

HOUSE BILL No. 2287

By Representative Dillmore

2-3

9 AN ACT concerning health care decisions; relating to durable powers of
10 attorney for health care decisions and declarations; amending K.S.A.
11 40-2130, 58-625, 58-632 and 65-28,103 and K.S.A. 2004 Supp. 58-629
12 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 40-2130 is hereby amended to read as follows: 40-
16 2130. The association or a member insurer thereof shall provide every
17 applicant for health coverage under the provisions of this act with a form
18 for making a declaration directing the withholding or withdrawal of life-
19 sustaining procedures in a terminal condition in substantial conformance
20 with ~~subsection (c) of~~ K.S.A. 65-28,103, and amendments thereto. If such
21 applicant elects to execute such declaration the applicant shall submit a
22 copy of such declaration to the association or member insurer thereof,
23 and such copy shall be retained and made a part of the applicant's per-
24 manent records.

25 Sec. 2. K.S.A. 58-625 is hereby amended to read as follows: 58-625.

26 (a) A durable power of attorney for health care decisions is a power of
27 attorney by which a principal designates another as the principal's agent,
28 in writing ~~and the writing contains the words "this power of attorney for~~
29 ~~health care decisions shall not be affected by subsequent disability or~~
30 ~~incapacity of the principal" or "this power of attorney for health care~~
31 ~~decisions shall become effective upon the disability or incapacity of the~~
32 ~~principal," or similar words showing the intent of the principal that the~~
33 ~~authority conferred shall be exercisable notwithstanding the principal's~~
34 ~~subsequent disability or incapacity,~~ *to make health care and medical*
35 *treatment decisions if the principal becomes impaired to the extent that*
36 *the principal is incapable of making such decisions.*

37 (b) *A principal may also designate another adult as a successor at-*
38 *torney to serve in place of the original attorney when the original attorney*
39 *is not reasonably available or is unable or unwilling to serve as an attorney*
40 *for health care decisions. If, after the authority of a successor attorney*
41 *has commenced, the original attorney becomes available, able and willing*
42 *to serve as attorney, the authority of the successor attorney shall cease*
43 *and the authority of the original designee shall commence.*

1 (c) *The authority of the durable power of attorney for health care*
2 *decisions shall commence upon a determination pursuant to subsection*
3 *(b) of K.S.A. 58-629, and amendments thereto, that the principal is*
4 *impaired.*

5 Sec. 3. K.S.A. 2004 Supp. 58-629 is hereby amended to read as fol-
6 lows: 58-629. (a) A durable power of attorney for health care decisions
7 may convey to the agent the authority to:

8 (1) Consent, refuse consent, or withdraw consent to any care, treat-
9 ment, service or procedure to maintain, diagnose or treat a physical or
10 mental condition, and to make decisions about organ donation, autopsy,
11 and disposition of the body;

12 (2) make all necessary arrangements for the principal at any hospital,
13 psychiatric hospital or psychiatric treatment facility, hospice, nursing
14 home or similar institution; to employ or discharge health care personnel
15 to include physicians, psychiatrists, psychologists, dentists, nurses, ther-
16 apists or any other person who is licensed, certified, or otherwise au-
17 thorized or permitted by the laws of this state to administer health care
18 as the agent shall deem necessary for the physical, mental and emotional
19 well being of the principal; and

20 (3) request, receive and review any information, verbal or written,
21 regarding the principal's personal affairs or physical or mental health in-
22 cluding medical and hospital records and to execute any releases of other
23 documents that may be required in order to obtain such information.

24 *Such power of attorney may also include other specific directions that*
25 *the principal may give to the agent.*

26 (b) The powers of the agent herein shall be limited to the extent set
27 out in writing in the durable power of attorney for health care decisions,
28 and shall not include the power to revoke or invalidate a previously ex-
29 isting declaration by the principal in accordance with the natural death
30 act. No agent powers conveyed pursuant to this section shall be effective
31 until the occurrence of the principal's impairment as determined by the
32 principal's attending physician, as defined in subsection (a) of K.S.A. 65-
33 28,102 and amendments thereto, unless the durable power of attorney
34 for health care decisions specifically provides otherwise. Nothing in this
35 act shall be construed as prohibiting an agent from providing treatment
36 by spiritual means through prayer alone and care consistent therewith, in
37 lieu of medical care and treatment, in accordance with the tenets and
38 practices of any church or religious denomination of which the principal
39 is a member.

