

By Representative Brooks

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.; correcting 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          732.922, F.S.; conforming provisions relating  
27          to duty of certain hospital administrators;  
28          amending s.765.101, F.S.; revising definitions;  
29          amending s. 765.102, F.S.; revising legislative  
30          intent relating to advance directives; amending  
31          s. 765.103, F.S.; providing for effect of

1 existing advance directives; amending s.  
2 765.104, F.S.; providing for amendment of an  
3 advance directive or designation of a  
4 surrogate; amending s. 765.110, F.S.;  
5 prohibiting certain actions by a health care  
6 facility or provider with respect to a  
7 patient's advance directive; increasing a  
8 penalty; requiring that advance directives  
9 become part of patients' medical records;  
10 providing for rules; amending s. 765.113, F.S.;  
11 correcting a cross reference; amending s.  
12 765.204, F.S.; revising provisions relating to  
13 evaluation of a patient's capacity to make  
14 health care decisions; amending s. 765.205,  
15 F.S.; revising responsibilities of the  
16 surrogate; amending s. 765.301, F.S.;  
17 correcting a cross reference; amending s.  
18 765.302, F.S.; revising procedure for making a  
19 living will; amending s. 765.303, F.S.;  
20 revising suggested form of a living will;  
21 amending s. 765.304, F.S.; revising procedure  
22 for implementing a living will; amending s.  
23 765.305, F.S.; revising procedure in the  
24 absence of a living will; amending s. 765.306,  
25 F.S.; revising provisions relating to  
26 determination of the patient's condition;  
27 renumbering and amending s. 765.308, F.S.;  
28 providing for transfer of a patient under  
29 certain circumstances; providing penalties for  
30 failure to comply with a patient's advance  
31 directive or the treatment decision of a

1 surrogate; renumbering and amending s. 765.310,  
2 F.S.; providing penalties for falsification,  
3 forgery, or willful concealment, cancellation,  
4 or destruction of an advance directive, or a  
5 revocation or amendment thereof; amending s.  
6 765.401, F.S.; revising provisions relating to  
7 who may act as a proxy; creating s. 765.404,  
8 F.S.; providing conditions for withholding or  
9 withdrawing life-prolonging procedures for  
10 certain persons in a persistent vegetative  
11 state; directing the Department of Elderly  
12 Affairs to convene a workgroup to develop model  
13 advance directive forms; amending s. 395.1027,  
14 F.S.; correcting a cross reference; repealing  
15 s. 732.916, F.S., relating to amendment or  
16 revocation of an anatomical gift; providing an  
17 effective date.

18

19 Be It Enacted by the Legislature of the State of Florida:

20

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

23

395.1041 Access to emergency services and care.--

24

(3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF

25

FACILITY OR HEALTH CARE PERSONNEL.--

26

(1) Hospital emergency services personnel may withhold

27

or withdraw cardiopulmonary resuscitation if presented with an

28

order not to resuscitate executed pursuant to s. 401.45.

29

Facility staff shall not be subject to criminal prosecution or

30

civil liability, nor be considered to have engaged in

31

negligent or unprofessional conduct, for withholding or

1 withdrawing cardiopulmonary resuscitation pursuant to such an  
2 order.

3 Section 2. Subsection (3) is added to section 400.142,  
4 Florida Statutes, to read:

5 400.142 Emergency medication kits; orders not to  
6 resuscitate.--

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

16 Section 3. Subsection (3) is added to section  
17 400.4255, Florida Statutes, to read:

18 400.4255 Use of ~~licensed~~ personnel; emergency care.--

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

28 Section 4. Subsection (7) is added to section 400.487,  
29 Florida Statutes, to read:

30  
31

1           400.487 Patient assessment; establishment and review  
2 of plan of care; provision of services; orders not to  
3 resuscitate.--

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

13           Section 5. Subsection (8) of section 400.6095, Florida  
14 Statutes, is renumbered as subsection (9), and a new  
15 subsection (8) is added to said section to read:

16           400.6095 Patient admission; assessment; plan of care;  
17 discharge; orders not to resuscitate; death.--

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

27           Section 6. Subsection (3) of section 400.621, Florida  
28 Statutes, 1998 Supplement, is renumbered as subsection (4),  
29 and a new subsection (3) is added to said section to read:

30           400.621 Rules and standards relating to adult  
31 family-care homes.--

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

10       Section 7. Subsections (9) through (22) of section  
11 401.23, Florida Statutes, are renumbered as subsections (10)  
12 through (23), respectively, and a new subsection (9) is added  
13 to said section to read:

14       401.23 Definitions.--As used in this part, the term:

15       (9) "Cardiopulmonary resuscitation (CPR)" means  
16 cardiac compression, endotracheal intubation and other  
17 advanced airway management, artificial ventilation,  
18 defibrillation, administration of cardiac resuscitation  
19 medications, and related emergency medical procedures.

