

See Judiciary Bill Amend (121) To Pass (p. 837)

FEB 11 1992

Place On Calendar

HOUSE FILE 2207

BY COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

(SUCCESSOR TO HSB 577)

Passed House, Date 2/17/92 (p. 231) Passed Senate, Date 3/31/92 (p. 1103)
Vote: Ayes 76 Nays 12 Vote: Ayes 43 Nays 1

Approved April 23, 1992 (p. 1770)

*Repealed House 4/8/92 (p. 1211)
Ayes 82, Nays 15*

*Motion to reconsider (p. 1112)
lost 4/7 (p. 1258)*

A BILL FOR

1 An Act conforming provisions of the life-sustaining procedures
2 Act to the durable power of attorney for health care law and
3 providing an effective date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2207

1 Section 1. Section 144A.2, subsection 4, Code 1991, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 4. "Health care provider" means a person who is licensed,
5 certified, or otherwise authorized or permitted by the law of
6 this state to administer health care in the ordinary course of
7 business or in the practice of a profession.

8 Sec. 2. Section 144A.2, subsection 5, Code 1991, is
9 amended to read as follows:

10 5. "Life-sustaining procedure" means any medical
11 procedure, treatment or intervention which meets both of the
12 following requirements:

13 a. Utilizes mechanical or artificial means to sustain,
14 restore, or supplant a spontaneous vital function.

15 b. When applied to a patient in a terminal condition,
16 would serve only to prolong the dying process.

17 "Life-sustaining procedure" does not include the provision
18 of sustenance nutrition or hydration except when required to
19 be provided parenterally or through intubation or the
20 administration of medication or performance of any medical
21 procedure deemed necessary to provide comfort care or to
22 alleviate pain.

23 Sec. 3. Section 144A.2, subsection 8, Code 1991, is
24 amended to read as follows:

25 8. "Terminal condition" means an incurable or irreversible
26 condition that, without the administration of life-sustaining
27 procedures, will, in the opinion of the attending physician,
28 result in death within a relatively short period of time or a
29 state of permanent unconsciousness from which, to a reasonable
30 degree of medical certainty, there can be no recovery.

31 Sec. 4. Section 144A.3, Code 1991, is amended by striking
32 the section and inserting in lieu thereof the following:

33 144A.3 DECLARATION RELATING TO USE OF LIFE-SUSTAINING
34 PROCEDURES.

35 1. A competent adult may execute a declaration at any time

1 directing that life-sustaining procedures be withheld or
2 withdrawn. The declaration shall be given operative effect
3 only if the declarant's condition is determined to be terminal
4 and the declarant is not able to make treatment decisions.

5 2. The declaration must be signed by the declarant or
6 another person acting on behalf of the declarant at the
7 direction of the declarant, must contain the date of its
8 execution, and must be witnessed or acknowledged by one of the
9 following methods:

10 a. Is signed by at least two individuals who, in the
11 presence of each other and the declarant, witnessed the
12 signing of the declaration by the declarant or by another
13 person acting on behalf of the declarant at the declarant's
14 direction. At least one of the witnesses shall be an
15 individual who is not a relative of the declarant by blood,
16 marriage, or adoption within the third degree of

17 consanguinity. The following individuals shall not be
18 witnesses for a declaration:

19 (1) A health care provider attending the declarant on the
20 date of execution.

21 (2) An employee of a health care provider attending the
22 declarant on the date of execution.

23 (3) An individual who is less than eighteen years of age.

24 b. Is acknowledged before a notarial officer within this
25 state.

26 3. It is the responsibility of the declarant to provide
27 the declarant's attending physician or health care provider
28 with the declaration. An attending physician or health care
29 provider may presume, in the absence of actual notice to the
30 contrary, that the declaration complies with this chapter and
31 is valid.

32 4. A declaration or similar document executed in another
33 state or jurisdiction in compliance with the law of that state
34 or jurisdiction shall be deemed valid and enforceable in this
35 state, to the extent the declaration or similar document is

1 consistent with the laws of this state.

