

Approved 4-27-89  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Eric Yost at  
Chairperson

10:00 a.m./~~p.m.~~ on March 28, 1989 in room 514-S of the Capitol.

All members were present ~~except~~: Senator Winter, Yost, Moran, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Jane Tharp, Committee Secretary

Conferees appearing before the committee: None

House Bill 2079 - Emergency medical services; limitation on liability

Senator Yost explained the bill and the recommendation of the subcommittee. Senator Rock moved to report the bill favorably. Senator Morris seconded the motion. The motion carried.

House Bill 2112 - Probate cleanup

Senator Yost explained the bill and recommendation of the subcommittee. Following committee discussion, Senator Parrish moved to report the bill favorably. Senator Petty seconded the motion. The motion carried.

House Bill 2243 - Judge pro tem appointments

Senator Yost explained the bill and recommendation of the subcommittee. Senator Morris moved to report the bill favorably. Senator Bond seconded the motion. The motion carried.

House Bill 2283 - Notification of defendants that appraisers' award has been paid in eminent domain proceedings.

Senator Yost explained the bill and the recommendation of the subcommittee. Senator Morris moved to amend the bill by changing "10" to "15" in line 22. Senator Rock seconded the motion. Following committee discussion, the motion carried. Senator Morris moved to report the bill favorably as amended. Senator Feleciano seconded the motion. The motion carried.

House Bill 2433 - Corporations registered office and registered agent.

Senator Yost explained the bill and recommendation of the subcommittee. Senator Morris moved to report the bill favorably. Senator Feleciano seconded the motion. The motion carried.

House Bill 2162 - Cleanup of Kansas administrative procedure act.

Senator Parrish explained the bill. Senator Parrish moved the adoption of the cleanup amendments recommended by the Corporation Commission and the subcommittee report. Senator Bond seconded the motion. Following committee discussion, the motion carried. Senator Parrish moved to report the bill favorably as amended. Senator Bond seconded the motion. The motion carried.

Senate Bill 355 - Civil remedies for theft

Senator Yost explained the bill and the recommendation of the committee. Following committee discussion, Senator Yost moved to report the bill favorably.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 28, 1989.

Senate Bill 355 - continued

Senator Bond seconded the motion. The motion failed.

House Bill 2009 - Durable power of attorney, health care decisions.

Senator Petty explained the recommendation of the subcommittee and the amendments (See Attachment I). Senator Petty moved the adoption of the subcommittee report that will create a substitute bill. Senator Yost seconded the motion. The motion carried. Following an explanation of decision-making-incapacity (See Attachment II), Senator Petty moved to further amend the bill to define decision-making-incapacity in subsection (d), page 3. Senator Parrish seconded the motion. The motion carried. Senator Bond made a conceptual motion to amend the bill that would include a health care decisions form. Senator Petty seconded the motion. The motion carried. Senator Petty moved to report the bill favorably as amended. Senator Parrish seconded the motion. The motion carried.

House Bill 2123 - Limiting the civil liability of athletic officials.

Senator Yost explained the bill. Senator Yost moved to report the bill favorably. Senator Rock seconded the motion. Following committee discussion, the motion carried.

House Bill 2436 - Unsworn declarations under penalty of perjury.

Senator Moran explained the bill. Following an explanation of the recommendations by the Secretary of State's office (See Attachment III), Senator Gaines moved to adopt the proposed amendments. Senator Moran seconded the motion. The motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Oleen seconded the motion. The motion carried.

Senator Bond moved to approve the minutes of March 7, 1989. Senator Moran seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-28-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Don Doerken	401 Topeka Ave	Kansas Dept Human Resources
Paul Shelby	Topeka	(PERB Board) OJA
KEITH R LANDIS	"	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Marilyn Bradt	Lawrence	Kansans for Improvement of Nursing Homes
Patricia Murphy	Manhattan	KTLA
Jean McBiner	Topeka	observed
Rebecca Wilbur	Topeka	h.w ✓
KEVIN HARMER	MARYSVILLE	UTU
JR O'Neil	Marysville	VTU
H. FERGUSON	SHANNON	UTU
Jerry Sloan	Topeka	OJA
DAVID E. RICHM	TOPEKA	KADM
Connie Begg	Lawrence	
Math Lynch	Topeka	Judicial Council
Jo Jenkins Moolshy	Topeka	KCC
Jan Drap	Topeka	Repeal the Best
Andy Gasse	Wheaton	NTLK
Sue Bond	Oreland Park	
Nancy Lindberg	Topeka	AG
BUD CORANT	TOPEKA	KCC
M. Hawer	"	Cam-Journals
Greg Doman	Topeka	WRB
Kent Roth	Great Bend	Physicians National
Ben Smith	Topeka	Ks Bar
W. Harnell	" "	Ks Jud Coun.