20       Section 8. Paragraph (b) of subsection (2) of section  
21 401.245, Florida Statutes, is amended to read:

22       401.245 Emergency Medical Services Advisory Council.--

23       (2)

24       (b) Representation on the Emergency Medical Services  
25 Advisory Council shall include: two licensed physicians who  
26 are "medical directors" as defined in s. 401.23~~(16)~~~~(15)~~or  
27 whose medical practice is closely related to emergency medical  
28 services; two emergency medical service administrators, one of  
29 whom is employed by a fire service; two certified paramedics,  
30 one of whom is employed by a fire service; two certified  
31 emergency medical technicians, one of whom is employed by a

1 fire service; one emergency medical services educator; one  
2 emergency nurse; one hospital administrator; one  
3 representative of air ambulance services; one representative  
4 of a commercial ambulance operator; and two laypersons who are  
5 in no way connected with emergency medical services, one of  
6 whom is a representative of the elderly. Ex officio members of  
7 the advisory council from state agencies shall include, but  
8 shall not be limited to, representatives from the Department  
9 of Education, the Department of Management Services, the  
10 Department of Insurance, the Department of Highway Safety and  
11 Motor Vehicles, the Department of Transportation, and the  
12 Department of Community Affairs.

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

15 401.45 Denial of emergency treatment; civil  
16 liability.--

17 (3)(a) Cardiopulmonary resuscitation ~~or~~  
18 ~~life-prolonging techniques~~ may be withheld or withdrawn from a  
19 patient by an emergency medical technician or paramedic if  
20 evidence of an order not to resuscitate by the patient's  
21 physician is presented to the emergency medical technician or  
22 paramedic ~~in a manner provided by rule of the department.~~ The  
23 department shall develop rules providing for the  
24 implementation of such orders.

25 (b) Any licensee, physician, medical director, or  
26 emergency medical technician or paramedic who acts under the  
27 direction of a medical director is not subject to criminal  
28 prosecution or civil liability, and has not engaged in  
29 negligent or unprofessional conduct, as a result of the  
30 withholding or withdrawal of cardiopulmonary resuscitation ~~or~~  
31

1 ~~life-prolonging techniques~~ from a patient pursuant to this  
2 subsection and rules adopted by the department.

3 (c) The department, in consultation with the  
4 Department of Elderly Affairs and the Agency for Health Care  
5 Administration, shall develop standardized do-not-resuscitate  
6 identification cards, forms, necklaces, bracelets, or other  
7 devices that signify, when carried or worn, that the possessor  
8 is a patient for whom a physician has issued an order not to  
9 administer cardiopulmonary resuscitation. The department may  
10 charge a reasonable fee to cover the cost of producing and  
11 distributing such identification devices.

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

18 Section 10. Section 732.912, Florida Statutes, 1998  
19 Supplement, is amended to read:

20 732.912 Persons who may make an anatomical gift.--

21 (1) Any person who may make a will may give all or  
22 part of his or her body for any purpose specified in s.  
23 732.910, the gift to take effect upon death. An anatomical  
24 gift made by an adult donor and not revoked by the donor as  
25 provided in s. 732.916 is irrevocable and does not require the  
26 consent or concurrence of any person after the donor's death.

