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**TESTIMONY OF JOHN HEDGES, STAFF ATTORNEY
ON BEHALF OF THE KANSAS STATE TREASURER'S OFFICE
IN SUPPORT OF HB 2490**

January 21, 2022

Chair Concannon and Members of the Committee on Children and Seniors,

As the Staff Attorney for the Kansas State Treasurer's Office, I help oversee the Kansas ABLE Savings Program. The Treasurer's Office supports passage of **HB 2490**.

This bill amends the Kansas ABLE savings program to comply with mandatory federal regulations governing state ABLE programs under IRC section 529A. For ABLE account beneficiaries who lack capacity to open or manage their own account, Kansas law currently requires a conservator or guardian to act on behalf of the beneficiary. However, final federal regulations were issued in November 2020, applicable to all state ABLE programs. These impose several mandatory changes, including expanding the categories of people who are authorized to open and manage an ABLE account (including a conservator or guardian, several specified family members, and a Representative Payee appointed by the Social Security Administration).

HB 2490 removes the express enrollment limitation in the Kansas statute, and incorporates the federal enrollment requirements by reference. This resolves the conflict between Kansas and federal law and allows the Kansas ABLE program to remain compliant with federal rules.

This change to enrollments must be adopted during this legislative session, to meet the November 22, 2022, deadline imposed by the federal regulations. Without these changes, the Kansas ABLE program will no longer qualify as a "qualified ABLE program" under federal law. Aside from drastic financial consequences to individual Kansans, failing to comply with federal ABLE requirements would put Kansas at a disadvantage compared to the 45 other states (and Washington D.C.) offering ABLE programs.

In addition to the enrollment changes, HB 2490 also removes an express age-related eligibility requirement in the Kansas statute and incorporates the federal requirements by reference. Current federal law requires that the disability which qualifies a person for an ABLE account must have occurred prior to age 26. The federal ABLE Age Adjustment Act is currently pending in Congress, and is expected to pass soon. That federal act raises the ABLE age qualification to age 46, expanding eligibility to an additional 6 million individuals with disabilities nationwide. However, the "age 26" requirement is explicitly set forth in the Kansas ABLE statutes, which conflicts with the ABLE Age Adjustment Act.

SB329 removes the explicit age requirement in Kansas law and instead refers to federal rules. This will not have an immediate impact on the Kansas ABLE program. However, by incorporating the federal requirements in a forward-looking manner as permitted by Article 11, section 11 of the Kansas Constitution, HB 2490 will automatically update Kansas ABLE to reflect future changes to age qualifications if the ABLE Age Adjustment Act becomes federal law.

HB 2490 will allow the Treasurer's Office to keep our program in compliance with current federal law, as well as future changes to federal eligibility rules. Under existing Kansas law, the State Treasurer must ensure that the Kansas ABLE program remains a "qualified ABLE program" under federal law. We are already working to implement other changes required by the final federal regulations, pursuant to existing Kansas requirements and under the State Treasurer's current statutory authority. However, we need the changes in HB 2490 to remove the conflicts between the Kansas statute and federal law.

Enacting HB 2490 is necessary to maintain the Kansas ABLE program's status as a qualified ABLE plan under the federal tax code. This bill resolves the inconsistency created by mandatory federal regulations, and allows the Kansas ABLE program to respond to current and anticipated federal requirements. HB 2490 will allow the State of Kansas continue to support Kansans with disabilities as they strive to secure their financial wellbeing.