

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

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**MEMORANDUM**

To: Senate Committee on Judiciary  
From: Office of Revisor of Statutes  
Date: February 8, 2021  
Subject: Bill Brief for SB 103

Senate Bill 103 amends the Kansas power of attorney act regarding the form of a power of attorney and the duties of third parties relying and acting on a power of attorney.

Section 1 amends K.S.A. 58-652 to provide that a power of attorney executed on or after July 1, 2021, shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council. It also requires the judicial council to develop a form for use under this section. The amendments to this section apply prospectively and shall not affect the validity of a power of attorney executed prior to July 1, 2021.

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. Subsection (a) currently provides that a third person may rely and act on any power of attorney executed by the principal. The bill amends this subsection to add that a signature on a power of attorney is presumed to be genuine if acknowledged in the manner prescribed by the uniform law on notarial acts. 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 amends subsection (e), regarding actions by a third person when being requested to engage in transactions with a principal through the principal's attorney in fact, to provide 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 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 new subsections (f) through (i) to K.S.A. 58-658. New subsection (f) provides 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 an acknowledged power of attorney. New subsection (h) provides that a third person who refuses to accept an acknowledged power of attorney in violation of this section is subject to a court order requiring acceptance. Subsection (h) also provides that reasonable attorney fees and costs may be awarded if the court confirms the validity of the power of attorney or mandates acceptance of the power of attorney and 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 in substantial compliance with the form provided by the judicial council and requires the judicial council to develop a form for use under this section.