

December 16, 2025

Rep. Michael Day, Chair
Committee on the Judiciary
24 Beacon Street, Room 136
Boston, MA 02133

Sen. Lydia Edwards, Chair
Committee on the Judiciary
24 Beacon Street, Room 413-C
Boston, MA 02133

RE: S1138 and H1911 An Act Clarifying a Right of a Durable Power of Attorney

Dear Chairs Edwards and Day,

The Massachusetts Chapter of the National Academy of Elder Law Attorneys (MassNAELA), the Massachusetts Bar Association (MBA), the Boston Bar Association (BBA), and the Boston Estate Planning Council (BEPC) submit this letter in support of using the amended language below to replace the current draft of *S1138 and H1911 An Act Clarifying a Right of a Durable Power of Attorney*.

Although we are suggesting that the current language of these bills be replaced with the language contained in this letter, we acknowledge that this language will yield the same result using simpler language with fewer edits to the current statute. Both the current language and the language provided below will codify the principle that the creation of trusts is a delegable power, so long as a principal explicitly includes this power in his or her power of attorney.

Suggested amended language:

SECTION 1. Section 402 of chapter 203E of the general laws, as appearing in the 2022 Official Edition, is hereby amended by inserting at the end thereof the following subsection:

“(d) Notwithstanding the foregoing, a settlor’s power to create a trust may be exercised by (1) an agent under a power of attorney only to the extent expressly authorized by the terms of the power of attorney or (2) a conservator as authorized by Article 5 of chapter 190B.

In addition, we recommend that this language be incorporated retroactively in the enabling statute to the enactment of the Massachusetts Uniform Trust Code (MUTC), M.G.L.c. 203E, in order to avoid any potential issues that may arise because of the ambiguity created by the Supreme Judicial Court in its *Barbetti v. Stempniewicz* decision.¹

¹ *Barbetti v. Stempniewicz*, 490 Mass. 98 (2022), analyzed the power of an attorney-in-fact to create a trust under the MUTC and the current Durable Power of Attorney statute in M.G.L.c. 190B.

We thank you for your time, ask that you accept this amended language, and that you report H. 1911 and S. 1138, An Act Clarifying a Right of a Durable Power of Attorney, favorably out of committee.

Sincerely,



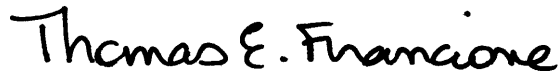
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