

By Senator Klein

28-409A-99

See HB 343

1                                   A bill to be entitled  
2           An act relating to end-of-life care; amending  
3           ss. 395.1041, 400.142, 400.4255, 400.487,  
4           400.6095, and 400.621, F.S.; authorizing  
5           personnel of hospital emergency services,  
6           long-term care facilities, assisted living  
7           facilities, home health agencies, hospices, and  
8           adult family-care homes to withhold or withdraw  
9           cardiopulmonary resuscitation pursuant to an  
10          order not to resuscitate; providing for rules;  
11          providing certain protection from prosecution  
12          and liability; amending s. 401.23, F.S.;  
13          providing a definition; amending s. 401.245,  
14          F.S.; conforming a cross-reference; amending s.  
15          401.45, F.S.; revising authority of emergency  
16          medical technicians and paramedics to withhold  
17          or withdraw resuscitation or life-prolonging  
18          techniques; providing for rules; directing the  
19          Department of Health to develop standardized  
20          do-not-resuscitate identification cards or  
21          devices; authorizing a fee; amending s.  
22          732.912, F.S.; revising provisions relating to  
23          who may make anatomical gifts; amending s.  
24          732.914, F.S.; providing for amendment and  
25          revocation of anatomical gifts; amending s.  
26          765.101, F.S.; revising definitions; amending  
27          s. 765.102, F.S.; revising legislative intent  
28          relating to advance directives; amending s.  
29          765.103, F.S.; providing for effect of existing  
30          advance directives; amending s. 765.104, F.S.;  
31          providing for amendment of an advance directive

1 or designation of a surrogate; amending s.  
2 765.110, F.S.; prohibiting certain actions by a  
3 health care facility or provider with respect  
4 to a patient's advance directive; increasing a  
5 penalty; requiring that advance directives  
6 become part of patients' medical records;  
7 providing for rules; amending s. 765.113, F.S.;  
8 conforming a cross-reference; amending s.  
9 765.204, F.S.; revising provisions relating to  
10 evaluation of a patient's capacity to make  
11 health care decisions; amending s. 765.205,  
12 F.S.; revising responsibilities of the  
13 surrogate; amending s. 765.301, F.S.;  
14 conforming a cross-reference; amending s.  
15 765.302, F.S.; revising procedure for making a  
16 living will; amending s. 765.303, F.S.;  
17 revising suggested form of a living will;  
18 amending s. 765.304, F.S.; revising procedure  
19 for implementing a living will; amending s.  
20 765.305, F.S.; revising procedure in the  
21 absence of a living will; amending s. 765.306,  
22 F.S.; revising provisions relating to  
23 determination of the patient's condition;  
24 renumbering and amending s. 765.308, F.S.;  
25 providing for transfer of a patient under  
26 certain circumstances; providing penalties for  
27 failure to comply with a patient's advance  
28 directive or the treatment decision of a  
29 surrogate; renumbering and amending s. 765.310,  
30 F.S.; providing penalties for falsification,  
31 forgery, or willful concealment, cancellation,

1 or destruction of an advance directive, or a  
2 revocation or amendment thereof; amending s.  
3 765.401, F.S.; revising provisions relating to  
4 who may act as a proxy; creating s. 765.404,  
5 F.S.; providing conditions for withholding or  
6 withdrawing life-prolonging procedures for  
7 certain persons in a persistent vegetative  
8 state; directing the Department of Elderly  
9 Affairs to convene a workgroup to develop model  
10 advance directive forms; amending s. 395.1027,  
11 F.S.; conforming a cross-reference; repealing  
12 s. 732.916, F.S., relating to amendment or  
13 revocation of an anatomical gift; providing an  
14 effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Paragraph (1) is added to subsection (3) of  
19 section 395.1041, Florida Statutes, 1998 Supplement, to read:

20 395.1041 Access to emergency services and care.--

21 (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF  
22 FACILITY OR HEALTH CARE PERSONNEL.--

23 (1) Hospital emergency services personnel may withhold  
24 or withdraw cardiopulmonary resuscitation if presented with an  
25 order not to resuscitate executed pursuant to s. 401.45.  
26 Facility staff shall not be subject to criminal prosecution or  
27 civil liability, nor be considered to have engaged in  
28 negligent or unprofessional conduct, for withholding or  
29 withdrawing cardiopulmonary resuscitation pursuant to such an  
30 order.

31

1           Section 2. Section 400.142, Florida Statutes, is  
2 amended to read:

3           400.142 Emergency medication kits; orders not to  
4 resuscitate.--

5           (1) Other provisions of this chapter or of chapter  
6 465, chapter 499, or chapter 893 to the contrary  
7 notwithstanding, each nursing home operating pursuant to a  
8 license issued by the agency may maintain an emergency  
9 medication kit for the purpose of storing medicinal drugs to  
10 be administered under emergency conditions to residents  
11 residing in such facility.

12           (2) The agency shall adopt such rules as it may deem  
13 appropriate to the effective implementation of this act,  
14 including, but not limited to, rules which:

15           (a) Define the term "emergency medication kit."

16           (b) Describe the medicinal drugs eligible to be placed  
17 in emergency medication kits.

18           (c) Establish requirements for the storing of  
19 medicinal drugs in emergency medication kits and the  
20 maintenance of records with respect thereto.

21           (d) Establish requirements for the administration of  
22 medicinal drugs to residents under emergency conditions from  
23 emergency medication kits.

24           (3) Facility staff may withhold or withdraw  
25 cardiopulmonary resuscitation if presented with an order not  
26 to resuscitate executed pursuant to s. 401.45. The agency  
27 shall adopt rules providing for the implementation of such  
28 orders. Facility staff shall not be subject to criminal  
29 prosecution or civil liability, nor be considered to have  
30 engaged in negligent or unprofessional conduct, for  
31

1 withholding or withdrawing cardiopulmonary resuscitation  
2 pursuant to such an order and rules adopted by the agency.

