

LEGISLATIVE COMMITTEE MINUTES

SB134

Bill as
Introduced

SB 134-FN - AS INTRODUCED

2021 SESSION

21-0931
04/06

SENATE BILL **134-FN**

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

SPONSORS: Sen. Carson, Dist 14

COMMITTEE: Judiciary

ANALYSIS

This bill adopts legislation relative to:

- 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. Interference with the enjoyment of a dwelling place.
- XI. Employer access to motor vehicle records.
- XII. Authorization to grow industrial hemp.

Explanation: Matter added to current law appears in **bold italics**.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 adopting omnibus legislation relative to civil actions and criminal liability.

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

1 1 Sponsorship. This act consists of the following proposed legislation:

2 Part I: LSR 21-0931, relative to prohibiting certain uses of laser pointing devices, sponsored by
3 Sen. Carson, Prime/Dist 14.

4 Part II: LSR 21-0498, relative to the revised uniform law on notarial acts and the uniform real
5 property electronic recording act, sponsored by Sen. Cavanaugh, Prime/Dist 16; Sen. Hennessey,
6 Dist 1; Sen. Bradley, Dist 3; Rep. Danielson, Hills 7.

7 Part III: LSR 21-0913, relative to incarceration under a suspended sentence, sponsored by Sen.
8 Whitley, Prime/Dist 15; Sen. Perkins Kwoka, Dist 20; Sen. Kahn, Dist 10; Sen. D'Allesandro, Dist
9 20.

10 Part IV: LSR 21-0932, relative to civil liability for damage to highways, sponsored by Sen.
11 Carson, Prime/Dist 14.

12 Part V: LSR 21-0934, relative to structured settlement protection, sponsored by Sen. Carson,
13 Prime/Dist 14.

14 Part VI: LSR 21-0944, establishing the New Hampshire collaborative law act, sponsored by Sen.
15 Carson, Prime/Dist 14.

16 Part VII: LSR 21-0979, relative to probate administration, distribution upon intestacy, and
17 powers of attorney and adopting the uniform disclaimer of property interests act, sponsored by Sen.
18 Whitley, Prime/Dist 15; Rep. McWilliams, Merr 27; Rep. Piedra, Hills 9.

19 Part VIII: LSR 21-1041, relative to school employee and school volunteer criminal history
20 background checks and establishing a committee to study department of education oversight of
21 criminal history background checks for private schools, sponsored by Sen. Kahn, Prime/Dist 10; Sen.
22 Cavanaugh, Dist 16; Rep. Ladd, Graf 4.

23 Part IX: LSR 21-0996, making an appropriation funding mental health intervention training
24 programs, sponsored by Sen. Giuda, Prime/Dist 2; Sen. Watters, Dist 4; Sen. Hennessey, Dist 1; Sen.
25 Sherman, Dist 24; Sen. Carson, Dist 14; Sen. Bradley, Dist 3; Rep. Salloway, Straf 5; Rep. Weyler,
26 Rock 13; Rep. Gordon, Graf 9; Rep. Lang, Belk 4; Rep. G. Sanborn, Graf 6.

27 Part X: LSR 21-0192, relative to interference with the enjoyment of a dwelling place, sponsored
28 by Sen. Ward, Prime/Dist 8.

29 Part XI: LSR 21-1013, relative to employer access to motor vehicle records, sponsored by Sen.
30 Carson, Prime/Dist 14.

1 Part XII: LSR 21-0969, relative to authorization to grow industrial hemp, sponsored by Sen.
2 Carson, Prime/Dist 14.

3 2 Legislation Enacted. The general court hereby enacts the following legislation:

4 PART I

5 Relative to prohibiting certain uses of laser pointing devices.

6 1 Assault and Related Offenses; Conduct Involving Laser Pointing Devices. RSA 631:3-a is
7 repealed and reenacted to read as follows:

8 631:3-a Conduct Involving Laser Pointing Devices.

9 I. As used in this section:

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

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

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

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

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

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

27 (a) An authorized person in the conduct of research and development or flight test
28 operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other
29 person authorized by the Federal Aviation Administration to conduct such research and
30 development or flight test operations.

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

33 (c) An individual using a laser emergency signaling device to send an emergency distress
34 signal, in an organized meeting or training class by the instructor or speaker, the use of medical
35 lasers by qualified medical personnel, sporting use related only to calibrate distance without
36 violating the prohibitions set forth in paragraph III, agricultural use, use related to land surveying,
37 construction lasers used by construction personnel in the course of their work or other use of lasers

1 for lawful business purposes, or lawful laser devices utilized by law enforcement personnel in the
2 performance of their official duties.

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

5 2 Effective Date. Part I of this act shall take effect January 1, 2022.

6 PART II

7 Relative to the revised uniform law on notarial acts and the uniform real property electronic
8 recording act.

9 1 Notaries Public. Amend RSA 455:3 to read as follows:

10 455:3 Powers.

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

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

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

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

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

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

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

23 2 New Paragraph; Notarial Fees. Amend RSA 455:11 by inserting after paragraph II the
24 following new paragraph:

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

27 3 Uniform Law on Notarial Acts; Definitions. Amend RSA 456-B:1 to read as follows:

28 456-B:1 Definitions.

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

34 II. "Acknowledgment" means a declaration by ~~[a person]~~ **an individual before a notarial**
35 **officer** that the ~~[person has executed an instrument]~~ **individual has signed a record** for the
36 purposes stated therein and, if ~~[the instrument is executed]~~ **the record is signed** in a
37 representative capacity, that the ~~[person]~~ **individual** signed the ~~[instrument]~~ **record** with proper

1 authority and ~~[executed]~~ *signed* it as the act of the ~~[person]~~ *individual* or entity ~~[represented and]~~
2 identified therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 XIV. "*Stamping device*" means:

1 (a) *A physical device capable of affixing to or embossing on a tangible record an*
2 *official stamp; or*

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

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

8 4 Uniform Law on Notarial Acts; Notarial Acts. Amend RSA 456-B:2 to read as follows:
9 456-B:2 Notarial Acts.

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

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

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

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

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

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

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

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

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

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

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

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

10 5 New Sections; Personal Appearance Required; Identification of Individual. Amend RSA 456-B
11 by inserting after section 2 the following new sections:

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

15 456-B:2-b Identification of Individual.

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

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

21 (a) By means of:

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

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

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

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

32 6 Notarial Acts. Amend RSA 456-B:3, III to read as follows:

33 III. The signature, *embossed* official seal or the legible imprint of an *electronic or rubber*
34 official [~~rubber~~] stamp stating the name of the notary, and the words "notary public, New
35 Hampshire" and the expiration date of the notary public's commission of a person performing a
36 notarial act or for a justice of the peace the name of the justice and the expiration date of his or her

1 commission typed, printed, or stamped on the document are prima facie evidence that the signature
2 is genuine and that the person holds the designated title.

3 7 New Section; Notarial Act Performed for Remotely Located Individual. Amend RSA 456-B by
4 inserting after section 6 the following new section:

5 456-B:6-a Notarial Act Performed for Remotely Located Individual.

6 I. In this section:

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

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

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

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

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

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

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

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

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

27 (a) The notary public:

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

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

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

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

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

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

4 (1) The record:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 8 New Sections; Official Stamp; Stamping Device; Notification Regarding Performance of
20 Notarial Act on Electronic Record; Selection of Technology; Rules; Journal; Validity of Notarial Acts;
21 Relation to Electronic Signatures in Global and National Commerce Act. Amend RSA 456-B by
22 inserting after section 8 the following new sections:

23 456-B:8-a Official Stamp; Stamping Device.

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

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

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

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

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

4 456-B:8-b Notification Regarding Performance of Notarial Act on Electronic Record; Selection of
5 Technology; Rules.

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

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

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

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

24 456-B:8-c Journal.

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

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

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

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

- 1 (b) A description of the record, if any, and type of notarial act;
- 2 (c) The full name and address of each individual for whom the notarial act is performed;
- 3 (d) If identity of the individual is based on personal knowledge, a statement to that
- 4 effect;
- 5 (e) If identity of the individual is based on satisfactory evidence, a brief description of
- 6 the method of identification and the identification credential presented, if any, including the date of
- 7 issuance and expiration of the identification credential; and
- 8 (f) The fee, if any, charged by the notary public.

9 IV. If the journal of a notary public is lost, the notary public loses access to the journal, or

10 the journal is stolen, the notary public promptly shall notify the secretary of state upon discovering

11 the journal is lost, access is lost, or the journal is stolen.

12 V. On resignation from, or the revocation or suspension of, the commission of a notary

13 public, the notary public shall retain the journal in accordance with paragraph I and inform the

14 secretary of state where the journal is located.

15 VI. Instead of retaining a journal as provided in paragraphs I and V, a current or former

16 notary public may transmit the journal to a repository approved by the secretary of state.

17 VII. Upon the death or adjudication of incompetency of a current or former notary public,

18 the personal representative or guardian of the notary public shall retain the journal as provided in

19 paragraphs I or V or transmit the journal to a repository approved by the secretary of state.

20 456-B:8-d Validity of Notarial Acts. The failure of a notarial officer to perform a duty or meet a

21 requirement specified in this chapter or RSA 455 does not invalidate a notarial act performed by the

22 notarial officer. The validity of a notarial act under this chapter or RSA 455 does not prevent an

23 aggrieved person from seeking to invalidate the record or transaction that is the subject of the

24 notarial act or from seeking other remedies based on law of this state other than this chapter or law

25 of the United States. This section does not validate a purported notarial act performed by an

26 individual who does not have the authority to perform notarial acts.

27 456-B:8-e Relation to Electronic Signatures in Global and National Commerce Act. This chapter

28 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15

29 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15

30 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section

31 103(b) of that act, 15 U.S.C. section 7003(b).

32 9 New Paragraph; Short Forms. Amend RSA 456-B:8 by inserting after paragraph V the

33 following new paragraph:

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

35 State of _____

36 (County) of _____

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

3 Dated _____

4 _____

5 (Signature of notarial officer)

6 (Seal, if any)

7 Title (and Rank)

8 [My commission expires: _____]

9 10 New Chapter; Uniform Real Property Electronic Recording Act. Amend RSA by inserting
10 after chapter 478 the following new chapter:

11 CHAPTER 478-A

12 UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

13 478-A:1 Short Title. This chapter may be cited as the Uniform Real Property Electronic
14 Recording Act.

15 478-A:2 Definitions. In this chapter:

16 I. "Document" means information that is:

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

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

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

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

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

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

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

33 478-A:3 Validity of Electronic Documents; Recordation of Electronic Documents in Tangible
34 Form.

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

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

3 III. A requirement that a document or a signature associated with a document be notarized,
4 acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the
5 person authorized to perform that act, and all other information required to be included, is attached
6 to or logically associated with the document or signature. A physical or electronic image of a stamp,
7 impression, or seal need not accompany an electronic signature.

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

13 478-A:4 Recording of Documents.

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

16 II. A register of deeds:

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

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

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

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

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

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

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

31 478-A:5 Uniformity of Application and Construction. In applying and construing this uniform
32 act, consideration shall be given to the need to promote uniformity of the law with respect to its
33 subject matter among states that enact it.

34 478-A:6 Relation to Electronic Signatures in Global and National Commerce Act. This chapter
35 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
36 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15

1 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
2 103(b) of that act, 15 U.S.C. section 7003(b).

3 11 Effective Date. Part II of this act shall take effect 180 days after its passage.
4

5 PART III

6 Relative to incarceration under a suspended sentence.

7 1 Incarceration Under a Suspended Sentence. Amend the introductory paragraph of RSA
8 651:20, I(a) to read as follows:

9 (a) Any person sentenced to state prison for a minimum term of 6 years or more shall
10 not bring a petition to suspend sentence until such person [~~has served at least 4 years or 2/3 of his~~
11 ~~minimum sentence, whichever is greater,~~] **is within 18 months of serving 2/3 of the minimum**
12 **sentence**, and not more frequently than every 3 years thereafter. Any person sentenced to state
13 prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until
14 such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by
15 the sentencing court. For the purposes of this subparagraph:

16 2 Effective Date. Part III of this act shall take effect 60 days after its passage.
17

18 PART IV

19 Relative to civil liability for damage to highways.

20 1 Liability for Obstruction or Injury to Highway; Civil Liability. Amend RSA 263:39 to read as
21 follows:

22 236:39 Civil Liability.

23 I. If any person, without authority, shall place any obstruction in a highway, or cause any
24 defect, insufficiency, or want of repair of a highway which renders it unsuitable for public travel, he
25 or she shall be **strictly** liable to the state for all damages to the highway, including **full and**
26 **current** replacement costs of protective barriers, **and any structure or device that is part of the**
27 **highway or turnpike system**, when maintained by the state, or to the municipality for all damages
28 to a highway, including **full and current** replacement costs of protective barriers **and any**
29 **structure or device that is part of the highway**, when maintained by the municipality, and for
30 all damages and costs which the state or municipality shall be compelled to pay to any person
31 injured by such obstruction, defect, insufficiency, or want of repair as established through an
32 appropriate contribution claim or under the rules of joint and several liability.

33 II. **"Full and current replacement cost" as used in this section means actual or**
34 **reasonable estimates of labor, including contracted labor; material, equipment, and**
35 **overhead. Such costs shall not be reduced for depreciation.**

36 2 Effective Date. Part IV of this act shall take effect 60 days after its passage.
37

PART V

1 Relative to structured settlement protection.

2 1 New Chapter; Structured Settlement Protection. Amend RSA by inserting after chapter 408-F
3 the following new chapter:

4 CHAPTER 408-G

5 STRUCTURED SETTLEMENT PROTECTION

6 408-G:1 Definitions. In this chapter:

7 I. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments
8 under a structured settlement.

9 II. "Assignee" means a party acquiring or proposing to acquire structured settlement
10 payment rights from a transferee of such rights.

11 III. "Dependents" include a payee's spouse and minor children and all other persons for
12 whom the payee is legally obligated to provide support, including alimony.

13 IV. "Discounted present value" means the present value of future payments determined by
14 discounting such payments to the present using the most recently published applicable federal rate
15 for determining the present value of an annuity, as issued by the United States Internal Revenue
16 Service.

17 V. "Gross advance amount" means the sum payable to the payee or for the payee's account
18 as consideration for a transfer of structured settlement payment rights before any reductions for
19 transfer expenses or other deductions to be made from such consideration.

20 VI. "Independent professional advice" means advice of an attorney, certified public
21 accountant, actuary or other licensed professional adviser.

22 VII. "Interested parties" means, with respect to any structured settlement, the payee, any
23 beneficiary irrevocably designated under the annuity contract to receive payments following the
24 payee's death, the annuity issuer, the structured settlement obligor, and any other party to such
25 structured settlement that has continuing rights or obligations to receive or make payments under
26 such structured settlement.

27 VIII. "Net advance amount" means the gross advance amount less the aggregate amount of
28 the actual and estimated transfer expenses required to be disclosed pursuant to this chapter.

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

31 X. "Periodic payments" includes both recurring payments and scheduled future lump sum
32 payments.

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

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

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

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

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

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

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

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

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

17 XVIII. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or
18 encumbrance of structured settlement payment rights made by a payee for consideration; provided
19 that the term "transfer" shall not include the creation or perfection of a security interest in
20 structured settlement payment rights under a blanket security agreement entered into with an
21 insured depository institution, in the absence of any action to redirect the structured settlement
22 payments to such insured depository institution, or an agent or successor in interest thereof, or
23 otherwise to enforce such blanket security interest against the structured settlement payment
24 rights.

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

27 XX. "Transfer expenses" means all expenses of a transfer that are required under the
28 transfer agreement to be paid by the payee or deducted from the gross advance amount, including,
29 without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and
30 lien search fees, finders' fees, commissions, and other payments to a broker or other
31 intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the
32 payee's account from the proceeds of a transfer.

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

35 408-G:2 Required Disclosure to Payee. Not less than 3 days prior to the date on which a payee
36 signs a transfer agreement, the transferee shall provide to the payee a separate disclosure
37 statement, in bold type no smaller than 14 points, setting forth the following:

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

2 II. The aggregate amount of such payments.

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

7 IV. The gross advance amount.

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

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

15 VII. The net advance amount.

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

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

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

24 408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect
25 transfer of structured settlement payment rights shall be effective and no structured settlement
26 obligor or annuity issuer shall be required to make any payment directly or indirectly to any
27 transferee or assignee of structured settlement payment rights unless the transfer has been
28 approved in advance in a final court order based on express findings by such court that:

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

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

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

36 408-G:4 Effects of Transfer of Structured Settlement Payment Rights. Following a transfer of
37 structured settlement payment rights under this chapter:

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

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

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

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

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

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

18 408-G:5 Procedure For Approval of Transfers.

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

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

27 III. Not less than 20 days prior to the scheduled hearing on any application for approval of a
28 transfer of structured settlement payment rights under RSA 408-G:3, the transferee shall file with
29 the court and serve on all interested parties, including a parent or other guardian or authorized legal
30 representative of any interested party who is not legally competent, a notice of the proposed transfer
31 and the application for its authorization, including with such notice:

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

33 (b) A copy of the transfer agreement.

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

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

37 (e) A summary of:

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

6 (2) Any prior transfers by the payee to any person or entity other than the transferee
7 or an affiliate or an assignee of the transferee or an affiliate within the 3 years preceding the date of
8 the transfer agreement and any prior proposed transfers by the payee to any person or entity other
9 than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval
10 of which were denied within the one year preceding the date of the current transfer agreement, to
11 the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee
12 in writing or otherwise are actually known to the transferee.

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

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

19 408-G:6 General Provisions; Construction.

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

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

26 III. No transfer of structured settlement payment rights shall extend to any payments that
27 are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the
28 transferee has established and has agreed to maintain procedures reasonably satisfactory to the
29 annuity issuer and the structured settlement obligor for periodically confirming the payee's survival,
30 and giving the annuity issuer and the structured settlement obligor prompt written notice in the
31 event of the payee's death.

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

36 V. No payee who proposes to make a transfer of structured settlement payment rights shall
37 incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the

1 proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of
2 this chapter.

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

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

12 2 Applicability. RSA 408-G as inserted by section 1 of Part V of this act shall apply to any
13 transfer of structured settlement payment rights under a transfer agreement entered into on or after
14 the 30th day after the effective date of Part V of this act.

15 3 Effective Date. Part V of this act shall take effect 60 days after its passage.

16

17

PART VI

18

Establishing the New Hampshire collaborative law act.

19

1 New Chapter; New Hampshire Collaborative Law Act. Amend RSA by inserting after chapter
20 490-I the following new chapter:

21

CHAPTER 490-J

22

NEW HAMPSHIRE COLLABORATIVE LAW ACT

23

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

24

490-J:2 Definitions. In this chapter:

25

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

27

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

28

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

30

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

31

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

33

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

35

(a) Sign a collaborative law participation agreement; and

36

(b) Are represented by collaborative lawyers.

1 IV. "Collaborative lawyer" means a lawyer who represents a party in a collaborative law
2 process.

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

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

6 (b) Parental rights and responsibilities;

7 (c) Grandparent rights;

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

9 (e) Parentage;

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

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

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

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

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

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

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

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

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

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

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

30 490-J:3 Applicability. This chapter applies to a collaborative law participation agreement that
31 meets the requirements of RSA 490-J:4 signed on or after the effective date of the chapter.

32 490-J:4 Collaborative Law Participation Agreement; Requirements.

33 I. A collaborative law participation agreement shall:

34 (a) Be in writing;

35 (b) Be signed by the parties;

36 (c) State the parties' intention to resolve a collaborative matter through a collaborative
37 law process under this chapter;

1 (d) Describe the nature and scope of the matter;

2 (e) Contain a statement by each collaborative lawyer confirming the lawyer's
3 representation of a party in the collaborative law process; and

4 (f) Disqualify the collaborative lawyer from representing a party in a case filed with a
5 court involving one or more of the same parties in the same or a related matter, except for the filing
6 needed to seek the court's approval of an agreement reached in the collaborative case or in pending
7 cases while stayed pursuant to RSA 490-J:6, I.

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

10 490-J:5 Beginning and Concluding Collaborative Law Process.

11 I. A collaborative law process begins when the parties sign a collaborative law participation
12 agreement.

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

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

16 (a) Resolution of a collaborative matter as evidenced by a signed agreement;

17 (b) Resolution of a part of the collaborative matter, evidenced by a signed agreement, in
18 which the parties agree that the remaining parts of the matter will not be resolved in the process; or

19 (c) Termination of the process.

20 IV. A collaborative law process terminates:

21 (a) When a party gives written notice to other parties that the process is ended.

22 (b) Except as otherwise provided by paragraph VII, when a party discharges a
23 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

24 (c) When a party:

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

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

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

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

31 (C) The matter is no longer stayed.

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

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

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

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

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

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

6 IX. A collaborative law participation agreement may provide additional methods of
7 concluding a collaborative law process.

8 490-J:6 Cases Already Filed in Court.

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

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

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

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

21 490-J:7 Emergency Order. During a collaborative law process, a court may issue emergency
22 orders to protect the health, safety, welfare, or interest of a party; however, filing for such an order
23 terminates the pending collaborative law process. Nothing in this section prohibits parties from
24 exploring a return to the collaborative process after the issues that gave rise to the emergency order
25 have been resolved and process outlined in RSA 490-J:13, III have been followed.

26 490-J:8 Approval of Agreement by Court.

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

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

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

35 490-J:9 Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

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

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

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

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

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

17 490-J:10 Disclosure of Information. During the collaborative law process, on the request of
18 another party, a party shall make timely, full, candid, and informal disclosure of information related
19 to a collaborative matter without formal discovery. A party also shall update promptly previously
20 disclosed information that has materially changed. The parties may define the scope of disclosure
21 during the collaborative law process.

22 490-J:11 Standards of Professional Responsibility and Mandatory Reporting Not Affected. This
23 chapter does not affect:

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

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

28 490-J:12 Appropriateness of Collaborative Law Process. Before a prospective party signs a
29 collaborative law participation agreement, a prospective collaborative lawyer shall:

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

32 II. Provide the prospective party with information that the lawyer reasonably believes is
33 sufficient for the party to make an informed decision about the material benefits and risks of a
34 collaborative law process as compared to the material benefits and risks of other reasonably
35 available alternatives for resolving the proposed collaborative matter, such as litigation, mediation,
36 arbitration, or neutral evaluation; and

37 III. Advise the prospective party that:

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

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

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

9 490-J:13 Domestic Violence.

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

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

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

22 490-J:14 Confidentiality of Collaborative Law Communication. A collaborative law
23 communication is confidential except as agreed by the parties in a signed document, or under the
24 circumstances set forth in RSA 490-J:15, IV.

25 490-J:15 Privilege Against Disclosure for Collaborative Law Communication.

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

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

33 III. Waiver of Privilege.

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

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

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

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

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

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

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

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

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

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

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

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

25 490-J:16 Authority of Court in Case of Noncompliance. Notwithstanding a failure to comply
26 with RSA 490-J:4, RSA 490-J:12, or RSA 490-J:13, a court may enforce an agreement, apply the
27 disqualification provisions of RSA 490-J:9, or apply a privilege under RSA 490-J:15 when the court
28 concludes that the parties intended to enter into a collaborative law participation agreement and to
29 participate in a collaborative law process. Such a conclusion shall be based upon the following
30 findings:

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

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

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

37 2 Effective Date. Part VI of this act shall take effect 60 days after its passage.

PART VII

1
2 Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting
3 the uniform disclaimer of property interests act.

4 1 Administrators and Their Appointment; Subdivision Heading Amended. Amend the
5 subdivision heading preceding RSA 553:32 to read as follows:

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

7 2 Waiver of Administration. RSA 553:32, I-II are repealed and reenacted to read as follows:

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

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

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

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

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

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

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

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

34 (c) If the administrator fails to file the affidavit of administration within the time
35 prescribed in subparagraph (b), including any extensions granted, the court may take appropriate
36 action in the discretion of the court, including, but not limited to, issuing a notice of default, a show
37 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 3 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 4 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 5 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 6 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 7 Uniform Power of Attorney Act; Statutory Form Power of Attorney. Amend RSA 564-E:301 to
15 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 ~~{10-}~~ 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 8 Applicability.

8 I. Section 2 of Part VII of this act shall apply to all petitions for estate administration filed
9 on or after July 1, 2021 regardless of the date of the decedent's death.

10 II. Section 3 of Part VII of this act shall apply to decedents dying on or after July 1, 2021.

11 III. Section 4 of Part VII of this act shall apply to general powers of attorney executed on or
12 after July 1, 2021.

13 9 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 10 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 11 Effective Date.

18 I. Sections 1-8 of Part VII of this act shall take effect July 1, 2021.

19 II. The remainder of Part VII of this act shall take effect upon its passage.
20

21 PART VIII

22 Relative to school employee and school volunteer criminal history background checks and
23 establishing a committee to study department of education oversight of criminal history background
24 checks for private schools.

25 1 School Employee and Designated School Volunteer Criminal History Records Check. Amend
26 RSA 189:13-a, III to read as follows:

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

1 ~~superintendent of the school administrative unit or the chief executive officer of the chartered public~~
2 ~~school or public academy shall destroy any criminal history record information that indicates a~~
3 ~~criminal record within 60 days of receiving such information.]~~ *If the applicant's criminal history*
4 *records information indicates that the applicant has been charged pending disposition for*
5 *or has been convicted of a crime listed in paragraph V, the superintendent of the school*
6 *administrative unit or the chief executive officer of the chartered public school or public*
7 *academy shall notify the department of education.*

8 *III-a. The superintendent of the school administrative unit or chief executive officer*
9 *of the chartered public school or public academy shall immediately destroy any criminal*
10 *history record information which indicates that the applicant has no criminal record. The*
11 *superintendent of the school administrative unit or chief executive officer of the chartered*
12 *public school or public academy shall destroy any criminal history record information that*
13 *indicates a criminal record within 60 days of receiving said information.*

14 2 School Employee and Designated School Volunteer Criminal History Records Check. Amend
15 RSA 189:13-a, VI to read as follows:

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

27 3 School Employee and Designated School Volunteer Criminal History Records Check. Amend
28 RSA 189:13-a, IX to read as follows:

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

35 ~~(b) Upon enrollment in an educator preparation program at an institution of higher~~
36 ~~education, a candidate shall submit to a criminal history records check. The institution of higher~~
37 ~~education in which the candidate is enrolled shall conduct the criminal history records check.]~~ Upon

1 placement of a candidate, *as defined in RSA 189:13-c*, as a student teacher, the receiving school
 2 administrative unit, school district, or chartered public school shall conduct ~~[another]~~ a criminal
 3 history records check of the candidate and shall follow the same procedures for assessing the
 4 candidate's criminal history background as for applicants for employment. ~~[The governing body of~~
 5 ~~the institution of higher education may adopt a policy relative to how often a candidate shall submit~~
 6 ~~to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is~~
 7 ~~enrolled in an educator preparation program at an institution of higher education in New~~
 8 ~~Hampshire.]~~

9 *(b) A receiving school administrative unit, school district, or chartered public*
 10 *school may conduct a criminal history records check upon a candidate, as defined in RSA*
 11 *189:13-c.*

12 4 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
 13 inserting after section 13-b the following new section:

14 189:13-c Credentialing Applicant and Candidate Criminal History Records Check.

15 I. Definitions:

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

18 (b) "Candidate" means a student who is enrolled in an educator preparation program at
 19 an institution of higher education in New Hampshire.

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

23 (b) The department shall complete a criminal history records check on all candidates as
 24 shall school administrative units, school districts, and chartered public schools pursuant to RSA
 25 189:13-a. The criminal history records check on candidates shall be conducted upon the candidate's
 26 enrollment in an educator preparation program at an institution of higher education and shall be
 27 valid for a period of 3 years.

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

34 (b) The credentialing applicant or candidate shall submit with the release form a
 35 complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee
 36 of the department of education. In the event that the first set of fingerprints is invalid due to
 37 insufficient pattern, a second set of fingerprints shall be taken in order to complete the criminal

1 history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern,
2 the department may, in lieu of the criminal history records check, accept police clearance from every
3 city, town, or county where an applicant or candidate has lived during the past 5 years.

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

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

9 V. Any person who has been charged pending disposition for or convicted of any violation or
10 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;
11 639:3; 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
12 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene in
13 this state, or under any statute prohibiting the same conduct in another state, territory, or
14 possession of the United States, shall not be granted a teaching credential by the department nor
15 shall candidates be granted clearance.

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

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

22 5 Committee Established. There is established a committee to study department of education
23 oversight of criminal history background checks by private schools.

24 6 Membership and Compensation.

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

26 (a) Three members of the house of representatives, appointed by the speaker of the
27 house of representatives.

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

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

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

33 7 Duties. The committee shall:

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

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

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

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

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

7 8 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
8 among the members. The first meeting of the committee shall be called by the first-named house
9 member. The first meeting of the committee shall be held within 45 days of the effective date of this
10 section. Three members of the committee shall constitute a quorum.

11 9 Report. The committee shall report its findings and any recommendations for proposed
12 legislation to the speaker of the house of representatives, the president of the senate, the house
13 clerk; the senate clerk, the commissioner of the department of education, the governor, and the state
14 library on or before November 1, 2021.

15 10 Effective Date.

16 I. Sections 1-4 of Part VIII of this act shall take effect 60 days after its passage.

17 II. The remainder of Part VIII of this act shall take effect upon its passage.

18 PART IX

19 Making an appropriation funding mental health intervention training programs.

20 1 Mental Health Intervention Training; Appropriation. The sum of \$210,000 for the biennium
21 ending June 30, 2023, is hereby appropriated to the police standards and training council for the
22 purposes of funding mental health intervention training programs. The appropriations shall be in
23 addition to any other funds appropriated to the police standards and training council. The governor
24 is authorized to draw a warrant for said sums out of any money in the treasury not otherwise
25 appropriated.

26 2 Effective Date. Part IX of this act shall take effect July 1, 2021.

27 PART X

28 Relative to interference with the enjoyment of a dwelling place.

29 1 New Section; Wilful Trespass; Interference With the Enjoyment of a Dwelling Place. Amend
30 RSA 539 by inserting after section 9 the following new section:

31 539:10 Interference With the Enjoyment of a Dwelling Place. Any person who knowingly uses
32 any device, including a mechanical or electronic device, in such a way as to unreasonably disturb the
33 peaceful enjoyment of another person's dwelling place or its curtilage, or any person who aids in such
34 act, shall be guilty of a misdemeanor. Any person injured by a violation of this section shall have a
35 right of action in the superior court to enforce this section and shall be awarded actual damages or
36 \$1,000, whichever is greater, and reasonable attorney's fees and court costs.

37 2 Effective Date. Part X of this act shall take effect January 1, 2022.

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PART XI

Relative to employer access to motor vehicle records.

1 New Paragraph; Motor Vehicle Records; Employer Access. Amend RSA 260:14 by inserting after paragraph IV the following new paragraph:

IV-a.(a) Except for a person's photograph, computerized image, and social security number, motor vehicle records and at least monthly electronic bulk files indicating changes in driving violations and driver license status shall be made available upon proof of the identity of the person requesting the records and representation by such person on a form satisfactory to the department that the records will be strictly limited to one or both of the following described uses:

(1) For use by an entity that employs drivers in the course of their business, or an authorized agent of such an entity, which requires a motor vehicle record or a monthly notification of changes to motor vehicle records in connection with pre-employment or continued employment screening of employees for driver safety reasons; or

(2) For use with respect to requests as to whether a driver meets the requirements of RSA 376-A:12.

(b) No motor vehicle records made available under this paragraph shall be sold, rented, transferred, or otherwise made available in whole or in part, in any form or format, directly or indirectly, to another person, except that an authorized agent may make such records available to any principal on whose behalf the records were sought if the name of that principal was provided to the department at the time the records were sought.

(c) Any person who makes a request under this paragraph shall have first obtained the written consent of the person whose records are being requested. Consent obtained pursuant to 18 U.S.C. section 2725(5) shall meet this requirement. The written consent shall be retained for a period of 3 years and shall be made available upon request to the division for inspection.

2 Motor Vehicle Records; Access to Individual Records. Amend RSA 260:14, VII to read as follows:

VII. ~~[A person]~~ **An individual** shall have access to motor vehicle records relating to such ~~[person]~~ **individual** upon proof of identity. ~~[Motor vehicle records relating to a person may be made available to any other person upon proof, in such form and manner as the department prescribes, that the notarized, written consent of the person who is the subject of the record has been obtained]~~ **An individual may have access to motor vehicle records relating to another individual, provided that the individual making the request presents proof of identity and has the notarized, written consent of the individual who is the subject of the record in a form acceptable to the department.**

3 Effective Date. Part XI of this act shall take effect upon its passage.

PART XII

Relative to authorization to grow industrial hemp.

SB 134-FN - AS INTRODUCED

- Page 48 -

1 1 Industrial Hemp Research; Authorization. Amend RSA 433-C:2 to read as follows:

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

9 2 Effective Date. Part XII of this act shall take effect upon its passage.

**SB 134-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

PART I Relative to prohibiting certain uses of laser pointing devices.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This part of the bill affects penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.

Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

PART II Relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.

This part of the bill has no fiscal impact.

PART III Relative to incarceration under a suspended sentence.

FISCAL IMPACT: State County Local None

Estimated Increase / (Decrease)
--

STATE:	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This part of the bill amends the amount of time that must be served by a person incarcerated under a suspended sentence to petition for the suspension of the remainder of the sentence.

The Judicial Branch indicates there may be an influx of petitions to suspend sentences from those eligible under the new provision that otherwise would have had to wait for the 2/3 minimum sentence date to pass. It is not possible to estimate how many early petitions there may be, but the Branch expects that after the initial influx, the volume of petitions would balance out over time and ultimately be similar to the current volume. The Branch states any measurable increase in workload is likely to be absorbed by the Judicial Branch within existing resources.

The Department of Corrections indicates it cannot predict when current or future residents will petition the court to suspend their sentence or the outcome of such petitions. The Department expects the fiscal impact would be either no change or a decrease in expenditures.

It is assumed any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch and Department of Corrections

PART IV Relative to civil liability for damage to highways.

This part of the bill has no fiscal impact.

PART V Relative to structured settlement protection.

This part of the bill has no fiscal impact.

PART VI Establishing the New Hampshire collaborative law act.

The Judicial Branch was originally contacted on January 25, 2021 for a fiscal note worksheet, which they have not provided as of February 8, 2021.

Part VII Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.

The Judicial Branch was originally contacted on January 25, 2021 for a fiscal note worksheet, which they have not provided as of February 8, 2021.

PART VIII Relative to 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.

This part of the bill has no fiscal impact.

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

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$210,000	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable. Not to exceed \$210,000 over the FY 2022-2023 biennium	Indeterminable. Not to exceed \$210,000 over the FY 2022-2023 biennium	\$0
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This part of the bill makes a general fund appropriation of \$210,000 for the biennium ending June 30, 2023 to the Police Standards and Training Council for the purpose of funding mental health intervention training programs. It is assumed the appropriation would be expended during FY 2022 and FY 2023, however it is not known how much of the appropriation would be spent in each year.

AGENCIES CONTACTED:

None

Part X Relative to interference with the enjoyment of a dwelling place.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This part of the bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal	\$6,407	\$6,407

Cost of a General Population Inmate		
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

PART XI Relative to employer access to motor vehicle records.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	\$0	\$0	\$0
Funding Source	<input type="checkbox"/> General Standards and Training and Emergency Medical Services Fund <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Fire			

METHODOLOGY:

The Department of Safety indicates the proposed legislation would allow an employer to obtain a monthly electronic file reflecting driving violations and driver license status changes upon proof of the identity of the person requesting the records. The employer requesting must first obtain written consent of the individual whose driving records are being requested. Written consent from the driver would be obtained and kept on file to be available upon request by the Division of Motor Vehicles (DMV) for inspection. The proposed legislation would include drivers who are under contracted by transportation network companies (TNCs). Currently the cost to obtain an electronic motor vehicle record is \$13. The Department states the impact on revenue would be

indeterminable, because the DMV has no method of calculating how many new records may be requested. There would be no fiscal impact on state expenditures or on county and local revenues and expenditures.

AGENCIES CONTACTED:

Department of Safety

PART XII Relative to authorization to grow industrial hemp.

This part of the bill has no fiscal impact.

SB 134-FN - AS AMENDED BY THE SENATE

03/18/2021 0775s

2021 SESSION

21-0931

04/06

SENATE BILL **134-FN**

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

SPONSORS: \ Sen. Carson, Dist 14

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill adopts legislation relative to:

- 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.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through]~~
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 adopting omnibus legislation relative to civil actions and criminal liability.

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

1 1 Sponsorship. This act consists of the following proposed legislation:

2 Part I: LSR 21-0931, relative to prohibiting certain uses of laser pointing devices, sponsored by
3 Sen. Carson, Prime/Dist 14.

4 Part II: LSR 21-0498, relative to the revised uniform law on notarial acts and the uniform real
5 property electronic recording act, sponsored by Sen. Cavanaugh, Prime/Dist 16; Sen. Hennessey,
6 Dist 1; Sen. Bradley, Dist 3; Rep. Danielson, Hills 7.

7 Part III: LSR 21-0913, relative to incarceration under a suspended sentence, sponsored by Sen.
8 Whitley, Prime/Dist 15; Sen. Perkins Kwoka, Dist 20; Sen. Kahn, Dist 10; Sen. D'Allesandro, Dist
9 20.

10 Part IV: LSR 21-0932, relative to civil liability for damage to highways, sponsored by Sen.
11 Carson, Prime/Dist 14.

12 Part V: LSR 21-0934, relative to structured settlement protection, sponsored by Sen. Carson,
13 Prime/Dist 14.

14 Part VI: LSR 21-0944, establishing the New Hampshire collaborative law act, sponsored by Sen.
15 Carson, Prime/Dist 14.

16 Part VII: LSR 21-0979, relative to probate administration, distribution upon intestacy, and
17 powers of attorney and adopting the uniform disclaimer of property interests act, sponsored by Sen.
18 Whitley, Prime/Dist 15; Rep. McWilliams, Merr 27; Rep. Piedra, Hills 9.

19 Part VIII: LSR 21-1041, relative to school employee and school volunteer criminal history
20 background checks and establishing a committee to study department of education oversight of
21 criminal history background checks for private schools, sponsored by Sen. Kahn, Prime/Dist 10; Sen.
22 Cavanaugh, Dist 16; Rep. Ladd, Graf 4.

23 Part IX: LSR 21-0996, making an appropriation funding mental health intervention training
24 programs, sponsored by Sen. Giuda, Prime/Dist 2; Sen. Watters, Dist 4; Sen. Hennessey, Dist 1; Sen.
25 Sherman, Dist 24; Sen. Carson, Dist 14; Sen. Bradley, Dist 3; Rep. Salloway, Straf 5; Rep. Weyler,
26 Rock 13; Rep. Gordon, Graf 9; Rep. Lang, Belk 4; Rep. G. Sanborn, Graf 6.

27 Part X: LSR 21-1013, relative to employer access to motor vehicle records, sponsored by Sen.
28 Carson, Prime/Dist 14.

29 Part XI: LSR 21-0969, relative to authorization to grow industrial hemp, sponsored by Sen.
30 Carson, Prime/Dist 14.

31 2 Legislation Enacted. The general court hereby enacts the following legislation:

PART I

Relative to prohibiting certain uses of laser pointing devices.

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

631:3-a Conduct Involving Laser Pointing Devices.

I. As used in this section:

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

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

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

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

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

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

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

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

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

1 (d) Vehicle sensors, including those used for navigational aids, and research,
2 development, test, evaluation, and operation of autonomous vehicles, as permitted by law
3 2 Effective Date. Part I of this act shall take effect January 1, 2022.

4 PART II

5 Relative to the revised uniform law on notarial acts and the uniform real property electronic
6 recording act.

7 1 Notaries Public. Amend RSA 455:3 to read as follows:

8 455:3 Powers.

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

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

16 III. *As used in this section:*

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

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

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

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

21 2 New Paragraph; Notarial Fees. Amend RSA 455:11 by inserting after paragraph II the
22 following new paragraph:

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

25 3 Uniform Law on Notarial Acts; Definitions. Amend RSA 456-B:1 to read as follows:

26 456-B:1 Definitions.

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

32 II. "Acknowledgment" means a declaration by ~~[a person]~~ *an individual before a notarial*
33 *officer* that the ~~[person has executed an instrument]~~ *individual has signed a record* for the
34 purposes stated therein and, if ~~[the instrument is executed]~~ *the record is signed* in a
35 representative capacity, that the ~~[person]~~ *individual* signed the ~~[instrument]~~ *record* with proper
36 authority and ~~[executed]~~ *signed* it as the act of the ~~[person]~~ *individual* or entity ~~[represented and]~~
37 *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 4 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 5 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 6 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 7 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 8 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 9 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 10 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 11 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 12 Effective Date.

2 I. RSA 456-B:2, VII as inserted by section 4 of Part II of this act and section 11 of Part II of
3 this act shall take effect upon its passage.

4 II. The remainder of Part II of this act shall take effect 180 days after its passage.
5

6 PART III

7 Relative to incarceration under a suspended sentence.

8 1 Incarceration Under a Suspended Sentence. Amend the introductory paragraph of RSA
9 651:20, I(a) to read as follows:

10 (a) Any person sentenced to state prison for a minimum term of 6 years or more shall
11 not bring a petition to suspend sentence until such person [~~has served at least 4 years or 2/3 of his~~
12 ~~minimum sentence, whichever is greater,~~] **is within 12 months of serving 2/3 of the minimum**
13 **sentence**, and not more frequently than every 3 years thereafter. Any person sentenced to state
14 prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until
15 such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by
16 the sentencing court. For the purposes of this subparagraph:

17 2 Effective Date. Part III of this act shall take effect 60 days after its passage.
18

19 PART IV

20 Relative to civil liability for damage to highways.

21 1 Liability for Obstruction or Injury to Highway; Civil Liability. Amend RSA 263:39 to read as
22 follows:

23 236:39 Civil Liability.

24 I. If any person, without authority, shall place any obstruction in a highway, or cause any
25 defect, insufficiency, or want of repair of a highway which renders it unsuitable for public travel, he
26 or she shall be **strictly** liable to the state for all damages to the highway, including **full and**
27 **current** replacement costs of protective barriers, **and any structure or device that is part of the**
28 **highway or turnpike system**, when maintained by the state, or to the municipality for all damages
29 to a highway, including **full and current** replacement costs of protective barriers **and any**
30 **structure or device that is part of the highway**, when maintained by the municipality, and for
31 all damages and costs which the state or municipality shall be compelled to pay to any person
32 injured by such obstruction, defect, insufficiency, or want of repair as established through an
33 appropriate contribution claim or under the rules of joint and several liability.

34 II. **"Full and current replacement cost" as used in this section means actual or**
35 **reasonable estimates of labor, including contracted labor; material, equipment, and**
36 **overhead. Such costs shall not be reduced for depreciation.**

37 2 Effective Date. Part IV of this act shall take effect 60 days after its passage.

PART V

Relative to structured settlement protection.

1 New Chapter; Structured Settlement Protection. Amend RSA by inserting after chapter 408-F the following new chapter:

CHAPTER 408-G

STRUCTURED SETTLEMENT PROTECTION

408-G:1 Definitions. In this chapter:

I. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

II. "Assignee" means a party acquiring or proposing to acquire structured settlement payment rights from a transferee of such rights.

III. "Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

IV. "Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

V. "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

VI. "Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser.

VII. "Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party to such structured settlement that has continuing rights or obligations to receive or make payments under such structured settlement.

VIII. "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

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

17 XVIII. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or
18 encumbrance of structured settlement payment rights made by a payee for consideration; provided
19 that the term "transfer" shall not include the creation or perfection of a security interest in
20 structured settlement payment rights under a blanket security agreement entered into with an
21 insured depository institution, in the absence of any action to redirect the structured settlement
22 payments to such insured depository institution, or an agent or successor in interest thereof, or
23 otherwise to enforce such blanket security interest against the structured settlement payment
24 rights.

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

27 XX. "Transfer expenses" means all expenses of a transfer that are required under the
28 transfer agreement to be paid by the payee or deducted from the gross advance amount, including,
29 without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and
30 lien search fees, finders' fees, commissions, and other payments to a broker or other
31 intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the
32 payee's account from the proceeds of a transfer.

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

35 408-G:2 Required Disclosure to Payee. Not less than 3 days prior to the date on which a payee
36 signs a transfer agreement, the transferee shall provide to the payee a separate disclosure
37 statement, in bold type no smaller than 14 points, setting forth the following:

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

2 II. The aggregate amount of such payments.

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

7 IV. The gross advance amount.

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

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

15 VII. The net advance amount.

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

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

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

24 408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect
25 transfer of structured settlement payment rights shall be effective and no structured settlement
26 obligor or annuity issuer shall be required to make any payment directly or indirectly to any
27 transferee or assignee of structured settlement payment rights unless the transfer has been
28 approved in advance in a final court order based on express findings by such court that:

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

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

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

36 408-G:4 Effects of Transfer of Structured Settlement Payment Rights. Following a transfer of
37 structured settlement payment rights under this chapter:

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

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

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

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

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

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

18 408-G:5 Procedure For Approval of Transfers.

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

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

27 III. Not less than 20 days prior to the scheduled hearing on any application for approval of a
28 transfer of structured settlement payment rights under RSA 408-G:3, the transferee shall file with
29 the court and serve on all interested parties, including a parent or other guardian or authorized legal
30 representative of any interested party who is not legally competent, a notice of the proposed transfer
31 and the application for its authorization, including with such notice:

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

33 (b) A copy of the transfer agreement.

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

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

37 (e) A summary of:

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

6 (2) Any prior transfers by the payee to any person or entity other than the transferee
7 or an affiliate or an assignee of the transferee or an affiliate within the 3 years preceding the date of
8 the transfer agreement and any prior proposed transfers by the payee to any person or entity other
9 than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval
10 of which were denied within the one year preceding the date of the current transfer agreement, to
11 the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee
12 in writing or otherwise are actually known to the transferee.

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

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

19 408-G:6 General Provisions; Construction.

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

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

26 III. No transfer of structured settlement payment rights shall extend to any payments that
27 are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the
28 transferee has established and has agreed to maintain procedures reasonably satisfactory to the
29 annuity issuer and the structured settlement obligor for periodically confirming the payee's survival,
30 and giving the annuity issuer and the structured settlement obligor prompt written notice in the
31 event of the payee's death.

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

36 V. No payee who proposes to make a transfer of structured settlement payment rights shall
37 incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the

1 proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of
2 this chapter.

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

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

12 2 Applicability. RSA 408-G as inserted by section 1 of Part V of this act shall apply to any
13 transfer of structured settlement payment rights under a transfer agreement entered into on or after
14 the 30th day after the effective date of Part V of this act.

15 3 Effective Date. Part V of this act shall take effect 60 days after its passage.

16

17

PART VI

18

Establishing the New Hampshire collaborative law act.

19

20

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

21

CHAPTER 490-J

22

NEW HAMPSHIRE COLLABORATIVE LAW ACT

23

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

24

490-J:2 Definitions. In this chapter:

25

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

27

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

28

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

30

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

31

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

33

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

35

(a) Sign a collaborative law participation agreement; and

36

(b) Are represented by collaborative lawyers.

1 IV. "Collaborative lawyer" means a lawyer who represents a party in a collaborative law
2 process.

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

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

6 (b) Parental rights and responsibilities;

7 (c) Grandparent rights;

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

9 (e) Parentage;

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

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

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

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

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

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

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

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

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

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

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

30 490-J:3 Applicability. This chapter applies to a collaborative law participation agreement that
31 meets the requirements of RSA 490-J:4 signed on or after the effective date of the chapter.

32 490-J:4 Collaborative Law Participation Agreement; Requirements.

33 I. A collaborative law participation agreement shall:

34 (a) Be in writing;

35 (b) Be signed by the parties;

36 (c) State the parties' intention to resolve a collaborative matter through a collaborative
37 law process under this chapter;

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

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

10 490-J:5 Beginning and Concluding Collaborative Law Process.

11 I. A collaborative law process begins when the parties sign a collaborative law participation
12 agreement.

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

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

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

20 IV. A collaborative law process terminates:

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

24 (c) When a party:

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

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

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

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

31 (C) The matter is no longer stayed.

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

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

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

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

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

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

6 IX. A collaborative law participation agreement may provide additional methods of
7 concluding a collaborative law process.

8 490-J:6 Cases Already Filed in Court.

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

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

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

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

21 490-J:7 Emergency Order. During a collaborative law process, a court may issue emergency
22 orders to protect the health, safety, welfare, or interest of a party; however, filing for such an order
23 terminates the pending collaborative law process. Nothing in this section prohibits parties from
24 exploring a return to the collaborative process after the issues that gave rise to the emergency order
25 have been resolved and process outlined in RSA 490-J:13, III have been followed.

26 490-J:8 Approval of Agreement by Court.

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

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

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

35 490-J:9 Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

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

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

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

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

11 or

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

17 490-J:10 Disclosure of Information. During the collaborative law process, on the request of
18 another party, a party shall make timely, full, candid, and informal disclosure of information related
19 to a collaborative matter without formal discovery. A party also shall update promptly previously
20 disclosed information that has materially changed. The parties may define the scope of disclosure
21 during the collaborative law process.

22 490-J:11 Standards of Professional Responsibility and Mandatory Reporting Not Affected. This
23 chapter does not affect:

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

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

28 490-J:12 Appropriateness of Collaborative Law Process. Before a prospective party signs a
29 collaborative law participation agreement, a prospective collaborative lawyer shall:

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

32 II. Provide the prospective party with information that the lawyer reasonably believes is
33 sufficient for the party to make an informed decision about the material benefits and risks of a
34 collaborative law process as compared to the material benefits and risks of other reasonably
35 available alternatives for resolving the proposed collaborative matter, such as litigation, mediation,
36 arbitration, or neutral evaluation; and

37 III. Advise the prospective party that:

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

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

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

9 490-J:13 Domestic Violence.

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

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

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

22 490-J:14 Confidentiality of Collaborative Law Communication. A collaborative law
23 communication is confidential except as agreed by the parties in a signed document, or under the
24 circumstances set forth in RSA 490-J:15, IV.

25 490-J:15 Privilege Against Disclosure for Collaborative Law Communication.

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

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

33 III. Waiver of Privilege.

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

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

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

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

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

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

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

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

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

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

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

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

25 490-J:16 Authority of Court in Case of Noncompliance. Notwithstanding a failure to comply
26 with RSA 490-J:4, RSA 490-J:12, or RSA 490-J:13, a court may enforce an agreement, apply the
27 disqualification provisions of RSA 490-J:9, or apply a privilege under RSA 490-J:15 when the court
28 concludes that the parties intended to enter into a collaborative law participation agreement and to
29 participate in a collaborative law process. Such a conclusion shall be based upon the following
30 findings:

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

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

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

37 2 Effective Date. Part VI of this act shall take effect 60 days after its passage.

PART VII

1
2 Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting
3 the uniform disclaimer of property interests act.

4 1 Administrators and Their Appointment; Subdivision Heading Amended. Amend the
5 subdivision heading preceding RSA 553:32 to read as follows:

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

7 2 Waiver of Administration. RSA 553:32, I-II are repealed and reenacted to read as follows:

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

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

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

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

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

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

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

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

34 (c) If the administrator fails to file the affidavit of administration within the time
35 prescribed in subparagraph (b), including any extensions granted, the court may take appropriate
36 action in the discretion of the court, including, but not limited to, issuing a notice of default, a show
37 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 3 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 4 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 5 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 6 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 7 Uniform Power of Attorney Act; Statutory Form Power of Attorney. Amend RSA 564-E:301 to
15 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 8 Applicability.

8 I. Section 2 of Part VII of this act shall apply to all petitions for estate administration filed
9 on or after July 1, 2021 regardless of the date of the decedent's death.

