

1 certain information; requiring the department
2 to distribute certain forms for the indication
3 of health care directives and blood type;
4 providing a recordkeeping system; requiring the
5 agency to provide funds for certain supplies;
6 requiring the department to provide funds for
7 the recordkeeping system; creating s. 765.3062,
8 F.S.; establishing a health care advance
9 directive and blood-type registry; requiring
10 the department to collect data and provide
11 collected data to the agency for the registry;
12 requiring the registry to record certain health
13 care advance directive and blood-type
14 information; providing access to the registry
15 by certain persons; providing guidelines for
16 the processing of certain forms; providing
17 criteria for revocation or amendment of
18 registry information by certain individuals;
19 providing for recording certain documents with
20 the registry; providing criteria for certain
21 health care advance directives being submitted;
22 requiring the department and the agency to
23 develop and implement a living will registry;
24 creating s. 765.3063, F.S.; providing means to
25 amend or revoke a health care advance directive
26 or blood type from the registry; providing for
27 the responsibility of the principal to update
28 forms; providing standards for controlling
29 forms and recordings; creating s. 765.3064,
30 F.S.; providing certain health care employees
31 with civil and criminal immunity from acts

1 performed in conjunction with certain
2 information provided by the department;
3 expressing the sovereign immunity of the
4 agency, the department, and their employees
5 from criminal prosecution and civil liability
6 for certain acts or forms; creating s.
7 765.3065, F.S.; requiring the agency, subject
8 to the concurrence of the department, to
9 develop a continuing education program relating
10 to health care advance directives and the
11 health care advance directive and blood-type
12 registry; creating s. 765.3066, F.S.; providing
13 for appointment of an education panel to create
14 an end-of-life public education campaign;
15 providing campaign criteria; providing
16 contractual power for programs aimed at
17 educating certain health care professionals;
18 requiring a study to be conducted by the
19 agency; providing for a report to the
20 Legislature; providing issues for the study to
21 address; amending s. 395.1041, F.S.; requiring
22 a facility licensed under ch. 395, F.S., to
23 withhold or withdraw cardiopulmonary
24 resuscitation when presented with an order not
25 to resuscitate; creating s. 395.10411, F.S.;
26 providing requirements to be carried out by a
27 facility licensed under ch. 395, F.S., when a
28 patient has an advance directive, has an order
29 not to resuscitate, or is a designated organ
30 donor; amending s. 765.1105, F.S.; requiring a
31 health care provider that refuses to carry out

1 a patient's advance directive to transfer the
2 patient within a specified time to a health
3 care provider that will comply with the advance
4 directive; creating s. 765.1021, F.S.;
5 encouraging physicians and patients to discuss
6 end-of-life care; specifying when an advance
7 directive must be part of the patient's medical
8 record; amending s. 765.304, F.S.; requiring an
9 attending physician who refuses to comply with
10 a person's living will to transfer the person
11 to a physician who will comply; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 322.0812, Florida Statutes, is
17 created to read:

18 322.0812 Additional fee imposed for persons
19 participating in health care advance directive and blood-type
20 registry.--

21 (1) Persons submitting initial application forms for
22 participation in the health care advance directive and
23 blood-type registry created under s. 765.3062 shall be
24 assessed a fee of \$10.

25 (2) The fee provided for in subsection (1) shall be
26 used by the Agency for Health Care Administration to establish
27 and maintain the health care advance directive and blood-type
28 registry. Funds received by the agency from such fees shall be
29 used to:

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31

1 (a) Obtain equipment and software to expand or improve
2 the database for the registry and the organ donor program
3 established under part V of chapter 765.

4 (b) Employ persons necessary to ensure the proper
5 operation of the equipment used to maintain the registry.

6 (c) Fund health care advance directive education
7 efforts as authorized in ss. 765.3065 and 765.3066.

8 Section 2. Subsection (8) is added to section 322.051,
9 Florida Statutes, to read:

10 322.051 Identification Cards.--

11 (8) A fee of \$10 shall be assessed for any person
12 choosing to submit an initial application to participate in
13 the health care advance directive and blood-type registry
14 pursuant to s. 320.08049.