3 Section 3. Subsection (3) is added to section  
4 400.4255, Florida Statutes, to read:

5 400.4255 Use of licensed personnel.--

6 (3) Facility staff may withhold or withdraw  
7 cardiopulmonary resuscitation if presented with an order not  
8 to resuscitate executed pursuant to s. 401.45. The department  
9 shall adopt rules providing for the implementation of such  
10 orders. Facility staff shall not be subject to criminal  
11 prosecution or civil liability, nor be considered to have  
12 engaged in negligent or unprofessional conduct, for  
13 withholding or withdrawing cardiopulmonary resuscitation  
14 pursuant to such an order and rules adopted by the department.

15 Section 4. Section 400.487, Florida Statutes, is  
16 amended to read:

17 400.487 Patient assessment; establishment and review  
18 of plan of care; provision of services; orders not to  
19 resuscitate.--

20 (1) The home health agency providing care and  
21 treatment must make an assessment of the patient's needs  
22 within 48 hours after the start of services.

23 (2) The attending physician for a patient receiving  
24 care or treatment provided by a licensed nurse or by a  
25 physical, occupational, or speech therapist must establish a  
26 plan of care for the patient on behalf of the home health  
27 agency that provides services to the patient. The original  
28 plan of treatment must be signed by the physician and  
29 reviewed, at least every 62 days or more frequently if the  
30 patient's illness requires, by the physician in consultation  
31

1 with home health agency personnel that provide services to the  
2 patient.

3 (3) Each patient has the right to be informed of and  
4 to participate in the planning of his or her care. Each  
5 patient must be provided, upon request, a copy of the plan of  
6 care established and maintained for that patient by the home  
7 health agency.

8 (4) Home health services that are provided to a  
9 patient must be evaluated in the patient's home by a physician  
10 licensed under chapter 458, chapter 459, chapter 460, or  
11 chapter 461 or by a registered nurse licensed under chapter  
12 464 as frequently as necessary to assure safe and adequate  
13 care, but not less frequently than once every 62 days.

14 (5) A home health agency must provide at least one  
15 home health service to patients for whom it has agreed to  
16 provide care. Services provided by others under contractual  
17 arrangements to a home health agency's patients must be  
18 monitored and controlled by the home health agency.

19 (6) The services provided by a home health agency,  
20 directly or under contract, must be supervised and coordinated  
21 in accordance with the plan of care.

22 (7) Home health agency personnel may withhold or  
23 withdraw cardiopulmonary resuscitation if presented with an  
24 order not to resuscitate executed pursuant to s. 401.45. The  
25 agency shall adopt rules providing for the implementation of  
26 such orders. Home health personnel shall not be subject to  
27 criminal prosecution or civil liability, nor be considered to  
28 have engaged in negligent or unprofessional conduct, for  
29 withholding or withdrawing cardiopulmonary resuscitation  
30 pursuant to such an order and rules adopted by the agency.

31

1           Section 5. Present subsection (8) of section 400.6095,  
2 Florida Statutes, is renumbered as subsection (9), and a new  
3 subsection (8) is added to that section, to read:

4           400.6095 Patient admission; assessment; plan of care;  
5 discharge; death.--

6           (8) The hospice care team may withhold or withdraw  
7 cardiopulmonary resuscitation if presented with an order not  
8 to resuscitate executed pursuant to s. 401.45. The department  
9 shall adopt rules providing for the implementation of such  
10 orders. Hospice staff shall not be subject to criminal  
11 prosecution or civil liability, nor be considered to have  
12 engaged in negligent or unprofessional conduct, for  
13 withholding or withdrawing cardiopulmonary resuscitation  
14 pursuant to such an order and rules adopted by the department.

15           Section 6. Present subsection (3) of section 400.621,  
16 Florida Statutes, 1998 Supplement, is renumbered as subsection  
17 (4), and a new subsection (3) is added to that section, to  
18 read:

19           400.621 Rules and standards relating to adult  
20 family-care homes.--

21           (3) The department shall adopt rules providing for the  
22 implementation of orders not to resuscitate. The provider may  
23 withhold or withdraw cardiopulmonary resuscitation if  
24 presented with an order not to resuscitate executed pursuant  
25 to s. 401.45. The provider shall not be subject to criminal  
26 prosecution or civil liability, nor be considered to have  
27 engaged in negligent or unprofessional conduct, for  
28 withholding or withdrawing cardiopulmonary resuscitation  
29 pursuant to such an order and rules adopted by the department.

30           Section 7. Present subsections (9) through (22) of  
31 section 401.23, Florida Statutes, are renumbered as

1 subsections (10) through (23), respectively, and a new  
2 subsection (9) is added to that section, to read:

3 401.23 Definitions.--As used in this part, the term:

4 (9) "Cardiopulmonary resuscitation (CPR)" means  
5 cardiac compression, endotracheal intubation and other  
6 advanced airway management, artificial ventilation,  
7 defibrillation, administration of cardiac resuscitation  
8 medications, and related emergency medical procedures.

