

Amendment to SB 230-FN

1 Amend RSA 564-E:102 as inserted by section 1 of the bill by replacing it with the following:

2
3 (1) "Agent" means a person granted authority to act for a principal under a power of
4 attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an
5 original agent, coagent, successor agent, and a person to which an agent's authority is delegated.

6 (2) "Court" means a court of competent jurisdiction.

7 (3) "Durable," with respect to a power of attorney, means not terminated by the
8 principal's incapacity.

9 (4) "Electronic" means relating to technology having electrical, digital, magnetic,
10 wireless, optical, electromagnetic, or similar capabilities.

11 (5) "Good faith" means honesty in fact.

12 (6) "Incapacity" means inability of an individual to manage property or business
13 affairs because the individual:

14 (A) has an impairment in the ability to receive and evaluate information or
15 make or communicate decisions even with the use of technological assistance; or

16 (B) is:

17 (i) missing;

18 (ii) detained, including incarcerated in a penal system; or

19 (iii) outside the United States and unable to return.

20 (7) "Include" and "including" means the same as "include, without limitation" and
21 "including, without limitation," regardless of whether expressly specified.

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

25 (9) "Power of attorney" means a writing or other record that grants authority to an
26 agent to act in the place of the principal, whether or not the term power of attorney is used.

27 (10) "Presently exercisable general power of appointment," with respect to property
28 or a property interest subject to a power of appointment, means power exercisable at the time in
29 question to vest absolute ownership in the principal individually, the principal's estate, the
30 principal's creditors, or the creditors of the principal's estate. The term includes a power of
31 appointment not exercisable until the occurrence of a specified event, the satisfaction of an
32 ascertainable standard, or the passage of a specified period only after the occurrence of the specified
33 event, the satisfaction of the ascertainable standard, or the passage of the specified period. The

Amendment to SB 230-FN
- Page 2 -

term does not include a power exercisable in a fiduciary capacity or only by will.

(11) "Principal" means an individual who grants authority to an agent in a power of attorney.

(12) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(13) "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.

(14) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

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

(16) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Amend RSA 564-E:105 as inserted by section 1 of the bill by replacing it with the following:

564-E:105 Execution Of Power Of Attorney. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney, and the principal must acknowledge the signature before a notary public or other individual authorized by law to take acknowledgments. In addition, a disclosure statement in substantially the following form must be signed by the principal or by another individual directed by the principal to sign the principal's name and affixed to the power of attorney:

INFORMATION CONCERNING THE POWER OF ATTORNEY

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

Notice to the Principal: As the "Principal," you are using this Power of Attorney to grant power to another person (called the "Agent") to make decisions, including, but not limited to, decisions concerning your money, property, or both, and to use your money, property, or both on your behalf. If this Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your

Amendment to SB 230-FN
- Page 3 -

1 money without advance notice to you or approval by you. Unless you have expressly provided
2 otherwise in this Power of Attorney, your Agent will have these powers before you become
3 incapacitated, and unless you have expressly provided otherwise in this Power of Attorney, your
4 Agent will continue to have these powers after you become incapacitated. You have the right to
5 retain this Power of Attorney and to release it later or to request that another person retain this
6 Power of Attorney on your behalf and release it only if one or more conditions specified in advance
7 by you are satisfied. You have the right to revoke or take back this Power of Attorney at any time,
8 so long as you are of sound mind. If there is anything about this Power of Attorney that you do not
9 understand, you should seek professional advice.

10
11 Amend RSA 564-E:108(b)(3) as inserted by section 1 of the bill by replacing it with the following:

12
13 (3) The fiduciary shall have the same power as the principal to revoke, suspend, or
14 terminate all or any part of such power of attorney.

15
16 Amend RSA 564-E:111(c) as inserted by section 1 of the bill by replacing it with the following:

17
18 (c) Except as otherwise provided in the power of attorney and subsection (d), an agent
19 that does not participate in or conceal a breach of fiduciary duty committed by another agent,
20 including a predecessor agent, is not liable for the actions of the other agent.