15 Section 3. Paragraph (f) is added to subsection (6) of
16 section 322.08, Florida Statutes, to read:

17 322.08 Application for license.--

18 (6) The application form for a driver's license or
19 duplicate thereof shall include language permitting the
20 following:

21 (f) Assessment of a fee of \$10 for any person choosing
22 to submit an initial application to participate in the health
23 care advance directive and blood-type registry pursuant to s.
24 320.08049.

25
26 A statement providing an explanation of the purpose of the
27 trust funds shall also be included.

28 Section 4. Section 765.3061, Florida Statutes, is
29 created to read:

1 765.3061 Health care advance directives and blood-type
2 indication as part of driver's license or identification card
3 process.--

4 (1) The Agency for Health Care Administration and the
5 Department of Highway Safety and Motor Vehicles shall develop
6 and implement a program encouraging and allowing a person, at
7 the person's request, to voluntarily make a health care
8 advance directive, as well as to voluntarily provide his or
9 her blood type, both of which may be noted on the person's
10 driver's license or identification card, upon issuance or
11 renewal of these documents.

12 (2) The health care advance directive form and
13 blood-type confirmation form, both of which are to be
14 distributed by the department, shall be developed by the
15 agency in consultation with the department. The health care
16 advance directive form shall include the living will specified
17 in s. 765.303, which must be executed in accordance with s.
18 765.302. The blood-type confirmation form must be signed by a
19 person's physician or an agent of a blood bank or laboratory
20 that has documentation of the person's blood type. The health
21 care advance directive and blood-type confirmation forms may
22 require additional information and may include additional
23 material as deemed necessary by the agency and the department.
24 An individual completing a health care advance directive form
25 or blood-type confirmation form shall have included on his or
26 her driver's license or identification card a notation on the
27 front of the card clearly indicating the individual's intent
28 concerning life-prolonging procedures and the individual's
29 blood type. A notation on an individual's driver's license or
30 identification card that the individual has a health care
31 advance directive or that provides the individual's blood type

1 is sufficient to satisfy all requirements concerning
2 life-prolonging procedures and necessary blood-type
3 information for health care providers.

4 (3)(a) All forms relating to the execution, amendment,
5 or revocation of a health care advance directive or blood-type
6 confirmation for the purpose of participating in the registry
7 shall be made available to the public at all offices of the
8 Division of Driver Licenses, as well as electronically on the
9 Internet.

10 (b) The forms relating to the execution of a health
11 care advance directive or confirmation of blood type, for
12 purposes of participating in the registry, shall:

13 1. Require an express declaration that the principal
14 has read the form and understands its contents.

15 2. Require an express waiver of any privacy rights
16 granted under state or federal law.

17 3. Require an express waiver of liability for health
18 care providers who rely upon the information contained on the
19 principal's driver's license, identification card, or the
20 registry.

21 4. Require an acknowledgment from the principal that
22 it is the responsibility of the principal to submit an
23 amendment form or revocation form to the Division of Driver
24 Licenses if it is the principal's desire to change or remove
25 any document recorded in the registry.

26 5. Require acknowledgment from the principal that a
27 reasonable delay will occur in the recording of a newly
28 executed form in the registry by the agency and department,
29 regardless of whether it is a health care advance directive or
30 blood-type confirmation form, or any amendment or revocation
31 thereof, and that health care providers will rely on the

1 information in the registry available at the time such
2 information is obtained by a health care provider.

3 (4) The agency shall provide the necessary supplies
4 and forms through funds appropriated from general revenue, any
5 authorized fees, or contributions from interested, voluntary,
6 nonprofit organizations. The department shall provide the
7 necessary recordkeeping system through funds appropriated from
8 general revenue.

9 Section 5. Section 765.3062, Florida Statutes, is
10 created to read:

11 765.3062 Health care advance directive and blood-type
12 registry; use of forms and delivery of documents.--

13 (1) There is established a health care advance
14 directive and blood-type registry. This registry shall be an
15 expansion of the organ and tissue donor registry that is
16 created, administered, and maintained in accordance with part
17 V of this chapter.

