimant did not exist.

8 (B) If the disclaimant is an individual, except as otherwise provided in
9 subparagraphs (C) and (D), the disclaimed interest passes as if the disclaimant had died
10 immediately before the time of distribution.

11 (C) If by law or under the instrument, the descendants of the disclaimant would
12 share in the disclaimed interest by any method of representation had the disclaimant died before the
13 time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who
14 survive the time of distribution.

15 (D) If the disclaimed interest would pass to the disclaimant's estate had the
16 disclaimant died before the time of distribution, the disclaimed interest instead passes by
17 representation to the descendants of the disclaimant who survive the time of distribution. If no
18 descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to
19 those persons, including the state but excluding the disclaimant, and in such shares as would
20 succeed to the transferor's intestate estate under the intestate succession law of the transferor's
21 domicile had the transferor died at the time of distribution. However, if the transferor's surviving
22 spouse is living but is remarried at the time of distribution, the transferor is deemed to have died
23 unmarried at the time of distribution.

24 (4) Upon the disclaimer of a preceding interest, a future interest held by a person
25 other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately
26 before the time of distribution, but a future interest held by the disclaimant is not accelerated in
27 possession or enjoyment.

28 Article 6

29 Disclaimer of Rights of Survivorship in Jointly Held Property

30 563-B:6 Disclaimer of Rights of Survivorship in Jointly Held Property.

31 (a) Upon the death of a holder of jointly held property, a surviving holder may disclaim,
32 in whole or part, the greater of:

33 (1) A fractional share of the property determined by dividing the number one by the
34 number of joint holders alive immediately before the death of the holder to whose death the
35 disclaimer relates; or

36 (2) all of the property except that part of the value of the entire interest attributable
37 to the contribution furnished by the disclaimant.

1 (b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly
2 held property to whose death the disclaimer relates.

3 (c) An interest in jointly held property disclaimed by a surviving holder of the property
4 passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

5 Article 7

6 Disclaimer of Interest by Trustee

7 563-B:7 Disclaimer of Interest by Trustee. If a trustee disclaims an interest in property that
8 otherwise would have become trust property, the interest does not become trust property.

9 Article 8

10 Disclaimer of Power of Appointment or Other Power

11 Not Held in a Fiduciary Capacity

12 563-B:8 Disclaimer of Power of Appointment or Other Power Not Held in a Fiduciary Capacity.
13 If a holder disclaims a power of appointment or other power not held in a fiduciary capacity; the
14 following rules apply:

15 (a) If the holder has not exercised the power, the disclaimer takes effect as of the time
16 the instrument creating the power becomes irrevocable.

17 (b) If the holder has exercised the power and the disclaimer is of a power other than a
18 presently exercisable general power of appointment, the disclaimer takes effect immediately after
19 the last exercise of the power.

20 (c) The instrument creating the power is construed as if the power expired when the
21 disclaimer became effective.

22 Article 9

23 Disclaimer by Appointee, Object, or Taker in Default of

24 Exercise of Power of Appointment

25 563-B:9 Disclaimer by Appointee, Object, or Taker in Default of Exercise of Power of
26 Appointment.

27 (a) A disclaimer of an interest in property by an appointee of a power of appointment
28 takes effect as of the time the instrument by which the holder exercises the power becomes
29 irrevocable.

30 (b) A disclaimer of an interest in property by an object or taker in default of an-exercise
31 of a power of appointment takes effect as of the time the instrument creating the power becomes
32 irrevocable.

33 Article 10

34 Disclaimer of Power Held in Fiduciary Capacity

35 563-B:10 Disclaimer of Power Held in Fiduciary Capacity.

1 (a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been
2 exercised, the disclaimer takes effect as of the time the instrument creating the power becomes
3 irrevocable.

4 (b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised,
5 the disclaimer takes effect immediately after the last exercise of the power.

6 (c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so
7 provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for
8 whom the fiduciary is acting.

9 Article 11

10 Delivery or Filing

11 563-B:11 Delivery or Filing.

12 (a) In this section, "beneficiary designation" means an instrument, other than an
13 instrument creating a trust, naming the beneficiary of:

- 14 (1) An annuity or insurance policy;
15 (2) An account with a designation for payment on death;
16 (3) A security registered in beneficiary form;
17 (4) A pension, profit-sharing, retirement, or other employment-related benefit plan;

18 or

- 19 (5) Any other non-probate transfer at death.

20 (b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by
21 personal delivery, first-class mail, or any other method likely to result in its receipt.

22 (c) In the case of an interest created under the law of intestate succession or an interest
23 created by will, other than an interest in a testamentary trust:

- 24 (1) A disclaimer must be delivered to the administrator of the decedent's estate; or
25 (2) If no administrator is then serving, it must be filed with a court having

26 jurisdiction to appoint the administrator.

27 (d) In the case of an interest in a testamentary trust:

28 (1) A disclaimer must be delivered to the trustee then serving, or if no trustee is then
29 serving, to the administrator of the decedent's estate; or

30 (2) If no administrator is then serving, it must be filed with a court having
31 jurisdiction to enforce the trust.

32 (e) In the case of an interest in an inter vivos trust:

- 33 (1) A disclaimer must be delivered to the trustee then serving;

34 (2) If no trustee is then serving, it must be filed with a court having jurisdiction to
35 enforce the trust; or

1 (3) If the disclaimer is made before the time the instrument creating the trust
2 becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the
3 interest.

4 (f) In the case of an interest created by a beneficiary designation which is disclaimed
5 before the designation becomes irrevocable, the disclaimer must be delivered to the person making
6 the beneficiary designation.

7 (g) In the case of an interest created by a beneficiary designation which is disclaimed
8 after the designation becomes irrevocable:

9 (1) The disclaimer of an interest in personal property must be delivered to the
10 person obligated to distribute the interest; and

11 (2) An attested copy of the disclaimer of an interest in real property must be
12 recorded in the office of registry of deeds of the county where the real property that is the subject of
13 the disclaimer is located.

14 (h) In the case of a disclaimer by a surviving holder of jointly held property, the
15 disclaimer must be delivered to the person to whom the disclaimed interest passes.

16 (i) In the case of a disclaimer by an object or taker in default of exercise of a power of
17 appointment at any time after the power was created:

18 (1) The disclaimer must be delivered to the holder of the power or to the fiduciary
19 acting under the instrument that created the power; or

20 (2) If no fiduciary is then serving, it must be filed with a court having authority to
21 appoint the fiduciary.

22 (j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

23 (1) The disclaimer must be delivered to the holder, the administrator of the holder's
24 estate, or to the fiduciary under the instrument that created the power; or

25 (2) If no fiduciary is then serving, it must be filed with a court having authority to
26 appoint the fiduciary.