27 (2) If the decedent has not executed an agreement  
28 concerning an anatomical gift, a member of one of the classes  
29 of persons listed below, in the order of priority stated and  
30 in the absence of ~~actual notice of~~ contrary indications by the  
31 decedent ~~or actual notice of opposition by a member of the~~



1 ~~same or a prior class~~, may give all or any part of the  
2 decedent's body for any purpose specified in s. 732.910:  
3       (a) A health care surrogate designated by the decedent  
4 pursuant to part II of chapter 765 ~~The spouse of the decedent;~~  
5 or  
6       (b) A proxy selected pursuant to part IV of chapter  
7 765.~~An adult son or daughter of the decedent;~~  
8       (c) ~~Either parent of the decedent;~~  
9       (d) ~~An adult brother or sister of the decedent;~~  
10       (e) ~~A grandparent of the decedent;~~  
11       (f) ~~A guardian of the person of the decedent at the~~  
12 ~~time of his or her death; or~~  
13       (g) ~~A representative ad litem who shall be appointed~~  
14 ~~by a court of competent jurisdiction forthwith upon a petition~~  
15 ~~heard ex parte filed by any person, which representative ad~~  
16 ~~litem shall ascertain that no person of higher priority exists~~  
17 ~~who objects to the gift of all or any part of the decedent's~~  
18 ~~body and that no evidence exists of the decedent's having made~~  
19 ~~a communication expressing a desire that his or her body or~~  
20 ~~body parts not be donated upon death;~~  
21  
22 ~~but no gift shall be made by the spouse if any adult son or~~  
23 ~~daughter objects, and provided that those of higher priority,~~  
24 ~~if they are reasonably available, have been contacted and made~~  
25 ~~aware of the proposed gift, and further provided that a~~  
26 ~~reasonable search is made to show that there would have been~~  
27 ~~no objection on religious grounds by the decedent.~~  
28       (3) ~~If the donee has actual notice of contrary~~  
29 ~~indications by the decedent or, in the case of a spouse making~~  
30 ~~the gift, an objection of an adult son or daughter or actual~~  
31 ~~notice that a gift by a member of a class is opposed by a~~

1 ~~member of the same or a prior class, the donee shall not~~  
2 ~~accept the gift.~~

3       ~~(3)~~(4) The person authorized by subsection (2) may  
4 make the gift after the decedent's death or immediately before  
5 the decedent's death.

6       ~~(4)~~(5) A gift of all or part of a body authorizes any  
7 examination necessary to assure medical acceptability of the  
8 gift for the purposes intended.

9       ~~(5)~~(6) Once the gift has been made, the rights of the  
10 donee are paramount to the rights of others, except as  
11 provided by s. 732.917.

12       Section 11. Subsection (6) is added to section  
13 732.914, Florida Statutes, 1998 Supplement, to read:

14       732.914 Manner of executing, amending, and revoking  
15 anatomical gifts.--

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

20       Section 12. Subsection (2) of section 732.922, Florida  
21 Statutes, 1998 Supplement, is amended to read:

22       732.922 Duty of certain hospital administrators;  
23 liability of hospital administrators, organ procurement  
24 organizations, eye banks, and tissue banks.--

25       (2) Where, based on accepted medical standards, a  
26 hospital patient is a suitable candidate for organ or tissue  
27 donation, the hospital administrator or the hospital  
28 administrator's designee shall, at or near the time of death,  
29 access the organ and tissue donor registry created by s.  
30 732.915(4) to ascertain the existence of a donor card or  
31 document executed by the decedent. In the absence of a donor

1 card, organ donation sticker or organ donation imprint on a  
2 driver's license, or other properly executed document, the  
3 hospital administrator or designee shall request the patient's  
4 health care surrogate or proxy, as any of the persons  
5 specified in s. 732.912, in the order and manner of priority  
6 stated in s. 732.912, to consent to the gift of all or any  
7 part of the decedent's body for any purpose specified in this  
8 part. ~~Except as provided in s. 732.912, in the absence of~~  
9 ~~actual notice of opposition, consent need only be obtained~~  
10 ~~from the person or persons in the highest priority class~~  
11 ~~reasonably available.~~

12 Section 13. Section 765.101, Florida Statutes, is  
13 amended to read:

14 765.101 Definitions.--As used in this chapter:

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

23 (2) "Attending physician" means the primary physician  
24 who has responsibility for the treatment and care of the  
25 patient.

26 (3) "Close personal friend" means any person 18 years  
27 of age or older who has exhibited special care and concern for  
28 the patient, and who presents an affidavit to the health care  
29 facility or to the attending or treating physician stating  
30 that he or she is a friend of the patient; is willing and able  
31 to become involved in the patient's health care; and has

1 maintained such regular contact with the patient so as to be  
2 familiar with the patient's activities, health, and religious  
3 or moral beliefs.

4 (4) "Health care decision" means:

5 (a) Informed consent, refusal of consent, or  
6 withdrawal of consent to any and all health care, including  
7 life-prolonging procedures.

