

HOUSE BILL No. 2500

By Committee on Judiciary

1-24

Proposed Amendments to HB 2500 - Patton 2
House Judiciary
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February 11, 2020

1 AN ACT concerning the Kansas power of attorney act; relating to
2 effectiveness of power of attorney; exemption of third persons from
3 liability in certain circumstances; amending K.S.A. 58-658 and K.S.A.
4 2019 Supp. 58-652 and repealing the existing sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2019 Supp. 58-652 is hereby amended to read as
8 follows: 58-652. (a) The authority granted by a principal to an attorney in
9 fact in a written power of attorney is not terminated in the event the
10 principal becomes wholly or partially disabled or in the event of later
11 uncertainty as to whether the principal is dead or alive if:

12 (1) The power of attorney is denominated a "durable power of
13 attorney";

14 (2) the power of attorney includes a provision that states in substance
15 one of the following:

16 (A) "This is a durable power of attorney and the authority of my
17 attorney in fact shall not terminate if I become disabled or in the event of
18 later uncertainty as to whether I am dead or alive"; or

19 (B) "This is a durable power of attorney and the authority of my
20 attorney in fact, when effective, shall not terminate or be void or voidable
21 if I am or become disabled or in the event of later uncertainty as to
22 whether I am dead or alive"; and

23 (3) the power of attorney is signed by the principal, and dated and
24 acknowledged in the manner prescribed by K.S.A. 53-501 et seq., and
25 amendments thereto. If the principal is physically unable to sign the power
26 of attorney but otherwise competent and conscious, the power of attorney
27 may be signed by an adult designee of the principal in the presence of the
28 principal and at the specific direction of the principal expressed in the
29 presence of a notary public. The designee shall sign the principal's name to
30 the power of attorney in the presence of a notary public, following which
31 the document shall be acknowledged in the manner prescribed by K.S.A.
32 53-501 et seq., and amendments thereto, to the same extent and effect as if
33 physically signed by the principal.

34 (b) All acts done by an attorney in fact pursuant to a durable power of
35 attorney shall inure to the benefit of and bind the principal and the
36 principal's successors in interest, notwithstanding any disability of the

1 principal.

2 (c) (1) A power of attorney does not have to be recorded to be valid
3 and binding between the principal and attorney in fact or between the
4 principal and third persons.

5 (2) A power of attorney may be recorded in the same manner as a
6 conveyance of land is recorded. A certified copy of a recorded power of
7 attorney may be admitted into evidence.

8 (3) If a power of attorney is recorded any revocation of that power of
9 attorney must be recorded in the same manner for the revocation to be
10 effective. If a power of attorney is not recorded it may be revoked by a
11 recorded revocation or in any other appropriate manner.

12 (4) If a power of attorney requires notice of revocation be given to
13 named persons, those persons may continue to rely on the authority set
14 forth in the power of attorney until such notice is received.

15 (d) A person who is appointed an attorney in fact under a durable
16 power of attorney has no duty to exercise the authority conferred in the
17 power of attorney, unless the attorney in fact has agreed expressly in
18 writing to act for the principal in such circumstances. An agreement to act
19 on behalf of the principal is enforceable against the attorney in fact as a
20 fiduciary without regard to whether there is any consideration to support a
21 contractual obligation to do so. Acting for the principal in one or more
22 transactions does not obligate an attorney in fact to act for the principal in
23 subsequent transactions.

24 (e) The grant of power or authority conferred by a power of attorney
25 in which any principal shall vest any power or authority in an attorney in
26 fact, if such writing expressly so provides, shall be effective only upon: (1)
27 A specified future date; (2) the occurrence of a specified future event; or
28 (3) the existence of a specified condition which may occur in the future. In
29 the absence of actual knowledge to the contrary, any person to whom such
30 writing is presented shall be entitled to rely on an affidavit, executed by
31 the attorney in fact, setting forth that such event has occurred or condition
32 exists.

