

Approved January 24, 1989  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at  
Chairperson

3:30 ~~a.m.~~/p.m. on January 18, 19 89 in room 313-S of the Capitol.

All members were present except:

Representative Peterson, who was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Committee consideration of H.B. 2009 - Durable Power of Attorney for health care decisions

Representative Douville distributed an amendment to H.B. 2009, see Attachment I. The amendment would replace language starting on line 98 on page 3 "including the power to place the principal in any facility or institution, including any treatment facility, but such agent shall not be required to obtain any court order to take such action except as set out in subsections (g)(3), (4), (5), (6), (7) and (8) of K.S.A. 59-3018", and insert "and if necessary, to make arrangements, contracts or otherwise, at any hospital, hospice, nursing home, convalescent home, health care facility, or similar institution, or in the principal's residence should such principal desire, and ensure that all the principal's essential needs are provided for at such facility or residence, as the case may be; to employ and discharge medical personnel, including physicians, psychiatrists, dentists, nurses and therapists as the agent shall deem necessary, for the principal's physical, mental and emotional well being and to pay them or cause them to be paid reasonable compensation; to request, receive and review any information, verbal or written, regarding the principal's personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information; giving and granting to the agent full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises. This power to contract and make decisions effecting the principal's health shall not be construed to authorize the withholding or withdrawal of life sustaining procedures unless the principal shall have executed a declaration in accordance with law as set forth in K.S.A. 65-28,101 through 65-28,109, and amendments thereto, and provided further that the principal has not revoked the declaration as authorized by K.S.A. 65-28, 106, and amendments thereto."

Representative Solbach proposed adding to Representative Douville's amendment, "or, unless the power of attorney for health care decisions specifically gives the agent power to execute a declaration on the principal's behalf under K.S.A. 65-28,101 through 109".

The Committee discussed the proposed amendments.

Representative Douville moved to adopt his amendment to H. B. 2009. Representative Buehler seconded the motion. The motion passed.

Representative Walker moved to report H.B. 2009, as amended, favorable for passage. The motion was seconded by Representative Buehler and the motion passed.

The minutes of January 10, 11 and 12 were approved.

The Committee meeting was adjourned at 4:30 p.m.



*House Judiciary  
1/18/89  
Attachment I*

81 of the power at that time. If the exercise of the power of attorney  
82 requires execution and delivery of any instrument that is recordable,  
83 the affidavit when authenticated for record is likewise recordable.  
84 This section does not affect any provision in a power of attorney for  
85 its termination by expiration of time or occurrence of an event other  
86 than express revocation or a change in the principal's capacity. Any-  
87 one presented with a power of attorney who, without actual knowl-  
88 edge of any matters affecting its validity (and with no obligation to  
89 make affirmative inquiry into any matters beyond the express terms  
90 of the written document), acts in good faith under the power shall  
91 not be liable civilly or criminally for relying on the power of attorney.

92 New Sec. 6. Any durable power of attorney containing the words  
93 "power of attorney for guardianship powers" or "power of attorney  
94 for guardianship and conservatorship powers," or similar words show-  
95 ing the intent of the principal that the authority conferred shall  
96 include the authority to do acts that a guardian can do, shall convey  
97 to the agent the authority to do all acts that a guardian can do under  
98 Kansas law, ~~including the power to place the principal in any facility~~  
99 ~~or institution, including any treatment facility, but such agent shall~~  
100 ~~not be required to obtain any court order to take any such action~~  
101 ~~except as set out in subsections (p)(3), (4), (5), (6), (7) and (8) of~~  
102 ~~K.S.A. 50-2018.~~ The powers of the agent herein shall be limited,

103 however, to the extent set out in writing in the power of attorney.  
104 No guardian powers shall be effective until the occurrence of the  
105 principal's disability or incapacity, unless the power of attorney spe-  
106 cifically provides otherwise. Nothing herein shall affect the validity  
107 of any power of attorney which conveys by its language the powers  
108 a guardian would have under Kansas law, even though the language  
109 referred to above is not used.

110 New Sec. 7. Unless and to the extent provided for in the written  
111 document, the agent is not entitled to compensation. However, the  
112 agent shall be entitled to reimbursement for all actual and reasonable  
113 expenses incurred on behalf of the principal.

114 Sec. 8. K.S.A. 58-615 is hereby amended to read as follows: 58-  
115 615. This act shall be applied and construed to effectuate its general  
116 purpose to make uniform the law with respect to the subject of this  
117 act among states enacting it. Any power of attorney which is a valid

; and if necessary, to make arrangements, contracts or otherwise, at any hospital, hospice, nursing home, convalescent home, health care facility, or similar institution, or in the principal's residence should such principal desire, and ensure that all the principal's essential needs are provided for at such facility or residence, as the case may be; to employ and discharge medical personnel, including physicians, psychiatrists, dentists, nurses and therapists as the agent shall deem necessary, for the principal's physical, mental and emotional well being and to pay them or cause them to be paid reasonable compensation; to request, receive and review any information, verbal or written, regarding the principal's personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information; giving and granting to the agent full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises. This power to contract and make decisions effecting the principal's health shall not be construed to authorize the withholding or withdrawal of life sustaining procedures unless the principal shall have executed a declaration in accordance with law as set forth in K.S.A. 65-28,101 through 65-28,109, and amendments thereto, and provided further that the principal has not revoked the declaration as authorized by K.S.A. 65-28,106, and amendments thereto