# MEMORANDUM

March 24, 1989

TO: Senate Judiciary Committee

FROM: Kansas Legislative Research Department

RE: Subcommittee Meeting on H.B. 2009

The Subcommittee on H.B. 2009 met on Friday, March 24, 1989. As a result of that meeting the Subcommittee recommends the consideration of Sub. H.B. 2009 with the following amendments:

1. In section 3(b), to delete ". . . of the principal's person" at the top of page 2.
2. Same section, last line, add "for health care reasons" after attorney.
3. In section 5, second line, change "shall" to "may".
4. In section 5(b), last two lines, delete "and to pay them or cause them to be paid reasonable compensation."
5. In section 5(e), last two lines, add "expressed" after "the" and before "desires." Insert a period after "principal" and delete the remainder of the sentence.
6. In section 5(g), delete the listed witness qualifications (A) through (F) and adopt the living will witness qualifications.

In conclusion, the Subcommittee has considered other issues and wishes the full Committee to deliberate on the following:

1. Section 7; whether to retain, delete, or modify.
2. A durable power of attorney for health care decisions form; whether to include a form in the statute or leave it out.

89-119

*Attachment I*  
*SJC*  
*3-28-89*

(Subcommittee)SUBSTITUTE FOR HOUSE BILL No. 2009

AN ACT concerning the durable power of attorney for health care decisions;....

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

Section 1. A durable power of attorney for health care decisions is a power of attorney by which a principal designates another as the principal's agent in writing and the writing contains the words "this power of attorney for health care decisions shall not be affected by subsequent disability or incapacity of the principal" or "this power of attorney for health care decisions shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

Sec. 2. All acts done by an agent pursuant to a durable power of attorney for health care decisions during any period of disability or incapacity of the principal have the same effect as if the principal were competent and not disabled.

Sec. 3. (a) If, following execution of a durable power of attorney for health care decisions, a court of the principal's domicile appoints a guardian charged with the responsibility for the principal's person, the guardian has the same power to revoke or amend the durable power of attorney that the principal would have had if the principal were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney

for health care decisions, a conservator or guardian for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney for health care decisions except for good cause or disqualification.

Sec. 4. A voluntary revocation by a principal of a durable power of attorney for health care decisions does not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the revocation, acts in good faith under the power.

Sec. 5. A durable power of attorney for health care decisions may convey to the agent the authority to: (a) consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy, and disposition of the body;

(b) make all necessary arrangements for the principal at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for the physical, mental and emotional well being of the principal; and

(c) 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.

(d) The powers of the agent herein shall be limited to the extent set out in writing in the durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate a previously existing declaration by the principal in accordance with the natural death act. No agent powers conveyed pursuant to this section shall be effective until the occurrence of the principal's decision-making-incapacity as determined by the principal's attending physician, as defined in K.S.A. 65-28,102(a), unless the durable power of attorney for health care decisions specifically provides otherwise. Nothing in this act shall be construed as prohibiting an agent from providing treatment by spiritual means through prayer alone and care consistent therewith, in lieu of medical care and treatment, in accordance with the tenets and practices of any church or religious denomination of which the principal is a member.

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

(f) Neither the treating health care provider, as defined by K.S.A. 65-4921(c), nor an employee of the treating health care provider, nor an employee, owner, director or officer of a facility described in section 5(b) may be designated as the agent to make health care decisions under a durable power of attorney for health care decisions unless: (1) related to the principal by blood, marriage or adoption; or



(2) the principal and agent are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conduct of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministrations or the performance of health care services.

(g) A durable power of attorney for health care decisions shall be (1) dated and signed in the presence of two witnesses at least 18 years of age neither of whom shall be the agent, related to the principal by blood, marriage or adoption, entitled to any portion of the estate of the principal according to the laws of intestate succession of this state or under any will of the principal or codicil thereto, or directly financially responsible for the principal's health care; or

(2) acknowledged before a notary public.

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

Sec. 6. Any durable power of attorney for health care decisions which is valid under the laws of the state of the principal's residence at the time the durable power of attorney for health care decisions was signed, shall be a durable power of attorney for health care decisions under this act. All acts taken by an agent in this state under such a durable power of attorney for health care decisions, which would be valid under the laws of this state, shall be valid acts. All acts taken by an agent for a principal whose residence is Kansas at the time the durable power of attorney for health care decisions is signed shall be valid if

valid under Kansas law.