21
22 Amend RSA 564-E:113(a) as inserted by section 1 of the bill by replacing it with the following:

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

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

Amendment to SB 230-FN
- Page 4 -

attorney will end when the principal dies and I will not have authority to manage or dispose of any property or administer the estate of the principal. If I violate a fiduciary duty under the power of attorney, I may be liable for damages and may be subject to criminal prosecution. If there is anything about the power of attorney, or my duties under it, that I do not understand, I understand that I should seek professional advice.

Amend RSA 564-E:116(a) and (b) as inserted by section 1 of the bill by replacing it with the following:

(a) The following persons may petition a court to determine whether a power of attorney is in effect, to determine whether a power of attorney has terminated, to determine whether an agent's authority has terminated, to determine whether a particular gift is authorized as provided in subsection (g), to determine whether a particular transaction is authorized, to construe a power of attorney or to review the agent's conduct, and to grant appropriate relief:

(1) the principal;

(2) the agent;

(3) a guardian, conservator, or other fiduciary acting for the principal;

(4) a person authorized to make health-care decisions for the principal;

(5) the principal's spouse, parent, or descendant;

(6) a person who would take property of the principal under the laws of intestate succession if the principal were to die at the time the petition is filed, whether or not the principal has a will;

(7) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(8) the department of justice, the department of health and human services, the county attorney, or any other governmental agency having regulatory authority to protect the welfare of the principal.

(b) If there is no person specified in subsection (a) who is able or willing to file a petition for a purposes specified in subsection (a), then the court may entertain a petition for such purpose from any other interested party who or which demonstrates to the satisfaction of the court the following:

(1) sufficient knowledge of the principal to demonstrate interest in the welfare of the principal; and

(2) the lack of capacity of the principal to bring such a petition.

Amend RSA 564-E:116(e), as inserted by section 1 of the bill, by replacing it with the following:

Amendment to SB 230-FN
- Page 5 -

(e) In a proceeding under this section commenced by the filing of a petition by a person other than the agent, the court may order the agent to pay reasonable attorney's fees to the petitioner if the court determines that the agent has clearly violated the agent's fiduciary duties under the power of attorney or has failed without any reasonable cause or justification to submit accounts or reports after written request pursuant to RSA 564-E:114(h).

Amend RSA 564-E:120 as inserted by section 1 of the bill by replacing it with the following:

564-E:120 Liability For Refusal To Accept Acknowledged Power Of Attorney.

(a) Except as otherwise provided in subsection (b):

(1) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under RSA 564-E:119(d) no later than 7 business days after presentation of the power of attorney for acceptance;

(2) if a person requests a certification, a translation, or an opinion of counsel under RSA 564-E:119(d), the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation, or opinion of counsel; and

(3) a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(b) A person is not required to accept an acknowledged power of attorney if:

(1) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law, including, without limitation, federal rules and federal regulations;

(3) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(4) a request for a certification, a translation, or an opinion of counsel under RSA 564-E:119(d) is refused;

(5) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under RSA 564-E:119(d) has been requested or provided; or

(6) the person makes, or has actual knowledge that another person has made, a report to the appropriate adult protective services or law enforcement agency stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(c) A person that refuses in violation of this section to accept an acknowledged power of

Amendment to SB 230-FN
- Page 6 -

1 attorney:

2 (1) is subject to a court order mandating acceptance of the power of attorney; and

3 (2) may be held liable for reasonable attorney's fees and costs incurred in any action
4 or proceeding that confirms the validity of the power of attorney or mandates acceptance of the
5 power of attorney.

