

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 526, at the Statehouse at 3:30 a. m./p. m., on March 26, 19 79.

members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on March 27, 19 79.

These minutes of the meeting held on March 23, 19 79 were considered, corrected and approved.

JOSEPH J. HOAGLAND

Chairman

The conferees appearing before the Committee were:

Representative Duncan
Richard Walker, Kansas Adult Authority

Chairman Hoagland called the meeting to order at 3:30 p.m. and the minutes of the last meeting were approved.

Substitute SB 376 was discussed. This bill deals with wage garnishment. Rep. Miller moved to recommend Sub. SB 376 favorably. Seconded by Rep. Douville.

A substitute motion was made by Rep. Roth to strike Lines 108 through 116 and amend Sub. SB 376. Seconded by Rep. Stites. Motion passed to adopt the amendment.

Rep. Miller than moved to recommend Sub. SB 376 favorably as amended. Seconded by Rep. Douville. Motion carried.

Rep. Duncan explained HCR 5018 to the committee. The Resolution rejects the Kansas Adult Authority Rules and Regulations.

Richard Walker, Kansas Adult Authority, briefly stated their support of the resolution.

Rep. Stites then moved to recommend that HCR 5018 be adopted. Rep. Glover seconded the motion. Motion carried.

Rep. Douville, Chairman of the Civil Sub-Committee explained a hearing on a bill that was similar to HB 2659, which is being considered by the committee today.

It was then moved by Rep. Crow and Seconded by Rep. Brewster to amend HB 2659 by striking all of Section 1 and anything else pertaining to that section. Motion carried to amend HB 2659.

Rep. Brewster then moved to amend HB 2659 by striking all of Section 5 and renumbering the sections accordingly. Seconded by Rep. Glover. Motion carried to amend HB 2659.

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It was moved by Rep. Glover and Seconded by Rep. Brewster to recommend HB 2659 favorably as amended. Motion passed with a vote of 9 to 4.

SB 295, a bill concerning joint custody of children of divorced parents was discussed next.

Rep. Brewster moved to recommend SB 295 favorably. Seconded by Rep. Glover. Motion carried.

SB 421, a bill which changes certain appeals from the Supreme Court to the Court of Appeals, was discussed briefly. Rep. Heinemann moved to recommend SB 421 favorably for passage. Seconded by Rep. Heinemann. Motion carried.

Rep. Heinemann moved to conceptually amend SB 423 by inserting a Section 2, repealing 44-556. Seconded by Rep. Brewster. Motion carried.

Rep. Stites then moved to recommend SB 428 favorably. Seconded by Rep. Glover. Motion passed.

Rep. Crow moved to pass SB 373 favorably. Seconded by Rep. Glover. Motion was withdrawn, following a short discussion of the bill.

Rep. Glover moved to recommend SB 377 favorably. Rep. Foster seconded.

A substitute motion was made on SB 377 by Rep. Gillmore to table the bill. Seconded by Rep. Frey. Motion failed.

A vote was taken on the original motion to recommend SB 377 favorably. Motion carried.

Rep. Miller moved to pass SB 381 favorably. Seconded by Rep. Matlack. Motion passed.

Rep. Crow moved to report SB 379 adversely. Rep. Gillmore seconded the motion.

Rep. Brewster made a substitute motion to table SB 379. Seconded by Rep. Baker. After a brief discussion, the substitute motion was withdrawn, but the second was not withdrawn. Motion passed to table SB 379.

SB 99, the bill concerning termination of life sustaining procedures, was discussed next. Rep. Gillmore passed out copies of proposed amendments to the bill and briefly explained them to the committee. (See attachment).

Rep. Gillmore moved to adopt the proposed amendment on page 2 of the attachment. Seconded by Rep. Miller. Motion carried to adopt the amendment.

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Rep. Glover moved to amend the amendment balloon and adopt the entire amendment. Seconded by Rep. Frey. The motion will be taken up at the next meeting and SB 99 will be discussed further on March 27.

