

1                   A bill to be entitled  
2           An act relating to health care advance directives;  
3           amending s. 765.101, F.S.; providing and revising  
4           definitions; amending s. 765.302, F.S.; providing that any  
5           competent adult may make a living will or written  
6           declaration that provides life-prolonging procedures in  
7           the event such person has a medically futile condition;  
8           amending s. 765.303, F.S.; revising medical conditions  
9           included in a suggested form of a living will; amending s.  
10          765.304, F.S.; revising procedures for acting in  
11          accordance with a living will; amending s. 765.305, F.S.;  
12          revising procedures relating to an incompetent patient's  
13          right to forego treatment in the absence of a living will;  
14          creating s. 765.3051, F.S.; specifying persons who may  
15          execute a health care advance directive on behalf of a  
16          patient who is less than 18 years of age and has a  
17          specified medical condition; creating s. 765.3052, F.S.;  
18          providing that certain pregnant patients may not have  
19          life-sustaining treatment withdrawn or withheld; amending  
20          s. 765.306, F.S.; revising guidelines for determining a  
21          patient's condition; creating s. 765.3061, F.S.; requiring  
22          the Department of Highway Safety and Motor Vehicles to  
23          develop and implement a voluntary program for driver's  
24          license or identification card notation of a health care  
25          advance directive; providing for noting an individual's  
26          health care advance directive relative to life-prolonging  
27          procedures on the individual's driver's license or  
28          identification card upon request; providing that an

29 individual is not required to provide a copy of a health  
 30 care advance directive to have a notation on his or her  
 31 driver's license or identification card; requiring the  
 32 Division of Driver Licenses offices to make forms  
 33 available to the public; requiring the Department of  
 34 Highway Safety and Motor Vehicles and the Agency for  
 35 Health Care Administration to make sample forms accessible  
 36 electronically on the Internet; creating s. 765.3064,  
 37 F.S.; providing certain health care employees with civil  
 38 and criminal immunity from acts performed in conjunction  
 39 with certain information indicated by the department;  
 40 expressing the sovereign immunity of the department and  
 41 its employees from criminal prosecution and civil  
 42 liability for certain acts; providing an effective date.

43

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

45

46 Section 1. Section 765.101, Florida Statutes, is amended  
 47 to read:

48 765.101 Definitions.--As used in this chapter:

49 (1) "Advance directive" means a witnessed written document  
 50 or oral statement in which instructions are given by a principal  
 51 or in which the principal's desires are expressed concerning any  
 52 aspect of the principal's health care, and includes, but is not  
 53 limited to, the designation of a health care surrogate, a living  
 54 will, or an anatomical gift made pursuant to part X of chapter  
 55 732.

56 (2) "Attending physician" means the primary physician who

57 has responsibility for the treatment and care of the patient.

58 (3) "Close personal friend" means any person 18 years of  
59 age or older who has exhibited special care and concern for the  
60 patient, and who presents an affidavit to the health care  
61 facility or to the attending or treating physician stating that  
62 he or she is a friend of the patient; is willing and able to  
63 become involved in the patient's health care; and has maintained  
64 such regular contact with the patient so as to be familiar with  
65 the patient's activities, health, and religious or moral  
66 beliefs.

67 (4) "End-stage condition" means an irreversible condition  
68 that is caused by injury, disease, or illness which has resulted  
69 in progressively severe and permanent deterioration, and which,  
70 to a reasonable degree of medical probability, treatment of the  
71 condition would be ineffective.

72 (5) "Health care decision" means:

73 (a) Informed consent, refusal of consent, or withdrawal of  
74 consent to any and all health care, including life-prolonging  
75 procedures.

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

78 (c) The right of access to all records of the principal  
79 reasonably necessary for a health care surrogate to make  
80 decisions involving health care and to apply for benefits.

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

83 (e) The consent, decision, or right of access to all  
84 records on behalf of a minor.

