

January 16, 1992 LB 696

SENATOR WARNER: One minute, Senator Crosby's time.

SENATOR LINDSAY: ...while it is true there's no criminal penalty for failure to carry out the obliga...carry out the wishes, and those of you who know me around here, I'm not a big fan of adding additional criminal penalties to just about any bill, in this case the enforcement mechanism would be by a civil medical malpractice action. Remember, the whole concept of durable power of attorney is the attorney, in fact, the agent acts in the place of the principal or the patient. What that means is that right now if I needed surgery, the doctor would come to me, would inform me of the consequences, the possible risks, why the surgery is necessary and I would then give my informed consent to that surgery. The same thing would happen if I had an agent under this act, the doctor would go to the agent, say, give the information, explain why, all that type of stuff. The agent would then give an informed consent. If...

SENATOR WARNER: Senator Lindsay, time. Now you're on your own time.

SENATOR LINDSAY: Thank you. If...if the doctor does not carry out the wishes, it is the same type of violation if the doctor didn't carry out my wishes. It would then be medical malpractice. So it would be enforced on a...as a civil enforcement. The same type of thing, there would be civil enforcement if the agent act outside the scope of the...of the durable power or if the agent acted...failed to act as set forth in that durable power. The third area that Senator Landis raises is a question of whether you have to go to an attorney to draft it. While I would certainly prefer that, that's not the way the bill is drafted. The bill sets forth a form which can be done in a preprinted type of format. It sets forth a form which could have substantial compliance, not just similar to the form set forth in Senator Landis's living will legislation. It would be a form that can be...and the intent is that it can be readily accessible to people. People should not and, under this bill, will not have to go to an attorney to have the durable power drafted. It would be available, much as any other types of forms that we have available are and people could do it at little or no cost. Finally, Senator Landis mentions the list of people who may challenge or may initiate legal action under this act and the list of people who are mentioned. The people are basically the people listed in our probate area who can file an