27 (k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the
28 disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were
29 an interest in property.

30 (l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to
31 the principal or the principal's representative.

32 (m) Notwithstanding any right to disclaim an interest in property as provided for in this
33 chapter, a person who has been devised real estate by testamentary instrument, or inherited under
34 the laws of intestacy, may waive his or her rights to the property pursuant to RSA 554:18-b.

35 Article 12

36 When Disclaimer Barred or Limited

1 (a) A disclaimer is barred by a written waiver of the right to disclaim.

2 (b) A disclaimer of an interest in property is barred if any of the following events occur
3 before the disclaimer becomes effective:

4 (1) The disclaimant accepts the interest sought to be disclaimed;

5 (2) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers
6 the interest sought to be disclaimed or contracts to do so; or

7 (3) A judicial sale of the interest sought to be disclaimed occurs.

8 (c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary
9 capacity is not barred by its previous exercise.

10 (d) A disclaimer, in whole or part, of the future exercise of a power not held in a
11 fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the
12 disclaimant.

13 (e) A disclaimer is barred or limited to the extent that it would impair the ability of the
14 department of health and human services to recover pursuant to Title XIX of the Social Security Act
15 or RSA 126-A, 135, 135-C, 130-A, 143, 143-A, 161, 161-B, 161-C, 161-E, 161-F, 161-H, 161-I, 165,
16 166, 167, 168-A, 169-B, 169-C, 169-D, 169-F, 170-A, 170-B, 170-E, 170-G, 171-B, 172, or 173-B.

17 (f) A disclaimer is barred or limited if so provided by law other than this chapter.

18 (g) A disclaimer of a power over property which is barred by this section is ineffective. A
19 disclaimer of an interest in property which is barred by this section takes effect as a transfer of the
20 interest disclaimed to the persons who would have taken the interest under this chapter had the
21 disclaimer not been barred.

22 Article 13

23 Tax Qualified Disclaimer

24 563-B:13 Tax Qualified Disclaimer. Notwithstanding any other provision of this chapter, if as a
25 result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the
26 provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor
27 statute thereto, and the regulations promulgated thereunder, as never having been transferred to
28 the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

29 Article 14

30 Recording of Disclaimer

31 563-B:14 Recording of Disclaimer. If an instrument transferring an interest in or power over
32 property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered,
33 the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in Article
34 11(g)(2), failure to file, record, or register the disclaimer does not affect its validity as between the
35 disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

36 Article 15

37 Application to Existing Relationships

1 563-B:15 Application to Existing Relationships. Except as otherwise provided in Article 12, an
2 interest in or power over property existing on the effective date of this chapter as to which the time
3 for delivering or filing a disclaimer under law superseded by this chapter has not expired may be
4 disclaimed after the effective date of this chapter.

5 Article 16

6 Supplemented by Other Law

7 563-B:16 Supplemented by Other Law.

8 (a) Unless displaced by a provision of this chapter, the principles of law and equity
9 supplement this chapter.

10 (b) This chapter does not limit any right of a person to waive, release, disclaim, or
11 renounce an interest in or power over property under a law other than this chapter.

12 Article 17

13 Uniformity of Application and Construction

14 563-B:17 Uniformity of Application and Construction. In applying and construing this uniform
15 act, consideration must be given to the need to promote uniformity of the law with respect to its
16 subject matter among states that enact it.

17 30 School Employee and Designated School Volunteer Criminal History Records Check. Amend
18 RSA 189:13-a, III to read as follows:

19 III. The superintendent of the school administrative unit or the chief executive officer of the
20 chartered public school or public academy shall maintain the confidentiality of all criminal history
21 records information received pursuant to this paragraph. ~~[If the criminal history records~~
22 ~~information indicates no criminal record, the superintendent of the school administrative unit or the~~
23 ~~chief executive officer of the chartered public school or public academy shall destroy the information~~
24 ~~received immediately following review of the information.] *The superintendent of the school*
25 *administrative unit, or chief executive officer of the chartered public school or public*
26 *academy shall review the criminal history records information in accordance with*
27 *paragraph V.* If the criminal history records information indicates that the applicant has been
28 convicted of any crime or has been charged pending disposition for or convicted of a crime listed in
29 paragraph V, the superintendent of the school administrative unit or the chief executive officer of the
30 chartered public school or public academy shall review the information for a hiring decision~~[-and the~~
31 ~~division of state police shall notify the department of education of any such charges pending~~
32 ~~disposition or convictions. The superintendent of the school administrative unit or the chief~~
33 ~~executive officer of the chartered public school or public academy shall destroy any criminal history~~
34 ~~record information that indicates a criminal record within 60 days of receiving such information.] *If*
35 *the applicant's criminal history records information indicates that the applicant has been*
36 *charged pending disposition for or has been convicted of a crime listed in paragraph V, the*~~~~

1 *superintendent of the school administrative unit or the chief executive officer of the*
 2 *chartered public school or public academy shall notify the department of education.*

3 *III-a. The superintendent of the school administrative unit or chief executive officer*
 4 *of the chartered public school or public academy shall destroy any criminal history record*
 5 *information within 60 days of receipt. The superintendent of the school administrative*
 6 *unit or chief executive officer of the chartered public school or public academy shall*
 7 *destroy any criminal history record information that indicates a criminal record within 60*
 8 *days of receiving said information.*

9 31 School Employee and Designated School Volunteer Criminal History Records Check. Amend
 10 RSA 189:13-a, VI to read as follows:

11 VI. *In accordance with paragraphs I-V*, this section shall apply to any employee,
 12 *including substitute teachers*, selected applicant for employment, designated volunteer, [ø] ~~volunteer~~
 13 ~~organization~~, *or individual or entity* which contracts with a school administrative unit,
 14 school district, chartered public school, or public academy to provide services, including but not
 15 limited to cafeteria workers, school bus drivers, custodial personnel, or any other service where the
 16 contractor or employees of the contractor provide services directly to students of the district,
 17 chartered public school, or public academy. The employing school administrative unit, school
 18 district, or chartered public school shall be responsible for completing the criminal history records
 19 check on the people identified in this paragraph, except for school bus drivers and transportation
 20 monitors, as provided in RSA 189:13-b. The cost for criminal history records checks for employees or
 21 selected applicants for employment with such contractors shall be borne by the contractor.