10 II. Section 3 of Part VII of this act shall apply to decedents dying on or after July 1, 2021.

11 III. Section 4 of Part VII of this act shall apply to general powers of attorney executed on or
12 after July 1, 2021.

13 9 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 10 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 11 Effective Date.

18 I. Sections 1-8 of Part VII of this act shall take effect July 1, 2021.

19 II. The remainder of Part VII of this act shall take effect upon its passage.

20
21 PART VIII

22 Relative to school employee and school volunteer criminal history background checks and
23 establishing a committee to study department of education oversight of
24 criminal history background checks for private schools,

25 1 School Employee and Designated School Volunteer Criminal History Records Check. Amend
26 RSA 189:13-a, III to read as follows:

27 III. The superintendent of the school administrative unit or the chief executive officer of the
28 chartered public school or public academy shall maintain the confidentiality of all criminal history
29 records information received pursuant to this paragraph. ~~[If the criminal history records~~
30 ~~information indicates no criminal record, the superintendent of the school administrative unit or the~~
31 ~~chief executive officer of the chartered public school or public academy shall destroy the information~~
32 ~~received immediately following review of the information.]~~ ***The superintendent of the school***
33 ***administrative unit, or chief executive officer of the chartered public school or public***
34 ***academy shall review the criminal history records information in accordance with***
35 ***paragraph V.*** If the criminal history records information indicates that the applicant has been
36 convicted of any crime or has been charged pending disposition for or convicted of a crime listed in
37 paragraph V, the superintendent of the school administrative unit or the chief executive officer of the

1 chartered public school or public academy shall review the information for a hiring decision~~[-and the~~
2 ~~division of state police shall notify the department of education of any such charges pending~~
3 ~~disposition or convictions. The superintendent of the school administrative unit or the chief~~
4 ~~executive officer of the chartered public school or public academy shall destroy any criminal history~~
5 ~~record information that indicates a criminal record within 60 days of receiving such information.]~~ *If*
6 *the applicant's criminal history records information indicates that the applicant has been*
7 *charged pending disposition for or has been convicted of a crime listed in paragraph V, the*
8 *superintendent of the school administrative unit or the chief executive officer of the*
9 *chartered public school or public academy shall notify the department of education.*

10 *III-a. The superintendent of the school administrative unit or chief executive officer*
11 *of the chartered public school or public academy shall destroy any criminal history record*
12 *information within 60 days of receipt. The superintendent of the school administrative*
13 *unit or chief executive officer of the chartered public school or public academy shall*
14 *destroy any criminal history record information that indicates a criminal record within 60*
15 *days of receiving said information.*

16 2 School Employee and Designated School Volunteer Criminal History Records Check. Amend
17 RSA 189:13-a, VI to read as follows:

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

29 3 School Employee and Designated School Volunteer Criminal History Records Check. Amend
30 RSA 189:13-a, IX to read as follows:

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

1 ~~(b) Upon enrollment in an educator preparation program at an institution of higher~~
 2 ~~education, a candidate shall submit to a criminal history records check. The institution of higher~~
 3 ~~education in which the candidate is enrolled shall conduct the criminal history records check.] Upon~~
 4 placement of a candidate, *as defined in RSA 189:13-c*, as a student teacher, the receiving school
 5 administrative unit, school district, or chartered public school shall conduct ~~[another]~~ a criminal
 6 history records check of the candidate and shall follow the same procedures for assessing the
 7 candidate's criminal history background as for applicants for employment. ~~[The governing body of~~
 8 ~~the institution of higher education may adopt a policy relative to how often a candidate shall submit~~
 9 ~~to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is~~
 10 ~~enrolled in an educator preparation program at an institution of higher education in New~~
 11 ~~Hampshire.]~~

12 *(b) A receiving school administrative unit, school district, or chartered public*
 13 *school may conduct a criminal history records check upon a candidate, as defined in RSA*
 14 *189:13-c.*

15 4 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
 16 inserting after section 13-b the following new section:

17 189:13-c Credentialing Applicant and Candidate Criminal History Records Check.

18 I. Definitions:

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

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

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

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

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

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

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

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

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

13 V. Any person who has been charged pending disposition for or convicted of any violation or
14 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;
15 639:3; 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
16 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene in
17 this state, or under any statute prohibiting the same conduct in another state, territory, or
18 possession of the United States, shall not be granted a teaching credential by the department nor
19 shall candidates be granted clearance.

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

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

26 5 Committee Established. There is established a committee to study department of education
27 oversight of criminal history background checks by private schools.

28 6 Membership and Compensation.

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

30 (a) Three members of the house of representatives, appointed by the speaker of the
31 house of representatives.

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

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

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

37 7 Duties. The committee shall:

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

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

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

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

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

10 8 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
11 among the members. The first meeting of the committee shall be called by the first-named house
12 member. The first meeting of the committee shall be held within 45 days of the effective date of this
13 section. Three members of the committee shall constitute a quorum.

14 9 Report. The committee shall report its findings and any recommendations for proposed
15 legislation to the speaker of the house of representatives, the president of the senate, the house
16 clerk, the senate clerk, the commissioner of the department of education, the governor, and the state
17 library on or before November 1, 2021.

18 10 Effective Date.

19 I. Sections 1-4 of Part VIII of this act shall take effect January 1, 2022.

20 II. The remainder of Part VIII of this act shall take effect upon its passage.

21 PART IX

22 Making an appropriation funding mental health intervention training programs.

23 1 Mental Health Intervention Training; Appropriation. The sum of \$210,000 for the biennium
24 ending June 30, 2023, is hereby appropriated to the police standards and training council for the
25 purposes of funding mental health intervention training programs. The appropriations shall be in
26 addition to any other funds appropriated to the police standards and training council. The governor
27 is authorized to draw a warrant for said sums out of any money in the treasury not otherwise
28 appropriated.

29 2 Effective Date. Part IX of this act shall take effect July 1, 2021.

30 PART X

31 Relative to employer access to motor vehicle records.

32 1 New Paragraph; Motor Vehicle Records; Employer Access. Amend RSA 260:14 by inserting
33 after paragraph IV the following new paragraph:

34 IV-a.(a) Except for a person's photograph, computerized image, and social security number,
35 motor vehicle records and at least monthly electronic bulk files indicating changes in driving
36 violations and driver license status shall be made available upon proof of the identity of the person

1 requesting the records and representation by such person on a form satisfactory to the department
2 that the records will be strictly limited to one or both of the following described uses:

3 (1) For use by an entity that employs drivers in the course of their business, or an
4 authorized agent of such an entity, which requires a motor vehicle record or a monthly notification of
5 changes to motor vehicle records in connection with pre-employment or continued employment
6 screening of employees for driver safety reasons; or

7 (2) For use with respect to requests as to whether a driver meets the requirements of
8 RSA 376-A:12.

9 (b) No motor vehicle records made available under this paragraph shall be sold, rented,
10 transferred, or otherwise made available in whole or in part, in any form or format, directly or
11 indirectly, to another person, except that an authorized agent may make such records available to
12 any principal on whose behalf the records were sought if the name of that principal was provided to
13 the department at the time the records were sought.

14 (c) Any person who makes a request under this paragraph shall have first obtained the
15 written consent of the person whose records are being requested. The written consent shall be
16 retained for a period of 3 years and shall be made available upon request to the division for
17 inspection. Motor vehicle records obtained under this paragraph shall not be subject to the
18 notarization requirements of RSA 260:14, VII.

19 2 Effective Date. Part X of this act shall take effect upon its passage.

20
21 PART XI

22 Relative to authorization to grow industrial hemp.

23 1 Industrial Hemp Research; Authorization. Amend RSA 433-C:2 to read as follows:

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

31 2 Effective Date. Part XI of this act shall take effect upon its passage.

SB 134-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2021-0775s)

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

PART I Relative to prohibiting certain uses of laser pointing devices.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This part of the bill affects penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.

Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

PART II Relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.

This part of the bill has no fiscal impact.

PART III Relative to incarceration under a suspended sentence.

FISCAL IMPACT: State County Local None

Estimated Increase / (Decrease)
--

STATE:	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This part of the bill amends the amount of time that must be served by a person incarcerated under a suspended sentence to petition for the suspension of the remainder of the sentence.

The Judicial Branch indicates there may be an influx of petitions to suspend sentences from those eligible under the new provision that otherwise would have had to wait for the 2/3 minimum sentence date to pass. It is not possible to estimate how many early petitions there may be, but the Branch expects that after the initial influx, the volume of petitions would balance out over time and ultimately be similar to the current volume. The Branch states any measurable increase in workload is likely to be absorbed by the Judicial Branch within existing resources.

The Department of Corrections indicates it cannot predict when current or future residents will petition the court to suspend their sentence or the outcome of such petitions. The Department expects the fiscal impact would be either no change or a decrease in expenditures.

It is assumed any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch and Department of Corrections

PART IV Relative to civil liability for damage to highways.

This part of the bill has no fiscal impact.

PART V Relative to structured settlement protection.

This part of the bill has no fiscal impact.

PART VI Establishing the New Hampshire collaborative law act.

The Judicial Branch was originally contacted on January 25, 2021 for a fiscal note worksheet, which they have not provided as of February 8, 2021.

Part VII Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.

The Judicial Branch was originally contacted on January 25, 2021 for a fiscal note worksheet, which they have not provided as of February 8, 2021.

PART VIII Relative to 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.

This part of the bill has no fiscal impact.

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

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$210,000	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable. Not to exceed \$210,000 over the FY 2022-2023 biennium	Indeterminable. Not to exceed \$210,000 over the FY 2022-2023 biennium	\$0
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This part of the bill makes a general fund appropriation of \$210,000 for the biennium ending June 30, 2023 to the Police Standards and Training Council for the purpose of funding mental health intervention training programs. It is assumed the appropriation would be expended during FY 2022 and FY 2023, however it is not known how much of the appropriation would be spent in each year.

AGENCIES CONTACTED:

None

PART X Relative to employer access to motor vehicle records.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	\$0	\$0	\$0
Funding Source	<input type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Fire Standards and Training and Emergency Medical Services Fund			

METHODOLOGY:

The Department of Safety indicates the proposed legislation would allow an employer to obtain a monthly electronic file reflecting driving violations and driver license status changes upon proof of the identity of the person requesting the records. The employer requesting must first obtain written consent of the individual whose driving records are being requested. Written consent from the driver would be obtained and kept on file to be available upon request by the Division of Motor Vehicles (DMV) for inspection. The proposed legislation would include drivers who are under contracted by transportation network companies (TNCs). Currently the cost to obtain an electronic motor vehicle record is \$13. The Department states the impact on revenue would be indeterminable, because the DMV has no method of calculating how many new records may be requested. There would be no fiscal impact on state expenditures or on county and local revenues and expenditures.

AGENCIES CONTACTED:

Department of Safety

PART XI Relative to authorization to grow industrial hemp.

This part of the bill has no fiscal impact.

SB 134-FN - AS AMENDED BY THE HOUSE

03/18/2021 0775s
3Jun2021... 1341h
3Jun2021... 1801h

2021 SESSION

21-0931
04/06

SENATE BILL

134-FN

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

SPONSORS: Sen. Carson, Dist 14

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill adopts legislation relative to:

- 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. Procedures for structured settlements.
- V. Establishing the New Hampshire collaborative law act.
- VI. Probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.
- VII. 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.
- VIII. Making an appropriation funding mental health intervention training programs.
- IX. Employer access to motor vehicle records.
- X. Authorization to grow industrial hemp.

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.

SB 134-FN - AS AMENDED BY THE HOUSE

03/18/2021 0775s
3Jun2021... 1341h
3Jun2021... 1801h

21-0931
04/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

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

1 1 Sponsorship. This act consists of the following proposed legislation:

2 Part I: LSR 21-0931, relative to prohibiting certain uses of laser pointing devices, sponsored by
3 Sen. Carson, Prime/Dist 14.

4 Part II: LSR 21-0498, relative to the revised uniform law on notarial acts and the uniform real
5 property electronic recording act, sponsored by Sen. Cavanaugh, Prime/Dist 16; Sen. Hennessey,
6 Dist 1; Sen. Bradley, Dist 3; Rep. Danielson, Hills 7.

7 Part III: LSR 21-0913, relative to incarceration under a suspended sentence, sponsored by Sen.
8 Whitley, Prime/Dist 15; Sen. Perkins Kwoka, Dist 20; Sen. Kahn, Dist 10; Sen. D'Allesandro, Dist
9 20.

10 Part IV: LSR 21-0934, relative to structured settlement protection, sponsored by Sen. Carson,
11 Prime/Dist 14.

12 Part V: LSR 21-0944, establishing the New Hampshire collaborative law act, sponsored by Sen.
13 Carson, Prime/Dist 14.

14 Part VI: LSR 21-0979, relative to probate administration, distribution upon intestacy, and
15 powers of attorney and adopting the uniform disclaimer of property interests act, sponsored by Sen.
16 Whitley, Prime/Dist 15; Rep. McWilliams, Merr 27; Rep. Piedra, Hills 9.

17 Part VII: LSR 21-1041, relative to school employee and school volunteer criminal history
18 background checks and establishing a committee to study department of education oversight of
19 criminal history background checks for private schools, sponsored by Sen. Kahn, Prime/Dist 10; Sen.
20 Cavanaugh, Dist 16; Rep. Ladd, Graf 4.

21 Part VIII: LSR 21-0996, making an appropriation funding mental health intervention training
22 programs, sponsored by Sen. Giuda, Prime/Dist 2; Sen. Watters, Dist 4; Sen. Hennessey, Dist 1; Sen.
23 Sherman, Dist 24; Sen. Carson, Dist 14; Sen. Bradley, Dist 3; Rep. Salloway, Straf 5; Rep. Weyler,
24 Rock 13; Rep. Gordon, Graf 9; Rep. Lang, Belk 4; Rep. G. Sanborn, Graf 6.

25 Part IX: LSR 21-1013, relative to employer access to motor vehicle records, sponsored by Sen.
26 Carson, Prime/Dist 14.

27 Part X: LSR 21-0969, relative to authorization to grow industrial hemp, sponsored by Sen.
28 Carson, Prime/Dist 14.

29 2 Legislation Enacted. The general court hereby enacts the following legislation:

PART I

Relative to prohibiting certain uses of laser pointing devices.

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

631:3-a Conduct Involving Laser Pointing Devices.

I. As used in this section:

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

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

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

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

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

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

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

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

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

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

3 (e) An individual authorized by the owner of the motor vehicle, aircraft, vessel, window,
4 or structure.

5 (f) An individual authorized by the person, or the parent or guardian of the person.

6 V. This section shall not apply to a structure owned by the state of New Hampshire, or any
7 political subdivision thereof, including but not limited to a county, city, town, precinct, water district,
8 school district, school administrative unit, or quasi-public entity, or the United States government,
9 provided it does not interfere with its safe use.

10 2 New Hampshire Aeronautics Act; Prohibitions. Amend RSA 422:28, XIV to read as follows:

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

16 3 Effective Date. Part I of this act shall take effect January 1, 2022.

17 PART II

18 Relative to the revised uniform law on notarial acts and the uniform real property electronic
19 recording act.

20 1 Notaries Public. Amend RSA 455:3 to read as follows:

21 455:3 Powers.

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

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

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

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

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

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

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

34 2 New Paragraph; Notarial Fees. Amend RSA 455:11 by inserting after paragraph II the
35 following new paragraph:

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

1 3 Uniform Law on Notarial Acts; Definitions. Amend RSA 456-B:1 to read as follows:
2 456-B:1 Definitions.

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

8 II. "Acknowledgment" means a declaration by ~~[a person]~~ ***an individual before a notarial***
9 ***officer*** that the ~~[person has executed an instrument]~~ ***individual has signed a record*** for the
10 purposes stated therein and, if ~~[the instrument is executed]~~ ***the record is signed*** in a
11 representative capacity, that the ~~[person]~~ ***individual*** signed the ~~[instrument]~~ ***record*** with proper
12 authority and ~~[executed]~~ ***signed*** it as the act of the ~~[person]~~ ***individual*** or entity ~~[represented and]~~
13 identified therein.

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

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

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

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

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

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

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

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

28 VII. "***Electronic signature***" means ***a unique sequence of data that is split into 2***
29 ***parts that together form a complete encryption key. One part is publicly shared and the***
30 ***other part is kept private and known only by the owner.***

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

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

36 X. "***Person***" means ***an individual, corporation, business trust, statutory trust,***
37 ***estate, trust, partnership, limited liability company, association, joint venture, public***

1 *corporation, government or governmental subdivision, agency, or instrumentality, or any*
2 *other legal or commercial entity.*

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

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

6 **(a) To execute or adopt a tangible symbol; or**

7 **(b) To attach to or logically associate with the record an electronic symbol,**
8 **sound, or process.**

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

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

12 **(a) A physical device capable of affixing to or embossing on a tangible record an**
13 **official stamp; or**

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

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

19 4 Uniform Law on Notarial Acts; Notarial Acts. Amend RSA 456-B:2 to read as follows:

20 456-B:2 Notarial Acts.

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

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

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

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

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

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

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

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

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

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

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

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

21 5 New Sections; Personal Appearance Required; Identification of Individual. Amend RSA 456-B
22 by inserting after section 2 the following new sections:

23 456-B:2-a Personal Appearance Required. If a notarial act relates to a statement made in or a
24 signature executed on a record, the individual making the statement or executing the signature shall
25 appear personally before the notarial officer.

26 456-B:2-b Identification of Individual.

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

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

32 (a) By means of:

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

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

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

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

6 6 Notarial Acts. Amend RSA 456-B:3, III to read as follows:

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

13 7 New Section; Notarial Act Performed for Remotely Located Individual. Amend RSA 456-B by
14 inserting after section 6 the following new section:

15 456-B:6-a Notarial Act Performed for Remotely Located Individual.

16 I. In this section:

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

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

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

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

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

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

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

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

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

37 (a) The notary public:

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

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

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

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

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

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

13 (1) The record:

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

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

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

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

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

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

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

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

34 VII. Before a notary public performs the notary public's initial notarial act under this
35 section, the notary public must notify the secretary of state that the notary public will be performing
36 notarial acts with respect to remotely located individuals and identify the technologies the notary
37 public intends to use. If the secretary of state has established standards under paragraph VIII and

1 RSA 456-B:8-b, IV, for approval of communication technology or identity proofing, the
2 communication technology and identity proofing must conform to the standards.

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

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

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

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

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

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

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

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

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

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

27 8 New Sections; Official Stamp; Stamping Device; Notification Regarding Performance of
28 Notarial Act on Electronic Record; Selection of Technology; Rules; Journal; Validity of Notarial Acts;
29 Relation to Electronic Signatures in Global and National Commerce Act. Amend RSA 456-B by
30 inserting after section 8 the following new sections:

31 456-B:8-a Official Stamp; Stamping Device.

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

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

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

36 II. A notary public is responsible for the security of the notary public's stamping device and
37 may not allow another individual to use the device to perform a notarial act. On resignation from, or

1 the revocation or expiration of, the notary public's commission, or on the expiration of the date set
2 forth in the stamping device, if any, the notary public shall disable the stamping device by
3 destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it
4 unusable. On the death or adjudication of incompetency of a notary public, the notary public's
5 personal representative or guardian or any other person knowingly in possession of the stamping
6 device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use
7 in a manner that renders it unusable.

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

11 456-B:8-b Notification Regarding Performance of Notarial Act on Electronic Record; Selection of
12 Technology; Rules.

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

17 II. Before a notary public performs the notary public's initial notarial act with respect to an
18 electronic record, a notary public shall notify the secretary of state that the notary public will be
19 performing notarial acts with respect to electronic records and identify the technology the notary
20 public intends to use. If the secretary of state has established standards for approval of technology,
21 the technology shall conform to the standards. If the technology conforms to the standards, the
22 secretary of state shall approve the use of the technology.

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

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

31 456-B:8-c Journal.

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

36 II. A journal may be created on a tangible medium or in an electronic format. A notary
37 public shall maintain only one journal at a time to chronicle all notarial acts performed regarding

1 tangible records and one or more journals to chronicle all notarial acts performed regarding
2 electronic records. If a journal is maintained on a tangible medium, it shall be a permanent, bound
3 register with numbered pages. If the journal is maintained in an electronic format, it shall be in a
4 permanent, tamper-evident electronic format complying with the rules of the secretary of state.

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

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

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

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

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

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

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

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

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

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

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

27 456-B:8-d Validity of Notarial Acts. The failure of a notarial officer to perform a duty or meet a
28 requirement specified in this chapter or RSA 455 does not invalidate a notarial act performed by the
29 notarial officer. The validity of a notarial act under this chapter or RSA 455 does not prevent an
30 aggrieved person from seeking to invalidate the record or transaction that is the subject of the
31 notarial act or from seeking other remedies based on law of this state other than this chapter or law
32 of the United States. This section does not validate a purported notarial act performed by an
33 individual who does not have the authority to perform notarial acts.

34 456-B:8-e Relation to Electronic Signatures in Global and National Commerce Act. This chapter
35 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
36 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15

1 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
2 103(b) of that act, 15 U.S.C. section 7003(b).

3 9 New Paragraph; Short Forms. Amend RSA 456-B:8 by inserting after paragraph V the
4 following new paragraph:

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

6 State of _____

7 (County) of _____

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

10 Dated _____

11 _____

12 (Signature of notarial officer)

13 (Seal, if any)

14 Title (and Rank)

15 [My commission expires: _____]

16 10 New Chapter; Uniform Real Property Electronic Recording Act. Amend RSA by inserting
17 after chapter 478 the following new chapter:

18 CHAPTER 478-A

19 UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

20 478-A:1 Short Title. This chapter may be cited as the Uniform Real Property Electronic
21 Recording Act.

22 478-A:2 Definitions. In this chapter:

23 I. "Document" means information that is:

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

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

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

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

31 IV. "Electronic signature" means a unique sequence of data that is split into 2 parts that
32 together form a complete encryption key. One part is publicly shared and the other part is kept
33 private and known only by the owner.

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

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

4 478-A:3 Validity of Electronic Documents; Recordation of Electronic Documents in Tangible
5 Form.

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

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

11 III. A requirement that a document or a signature associated with a document be notarized,
12 acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the
13 person authorized to perform that act, and all other information required to be included, is attached
14 to or logically associated with the document or signature. A physical or electronic image of a stamp,
15 impression, or seal need not accompany an electronic signature.

16 IV. A register of deeds shall accept for recording a tangible copy of an electronic document,
17 other than a plat, map, survey, or plat of land as provided in RSA 478:1-a, containing a notarial
18 certificate as satisfying any requirement that a document accepted for recording be an original, if the
19 notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of
20 the electronic document. A notarial certificate in the form provided in RSA 456-B:8, VI, satisfies the
21 requirement of this paragraph.

22 478-A:4 Recording of Documents.

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

25 II. A register of deeds:

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

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

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

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

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

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

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

4 478-A:5 Uniformity of Application and Construction. In applying and construing this uniform
5 act, consideration shall be given to the need to promote uniformity of the law with respect to its
6 subject matter among states that enact it.

7 478-A:6 Relation to Electronic Signatures in Global and National Commerce Act. This chapter
8 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
9 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15
10 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
11 103(b) of that act, 15 U.S.C. section 7003(b).

12 11 Wills; Requirements. Amend RSA 551:2, III(b) to read as follows:

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

16 12 Effective Date.

17 I. RSA 456-B:2, VII as inserted by section 4 of Part II of this act and section 11 of Part II of
18 this act shall take effect upon its passage.

19 II. The remainder of Part II of this act shall take effect 180 days after its passage.

20
21 PART III

22 Relative to incarceration under a suspended sentence.

23 1 Incarceration Under a Suspended Sentence. Amend the introductory paragraph of RSA
24 651:20, I(a) to read as follows:

25 (a) Any person sentenced to state prison for a minimum term of 6 years or more shall
26 not bring a petition to suspend sentence until such person ~~[has served at least 4 years or 2/3 of his~~
27 ~~minimum sentence, whichever is greater,]~~ *is within 12 months of serving 2/3 of the minimum*
28 *sentence*, and not more frequently than every 3 years thereafter. Any person sentenced to state
29 prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until
30 such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by
31 the sentencing court. For the purposes of this subparagraph:

32 2 Effective Date. Part III of this act shall take effect 60 days after its passage.

33
34 PART IV

35 Relative to structured settlement protection.

36 1 New Chapter; Structured Settlement Protection. Amend RSA by inserting after chapter 408-F
37 the following new chapter:

CHAPTER 408-G

STRUCTURED SETTLEMENT PROTECTION

408-G:1 Definitions. In this chapter:

I. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

II. "Assignee" means a party acquiring or proposing to acquire structured settlement payment rights from a transferee of such rights.

III. "Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

IV. "Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

V. "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

VI. "Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser.

VII. "Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party to such structured settlement that has continuing rights or obligations to receive or make payments under such structured settlement.

VIII. "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

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

13 XVIII. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or
14 encumbrance of structured settlement payment rights made by a payee for consideration; provided
15 that the term "transfer" shall not include the creation or perfection of a security interest in
16 structured settlement payment rights under a blanket security agreement entered into with an
17 insured depository institution, in the absence of any action to redirect the structured settlement
18 payments to such insured depository institution, or an agent or successor in interest thereof, or
19 otherwise to enforce such blanket security interest against the structured settlement payment
20 rights.

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

23 XX. "Transfer expenses" means all expenses of a transfer that are required under the
24 transfer agreement to be paid by the payee or deducted from the gross advance amount, including,
25 without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and
26 lien search fees, finders' fees, commissions, and other payments to a broker or other
27 intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the
28 payee's account from the proceeds of a transfer.

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

31 408-G:2 Required Disclosure to Payee. Not less than 3 days prior to the date on which a payee
32 signs a transfer agreement, the transferee shall provide to the payee a separate disclosure
33 statement, in bold type no smaller than 14 points, setting forth the following:

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

35 II. The aggregate amount of such payments.

36 III. The discounted present value of the payments to be transferred, which shall be
37 identified as the "calculation of current value of the transferred structured settlement payments

1 under federal standards for valuing annuities and the amount of the Applicable Federal Rate used in
2 calculating such discounted present value.

3 IV. The gross advance amount.

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

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

11 VII. The net advance amount.

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

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

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

20 XI. That the payee has the right to negotiate the purchase price offered by the transferee,
21 and the payee is advised to obtain competing offers from other potential transferees.

22 408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect
23 transfer of structured settlement payment rights shall be effective and no structured settlement
24 obligor or annuity issuer shall be required to make any payment directly or indirectly to any
25 transferee or assignee of structured settlement payment rights unless the transfer has been
26 approved in advance in a final court order based on express findings by such court that:

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

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

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

34 408-G:4 Effects of Transfer of Structured Settlement Payment Rights. Following a transfer of
35 structured settlement payment rights under this chapter:

36 I. The structured settlement obligor and the annuity issuer may rely on the court order
37 approving the transfer in redirecting periodic payments to an assignee or transferee in accordance

1 with the order approving the transfer and shall, as to all parties except the transferee or an assignee
2 designated by the transferee, be discharged and released from any and all liability for the redirected
3 payments; and such discharge and release shall not be affected by the failure of any party to the
4 transfer to comply with this chapter or with the court order approving the transfer;

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

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

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

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

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

16 408-G:5 Procedure For Approval of Transfers.

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

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

25 III. Not less than 20 days prior to the scheduled hearing on any application for approval of a
26 transfer of structured settlement payment rights under RSA 408-G:3, the transferee shall file with
27 the court and serve on all interested parties, including a parent or other guardian or authorized legal
28 representative of any interested party who is not legally competent, a notice of the proposed transfer
29 and the application for its authorization, including with such notice:

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

31 (b) A copy of the transfer agreement.

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

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

35 (e) A summary of:

36 (1) Any prior transfers by the payee to the transferee or an affiliate, or through the
37 transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer

1 agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the
2 transferee or an affiliate, applications for approval of which were denied within the 2 years
3 preceding the date of the transfer agreement; and

4 (2) Any prior transfers by the payee to any person or entity other than the transferee
5 or an affiliate or an assignee of the transferee or an affiliate within the 3 years preceding the date of
6 the transfer agreement and any prior proposed transfers by the payee to any person or entity other
7 than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval
8 of which were denied within the one year preceding the date of the current transfer agreement, to
9 the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee
10 in writing or otherwise are actually known to the transferee.

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

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

17 IV. In determining whether a transfer is in the payee's best interest under RSA 408-G:3, I,
18 the court shall consider, among other matters, whether the payee has compared competing offers for
19 the structured settlement payment rights that the payee proposes to transfer.

20 408-G:6 General Provisions; Construction.

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

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

27 III. No transfer of structured settlement payment rights shall extend to any payments that
28 are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the
29 transferee has established and has agreed to maintain procedures reasonably satisfactory to the
30 annuity issuer and the structured settlement obligor for periodically confirming the payee's survival,
31 and giving the annuity issuer and the structured settlement obligor prompt written notice in the
32 event of the payee's death.

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

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

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

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

14 2 Applicability. RSA 408-G as inserted by section 1 of Part V of this act shall apply to any
15 transfer of structured settlement payment rights under a transfer agreement entered into on or after
16 the 30th day after the effective date of Part V of this act.

17 3 Effective Date. Part IV of this act shall take effect 60 days after its passage.

18
19 PART V

20 Establishing the New Hampshire collaborative law act.

21 1 New Chapter; New Hampshire Collaborative Law Act. Amend RSA by inserting after chapter
22 490-I the following new chapter:

23 CHAPTER 490-J

24 NEW HAMPSHIRE COLLABORATIVE LAW ACT

25 490-J:1 Short Title. This chapter may be cited as the New Hampshire collaborative law act.

26 490-J:2 Definitions. In this chapter:

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

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

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

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

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

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

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

1 (b) Are represented by collaborative lawyers.

2 IV. "Collaborative lawyer" means a lawyer who represents a party in a collaborative law
3 process.

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

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

7 (b) Parental rights and responsibilities;

8 (c) Grandparent rights;

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

10 (e) Parentage;

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

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

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

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

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

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

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

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

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

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

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

31 490-J:3 Applicability. This chapter applies to a collaborative law participation agreement that
32 meets the requirements of RSA 490-J:4 signed on or after the effective date of the chapter.

33 490-J:4 Collaborative Law Participation Agreement; Requirements.

34 I. A collaborative law participation agreement shall:

35 (a) Be in writing;

36 (b) Be signed by the parties;

1 (c) State the parties' intention to resolve a collaborative matter through a collaborative
2 law process under this chapter;

3 (d) Describe the nature and scope of the matter;

4 (e) Contain a statement by each collaborative lawyer confirming the lawyer's
5 representation of a party in the collaborative law process; and

6 (f) Disqualify the collaborative lawyer from representing a party in a case filed with a
7 court involving one or more of the same parties in the same or a related matter, except for the filing
8 needed to seek the court's approval of an agreement reached in the collaborative case or in pending
9 cases while stayed pursuant to RSA 490-J:6, I.

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

12 490-J:5 Beginning and Concluding Collaborative Law Process.

13 I. A collaborative law process begins when the parties sign a collaborative law participation
14 agreement.

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

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

18 (a) Resolution of a collaborative matter as evidenced by a signed agreement;

19 (b) Resolution of a part of the collaborative matter, evidenced by a signed agreement, in
20 which the parties agree that the remaining parts of the matter will not be resolved in the process; or

21 (c) Termination of the process.

22 IV. A collaborative law process terminates:

23 (a) When a party gives written notice to other parties that the process is ended.

24 (b) Except as otherwise provided by paragraph VII, when a party discharges a
25 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

26 (c) When a party:

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

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

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

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

33 (C) The matter is no longer stayed.

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

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

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

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

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

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

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

11 490-J:6 Cases Already Filed in Court.

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

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

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

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

24 490-J:7 Emergency Order. During a collaborative law process, a court may issue emergency
25 orders to protect the health, safety, welfare, or interest of a party; however, filing for such an order
26 terminates the pending collaborative law process. Nothing in this section prohibits parties from
27 exploring a return to the collaborative process after the issues that gave rise to the emergency order
28 have been resolved and process outlined in RSA 490-J:13, III have been followed.

29 490-J:8 Approval of Agreement by Court.

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

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

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

1 490-J:9 Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

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

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

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

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

12 or

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

18 490-J:10 Disclosure of Information. During the collaborative law process, on the request of
19 another party, a party shall make timely, full, candid, and informal disclosure of information related
20 to a collaborative matter without formal discovery. A party also shall update promptly previously
21 disclosed information that has materially changed. The parties may define the scope of disclosure
22 during the collaborative law process.

23 490-J:11 Standards of Professional Responsibility and Mandatory Reporting Not Affected. This
24 chapter does not affect:

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

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

29 490-J:12 Appropriateness of Collaborative Law Process. Before a prospective party signs a
30 collaborative law participation agreement, a prospective collaborative lawyer shall:

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

33 II. Provide the prospective party with information that the lawyer reasonably believes is
34 sufficient for the party to make an informed decision about the material benefits and risks of a
35 collaborative law process as compared to the material benefits and risks of other reasonably
36 available alternatives for resolving the proposed collaborative matter, such as litigation, mediation,
37 arbitration, or neutral evaluation; and

1 III. Advise the prospective party that:

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

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

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

10 490-J:13 Domestic Violence.

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

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

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

23 490-J:14 Confidentiality of Collaborative Law Communication. A collaborative law
24 communication is confidential except as agreed by the parties in a signed document, or under the
25 circumstances set forth in RSA 490-J:15, IV.

26 490-J:15 Privilege Against Disclosure for Collaborative Law Communication.

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

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

34 III. Waiver of Privilege.

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

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

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

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

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

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

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

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

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

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

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

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

25 490-J:16 Authority of Court in Case of Noncompliance. Notwithstanding a failure to comply
26 with RSA 490-J:4, RSA 490-J:12, or RSA 490-J:13, a court may enforce an agreement, apply the
27 disqualification provisions of RSA 490-J:9, or apply a privilege under RSA 490-J:15 when the court
28 concludes that the parties intended to enter into a collaborative law participation agreement and to
29 participate in a collaborative law process. Such a conclusion shall be based upon the following
30 findings:

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

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

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

37 2 Effective Date. Part V of this act shall take effect 60 days after its passage.

PART VI

1
2 Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting
3 the uniform disclaimer of property interests act.

4 1 Administrators and Their Appointment; Subdivision Heading Amended. Amend the
5 subdivision heading preceding RSA 553:32 to read as follows:

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

7 2 Waiver of Administration. RSA 553:32, I-II are repealed and reenacted to read as follows:

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

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

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

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

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

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

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

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

34 (c) If the administrator fails to file the affidavit of administration within the time
35 prescribed in subparagraph (b), including any extensions granted, the court may take appropriate
36 action in the discretion of the court, including, but not limited to, issuing a notice of default, a show
37 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 3 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 4 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 5 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 6 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 7 Uniform Power of Attorney Act; Statutory Form Power of Attorney. Amend RSA 564-E:301 to
15 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 8 Applicability.

8 I. Section 2 of Part VII of this act shall apply to all petitions for estate administration filed
9 on or after July 1, 2021 regardless of the date of the decedent's death.

10 II. Section 3 of Part VII of this act shall apply to decedents dying on or after July 1, 2021.

11 III. Section 4 of Part VII of this act shall apply to general powers of attorney executed on or
12 after July 1, 2021.

13 9 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 10 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 II. "Available alternative resource" means alternatives to guardianship including, but not
2 limited to, services such as visiting nurses, homemakers, home health aides, adult day care and
3 multipurpose senior citizen centers; powers of attorney, supported decision-making agreements such
4 as those authorized by RSA 464-D, representative and protective payees; and board and care
5 residential care facilities.

6 13 Guardians and Conservators; Termination of Guardianship. RSA 464-A:40, I is repealed and
7 reenacted to read as follows:

8 I. A guardianship of the person or of the estate shall terminate upon order of the court, the
9 death of the ward, or upon a finding by the court either that the ward is no longer incapacitated or
10 that the ward's needs are met by available alternative resources.

11 14 New Sections; Special Education; Supported Decision-Making. Amend RSA 186-C by
12 inserting after section 3-b the following new sections:

13 186-C:3-c Supported Decision-Making. If adult guardianship is being discussed by the IEP team
14 with a student or the student's family, the team shall inform the student and family of the
15 availability of supported decision-making pursuant to RSA 464-D as an alternative to guardianship.
16 This shall be done promptly when guardianship is first discussed. The IEP team shall make
17 available resources to assist in establishing a supported decision-making agreement. If a supported
18 decision-making agreement is executed, the IEP team shall abide by decisions made by the student
19 pursuant to the supported decision-making agreement.

20 186-C:3-d Alternatives to Guardianship; Information Resources. The commissioner of the
21 department of education shall develop information resources regarding alternatives to guardianship,
22 including supported decision-making agreements pursuant to RSA 464-D, for children with
23 disabilities who are approaching the age of 18. These resources shall be developed in consultation
24 with New Hampshire disability advocacy organizations and other stakeholders and made available
25 to local education agencies to facilitate their responsibility to provide information to students and
26 families regarding alternatives to guardianship under RSA 186-C:3-c.

27 15 New Chapter; Supported Decision-Making. Amend RSA by inserting after chapter 464-C the
28 following new chapter:

29 CHAPTER 464-D

30 SUPPORTED DECISION-MAKING

31 464-D:1 Purpose. It is the purpose of this chapter to establish and recognize a less restrictive
32 alternative to guardianship for adults with disabilities. It fulfills this purpose by authorizing a legal
33 option for adults with disabilities who seek assistance in making life decisions but choose to retain
34 all of their legal rights. The chapter gives legal status to supporters of such adults and to decisions
35 made pursuant to supported decision-making.

36 464-D:2 Construction and Administration. This chapter is to be administered and interpreted in
37 accordance with the following principles:

1 I. All adults should be able to choose to live in the manner they wish and to accept or refuse
2 support, assistance, or protection;

3 II. All adults should be able to be informed about and participate in the management of
4 their affairs; and

5 III. The values, beliefs, wishes, cultural norms, and traditions that adults hold should be
6 respected in supporting adults in the management of their affairs.

7 464-D:3 Presumption of Capacity.

8 I. All adults are presumed to be capable of managing their affairs and to have legal capacity.

9 II. The manner in which an adult communicates with others is not grounds for a
10 determination that the adult is incapable of managing the adult's affairs.

11 III. Execution of a supported decision-making agreement may not be used as evidence of
12 incapacity in any proceeding.

13 IV. The execution of a supported decision-making agreement does not preclude the adult
14 who has entered into such an agreement from acting independently of the agreement.

15 464-D:4 Definitions.

16 I. "Adult" means an individual who is 18 years of age or older.

17 II. "Disability" means a physical or mental impairment that substantially limits one or more
18 major life activities of a person.

19 III. "Immediate family member" means a spouse, child, sibling, parent, grandparent,
20 grandchild, stepparent, stepchild, or stepsibling.

21 IV. "Person" means an adult; health-care institution; health-care provider; corporation;
22 partnership; limited liability company; association; joint venture; government; governmental
23 subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity

24 V. "Principal" means an adult who enters into a supported decision-making agreement
25 under this chapter to receive decision-making assistance.

26 VI. "Supported decision-making" means a process of supporting and accommodating an
27 adult with a disability to enable the adult to make life decisions, including, without limitation,
28 decisions related to where the adult wants to live, the services, supports, and medical care the adult
29 wants to receive, whom the adult wants to live with, education, and where the adult wants to work,
30 without impeding the self-determination of the adult.

31 VII. "Supporter" means an adult who enters into an agreement with an adult with a
32 disability to provide supported decision-making.

33 VIII. "Support services" means a system of social and other services supplied by private,
34 state, institutional, or community providers designed to help maintain the independence of an adult,
35 including any of the following:

36 (a) Homemaker-type services, including house repair, home cleaning, laundry, shopping,
37 and the provision of meals.

1 (b) Companion-type services, including transportation, escort, and facilitation of written,
2 oral, and electronic communication.

3 (c) Visiting nurse and attendant care.

4 (d) The provision of health care.

5 (e) Physical and psychosocial assessments.

6 (f) Legal assessments and advice.

7 (g) Education and educational assessment and advice.

8 (h) Personal treatment or care, including assistance with activities of daily living such
9 as bathing, dressing, eating, range of motion, toileting, transferring, and ambulation.

10 (i) Care planning.

11 (j) Other services needed to maintain the independence of an adult.

12 464-D:5 Subject Matter of Agreement. A principal may identify any type of decision to be the
13 subject of an agreement under this chapter. Such matters may include, but are not limited to:

14 I. Physical and mental health care.

15 II. Managing and using income and assets.

16 III. Support services.

17 IV. Employment.

18 V. Food and shelter.

19 VI. Assistance with public benefits.

20 VII. Education.

21 464-D:6 Limitations of Agreement.

22 I. An agreement under this chapter may coexist with, but not conflict with, a guardianship
23 or other court order.

24 II. An agreement under this chapter may be for a definite term. In the absence of a
25 provision setting a definite term of the agreement, the agreement shall remain in effect until
26 terminated pursuant to RSA 464-D:16.

27 464-D:7 Form and Content of Valid Agreement.

28 I. In order to be valid under this chapter, a supported decision-making agreement shall
29 include all of the following:

30 (a) Designation of at least one supporter.

31 (b) A description of the types of decisions for which the supporter is authorized to assist.

32 (c) A description of the types of decisions, if any, for which the supporter may not assist.

33 II. A supported decision-making agreement may include any of the following:

34 (a) Designation of more than one supporter.

35 (b) Provision for an alternate supporter to act in place of a supporter in circumstances
36 specified in the agreement.

1 (c) Authorization for a supporter to share information with any other person, including
2 another supporter.

3 III. A supported decision-making agreement is only valid if all of the following occur:

4 (a) The agreement is in a writing that contains the elements of the form contained in
5 RSA 464-D:16.

6 (c) The agreement is dated.

7 (d) The agreement is signed in the presence of 2 adult witnesses, or before a notary
8 public, justice of the peace, or commissioner of deeds.

9 (e) Each party to the agreement has signed the agreement voluntarily and with an
10 understanding of the nature and effect of the agreement.

11 IV. The 2 adult witnesses required by subparagraph III(d) may not be any of the following:

12 (a) A supporter named in the agreement.

13 (b) An employee or agent of a supporter named in the agreement.

14 (c) A paid provider of services to the principal, unless the person is an immediate family
15 member.

16 (d) Any person who does not understand the type of communication the principal uses,
17 unless an individual who understands the principal's means of communication is present to assist
18 during the execution of the supported decision-making agreement.

19 V. A supported decision-making agreement shall contain a separate declaration signed by
20 each supporter named in the agreement indicating all of the following:

21 (a) The supporter's relationship to the principal.

22 (b) The supporter's willingness to act as a supporter.

23 (c) The supporter's acknowledgment of the role of a supporter under this chapter.

24 464-D:8 Termination of Agreement.

25 I. A principal may terminate a supported decision-making agreement at any time. Such
26 termination may be accomplished by any of the following actions by the principal:

27 (a) Providing written notice to all of the supporters named in the agreement.

28 (b) Verbally expressing the intent to terminate the agreement in the presence of 2 adult
29 witnesses.

30 II. A supporter may withdraw from a supported decision-making agreement by providing
31 written notice to the principal. If the principal does not use a written form of communication, actual
32 notice of the supporter's withdrawal shall be provided using the type of communication used by the
33 principal. When a supporter withdraws from a supported decision-making agreement and there is
34 no remaining supporter, the agreement is automatically terminated.

35 III. A supported decision-making agreement is automatically terminated upon the death of
36 the principal.

1 IV. Subject to paragraph V, a supported decision-making agreement is automatically
2 terminated if any of the following events occur:

3 (a) There is a finding by a court or a state or federal agency that the principal has been
4 abused, neglected, or exploited by a supporter named in the agreement.

5 (b) There is a criminal conviction of a supporter for any of the following offenses under
6 New Hampshire law or their equivalent in another jurisdiction:

7 (1) Any offense or attempted offense under RSA 630 (homicide).

8 (2) Any felony offense or attempted felony offense under RSA 631 (assault and
9 related offenses).

10 (3) Any offense or attempted offense under RSA 632-A (sexual assault and related
11 offenses).

12 (4) Any offense or attempted offense under RSA 636 (robbery).

13 (5) Any offense or attempted offense under RSA 637 (theft).

14 (6) Any offense or attempted offense under RSA 638 (fraud).

15 (7) Any offense or attempted offense under RSA 641 (falsification in official matters).

16 V. When a supporter is the subject of a criminal conviction or a finding of misconduct under
17 paragraph IV, and there is one or more other supporters named in the agreement who are not the
18 subjects of convictions or findings of misconduct under that paragraph, the agreement does not
19 automatically terminate; however, any supporter who is the subject of a criminal conviction or a
20 finding of misconduct under paragraph IV is disqualified from further actions as a supporter under
21 the agreement.

22 464-D:9 Duties of Supporters. A supporter is in a fiduciary relationship with the principal and
23 is subject to the following requirements:

24 I. To act loyally, without self-interest, and in good faith.

25 II. To act within the authority granted in the agreement and by this chapter.

26 III. To avoid conflicts of interest.

27 IV. To disclose to the principal all facts known to the supporter relevant to making a
28 decision.

29 V. To act with the care, competence, and diligence ordinarily exercised by individuals in
30 similar circumstances, with due regard either to the possession of, or lack of, special skills or
31 expertise.

32 VI. To provide sufficient information to a monitor for financial matters designated pursuant
33 to RSA 464-D:13 to allow the monitor to fulfill his or her responsibilities pursuant to this chapter.

34 464-D:10 Authority of Supporters.

35 I. A supporter may only exercise the authority granted to the supporter in the agreement.

36 II. A supporter is not a surrogate decision maker for the principal and is not authorized to
37 sign legal or other documents on behalf of the principal or to bind the principal to a legal agreement.

1 III. A supporter may only access protected information if expressly authorized to do so by
2 the principal in the agreement or other written document.

3 IV. A supporter may not do any of the following:

4 (a) Exert undue influence upon or make decisions on behalf of the principal.

5 (b) Obtain, without consent of the principal, information that is not reasonably related
6 to matters with which the supporter is authorized to assist under the supported decision-making
7 agreement.

8 (c) Use or disclose information, without the principal's consent, for a purpose other than
9 assisting the principal to make decisions under the supported decision-making agreement.

10 464-D:11 Recognition of Supporters. A decision or request made or communicated with the
11 assistance of a supporter in conformity with this chapter shall be recognized for the purposes of any
12 provision of law as the decision or request of the principal and may be enforced in law or equity on
13 the same basis as a decision or request of the principal.

14 464-D:12 Persons Ineligible to be Supporters. Any of the following are prohibited from acting as
15 supporters.

16 I. A person who is an employer or employee of the principal, unless the person is an
17 immediate family member of the principal.

18 II. A person providing paid support services, unless the person is an immediate family
19 member of the principal.

20 III. A person against whom the principal has obtained an order of protection from abuse or a
21 person who is the subject of a civil or criminal order prohibiting contact with the principal.

22 IV. A person who has been convicted of any of the following New Hampshire offenses or
23 their equivalent in another jurisdiction, if the offense has not been annulled:

24 (a) Any offense or attempted offense under RSA 630 (homicide).

25 (b) Any felony offense or attempted felony offense under RSA 631 (assault and related
26 offenses).

27 (c) Any offense or attempted offense under RSA 632-A (sexual assault and related
28 offenses).

29 (d) Any offense or attempted offense under RSA 636 (robbery).

30 (e) Any felony offense or attempted felony offense under RSA 637 (theft).

31 (f) Any offense or attempted offense under RSA 638 (fraud).

32 (g) Any offense or attempted offense under RSA 641 (falsification in official matters).

33 464-D:13 Monitors for Financial Matters.

34 I. If a supporter is authorized in a supported decision-making agreement to assist a
35 principal with his or her financial affairs, a principal may designate a monitor.

36 II. A monitor designated under this section shall ensure that the supporter is complying
37 with RSA 464-D:9 and 464-D:10.

1 464-D:14 Reporting of Abuse and Neglect.

2 I. If a person who receives a copy of a supported decision-making agreement or is aware of
3 the existence of a supported decision-making agreement has cause to believe that the principal has
4 been abused, neglected, or financially exploited by the supporter, the person shall promptly report
5 the alleged abuse, neglect, or exploitation to the commissioner of health and human services or the
6 commissioner's authorized representative in accordance with RSA 161-F.

7 II. Nothing in this section shall be construed as eliminating or limiting a person's
8 requirement to report under any other statute or regulation.

9 464-D:15 Access to Information.

10 I. A supporter may assist the principal with obtaining any information to which the
11 principal is entitled, including, with a dated specific consent executed by the principal, protected
12 health information under the Health Insurance Portability and Accountability Act of 1996, Public
13 Law 104-191, educational records under the Family Educational Rights and Privacy Act of 1974, 20
14 U.S.C. section 1232g, or information related to a substance use disorder protected by 42 U.S.C.
15 section 290dd-2 and 42 C.F.R. Part 2.

16 II. The supporter shall ensure all information collected on behalf of the principal under this
17 section is kept privileged and confidential, as applicable; is not subject to unauthorized access, use,
18 or disclosure; and is properly disposed of when appropriate.

19 464-D:16 Form of Supported decision-making Agreement. A supported decision-making
20 agreement may be in any form not inconsistent with the following form and the other requirements
21 of this chapter. Use of the following form is presumed to meet statutory provisions.

22 SUPPORTED DECISION-MAKING AGREEMENT

23 This agreement must be communicated to all parties to the agreement in the presence of either a
24 notary or 2 witnesses. The form of communication must be appropriate to the needs and preferences
25 of the person with a disability. Reading the agreement out loud or using a sign language interpreter
26 may be necessary.

27
28 My name is _____.

29
30 I want to have people I trust help me make decisions. The people who will help me are called
31 supporters. My supporters are not allowed to make the decisions for me. I will make my own
32 choices, with their support. I am called the principal.

33
34 This agreement can be changed at any time. I can change it by crossing out words and writing my
35 initials next to the change. I can also end this agreement at any time by _____.

36 Signature of Principal
37

1 I am making this supportive decision-making agreement because I want people to help me make
2 choices. I know that I do not have to make this agreement. I know that I can change this agreement
3 at any time.

4

5 My printed name: _____

6 My address: _____

7 My phone number: _____

8 My email address: _____

9 Today's date: _____

10

11 Supporters

12 Supporter #1

13

14 I agree that _____ (name) will be my supporter. Their contact
15 information is:

16 Address: _____

17 Phone Number: _____

18 E-mail Address: _____

19 My supporter may help me with making everyday life decisions relating to the following:

20 Obtaining food, clothing, and shelter: Yes ___ No ___

21 Taking care of my physical health: Yes ___ No ___

22 Taking care of my mental health: Yes ___ No ___

23 Managing my financial affairs: Yes ___ No ___

24 Applying for and managing public benefits: Yes ___ No ___

25 My education: Yes ___ No ___

26 Applying for and managing employment: Yes ___ No ___

27 The following are other decisions that I have specifically identified that I would like assistance with:

28 _____

29 _____

30 _____

31 _____

32 _____

33 _____

34

35 Supporter #2.

36

1 I do not have to have more than one supporter. I choose to have _____
2 (name) also be my supporter. Their contact information is:

3 Address: _____

4 Phone Number: _____

5 E-mail Address: _____

6 is my supporter. My supporter may help me with making everyday life decisions relating to the
7 following:

8 Obtaining food, clothing, and shelter: Yes ___ No ___

9 Taking care of my physical health: Yes ___ No ___

10 Taking care of my mental health: Yes ___ No ___

11 Managing my financial affairs: Yes ___ No ___

12 Applying for and managing public benefits: Yes ___ No ___

13 My education: Yes ___ No ___

14 Applying for and managing employment: Yes ___ No ___

15 The following are other decisions that I have specifically identified that I would like assistance with:

16 _____
17 _____
18 _____
19 _____
20 _____
21 _____

22

23 To help me with my decisions, my supporter(s) may do the following things (check all that apply):

24 () Help me access, collect, or obtain information that is relevant to a decision, including medical,
25 psychological, educational, or treatment records;

26 () Help me gather and complete appropriate authorizations and releases;

27 () Help me understand my options so I can make an informed decision; and.