85 (6) "Health care facility" means a hospital, nursing home,  
86 hospice, home health agency, or health maintenance organization  
87 licensed in this state, or any facility subject to part I of  
88 chapter 394.

89 (7) "Health care provider" or "provider" means any person  
90 licensed, certified, or otherwise authorized by law to  
91 administer health care in the ordinary course of business or  
92 practice of a profession.

93 (8) "Incapacity" or "incompetent" means the patient is  
94 physically ~~or mentally~~ unable to communicate a willful and  
95 knowing health care decision or lacks the mental ability, based  
96 on reasonable medical judgment, to understand or appreciate the  
97 nature and consequences of a treatment decision, including the  
98 significant benefits and harms of and reasonable alternatives to  
99 a proposed treatment decision. For the purposes of making an  
100 anatomical gift, the term also includes a patient who is  
101 deceased.

102 (9) "Informed consent" means consent voluntarily given by  
103 a person after a sufficient explanation and disclosure of the  
104 subject matter involved to enable that person to have a general  
105 understanding of the treatment or procedure and the medically  
106 acceptable alternatives, including the substantial risks and  
107 hazards inherent in the proposed treatment or procedures, and to  
108 make a knowing health care decision without coercion or undue  
109 influence.

110 (10) "Life-prolonging procedure" means any medical  
111 procedure, treatment, or intervention, including artificially  
112 provided sustenance and hydration, which sustains, restores, or

113 | supplants a spontaneous vital function. The term does not  
 114 | include the administration of medication or performance of  
 115 | medical procedure, when such medication or procedure is deemed  
 116 | necessary to provide comfort care or to alleviate pain.

117 |       (11) "Living will" or "declaration" means:

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

120 |           (b) A witnessed oral statement made by the principal  
 121 | expressing the principal's instructions concerning life-  
 122 | prolonging procedures.

123 |       (12) "Medically futile condition" means a condition,  
 124 | injury, or illness which is determined by the treating physician  
 125 | or physicians that:

126 |           (a) May be treated but is never cured or eliminated.

127 |           (b) Leaves a person unable to care for, or make decisions  
 128 | for, the person's own self.

129 |           (c) Would be fatal without life-sustaining treatment  
 130 | provided in accordance with the prevailing standard of medical  
 131 | care.

132 |       ~~(13)~~(12) "Persistent vegetative state" means a permanent  
 133 | and irreversible condition of unconsciousness in which there is:

134 |           (a) The absence of voluntary action or cognitive behavior  
 135 | of any kind.

136 |           (b) An inability to communicate or interact purposefully  
 137 | with the environment.

138 |       ~~(14)~~(13) "Physician" means a person licensed pursuant to  
 139 | chapter 458 or chapter 459.

140 |       ~~(15)~~(14) "Principal" means a competent adult executing an

141 advance directive and on whose behalf health care decisions are  
 142 to be made.

143 ~~(16)~~~~(15)~~ "Proxy" means a competent adult who has not been  
 144 expressly designated to make health care decisions for a  
 145 particular incapacitated individual, but who, nevertheless, is  
 146 authorized pursuant to s. 765.401 to make health care decisions  
 147 for such individual.

148 ~~(17)~~~~(16)~~ "Surrogate" means any competent adult expressly  
 149 designated by a principal to make health care decisions on  
 150 behalf of the principal upon the principal's incapacity.

151 ~~(18)~~~~(17)~~ "Terminal condition" means an incurable a  
 152 condition, as determined by the treating physician or  
 153 physicians, caused by injury, disease, or illness that according  
 154 to reasonable medical judgment will produce death within 6  
 155 months, even with available life-sustaining treatment provided  
 156 in accordance with the prevailing standard of medical care. A  
 157 patient who has been admitted to a program under which the  
 158 person receives hospice services provided by a home or community  
 159 support services agency is presumed to have a terminal condition  
 160 for purposes of this chapter ~~from which there is no reasonable~~  
 161 ~~medical probability of recovery and which, without treatment,~~  
 162 ~~can be expected to cause death.~~