33 (f) *A power of attorney shall be deemed sufficient if in substantial*
34 *compliance with the form set forth by the judicial council. The judicial*
35 *council shall develop a form for use under this section.*

36 Sec. 2. K.S.A. 58-658 is hereby amended to read as follows: 58-658.

37 (a) A third person, who is acting in good faith, without liability to the
38 principal or the principal's successors in interest, ~~may rely and act on any~~
39 ~~power of attorney executed by the principal. A third person, with respect to~~
40 ~~the subjects and purposes encompassed by or separately expressed in the~~
41 ~~power of attorney, may rely and act on the instructions of or otherwise~~
42 ~~contract and deal with the principal's attorney in fact or successor attorney~~
43 ~~in fact and, in the absence of actual knowledge, as defined in subsection~~

acknowledged in the manner prescribed by K.S.A. 53-501 et seq., and amendments thereto

- 1 ~~(e)~~ (d), is not responsible for determining and has no duty to inquire as to
2 any of the following:
- 3 (1) The authenticity of a copy of a power of attorney furnished by the
4 principal's attorney in fact or successor;
 - 5 (2) the validity of the designation of the attorney in fact or successor;
 - 6 (3) whether the attorney in fact or successor is qualified to act as an
7 attorney in fact for the principal;
 - 8 (4) *whether the attorney in fact is exceeding or improperly exercising*
9 *the attorney in fact's authority;*
 - 10 (5) the propriety of any act of the attorney in fact or successor in the
11 principal's behalf, including, but not limited to, whether or not an act taken
12 or proposed to be taken by the attorney in fact, constitutes a breach of any
13 duty or obligation owed to the principal, including, but not limited to, the
14 obligation to the principal not to modify or alter the principal's estate plan
15 or other provisions for distributions of assets at death, as provided in
16 ~~subsection (a) of K.S.A. 58-656(a)~~, and amendments thereto;
 - 17 ~~(5)~~(6) whether any future event, condition or contingency making
18 effective or terminating the authority conferred in a power of attorney has
19 occurred;
 - 20 ~~(6)~~(7) whether the principal is disabled or has been adjudicated
21 disabled;
 - 22 ~~(7)~~(8) whether the principal, the principal's legal representative or a
23 court has given the attorney in fact any instructions or the content of any
24 instructions, or whether the attorney in fact is following any instructions
25 received;
 - 26 ~~(8)~~(9) whether the authority granted in a power of attorney has been
27 modified by the principal, a legal representative of the principal or a court;
 - 28 ~~(9)~~(10) whether the authority of the attorney in fact has been
29 terminated, except by an express provision in the power of attorney
30 showing the date on which the power of attorney terminates;
 - 31 ~~(10)~~(11) whether the power of attorney, or any modification or
32 termination thereof, has been recorded, except as to transactions affecting
33 real estate;
 - 34 ~~(11)~~(12) whether the principal had legal capacity to execute the
35 power of attorney at the time the power of attorney was executed;
 - 36 ~~(12)~~(13) whether, at the time the principal executed the power of
37 attorney, the principal was subjected to duress, undue influence or fraud,
38 or the power of attorney was for any other reason void or voidable, if the
39 power of attorney appears to be regular on its face;
 - 40 ~~(13)~~(14) whether the principal is alive;
 - 41 ~~(14)~~(15) whether the principal and attorney in fact were married at or
42 subsequent to the time the power of attorney was created and whether an
43 action for annulment, separate maintenance or divorce has been filed by

1 either party; or
 2 ~~(15)~~(16) the truth or validity of any facts or statements made in an
 3 affidavit of the attorney in fact or successor with regard to the ability or
 4 capacity of the principal, the authority of the attorney in fact or successor
 5 under the power of attorney, the happening of any event or events vesting
 6 authority in any successor or contingent attorney in fact, the identity or
 7 authority of a person designated in the power of attorney to appoint a
 8 substitute or successor attorney in fact or that the principal is alive.

9 (b) *Nothing in subsection (a) shall relieve a third person of any duty*
 10 *to report abuse, neglect or exploitation pursuant to K.S.A. 39-1431, and*
 11 *amendments thereto, and making such report shall relieve the third person*
 12 *of any liability for not accepting a power of attorney as provided in*
 13 *subsection (f)(6).*

14 (c) A third person, in good faith and without liability to the principal
 15 or the principal's successors in interest, even with knowledge that the
 16 principal is disabled, may rely and act on the instructions of or otherwise
 17 contract and deal with the principal's attorney in fact or successor attorney
 18 in fact acting pursuant to authority granted in a durable power of attorney.