28 () Help me communicate my decision to appropriate persons.

29

30 Monitor for Financial Matters

31

32 If I want someone to help me make choices about money, I may also choose someone to make sure
33 my supporters are being honest and using good judgment in helping me with my money. This person
34 is called a monitor. A monitor cannot also be a supporter.

35

36 I agree that _____ (name) will be my monitor. Their contact information
37 is:

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1 Address: _____.

2 Phone Number: _____.

3 E-mail Address: _____.

4

5 Effective Date of Supported decision-making Agreement.

6

7 This supported decision-making agreement is effective immediately and will continue
8 until _____ (insert date) or until the agreement is terminated by my supporter or me or
9 by operation of law.

10

11 The date of this agreement is _____.

12

13 Consent of Supporter(s)

14

15 Supporter #1: I, _____ (name of supporter), consent to act as a supporter under this
16 agreement, and acknowledge my responsibilities under RSA 464-D.

17

18 _____.

19 (Signature of supporter) (Printed name of supporter).

20

21 My relationship to the principal is: _____.

22

23 Supporter #2: I, _____ (name of supporter), consent to act as a supporter under this
24 agreement, and acknowledge my responsibilities under RSA 464-D.

25

26 _____.

27 (Signature of supporter) (Printed name of supporter).

28

29 My relationship to the principal is: _____.

30

31 Additional supporters may be added below as necessary.

32

33 Consent of Monitor

34

35 I, _____ (name of monitor), consent to act as a monitor under this agreement, and
36 acknowledge my responsibilities under RSA 464-D.

37

1 _____

2 (Signature of monitor) (Printed name of monitor).

3

4 My relationship to the principal is: _____

5

6 Consent of the Principal

7

8 Wait until a notary or 2 witnesses are there to watch you sign.

9

10 _____

11 (My signature) (My printed name).

12

13 Witnesses or Notary.

14

15 _____

16 (Witness signature) (Printed name of witness).

17

18 _____

19 (Witness signature) (Printed name of witness)

20

21 16 Effective Date.

22 I. Sections 1-8 of Part VI of this act shall take effect July 1, 2021.

23 II. Sections 11-13 and section 15 of Part VI of this act shall take effect 60 days after its
24 passage.

25 III. Section 14 of Part VI of this act shall take effect January 1, 2022.

26 IV. The remainder of Part VI of this act shall take effect upon its passage.

27

28 PART VII

29 Relative to school employee and school volunteer criminal history background checks and
30 establishing a committee to study department of education oversight of
31 criminal history background checks for private schools.

32 1 School Employee and Designated School Volunteer Criminal History Records Check. Amend
33 RSA 189:13-a, III to read as follows:

34 III. The superintendent of the school administrative unit or the chief executive officer of the
35 chartered public school or public academy shall maintain the confidentiality of all criminal history
36 records information received pursuant to this paragraph. ~~If the criminal history records~~
37 ~~information indicates no criminal record, the superintendent of the school administrative unit or the~~

1 ~~chief executive officer of the chartered public school or public academy shall destroy the information~~
2 ~~received immediately following review of the information.]~~ *The superintendent of the school*
3 *administrative unit, or chief executive officer of the chartered public school or public*
4 *academy shall review the criminal history records information in accordance with*
5 *paragraph V.* If the criminal history records information indicates that the applicant has been
6 convicted of any crime or has been charged pending disposition for or convicted of a crime listed in
7 paragraph V, the superintendent of the school administrative unit or the chief executive officer of the
8 chartered public school or public academy shall review the information for a hiring decision~~[, and the~~
9 ~~division of state police shall notify the department of education of any such charges pending~~
10 ~~disposition or convictions. The superintendent of the school administrative unit or the chief~~
11 ~~executive officer of the chartered public school or public academy shall destroy any criminal history~~
12 ~~record information that indicates a criminal record within 60 days of receiving such information.]~~ *If*
13 *the applicant's criminal history records information indicates that the applicant has been*
14 *charged pending disposition for or has been convicted of a crime listed in paragraph V, the*
15 *superintendent of the school administrative unit or the chief executive officer of the*
16 *chartered public school or public academy shall notify the department of education.*

17 *III-a. The superintendent of the school administrative unit or chief executive officer*
18 *of the chartered public school or public academy shall destroy any criminal history record*
19 *information within 60 days of receipt. The superintendent of the school administrative*
20 *unit or chief executive officer of the chartered public school or public academy shall*
21 *destroy any criminal history record information that indicates a criminal record within 60*
22 *days of receiving said information.*

23 2 School Employee and Designated School Volunteer Criminal History Records Check. Amend
24 RSA 189:13-a, VI to read as follows:

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

36 3 School Employee and Designated School Volunteer Criminal History Records Check. Amend
37 RSA 189:13-a, IX to read as follows:

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

7 ~~(b) Upon enrollment in an educator preparation program at an institution of higher~~
8 ~~education, a candidate shall submit to a criminal history records check. The institution of higher~~
9 ~~education in which the candidate is enrolled shall conduct the criminal history records check.] Upon~~
10 placement of a candidate, *as defined in RSA 189:13-c*, as a student teacher, the receiving school
11 administrative unit, school district, or chartered public school shall conduct ~~[another]~~ a criminal
12 history records check of the candidate and shall follow the same procedures for assessing the
13 candidate's criminal history background as for applicants for employment. ~~[The governing body of~~
14 ~~the institution of higher education may adopt a policy relative to how often a candidate shall submit~~
15 ~~to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is~~
16 ~~enrolled in an educator preparation program at an institution of higher education in New~~
17 ~~Hampshire.]~~

18 *(b) A receiving school administrative unit, school district, or chartered public*
19 *school may conduct a criminal history records check upon a candidate, as defined in RSA*
20 *189:13-c.*

21 4 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
22 inserting after section 13-b the following new section:

23 '189:13-c Credentialing Applicant and Candidate Criminal History Records Check.

24 I. Definitions:

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

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

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

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

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

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

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

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

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

19 V. Any person who has been charged pending disposition for or convicted of any violation or
20 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;
21 639:3; 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
22 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene in
23 this state, or under any statute prohibiting the same conduct in another state, territory, or
24 possession of the United States, shall not be granted a teaching credential by the department nor
25 shall candidates be granted clearance.

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

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

32 5 Committee Established. There is established a committee to study department of education
33 oversight of criminal history background checks by private schools.

34 6 Membership and Compensation.

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

36 (a) Three members of the house of representatives, appointed by the speaker of the
37 house of representatives.

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

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

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

6 7 Duties. The committee shall:

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

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

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

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

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

16 8 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
17 among the members. The first meeting of the committee shall be called by the first-named house
18 member. The first meeting of the committee shall be held within 45 days of the effective date of this
19 section. Three members of the committee shall constitute a quorum.

20 9 Report. The committee shall report its findings and any recommendations for proposed
21 legislation to the speaker of the house of representatives, the president of the senate, the house
22 clerk, the senate clerk, the commissioner of the department of education, the governor, and the state
23 library on or before November 1, 2021.

24 10 Effective Date.

25 I. Sections 1-4 of Part VII of this act shall take effect January 1, 2022.

26 II. The remainder of Part VII of this act shall take effect upon its passage.

27 PART VIII

28 Making an appropriation funding mental health intervention training programs.

29 1 Mental Health Intervention Training; Appropriation. The sum of \$210,000 for the biennium
30 ending June 30, 2023, is hereby appropriated to the police standards and training council for the
31 purposes of funding mental health intervention training programs. The appropriations shall be in
32 addition to any other funds appropriated to the police standards and training council. The governor
33 is authorized to draw a warrant for said sums out of any money in the treasury not otherwise
34 appropriated.

35 2 Effective Date. Part VIII of this act shall take effect July 1, 2021.

36 PART IX

37 Relative to employer access to motor vehicle records.

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1 3 Effective Date. Part X of this act shall take effect upon its passage.

SB 134-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2021-1341h and #2021-1801h)

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

PART I Relative to prohibiting certain uses of laser pointing devices.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This part of the bill affects penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78
Appeals	Varies	Varies
<p>It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.</p>		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.

Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

PART II Relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.

This part of the bill has no fiscal impact.

PART III Relative to incarceration under a suspended sentence.

FISCAL IMPACT: State County Local None

Estimated Increase / (Decrease)
--

STATE:	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indéterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This part of the bill amends the amount of time that must be served by a person incarcerated under a suspended sentence to petition for the suspension of the remainder of the sentence.

The Judicial Branch indicates there may be an influx of petitions to suspend sentences from those eligible under the new provision that otherwise would have had to wait for the 2/3 minimum sentence date to pass. It is not possible to estimate how many early petitions there may be, but the Branch expects that after the initial influx, the volume of petitions would balance out over time and ultimately be similar to the current volume. The Branch states any measurable increase in workload is likely to be absorbed by the Judicial Branch within existing resources.

The Department of Corrections indicates it cannot predict when current or future residents will petition the court to suspend their sentence or the outcome of such petitions. The Department expects the fiscal impact would be either no change or a decrease in expenditures.

It is assumed any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch and Department of Corrections

PART IV Relative to structured settlement protection.

This part of the bill has no fiscal impact.

PART V Establishing the New Hampshire collaborative law act.

The Judicial Branch was originally contacted on January 25, 2021 for a fiscal note worksheet, which they have not provided as of June 9, 2021.

Part VI Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.

The Judicial Branch was originally contacted on January 25, 2021 for a fiscal note worksheet, which they have not provided as of June 9, 2021.

PART VII Relative to 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.

This part of the bill has no fiscal impact.

PART VIII Making an appropriation funding mental health intervention training programs.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$210,000	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable. Not to exceed \$210,000 over the FY 2022-2023 biennium	Indeterminable. Not to exceed \$210,000 over the FY 2022-2023 biennium	\$0
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input type="checkbox"/> Other			

METHODOLOGY:

This part of the bill makes a general fund appropriation of \$210,000 for the biennium ending June 30, 2023 to the Police Standards and Training Council for the purpose of funding mental health intervention training programs. It is assumed the appropriation would be expended during FY 2022 and FY 2023, however it is not known how much of the appropriation would be spent in each year.

AGENCIES CONTACTED:

None

PART IX Relative to employer access to motor vehicle records.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

Expenditures	\$0	\$0	\$0	\$0
Funding Source	<input type="checkbox"/> General Standards and Training	<input type="checkbox"/> Education and Emergency	<input type="checkbox"/> Highway Medical Services Fund	<input checked="" type="checkbox"/> Other - Fire

METHODOLOGY:

The Department of Safety indicates the proposed legislation would allow an employer to obtain a monthly electronic file reflecting driving violations and driver license status changes upon proof of the identity of the person requesting the records. The employer requesting must first obtain written consent of the individual whose driving records are being requested. Written consent from the driver would be obtained and kept on file to be available upon request by the Division of Motor Vehicles (DMV) for inspection. The proposed legislation would include drivers who are under contracted by transportation network companies (TNCs). Currently the cost to obtain an electronic motor vehicle record is \$13. The Department states the impact on revenue would be indeterminable, because the DMV has no method of calculating how many new records may be requested. There would be no fiscal impact on state expenditures or on county and local revenues and expenditures.

AGENCIES CONTACTED:

Department of Safety

PART X Relative to authorization to grow industrial hemp.

This part of the bill has no fiscal impact.

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03/18/2021 0775s
3Jun2021... 1341h
3Jun2021... 1801h
06/24/2021 2019CofC
06/24/2021 2078EBA

2021 SESSION

21-0931
04/06

SENATE BILL

134-FN

AN ACT

adopting omnibus legislation relative to civil actions and criminal liability.

SPONSORS:

Sen. Carson, Dist 14

COMMITTEE:

Judiciary

AMENDED ANALYSIS

This bill adopts legislation relative to:

- 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. Procedures for structured settlements.
- V. Establishing the New Hampshire collaborative law act.
- VI. Probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.
- VII. 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.
- VIII. Making an appropriation funding mental health intervention training programs.
- IX. Employer access to motor vehicle records.
- X. Authorization to grow industrial hemp.

Explanation:

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

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

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

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03/18/2021 0775s
3Jun2021... 1341h
3Jun2021... 1801h
06/24/2021 2019CofC
06/24/2021 2078EBA

21-0931
04/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

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

1 206:1 Sponsorship. This act consists of the following proposed legislation:

2 Part I: LSR 21-0931, relative to prohibiting certain uses of laser pointing devices, sponsored
3 by Sen. Carson, Prime/Dist 14.

4 Part II: LSR 21-0498, relative to the revised uniform law on notarial acts and the uniform
5 real property electronic recording act, sponsored by Sen. Cavanaugh, Prime/Dist 16; Sen. Hennessey,
6 Dist 1; Sen. Bradley, Dist 3; Rep. Danielson, Hills 7.

7 Part III: LSR 21-0913, relative to incarceration under a suspended sentence, sponsored by
8 Sen. Whitley, Prime/Dist 15; Sen. Perkins Kwoka, Dist 20; Sen. Kahn, Dist 10; Sen. D'Allesandro,
9 Dist 20.

10 Part IV: LSR 21-0934, relative to structured settlement protection, sponsored by Sen.
11 Carson, Prime/Dist 14.

12 Part V: LSR 21-0944, establishing the New Hampshire collaborative law act, sponsored by
13 Sen. Carson, Prime/Dist 14.

14 Part VI: LSR 21-0979, relative to probate administration, distribution upon intestacy, and
15 powers of attorney and adopting the uniform disclaimer of property interests act, sponsored by Sen.
16 Whitley, Prime/Dist 15; Rep. McWilliams, Merr 27; Rep. Piedra, Hills 9.

17 Part VII: LSR 21-1041, relative to school employee and school volunteer criminal history
18 background checks and establishing a committee to study department of education oversight of
19 criminal history background checks for private schools, sponsored by Sen. Kahn, Prime/Dist 10; Sen.
20 Cavanaugh, Dist 16; Rep. Ladd, Graf 4.

21 Part VIII: LSR 21-0996, making an appropriation funding mental health intervention
22 training programs, sponsored by Sen. Giuda, Prime/Dist 2; Sen. Watters, Dist 4; Sen. Hennessey,
23 Dist 1; Sen. Sherman, Dist 24; Sen. Carson, Dist 14; Sen. Bradley, Dist 3; Rep. Salloway, Straf 5;
24 Rep. Weyler, Rock 13; Rep. Gordon, Graf 9; Rep. Lang, Belk 4; Rep. G. Sanborn, Graf 6.

25 Part IX: LSR 21-1013, relative to employer access to motor vehicle records, sponsored by
26 Sen. Carson, Prime/Dist 14.

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1 Part X: LSR 21-0969, relative to authorization to grow industrial hemp, sponsored by Sen.
2 Carson, Prime/Dist 14.

3 206:2 Legislation Enacted. The general court hereby enacts the following legislation:

4 PART I

5 Relative to prohibiting certain uses of laser pointing devices.

6 206:1 Assault and Related Offenses; Conduct Involving Laser Pointing Devices. RSA 631:3-a is
7 repealed and reenacted to read as follows:

8 631:3-a Conduct Involving Laser Pointing Devices.

9 I. As used in this section:

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

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

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

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

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

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

27 (a) An authorized person in the conduct of research and development or flight test
28 operations conducted by an aircraft manufacturer, the Federal Aviation Administration, or any other
29 person authorized by the Federal Aviation Administration to conduct such research and
30 development or flight test operations.

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

33 (c) An individual using a laser emergency signaling device to send an emergency distress
34 signal, in an organized meeting or training class by the instructor or speaker, the use of medical
35 lasers by qualified medical personnel, sporting use related only to calibrate distance without
36 violating the prohibitions set forth in paragraph III, agricultural use, use related to land surveying,
37 construction lasers used by construction personnel in the course of their work or other use of lasers

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1 for lawful business purposes, or lawful laser devices utilized by law enforcement personnel in the
2 performance of their official duties.

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

5 (e) An individual authorized by the owner of the motor vehicle, aircraft, vessel, window,
6 or structure.

7 (f) An individual authorized by the person, or the parent or guardian of the person.

8 206:2 New Hampshire Aeronautics Act; Prohibitions. Amend RSA 422:28, XIV to read as
9 follows:

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

15 206:3 Effective Date. Part I of this act shall take effect January 1, 2022.

PART II

16 Relative to the revised uniform law on notarial acts and
17 the uniform real property electronic recording act.

18 206:1 Notaries Public. Amend RSA 455:3 to read as follows:

19 455:3 Powers.

20
21 ***I.*** Every notary public, in addition to the usual powers of the office, shall have the same
22 powers as a justice of the peace in relation to depositions and the acknowledgment of deeds and
23 other instruments and the administering of oaths.

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

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

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

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

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

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

33 206:2 New Paragraph; Notarial Fees. Amend RSA 455:11 by inserting after paragraph II the
34 following new paragraph:

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

37 206:3 Uniform Law on Notarial Acts; Definitions. Amend RSA 456-B:1 to read as follows:

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1 456-B:1 Definitions.

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

7 II. "Acknowledgment" means a declaration by ~~[a person]~~ ***an individual before a notarial***
8 ***officer*** that the ~~[person has executed an instrument]~~ ***individual has signed a record*** for the
9 purposes stated therein and, if ~~[the instrument is executed]~~ ***the record is signed*** in a
10 representative capacity, that the ~~[person]~~ ***individual*** signed the ~~[instrument]~~ ***record*** with proper
11 authority and ~~[executed]~~ ***signed*** it as the act of the ~~[person]~~ ***individual*** or entity ~~[represented and]~~
12 identified therein.

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

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

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

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

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

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

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

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

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

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

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

35 X. ***"Person" means an individual, corporation, business trust, statutory trust,***
36 ***estate, trust, partnership, limited liability company, association, joint venture, public***

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1 *corporation, government or governmental subdivision, agency, or instrumentality, or any*
2 *other legal or commercial entity.*

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

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

6 **(a) To execute or adopt a tangible symbol; or**

7 **(b) To attach to or logically associate with the record an electronic symbol,**
8 **sound, or process.**

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

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

12 **(a) A physical device capable of affixing to or embossing on a tangible record an**
13 **official stamp; or**

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

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

19 206:4 Uniform Law on Notarial Acts; Notarial Acts. Amend RSA 456-B:2 to read as follows:
20 456-B:2 Notarial Acts.

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

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

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

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

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

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

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

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

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

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

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

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

21 206:5 New Sections; Personal Appearance Required; Identification of Individual. Amend RSA
22 456-B by inserting after section 2 the following new sections:

23 456-B:2-a Personal Appearance Required. If a notarial act relates to a statement made in or a
24 signature executed on a record, the individual making the statement or executing the signature shall
25 appear personally before the notarial officer.

26 456-B:2-b Identification of Individual.

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

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

32 (a) By means of:

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

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

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

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

6 206:6 Notarial Acts. Amend RSA 456-B:3, III to read as follows:

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

13 206:7 New Section; Notarial Act Performed for Remotely Located Individual. Amend RSA 456-B
14 by inserting after section 6 the following new section:

15 456-B:6-a Notarial Act Performed for Remotely Located Individual.

16 I. In this section:

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

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

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

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

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

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

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

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

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

37 (a) The notary public:

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

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

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

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

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

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

13 (1) The record:

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

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

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

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

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

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

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

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

34 VII. Before a notary public performs the notary public's initial notarial act under this
35 section, the notary public must notify the secretary of state that the notary public will be performing
36 notarial acts with respect to remotely located individuals and identify the technologies the notary
37 public intends to use. If the secretary of state has established standards under paragraph VIII and

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1 RSA 456-B:8-b, IV, for approval of communication technology or identity proofing, the
2 communication technology and identity proofing must conform to the standards.

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

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

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

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

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

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

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

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

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

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

27 206:8 New Sections; Official Stamp; Stamping Device; Notification Regarding Performance of
28 Notarial Act on Electronic Record; Selection of Technology; Rules; Journal; Validity of Notarial Acts;
29 Relation to Electronic Signatures in Global and National Commerce Act. Amend RSA 456-B by
30 inserting after section 8 the following new sections:

31 456-B:8-a Official Stamp; Stamping Device.

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

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

34 (b) Be capable of being copied together with the record to which it is affixed or attached
35 or with which it is logically associated.

36 II. A notary public is responsible for the security of the notary public's stamping device and
37 may not allow another individual to use the device to perform a notarial act. On resignation from, or

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1 the revocation or expiration of, the notary public's commission, or on the expiration of the date set
2 forth in the stamping device, if any, the notary public shall disable the stamping device by
3 destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it
4 unusable. On the death or adjudication of incompetency of a notary public, the notary public's
5 personal representative or guardian or any other person knowingly in possession of the stamping
6 device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use
7 in a manner that renders it unusable.

8 III. If a notary public's stamping device is lost or stolen, the notary public or the notary
9 public's personal representative or guardian shall notify promptly the secretary of state on
10 discovering that the device is lost or stolen.

11 456-B:8-b Notification Regarding Performance of Notarial Act on Electronic Record; Selection of
12 Technology; Rules.

13 I. A notary public may select one or more tamper-evident technologies to perform notarial
14 acts with respect to electronic records. A person may not require a notary public to perform a
15 notarial act with respect to an electronic record with a technology that the notary public has not
16 selected.

17 II. Before a notary public performs the notary public's initial notarial act with respect to an
18 electronic record, a notary public shall notify the secretary of state that the notary public will be
19 performing notarial acts with respect to electronic records and identify the technology the notary
20 public intends to use. If the secretary of state has established standards for approval of technology,
21 the technology shall conform to the standards. If the technology conforms to the standards, the
22 secretary of state shall approve the use of the technology.

23 III. The secretary of state may adopt rules under RSA 541-A to implement this chapter.
24 Rules adopted regarding the performance of notarial acts with respect to electronic records may not
25 require, or accord greater legal status or effect to, the implementation or application of a specific
26 technology or technical specification.

27 IV. Unless the secretary of state has adopted a rule establishing standards for tamper-
28 evident technology, a notary public shall attach or logically associate the notary public's official
29 stamp to an electronic record by use of a digital certificate complying with the X.509 standard
30 adopted by the International Telecommunication Union or a similar industry-standard technology.

31 456-B:8-c Journal.

32 I. A notary public shall maintain a journal in which the notary public chronicles all notarial
33 acts the notary public performs with respect to a remotely located individual under RSA 456-B:6-a.
34 The notary public shall retain the journal for 10 years after the performance of the last notarial act
35 chronicled in the journal.

36 II. A journal may be created on a tangible medium or in an electronic format. A notary
37 public shall maintain only one journal at a time to chronicle all notarial acts performed regarding

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1 tangible records and one or more journals to chronicle all notarial acts performed regarding
2 electronic records. If a journal is maintained on a tangible medium, it shall be a permanent, bound
3 register with numbered pages. If the journal is maintained in an electronic format, it shall be in a
4 permanent, tamper-evident electronic format complying with the rules of the secretary of state.

5 III. An entry in a journal shall be made contemporaneously with performance of the notarial
6 act and contain the following information:

7 (a) The date and time of the notarial act;

8 (b) A description of the record, if any, and type of notarial act;

9 (c) The full name and address of each individual for whom the notarial act is performed;

10 (d) If identity of the individual is based on personal knowledge, a statement to that
11 effect;

12 (e) If identity of the individual is based on satisfactory evidence, a brief description of
13 the method of identification and the identification credential presented, if any, including the date of
14 issuance and expiration of the identification credential; and

15 (f) The fee, if any, charged by the notary public.

16 IV. If the journal of a notary public is lost, the notary public loses access to the journal, or
17 the journal is stolen, the notary public promptly shall notify the secretary of state upon discovering
18 the journal is lost, access is lost, or the journal is stolen.

19 V. On resignation from, or the revocation or suspension of, the commission of a notary
20 public, the notary public shall retain the journal in accordance with paragraph I and inform the
21 secretary of state where the journal is located.

22 VI. Instead of retaining a journal as provided in paragraphs I and V, a current or former
23 notary public may transmit the journal to a repository approved by the secretary of state.

24 VII. Upon the death or adjudication of incompetency of a current or former notary public,
25 the personal representative or guardian of the notary public shall retain the journal as provided in
26 paragraphs I or V or transmit the journal to a repository approved by the secretary of state.

27 456-B:8-d Validity of Notarial Acts. The failure of a notarial officer to perform a duty or meet a
28 requirement specified in this chapter or RSA 455 does not invalidate a notarial act performed by the
29 notarial officer. The validity of a notarial act under this chapter or RSA 455 does not prevent an
30 aggrieved person from seeking to invalidate the record or transaction that is the subject of the
31 notarial act or from seeking other remedies based on law of this state other than this chapter or law
32 of the United States. This section does not validate a purported notarial act performed by an
33 individual who does not have the authority to perform notarial acts.

34 456-B:8-e Relation to Electronic Signatures in Global and National Commerce Act. This chapter
35 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
36 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15

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1 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
2 103(b) of that act, 15 U.S.C. section 7003(b).

3 206:9 New Paragraph; Short Forms. Amend RSA 456-B:8 by inserting after paragraph V the
4 following new paragraph:

5 VI. For certifying a tangible copy of an electronic record:

6 State of _____

7 (County) of _____

8 I certify that this record is a true and correct copy of an electronic record printed by me or under my
9 supervision.

10 Dated _____

11 _____

12 (Signature of notarial officer)

13 (Seal, if any)

14 Title (and Rank)

15 [My commission expires: _____]

16 206:10 New Chapter; Uniform Real Property Electronic Recording Act. Amend RSA by
17 inserting after chapter 478 the following new chapter:

18 **CHAPTER 478-A**

19 **UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

20 478-A:1 Short Title. This chapter may be cited as the Uniform Real Property Electronic
21 Recording Act.

22 478-A:2 Definitions. In this chapter:

23 I. "Document" means information that is:

24 (a) Inscribed on a tangible medium or that is stored in an electronic or other medium
25 and is retrievable in perceivable form; and

26 (b) Eligible to be recorded in the land records maintained by the register of deeds.

27 II. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
28 optical, electromagnetic, or similar capabilities.

29 III. "Electronic document" means a document that is received by the register of deeds in an
30 electronic form.

31 IV. "Electronic signature" means an electronic sound, symbol, or process attached to or
32 logically associated with a document and executed or adopted by a person with the intent to sign the
33 document.

34 V. "Person" means an individual, corporation, business trust, estate, trust, partnership,
35 limited liability company, association, joint venture, public corporation, government, or
36 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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1 VI. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
2 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
3 United States.

4 478-A:3 Validity of Electronic Documents; Recordation of Electronic Documents in Tangible
5 Form.

6 I. If a law requires, as a condition for recording, that a document be an original, be on paper
7 or another tangible medium, or be in writing, the requirement is satisfied by an electronic document
8 satisfying this section.

9 II. If a law requires, as a condition for recording, that a document be signed, the
10 requirement is satisfied by an electronic signature.

11 III. A requirement that a document or a signature associated with a document be notarized,
12 acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the
13 person authorized to perform that act, and all other information required to be included, is attached
14 to or logically associated with the document or signature. A physical or electronic image of a stamp,
15 impression, or seal need not accompany an electronic signature.

16 IV. A register of deeds shall accept for recording a tangible copy of an electronic document,
17 other than a plat, map, survey, or plat of land as provided in RSA 478:1-a, containing a notarial
18 certificate as satisfying any requirement that a document accepted for recording be an original, if the
19 notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of
20 the electronic document. A notarial certificate in the form provided in RSA 456-B:8, VI, satisfies the
21 requirement of this paragraph.

22 478-A:4 Recording of Documents.

23 I. In this section, "paper document" means a document that is received by the register of
24 deeds in a form that is not electronic.

25 II. A register of deeds:

26 (a) May receive, index, store, archive, and transmit electronic documents;

27 (b) May provide for access to, and for search and retrieval of, documents and information
28 by electronic means;

29 (c) Shall, if accepting electronic documents for recording, continue to accept paper
30 documents as authorized by state law and shall place entries for both types of documents in the
31 same index;

32 (d) May convert paper documents accepted for recording into electronic form;

33 (e) May convert into electronic form information recorded before the register of deeds
34 began to record electronic documents;

35 (f) May accept electronically any fee or tax that the register of deeds is authorized to
36 collect; and

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1 (g) May agree with other officials of a state or a political subdivision thereof, or of the
2 United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals
3 and conditions precedent to recording and the electronic payment of fees and taxes.

4 478-A:5 Uniformity of Application and Construction. In applying and construing this uniform
5 act, consideration shall be given to the need to promote uniformity of the law with respect to its
6 subject matter among states that enact it.

7 478-A:6 Relation to Electronic Signatures in Global and National Commerce Act. This chapter
8 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
9 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15
10 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
11 103(b) of that act, 15 U.S.C. section 7003(b).

12 206:11 Wills; Requirements. Amend RSA 551:2, III(b) to read as follows:

13 (b) Nothing in this paragraph shall be deemed to allow an electronic will or codicil. This
14 paragraph shall apply only to wills executed on or after March 23, 2020~~[-and ending on the last day~~
15 ~~of the state of emergency declared by executive order 2020-04].~~

16 206:12 Effective Date.

17 I. RSA 456-B:2, VII as inserted by section 4 of Part II of this act and section 11 of Part II of
18 this act shall take effect upon its passage.

19 II. The remainder of Part II of this act shall take effect 180 days after its passage.

PART III

Relative to incarceration under a suspended sentence.

22 206:1 Incarceration Under a Suspended Sentence. Amend the introductory paragraph of RSA
23 651:20, I(a) to read as follows:

24 (a) Any person sentenced to state prison for a minimum term of 6 years or more shall
25 not bring a petition to suspend sentence until such person ~~[has served at least 4 years or 2/3 of his~~
26 ~~minimum sentence, whichever is greater,]~~ **is within 12 months of serving 2/3 of the minimum**
27 **sentence**, and not more frequently than every 3 years thereafter. Any person sentenced to state
28 prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until
29 such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by
30 the sentencing court. For the purposes of this subparagraph:

31 206:2 Effective Date. Part III of this act shall take effect 60 days after its passage.

PART IV

Relative to structured settlement protection.

34 206:1 New Chapter; Structured Settlement Protection. Amend RSA by inserting after chapter
35 408-F the following new chapter:

CHAPTER 408-G

STRUCTURED SETTLEMENT PROTECTION

1 408-G:1 Definitions. In this chapter:

2 I. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments
3 under a structured settlement.

4 II. "Assignee" means a party acquiring or proposing to acquire structured settlement
5 payment rights from a transferee of such rights.

6 III. "Dependents" include a payee's spouse and minor children and all other persons for
7 whom the payee is legally obligated to provide support, including alimony.

8 IV. "Discounted present value" means the present value of future payments determined by
9 discounting such payments to the present using the most recently published applicable federal rate
10 for determining the present value of an annuity, as issued by the United States Internal Revenue
11 Service.

12 V. "Gross advance amount" means the sum payable to the payee or for the payee's account
13 as consideration for a transfer of structured settlement payment rights before any reductions for
14 transfer expenses or other deductions to be made from such consideration.

15 VI. "Independent professional advice" means advice of an attorney, certified public
16 accountant, actuary or other licensed professional adviser.

17 VII. "Interested parties" means, with respect to any structured settlement, the payee, any
18 beneficiary irrevocably designated under the annuity contract to receive payments following the
19 payee's death, the annuity issuer, the structured settlement obligor, and any other party to such
20 structured settlement that has continuing rights or obligations to receive or make payments under
21 such structured settlement.

22 VIII. "Net advance amount" means the gross advance amount less the aggregate amount of
23 the actual and estimated transfer expenses required to be disclosed pursuant to this chapter.

24 IX. "Payee" means an individual who is receiving tax free payments under a structured
25 settlement and proposes to make a transfer of payment rights thereunder.

26 X. "Periodic payments" includes both recurring payments and scheduled future lump sum
27 payments.

28 XI. "Qualified assignment agreement" means an agreement providing for a qualified
29 assignment within the meaning of United States Internal Revenue Code, 26 U.S.C. section 130, as
30 amended.

31 XII. "Settled claim" means the original tort claim resolved by a structured settlement.

32 XIII. "Structured settlement" means an arrangement for periodic payment of damages for
33 personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

34 XIV. "Structured settlement agreement" means the agreement, judgment, stipulation, or
35 release embodying the terms of a structured settlement.

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1 XV. "Structured settlement obligor" means, with respect to any structured settlement, the
2 party that has the continuing obligation to make periodic payments to the payee under a structured
3 settlement agreement or a qualified assignment agreement.

4 XVI. "Structured settlement payment rights" means rights to receive periodic payments
5 under a structured settlement, whether from the structured settlement obligor or the annuity issuer,
6 where:

7 (a) The payee resides in this state; or

8 (b) The structured settlement agreement was approved by a court in this state.

9 XVII. "Terms of the structured settlement" include, with respect to any structured
10 settlement, the terms of the structured settlement agreement, the annuity contract, any qualified
11 assignment agreement and any order or other approval of any court or other government authority
12 that authorized or approved such structured settlement.

13 XVIII. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or
14 encumbrance of structured settlement payment rights made by a payee for consideration; provided
15 that the term "transfer" shall not include the creation or perfection of a security interest in
16 structured settlement payment rights under a blanket security agreement entered into with an
17 insured depository institution, in the absence of any action to redirect the structured settlement
18 payments to such insured depository institution, or an agent or successor in interest thereof, or
19 otherwise to enforce such blanket security interest against the structured settlement payment
20 rights.

21 XIX. "Transfer agreement" means the agreement providing for a transfer of structured
22 settlement payment rights.

23 XX. "Transfer expenses" means all expenses of a transfer that are required under the
24 transfer agreement to be paid by the payee or deducted from the gross advance amount, including,
25 without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and
26 lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary;
27 "transfer expenses" do not include preexisting obligations of the payee payable for the payee's
28 account from the proceeds of a transfer.

29 XXI. "Transferee" means a party acquiring or proposing to acquire structured settlement
30 payment rights through a transfer.

31 408-G:2 Required Disclosure to Payee. Not less than 3 days prior to the date on which a payee
32 signs a transfer agreement, the transferee shall provide to the payee a separate disclosure
33 statement, in bold type no smaller than 14 points, setting forth the following:

34 I. The amounts and due dates of the structured settlement payments to be transferred.

35 II. The aggregate amount of such payments.

36 III. The discounted present value of the payments to be transferred, which shall be
37 identified as the "calculation of current value of the transferred structured settlement payments

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1 under federal standards for valuing annuities and the amount of the Applicable Federal Rate used in
2 calculating such discounted present value.

3 IV. The gross advance amount.

4 V. An itemized listing of all applicable transfer expenses, other than attorneys' fees and
5 related disbursements payable in connection with the transferee's application for approval of the
6 transfer, and the transferee's best estimate of the amount of any such fees and disbursements.

7 VI. The effective annual interest rate, which must be disclosed in a statement in the
8 following form: "On the basis of the net amount that you will receive from us and the amounts and
9 timing of the structured settlement payments that you are transferring to us, you will, in effect be
10 paying interest to us at a rate of _____ percent per year."

11 VII. The net advance amount.

12 VIII. The amount of any penalties or liquidated damages payable by the payee in the event
13 of any breach of the transfer agreement by the payee.

14 IX. That the payee has the right to cancel the transfer agreement, without penalty or
15 further obligation, not later than the third business day after the date the agreement is signed by
16 the payee.

17 X. That the payee has the right to seek and receive independent professional advice
18 regarding the proposed transfer and should consider doing so before agreeing to transfer any
19 structured settlement payment rights.

20 XI. That the payee has the right to negotiate the purchase price offered by the transferee,
21 and the payee is advised to obtain competing offers from other potential transferees.

22 408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect
23 transfer of structured settlement payment rights shall be effective and no structured settlement
24 obligor or annuity issuer shall be required to make any payment directly or indirectly to any
25 transferee or assignee of structured settlement payment rights unless the transfer has been
26 approved in advance in a final court order based on express findings by such court that:

27 I. The transfer is in the best interest of the payee, taking into account the welfare and
28 support of the payee's dependents; and

29 II. The payee has been advised in writing by the transferee to seek independent professional
30 advice regarding the transfer and has either received such advice or knowingly waived in writing the
31 opportunity to seek and receive such advice; and

32 III. The transfer does not contravene any applicable statute or the order of any court or
33 other government authority.

34 408-G:4 Effects of Transfer of Structured Settlement Payment Rights. Following a transfer of
35 structured settlement payment rights under this chapter:

36 I. The structured settlement obligor and the annuity issuer may rely on the court order
37 approving the transfer in redirecting periodic payments to an assignee or transferee in accordance

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1 with the order approving the transfer and shall, as to all parties except the transferee or an assignee
2 designated by the transferee, be discharged and released from any and all liability for the redirected
3 payments; and such discharge and release shall not be affected by the failure of any party to the
4 transfer to comply with this chapter or with the court order approving the transfer;

5 II. The transferee shall be liable to the structured settlement obligor and the annuity issuer:

6 (a) If the transfer contravenes the terms of the structured settlement, for any taxes
7 incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

8 (b) For any other liabilities or costs, including reasonable costs and attorneys' fees,
9 arising from compliance by the structured settlement obligor or annuity issuer with the court order
10 approving the transfer or from the failure of any party to the transfer to comply with this chapter;

11 III. Neither the annuity issuer nor the structured settlement obligor may be required to
12 divide any periodic payment between the payee and any transferee or assignee or between 2 or more
13 transferees or assignees; and

14 IV. Any further transfer of structured settlement payment rights by the payee may be made
15 only after compliance with all of the requirements of this chapter.

16 408-G:5 Procedure For Approval of Transfers.

17 I. An application under this chapter for approval of a transfer of structured settlement
18 payment rights shall be made by the transferee and shall be brought in the superior court in the
19 county in which the payee resides, except that if the payee does not reside in this state, the
20 application may be brought in the court in this state that approved the structured settlement
21 agreement.

22 II. A timely hearing shall be held on an application for approval of a transfer of structured
23 settlement payment rights. The payee shall appear in person at the hearing unless the court
24 determines that good cause exists to excuse the payee from appearing in person.

25 III. Not less than 20 days prior to the scheduled hearing on any application for approval of a
26 transfer of structured settlement payment rights under RSA 408-G:3, the transferee shall file with
27 the court and serve on all interested parties, including a parent or other guardian or authorized legal
28 representative of any interested party who is not legally competent, a notice of the proposed transfer
29 and the application for its authorization, including with such notice:

30 (a) A copy of the transferee's application.

31 (b) A copy of the transfer agreement.

32 (c) A copy of the disclosure statement required under RSA 408-G:2.

33 (d) The payee's name, age, and county of residence and the number and ages of each of
34 the payee's dependents.

35 (e) A summary of:

36 (1) Any prior transfers by the payee to the transferee or an affiliate, or through the
37 transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer

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1 agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the
2 transferee or an affiliate, applications for approval of which were denied within the 2 years
3 preceding the date of the transfer agreement; and

4 (2) Any prior transfers by the payee to any person or entity other than the transferee
5 or an affiliate or an assignee of the transferee or an affiliate within the 3 years preceding the date of
6 the transfer agreement and any prior proposed transfers by the payee to any person or entity other
7 than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval
8 of which were denied within the one year preceding the date of the current transfer agreement, to
9 the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee
10 in writing or otherwise are actually known to the transferee.

11 (f) Notification that any interested party is entitled to support, oppose or otherwise
12 respond to the transferee's application, either in person or by counsel, by submitting written
13 comments to the court or by participating in the hearing.

14 (g) Notification of the time and place of the hearing and notification of the manner in
15 which and the date by which written responses to the application must be filed, which date shall be
16 not less than 5 days prior to the hearing, in order to be considered by the court.

17 IV. In determining whether a transfer is in the payee's best interest under RSA 408-G:3, I,
18 the court shall consider, among other matters, whether the payee has compared competing offers for
19 the structured settlement payment rights that the payee proposes to transfer.

20 408-G:6 General Provisions; Construction.

21 I. The provisions of this chapter shall not be waived by any payee.

22 II. Any transfer agreement entered into on or after the effective date of this chapter by a
23 payee who resides in this state shall provide that disputes under such transfer agreement, including
24 any claim that the payee has breached the agreement, shall be determined in and under the laws of
25 this state. No such transfer agreement shall authorize the transferee or any other party to confess
26 judgment or consent to entry of judgment against the payee.

27 III. No transfer of structured settlement payment rights shall extend to any payments that
28 are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the
29 transferee has established and has agreed to maintain procedures reasonably satisfactory to the
30 annuity issuer and the structured settlement obligor for periodically confirming the payee's survival,
31 and giving the annuity issuer and the structured settlement obligor prompt written notice in the
32 event of the payee's death.

33 IV. If the payee cancels a transfer agreement, or if the transfer agreement otherwise
34 terminates, after an application for approval of a transfer of structured settlement payment rights
35 has been filed and before it has been granted or denied, the transferee shall promptly request
36 dismissal of the application.

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1 V. No payee who proposes to make a transfer of structured settlement payment rights shall
2 incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the
3 proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of
4 this chapter.

5 VI. Nothing contained in this chapter shall be construed to authorize any transfer of
6 structured settlement payment rights in contravention of any applicable law or to imply that any
7 transfer under a transfer agreement entered into prior to the effective date of this chapter is valid or
8 invalid.

9 VII. Compliance with the requirements set forth in RSA 408-G:2 and fulfillment of the
10 conditions set forth in RSA 408-G:3 shall be solely the responsibility of the transferee in any transfer
11 of structured settlement payment rights, and neither the structured settlement obligor nor the
12 annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with
13 such requirements or failure to fulfill such conditions.

14 206:2 Applicability. RSA 408-G as inserted by section 1 of Part IV of this act shall apply to any
15 transfer of structured settlement payment rights under a transfer agreement entered into on or after
16 the 30th day after the effective date of Part IV of this act.

17 206:3 Effective Date. Part IV of this act shall take effect 60 days after its passage.

PART V

Establishing the New Hampshire collaborative law act.

19 206:1 New Chapter; New Hampshire Collaborative Law Act. Amend RSA by inserting after
20 chapter 490-I the following new chapter:
21

CHAPTER 490-J

NEW HAMPSHIRE COLLABORATIVE LAW ACT

22 490-J:1 Short Title. This chapter may be cited as the New Hampshire collaborative law act.

23 490-J:2 Definitions. In this chapter:

24 I. "Collaborative law communication" means a statement, whether oral or in a document,
25 that:

26 (a) Is made as part of a collaborative law process;

27 (b) Occurs after the parties sign a collaborative law participation agreement and before
28 the collaborative law process is concluded; and

29 (c) Is not otherwise privileged pursuant to the attorney client relationship.

30 II. "Collaborative law participation agreement" means an agreement by persons to
31 participate in a collaborative law process.

32 III. "Collaborative law process" means a procedure intended to resolve a collaborative
33 matter without intervention by a court in which persons:

34 (a) Sign a collaborative law participation agreement; and

35 (b) Are represented by collaborative lawyers.
36
37

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1 IV. "Collaborative lawyer" means a lawyer who represents a party in a collaborative law
2 process.

3 V. "Collaborative matter" means an issue for resolution which is described in a collaborative
4 law participation agreement and arises under the law of this state, including, but not limited to:

5 (a) Marriage, divorce, annulment, legal separation, and property distribution;

6 (b) Parental rights and responsibilities;

7 (c) Grandparent rights;

8 (d) Alimony, maintenance, and child support;

9 (e) Parentage;

10 (f) Premarital and post-marital agreements; and

11 (g) Any modifications of any orders arising out of the matters set forth in subparagraphs
12 (a)-(f).

13 VI. "Court" means a body acting in an adjudicative capacity which has jurisdiction to render
14 a decision affecting a party's interests in a matter.

15 VII. "Document" means information that is inscribed on a tangible medium or that is stored
16 in an electronic or other medium and is retrievable in perceivable form.

17 VIII. "Law firm" means lawyers who practice law together in a partnership, professional
18 corporation, sole proprietorship, limited liability company, association or legal services organization.

19 IX. "Neutral participant" means a person, other than a party and a party's collaborative
20 lawyer, that participates in a collaborative law process.

21 X. "Party" means a person that signs a collaborative law participation agreement and whose
22 consent is necessary to resolve a collaborative matter.

23 XI. "Proceeding" means a judicial or other adjudicative process.

24 XII. "Prospective party" means a person who discusses with a prospective collaborative
25 lawyer the possibility of signing a collaborative law participation agreement.

26 XIII. "Related to a collaborative matter" means involving the same parties, transaction or
27 occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

28 XIV. "Sign" means with present intent to authenticate or adopt a document by electronic or
29 non-electronic signature.

30 490-J:3 Applicability. This chapter applies to a collaborative law participation agreement that
31 meets the requirements of RSA 490-J:4 signed on or after the effective date of the chapter.

32 490-J:4 Collaborative Law Participation Agreement; Requirements.

33 I. A collaborative law participation agreement shall:

34 (a) Be in writing;

35 (b) Be signed by the parties;

36 (c) State the parties' intention to resolve a collaborative matter through a collaborative
37 law process under this chapter;

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1 (d) Describe the nature and scope of the matter;
2 (e) Contain a statement by each collaborative lawyer confirming the lawyer's
3 representation of a party in the collaborative law process; and

4 (f) Disqualify the collaborative lawyer from representing a party in a case filed with a
5 court involving one or more of the same parties in the same or a related matter, except for the filing
6 needed to seek the court's approval of an agreement reached in the collaborative case or in pending
7 cases while stayed pursuant to RSA 490-J:6, I.

8 II. Parties may agree to include in a collaborative law participation agreement additional
9 provisions not inconsistent with this chapter or current law.

10 490-J:5 Beginning and Concluding Collaborative Law Process.

11 I. A collaborative law process begins when the parties sign a collaborative law participation
12 agreement.

13 II. A court shall not order a party to participate in a collaborative law process over that
14 party's objection.

15 III. A collaborative law process is concluded by a:

- 16 (a) Resolution of a collaborative matter as evidenced by a signed agreement;
17 (b) Resolution of a part of the collaborative matter, evidenced by a signed agreement, in
18 which the parties agree that the remaining parts of the matter will not be resolved in the process; or
19 (c) Termination of the process.

20 IV. A collaborative law process terminates:

- 21 (a) When a party gives written notice to other parties that the process is ended.
22 (b) Except as otherwise provided by paragraph VII, when a party discharges a
23 collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

24 (c) When a party:

25 (1) Files a petition or other pleading related to a collaborative matter without the
26 agreement of all parties; or

27 (2) In a pending proceeding related to the matter:

28 (A) Initiates a pleading, motion, order to show cause, or request for a conference
29 with the court; or

30 (B) Requests that the proceeding be put on the court's active docket; or

31 (C) The matter is no longer stayed.

32 V. A party's collaborative lawyer shall give prompt written notice to all other parties if the
33 lawyer has been discharged or withdraws as counsel.

34 VI. A party may terminate a collaborative law process with or without cause.

35 VII. Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative
36 law process continues, if within 30 days or within a time agreed to by the team in writing:

37 (a) The unrepresented party engages a successor collaborative lawyer; and

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1 (b) The parties consent in writing to continue the process by reaffirming the
2 collaborative law participation agreement, and the successor collaborative lawyer confirms the
3 lawyer's representation of a party in the collaborative process.

4 VIII. A collaborative law process shall not conclude if the parties jointly request the court to
5 approve a settlement of the collaborative matter or any part thereof.

6 IX. A collaborative law participation agreement may provide additional methods of
7 concluding a collaborative law process.

8 490-J:6 Cases Already Filed in Court.

9 I. Parties who have already initiated a proceeding by filing a petition with the court may
10 jointly request the court to stay future action in the matter so the parties may engage in a
11 collaborative process for resolution of the matter. Before signing a participation agreement, the
12 parties shall file an assented to motion to stay the proceedings with the court. The case shall not
13 proceed with the collaborative process unless the stay is granted by the court. An extension of the
14 stay may be requested of the court by written agreement to continue the collaborative process.

15 II. Either party can initiate a filing with the court to remove the stay and proceed with a
16 litigated solution in the matter at any time.

17 III. Any unilateral filing with the court terminates the collaborative case. The case shall be
18 returned to the active docket.

19 IV. A court shall provide parties notice and an opportunity to be heard before dismissing a
20 case in which a notice of collaborative process is filed.

21 490-J:7 Emergency Order. During a collaborative law process, a court may issue emergency
22 orders to protect the health, safety, welfare, or interest of a party; however, filing for such an order
23 terminates the pending collaborative law process. Nothing in this section prohibits parties from
24 exploring a return to the collaborative process after the issues that gave rise to the emergency order
25 have been resolved and process outlined in RSA 490-J:13, III have been followed.

26 490-J:8 Approval of Agreement by Court.

27 I. The terms of a collaborative law participation agreement shall be considered a binding
28 contract and shall be enforceable by the trial court.

29 II. Any agreements signed by the parties during the collaborative process are binding upon
30 the parties in the same manner as they are in other family law proceedings. The trial court fully
31 retains all rights and duties to ensure that the agreements reached are fair and reasonable to all
32 before being approved by the court.

33 III. Agreements reached during the collaborative process which are not signed by all parties
34 shall not be binding and shall be considered part of settlement discussions only.

35 490-J:9 Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

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1 I. Except as otherwise provided in paragraph III, a collaborative lawyer is disqualified from
2 appearing before a court to represent a party in a proceeding related to a collaborative matter,
3 including related matters filed by third parties.

4 II. Except as otherwise provided in paragraph III, RSA 490-J:10, and RSA 490-J:11, a
5 lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing
6 before a court to represent a party in a proceeding related to a collaborative matter if the
7 collaborative lawyer is disqualified from doing so under paragraph I.

8 III. A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is
9 associated may represent a party:

10 (a) To ask a court to approve an agreement resulting from the collaborative law process;

11 or

12 (b) To seek or defend an emergency order to protect the health, safety, welfare, or
13 interest of a party, a minor child, family or household member as defined in RSA 173-B:1, X, if a
14 successor lawyer is not immediately available to represent that party and only until the person is
15 represented by a successor lawyer or reasonable measures are taken to protect the health, safety,
16 welfare, or interest of the person.

17 490-J:10 Disclosure of Information. During the collaborative law process, on the request of
18 another party, a party shall make timely, full, candid, and informal disclosure of information related
19 to a collaborative matter without formal discovery. A party also shall update promptly previously
20 disclosed information that has materially changed. The parties may define the scope of disclosure
21 during the collaborative law process.

22 490-J:11 Standards of Professional Responsibility and Mandatory Reporting Not Affected. This
23 chapter does not affect:

24 I. The professional responsibility obligations and standards applicable to a lawyer or other
25 licensed professional; or

26 II. The obligation of a person to report abuse or neglect, abandonment, or exploitation of an
27 adult or child under New Hampshire law.

28 490-J:12 Appropriateness of Collaborative Law Process. Before a prospective party signs a
29 collaborative law participation agreement, a prospective collaborative lawyer shall:

30 I. Assess with the prospective party factors the lawyer reasonably believes relate to whether
31 a collaborative law process is appropriate for the prospective party's matter;

32 II. Provide the prospective party with information that the lawyer reasonably believes is
33 sufficient for the party to make an informed decision about the material benefits and risks of a
34 collaborative law process as compared to the material benefits and risks of other reasonably
35 available alternatives for resolving the proposed collaborative matter, such as litigation, mediation,
36 arbitration, or neutral evaluation; and

37 III. Advise the prospective party that:

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1 (a) After signing an agreement if a party initiates a proceeding or seeks court
2 intervention in a pending proceeding related to the collaborative matter, the collaborative law
3 process terminates;

4 (b) Participation in a collaborative law process is voluntary and any party has the right
5 to terminate unilaterally a collaborative law process with or without cause; and

6 (c) The collaborative lawyer and any lawyer in a law firm with which the collaborative
7 lawyer is associated may not appear before a court to represent a party in a proceeding related to the
8 collaborative matter, except as authorized by RSA 490-J:9, III.