Sec. 7. A durable power of attorney executed before July 1, 1989, that specifically authorizes the attorney in fact or agent to make decisions relating to the health care of the principal shall not be limited or otherwise affected by the provisions of this act.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

1. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

I hereby create a durable power of attorney for health care decisions by appointing the person designated below to make health care decisions for me. This power shall become effective at the time I become incapable of giving informed consent for health care decisions or as specified below. This power of attorney shall not be affected by my subsequent disability or incapacity.

2. GENERAL STATEMENT OF AUTHORITY GRANTED

If I become incapable of giving informed consent for health care decisions and protective proceedings have not commenced regarding the guardianship of my person, I hereby grant to my agent, subject to any limitations stated herein, full power and authority to make health care decisions for me including the right to consent, refuse consent, or withdraw consent to any care, treatment, service, or procedure to maintain, diagnose or treat a physical or mental condition, and to authorize release of medical information. This authority is subject to the special provisions and limitations set out as follows:

The agent shall be prohibited from authorizing consent for the items marked below:

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Additional statement of desires, special provisions,

limitations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. DESIGNATION OF AGENT

I, \_\_\_\_\_ do hereby designate and appoint \_\_\_\_\_, residing at \_\_\_\_\_, \_\_\_\_\_ as my agent to make health care decisions for me as authorized in this document.

If protective proceedings are commenced pursuant to my incapability, I hereby nominate to the court, pursuant to K.S.A.58-612(b), as amended, or applicable statute, the above named agent (or alternate) to be the conservator or guardian.

4. DESIGNATION OF ALTERNATE AGENT

If the person designated in Paragraph 3 as my agent is not available and willing to make a health care decision for me, then I designate the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

B. Second Alternate Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

5. DURATION

I understand that this durable power of attorney for health care decisions will exist from the date I execute this document until I revoke this power by a written instrument which is executed by the same formalities as required in creating this document.

6. PRIOR DESIGNATIONS REVOKED

I revoke any prior durable power of attorney for health care decisions.

7. SIGNATURE

I sign my name to this Durable Power of Attorney for Health Care on \_\_\_\_\_ at \_\_\_\_\_.  
Month Day Year

\_\_\_\_\_  
Principal

8. (This document must be: (1) witnessed by two witnesses at least 18 years of age who are not the agent; not related to you by blood, marriage or adoption; not entitled to any portion of your estate; not directly financially responsible for your health care; OR, (2) acknowledged by a notary public.)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

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: \_\_\_\_\_

Copies

DECISION-MAKING-INCAPACITY

from DECIDING TO FOREGO LIFE-SUSTAINING TREATMENT,  
President's Commission for the Study of Ethical Problems  
in Medicine and Biomedical and Behavioral Research

pg 44 ...needs to be protected against the adverse consequences of a flawed choice. Yet any mechanism that offers such protection also risks abuse: the individual's ability to direct his or her own life might be frustrated in an unwarranted manner. In its report on informed consent, the Commission recommended that a surrogate--typically a close relative or friend--be named when a patient lacks the capacity to make particular medical decisions. (Making Health Care Decisions... at 181-88. The considerations that enter into a decision to turn to a surrogate ... and the procedures and standards for surrogate decisionmaking are also treated in pp. 121-36 infra.

pg. 123 "Decisionmaking incapacity" is not a medical or a psychiatric diagnostic category; it rests on a judgment of the type that an informed layperson might make--that a patient lacks sufficient ability to understand a situation and to make a choice in light of that understanding.

pg 126. The Commission therefore believes that determinations of incapacity are best made without routine recourse to the courts. The Commission recommends that -- except where state law clearly requires judicial intervention or where a real dispute persists after intrainstitutional review--determinations of decisional incapacity be made by the attending physician and regulated and reviewed at the institutional level, and that those who make and apply the law be encouraged to recognize the validity of such determinations.

pg 125 Although formal legal procedures exist for adjudicating incompetency, a determination that a patient lacks the capacity to make some or all medical decisions independently is customarily made extra-judicially; nonjudicial determinations is therefore uncertain, though this common practice is endorsed in the routine admonition to physicians to secure informed consent from the patient's next-of-kin,\* in institutional regulations,\* and even in court cases.\*

\*Sources referenced in footnotes page 125-126.

*Attachment II*  
*SJC*  
*3-28-89*

# Substitute for HOUSE BILL No. 2436

By Committee on Judiciary

3-6

[and verification of documents

[and 46-265

] sections

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AN ACT concerning certain unsworn declarations; permitting such declarations under penalty of perjury in certain instances; amending K.S.A. 21-3805 and repealing the existing ~~section~~.