22 32 School Employee and Designated School Volunteer Criminal History Records Check. Amend
 23 RSA 189:13-a, IX to read as follows:

24 IX.(a) ~~[Substitute teachers and other educational staff, not otherwise addressed in this~~
 25 ~~section, shall apply for a criminal history records check at the employing school administrative unit,~~
 26 ~~school district, chartered public school, or public academy. The division of state police shall complete~~
 27 ~~the criminal history records check, as established in paragraph II, and, upon completion, shall issue~~
 28 ~~a report to the applicant. The report shall be valid for 30 days from the date of issuance and shall~~
 29 ~~constitute satisfactory proof of compliance with this section.~~

30 (b) ~~Upon enrollment in an educator preparation program at an institution of higher~~
 31 ~~education, a candidate shall submit to a criminal history records check. The institution of higher~~
 32 ~~education in which the candidate is enrolled shall conduct the criminal history records check.] Upon~~
 33 placement of a candidate, *as defined in RSA 189:13-c*, as a student teacher, the receiving school
 34 administrative unit, school district, or chartered public school shall conduct [another] *a* criminal
 35 history records check of the candidate and shall follow the same procedures for assessing the
 36 candidate's criminal history background as for applicants for employment. ~~[The governing body of~~
 37 ~~the institution of higher education may adopt a policy relative to how often a candidate shall submit~~

1 ~~to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is~~
2 ~~enrolled in an educator preparation program at an institution of higher education in New~~
3 ~~Hampshire.]~~

4 *(b) A receiving school administrative unit, school district, or chartered public*
5 *school may conduct a criminal history records check upon a candidate, as defined in RSA*
6 *189:13-c.*

7 33 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
8 inserting after section 13-b the following new section:

9 189:13-c Credentialing Applicant and Candidate Criminal History Records Check.

10 I. Definitions:

11 (a) "Credentialing applicant" means a first-time applicant for a New Hampshire
12 teaching credential.

13 (b) "Candidate" means a student at an institution of higher education in New
14 Hampshire who has been selected to participate in a K-12 educator preparation program.

15 II.(a) The department shall complete a confidential criminal history records check on all
16 first-time applicants for a teaching license, under RSA 21-N:9, II(s), as shall school administrative
17 units, school districts, and chartered public schools pursuant to RSA 189:13-a.

18 (b) The department shall complete a confidential criminal history records check on all
19 candidates as shall school administrative units, school districts, and chartered public schools
20 pursuant to RSA 189:13-a. The department shall adopt rules pursuant to RSA 541-A relative to
21 coordination with institutions of higher education in New Hampshire on procedures for conducting
22 clearances for candidates for K-12 educator preparation programs.

23 (c) The criminal history records check on a candidate shall valid for a period of 3 years.

24 III.(a) The credentialing applicant or candidate shall submit to the department a criminal
25 history records release form, as provided by the division of state police, which authorizes the division
26 of state police to conduct a criminal history records check through its state records and through the
27 Federal Bureau of Investigation and to release a report of the credentialing applicant's or candidate's
28 criminal history record information, including confidential criminal history record information, to
29 the background check coordinator of the department, as described in RSA 21-N:8-a, I-a.

30 (b) The credentialing applicant or candidate shall submit with the release form a
31 complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee
32 of the department of education. In the event that the first set of fingerprints is invalid due to
33 insufficient pattern, a second set of fingerprints shall be taken in order to complete the criminal
34 history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern,
35 the department may, in lieu of the criminal history records check, accept police clearance from every
36 city, town, or county where an applicant or candidate has lived during the past 5 years.

1 IV.(a) The department shall maintain the confidentiality of all criminal history records
2 information received pursuant to this paragraph. The department shall destroy all criminal history
3 record information within 60 days of receiving said information.

4 (b) The department may require the credentialing applicant or candidate to pay the
5 actual costs of the criminal history records check.

6 V. Any person who has been charged pending disposition for or convicted of any violation or
7 attempted violation of RSA 630:1; 630:1-a; 630:1-b; 630:2; 632-A:2; 632-A:3; 632-A:4; 633:1; 639:2;
8 639:3; 645:1, II or III; 645:2; 649-A:3; 649-A:3-a; 649-A:3-b; 649-B:3; or 649-B:4; or any violation or
9 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene in
10 this state, or under any statute prohibiting the same conduct in another state, territory, or
11 possession of the United States, shall not be granted a teaching credential by the department nor
12 shall candidates be granted clearance.

13 VI. The department shall adopt rules, pursuant to RSA 541-A, governing the rights of a
14 credentialing applicant and candidate and their ability to appeal a denial of a teaching credential or
15 clearance pursuant to a charge pending disposition for or a conviction of any of the offenses under
16 paragraph V.

17 VII. If a credentialing applicant had submitted to a criminal history records check within
18 the prior 6 months as a candidate, that check shall be deemed valid for purposes of this section.

19 34 Committee Established. There is established a committee to study department of education
20 oversight of criminal history background checks by private schools.

21 35 Membership and Compensation.

22 I. The members of the committee shall be as follows:

23 (a) Three members of the house of representatives, appointed by the speaker of the
24 house of representatives.

25 (b) Two members of the senate, appointed by the president of the senate.

26 II. The commissioner of the department of education, or designee, shall serve as a non-
27 voting, ex officio member of the committee.

28 III. Members of the committee shall receive mileage at the legislative rate when attending
29 to the duties of the committee.

30 36 Duties. The committee shall:

31 I. Review current statutes regarding criminal history background checks in private schools.

32 II. Review department of education rules and oversight of private schools regarding criminal
33 history background checks.

34 III. Review annual reporting on criminal history background checks to the department of
35 education by private schools.

36 IV. Review other states' statutes and rules regarding criminal history background checks in
37 private schools.

1 V. Make recommendations for updating statutes and department of education rules
2 regarding criminal history background checks in private schools.

3 37 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
4 among the members. The first meeting of the committee shall be called by the first-named house
5 member. The first meeting of the committee shall be held within 45 days of the effective date of this
6 section. Three members of the committee shall constitute a quorum.

7 38 Report. The committee shall report its findings and any recommendations for proposed
8 legislation to the speaker of the house of representatives, the president of the senate, the house
9 clerk, the senate clerk, the commissioner of the department of education, the governor, and the state
10 library on or before November 1, 2021.

11 39 Mental Health Intervention Training; Appropriation. The sum of \$210,000 for the biennium
12 ending June 30, 2023, is hereby appropriated to the police standards and training council for the
13 purposes of funding mental health intervention training programs. The appropriations shall be in
14 addition to any other funds appropriated to the police standards and training council. The governor
15 is authorized to draw a warrant for said sums out of any money in the treasury not otherwise
16 appropriated.