9 Section 8. Paragraph (b) of subsection (2) of section  
10 401.245, Florida Statutes, is amended to read:

11 401.245 Emergency Medical Services Advisory Council.--

12 (2)

13 (b) Representation on the Emergency Medical Services  
14 Advisory Council shall include: two licensed physicians who  
15 are "medical directors" as defined in s. 401.23~~(16)~~~~(15)~~or  
16 whose medical practice is closely related to emergency medical  
17 services; two emergency medical service administrators, one of  
18 whom is employed by a fire service; two certified paramedics,  
19 one of whom is employed by a fire service; two certified  
20 emergency medical technicians, one of whom is employed by a  
21 fire service; one emergency medical services educator; one  
22 emergency nurse; one hospital administrator; one  
23 representative of air ambulance services; one representative  
24 of a commercial ambulance operator; and two laypersons who are  
25 in no way connected with emergency medical services, one of  
26 whom is a representative of the elderly. Ex officio members of  
27 the advisory council from state agencies shall include, but  
28 shall not be limited to, representatives from the Department  
29 of Education, the Department of Management Services, the  
30 Department of Insurance, the Department of Highway Safety and  
31



1 Motor Vehicles, the Department of Transportation, and the  
2 Department of Community Affairs.

3 Section 9. Subsection (3) of section 401.45, Florida  
4 Statutes, is amended to read:

5 401.45 Denial of emergency treatment; civil  
6 liability.--

7 (3)(a) Cardiopulmonary resuscitation ~~or~~  
8 ~~life-prolonging techniques~~ may be withheld or withdrawn from a  
9 patient by an emergency medical technician or paramedic if  
10 evidence of an order not to resuscitate by the patient's  
11 physician is presented to the emergency medical technician or  
12 paramedic ~~in a manner provided by rule of the department. The~~  
13 department shall develop rules providing for the  
14 implementation of such orders.

15 (b) Any licensee, physician, medical director, or  
16 emergency medical technician or paramedic who acts under the  
17 direction of a medical director is not subject to criminal  
18 prosecution or civil liability, and has not engaged in  
19 negligent or unprofessional conduct, as a result of the  
20 withholding or withdrawal of cardiopulmonary resuscitation ~~or~~  
21 ~~life-prolonging techniques~~ from a patient pursuant to this  
22 subsection and rules adopted by the department.

23 (c) The department, in consultation with the  
24 Department of Elderly Affairs and the Agency for Health Care  
25 Administration, shall develop standardized do-not-resuscitate  
26 identification cards, forms, necklaces, bracelets, or other  
27 devices that signify, when carried or worn, that the possessor  
28 is a patient for whom a physician has issued an order not to  
29 administer cardiopulmonary resuscitation. The department may  
30 charge a reasonable fee to cover the cost of producing and  
31 distributing such identification devices.

1           (4) Any licensee or emergency medical technician or  
2 paramedic who in good faith provides emergency medical care or  
3 treatment within the scope of their employment and pursuant to  
4 oral or written instructions of a medical director shall be  
5 deemed to be providing emergency medical care or treatment for  
6 the purposes of s. 768.13(2)(b).

7           Section 10. Section 732.912, Florida Statutes, 1998  
8 Supplement, is amended to read:

9           732.912 Persons who may make an anatomical gift.--

10           (1) Any person who may make a will may give all or  
11 part of his or her body for any purpose specified in s.  
12 732.910, the gift to take effect upon death. An anatomical  
13 gift made by an adult donor and not revoked by the donor as  
14 provided in s. 732.916 is irrevocable and does not require the  
15 consent or concurrence of any person after the donor's death.

16           (2) If the decedent has not executed an agreement  
17 concerning an anatomical gift, a member of one of the classes  
18 of persons listed below, in the order of priority stated and  
19 in the absence of actual notice of contrary indications by the  
20 decedent or actual notice of opposition by a member of the  
21 same or a prior class, may give all or any part of the  
22 decedent's body for any purpose specified in s. 732.910:

23           (a) The spouse of the decedent;

24           (b) An adult son or daughter of the decedent;

25           (c) Either parent of the decedent;

26           (d) An adult brother or sister of the decedent;

27           (e) A grandparent of the decedent;

28           (f) A guardian of the person of the decedent at the  
29 time of his or her death; ~~or~~

30           (g) A health care surrogate designated by the decedent  
31 under part II of chapter 765; or

1           (h)~~(g)~~ A representative ad litem who shall be  
2 appointed by a court of competent jurisdiction forthwith upon  
3 a petition heard ex parte filed by any person, which  
4 representative ad litem shall ascertain that no person of  
5 higher priority exists who objects to the gift of all or any  
6 part of the decedent's body and that no evidence exists of the  
7 decedent's having made a communication expressing a desire  
8 that his or her body or body parts not be donated upon death;  
9  
10 but no gift shall be made by the spouse if any adult son or  
11 daughter objects, and provided that those of higher priority,  
12 if they are reasonably available, have been contacted and made  
13 aware of the proposed gift, and further provided that a  
14 reasonable search is made to show that there would have been  
15 no objection on religious grounds by the decedent.  
16           (3) If the donee has actual notice of contrary  
17 indications by the decedent or, in the case of a spouse making  
18 the gift, an objection of an adult son or daughter or actual  
19 notice that a gift by a member of a class is opposed by a  
20 member of the same or a prior class, the donee shall not  
21 accept the gift.  
22           (4) The person authorized by subsection (2) may make  
23 the gift after the decedent's death or immediately before the  
24 decedent's death.  
25           (5) A gift of all or part of a body authorizes any  
26 examination necessary to assure medical acceptability of the  
27 gift for the purposes intended.  
28           (6) Once the gift has been made, the rights of the  
29 donee are paramount to the rights of others, except as  
30 provided by s. 732.917.  
31

1           Section 11. Section 732.914, Florida Statutes, 1998  
2 Supplement, is amended to read:

3           732.914 Manner of executing, amending, and revoking  
4 anatomical gifts.--

5           (1) A gift of all or part of the body under s.  
6 732.912(1) may be made by will. The gift becomes effective  
7 upon the death of the testator without waiting for probate.  
8 If the will is not probated or if it is declared invalid for  
9 testamentary purposes, the gift is nevertheless valid to the  
10 extent that it has been acted upon in good faith.

