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MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 12, 2020

Subject: Bill Brief on HB 2500

House Bill 2500, as amended by House Committee, makes changes to the Kansas power of attorney act.

Section 1 amends K.S.A. 58-652 to provide that a power of attorney shall be deemed sufficient if it is in substantial compliance with the form set forth by the judicial council. It also requires the judicial council to develop a form to use for this section. The House Committee on Judiciary added subsection (g) to clarify that the amendments to this section apply prospectively and shall not affect the validity of a power of attorney executed prior to July 1, 2020.

Section 2 amends K.S.A. 58-658, a statute addressing exemption of third persons from liability when relying and acting on a power of attorney. New subsection (b) provides that a third person is not relieved from a duty to report abuse, neglect or exploitation, and making such report will relieve the person from liability for not accepting a power of attorney. The bill as introduced proposed adding language to subsection (e) regarding requests by a third person when being requested to engage in transactions with a principal through the principal's attorney in fact. The House Committee on Judiciary modified and added to the language, providing that a third person may: (1) 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 (2) 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 also adds a new subsection (f) to K.S.A. 58-658, providing that a third person may not require an additional or different form of power of attorney. New subsection (g) provides when a third person is required to accept a power of attorney and new subsection (h) provides that a third person who refuses to accept a power of attorney in violation of this section is subject to a court order requiring acceptance. The House Committee on Judiciary added language to subsections (g) and (h) requiring the power of attorney to be acknowledged in the manner prescribed by K.S.A. 53-501 et seq., the uniform law on notarial acts. Subsection (h) also provides that reasonable attorney fees and costs may be awarded in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney. The House Committee on Judiciary added language limiting attorney fees and costs to cases in which the court determines the third person did not act in good faith. Finally, new subsection (i) provides that an attorney in fact's certification shall be deemed sufficient if it is in substantial compliance with the form provided by the judicial council, and requires the judicial council to develop a form for use pursuant to this section.