17 40 Industrial Hemp Research; Authorization. Amend RSA 433-C:2 to read as follows:

18 433-C:2 Authorization. An institution of higher education, as defined in 20 U.S.C. section 1001,
19 may grow or cultivate *or may contract with a private party to grow or cultivate*, industrial
20 hemp, on site or off site, for purposes of research under an agricultural pilot program or other
21 agricultural or academic research. In addition to studying the plant's growth and cultivation, the
22 research shall also study the economics of industrial hemp, including markets and processing.
23 Industrial hemp grown or cultivated in accordance with this chapter shall not be considered a
24 controlled drug or controlled substance under RSA 318-B.

25 41 Effective Date.

26 I. RSA 456-B:2, VII as inserted by section 8 of this act and section 15 of this act shall take
27 effect upon its passage.

28 II. The remainder of sections 5-15 of this act shall take effect 180 days after its passage.

29 III. Sections 20-27, and section 39 of this act shall take effect July 1, 2021.

30 IV. Sections 28, 29, 34-38, and 40 of this act shall take effect upon its passage.

31 V. Sections 3, 4, and 30-33 shall take effect January 1, 2022.

32 VI. The remainder of this act shall take effect 60 days after its passage.

2021-1778s

AMENDED ANALYSIS

This bill adopts legislation relative to:

I. Warrantless search of a motor vehicle with the informed consent of the motor vehicle operator; the bill also amends the statutory requirements for a search warrant to allow consistency with the requirements for electronic warrants.

I. Prohibiting certain uses of laser pointing devices.

II. The revised uniform law on notarial acts and the uniform real property electronic recording act.

III. Incarceration under a suspended sentence.

IV. Civil liability for damage to highways.

V. Procedures for structured settlements.

VI. Establishing the New Hampshire collaborative law act.

VII. Probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.

VIII. School employee and school volunteer criminal history background checks and establishing a committee to study department of education oversight of criminal history background checks for private schools.

IX. Making an appropriation funding mental health intervention training programs.

X. Employer access to motor vehicle records.

XI. Authorization to grow industrial hemp.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 8, 2021

HEARINGS

Thursday	04/15/2021	
(Day)	(Date)	
Judiciary	REMOTE	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m. HB 471	relative to police disciplinary hearings.	
1:15 p.m.	Hearing on proposed Amendment #1118s, relative to police disciplinary hearings and authorizing the department of justice to maintain an exculpatory evidence schedule, to HB 471, relative to police disciplinary hearings.	
1:30 p.m. HB 485	requiring law enforcement officers to inform a person of their right to refuse a consensual search.	
1:45 p.m. HB 180	increasing the penalty for buyers under the law regarding trafficking in persons.	
2:00 p.m. HB 286	establishing a committee to study the response of law enforcement and the criminal justice system to homelessness in New Hampshire,	

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/99568630852>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +16465588656,,99568630852# or +13017158592,,99568630852#
4. Webinar ID: **995 6863 0852**
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 471

Rep. Roy
Rep. Spillane
Rep. Moran

Rep. M. King
Rep. Bixby
Rep. Frost

Rep. Stevens
Rep. Welch
Sen. Reagan

Rep. Potucek
Rep. Bordenet

HB 485

Rep. Roy
Rep. Klein-Knight
Rep. Moran

Rep. Abramson
Rep. Potucek
Rep. B. King

Rep. Andrew Bouldin
Rep. Avellani

Rep. Fellows
Rep. Binford

HB 180

Rep. Massimilla
Rep. Mangipudi

Rep. Katsakiores
Rep. Egan

Rep. Ebel

Rep. Klee

HB 286

Rep. Klein-Knight
Rep. Labranche

Rep. Moran
Rep. Oxaal

Rep. Massimilla
Rep. Bouchard

Rep. Griffith
Rep. Stevens

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 485, requiring law enforcement officers to inform a person of their right to refuse a consensual search.

Hearing Date: April 15, 2021

Time Opened: 2:14 p.m.

Time Closed: 2:30 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill requires a law enforcement officer to inform a person of their right to refuse a consensual search before conducting a consensual search.

Sponsors:

Rep. Roy

Rep. Abramson

Rep. Andrew Bouldin

Rep. Fellows

Rep. Klein-Knight

Rep. Potucek

Rep. Avellani

Rep. Binford

Rep. Moran

Rep. B. King

Who supports the bill: 97 people signed up in support of the bill. Full sign in sheet available upon request

Who opposes the bill: 3 person signed up in opposition to the bill. Full sign in sheet available upon request.

Who is neutral on the bill: 1 person signed in neutrally on the bill. Full sign in sheet available upon request.

Summary of testimony presented in support:

Representative Roy

- This simply requires officers, when they ask to search an individual's vehicle, to let that person know that they have the right to refuse that search.
- It is no longer the case that a lot of people understand what their rights are.
- NH already has something similar to this in the Miranda warning for an interrogation situation.

Gilles Bissonette (ACLU)

- SB40 is a similar bill, and arguably may be a little clearer to address this issue.

- Suggests replacing this bill with SB40's language with the amendment.
- Reiterates his SB40 testimony.
- It is important for people to know what their rights are.
- Senator Gannon asked if schools have exceptions to warrantless searches, especially in parking lots.
 - Does not know. In the interior of schools there is a looser requirement.
 - Would defer to Mr. Buzz Scherr on that. There are places of exceptions for the warrant requirement.

Buzz Scherr

- Reiterates his SB40 testimony.
- Agrees with Mr. Bissonette that SB40 may be a little cleaner.
- Supportive of the DOC amendment.
- If a school is looking to search the property of a student, they have to have a lesser justification, reasonable suspicion.
- If the police or the school were to ask a student to search their locker, the student would have the right to refuse with the understanding that the authorities would not need as much justification to move forward with the search.

Summary of testimony presented in opposition:

Lyn Marie Cusack (Department of Corrections)

- When an individual comes on to prison grounds they are consenting to a search of their person and their vehicle, especially if the vehicle is unlocked and they are not in it.
- In the corrections setting if an individual refuses to be searched they are then asked to leave the premises and they may be put on a restriction that they cannot come back for a certain time.
- The bill as written says that if an individual refuses the search, they will not be penalized.
- Disallowing a person to come into the corrections setting could be seen as a penalty.
- The bill also requires that the Department would have to find and wait for the individual who belongs to the car, have them brought out, and ask search their unlocked car.
- The Department has no concerns about a locked car.
- However, with an unlocked car some residents in the transitional housing units know the car is present at the facility and will drop off contraband in it.
- There is implied consent already, as individuals are informed of that when driving on to the property.
- The Department does practice the way the current law is written.
- If an individual refuses to be search, the Department needs a way to continue to not allow them to be on the grounds.
- Senator Kahn asked if they provided this testimony to the House.