11           (2)(a) A gift of all or part of the body under s.  
12 732.912(1) may also be made by a document other than a will.  
13 The gift becomes effective upon the death of the donor. The  
14 document must be signed by the donor in the presence of two  
15 witnesses who shall sign the document in the donor's presence.  
16 If the donor cannot sign, the document may be signed for him  
17 or her at the donor's direction and in his or her presence and  
18 the presence of two witnesses who must sign the document in  
19 the donor's presence. Delivery of the document of gift during  
20 the donor's lifetime is not necessary to make the gift valid.

21           (b) The following form of written instrument shall be  
22 sufficient for any person to give all or part of his or her  
23 body for the purposes of this part:

24

25

UNIFORM DONOR CARD

26

27 The undersigned hereby makes this anatomical gift, if  
28 medically acceptable, to take effect on death. The words and  
29 marks below indicate my desires:

30 I give:

31           (a) .... any needed organs or parts;

1           (b) .... only the following organs or parts  
2           ...[Specify the organ(s) or part(s)]...  
3 for the purpose of transplantation, therapy, medical research,  
4 or education;  
5           (c) .... my body for anatomical study if needed.  
6 Limitations or special wishes, if any:  
7           ...(If applicable, list specific donee)...  
8  
9 Signed by the donor and the following witnesses in the  
10 presence of each other:  
11  
12 ...(Signature of donor)...           ...(Date of birth of donor)...  
13 ...(Date signed)...                 ...(City and State)...  
14  
15 ...(Witness)...                         ...(Witness)...  
16 ...(Address)...                         ...(Address)...  
17  
18           (3) The gift may be made to a donee specified by name.  
19 If the donee is not specified by name, the gift may be  
20 accepted by the attending physician as donee upon or following  
21 the donor's death. If the gift is made to a specified donee  
22 who is not available at the time and place of death, the  
23 attending physician may accept the gift as donee upon or  
24 following death in the absence of any expressed indication  
25 that the donor desired otherwise. However, the Legislature  
26 declares that the public policy of this state prohibits  
27 restrictions on the possible recipients of an anatomical gift  
28 on the basis of race, color, religion, sex, national origin,  
29 age, physical handicap, health status, marital status, or  
30 economic status, and such restrictions are hereby declared  
31 void and unenforceable. The physician who becomes a donee

1 under this subsection shall not participate in the procedures  
2 for removing or transplanting a part.

3 (4) Notwithstanding s. 732.917(2), the donor may  
4 designate in his or her will or other document of gift the  
5 surgeon or physician to carry out the appropriate procedures.  
6 In the absence of a designation or if the designee is not  
7 available, the donee or other person authorized to accept the  
8 gift may employ or authorize any surgeon or physician for the  
9 purpose.

10 (5) Any gift by a member of a class designated in s.  
11 732.912(2) must be made by a document signed by that person or  
12 made by that person's witnessed telephonic discussion,  
13 telegraphic message, or other recorded message.

14 (6) A gift may be amended or revoked in the manner  
15 provided in s. 765.104. An amendment or revocation addressed  
16 to an attending physician must be communicated by that  
17 physician to the designated procurement organization.

18 Section 12. Section 765.101, Florida Statutes, is  
19 amended to read:

20 765.101 Definitions.--As used in this chapter:

21 (1) "Advance directive" means a witnessed written  
22 document or oral statement in which instructions are given by  
23 a principal or in which the principal's desires are expressed  
24 concerning any aspect of the principal's health care, and  
25 includes, but is not limited to, the designation of a health  
26 care surrogate, a living will, or an anatomical gift made  
27 pursuant to part X of chapter 732 ~~orders not to resuscitate~~  
28 ~~issued pursuant to s. 401.45.~~

29 (2) "Attending physician" means the primary physician  
30 who has responsibility for the treatment and care of the  
31 patient.

1           (3) "Close personal friend" means any person 18 years  
2 of age or older who has exhibited special care and concern for  
3 the patient, and who presents an affidavit to the health care  
4 facility or to the attending or treating physician stating  
5 that he or she is a friend of the patient; is willing and able  
6 to become involved in the patient's health care; and has  
7 maintained such regular contact with the patient so as to be  
8 familiar with the patient's activities, health, and religious  
9 or moral beliefs.

10           (4) "Health care decision" means:

11           (a) Informed consent, refusal of consent, or  
12 withdrawal of consent to any and all health care, including  
13 life-prolonging procedures.

14           (b) The decision to apply for private, public,  
15 government, or veterans' benefits to defray the cost of health  
16 care.

17           (c) The right of access to all records of the  
18 principal reasonably necessary for a health care surrogate to  
19 make decisions involving health care and to apply for  
20 benefits.

21           (d) The decision to make an anatomical gift pursuant  
22 to part X of chapter 732.

23           (5) "Health care facility" means a hospital, nursing  
24 home, hospice, home health agency, or health maintenance  
25 organization licensed in this state, or any facility subject  
26 to part I of chapter 394.

27           (6) "Health care provider" or "provider" means any  
28 person licensed, certified, or otherwise authorized by law to  
29 administer health care in the ordinary course of business or  
30 practice of a profession.

31

1           (7) "Incapacity" or "incompetent" means the patient is  
2 physically or mentally unable to communicate a willful and  
3 knowing health care decision. For the purposes of making an  
4 anatomical gift, the term also includes a patient who is  
5 deceased.

6           (8) "Informed consent" means consent voluntarily given  
7 by a person after a sufficient explanation and disclosure of  
8 the subject matter involved to enable that person to have a  
9 general understanding of the treatment or procedure and the  
10 medically acceptable alternatives, including the substantial  
11 risks and hazards inherent in the proposed treatment or  
12 alternative procedures, and to make a knowing health care  
13 decision without coercion or undue influence.