19 ~~(e)~~(d) A third person that conducts activities through employees shall
 20 not be charged under this act with actual knowledge of any fact relating to
 21 a power of attorney, nor of a change in the authority of an attorney in fact,
 22 unless the information is received at a home office or a place where there
 23 is an employee with responsibility to act on the information, and the
 24 employee has a reasonable time in which to act on the information using
 25 the procedures and facilities that are available to the third person in the
 26 regular course of its operations.

27 ~~(f)~~(e) A third person, when being requested to engage in transactions
 28 with a principal through the principal's attorney in fact, may:

29 (1) Require the attorney in fact to provide specimens of the attorney
 30 in fact's signature and any other information reasonably necessary or
 31 appropriate in order to facilitate the actions of the third person in
 32 transacting business through the attorney in fact;

33 (2) ~~require the attorney in fact to provide a certification under~~
 34 ~~penalty of perjury of any factual matter concerning the principal, attorney~~
 35 ~~in fact or power of attorney;~~

36 (3) require the attorney in fact to indemnify the third person against
 37 forgery of the power of attorney, by bond or otherwise. If the power of
 38 attorney is durable as defined in subsection (a) of K.S.A. 58-652(a), and
 39 amendments thereto, and if either the principal or the attorney in fact
 40 seeking to act is and has been a resident of this state for at least two years,
 41 and if the attorney in fact has executed in the name of the principal and
 42 delivered to the third person an indemnity agreement reasonably
 43 satisfactory in form to such third person, no such bond shall be required;

request and rely upon a certification by

,provided

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(3) 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;
 Redesignate paragraphs

1 and

2 ~~(3)~~ (4) prescribe the place and manner in which the third person will
3 be given any notice respecting the principal's power of attorney and the
4 time in which the third person has to comply with any notice.

5 (f) *A third person may not require an additional or different form of*
6 *power of attorney for authority granted in the power of attorney*
7 *presented.*

8 (g) *A third person shall accept a power of attorney unless:*

9 (1) *The person is not otherwise required to engage in a transaction*
10 *with the principal in the same circumstances;*

11 (2) *engaging in a transaction with the attorney in fact or principal in*
12 *the same circumstances would be inconsistent with federal law;*

13 (3) *the person has actual knowledge of the termination of the*
14 *attorney in fact's authority or of the power of attorney before the exercise*
15 *of the power;*

16 (4) *a request for information, certification or indemnification under*
17 *subsection (e) is refused;*

18 (5) *the person in good faith believes that the power is not valid or*
19 *that the attorney in fact does not have the authority to perform the act*
20 *requested, whether or not a certification under subsection (e) has been*
21 *requested or provided; or*

22 (6) *the person makes, or has actual knowledge that another person*
23 *has made, a report under K.S.A. 39-1431, and amendments thereto, stating*
24 *a good faith belief that the principal may be subject to physical or*
25 *financial abuse, neglect, exploitation or abandonment by the attorney in*
26 *fact or a person acting for or with the attorney in fact.*

27 (h) *A third person that refuses to accept a power of attorney in*
28 *violation of this section is subject to a court order mandating acceptance*
29 *of the power of attorney. Reasonable attorney fees and costs may be*
30 *awarded in any action or proceeding that confirms the validity of the*
31 *power of attorney or mandates acceptance of the power of attorney.*

32 (i) *An attorney in fact's certification shall be deemed sufficient if in*
33 *substantial compliance with the form set forth by the judicial council. The*
34 *judicial council shall develop a form for use under this section.*

35 Sec. 3. K.S.A. 58-658 and K.S.A. 2019 Supp. 58-652 are hereby
36 repealed.

37 Sec. 4. This act shall take effect and be in force from and after its
38 publication in the statute book.

acknowledged in the manner prescribed by K.S.A. 53-501 et seq., and amendments thereto

,an opinion of counsel

or an opinion of counsel

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