9 490-J:13 Domestic Violence.

10 I. Before a prospective party signs a collaborative law participation agreement, a prospective
11 collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a
12 coercive or violent relationship with another prospective party.

13 II. Throughout the collaborative law process, a collaborative lawyer reasonably and
14 continuously shall assess whether the party the collaborative lawyer represents has a history of a
15 coercive or violent relationship with another party.

16 III. If a collaborative lawyer reasonably believes that the party the lawyer represents or the
17 prospective party who consults the lawyer has a history of a coercive or violent relationship with
18 another party or prospective party, the lawyer may not begin or continue the collaborative law
19 process unless both parties, after individual consultation with their attorneys, represent to their
20 individual attorney that he/she has no current concern for his/her safety or coercion and both wish to
21 proceed with the collaborative process.

22 490-J:14 Confidentiality of Collaborative Law Communication. A collaborative law
23 communication is confidential except as agreed by the parties in a signed document, or under the
24 circumstances set forth in RSA 490-J:15, IV.

25 490-J:15 Privilege Against Disclosure for Collaborative Law Communication.

26 I. Except as set forth in this section, a collaborative law communication is privileged, is not
27 subject to discovery, and is not admissible into evidence. Accordingly, a party or a party's lawyer or
28 a neutral participant may refuse to disclose, and may prevent any other person from disclosing, a
29 collaborative law communication.

30 II. Evidence or information that is otherwise admissible or subject to discovery does not
31 become inadmissible or protected from discovery solely because of its disclosure or use in a
32 collaborative law process.

33 III. Waiver of Privilege.

34 (a) The privilege may be waived wholly or in part in a document or orally during a
35 proceeding if it is expressly waived by all parties and, in the case of the privilege of a neutral
36 participant, it is also expressly waived by the neutral participant.

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1 (b) A party who discloses a collaborative law communication for which the privilege has
2 not been waived under subparagraph (a) shall be deemed to have waived the privilege, but only to
3 the extent necessary to permit any other party to respond to the unauthorized disclosure.

4 IV. There is no privilege under this chapter for a collaborative law communication that is:

5 (a) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

6 (b) In an agreement resulting from the collaborative law process, evidenced by a
7 document signed by all parties to the agreement;

8 (c) Sought or offered to prove or disprove a claim or complaint of professional misconduct
9 or malpractice arising from or related to a collaborative law process; or

10 (d) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of
11 a child or adult.

12 V. There is no privilege under this chapter if a court finds, after a hearing in camera, that
13 the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise
14 available, the need for the evidence substantially outweighs the interest in protecting the privilege
15 and the collaborative law communication is sought or offered in:

16 (a) A court proceeding involving a felony; or

17 (b) A proceeding seeking rescission or clarification of an agreement arising out of the
18 collaborative law process or in which a defense to avoid liability on the contract is asserted.

19 VI. If a collaborative law communication is subject to an exception under paragraph IV or V,
20 only the part of the communication necessary for the application of the exception may be disclosed or
21 admitted.

22 VII. Disclosure or admission of evidence excepted from the privilege under paragraph IV or
23 V does not make the evidence or any other collaborative law communication discoverable or
24 admissible for any other purpose.

25 490-J:16 Authority of Court in Case of Noncompliance. Notwithstanding a failure to comply
26 with RSA 490-J:4, RSA 490-J:12, or RSA 490-J:13, a court may enforce an agreement, apply the
27 disqualification provisions of RSA 490-J:9, or apply a privilege under RSA 490-J:15 when the court
28 concludes that the parties intended to enter into a collaborative law participation agreement and to
29 participate in a collaborative law process. Such a conclusion shall be based upon the following
30 findings:

31 I. The parties signed a document indicating an intent to enter into a collaborative law
32 participation agreement;

33 II. The parties reasonably believed they were participating in a collaborative law process;
34 and

35 III. The interests of justice require finding that the parties were participating in
36 collaborative law process.

37 206:2 Effective Date. Part V of this act shall take effect 60 days after its passage.

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PART VI

1
2 Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting
3 the uniform disclaimer of property interests act.

4 206:1 Administrators and Their Appointment; Subdivision Heading Amended. Amend the
5 subdivision heading preceding RSA 553:32 to read as follows:

~~[Administration of Small Estates]~~ *Waiver of Administration*

7 206:2 Waiver of Administration. RSA 553:32, I-II are repealed and reenacted to read as follows:

8 I.(a) Notwithstanding any provision of law, there shall be no requirement for an inventory of
9 the estate, no requirement for a bond, and no requirement for an accounting for assets in any of the
10 following circumstances:

11 (1) Whenever a decedent dies testate and an individual is named in the will as the
12 sole beneficiary of the decedent's estate and is appointed to serve as administrator.

13 (2) Whenever a decedent dies testate and all individuals named in the will as
14 beneficiaries of the decedent's estate are appointed to serve as co-administrators or any appropriate
15 person is appointed to serve as administrator with the assent of all such beneficiaries.

16 (3) Whenever a decedent dies testate, a trust is named in the will as the sole
17 beneficiary of the estate, and any appropriate person, including one or more trustees of such trust, is
18 appointed to serve as administrator with the assent of all such trustees.

19 (4) Whenever a decedent dies intestate and an individual, including a surviving
20 spouse, is the sole heir of the decedent's estate and is appointed to serve as administrator.

21 (5) Whenever a decedent dies intestate and all heirs of the decedent's estate,
22 including a surviving spouse, if any, are appointed to serve as co-administrators or any appropriate
23 person is appointed to serve as administrator with the assent of all such heirs.

24 (6) Whenever, in the discretion of the court, the court determines it is appropriate
25 under the circumstances.

26 (b) Administration of the estate shall be completed upon the administrator's filing, and
27 the probate court's approval, of an affidavit of administration. Such filing shall occur not less than 6
28 months and no more than one year after the date of appointment of the administrator. Upon motion
29 of the administrator, for good cause shown, the court may extend the one year deadline for filing the
30 affidavit of administration. The affidavit of administration shall state that to the best of the
31 knowledge and belief of the administrator there are no outstanding debts or obligations attributable
32 to the decedent's estate and shall list all real estate owned by the decedent at the time of death,
33 including the location, book, and page.

34 (c) If the administrator fails to file the affidavit of administration within the time
35 prescribed in subparagraph (b), including any extensions granted, the court may take appropriate
36 action in the discretion of the court, including, but not limited to, issuing a notice of default, a show
37 cause order, or requiring full administration of the estate.

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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.

15 206:3 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.

18 206:4 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*

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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.

4 206:5 Uniform Powers of Attorney Act; Authority That Requires Specific Grant. Amend RSA
5 564-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*.

8 206:6 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.

14 206:7 Uniform Power of Attorney Act; Statutory Form Power of Attorney. Amend RSA 564-
15 E:301 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

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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

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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.*

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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.~~

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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

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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:

7 206:8 Applicability.

8 I. Section 2 of Part VI of this act shall apply to all petitions for estate administration filed on
9 or after July 1, 2021 regardless of the date of the decedent's death.

10 II. Section 3 of Part VI of this act shall apply to decedents dying on or after July 1, 2021.

11 III. Section 4 of Part VI of this act shall apply to general powers of attorney executed on or
12 after July 1, 2021.

13 206:9 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.

28 206:10 Uniform Disclaimer of Property Interests Act. RSA 563-B is repealed and reenacted to
29 read 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**

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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.

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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.

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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.

Article 11

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

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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.

Article 12

When Disclaimer Barred or Limited

35
36
37 563-B:12 When Disclaimer Barred or Limited.

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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

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1 II. "Available alternative resource" means alternatives to guardianship including, but not
2 limited to, services such as visiting nurses, homemakers, home health aides, adult day care and
3 multipurpose senior citizen centers; powers of attorney, supported decision-making agreements such
4 as those authorized by RSA 464-D, representative and protective payees; and board and care
5 residential care facilities.

6 206:13 Guardians and Conservators; Termination of Guardianship. RSA 464-A:40, I is repealed
7 and reenacted to read as follows:

8 I. A guardianship of the person or of the estate shall terminate upon order of the court, the
9 death of the ward, or upon a finding by the court either that the ward is no longer incapacitated or
10 that the ward's needs are met by available alternative resources.

11 206:14 New Sections; Special Education; Supported Decision-Making. Amend RSA 186-C by
12 inserting after section 3-b the following new sections:

13 186-C:3-c Supported Decision-Making. If adult guardianship is being discussed by the IEP team
14 with a student or the student's family, the team shall inform the student and family of the
15 availability of supported decision-making pursuant to RSA 464-D as an alternative to guardianship.
16 This shall be done promptly when guardianship is first discussed. The IEP team shall make
17 available resources to assist in establishing a supported decision-making agreement. If a supported
18 decision-making agreement is executed, the IEP team shall abide by decisions made by the student
19 pursuant to the supported decision-making agreement.

20 186-C:3-d Alternatives to Guardianship; Information Resources. The commissioner of the
21 department of education shall develop information resources regarding alternatives to guardianship,
22 including supported decision-making agreements pursuant to RSA 464-D, for children with
23 disabilities who are approaching the age of 18. These resources shall be developed in consultation
24 with New Hampshire disability advocacy organizations and other stakeholders and made available
25 to local education agencies to facilitate their responsibility to provide information to students and
26 families regarding alternatives to guardianship under RSA 186-C:3-c.

27 206:15 New Chapter; Supported Decision-Making. Amend RSA by inserting after chapter 464-C
28 the following new chapter:

CHAPTER 464-D

SUPPORTED DECISION-MAKING

29
30
31 464-D:1 Purpose. It is the purpose of this chapter to establish and recognize a less restrictive
32 alternative to guardianship for adults with disabilities. It fulfills this purpose by authorizing a legal
33 option for adults with disabilities who seek assistance in making life decisions but choose to retain
34 all of their legal rights. The chapter gives legal status to supporters of such adults and to decisions
35 made pursuant to supported decision-making.

36 464-D:2 Construction and Administration. This chapter is to be administered and interpreted in
37 accordance with the following principles:

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1 I. All adults should be able to choose to live in the manner they wish and to accept or refuse
2 support, assistance, or protection;

3 II. All adults should be able to be informed about and participate in the management of
4 their affairs; and

5 III. The values, beliefs, wishes, cultural norms, and traditions that adults hold should be
6 respected in supporting adults in the management of their affairs.

7 464-D:3 Presumption of Capacity.

8 I. All adults are presumed to be capable of managing their affairs and to have legal capacity.

9 II. The manner in which an adult communicates with others is not grounds for a
10 determination that the adult is incapable of managing the adult's affairs.

11 III. Execution of a supported decision-making agreement may not be used as evidence of
12 incapacity in any proceeding.

13 IV. The execution of a supported decision-making agreement does not preclude the adult
14 who has entered into such an agreement from acting independently of the agreement.

15 464-D:4 Definitions.

16 I. "Adult" means an individual who is 18 years of age or older.

17 II. "Disability" means a physical or mental impairment that substantially limits one or more
18 major life activities of a person.

19 III. "Immediate family member" means a spouse, child, sibling, parent, grandparent,
20 grandchild, stepparent, stepchild, or stepsibling.

21 IV. "Person" means an adult; health-care institution; health-care provider; corporation;
22 partnership; limited liability company; association; joint venture; government; governmental
23 subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity

24 V. "Principal" means an adult who enters into a supported decision-making agreement
25 under this chapter to receive decision-making assistance.

26 VI. "Supported decision-making" means a process of supporting and accommodating an
27 adult with a disability to enable the adult to make life decisions, including, without limitation,
28 decisions related to where the adult wants to live, the services, supports, and medical care the adult
29 wants to receive, whom the adult wants to live with, education, and where the adult wants to work,
30 without impeding the self-determination of the adult.

31 VII. "Supporter" means an adult who enters into an agreement with an adult with a
32 disability to provide supported decision-making.

33 VIII. "Support services" means a system of social and other services supplied by private,
34 state, institutional, or community providers designed to help maintain the independence of an adult,
35 including any of the following:

36 (a) Homemaker-type services, including house repair, home cleaning, laundry, shopping,
37 and the provision of meals.

1 (b) Companion-type services, including transportation, escort, and facilitation of written,
2 oral, and electronic communication.

3 (c) Visiting nurse and attendant care.

4 (d) The provision of health care.

5 (e) Physical and psychosocial assessments.

6 (f) Legal assessments and advice.

7 (g) Education and educational assessment and advice.

8 (h) Personal treatment or care, including assistance with activities of daily living such
9 as bathing, dressing, eating, range of motion, toileting, transferring, and ambulation.

10 (i) Care planning.

11 (j) Other services needed to maintain the independence of an adult.

12 464-D:5 Subject Matter of Agreement. A principal may identify any type of decision to be the
13 subject of an agreement under this chapter. Such matters may include, but are not limited to:

14 I. Physical and mental health care.

15 II. Managing and using income and assets.

16 III. Support services.

17 IV. Employment.

18 V. Food and shelter.

19 VI. Assistance with public benefits.

20 VII. Education.

21 464-D:6 Limitations of Agreement.

22 I. An agreement under this chapter may coexist with, but not conflict with, a guardianship
23 or other court order.

24 II. An agreement under this chapter may be for a definite term. In the absence of a
25 provision setting a definite term of the agreement, the agreement shall remain in effect until
26 terminated pursuant to RSA 464-D:16.

27 464-D:7 Form and Content of Valid Agreement.

28 I. In order to be valid under this chapter, a supported decision-making agreement shall
29 include all of the following:

30 (a) Designation of at least one supporter.

31 (b) A description of the types of decisions for which the supporter is authorized to assist.

32 (c) A description of the types of decisions, if any, for which the supporter may not assist.

33 II. A supported decision-making agreement may include any of the following:

34 (a) Designation of more than one supporter.

35 (b) Provision for an alternate supporter to act in place of a supporter in circumstances
36 specified in the agreement.

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1 (c) Authorization for a supporter to share information with any other person, including
2 another supporter.

3 III. A supported decision-making agreement is only valid if all of the following occur:

4 (a) The agreement is in a writing that contains the elements of the form contained in
5 RSA 464-D:16.

6 (c) The agreement is dated.

7 (d) The agreement is signed in the presence of 2 adult witnesses, or before a notary
8 public, justice of the peace, or commissioner of deeds.

9 (e) Each party to the agreement has signed the agreement voluntarily and with an
10 understanding of the nature and effect of the agreement.

11 IV. The 2 adult witnesses required by subparagraph III(d) may not be any of the following:

12 (a) A supporter named in the agreement.

13 (b) An employee or agent of a supporter named in the agreement.

14 (c) A paid provider of services to the principal, unless the person is an immediate family
15 member.

16 (d) Any person who does not understand the type of communication the principal uses,
17 unless an individual who understands the principal's means of communication is present to assist
18 during the execution of the supported decision-making agreement.

19 V. A supported decision-making agreement shall contain a separate declaration signed by
20 each supporter named in the agreement indicating all of the following:

21 (a) The supporter's relationship to the principal.

22 (b) The supporter's willingness to act as a supporter.

23 (c) The supporter's acknowledgment of the role of a supporter under this chapter.

24 464-D:8 Termination of Agreement.

25 I. A principal may terminate a supported decision-making agreement at any time. Such
26 termination may be accomplished by any of the following actions by the principal:

27 (a) Providing written notice to all of the supporters named in the agreement.

28 (b) Verbally expressing the intent to terminate the agreement in the presence of 2 adult
29 witnesses.

30 II. A supporter may withdraw from a supported decision-making agreement by providing
31 written notice to the principal. If the principal does not use a written form of communication, actual
32 notice of the supporter's withdrawal shall be provided using the type of communication used by the
33 principal. When a supporter withdraws from a supported decision-making agreement and there is
34 no remaining supporter, the agreement is automatically terminated.

35 III. A supported decision-making agreement is automatically terminated upon the death of
36 the principal.

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1 IV. Subject to paragraph V, a supported decision-making agreement is automatically
2 terminated if any of the following events occur:

3 (a) There is a finding by a court or a state or federal agency that the principal has been
4 abused, neglected, or exploited by a supporter named in the agreement.

5 (b) There is a criminal conviction of a supporter for any of the following offenses under
6 New Hampshire law or their equivalent in another jurisdiction:

7 (1) Any offense or attempted offense under RSA 630 (homicide).

8 (2) Any felony offense or attempted felony offense under RSA 631 (assault and
9 related offenses).

10 (3) Any offense or attempted offense under RSA 632-A (sexual assault and related
11 offenses).

12 (4) Any offense or attempted offense under RSA 636 (robbery).

13 (5) Any offense or attempted offense under RSA 637 (theft).

14 (6) Any offense or attempted offense under RSA 638 (fraud).

15 (7) Any offense or attempted offense under RSA 641 (falsification in official matters).

16 V. When a supporter is the subject of a criminal conviction or a finding of misconduct under
17 paragraph IV, and there is one or more other supporters named in the agreement who are not the
18 subjects of convictions or findings of misconduct under that paragraph, the agreement does not
19 automatically terminate; however, any supporter who is the subject of a criminal conviction or a
20 finding of misconduct under paragraph IV is disqualified from further actions as a supporter under
21 the agreement.

22 464-D:9 Duties of Supporters. A supporter is in a fiduciary relationship with the principal and
23 is subject to the following requirements:

24 I. To act loyally, without self-interest, and in good faith.

25 II. To act within the authority granted in the agreement and by this chapter.

26 III. To avoid conflicts of interest.

27 IV. To disclose to the principal all facts known to the supporter relevant to making a
28 decision.

29 V. To act with the care, competence, and diligence ordinarily exercised by individuals in
30 similar circumstances, with due regard either to the possession of, or lack of, special skills or
31 expertise.

32 VI. To provide sufficient information to a monitor for financial matters designated pursuant
33 to RSA 464-D:13 to allow the monitor to fulfill his or her responsibilities pursuant to this chapter.

34 464-D:10 Authority of Supporters.

35 I. A supporter may only exercise the authority granted to the supporter in the agreement.

36 II. A supporter is not a surrogate decision maker for the principal and is not authorized to
37 sign legal or other documents on behalf of the principal or to bind the principal to a legal agreement.

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1 III. A supporter may only access protected information if expressly authorized to do so by
2 the principal in the agreement or other written document.

3 IV. A supporter may not do any of the following:

4 (a) Exert undue influence upon or make decisions on behalf of the principal.

5 (b) Obtain, without consent of the principal, information that is not reasonably related
6 to matters with which the supporter is authorized to assist under the supported decision-making
7 agreement.

8 (c) Use or disclose information, without the principal's consent, for a purpose other than
9 assisting the principal to make decisions under the supported decision-making agreement.

10 464-D:11 Recognition of Supporters. A decision or request made or communicated with the
11 assistance of a supporter in conformity with this chapter shall be recognized for the purposes of any
12 provision of law as the decision or request of the principal and may be enforced in law or equity on
13 the same basis as a decision or request of the principal.

14 464-D:12 Persons Ineligible to be Supporters. Any of the following are prohibited from acting as
15 supporters.

16 I. A person who is an employer or employee of the principal, unless the person is an
17 immediate family member of the principal.

18 II. A person providing paid support services, unless the person is an immediate family
19 member of the principal.

20 III. A person against whom the principal has obtained an order of protection from abuse or a
21 person who is the subject of a civil or criminal order prohibiting contact with the principal.

22 IV. A person who has been convicted of any of the following New Hampshire offenses or
23 their equivalent in another jurisdiction, if the offense has not been annulled:

24 (a) Any offense or attempted offense under RSA 630 (homicide).

25 (b) Any felony offense or attempted felony offense under RSA 631 (assault and related
26 offenses).

27 (c) Any offense or attempted offense under RSA 632-A (sexual assault and related
28 offenses).

29 (d) Any offense or attempted offense under RSA 636 (robbery).

30 (e) Any felony offense or attempted felony offense under RSA 637 (theft).

31 (f) Any offense or attempted offense under RSA 638 (fraud).

32 (g) Any offense or attempted offense under RSA 641 (falsification in official matters).

33 464-D:13 Monitors for Financial Matters.

34 I. If a supporter is authorized in a supported decision-making agreement to assist a
35 principal with his or her financial affairs, a principal may designate a monitor.

36 II. A monitor designated under this section shall ensure that the supporter is complying
37 with RSA 464-D:9 and 464-D:10.

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1 464-D:14 Reporting of Abuse and Neglect.

2 I. If a person who receives a copy of a supported decision-making agreement or is aware of
3 the existence of a supported decision-making agreement has cause to believe that the principal has
4 been abused, neglected, or financially exploited by the supporter, the person shall promptly report
5 the alleged abuse, neglect, or exploitation to the commissioner of health and human services or the
6 commissioner's authorized representative in accordance with RSA 161-F.

7 II. Nothing in this section shall be construed as eliminating or limiting a person's
8 requirement to report under any other statute or regulation.

9 464-D:15 Access to Information.

10 I. A supporter may assist the principal with obtaining any information to which the
11 principal is entitled, including, with a dated specific consent executed by the principal, protected
12 health information under the Health Insurance Portability and Accountability Act of 1996, Public
13 Law 104-191, educational records under the Family Educational Rights and Privacy Act of 1974, 20
14 U.S.C. section 1232g, or information related to a substance use disorder protected by 42 U.S.C.
15 section 290dd-2 and 42 C.F.R. Part 2.

16 II. The supporter shall ensure all information collected on behalf of the principal under this
17 section is kept privileged and confidential, as applicable; is not subject to unauthorized access, use,
18 or disclosure; and is properly disposed of when appropriate.

19 464-D:16 Form of Supported decision-making Agreement. A supported decision-making
20 agreement may be in any form not inconsistent with the following form and the other requirements
21 of this chapter. Use of the following form is presumed to meet statutory provisions.

22 **SUPPORTED DECISION-MAKING AGREEMENT**

23 This agreement must be communicated to all parties to the agreement in the presence of either a
24 notary or 2 witnesses. The form of communication must be appropriate to the needs and preferences
25 of the person with a disability. Reading the agreement out loud or using a sign language interpreter
26 may be necessary.

27

28 My name is _____.

29

30 I want to have people I trust help me make decisions. The people who will help me are called
31 supporters. My supporters are not allowed to make the decisions for me. I will make my own
32 choices, with their support. I am called the principal.

33

34 This agreement can be changed at any time. I can change it by crossing out words and writing my
35 initials next to the change. I can also end this agreement at any time by _____.

36

Signature of Principal

37

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1 I am making this supportive decision-making agreement because I want people to help me make
2 choices. I know that I do not have to make this agreement. I know that I can change this agreement
3 at any time.

4

5 My printed name: _____

6 My address: _____

7 My phone number: _____

8 My email address: _____

9 Today's date: _____

10

11 Supporters

12 Supporter #1

13

14 I agree that _____ (name) will be my supporter. Their contact
15 information is:

16 Address: _____

17 Phone Number: _____

18 E-mail Address: _____

19 My supporter may help me with making everyday life decisions relating to the following:

20 Obtaining food, clothing, and shelter: Yes ___ No ___

21 Taking care of my physical health: Yes ___ No ___

22 Taking care of my mental health: Yes ___ No ___

23 Managing my financial affairs: Yes ___ No ___

24 Applying for and managing public benefits: Yes ___ No ___

25 My education: Yes ___ No ___

26 Applying for and managing employment: Yes ___ No ___

27 The following are other decisions that I have specifically identified that I would like assistance with:

28 _____

29 _____

30 _____

31 _____

32 _____

33 _____

34 _____

35 Supporter #2.

36

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1 I do not have to have more than one supporter. I choose to have _____

2 (name) also be my supporter. Their contact information is:

3 Address: _____

4 Phone Number: _____

5 E-mail Address: _____

6 is my supporter. My supporter may help me with making everyday life decisions relating to the
7 following:

8 Obtaining food, clothing, and shelter: Yes ____ No ____

9 Taking care of my physical health: Yes ____ No ____

10 Taking care of my mental health: Yes ____ No ____

11 Managing my financial affairs: Yes ____ No ____

12 Applying for and managing public benefits: Yes ____ No ____

13 My education: Yes ____ No ____

14 Applying for and managing employment: Yes ____ No ____

15 The following are other decisions that I have specifically identified that I would like assistance with:

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22

23 To help me with my decisions, my supporter(s) may do the following things (check all that apply):

24 () Help me access, collect, or obtain information that is relevant to a decision, including medical,
25 psychological, educational, or treatment records;

26 () Help me gather and complete appropriate authorizations and releases;

27 () Help me understand my options so I can make an informed decision; and.

28 () Help me communicate my decision to appropriate persons.

29

30 Monitor for Financial Matters

31

32 If I want someone to help me make choices about money, I may also choose someone to make sure
33 my supporters are being honest and using good judgment in helping me with my money. This person
34 is called a monitor. A monitor cannot also be a supporter.

35

36 I agree that _____ (name) will be my monitor. Their contact information
37 is:

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1 Address: _____

2 Phone Number: _____

3 E-mail Address: _____

4

5 Effective Date of Supported decision-making Agreement.

6

7 This supported decision-making agreement is effective immediately and will continue
8 until _____ (insert date) or until the agreement is terminated by my supporter or me or
9 by operation of law.

10

11 The date of this agreement is _____

12

13 Consent of Supporter(s)

14

15 Supporter #1: I, _____ (name of supporter), consent to act as a supporter under this
16 agreement, and acknowledge my responsibilities under RSA 464-D.

17

18 _____

19 (Signature of supporter) (Printed name of supporter).

20

21 My relationship to the principal is: _____

22

23 Supporter #2: I, _____ (name of supporter), consent to act as a supporter under this
24 agreement, and acknowledge my responsibilities under RSA 464-D.

25

26 _____

27 (Signature of supporter) (Printed name of supporter).

28

29 My relationship to the principal is: _____

30

31 Additional supporters may be added below as necessary.

32

33 Consent of Monitor

34

35 I, _____ (name of monitor), consent to act as a monitor under this agreement, and
36 acknowledge my responsibilities under RSA 464-D.

37

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1 _____
2 (Signature of monitor) (Printed name of monitor).

3
4 My relationship to the principal is: _____
5

6 Consent of the Principal
7

8 Wait until a notary or 2 witnesses are there to watch you sign.
9

10 _____
11 (My signature) (My printed name).

12
13 Witnesses or Notary.
14

15 _____
16 (Witness signature) (Printed name of witness).
17

18 _____
19 (Witness signature) (Printed name of witness)
20

21 206:16 Effective Date.

22 I. Sections 1-8 of Part VI of this act shall take effect July 1, 2021.

23 II. Sections 11-13 and section 15 of Part VI of this act shall take effect 60 days after its
24 passage.

25 III. Section 14 of Part VI of this act shall take effect January 1, 2022.

26 IV. The remainder of Part VI of this act shall take effect upon its passage.

27 PART VII

28 Relative to school employee and school volunteer criminal history background checks and
29 establishing a committee to study department of education oversight of
30 criminal history background checks for private schools.

31 206:1 School Employee and Designated School Volunteer Criminal History Records Check.
32 Amend RSA 189:13-a, III to read as follows:

33 III. The department of education shall conduct training concerning the reading and
34 interpretation of criminal history records. The superintendent or designee of the school
35 administrative unit or the chief executive officer of the chartered public school or public academy
36 shall complete such training and maintain the confidentiality of all criminal history records
37 information received pursuant to this paragraph. ~~[If the criminal history records information~~

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1 ~~indicates no criminal record, the superintendent or designee of the school administrative unit or the~~
2 ~~chief executive officer of the chartered public school or public academy shall destroy the information~~
3 ~~received immediately following review of the information.] *The superintendent of the school*~~
4 ~~*administrative unit, or chief executive officer of the chartered public school or public*~~
5 ~~*academy shall review the criminal history records information in accordance with*~~
6 ~~*paragraph V.*~~ If the criminal history records information indicates that the applicant has been
7 convicted of any crime or has been charged pending disposition for or convicted of a crime listed in
8 paragraph V, the superintendent or designee of the school administrative unit or the chief executive
9 officer of the chartered public school or public academy shall review the information for a hiring
10 decision[, and the division of state police shall notify the department of education of any such
11 charges pending disposition or convictions. The superintendent or designee of the school
12 administrative unit or the chief executive officer of the chartered public school or public academy
13 shall destroy any criminal history record information that indicates a criminal record within 60 days
14 of receiving such information.] *If the applicant's criminal history records information*
15 *indicates that the applicant has been charged pending disposition for or has been*
16 *convicted of a crime listed in paragraph V, the superintendent of the school administrative*
17 *unit or the chief executive officer of the chartered public school or public academy shall*
18 *notify the department of education.*

19 *III-a. The superintendent of the school administrative unit or chief executive officer*
20 *of the chartered public school or public academy shall destroy any criminal history record*
21 *information within 60 days of receipt. The superintendent of the school administrative*
22 *unit or chief executive officer of the chartered public school or public academy shall*
23 *destroy any criminal history record information that indicates a criminal record within 60*
24 *days of receiving said information.*

25 206:2 School Employee and Designated School Volunteer Criminal History Records Check.
26 Amend RSA 189:13-a, VI to read as follows:

27 VI. *In accordance with paragraphs I-V*, this section shall apply to any employee,
28 *including substitute teachers*, selected applicant for employment, designated volunteer, [or]
29 volunteer organization, *or individual or entity* which contracts with a school administrative unit,
30 school district, chartered public school, or public academy to provide services, including but not
31 limited to cafeteria workers, school bus drivers, custodial personnel, or any other service where the
32 contractor or employees of the contractor provide services directly to students of the district,
33 chartered public school, or public academy. The employing school administrative unit, school
34 district, or chartered public school shall be responsible for completing the criminal history records
35 check on the people identified in this paragraph, except for school bus drivers and transportation
36 monitors, as provided in RSA 189:13-b. The cost for criminal history records checks for employees or
37 selected applicants for employment with such contractors shall be borne by the contractor.

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1 206:3 School Employee and Designated School Volunteer Criminal History Records Check.
2 Amend RSA 189:13-a, IX to read as follows:

3 IX.(a) ~~[Substitute teachers and other educational staff, not otherwise addressed in this~~
4 ~~section, shall apply for a criminal history records check at the employing school administrative unit,~~
5 ~~school district, chartered public school, or public academy. The division of state police shall complete~~
6 ~~the criminal history records check, as established in paragraph II, and, upon completion, shall issue~~
7 ~~a report to the applicant. The report shall be valid for 30 days from the date of issuance and shall~~
8 ~~constitute satisfactory proof of compliance with this section.~~

9 ~~(b) Upon enrollment in an educator preparation program at an institution of higher~~
10 ~~education, a candidate shall submit to a criminal history records check. The institution of higher~~
11 ~~education in which the candidate is enrolled shall conduct the criminal history records check.] Upon~~
12 placement of a candidate, *as defined in RSA 189:13-c*, as a student teacher, the receiving school
13 administrative unit, school district, or chartered public school shall conduct ~~[another] a~~ criminal
14 history records check of the candidate and shall follow the same procedures for assessing the
15 candidate's criminal history background as for applicants for employment. ~~[The governing body of~~
16 ~~the institution of higher education may adopt a policy relative to how often a candidate shall submit~~
17 ~~to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is~~
18 ~~enrolled in an educator preparation program at an institution of higher education in New~~
19 ~~Hampshire.]~~

20 **(b) A receiving school administrative unit, school district, or chartered public**
21 **school may conduct a criminal history records check upon a candidate, as defined in RSA**
22 **189:13-c.**

23 206:4 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
24 inserting after section 13-b the following new section:

25 189:13-c Credentialing Applicant and Candidate Criminal History Records Check.

26 I. Definitions:

27 (a) "Credentialing applicant" means a first-time applicant for a New Hampshire
28 teaching credential.

29 (b) "Candidate" means a student at an institution of higher education in New
30 Hampshire who has been selected to participate in a K-12 educator preparation program.

31 II.(a) The department shall complete a confidential criminal history records check on all
32 first-time applicants for a teaching license, under RSA 21-N:9, II(s), as shall school administrative
33 units, school districts, and chartered public schools pursuant to RSA 189:13-a.

34 (b) The department shall complete a confidential criminal history records check on all
35 candidates as shall school administrative units, school districts, and chartered public schools
36 pursuant to RSA 189:13-a. The department shall adopt rules pursuant to RSA 541-A relative to

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1 coordination with institutions of higher education in New Hampshire on procedures for conducting
2 clearances for candidates for K-12 educator preparation programs.

3 (c) The criminal history records check on a candidate shall valid for a period of 3 years.

4 III.(a) The credentialing applicant or candidate shall submit to the department a criminal
5 history records release form, as provided by the division of state police, which authorizes the division
6 of state police to conduct a criminal history records check through its state records and through the
7 Federal Bureau of Investigation and to release a report of the credentialing applicant's or candidate's
8 criminal history record information, including confidential criminal history record information, to
9 the background check coordinator of the department, as described in RSA 21-N:8-a, I-a.

10 (b) The credentialing applicant or candidate shall submit with the release form a
11 complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee
12 of the department of education. In the event that the first set of fingerprints is invalid due to
13 insufficient pattern, a second set of fingerprints shall be taken in order to complete the criminal
14 history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern,
15 the department may, in lieu of the criminal history records check, accept police clearance from every
16 city, town, or county where an applicant or candidate has lived during the past 5 years:

17 IV.(a) The department shall maintain the confidentiality of all criminal history records
18 information received pursuant to this paragraph. The department shall destroy all criminal history
19 record information within 60 days of receiving said information.

20 (b) The department may require the credentialing applicant or candidate to pay the
21 actual costs of the criminal history records check.

22 V. Any person who has been charged pending disposition for or convicted of any violation or
23 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;
24 639:3; 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
25 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene in
26 this state, or under any statute prohibiting the same conduct in another state, territory, or
27 possession of the United States, shall not be granted a teaching credential by the department nor
28 shall candidates be granted clearance.

29 VI. The department shall adopt rules, pursuant to RSA 541-A, governing the rights of a
30 credentialing applicant and candidate and their ability to appeal a denial of a teaching credential or
31 clearance pursuant to a charge pending disposition for or a conviction of any of the offenses under
32 paragraph V.

33 VII. If a credentialing applicant had submitted to a criminal history records check within
34 the prior 6 months as a candidate, that check shall be deemed valid for purposes of this section.

35 206:5 Committee Established. There is established a committee to study department of
36 education oversight of criminal history background checks by private schools.

37 206:6 Membership and Compensation.

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1 I. The members of the committee shall be as follows:

2 (a) Three members of the house of representatives, appointed by the speaker of the
3 house of representatives.

4 (b) Two members of the senate, appointed by the president of the senate.

5 II. The commissioner of the department of education, or designee, shall serve as a non-
6 voting, ex officio member of the committee.

7 III. Members of the committee shall receive mileage at the legislative rate when attending
8 to the duties of the committee.

9 206:7 Duties. The committee shall:

10 I. Review current statutes regarding criminal history background checks in private schools.

11 II. Review department of education rules and oversight of private schools regarding criminal
12 history background checks.

13 III. Review annual reporting on criminal history background checks to the department of
14 education by private schools.

15 IV. Review other states' statutes and rules regarding criminal history background checks in
16 private schools.

17 V. Make recommendations for updating statutes and department of education rules
18 regarding criminal history background checks in private schools.

19 206:8 Chairperson; Quorum. The members of the study committee shall elect a chairperson
20 from among the members. The first meeting of the committee shall be called by the first-named
21 house member. The first meeting of the committee shall be held within 45 days of the effective date
22 of this section. Three members of the committee shall constitute a quorum.

23 206:9 Report. The committee shall report its findings and any recommendations for proposed
24 legislation to the speaker of the house of representatives, the president of the senate, the house
25 clerk, the senate clerk, the commissioner of the department of education, the governor, and the state
26 library on or before November 1, 2021.

27 206:10 Effective Date.

28 I. Sections 1-4 of Part VII of this act shall take effect January 1, 2022.

29 II. The remainder of Part VII of this act shall take effect upon its passage.

PART VIII

31 Making an appropriation funding mental health intervention training programs.

32 206:1 Mental Health Intervention Training; Appropriation. The sum of \$210,000 for the
33 biennium ending June 30, 2023, is hereby appropriated to the police standards and training council
34 for the purposes of funding mental health intervention training programs. The appropriations shall
35 be in addition to any other funds appropriated to the police standards and training council. The
36 governor is authorized to draw a warrant for said sums out of any money in the treasury not
37 otherwise appropriated.

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1 206:2 Effective Date. Part VIII of this act shall take effect July 1, 2021.

2 PART IX

3 Relative to employer access to motor vehicle records.

4 206:1 New Paragraph; Motor Vehicle Records; Employer Access. Amend RSA 260:14 by
5 inserting after paragraph IV the following new paragraph:

6 IV-a.(a) Except for a person's photograph, computerized image, and social security number,
7 motor vehicle records and at least monthly electronic bulk files indicating changes in driving
8 violations and driver license status shall be made available upon proof of the identity of the person
9 requesting the records and representation by such person on a form satisfactory to the department
10 that the records will be strictly limited to one or both of the following described uses:

11 (1) For use by an entity that employs drivers in the course of their business, or an
12 authorized agent of such an entity, which requires a motor vehicle record or a monthly notification of
13 changes to motor vehicle records in connection with pre-employment or continued employment
14 screening of employees for driver safety reasons; or

15 (2) For use with respect to requests as to whether a driver meets the requirements of
16 RSA 376-A:12.

17 (b) No motor vehicle records made available under this paragraph shall be sold, rented,
18 transferred, or otherwise made available in whole or in part, in any form or format, directly or
19 indirectly, to another person, except that an authorized agent may make such records available to
20 any principal on whose behalf the records were sought if the name of that principal was provided to
21 the department at the time the records were sought.

22 (c) Any person who makes a request under this paragraph shall have first obtained the
23 written consent of the person whose records are being requested. The written consent shall be
24 retained for a period of 3 years and shall be made available upon request to the division for
25 inspection. Motor vehicle records obtained under this paragraph shall not be subject to the
26 notarization requirements of RSA 260:14, VII.

27 206:2 Effective Date. Part IX of this act shall take effect upon its passage.

28 PART X

29 Relative to hemp.

30 206:1 Industrial Hemp Research; Authorization. Amend RSA 433-C:2 to read as follows:

31 433-C:2 Authorization. An institution of higher education, as defined in 20 U.S.C. section 1001,
32 may grow or cultivate *or may contract with a private party to grow or cultivate*, industrial
33 hemp, on site or off site, for purposes of research under an agricultural pilot program or other
34 agricultural or academic research. In addition to studying the plant's growth and cultivation, the
35 research shall also study the economics of industrial hemp, including markets and processing.
36 Industrial hemp grown or cultivated in accordance with this chapter shall not be considered a
37 controlled drug or controlled substance under RSA 318-B.206:

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- 1 206:2 Hemp. Amend RSA 439-A:3 to read as follows:
- 2 439-A:3 Hemp Permitted. Hemp is an agricultural product which may be grown as a crop,
- 3 206:3 Effective Date. Part X of this act shall take effect upon its passage.

Approved: August 10, 2021

Effective Date:

Pt. I eff. January 1, 2022

Pt. II eff: I. RSA 456-B:2, VII as inserted by section 4 and section 11 eff. August 10, 2021

 II. Rem. eff. February 6, 2022

Pt. III eff. October 9, 2021

Pt. IV eff. October 9, 2021

Pt. V eff. October 9, 2021

Pt. VI eff: I. Sec. 1-8 eff July 1, 2021.

 II. Sec. 11-13 and 15 eff. October 9, 2021

 III. Sec. 14 eff. January 1, 2022

 IV. Rem. eff. August 10, 2021

Pt. VII eff: I. Sec. 1-4 eff. January 1, 2022

 II. Rem. eff. August 10, 2021

Pt. VIII eff. July 1, 2021

Pt. IX eff. August 10, 2021

Pt. X eff. August 10, 2021

Amendments

Amendment to SB 134-FN

1 Amend the bill by replacing Part VIII with the following:

2 PART VIII

3 Relative to school employee and school volunteer criminal history background checks and
4 establishing a committee to study department of education oversight of
5 criminal history background checks for private schools.

6 1 School Employee and Designated School Volunteer Criminal History Records Check. Amend
7 RSA 189:13-a, III to read as follows:

8 III. The superintendent of the school administrative unit or the chief executive officer of the
9 chartered public school or public academy shall maintain the confidentiality of all criminal history
10 records information received pursuant to this paragraph. ~~[If the criminal history records~~
11 ~~information indicates no criminal record, the superintendent of the school administrative unit or the~~
12 ~~chief executive officer of the chartered public school or public academy shall destroy the information~~
13 ~~received immediately following review of the information.] ***The superintendent of the school***
14 ***administrative unit, or chief executive officer of the chartered public school or public***
15 ***academy shall review the criminal history records information in accordance with***
16 ***paragraph V.*** If the criminal history records information indicates that the applicant has been
17 convicted of any crime or has been charged pending disposition for or convicted of a crime listed in
18 paragraph V, the superintendent of the school administrative unit or the chief executive officer of the
19 chartered public school or public academy shall review the information for a hiring decision ~~and the~~
20 ~~division of state police shall notify the department of education of any such charges pending~~
21 ~~disposition or convictions. The superintendent of the school administrative unit or the chief~~
22 ~~executive officer of the chartered public school or public academy shall destroy any criminal history~~
23 ~~record information that indicates a criminal record within 60 days of receiving such information.] ***If***
24 ***the applicant's criminal history records information indicates that the applicant has been***
25 ***charged pending disposition for or has been convicted of a crime listed in paragraph V, the***
26 ***superintendent of the school administrative unit or the chief executive officer of the***
27 ***chartered public school or public academy shall notify the department of education.***~~~~

28 ***III-a. The superintendent of the school administrative unit or chief executive officer***
29 ***of the chartered public school or public academy shall destroy any criminal history record***
30 ***information within 60 days of receipt. The superintendent of the school administrative***
31 ***unit or chief executive officer of the chartered public school or public academy shall***

1 *destroy any criminal history record information that indicates a criminal record within 60*
2 *days of receiving said information.*

3 2 School Employee and Designated School Volunteer Criminal History Records Check. Amend
4 RSA 189:13-a, VI to read as follows:

5 VI. *In accordance with paragraphs I-V*, this section shall apply to any employee,
6 *including substitute teachers*, selected applicant for employment, designated volunteer, [æ]r
7 volunteer organization, *or individual or entity* which contracts with a school administrative unit,
8 school district, chartered public school, or public academy to provide services, including but not
9 limited to cafeteria workers, school bus drivers, custodial personnel, or any other service where the
10 contractor or employees of the contractor provide services directly to students of the district,
11 chartered public school, or public academy. The employing school administrative unit, school
12 district, or chartered public school shall be responsible for completing the criminal history records
13 check on the people identified in this paragraph, except for school bus drivers and transportation
14 monitors, as provided in RSA 189:13-b. The cost for criminal history records checks for employees or
15 selected applicants for employment with such contractors shall be borne by the contractor.

16 3 School Employee and Designated School Volunteer Criminal History Records Check. Amend
17 RSA 189:13-a, IX to read as follows:

18 IX.(a) ~~[Substitute teachers and other educational staff, not otherwise addressed in this~~
19 ~~section, shall apply for a criminal history records check at the employing school administrative unit,~~
20 ~~school district, chartered public school, or public academy. The division of state police shall complete~~
21 ~~the criminal history records check, as established in paragraph II, and, upon completion, shall issue~~
22 ~~a report to the applicant. The report shall be valid for 30 days from the date of issuance and shall~~
23 ~~constitute satisfactory proof of compliance with this section.~~

24 ~~(b) Upon enrollment in an educator preparation program at an institution of higher~~
25 ~~education, a candidate shall submit to a criminal history records check. The institution of higher~~
26 ~~education in which the candidate is enrolled shall conduct the criminal history records check.] Upon~~
27 placement of a candidate, *as defined in RSA 189:13-c*, as a student teacher, the receiving school
28 administrative unit, school district, or chartered public school shall conduct [another] a criminal
29 history records check of the candidate and shall follow the same procedures for assessing the
30 candidate's criminal history background as for applicants for employment. ~~[The governing body of~~
31 ~~the institution of higher education may adopt a policy relative to how often a candidate shall submit~~
32 ~~to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is~~
33 ~~enrolled in an educator preparation program at an institution of higher education in New~~
34 ~~Hampshire.]~~

35 (b) *A receiving school administrative unit, school district, or chartered public*
36 *school may conduct a criminal history records check upon a candidate, as defined in RSA*
37 *189:13-c.*

Amendment to SB 134-FN

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1 4 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
2 inserting after section 13-b the following new section:

3 189:13-c Credentialing Applicant and Candidate Criminal History Records Check.

4 I. Definitions:

5 (a) "Credentialing applicant" means a first-time applicant for a New Hampshire
6 teaching credential.

7 (b) "Candidate" means a student at an institution of higher education in New
8 Hampshire who has been selected to participate in a K-12 educator preparation program.

9 II.(a) The department shall complete a confidential criminal history records check on all
10 first-time applicants for a teaching license, under RSA 21-N:9, II(s), as shall school administrative
11 units, school districts, and chartered public schools pursuant to RSA 189:13-a.

12 (b) The department shall complete a confidential criminal history records check on all
13 candidates as shall school administrative units, school districts, and chartered public schools
14 pursuant to RSA 189:13-a. The department shall adopt rules pursuant to RSA 541-A relative to
15 coordination with institutions of higher education in New Hampshire on procedures for conducting
16 clearances for candidates for K-12 educator preparation programs.

17 (c) The criminal history records check on a candidate shall valid for a period of 3 years.

18 III.(a) The credentialing applicant or candidate shall submit to the department a criminal
19 history records release form, as provided by the division of state police, which authorizes the division
20 of state police to conduct a criminal history records check through its state records and through the
21 Federal Bureau of Investigation and to release a report of the credentialing applicant's or candidate's
22 criminal history record information, including confidential criminal history record information, to
23 the background check coordinator of the department, as described in RSA 21-N:8-a, I-a.

24 (b) The credentialing applicant or candidate shall submit with the release form a
25 complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee
26 of the department of education. In the event that the first set of fingerprints is invalid due to
27 insufficient pattern, a second set of fingerprints shall be taken in order to complete the criminal
28 history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern,
29 the department may, in lieu of the criminal history records check, accept police clearance from every
30 city, town, or county where an applicant or candidate has lived during the past 5 years.

31 IV.(a) The department shall maintain the confidentiality of all criminal history records
32 information received pursuant to this paragraph. The department shall destroy all criminal history
33 record information within 60 days of receiving said information.

34 (b) The department may require the credentialing applicant or candidate to pay the
35 actual costs of the criminal history records check.

36 V. Any person who has been charged pending disposition for or convicted of any violation or
37 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;

Amendment to SB 134-FN

- Page 4 -

1 639:3; 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
2 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene in
3 this state, or under any statute prohibiting the same conduct in another state, territory, or
4 possession of the United States, shall not be granted a teaching credential by the department nor
5 shall candidates be granted clearance.

6 VI. The department shall adopt rules, pursuant to RSA 541-A, governing the rights of a
7 credentialing applicant and candidate and their ability to appeal a denial of a teaching credential or
8 clearance pursuant to a charge pending disposition for or a conviction of any of the offenses under
9 paragraph V.

10 VII. If a credentialing applicant had submitted to a criminal history records check within
11 the prior 6 months as a candidate, that check shall be deemed valid for purposes of this section.

12 5 Committee Established. There is established a committee to study department of education
13 oversight of criminal history background checks by private schools.

14 6 Membership and Compensation.

15 I. The members of the committee shall be as follows:

16 (a) Three members of the house of representatives, appointed by the speaker of the
17 house of representatives.

18 (b) Two members of the senate, appointed by the president of the senate.

19 II. The commissioner of the department of education, or designee, shall serve as a non-
20 voting, ex officio member of the committee.

21 III. Members of the committee shall receive mileage at the legislative rate when attending
22 to the duties of the committee.

23 7 Duties. The committee shall:

24 I. Review current statutes regarding criminal history background checks in private schools.

25 II. Review department of education rules and oversight of private schools regarding criminal
26 history background checks.

27 III. Review annual reporting on criminal history background checks to the department of
28 education by private schools.

29 IV. Review other states' statutes and rules regarding criminal history background checks in
30 private schools.

31 V. Make recommendations for updating statutes and department of education rules
32 regarding criminal history background checks in private schools.

33 8 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
34 among the members. The first meeting of the committee shall be called by the first-named house
35 member. The first meeting of the committee shall be held within 45 days of the effective date of this
36 section. Three members of the committee shall constitute a quorum.

1 9 Report. The committee shall report its findings and any recommendations for proposed
2 legislation to the speaker of the house of representatives, the president of the senate, the house
3 clerk, the senate clerk, the commissioner of the department of education, the governor, and the state
4 library on or before November 1, 2021.

5 10 Effective Date.

6 I. Sections 1-4 of Part VIII of this act shall take effect January 1, 2022.

7 II. The remainder of Part VIII of this act shall take effect upon its passage.

UNAPPROVED

Amendment to SB 134-FN

1 Amend Part III of the bill by replacing section 1 with the following:

2

3 1 Incarceration Under a Suspended Sentence. Amend the introductory paragraph of RSA
4 651:20, I(a) to read as follows:

5 (a) Any person sentenced to state prison for a minimum term of 6 years or more shall
6 not bring a petition to suspend sentence until such person [~~has served at least 4 years or 2/3 of his~~
7 ~~minimum sentence, whichever is greater,~~ *is within 12 months of serving 2/3 of the minimum*
8 *sentence*, and not more frequently than every 3 years thereafter. Any person sentenced to state
9 prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until
10 such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by
11 the sentencing court. For the purposes of this subparagraph:

UNAPPROVED

Amendment to SB 134-FN

1 Amend Part II of the bill by replacing RSA 456-B:2, VII as inserted by section 4 with the following:

2

3 VII.(a) For the purposes of this section, but only in the context of executing an estate
4 planning instrument such as a will, ~~trust, or power of attorney~~ *or estate planning trust*, the
5 requirement that a person appear before a notarial officer at the time of the notarial act is satisfied
6 if the notarial officer is:

7 (1) The attorney, licensed to practice law in New Hampshire and in good standing,
8 who drafted the estate planning instrument;

9 (2) Another attorney licensed to practice law in New Hampshire and in good
10 standing, under the drafting attorney's supervision; or

11 (3) A paralegal under the supervision of either such attorney; and

12 (b) The person and the notarial officer can communicate simultaneously by sight and
13 sound through an electronic device or process at the time of the notarial act.

14 (c) This paragraph shall apply only to notarial acts performed on or after March 23, 2020
15 ~~[and ending on the last day of the state of emergency declared by executive order 2020-04]~~. In
16 addition, a notarial act performed in compliance with emergency order #11 pursuant to executive
17 order 2020-04 from its effective date through the date of its expiration is valid.

18

19 Amend Part II of the bill by replacing all after section 10 with the following:

20

21 11 Wills; Requirements. Amend RSA 551:2, III(b) to read as follows:

22 (b) ~~Nothing in this paragraph shall be deemed to allow an electronic will or codicil. This~~
23 ~~paragraph shall apply only to wills executed on or after March 23, 2020~~ ~~[and ending on the last day~~
24 ~~of the state of emergency declared by executive order 2020-04]~~.

25 12 Effective Date.