- The Department was late in getting this to Rep Roy. Learned it had been put on the Consent Calendar in the House and it was determined that the Department should come to the Senate with this testimony.
- Senator Kahn asked if they could provide notwithstanding language for this.
 - Believes Senator Carson has an amendment for that.
 - Senator Carson noted that it is Amendment 1123s.

Neutral Information Presented:

Chief David Goldstein (NH Association of Chiefs of Police)

- Would support the notwithstanding amendment for the Department of Corrections.
- It is practice already to advise individuals that they have the right to refuse a search of their vehicle.
- There have been numerous legal decisions over the years to address this issue on the state and federal levels.
- It is best to leave it to the discretion of the courts to ensure due process relative to consent searches.
- Senator Gannon asked if there are other places besides a corrections setting, like police stations or government buildings, where there are exceptions to warrant requirements.
 - There is no requirement at his department. In court buildings a person does have to go through metal detectors that may potentially lead to some sort of search. Does not think there is anything as definitive as what the DOC has brought up.

jch

Date Hearing Report completed: April 20, 2021

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB485 on 2021-04-15

Support: 97 Oppose: 3 Neutral: 1 Total to Testify: 4

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Goldstein, David	dgoldstein@franklinnh.org	603-998-9782	A Member of the Public	NH Association of Chiefs of Police	Neutral	Yes	4/14/2021 11:05 AM
Bissonnette, Gilles	gilles@aclu-nh.org	603-227-6678	A Lobbyist	ACLU of New Hampshire	Support	Yes	4/15/2021 10:04 AM
Scherr, Albert	Not Given	Not Given	A Member of the Public	Myself	Support	Yes	4/14/2021 7:39 PM
Cusack, Lynmarie	Lynmarie.cusack@doc.nh.gov	603271-5604	State Agency Staff	NH Department of Corrections	Oppose	Yes	4/15/2021 11:34 AM
Prince, Sonia	ssprince1@comcast.net	603.578.0786	A Member of the Public	Myself	Support	No	4/15/2021 4:50 PM
Pedersen, Michael	PedersenUSA@aim.com	Not Given	An Elected Official	Hillsborough 32	Support	No	4/15/2021 11:01 PM
Weber, Jill	jill@frazilfarms.com	603.978.1263	A Member of the Public	Myself	Support	No	4/14/2021 8:51 PM
Hayes, Randy	rcompostr@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 9:10 PM
perez, maria	mariaeli63@gmail.com	603.801.7867	An Elected Official	Myself	Support	No	4/15/2021 10:16 AM
Aranzabal, Luis	Luisaranzabal40@gmail.com	603.461.1834	A Member of the Public	Myself	Support	No	4/15/2021 10:17 AM
Watson, Margaret	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/15/2021 10:39 AM
Bouldin, Amanda	amanda.bouldin@leg.state.nh.us	603.494.8689	An Elected Official	Hillsborough District 12	Support	No	4/14/2021 8:32 PM
Bouldin, Andrew	andrew.bouldin@leg.state.nh.us	603.397.7526	An Elected Official	Hillsborough District 12	Support	No	4/14/2021 8:33 PM
Green, Debra	laffalot37@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 8:34 PM
Mayne, Kenneth	kbmayne@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 8:35 PM
DiLorenzo, Charlotte	cbdilorenzo@comcast.net	16039884405	An Elected Official	Myself	Support	No	4/14/2021 9:49 PM
Cloutier, John	jocloutier@comcast.net	16034773690	An Elected Official	Myself	Support	No	4/15/2021 7:19 AM
Ari, Leslie	leslie.ari@gmail.com	603.496.4202	A Member of the Public	Myself	Support	No	4/15/2021 9:49 AM
Ward, Gerald W.R.	Ward4staterrep@gmail.com	Not Given	An Elected Official	Myself	Support	No	4/14/2021 10:09 PM
Hamblet, Joan	joan.hamblet@leg.state.nh.us	603.205.4925	A Member of the Public	Myself	Support	No	4/14/2021 10:15 PM
Platt, Elizabeth-Anne	lizanneplatt09@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/15/2021 6:24 AM
Hamer, Heidi	Not Given	Not Given	An Elected Official	Myself	Support	No	4/15/2021 6:54 AM
Dutzy, Sherry	sherry.dutzy@leg.state.nh.us	603.557.5599	An Elected Official	Myself	Support	No	4/15/2021 9:13 AM
Vincent, Laura	lvlauravincen5@gmail.com	603.783.4849	A Member of the Public	Myself	Support	No	4/14/2021 2:23 PM
Ellermann, Maureen	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/15/2021 4:49 AM
Vail, Suzanne	Suzanne.vail@leg.state.nh.us	603.234.0704	An Elected Official	Hillsborough County 30	Support	No	4/15/2021 9:58 AM
Chase, Wendy	wendy.chase@leg.state.nh.us	603.319.7259	An Elected Official	Myself	Support	No	4/14/2021 10:26 PM
Lynch, Chrisinda	cmmlynch@comcast.net	603.225.5614	A Member of the Public	Myself	Support	No	4/10/2021 2:12 PM