40 (c) In exercising the authority under the durable power of attorney
41 for health care decisions, the agent has a duty to act consistent with the
42 expressed desires of the principal.

43 (d) Neither the treating health care provider, as defined by subsec-

1 tion (c) of K.S.A. 65-4921 and amendments thereto, nor an employee of
2 the treating health care provider, nor an employee, owner, director or
3 officer of a facility described in subsection (a)(2) in K.S.A. 58-629 may
4 be designated as the agent to make health care decisions under a durable
5 power of attorney for health care decisions unless:

- 6 (1) Related to the principal by blood, marriage or adoption; or
- 7 (2) the principal and agent are members of the same community of
8 persons who are bound by vows to a religious life and who conduct or
9 assist in the conduct of religious services and actually and regularly engage
10 in religious, benevolent, charitable or educational ministrations or the
11 performance of health care services.

12 (e) A durable power of attorney for health care decisions shall be:

- 13 (1) Dated and signed in the presence of two witnesses at least 18
14 years of age neither of whom shall be the agent, related to the principal
15 by blood, marriage or adoption, entitled to any portion of the estate of
16 the principal according to the laws of intestate succession of this state or
17 under any will of the principal or codicil thereto, or directly financially
18 responsible for the principal's health care; or
- 19 (2) acknowledged before a notary public.

20 (f) Death of the principal shall not prohibit or invalidate acts of the
21 agent in arranging for organ donation, autopsy or disposition of body.

22 (g) Any person who in good faith acts pursuant to the terms of a
23 durable power of attorney for health care decisions without knowledge
24 of its invalidity shall be immune from liability that may be incurred or
25 imposed from such action.

26 Sec. 4. K.S.A. 58-632 is hereby amended to read as follows: 58-632.
27 A durable power of attorney for health care decisions shall be in substan-
28 tially the following form:

29 ~~DURABLE POWER OF ATTORNEY FOR HEALTH~~
30 ~~CARE DECISIONS~~
31 ~~GENERAL STATEMENT OF AUTHORITY~~
32 ~~GRANTED~~

33 I, _____, designate and appoint:

34 Name _____

35 Address: _____

36 _____

37 Telephone Number: _____

38 to be my agent for health care decisions and pursuant to the language stated below, on my
39 behalf to:

40 (1) Consent, refuse consent, or withdraw consent to any care, treatment, service or
41 procedure to maintain, diagnose or treat a physical or mental condition, and to make
42 decisions about organ donation, autopsy and disposition of the body;

43 (2) make all necessary arrangements at any hospital, psychiatric hospital or psychiatric

1 ~~treatment facility, hospice, nursing home or similar institution, to employ or discharge~~
 2 ~~health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses,~~
 3 ~~therapists or any other person who is licensed, certified or otherwise authorized or~~
 4 ~~permitted by the laws of this state to administer health care as the agent shall deem~~
 5 ~~necessary for my physical, mental and emotional well being, and~~
 6 ~~(3) request, receive and review any information, verbal or written, regarding my per-~~
 7 ~~sonal affairs or physical or mental health including medical and hospital records and to~~
 8 ~~execute any releases of other documents that may be required in order to obtain such~~
 9 ~~information.~~
 10 ~~In exercising the grant of authority set forth above my agent for health care decisions~~
 11 ~~shall.~~
 12 ~~(Here may be inserted any special instructions or statement of the principal's desires to be~~
 13 ~~followed by the agent in exercising the authority granted.)~~