163 Section 2. Subsection (1) of section 765.302, Florida  
 164 Statutes, is amended to read:

165 765.302 Procedure for making a living will; notice to  
 166 physician.--

167 (1) Any competent adult may, at any time, make a living  
 168 will or written declaration and direct the providing,

169 withholding, or withdrawal of life-prolonging procedures in the  
 170 event that such person has a terminal condition, a medically  
 171 futile condition, or ~~has~~ an end-stage condition, or is in a  
 172 persistent vegetative state. A living will must be signed by the  
 173 principal in the presence of two subscribing witnesses, one of  
 174 whom is neither a spouse nor a blood relative of the principal.  
 175 If the principal is physically unable to sign the living will,  
 176 one of the witnesses must subscribe the principal's signature in  
 177 the principal's presence and at the principal's direction.

178 Section 3. Section 765.303, Florida Statutes, is amended  
 179 to read:

180 765.303 Suggested form of a living will.--

181 (1) A living will may, BUT NEED NOT, be in the following  
 182 form:

183 Living Will

184 Declaration made this \_\_\_\_ day of \_\_\_\_\_, (year) , I,  
 185 \_\_\_\_\_, willfully and voluntarily make known my desire that  
 186 my dying not be artificially prolonged under the circumstances  
 187 set forth below, and I do hereby declare that, if at any time I  
 188 am incapacitated and

- 189 (initial) I have a terminal condition
- 190 or (initial) I have a medically futile condition
- 191 or (initial) I have an end-stage condition
- 192 or (initial) I am in a persistent vegetative state

193  
 194 and if my attending or treating physician and another consulting  
 195 physician have determined that there is no reasonable medical  
 196 probability of my recovery from such condition, I direct that

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197 life-prolonging procedures be withheld or withdrawn when the  
 198 application of such procedures would serve only to prolong  
 199 artificially the process of dying, and that I be permitted to  
 200 die naturally with only the administration of medication or the  
 201 performance of any medical procedure deemed necessary to provide  
 202 me with comfort care or to alleviate pain.

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

207 In the event that I have been determined to be unable to  
 208 provide express and informed consent regarding the withholding,  
 209 withdrawal, or continuation of life-prolonging procedures, I  
 210 wish to designate, as my surrogate to carry out the provisions  
 211 of this declaration:

212  
 213 Name:

214 Address:

215

\_\_\_\_\_ Zip Code: \_\_\_\_\_

216

217 Phone: \_\_\_\_\_

218 I understand the full import of this declaration, and I am  
 219 emotionally and mentally competent to make this declaration.

220 Additional Instructions (optional):

221 \_\_\_\_\_ (Signed) \_\_\_\_\_

222 \_\_\_\_\_ Witness \_\_\_\_\_



223 \_\_\_\_\_Address\_\_\_\_\_

224 \_\_\_\_\_Phone\_\_\_\_\_

225 \_\_\_\_\_Witness\_\_\_\_\_

226 \_\_\_\_\_Address\_\_\_\_\_

227 \_\_\_\_\_Phone\_\_\_\_\_

228 (2) The principal's failure to designate a surrogate shall  
 229 not invalidate the living will.

230 Section 4. Subsection (2) of section 765.304, Florida  
 231 Statutes, is amended to read:

232 765.304 Procedure for living will.--

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

235 (a) The principal does not have a reasonable medical  
 236 probability of recovering capacity so that the right could be  
 237 exercised directly by the principal.

238 (b) The principal has a terminal condition, a medically  
 239 futile condition, or ~~has~~ an end-stage condition, or is in a  
 240 persistent vegetative state.

241 (c) Any limitations or conditions expressed orally or in a  
 242 written declaration have been carefully considered and  
 243 satisfied.

244 Section 5. Subsection (2) of section 765.305, Florida  
 245 Statutes, is amended to read:

246 765.305 Procedure in absence of a living will.--

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

249 (a) The patient does not have a reasonable medical  
 250 probability of recovering capacity so that the right could be  
 251 exercised by the patient.