2 5. A declaration executed pursuant to this chapter may,
3 but need not, be in the following form:

4 DECLARATION

5 If I should have an incurable or irreversible condition
6 that will result either in death within a relatively short
7 period of time or a state of permanent unconsciousness from
8 which, to a reasonable degree of medical certainty, there can
9 be no recovery, it is my desire that my life not be prolonged
10 by the administration of life-sustaining procedures. If I am
11 unable to participate in my health care decisions, I direct my
12 attending physician to withhold or withdraw life-sustaining
13 procedures that merely prolong the dying process and are not
14 necessary to my comfort or freedom from pain.

15 Sec. 6. NEW SECTION. 144A.12 APPLICATION TO EXISTING
16 DECLARATIONS.

17 A declaration executed prior to the effective date of this
18 Act, in accordance with the provisions of this chapter
19 applicable at the time of execution shall remain valid and, to
20 the extent specifically provided for in such declaration,
21 shall be given effect with regard to the provision of
22 nutrition and hydration as if the declaration were executed on
23 or after the effective date of this Act. However, the
24 definition of terminal condition as set forth in section
25 144A.2, subsection 8, as it read prior to the effective date
26 of this Act, shall continue to be given effect as to all
27 declarations executed prior to the effective date of this Act.

28 Sec. 7. EFFECTIVE DATE. This Act, being deemed of
29 immediate importance, takes effect upon enactment.

30 EXPLANATION

31 This bill makes the definition of health care provider in
32 chapter 144A the same as in chapter 144B. The bill provides
33 that nutrition and hydration are only included in the
34 definition of life-sustaining procedure if it must be provided
35 through intubation. The bill also adds the state of permanent

1 unconsciousness to the definition of terminal condition. In
2 addition, the bill provides for witnessing or acknowledging a
3 declaration under chapter 144A in the same manner as a durable
4 power of attorney for health care. Finally, the bill provides
5 that declarations under chapter 144A executed prior to the
6 enactment of the bill shall be interpreted in accordance with
7 the definition of terminal condition and regarding the
8 provision of nutrition and hydration as they existed prior to
9 the enactment of the bill.

10 The bill takes effect upon enactment.

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HOUSE FILE 2207

S-5545

1 Amend House File 2207 as passed by the House, as
2 follows:

3 1. Page 3, by inserting after line 14 the
4 following:

5 "Sec. _____. Section 144A.8, Code 1991, is amended
6 by adding the following new subsection before
7 subsection 1:

8 NEW SUBSECTION. 1. An individual who may lawfully
9 perform, assist, or participate in medical procedures
10 which will result in the death of a patient shall not
11 be required against that individual's religious
12 beliefs or moral convictions to perform, assist, or
13 participate in such procedures. A person shall not
14 discriminate against any individual in any manner,
15 including but not limited to employment, promotion,
16 advancement, transfer, licensing, education, training,
17 or the granting of hospital privileges or staff
18 appointments because of the individual's participation
19 in or refusal to participate in recommending,
20 performing, or assisting in a life-sustaining
21 procedure."

22 2. Page 3, by inserting after line 27 the
23 following:

24 "Sec. _____. Section 144B.9, Code Supplement 1991,
25 is amended by adding the following new subsection
26 before subsection 1:

27 NEW SUBSECTION. 1. An individual who may lawfully
28 perform, assist, or participate in medical procedures
29 which will result in the death of a patient shall not
30 be required against that individual's religious
31 beliefs or moral convictions to perform, assist, or
32 participate in such procedures. A person shall not
33 discriminate against any individual in any manner,
34 including but not limited to employment, promotion,
35 advancement, transfer, licensing, education, training,
36 or the granting of hospital privileges or staff
37 appointments because of the individual's participation
38 in or refusal to participate in recommending,
39 performing, or assisting in a life-sustaining
40 procedure as defined in section 144A.2."

41 3. By renumbering as necessary.

By WILLIAM W. DIELEMAN

S-5545 FILED APRIL 3, 1992

HOUSE FILE 2207

S-5311

1 Amend House File 2207, as passed by the House, as
2 follows:

3 1. Page 3, by striking lines 17 through 27 and
4 inserting the following:

5 "A declaration executed prior to the effective date
6 of this Act shall remain valid and shall be given
7 effect in accordance with the then-applicable
8 provisions of this chapter. If a declaration executed
9 prior to the effective date of this Act includes a
10 provision which would not have been given effect under
11 this chapter prior to the effective date of this Act
12 but which would be given effect under this Act, then
13 the provision shall be given effect in accordance with
14 this Act."