LIMITATIONS OF AUTHORITY

14
 15 ~~(1) The powers of the agent herein shall be limited to the extent set out in writing in~~
 16 ~~this durable power of attorney for health care decisions, and shall not include the power to~~
 17 ~~revoke or invalidate any previously existing declaration made in accordance with the natural~~
 18 ~~death act.~~
 19 ~~(2) The agent shall be prohibited from authorizing consent for the following items:~~
 20 _____
 21 _____
 22 ~~(3) This durable power of attorney for health care decisions shall be subject to the~~
 23 ~~additional following limitations:~~
 24 _____
 25 _____

EFFECTIVE TIME

26
 27 ~~This power of attorney for health care decisions shall become effective (immediately and~~
 28 ~~shall not be affected by my subsequent disability or incapacity or upon the occurrence of~~
 29 ~~my disability or incapacity).~~

REVOCAATION

30
 31 ~~Any durable power of attorney for health care decisions I have previously made is hereby~~
 32 ~~revoked.~~
 33 ~~(This durable power of attorney for health care decisions shall be revoked by an instru-~~
 34 ~~ment in writing executed, witnessed or acknowledged in the same manner as required herein~~
 35 ~~or set out another manner of revocation, if desired.)~~

EXECUTION

36
 37 Executed this _____, at _____, Kansas:
 38 _____

Principal:

39
 40 ~~This document must be: (1) Witnessed by two individuals of lawful age who are not the~~
 41 ~~agent, not related to the principal by blood, marriage or adoption, not entitled to any portion~~
 42 ~~of principal's estate and not financially responsible for principal's health care; OR (2) ac-~~
 43 ~~knowledged by a notary public.~~

1 _____

2 Witness Witness

3 _____

4 Address Address

5 (OR)

6 STATE OF _____

7 SS. _____

8 COUNTY OF _____

9 This instrument was acknowledged before me on _____ (date) by (name of person):

10 _____

11 (Signature of notary public)

12 (Seal, if any)

13 My appointment expires: _____

Copies

a form which complies with K.S.A. 58-625 through 58-631, and amendments thereto.

17 Sec. 5. K.S.A. 65-28,103 is hereby amended to read as follows: 65-

18 28,103. (a) Any adult person may execute a declaration directing the with-

19 holding or withdrawal of life-sustaining procedures in a terminal condi-

20 tion. The declaration made pursuant to this act shall be: (1) In writing;

21 (2) signed by the person making the declaration, or by another person in

22 the declarant's presence and by the declarant's expressed direction; (3)

23 dated; and (4)(A) signed in the presence of two or more witnesses at least

24 18 years of age neither of whom shall be the person who signed the

25 declaration on behalf of and at the direction of the person making the

26 declaration, related to the declarant by blood or marriage, entitled to any

27 portion of the estate of the declarant according to the laws of intestate

28 succession of this state or under any will of the declarant or codicil

29 thereto, or directly financially responsible for declarant's medical care; or

30 (B) acknowledged before a notary public. The declaration of a qualified

31 patient diagnosed as pregnant by the attending physician shall have no

32 effect during the course of the qualified patient's pregnancy.

33 (b) It shall be the responsibility of declarant to provide for notification

34 to the declarant's attending physician of the existence of the declaration.

35 An attending physician who is so notified shall make the declaration, or

36 a copy of the declaration, a part of the declarant's medical records.

37 (c) The declaration shall be ~~substantially in the following form, but~~

38 ~~in addition~~ *in a form which complies with this section and* may include

39 other specific directions. Should any of the other specific directions be

40 held to be invalid, such invalidity shall not affect other directions of the

41 declaration which can be given effect without the invalid direction, and

42 to this end the directions in the declaration are severable.

DECLARATION

—Declaration made this _____ day of _____ (month, year). I, _____ being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

—If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care:

—In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal:

—I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed _____

City, County and State _____

of Residence _____

—The declarant has been personally known to me and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care:

Witness _____

Witness _____

(OR)

STATE OF _____)

ss. _____

COUNTY OF _____)

—This instrument was acknowledged before me on _____ (date)

by _____ (name of person)

(Signature of notary public)

(Seal, if any)

My appointment expires. _____

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Sec. 6. K.S.A. 40-2130, 58-625, 58-632 and 65-28,103 and K.S.A. 2004 Supp. 58-629 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.