8 (b) The decision to apply for private, public,  
9 government, or veterans' benefits to defray the cost of health  
10 care.

11 (c) The right of access to all records of the  
12 principal reasonably necessary for a health care surrogate to  
13 make decisions involving health care and to apply for  
14 benefits.

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

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

21 (6) "Health care provider" or "provider" means any  
22 person licensed, certified, or otherwise authorized by law to  
23 administer health care in the ordinary course of business or  
24 practice of a profession.

25 (7) "Incapacity" or "incompetent" means the patient is  
26 physically or mentally unable to communicate a willful and  
27 knowing health care decision. For the purposes of making an  
28 anatomical gift, the term also includes a patient who is  
29 deceased.

30 (8) "Informed consent" means consent voluntarily given  
31 by a person after a sufficient explanation and disclosure of

1 the subject matter involved to enable that person to have a  
2 general understanding of the treatment or procedure and the  
3 medically acceptable alternatives, including the substantial  
4 risks and hazards inherent in the proposed treatment or  
5 alternative procedures, and to make a knowing health care  
6 decision without coercion or undue influence.

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

11 ~~(a) Utilizes mechanical or other artificial means to~~  
12 ~~sustain, restore, or supplant a spontaneous vital function;~~  
13 ~~and~~

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

16  
17 The term "~~life-prolonging procedure~~" does not include the  
18 administration of medication or performance of medical  
19 procedure, when such medication or procedure is deemed  
20 necessary to provide comfort care or to alleviate pain.

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

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

24 (b) A witnessed oral statement made by the principal  
25 expressing the principal's instructions concerning  
26 life-prolonging procedures.

27 (11) "Persistent vegetative state" means a permanent  
28 and irreversible condition of unconsciousness in which there  
29 is:

30 (a) The absence of voluntary action or cognitive  
31 behavior of any kind.

1           (b) An inability to communicate or interact  
2 purposefully with the environment.

3           (12)~~(11)~~ "Physician" means a person licensed pursuant  
4 to chapter 458 or chapter 459.

5           (13)~~(12)~~ "Principal" means a competent adult executing  
6 an advance directive and on whose behalf health care decisions  
7 are to be made.

8           (14)~~(13)~~ "Proxy" means a competent adult who has not  
9 been expressly designated to make health care decisions for a  
10 particular incapacitated individual, but who, nevertheless, is  
11 authorized pursuant to s. 765.401 to make health care  
12 decisions for such individual.

13           (15)~~(14)~~ "Surrogate" means any competent adult  
14 expressly designated by a principal to make health care  
15 decisions on behalf of the principal upon the principal's  
16 incapacity.

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

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

21           ~~(b) A persistent vegetative state characterized by a~~  
22 ~~permanent and irreversible condition of unconsciousness in~~  
23 ~~which there is:~~

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

26           ~~2. An inability to communicate or interact~~  
27 ~~purposefully with the environment.~~

28           ~~(16) "Treating physician" means the physician who has~~  
29 ~~treated or is treating the patient for any condition directly~~  
30 ~~related to the condition resulting in the patient's~~  
31 ~~incapacity.~~

1           Section 14. Subsection (3) of section 765.102, Florida  
2 Statutes, is amended to read:

3           765.102 Legislative findings and intent.--

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

23           Section 15. Section 765.103, Florida Statutes, is  
24 amended to read:

25           765.103 Existing advance directives.--Any advance  
26 directive made prior to the effective date of this act ~~April~~  
27 ~~10, 1992,~~ shall be given effect as executed, ~~as provided in~~  
28 ~~this chapter~~ provided such directive was legally effective  
29 when written.

