

SESSION OF 2020

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2500

As Amended by House Committee on Judiciary

Brief*

HB 2500, as amended, would amend the Kansas Power of Attorney Act (Act) to state a power of attorney executed on or after July 1, 2020, would be deemed sufficient if in substantial compliance with the form set forth by the Judicial Council and would direct the Judicial Council to develop such form. The bill would state the amendments made by the bill would apply prospectively and would not affect the validity of a power of attorney executed prior to July 1, 2020.

The bill would amend the section of the Act governing liability of third persons with respect to reliance on a power of attorney to specify its provisions address reliance on powers of attorney acknowledged pursuant to the Uniform Law on Notarial Acts. This section also would be amended to state nothing in its listing of determinations for which a third person is not responsible would relieve the third person of any duty to report abuse, neglect, or exploitation under certain mandatory reporter statutes. The bill would state that making such report would relieve the third person of any liability for not accepting a power of attorney.

The bill would also amend this section of the Act to allow a third person requested to engage in transactions with a principal through the principal's attorney-in-fact to:

- Request and rely upon a certification by the attorney-in-fact provided under penalty of perjury, of any factual matter concerning the principal, attorney-in-fact, or power of attorney; or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Request and rely upon an opinion of the third person's counsel as to any matter of law concerning the power of attorney, if the third person provides in a writing or other record the reason for the request.

The bill would state an attorney-in-fact's certification would be deemed sufficient if it is in substantial compliance with the form set forth by the Judicial Council and would direct the Judicial Council to develop such form.

Finally, the bill would amend this section of the Act to prohibit a third person from requiring an additional or different form of power of attorney for authority granted in the power of attorney presented and to require a third person to accept a power of attorney unless:

- The person is not otherwise required to engage in a transaction with the principal in the same circumstances;
- Engaging in a transaction with the attorney-in-fact or principal in the same circumstances would be inconsistent with federal law;
- The person has actual knowledge of the termination of the attorney-in-fact's authority or of the power of attorney before the exercised of the power;
- A request for information, certification, an opinion of counsel, or indemnification is refused;
- The person in good faith believes the power is not valid or that the attorney-in-fact does not have the authority to perform the requested act, whether or not a certification or opinion of counsel has been requester or provided; or

- The person makes, or has actual knowledge that another person has made, a report under mandatory reporter statutes, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the attorney-in-fact or a person acting for or with the attorney-in-fact.

A third person refusing to accept a power of attorney in violation of this section would be subject to a court order mandating acceptance of the power of attorney. Reasonable attorney fees and costs could be awarded in any action or proceeding confirming the validity of the power of attorney or mandating acceptance of the power of attorney, if the court determines the third person did not act in good faith.

Background

The bill was introduced by the House Committee on Judiciary at the request of the Kansas Judicial Council.

In the House Committee hearing, a representative of the Kansas Judicial Council testified in support of the bill, stating the bill is intended to address entities who improperly refuse to accept durable powers of attorney. A representative of the Office of the Attorney General testified as a neutral conferee and requested amendments to the bill. A representative of the Kansas Land Title Association submitted written-only testimony opposing the bill and suggesting an amendment.

The House Committee amended the bill to address the validity of powers of attorney executed prior to the amendments made by the bill, remove a provision regarding a third party's duty to determine or inquire regarding whether an attorney-in-fact is exceeding or improperly exercising authority, limit an award of attorney fees to cases wherein a third person does not act in good faith, add a statutory cross-reference, and add provisions specifying a method of acknowledgment and allowing a third person to rely on an opinion of counsel.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration and Kansas Judicial Council both estimate any fiscal effect resulting from enactment of the bill would be negligible. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.