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

New Section 1. (a) Except as provided by subsection (b), whenever a law of this state or any rules and regulations, order or requirement adopted or issued thereunder requires or permits a matter to be supported, evidenced, established or proved by the sworn written declaration, verification, certificate, statement, oath or affidavit of a person, such matter may be supported, evidenced, established or proved with the same force and effect by the unsworn written declaration, verification, certificate or statement dated and subscribed by the person as true, under penalty of perjury, in substantially the following form:

(1) If executed outside this state: "I declare (or verify, certify or state) under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct. Executed on (date).

\_\_\_\_\_  
(Signature)"

(2) If executed in this state: "I declare (or verify, certify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

\_\_\_\_\_  
(Signature)"

(b) The provisions of subsection (a) do not apply to the following oaths:

(1) An oath of office.

(2) An oath required to be taken before a specified official other than a notary public.

Senate  
Judiciary Committee  
Attachment III  
3-28-89

JJC  
3-28-89



45 (3) An oath of a testator or witnesses as required for wills, cod-  
46 icils, revocations of wills and codicils and republications of wills and  
47 codicils.

48 (c) A notarial act performed prior to the effective date of this act  
49 is not affected by this act. Nothing in this act diminishes or inval-  
50 idates the recognition accorded to notarial acts by other laws of this  
51 state or rules and regulations adopted thereunder.

52 Sec. 2. K.S.A. 21-3805 is hereby amended to read as follows:  
53 21-3805. (a) Perjury is willfully, knowingly and falsely swearing, tes-  
54 tifying, affirming, declaring or subscribing to any material fact upon  
55 any oath or affirmation legally administered in any cause, matter or  
56 proceeding before any court, tribunal, public body, notary public or  
57 other officer authorized to administer oaths; or

58 (2) *subscribing as true and correct under penalty of perjury any*  
59 *material matter in any declaration, verification, certificate or state-*  
60 *ment as permitted by section 1.*

61 (b) Perjury is a class D felony if the false statement is made  
62 upon the trial of a felony. Perjury is a class E felony if the false  
63 statement is made in a cause, matter or proceeding other than the  
64 trial of a felony charge *or is made under penalty of perjury in any*  
65 *declaration, verification, certificate or statement as permitted by*  
66 *section 1.*

67 Sec. 3. ~~K.S.A. 21-3805~~ hereby repealed.

68 Sec. 4. This act shall take effect and be in force from and after  
69 its publication in the statute book.

(d) On or after July 1, 1989, whenever an officer or partner listed in K.S.A. 17-2718(b), K.S.A. 17-7503(c), K.S.A. 17-7504(c), K.S.A. 17-7505(c), K.S.A. 56-1a606(d), or K.S.A. 56-1a607(d) is required to execute a report before a notary or swear an oath before an officer authorized to administer oaths, in lieu thereof such person may execute an unsworn declaration if such declaration is in substantial conformity with subsections (a), (b) and (c) of this section.

(e) On or after July 1, 1990, subsections (a), (b) and (c) of this section shall have general application.

Sec. 3. K.S.A. 46-265 is hereby amended to read as follows: 46-265. Every lobbyist shall register with the secretary of state by completing a registration form prescribed and provided by the commission and by signing and verifying the same. Such registration shall show the name and address of the lobbyist, the name and address of the person compensating the lobbyist for lobbying, the purpose of the employment and the method of determining and computing the compensation of the lobbyist. If the lobbyist is compensated or to be compensated for lobbying by more than one employer or is to be engaged in more than one employment, the relevant facts listed above shall be separately stated for each employer and each employment. Whenever any new lobbying employment or lobbying position is accepted by a lobbyist already registered hereunder, such lobbyist shall report the same on forms prescribed and provided by the commission before engaging in any

lobbying activity related to such new employment or position, and such report shall be filed, when made, with the secretary of state. Whenever the lobbying of a lobbyist concerns a legislative matter, the secretary of state shall promptly transmit copies of each registration and each report filed under this act to the secretary of the senate and the chief clerk of the house of representatives.

Any person may register as a lobbyist under this section. Such registration shall expire annually on December 31. In any calendar year, before engaging in lobbying, persons to whom this section applies shall register or renew their registration hereunder. Every person registering or renewing registration shall pay to the secretary of state a fee of \$15 for each lobbying employment or lobbying position held by such person. The secretary of state shall remit all moneys received under this section to the state treasurer, and the state treasurer shall deposit the same in the state treasury to the credit of the state general fund.

Any person who has registered as a lobbyist pursuant to this act may file, upon termination of such person's lobbying activities, a statement terminating such person's registration as a lobbyist. Such statement shall be on a form prescribed by the commission and shall state the name and address of the lobbyist, the name and address of the person compensating the lobbyist for lobbying and the date of the termination of the lobbyist's lobbying activities.

Sec. 4. K.S.A. 21-3805 and 46-265 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.