By COMMITTEE ON JUDICIARY
AL STURGEON, Chairperson

S-5311 FILED MARCH 19, 1992
Adopted 3/30 (p. 1103)

HOUSE FILE 2207

S-5547

1 Amend House File 2207, as passed by the House, as
2 follows:

3 1. Page 1, line 28, by striking the words "time
4 or a" and inserting the following: "time."

5 2. Page 1, by striking lines 29 and 30.

6 3. Page 3, by striking lines 7 through 9 and
7 inserting the following: "period of time; it is my
8 desire that my life not be prolonged".

9 4. By renumbering as necessary.

By WILLIAM W. DIELEMAN

S-5547 FILED APRIL 3, 1992

HOUSE FILE 2207

S-5548

1 Amend House File 2207, as passed by the House, as
2 follows:

3 1. Page 2, by striking lines 8 through 25 and
4 inserting the following: "execution, and must be
5 signed by at least two individuals who, in the
6 presence of each other and the declarant, witnessed
7 the signing of the declaration by the declarant or by
8 another person acting on behalf of the declarant at
9 the declarant's direction. At least one of the
10 witnesses shall be an individual who is not a relative
11 of the declarant by blood, marriage, or adoption
12 within the third degree of consanguinity. The
13 following individuals shall not be witnesses for a
14 declaration:

15 a. A health care provider attending the declarant
16 on the date of execution.

17 b. An employee of a health care provider attending
18 the declarant on the date of execution.

19 c. An individual who is less than eighteen years
20 of age."

By WILLIAM W. DIELEMAN

S-5548 FILED APRIL 3, 1992

HOUSE FILE 2207

S-5546

1 Amend House File 2207, as passed by the House, as
2 follows:

3 1. Page 3, by inserting after line 27 the
4 following:

5 "Sec. ____ Section 144B.5, subsection 1, Code
6 Supplement 1991, is amended to read as follows:

7 1. A durable power of attorney for health care
8 executed pursuant to this chapter may, but need not,
9 be in the following form:

10 I hereby designate as my attorney in fact
11 (my agent) and give to my agent the power to make
12 health care decisions for me. This power exists only
13 when I am unable, in the judgment of my attending
14 physician, to make those health care decisions. The
15 attorney in fact must act consistently with my desires
16 as stated in this document or otherwise made known.

17 Except as otherwise specified in this document,
18 this document gives my agent the power, where
19 otherwise consistent with the law of this state, to
20 consent to my physician not giving health care or
21 stopping health care which is necessary to keep me
22 alive.

23 This document gives my agent power to make health
24 care decisions on my behalf, including to consent, to
25 refuse to consent, or to withdraw consent to the
26 provision of any care, treatment, service, or
27 procedure to maintain, diagnose, or treat a physical
28 or mental condition. This power is subject to any
29 statement of my desires and any limitations included
30 in this document.

31 I direct that my attorney in fact has authority to
32 make decisions regarding the withholding and
33 withdrawal of artificially administered nutrition or
34 hydration or both with the understanding that
35 mainutrition, dehydration, and death may result.

36 My agent has the right to examine my medical
37 records and to consent to disclosure of such records."

38 2. By renumbering as necessary.

By WILLIAM W. DIELEMAN

S-5546 FILED APRIL 3, 1992

SENATE AMENDMENT TO HOUSE FILE 2207

H-5762

1 Amend House File 2207, as passed by the House, as
2 follows:
3 1. Page 3, by striking lines 17 through 27 and
4 inserting the following:
5 "A declaration executed prior to the effective date
6 of this Act shall remain valid and shall be given
7 effect in accordance with the then-applicable
8 provisions of this chapter. If a declaration executed
9 prior to the effective date of this Act includes a
10 provision which would not have been given effect under
11 this chapter prior to the effective date of this Act
12 but which would be given effect under this Act, then
13 the provision shall be given effect in accordance with
14 this Act."

