Judiciary Committee
Ohio House of Representative
Wednesday, October 15, 2025
HB 446 – Proponent Testimony

Chair Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and Members of the House Judiciary Committee:

Thank you for the opportunity to testify in support of House Bill 446. My name is Brian Layman. I appear today as the immediate past chair of the Ohio State Bar Association's Estate Planning, Trust and Probate Law Section Council (the "Council"). The proposals before you are the product of years of work by the Council's diverse group of practitioners: private probate and trust lawyers, fiduciary litigators, bank and trust company trust officers and counselors to family offices. This Bill is focused on making Ohio law clearer, improving the law for all Ohioans, and more workable for the professionals and courts who serve them.

HB 446 modernizes Ohio's trust architecture by enacting the Trust Protector and Directed Trust Act. Families increasingly use more complex trust structures that separate investment, distribution, and oversight functions and allow a trustee to be directed by a third party (commonly called a "Trust Protector"). New Chapter 5818 enhances existing Ohio law by treating Trust Protectors as fiduciaries unless a trust expressly provides otherwise. The Bill fills the gaps in existing law by establishing clear standards of authority and liability among the trustee, protector and beneficiaries. The Bill establishes a mandatory minimum liability threshold for a non-fiduciary Trust Protector. This framework gives courts and practitioners the tools they need to hold the right person accountable, while honoring how modern trusts are drafted.

HB 446 incorporates improvements to the Ohio Trust Code. The Bill provides that a trustee may pay or reimburse a grantor for the income taxes attributable to the trust's income. In addition, the Bill confirms that a trustee does not have a duty to move the situs of a trust to another jurisdiction outside the State of Ohio. Finally, the Bill reverses the Supreme Court's decision in *Diller v. Diller* to prevent a trust provision from lapsing when a beneficiary predeceases the grantor (SB 199 of the 134th General Assembly did this for wills).

HB 446 promotes finality in probate administration. In general, claims against a probate estate must be presented within six months after a decedent's death. The Bill clarifies a fiduciary is not exempt from the general six month claim statute and must present a claim within that time period. The Bill also requires claims grounded in alleged fraudulent transfers related to a decedent's death to be brought within six months after death. These proposals mirror the probate system's emphasis on prompt and orderly resolution. Families deserve to close estates without years of uncertainty, and good-faith creditors deserve a clear, predictable window to act.

HB 446 strengthens power of attorney protections by clarifying fiduciary duties and roles. The proposal specifically incorporates core mandatory duties of an agent under a power of attorney and more explicitly states that an agent may only withdraw or direct the distribution of trust property when both the power of attorney and trust authorize it. The proposal also grants

courts the same power to award attorney fees in actions involving powers of attorney that courts already have in cases involving the administration of trusts. These provisions are important to protect those who are most exposed – the elderly and infirm.

HB 446 matters for Ohio families. In short, this Bill brings clarity, protection, and predictability to Ohio families. When statutes are silent or ambiguous, families pay for that uncertainty. HB 446 keeps Ohio competitive by reducing confusion that leads to disputes, speeding up routine estate work, and ensuring the right people are accountable. The Section believes these changes will reduce litigation, lower administration costs, and make it easier to serve Ohio families under Ohio law.

HB 446 is a careful, consensus-built modernization that protects consumers, honors settlor intent, and gives fiduciaries clear rules. On behalf of the Council and the Ohio State Bar Association, I respectfully request your favorable consideration.