30           Section 16. Subsections (1) and (3) of section  
31 765.104, Florida Statutes, are amended to read:

1           765.104 Amendment or revocation.--  
2           (1) An advance directive or designation of a surrogate  
3 may be amended or revoked at any time by a competent  
4 principal:  
5           (a) By means of a signed, dated writing;  
6           (b) By means of the physical cancellation or  
7 destruction of the advance directive by the principal or by  
8 another in the principal's presence and at the principal's  
9 direction;  
10          (c) By means of an oral expression of intent to amend  
11 or revoke; or  
12          (d) By means of a subsequently executed advance  
13 directive that is materially different from a previously  
14 executed advance directive.  
15          (3) Any such amendment or revocation will be effective  
16 when it is communicated to the surrogate, health care  
17 provider, or health care facility. No civil or criminal  
18 liability shall be imposed upon any person for a failure to  
19 act upon an amendment or ~~a~~ revocation unless that person has  
20 actual knowledge of such amendment or revocation.  
21          Section 17. Section 765.110, Florida Statutes, is  
22 amended to read:  
23          765.110 Health care facilities and providers;  
24 discipline.--  
25          (1) A health care facility, pursuant to Pub. L. No.  
26 101-508, ss. 4206 and 4751, shall provide to each patient  
27 written information concerning the individual's rights  
28 concerning advance directives and the health care facility's  
29 policies respecting the implementation of such rights, and  
30 shall document in the patient's medical records whether or not  
31 the individual has executed an advance directive.



1           (2) A health care provider or health care facility may  
2 not require a patient to execute an advance directive or to  
3 execute a new advance directive using the facility's or  
4 provider's forms. The patient's advance directives shall  
5 travel with the patient as part of the patient's medical  
6 record.

7           ~~(3)(2)~~ A health care provider or health care facility  
8 shall be subject to professional discipline and revocation of  
9 license or certification, and a fine of not more than \$1,000  
10 ~~\$500~~ per incident, or both, if the health care provider or  
11 health care facility, as a condition of treatment or  
12 admission, requires an individual to execute or waive an  
13 advance directive.

14           ~~(4)(3)~~ The Department of Elderly Affairs for hospices  
15 and, in consultation with the Department of Elderly Affairs,  
16 the Department of Health for health care providers, and  
17 ~~Rehabilitative Services and the Agency for Health Care~~  
18 Administration for hospitals, nursing homes, home health  
19 agencies, and health maintenance organizations, and the  
20 Department of Children and Family Services for facilities  
21 subject to part I of chapter 394 shall adopt rules to  
22 implement the provisions of the section.

23           Section 18. Subsection (2) of section 765.113, Florida  
24 Statutes, is amended to read:

25           765.113 Restrictions on providing consent.--Unless the  
26 principal expressly delegates such authority to the surrogate  
27 in writing, or a surrogate or proxy has sought and received  
28 court approval pursuant to rule 5.900 of the Florida Probate  
29 Rules, a surrogate or proxy may not provide consent for:

30  
31

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

4           Section 19. Subsection (2) of section 765.204, Florida  
5 Statutes, is amended to read:

6           765.204 Capacity of principal; procedure.--

7           (2) If a principal's capacity to make health care  
8 decisions for herself or himself or provide informed consent  
9 is in question, the attending physician shall evaluate the  
10 principal's capacity and, if the physician concludes that the  
11 principal lacks capacity, enter that evaluation in the  
12 principal's medical record. If the attending physician has a  
13 question as to whether ~~concludes that~~ the principal lacks ~~such~~  
14 capacity, another physician shall also evaluate the  
15 principal's capacity. If the second physician agrees that the  
16 principal lacks the capacity to make health care decisions or  
17 provide informed consent, the health care facility shall enter  
18 both physician's evaluations in the principal's clinical  
19 record and, if the principal has designated a health care  
20 surrogate, shall notify such surrogate in writing that her or  
21 his authority under the instrument has commenced.

22           Section 20. Subsection (2) of section 765.205, Florida  
23 Statutes, is amended to read:

24           765.205 Responsibility of the surrogate.--

25           (2) The surrogate may authorize the release of  
26 information and clinical records to appropriate persons to  
27 ensure the continuity of the principal's health care and may  
28 authorize the ~~transfer and~~ admission, discharge, or transfer  
29 of the principal to or from a health care facility or other  
30 facility or program licensed under chapter 400.

1           Section 21. Section 765.301, Florida Statutes, is  
2 amended to read:

3           765.301 Short title.--Sections 765.302-765.309  
4 ~~765.302-765.310~~ may be cited as the "Life-Prolonging Procedure  
5 Act of Florida."

6           Section 22. Subsection (1) of section 765.302, Florida  
7 Statutes, is amended to read:

8           765.302 Procedure for making a living will; notice to  
9 physician.--

10           (1) Any competent adult may, at any time, make a  
11 living will or written declaration directing the providing,  
12 withholding, or withdrawal of life-prolonging procedures ~~in~~  
13 ~~the event such person suffers from a terminal condition.~~ A  
14 living will must be signed by the principal in the presence of  
15 two subscribing witnesses, one of whom is neither a spouse nor  
16 a blood relative of the principal. If the principal is  
17 physically unable to sign the living will, one of the  
18 witnesses must subscribe the principal's signature in the  
19 principal's presence and at the principal's direction.