RECEIVED FROM THE SENATE

H-5762 FILED APRIL 7, 1992

House Journal 4/8/92 (p 1211)

Chair-Peterson, Blanshan, Kumer

MWB

Now

HSB 577

Judiciary & Law Enforcement

HOUSE FILE 2207

BY (PROPOSED COMMITTEE ON
JUDICIARY AND LAW
ENFORCEMENT BILL BY
CHAIRPERSON JAY)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act conforming provisions of the life-sustaining procedures

2 Act to the durable power of attorney for health care law.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SUB COMMITTEE ASSIGNMENTS

CHAIR Peterson
COMMITTEE: Judiciary
2-3-92

1 Section 1. Section 144A.2, subsection 4, Code 1991, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 4. "Health care provider" means a person who is licensed,
5 certified, or otherwise authorized or permitted by the law of
6 this state to administer health care in the ordinary course of
7 business or in the practice of a profession.

8 Sec. 2. Section 144A.2, subsection 5, Code 1991, is
9 amended to read as follows:

10 5. "Life-sustaining procedure" means any medical
11 procedure, treatment, or intervention which meets both of the
12 following requirements:

13 a. Utilizes mechanical or artificial means to sustain,
14 restore, or supplant a spontaneous vital function.

15 b. When applied to a patient in a terminal condition,
16 would serve only to prolong the dying process.

17 "Life-sustaining procedure" does not include the provision
18 of sustenance nutrition or hydration except when required to
19 be provided parenterally or through intubation or the
20 administration of medication or performance of any medical
21 procedure deemed necessary to provide comfort care or to
22 alleviate pain.

23 Sec. 3. Section 144A.2, subsection 8, Code 1991, is
24 amended to read as follows:

25 8. "Terminal condition" means an incurable or irreversible
26 condition that, without the administration of life-sustaining
27 procedures, will, in the opinion of the attending physician,
28 result in death within a relatively short period of time or a
29 state of permanent unconsciousness from which, to a reasonable
30 degree of medical certainty, there can be no recovery.

31 Sec. 4. Section 144A.3, Code 1991, is amended by striking
32 the section and inserting in lieu thereof the following:

33 144A.3 DECLARATION RELATING TO USE OF LIFE-SUSTAINING
34 PROCEDURES.

35 1. A competent adult may execute a declaration at any time

1 directing that life-sustaining procedures be withheld or
2 withdrawn. The declaration shall be given operative effect
3 only if the declarant's condition is determined to be terminal
4 and the declarant is not able to make treatment decisions.

5 2. The declaration must be signed by the declarant or
6 another person acting on behalf of the declarant at the
7 direction of the declarant, must contain the date of its
8 execution, and must be witnessed or acknowledged by one of the
9 following methods:

10 a. Is signed by at least two individuals who, in the
11 presence of each other and the declarant, witnessed the
12 signing of the declaration by the declarant or by another
13 person acting on behalf of the declarant at the declarant's
14 direction. At least one of the witnesses shall be an
15 individual who is not a relative of the declarant by blood,
16 marriage, or adoption within the third degree of
17 consanguinity. The following individuals shall not be
18 witnesses for a declaration:

19 (1) A health care provider attending the declarant on the
20 date of execution.

21 (2) An employee of a health care provider attending the
22 declarant on the date of execution.

23 (3) An individual who is less than eighteen years of age.

24 b. Is acknowledged before a notarial officer within this
25 state.

26 3. It is the responsibility of the declarant to provide
27 the declarant's attending physician or health care provider
28 with the declaration. An attending physician or health care
29 provider may presume, in the absence of actual notice to the
30 contrary, that the declaration complies with this chapter and
31 is valid.

32 4. A declaration or similar document executed in another
33 state or jurisdiction in compliance with the law of that state
34 or jurisdiction shall be deemed valid and enforceable in this
35 state, to the extent the declaration or similar document is

1 consistent with the laws of this state.

2 5. A declaration executed pursuant to this chapter may,
3 but need not, be in the following form:

4 DECLARATION

5 If I should have an incurable or irreversible condition
6 that will result either in death within a relatively short
7 period of time or a state of permanent unconsciousness from
8 which, to a reasonable degree of medical certainty, there can
9 be no recovery, it is my desire that my life not be prolonged
10 by the administration of life-sustaining procedures. If I am
11 unable to participate in my health care decisions, I direct my
12 attending physician to withhold or withdraw life-sustaining
13 procedures that merely prolong the dying process and are not
14 necessary to my comfort or freedom from pain.