26 I. RSA 456-B:2, VII as inserted by section 4 of Part II of this act and section 11 of Part II of
27 this act shall take effect upon its passage.

28 II. The remainder of Part II of this act shall take effect 180 days after its passage.

29

30 Amend Part III of the bill by replacing section 1 with the following:

31

Amendment to
- Page 2 -

1 1 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 not
4 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
11 Amend Part V of the bill by replacing RSA 408-G:3 as inserted by section 1, with the following:

12
13 408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect
14 transfer of structured settlement payment rights shall be effective and no structured settlement
15 obligor or annuity issuer shall be required to make any payment directly or indirectly to any
16 transferee or assignee of structured settlement payment rights unless the transfer has been
17 approved in advance in a final court order based on express findings by such court that:

18 I. The transfer is in the best interest of the payee, taking into account the welfare and
19 support of the payee's dependents;

20 II. The payee has been advised in writing by the transferee to seek independent professional
21 advice regarding the transfer and has either received such advice or knowingly waived in writing the
22 opportunity to seek and receive such advice;

23 III. The transfer does not contravene any applicable statute or the order of any court or
24 other government authority; and

25 IV. The payee presents 3 separate bids for the structured settlement payment right at issue.
26 Each bid shall be made by organizations which are unaffiliated with each other in any way and
27 cannot benefit from each other financially. The presentation of 3 separate bids under this paragraph
28 may be considered by the court but shall not by itself be dispositive of whether the transfer is in the
29 best interest of the payee. The court may, for good cause shown, waive the requirement that the
30 transferor provide evidence of obtaining 3 bids.

31
32 Amend the bill by replacing Part XI with the following:

33
34 PART XI

35 Relative to employer access to motor vehicle records.

36 1 New Paragraph; Motor Vehicle Records; Employer Access. Amend RSA 260:14 by inserting
37 after paragraph IV the following new paragraph:

Amendment to
- Page 3 -

1 IV-a.(a) Except for a person's photograph, computerized image, and social security number,
2 motor vehicle records and at least monthly electronic bulk files indicating changes in driving
3 violations and driver license status shall be made available upon proof of the identity of the person
4 requesting the records and representation by such person on a form satisfactory to the department
5 that the records will be strictly limited to one or both of the following described uses:

6 (1) For use by an entity that employs drivers in the course of their business, or an
7 authorized agent of such an entity, which requires a motor vehicle record or a monthly notification of
8 changes to motor vehicle records in connection with pre-employment or continued employment
9 screening of employees for driver safety reasons; or

10 (2) For use with respect to requests as to whether a driver meets the requirements of
11 RSA 376-A:12.

12 (b) No motor vehicle records made available under this paragraph shall be sold, rented,
13 transferred, or otherwise made available in whole or in part, in any form or format, directly or
14 indirectly, to another person, except that an authorized agent may make such records available to
15 any principal on whose behalf the records were sought if the name of that principal was provided to
16 the department at the time the records were sought.

17 (c) Any person who makes a request under this paragraph shall have first obtained the
18 written consent of the person whose records are being requested. The written consent shall be
19 retained for a period of 3 years and shall be made available upon request to the division for
20 inspection. Motor vehicle records obtained under this paragraph shall not be subject to the
21 notarization requirements of RSA 260:14, VII.

22 2 Effective Date. Part XI of this act shall take effect upon its passage.

UNAPPROVED

Amendment to SB 134-FN

1 Amend section 1 of the bill, Sponsorship, by deleting Part X and renumbering the original Parts XI
2 and XII to read as Parts X and XI, respectively.

3

4 Amend Part II of the bill by replacing RSA 456-B:2, VII as inserted by section 4 with the following:

5

6 VII.(a) For the purposes of this section, but only in the context of executing an estate
7 planning instrument such as a will~~[-trust, or power of attorney]~~ **or estate planning trust**, the
8 requirement that a person appear before a notarial officer at the time of the notarial act is satisfied
9 if the notarial officer is:

10 (1) The attorney, licensed to practice law in New Hampshire and in good standing,
11 who drafted the estate planning instrument;

12 (2) Another attorney licensed to practice law in New Hampshire and in good
13 standing, under the drafting attorney's supervision; or

14 (3) A paralegal under the supervision of either such attorney; and

15 (b) The person and the notarial officer can communicate simultaneously by sight and
16 sound through an electronic device or process at the time of the notarial act.

17 (c) This paragraph shall apply only to notarial acts performed on or after March 23, 2020
18 ~~[and ending on the last day of the state of emergency declared by executive order 2020-04]~~. In
19 addition, a notarial act performed in compliance with emergency order #11 pursuant to executive
20 order 2020-04 from its effective date through the date of its expiration is valid.

21

22 Amend Part II of the bill by replacing all after section 10 with the following:

23

24 11 Wills; Requirements. Amend RSA 551:2, III(b) to read as follows:

25 (b) Nothing in this paragraph shall be deemed to allow an electronic will or codicil. This
26 paragraph shall apply only to wills executed on or after March 23, 2020~~[-and ending on the last day
27 of the state of emergency declared by executive order 2020-04]~~.

28 12 Effective Date.

29 I. RSA 456-B:2, VII as inserted by section 4 of Part II of this act and section 11 of Part II of
30 this act shall take effect upon its passage.

31 II. The remainder of Part II of this act shall take effect 180 days after its passage.

32

Amendment to SB 134-FN

- Page 2 -

1 Amend Part III of the bill by replacing section 1 with the following:

2
3 1 Incarceration Under a Suspended Sentence. Amend the introductory paragraph of RSA
4 651:20, I(a) to read as follows:

5 (a) Any person sentenced to state prison for a minimum term of 6 years or more shall
6 not bring a petition to suspend sentence until such person [~~has served at least 4 years or 2/3 of his~~
7 ~~minimum sentence, whichever is greater,~~] **is within 12 months of serving 2/3 of the minimum**
8 **sentence**, and not more frequently than every 3 years thereafter. Any person sentenced to state
9 prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until
10 such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by
11 the sentencing court. For the purposes of this subparagraph:

12
13 Amend the bill by replacing Part VIII with the following:

14
15 PART VIII

16 Relative to school employee and school volunteer criminal history background checks and
17 establishing a committee to study department of education oversight of
18 criminal history background checks for private schools.

19 1 School Employee and Designated School Volunteer Criminal History Records Check. Amend
20 RSA 189:13-a, III to read as follows:

21 III. The superintendent of the school administrative unit or the chief executive officer of the
22 chartered public school or public academy shall maintain the confidentiality of all criminal history
23 records information received pursuant to this paragraph. [~~If the criminal history records~~
24 ~~information indicates no criminal record, the superintendent of the school administrative unit or the~~
25 ~~chief executive officer of the chartered public school or public academy shall destroy the information~~
26 ~~received immediately following review of the information.] **The superintendent of the school**
27 **administrative unit, or chief executive officer of the chartered public school or public**
28 **academy shall review the criminal history records information in accordance with**
29 **paragraph V.** If the criminal history records information indicates that the applicant has been
30 convicted of any crime or has been charged pending disposition for or convicted of a crime listed in
31 paragraph V, the superintendent of the school administrative unit or the chief executive officer of the
32 chartered public school or public academy shall review the information for a hiring decision[, and the
33 division of state police shall notify the department of education of any such charges pending
34 disposition or convictions. The superintendent of the school administrative unit or the chief
35 executive officer of the chartered public school or public academy shall destroy any criminal history
36 record information that indicates a criminal record within 60 days of receiving such information.] **If**
37 **the applicant's criminal history records information indicates that the applicant has been**~~

1 *charged pending disposition for or has been convicted of a crime listed in paragraph V, the*
2 *superintendent of the school administrative unit or the chief executive officer of the*
3 *chartered public school or public academy shall notify the department of education.*

4 *III-a. The superintendent of the school administrative unit or chief executive officer*
5 *of the chartered public school or public academy shall destroy any criminal history record*
6 *information within 60 days of receipt. The superintendent of the school administrative*
7 *unit or chief executive officer of the chartered public school or public academy shall*
8 *destroy any criminal history record information that indicates a criminal record within 60*
9 *days of receiving said information.*

10 2 School Employee and Designated School Volunteer Criminal History Records Check. Amend
11 RSA 189:13-a, VI to read as follows:

12 VI. *In accordance with paragraphs I-V*, this section shall apply to any employee,
13 *including substitute teachers*, selected applicant for employment, designated volunteer, [e]r
14 volunteer organization, *or individual or entity* which contracts with a school administrative unit,
15 school district, chartered public school, or public academy to provide services, including but not
16 limited to cafeteria workers, school bus drivers, custodial personnel, or any other service where the
17 contractor or employees of the contractor provide services directly to students of the district,
18 chartered public school, or public academy. The employing school administrative unit, school
19 district, or chartered public school shall be responsible for completing the criminal history records
20 check on the people identified in this paragraph, except for school bus drivers and transportation
21 monitors, as provided in RSA 189:13-b. The cost for criminal history records checks for employees or
22 selected applicants for employment with such contractors shall be borne by the contractor.

23 3 School Employee and Designated School Volunteer Criminal History Records Check. Amend
24 RSA 189:13-a, IX to read as follows:

25 IX.(a) [~~Substitute teachers and other educational staff, not otherwise addressed in this~~
26 ~~section, shall apply for a criminal history records check at the employing school administrative unit,~~
27 ~~school district, chartered public school, or public academy. The division of state police shall complete~~
28 ~~the criminal history records check, as established in paragraph II, and, upon completion, shall issue~~
29 ~~a report to the applicant. The report shall be valid for 30 days from the date of issuance and shall~~
30 ~~constitute satisfactory proof of compliance with this section.~~

31 (b) ~~Upon enrollment in an educator preparation program at an institution of higher~~
32 ~~education, a candidate shall submit to a criminal history records check. The institution of higher~~
33 ~~education in which the candidate is enrolled shall conduct the criminal history records check.] Upon~~
34 placement of a candidate, *as defined in RSA 189:13-c*, as a student teacher, the receiving school
35 administrative unit, school district, or chartered public school shall conduct [another] a criminal
36 history records check of the candidate and shall follow the same procedures for assessing the
37 candidate's criminal history background as for applicants for employment. [~~The governing body of~~

Amendment to SB 134-FN

- Page 4 -

1 ~~the institution of higher education may adopt a policy relative to how often a candidate shall submit~~
2 ~~to a criminal history records check. In this subparagraph, "candidate" shall mean a student who is~~
3 ~~enrolled in an educator preparation program at an institution of higher education in New~~
4 ~~Hampshire.]~~

5 *(b) A receiving school administrative unit, school district, or chartered public*
6 *school may conduct a criminal history records check upon a candidate, as defined in RSA*
7 *189:13-c.*

8 4 New Section; Teacher Credentialing Criminal History Records Check. Amend RSA 189 by
9 inserting after section 13-b the following new section:

10 189:13-c Credentialing Applicant and Candidate Criminal History Records Check.

11 I. Definitions:

12 (a) "Credentialing applicant" means a first-time applicant for a New Hampshire
13 teaching credential.

14 (b) "Candidate" means a student at an institution of higher education in New
15 Hampshire who has been selected to participate in a K-12 educator preparation program.

16 II.(a) The department shall complete a confidential criminal history records check on all
17 first-time applicants for a teaching license, under RSA 21-N:9, II(s), as shall school administrative
18 units, school districts, and chartered public schools pursuant to RSA 189:13-a.

19 (b) The department shall complete a confidential criminal history records check on all
20 candidates as shall school administrative units, school districts, and chartered public schools
21 pursuant to RSA 189:13-a. The department shall adopt rules pursuant to RSA 541-A relative to
22 coordination with institutions of higher education in New Hampshire on procedures for conducting
23 clearances for candidates for K-12 educator preparation programs.

24 (c) The criminal history records check on a candidate shall valid for a period of 3 years.

25 III.(a) The credentialing applicant or candidate shall submit to the department a criminal
26 history records release form, as provided by the division of state police, which authorizes the division
27 of state police to conduct a criminal history records check through its state records and through the
28 Federal Bureau of Investigation and to release a report of the credentialing applicant's or candidate's
29 criminal history record information, including confidential criminal history record information, to
30 the background check coordinator of the department, as described in RSA 21-N:8-a, I-a.

31 (b) The credentialing applicant or candidate shall submit with the release form a
32 complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee
33 of the department of education. In the event that the first set of fingerprints is invalid due to
34 insufficient pattern, a second set of fingerprints shall be taken in order to complete the criminal
35 history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern,
36 the department may, in lieu of the criminal history records check, accept police clearance from every
37 city, town, or county where an applicant or candidate has lived during the past 5 years.

Amendment to SB 134-FN

- Page 5 -

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 5 Committee Established. There is established a committee to study department of education
20 oversight of criminal history background checks by private schools.

21 6 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 7 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 8 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 9 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 10 Effective Date.

12 I. Sections 1-4 of Part VIII of this act shall take effect January 1, 2022.

13 II. The remainder of Part VIII of this act shall take effect upon its passage.
14

15 Amend the bill by replacing all after Part IX with the following:
16

17 PART X

18 Relative to employer access to motor vehicle records.

19 1 New Paragraph; Motor Vehicle Records; Employer Access. Amend RSA 260:14 by inserting
20 after paragraph IV the following new paragraph:

21 IV-a.(a) Except for a person's photograph, computerized image, and social security number,
22 motor vehicle records and at least monthly electronic bulk files indicating changes in driving
23 violations and driver license status shall be made available upon proof of the identity of the person
24 requesting the records and representation by such person on a form satisfactory to the department
25 that the records will be strictly limited to one or both of the following described uses:

26 (1) For use by an entity that employs drivers in the course of their business, or an
27 authorized agent of such an entity, which requires a motor vehicle record or a monthly notification of
28 changes to motor vehicle records in connection with pre-employment or continued employment
29 screening of employees for driver safety reasons; or

30 (2) For use with respect to requests as to whether a driver meets the requirements of
31 RSA 376-A:12.

32 (b) No motor vehicle records made available under this paragraph shall be sold, rented,
33 transferred, or otherwise made available in whole or in part, in any form or format, directly or
34 indirectly, to another person, except that an authorized agent may make such records available to
35 any principal on whose behalf the records were sought if the name of that principal was provided to
36 the department at the time the records were sought.

Amendment to SB 134-FN

- Page 7 -

1 (c) Any person who makes a request under this paragraph shall have first obtained the
2 written consent of the person whose records are being requested. The written consent shall be
3 retained for a period of 3 years and shall be made available upon request to the division for
4 inspection. Motor vehicle records obtained under this paragraph shall not be subject to the
5 notarization requirements of RSA 260:14, VII.

6 2 Effective Date. Part X of this act shall take effect upon its passage.

7
8 PART XI

9 Relative to authorization to grow industrial hemp.

10 1 Industrial Hemp Research; Authorization. Amend RSA 433-C:2 to read as follows:

11 433-C:2 Authorization. An institution of higher education, as defined in 20 U.S.C. section 1001,
12 may grow or cultivate ***or may contract with a private party to grow or cultivate***, industrial
13 hemp, on site or off site, for purposes of research under an agricultural pilot program or other
14 agricultural or academic research. In addition to studying the plant's growth and cultivation, the
15 research shall also study the economics of industrial hemp, including markets and processing.
16 Industrial hemp grown or cultivated in accordance with this chapter shall not be considered a
17 controlled drug or controlled substance under RSA 318-B.

18 2 Effective Date. Part XI of this act shall take effect upon its passage.

2021-0775s

AMENDED ANALYSIS

This bill adopts legislation relative to:

- 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: February 10, 2021

HEARINGS

Tuesday	02/16/2021	
(Day)	(Date)	
<hr/>		
Judiciary	REMOTE	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m. SB 141-FN	relative to the procedure for conducting firearm background checks.	
1:30 p.m. SB 134-FN	adopting omnibus legislation relative to civil actions and criminal liability.	

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/98630768042>
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: +13126266799,,98630768042# or +16465588656,,98630768042#
4. Webinar ID: **986 3076 8042**
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
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EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 141-FN

Sen. Giuda
Rep. Rhodes

Sen. Avard
Rep. Gorski

Rep. Burt
Rep. Kelsey

Rep. Edwards

SB 134-FN

Sen. Carson

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

SB 134-FN, adopting omnibus legislation relative to civil actions and criminal liability.

Hearing Date: February 16, 2021

Time Opened: 3:31 p.m.

Time Closed: 6:20 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill adopts legislation relative to:

- 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. Interference with the enjoyment of a dwelling place.
 - XI. Employer access to motor vehicle records.
 - XII. Authorization to grow industrial hemp.
-

Sponsors:
Sen. Carson

Who supports the bill: Please See Sign-In Sheet

Who opposes the bill: Please See Sign-In Sheet

Who is neutral on the bill: Please See Sign-In Sheet

Summary of testimony presented in support:

Senator Carson

- Spoke to Part I of the bill.
- Relative to prohibiting certain uses of laser pointing devices.
- The use of laser pointing devices can be very dangerous in certain situations.
- This legislation will help clarify that particular issue.

Senator Cavanaugh

- Spoke to Part II
- Relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.
- Sponsored a commission bill on this issue last year.
- 28 states have modified their notary laws to allow for this practice.
- With the COVID 19 pandemic many notaries have moved to remote means under Executive Order 11.
- The Governor mentioned that some of the Executive Orders should be reviewed regarding putting them into statute.
- A group of stakeholders worked over the summer on this language, including the Mortgage Brokers and Bankers Association, NH Bankers Association, NH Credit Union League, NH Realtors, Registers of Deed, and title companies. The Secretary of State also provided input.

Senator Whitley

- Spoke to Part III.
- Relative to incarceration under a suspended sentence.
- This will allow people to apply for a suspended sentence earlier.
- If granted an individual would have time to prepare to return to their communities before they would reach 2/3rds of their minimum sentence.
- This is not about early release, it is just about the timing for applying for a suspended sentence.

Senator Carson

- Spoke to Part IV
- Relative to civil liability for damage to highways.
- This was filed at the request of the Department to assist them in collecting monies owed to the state when people have caused damage to state highways.
- Spoke to Part V

- Relative to structured settlement protection.
- Was asked to file this because NH is the only state that has not updated their structured settlement laws.
- This will bring NH into line with other states.
- A number of stakeholders have been working on this language and they do have an amendment to bring forward.
- Spoke to Part VI
- Establishing the New Hampshire collaborative law act.
- This bill was filed last year but was in an omnibus bill that was vetoed.

Senator Whitley

- Spoke to Part VII
- Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.
- This expands the waiver administration process in probate proceedings, it makes a non-substantive clarification to the intestacy statute, makes some clarifying changes to the NH Uniform Power of Attorney Act, and adopts the Uniform Disclaimer of Property Interests Act with the addition of some language requested by DHHS.
- These bills were brought last session but got lost in the COVID shuffle.
- The creation of this bill was done through a collaboration with about 45 trusts and estates attorneys.

Senator Kahn

- Spoke to Part VIII.
- Relative to 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.
- Worked with the Department of Education and the Department of Safety on this legislation.
- The departments work together on criminal history background checks for licensed educators.
- This is a follow up to legislation that became law last session relative to the role of the DOE to do criminal history background checks on all licensees, re-licensees, school bus drivers, and attendants.
- This bill works to further explain the role of the school district is and the role of DOE in storing and retaining this information.
- This bill clarifies the turning over of information regarding a person who has been convicted or has pending charges relative to the listed crimes in RSA 189, such as first-degree murder, manslaughter, sexual assault, and pornography.
- These records don't need to be retained by the school district beyond 60 days.
- This bill also describes the role of the school district relative to volunteers.
- Section 4 defines the role of the DOE relative to doing criminal history background checks on credential applicants and candidates, which covers students at higher education institutions.

- Currently the FBI will not conduct a criminal history background check for a state college, but instead only for school districts who serve minors.
- Colleges rely on the state background check, but in this instance we need to go farther.
- These are valid for the duration of when a student might continue to pursue their degree.
- This does not prohibit a school district from doing their own background check.
- While this applies to public schools and public charter schools, these kind of background checks do not apply to private schools.
- A legislative committee will review this issue regarding private schools.

Senator Giuda

- Spoke to Part IV.
- Making an appropriation funding mental health intervention training programs.
- This bill asks for \$210,000 to continue a federal grant that runs out in September.
- This grant allows NAMI to instruct the Police Academy in mental health issues and how to approach individuals they interact with who are dealing with mental health issues.
- The incidents of mental health problems has escalated partly due to COVID.
- More than a few of the police shootings that have occurred involve a person with mental health issues.
- Thinks if the officers had training the outcome might have been different in those cases.
- \$120,000 of this would be used in FY2022 and the remaining \$90,000 would be for the remainder of FY2021, fully funding the program for the coming two years.
- The Governor may put this in his budget, but we need to ensure it is enacted.

Senator Ward

- Spoke to Part X.
- Relative to interference with the enjoyment of a dwelling place.
- This bill was introduced last session but did not make it through the whole process.
- One of her constituents contacted the police because he was being bothered by drones coming over his curtilage and hovering near his bedroom. He was told there was nothing the police could do.
- This creates an opportunity to do something if drones come too close or over an individual's property, while recognizing the Federal Aviation Act.
- This issue can be brought before the superior court if someone violates this law under this bill.

Senator Carson

- Spoke to Part XI
- Relative to employer access to motor vehicle records.
- This will streamline the process for employers to obtain motor vehicle records and license status checks from the DMV electronically.

- This will put NH in line with what is happening across the country.
- These records are already disclosed to employers under NH law.
- Spoke to Part XII
- Relative to authorization to grow industrial hemp.
- This is a refile from last year.
- NH has struggled for years about whether or not to allow our citizens to grow hemp.
- The growth of hemp is prohibited under federal law, but a few years ago the federal government added provisions that would allow people to grow hemp under certain circumstances, usually in collaboration with universities.
- This bill addresses some issues that still need to be worked out.
- Have had inquiries from people interested in growing industrial hemp.

Dave Cuzzi, Erin Poitras, and Tom Bishop (BAE Systems)

- Spoke on Part I: Relative to prohibiting certain uses of laser pointing devices.
- In 2016 a bill was signed into law to prohibit the shining laser pointers at airplanes, law enforcement officers, law enforcement vehicles, persons, occupied vehicles, or other structure.
- The 2016 law included limited exceptions, which had the unintentional effect of making even some everyday uses of lasers illegal, such as vehicle sensors, golf range finders, hunting range finders, etc.
- That law also prohibits some research activities that aerospace and defense technology companies conduct with lasers and laser systems.
- BAE is not aware of any law enforcement entity interpreting or enforcing that statute beyond its original intent.
- Believes that appropriate exemptions should be added to clarify those lawful uses of lasers, while ensuring malicious use of the lasers remains prohibited.
- Senator Kahn asked what kind of research they are doing today.
 - Broadly their research teams are using lasers for communications and communication disruption. Not in the business of weaponizing laser energy.

The Business Industry Association specifically supports Parts II and XI of the bill.

John Diana (SAMBA Safety)

- Spoke to Part XI: Relative to employer access to motor vehicle records.
- His company assists companies to improve driver safety, and help employers interpret and understand motor vehicle records.
- A motor vehicle record indicates the status of an individual's license and provides a recent history of violations, including DUIs, reckless driving, speeding, etc.
- These records are critical for public safety and are the best public record to assess the qualifications of a driver.
- 3-5% of accidents involve a driver without a valid license.
- 19% of all fatalities involve a person without a valid license.
- 26% of fatalities involve speeding.
- 39% of accidents have alcohol as a contributing factor.

- Today, NH DMV interprets state law to require that records be obtained on an individual basis with a notarized release.
- NH is the only state that restricts access in this manner.
- This restriction is impractical, as well as costly and time consuming for employers.
- This makes it substantially more likely that an employer will put a driver behind the wheel without checking their motor vehicle record.
- The DMV encouraged him that the only way to address these concerns would be through legislation.
- This will improve road safety and benefit employers, all while maintaining state and federal protections for individuals.
- Federal and state law require that if an employer is going to pull the motor vehicle record of an individual, then the individual must receive a disclosure that the record is being pulled and they must consent in writing to release the record.

Director Marie Mullen (Department of Transportation)

- Spoke to Part I: Relative to prohibiting certain uses of laser pointing devices
- Believes RSA 422, which includes the NH Aeronautics Act prohibitions, should be referenced in Part I.
- Wants to ensure this is covered in RSA 422 and RSA 631.
- The language does not specifically define an 'authorized persons.' Thinks it would be helpful to clarify that to avoid any confusion.
- Spoke to Part IV: Relative to civil liability for damage to highways.
- This bill was requested by the Department.
- Each year the Department bills hundreds of thousands of dollars related to damage to the highway systems.
- In FYs 19 and 20 the Department billed over \$2 million in damage through insurance or directly from individuals for damage caused.
- The strict liability RSA has been interpreted to be that the Department must use actual costs in billing claimants.
- It has been the practice to use reasonable estimates, which is an accepted practice with insurance companies.
- This is needed by the Department due to the nature and timing of these damages.
- For example, damage that occurs in the winter cannot be fixed right away, so it can take several months to fix it and get the actual costs.
- Many insurance companies and individuals do not want to wait that long to get invoiced.
- Worked with the Attorney General's Office to come up with this change in language to 'actual costs or reasonable estimates'.
- Would like this to apply retrospectively and prospectively to all persons.
- For the past year and half the Department has not been able to invoice several folks because there were no actuals, only estimates.

- Spoke to Part X: Relative to interference with the enjoyment of a dwelling place.
- The Bureau of Aeronautics is concerned if the intent of this is to target the use of airspace.
- The use of air space is federally preempted, and states and municipalities cannot regulate airspace.
- Wants to make Committee aware of that federal preemption regulating airspace.
- Senator Gannon asked on Part IV, why use strict liability.
 - Believes that was passed before her time. Once it was put into place that language is why the language had it become more restrictive. The Department has had trouble with invoicing and billing people for claims. Knows that the Attorney General's Office is here that may have a better legal interpretation.
- Senator Kahn asked in regard to Part X for the federal reference.
 - Will speak to the Aeronautics Bureau and get the Committee language to address that.

Zachary Towle (Attorney General's Office)

- Spoke to Part IV: Relative to civil liability for damage to highways.
- This changes three key components of the statute.
- One, changing the language from 'shall be liable' to 'shall be strictly liable.'
- Currently the courts interpret the 'shall be liable' language as a strict liability standard. The intent of this change is to just clarify that.
- Two, changes the language to include barriers, devices or structures that are part of the highway.
- Typically, the courts take a wide view of what the highway encompasses.
- This simply clarifies the standards of what is included.
- Three, shifts the language from just actual damages to estimated damages when seeking judgments.
- The intent is to seek to be as close to the actual damages as possible, but due to the amount of time it can take for construction work to happen and the way things are purchased by DOT it can be very challenging to get the exact amount of the damages.
- This will allow for the showing of data to get these done in a relatively quick manner.

Steve Bauer (Mortgage Bankers and Brokers Association of NH)

- Spoke to Part II: Relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.
- Was a part of the working group last summer that pulled together this language on Remote Online Notarization (RON).
- RON is the use of audio-visual technology to complete a notarial act when the principal is not in the same physical location as the notary public.
- RON is not to replace a traditional notary or electronic in-person notary.
- RON provides notaries the legal framework to modernize their practices and meet the evolving needs of businesses and consumers.

- RON has been enacted in at least 24 states, and an increasing number of states have proposed legislation on this.

Donald Sienkiewicz (New Hampshire Trust & Estates Attorneys) (submitted written testimony)

- Supports Part VII: Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.
- Spoke to Part II: Relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.
- Was a part of the working group on this language.
- Last year language was passed to deal with electronic signing of wills and estate planning, but it expires when the state of emergency ends.
- Asking to remove that expiration clause from that language.
- Representative McBeath was able to have that amendment drafted up.
- There is one other minor change of striking 'powers of attorney'.
- The working group discussed removing this because it is done in real estate closings and in estate plans.
- Remote signings have been a successful experiment and would like it to continue for NH residents after the end of the state of emergency.
- Senator Gannon asked if witnessing is included.
 - It is not in the bill as proposed, but there is an amendment to RSA 551 to have 'in the presence of' mean two witnesses who are being supervised by an attorney who is also a notary or a paralegal under the supervision of an attorney as long as those witnesses are on simultaneously on the same video with the attestator and the lawyer and the notary.
- Senator Gannon raised concerns about fraud occurring more easily with audio-visual signings.

Ben Siracusa Hillman

- Spoke to Part VII: Relative to probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act.
- Was a part of the working group on this.
- This language was brought forward last year.
- The bill has the general support of the Trusts and Estates Bar.
- Judge King on behalf of the Probate Judges reviewed this language and provided feedback.
- Section 1 deals with expansion of availability of the waiver of administration process in uncontested estates.
- This bill simplifies the probate process by expanding the existing waiver process, which currently applies to certain estates where there both is and is not a will, but generally when there is only one beneficiary of an estate and that person is a spouse, a child, or a trust.
- This waiver has been expanded on a couple of different occasions since it's enactment in 2002.

- It currently does not apply where there is more than one beneficiary or where the sole beneficiary is someone other than a spouse, child, or trust.
- This bill will expand that process to include all estates where there is only one beneficiary and that beneficiary is serving as the administrator or where there are multiple beneficiaries and those beneficiaries are all co-administrators or they all sign an assent to the appoint an administrator, or in certain cases at the discretion of the court.
- Where waiver administration is applied the probate process is simplified.
- In the regular probate process an inventory has to be filed, a bond has to be posted in estates with a value of \$25,000 or more, and the estate has to be closed with either a final accounting or a motion for summary administration.
- In the waiver administration process the paperwork to administrate is the same with the filing of a petition and requires all of the same information, but there is no court filed inventory, bond, or accounting necessary. The estate is closed with the filing of a waiver administration statement at any time after the six-month creditor claims period has run and a statement under oath has been filed that all creditors have been paid.
- This bill does not change that process and maintains that any interested person can petition for full administration at any time while the estate remains open.
- Expanding this will save time and money for the estates, beneficiaries, and the courts.
- This also maintains the protections that creditors have under current law.
- The bill also explicitly allows the court to grant an extension to what is currently a one-year deadline to file an affidavit of administration in those estates that take longer than a year to administer.
- Currently that is unclear and different judges have taken different views in different circumstances.
- The bill also clarifies how deadlines operate if an estate that starts out as a waiver administration and is subsequently converted to full administration.
- Section 3 resolves an ambiguity in the intestacy statute with no substantive changes.
- Section 4 deals with the Uniform Power of Attorney Act and amends the Act to take into account experience practitioners have had with the law over the past three years, by amending the agent acknowledgment form with clarification on the obligations.
- Section 5 adds a reference to the Revised Uniform Fiduciary Access to Digital Assets Act to make clear the authorization given in the power of attorney is what set forth.
- Section 6 clarifies the use of the word 'gift' without a substantive change.
- Section 7 amends the statutory form to make it clearer and easier to use, while eliminating and replacing a section that is confusing and did not accurately reflect NH law regarding when an agent may benefit themselves or those who the agent owes a legal obligation of support.

- Provisions for allowing an agent to benefit themselves are essential in some situations, but unfortunately provide opportunities for abuse.
 - These changes provide more specific language and more specific choices for the individual signing the form to maximize flexibility while minimizing opportunities for abuse.
 - Section 10 deals with the Uniform Disclaimer of Property Interests Act by substantially updating the Act with changes requested by DHHS to try to avoid potential abuses of disclaimers where it could impair estate recovery.
 - The current Act was enacted in 1996 and has not been amended.
 - This expands the definition of disclaimer to provide a broader range of property, provides further and more specific instructions to clarify when a disclaimer is delivered and under what circumstances it becomes effective, clarifies the result of refusing property or powers through a disclaimer, creates rules for types of disclaimers that are not explicitly addressed under current law, provides rules for when a fiduciary can disclaim, allows for a partial disclaimer, and it clarifies that the disclaimed interest passes without direction by the disclaimant.
 - 25 jurisdictions have adopted this model act in whole or in substantial part.
- Carol Williboughy (First American Title Insurance) (provided written testimony)**
- Spoke to Part II: Relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.
 - Was a member of the working group on this language.
 - The bill seeks to enact remote online notarization.
 - The past 12 months have taught the value and use of technology to obtain the daily necessities of life.
 - Everyday thousands of NH residents need to conduct business that require notarization and similar services.
 - Notarization is an historically face-to-face service.
 - Citizens need a more robust and permanent solution that the current Executive Order.
 - Notaries provide many services that are critical to various aspects of legal system.
 - When performing these services, the notary serves three critical functions, confirm the signer's identity, confirm that the signer knows what they are signing, and confirm that the signer is acting of their own free will.
 - Notarization, if done properly, is a significant and important safeguard to fraud, and in real estate it is a core vehicle we rely on for land records and the validity of the legal documents.
 - This bill seeks to bring in an additional optional method of performing these services, remotely online.
 - There are three ways to ensure safeguards remain in place when conducting online notarizations: enhanced identification protocols, robust audit trail, and secure technology.
 - RON technology platforms and this bill provide those safeguards.

- Enhanced identification protocols are performed using online data that is verified by establishing ID is credible, allowing the notary to view the credential and look at the person, and retaining a record of that identification credential, and using multi-factor authentications based on public and private data sources.
- Under this bill an electronic audio-video record of the notarial act is required, which helps to verify the signer's action in the event of a future challenge.
- The fact that to notarial act is undertaken remotely is evident in the body of the notarial certificate disclosure.
- This bill requires the use of tamper evident technology with an electronic seal.
- There are 29 states that have enacted full remote online notarization, with 11 other states with permanent RON legislation pending.
- Without a robust notarization law, NH citizens are at a disadvantage, as we are a cross border society.
- Without properly drafted laws people will seek these services out of state, which could result in courts ruling the documents invalid.
- Rural and underserved communities will have more access to notarization under this legislation.
- This bill does not take away in person notarization.
- Senator French asked if she believes this technology existed in 1840 when this was enacted would we already be doing it this way.
 - Would like to think if they had the technology, they would utilize it.
- Senator Gannon asked if remote notarization is going to be as safe as in person.
 - Thinks it will be. This is only an option and notaries can still refuse to notarize a document. The beauty of the system is that it does provide real time visual communication and does not take away the ability of the notary to have that conversation.

Jack Kelly (National Association Settlement Purchasers)

- Spoke to Part V: relative to structured settlement protection.
- NH will be the last state, including DC, to adopt the Structured Settlement Act.
- In the 1970s the Structured Settlement Act was designed to benefit those who needed long term care and could have a benefit of the tax afforded to it.
- As time went on, structured settlements were no longer used for long term care.
- Currently, they are now often used in torts for simple things, like a slip and fall or some sort of assault, and as such a market arose where recipients wanted to sell their asset to gain access to it.
- In 2002, after 9/11 Congress was considering the Victims Act which was structured settlement legislation. Congress chose to clarify the law to ensure procedure where people could transfer their structured settlement, while ensuring the individuals were protected.
- Congress created a statutory mandate that the individual must go before a court and have the transfer proposal reviewed, and the court must determine it is in the individual's best interest, this also required that states adopt laws regarding this.

- In 2004, the National Conference of Insurance Legislators, choose to adopt a model act that would provide for a uniform system to comply with the federally mandated requirement.
- NH does not have such an act and therefore must operate under the law of the state where the annuity carrier is located.
- The model act is a well-established civil procedure that has been in effect for over 20 years.
- Under this the court has the ability to determine and inquire with that individual regarding whether or not it is in the best interest of the individual.
- An individual in Epping, NH could be subject to CA law if the carrier is domiciled in CA. The CA court may require the individual do a personal appearance in court.
- The bill requires the individual know what they are doing, and if they desire to sell, then they should have the right to do it.
- Provided an amendment to address the concerns of the Judicial Branch by requiring the individual to be informed and advised to get three bids.
- Under this bill structured settlement recipients have the right to walk away at any time during the transaction.
- When an individual is forced to go out to seek addition bids, they will then have to go to three companies and provide them with all of their personal information, which is concerning given the privacy challenges we face today.

Craig Ulman (National Structured Settlements Trade Association)

- Spoke to Part V: relative to structured settlement protection.
- This is legislation that has been road tested in 50 different jurisdictions.
- Thinks it is a good idea to advise payees that they have the right to negotiate the purchase price and that they should look at competing offers.
- Thinks it is good idea to tell courts to take into account whether a payee has obtained competing offers.
- However, a mandate to get three bids goes too far.
- Firstly, because of the privacy concerns which are serious.
- Secondly, is the timing, as often people do this because they are facing dire financial circumstances.
- This is already a time-consuming process due to the court approval requirement, so if people have to get additional competing bids that adds to the delay.
- Thirdly, people will likely go on the internet to get competing bids which in many instances will be effectively meaningless because they don't know who is behind those bids.
- The Judicial Branch's proposal states that the bids have to come from organizations that are not affiliated. How is the payee supposed to know that?
- Settlement purchasers often have multiple affiliates and connections.
- In speaking with the Judicial Branch, when proposing the amendment without a mandate, the Judicial Branch responded that they would include a waiver for that requirement for good cause shown.

- That waiver would have to be provided in response to a request from the settlement recipient, the same recipient who has been correctly categorized as unrepresented and unsophisticated.
- The proposed amendment of simply advising payees has been implemented in other states and appears to work.
- In the Blazing Star Case, the Honorable McNamara spoke to the court not standing in the way of the payees right to dispose of their property. However, the holding of the case was that the Supreme Court 'cannot determine upon this record whether the trial court could have reasonably found that the transfer was not in Wilson's best interest.'
- The Supreme Court remanded the case and ultimately the trial court approved the transfer.
- The payee in that case was actively negotiating with two different settlement purchasers.

Ken Norton (NAMI)

- Spoke to Part IX: Making an appropriation funding mental health intervention training programs.
- Served on the LEACT Commission and the Governor's Commission on Courts and Corrections.
- This bill came about following a number of discussions regarding the use of deadly force in officer involved shootings.
- A 2016 report from the NH Attorney General's Office indicated that 45% of the officer involved shootings in NH involved a person with known mental illness, which is significantly higher than the national average of about 25%.
- Spoke with the Governor's Office, the Attorney General, department heads, and policy leaders about how to address this.
- NAMI-NH received a three-year federal grant to provide crisis intervention team training, which is a 40-hour training program to the NH Department of Safety and State Police.
- The training is based on the Memphis Model and is an internationally recognized training.
- It involves over 20 subject matter experts that are a part of the faculty and trained actors, who are people with personal lived experience with mental illness.
- Role play and rehearsal is a significant part of the training.
- Role play could be someone locked in the bathroom and engaged in a suicide attempt and law enforcement is trying to get them to open the door.
- This grant runs out at the end of September, and in conversation with Director Skipka (PSTC) and Governor's Office, looking to expand this training to other law enforcement.
- The training includes in depth information, de-escalation techniques, and rehearsals.

- A significant portion of the training also includes a focus on officer wellness and resilience.
- More law enforcement officers die by suicide than are killed in the line of duty.
- There has been an incredible demand for this training since it started to be offered.
- The funding would go directly to PSTC, who would decide how the training would be presented.
- Senator Kahn asked if this was recommended by the LEACT Commission.
 - It was not specifically recommended, but LEACT took a more general approach to discuss de-escalation training. It is specifically recommended the by the President's 21st Century Taskforce on Policing. Their report came out in 2016, recommending that all law enforcement receive this 40-hour crisis intervention team training.
- Senator Kahn asked if there would be an objection to include this in the legislation that holds all of the LEACT recommendations.
 - Has no objections to that.

Jane Schirch

- Spoke to Part VI: establishing the New Hampshire collaborative law act.
- Serves on the Legislative Committee of the NH Collaborative Law Alliance.
- Collaborative practice is a private contractually based process of alternative dispute resolution.
- In NH collaborative law practice uses a team approach with two attorneys to represent the parties, a neutral coach facilitator, and a financial professional.
- This practice is used primarily in the area of family law.
- Currently, prior to entering into the process, parties and professionals sign a participation agreement that sets forth the expectations and parameters of the process.
- The passage of this legislation will standardize the contents of the participation agreement and process.
- There are occasions where the collaborative process is not successful and in those instances the parties will resort to litigation.
- This act will ensure the confidentiality of the process by limiting the ability to enter into evidence information that was gleaned during the process.
- Much like the mediation process, ensuring the confidentially allows individuals to look at options without being afraid that that might come back to bite them in the litigation process.
- This is based on a uniform collaborative law act that is suited to NH.
- Currently there are 19 states that have passed similar legislation and five where it is pending.

Tina Sharby (Easter Seals) (submitted written testimony)

- Spoke to Part XI: Relative to employer access to motor vehicle records.
- Easter Seals conducts driver records checks on all employees that provide transportation services. Currently employs over 1,500 staffers.

- This results in about 12 staffers being checked weekly.
- The record check allows for educated hiring decisions and to identify high risk drivers.
- Currently, the records have to be requested on an individual basis, which makes it time consuming to obtain them.
- This bill will provide for a more efficient and timely way to obtain the records, which will aid in on-boarding staff.

Joseph Lascaze (ACLU)

- Spoke to Part III: Relative to incarceration under a suspended sentence.
- Has gone through the process to petition a court for a suspended sentence and can say that it is a time consuming and burdensome process.
- Since success is the goal of the Department of Corrections, success needs time and people need to prepare for that. This bill provides that by allowing an individual to start preparing for their re-entry.
- This bill does not open the door to make individuals eligible for parole, it simply allows them to prepare.
- That is key for when someone is entering from one world to the next.
- Senator Whitley asked what types of things that could be done in preparation for release.
 - There are numerous factors that a court looks at when they are reviewing a suspended sentence petition, which includes employment, viable housing plans, as well as letters of recommendation that speak to the character of the person during their incarceration and what their support system is in the community. All of that takes times to gather and prepare. The current situation would be equivalent to OLS to saying that an LSR cannot be introduced until a week before it's hearing, giving no one the chance to review the bill.

Chief David Goldstein (Association of Chiefs of Police)

- Spoke to Part IX: Making an appropriation funding mental health intervention training programs.
- Mirrors Mr. Norton's testimony and would appreciate the extension of the funding.

J. Brian Dear (National Association of Settlement Purchasers)

- Spoke to Part V: Relative to structured settlement protection.
- Echoes Mr. Kelly's and Mr. Ulman's points.
- Thinks it is very important for structured settlement recipients to have the opportunity to receive information advising them to seek out other offers.
- In his experience most people already do that in advance.
- Especially during the pandemic, many of the transactions he has seen has been directly related to that and speed is of the absolute essence.
- Believes some of the suggestions from the Judicial Branch would be more damaging than beneficial.

Summary of testimony presented in opposition:

Honorable Richard McNamara (Judicial Branch) (provided written testimony)

- Speaking on Part V: Relative to structured settlement protection.
- The Judicial Branch is concerned about individuals having adequate information before making what can be the most important financial decision of their life.
- Structured settlements occur in NH when a personal injury settlement is reached, and an attorney recommends to a client that because of the client's life expectancy it would make sense to have periodic payment made over the course of the client's life.
- These kinds of settlements are common with minors and people who have catastrophic injuries who will need income in the future.
- There are three benefits to these types of settlements: they can be paid out over time, if the client is a minor that money can be professionally managed and pay out a large amount of money in the future, and the biggest benefit is the fact that a personal injury settlement is not taxable.
- Because these settlements are so valuable, they are often purchased by factors and they advertise heavily to encourage individuals to sell them for far less than market value.
- In order to keep the tax benefits of an annuity though a person must comply with federal law.
- Section 5891 of the Internal Revenue Code imposes a tax on certain transfers of structured settlement annuities unless the transfer is approved pursuant to a "qualified order".
- 26 U.S.C. 5891 defines a "qualified order" under federal law is an order that was issued "under the authority of an applicable state statute".
- If no statute has been enacted by the state, then the statute of the state that the company is domiciled is used.
- NH judges have been handling these transfers for years, using a statute from other states which are all essentially cognates, and which contain the language required by the federal statute.
- The superior court is very concerned because they often face cases where unrepresented and unsophisticated individuals seek to sell their annuity and appear to be taken advantage of.
- The NH Supreme Court has recently considered the language of the federal statute to say that the judge must find that the transfer is in the best interest of the payee taking into account the welfare and support of the payee's dependents.
- That standard is very broad, and it means that the court must find that the person selling the annuity isn't impoverished by it.
- The court is not allowed to substitute its judgment for the consumer.
- Under law the person buying the annuity must disclose to the seller what the discount rate is, how much the seller is giving up, and that the seller has the right to talk to a lawyer.
- Most of these unrepresented individuals never talk to a lawyer.

- In *Blazing Star Funding v Wilson* (2015) the person selling the annuity was going to receive \$125,000 in 2015 in exchange for payments of \$400,000 in 2023 and 2028, which had a present value of \$298,000. Those benefits were being sold for 41 cents on every dollar.
- The NH Supreme Court's ruling stated that "[a]t the outset, we note that, regardless of the trial court's personal view of "companies that try to bust structured settlements," the right of private parties to enter into enforceable contracts is a constitutionally protected interest.", reversing the trial court's decision and allowed the sale to go forward.
- These decisions are up to the individual and not the judge, but a lot of these individuals see these advertisements and are not necessarily aware of the entire situation.
- Proposing an amendment to have in addition to the court's finding that the transfer is in the best interest of the payee and that the payee has been advised in writing to seek independent advice, where the payee will present three separate bids from organizations that are unaffiliated with one another.
- The presentation of these three bids can be considered by the court but is not dispositive and the court can waive the requirement for good cause shown.
- This is a chance for the free market to work for the benefit of consumers, simply by providing them with information.
- Senator French asked if a structured settlement is an individual's asset once it has been granted.
 - Correct.
- Senator French asked why stop at structured assets for court intervention and not include the liquidation of real estate, bonds, or any other asset.
 - Because there is no statute requiring that a court find that the sale of the assets is in the interest of the consumer. Secondly, the average person buying something like any automobile goes to multiple dealerships and looks at multiple cars. The payee can take whatever bid he wants, but this will provide more information. As a judge would see things that were horrible, with people taken advantage of.
- Senator Gannon asked about going with a reasonable agreement.
 - Thinks the problem with that is that the legal system is based on the John Locke Aristotelian theory and it is not a judge's job to decide what is fair. The Supreme Court said that in the *Blazing Star* case. People have the right to make their own decision even if it is a bad decision. Most people are not aware of how valuable structured settlements are.

Neutral Information Presented:

Director Elizabeth Bielecki (Division of Motor Vehicles)

- Spoke to Part XI: Relative to employer access to motor vehicle records.
- Any changes to the driver privacy law is a matter of legislative policy.
- NH has the strictest driver privacy law in the nation.

- The Division has been working with companies that would like to expand access to driver's records.
- Currently, records are obtained on a case-by-case basis, which means that a company has to obtain a written notarized release from the holder to obtain records.
- This language proposes that motor vehicle records could be released to employers in a bulk electronic manner, where the notarized consent would still be required from the holder, but the consent would be retained by the person requesting record subject to auditing standards.
- Has some concerns with the language proposed.
- Section (c) states that 'Any person who makes a request under this paragraph shall have first obtained the written consent of the person whose records are being requested. Consent obtained pursuant to 18 U.S.C. section 2725(5) shall meet this requirement.'
- Is concerned because 18 U.S.C. section 2725(5) defines electronic signatures, and NH has not adopted any standards for electronic records or electronic signatures.
- Adopting a federal standard before adopting a state standard is concerning.
- Also concerned in VII where 'A person' is replaced with 'An individual'.
- RSA 264:18 defines 'a person' to include individuals and companies.
- It is concerning to introduce the concept of an individual without it being defined.
- Having the language read 'a person' allows the Division to release the record to a company that provides written consent.
- Is worried that changing the language to read 'an individual' might narrow down that particular authorization to truly only being individuals and not companies.
- Senator Kahn asked how the companies currently access the information.
 - If a company is looking for a motor vehicle record of an individual, they need to obtain written notarized consent from the record holder. That would then be submitted to the DMV and DMV would release the record. The only exception to that is for CDL drivers, where the driver privacy law does have a provision for DMV to release CDL drivers' records to their employers.
- Senator French asked who the company is able to share these records with after they have obtained them from DMV.
 - Currently, the records cannot be transferred to anyone else. There are instances where the Division will allow an authorized agent of an employer to obtain the records on the behalf of the employer. In that case the authorized agent has to provide a certificate of authority that states they have the authority to conduct this business on behalf of an employer.
- Senator French asked what the penalty is for a company that shares those records.

- Believes there is a misdemeanor penalty for willfully providing records to unauthorized individuals. Will provide the Committee with a follow up email to confirm that. There would be some liquidating damages for any person aggrieved by that violation.

Ryan Hale (NH Banker's Association)

- Spoke to Part II: Relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.
- In support.

Diana Fenton (Department of Education)

- Spoke to Part VIII: Relative to 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.
- This bill ensures that children are safe in the classroom and it is partnership between the school districts and the Department of Education.
- The bill recognizes the difference between employment and credentialing.
- Last Session HB1520 was passed and it gave the DOE the authority to run a criminal background check on first time applicants for a NH teaching credential.
- That bill was lacking the necessary language from DOS to allow the release of the FBI record to the DOE.
- The criminal background check is a matter of employment only, the Department was licensing people without doing a criminal records check.
- As a matter of child safety, the DOE feels that that is inappropriate.
- There is a list of offenses in RSA 189:13-a that prohibits individuals from working as educators in public schools.
- These are narrowly tailored to child protection offenses. However, there are a lot of offenses not included in that list.
- Without the ability to run a background check prior to issuing a credential to teach, the DOE could be issuing credentials to individual who is unemployable.
- This bill does not take away a district's ability or obligation to run a criminal history check.
- Lines 13-16 is an editorial change to clean up the language.
- Lines 24-27 makes it clear that if an applicant has a Section 5 violation that would prohibit employment, then the superintendent has to notify the DOE. That mirrors the code of conduct for educators that was passed in 2018.
- Lines 28-31 says that the criminal record check has to be destroyed within 60 days.
- Prior to this amendment, there was some provisions that required that to be done immediately and others that said 60 days. This is simply streamlining that.
- Line 5 is clean up language requested by DOS to make clear the previous paragraphs were still applicable to that section.
- Lines 18-26 are struck because some of the language was no longer applicable and some violated the regulations of the FBI.

- Moved substitute teachers up to line 6 as to not inadvertently exclude them.
- Under this DOE will partner with higher education institutions that do teacher prep programs.
- An issue that has occurred is that teacher prep programs and higher eds cannot receive the FBI check because they are not a governmental entity, only the state check.
- This bill will allow the DOE to partner with the teach prep programs to run the checks.
- Lines 35-37 allows schools districts to also do a check if they so choose because they maintain the liability. Once a person is placed as a student teacher, the school district has the obligation to do the check.
- The creation of RSA 189:13-c authorizes the Department of Education to run a check for first time applicants for a NH teaching credential and candidates.
- Section b gives rulemaking authority to allow DOE to develop rules on coordinating with the high educational institutions.
- DOE will not be issuing credentials to teacher prep candidates, only clearing them of Section 5 violations.
- Line 17 says that the check will be valid for 3 years, which is generally the length of a teacher prep program.
- Lines 18-23 is template language from DOS as required by the FBI to release the records to DOE.
- Lines 24-30 is language in the employment statute regarding if fingerprints are invalid.
- Lines 31-33 deals with the DOE maintaining the confidentiality of the records.
- The DOE may require the applicant to pay the actual cost of the check. Believes it is about \$42.
- Section 5 is verbatim to employment statute with the list of offenses that would prohibit someone from being a teacher.
- There are a lot of offenses that are not included in that section, such as DWI, theft, arson. Those are the offenses a district would be allowed to look at.
- This system is set up to have the DOE act as the floor of protection and the districts can be more protective but not less.
- Lines 6-9 gives the DOE rulemaking authority to address appellant rights for someone who is denied.
- Lines 12 and beyond creates a committee to explore the role the DOE plays with private schools in background checks. Similar to higher eds, private schools are not able to receive the FBI checks.
- Senator Kahn asked to confirm that there is an amendment to share with the Committee.
 - That amendment has been drafted and those are the provisions she spoke to.