20           Section 23. Subsection (1) of section 765.303, Florida  
21 Statutes, is amended to read:

22           765.303 Suggested form of a living will.--

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

25                                           Living Will

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

30           If at any time I am both mentally and physically  
31 incapacitated ~~have a terminal condition~~ and if my attending or

1 treating physician and another consulting physician have  
2 determined that there is no reasonable medical probability of  
3 my recovery from such condition, I direct that life-prolonging  
4 procedures be withheld or withdrawn when the application of  
5 such procedures would serve only to prolong artificially the  
6 process of dying, and that I be permitted to die naturally  
7 with only the administration of medication or the performance  
8 of any medical procedure deemed necessary to provide me with  
9 comfort care or to alleviate pain.

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

14 In the event that I have been determined to be unable  
15 to provide express and informed consent regarding the  
16 withholding, withdrawal, or continuation of life-prolonging  
17 procedures, I wish to designate, as my surrogate to carry out  
18 the provisions of this declaration:

19  
20 Name:.....  
21 Address:.....  
22 ..... Zip Code:....  
23 Phone:.....

24 I understand the full import of this declaration, and I  
25 am emotionally and mentally competent to make this  
26 declaration.

27 Additional Instructions (optional):  
28 .....  
29 .....  
30 .....

31 .....(Signed).....

1                                   ....Witness....  
2                                   ....Address....  
3                                   ....Phone....  
4                                   ....Witness....  
5                                   ....Address....  
6                                   ....Phone....  
7

8           Section 24. Subsection (2) of section 765.304, Florida  
9 Statutes, is amended to read:

10           765.304 Procedure for living will.--

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

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

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

17           (b)(c) Any limitations or conditions expressed orally  
18 or in a written declaration have been carefully considered and  
19 satisfied.

20           Section 25. Section 765.305, Florida Statutes, is  
21 amended to read:

22           765.305 Procedure in absence of a living will.--

23           (1) In the absence of a living will ~~executed pursuant~~  
24 ~~to s. 765.303~~, the decision to withhold or withdraw  
25 life-prolonging procedures from a patient may be made by a  
26 health care surrogate designated by the patient pursuant to  
27 part II unless the designation limits the surrogate's  
28 authority to consent to the withholding or withdrawal of  
29 life-prolonging procedures.

30           (2) Before exercising the incompetent patient's right  
31 to forego treatment, the surrogate must be satisfied that+

1           (a) the patient does not have a reasonable probability  
2 of recovering capacity ~~competency~~ so that the right could be  
3 exercised by the patient.

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

5           Section 26. Section 765.306, Florida Statutes, is  
6 amended to read:

7           765.306 Determination of patient condition.--In  
8 determining whether the patient ~~has a terminal condition or~~  
9 may recover capacity, or whether a medical condition or  
10 limitation referred to in an advance directive exists, the  
11 patient's attending or treating physician and at least one  
12 other consulting physician must ~~separately~~ examine the  
13 patient. The findings of each such examination must be  
14 documented in the patient's medical record and signed by each  
15 examining physician before life-prolonging procedures may be  
16 withheld or withdrawn.

17           Section 27. Section 765.308, Florida Statutes, is  
18 renumbered as section 765.1105, Florida Statutes, and amended  
19 to read:

20           765.1105 ~~765.308~~ Transfer of a patient; penalties.--

21           (1) A health care provider or facility that refuses to  
22 comply with a patient's advance directive ~~the declaration of a~~  
23 ~~patient~~, or the treatment decision of his or her surrogate,  
24 shall make reasonable efforts to transfer the patient to  
25 another health care provider or facility that will comply with  
26 the directive ~~declaration~~ or treatment decision. This chapter  
27 does not require a health care provider or facility to commit  
28 any act which is contrary to the provider's or facility's  
29 moral or ethical beliefs ~~concerning life-prolonging~~  
30 ~~procedures~~, if the patient:

31           (a) Is not in an emergency condition; and

1 (b) Has received written information upon admission  
2 informing the patient of the policies of the health care  
3 provider or facility regarding such moral or ethical beliefs.