McGuire, Dan	danmcguire@gmail.com	603.782.4918	A Member of the Public	Myself	Support	No	4/10/2021 7:31 PM
Blair, David	orionblair@gmail.com	603.828.6804	A Member of the Public	Myself	Support	No	4/11/2021 10:42 AM
Thomas, Nicholas	nicholas.w.thomas@uconn.edu	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 4:10 AM
Bates, David	dbates3@yahoo.com	603.748.2668	A Member of the Public	Myself	Support	No	4/11/2021 1:42 PM
Baiocchetti, Vinnie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/8/2021 3:17 PM
Hennessey, Martha	martha.hennessey@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 6:15 PM
Hinkel, Robert	r.hinkel@gmail.com	413.478.8701	A Member of the Public	Myself	Support	No	4/12/2021 12:08 PM
Hatcher, Phil	phil.hatcher@gmail.com	603.988.8034	A Member of the Public	Myself	Support	No	4/11/2021 11:46 AM
Orkin, Susan	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 12:02 PM
Bushueff, Catherine	agawamdesigns@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 5:14 PM
Letellier, Kathleen	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 7:25 PM
Barretto, Tim	timbarretto@comcast.net	603.749.0037	A Member of the Public	Myself	Support	No	4/12/2021 6:21 AM
Michelson, Barbara	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 10:28 AM
Feder, Marsha	marshafeder@gmail.com	603.860.8743	A Member of the Public	Myself	Support	No	4/11/2021 11:19 AM
Lucas, Janet	janluca1953@gmail.com	16037267614	State Agency Staff	Myself	Support	No	4/12/2021 7:59 AM
Chait, George	george.chait@gmail.com	603.848.3236	A Member of the Public	Myself	Support	No	4/12/2021 1:53 PM
Phillips, Margery	Margeryphillips@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 2:09 PM
Fenner-Lukaitis, Elizabeth	glukaitis@mcttelecom.com	Not Given	A Member of the Public	Myself	Support	No	4/11/2021 3:04 PM
Clancy, Michelle	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 8:54 AM
QUISUMBING-KING, Cora	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 10:56 AM
Alleman, Bill	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 3:27 PM
Russell, Scott	srussell@nhpd.org	Not Given	A Member of the Public	Myself	Oppose	No	4/12/2021 1:18 PM
Moran, Karen	karenmoran@tds.net	603.746.2017	A Member of the Public	Myself	Support	No	4/12/2021 6:46 PM
Kaufman, Amy	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 7:20 PM
Hansen, Sarah	sarahsarahhansen@gmail.com	503.803.4964	A Member of the Public	Myself	Support	No	4/12/2021 4:22 PM
Pexton, Olivia	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 5:14 PM
Torpey, Jeanne	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 8:29 PM
Reed, Barbara D.	BDRreed74@gmail.com.com	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 9:15 PM
Edelson, Rachel	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 9:32 PM
Mennella, Alexandra	amennella1@protonmail.com	16466109858	A Member of the Public	Myself	Support	No	4/12/2021 9:37 PM
Garland, Ann	annhgarland@gmail.com	603.678.8143	A Member of the Public	Myself	Support	No	4/12/2021 9:44 PM
See, Alvin	absee@4Liberty.net	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 11:40 PM
Istel, Claudia	claudia@sover.net	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 11:47 PM
Long, Julian	julianleelong@yahoo.com	603.767.1953	A Member of the Public	Myself	Support	No	4/12/2021 10:18 PM
Goldwater, Catherine	cathy.goldwater@gmail.com	603.860.3756	A Member of the Public	Myself	Support	No	4/13/2021 6:35 AM
Verschueren, Jim	jd.verschueren@gmail.com	603.978.0398	A Member of the Public	Myself	Support	No	4/12/2021 10:46 PM

Jachim, Nancy	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 7:03 AM
Smith, Jennifer	jaycmd7699@gmail.com	603.738.6221	A Member of the Public	Myself	Support	No	4/13/2021 7:03 AM
Brookmeyer, Janet	brookmeyermusic@gmail.com	603.667.1356	A Member of the Public	Myself	Support	No	4/13/2021 7:15 AM
Dolkart, Vivian	viviandolkart@comcast.net	603.865.5117	A Member of the Public	Myself	Support	No	4/13/2021 7:36 AM
DeMark, Richard	demarknh114@gmail.com	603.520.5582	A Member of the Public	Myself	Support	No	4/13/2021 7:57 AM
Clark, Denise	denise.m.clark03055@gmail.com	603.213.1692	A Member of the Public	Myself	Support	No	4/13/2021 8:02 AM
Douville, Linda	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 8:09 AM
Spielman, Kathy	jspielman@comcast.net	603.397.7879	A Member of the Public	Myself	Support	No	4/13/2021 8:29 AM
McLaughlin, Barbara	brbmclaughlin42@gmail.com	760.458.9668	A Member of the Public	Myself	Support	No	4/13/2021 8:34 AM
Ingold, Bret	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 8:35 AM
Hardwick, Bryant	portxejf@yahoo.com	603.740.4986	A Member of the Public	Myself	Support	No	4/13/2021 8:59 AM
Paratore, Sarah	smparatore@gmail.com	603.520.5311	A Member of the Public	Myself	Support	No	4/13/2021 9:03 AM
Kelly, Fran	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 9:18 AM
Watson, Clyde	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 9:37 AM
Koch, Laurie	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 9:47 AM
Richards, Matthew	mricha711@gmail.com	603.854.3953	A Member of the Public	Myself	Support	No	4/13/2021 10:49 AM
Merrigan, Susan	s.e.merrigan@gmail.com	603.557.5245	A Member of the Public	Myself	Support	No	4/13/2021 10:58 AM
Robertson, Howard	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 11:53 AM
Pugh, Barbara	barbara.pugh@comcast.net	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 9:56 AM
Axelman, Elliot	alu.axelman@gmail.com	732.674.2355	A Member of the Public	Myself	Support	No	4/13/2021 10:01 AM
Laker-Phelps, Gail	lpsart@tds.net	603.798.5394	A Member of the Public	Myself	Support	No	4/13/2021 10:31 AM
Jones, Gisela	gisela1142@gmail.com	603.448.2940	A Member of the Public	Myself	Support	No	4/13/2021 12:29 PM
Oxenham, Evan	evan.oxenham@gmail.com	603.727.9368	A Member of the Public	Myself	Support	No	4/13/2021 3:46 PM
Irwin, Virginia	biddy.irwin@gmail.com	603.863.3582	A Member of the Public	Myself	Support	No	4/13/2021 4:02 PM
Johnson, Sara	nhchicagocubfan@gmail.com	603-748-5779	A Member of the Public	Myself	Support	No	4/13/2021 4:20 PM
fagin, valerie	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 4:43 PM
Oxenham, Lee	leeoxenham@comcast.net	603.727.9368	An Elected Official	Sullivan Co., District 1	Support	No	4/13/2021 4:48 PM
Cranage, Amy	cranhan@comcast.net	603.252.8531	A Member of the Public	Myself	Support	No	4/13/2021 4:52 PM
Lieberman, Sheryl	saml54@comcast.net	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 7:44 AM
Falk, Cheri	Falk.cj@gmail.com	603.801.4651	A Member of the Public	Myself	Support	No	4/13/2021 7:09 PM
Damon, Claudia	cordsdamon@gmail.com	603.225.4561	A Member of the Public	Myself	Support	No	4/13/2021 8:40 PM
Perencevich, Ruth	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 8:45 PM
Richman, Susan	susan7richman@gmail.com	603.868.2758	A Member of the Public	Myself	Support	No	4/13/2021 8:55 PM
McArt, Ebba	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 12:35 PM
rettew, ann	abrettew@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 4:19 PM
Anastasia, Patricia	patti@pattianastasia.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 5:48 PM
Sinclair-Pappas,	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 6:02 PM

Barbara

Testimony

Jennifer Horgan

From: David Blair <orionblair@gmail.com>
Sent: Sunday, April 11, 2021 10:43 AM
To: Jay Kahn; Sharon Carson; Harold French; William Gannon; Becky Whitley
Cc: Jennifer Horgan
Subject: bills before the Senate Judiciary Committee

Dear members of the Senate Judiciary Committee,

You have a very full week ahead of you, and I wish you wisdom as you consider some very important bills.