6
7 Amend RSA 564-E:201, (a)-(d) as inserted by section 1 of the bill by replacing it with the following:

8
9 (a) An agent under a power of attorney may do the following on behalf of the principal
10 or with the principal's property only if the power of attorney expressly grants the agent the
11 authority and exercise of the authority is not otherwise prohibited by another agreement or
12 instrument to which the authority or property is subject:

13 (1) create, amend, revoke, or terminate an inter vivos trust;

14 (2) make a gift, except the agent may not make a gift that will leave the principal
15 without sufficient assets or income to provide for the principal's care without relying on Medicaid,
16 other public assistance or charity unless the power of attorney expressly grants such authority or
17 unless the gift is approved in advance by the court upon a determination that the gift is authorized
18 in accordance with RSA 564-E:116(g);

19 (3) create or change rights of survivorship;

20 (4) create or change a beneficiary designation;

21 (5) delegate authority granted under the power of attorney;

22 (6) waive the principal's right to be a beneficiary of a joint and survivor annuity,
23 including a survivor benefit under a retirement plan;

24 (7) exercise a fiduciary power that the principal has authority to delegate to the
25 extent that the principal specifically and expressly delegates such power to the agent; or

26 (8) exercise authority over the content of electronic communications sent or received
27 by the principal.

28 (b) Notwithstanding a grant of authority to do an act described in subsection (a):

29 (1) an agent may not exercise authority under a power of attorney to create in the
30 agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the
31 principal's property by gift unless the power of attorney otherwise provides or unless the gift is
32 approved in advance by the court upon a determination that the gift is authorized in accordance
33 with RSA 564-E:116(g); and

34 (2) an agent (other than an agent that is an ancestor, spouse, or descendant of the
35 principal) may not exercise authority under a power of attorney to create in the agent, or in an
36 individual to whom the agent owes a legal obligation of support, an interest in the principal's
37 property by any manner other than a gift, including, without limitation, by right of survivorship,

Amendment to SB 230-FN
- Page 7 -

beneficiary designation, or disclaimer, unless the power of attorney otherwise provides.

(c) Subject to subsections (a), (b), (d), and (e), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in RSA 564-E:204 through RSA 564-E:216.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to RSA 564-E:217.

Amend the introductory paragraph of RSA 564-E:203 as inserted by section 1 of the bill by replacing it with the following:

564-E:203 Construction Of Authority Generally. Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in RSA 564-E:204 through RSA 564-E:217 or that grants to an agent authority to do all acts that a principal could do pursuant to RSA 564-E:201(c), a principal authorizes the agent, with respect to that subject, to:

Amend RSA 564-E:204(9) as inserted by section 1 of the bill by replacing it with the following:

(9) dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

Amend RSA 564-E:210 as inserted by section 1 of the bill by replacing it with the following:

564-E:210 Insurance And Annuities. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment;

(3) pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) apply for and receive a loan secured by a contract of insurance or annuity;

(5) surrender and receive the cash surrender value on a contract of insurance or

Amendment to SB 230-FN
- Page 8 -

1 annuity;

2 (6) exercise an election;

3 (7) exercise investment powers available under a contract of insurance or annuity;

4 (8) change the manner of paying premiums on a contract of insurance or annuity;

5 (9) change or convert the type of insurance or annuity with respect to which the
6 principal has or claims to have authority described in this section;

7 (10) apply for and procure a benefit or assistance under a statute or regulation to
8 guarantee or pay premiums of a contract of insurance on the life of the principal;

9 (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the
10 principal in a contract of insurance or annuity;

11 (12) select the form and timing of the payment of proceeds from a contract of
12 insurance or annuity; and

13 (13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds
14 in connection with, a tax or assessment levied by a taxing authority with respect to a contract of
15 insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

16
17 Amend RSA 564-E:211(a) as inserted by section 1 of the bill by replacing it with the following:

18
19 (a) In this section, “estate, trust, or other beneficial interest” means a trust, probate
20 estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal
21 is, may become, or claims to be, entitled to a share or payment.

