

Memorandum in Support

NYSBA #18

May 24, 2019

A. 5630

By: M. of A. Weinstein

S. 3923

By: Senator Hoylman

Assembly Committee: Judiciary

Senate Committee: Judiciary

Effective Date: 180th day after it shall have become a law

AN ACT to amend the general obligations law, in relation to reforming the statutory short form and other powers of attorney for purposes of financial and estate planning; and to repeal certain provisions of such law relating to statutory gift riders.

Consumers often suffer major problems because of the complexity and rigid “exact-wording” standard required of the current power of attorney form. It is often difficult for consumers to get a bank or other financial institution to accept a power of attorney, because the bank faces no penalties for refusing to honor the document. When a consumer loses capacity and cannot execute a new document, this can result in a major problem for an agent under a power of attorney who needs to pay rent, make mortgage and utility payments, arrange for other essential services or do planning for the incapacitated person.

Under current law, a power of attorney form is too complex, too costly, and unreasonably difficult for individuals to use.

In order to address the current problems with the form, this bill would:

- Simplify the current power of attorney form;
- Prevent third parties from improperly refusing to accept a consumer’s valid power of attorney;
- Provide protection for third parties who follow the process for accepting a power of attorney; and,
- Authorize language in the power of attorney form that substantially conforms with the statutory language, in order to prevent the harsh consequence of the form being invalidated because of harmless error in the form.

In short, this bill would ease the burden on families, especially at a time when they need simple and effective solutions. Good public policy should ensure that individuals are able to create and use an effective power of attorney when they need it.

Based on the foregoing, the New York State Bar Association **SUPPORTS** this much-needed legislation -- which is based on the Association’s proposal -- to improve the power of attorney form for the benefit of individuals throughout New York State.