I am writing to express my support for all of the following bills, which will come before you on Tuesday, Wednesday and Thursday:

HB 270 (post-conviction DNA testing)
HB 615 (reduction of penalty for certain first offense drug possessions)
HB 436 (eyewitness identification)
HB 474 (public surveillance on public ways)
HB 471 (police disciplinary hearings)
HB 485 (right to refuse consensual search)

Thank you all for your work on behalf of justice and safety for all NH residents!

Sincerely,

David Blair
77 South Road
Harrisville, NH

Jennifer Horgan

From: Jean <jlewando@hotmail.com>
Sent: Saturday, May 15, 2021 7:02 PM
To: Jennifer Horgan

I am writing to urge you to support HB485, which requires police to inform people that they have a right to refuse consensual searches and demand a search warrant be issued. Too many times, people have had their private property torn up without any recompense, and without any benefit to law enforcement or public safety, because they have not been informed of this right.

I also urge you to support HB286, which establishes a commission to study the response of law enforcement and the criminal justice system to homelessness in our state. The condition of being unhoused should not be considered a criminal matter in the first place. It is a symptom of multiple factors within our economy, our health care system, and our social safety net. These are matters of policy, funding priorities, and allocation of resources toward health and human services, affordable housing, and ensuring livable wages.

If community-police relationships are to be healthy and beneficial to everyone, there must be trust that the system is open and accountable, and we must stop dumping jobs on law enforcement, when other agencies are better suited to deal with them, when they are properly funded.

Jean Lewandowski
Ward 5, Nashua

Sent from [Mail](#) for Windows 10

Cor 306.03 Searches and Inspections Authorized.

(a) Any person or possessions on departmental property shall be subject to search to discover contraband. Searches shall be necessary to prevent the introduction of contraband into the facilities by persons under departmental control and to prevent escapes, violence, and situations where violence is likely. Travel onto departmental property shall constitute implied consent to search for contraband pursuant to RSA 622:24-25, and RSA 622:39. In such cases where implied consent exists, the visitor shall be given a choice of either consenting to the search or immediately leaving departmental property. Nothing in Cor 306.03, however, shall prevent non-consensual searches in situations where probable cause exists to believe that the visitor is or has attempted to introduce contraband into a departmental facility pursuant to the laws of New Hampshire concerning search, seizure, and arrest or otherwise authorized by law.

(b) All motor vehicles parked on departmental property shall be locked and have the keys removed. Correctional uniformed staff shall check to ensure that vehicles are locked and shall visually inspect the plain view interiors of the vehicles. Vehicles discovered to be unlocked shall be searched to ensure that no contraband is present. Contraband discovered during searches shall be confiscated as evidence and turned over to law enforcement authorities for use in possible prosecution.

(c) All persons entering departmental facilities to visit with persons under departmental control or patients of the SPU, or staff, or to perform services at the facilities or to tour the facilities shall be subject to having their persons checked for contraband. In order to minimize the scope of such searches, items not needed for the visit such as purses, coats, and other baggage shall be left either in the vehicles or in the small lockers provided. All items and clothing carried into the institution waiting area shall be searched for contraband. Items left at the storage area shall be subject to inspection and search. Contraband seized shall be retained as evidence and turned over to law enforcement authorities for use in possible prosecution.

Under the existing state of the law, merely by stepping onto the property of the prison means we can conduct a search of a person or their property, including an unlocked vehicle. The language of HB 485 would change the state of the law, forcing NHDOC staff to ask a person on the prison property for consent to search their person or vehicle. While NHDOC never searches a person without his or her consent, this proposal under HB 485 would eliminate the Department's ability to intercept contraband by simply searching an unlocked vehicle.

NHDOC requests that the Legislature create a carve out for the Department in **HB 485**, similar to the one recently enacted in RSA 635:2 regarding criminal trespass, by inserting the following:

1 New Section; Right to Refuse a Consensual Search. Amend RSA 595-A by inserting after section 9 the following new section:

595-A:10 Right to Refuse a Consensual Search. Before an officer attempts to conduct a consensual search of a person, his or her vehicle, home, or other property, the officer shall inform such person of his or her right to refuse such a search without a penalty. Such refusal shall not be used in establishing probable cause for a warrantless search or in an application for a search warrant, nor shall it be used to further extend any stop or interaction with a member of the public, provided all other lawful reasons for the stop or interaction have been concluded. This section shall not preclude searches incident to arrest, those searches allowed under the United States Constitution for officer safety, *on any grounds, lands, or parking areas of any state correctional facility or transitional housing unit operated by the department of corrections*, or inventory searches of lawfully seized property, including but not limited to vehicles towed in conjunction to the arrest of the operator.

2 Effective Date. This act shall take effect 60 days after its passage.

In summary, we feel that the current state of the law, as it relates to searches in NHDOC property, is necessary and appropriate to ensure the safety and security of our grounds and facilities, and we would not want new law to be introduced that conflicts with or undermines that ability.

Thank you for your attention to this matter, we look forward to discussing this further and answering additional questions. I can be reached at 603-271-5604 or Lynmarie.c.cusack@doc.nh.gov.

Thank you for your service to the State of NH.

Jennifer Horgan

From: Rachel Edelson <redelson@hotmail.com>
Sent: Monday, April 12, 2021 9:42 PM
To: Jennifer Horgan
Subject: Urging SUPPORT for These Bills

Dear Committee Aide Jennifer Horgan,

As an involved resident of Nashua I wrote to the members of the Judiciary committee to express my **SUPPORT** these Bills which are going to be voted on this week:

HB 270
HB 615
HB 436
HB 474
HB 471
HB 485

Thank you for your work as part of our democracy.

Sincerely,
Rachel Edelson
Bay Ridge Apts.
Nashua NH 03062

Jennifer Horgan

From: Susan Cragin <susancragin@earthlink.net>
Sent: Tuesday, June 15, 2021 12:42 PM
To: ~House Judiciary Committee; ~Senate Judiciary Committee
Subject: SB-134 / HB-485 -- URPERA

My name is Susan Cragin. I am the Merrimack County Register of Deeds. I would like to add a few comments about adding the Uniform Real Property Electronic Recording Act (URPERA) to New Hampshire's laws.

Terminology relating to electronic documents has changed, and laws developed years ago, such as URPERA, are not what they were when it was drafted. And so, a bill attempting to make New Hampshire's law "modern" by allowing "esignatures" and "electronic documents" is confusing at best.

(1) The legislation uses the term "electronic" signature when, I believe, it would be more appropriate to use the term "digital" signature.