Meeting adjourned at 5:00 p.m.

SENATE BILL No. 99

By Senator Winter

1-16

0017 AN ACT concerning medical treatment of persons afflicted with a
0018 terminal condition; authorizing a written declaration instruct-
0019 ing a physician to withhold or withdraw life-sustaining pro-
0020 cedures in the event of such affliction; declaring certain acts to
0021 be unlawful and classifying the crime and the penalties there-
0022 for; amending *K.S.A. 77-202 and K.S.A. 1978 Supp. 65-2837*
0023 and repealing the existing ~~section~~ sections.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 New Section 1. The legislature finds that adult persons have
0026 the fundamental right to control the decisions relating to the
0027 rendering of their own medical care, including the decision to
0028 have life-sustaining procedures withheld or withdrawn in in-
0029 stances of a terminal condition.

0030 In order that the rights of patients may be respected even after
0031 they are no longer able to participate actively in decisions about
0032 themselves, the legislature hereby declares that the laws of this
0033 state shall recognize the right of an adult person to make a written
0034 declaration instructing his or her physician to withhold or with-
0035 draw life-sustaining procedures in the event of a terminal condi-
0036 tion.

0037 New Sec. 2. As used in this act:

0038 (a) "Attending physician" means the physician selected by, or
0039 assigned to, the patient who has primary responsibility for the
0040 treatment and care of the patient.

0041 (b) "Declaration" means a witnessed document in writing,
0042 voluntarily executed by the declarant in accordance with the
0043 requirements of section 3.

0044 (c) "Life-sustai. [] procedure" means any medical proce-
0045 dure or intervention which, when applied to a qualified patient,

0046 would serve only to prolong the dying process and where, in the
0047 judgment of the attending physician, death will occur whether or
0048 not such procedure or intervention is utilized. "Life-sustaining
0049 procedure" shall not include the administration of medication or
0050 the performance of any medical procedure deemed necessary to
0051 provide comfort care or to alleviate pain.

0052 (d) "Physician" means a person licensed to practice medicine
0053 and surgery by the state board of healing arts.

0054 (e) "Qualified patient" means a patient who has executed a
0055 declaration in accordance with this act and who has been diag-
0056 nosed and certified in writing to be afflicted with a terminal
0057 condition by two physicians who have personally examined the
0058 patient, one of whom shall be the attending physician.

0059 New Sec. 3. (a) Any adult person may execute a declaration
0060 directing the withholding or withdrawal of life-sustaining pro-
0061 cedures in a terminal condition. The declaration ~~shall be executed~~
0062 ~~in the same manner as provided by law for the execution of a will~~
0063 ~~in this state.~~ *The declaration of a qualified patient diagnosed as*
0064 *pregnant by the attending physician shall have no effect during*
0065 *the course of the qualified patient's pregnancy.*

0066 (b) It shall be the responsibility of declarant to provide for
0067 notification to his or her attending physician of the existence of
0068 the declaration. An attending physician who is so notified shall
0069 make the declaration, or a copy of the declaration, a part of the
0070 declarant's medical records.

0071 (c) The declaration shall be substantially in the following
0072 form, but in addition may include other specific directions.
0073 Should any of the other specific directions be held to be invalid,
0074 such invalidity shall not affect other directions of the declaration
0075 which can be given effect without the invalid direction, and to
0076 this end the directions in the declaration are severable.

