



Date: January 17, 2024
To: House Committee on Judiciary
Representative Susan Humphries, Chair
From: Kelly VanZwoll, Vice President – Government Relations
Kansas Bankers Association
Re: Verbal Opponent Testimony for HB 2345

Dear Chair Humphries and Members of the Committee,

I am Kelly VanZwoll, providing this testimony on behalf of the Kansas Bankers Association (KBA). It is also my pleasure to introduce Alex Orel, who serves as Senior Vice President – Government Relations and J.W. Wells, who serves as Ag and GR Assistant. We look forward to being a resource for you and the committee as you consider financial service issues during this legislative session and thank you for the opportunity to provide opponent testimony on HB 2345.

Kansas Bankers Association Background Information:

The KBA, founded in 1887, is a voluntary, non-profit trade association governed by its membership. The KBA is headquartered in Topeka, Kansas, and is led by our 24-member board of directors. The KBA staff, which President/CEO Doug Wareham leads, includes 37 professionals, including 11 attorneys, that provide services to Kansas bankers ranging from legislative advocacy to educational training to insurance services to legal and regulatory compliance support. Our mission statement is direct and straightforward:

"Together, we support our member banks and bankers with leadership, advocacy, and education to benefit the communities and customers they serve."

KBA's membership includes 98% of the headquartered banks in Kansas. Our membership also includes 20 out-of-state commercial banks operating in Kansas and seven savings and loans. Our member banks employ more than 22,000 Kansans that provide financial services in every county across the state. While our member banks range in assets from the smallest in our state to the largest in our state, each member bank that belongs to the KBA has one vote on policy positions adopted by either our general membership or our Board of Directors. One member, one vote.

HB 2345—Opponent Testimony

I would like to start by saying that we understand the intent of this legislation and would like to work with any interested parties to be part of a solution. However, the bill as drafted creates some concerns not only for our industry, but for the customers we serve.

First, we believe that a supported decision-making agreement can exist today, without the introduction of new state law. If an adult wanted to have a supporter with them when dealing with

a financial institution, they can do so now. If an adult wanted another person to view their account records with them, they can do so now. All this would require is a conversation between the adult and their financial institution. However, if this bill were to take effect there is concern that a supporter could bring a supported decision-making agreement into a financial institution and the financial institution would have to grant them access to all financial records without requiring any communication from the customer/adult. As written, a financial institution could only decline to honor the agreement if they have actual knowledge that the agreement is invalid or has been terminated.

Second, an adult could have a limited power of attorney drafted to handle any of the tasks listed in this bill. Having a limited power of attorney is not a statement of incapacity and does not take away any of the power of the principal. Financial institutions deal with limited power of attorneys often and are very comfortable with these documents. The benefit of a limited power of attorney is that it includes increased protections for both the adult and the third parties involved. Currently the Kansas Judicial Center has a durable power of attorney document available to download on their website. If the cost of having one drafted is the challenge, perhaps adding a limited power of attorney to the website to be used for such purposes could be another solution?

However, if it is necessary to have a “supported decision-making agreement” available, then we would respectfully request that some additional language be added to protect both the adult and the third parties involved with these documents.

1. Fiduciary duty language added in New Section 7:

“The supporter owes the adult a fiduciary duty to act in accordance with the supported decision-making agreement.”

If a supporter is going to have access to such personal and private financial information, then it only seems right that they are held to a higher standard. The state of Alabama enacted a version of a supported decision-making law in 2023 and included a fiduciary duty (Ala. Code § 26-1B-5(b)).

2. Incapacity language added in New Section 6:

“If the adult who entered into the supported decision-making agreement becomes incapacitated the supported decision-making agreement remains valid unless a third party has actual knowledge that the principal is incapacitated.”

As drafted, nothing speaks to what happens to the agreement if the adult who entered into the agreement were to become incapacitated. Financial institutions are often caught in the middle of difficult situations when a customer becomes incapacitated and it is unclear who can have access to information. If this amendment is added, we would also suggest that “actual knowledge” be defined using the same definition from the Kansas Trust Code (K.S.A. 58a-104).

3. Third party protection language added in New Section 8(b):

“declining to comply with the authorization in a supported decision-making agreement if the person is declining based on actual knowledge that the request is unauthorized;

declining to comply with the authorization in a supported decision-making agreement if the financial institution cannot in good faith comply with the limitations set forth in the agreement; and

declining to comply with the authorization in a supported decision-making agreement if the person makes, or has actual knowledge that another person has made, a report under K.S.A. [39-1402](#) or [39-1431](#), and amendments thereto, stating a good faith belief that the adult may be subject to physical or financial abuse, neglect, exploitation or abandonment by the supporter.”

As drafted, a financial institution can only decline to comply with the agreement if they have actual knowledge that the agreement is invalid or has been terminated. This could put a financial institution in a situation where the supporter, or the principal with the help of the supporter, are requesting them to complete a task that is not authorized under the valid agreement. This potential amendment also allows the financial institution to decline the authorization if they are reporting the supporter for financial mistreatment of the adult. Under Kansas law a bank trust officer and any other officers of financial institutions are mandatory reporters of physical or financial abuse.

The mistreatment of vulnerable adults and elders is rapidly increasing and financial institutions are on the frontline of this issue. According to the 2022 Federal Bureau Investigation of Elder Fraud Report, victims reported more than \$3.1 billion in losses from elder financial abuse in 2022, an 84% increase from 2021.¹ The KBA Legal Department receives calls every week from bankers across the state worried about their customers being taken advantage of. We want to be great community partners and support our customers however we can. We are concerned that the current bill could do more harm than good, inadvertently hurting the very people we are working to help.

Thank you for the opportunity to provide testimony and we appreciate your thoughtful consideration of the concerns and potential amendments that we have raised. We would support the legislature taking a deeper look into this matter and how it fits into the current Kansas legal system. If you have questions or require additional information, please contact me at kvanzwoll@ksbankers.com or (785) 232-3444.

¹ Slide 4, https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3ElderFraudReport.pdf