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**Neutral Testimony on House Bill 2500
An Act Concerning the Kansas Power of Attorney Act**

**Presented to the House Committee on the Judiciary
By Deputy Attorney General Steven Karrer**

January 28, 2020

Chairman Patton and Members of the Committee:

Thank you for the opportunity to present this neutral testimony on behalf of Kansas Attorney General Derek Schmidt on House Bill 2500 and to request further amendments to the bill.

House Bill 2500 addresses the acceptance of powers of attorney by third parties. The Kansas Legislature should support and promote the acceptance of powers of attorney by third parties. The problem with HB 2500 is the addition of (a)(4) to K.S.A. 58-658. This provision states, “(a)A third person...is not responsible for determining and has no duty to inquire as to... (4) whether the attorney in fact is exceeding or improperly exercising the attorney in fact’s authority...”

This provision does nothing to further the goal of HB 2500, but puts the elderly, disabled, and other principals at risk of abuse. It is completely appropriate for third parties to reject the acceptance of a power of attorney because the attorney in fact is exceeding or improperly exercising their authority. Legislative policy should encourage, not discourage, third parties from protecting principals.

HB 2500 also amends K.S.A. 58-658 to include provisions which states nothing in section (a) relieves a third person from being a mandatory reporter pursuant to section 39-1431. It also allows a third party to reject a P.O.A. if the third party believes the attorney in fact is exceeding their authority or exercising an invalid power. The problem here is that a third party would not be in position to know these things if they do not have a duty to read the P.O.A. and determine if the attorney in fact is exceeding his or her authority or exercising an invalid power.

It is also noted that in section (b) and (f)(6), there is language regarding mandatory reporters under K.S.A. 39-1431. There are actually two statutes regarding the mandatory reporting of abuse, neglect and exploitation of an adult. K.S.A. 39-1402 addresses the mandatory reporting of abuse, neglect, and exploitation when the victim of the abuse is a resident as defined by K.S.A. 39-1401(a). This is generally individuals who live in a care facility, whereas K.S.A. 39-1431

applies to victims who live in the community. It appears K.S.A. 39-1402, was simply inadvertently omitted from section (b) and (f)(6) in the amendments to K.S.A. 58-658.

On behalf of Kansas Attorney General Derek Schmidt, I encourage you to amend HB 2500 by striking the new subsection (a)(4) from K.S.A. 58-658. Also I would encourage you add K.S.A. 39-1402 to any provision where K.S.A. 39-1431 has been added. These amendments do not detract from the purpose of HB 2500 and they would ensure the protection of all principals, including the elderly and disabled, who choose to appoint a power of attorney.