

HOUSE BILL No. 2638

By Committee on Federal and State Affairs

2-11

1 AN ACT concerning incapacitated and terminally ill persons; relating to
2 durable power of attorney for health care decisions; withholding or
3 withdrawal of life-sustaining procedures; treating health care providers;
4 amending K.S.A. 58-629 and 65-28,102 and K.S.A. 2013 Supp. 65-
5 28,107 and 65-28,108 and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 58-629 is hereby amended to read as follows: 58-
9 629. (a) A durable power of attorney for health care decisions may convey
10 to the agent the authority to:

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

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

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

27 (b) The powers of the agent ~~herein~~ shall be limited to the extent set
28 out in writing in the durable power of attorney for health care decisions,
29 and shall not include the power to revoke or invalidate a previously
30 existing declaration by the principal in accordance with the natural death
31 act. No agent powers conveyed pursuant to this section shall be effective
32 until the occurrence of the principal's impairment as determined by the
33 principal's attending physician, as defined in subsection (a) of K.S.A. 65-
34 28,102, and amendments thereto, unless the durable power of attorney for
35 health care decisions specifically provides otherwise. Nothing in this act
36 shall be construed as prohibiting an agent from providing treatment by

1 spiritual means through prayer alone and care consistent therewith, in lieu
2 of medical care and treatment, in accordance with the tenets and practices
3 of any church or religious denomination of which the principal is a
4 member.

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

8 (d) Neither the treating health care provider, as defined by subsection
9 (c) of K.S.A. 65-4921, and amendments thereto, nor an employee of the
10 treating health care provider, nor an employee, owner, director or officer of
11 a facility described *in* subsection (a)(2) in K.S.A. 58-629, *and*
12 *amendments thereto*, may be designated as the agent to make health care
13 decisions under a durable power of attorney for health care decisions
14 unless:

- 15 (1) Related to the principal by blood, marriage or adoption; or
16 (2) the principal and agent are members of the same community of
17 persons who are bound by vows to a religious life and who conduct or
18 assist in the conduct of religious services and actually and regularly
19 engage in religious, benevolent, charitable or educational ministrations or
20 the performance of health care services.

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

22 (1) Dated and signed in the presence of two witnesses at least 18
23 years of age neither of whom shall be the agent, related to the principal by
24 blood, marriage or adoption, entitled to any portion of the estate of the
25 principal according to the laws of intestate succession of this state or under
26 any will of the principal or codicil thereto, or directly financially
27 responsible for the principal's health care; or

28 (2) acknowledged before a notary public.

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

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

35 (h) *An attending physician or health facility that refuses to comply*
36 *with the directions of an agent pursuant to a durable power of attorney for*
37 *health care decisions shall effect the transfer of the principal to another*
38 *physician or health facility willing to comply with the directions of the*
39 *agent and pending such transfer shall provide continuing care to the*
40 *principal until such transfer is effected. Failure of an attending physician*
41 *to comply with the directions of an agent pursuant to a durable power of*
42 *attorney for health care decisions, effect the transfer of a principal or*
43 *provide continuing care to the principal until such transfer is effected*

1 shall constitute unprofessional conduct as defined in K.S.A. 65-2837, and
2 amendments thereto. Further, any person may seek injunctive relief in a
3 court of competent jurisdiction to enjoin an attending physician or health
4 facility failing to comply with the directions of an agent pursuant to a
5 durable power of attorney for health care decisions, effect the transfer of a
6 principal or provide continuing care to a principal until such transfer is
7 effected.

8 (i) As used in this section:

9 (1) "Attending physician" means the physician selected by, or
10 assigned to, the patient who has primary responsibility for the treatment
11 and care of the patient.

12 (2) "Continuing care" means the provision of health care sufficient to
13 assure, to the extent possible in reasonable medical judgment, that no
14 material deterioration of the principal's condition is likely to occur
15 pending transfer of such principal to another physician or health facility.

16 (3) "Health facility" means the same as in K.S.A. 40-2,116, and
17 amendments thereto.

18 (4) "Physician" means a person licensed to practice medicine and
19 surgery by the state board of healing arts.

20 Sec. 2. K.S.A. 65-28,102 is hereby amended to read as follows: 65-
21 28,102. As used in this the natural death act:

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

25 (b) "Continuing care" means the provision of health care sufficient to
26 assure, to the extent possible in reasonable medical judgment, that no
27 material deterioration of the qualified patient's condition is likely to occur
28 pending transfer of such qualified patient to another physician or health
29 facility.

30 ~~(b)~~ (c) "Declaration" means a witnessed document in writing,
31 voluntarily executed by the declarant in accordance with the requirements
32 of K.S.A. 65-28,103, and amendments thereto.

33 (d) "Health facility" means the same as in K.S.A. 40-2,116, and
34 amendments thereto.