22
23 Amend RSA 564-E:213(a) as inserted by section 1 of the bill by replacing it with the following:

24
25 (a) Unless the power of attorney otherwise provides, language in a power of attorney
26 granting general authority with respect to personal and family maintenance authorizes the agent
27 to:

28 (1) perform the acts necessary to maintain the customary standard of living of the
29 principal, the principal’s spouse, and the following individuals, whether living when the power of
30 attorney is executed or later born:

31 (A) individuals legally entitled to be supported by the principal; and

32 (B) the individuals whom the principal has customarily supported or indicated
33 the intent to support;

34 (2) make periodic payments of child support and other family maintenance required
35 by a court or governmental agency or an agreement to which the principal is a party;

36 (3) provide living quarters for the individuals described in paragraph (1) by:

37 (A) purchase, lease, or other contract; or

Amendment to SB 230-FN
- Page 9 -

1 (B) paying the operating costs, including interest, amortization payments,
2 repairs, improvements, and taxes, for premises owned by the principal or occupied by those
3 individuals;

4 (4) provide normal domestic help, usual vacations and travel expenses, and funds
5 for shelter, clothing, food, appropriate education, including postsecondary and vocational education,
6 and other current living costs for the individuals described in paragraph (1);

7 (5) pay expenses for necessary health care and custodial care on behalf of the
8 individuals described in paragraph (1);

9 (6) act as the principal's personal representative pursuant to the Health Insurance
10 Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C.
11 section 1320d, as amended, and applicable regulations, in making decisions related to the past,
12 present, or future payment for the provision of health care consented to by the principal or anyone
13 authorized under the law of this state to consent to health care on behalf of the principal;

14 (7) continue any provision made by the principal for automobiles or other means of
15 transportation, including registering, licensing, insuring, and replacing them, for the individuals
16 described in paragraph (1);

17 (8) maintain credit and debit accounts for the convenience of the individuals
18 described in paragraph (1) and open new accounts; and

19 (9) continue payments incidental to the membership or affiliation of the principal in
20 a religious institution, club, society, order, or other organization or ~~[to]~~ continue contributions to
21 those organizations.

22
23 Amend RSA 564-E:214(b)(6) as inserted by section 1 of the bill by replacing it with the following:

24
25 (6) receive the financial proceeds of a claim described in paragraph (4) and
26 conserve, invest, disburse, or use for a lawful purpose anything so received.

27
28 Amend RSA 564-E:217(b)(2) as inserted by section 1 of the bill by replacing it with the following:

29
30 (2) the principal's personal history of making or joining in the making of lifetime
31 gifts;

32
33 Amend RSA 564-E:301 as inserted by section 1 of the bill by replacing it with the following:

34
35 564-E:301 Statutory Form Power Of Attorney. A document substantially in the following form
36 may be used to create a power of attorney that is in compliance with the provisions of this chapter:

37
NEW HAMPSHIRE

Amendment to SB 230-FN
- Page 10 -

STATUTORY POWER OF ATTORNEY

INFORMATION CONCERNING THE POWER OF ATTORNEY

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

Notice to the Principal: As the "Principal," you are using this Power of Attorney to grant power to another person (called the "Agent") to make decisions, including, but not limited to, decisions concerning your money, property, or both, and to use your money, property, or both on your behalf. If this Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money without advance notice to you or approval by you. Unless you have expressly provided otherwise in this Power of Attorney, your Agent will have these powers before you become incapacitated, and unless you have expressly provided otherwise in this Power of Attorney, your Agent will continue to have these powers after you become incapacitated. You have the right to retain this Power of Attorney and to release it later or to request that another person retain this Power of Attorney on your behalf and release it only if one or more conditions specified in advance by you are satisfied. You have the right to revoke or take back this Power of Attorney at any time, so long as you are of sound mind. If there is anything about this Power of Attorney that you do not understand, you should seek professional advice.