14           (9) "Life-prolonging procedure" means any medical  
15 procedure, treatment, or intervention, including artificially  
16 provided sustenance and hydration, which sustains, restores,  
17 or supplants a spontaneous vital function.~~which:~~

18           ~~(a) Utilizes mechanical or other artificial means to~~  
19 ~~sustain, restore, or supplant a spontaneous vital function;~~  
20 ~~and~~

21           ~~(b) When applied to a patient in a terminal condition,~~  
22 ~~serves only to prolong the process of dying.~~

23  
24 The term "~~life-prolonging procedure~~" does not include the  
25 administration of medication or performance of medical  
26 procedure, when such medication or procedure is deemed  
27 necessary to provide comfort care or to alleviate pain.

28           (10) "Living will" or "declaration" means:

29           (a) A witnessed document in writing, voluntarily  
30 executed by the principal in accordance with s. 765.302; or

31



1 (b) A witnessed oral statement made by the principal  
2 expressing the principal's instructions concerning  
3 life-prolonging procedures.

4 (11) "Persistent vegetative state" means a permanent  
5 and irreversible condition of unconsciousness in which there  
6 is:

7 (a) The absence of voluntary action or cognitive  
8 behavior of any kind.

9 (b) An inability to communicate or interact  
10 purposefully with the environment.

11 (12)~~(11)~~ "Physician" means a person licensed pursuant  
12 to chapter 458 or chapter 459.

13 (13)~~(12)~~ "Principal" means a competent adult executing  
14 an advance directive and on whose behalf health care decisions  
15 are to be made.

16 (14)~~(13)~~ "Proxy" means a competent adult who has not  
17 been expressly designated to make health care decisions for a  
18 particular incapacitated individual, but who, nevertheless, is  
19 authorized pursuant to s. 765.401 to make health care  
20 decisions for such individual.

21 (15)~~(14)~~ "Surrogate" means any competent adult  
22 expressly designated by a principal to make health care  
23 decisions on behalf of the principal upon the principal's  
24 incapacity.

25 ~~(15) "Terminal condition" means:~~

26 ~~(a) A condition caused by injury, disease, or illness~~  
27 ~~from which there is no reasonable probability of recovery and~~  
28 ~~which, without treatment, can be expected to cause death; or~~

29 ~~(b) A persistent vegetative state characterized by a~~  
30 ~~permanent and irreversible condition of unconsciousness in~~  
31 ~~which there is:~~

1           ~~1. The absence of voluntary action or cognitive~~  
2 ~~behavior of any kind; and~~

3           ~~2. An inability to communicate or interact~~  
4 ~~purposefully with the environment.~~

5           ~~(16) "Treating physician" means the physician who has~~  
6 ~~treated or is treating the patient for any condition directly~~  
7 ~~related to the condition resulting in the patient's~~  
8 ~~incapacity.~~

9           Section 13. Subsection (3) of section 765.102, Florida  
10 Statutes, is amended to read:

11           765.102 Legislative findings and intent.--

12           (3) The Legislature recognizes ~~further finds~~ that for  
13 some the administration of life-prolonging medical procedures  
14 may result in the artificial prolongation of life for a person  
15 ~~with a terminal condition may secure for him or her only a~~  
16 ~~precarious and burdensome existence, while providing nothing~~  
17 ~~medically necessary or beneficial to the patient. In order to~~  
18 ensure that the rights and intentions of a person ~~with such a~~  
19 ~~condition~~ may be respected even after he or she is no longer  
20 able to participate actively in decisions concerning himself  
21 or herself, and to encourage communication among such patient,  
22 his or her family, and his or her physician, the Legislature  
23 declares that the laws of this state recognize the right of a  
24 competent adult to make an advance directive instructing his  
25 or her physician to provide, withhold, or withdraw  
26 life-prolonging procedures, or to designate another to make  
27 the treatment decision for him or her in the event that such  
28 person should become incapacitated and unable to personally  
29 direct his or her medical care ~~be found to be incompetent and~~  
30 ~~suffering from a terminal condition.~~

31

1           Section 14. Section 765.103, Florida Statutes, is  
2 amended to read:

3           765.103 Existing advance directives.--Any advance  
4 directive made prior to October 1, 1999 ~~April 10, 1992~~, shall  
5 be given effect as executed, ~~as provided in this chapter~~  
6 provided such directive was legally effective when written.

7           Section 15. Section 765.104, Florida Statutes, is  
8 amended to read:

9           765.104 Amendment or revocation.--

10           (1) An advance directive or designation of a surrogate  
11 may be amended or revoked at any time by a competent  
12 principal:

13           (a) By means of a signed, dated writing;

14           (b) By means of the physical cancellation or  
15 destruction of the advance directive by the principal or by  
16 another in the principal's presence and at the principal's  
17 direction;

18           (c) By means of an oral expression of intent to amend  
19 or revoke; or

20           (d) By means of a subsequently executed advance  
21 directive that is materially different from a previously  
22 executed advance directive.

23           (2) Unless otherwise provided in the advance directive  
24 or in an order of dissolution or annulment of marriage, the  
25 dissolution or annulment of marriage of the principal revokes  
26 the designation of the principal's former spouse as a  
27 surrogate.

28           (3) Any such amendment or revocation will be effective  
29 when it is communicated to the surrogate, health care  
30 provider, or health care facility. No civil or criminal  
31 liability shall be imposed upon any person for a failure to

1 act upon an amendment or a revocation unless that person has  
2 actual knowledge of such amendment or revocation.