Brian Blackden

- Spoke to Part I: Relative to prohibiting certain uses of laser pointing devices.

- Is a federal firearms licensee.
- Under this bill doctors, law enforcement, contractors are exempt.
- Many firearms have lasers attached to them and in a self-defense situation a person may need an exemption to point a laser at a vehicle.
- Spoke to Part III: Relative to incarceration under a suspended sentence.
- As a former counselor at the State Prison, would ask for changing the timeline, as most units have two counselors for 300 inmates.
- There is a lot of programming that goes on.
- Spoke to Part IX: Making an appropriation funding mental health intervention training programs.
- Has been to six friends' funerals who were officers and knows of three others.
- Definitely supports this.
- Spoke to Part X: Relative to interference with the enjoyment of a dwelling place.
- There is law on drones already.
- Has a problem with it being 'shall be guilty of a misdemeanor.' Would prefer it to be 'may' as there are instances where people do things for police. So if the police ask them to do something they become an agent of the police.
- The invasion of privacy is clearly wrong, but instances differ, and every case is different, so it should be 'may'.
- Senator Gannon raised the point that with laser pointers, law enforcement and lawful uses are exempt, specifically range finders.
 - RSA 631-3 did not see any other lawful use. Unfortunately, does not have the bill in front of him.

jch

Date Hearing Report completed: February 26, 2021

Speakers

Judiciary Committee Testify List for Bill SB134 on 2021-02-16

Support: 104 Oppose: 3 Neutral: 8 Total to Testify: 32

Name	Title	Representing	Position	Testifing	Signed Up
McBeath Rebecca	An Elected Official	Myself	Support	Yes	2/12/2021 13:30
Diana John	A Member of the Public	Samba Safety	Support	Yes	2/11/2021 12:01
Mullen Marie	State Agency Staff	NH Dept of Transportation	Support	Yes	2/12/2021 13:38
Towle Zachary	State Agency Staff	Myself	Support	Yes	2/12/2021 12:19
Bauer Steven	A Member of the Public	Mortgage Bankers and Brokers Association of NH	Support	Yes	2/12/2021 8:49
Sienkiewicz Esq. Donald H.	A Member of the Public	New Hampshire Trust & Estates attorneys	Support	Yes	2/12/2021 10:01
Cavanaugh Senator Kevin	An Elected Official	Myself Prime Sponsor of Part II	Support	Yes	2/10/2021 18:18
Willoughby Carol	A Member of the Public	First American Title Insurance Company	Support	Yes	2/10/2021 19:36
Giuda Bob	An Elected Official	NH Senate District 2	Support	Yes	2/10/2021 20:28
Ward Senator Ruth	An Elected Official	Senate District 8 (Supporting Parts X PRIME)	Support	Yes	2/10/2021 16:32
Siracusa Hillman Benjamin	A Member of the Public	Myself (speaking on Part VII)	Support	Yes	2/11/2021 15:26
Norton Kenneth	A Lobbyist	NAMI NH The National Alliance On Mental Illness	Support	Yes	2/12/2021 15:34
Bielecki Elizabeth	State Agency Staff	NH DMV	Neutral	Yes	2/12/2021 15:54
McKay Cathy	A Member of the Public	The NH/Collaborative Law Alliance	Support	Yes	2/13/2021 14:27
McNamara Richard	A Member of the Public	Judicial Branch (speaking to Part V)	Oppose	Yes	2/12/2021 17:20
Sharby Tina	A Member of the Public	Easter Seals NH Inc.	Support	Yes	2/12/2021 10:47
Lascaze Joseph	A Lobbyist	American Civil Liberties Union	Support	Yes	2/14/2021 14:18

Carson Sharon	An Elected Official	Senate District 14 Parts I IV V VI XI XII	Support	Yes	2/14/2021 15:19
Schirch Jane	A Member of the Public	Myself	Support	Yes	2/15/2021 12:32
Cuzzi David	A Lobbyist	BAE Systems	Support	Yes	2/15/2021 15:08
Poitras Erin	A Member of the Public	BAE Systems	Support	Yes	2/15/2021 15:10
Bishop Tom	A Member of the Public	BAE Systems	Support	Yes	2/15/2021 15:11
Ulman Craig	A Lobbyist	National Structured Settlements Trade Association	Support	Yes	2/15/2021 17:13
Juvet David	A Lobbyist	Business & Industry Association	Support	Yes	2/16/2021 11:34
Kelly Jack	A Member of the Public	National Association of Settlement Purchasers	Support	Yes	2/16/2021 8:16
Goldstein David	A Member of the Public	Myself	Support	Yes	2/16/2021 9:43
Hale Ryan	A Lobbyist	NH Bankers	Neutral	Yes	2/16/2021 9:18
Langianese Roselyn	A Member of the Public	Myself - Business Owner Summit Title	Support	Yes	2/16/2021 7:59
Dear Brian	A Member of the Public	National Association of Settlement Purchasers	Support	Yes	2/16/2021 10:41
Sheehan Virginia	A Member of the Public	Myself	Support	Yes	2/16/2021 13:14
Blackden Brian	A Member of the Public	Myself	Oppose	Yes	2/16/2021 15:16
fenton diana	State Agency Staff	Myself	Neutral	Yes	2/16/2021 15:58
Veilleux Henry	A Lobbyist	American Council of Life Insurers	Support	No	2/16/2021 13:16
Strandson Kurt	A Member of the Public	MBBA NH	Support	No	2/16/2021 13:43
Holske Rebecca	A Member of the Public	Myself	Support	No	2/16/2021 10:50
Vachon Susie	State Agency Staff	State Police Criminal Record Unit	Neutral	No	2/16/2021 13:11
Langianese Jason	A Member of the Public	Myself	Support	No	2/16/2021 8:01
Seifert Bernadette	A Member of the Public	Myself	Support	No	2/16/2021 9:28
Winston Kyle	A Member of the Public	Myself	Support	No	2/16/2021 9:34
Ashley Fischer	A Member of the Public	Myself	Support	No	2/16/2021 9:37
Tetreault Michelle	A Member of the Public	Myself	Support	No	2/16/2021 9:57
Corbett Stacy	A Member of the Public	Myself	Support	No	2/16/2021 9:59

collins david	A Lobbyist	NH Credit Unions	Support	No	2/16/2021 10:04
Kittery Melanie	A Member of the Public	Myself	Support	No	2/16/2021 10:04
aaby lynn	A Member of the Public	Myself	Support	No	2/16/2021 10:05
Brasil Rebecca	A Member of the Public	Myself	Support	No	2/16/2021 10:07
Williams Katrina	A Member of the Public	Myself	Support	No	2/16/2021 10:28
Conroy Rebecca	A Member of the Public	Myself	Support	No	2/16/2021 10:30
Samuel Susan	A Member of the Public	Myself	Support	No	2/16/2021 10:36
Wade Kimberly	A Member of the Public	Myself	Support	No	2/16/2021 10:37
Shuey Jordan	A Member of the Public	Myself	Support	No	2/16/2021 10:39
Carmichael Jill	A Member of the Public	Myself	Support	No	2/16/2021 8:34
McQuade Michael	State Agency Staff	Division of State Police	Neutral	No	2/16/2021 8:36
Monahan Kelley	An Elected Official	NH Register of Deeds Association as President	Support	No	2/16/2021 8:41
Bryant Brytney	A Member of the Public	Myself	Support	No	2/16/2021 8:42
Roth Angel	A Member of the Public	Myself	Support	No	2/16/2021 8:44
perez maria	An Elected Official	District 23	Support	No	2/16/2021 8:50
Aranzabal Luis	A Member of the Public	Myself	Support	No	2/16/2021 8:50
Lambert Tricia	State Agency Staff	NHDOT Bureau of Aeronautics	Support	No	2/16/2021 9:00
Roussos George	A Lobbyist	American Property Casualty Insurance Association	Support	No	2/16/2021 9:02
Braun Judith	A Member of the Public	Myself	Support	No	2/16/2021 11:54
SHANELARIS CATHERINE	A Member of the Public	Myself	Support	No	2/16/2021 7:33
Foglia Shannon	A Member of the Public	Myself	Support	No	2/16/2021 7:39
FRIEDRICH ED	A Member of the Public	Myself	Support	No	2/16/2021 7:50
blanchard amy	A Member of the Public	Myself	Support	No	2/16/2021 7:55
Conway Ann	A Member of the Public	Myself	Support	No	2/15/2021 17:21
Matthews Marjorie	A Member of the Public	Myself	Support	No	2/15/2021 13:26
George Kristina	A Member of the Public	Myself	Support	No	2/15/2021 13:34
Fedorchak Gaye	A Member of the Public	Myself	Support	No	2/15/2021 14:43
Westlake Jane	A Member of the Public	Myself	Support	No	2/15/2021 15:03
Hayward Marcia	A Member of the Public	Myself	Support	No	2/15/2021 15:12
Boynton Jill	A Member of the Public	Myself	Support	No	2/15/2021 15:26

Hope Lucinda	A Member of the Public	Myself	Support	No	2/15/2021 15:33
Bonacorsi Michael	A Member of the Public	Myself	Support	No	2/15/2021 16:47
Morneau Katherine	A Member of the Public	Myself	Support	No	2/15/2021 15:46
Alice Hitchcock	A Member of the Public	Myself	Neutral	No	2/15/2021 17:51
Brazeau Pam	A Member of the Public	Myself	Support	No	2/15/2021 17:54
Brazeau Pierre	A Member of the Public	Myself	Support	No	2/15/2021 17:54
Kenny Karen	A Member of the Public	Myself	Support	No	2/15/2021 18:14
Connolly Brenna	A Member of the Public	Myself	Support	No	2/15/2021 18:19
Sawyer Dr. Nicole	A Member of the Public	Myself	Support	No	2/15/2021 16:15
reis Meegan	A Member of the Public	Myself	Support	No	2/15/2021 16:23
Murray Joseph	A Lobbyist	Fidelity Investments	Support	No	2/15/2021 18:57
Parsons Anne	A Member of the Public	Myself	Support	No	2/15/2021 21:12
DeMark Richard	A Member of the Public	Myself	Support	No	2/15/2021 21:22
Kim Sue	A Member of the Public	Myself	Support	No	2/16/2021 0:02
ARONSON LAURA	A Member of the Public	Myself	Support	No	2/15/2021 23:02
Chase Marissa	A Lobbyist	NH Association for Justice	Support	No	2/16/2021 10:59
Ecker Jessica	A Member of the Public	Myself	Support	No	2/16/2021 11:14
Gallant Taylor	A Member of the Public	Myself	Support	No	2/16/2021 11:18
Modigliani Marta	State Agency Staff	Department of Safety	Neutral	No	2/16/2021 11:24
Sculley Robert	A Lobbyist	Myself	Support	No	2/16/2021 11:24
Reiniger Timothy	A Member of the Public	Myself as ABA-Appointed Advisor to RULONA	Support	No	2/16/2021 11:30
Weston Cynthia	A Member of the Public	Myself	Support	No	2/15/2021 12:53
Bruce Susan	A Member of the Public	Myself	Support	No	2/15/2021 12:54
Hanley Tricia	A Member of the Public	Myself	Support	No	2/15/2021 12:49
Jennifer Cogan	A Member of the Public	Myself	Support	No	2/15/2021 13:12
McCue Dara	A Member of the Public	Myself	Support	No	2/15/2021 13:16
Rifkin Caren	A Member of the Public	Myself	Support	No	2/15/2021 14:00
Larson Ruth	A Member of the Public	Myself	Support	No	2/15/2021 10:58
McKay Catherine	A Member of the Public	Myself	Support	No	2/15/2021 12:20
Goulet Zimmerman Anna	A Member of the Public	Myself	Support	No	2/15/2021 12:21
Matthews James	A Member of the Public	Myself	Support	No	2/14/2021 14:25

Abruzzese Cathleen	A Member of the Public	Myself	Oppose	No	2/14/2021 17:40
Chase Wendy	An Elected Official	Myself	Support	No	2/13/2021 13:42
Fordey Nicole	A Member of the Public	Myself	Support	No	2/13/2021 20:33
Guggisberg Karen	A Member of the Public	Myself	Support	No	2/14/2021 9:31
Zboya Patrice	A Member of the Public	Myself	Support	No	2/14/2021 11:08
Nossiff Virginia	A Member of the Public	Myself	Support	No	2/14/2021 13:31
Benton Emily	A Member of the Public	Myself	Support	No	2/12/2021 23:43
Cohen Kelly	A Member of the Public	Myself	Support	No	2/13/2021 7:43
LITTLEFIELD SHANNON	A Member of the Public	Myself	Support	No	2/13/2021 12:08
Bennett Dan	A Lobbyist	NH Automobile Dealers Association	Support	No	2/12/2021 11:41
Murdoch Kimberly	A Member of the Public	Myself	Support	No	2/12/2021 14:23
Karnis Roni	State Agency Staff	Insurance Department	Neutral	No	2/12/2021 14:33

Testimony

Jennifer Horgan

From: Susan M. Davies <jsdavies@earthlink.net>
Sent: Saturday, February 13, 2021 5:26 PM
To: Jennifer Horgan
Subject: Written Testimony in Support of Section IX. of SB 134

To All Members of the Senate Judiciary Committee,

I write in strong support of passage of Section IX of SB 134. Having had very positive experiences with trained law enforcement during mental health crisis events with our adult daughter, I want you to understand how important it is that our law enforcement and first responders continue to be well trained. In difficult situations where my daughter in her distress called 911, had the responders not been trained in crisis intervention, the event could have totally spiraled out of control. We were fortunate that officers both in Manchester and Sandwich had been well trained in de-escalation skills.

Passage of Section IX would allow for continuation and expansion of this invaluable training and enhance the crisis intervention skills of our first responders. Knowing the personal burdens these encounters lay upon our local law enforcement, any and all training we can provide our first responders will contribute both to their own mental health and their ability to continue to serve us in times of crisis.

Thank you for support of Section IX. of SB 134,

Susan M. Davies

67 Ledges Drive
Laconia, NH 03246
603-556-9377

Also: Mt. Israel Road,
Center Sandwich, NH 03227



First American Title™

Testimony of First American Title Insurance Company

on

**S.B. 134-FN Relating to the revised uniform law on notarial acts and the uniform
real property electronic recording act**

before the

Senate Judiciary Committee, New Hampshire Legislature

Tuesday, February 16, 2021

1:30 p.m.

Madame Chair and Distinguished Members of the Committee:

First American Title Insurance Company¹ is grateful for the opportunity to **support** S.B. 134-FN to adopt remote online notarization in New Hampshire, to discuss how the legislation will benefit New Hampshire's residents and business community. One has only to recall the events of the past year to grasp the timeliness of this discussion and the importance of remote online notarization. Everyday New Hampshire residents are grappling with the need to execute critically important documents while balancing concerns over social distancing. Remote online notarization serves many needs, but the challenges we've all faced over the past year, and continue to face in the coming months, illustrate this best.

Along with others in the mortgage and land title industries, the title industry has taken a keen interest in remote online notary laws because notaries are the lynchpin of our system of real estate transfer and recording. As a leading national provider of settlement services, and a major consumer of notary services, we are interested in making sure that any remote online notary law provides sufficient safeguards to protect the identities and real property interests of New Hampshire's citizens. In this testimony, First American Title, as a member of the title industry, seeks to discuss our interest in Section II of S.B. 134-FN as amended, our role amongst industry stakeholders in the notarial process, the benefits and potential pitfalls that accompany online notarization, and the principles that we believe should inform the legislative process to have a safe and effective online notarization system. In addition, we discuss the shortfall of NH RSA 456-B as written today, in relation to the authorization and regulation of remote online notarization.

Notaries perform a vital function across a wide spectrum of our country's commercial, private, and governmental spheres. While real estate transactions constitute only a fraction of the total number of notarizations that take place today, notaries play an outsized role in the real estate industry, which by some estimates constitutes the single largest sector of the U.S. economy.

Notaries are critical to our system of real estate transfer and land records. For a document to be recorded with a county registry, state law requires documents evidencing transfer of an interest in title to be notarized. Without a proper and valid notarization, a document may not be able to be recorded. What is more, if a document is recorded but contains an improper or invalid notarization,

¹ First American Title Insurance Company is a subsidiary of First American Financial Corporation (NYSE:FAF), one of the nation's largest title insurance companies and providers of real estate settlement services.

a court may still find that the document was not properly entitled to be recorded or worse, set aside the validity of the document itself. Such an outcome can result in serious legal and economic consequences.

The risk of improperly or invalidly notarized documents is thus a core threat that runs through our entire real estate economy.

The Challenges of Remote Online Notarization

Until a few years ago, the concept of notarizing a document when the signatory is in a different physical location than the notary would have been a contradiction in terms. The very purpose of the notarial process is to determine the identity of the person in front of the notary, to assess the capacity of the signatory, and to certify, in the notary's best professional judgment, that a signatory's execution of a document or attestation of facts was duly, freely, and voluntarily given. These functions all require personal interaction and a high degree of awareness by a notary of the circumstances surrounding a notarial event.

The advent of high-speed internet and increases in the security, effectiveness and availability of communication technologies (both hardware and software) have resulted in an overwhelming number of states enabling, or considering enabling, the notarial event to take place over the internet.² These "remote online" notarization laws serve to revolutionize the notarial process in the same way that new technologies have affected other fundamental aspects of our daily lives. However, unique safety and legal challenges must be addressed.

We believe that a remote online notarization law, when done *correctly*, can provide a superior consumer experience, increase efficiencies across many industries, provide greater ease of access, and lower costs to consumers and business. In particular, rural or underserved communities, those without ready access to transportation, and persons serving in the military in other parts of the country and world, to name a few, will be tremendously helped by technology that allows people to notarize documents from the convenience of their homes or jobs at any time of the day. In other words, remote online notarization holds out the promise of becoming a major societal good.

We also believe that, when done *poorly*, remote online notarization could jeopardize consumers' identities, create new avenues for elder abuse, and make it easier for fraudsters and the unscrupulous to steal property rights. In addition, a poorly conceived remote online notary law could result in legal challenges to the validity of notarized documents that are a part of the public records, thereby rendering property rights less secure. Addressing these issues is what we term the *challenges of remote online notarization*.

Because of these complex challenges, and the utmost need to protect the property rights of NH's citizens, the enactment of any remote online notary law should be undertaken carefully and methodically.

² Appendix A provides a list of states that have enacted remote online notarization, or who have legislation pending relating to remote online notarization.

NH's Uniform Law on Notarial Acts ("ULONA") and "Personal Appearance"

NH law does not currently authorize remote online notarization. The language of RSA 456-B:I tells us that a "notarial act" includes "taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument." In every notarial act, the "officer must determine, either from personal knowledge or from satisfactory evidence, that the *person appearing before the officer* ... is the person whose true signature is on the instrument" (emphasis added). Historically under the common law, which ULONA codifies, this requirement for "personal appearance" means that the officer must be in the physical presence of the signatory. Therefore, to authorize remote online notarizations NH law must specifically permit the "personal appearance" requirement to be satisfied by use of audio-video communication technology (e.g., a webcam).

As of the drafting of this testimony, twenty-nine (29) states have passed legislation authorizing remote online notarization. Eleven (11) additional states have pending remote notarization related legislation pending. Outside of the authority of our current Emergency Order #11, issued by Governor Sununu, the inability of a New Hampshire notary to perform a remote notarization means New Hampshire's citizens may only seek such services out-of-state. Such a result does not benefit New Hampshire notaries or consumers.

Use of Uniform Law and Standards for Remote Online Notarization

Several states have enacted legislation based on the 2018 version of the Revised Uniform Law on Notarial Acts, also known as "RULONA 2018."³ This is the model that S.B. 134-FN is based upon. Very simply, it creates another method by which a notarial act may be carried out, remotely. This is done through the modification of NH RSA 455 and 456: B, our existing legal framework governing notaries and notarial acts, and through adoption of sections of the Uniform Real Property Electronic Recording Act ("URPERA"). S.B. 134-FN utilizes necessary definitions from RULONA 2018 to contemplate the notarial act being undertaken when the signer is not in the physical presence of the notary using technology. Moreover, S.B. 143-FN implements a legal framework which support the National Electronic Notarization Standards adopted by the National Association of Secretary of States (NASS) in February 2018. In short, RULONA 2018 is a well drafted and tested legislative model, which fits neatly into New Hampshire's existing Uniform Law on Notarial Act and therefore our laws.

³ See: <https://www.uniformlaws.org/committees/community-home?CommunityKey=8acec8a5-123b-4724-b131-e5ca8cc6323e>

Enhanced Security for the Most Important Transactions

A comprehensive notarization law embraces the latest technologies to prevent fraud in the notarial process. It is crucial to use available tools to protect people's most valuable assets—ownership of their homes.

- **Enhanced Identification Requirements:** Any remote online notarization law must incorporate enhanced ID requirements and use a multi-factor approach to authenticate signers. Leveraging the latest technologies and forensic tools, a well-crafted law can stop fraud before it happens. In addition, such a statute needs flexibility to give the Secretary of State's office the authority to adopt the latest technological tools as they may become available in the future.
- **Robust Audit Trail:** A well-crafted law will require a secure electronic journal entry and audio-video recording made of each notarization be retained by the notary, creating an auditable record to deter potential fraudsters. Criminals are much less likely to steal someone's identity when the camera is rolling.
- **Secure Technologies:** Moreover, a well-crafted law will involve the latest tamper-evident technologies so that third parties can detect whether someone has tried to alter an electronically notarized document.
- **Inconsistent Legislation Among States:** It is important that any remote online notarization legislation take into account the inter-connectivity of our many states. Any new law must ensure that remote online notarizations performed in NH will be effective in other jurisdictions, as well as the reverse. The use of one of the model acts above is the best way to make sure NH law remains consistent with the laws of the other states.

S.B. 134-FN addresses these principals by incorporating the Remote Online Notarization Standards of August 28, 2019 adopted by the Mortgage Industry Standards Maintenance Organization (MISMO Ron Standards)⁴. The MISMO RON Standards are the industry standard for credential analysis, dynamic knowledge-based authentication of witnesses and signers, secure simultaneous sight and sound technology over which to conduct the notarial act, and automated tamper evident record keeping. Under S.B. 134-FN, the MISMO Standards would control unless and until the New Hampshire Secretary of State issues regulations.

The Consumer-Friendly Choice

Remote online notarization is the consumer-friendly alternative to the difficult and time-consuming process of finding a traditional notary for an in-person notarization. Significant benefits include:

⁴ A copy of the MISMO Remote Online Notarization Standards, (Ver.1, August 28, 2019) is included with this testimony.

- Ease of Access: NH residents can get documents notarized *anywhere, anytime*. It is especially useful to disadvantaged or immobilized residents who need to notarize official documents.

Health and Safety: NH residents can get documents notarized safely, without having to leave the security of their home when health or safety concerns for them or others would recommend or require otherwise. NH notaries will have the ability to offer notarial services without the requirement of being in the signor's physical presence thereby reducing the number of in-person interactions.

- Save on Time, Lost Wages and Travel Costs: Remote online notarization eliminates the need to make appointments, take leave from work, or drive for miles to find a notary—all you need is a computer and an internet connection.
- Good for Rural Residents and Members of the Military: Remote online notarization can benefit NH's residents who live in remote areas and members of the military on deployment.
- Consumer Choice: Under S.B. 134-FN, remote online notarization is strictly optional and preserves consumer choice. Use of remote notarization would and should simply be an alternative for those who wish to use it.

Summary

The internet knows no borders. Remote notarizations are happening today in the thousands by residents of all states, including New Hampshire. When New Hampshire residents use online remote notaries from other states they are being deprived of important legal protections which other states' residents are receiving and which New Hampshire residents deserve. Out of state notaries are servicing this important business and societal need that could and should be served by New Hampshire notaries. S.B. 134-FN utilizes tested national model laws, model regulations and model technology standards that New Hampshire can and should adopt to give New Hampshire residents and businesses the advantage and protection of these best-in-class models. At no time is this more important than when our residents are executing some of the most important documents they may ever execute in their lives, such as affidavits, powers of attorney, deeds, and mortgages, to name a few. At no time has the need for such important legislation been so evident. **For all the reasons stated herein, First American Title respectfully requests that SB 134-FN be adopted without delay.**

* * *

Thank you for the opportunity to provide testimony in support of this bill.

Appendix A

**REMOTE ONLINE NOTARIZATION (RON) LEGISLATIVE STATUS
AS OF FEBRUARY 12, 2021**

Permanent RON Law

Alaska
Arizona
Colorado
Florida
Hawaii
Idaho
Indiana
Iowa
Kentucky
Louisiana
Maryland
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
North Dakota
Ohio
Oklahoma
Pennsylvania
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
Wisconsin

Permanent RON Bill Pending

Connecticut
Georgia
Illinois
Kansas
Maine
New Hampshire
New Jersey
New Mexico
New York
Oregon
Wyoming

No RON Activity

Alabama
Arkansas
California*
Delaware
District of Columbia
Massachusetts*
Mississippi
North Carolina
Rhode Island
South Carolina*
West Virginia

* Permanent RON Legislation introduced in prior legislative session.

Section V of SB 134, Marked to Show Proposed Amendments Providing for
Negotiation/Competing Offers

CHAPTER 408-G
STRUCTURED SETTLEMENT PROTECTION

New Chapter: Structured Settlement Protection. Amend RSA by inserting after chapter
408-F the following new chapter:

408-G:1 Definitions. In this chapter:

I. "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

II. "Assignee" means a party acquiring or proposing to acquire structured settlement payment rights from a transferee of such rights.

III. "Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

IV. "Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

V. "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

VI. "Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser.

VII. "Interested parties" means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party to such structured settlement that has continuing rights or obligations to receive or make payments under such structured settlement.

VIII. "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed pursuant to this chapter.

IX. "Payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

X. "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

XI. "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of United States Internal Revenue Code, 26 U.S.C. section 130, as amended.

XII. "Settled claim" means the original tort claim resolved by a structured settlement.

XIII. "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

XIV. "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

XV. "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

XVI. "Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(a) The payee resides in this state; or

(b) The structured settlement agreement was approved by a court in this state.

XVII. "Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or other approval of any court or other government authority that authorized or approved such structured settlement;

XVIII. "Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term "transfer" shall not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

XIX. "Transfer agreement" means the agreement providing for a transfer of structured settlement payment rights.

XX. "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; "transfer expenses" do not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

XXI. "Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

408-G:2 Required Disclosure to Payee. Not less than 3 days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth the following:

- I. The amounts and due dates of the structured settlement payments to be transferred.
- II. The aggregate amount of such payments.
- III. The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the Applicable Federal Rate used in calculating such discounted present value.
- IV. The gross advance amount.
- V. An itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements.
- VI. The effective annual interest rate, which must be disclosed in a statement in the following form: "On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will, in effect be paying interest to us at a rate of ___ percent per year."
- VII. The net advance amount.
- VIII. The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee.
- IX. That the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.
- X. That the payee has the right to seek and receive independent professional advice regarding the proposed transfer and should consider doing so before agreeing to transfer any structured settlement payment rights.

XI. That the payee has the right to negotiate the purchase price offered by the transferee, and the payee is advised to obtain competing offers from other potential transferees.

408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee or assignee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by such court that:

I. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and

II. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice; and

III. The transfer does not contravene any applicable statute or the order of any court or other government authority.

408-G:4 Effects of Transfer of Structured Settlement Payment Rights. Following a transfer of structured settlement payment rights under this chapter:

I. The structured settlement obligor and the annuity issuer may rely on the court order approving the transfer in redirecting periodic payments to an assignee or transferee in accordance with the order approving the transfer and shall, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from any and all liability for the redirected payments; and such discharge and release shall not be affected by the failure of any party to the transfer to comply with this chapter or with the court order approving the transfer;

II. The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(a) If the transfer contravenes the terms of the structured settlement, for any taxes incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

(b) For any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the structured settlement obligor or annuity issuer with the court order approving the transfer or from the failure of any party to the transfer to comply with this chapter;

III. Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between 2 or more transferees or assignees; and

IV. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

408-G:5 Procedure For Approval of Transfers.

I. An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in the Superior Court in the county in which the payee resides, except that if the payee does not reside in this state, the application may be brought in the court in this state that approved the structured settlement agreement.

II. A timely hearing shall be held on an application for approval of a transfer of structured settlement payment rights. The payee shall appear in person at the hearing unless the court determines that good cause exists to excuse the payee from appearing in person.

III. In determining whether a transfer is in the payee's best interest under RSA 408-G:3.1, the court shall consider, among matters, whether the payee has compared competing offers for the structured settlement payment rights that the payee proposes to transfer.

IV. Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under RSA 408-G:3, the transferee shall file with the court and serve on all interested parties, including a parent or other guardian or authorized legal representative of any interested party who is not legally competent, a notice of the proposed transfer and the application for its authorization, including with such notice:

- (a) A copy of the transferee's application.
- (b) A copy of the transfer agreement.
- (c) A copy of the disclosure statement required under RSA 408-G:2.
- (d) The payee's name, age, and county of residence and the number and ages of each of the payee's dependents.

(e) A summary of:

(1) Any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate, applications for approval of which were denied within the 2 years preceding the date of the transfer agreement; and

(2) Any prior transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of the transferee or an affiliate within the 3 years preceding the date of the transfer agreement and any prior proposed transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval of which were denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or otherwise are actually known to the transferee.

(f) Notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing. (g) Notification of the time and place of the hearing and notification of the manner in which and the date by which written responses to the application must be filed, which date shall be not less than 5 days prior to the hearing, in order to be considered by the court.

408-G:6 General Provisions; Construction.

I. The provisions of this chapter shall not be waived by any payee.

II. Any transfer agreement entered into on or after the effective date of this chapter by a payee who resides in this state shall provide that disputes under such transfer agreement,

including any claim that the payee has breached the agreement, shall be determined in and under the laws of this state. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

III. No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival, and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

IV. If the payee cancels a transfer agreement, or if the transfer agreement otherwise terminates, after an application for approval of a transfer of structured settlement payment rights has been filed and before it has been granted or denied, the transferee shall promptly request dismissal of the application.

V. No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this chapter.

VI. Nothing contained in this chapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any applicable law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this chapter is valid or invalid.

VII. Compliance with the requirements set forth in RSA 408-G:2 and RSA 408-G:3 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

2 Applicability. RSA 408-G as inserted by section 1 of this act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the 30th day after the effective date of this act.

3 Effective Date. This act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill establishes procedures relative to the purchase or transfer of structured settlement agreements.

Jennifer Horgan

From: Michael J. Cohen <michael@mjchealthsolutions.com>
Sent: Monday, February 15, 2021 1:15 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: Support SB 134

Honorable Committee Members

As the former Executive Director of NAMI NH and as a father of a daughter with mental illness who has encountered law enforcement while in emergency psychiatric condition I strongly encourage the Committee to support SB 134 especially, Section IX, which would provide 40-hours of training to law enforcement and first responders around de-escalation and intervention in mental health crises. The officers who did intervene in my daughter's situation were trained and it made a significant difference in leading to an appropriate hospitalization to treat my daughter's acute condition. The training proposed enhances the skills of law enforcement and first responders and also addresses their own mental health, often exacerbated following a crisis intervention. The involvement of persons with lived experience in role play scenarios during training better prepares law enforcement and first responders for responding to mental health crisis.

This legislation is a win for the consumer in crisis, a win for law enforcement, a win for effective treatment and a win for the family. Please support this legislation. Thank you.

Sincerely,
Michael J. Cohen
4 Upper Flanders Rd
Amherst NH 03031
604-496-1657
michael@mjchealthsolutions.com

New Hampshire Credit Unions



Creating Cooperative Power

**SENATE JUDICIARY COMMITTEE
PUBLIC HEARING
FEBRUARY 16, 2021**

**A STATEMENT BY DAVID COLLINS ON BEHALF OF
NEW HAMPSHIRE CREDIT UNIONS
IN SUPPORT
SB 134**

**AN ACT ADOPTING OMNIBUS LEGISLATION RELATIVE TO CIVIL ACTIONS AND
CRIMINAL LIABILITY**

The Cooperative Credit Union Association, Inc. (“Association”) is the state credit union trade association, serving 14 New Hampshire federally and state-chartered credit unions that are cooperatively owned by 761,000 consumers as members. On behalf of the New Hampshire credit union movement, the Association supports SB 134, *An Act Adopting Omnibus Legislation Relative to Civil Actions and Criminal Liability*. Testimony in support is limited to Part II of the bill relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.

Overview of Notarial Acts

Notarial acts are a necessary component of the residential loan closing process. Credit unions are continually striving to meet member demand and convenience at every opportunity. New Hampshire credit unions support this legislation which would serve to increase their online capacity to efficiently and safely serve members’ needs in real estate transactions. This is a benefit that is currently enjoyed in most other states across the country.

The Association notes that the Uniform Electronic Transaction Act (“UETA”), and/or E-SIGN currently have the authorization to utilize electronic notarization. Yet even though both UETA and E-SIGN authorize electronic notarization, they do not provide a framework for performing notarial acts electronically. With the rapid advances that have come with online communication and electronic signing technology, which have only been magnified by the current Coronavirus pandemic, there is a need and a desire to have notarial acts be performed electronically. The Association submits that the authority to electronically notarize documents will lead to higher efficiency and less paper in the workplace, allowing credit unions to more efficiently service their members’ notarial needs.

Electronic Notarization vs. Remote Online Notarization:

Electronic notarization requires an individual to physically appear before a notary public for positive identification. The signatures of both the individual and the notary public can be done electronically. The notary public can electronically seal the document using this method of e-notarization. During this process, the document is electronic, the signatures and seal are electronic, but the individual still must physically appear before the notary public for identification purposes.

Remote online notarization provides a platform in which the individual requiring a notarial act can log into and share a document with a notary public online. The individual wishing to have their document notarized would provide positive identification by holding up their government-issued identification to a webcam. The platform uses positive identification technology to then confirm the individual's identity before allowing the notary to perform any notarial acts. The individual would then electronically sign their portions of the document and the notary would electronically sign and seal the document. The entire transaction would be completed online, further increasing the ease and efficiency of having documents notarized.

Overview of Senate Bill 134:

The Association supports consumer choice for remote online notarization. SB 134 is a legislative proposal that works to promote a modern, paperless mortgage closing process. It ensures that safety and soundness is preserved with a rigorous proposed statutory framework so that New Hampshire consumers, as prospective homeowners, and others receive the benefits of a system that protects document integrity and is secure, efficient and cost effective.

New Hampshire credit unions utilized without incident with the temporary authority granted by Executive Order granted at the beginning of the pandemic¹ which set guidelines for remote authorization. In addition, last session the Legislature passed Chapter 17, which authorized remote notarization of paper estate planning documents during the COVID-19 state of emergency. Finally, HB 287 relative to remote notarization remains pending before the House Judiciary Committee. Accordingly, the Association believes that both the volume and cumulative impact of all of these efforts underscores the need for favorable consideration today of SB 134 as a reasonable solution to permanently carry remote online notarization efforts forward.

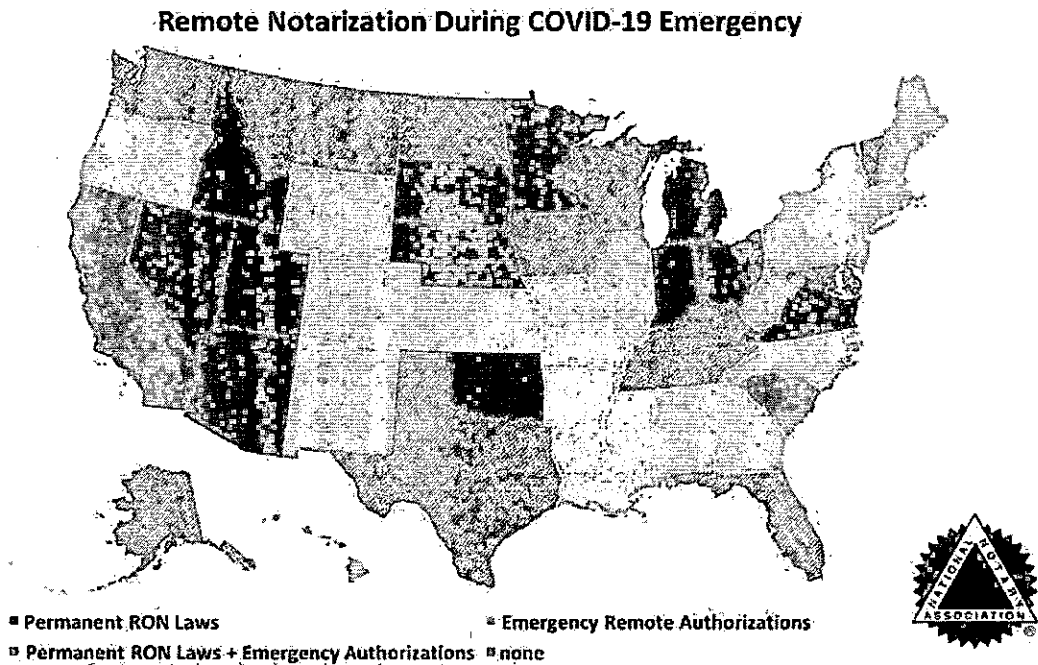
Credit Unions Seek to Improve Member Service by Senate Bill 134:

Service to members is the hallmark of the mission of credit unions as not-for-profit financial cooperatives. Furthermore, striving to improve service levels is a core component of the fabric of every credit union's strategic plans. The need for the authorities in SB 134 is the result of the goal of credit unions to enhance and to expedite current closing features which were brought to light and accelerated by the Know Before You Owe mortgage rule, promulgated by the federal Bureau of Financial Consumer Protection, effective October 3, 2015. One of the important requirements of the rule mandates that consumers receive a new, easier-to-use closing document, the Closing Disclosure, three business days before closing. This allocates more time for borrowers to understand mortgage terms and costs, and provides protection from surprises at the closing table. It also provides time for borrowers to consult with lawyers or housing counselors and ask

¹ Executive Order #11 issued March 23, 2020.

questions about the terms of their mortgage. The result is that greater informed consumers are at the closing table ready to move forward in the most expeditious manner as possible with an elevated expectation that New Hampshire lenders can accommodate their needs. In addition, consumers with experience in real estate closings in states that already permit e-notary closings are also familiar with and value the convenience. They seek the same convenience from their preferred local lender on property located in the Granite State.

Action by Other States:



Without favorable consideration of SB 134, the Association believes that the Granite State is falling significantly behind, with its reputation to help its residents safely, securely and expeditiously navigate the American dream of homeownership, as well as advance its business-friendly goals.

The Association appreciates the opportunity to provide input to the Committee, and respectfully requests favorable consideration of SB 134.

Senate Judiciary Committee
February 16, 2021
Statement in Support of SB 134
Page 4

Jennifer Horgan

From: Rebecca Holske <rholske@icloud.com>
Sent: Tuesday, February 16, 2021 10:54 AM
To: Jennifer Horgan
Subject: In support of Section IX 134.

Hello,

> I would like to submit written testimony supporting positive experiences I have had with local law enforcement in the past when involved with a family member in multiple mental health crises. I had nothing but supportive help with compassionate care without judgement in my town of Boscawen and it made a world of difference when my family was in need of help.

>

> I want to support training as well due to a close friend in another city having a traumatic experience ending in her loved ones suicide that was part of law enforcement and well handled. After watching HBO's Crisis Cops and working in substance use and mental health treatment I believe that law enforcement has become the first point of contact in potential intervention. If there is little understanding of mental health issues or compassion suffering individuals will be incarcerated for behavioral health where they will be less likely to receive help.

Sincerely,
Rebecca Holske
295 Corn Hill Rd
Boscawen NH 03303
Sent from my iPhone



MISMO Remote Online Notarization Standards

FINAL Candidate Recommendation (CR) Version

Version 1

August 28, 2019

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Standards for Remote Online Notarization

Summary

This document outlines technical and procedural guidance and establishes underlying principles that should be considered as organizations move towards implementation of Remote Online Notarization.

The intended audience includes but is not limited to: state regulators, commissioning or licensing officials; financial institutions; service providers; technology providers; title insurance underwriters; trade associations; mortgage and title/settlement service providers.

It is worth noting that these are the minimum set of technical and procedural standards and parties are free to implement additional requirements, practices or processes for the items addressed by these standards¹. While not specifically addressed in these standards, remote online notarization system implementations should accommodate ADA (Americans with Disabilities Act) computer user interface standards and/or best practices as required by state and/or federal law².

Capitalized terms not defined in the text are defined in Section 7, entitled "DEFINITIONS".

1. CREDENTIAL ANALYSIS AND AUTHENTICATION

The following authentication and analysis protocols are intended to support the notary public (Notary) in making the determination that satisfactory evidence of each Principal's identity has been established for a Remote Online Notarization. This section specifies standards for States to reference when identity proofing involving Knowledge-Based Authentication (KBA) and/or credential analysis is required to perform Remote Online Notarization³. If a State specifies additional or alternative means for identify verification aside from identify proofing or credential analysis (such as by oath or affirmation of a credible witness, by a Notary's personal knowledge of the Principal, or by other methods), such additional or alternative means are not addressed by these standards.

- a. Principal identity verification for Remote Online Notarization services must include consistent Multi-Factor Authentication procedures:
 - i. Each Principal's identity credential must be verified against trusted third-party data sources;

¹ Mortgage lenders, insurance underwriters or other parties may impose more restrictive or additional standards based on jurisdiction, transaction type, financial implications or other factors.

² ADA requirements are a separate and distinct body of work and are not addressed by these standards.

³ As of the time of this writing, KBA, and credential analysis procedures and technology are widely accepted as identity proofing processes and are therefore specifically addressed, however, MISMO supports efforts to explore and permit other types of analysis and authentication.

- ii. Each Principal's identity must be bound to each individual Principal following successful Knowledge-Based Authentication, or another form of authentication or trusted third-party identity verification such as online banking authentication; and
- iii. Procedures must provide for human visual comparison between the Principal's identity credential presented to the Notary and the Principal himself or herself.

b. Credential Analysis of Government Issued Identification

Remote Online Notarization service providers must use automated software processes to aid the Notary with their role in verifying each Principal's identity.

- i. The credential must pass an authenticity test, consistent with sound commercial practices that:
 - 1. Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
 - 2. Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
 - 3. Use information held or published by the issuing source or authoritative source(s), as available, to confirm the validity of credential details; and
 - 4. Provide the output of the authenticity test to the Notary.⁴
- ii. The credential analysis procedure must enable the Notary to visually compare both of the following for consistency:
 - 1. The information and photo on the presented credential image; and
 - 2. The Principal as viewed by the Notary in real time through the audio/video system.
- iii. Credential Type Requirements
 - 1. Must be a government-issued document meeting the requirements of the State that contains a photograph of the individual, may be imaged, photographed and video recorded under applicable state and federal law⁵, and can be subjected to credential analysis.
- iv. Credential Image Capture
 - 1. The credential image capture procedure must confirm that:
 - a. The Principal is in possession of the credential at the time of the Notarial Act;
 - b. Credential images submitted for credential analysis have not been manipulated; and
 - c. Credential images match the credential in the Principal's possession.

⁴ The output may simply indicate a "pass" or "fail" type score, or may provide more information to indicate the outcome of the authenticity test to the Notary.

⁵ State or federal law may prohibit the capture of certain credential images.

2. The following general principles should be considered in the context of image resolution:

- a. Captured image resolution should be sufficient enough for the service provider to perform credential analysis per the requirements above.
- b. Image resolution should be sufficient to enable visual inspection by the Notary, including legible text and clarity of photographs, barcodes, and other credential features.
- c. All images necessary to perform visual inspection and credential analysis must be captured — e.g. U.S. Passport requires identity page; state driver's licenses require front and back.

c. **Dynamic Knowledge-Based Authentication**

Dynamic Knowledge-Based Authentication (KBA) is an identity assessment that is based on a set of questions formulated from public or private data sources. A Dynamic Knowledge-Based Authentication procedure must meet the following requirements:

- i. Each Principal must answer questions and achieve a passing score.
 1. MISMO Recommends:
 - a. Five questions, drawn from public or private data sources.
 - b. A minimum of five possible answer choices per question.
 - c. At least four of the five questions answered correctly (a passing score of 80%).
 - d. All five questions answered within two minutes.
- ii. Each Principal to be provided a reasonable number of attempts per Signing Session.
 1. MISMO Recommends:
 - a. If a Principal fails their first quiz, they may attempt up to two additional quizzes within 48 hours from the first failure⁶.
 - b. During any quiz retake, a minimum of 40% (two) of the prior questions must be replaced⁷.
- iii. The Remote Online Notarization system provider must not include the KBA procedure as part of the video recording or as part of the system provided person-to-person video interaction between the Notary and the Signatory, and must not store the data or information presented in the KBA

⁶ The standard of three total attempts within 48 hours accommodates a security provision (a maximum number of attempts per Signing Session) and a business provision (a reasonable time frame for such attempts) for a wide range of notarial scenarios. These standards also accommodate known technical limitations imposed by KBA service providers.

⁷ The purpose of replacing questions in subsequent KBA quizzes is to reduce the statistical probability of an individual guessing correct answers.

questions and answers. However, the output of the KBA assessment procedure must be provided to the Notary.⁸

d. Biometrics and Other Requirements

Biometric sensing technologies have potential application to Remote Online Notarization in the areas of authentication, credential analysis, and identity verification. These technologies include but are not limited to: facial, voice, and fingerprint recognition.⁹

e. Workflow Continuity Requirement

If a Principal must exit the workflow, they must meet the criteria outlined in this section and restart the Credential Analysis and Authentication workflow from the beginning.¹⁰

2. AUDIO/VIDEO QUALITY

- a. A reliable Remote Online Notarization operating model should consist of continuous, synchronous audio and video feeds with good clarity such that all participants can be clearly seen and understood at all times.
- b. Inherent in online audio/video technology is the presence of temporary surges or spikes in quantitative measures like bitrate and/or frequency of communications and no simple technical limits are practical or prudent. Rather, a sounder approach to ensuring reliable real-time communications is to rely on the judgement of the Notary to determine the adequacy of the communications and provide direction to terminate the session if those conditions are not met¹¹.
- c. The audio/video recording must include the person-to-person interaction required as part of the Notarial Act as defined by the State¹², must be logically associated to the electronic Audit Trail¹³, and must be capable of being viewed and heard using broadly available audio/video players.
- d. The video recording of the transaction documents executed in the Remote Online Notarization process is not required as part of these standards.¹⁴

⁸ The output may simply indicate a “pass” or “fail” type score, and/or may provide more information to indicate the outcome of the KBA assessment to the Notary.

⁹ MISMO does not offer specific guidance in applying this type of authentication protocol due to the lack of available industry standards regarding biometric technology.

¹⁰ Principals may have to exit the workflow for various valid or invalid reasons and may do so for an unpredictable amount of time. Therefore, to simplify these standards and provide unambiguous guidance, MISMO requires a new Remote Online Notarization workflow be started each time a Principal exits the workflow.

¹¹ Uniform standards that take into account all potential audio/video disruptions and whether they affect the integrity of the Notarial Act are not practical, and therefore, these standards provide for human judgement to determine adequate audio/video quality.

¹² The specific activities required in the Notarial Act may vary by state and therefore are not defined here.

¹³ One must be able to match the application of eSignatures, and other trackable events recorded in the Audit Trail, to the people and actions in the audio/video recording.

¹⁴ Many documents that may be notarized in this manner may contain non-public personal information (NPI) as defined under applicable law. Therefore, MISMO does not require video capture of documents or credentials as part

3. STORAGE OF NOTARIAL RECORDS

- a. Where applicable, and in accordance with State laws, rules and regulations, the Notary must maintain accurate and reliable Notarial Records. These State laws, rules and regulations may or may not require that a copy of the audio/video recording be part of a notarial journal (which may be subject to public access under State law)¹⁵. Notaries must have the ability to electronically capture the required Notarial Records or to direct a third party to do so on their behalf. In either case, the Remote Online Notarization system must:
 - i. Facilitate the process of collecting the required Notarial Records;
 - ii. Provide a method by which a Notary can access and/or export the Notarial Records; and
 - iii. Provide automated backup of the Notarial Records and audio/video recording to ensure redundancy.
- b. The Remote Online Notarization technology solution must employ data protection safeguards consistent with generally accepted information security standards.
- c. Retention of the audio/video recording and Notarial Records by either the Notary public or their designated third party, as directed by the Notary, must adhere to the laws, directives, rules and regulations of the State.

4. POST-EXECUTION RECORDS

- a. Significant actions completed as part of a Remote Online Notarization Signing Session should be recorded in an Audit Trail. Each entry in this Audit Trail should clearly indicate the action performed (e.g. addition of an electronic signature), the date/time of its performance (e.g. Coordinated Universal Time, 2018-08-21 01:14:22 UTC), the name of the party performing the action (e.g. John Doe) and the IP address of the party performing the action. Further detailed guidance on the contents of the Audit Trail or its form is beyond the scope of these standards.
- b. Each document completed as part of a Remote Online Notarization should be electronically signed and rendered Tamper-Evident.

5. SECURITY CONSIDERATIONS

Remote Online Notarization technology providers must have comprehensive security programs in place to ensure privacy and data security. Technology providers should be vigilant to ensure consumer data, privacy and information security laws and regulations are satisfied through their information security programs. There are many industry accepted models, standards and frameworks for how to develop such programs.

of these standards. Including the documents and/or credentials in the video recording may be considered as a matter of policy on a state-by-state basis.

¹⁵ Treatment of the audio/video recording in the context of the Notarial Record or journal is a matter of public policy and not addressed in these standards.

6. COUNTY RECORDING CONSIDERATIONS FOR ELECTRONICALLY NOTARIZED DOCUMENTS

- a. The Remote Online Notarization system, process, and procedures must be capable of generating a printable version of all documents executed in the system, including but not limited to the documents executed in the Notarial Act, and associated certifications as required by the State, county and/or other governing or regulatory body.¹⁶
- b. Any document notarized remotely online must clearly state, in the remote online notarial certificate, that the person making the acknowledgment, oath or affirmation and signing the document appeared remotely online using audio/video communication technology.

7. DEFINITIONS

- a. **“Audit Trail”** means a chronological and detailed list of critical events and actions, from the beginning to the end of the Remote Online Notarization process, including the dates and times the events and actions took place and identification of the individuals and/or systems that performed the events or actions. Also known as: Audit Log or Event Log.
- b. **“Knowledge-Based Authentication” or “KBA”** means an identity verification method based on knowledge of private information associated with the claimed identity of a person.¹⁷
- c. **“Multi-Factor Authentication” or “MFA”** means a method of access control in which a user is granted access after successfully presenting identity evidence through a minimum of two of the following mechanisms: something they *have* (e.g. an ID credential), something they *know* (e.g. KBA), something they *are* (e.g. iris, retinal, thumbprint scans, facial recognition and other forms of biometric identification).
- d. **“Notarial Act”** means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of a specific State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.¹⁸
- e. **“Notarial Records”** means details of the Notarial Act common to the State’s notarial journal or register requirements.

¹⁶ While outside the scope of these standards, the concept of “papering out” and printing eNotarized documents for use in a paper county recording process may be permissible under the law of some states. These standards require electronically created documents be printable for this purpose.

