

SESSION OF 2003

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2034**

As Amended by Senate Committee on  
Judiciary

**Brief\***

HB 2034 recodifies the Kansas Power of Attorney Act. Selected features of the bill are as follows:

- ! The bill requires a durable power of attorney be signed, dated, and acknowledged. Current law is silent.
- ! General powers may be granted without including in the power of attorney an exhaustive list of all powers.
- ! A definitions section is provided. Current law has none. Attorney in fact is defined as an individual, corporation, or other legal entity appointed to act as agent of a principal in a written power of attorney.
- ! The powers of an attorney in fact are listed. Included in the list of powers is the ability to alienate the homestead without the joint consent of husband and wife when that relationship exists if the power of attorney specifically gives the attorney in fact the power to sell, transfer, and convey the homestead, gives the legal description and street address of the property, states that by the execution of the power of attorney it is the intention of the parties that the act will constitute joint consent required by the Kansas Constitution, and the power of attorney is executed by both husband and wife in the same instrument.
- ! Those powers not delegated to the attorney in fact are listed. For example, an attorney in fact cannot make, execute, modify, or revoke a 'do not resuscitate' directive for the principal. Likewise,

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\*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/klrd>

an attorney in fact cannot make, execute, modify, or revoke a durable power of attorney for health care decisions for the principal.

- ! Duties of the attorney in fact are listed. Included under this section is the provision that a principal may nominate by a power of attorney a guardian or conservator, or both, for consideration by the court. If a petition is filed, the court shall make the appointment as long as the individual nominated is a fit and proper person.
- ! Instances which terminate the power of attorney between the principal and attorney in fact are listed.
- ! A principal may appoint more than one attorney in fact and the conferred authority may be exercised either jointly or severally. In the absence of specification, the attorney in fact must act jointly.
- ! The fiduciary standard of care is outlined.
- ! Regarding third party liability, if there is reasonable reliance on the durable power of attorney, there is no liability to the principal.
- ! Reasonable compensation and reimbursement for reasonable expenses are allowed.
- ! A durable power of attorney executed in another state is valid.
- ! The bill adopts by reference 50 U.S.C. 591 of the Soldiers and Sailors Relief Act.

The House Committee of the Whole amendment and the Senate Committee amendments are technical.

## **Background**

An attorney representing the Judicial Council testified in support of the measure. Support was also presented on behalf of the Kansas Bankers Association and the Kansas Bar Association. Concern was noted on behalf of the Kansas Living Initiatives For End-of-Life Care (LIFE) Project.

The fiscal note indicates there likely would be no fiscal impact on the courts.