252 (b) The patient has an end-stage condition, the patient is  
 253 in a persistent vegetative state, the patient has a medically  
 254 futile condition, or the patient's physical condition is  
 255 terminal.

256 Section 6. Section 765.3051, Florida Statutes, is created  
 257 to read:

258 765.3051 Execution of directive on behalf of patient less  
 259 than 18 years of age.--The following persons may execute a  
 260 health care advance directive on behalf of a patient who is less  
 261 than 18 years of age and has a terminal condition, a medically  
 262 futile condition, or an end-stage condition:

- 263 (1) The patient's spouse, if the spouse is an adult;
- 264 (2) The patient's parents; or
- 265 (3) The patient's legal guardian.

266 Section 7. Section 765.3052, Florida Statutes, is created  
 267 to read:

268 765.3052 Pregnant patients.--Regardless of whether a  
 269 patient has a health care advance directive, a person may not  
 270 withdraw or withhold life-sustaining treatment under this  
 271 chapter from a pregnant patient unless it is determined with  
 272 reasonable medical certainty that the fetus is no longer viable.

273 Section 8. Section 765.306, Florida Statutes, is amended  
 274 to read:

275 765.306 Determination of patient condition.--In  
 276 determining whether the patient has a terminal condition, a

277 medically futile condition, or ~~has~~ an end-stage condition, or is  
 278 in a persistent vegetative state or may recover capacity, or  
 279 whether a medical condition or limitation referred to in an  
 280 advance directive exists, the patient's attending or treating  
 281 physician and at least one other consulting physician must  
 282 separately examine the patient. The findings of each such  
 283 examination must be documented in the patient's medical record  
 284 and signed by each examining physician before life-prolonging  
 285 procedures may be withheld or withdrawn.

286 Section 9. Section 765.3061, Florida Statutes, is created  
 287 to read:

288 765.3061 Health care advance directive notation as part of  
 289 driver's license or identification card process.--

290 (1) The Department of Highway Safety and Motor Vehicles  
 291 shall develop and implement a voluntary program allowing an  
 292 individual who has previously executed a health care advance  
 293 directive form to have, at the individual's choice, included on  
 294 his or her driver's license or identification card upon issuance  
 295 or renewal of the license or card a notation on the front of the  
 296 license or card clearly indicating that the individual has  
 297 executed a health care advance directive which is in the  
 298 individual's possession or is in the possession of another  
 299 person being held on the individual's behalf. An individual is  
 300 not required to produce a copy of his or her health care advance  
 301 directive as a condition of having a notation on the  
 302 individual's driver's license or identification card. An  
 303 individual must only indicate to the employee of the department  
 304 who is preparing the issuance or renewal of the card the

305 individual's desire to have the notation on his or her driver's  
 306 license or identification card.

307 (2) Sample forms consistent with this chapter that relate  
 308 to the execution of a health care advance directive shall be  
 309 made available to the public at all offices of the Division of  
 310 Driver Licenses, as well as electronically on the Internet  
 311 through the Department of Highway Safety and Motor Vehicles and  
 312 the Agency for Health Care Administration.

313 Section 10. Section 765.3064, Florida Statutes, is created  
 314 to read:

315 765.3064 Immunity from liability.--

316 (1) Unless provided with information or documentation to  
 317 the contrary, a health care facility, health care provider, or  
 318 any other person acting under the direction of a health care  
 319 facility or health care provider carrying out a health care  
 320 decision made in accordance with a health care advance directive  
 321 executed in accordance with the provisions of this chapter is  
 322 not subject to criminal prosecution or civil liability and will  
 323 not be deemed to have engaged in unprofessional conduct.

324 (2) The Department of Highway Safety and Motor Vehicles  
 325 and any employees acting within the scope of their employment  
 326 are immune from criminal prosecution and civil liability for any  
 327 acts or notations recorded in compliance with the provisions of  
 328 this chapter.

329 Section 11. This act shall take effect September 1, 2005.