



**Representative John M. Rogers**  
**60<sup>th</sup> House District**  
**Representative Bill Seitz**  
**30<sup>th</sup> House District**

### **Sponsor Testimony on HB 446**

Chairman Butler, Vice Chair Hughes, Ranking Member Boggs, and members of the House Civil Justice Committee. Thank you for giving myself and Rep. Seitz the opportunity today to provide sponsor testimony on House Bill 446, legislation that prevents a third party from refusing to honor a power-of-attorney document that was properly drafted under Ohio law.

A power of attorney (POA) is a legal document used by individuals to allow someone else to act on their behalf. It is commonly recommended by general practice, elder law and estate planning attorneys as a tool to plan for the incapacity of their clients. In most cases, the POA specifies that it will continue if incapacity occurs and thus, it is known as a durable power of attorney. Powers of attorney are regulated by state law. Ohio has enacted the Uniform Power of Attorney Act, which lays out the mandatory language that must be incorporated into clients' documents to comply with Ohio law (Ohio R.C.§1337.60). Unfortunately, this important document is frequently abused. One type of abuse is an unlawful refusal by a third party to accept a legally drafted POA.

In recent years, I have personally had a number of POAs refused to be honored for reasons, including that the document was "prepared more than six months ago and the law does not allow a successor agent(s)." Attorneys who draft documents are subject to malpractice if documents they have prepared were done so contrary to law. Consider the grave consequences that could ensue to a denied client.

As one example, consider one of my now deceased clients. This senior was wheelchair bound and scheduled a "Dial-A-Ride" service through the local public transit authority to take him to his financial institution. Once there, he presented his POA to an employee/agent, who after reviewing the document advised my client that his POA was not to be honored in its present form. Specifically, my client was told that having named a second adult child as a successor agent was not permitted. The employee proceeded to advise my client that the document needed to be redrafted according to their specifications and offered to refer my client to someone in house to help, if necessary.

My client declined the institution's offer, returned home and contacted me to express his concerns about his dishonored POA. I offered to contact the institution on his behalf, but he asked that I redraft the document in accordance with the bank's instructions. I did so, at no expense, but in my opinion, what had happened was unconscionable!

The legislation we are proposing would prevent a third party from refusing to honor a legally constructed POA that was properly drafted under Ohio law. It also would sanction any third party that required a different form, typically one that they dictated unless certain circumstances as outlined below apply.

1. The person has actual knowledge of the termination of the agent's authority
2. The person in good faith believes that the transactions outside the scope of the authority granted to the agent in the power of attorney.
3. The person in good faith believes that the power of attorney is not valid

Furthermore, a failure to comply with the law would result in sanctions with liability to the dishonoring institution for reasonable attorney fees and costs to confirm or mandate the acceptance of the properly prepared and executed document.

Thank you for your time and consideration of House Bill 446. We will be happy to answer any questions at this time