Testimony of Barry C. Hawkins
Connecticut Uniform Law Commissioner

IN SUPPORT OF HOUSE BILL 6928

AN ACT CONCERNING THE RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT

March 6, 2015 - Judiciary Committee

Chairman Coleman
Chairman Tong
Members of the Judiciary Committee

My name is Barry C. Hawkins, a past president of the Connecticut Bar Association and a partner in the firm of Shipman & Goodwin, resident in its Stamford office. I reside in Bridgeport. I am a Uniform Law Commissioner for the State of Connecticut, serving in that position at the pleasure of the Governor since 1999.. I am also here on behalf of the Connecticut Bar Association's Probate and Trust Section which has also endorsed this Act.

Powers of Attorney are called by different names in different geographical areas. In New York they are often called "proxies" and in parts of Canada they are known as "representation agreements". In HB 6928 we use the generic term "substitute decision-making documents", but make no mistake we are talking about powers of attorney. By any name they are very useful tools to create a simple agency relationship for all kinds of reasons. Most commonly, they are used to appoint an agent for financial transactions or for health care decisions. However, their usefulness is very limited if they cannot be used outside of Connecticut when our residents frequently cross our borders and need them elsewhere.

Last summer, the Uniform Law Commission approved a new act to promote the portability of such powers of attorney. This Act contained in HB 6928 will allow powers of attorney drafted in any state or in a Province of Canada to be accepted in Connecticut or any other state or Province that adopts it. The Act, for the very first time in history was drafted in conjunction with the Uniform a Law Conference of Canada to promote the cross border acceptance of these important agreements. Based upon our weather for the last six weeks the differences between Connecticut and our Canadian friends appear to be increasingly less obviously!

USRDDA uses five simple rules to promote portability:

1. A Power of Attorney, (by whatever name it is called) will be deemed valid in enacting states if it was executed in compliance with the laws of that jurisdiction where it was executed or those laws of a different state if chosen by the person creating the document.

2. The meaning and effect of a power of attorney and the authority of the decision -maker (agent) are determined by the laws of the jurisdiction identified in number one above. Accordingly the agent's authority does not vary according to geography but remains constant in accordance with the maker's presumed intent.

3. A person asked to accept a POA from another state or province without actual knowledge of that the POA is void, invalid or terminated for any reason may assume without further inquiry that the POA is valid and is not liable for damages if it turns out otherwise. This is to encourage the acceptance of POA's even when they are not from Connecticut. As a matter of policy the organizations dealing with the elderly (the population which most often uses these documents) has overwhelmingly testified that the problems of POA's not being accepted when presented is a far bigger problem than the possible criminal misuse of invalid documents of authority.

4. A person asked to accept a POA from another state or province may request and rely upon an agent's certification of any relevant fact, a translation of the POA if not in English and/or an opinion of counsel that the POA s valid under the law of such other state or province. The agent must do this at the expense of the agent.

5. If the requested documentation is presented by the agent, the person being asked to accept it must do so if unless one of five very narrow exceptions apply.

HB6928 is a very short and simple Act which will provide for the wider acceptance of powers of attorneys across the borders of Connecticut for both financial transactions and more importantly, health care decisions. It was drafted to work in conjunction with our existing or even hopefully any new power of attorney statute and does not replace any substantive provisions of existing state law. It will protect Connecticut banks, hospitals, doctors and any other person asked to accept a non-Connecticut power of attorney.

I ask for your support of HB 6928, and I welcome any questions you may have.