0077 DECLARATION

0078 Declaration made this _____ day of _____ (month, year). I,
0079 _____, being of sound mind, willfully and voluntarily make
0080 known my desire that my dying shall not be artificially prolonged under the
0081 circumstances set forth below, do hereby declare:
0082 "at any time I should _____ an incurable injury, disease, or illness certified to be
0083 _____ terminal condition by _____ physicians who have personally examined me, one of
0084 _____ whom shall be my atten- _____ physician, and the physicians have determined that
0085 my death will occur whether or not life-sustaining procedures are utilized and

made pursuant to this act shall be: (1) In writing; (2) signed by the person making the declaration, or by a person in his or her presence and by his or her expressed direction; (3) dated; and (4) signed in the presence of two or more witnesses at least eighteen (18) years of age neither of whom shall be the person who signed the declaration on behalf of and at the direction of the person making the declaration, 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 of this state or under any will of declarant or codicil thereto, or directly financially responsible for declarants medical care

0086 where the application of life-sustaining procedures would serve only to arti-
0087 ficially prolong the dying process, I direct that such procedures be withheld or
0088 withdrawn, and that I be permitted to die naturally with only the administration
0089 of medication or the performance of any medical procedure deemed necessary to
0090 provide me with comfort care.

0091 In the absence of my ability to give directions regarding the use of such
0092 life-sustaining procedures, it is my intention that this declaration shall be honored
0093 by my family and physician(s) as the final expression of my legal right to refuse
0094 medical or surgical treatment and accept the consequences from such refusal.

0095 I understand the full import of this declaration and I am emotionally and
0096 mentally competent to make this declaration.

0097 Signed _____
0098 City, County and State of Residence _____

0099 The declarant has been personally known to me and I believe him or her to be of
0100 sound mind.

0101 Witness _____
0102 Witness _____

0103 New Sec. 4. (a) A declaration may be revoked ~~in the same~~
0104 ~~manner as provided by law for the revocation of a will in this~~
0105 ~~state.~~

0106 ~~(b) Such revocation shall become effective upon communica-~~
0107 ~~tion to the attending physician by the declarant or by a person~~
0108 ~~who is reasonably believed to be acting on behalf of the de-~~
0109 ~~clarant. The attending physician shall record in the patient's~~
0110 ~~medical record the time, date and place of the revocation and the~~
0111 ~~time, date and place, if different, of when he or she received~~
0112 ~~notification of the revocation.~~

0113 ~~(c)~~ There shall be no criminal or civil liability on the part of
0114 any person for failure to act upon a revocation made pursuant to
0115 this section unless that person has actual knowledge of the
0116 revocation.

0117 New Sec. 5. An attending physician who has been notified of
0118 the existence of a declaration executed under this act, without
0119 delay after the diagnosis of a terminal condition of the declarant,
0120 shall take the necessary steps to provide for written certification
0121 and confirmation of the declarant's terminal condition, so that
0122 declarant may be deemed to be a qualified patient under this act.

0123 An attending physician who fails to comply with this section
0124 shall be deemed to have refused to comply with the declaration
0125 and shall be subject to subsection (a) of section 7.

0126 New Sec. 6. If _____ desires of a qualified patient who is compe-
0127 tent shall at all _____ supersede the effect of the declaration.

0128 If the qualified patient is incompetent at the time of the
0129 decision to withhold or withdraw life-sustaining procedures,

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 interstate succession or under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care.

at any time by the declarant by any of the following methods:
(1) By being obliterated, burnt, torn, or otherwise destroyed, or defaced in a manner indicating intention to cancel;
(2) by a written revocation of the declaration signed and dated by the declarant or person acting on behalf of the declarant; or
(3) by a verbal expression of the intent to revoke the declaration, in the presence of a witness eighteen (18) years of age or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective upon receipt by the attending physician of the above mentioned writing

(b)

0130 declaration executed in accordance with section 3 of this act is
0131 presumed to be valid. For the purpose of this act, a physician or
0132 medical care facility may presume in the absence of actual notice
0133 to the contrary that an individual who executed a declaration was
0134 of sound mind when it was executed. The fact of an individual's
0135 having executed a declaration shall not be considered as an
0136 indication of a declarant's mental incompetency. Age of itself
0137 shall not be a bar to a determination of competency.

0138 In the absence of actual notice of the revocation of the decla-
0139 ration, none of the following, when acting in accordance with the
0140 requirements of this act, shall be subject to civil liability for such
0141 action, unless negligent, or shall be guilty of any criminal act or
0142 of unprofessional conduct:

0143 (a) A physician or medical care facility which causes the
0144 withholding or withdrawal of life-sustaining procedures from a
0145 qualified patient.