15 Sec. 6. NEW SECTION. 144A.12 APPLICATION TO EXISTING
16 DECLARATIONS.

17 A declaration executed prior to July 1, 1992, in accordance
18 with the provisions of this chapter applicable at the time of
19 execution shall remain valid and, to the extent specifically
20 provided for in such declaration, shall be given effect with
21 regard to the provision of nutrition and hydration as if the
22 declaration were executed after June 30, 1992. However, the
23 definition of terminal condition as set forth in section
24 144A.2, subsection 8, as it read prior to July 1, 1992, shall
25 continue to be given effect as to all declarations executed
26 prior to July 1, 1992.

27 EXPLANATION

28 This bill makes the definition of health care provider in
29 chapter 144A the same as in chapter 144B. The bill provides
30 that nutrition and hydration are only included in the
31 definition of life-sustaining procedure if it must be provided
32 through intubation. The bill also adds the state of permanent
33 unconsciousness to the definition of terminal condition. In
34 addition, the bill provides for witnessing or acknowledging a
35 declaration under chapter 144A in the same manner as a durable

1 power of attorney for health care. Finally, the bill provides
2 that declarations under chapter 144A executed prior to July 1,
3 1992, shall be interpreted in accordance with the definition
4 of terminal condition and regarding the provision of nutrition
5 and hydration as they existed prior to July 1, 1992.

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HOUSE FILE 2207

AN ACT

CONFORMING PROVISIONS OF THE LIFE-SUSTAINING PROCEDURES ACT TO THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE LAW AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 144A.2, subsection 4, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

4. "Health care provider" means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

Sec. 2. Section 144A.2, subsection 5, Code 1991, is amended to read as follows:

5. "Life-sustaining procedure" means any medical procedure, treatment or intervention which meets both of the following requirements:

a. Utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function.

b. When applied to a patient in a terminal condition, would serve only to prolong the dying process.

"Life-sustaining procedure" does not include the provision of sustenance nutrition or hydration except when required to be provided parenterally or through intubation or the administration of medication or performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

Sec. 3. Section 144A.2, subsection 8, Code 1991, is amended to read as follows:

8. "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining

procedures, will, in the opinion of the attending physician, result in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery.

Sec. 4. Section 144A.3, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

144A.3 DECLARATION RELATING TO USE OF LIFE-SUSTAINING PROCEDURES.

1. A competent adult may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. The declaration shall be given operative effect only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions.

2. The declaration must be signed by the declarant or another person acting on behalf of the declarant at the direction of the declarant, must contain the date of its execution, and must be witnessed or acknowledged by one of the following methods:

a. Is signed by at least two individuals who, in the presence of each other and the declarant, witnessed the signing of the declaration by the declarant or by another person acting on behalf of the declarant at the declarant's direction. At least one of the witnesses shall be an individual who is not a relative of the declarant by blood, marriage, or adoption within the third degree of consanguinity. The following individuals shall not be witnesses for a declaration:

(1) A health care provider attending the declarant on the date of execution.

(2) An employee of a health care provider attending the declarant on the date of execution.

(3) An individual who is less than eighteen years of age.

b. Is acknowledged before a notarial officer within this state.

3. It is the responsibility of the declarant to provide the declarant's attending physician or health care provider with the declaration. An attending physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

4. A declaration or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the declaration or similar document is consistent with the laws of this state.

5. A declaration executed pursuant to this chapter may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will result either in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery, it is my desire that my life not be prolonged by the administration of life-sustaining procedures. If I am unable to participate in my health care decisions, I direct my attending physician to withhold or withdraw life-sustaining procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain.

Sec. 5. NEW SECTION. 144A.12 APPLICATION TO EXISTING DECLARATIONS.

A declaration executed prior to the effective date of this Act shall remain valid and shall be given effect in accordance with the then applicable provisions of this chapter. If a declaration executed prior to the effective date of this Act includes a provision which would not have been given effect under this chapter prior to the effective date of this Act but which would be given effect under this Act, then the provision shall be given effect in accordance with this Act.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

ROBERT C. ARNOULLO
Speaker of the House

MICHAEL E. GRONSTAL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2207, Seventy-fourth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved Sept 23, 1992

TERRY E. BRANSTAD
Governor