

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 103

As Recommended by Senate Committee on
Judiciary

Brief*

SB 103 would amend the Kansas Power of Attorney Act (Act) to state a power of attorney executed on or after July 1, 2021, 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, 2021.

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 and to add that a signature on a power of attorney is presumed to be genuine if 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 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:

*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 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; and
- 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 exercise of the power;
- A request for information, certification, 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 requested 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 Senate Committee on Judiciary at the request of the Kansas Judicial Council.

[*Note:* The bill contains provisions similar to those of 2020 HB 2500, as amended by the House Committee on Judiciary.]

Senate Committee on Judiciary

In the Senate Committee hearing, a representative of the Kansas Judicial Council testified as a **proponent** of the bill, stating the bill is intended to address entities who improperly refuse to accept durable powers of attorney. A representative of the Kansas Land Title Association submitted written-only proponent testimony.

No neutral or **opponent** testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration (OJA) indicates enactment of the bill could increase the number of cases filed in district court, because it allows for a court action to enforce a person to accept a power of attorney, which could result in more time spent by court employees and judges processing and hearing cases, but a fiscal effect cannot be estimated. OJA also estimates enactment of the bill could result in the collection of docket fees assessed in cases filed under the provisions of the bill. The Kansas Judicial Council estimates any fiscal effect resulting from enactment of the bill on the agency would be negligible. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Power of attorney; third-person liability