3 Section 16. Section 765.110, Florida Statutes, is  
4 amended to read:

5 765.110 Health care facilities and providers;  
6 discipline.--

7 (1) A health care facility, pursuant to Pub. L. No.  
8 101-508, ss. 4206 and 4751, shall provide to each patient  
9 written information concerning the individual's rights  
10 concerning advance directives and the health care facility's  
11 policies respecting the implementation of such rights, and  
12 shall document in the patient's medical records whether or not  
13 the individual has executed an advance directive.

14 (2) A health care provider or health care facility may  
15 not require a patient to execute an advance directive or to  
16 execute a new advance directive using the facility's or  
17 provider's forms. The patient's advance directives shall  
18 travel with the patient as part of the patient's medical  
19 record.

20 (3)~~(2)~~ A health care provider or health care facility  
21 shall be subject to professional discipline and revocation of  
22 license or certification, and a fine of not more than \$1,000  
23 ~~\$500~~ per incident, or both, if the health care provider or  
24 health care facility, as a condition of treatment or  
25 admission, requires an individual to execute or waive an  
26 advance directive.

27 (4)~~(3)~~ The Department of Elderly Affairs for hospices  
28 and, in consultation with the Department of Elderly Affairs,  
29 the Department of Health for health care providers, and  
30 Rehabilitative Services and the Agency for Health Care  
31 Administration for hospitals, nursing homes, home health

1 agencies, and health maintenance organizations, and the  
2 Department of Children and Family Services for facilities  
3 subject to part I of chapter 394 shall adopt rules to  
4 implement the provisions of the section.

5 Section 17. Subsection (2) of section 765.113, Florida  
6 Statutes, is amended to read:

7 765.113 Restrictions on providing consent.--Unless the  
8 principal expressly delegates such authority to the surrogate  
9 in writing, or a surrogate or proxy has sought and received  
10 court approval pursuant to rule 5.900 of the Florida Probate  
11 Rules, a surrogate or proxy may not provide consent for:

12 (2) Withholding or withdrawing life-prolonging  
13 procedures from a pregnant patient prior to viability as  
14 defined in s. 390.0111 ~~s. 390.001(5)~~.

15 Section 18. Subsection (2) of section 765.204, Florida  
16 Statutes, is amended to read:

17 765.204 Capacity of principal; procedure.--

18 (2) If a principal's capacity to make health care  
19 decisions for herself or himself or provide informed consent  
20 is in question, the attending physician shall evaluate the  
21 principal's capacity and, if the physician concludes that the  
22 principal lacks capacity, enter that evaluation in the  
23 principal's medical record. If the attending physician has a  
24 question as to whether ~~concludes that~~ the principal lacks ~~such~~  
25 capacity, another physician shall also evaluate the  
26 principal's capacity. If the second physician agrees that the  
27 principal lacks the capacity to make health care decisions or  
28 provide informed consent, the health care facility shall enter  
29 both physician's evaluations in the principal's clinical  
30 record and, if the principal has designated a health care  
31

1 surrogate, shall notify such surrogate in writing that her or  
2 his authority under the instrument has commenced.

3 Section 19. Subsection (2) of section 765.205, Florida  
4 Statutes, is amended to read:

5 765.205 Responsibility of the surrogate.--

6 (2) The surrogate may authorize the release of  
7 information and clinical records to appropriate persons to  
8 ensure the continuity of the principal's health care and may  
9 authorize the ~~transfer and admission, discharge, or transfer~~  
10 of the principal to or from a health care facility or other  
11 facility or program licensed under chapter 400.

12 Section 20. Section 765.301, Florida Statutes, is  
13 amended to read:

14 765.301 Short title.--Sections 765.302-765.309  
15 ~~765.302-765.310~~ may be cited as the "Life-Prolonging Procedure  
16 Act of Florida."

17 Section 21. Subsection (1) of section 765.302, Florida  
18 Statutes, is amended to read:

19 765.302 Procedure for making a living will; notice to  
20 physician.--

21 (1) Any competent adult may, at any time, make a  
22 living will or written declaration directing the providing,  
23 withholding, or withdrawal of life-prolonging procedures ~~in~~  
24 ~~the event such person suffers from a terminal condition.~~ A  
25 living will must be signed by the principal in the presence of  
26 two subscribing witnesses, one of whom is neither a spouse nor  
27 a blood relative of the principal. If the principal is  
28 physically unable to sign the living will, one of the  
29 witnesses must subscribe the principal's signature in the  
30 principal's presence and at the principal's direction.

31

1 Section 22. Subsection (1) of section 765.303, Florida  
2 Statutes, is amended to read:

3 765.303 Suggested form of a living will.--

4 (1) A living will may, but need not, be in the  
5 following form:

6 Living Will

7 Declaration made this .... day of ....., 19 .... I,  
8 ....., willfully and voluntarily make known my desire that  
9 my dying not be artificially prolonged under the circumstances  
10 set forth below, and I do hereby declare:

11 If at any time I am both mentally and physically  
12 incapacitated ~~have a terminal condition~~ and if my attending or  
13 treating physician and another consulting physician have  
14 determined that there is no reasonable medical probability of  
15 my recovery from such condition, I direct that life-prolonging  
16 procedures be withheld or withdrawn when the application of  
17 such procedures would serve only to prolong artificially the  
18 process of dying, and that I be permitted to die naturally  
19 with only the administration of medication or the performance  
20 of any medical procedure deemed necessary to provide me with  
21 comfort care or to alleviate pain.

22 It is my intention that this declaration be honored by  
23 my family and physician as the final expression of my legal  
24 right to refuse medical or surgical treatment and to accept  
25 the consequences for such refusal.