Both "electronic" and "digital" signatures are fairly recent terms. "Electronic" signatures came out first, and are codified in New Hampshire law as follows:

NH RSA 294-E:2, VIII provides that an electronic signature may be represented by "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

This of course is not a good definition, since only the "signer" knows what his "intent" was when he signed it.

More recently, the business world has realized that a tighter standard must be applied to certain documents, especially those where the agreements are long-term, and / or where the parties may not be able to face each other in court. Thus digital signatures were developed.

<https://us-east-2.protection.sophos.com?d=techtarget.com&u=aHR0cHM6Ly9zZWZyY2hzZW50ZWNodGFyZ2V0LmNvbS9kZWZpbml0aW9uL2RpZ210YWwtc2lnbmF0dXJl&i=NWViOWEzNmVkMDA3MzIxNzcxMzJhMTJh&t=cHVqb2ZubU5YZ2JveUdLb1VPNmSyYkxTbnJwWWVoMCA3d3hTeDBQSXVxUT0=&h=b63053b27bf64ae8a8c26cbcd7e3ed7f>

In land records, especially mortgages, a valid signature is important. A mortgage is between a regulated entity (bank) and an individual, who must sign whatever contract the bank offers. New Hampshire is a non-judicial foreclosure state, where foreclosure can be more or less automated. A homeowner should not be evicted based on a typed signature. But this is what may happen.

(2) Electronic documents and digital documents are not the same thing.

Your legislation refers to "electronic" documents, as "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." ... "Electronic document" means a document that is received by the register of deeds in an electronic form."

This definition is confusing.

My registry offers "e-recording" services, but the documents we currently e-record are merely snapshot copies of paper documents, with wet signatures. These are referred to as "digital documents."

"Electronic documents" are electronic with a visual representation, whereas digital documents are visual with an electronic representation.

Confused now? Think of the difference between making a snapshot of a book page, and reading that book on a web page.

<https://us-east-2.protection.sophos.com?d=tiekinetix.com&u=aHR0cHM6Ly90aWVraW5ldG14LmNvbS91bi9kaWZmZXJlbnNlWJldHdlZW4tZGlnaXRhbC1lbGVjdHJvbmljLWRvY3VtZW50cw==&i=NWViOWEzNmVkMDA3MzIxNzcxMzJhMTJh&t=NEpLaXBtaXhVRjB1ZmJ2RE5wQkx6UGRtSm5sT0h6U2VuOGZ1dXpXNSStXWT0=&h=b63053b27bf64ae8a8c26bcd7e3ed7f>

I take no position on the bill. It appears to be ready to pass, so I guess we'll work out the bugs as they come up.

Susan Cragin

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB485

Hearing date: _____

Executive Session date: _____

Motion of: 1123 Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTPA Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: ~~OTPA~~ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Kahn

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, April 21, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 485**

AN ACT

requiring law enforcement officers to inform a
person of their right to refuse a consensual search.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 2021-1173s

Senator Jay Kahn
For the Committee

Jennifer Horgan 271-7875

JUDICIARY

HB 485, requiring law enforcement officers to inform a person of their right to refuse a consensual search.

Ought to Pass with Amendment, Vote 5-0.

Senator Jay Kahn for the committee.

General Court of New Hampshire - Bill Status System

Docket of HB485

Docket Abbreviations

Bill Title: (New Title) relative to informed consent to search a motor vehicle and amending the statutory requirements for a search warrant; relative to prohibiting certain uses of laser pointing devices, and relative to various civil actions and criminal liability.

Official Docket of HB485.:

Date	Body	Description
1/10/2021	H	Introduced (in recess of) 01/06/2021 and referred to Criminal Justice and Public Safety HJ 2 P. 50
2/17/2021	H	Public Hearing: 02/17/2021 11:45 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/98063742762 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
3/16/2021	H	Committee Report: Ought to Pass with Amendment #2021-0409h (Vote 20-0; CC) HC 18 P. 7
4/7/2021	H	Amendment #2021-0409h : AA VV 04/07/2021 HJ 5 P. 8
4/7/2021	H	Ought to Pass with Amendment 2021-0409h: MA VV 04/07/2021 HJ 5 P. 8
4/7/2021	H	Reconsider (Rep. Osborne): MF VV 04/07/2021 HJ 5 P. 50
4/7/2021	S	Introduced 04/01/2021 and Referred to Judiciary; SJ 11
4/8/2021	S	Remote Hearing : 04/15/2021, 01:30 pm; Links to join the hearing can be found in the Senate Calendar; SC 19
4/21/2021	S	Committee Report: Ought to Pass with Amendment #2021-1173s , 04/29/2021; SC 21
4/29/2021	S	Sen. Carson Moved Laid on Table, RC 0Y-24N , MF; 04/29/2021; SJ 13
4/29/2021	S	Committee Amendment #2021-1173s , RC 24Y-0N , AA; 04/29/2021; SJ 13
4/29/2021	S	Ought to Pass with Amendment 2021-1173s, RC 24Y-0N , MA; 04/29/2021; SJ 13
4/29/2021	S	Sen. Carson Moved Laid on Table, RC 24Y-0N , MA; 04/29/2021; SJ 13
4/29/2021	S	Pending Motion OT3rdg; 04/29/2021; SJ 13
5/27/2021	S	Sen. Carson Moved to Remove From Table, MA, VV; 05/27/2021; SJ 17
5/27/2021	S	Sen. Carson Floor Amendment #2021-1778s , AA, VV; 05/27/2021; SJ 17
5/27/2021	S	Ought to Pass with Amendment 2021-1778s, MA, VV; OT3rdg; 05/27/2021; SJ 17
6/8/2021	H	House Non-Concurs with Senate Amendment 2021-1173s and 2021-1778s and Requests CofC (Reps. Abbas, Roy, Wallace, Harriott-Gathright): MA VV 06/04/2021 HJ 9 P. 53
6/10/2021	S	Sen. Carson Accedes to House Request for Committee of Conference, MA, VV; 06/10/2021; SJ 19
6/10/2021	S	President Appoints: Senators Carson, French, Kahn; 06/10/2021; SJ 19
6/14/2021	H	Conferee Change: Rep. Bordenet Replaces Rep. Harriott-Gathright 06/10/2021 HJ 10 P. 22
6/16/2021	H	Conference Committee Meeting: 06/16/2021 11:30 am LOB 201-203
6/23/2021	S	Conference Committee Report; Not Signed Off; SJ 20

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB485

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 11235 - amendment # _____

- amendment # 11735 - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # 1778 - amendment # _____

- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Horgan
Committee Aide

8/16/21
Date

Senate Clerk's Office AK