

Kansas Power of Attorney Act; Third Persons; SB 103

SB 103 amends the Kansas Power of Attorney Act (Act) to state a power of attorney executed on or after July 1, 2021, is deemed sufficient if in substantial compliance with the form set forth by the Judicial Council, and the bill directs the Judicial Council to develop such form. The bill states the amendments made by the bill shall apply prospectively and shall not affect the validity of a power of attorney executed prior to July 1, 2021.

The bill amends 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 adds 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 is amended to state nothing in its listing of determinations for which a third person is not responsible shall relieve the third person of any duty to report abuse, neglect, or exploitation under certain mandatory reporter statutes. The bill states making such report shall relieve the third person of any liability for not accepting a power of attorney.

The bill also amends 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:

- 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 states an attorney-in-fact's certification shall be deemed sufficient if it is in substantial compliance with the form set forth by the Judicial Council and directs the Judicial Council to develop such form.

Finally, the bill amends 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 the attorney-in-fact does not have the authority to perform the requested act, regardless of whether 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 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 shall be subject to a court order mandating acceptance of the power of attorney. Reasonable attorney fees and costs may 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.