

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 813
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Short Title: Expand Dur. Power of Attorney.

(Public)

Sponsors: Senators Taft; Johnson of Wake, Marvin, Odom, Royall, Sands, Shaw, Sherron, Smith, Tally, and Ward.

Referred to: Judiciary III.

April 6, 1989

A BILL TO BE ENTITLED

AN ACT TO SPECIFICALLY PROVIDE THAT THE AUTHORITY TO EXERCISE THE RIGHT TO A NATURAL DEATH MAY BE INCLUDED IN A DURABLE POWER OF ATTORNEY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2 is amended by adding a new subsection to read as follows:

"(14) Right to Natural Death and other Medical Decisions. To exercise all rights of the principal to control decisions relating to medical care to the principal, including, but not limited to, those rights set forth in Article 23 of Chapter 90 of the General Statutes, and the attorney-in-fact, subject to the consent of the spouse of the principal, shall be deemed his lawful representative for purposes of that Article."

Sec. 2. G.S. 90-322(b) reads as rewritten:

"(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) and such person has executed a durable power of attorney under Chapter 32A of the General Statutes, which confers or incorporates those powers set out in G.S. 32A-2(9) relative to this Article; and such power of attorney has not been revoked in accordance with G.S. 32A-13; then the attorney-in-fact may exercise such person's right to a natural death by authorizing or concurring that such person's life not be prolonged by extraordinary means. Such act of a person's attorney-in-fact under a durable power of attorney, as set forth above, shall have the same force and effect as a declaration of

1 such person under the provisions of G.S. 90-321; and pursuant to such authorization, the
2 extraordinary means to prolong life may be withheld or discontinued upon the direction
3 and under the supervision of the attending physician. In the event of a conflict between
4 the provisions of a right to natural death declaration executed under Article 23 of
5 Chapter 90, and a durable power of attorney executed under Chapter 32A, the
6 provisions of the instrument executed last shall control. No person may be held
7 criminally or civilly liable for exercising a person's right to natural death pursuant to
8 any superseded instrument unless that person had actual knowledge of a latter
9 instrument. If a person's condition has been determined to meet the conditions set forth
10 in subsection (a) and no durable power of attorney has been executed, as set forth in this
11 subsection, and no instrument has been executed as provided in G.S. 90-321 the
12 extraordinary means to prolong life may be withheld or discontinued upon the direction
13 and under the supervision of the attending physician with the concurrence (i) of the
14 person's spouse, or (ii) of a guardian of the person, or (iii) of a majority of the relatives
15 of the first degree, in that order. If none of the above is available then at the discretion
16 of the attending physician the extraordinary means may be withheld or discontinued
17 upon the direction and under the supervision of the attending physician."

18 Sec. 2.1. G.S. 32A-1 is amended by adding after the phrase "(13)
19 Employment of agents" a new phrase to read "(14) Right to Natural Death and other
20 Medical Decisions".

21 Sec. 3. This act shall become effective January 1, 1990.