18 (2) The forms to be recorded in the registry shall be
19 collected by the Department of Highway Safety and Motor
20 Vehicles and provided to the Agency for Health Care
21 Administration in a manner similar to the forms and
22 information collected for anatomical gifts as provided in part
23 V of this chapter. The registry shall record, through
24 electronic means, health care advance directive and blood-type
25 documents submitted through the driver's license
26 identification program or obtained from other sources. The
27 registry shall be maintained in a manner that will allow,
28 through electronic and telephonic methods, immediate access to
29 health care advance directive and blood-type documents 24
30 hours a day, 7 days a week. Hospitals and other parties
31 identified by rule of the agency shall be allowed access,

1 through coded means, to the information stored in the
2 registry.

3 (3) If a health care advance directive is made through
4 the program established under s. 765.3061, the completed
5 health care advance directive shall be delivered to the
6 department and processed in the manner specified in subsection

7 (4). Delivery of the health care advance directive is not
8 necessary for the validity of the health care advance
9 directive. If a person amends or revokes a health care advance
10 directive in accordance with s. 765.3063, the records of the
11 department shall be updated to reflect such status of the
12 health care advance directive.

13 (4) If a health care advance directive is made by an
14 individual, other than through the program established by the
15 agency and the department, the document may be recorded in the
16 registry administered by the agency and noted on an
17 individual's driver's license, if the individual follows the
18 procedure and the health care advance directive meets the
19 criteria set forth in this chapter and in any rules of the
20 department and the agency.

21 (5) The agency and the department shall develop and
22 implement a living will registry as an expansion and
23 improvement of the organ donor database maintained by the
24 agency.

25 Section 6. Section 765.3063, Florida Statutes, is
26 created to read:

27 765.3063 Amendment to or revocation of a health care
28 advance directive or removal of blood type from the registry;
29 responsibility of the participant; last documents submitted
30 and recorded are controlling documents.--

31

1 (1) A person may amend or revoke a health care advance
2 directive by the execution and delivery of the appropriate
3 form, signed and properly executed, to the Department of
4 Highway Safety and Motor Vehicles to be transmitted to the
5 Agency for Health Care Administration for recording in or
6 removal from the registry.

7 (2) If a person participates in the health care
8 advance directive and blood-type registry, it is the
9 responsibility of the principal to complete and submit the
10 appropriate forms needed to amend or revoke the health care
11 advance directive or blood-type information. If a person
12 chooses to participate in the registry, the most recently
13 submitted forms recorded in the registry shall be considered
14 the controlling documents of the participant in any dispute or
15 decision by a health care provider.

16 (3) A person may remove the record of his or her blood
17 type from the registry by signing a form provided by the
18 department, as developed in conjunction with the agency, that
19 is signed in the presence of an employee of the department.

20 (4) Nothing in this section shall affect a principal's
21 right to amend or revoke a health care advance directive or
22 designation of a surrogate as authorized under s. 765.104 if
23 the principal is not participating in the agency's health care
24 advance directive and blood-type registry.

25 Section 7. Section 765.3064, Florida Statutes, is
26 created to read:

27 765.3064 Immunity from liability.--

28 (1) Notwithstanding the express waiver of liability
29 signed by the person who chooses to participate in the health
30 care advance directive and blood-type registry, a health care
31 facility or a health care provider, or any other person acting

1 under the direction of a health care facility or health care
2 provider, carrying out a health care decision made in
3 accordance with a properly recorded health care advance
4 directive or blood-type confirmation transmitted by the
5 Department of Highway Safety and Motor Vehicles, is not
6 subject to criminal prosecution or civil liability and will
7 not be deemed to have engaged in unprofessional conduct.

8 (2) The Agency for Health Care Administration and the
9 Department of Highway Safety and Motor Vehicles and any
10 employees acting within the scope of their employment are
11 immune from criminal prosecution and civil liability for any
12 acts or forms recorded in compliance with the provisions of
13 this chapter.

14 Section 8. Section 765.3065, Florida Statutes, is
15 created to read:

16 765.3065 Education program relating to health care
17 advance directives and blood-type registries.--The Agency for
18 Health Care Administration, subject to the concurrence of the
19 Department of Highway Safety and Motor Vehicles, shall develop
20 a continuing education program to educate and inform health
21 care professionals, including emergency medical personnel, law
22 enforcement agencies and officers, state and local government
23 employees, and the public regarding the laws of this state
24 relating to the health care advance directives and the health
25 care advance directive and blood-type registry as described in
26 this chapter.