Principal's Signature: _____

Date: _____

1. DESIGNATION OF AGENT

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

Name of Agent: _____

Agent's Address: _____

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

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

Name of Successor Agent: _____

Successor Agent's Address: _____

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

Name of Second Successor Agent: _____

Second Successor Agent's Address: _____

3. REVOCATION OF EXISTING POWERS OF ATTORNEY

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

_____ This Power of Attorney revokes all existing powers of attorney previously executed by me.

4. GRANT OF GENERAL AUTHORITY

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

Amendment to SB 230-FN
- Page 11 -

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

3 _____ B. I grant my agent general authority over the following subjects as defined in the following
4 sections of the Uniform Power of Attorney Act:

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

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

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

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

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

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

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

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

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

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

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

16 _____ Benefits from Governmental Programs or Civil or Military Service as defined
17 in RSA 564-E:214

18 _____ Retirement Plans as defined in RSA 564-E:215

19 _____ Taxes as defined in RSA 564-E:216

20 _____ Digital Assets

21 **5. GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

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

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

28 _____ Create, amend, revoke, or terminate an inter vivos trust

29 _____ Make a gift, subject to the limitations of RSA 564-E:217 of the Uniform
30 Power of Attorney Act

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

33 _____ My agent may make a gift, even if it will leave me without sufficient assets
34 or income to provide for my care without relying on Medicaid; other public
35 assistance or charity.

36 _____ My agent may make a gift to himself or herself and to any individual to
37 whom my agent owes a legal obligation of support.

Amendment to SB 230-FN
- Page 12 -

- 1 _____ Create or change rights of survivorship
- 2 _____ Create or change a beneficiary designation
- 3 _____ Delegate authority granted under this Power of Attorney to another person
- 4 _____ Waive my right to be a beneficiary of a joint and survivor annuity, including
- 5 a survivor benefit under a retirement plan
- 6 _____ Exercise the fiduciary power(s) that I have the authority to delegate as
- 7 specified in the "Special Instructions" in Paragraph 7 of this Power of Attorney
- 8 _____ Exercise authority over the content of electronic communication sent or
- 9 received by me
- 10 _____ Exercise authority with respect to intellectual property, including, without
- 11 limitation, copyrights, contracts for payment of royalties, and trademarks

12 **6. LIMITATION ON AGENT'S AUTHORITY (OTHER THAN GIFTING)**

13 (If an agent (including successor agent) named in this Power of Attorney is someone other than an

14 ancestor of yours, your spouse, or a descendant of yours, you must initial the following statement if

15 it is your choice that such agent have the following authority. An agent who is an ancestor of yours,

16 your spouse, or a descendant of yours already has the following authority under New Hampshire

17 law.)

18 _____ My agent may exercise authority under this Power of Attorney to create in my agent, or in

19 an individual to whom my agent owes a legal obligation of support, an interest in my property by

20 any manner (other than a gift), including, without limitation, by right of survivorship, beneficiary

21 designation, or disclaimer.

22 **7. SPECIAL INSTRUCTIONS (OPTIONAL)**

23 (Here you may include special instructions. You may leave this Paragraph blank. You may attach

24 additional pages as necessary.)

25 _____

26 **8. EFFECTIVE DATE AND AUTHORITY OF AGENT**

27 This Power of Attorney is effective immediately unless I have stated otherwise in the Special

28 Instructions in Paragraph 7 of this Power of Attorney. An agent (including successor agent) named

29 in this Power of Attorney will have no authority to act as my agent until he or she has signed and

30 affixed to this Power of Attorney an acknowledgment that is substantially the same as the

31 Acknowledgment at the end of this Power of Attorney.

32 **9. GOVERNING LAW**

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

34 **10. RELIANCE ON THIS POWER OF ATTORNEY**

35 Any person, including my agent, may rely upon this Power of Attorney if it is acknowledged before

36 a notary public or other individual authorized to take acknowledgements (or a copy of the

37 acknowledged Power of Attorney), unless that person knows it is void, invalid, or terminated.