26 In the event that I have been determined to be unable  
27 to provide express and informed consent regarding the  
28 withholding, withdrawal, or continuation of life-prolonging  
29 procedures, I wish to designate, as my surrogate to carry out  
30 the provisions of this declaration:

31

1 Name:.....  
2 Address:.....  
3 ..... Zip Code:....  
4 Phone:.....

5 I understand the full import of this declaration, and I  
6 am emotionally and mentally competent to make this  
7 declaration.

8 Additional Instructions (optional):  
9 .....  
10 .....  
11 .....

12 .....(Signed)....  
13 .....Witness....  
14 .....Address....  
15 .....Phone....  
16 .....Witness....  
17 .....Address....  
18 .....Phone....

19  
20 Section 23. Subsection (2) of section 765.304, Florida  
21 Statutes, is amended to read:

22 765.304 Procedure for living will.--

23 (2) Before proceeding in accordance with the  
24 principal's living will, it must be determined that:

25 (a) The principal does not have a reasonable  
26 probability of recovering capacity ~~competency~~ so that the  
27 right could be exercised directly by the principal.

28 ~~(b) The principal's physical condition is terminal.~~

29 (b)~~(c)~~ Any limitations or conditions expressed orally  
30 or in a written declaration have been carefully considered and  
31 satisfied.



1 Section 24. Section 765.305, Florida Statutes, is  
2 amended to read:

3 765.305 Procedure in absence of a living will.--

4 (1) In the absence of a living will ~~executed pursuant~~  
5 ~~to s. 765.303~~, the decision to withhold or withdraw  
6 life-prolonging procedures from a patient may be made by a  
7 health care surrogate designated by the patient pursuant to  
8 part II unless the designation limits the surrogate's  
9 authority to consent to the withholding or withdrawal of  
10 life-prolonging procedures.

11 (2) Before exercising the incompetent patient's right  
12 to forego treatment, the surrogate must be satisfied that:

13 ~~(a)~~ the patient does not have a reasonable probability  
14 of recovering capacity ~~competency~~ so that the right could be  
15 exercised by the patient.

16 ~~(b) The patient's physical condition is terminal.~~

17 Section 25. Section 765.306, Florida Statutes, is  
18 amended to read:

19 765.306 Determination of patient condition.--In  
20 determining whether the patient ~~has a terminal condition or~~  
21 may recover capacity, or whether a medical condition or  
22 limitation referred to in an advance directive exists, the  
23 patient's attending or treating physician and at least one  
24 other consulting physician must ~~separately~~ examine the  
25 patient. The findings of each such examination must be  
26 documented in the patient's medical record and signed by each  
27 examining physician before life-prolonging procedures may be  
28 withheld or withdrawn.

29 Section 26. Section 765.308, Florida Statutes, is  
30 transferred, renumbered as section 765.1105, Florida Statutes,  
31 and amended to read:

1           765.1105 ~~765.308~~ Transfer of a patient; penalties.--  
2           (1) A health care provider or facility that refuses to  
3 comply with a patient's advance directive ~~the declaration of a~~  
4 ~~patient~~, or the treatment decision of his or her surrogate,  
5 shall make reasonable efforts to transfer the patient to  
6 another health care provider or facility that will comply with  
7 the directive ~~declaration~~ or treatment decision. This chapter  
8 does not require a health care provider or facility to commit  
9 any act which is contrary to the provider's or facility's  
10 moral or ethical beliefs ~~concerning life-prolonging~~  
11 ~~procedures~~, if the patient:  
12           (a) Is not in an emergency condition; and  
13           (b) Has received written information upon admission  
14 informing the patient of the policies of the health care  
15 provider or facility regarding such moral or ethical beliefs.  
16           (2) A health care provider or facility that is  
17 unwilling to carry out the wishes of the patient or the  
18 treatment decision of his or her surrogate because of moral or  
19 ethical beliefs must within 7 days either:  
20           (a) Transfer the patient to another health care  
21 provider or facility. The health care provider or facility  
22 shall pay the costs for transporting the patient to another  
23 health care provider or facility; or  
24           (b) If the patient has not been transferred, carry out  
25 the wishes of the patient or the patient's surrogate, unless  
26 the provisions of s. 765.105 apply.  
27           (3) Except as provided under this section, a health  
28 care provider or facility who fails to comply with the advance  
29 directive of a patient, or the treatment decision of his or  
30 her surrogate, has no right to compensation for medical  
31 services provided to the patient after being informed of the

1 existence of the advance directive or the treatment decision  
2 of the surrogate. The patient, the patient's heirs, or the  
3 patient's estate may bring a cause of action for the willful  
4 failure to comply with the patient's advance directive or the  
5 treatment decision of the patient's surrogate.

6 Section 27. Section 765.310, Florida Statutes, is  
7 transferred, renumbered as section 765.1115, Florida Statutes,  
8 and amended to read:

9 765.1115 ~~765.310~~ Falsification, forgery, or willful  
10 concealment, cancellation, or destruction of directive  
11 ~~declaration~~ or revocation or amendment; penalties.--

12 (1) Any person who willfully conceals, cancels,  
13 defaces, obliterates, or damages an advance directive ~~a living~~  
14 ~~will~~ without the principal's consent or who falsifies or  
15 forges the revocation or amendment of an advance directive ~~a~~  
16 ~~revocation of a living will~~ of another, and who thereby causes  
17 life-prolonging procedures to be utilized in contravention of  
18 the previously expressed intent of the principal, commits a  
19 felony of the third degree, punishable as provided in s.  
20 775.082, s. 775.083, or s. 775.084.

21 (2) Any person who falsifies or forges the advance  
22 directive ~~living will~~ of another or who willfully conceals or  
23 withholds personal knowledge of the revocation of an advance  
24 directive ~~a declaration~~, with the intent to cause a  
25 withholding or withdrawal of life-prolonging procedures  
26 contrary to the wishes of the principal, and who thereby  
27 because of such act directly causes life-prolonging procedures  
28 to be withheld or withdrawn and death to be hastened, commits  
29 a felony of the second degree, punishable as provided in s.  
30 775.082, s. 775.083, or s. 775.084.