¹⁷ DIGITAL IDENTITY GUIDELINES NIST SP 800-63-3 (page 46 for definition of KBV a.k.a. KBA)

¹⁸ Mortgage Bankers Association – American Land Title Association Model Legislation for Remote Online Notarization Sec.1 Definitions (9) “Notarial Act” page 3

- f. **“Principal”** means an individual whose electronic signature is notarized in a remote online notarization; or making an oath or affirmation or an acknowledgment other than in the capacity of a witness for the remote online notarization.¹⁹
- g. **“Record”** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.²⁰
- h. **“Remote Online Notarization”** means a Notarial Act performed by means of an electronic device or process that allows a notary public and a Principal, who is not in the same physical location as the notary public, to complete a Notarial Act and communicate with each other simultaneously by sight and sound.²¹
- i. **“Signing Session”** means one or more Notarial Acts performed on a single set of documents as a single event by a single Notary with one or more Principals and any applicable witnesses.
- j. **“State”** means the state or jurisdiction under which the notary public is commissioned and for which the notary public is performing the Remote Online Notarization.²²
- k. **“Tamper-Evident”** A technology based process that indicates whether a change has been made to the record since the technology was applied.

¹⁹ Mortgage Bankers Association – American Land Title Association Model Legislation for Remote Online Notarization Sec.1 Definitions (11) “Notarial Act” page 3

²⁰ RULONA Section 2. Definition for Record (Page 5)

²¹ Adapted from the Mortgage Bankers Association – American Land Title Association Model Legislation for Remote Online Notarization Sec.1 Definitions (13) “Remote online notarization” page 4 and “(2) “Communication technology” page 1.

²² This state definition provides clarity for which jurisdiction rules, requirements or regulations must be referenced when there is more than one state related to a Notarial Act: (1) the state where the Principal is located, (2) the state where a property related to the Notarial Act is located, (3) the state in which the Notary is located, or (4) other state references.

Jennifer Horgan

From: Tim Reiniger <tim@reinigerllc.com>
Sent: Tuesday, February 16, 2021 11:42 AM
To: Jennifer Horgan
Cc: Tim Reiniger; Thomas.Prasol@demers-prasol.com
Subject: Support for SB 134

Dear Jennifer,

I am submitting these brief comments in conjunction with today's Senate Judiciary Committee hearing. Thank you for your assistance.

.....
Dear Sen. Carson and Members of the Senate Judiciary Committee,

I have the honor of serving as American Bar Association-appointed Advisor to the Uniform Law Commission's (ULC) standing committee for the Revised Uniform Law on Notarial Acts (RULONA). In 2018, the ULC formally approved the current version that authorizes online notarization. Based on this experience as ABA Advisor to the ULC effort as well as involvement in authoring the first such law out of Virginia (2011), I strongly support the enactment of SB 134, which includes the key language and policy components of the ULC recommended approach.

SB 134 will strengthen the current New Hampshire statute in two important respects. **First**, by authorizing online notarization, SB 134 gives New Hampshire consumers access to the strongest possible protections afforded by leveraging multi-factor online authentication of signers, as recommended by the ULC. **Second**, the legislation incorporates the RULONA policy with respect to the required retention of the audio-video recording of each remote signer/online notarization session. Above all, the result will be a notary office that is well-positioned to best support New Hampshire's diverse commercial and public sector needs.

Experience in Virginia and the 30 other enacting states has shown that giving both a) notaries the capability of performing notarial acts in the online environment and b) the banking industry the ability to e-record, has been highly valued by the business community, consumers, and government. And, because of the inherent security requirements of online notarizations, to-date there have been no reported instances of notarial fraud or court challenges with respect to documents notarized in this manner.

Please do not hesitate to contact me should you have any questions about this letter of support or desire more information about the experience with online notarization in other states. I very much thank you for your consideration.

Very truly
yours,

Timothy S. Reiniger, Esq.
Cape Elizabeth, Maine
(Member of the New Hampshire and Maine Bars)

Sent from [Mail](#) for Windows 10

Jennifer Horgan

From: Virginia S. Sheehan <vss@fstlaw.com>
Sent: Tuesday, February 16, 2021 2:29 PM
To: Jennifer Horgan
Subject: Written testimony in support of SB 134, Parts II and VII

To the Senate Judiciary Committee
Written testimony in support of SB 134

My name is Virginia Sheehan and I have been practicing as an estate planning, probate and trust attorney since 1990. I am here to support passage of SB 134, in particular Parts II and VII.

Part II:

Legislation passed last summer authorized remote notarization of wills, trusts, and powers of attorney, and remote witnessing of wills, during the COVID-19 State of Emergency. This has provided NH estate planners the ability to serve many clients who otherwise could not have completed their estate plans due to medical concerns, and to keep many others safe during the process.

Senator Cavanaugh introduced permanent remote notarization legislation this session that has been added to SB 134 in Part II. He did this at the request of the Mortgage Bankers & Brokers Association of New Hampshire. The purpose is to allow remote real estate closings, and the legislation is based on model statutes, the Revised Uniform Law on Notarial Acts and the Uniform Real Property Electronic Recording Act ("RULONA/URPERA") that have been enacted in many other states. Last summer's amendment to the notarial acts statute regarding estate planning documents, RSA 456-B,VII, is appropriately included in Senator Cavanaugh's proposed legislation, but at this point it is also appropriate to further amend RSA 456-B,VII, as well as RSA 551:2,III regarding remote witnessing of wills. The proposed amendments, which were provided to Senator French by Attorney Donald Sienkiewicz via email, are germane to the subject matter and overall intent of RULONA/URPERA, and would make the temporary authority to do remote estate planning document signings permanent. These are non-partisan amendments that will continue to allow many residents of New Hampshire to put their estate planning affairs in order without putting their health at risk, whether due to Covid-19 or other health care concerns.

Part VII:

I also support passage of Part VII of SB 134. This part expands the simplified probate administration process known as waiver of administration, makes several corrections to the intestacy and durable power of attorney statutes, and updates the uniform disclaimer of property interests act. These changes were passed by the Senate last year, but unfortunately, despite being non-controversial, were part of an omnibus bill that was vetoed last summer. These changes were originally proposed by an informal "working group" of estate planning/probate attorneys who are interested in reviewing statutes relative to our practice and proposing changes to make improvements that benefit NH citizens and the probate practice in the NH Circuit Court – Probate Division. Consistent with this goal, these changes were reviewed by Judge David King and he is supportive of them, especially the changes to the waiver of administration statute that directly impact the Court. The waiver of administration changes will simplify the probate process for NH citizens, while continuing the

oversight of the Court if necessary. This will save time and money for both NH citizens and the NH Circuit Court – Probate Division.

Thank you for your consideration.

Virginia Symmes Sheehan
Flood, Sheehan & Tobin, PLLC
2 Delta Drive, Suite 303
Concord, NH 03301
Tel: 603-415-4200
Fax: 603-415-4201
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Jennifer Horgan

From: Alexis Murray <alexisgeorgina@gmail.com>
Sent: Wednesday, February 17, 2021 9:58 AM
To: Jennifer Horgan
Subject: support of Section IX. of SB 134.

Dear Ms. Horgan,

I am writing in support of this bill. As a mental health practitioner for 20 years, I can testify to the improved quality of life for both offenders and officers when intentional practices are used when interacting.

thank you,

Alexis Murray-Golay, LCMHC & LTF (Licensed Clinical Mental Health Counselor and Licensed **TIMBO** Facilitator)

Trauma Informed Mind and Body: www.timbocollective.org

312-933-6760

Draft Amendment to Part XI of SB 134

Amend the bill by replacing Part XI, sections 1-3, with the following:

1 New Paragraph; Motor Vehicle Records; Employer Access. Amend RSA 260:14 by inserting after paragraph IV the following new paragraph:

IV-a.(a) Except for a person's photograph, computerized image, and social security number, motor vehicle records and at least monthly electronic bulk files indicating changes in driving violations and driver license status shall be made available upon proof of the identity of the person requesting the records and representation by such person on a form satisfactory to the department that the records will be strictly limited to one or both of the following described uses:

(1) For use by an entity that employs drivers in the course of their business, or an authorized agent of such an entity, which requires a motor vehicle record or a monthly notification of changes to motor vehicle records in connection with pre-employment or continued employment screening of employees for driver safety reasons; or

(2) For use with respect to requests as to whether a driver meets the requirements of RSA 376-A:12.

(b) No motor vehicle records made available under this paragraph shall be sold, rented, transferred, or otherwise made available in whole or in part, in any form or format, directly or indirectly, to another person, except that an authorized agent may make such records available to any principal on whose behalf the records were sought if the name of that principal was provided to the department at the time the records were sought.

(c) Any person who makes a request under this paragraph shall have first obtained the written consent of the person whose records are being requested. The written consent shall be retained for a period of 3 years and shall be made available upon request to the division for inspection. Motor vehicle records obtained under this paragraph shall not be subject to the notarization requirements of RSA 260:14, VII.

2 Effective Date. Part XI of this act shall take effect upon its passage.

**Testimony of Erin Poitras, Laser Safety Officer, BAE Systems
Regarding SB 134 Part I**

NH Senate Judiciary Committee, 02/16/2021, 1:30 pm (via Zoom)

- Good afternoon, Chairwoman Carson and members of the committee.
- For the record, my name is Erin Poitras, and I am the Laser Safety Officer for BAE Systems' Electronic Systems sector in Nashua, New Hampshire testifying on behalf of the company.
- BAE Systems supports Part One of Senate Bill 134, regarding the prohibition of certain uses of laser pointing devices.
- We do not have any position on any of the other parts of this omnibus legislation.
- By way of background, in 2016, a bill was signed into law prohibiting the shining of a laser pointer at an airplane, law enforcement officer, law enforcement vehicle, or a person or structure.
- The bill was in response to such laser pointer incidents in the state and nationwide.
- The 2016 law included very limited exceptions, which had the unintentional effect of making today's everyday uses of lasers illegal, from vehicle sensors to golf and hunting range finders.
- As Senator Carson knows, our company became aware of an issue with the New Hampshire state law about a year ago.
- At the time, it was too late to seek legislative remedy.
- The reason we approached Senator Carson with this issue, is that the law also prohibits some of the research, development,

and testing work that aerospace and defense technology companies like BAE Systems conducts with lasers.

- To be clear, BAE Systems takes every precaution to legally work around the unintended prohibitions set forth in the 2016 law until the legislature can provide a remedy.
- In addition, we are not aware of any law enforcement entity interpreting and enforcing the statute beyond the intent of the law.
- However, we do believe appropriate exemptions should be placed in statute to clarify lawful uses, while ensuring the malicious use of lasers and laser pointers is prohibited.
- I'd like to thank the Departments of Safety, Transportation, and Fish and Game for their willingness to provide feedback to us as we worked to provide a solution for Senator Carson to introduce in the Senate.
- I respectfully request the committee recommends "Ought to Pass" on Part One of Senate Bill 134
- Thank you for your consideration.
- I'm happy to take any questions.

Respectfully Submitted by David Cuzzi of Prospect Hill Strategies for BAE Systems
David.Cuzzi@prospecthillstrategies.com, 603-716-0569

February 16, 2021

Ray Brousseau
Vice President & Deputy General Manager
BAE Systems Electronic Systems
65 Spit Brook Road
Nashua, NH 03061

BAE SYSTEMS

March 2, 2021

The Honorable Sharon Carson, Chair
Senate Judiciary Committee
State House, Room 106
107 North Main Street
Concord, NH 03301

Dear Chairwoman Carson:

On behalf of the thousands of BAE Systems employees in Southern New Hampshire, including those who work in your district, thank you for bringing forth Senate Bill 134 Part I. BAE Systems supports the bill, relative to prohibiting certain uses of laser pointing devices. The company has no position on other parts of this omnibus legislation.

Current New Hampshire law – specifically, RSA 631:3-a – prohibits the pointing of lasers, visible or invisible, with limited exceptions. That law was enacted in 2016, after unanimous passage, in response to a growing number of incidents of people shining laser pointers at aircraft and law enforcement personnel.

Unfortunately, the broad nature of the 2016 law unintentionally makes illegal the everyday use of lasers, from some vehicle sensors to certain consumer electronics. Most important to us at BAE Systems, it also restricts national security-related research and development projects involving lasers.

Our proposed exemption in the law's language would apply to companies like BAE Systems engaged in critical government-funded research and development projects. It would also allow for the lawful commercial, civilian, and government use of laser pointing devices, including those by law enforcement officials. A one-page overview of SB 134 Part I is attached.

BAE Systems respectfully requests the Judiciary Committee recommend SB 134 Part I, relative to providing exemptions to the prohibited uses of laser pointing devices, Ought to Pass (OTP) to the full Senate. Should you have questions or require additional information, please feel free to contact me, or our Concord representative, David Cuzzi of Prospect Hill Strategies (603-716-0569).

Thank you for your efforts on behalf of BAE Systems.

Sincerely,



Ray Brousseau
Vice President & Deputy General Manager
BAE Systems Electronics Systems

INFORMATION PAPER

SB 134 Part I – Prohibiting certain uses of laser pointing devices

ISSUE: Current New Hampshire law prohibits the pointing of lasers, visible and invisible, with limited exceptions. The very broad prohibition in state law of a laser pointer unintentionally makes illegal the everyday use of lasers, from vehicle sensors to national security-related research and development, to golf and hunting rangefinders.

BACKGROUND: In 2016, the legislature passed, and then-Governor Hassan into law HB 1599, relative to shining a laser at an aircraft or vessel, or another person. This was in response to a growing number of incidents of people shining green laser pointers into the cockpits of aircraft, and also shining laser pointers on law enforcement personnel to give the appearance of a weapon targeting them. Unfortunately, the bill, which became law after passing both chambers by voice vote, did not account for technological advances. As a result, the law unintentionally makes the common, everyday use of visible and invisible lasers illegal. Vehicle safety sensors, golf and hunting rangefinders, and research, development, and testing of laser-based military technologies are examples of visible and invisible lasers that are often pointed at vehicles and people. And as such, are technically illegal under current state law. Moreover, HB 1599, as amended and signed into law, did not account for broader misuse of laser pointers, such as using them on drones or pointing them at OHRVs and snowmobiles.

SOLUTION: Legislation is needed to amend RSA 631: 3-a to make sure the malicious use of visible lasers remains prohibited as intended by HB1599 in 2016, but extends the prohibition to include pointing a laser beam at OHRVs and snowmobiles, and mounting a laser pointer on drones for malicious purposes. Equally important, RSA 631: 3-a should be amended to broaden the exceptions to the prohibitions on laser pointers so that state law no longer unwittingly make illegal what are common, everyday use of lasers in civilian, commercial, and government settings, including law enforcement uses.

OTHER CONSIDERATIONS: This proposed solution has been put forth with input from the Departments of Safety, Transportation, and Fish and Game and other stakeholders to identify any possible concerns with these suggested improvements to RSA 631: 3-a. solution.

RECOMMENDATION: Recommend SB 134 Part I, relative to prohibiting certain uses of laser pointing devices, Ought to Pass (OTP) to the full Senate to change NH law regarding lasers pointers to align with the original intent on HB1599 in 2016 and ensure it accounts for technological advances going forward.

Respectfully Submitted by David Cuzzi of Prospect Hill Strategies for BAE Systems
David.Cuzzi@prospecthillstrategies.com, 603-716-0569

February 16, 2021

From: Mascio, Lissa <Lissa.D.Mascio@doc.nh.gov>
Sent: Wednesday, February 17, 2021 12:04 PM
To: Sharon.Carson@leg.state.nh.us; William.Gannon@leg.state.nh.us; Harold.French@leg.state.nh.us;
Becky.Whitley@leg.state.nh.us; Jay.Kahn@leg.state.nh.us; jennifer.horgan@leg.state.nh.us
Cc: Hanks, Helen <Helen.E.Hanks@doc.nh.gov>
Subject: NH Dept of Corrections Testimony re SB143

Madame Chair and esteemed members of the Senate Judiciary Committee,

The New Hampshire Department of Corrections is opposed to SB134, omnibus legislation relating to civil actions and criminal liability; Part III, Incarceration under a suspended sentence, as written; and, would like to take this opportunity to submit the written testimony of Commissioner Helen Hanks with a requested amendment. Unfortunately, we were not able to testify at the hearing on this bill yesterday, but if you have any questions or concerns, please do not hesitate to contact the Commissioner, or myself.

Thank you for your attention to this matter, and for your tireless service to the State of NH.

Lissa Mascio, Esq.
Attorney, Division of Professional Standards
NH Department of Corrections
105 Pleasant St.
Concord, NH 03301
Tel: 603-271-5612

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Jennifer Horgan

From: Hanks, Helen <Helen.E.Hanks@doc.nh.gov>
Sent: Thursday, February 18, 2021 2:33 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Cc: Joseph Lascaze; Mascio, Lissa
Subject: RE: NH Dept of Corrections Testimony re SB143

Dear Madame Chair and Honorable Members of the Committee,

I have been contacted by the ACLU, Smart Justice Coordinator (Joseph Lascaze) discussing our agency's request to reduce the timeframe to 6 months. We both agreed to a 12-month recommendation as appropriate compromise and balance to our agency's concern and the goals of the bills request. In this regard, a person who is granted the 2/3rds will have re-entry planning and transition planning time either through our transitional services or through a direct community release plan balanced by not having such significant time to the 2/3rd's release date that adverse institutional conduct could arise as a concern and a potential for the Department to seek a reversal of the Court's order creates another legal action for the Judiciary to review.

I appreciate your consideration of all this information as you do the State's work and your dedication to state service.

If I can be of assistance, please always feel free to reach out.

Respectfully,
Helen

Helen E. Hanks, MM.
New Hampshire Department of Corrections
Commissioner
PO Box 1806
Concord, NH 03302
(Tel.) 603-271-5603
(Fax) 888-908-6609



NH Department of Corrections

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Jennifer Horgan

From: Kathryn Wallenstein <uppity.211@gmail.com>
Sent: Monday, March 1, 2021 1:42 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: Please Support Parts 3 and 7 of SB134

Dear Senators of the Judiciary Committee,

I am writing in SUPPORT of parts 3 and 7 of SB134.

Kathryn Wallenstein
230 Hopkinton Road
Concord

Sent from my iPad

The New Hampshire State Senate
Senate Judiciary Committee
c/o Jennifer Horgan
107 North Main Street
Concord NH 03301

February 16, 2021

Dear Senators,

My name is Dr. Lacey Colligan. I am a constituent living in Moultonborough NH.

I support Senate Bill 134: the adoption of omnibus legislation relative to civil actions and criminal liability, specifically Article IX: Making an appropriation funding mental health intervention training programs. I support Senate Bill 134 because I need the police to recognize and have tools to help citizens in acute psychological pain.

I am one of 100,000 New Hampshire citizens diagnosed with post-traumatic-stress disorder, "PTSD." PTSD is more common than you may think. Half of us will experience a significant trauma in our lifetime, and among those, 4% of men and 10% of women will go on to develop PTSD. A sense of overwhelming powerlessness is at the core of PTSD. It is critical for police officers that remember that one thing they always have over citizens is power.

My own PTSD stems from the violent and protracted death of my 21-year-old daughter and subsequent work-related events that significantly worsened my condition. These experiences make my body and mind hypersensitive to perceived danger. PTSD is a chronic condition and I will be managing symptoms for the rest of my life.

An example of my hypersensitivity can be illustrated by my recent encounter with a police officer on Main Street in a small town. An officer spoke to me saying I had just hit a car in a nearby parking lot. I wasn't aware that I had and asked him what I should do. He told me I was lying because my license plate had been recorded at the scene. As he spoke, I got very nervous realizing I might have hit someone's fender, but I wasn't lying about not knowing it. He continued to speak and I perceived his allegation growing in damage, drama and deceit. My heart raced, I wanted to vomit, and I could not understand his words. I started to cry. He kept talking. Next thing I knew, I was sitting on the ground hugging my knees, hiding my face and wailing as he kept talking. I was overwhelmed with powerlessness in the face of false accusations by the police. Still talking, he started nudging me with his knee. I thought he was trying to push me to the ground so he could handcuff me and take me to jail. I started screaming. My reaction was irrational, but my behavior was dictated by terror, not rationality. I was having a mental health crisis.

Fortunately, my acute trauma crisis was resolved when my husband found me and de-escalated the situation. I am lucky to have someone in my life who could step in.

My story illustrates how a police officer precipitated a mental health crisis and did not change his behavior as the situation deteriorated. This scene could have been averted if he had the skills taught in mental health intervention training.

For example, if he had introduced himself, asked my name, and told me he needed to talk about an incident in a parking lot, I could have oriented myself to the problem. Instead, he opened with an accusation that immediately increased the power differential. Once I became afraid and powerless, the fear network in my brain took control and disconnected me from reality. If he had paused between sentences and lowered his volume, my reaction would have had slowed and I could have calmed myself. If he had stopped standing over me, but stepped back and lowered himself, he would have leveled the power differential and reduced my sense of powerlessness. These small actions would have given me the chance to access the skills I've learned over the years. The next encounter I have with police, I am far more likely to be triggered toward a similar crisis. This drama was unnecessary, unfair to me and unfair to the next police officer I encounter.

Please support Senate Bill 134: the adoption of omnibus legislation relative to civil actions and criminal liability, specifically Section/Article? IX: Making an appropriation funding mental health intervention training programs.

Sincerely,

Lacey Colligan MD
85 Portage Pass
Moultonborough NH 03254

Jennifer Horgan

From: Holly F Johnson <hollyjphaneuf100@gmail.com>
Sent: Monday, March 1, 2021 2:29 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: Please Support Parts 3 and 7 of SB134

Dear Senators of the Judiciary Committee,

I am writing in SUPPORT of parts 3 and 7 of SB134.

Sent from my iPhone



SHANELARIS & SCHIRCH, PLLC
Attorneys at Law

Catherine E. Shanelaris
Jennifer E. Warburton

Jane M. Schirch*
*Admitted in NH and MA

February 15, 2021

New Hampshire Senate
Judiciary Committee
State House Room 100
Concord, New Hampshire 03301

Re: SB 134 – Section VI relative to the New Hampshire Collaborative Law Act

Dear Senators Carson, Gannon, French, Whitley, and Kahn:

This letter is written in support of Senate Bill 134 Section VI. We are attorneys practicing in the area of family law. We are all long time members of the New Hampshire bar association practicing in the family law field for the many years. We are all members of the NHCLA legislative committee and have been involved in the effort to enact this legislation.

The practice of Collaborative Law is a voluntary process that allows individuals the choice to resolve their family law matter outside of the court process. Parties work with a team that includes collaboratively trained attorneys, financial professionals and coach facilitators. There has been a group of family law practitioners that have been practicing in the area of Collaborative law for more than 15 years. In the last 10 years, we have seen the practice of Collaborative law grow as more individuals choose a more holistic approach to resolve their family law matters than is offered through the traditional litigation approach. While the vast majority of collaborative law cases resolve successfully, there are those cases that do not, and the parties must leave the collaborative law process and resolve their issues within the Court system. The passage of this legislation would assure those individuals that choose the Collaborative process that they will be protected should the process require litigation. This statute would require that agreements entered in the collaborative process are protected and enforced by the Court and that the confidentiality of the process is respected with the same enforcement that we currently offer parties that choose mediation.

Additionally, this legislation will ensure that all practitioners that choose to practice in the collaborative law space are playing by the same rules so that any citizen that chooses the collaborative law process knows what the parameters of the process

include. For the most part, the collaborative law community has been trying to maintain and improve a standardized framework for the collaborative law process, this legislation will provide our practitioners that framework within a statutory construction.

We appreciate your willingness to consider this legislation and any one of us would be happy to answer any questions you may have, please feel free to contact us at the email addresses below.

Sincerely,

Jane M. Schirch, Esq.

Jane@sandslawfirm.com

Catherine P. McKay, Esq.

cmckay@pmmlawyers.com

Cynthia M. Weston, Esq.

westlau2@aol.com

Anna Goulet Zimmerman, Esq.

anna@mzlawnh.com

/JMS



Statement by Joseph Lascaze, Smart Justice Organizer
Senate Judiciary Committee
Senate Bill 134
February 16, 2021

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties throughout New Hampshire for over fifty years. The ACLU-NH supports SB134's provision regarding incarceration under a suspended sentence and urges this committee to vote *ought to pass* on the legislation.

Successful re-entry after incarceration requires preparation.

A critical step in advancing public safety is reducing recidivism by making sure that people successfully reenter their communities after incarceration. Reentry poses a host of challenges for incarcerated individuals, particularly for people who have been in prison for years or even decades. There is culture shock, the need to identify housing and employment, and state identification needs to be renewed, to name just a few of the initial challenges. To put it mildly, successful reentry requires preparation.

Right now, a person at the NH state prison must wait until they have served two-thirds of their minimum sentence before petitioning the court to suspend the remaining third of their sentence. What this means in practice is that by the time the petitioning process has concluded, assuming someone is granted a suspended sentence, the petitioner often has very little time to prepare for reentry. Just like anything in life, we have a better chance of success when we plan ahead, which can be difficult to do given the uncertainty of the petitioning process and how long it can take. By allowing inmates to petition for a suspended sentence earlier, SB134 would provide inmates with additional time between when their suspended sentence is granted by a court and when they would actually be released, enabling them to better prepare for reentry. Please note that SB134 would not result in inmates being released from prison any earlier. This is not about changing the date of release, but about changing the timeline for petitioning the court.

SB134 does not lessen accountability; instead, it promotes responsibility and reentry.

No inmate is entitled to a suspended sentence. A suspended sentence is a privilege and must be earned. This bill in no way changes that. The criteria for being granted a suspended sentence would not change with this bill. New Hampshire allows for suspended sentences in order to foster a more rehabilitative environment and provide an avenue for individuals who meet the requirements (RSA 651:20) to reenter their communities as a productive and fruitful member. This bill advances these same goals.

Similar legislation was introduced in the Senate and the House last year. Anticipating that the House bill would crossover, the Senate used SB437 to instead make important changes to NH's Earned Time Credit statute, at the request of the Department of Corrections. Due to COVID-19, the Senate was unable to take up the House bill, which passed the House on voice vote.

For these reasons, I respectfully urge the members of this committee to vote *ought to pass* on SB134

Amendment to SB 134, Part V
Amend Page 17 (as introduced), beginning at Line 24

408-G:3 Approval of Transfers of Structured Settlement Payment Rights. No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee or assignee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by such court that:

I. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents; and

II. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice; and

III. The transfer does not contravene any applicable statute or the order of any court or other government authority; and

IV. The payee presents three separate bids for the structured settlement payment right at issue. Each bid shall be made by organizations which are unaffiliated with each other in any way and cannot benefit from each other financially. The presentation of three separate bids under this paragraph can be considered by the court but shall not by itself be dispositive of whether the transfer is in the best interest of the payee. The Court may waive the requirement that the transferor provide evidence that he has obtained three bids for good cause shown.

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MEMORANDUM

To: Senate Judiciary Committee
From: Judge Richard B. McNamara, New Hampshire Superior Court (Retired)
Re: Judicial Branch Proposed Amendment to SB 134, Part V (LSR 21-0934)
Date: February 15, 2021

This Memorandum will explain the Judicial Branch's reasoning in proposing its Amendment to Senate Bill 134, Part V. Essentially, the Amendment seeks to protect New Hampshire citizens by ensuring that they have adequate information before making what maybe the most important financial decision of their lives- transferring the benefits of a settlement which compensated them for a severe personal injury for far less than what those benefits are worth.

I. Structured Settlements

When a person suffers a personal injury, a lawsuit may be brought against the person who is responsible for the injury. Generally speaking, if a personal injury settlement is reached, the settlement is not taxable income to the plaintiff, because it is simply restoration of something the injured person lost.

Lawyers seeking to benefit clients with a long-life expectancy often recommend what are called "structured settlements." Essentially, instead of making a lump sum payment, the defendant agrees to purchase an annuity to benefit the plaintiff. This is beneficial to the injured party for several reasons. First, if the injured plaintiff has suffered a catastrophic injury, the benefits may be paid out over time, providing a steady stream of income when it may be needed in the future. Second, and of more importance, the benefits of the settlement are enhanced, because the settlement is professionally managed. An insurance company can provide the purchaser of an annuity with a high return by professionally managing the money, while making money itself. These settlements are particularly valuable for injured children.

But the most important benefit to a structured settlement is the tax treatment. If the appropriate regulations are followed, the future payments will be tax free.

II. Purchase of Structured Settlements

These valuable annuities is are often purchased by so called "factors" who advertise heavily, and to attempt to persuade owners of such annuities to sell them- often for far less than fair market value.

In order to keep the tax benefits of the annuity if it is transferred, federal law has established certain requirements. Section 5891 of the Internal Revenue Code imposes a

tax on certain transfers of structured settlement annuities, unless the transfer is approved pursuant to a “qualified order”: See 26 U.S.C. 5891. A “qualified order” under federal law is an order that was issued “under the authority of an applicable state statute” by an applicable state court, which is not contrary to any federal or state statute or court order and one in which the court finds that the transfer “is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents” Id. at 5891(b)(2).

An “applicable state statute” is a statute enacted for the purpose of issuing qualified orders either by the payee’s state of domicile or, if no statute has been enacted, by the state in which the funding asset for the structured settlement is domiciled.

New Hampshire does not have such a statute, so New Hampshire judges have routinely handled cases involving transfer of settlements based on other states statutes which are all essentially cognates, and which contain the language required by the federal statute. The proposed statute would not alter New Hampshire law at all, since it appears to be a cognate of with the statutes New Hampshire judges have dealt with for years.

III. The Current Problem

New Hampshire judges often face cases in which unrepresented and unsophisticated individuals seek to sell their annuity and appear to be taken advantage of. However, the New Hampshire Supreme Court has made clear that the language of the federal statute, and cognate state statutes, that the trial court finds that the transfer, “is in the best interest of the payee, taking into account the welfare and support of the payees’ dependents” does not allow the court to substitute its judgment for the consumer about what a wise decision would be.

Illustrative is the recent unreported decision in *Blazingstar Funding, LLC v. Wilson*, No. 2014-0440 (April 3, 2015) in which the Court considered a transfer under an Illinois statute which appears to be a virtual cognate of the proposed statute. The disclosure required by the statute and presented to the Court by Wilson showed that he would receive \$125,000 in exchange for payments of \$400,000 due in 2023 and 2028, which amounted to only 41.9% of the present value of the annuity, which was \$298,000. The trial court rejected the settlement, but the Supreme Court reversed. It stated that “[a]t the outset, we note that, regardless of the trial court’s personal view of “companies that try to bust structured settlements,” the right of private parties to enter into enforceable contracts is a constitutionally protected interest.” Id. at 4. It went on to state that the record indicated that Wilson had no dependents, and that although he had received a settlement as a result of lead poisoning, his success in the past 2 decades established, he had the ability to care for himself.

Blazingstar therefore stands for the proposition that judges have limited ability to interfere with the constitutional right of competent adults to enter into contracts

upon whatever terms they think best, assuming the contract does not affect their ability to support themselves and their dependents.

Moreover, in the typical case, the unrepresented and unsophisticated annuity holder appears in court having signed a stack of documents presented to him by the purchaser, who is represented by sophisticated counsel. While the trial court has the right to inquire as to the seller's understanding of the documents, the trial court has limited ability to inquire further in the circumstances. The Canons of Judicial Ethics prohibit a judge from making an independent investigation into the circumstances of the transfer. Canon 2.9(C) of the Canons provides:

A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may be judicially noticed.

New Hampshire Supreme Court Rule 38, Canon 2.9(C).

As a result, judges frequently see cases like Wilson- a consumer selling what is probably his most valuable asset for 40% of its value.

IV. The Judicial Branch's Recommendation

The Judicial Branch believes the best remedy for this serious problem is to provide information. The Judicial Branch proposal will ensure that consumers have appropriate information in order to make what may be the most important decision of their lives.

Accordingly, the Judicial Branch recommends in its attached Amendment that RSA 408-G3 provide that courts should require as part of an approval petition:

IV. The payee presents three separate bids for the structured settlement right at issue. Each bid shall be made by organizations that are affiliated with each other in any way and cannot benefit from each other financially. The presentation of three bids under this paragraph may be considered by the court but shall not by itself be dispositive of whether the transfer is in the best interest of the transferee. The Court may waive the requirement that the transferor provide evidence that he has obtained three bids for good cause shown.

Jennifer Horgan

From: Cleve Kapala <outlook_29D5132BE77F279E@outlook.com>
Sent: Monday, March 1, 2021 2:58 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: Please Support Parts 3 and 7 of SB134

Dear Senators of the Judiciary Committee,

I am writing in SUPPORT of parts 3 and 7 of SB134.
Sent from [Mail](#) for Windows 10



NEW HAMPSHIRE SENATE JUDICIARY COMMITTEE
PUBLIC HEARING
FEBRUARY 16, 2021

WRITTEN TESTIMONY IN SUPPORT OF SB 134

Dear Committee Members,

Digital Federal Credit Union is a not-for-profit member owned financial cooperative headquartered in Marlborough Massachusetts with four retail branch locations in New Hampshire. Our mortgage team helps thousands of our members every year with their real estate financing needs. Over 900,000 of our members live in New Hampshire and we service over \$500 million of their mortgage loans.

We conduct thousands of hybrid eClosings in New Hampshire each year and the number one request we get from members is to eliminate the remaining physical papers requiring ink-based signatures. Based on their feedback we started offering hybrid eClosings, where all documents are signed electronically except for the mortgage/deed and any other document requiring notarization. Members benefit from receiving the closing documents 3 days before closing via a secured portal, and many have commented that they have never walked into a closing feeling so prepared. Now that members can view the entire closing package before the signing appointment, they have time to reach out to the lender with any questions. This helps avoid any delays and saves time at the closing table, with the old process taking up to an hour and the new process taking as little as 20 minutes.

We expanded our eClosing program to include an in-person eNotary option for loans in Florida, Colorado, Maryland, New York, and Texas, and we have successfully piloted remote online closings commonly referred to as RON in Virginia. We are expanding our eClosing program to other states that have adopted and operationalized the required framework to support eNotarization.

39 states have enacted eNotary laws with legislation pending in many of the remaining states. Most states allow for in-person eNotarization, but a growing number are adopting more consumer and environmentally friendly remote online notarizations (RON) eNotary, where closings take place virtually via web camera. Florida recently updated their eNotary law to include a RON provision, while others originally adopted RON, Virginia being the first back in 2011, eNotarization is the lynchpin to mortgage eClosings as the mortgage/deed is only remaining physical document required in the mortgage process.

Members have been able to sign a purchase and sales agreement to buy a house for nearly two decades. They can now also sign all their mortgage documents from early disclosures to promissory notes electronically. Fannie Mae and Freddie Mac buy electronic notes, and the Federal Home Loan Banks will soon accept electronically closed loans as collateral. There is wide industry acceptance and many national lenders like Quicken Home Loans are quickly adopting this technology and marketing as a value-added feature of their mortgage product.

mail

220 Donald Lynch Blvd. | PO Box 9130
Marlborough, MA 01752-9130

connect

dcu.org | dcu@dcu.org
800.328.8797

Insured by NCUA



48 states accept documents for electronic recording including the majority of Registries of Deeds in New Hampshire. To fully realize the effectiveness of the eRecording system documents requiring notarization such as a mortgage need to have an electronic option. Once a mortgage is electronically notarized the closing attorney can instantly record the document eliminating the need to physically record at a Registry. This process is secure and ensures proper lien placement and conveyance leading to a faster and more efficient funding process.

We estimate that DCU and our settlement agents save over one million pieces of paper a year by offering hybrid eClosings. We also benefit from a reduction in operating costs with no physical delivery expenses, improved quality control, and handling time savings. There are additional fuel, traffic, and time congestion savings in states that adopt RON. Our members benefit from faster and more transparent closings, with additional travel time savings when closed remotely. The convenience factor of eClosings is quickly increasing consumer demand and the mortgage industry is rapidly adopting for the cost savings and improved security.

Please reach out to me if you have any questions regarding eNotary or more generally eClosings in the mortgage industry. We look forward to the opportunity to work with you and to bring this value-added solution to the residents of New Hampshire.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason E. Sorochinsky", is positioned below the word "Sincerely,".

Jason E. Sorochinsky
Vice President of Mortgage Lending
Digital Federal Credit Union
jsorochinsky@dcu.org
(508) 804-9532

mail

220 Donald Lynch Blvd. | PO Box 9130
Marlborough, MA 01752-9130

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Crimes Which Bar Employment in Education
RSA 189:13-a, V

- RSA 630:1—Capitol Murder
- RSA 630:1-a—First Degree Murder
- RSA 630:1-b—Second Degree Murder
- RSA 630:2—Manslaughter
- RSA 632-A:2—Aggravated Felonious Sexual Assault
- RSA 632-A:3—Felonious Sexual Assault
- RSA 632-A:4—Sexual Assault (misdemeanor level)
- RSA 633:1—Kidnapping
- RSA 639:2—Incest
- RSA 639:3—Endangering the Welfare of Child or Incompetent
- RSA 645:1, II or III—Indecent Exposure and Lewdness
- RSA 645:2—Prostitution and Related Offenses
- RSA 649-A:3—Possession of Child Sexual Abuse Images
- RSA 649-A:3-a—Distribution of Child Sexual Abuse Images
- RSA 649-A:3-b—Manufacture of Child Sexual Abuse Images
- RSA 649-B:3—Computer Pornography and Child Exploitation Prevention
- RSA 649-B:4—Certain Uses of Computer Services Prohibited
- RSA 650:2—Obscene Matter Offenses

Amendment to SB 134-FN

1 Amend Part II of the bill by replacing RSA 456-B:2, VII, as inserted by section 4, with the following:

2

3 VII.(a) For the purposes of this section, but only in the context of executing an estate
4 planning instrument such as a will[, trust, or power of attorney] *or estate planning trust*, the
5 requirement that a person appear before a notarial officer at the time of the notarial act is satisfied
6 if the notarial officer is:

7 (1) The attorney, licensed to practice law in New Hampshire and in good standing,
8 who drafted the estate planning instrument;

9 (2) Another attorney licensed to practice law in New Hampshire and in good
10 standing, under the drafting attorney's supervision; or

11 (3) A paralegal under the supervision of either such attorney; and

12 (b) The person and the notarial officer can communicate simultaneously by sight and
13 sound through an electronic device or process at the time of the notarial act.

14 (c) This paragraph shall apply only to notarial acts performed on or after March 23, 2020
15 [~~and ending on the last day of the state of emergency declared by executive order 2020-04~~]. In
16 addition, a notarial act performed in compliance with emergency order #11 pursuant to executive
17 order 2020-04 from its effective date through the date of its expiration is valid.

18

19 Amend Part II of the bill by replacing all after section 10 with the following:

20

21 11 Wills; Requirements. Amend RSA 551:2, III(b) to read as follows:

22 (b) ~~Nothing in this paragraph shall be deemed to allow an electronic will or codicil. This~~
23 ~~paragraph shall apply only to wills executed on or after March 23, 2020~~ [~~and ending on the last day~~
24 ~~of the state of emergency declared by executive order 2020-04~~].

25 12 Effective Date.

26 I. RSA 456-B:2, VII as inserted by section 4 of Part II of this act and section 11 of Part II of
27 this act shall take effect upon its passage.

28 II. The remainder of Part II of this act shall take effect 180 days after its passage.



February 12, 2021

Senate Judiciary Committee
State House
107 N. Main Street
Concord, NH 03301

***RE: Support for employer access to motor vehicle records (Section XI of SB 134
adopting omnibus legislation relative to civil actions and criminal liability)***

Dear Chair Carson and Members of the Senate Judiciary Committee:

I am writing to offer support for Section IX of Senate Bill 134-FN, relative to employer access to motor vehicle records (originally filed as LSR 2021-1013).

For over 80 years, Easterseals NH has provided exceptional services to ensure we change the way the world defines and views disability by making profound, positive differences in people's lives every day. Easterseals.NH services include autism services, inclusive child care and early intervention, special education, medical rehabilitation, camping and recreation, vocational services, senior services, substance abuse services, adult day programs, community-based services, individual service options, transportation services, residential service options, dental services and veteran services. As a leader in social services for individuals with disabilities and special needs, Easterseals NH employs more than 1,500 individuals who serve more than 26,900 children, adults and seniors with our 11 core programs throughout the state.

Many of our core services require our staff to transport individuals served by Easterseals. This is why we strongly support enhancing the way we can conduct driver record checks and license status checks for both existing and prospective employees as proposed by this legislation. The demand for our services, including transportation services, has seen a notable increase during the COVID-19 pandemic. Now more than ever, it is important that we can provide services efficiently and safely. Conducting driver record and license status checks more easily, including in bulk electronic form when needed will help achieve this goal. Accessing these records increases the safety of our staff and has a direct impact on our ability to protect the safety of the children, adults, and seniors with disabilities or special needs whom we serve each and every day across New Hampshire.

While New Hampshire law already allows for the disclosure of this information, in our experience, it is overly time consuming to obtain because the records must be requested on an individual basis. This makes it burdensome to conduct motor vehicle and license status checks regarding job applicants, as well as to conduct periodic checks regarding current employee-drivers.

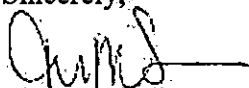
This bill would allow employers, like Easterseals NH, to access the same information that is already released, but in a much more efficient and streamlined way, which will save time and costs,

but more importantly, increase the safety of our roadways and increase the safety of our clients. It will help enable us to make educated hiring decisions, better identify high-risk drivers, and enforce our driving policies.

New Hampshire is the only state where we must request these records individually. By passing this law, New Hampshire will be joining the many others that already provide driver and license records in bulk electronic format.

With the number of drivers providing transportation and delivery services steadily increasing during the pandemic, it is important to act now. Please vote in favor of Section XI of SB 134 regarding employer access to motor vehicle records.

Sincerely,



Tina M Sharby

Chief Human Resources Officer

February 16th, 2021



The Honorable Sharon Carson, Chair
The Honorable Bill Gannon, Vice Chair
Senate Judiciary Committee
The New Hampshire State Senate
107 North Main Street
Concord, NH 03301

Subject: New Hampshire SB 134, adopting omnibus legislation relative to civil actions and criminal liability.

Dear Chair Carson, Vice Chair Gannon and Members of the Senate Judiciary Committee:

Notarize, Inc. thanks the Senate Judiciary Committee (the Committee) for consideration of SB 134, which would allow for permanent remote online notarization in New Hampshire. We support SB 134 in its current form and applaud you for sponsoring this important legislation.

ABOUT NOTARIZE

Notarize is a digital trust provider - a platform that integrates technology with live human interaction to establish identities. We offer digital identity proofing and authentication services, including a market leading notary public platform to allow documents to be notarized online, 24/7.

Our mission is to help people execute the most important transactions of their lives and make notarizations more convenient, secure, authenticated, integrity-preserving, and non-repudiable. Our goal is trust in a digital age through protected online services and transactions.

ENSURING SAFETY, SECURITY & INTEGRITY

Access to digital services is more important than ever, and we thank the Committee for discussing how it can assist New Hampshire's citizens, notaries and industries. We appreciate efforts to update the Uniform Law Commission's Uniform Law on Notarial Acts (ULONA) and add Uniform Real Property Electronic Recording Act (URPERA) in New Hampshire.

Remote online notarization includes a multi-layered security process built with fraud prevention and the safety of consumer, notary public and integrity of the notarial act in mind. URPERA would allow for the recording of tangible copies of electronic documents. The combination of updates to ULONA and addition of URPERA provides an avenue to facilitate the coordination between long standing state and local government functions with an increasing use of digital business and commerce. We applaud New Hampshire for recognizing the need to amend laws to allow for access to these digital services.

February 16th, 2021

We respect and understand the importance of coordination between state legislatures and regulators in rolling out new digital services, such as remote notarization. Should you like assistance, we are happy to partner with the Committee leadership and/or members to host an education briefing for your colleagues and/or state regulators. An education event could provide a platform for a basic understanding of remote notarization, what it means for other specific agencies and how a safe and secure process should work for the good of the citizen and notary.

CONCLUSION

The pandemic has highlighted the need for access to digital services, and we believe all consumers and communities should have the option to use safe and secure platforms, like Notarize. We thank the Committee for its leadership and consideration of SB 134. Should you have questions, you can reach me by email at nicole.booth@notarize.com. We look forward to being a trusted partner with the New Hampshire Legislature as the process continues.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Booth", with a large, stylized flourish at the end.

Nicole Booth
Executive Vice President, Public Affairs
Notarize, Inc.

Jennifer Horgan

From: Heather <heather.scholl@comcast.net>
Sent: Monday, March 1, 2021 4:21 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: Please Support Parts 3 and 7 of SB134

Dear Senators of the Judiciary Committee,

I am writing in SUPPORT of parts 3 and 7 of SB134.

Sent from my iPad

Jennifer Horgan

Subject: FW: Amendment to SB 134 Making Permanent Remote Execution

From: Wells, Bob <BOB.WELLS@MCLANE.COM>
Sent: Monday, March 1, 2021 5:22 PM
To: Sharon Carson <Sharon.Carson@leg.state.nh.us>; William Gannon <William.Gannon@leg.state.nh.us>; Becky Whitley <Becky.Whitley@leg.state.nh.us>; Jay Kahn <Jay.Kahn@leg.state.nh.us>; Harold French <Harold.French@leg.state.nh.us>
Cc: Donald H. Sienkiewicz (dhs@estateplannh.com) <dhs@estateplannh.com>
Subject: Amendment to SB 134 Making Permanent Remote Execution

Dear Senators

Thank you for working with us on the matter of remote signing of estate planning documents which has been allowed during the Emergency Order and making that procedure permanent. Having practiced in this area for 50 years, you might be surprised that I (as an older practitioner!) am excited about making remote signing permanent. Old dogs can learn new tricks!!!!

Prior to COVID, clients would have to travel to our office or I to their home for purposes of signing documents (Will, Trust, and Advance Directives). I found the remote signing of documents has been extremely advantageous to my clients. Many live far away. Many are home bound. Many are elderly. Bad weather can create delays in signing. Remote signing avoids those issues.

I have been using the remote signing allowed now during the Emergency Order using zoom. The use of zoom for the execution of documents makes it possible to identify the client, seeing if anyone is in the room with them, etc. I have not had clients unable to participate in the zoom call (sometime a child may need to set it up for them.) The witnesses and I are on the zoom call with the testator. I am at home explaining, via zoom, the documents and acting as the NP. My assistant and another witness are in their office or at home. We go through the standard execution of each of the documents. I ask the testator/client if s/he has any questions about the documents; that they are signing the documents voluntarily; and that they want witnesses who are on the zoom call to be their witnesses. Witnesses can ask questions if they want any assurances from the testator. Just as in the case of in person signing, the witnesses sign as I do in the proper order. I take the oath of witnesses that they are signing in the presence of the testator; that they are signing in the presence of one another; and to the best of their knowledge that testator is over the age of 18, is of sound mind, and signed the documents voluntarily.

Following signing the client sends the original documents to my office. My assistant assembles the witness documents. And the NP signature, including the Self Proving Affidavit for Wills.

If we have a troublesome situation such as exclusion of a child as a beneficiary or any concern about lack of capacity or undue influence, we would not use remote signing. Rather we would use normal in person signing to avoid any questions about the decision of the testator/client being able to sign and doing so voluntarily.

Please vote in favor of making remote signing permanent. It is in the best interest of the client. The practice of law in the area of estate planning.

If you have questions, I am happy to answer them.



Robert Wells

Attorney

900 Elm Street
Manchester, NH 03101

Direct: (603) 628-1307

Fax: (603) 625-5650



[website](#) | [bio](#) | [email](#)

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Jennifer Horgan

From: rwise65@tds.net
Sent: Monday, March 1, 2021 5:24 PM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: Please Support Parts 3 and 7 of SB134

Dear Senators of the Judiciary Committee,

I am writing in SUPPORT of parts 3 and 7 of SB134.

Sent from my iPad

3 Whipple Street
Nashua, NH 03060
(603) 860-3066



February 12, 2021
Senate Judiciary Committee
State House
107 N. Main Street
Concord, NH 03301

RE: Support for employer access to motor vehicle records (section XI of SB 134, adopting omnibus legislation relative to civil actions and criminal liability)

Dear Chairwoman Carson and Members of the Senate Judiciary Committee:

I am writing to offer support for Section XI of SB 134, relative to employer access to motor vehicle records (initially known as LSR 2021-1013).

UPS is a global company with multiple locations throughout New Hampshire. We employ approximately 2,000 people, including 1,015 drivers in the Granite State. With so many drivers on New Hampshire roadways, especially during times like these when there are many more home deliveries being made, safety is a top concern for UPS. That is why we support amending the motor vehicle law to allow employers, such as UPS (and their authorized agents) to access the driver records and driver license status of current employees and job applicants in bulk electronic form as needed.

New Hampshire law currently allows for the disclosure of this information, however it is burdensome and time consuming to access because the records must be requested individually and there is no convenient and up-to-date way to access driver license status on an ongoing basis. Under the bill before you, employers and their agents would be able to obtain the same information in a much more efficient way by authorizing the Division of Motor Vehicles to provide the records in electronic bulk form when the employer needs to access them. When data on driver records is made readily available, it allows employers to efficiently identify high-risk drivers, take appropriate action and enforce company policies as necessary, and make well-informed hiring decisions – all of which lead to increased safety.

It is important to remember that this bill maintains current employee and prospective employee privacy, and due process protections already in place under state and federal law. It merely allows for the disclosure of the same information in a streamlined manner.

New Hampshire is the only state we are aware of that does not already allow the release of such electronic records from the DMV. By passing this legislation, you would be facilitating employers and their agents being able to conduct motor vehicle record checks in New Hampshire that are consistent with those being done in other states, thus preventing unsafe drivers from jeopardizing public safety on our highways and on an interstate basis.

For these reasons, we urge you to vote OUGHT TO PASS on Section XI of SB 134.

Mark Giuffre
UPS
Vice President, State Government Affairs



February 11, 2021

Senate Judiciary Committee
State House, Room 100
107 N. Main Street
Concord, NH 03301

RE: Support for Section XI of SB 134, relative to employer access to motor vehicle records

Dear Chairwoman Carson and Members of the Senate Judiciary Committee:

On behalf of SambaSafety, I wish to offer this testimony in strong support of Section XI of Senate Bill 134-FN, relative to employer access to motor vehicle records (formerly LSR 2021-1013).

SambaSafety is a company that provides pre-hire motor vehicle record checks and continuous driver monitoring to protect all highway users from risky drivers and allow companies to better manage and assess employee driver risk. Our mission is to help employers transform data into action, protecting businesses and communities from driver and mobility risk. SambaSafety assists over 100,000 employers nationwide to access and interpret motor vehicle records for driver safety. Motor vehicle records are critical for employers to ensure that drivers are qualified to drive for employment and do not present unnecessary risk to the public.

SambaSafety supports amending New Hampshire's motor vehicle records law, RSA 260:14, to allow companies and their agents to efficiently access the driver records and driver license status of employees and prospective employees electronically.

This change is necessary because the New Hampshire Division of Motor Vehicles interprets the current law to prevent it from allowing such employers from obtaining electronic access if this information is to be used for employment purposes. The DMV interprets the current law to only allow the checking of driver records and license status in bulk by insurance companies; other than for that purpose, records must be obtained on an individual basis with a notarized authorization from the employee or prospective employee on file with the DMV. It is impractical, costly and time consuming for employers to conduct periodic checks of driver records individually. SambaSafety has been trying for over a year to obtain this information in bulk from the DMV, but the DMV has felt constrained by the current law. In fact, the DMV encouraged SambaSafety to seek legislation to address this issue.

It is important to emphasize that employees and prospective employees are protected under federal law, the Driver Privacy Protection Act of 1994 (DPPA), which prohibits states from

releasing personal information of motor vehicle records to sales and marketing organizations and the general public unless an individual specifically consents to the release. The DPPA and the federal Fair Credit Reporting Act, also provides a number of layers of due process protections for employees. Individuals are thus already protected under federal law from random and unauthorized driver record checks. Because Samba Safety and other similarly situated companies are bound by and strictly follow these federal requirements, current New Hampshire law provides an unnecessary barrier for employees that in fact works to impede highway safety and prevent employers from making sure that their employees are initially, and continue to be, safe drivers.

