

CHAPTER 206
SB 134-FN - FINAL VERSION

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 206
SB 134-FN - FINAL VERSION

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 3 -

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

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

14 3 Effective Date. Part I of this act shall take effect January 1, 2022.

15 PART II

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

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:

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

36 3 Uniform Law on Notarial Acts; Definitions. Amend RSA 456-B:1 to read as follows:

37 456-B:1 Definitions.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 4 -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **XI. “Record” means information that is inscribed on a tangible medium or that is**
2 **stored in an electronic or other medium and is retrievable in perceivable form.**

3 **XII. “Sign” means, with present intent to authenticate or adopt a record:**

4 **(a) To execute or adopt a tangible symbol; or**

5 **(b) To attach to or logically associate with the record an electronic symbol,**
6 **sound, or process.**

7 **XIII. “Signature” means a tangible symbol or an electronic signature that evidences**
8 **the signing of a record.**

9 **XIV. “Stamping device” means:**

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

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

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

17 4 Uniform Law on Notarial Acts; Notarial Acts. Amend RSA 456-B:2 to read as follows:
18 456-B:2 Notarial Acts.

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

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

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

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

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

36 VI. ~~[A notarial officer has satisfactory evidence that a person is the person whose true~~
37 **signature is on a document if that person is personally known to the notarial officer, is identified**

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 6 -

1 ~~upon the oath or affirmation of a credible witness personally known to the notarial officer, or is~~
2 ~~identified on the basis of identification documents.]~~ ***A notarial officer may certify that a***
3 ***tangible copy of an electronic record is an accurate copy of the electronic record.***

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

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

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

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

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

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

19 5 New Sections; Personal Appearance Required; Identification of Individual. Amend RSA
20 456-B by inserting after section 2 the following new sections:

21 456-B:2-a Personal Appearance Required. If a notarial act relates to a statement made in or a
22 signature executed on a record, the individual making the statement or executing the signature shall
23 appear personally before the notarial officer.

24 456-B:2-b Identification of Individual.

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

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

30 (a) By means of:

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

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 7 -

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
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:

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 8 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 9 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 10 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 11 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 12 -

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 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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 13 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 14 -

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 **PART III**

21 Relative to incarceration under a suspended sentence.

22 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 2 Effective Date. Part III of this act shall take effect 60 days after its passage.

32 **PART IV**

33 Relative to structured settlement protection.

34 1 New Chapter; Structured Settlement Protection. Amend RSA by inserting after chapter
35 408-F the following new chapter:

36 **CHAPTER 408-G**

37 **STRUCTURED SETTLEMENT PROTECTION**

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 15 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 16 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 17 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 18 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 19 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 21 -

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;

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 22 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 23 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 24 -

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:

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 25 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 26 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 27 -

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:

~~[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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 28 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 29 -

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
15 to read as follows:

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

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

21 NEW HAMPSHIRE

22 STATUTORY POWER OF ATTORNEY

23 INFORMATION CONCERNING THE POWER OF ATTORNEY

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

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 30 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 31 -

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.***

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 32 -

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.~~

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 33 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 34 -

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 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 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
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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 35 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 37 -

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.

Article 6

Disclaimer of Rights of Survivorship in Jointly Held Property

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 38 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 39 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 40 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 41 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 42 -

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 Statement of Findings. The general court hereby finds that:

18 I. Whenever possible, New Hampshire adults should make their own decisions about how to
19 live their lives.

20 II. The imposition of guardianship necessarily involves the loss of authority over one's own
21 life. Adults with disabilities have a range of strengths and capacities, and guardianship is
22 unnecessarily restrictive in many of those circumstances.

23 III. Guardianship may be necessary in some cases, but when it is imposed upon a person
24 with a disability that could utilize less restrictive alternatives, it can cause negative impacts to
25 mental and physical health and the ability to function independently.

26 IV. Supported decision-making is a process which preserves the self-determination of adults
27 with disabilities by providing them with accommodations and supports to enable them to make life
28 decisions.

29 V. Supported decision-making has in recent years gained recognition and acceptance. It has
30 been promoted as an alternative to guardianship by the National Guardianship Association and the
31 American Bar Association. Nine states have recently adopted statutes which formally establish
32 supported decision-making agreements.

33 VI. The legal recognition of supported decision-making will promote understanding and
34 acceptance of the decisions of people with disabilities. This will assist in effective relationships
35 between people with disabilities and their caregivers, health care providers, and other third parties.

36 12 Guardians and Conservators; Available Alternative Resource. RSA 464-A:2, II is repealed
37 and reenacted to read as follows:

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 43 -

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
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 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
28 the following new chapter:

CHAPTER 464-D

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:

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 44 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 45 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 46 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 47 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 48 -

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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 49 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 50 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 51 -

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:

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 52 -

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 53 -

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

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 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~~

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 54 -

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 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.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 55 -

1 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 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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 56 -

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

37 6 Membership and Compensation.

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 57 -

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

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

CHAPTER 206
SB 134-FN - FINAL VERSION
- Page 59 -

- 1 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 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