0146 (b) Any person who participates in the withholding or with-
0147 drawal of life-sustaining procedures while acting under the di-
0148 rection of a physician. No physician, licensed health care pro-
0149 fessional, medical care facility or employee thereof who in good
0150 faith causes or participates in the withholding or withdrawing
0151 of life-sustaining procedures from a qualified patient pursuant
0152 to a declaration made in accordance with this act shall, as a
0153 result thereof, be subject to criminal or civil liability, or be
0154 found to have committed an act of unprofessional conduct.

0155 New Sec. 7. (a) An attending physician who refuses to
0156 comply with the declaration of a qualified patient pursuant to this
0157 act shall make the necessary arrangements to effect the transfer of
0158 the qualified patient to another physician who will effectuate the
0159 declaration of the qualified patient. Failure of an attending phy-
0160 sician to comply with the declaration of a qualified patient or to
0161 make the necessary arrangements to effect the transfer of the
0162 qualified patient shall constitute unprofessional conduct as de-
0163 fined in K.S.A. 1978 Supp. 65-2837, as amended.

0164 (b) Any person who willfully conceals, cancels, defaces, ob-
0165 literates or destroys the declaration of another without such
0166 declarant's consent or who falsifies or forges a revocation of the

0167 declaration of another shall be guilty of a class A misdemeanor.

0168 (c) Any person who falsifies or forges the declaration of
0169 another, or willfully conceals or withholds personal knowledge
0170 of the revocation of a declaration, with the intent to cause a
0171 withholding or withdrawal of life-sustaining procedures contrary
0172 to the wishes of the declarant, and thereby, because of such act,
0173 directly causes life-sustaining procedures to be withheld or
0174 withdrawn and death to be hastened, shall be guilty of a class E
0175 felony.

0176 New Sec. 8. (a) The withholding or withdrawal of life-sus-
0177 taining procedures from a qualified patient in accordance with
0178 the provisions of this act shall not, for any purpose, constitute a
0179 suicide and shall not constitute the crime of assisting suicide as
0180 defined by K.S.A. 21-3406.

0181 (b) The making of a declaration pursuant to section 3 shall not
0182 affect in any manner the sale, procurement, or issuance of any
0183 policy of life insurance, nor shall it be deemed to modify the
0184 terms of an existing policy of life insurance. No policy of life
0185 insurance shall be legally impaired or invalidated in any manner
0186 by the withholding or withdrawal of life-sustaining procedures
0187 from an insured qualified patient, notwithstanding any term of
0188 the policy to the contrary.

0189 (c) No physician, medical care facility, or other health care
0190 provider, and no health care service plan, health maintenance
0191 organization, insurer issuing disability insurance, self-insured
0192 employee welfare benefit plan, nonprofit medical service cor-
0193 poration or mutual nonprofit hospital service corporation shall
0194 require any person to execute a declaration as a condition for
0195 being insured for, or receiving, health care services.

0196 (d) Nothing in this act shall impair or supersede any legal
0197 right or legal responsibility which any person may have to effect
0198 the withholding or withdrawal of life-sustaining procedures in
0199 any lawful manner. In such respect the provisions of this act are
0200 cumulative.

0201 (e) This act shall create no presumption concerning the in-
0202 tent of an individual who has not executed a declaration to
0203 consent to the use or withholding of life-sustaining procedures in

0204 the event of a terminal condition.

0205 New Sec. 9. Nothing in this act shall be construed to con-
0206 done, authorize or approve mercy killing or euthanasia or to
0207 permit any affirmative or deliberate act or omission to end life
0208 other than to permit the natural process of dying as provided in
0209 this act.