4 (2) A health care provider or facility that is  
5 unwilling to carry out the wishes of the patient or the  
6 treatment decision of his or her surrogate because of moral or  
7 ethical beliefs must within 7 days either:

8 (a) Transfer the patient to another health care  
9 provider or facility. The health care provider or facility  
10 shall pay the costs for transporting the patient to another  
11 health care provider or facility; or

12 (b) If the patient has not been transferred, carry out  
13 the wishes of the patient or the patient's surrogate, unless  
14 the provisions of s. 765.105 apply.

15 (3) Except as provided under this section, a health  
16 care provider or facility who fails to comply with the advance  
17 directive of a patient, or the treatment decision of his or  
18 her surrogate, has no right to compensation for medical  
19 services provided to the patient after being informed of the  
20 existence of the advance directive or the treatment decision  
21 of the surrogate. The patient, the patient's heirs, or the  
22 patient's estate may bring a cause of action for the willful  
23 failure to comply with the patient's advance directive or the  
24 treatment decision of the patient's surrogate.

25 Section 28. Section 765.310, Florida Statutes, is  
26 renumbered as section 765.1115, Florida Statutes, and amended  
27 to read:

28 765.1115 ~~765.310~~ Falsification, forgery, or willful  
29 concealment, cancellation, or destruction of directive  
30 ~~declaration~~ or revocation or amendment; penalties.--  
31

1           (1) Any person who willfully conceals, cancels,  
2 defaces, obliterates, or damages an advance directive ~~a living~~  
3 ~~will~~ without the principal's consent or who falsifies or  
4 forges the revocation or amendment of an advance directive ~~a~~  
5 ~~revocation of a living will~~ of another, and who thereby causes  
6 life-prolonging procedures to be utilized in contravention of  
7 the previously expressed intent of the principal, commits a  
8 felony of the third degree, punishable as provided in s.  
9 775.082, s. 775.083, or s. 775.084.

10           (2) Any person who falsifies or forges the advance  
11 directive ~~living will~~ of another or who willfully conceals or  
12 withholds personal knowledge of the revocation of an advance  
13 directive ~~a declaration~~, with the intent to cause a  
14 withholding or withdrawal of life-prolonging procedures  
15 contrary to the wishes of the principal, and who thereby  
16 because of such act directly causes life-prolonging procedures  
17 to be withheld or withdrawn and death to be hastened, commits  
18 a felony of the second degree, punishable as provided in s.  
19 775.082, s. 775.083, or s. 775.084.

20           Section 29. Paragraphs (c) and (e) of subsection (1)  
21 and subsection (3) of section 765.401, Florida Statutes, are  
22 amended to read:

23           765.401 The proxy.--

24           (1) If the patient has not executed an advance  
25 directive, or designated a surrogate to execute an advance  
26 directive, or the designated or alternate surrogate is no  
27 longer available to make health care decisions, health care  
28 decisions may be made for the patient by any of the following  
29 individuals, in the following order of priority, if no  
30 individual in a prior class is reasonably available, willing,  
31 or competent to act:



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

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

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

15           Section 30. Section 765.404, Florida Statutes, is  
16 created to read:

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

24           (1) The person has a judicially appointed guardian  
25 representing his or her best interest with authority to  
26 consent to medical treatment.

27           (2) The guardian, in consultation with the person's  
28 attending physician and the medical ethics committee of the  
29 hospital where the patient is located, or if there is no  
30 medical ethics committee, a permanent committee established by  
31 the Board of Medicine to review such cases, concludes that the

1 condition is permanent and that there is no reasonable hope  
2 for recovery.

3           Section 31. The Department of Elderly Affairs shall  
4 convene a workgroup composed of health care professionals,  
5 health facilities, attorneys, consumers, clergy, academic  
6 institutions, and other interested parties to develop model  
7 advance directive forms. The department shall make the forms  
8 available to the public. The department may reconvene the  
9 workgroup as necessary to modify and update such forms.

10           Section 32. Subsection (4) of section 395.1027,  
11 Florida Statutes, 1998 Supplement, is amended to read:

12           395.1027 Regional poison control centers.--

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

28           Section 33. Section 732.916, Florida Statutes, is  
29 repealed.

30           Section 34. This act shall take effect October 1,  
31 1999.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

HOUSE 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 how anatomical gift declarations may be amended and revoked, who may make an anatomical gift for a decedent, and how such gifts are implemented. 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.