

# Senate Judiciary Committee

*Jennifer Horgan 271-3092*

**SB 230-FN**, establishing the Uniform Power of Attorney Act.

**Hearing Date:** February 14, 2017

**Time Opened:** 9:00 a.m.

**Time Closed:** 9:17 a.m.

**Members of the Committee Present:** Senators Carson, Lasky, French, Gannon and Hennessey

**Members of the Committee Absent :** None

**Bill Analysis :** This bill adopts the Uniform Power of Attorney Act.

**Sponsors :**

Sen. Carson

Sen. Lasky

Rep. Guthrie

Rep. Wall

Rep. Kenison

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**Who supports the bill:** Senator Carson; Senator Lasky; Tom Fahey (NH Bankers Association); Roger Desroosiers (AARP); Doug McNutt (AARP); Delores Perrotta (AARP); Constance M. Chapdelaire (AARP); Cheryl Steinberg (NH Legal Assistance); Morie Muray (NH Public Health Association); Heather Carroll (Alzheimer's Association); Megan Neal; Elise Salek; Michelle Arruda; Tina Annis; Jeff Zellas; Bob Wells;

**Who opposes the bill:** No one

**Summary of testimony presented in support :**

**Senator Carson** (provided written testimony)

- Provided an amendment to the Committee
- Powers of Attorney are widely used by Granite Staters as a way to plan for incapacity and to carry out business transaction in the absence of the principal.
- This bill is the result of a work group that examined the Uniform Power of Attorney Act and adapted it to work with NH Law.
- This work group included trust and estate attorneys, trust companies, elder law attorneys, the NH court system, the Bankers Association, AARP, UNH Law School, and NH Legal Assistance.
- This will provide mandatory provisions that provide safeguards for the protection of the principal, the agent and persons who are asked to rely on the agent's authority.
- A lot of work has gone into dealing with existing problems with Powers of Attorney in NH, specifically with the acceptance of Powers of Attorney by banks in real estate and other transactions.
- This will compile all of the laws regarding Powers of Attorney in one statute in order for it to be more accessible to practitioners and the public.
- The bill will put a form into statute for Powers of Attorney that was developed to create a simple Power of Attorney process for individuals who do not have access to a lawyer, but still need a Power of Attorney to avoid the potential need for guardianship.

### **Attorney Bob Wells and Attorney Michelle Arruda**

- Were on the Committee that worked on this legislation
- This bill addresses several issues related to Powers of Attorney that were specifically dealt with in statute.
- The language is based on the Uniform Law Commission's model.
- It has been tailored to NH's unique laws in form and substance, such as statutory notices the principal must sign, acknowledgment forms the agent must sign, and other provisions from RSA 506:6 and 506:7.
- Senator Gannon asked if the purpose is to make this accessible to lay people.
  - Yes, and to clarify the responsibilities of principals and agents. This will be helpful for individuals who do not go to an attorney, anyone dealing with someone with the Power of Attorney, and others.
- Senator Gannon asked if this is simple enough for individuals to know where to file.
  - There would be no filing of the document; they would simply sign it and give it to the agent to use as required.
- Senator Carson asked why NH needs this.
  - This will help practitioners and the general public. NH's laws are scattered and unclear in execution guidelines, how co-agents can work together, and the duties and responsibilities of an agent. This will clarify what NH law is, safeguard principles, provide clear guidelines to agents, explain what kind of protections third parties have in accepting Powers of Attorney, and what kind of sanctions they would be subject to if they failed to honor their duties.
  - There have been issues with institutions refusing to accept Powers of Attorney. This would require them to honor a properly documented Power of Attorney and deals with making the Powers of Attorney more easily manageable in the court system.
- Senator Hennessey asked if this is a process other states go through as well.
  - Typically, every state will put together a committee of stakeholders to review the Power of Attorney model act and tailor it their existing statutes.
- Senator French asked if this a suggested form or the only form able to be used.
  - It is a suggested form, as anyone can draft their own Power of Attorney if they choose. However, this form is meant to work hand in glove with the statute.
- Senator Carson asked what happens if someone in Connecticut has a durable Power of Attorney over an elderly parent that lives with them and they move to NH. Would NH honor the Power of Attorney established in C?.
  - This legislation specifies that out of state Powers of Attorney that were validly executed would be valid in NH.
  - The Full Faith and Credit Clause requires that.

### **Summary of testimony presented in opposition :**

None

### **Future Action:** Pending

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Date Hearing Report completed: February 17, 2017