Amendment to SB 230-FN
- Page 13 -

SIGNATURE AND ACKNOWLEDGMENT

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

Principal's Signature:_____

Date:_____

STATE OF NEW HAMPSHIRE

COUNTY OF _____

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

Signature of Notarial Officer:_____

Title (and Rank):_____

My commission expires:_____

AGENT ACKNOWLEDGMENT

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

I, _____, have read the attached power of attorney and am the person identified as the agent for the principal. I hereby acknowledge that when I act as agent I am given power under the power of attorney to make decisions about money, property, or both belonging to the principal, and to spend the principal's money, property, or both on the principal's behalf, in accordance with the terms of the power of attorney. When acting as agent, I have duties (called "fiduciary duties") to act in the principal's best interest, to act in good faith, and to act only within the scope of authority granted in the power of attorney, as well as other duties imposed by law to the extent not provided otherwise in the power of attorney. As an agent, I am not entitled to use the money or property for my own benefit or to make gifts to myself or others unless the power of attorney specifically gives me the authority to do so. As an agent, my authority under the power of attorney will end when the principal dies and I will not have authority to manage or dispose of any property or administer the estate of the principal. If I violate a fiduciary duty under the power of attorney, I may be liable for damages and may be subject to criminal prosecution. If there is anything about this power of attorney, or my duties under it, that I do not understand, I understand that I should seek professional advice.

Agent's Signature:_____

Date:_____

Amend RSA 564-E:302, as inserted by section 1 of the bill, by replacing it with the following:

Amendment to SB 230-FN
- Page 14 -

564-E:302 Agent's Certification. The following optional form may be used by an agent to certify facts concerning a power of attorney:

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

STATE OF NEW HAMPSHIRE

COUNTY OF _____

I, _____, certify under penalty of perjury that _____ granted me authority as an agent in a power of attorney dated _____.

I further certify that to my knowledge:

(1) the principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) (Insert Other Relevant Statement(s)).

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature: _____

Date: _____

Agent's Name Printed _____

Agent's Address _____

Agent's Telephone Number _____

Signed and sworn to (or affirmed) before me on _____, by _____, known to me or satisfactorily proven to be the person named herein

Signature of Notarial Officer: _____

Title (and Rank): _____

My commission expires: _____

Amend RSA 137-J:22, I as inserted by section 3 of the bill by replacing it with the following:

I. The principal or any person who is a near relative of the principal, or who is a responsible adult who is directly interested in the principal by personal knowledge and acquaintance, including, but not limited to a guardian, social worker, physician, or *member of the* clergy, may file an action in the probate court of the county where the principal is located at the time:

(a) Requesting that the authority granted to an agent by an advance directive be revoked on the grounds that the principal was not of sound mind or was under duress, fraud, or undue influence when the advance directive was executed, and shall have all the rights and

Amendment to SB 230-FN
- Page 15 -

remedies provided by ~~[RSA 506:7]~~ ***RSA 564-E:116*** which shall apply to directives executed under this chapter and persons acting pursuant to this chapter.

(b) Challenging the right of any agent who is acting or who proposes to act as such pursuant to this chapter and naming another person, who agrees to so act, to be appointed guardian over the person of the principal for the sole purpose of making health care decisions, as provided for in RSA 464-A.

Amend the bill by replacing all after section 3 with the following:

4 Judges of Probate; Jurisdiction; Cross Reference. Amend RSA 547:3, II(b) to read as follows:

(b) Durable powers of attorney under ~~[RSA 506:6 and 506:7]~~ ***RSA 564-E***.

5 Repeal. The following are repealed:

I. RSA 506:5, relative to powers of attorney and effect of death of principal.

II. RSA 506:6, relative to powers of attorney and disability or incompetence of the principal.

III. RSA 506:7 relative to powers of attorney and limitations on the agent.

6 Effective Date. This act shall take effect January 1, 2018.