31

1           Section 28. Subsections (1) and (3) of section  
2 765.401, Florida Statutes, are amended to read:

3           765.401 The proxy.--

4           (1) If the patient has not executed an advance  
5 directive, or designated a surrogate to execute an advance  
6 directive, or the designated or alternate surrogate is no  
7 longer available to make health care decisions, health care  
8 decisions may be made for the patient by any of the following  
9 individuals, in the following order of priority, if no  
10 individual in a prior class is reasonably available, willing,  
11 or competent to act:

12           (a) The judicially appointed guardian of the patient,  
13 who has been authorized to consent to medical treatment, if  
14 such guardian has previously been appointed; however, this  
15 paragraph shall not be construed to require such appointment  
16 before a treatment decision can be made under this subsection;

17           (b) The patient's spouse;

18           (c) An adult child of the patient, ~~or if the patient~~  
19 ~~has more than one adult child, a majority of the adult~~  
20 ~~children who are reasonably available for consultation;~~

21           (d) A parent of the patient;

22           (e) An ~~The~~ adult sibling of the patient; ~~or, if the~~  
23 ~~patient has more than one sibling, a majority of the adult~~  
24 ~~siblings who are reasonably available for consultation.~~

25           (f) An adult relative of the patient who has exhibited  
26 special care and concern for the patient and who has  
27 maintained regular contact with the patient and who is  
28 familiar with the patient's activities, health, and religious  
29 or moral beliefs; or

30           (g) A close friend of the patient.  
31

1           (3) Before exercising the incapacitated patient's  
2 rights to select or decline health care, the proxy must comply  
3 with the pertinent provisions applicable to surrogates under  
4 this chapter, except that a proxy's decision to withhold or  
5 withdraw life-prolonging procedures, if challenged, must be  
6 supported by clear and convincing evidence that the decision  
7 would have been the one the patient would have chosen had the  
8 patient been competent.

9           Section 29. Section 765.404, Florida Statutes, is  
10 created to read:

11           765.404 Persistent vegetative state.--For persons in a  
12 persistent vegetative state who have no advance directive and  
13 for whom there is no evidence indicating what the person would  
14 have wanted under such conditions, and who have no family or  
15 friends available or willing to serve as a proxy to make  
16 health care decisions for them, life-prolonging procedures may  
17 be withheld or withdrawn under the following conditions:

18           (1) The person has a judicially appointed guardian  
19 representing his or her best interest with authority to  
20 consent to medical treatment.

21           (2) The guardian, in consultation with the person's  
22 attending physician and the medical ethics committee of the  
23 hospital where the patient is located, or if there is no  
24 medical ethics committee, a permanent committee established by  
25 the Board of Medicine to review such cases, concludes that the  
26 condition is permanent and that there is no reasonable hope  
27 for recovery.

28           Section 30. The Department of Elderly Affairs shall  
29 convene a workgroup composed of health care professionals,  
30 health facilities, attorneys, consumers, clergy, academic  
31 institutions, and other interested parties to develop model

1 advance directive forms. The department shall make the forms  
2 available to the public. The department may reconvene the  
3 workgroup as necessary to modify and update such forms.

4 Section 31. Subsection (4) of section 395.1027,  
5 Florida Statutes, 1998 Supplement, is amended to read:

6 395.1027 Regional poison control centers.--

7 (4) By October 1, 1999, each regional poison control  
8 center shall develop a prehospital emergency dispatch protocol  
9 with each licensee defined by s. 401.23(14)~~s. 401.23 (13)~~ in  
10 the geographic area covered by the regional poison control  
11 center. The prehospital emergency dispatch protocol shall be  
12 developed by each licensee's medical director in conjunction  
13 with the designated regional poison control center responsible  
14 for the geographic area in which the licensee operates. The  
15 protocol shall define toxic substances and describe the  
16 procedure by which the designated regional poison control  
17 center may be consulted by the licensee. If a call is  
18 transferred to the designated regional poison control center  
19 in accordance with the protocol established under this section  
20 and s. 401.268, the designated regional poison control center  
21 shall assume responsibility and liability for the call.

22 Section 32. Section 732.916, Florida Statutes, is  
23 repealed.

24 Section 33. This act shall take effect October 1,  
25 1999.

26  
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28  
29  
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LEGISLATIVE SUMMARY

Authorizes emergency medical technicians, paramedics, and personnel of hospital emergency services, long-term care facilities, assisted living facilities, home health agencies, hospices, and adult family-care homes to withhold or withdraw cardiopulmonary resuscitation pursuant to an order not to resuscitate. Provides protection from criminal prosecution, civil liability, and charges of negligent or unprofessional conduct for such action. Directs the Department of Health to develop standardized do-not-resuscitate identification cards or devices, and authorizes a fee therefor. Revises provisions relating to execution and implementation of advance directives, designation and responsibilities of health care surrogates and proxies, and procedures for executing, revising, and implementing living wills. Increases a penalty for health care facilities or providers that require patients to execute advance directives. Requires advance directives to become part of patients' medical records. Provides that willful failure to comply with a patient's advance directive or the treatment decision of a surrogate creates a cause of action by the patient or the patient's heirs or estate. Provides penalties for cancellation or destruction of an advance directive, rather than a living will. Provides conditions for withholding or withdrawing life-prolonging procedures for persons in a persistent vegetative state when there is no advance directive or health care proxy. Directs the Department of Elderly Affairs to convene a workgroup to develop model advance directive forms.