27 Section 9. Section 765.3066, Florida Statutes, is
28 created to read:

29 765.3066 Health care advance directives education
30 panel.--The Legislature recognizes that every competent adult
31 has the fundamental right of self-determination regarding

1 decisions pertaining to his or her health. This includes the
2 right to choose or refuse medical treatment. A panel of three
3 members appointed by the secretary of the Department of
4 Elderly Affairs, the secretary of the Agency for Health Care
5 Administration, and the secretary of the Department of Health
6 shall jointly create a campaign on end-of-life care for
7 purposes of educating the public. This campaign shall include
8 culturally sensitive programs to improve understanding of
9 end-of-life issues. Existing community resources, when
10 available, shall be used to support the program, and
11 volunteers and health care professionals may assist in the
12 program to the maximum extent possible. The program aimed at
13 educating health care professionals may be implemented by
14 contract with one or more medical schools located in the
15 state.

16 Section 10. Effective upon this act becoming a law,
17 the Agency for Health Care Administration shall conduct a
18 study on how to implement the health care advance directive
19 and blood-type registry and report its findings and
20 recommendations to the Speaker of the House of Representatives
21 and the President of the Senate by January 1, 2005. The study
22 shall, at a minimum, examine and make recommendations
23 concerning the following:

24 (1) The nonrecurring capital outlay and recurring
25 operational funding necessary to establish and maintain the
26 health care advance directive and blood-type registry.

27 (2) The efficiency and cost-effectiveness of databases
28 and procedures used to maintain the data in the registry and
29 to transfer forms between the Department of Highway Safety and
30 Motor Vehicles and the Agency for Health Care Administration.

31

1 (3) The reasonable timeframes necessary to record
2 forms and other information in the registry and make such
3 information available to health care facilities and
4 appropriate professionals.

5 (4) The types of disclosures and disclaimers necessary
6 to be included in the forms used for the health care advance
7 directive and blood-type registry.

8 (5) The projected number of persons who may
9 participate in the health care advance directive and
10 blood-type registry and the sufficiency of the fees assessed
11 to fund the registry and health care advance directive
12 education efforts.

13 (6) The most effective and cost-efficient means to
14 implement the educational requirements in sections 765.3065
15 and 765.3066, Florida Statutes.

16 Section 11. Paragraph (1) of subsection (3) of section
17 395.1041, Florida Statutes, is amended to read:

18 395.1041 Access to emergency services and care.--

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

21 (1) Hospital personnel must ~~may~~ withhold or withdraw
22 cardiopulmonary resuscitation if presented with an order not
23 to resuscitate executed pursuant to s. 401.45. Facility staff
24 and facilities shall not be subject to criminal prosecution or
25 civil liability, nor be considered to have engaged in
26 negligent or unprofessional conduct, for withholding or
27 withdrawing cardiopulmonary resuscitation pursuant to such an
28 order. The absence of an order not to resuscitate executed
29 pursuant to s. 401.45 does not preclude a physician from
30 withholding or withdrawing cardiopulmonary resuscitation as
31 otherwise permitted by law.

1 Section 12. Section 395.10411, Florida Statutes, is
2 created to read:

3 395.10411 Duty of a facility to carry out the advance
4 directive of a patient.--

5 (1) When a person who has a terminal condition or an
6 end-stage condition or is in a persistent vegetative state and
7 who has an advance directive is a patient in a facility
8 licensed under this chapter which is providing health care
9 services to the person, the facility must carry out the
10 advance directive or must transfer the patient pursuant to s.
11 765.1105 to a facility that will carry out the advance
12 directive. The cost of transferring a patient for the purpose
13 of carrying out an advance directive shall be paid by the
14 facility from which the patient is transferred, and neither
15 the patient nor the receiving facility is responsible for any
16 part of such cost. A facility that fails to carry out a
17 patient's advance directive will not receive payment of any
18 state funds for life-prolonging treatment provided to the
19 patient.

