



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

### **Substitute House Bill 464 Sponsor Testimony**

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for allowing us the opportunity to offer sponsor testimony today on Substitute House Bill 464 – legislation to make simple but important changes to Ohio’s probate and trust laws as well as to the process of referring cases to a retired judge. This legislation is the result of conversations and recommendations from individuals representing the Trust and Probate Section of the Ohio State Bar Association, the Ohio Judicial Conference, the Supreme Court of Ohio and others.

In support of your consideration of this bill today, I offer these initial takeaways on the legislation’s main features. Unfortunately, I am away this week and will not be able to answer your questions directly. However my esteemed colleague from Geauga County, also presenting sponsor testimony today, is more than capable of answering your questions afterwards.

#### **Surviving Spouses Selecting Automobiles**

House Bill 464 helps to improve the position of a surviving spouse when taking ownership of one or more of a deceased spouse’s automobiles. Under current law, if more than one of automobiles is selected, any allowance for support is reduced by an amount equivalent to the automobile having the least value. This legislation proposes that a probate court will also have to consider the value of the least expensive automobile when calculating a family’s support allowance, should the surviving spouse select more than one automobile.

## Guardianship

The current authority of a legal guardian is limited with respect to estate planning when involving wards. This bill would expand the power of a legal guardian, subject to the approval of the probate court. Furthermore, guardians would be deemed to be free from an inference of impropriety or liability in those situations where the guardian chooses not to apply for or take on these additional powers. The legislation also expands what situations trigger a notice being issued and a hearing scheduled, when any new guardian powers are being sought or considered. Furthermore, the individuals to be notified would be expanded, prior to a probate court granting such guardianship changes. Also of note is the change that would authorize the Probate Court to appoint certain non-profit organizations as the guardian of the person of an incompetent upon being certified by the probate court.

## Trusts

With respect to trusts, House Bill 464 modifies the treatment of a non-charitable trust by enabling modifications and further clarifying procedurally the removal or replacement of a trustee. It also repeals the current trust code provision that states that upon the lapse, release, or waiver of the power of withdrawal, the holder is treated as the settlor of the trust - only to the extent the value of the affected property exceeds the greater of amounts specified under the Internal Revenue Code.

## Actions Referred to Retired Judges

Under current law, parties in a civil action may mutually agree to choose to have their case referred to a retired judge, and are required to create a written agreement when doing so. This legislation would now require both parties to the action, to include language describing procedurally what steps would be required if the agreement were to be terminated. The court of original jurisdiction presiding over the civil action must address the written agreement within 14 days and, at the courts discretion, order the referral. The legislation also makes it clear that jurisdiction returns to the referring judge once the civil issue or question has been decided.

## Cemetery Endowment Trusts

The bill also establishes two different distribution methods for cemetery endowment care trusts in order to pay for cemetery expenses while expanding the list of allowable trust expenses to which a trust distribution can be directed to include investment expenses.

## Conformity of a Legal Name

The bill will permit a person desiring to conform the person's legal name on an official identity document to file an application in the probate court of the county in which the person resides. Applications will require that (1) that the applicant has been a resident of the county of filing for at least 60 days, (2) an explanation of the misspelling, inconsistency, or other error in the name, and (3) a description of the correction sought. Also required will be a an affidavit verifying information on the applicant's residency, purpose, debtor status, the truth, accuracy, and completeness of submitted documentary evidence, and any other information the court may require.

Finally, where a change of name is sought, specific requirements have been added including the need for an affidavit supporting the name change application to verify that the applicant has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or does not have a duty to register as a sex offender for having committed a sexually oriented offense or a child-victim oriented offense

## In Conclusion

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, again we appreciate the opportunity to give testimony on HB 464. As you will have noted in our testimony, this legislation makes a number of common sense, technical changes to probate and trust law, as well as to civil procedures involving retired judges. We are confident that these specific fixes will improve upon a number of common civil situations within Ohio's Probate Law.

Thank you!