As a result of the pandemic many commercial transactions now take place over the Internet with packages of goods being delivered to homes and businesses by company drivers who do not have commercial driver licenses (CDL) because the vehicles they are driving are smaller than a vehicle that requires possession of a CDL. There are many more of these basically unregulated drivers on the road logging many more miles than they did prior to the pandemic. Allowing the employers of these drivers, or agents of the employers, to conduct regular electronic driver record checks and license status checks on their employees or prospective employees ensures greater driver safety. Without this legislation, there is a much greater chance that a driver with a suspended license or new motor vehicle violations will be operating a vehicle for commercial purposes on the roads of New Hampshire in a manner that could threaten public safety.

Other states allow these kinds of electronic employer driving record and license status checks and find ways to facilitate them in order to protect public safety. By passing this legislation you would be facilitating employers being able to conduct record checks in New Hampshire that are consistent with those being done in virtually all other states, thus preventing unsafe drivers from jeopardizing public safety on our highways and on an interstate basis.

The law currently authorizes the Division of Motor Vehicles to charge fees to the applicants for such record and license status checks to recover their costs. Therefore, since it is likely that this legislation will result in more employers requesting such documents because this legislation will break down barriers to accessing records, it is very likely that the state will see more revenues.

Ten percent of drivers are responsible for 40 percent of car crashes. When data on driver records and license status is made available it allows employers to identify high-risk drivers, enforce company policies and make well-informed hiring decisions.

Please vote OUGHT TO PASS on Section XI of SB 134 regarding employer access to motor vehicle records.

Sincerely,



John Diana
General Counsel and Chief Compliance Officer



DEPARTMENT OF CORRECTIONS
STATE OF NEW HAMPSHIRE

P. O. BOX 1806

CONCORD, NH 03302-1806

Office of the Commissioner

FROM:	Helen E. Hanks Commissioner	DATE:	February 17, 2021
SUBJECT:	SB134 omnibus legislation relating to civil actions and criminal liability; Part III. Incarceration under a suspended sentence.	OFFICE:	Commissioner's Office
		Phone:	271-5603
		Fax:	271-5643
TO:	The Honorable Members of the Senate Judiciary Committee		

.....

The New Hampshire Department of Corrections is opposed to SB134, omnibus legislation relating to civil actions and criminal liability; Part III, Incarceration under a suspended sentence, as written. The Department of Corrections is concerned about the impact of allowing a petition to suspend sentence to be filed 18 months prior to 2/3rds of the minimum sentence, and ask that the sponsors consider an amendment to reduce that to 6 months as outlined below.

Amend RSA 651:20, I(a) to read as follows:

(a) Any person sentenced to state prison for a minimum term of 6 years or more shall not bring a petition to suspend sentence until such person ~~has served at least 4 years or 2/3 of his minimum sentence, whichever is greater,~~ **is within 18-6 months of serving 2/3 of the minimum sentence**, and not more frequently than every 3 years thereafter. Any person sentenced to state prison for a minimum term of less than 6 years shall not bring a petition to suspend sentence until such person has served at least 2/3 of the minimum sentence, or the petition has been authorized by the sentencing court.

The Department of Corrections is not opposed to the intention of this bill, to allow a resident enough time for re-entry services/planning before they reach their Minimum Parole Date; however, 18 months prior may be too early in the rehabilitative process in many cases. Currently, a resident cannot petition to suspend his or her sentence through the court until they have served 2/3rds of their sentence. If the court grants the suspension, the resident is immediately eligible for parole. This amendment will allow residents to petition 18 months before their 2/3rds date, and if the court grants the suspension, they will have time for re-entry services/programming to be completed prior to reaching their Minimum Parole Date.

The Department of Corrections supports this idea, in theory, but 18 months is too far in advance of the release date, and oftentimes, far too early in a resident's incarceration for real rehabilitative engagement or progress to be demonstrated. For example, if a resident is sentenced to a 6-year minimum, their 2/3rds eligibility is 4 years; 18 months before that 4 year mark is only 2 1/2 years. The resident may not have had

the opportunity to engage completely in rehabilitative programming at the Department of Corrections or demonstrate behavioral changes, in order for there to be enough of a body of work to produce to the Court to allow it to effectively render a good judgement. In essence, a resident would be able to apply to suspend his or her sentence before even serving half of their minimum sentence – for all sentences up to a 10 year minimum sentence (at which time, a resident could apply at the 5 year and 2 month mark, just over half of the sentence served).

With respect to the good intentions behind SB134, Part III, the Department of Corrections would suggest cutting the time frame down within to 6 months of serving 2/3rds of the minimum sentence. This would allow ample time for a resident to engage in re-entry services prior to reaching the mandatory minimum sentence; but, also give the resident enough time to participate in rehabilitative services at the Department of Corrections in order to be able to give the Court a more accurate reflection of the resident's behavior and programming while incarcerated in considering a petition to suspend sentence.

Thank you for your review our request to amend, we look forward to discussing this further and answering additional questions.

Thank you for your service to the State of NH.

INFORMATION PAPER

SB 134 Part I – Prohibiting certain uses of laser pointing devices

ISSUE: Current New Hampshire law prohibits the pointing of lasers, visible and invisible, with limited exceptions. The very broad prohibition in state law of a laser pointer unintentionally makes illegal the everyday use of lasers, from vehicle sensors to national security-related research and development, to golf and hunting rangefinders.

BACKGROUND: In 2016, the legislature passed, and then-Governor Hassan into law HB 1599, relative to shining a laser at an aircraft or vessel, or another person. This was in response to a growing number of incidents of people shining green laser pointers into the cockpits of aircraft, and also shining laser pointers on law enforcement personnel to give the appearance of a weapon targeting them. Unfortunately, the bill, which became law after passing both chambers by voice vote, did not account for technological advances. As a result, the law unintentionally makes the common, everyday use of visible and invisible lasers illegal. Vehicle safety sensors, golf and hunting rangefinders, and research, development, and testing of laser-based military technologies are examples of visible and invisible lasers that are often pointed at vehicles and people. And as such, are technically illegal under current state law. Moreover, HB 1599, as amended and signed into law, did not account for broader misuse of laser pointers, such as using them on drones or pointing them at OHRVs and snowmobiles.

SOLUTION: Legislation is needed to amend RSA 631: 3-a to make sure the malicious use of visible lasers remains prohibited as intended by HB1599 in 2016, but extends the prohibition to include pointing a laser beam at OHRVs and snowmobiles, and mounting a laser pointer on drones for malicious purposes. Equally important, RSA 631: 3-a should be amended to broaden the exceptions to the prohibitions on laser pointers so that state law no longer unwittingly make illegal what are common, everyday use of lasers in civilian, commercial, and government settings, including law enforcement uses.

OTHER CONSIDERATIONS: This proposed solution has been put forth with input from the Departments of Safety, Transportation, and Fish and Game and other stakeholders to identify any possible concerns with these suggested improvements to RSA 631: 3-a. solution.

RECOMMENDATION: Recommend SB 134 Part I, relative to prohibiting certain uses of laser pointing devices, Ought to Pass (OTP) to the full Senate to change NH law regarding lasers pointers to align with the original intent on HB1599 in 2016 and ensure it accounts for technological advances going forward.

Respectfully Submitted by David Cuzzi of Prospect Hill Strategies for BAE Systems
David.Cuzzi@prospecthillstrategies.com, 603-716-0569

February 16, 2021

**Testimony of Erin Poitras, Laser Safety Officer, BAE Systems
Regarding SB 134 Part I**

NH Senate Judiciary Committee, 02/16/2021, 1:30 pm (via Zoom)

- Good afternoon, Chairwoman Carson and members of the committee.
- For the record, my name is Erin Poitras, and I am the Laser Safety Officer for BAE Systems' Electronic Systems sector in Nashua, New Hampshire testifying on behalf of the company.
- BAE Systems supports Part One of Senate Bill 134, regarding the prohibition of certain uses of laser pointing devices.
- We do not have any position on any of the other parts of this omnibus legislation.
- By way of background, in 2016, a bill was signed into law prohibiting the shining of a laser pointer at an airplane, law enforcement officer, law enforcement vehicle, or a person or structure.
- The bill was in response to such laser pointer incidents in the state and nationwide.
- The 2016 law included very limited exceptions, which had the unintentional effect of making today's everyday uses of lasers illegal, from vehicle sensors to golf and hunting range finders.
- As Senator Carson knows, our company became aware of an issue with the New Hampshire state law about a year ago.
- At the time, it was too late to seek legislative remedy.
- The reason we approached Senator Carson with this issue, is that the law also prohibits some of the research, development,

and testing work that aerospace and defense technology companies like BAE Systems conducts with lasers.

- To be clear, BAE Systems takes every precaution to legally work around the unintended prohibitions set forth in the 2016 law until the legislature can provide a remedy.
- In addition, we are not aware of any law enforcement entity interpreting and enforcing the statute beyond the intent of the law.
- However, we do believe appropriate exemptions should be placed in statute to clarify lawful uses, while ensuring the malicious use of lasers and laser pointers is prohibited.
- I'd like to thank the Departments of Safety, Transportation, and Fish and Game for their willingness to provide feedback to us as we worked to provide a solution for Senator Carson to introduce in the Senate.
- I respectfully request the committee recommends "Ought to Pass" on Part One of Senate Bill 134
- Thank you for your consideration.
- I'm happy to take any questions.

Respectfully Submitted by David Cuzzi of Prospect Hill Strategies for BAE Systems
David.Cuzzi@prospecthillstrategies.com, 603-716-0569

February 16, 2021

Testimony of Summit Title Services, LLC

on

S.B. 134; Section 2

AN ACT relative to the revised uniform law on notarial acts and the uniform real property electronic recording act.

before the

Senate Executive Departments and Administration Committee

Tuesday, February 16, 2021

1:30 p.m.

Madame Chairwoman Carson, Vice Chairman Cavanaugh and Distinguished Members of the Committee:

Summit Title Services, LLC appreciates the opportunity to support S.B. 134; Section 2 which would revise uniform law on notarial acts and the uniform real property electronic recording act.

Summit Title, along with other settlement providers in New Hampshire have taken interest in Remote Online Notarization because of the added security, convenience to the consumer as well as for the safety of our employees, during this pandemic.

Being deemed an essential business during the COVID-19 Pandemic, we have been challenged with keeping our staff safe to be able to perform in-person closings. Emergency Order #11 was put in place to assist with this challenge. Unfortunately, EO #11 has been challenging. This order requires that we still obtain wet signatures of the consumer as well as the Notary Public/Justice of the Peace. This process does not allow us to complete a true digital closing and has unintentionally added additional work for our industry along with facing many new challenges. Some of these challenges include:

- 1) Consumers having to print 100+ pages on personal printers using letter and legal-size paper.
- 2) Lenders not having the closing documents prepared in time to reach the customer via overnight mail.
- 3) Customer not able to get the documents back in a timely manner which creates post-closing issues for the lender (including penalties when the loan is pre-sold in the secondary market).
- 4) Customers who are positive with COVID-19 are handling paperwork that is then sent back or dropped off at our office for our employees to handle.
- 5) Missing signatures, dates, etc. which creates additional contact to have the documents re-signed.
- 6) "Drive-up closings" present another set of concerns that include not properly being able to explain the documents the consumer is signing properly, paperwork getting wet when there is bad weather, requiring employees to stand out in the rain, cold or windy weather.
- 7) "In-person closings" are concerning because of the close contact that is required. If we are not closing in one of our offices, each office has a different policy that doesn't always protect our employee. Conflict when we are asking others not to enter the closing room if they are not

signing closing documents. Conflict when some feel as though they should have to wear a mask and enter our building.

Another big concern for us as Notaries/Justice of the Peace is the risk of a potential lawsuit that may come when a consumer has the opportunity to bring a lawsuit by finding a loophole within this EO.

Being able to offer the convenience, security and safety to our employees and the consumer would certainly be a win-win for all.

Thank you for the opportunity to share our support for this bill as well as the challenges we are faced with.

Jennifer Horgan

From: Virginia S. Sheehan <vss@fstlaw.com>
Sent: Tuesday, March 2, 2021 1:02 PM
To: Sharon Carson; William Gannon; Harold French; 'Becky.Whitley@leg.state.nh.us; Jay Kahn
Cc: Jennifer Horgan; Donald H. Sienkiewicz (dhs@estateplannh.com)
Subject: Amendments to Part II of SB 134

Dear Senators Carson, Gannon, French, Whitley and Kahn,

I write in support of the amendments to Part II of SB 134 that I believe were brought forward today by Senator French.

Legislation passed last summer authorized remote notarization of wills, trusts, and powers of attorney, and remote witnessing of wills, during the COVID-19 State of Emergency. This has provided NH estate planners the ability to serve many clients who otherwise could not have completed their estate plans due to medical concerns, and to keep many others safe during the process.

Senator Cavanaugh introduced permanent remote notarization legislation this session that has been added to SB 134 in Part II. He did this at the request of the Mortgage Bankers & Brokers Association of New Hampshire. The purpose is to allow remote real estate closings, and the legislation is based on model statutes, the Revised Uniform Law on Notarial Acts and the Uniform Real Property Electronic Recording Act ("RULONA/URPERA") that have been enacted in many other states. Last summer's amendment to the notarial acts statute regarding estate planning documents, RSA 456-B,VII, is appropriately included in Senator Cavanaugh's proposed legislation, but at this point it is also appropriate to further amend RSA 456-B,VII, as well as RSA 551:2,III regarding remote witnessing of wills. The proposed amendments, which were provided to Senator French by Attorney Donald Sienkiewicz, are germane to the subject matter and overall intent of RULONA/URPERA, and would make the temporary authority to do remote estate planning document signings permanent. These are non-partisan amendments that will continue to allow many residents of New Hampshire to put their estate planning affairs in order without putting their health at risk, whether due to Covid-19 or other health care concerns.

Thank you for your consideration.

Ginger

Virginia Symmes Sheehan
Flood, Sheehan & Tobin, PLLC
2 Delta Drive, Suite 303
Concord, NH 03301
Tel: 603-415-4200
Fax: 603-415-4201
Website: www.fstlaw.com

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Jennifer Horgan

From: Susan Cragin <susancragin@earthlink.net>
Sent: Thursday, June 10, 2021 10:28 AM
To: ~House Judiciary Committee; ~Senate Judiciary Committee
Subject: Statement in opposition to SB-134 II CHAPTER 478-A UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

My name is Susan Cragin. I am the Merrimack County Register of Deeds, and also a former Senior Investigator with the FDIC Division of Liquidations, in the Fraud division. I am again testifying in opposition to SB-134 II Chapter 478-A, regarding adoption of URPERA, the Uniform Real Property Electronic Recording Act. I have been told that the legislation is likely to pass, but first I want to make sure that the committee understands the legislation they are passing, and why they are passing it.

The legislation seems to make our laws like other state laws, and become "modern" by allowing esignatures on documents filed with the registries of deeds. It also allows electronic documents. But what you think about the legislation is wrong.

Flaws:

(1) Electronic signatures have been superceded by digital signatures for critical documents.

The term esignature or "electronic signature" as defined by current law means any mark made with the intent to sign, "intent" meaning the thought in the signatory's mind at the time he affixed whatever his mark was. So the mark can be anything.

Recently, I accepted a document from a New Hampshire State attorney with his "signature" typed by his secretary. He convinced me that this was acceptable under New Hampshire law.

Since the term "electronic" signature has come out, it has been superceded by another, tighter term: digital signature. "Electronic" signature has been downgraded to use between two parties to a contract.

<http://www.differencebetween.net/technology/difference-between-digital-signature-and-electronic-signature/#:~:text=The%20main%20difference%20between%20the,the%20intention%20to%20do%20so>

Digital signatures are used when accuracy is critical. Here, with one party being a regulated entity (banks) and the other being an individual who signs a contract of adhesion without reading it, digital signatures are more appropriate. Signing services like Adobe and DocuSign promise "electronic" signatures, but their definition provides the security of a digital signature.

(2) "Electronic" or "digital" signatures are not used exclusively in e-documents.

I have been told that the committee thinks that you cannot have one without the other, but clearly you can have e-signatures on plain paper documents. And there is nothing in the legislation that mandates e-signatures only on e-documents.

(3) The deeds offices do not currently accept electronic documents, and may be financially impacted by this decision.

Registries of Deeds offer e-recording services, but the documents we currently e-record are not electronic documents, they are merely PDF copies of paper documents, with wet signatures. (These are sometimes called digital documents.) We may need changes to our software, and training to our staff, to accept and validate e-documents.

See this website for a clear definition of the distinction between the two.

<https://tiekinetix.com/en/difference-between-digital-electronic-documents>

I have no suggestions for changing the legislation, other than that the definition of "esignature" be changed to "digital signature," because "esignature" is defined so vaguely everywhere outside this particular piece of legislation. I would also suggest that you amend the financial impact section to show an unknown cost to the Deeds offices.

Susan Cragin

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=aHR0cHM6Ly9zZWZyY2hzZW50ZWNodGFyZ2V0LmNvbS9kZWZpbml0aW9uL2RpZ2l0YWw2c2lnbmF0dXJl&i=NWViOWEzNmVkMDA3MzIxNzcwMzJhMTJh&t=cHVqb2ZubU5YZ2JveUdLb1VFNmsyYkxTbnJwWWVoMC9qd3hTeDBQSVVxUT0=&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=aHR0cHM6Ly90aWVraW5ldG14LmNvbS9lbi9kaWZmZXJlbnNILWJldHdlZW4tZGlnaXRhbC1lbGVjdHJvbmljLWRvY3VtZW50cw==&i=NWViOWEzNmVkMDA3MzIxNzcxMzJhMTJh&t=NEpLaXBtaXhVRjB1ZmJ2RE5wQkx6UGRtSm5sT0h6U2VuOGZldXpXNSlXWT0=&h=b63053b27bf64ae8a8c26cbcd7e3ed7f>

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 # **SB134**

Hearing date: _____

Executive Session date: _____

Motion of: Comm 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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" 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: consent 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 checked="" 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 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"/>

Reported out by: Carson

Notes: _____

Committee Report

FOR THE CONSENT CALENDAR

JUDICIARY

SB 134-FN, adopting omnibus legislation relative to civil actions and criminal liability.

Ought to Pass with Amendment, Vote 5-0.

Senator Sharon Carson for the committee.

This bill is omnibus legislation that as amended addresses prohibiting certain uses of laser pointing devices; the revised uniform law on notarial acts and the uniform real property electronic recording act; incarceration under a suspended sentence; civil liability for damage to highways; procedures for structured settlements; establishing the New Hampshire collaborative law act; probate administration, distribution upon intestacy, and powers of attorney and adopting the uniform disclaimer of property interests act; 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; making an appropriation funding mental health intervention training programs; employer access to motor vehicle records; and authorization to grow industrial hemp. The Committee removed Part X of the bill as drone and airspace regulation is overseen by the federal government and not the state.

General Court of New Hampshire - Bill Status System

Docket of SB134

Docket Abbreviations

Bill Title: adopting omnibus legislation relative to civil actions and criminal liability.**Official Docket of SB134.:**

Date	Body	Description
2/3/2021	S	Introduced 01/06/2021 and Referred to Judiciary; SJ 3
2/10/2021	S	Remote Hearing: 02/16/2021, 01:30 pm; Links to join the hearing can be found in the Senate Calendar; SC 11
3/10/2021	S	Committee Report: Ought to Pass with Amendment #2021-0775s , 03/18/2021; Vote 5-0; CC; SC 15
3/18/2021	S	Committee Amendment #2021-0775s, RC 23Y-1N, AA; 03/18/2021; SJ 8
3/18/2021	S	Ought to Pass with Amendment 2021-0775s, RC 23Y-1N, MA; OT3rdg; 03/18/2021; SJ 8
3/31/2021	H	Introduced (in recess of) 02/25/2021 and referred to Judiciary HJ 4 P. 50
4/13/2021	H	Public Hearing: 04/27/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/93757868844 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
4/20/2021	H	Executive Session: 05/04/2021 01:00 pm Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/95312058132
5/24/2021	H	Majority Committee Report: Ought to Pass with Amendment #2021-1341h (Vote 16-4; RC) HC 26 P. 25
5/24/2021	H	Minority Committee Report: Inexpedient to Legislate
6/3/2021	H	Amendment #2021-1341h: AA VV 06/03/2021 HJ 8 P. 165
6/3/2021	H	FLAM #2021-1801h (Rep. Prout): AA DV 185-184 06/03/2021 HJ 8 P. 172
6/3/2021	H	Ought to Pass with Amendment 2021-1341h and 2021-1801h: MA RC 264-113 06/03/2021 HJ 8 P. 172
6/10/2021	S	Sen. Carson Moved Nonconcur with the House Amendment; Requests C of C, MA, VV; 06/10/2021; SJ 19
6/10/2021	S	President Appoints: Senators Carson, French, Kahn; 06/10/2021; SJ 19
6/10/2021	H	House Accedes to Senate Request for CofC (Rep. Gordon): MA VV 06/10/2021 HJ 10 P. 16
6/10/2021	H	Speaker Appoints: Reps. Gordon, Rice, Wuelper, McBeath 06/10/2021 HJ 10 P. 16
6/11/2021	S	Committee of Conference Meeting: 06/15/2021, 10:30 a.m., Room 100, SH
6/17/2021	H	Conference Committee Report #2021-2019c Filed 06/10/2021; House Amendment + New Amendment
6/24/2021	H	Conference Committee Report 2021-2019c: Adopted, VV 06/24/2021
6/24/2021	S	Conference Committee Report #2021-2019c , Adopted, VV; 06/24/2021; SJ 20
7/20/2021	H	Enrolled Bill Amendment #2021-2078e: AA VV (in recess of) 06/24/2021
7/21/2021	S	Enrolled Bill Amendment #2021-2078e Adopted, VV, (In recess of

		06/24/2021); SJ 20
7/28/2021	H	Enrolled (in recess of) 06/24/2021
7/28/2021	S	Enrolled Adopted, VV, (In recess 06/24/2021); SJ 20
8/16/2021	S	Signed by the Governor on 08/10/2021; Chapter 0206
8/16/2021	S	Part I Effective 01/01/2022
8/16/2021	S	Part II. I. RSA 456-B:2; VII as inserted by Section 4 and Section 11 Effective 08/10/2021
8/16/2021	S	Part II. II. Remainder Effective 02/06/2022
8/16/2021	S	Part III Effective 10/09/2021
8/16/2021	S	Part IV Effective 10/09/2021
8/16/2021	S	Part V Effective 10/09/2021
8/16/2021	S	Part VI. I. Sections 1 - 8 Effective 07/ 01/2021
8/16/2021	S	Part VI. II. Sections 11 - 13 and 15 Effective 10/09/2021
8/16/2021	S	Part VI. III. Section 14 Effective 01/01/2022
8/16/2021	S	Part VI. IV. Remainder Effective 08/10/2022
8/16/2021	S	Part VII. I. Sections 1 - 4 Effective 01/01/2022
8/16/2021	S	Part VII. II. Remainder Effective 08/10/2021
8/16/2021	S	Part VIII Effective 07/01/2021
8/16/2021	S	Part IX Effective 08/10/2021
8/16/2021	S	Part X Effective 08/10/2021

 NH House

 NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB134

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 # 0382s - amendment # 0691s

- amendment # 0472s - amendment # 0175s

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 # _____ - 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): 2019

Enrolled Bill Amendment(s) 2076

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:

Committee Aide

Date

Senate Clerk's Office AK

1 Committee of Conference Report on SB 134-FN, adopting omnibus legislation relative to civil actions
2 and criminal liability.

3

4 Recommendation:

5

6 That the Senate recede from its position of nonconcurrence with the House amendment, and
7 concur with the House amendment, and

8 That the Senate and House adopt the following new amendment to the bill as amended by the
9 House, and pass the bill as so amended:

10

11 Amend RSA 631:3-a as inserted by Part I of the bill by deleting paragraph V.

12

13 Amend the bill by replacing Part II with the following:

14

15

PART II

16

Relative to the revised uniform law on notarial acts and
the uniform real property electronic recording act.

17

18 1 Notaries Public. Amend RSA 455:3 to read as follows:

19

455:3 Powers.

20

I. Every notary public, in addition to the usual powers of the office, shall have the same
21 powers as a justice of the peace in relation to depositions and the acknowledgment of deeds and
22 other instruments and the administering of oaths.

23

II. All ~~[acknowledgments made]~~ **notarial acts performed** by a notary public **with respect**
24 **to a record** shall be either under an **embossed** official seal or shall carry the legible imprint of an
25 **electronic or rubber** official ~~[rubber]~~ stamp stating the name of the notary, the words "notary
26 public, New Hampshire" and the expiration date of the notary public's commission.

27

III. As used in this section:

28

(a) **"Electronic"** has the same meaning given in RSA 456-B:1, VI;

29

(b) **"Notarial act"** has the same meaning given in RSA 456-B:1, I;

30

(c) **"Official stamp"** has the same meaning given in RSA 456-B:1, IX; and

31

(d) **"Record"** has the same meaning given in RSA 456-B:1, XI.

32

2 New Paragraph; Notarial Fees. Amend RSA 455:11 by inserting after paragraph II the
33 following new paragraph:

Committee of Conference Report on SB 134-FN
- Page 2 -

1 III. For performing notarial acts for a remotely located individual under RSA 456-B:6-a, a
2 notary public shall be entitled to a fee of \$25 per act.

3 3 Uniform Law on Notarial Acts; Definitions. Amend RSA 456-B:1 to read as follows:
4 456-B:1 Definitions.

5 I. "Notarial act" means ~~[any act that a notary public]~~ ***an act, whether performed with***
6 ***respect to a tangible or electronic record, that a notarial officer*** is authorized to perform
7 ***under the law of this state***, and includes taking an acknowledgment, administering an oath or
8 affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature,
9 certifying or attesting a copy, and noting a protest of a negotiable instrument.

10 II. "Acknowledgment" means a declaration by ~~[a person]~~ ***an individual before a notarial***
11 ***officer*** that the ~~[person has executed an instrument]~~ ***individual has signed a record*** for the
12 purposes stated therein and, if ~~[the instrument is executed]~~ ***the record is signed*** in a
13 representative capacity, that the ~~[person]~~ ***individual*** signed the ~~[instrument]~~ ***record*** with proper
14 authority and ~~[executed]~~ ***signed*** it as the act of the ~~[person]~~ ***individual*** or entity ~~[represented and]~~
15 identified therein.

16 III. "Verification upon oath or affirmation" means a declaration that a statement is true
17 made by ~~[a person]~~ ***an individual*** upon oath or affirmation.

18 IV. "In a representative capacity" means ***acting as***:

19 (a) ~~[For and on behalf of a corporation, partnership, trust, or other entity, as]~~ An
20 authorized officer, agent, partner, trustee, or other representative ***for a person other than an***
21 ***individual***;

22 (b) ~~[As]~~ A public officer, personal representative, guardian, or other representative, in
23 the capacity recited in the instrument;

24 (c) ~~[As]~~ An ***agent or*** attorney in fact for a principal; or

25 (d) In any other capacity as an authorized representative of another.

26 V. "Notarial officer" means a notary public, justice of the peace, or other officer authorized to
27 perform notarial acts.

28 VI. "***Electronic***" means ***relating to technology having electrical, digital, magnetic,***
29 ***wireless, optical, electromagnetic, or similar capabilities.***

30 VII. "***Electronic signature***" means ***an electronic symbol, sound, or process attached***
31 ***to or logically associated with a record and executed or adopted by an individual with the***
32 ***intent to sign the record.***

33 VIII. "***Notary public***" means ***an individual appointed to perform a notarial act by***
34 ***the governor and executive council.***

35 IX. "***Official stamp***" means ***an official seal of office consisting of a physical image***
36 ***affixed to or embossed on a tangible record or an electronic image attached to or logically***
37 ***associated with an electronic record.***

1 X. "Person" means an individual, corporation, business trust, statutory trust,
2 estate, trust, partnership, limited liability company, association, joint venture, public
3 corporation, government or governmental subdivision, agency, or instrumentality, or any
4 other legal or commercial entity.

5 XI. "Record" means information that is inscribed on a tangible medium or that is
6 stored in an electronic or other medium and is retrievable in perceivable form.

7 XII. "Sign" means, with present intent to authenticate or adopt a record:

8 (a) To execute or adopt a tangible symbol; or

9 (b) To attach to or logically associate with the record an electronic symbol,
10 sound, or process.

11 XIII. "Signature" means a tangible symbol or an electronic signature that evidences
12 the signing of a record.

13 XIV. "Stamping device" means:

14 (a) A physical device capable of affixing to or embossing on a tangible record an
15 official stamp; or

16 (b) An electronic device or process capable of attaching to or logically
17 associating with an electronic record an official stamp.

18 XV. "State" means a state of the United States, the District of Columbia, Puerto
19 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
20 jurisdiction of the United States.

21 4 Uniform Law on Notarial Acts; Notarial Acts. Amend RSA 456-B:2 to read as follows:

22 456-B:2 Notarial Acts.

23 I. In taking an acknowledgment, the notarial officer must determine, either from personal
24 knowledge or from satisfactory evidence, that the ~~[person]~~ *individual* appearing before the officer
25 and making the acknowledgment ~~[is the person whose true]~~ *has the identity claimed and that*
26 *the signature [is] on the instrument is the signature of the individual.*

27 II. In taking a verification upon oath or affirmation, the notarial officer must determine,
28 either from personal knowledge or from satisfactory evidence, that the ~~[person]~~ *individual*
29 appearing before the officer and making the verification ~~[is the person whose true]~~ *has the identity*
30 *claimed and that the signature [is] on the statement verified is the signature of the individual.*

31 III. In witnessing or attesting a signature the notarial officer must determine, either from
32 personal knowledge or from satisfactory evidence, that the ~~[signature is that of the person]~~
33 *individual* appearing before the officer and ~~[named therein]~~ *signing the record has the identity*
34 *claimed.*

35 IV. In certifying or attesting a copy of a ~~[document]~~ *record* or other item *that was copied,*
36 the notarial officer must determine that the proffered copy is a full, true, and accurate transcription
37 or reproduction of ~~[that which was copied]~~ *the record or item.*

Committee of Conference Report on SB 134-FN

- Page 4 -

1 V. In making or noting a protest of a negotiable instrument the notarial officer must
2 determine the matters set forth in RSA 382-A:3-505.

3 VI. ~~[A notarial officer has satisfactory evidence that a person is the person whose true~~
4 ~~signature is on a document if that person is personally known to the notarial officer, is identified~~
5 ~~upon the oath or affirmation of a credible witness personally known to the notarial officer, or is~~
6 ~~identified on the basis of identification documents.] **A notarial officer may certify that a**
7 **tangible copy of an electronic record is an accurate copy of the electronic record.**~~

8 VII.(a) For the purposes of this section, but only in the context of executing an estate
9 planning instrument such as a will~~[, trust, or power of attorney]~~ **or estate planning trust**, the
10 requirement that a person appear before a notarial officer at the time of the notarial act is satisfied
11 if the notarial officer is:

12 (1) The attorney, licensed to practice law in New Hampshire and in good standing,
13 who drafted the estate planning instrument;

14 (2) Another attorney licensed to practice law in New Hampshire and in good
15 standing, under the drafting attorney's supervision; or

16 (3) A paralegal under the supervision of either such attorney; and

17 (b) The person and the notarial officer can communicate simultaneously by sight and
18 sound through an electronic device or process at the time of the notarial act.

19 (c) This paragraph shall apply only to notarial acts performed on or after March 23, 2020
20 ~~[and ending on the last day of the state of emergency declared by executive order 2020-04].~~ In
21 addition, a notarial act performed in compliance with emergency order #11 pursuant to executive
22 order 2020-04 from its effective date through the date of its expiration is valid.

23 5 New Sections; Personal Appearance Required; Identification of Individual. Amend RSA 456-B
24 by inserting after section 2 the following new sections:

25 456-B:2-a Personal Appearance Required. If a notarial act relates to a statement made in or a
26 signature executed on a record, the individual making the statement or executing the signature shall
27 appear personally before the notarial officer.

28 456-B:2-b Identification of Individual.

29 I. A notarial officer has personal knowledge of the identity of an individual appearing before
30 the officer if the individual is personally known to the officer through dealings sufficient to provide
31 reasonable certainty that the individual has the identity claimed.

32 II. A notarial officer has satisfactory evidence of the identity of an individual appearing
33 before the officer if the officer can identify the individual:

34 (a) By means of:

35 (1) A passport, driver's license, or government issued nondriver identification card,
36 which is current and unexpired; or

Committee of Conference Report on SB 134-FN

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1 (2) Another form of government identification issued to an individual, which is
2 current and unexpired, contains the signature or a photograph of the individual, and is satisfactory
3 to the officer; or

4 (b) By a verification upon oath or affirmation of a credible witness personally appearing
5 before the officer and known to the officer or whom the officer can identify on the basis of a passport,
6 driver's license, or government issued nondriver identification card, which is current and unexpired.

7 III. A notarial officer may require an individual to provide additional information or
8 identification credentials necessary to assure the officer of the identity of the individual.

9 6 Notarial Acts. Amend RSA 456-B:3, III to read as follows:

10 III. The signature, *embossed* official seal or the legible imprint of an *electronic or rubber*
11 official [~~rubber~~] stamp stating the name of the notary, and the words "notary public, New
12 Hampshire" and the expiration date of the notary public's commission of a person performing a
13 notarial act or for a justice of the peace the name of the justice and the expiration date of his or her
14 commission typed, printed, or stamped on the document are prima facie evidence that the signature
15 is genuine and that the person holds the designated title.

16 7 New Section; Notarial Act Performed for Remotely Located Individual. Amend RSA 456-B by
17 inserting after section 6 the following new section:

18 456-B:6-a Notarial Act Performed for Remotely Located Individual.

19 I. In this section:

20 (a) "Communication technology" means an electronic device or process that:

21 (1) Allows a notary public and a remotely located individual to communicate with
22 each other simultaneously by sight and sound; and

23 (2) When necessary and consistent with other applicable law, facilitates
24 communication with a remotely located individual who has a vision, hearing, or speech impairment.

25 (b) "Foreign state" means a jurisdiction other than the United States, a state, or a
26 federally recognized Indian tribe.

27 (c) "Identity proofing" means a process or service by which a third person provides a
28 notary public with a means to verify the identity of a remotely located individual by a review of
29 personal information from public or private data sources.

30 (d) "Outside the United States" means a location outside the geographic boundaries of
31 the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular
32 possession, or other location subject to the jurisdiction of the United States.

33 (e) "Remotely located individual" means an individual who is not in the physical
34 presence of the notary public who performs a notarial act under paragraph III.

35 II. A remotely located individual may comply with RSA 456-B:2-a, and any other
36 requirement under the law of this state to appear before or be in the presence of a notary public at
37 the time of a notarial act, by using communication technology to appear before a notary public.

1 III. A notary public located in this state may perform a notarial act using communication
2 technology for a remotely located individual if:

3 (a) The notary public:

4 (1) Has personal knowledge under RSA 456-B:2-b, I, of the identity of the individual;

5 (2) Has satisfactory evidence of the identity of the remotely located individual by
6 oath or affirmation from a credible witness appearing before the notary public under RSA 456-B:2-b,
7 II, or this section; or

8 (3) Has obtained satisfactory evidence of the identity of the remotely located
9 individual by using at least 2 different types of identity proofing;

10 (b) The notary public is able reasonably to confirm that a record before the notary public
11 is the same record in which the remotely located individual made a statement or on which the
12 individual executed a signature;

13 (c) The notary public, or a person acting on behalf of the notary public, creates an audio-
14 visual recording of the performance of the notarial act; and

15 (d) For a remotely located individual located outside the United States:

16 (1) The record:

17 (A) Is to be filed with or relates to a matter before a public official or court,
18 governmental entity, or other entity subject to the jurisdiction of the United States; or

19 (B) Involves property located in the territorial jurisdiction of the United States
20 or involves a transaction substantially connected with the United States; and

21 (2) The act of making the statement or signing the record is not prohibited by the
22 foreign state in which the remotely located individual is located.

23 IV. If a notarial act is performed under this section, the certificate of notarial act required by
24 RSA 456-B:7 and the short-form certificate provided in RSA 456-B:8 must indicate that the notarial
25 act was performed using communication technology.

26 V. A short-form certificate provided in RSA 456-B:8 for a notarial act subject to this section
27 is sufficient if it:

28 (a) Complies with rules adopted under subparagraph VIII(a); or

29 (b) Is in the form provided in RSA 456-B:8 and contains a statement substantially as
30 follows: "This notarial act involved the use of communication technology."

31 VI. A notary public, a guardian, conservator, or agent of a notary public, or a personal
32 representative of a deceased notary public shall retain the audio-visual recording created under
33 subparagraph III(c) or cause the recording to be retained by a repository designated by or on behalf
34 of the person required to retain the recording. Unless a different period is required by rule adopted
35 under subparagraph VIII(d), the recording must be retained for a period of at least 10 years after the
36 recording is made.

Committee of Conference Report on SB 134-FN

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1 VII. Before a notary public performs the notary public's initial notarial act under this
2 section, the notary public must notify the secretary of state that the notary public will be performing
3 notarial acts with respect to remotely located individuals and identify the technologies the notary
4 public intends to use. If the secretary of state has established standards under paragraph VIII and
5 RSA 456-B:8-b, IV, for approval of communication technology or identity proofing, the
6 communication technology and identity proofing must conform to the standards.

7 VIII. In addition to adopting rules under RSA 456-B:8-b, IV, the secretary of state may
8 adopt rules under RSA 541-A regarding performance of a notarial act under this section. The rules
9 may:

10 (a) Prescribe the means of performing a notarial act involving a remotely located
11 individual using communication technology;

12 (b) Establish standards for communication technology and identity proofing;

13 (c) Establish requirements or procedures to approve providers of communication
14 technology and the process of identity proofing; and

15 (d) Establish standards and a period for the retention of an audio-visual recording
16 created under subparagraph III(c).

17 IX. Before adopting, amending, or repealing a rule governing performance of a notarial act
18 with respect to a remotely located individual, the secretary of state must consider:

19 (a) The most recent standards regarding the performance of a notarial act with respect
20 to a remotely located individual promulgated by national standard-setting organizations and the
21 recommendations of the National Association of Secretaries of State;

22 (b) Standards, practices, and customs of other jurisdictions that have laws substantially
23 similar to this section; and

24 (c) The views of governmental officials and entities and other interested persons.

25 X. Unless the secretary of state has adopted a rule establishing standards for identity
26 proofing under subparagraph VIII(b), a notary public shall comply with the credential analysis and
27 authentication provisions of the Standards for Remote Online Notarization (Version 1) adopted by
28 The Mortgage Industry Standards Maintenance Organization on August 28, 2019. Compliance with
29 this paragraph satisfies the requirement of using at least 2 different types of identity proofing when
30 performing a notarial act for a remotely located individual under this section.

31 8 New Sections; Official Stamp; Stamping Device; Notification Regarding Performance of
32 Notarial Act on Electronic Record; Selection of Technology; Rules; Journal; Validity of Notarial Acts;
33 Relation to Electronic Signatures in Global and National Commerce Act. Amend RSA 456-B by
34 inserting after section 8 the following new sections:

35 456-B:8-a Official Stamp; Stamping Device.

36 I. The electronic or rubber official stamp of a notary public shall:

37 (a) Include the information required by RSA 455:3; and

1 (b) Be capable of being copied together with the record to which it is affixed or attached
2 or with which it is logically associated.

3 II. A notary public is responsible for the security of the notary public's stamping device and
4 may not allow another individual to use the device to perform a notarial act. On resignation from, or
5 the revocation or expiration of, the notary public's commission, or on the expiration of the date set
6 forth in the stamping device, if any, the notary public shall disable the stamping device by
7 destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it
8 unusable. On the death or adjudication of incompetency of a notary public, the notary public's
9 personal representative or guardian or any other person knowingly in possession of the stamping
10 device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use
11 in a manner that renders it unusable.

12 III. If a notary public's stamping device is lost or stolen, the notary public or the notary
13 public's personal representative or guardian shall notify promptly the secretary of state on
14 discovering that the device is lost or stolen.

15 456-B:8-b Notification Regarding Performance of Notarial Act on Electronic Record; Selection of
16 Technology; Rules.

17 I. A notary public may select one or more tamper-evident technologies to perform notarial
18 acts with respect to electronic records. A person may not require a notary public to perform a
19 notarial act with respect to an electronic record with a technology that the notary public has not
20 selected.

21 II. Before a notary public performs the notary public's initial notarial act with respect to an
22 electronic record, a notary public shall notify the secretary of state that the notary public will be
23 performing notarial acts with respect to electronic records and identify the technology the notary
24 public intends to use. If the secretary of state has established standards for approval of technology,
25 the technology shall conform to the standards. If the technology conforms to the standards, the
26 secretary of state shall approve the use of the technology.

27 III. The secretary of state may adopt rules under RSA 541-A to implement this chapter.
28 Rules adopted regarding the performance of notarial acts with respect to electronic records may not
29 require, or accord greater legal status or effect to, the implementation or application of a specific
30 technology or technical specification.

31 IV. Unless the secretary of state has adopted a rule establishing standards for tamper-
32 evident technology, a notary public shall attach or logically associate the notary public's official
33 stamp to an electronic record by use of a digital certificate complying with the X.509 standard
34 adopted by the International Telecommunication Union or a similar industry-standard technology.

35 456-B:8-c Journal.

36 I. A notary public shall maintain a journal in which the notary public chronicles all notarial
37 acts the notary public performs with respect to a remotely located individual under RSA 456-B:6-a.

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1 The notary public shall retain the journal for 10 years after the performance of the last notarial act
2 chronicled in the journal.

3 II. A journal may be created on a tangible medium or in an electronic format. A notary
4 public shall maintain only one journal at a time to chronicle all notarial acts performed regarding
5 tangible records and one or more journals to chronicle all notarial acts performed regarding
6 electronic records. If a journal is maintained on a tangible medium, it shall be a permanent, bound
7 register with numbered pages. If the journal is maintained in an electronic format, it shall be in a
8 permanent, tamper-evident electronic format complying with the rules of the secretary of state.

9 III. An entry in a journal shall be made contemporaneously with performance of the notarial
10 act and contain the following information:

11 (a) The date and time of the notarial act;

12 (b) A description of the record, if any, and type of notarial act;

13 (c) The full name and address of each individual for whom the notarial act is performed;

14 (d) If identity of the individual is based on personal knowledge, a statement to that
15 effect;

16 (e) If identity of the individual is based on satisfactory evidence, a brief description of
17 the method of identification and the identification credential presented, if any, including the date of
18 issuance and expiration of the identification credential; and

19 (f) The fee, if any, charged by the notary public.

20 IV. If the journal of a notary public is lost, the notary public loses access to the journal, or
21 the journal is stolen, the notary public promptly shall notify the secretary of state upon discovering
22 the journal is lost, access is lost, or the journal is stolen.

23 V. On resignation from, or the revocation or suspension of, the commission of a notary
24 public, the notary public shall retain the journal in accordance with paragraph I and inform the
25 secretary of state where the journal is located.

26 VI. Instead of retaining a journal as provided in paragraphs I and V, a current or former
27 notary public may transmit the journal to a repository approved by the secretary of state.

28 VII. Upon the death or adjudication of incompetency of a current or former notary public,
29 the personal representative or guardian of the notary public shall retain the journal as provided in
30 paragraphs I or V or transmit the journal to a repository approved by the secretary of state.

31 456-B:8-d Validity of Notarial Acts. The failure of a notarial officer to perform a duty or meet a
32 requirement specified in this chapter or RSA 455 does not invalidate a notarial act performed by the
33 notarial officer. The validity of a notarial act under this chapter or RSA 455 does not prevent an
34 aggrieved person from seeking to invalidate the record or transaction that is the subject of the
35 notarial act or from seeking other remedies based on law of this state other than this chapter or law
36 of the United States. This section does not validate a purported notarial act performed by an
37 individual who does not have the authority to perform notarial acts.

1 456-B:8-e Relation to Electronic Signatures in Global and National Commerce Act. This chapter
2 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
3 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15
4 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
5 103(b) of that act, 15 U.S.C. section 7003(b).

6 9 New Paragraph; Short Forms. Amend RSA 456-B:8 by inserting after paragraph V the
7 following new paragraph:

8 VI. For certifying a tangible copy of an electronic record:

9 State of _____

10 (County) of _____

11 I certify that this record is a true and correct copy of an electronic record printed by me or under my
12 supervision.

13 Dated _____

14 _____

15 (Signature of notarial officer)

16 (Seal, if any)

17 Title (and Rank)

18 [My commission expires: _____]

19 10 New Chapter; Uniform Real Property Electronic Recording Act. Amend RSA by inserting
20 after chapter 478 the following new chapter:

21 CHAPTER 478-A

22 UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

23 478-A:1 Short Title. This chapter may be cited as the Uniform Real Property Electronic
24 Recording Act.

25 478-A:2 Definitions. In this chapter:

26 I. "Document" means information that is:

27 (a) Inscribed on a tangible medium or that is stored in an electronic or other medium
28 and is retrievable in perceivable form; and

29 (b) Eligible to be recorded in the land records maintained by the register of deeds.

30 II. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
31 optical, electromagnetic, or similar capabilities.

32 III. "Electronic document" means a document that is received by the register of deeds in an
33 electronic form.

34 IV. "Electronic signature" means an electronic sound, symbol, or process attached to or
35 logically associated with a document and executed or adopted by a person with the intent to sign the
36 document.

1 V. "Person" means an individual, corporation, business trust, estate, trust, partnership,
2 limited liability company, association, joint venture, public corporation, government, or
3 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

4 VI. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
5 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
6 United States.

7 478-A:3 Validity of Electronic Documents; Recordation of Electronic Documents in Tangible
8 Form.

9 I. If a law requires, as a condition for recording, that a document be an original, be on paper
10 or another tangible medium, or be in writing, the requirement is satisfied by an electronic document
11 satisfying this section.

12 II. If a law requires, as a condition for recording, that a document be signed, the
13 requirement is satisfied by an electronic signature.

14 III. A requirement that a document or a signature associated with a document be notarized,
15 acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the
16 person authorized to perform that act, and all other information required to be included, is attached
17 to or logically associated with the document or signature. A physical or electronic image of a stamp,
18 impression, or seal need not accompany an electronic signature.

19 IV. A register of deeds shall accept for recording a tangible copy of an electronic document,
20 other than a plat, map, survey, or plat of land as provided in RSA 478:1-a, containing a notarial
21 certificate as satisfying any requirement that a document accepted for recording be an original, if the
22 notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of
23 the electronic document. A notarial certificate in the form provided in RSA 456-B:8, VI, satisfies the
24 requirement of this paragraph.

25 478-A:4 Recording of Documents.

26 I. In this section, "paper document" means a document that is received by the register of
27 deeds in a form that is not electronic.

28 II. A register of deeds:

29 (a) May receive, index, store, archive, and transmit electronic documents;

30 (b) May provide for access to, and for search and retrieval of, documents and information
31 by electronic means;

32 (c) Shall, if accepting electronic documents for recording, continue to accept paper
33 documents as authorized by state law and shall place entries for both types of documents in the
34 same index;

35 (d) May convert paper documents accepted for recording into electronic form;

36 (e) May convert into electronic form information recorded before the register of deeds
37 began to record electronic documents;

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1 (f) May accept electronically any fee or tax that the register of deeds is authorized to
2 collect; and

3 (g) May agree with other officials of a state or a political subdivision thereof, or of the
4 United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals
5 and conditions precedent to recording and the electronic payment of fees and taxes.

6 478-A:5 Uniformity of Application and Construction. In applying and construing this uniform
7 act, consideration shall be given to the need to promote uniformity of the law with respect to its
8 subject matter among states that enact it.

9 478-A:6 Relation to Electronic Signatures in Global and National Commerce Act. This chapter
10 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15
11 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15
12 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
13 103(b) of that act, 15 U.S.C. section 7003(b).

14 11 Wills; Requirements. Amend RSA 551:2, III(b) to read as follows:

15 (b) Nothing in this paragraph shall be deemed to allow an electronic will or codicil. This
16 paragraph shall apply only to wills executed on or after March 23, 2020 ~~and ending on the last day~~
17 ~~of the state of emergency declared by executive order 2020-04].~~

18 12 Effective Date.

19 I. RSA 456-B:2, VII as inserted by section 4 of Part II of this act and section 11 of Part II of
20 this act shall take effect upon its passage.

21 II. The remainder of Part II of this act shall take effect 180 days after its passage.

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The signatures below attest to the authenticity of this Report on SB 134-FN, adopting omnibus legislation relative to civil actions and criminal liability.

Conferees on the Part of the Senate

Conferees on the Part of the House

Sen. Carson, Dist. 14

Rep. Gordon, Graf. 9

Sen. French, Dist. 7

Rep. Rice, Hills. 37

Sen. Kahn, Dist. 10

Rep. Wuelper, Straf. 3

Rep. McBeath, Rock. 26

July 19, 2021
2021-2078-EBA
05/10

Enrolled Bill Amendment to SB 134-FN

The Committee on Enrolled Bills to which was referred SB 134-FN

AN ACT adopting omnibus legislation relative to civil actions and criminal liability.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to SB 134-FN

This enrolled bill amendment makes technical corrections and incorporates changes to RSA 189:13-a, III made by 2021, 71 (HB 402).

Enrolled Bill Amendment to SB 134-FN

Amend Part IV of the bill by replacing section 2 with the following:

2 Applicability. RSA 408-G as inserted by section 1 of Part IV of this act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after the 30th day after the effective date of Part IV of this act.

Amend Part VI of the bill by replacing section 8 with the following:

8 Applicability.

I. Section 2 of Part VI of this act shall apply to all petitions for estate administration filed on or after July 1, 2021 regardless of the date of the decedent's death.

II. Section 3 of Part VI of this act shall apply to decedents dying on or after July 1, 2021.

III. Section 4 of Part VI of this act shall apply to general powers of attorney executed on or after July 1, 2021.

Amend RSA 189:13-a, III as inserted by section 1 of part VII of the bill by replacing it with the following:

ENROLLED BILL AMENDMENT TO SB 134-FN

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III. The department of education shall conduct training concerning the reading and interpretation of criminal history records. The superintendent or designee of the school administrative unit or the chief executive officer of the chartered public school or public academy shall complete such training and maintain the confidentiality of all criminal history records information received pursuant to this paragraph. ~~[If the criminal history records information indicates no criminal record, the superintendent or designee of the school administrative unit or the chief executive officer of the chartered public school or public academy shall destroy the information received immediately following review of the information.]~~ ***The superintendent of the school administrative unit, or chief executive officer of the chartered public school or public academy shall review the criminal history records information in accordance with paragraph V.*** If the criminal history records information indicates that the applicant has been convicted of any crime or has been charged pending disposition for or convicted of a crime listed in paragraph V, the superintendent or designee of the school administrative unit or the chief executive officer of the chartered public school or public academy shall review the information for a hiring decision~~], and the division of state police shall notify the department of education of any such charges pending disposition or convictions. The superintendent or designee of the school administrative unit or the chief executive officer of the chartered public school or public academy shall destroy any criminal history record information that indicates a criminal record within 60 days of receiving such information.]~~ ***If the applicant's criminal history records information indicates that the applicant has been charged pending disposition for or has been convicted of a crime listed in paragraph V, the superintendent of the school administrative unit or the chief executive officer of the chartered public school or public academy shall notify the department of education.***

Amend section 2 of Part X of the bill by replacing line 1 with the following:

2 Hemp. Amend RSA 439-A:3 to read as follows:

439-A:3 Hemp Permitted. Hemp is an agricultural product which may be grown as a crop,