20 (2) When a person who has a terminal condition or an
21 end-stage condition or is in a persistent vegetative state and
22 who has an order not to resuscitate is a patient in a facility
23 licensed under this chapter which is providing health care
24 services to the person, the facility must carry out the order
25 not to resuscitate. A facility that fails to carry out a
26 patient's order not to resuscitate will not receive payment of
27 any state funds for life-prolonging treatment provided to the
28 patient.

29 (3) When there is a plan to discuss termination of
30 life support for a person who has a living will and is an
31 organ donor, the health care facility must notify the

1 federally designated organ procurement organization. This
2 subsection does not supersede s. 382.009.

3 Section 13. Section 765.1105, Florida Statutes, is
4 amended to read:

5 765.1105 Transfer of a patient.--

6 (1) A health care provider or facility that refuses to
7 comply with a patient's advance directive, or the treatment
8 decision of his or her surrogate, must ~~shall make reasonable~~
9 ~~efforts to~~ transfer the patient to another health care
10 provider or facility that will comply with the directive or
11 treatment decision. This chapter does not require a health
12 care provider or facility to commit any act which is contrary
13 to the provider's or facility's moral or ethical beliefs, if
14 the patient:

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

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

19 (2) A health care provider or facility that is
20 unwilling to carry out the wishes of the patient or the
21 treatment decision of his or her surrogate because of moral or
22 ethical beliefs must, within 48 hours after a determination by
23 the attending physician that the patient's condition is such
24 that the advance directive applies, 7 days either:

25 (a) Transfer the patient to another health care
26 provider or facility. The health care provider or facility
27 shall pay the costs for transporting the patient to another
28 health care provider or facility; or

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

1 Section 14. Section 765.1021, Florida Statutes, is
2 created to read:

3 765.1021 Advance directive as part of a patient's
4 medical record.--To encourage individuals to complete an
5 advance directive and to inform individuals about options for
6 care available to them at the end of life, the Legislature
7 encourages primary physicians and patients to discuss advance
8 directives and end-of-life care in a physician's office
9 setting on a nonemergency basis. If a patient completes an
10 advance directive and gives a copy of it to a physician, the
11 patient's advance directive must become part of the patient's
12 medical record.

13 Section 15. Subsection (1) of section 765.304, Florida
14 Statutes, is amended to read:

15 765.304 Procedure for living will.--

16 (1) If a person has made a living will expressing his
17 or her desires concerning life-prolonging procedures, but has
18 not designated a surrogate to execute his or her wishes
19 concerning life-prolonging procedures or designated a
20 surrogate under part II, the attending physician ~~must~~ ~~may~~
21 proceed as directed by the principal in the living will or
22 must transfer him or her to a physician who will comply with
23 the living will. In the event of a dispute or disagreement
24 concerning the attending physician's decision to withhold or
25 withdraw life-prolonging procedures, the attending physician
26 shall not withhold or withdraw life-prolonging procedures
27 pending review under s. 765.105. If a review of a disputed
28 decision is not sought within 7 days following the attending
29 physician's decision to withhold or withdraw life-prolonging
30 procedures, the attending physician ~~must~~ ~~may~~ proceed in
31 accordance with the principal's instructions.

1 Section 16. Except as otherwise expressly provided in
2 this act, and except for this section, which shall take effect
3 upon becoming a law, this act shall take effect September 1,
4 2005.

5
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 2902

9 The committee substitute differs from SB 2902 in the following ways:

10 Except as otherwise provided in the bill, the bill will take
11 effect September 1, 2005. Thus, the Agency for Health Care
Administration will conduct a study of ways to implement the
registry before the registry is created.

12 Hospitals, ambulatory surgical centers and mobile surgical
13 facilities are required to honor an advance directive or order
14 not to resuscitate or to transfer a patient to a facility
where the advance directive or order will be carried out.

15 A health care provider that refuses to carry out an advance
16 directive based on moral or ethical beliefs must, within 48
hours, transfer the patient to a facility where the directive
or order will be carried out.

17 Primary physicians are encouraged to discuss advance
18 directives with patients on a nonemergency basis and to make
an advance directive a part of a patient's medical record.

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