

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2005

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Legislative Document

No. 1566

H.P. 1104

House of Representatives, April 12, 2005

### An Act Concerning Full Faith and Credit for Legal Documents Executed in Other Jurisdictions

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Speaker RICHARDSON of Brunswick.  
Cosponsored by Senator HOBBS of York and  
Representatives: CANAVAN of Waterville, CROSBY of Topsham, PELLETIER-SIMPSON  
of Auburn, Senator: HASTINGS of Oxford.

**Be it enacted by the People of the State of Maine as follows:**

2  
4       **Sec. 1. 18-A MRSA §5-506, sub-§(b)**, as enacted by PL 1991, c. 719, §3, is amended to read:

6           (b) A durable health care power of attorney executed in this State must be signed by the principal, or another at the principal's direction, and witnessed by 2 individuals other than the designated attorney-in-fact. This section's requirement of 2 witnesses does not render ineffective a durable health care power of attorney validly executed prior to the effective date of this section.

14       **Sec. 2. 18-A MRSA §5-508, sub-§(c)**, as repealed and replaced by PL 1997, c. 683, Pt. C, §6, is amended to read:

16           (c) A durable financial power of attorney executed in this State must be notarized by a notary public or an attorney-at-law.

20       **Sec. 3. 18-A MRSA §5-508, sub-§(d)**, as amended by PL 2003, c. 618, Pt. B, §8 and affected by §20, is further amended to read:

22           (d) A durable financial power of attorney executed in this State must contain the following language:

26       "Notice to the Principal: As the "Principal," you are using this Durable Power of Attorney to grant power to another person (called the "Agent" or "Attorney-in-fact") to make decisions about your money, property or both and to use your money, property or both on your behalf. If this written Durable Power of Attorney does not limit the powers that you give your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property and spend your money without advance notice to you or approval by you. Under this document, your Agent will continue to have these powers after you become incapacitated, and you may also choose to authorize your Agent to use these powers before you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Revised Statutes, Title 18-A, sections 5-501 to 5-508 and in Maine case law. You have the right to revoke or take back this Durable Power of Attorney at any time as long as you are of sound mind. If there is anything about this Durable Power of Attorney that you do not understand, you should ask a lawyer to explain it to you.

46       Notice to the Agent: As the "Agent" or "Attorney-in-fact," you are given power under this Durable Power of Attorney to make decisions about the money, property or both belonging to the Principal and to spend the Principal's money, property or both on that person's behalf in accordance with the terms of this Durable

2 Power of Attorney. This Durable Power of Attorney is valid only  
3 if the Principal is of sound mind when the Principal signs it.  
4 As the Agent, you are under a duty (called a "fiduciary duty") to  
5 observe the standards observed by a prudent person dealing with  
6 the property of another. The duty is explained more fully in the  
7 Maine Revised Statutes, Title 18-A, sections 5-501 to 5-508 and  
8 Title 18-B, sections 802 to 807 and chapter 9 and in Maine case  
9 law. As the Agent, you are not entitled to use the money or  
10 property for your own benefit or to make gifts to yourself or  
11 others unless the Durable Power of Attorney specifically gives  
12 you the authority to do so. As the Agent, your authority under  
13 this Durable Power of Attorney will end when the Principal dies  
14 and you will not have the authority to administer the estate  
15 unless you are authorized to do so in accordance with the Probate  
16 Code. If you violate your fiduciary duty under this Durable  
17 Power of Attorney, you may be liable for damages and may be  
18 subject to criminal prosecution. If there is anything about this  
19 Durable Power of Attorney or your duties under it that you do not  
20 understand, you should ask a lawyer to explain it to you."

21 This language does not confer powers not otherwise contained in  
22 the durable financial power of attorney.

23 This subsection does not apply to a durable financial power of  
24 attorney granted by a person for the limited purpose of  
25 representation of that person in a set of transactions involving  
26 the sale, purchase or mortgage of specifically identified real  
27 property.

28  
29 **Sec. 4. 18-A MRSA §§5-510 and 5-511 are enacted to read:**

30  
31 **§5-510. Recognition of powers of attorney from other**  
32 **jurisdictions**

33  
34 Notwithstanding any contrary requirements of law, a durable  
35 or nondurable health care power of attorney or a durable or  
36 nondurable financial power of attorney that was duly executed in  
37 another jurisdiction within the United States in compliance with  
38 the laws of that jurisdiction is not ineffective in this State  
39 due to noncompliance with the laws of this State.

40  
41 **§5-511. Reliance on power of attorney**

42  
43 A person who acts in good faith reliance on a copy of a  
44 document purporting to establish an agency is fully protected and  
45 released to the same extent as though the person relying on the  
46 document had dealt directly with the named principal as a fully  
47 competent person. A person dealing with an agent named in a copy  
48 of a document purporting to establish an agency may presume, in  
49 the absence of actual knowledge to the contrary, that the  
50

2 document purporting to establish the agency was validly executed,  
4 that the agency was validly established, that the named principal  
6 was competent at the time of execution and that, at the time of  
8 reliance, the named principal is alive, the agency was validly  
10 established and has not terminated or been amended, the relevant  
12 powers of the named agent were properly and validly granted and  
14 have not terminated or been amended and the acts of the named  
16 agent conform to the standards of this Part. No person relying  
18 on a copy of a document purporting to establish an agency is  
20 required to see to the application of any property delivered to  
22 or controlled by the named agent or to question the authority of  
24 the named agent.

26 **Sec. 5. 18-A MRSA §5-802, sub-§(k) is enacted to read:**

28 (k) Notwithstanding any contrary requirements of law, an  
30 advance health-care directive, power of attorney for health care,  
32 living will or other document expressing instructions for health  
34 care, document authorizing donation of organs at death or other  
36 advance medical care directive that was duly executed in another  
38 jurisdiction within the United States in compliance with the laws  
40 of that jurisdiction is not ineffective in this State due to  
42 noncompliance with the laws of this State.

## 44 SUMMARY

46 This bill amends the Probate Code to provide that powers of attorney validly executed in other jurisdictions are valid in this State, even if the Maine requirements for that document are not met. The types of powers of attorney covered are both durable and nondurable, and include financial powers of attorney and health care powers of attorney.

This bill also creates a presumption that the out-of-state power of attorney was executed in compliance with the law of the jurisdiction in which it was executed.

This bill exempts from the specific protective notice provisions of the Maine Revised Statutes, Title 18-A, section 5-508 certain financial powers of attorney. Durable financial powers of attorney that are executed for the limited purpose of providing for the representation of the principal in specific real estate transactions will not need to include the cautionary language about the authority of agents and principals that is required for other financial powers of attorney.