35 ~~(c)~~ (e) "Life-sustaining procedure" means any medical procedure or
36 intervention which, when applied to a qualified patient, would serve only
37 to prolong the dying process and where, in the judgment of the attending
38 physician, death will occur whether or not such procedure or intervention
39 is utilized. "Life-sustaining procedure" shall not include the
40 administration of medication or the performance of any medical procedure
41 deemed necessary to provide comfort care or to alleviate pain.

42 ~~(d)~~ (f) "Physician" means a person licensed to practice medicine and
43 surgery by the state board of healing arts.

1 (+) (g) "Qualified patient" means a patient who has executed a
2 declaration in accordance with ~~this~~ *the natural death* act and who has been
3 diagnosed and certified in writing to be afflicted with a terminal condition
4 by two physicians who have personally examined the patient, one of
5 whom shall be the attending physician.

6 Sec. 3. K.S.A. 2013 Supp. 65-28,107 is hereby amended to read as
7 follows: 65-28,107. (a) An attending physician *or health facility* who
8 refuses to comply with the declaration of a qualified patient pursuant to
9 ~~this~~ *the natural death* act shall effect the transfer of the qualified patient to
10 another physician *or health facility and pending such transfer shall*
11 *provide continuing care to the qualified patient until such transfer is*
12 *effected*. Failure of an attending physician to comply with the declaration
13 of a qualified patient ~~and to~~, effect the transfer of the qualified patient *or*
14 *provide continuing care to the qualified patient until such transfer is*
15 *effected* shall constitute unprofessional conduct as defined in K.S.A. 65-
16 2837, and amendments thereto. *Further, any person may seek injunctive*
17 *relief in a court of competent jurisdiction to enjoin an attending physician*
18 *or health facility failing to comply with the declaration of a qualified*
19 *patient, effect the transfer of such qualified patient or provide continuing*
20 *care to the qualified patient until such transfer is effected*.

21 (b) Any person who willfully conceals, cancels, defaces, obliterates
22 or damages the declaration of another without such declarant's consent or
23 who falsifies or forges a revocation of the declaration of another shall be
24 guilty of a class A person misdemeanor.

25 (c) Any person who falsifies or forges the declaration of another, or
26 willfully conceals or withholds personal knowledge of the revocation of a
27 declaration, with the intent to cause a withholding or withdrawal of life-
28 sustaining procedures contrary to the wishes of the declarant, and thereby,
29 because of such act, directly causes life-sustaining procedures to be
30 withheld or withdrawn and death to be hastened, shall be guilty of a
31 severity level 7, person felony.

32 Sec. 4. K.S.A. 2013 Supp. 65-28,108 is hereby amended to read as
33 follows: 65-28,108. (a) The withholding or withdrawal of life-sustaining
34 procedures from a qualified patient in accordance with the provisions of
35 ~~this~~ *the natural death* act shall not, for any purpose, constitute a suicide
36 and shall not constitute the crime of assisting suicide as defined in K.S.A.
37 2013 Supp. 21-5407, and amendments thereto.

38 (b) The making of a declaration pursuant to K.S.A. 65-28,103, and
39 amendments thereto, shall not affect in any manner the sale, procurement,
40 or issuance of any policy of life insurance, nor shall it be deemed to
41 modify the terms of an existing policy of life insurance. No policy of life
42 insurance shall be legally impaired or invalidated in any manner by the
43 withholding or withdrawal of life-sustaining procedures from an insured

1 qualified patient, notwithstanding any term of the policy to the contrary.

2 (c) No physician, medical care facility, or other health care provider,
3 and no health care service plan, health maintenance organization, insurer
4 issuing disability insurance, self-insured employee welfare benefit plan or
5 nonprofit medical and hospital service corporation shall require any person
6 to execute a declaration as a condition for being insured for, or receiving,
7 health care services.

8 (d) (1) *Except as provided in subsection (d)(2), nothing in ~~this the~~*
9 *natural death act shall impair or supersede any legal right or legal*
10 *responsibility which any person may have to effect the withholding or*
11 *withdrawal of life-sustaining procedures in any lawful manner. In such*
12 *respect the provisions of ~~this the natural death~~ act are cumulative.*

13 (2) *The provisions of subsection (d)(1) shall not be construed to*
14 *authorize a violation of K.S.A. 65-28,107, and amendments thereto.*

15 (e) ~~This~~ *The natural death act shall create no presumption concerning*
16 *the intention of an individual who has not executed a declaration to*
17 *consent to the use or withholding of life-sustaining procedures in the event*
18 *of a terminal condition.*

19 New Sec. 5. The provisions of K.S.A. 65-28,101 et seq., and
20 amendments thereto, shall be known and may be cited as the natural death
21 act.

22 Sec. 6. K.S.A. 58-629 and 65-28,102 and K.S.A. 2013 Supp. 65-
23 28,107 and 65-28,108 are hereby repealed.

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