0210 Sec. 10. K.S.A. 1978 Supp. 65-2837 is hereby amended to
0211 read as follows: 65-2837. For the purpose of the preceding sec-
0212 tion, "unprofessional conduct" shall consist of any of the fol-
0213 lowing acts: (a) Solicitation of professional patronage, or profit-
0214 ing by the acts of those representing themselves to be agents of
0215 the licensee. (b) Receipt of fees on the assurance that a manifestly
0216 incurable disease can be permanently cured. (c) Assisting in the
0217 care or treatment of a patient without the consent of said patient,
0218 his or her attending physician or his legal representatives. (d) The
0219 use of any letters, words, or terms, as an affix, on stationery, in
0220 advertisements, or otherwise indicating that such person is en-
0221 titled to practice a branch of the healing arts for which he or she is
0222 not licensed. (e) Performing, procuring or aiding and abetting in
0223 the performance or procurement of a criminal abortion. (f) Willful
0224 betrayal of confidential information. (g) Making use of any ad-
0225 vertising statements of a character tending to deceive or mislead
0226 the public. (h) Advertising professional superiority or the per-
0227 formance of professional services in a superior manner. (i) Ad-
0228 vertising prices for professional service; posting of fees as re-
0229 quired by law shall not be deemed advertising. (j) Advertising by
0230 means of a large display, lights, signs, or containing as a part
0231 thereof, the representation of any portion of the human body. (k)
0232 Employing or making use of advertising solicitors or free public
0233 press agents. (l) Advertising any free professional services or free
0234 examination. (m) Offering discounts or inducements to prospec-
0235 tive patients by means of coupons or otherwise to perform pro-
0236 fessional services during the given period of time or during any
0237 period of time for a lesser or more attractive price. (n) Advertising
0238 to guarantee an professional service or to perform any operation
0239 painlessly. (o) Individually advertising any price or prices of
0240 corrective devices or services. (p) Participating in any action as a

0241 staff member of a medical care facility which is designed to
0242 exclude or which results in the exclusion of any person licensed
0243 to practice medicine and surgery from the medical staff of a
0244 nonprofit medical care facility licensed in this state because of
0245 the branch of the healing arts practiced by such person or without
0246 just cause. (q) *Failure to effectuate the declaration of a qualified*
0247 *patient as provided in subsection (a) of section 7.*

0248 *Sec. 11. K.S.A. 77-202 is hereby amended to read as follows:*
0249 *77-202. A person will be considered medically and legally dead*
0250 *if, in the opinion of a physician, based on ordinary standards of*
0251 *medical practice, there is the absence of spontaneous respiratory*
0252 *and cardiac function and, because of the disease or condition*
0253 *which caused, directly or indirectly, these functions to cease, or*
0254 *because of the passage of time since these functions ceased,*
0255 *attempts at resuscitation are considered hopeless; and, in this*
0256 *event, death will have occurred at the time these functions*
0257 *ceased; or*

0258 *A person will be considered medically and legally dead if, in*
0259 *the opinion of a physician, based on ordinary standards of*
0260 *medical practice, there is the absence of spontaneous brain*
0261 *function; and if based on ordinary standards of medical prac-*
0262 *tice, during reasonable attempts to either maintain or restore*
0263 *spontaneous circulatory or respiratory function in the absence*
0264 *of aforesaid brain function, it appears that further attempts at*
0265 *resuscitation or supportive maintenance will not succeed, death*
0266 *will have occurred at the time when these conditions first*
0267 *coincide. Death is to be pronounced before artificial means of*
0268 *supporting respiratory and circulatory function are terminated*
0269 *and before any vital organ is removed for purposes of trans-*
0270 *plantation.*

0271 *These alternative definitions of death are to be utilized for all*
0272 *purposes in this state, including the trials of civil and criminal*
0273 *cases, any laws to the contrary notwithstanding.*

0274 *Sec. 11 12. K.S.A. 77-202 and K.S.A. 1978 Supp. 65-2837 is*
0275 *hereby repealed.*

0276 *Sec. 11 13. This* *shall take effect and be in force from and*
0277 *after its publication in the statute book.*