

By Senator Crist

12-1583A-05

See HB 1345

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23 not have life-sustaining treatment withdrawn or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

1 individual's health care advance directive
2 relative to life-prolonging procedures on the
3 individual's driver's license or identification
4 card upon request; providing that an individual
5 is not required to provide a copy of a health
6 care advance directive to have a notation on
7 his or her driver's license or identification
8 card; requiring the Division of Driver Licenses
9 offices to make forms available to the public;
10 requiring the Department of Highway Safety and
11 Motor Vehicles and the Agency for Health Care
12 Administration to make sample forms accessible
13 electronically on the Internet; creating s.
14 765.3064, F.S.; providing certain health care
15 employees with civil and criminal immunity from
16 acts performed in conjunction with certain
17 information indicated by the department;
18 expressing the sovereign immunity of the
19 department and its employees from criminal
20 prosecution and civil liability for certain
21 acts; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 765.101, Florida Statutes, is
26 amended to read:

27 765.101 Definitions.--As used in this chapter:

28 (1) "Advance directive" means a witnessed written
29 document or oral statement in which instructions are given by
30 a principal or in which the principal's desires are expressed
31 concerning any aspect of the principal's health care, and

1 includes, but is not limited to, the designation of a health
2 care surrogate, a living will, or an anatomical gift made
3 pursuant to part X of chapter 732.

4 (2) "Attending physician" means the primary physician
5 who has responsibility for the treatment and care of the
6 patient.

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

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

21 (5) "Health care decision" means:

22 (a) Informed consent, refusal of consent, or
23 withdrawal of consent to any and all health care, including
24 life-prolonging procedures.

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

28 (c) The right of access to all records of the
29 principal reasonably necessary for a health care surrogate to
30 make decisions involving health care and to apply for
31 benefits.

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

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

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

9 (7) "Health care provider" or "provider" means any
10 person licensed, certified, or otherwise authorized by law to
11 administer health care in the ordinary course of business or
12 practice of a profession.

13 (8) "Incapacity" or "incompetent" means the patient is
14 physically ~~or mentally~~ unable to communicate a willful and
15 knowing health care decision or lacks the mental ability,
16 based on reasonable medical judgment, to understand or
17 appreciate the nature and consequences of a treatment
18 decision, including the significant benefits and harms of and
19 reasonable alternatives to a proposed treatment decision. For
20 the purposes of making an anatomical gift, the term also
21 includes a patient who is deceased.

22 (9) "Informed consent" means consent voluntarily given
23 by a person after a sufficient explanation and disclosure of
24 the subject matter involved to enable that person to have a
25 general understanding of the treatment or procedure and the
26 medically acceptable alternatives, including the substantial
27 risks and hazards inherent in the proposed treatment or
28 procedures, and to make a knowing health care decision without
29 coercion or undue influence.

30 (10) "Life-prolonging procedure" means any medical
31 procedure, treatment, or intervention, including artificially

1 provided sustenance and hydration, which sustains, restores,
2 or supplants a spontaneous vital function. The term does not
3 include the administration of medication or performance of
4 medical procedure, when such medication or procedure is deemed
5 necessary to provide comfort care or to alleviate pain.

6 (11) "Living will" or "declaration" means:

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

9 (b) A witnessed oral statement made by the principal
10 expressing the principal's instructions concerning
11 life-prolonging procedures.

12 (12) "Medically futile condition" means a condition,
13 injury, or illness which is determined by the treating
14 physician or physicians that:

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

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

18 (c) Would be fatal without life-sustaining treatment
19 provided in accordance with the prevailing standard of medical
20 care.

21 ~~(13)~~~~(12)~~ "Persistent vegetative state" means a
22 permanent and irreversible condition of unconsciousness in
23 which there is:

24 (a) The absence of voluntary action or cognitive
25 behavior of any kind.

26 (b) An inability to communicate or interact
27 purposefully with the environment.

28 ~~(14)~~~~(13)~~ "Physician" means a person licensed pursuant
29 to chapter 458 or chapter 459.

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1 ~~(15)~~~~(14)~~ "Principal" means a competent adult executing
2 an advance directive and on whose behalf health care decisions
3 are to be made.

4 ~~(16)~~~~(15)~~ "Proxy" means a competent adult who has not
5 been expressly designated to make health care decisions for a
6 particular incapacitated individual, but who, nevertheless, is
7 authorized pursuant to s. 765.401 to make health care
8 decisions for such individual.

9 ~~(17)~~~~(16)~~ "Surrogate" means any competent adult
10 expressly designated by a principal to make health care
11 decisions on behalf of the principal upon the principal's
12 incapacity.

13 ~~(18)~~~~(17)~~ "Terminal condition" means an incurable a
14 condition, as determined by the treating physician or
15 physicians, caused by injury, disease, or illness that
16 according to reasonable medical judgment will produce death
17 within 6 months, even with available life-sustaining treatment
18 provided in accordance with the prevailing standard of medical
19 care. A patient who has been admitted to a program under which
20 the person receives hospice services provided by a home or
21 community support services agency is presumed to have a
22 terminal condition for purposes of this chapter from which
23 ~~there is no reasonable medical probability of recovery and~~
24 ~~which, without treatment, can be expected to cause death.~~

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

27 765.302 Procedure for making a living will; notice to
28 physician.--

29 (1) Any competent adult may, at any time, make a
30 living will or written declaration and direct the providing,
31 withholding, or withdrawal of life-prolonging procedures in

1 | the event that such person has a terminal condition, a
2 | medically futile condition, or ~~has~~ an end-stage condition, or
3 | is in a persistent vegetative state. A living will must be
4 | signed by the principal in the presence of two subscribing
5 | witnesses, one of whom is neither a spouse nor a blood
6 | relative of the principal. If the principal is physically
7 | unable to sign the living will, one of the witnesses must
8 | subscribe the principal's signature in the principal's
9 | presence and at the principal's direction.

10 | Section 3. Section 765.303, Florida Statutes, is
11 | amended to read:

12 | 765.303 Suggested form of a living will.--

13 | (1) A living will may, BUT NEED NOT, be in the
14 | following form:

15 | Living Will

16 | Declaration made this day of, ...(year)...,
17 | I,, willfully and voluntarily make known my desire
18 | that my dying not be artificially prolonged under the
19 | circumstances set forth below, and I do hereby declare that,
20 | if at any time I am incapacitated and

21 | ...(initial)... I have a terminal condition
22 | or ...(initial)... I have a medically futile condition
23 | or ...(initial)... I have an end-stage condition
24 | or ...(initial)... I am in a persistent vegetative
25 | state

26 |
27 | and if my attending or treating physician and another
28 | consulting physician have determined that there is no
29 | reasonable medical probability of my recovery from such
30 | condition, I direct that life-prolonging procedures be
31 | withheld or withdrawn when the application of such procedures

1 | would serve only to prolong artificially the process of dying,
2 | and that I be permitted to die naturally with only the
3 | administration of medication or the performance of any medical
4 | procedure deemed necessary to provide me with comfort care or
5 | to alleviate pain.

6 | It is my intention that this declaration be honored by
7 | my family and physician as the final expression of my legal
8 | right to refuse medical or surgical treatment and to accept
9 | the consequences for such refusal.

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

15 |
16 | Name:.....
17 | Address:.....
18 | Zip Code:.....
19 | Phone:.....

20 | I understand the full import of this declaration, and I
21 | am emotionally and mentally competent to make this
22 | declaration.

23 | Additional Instructions (optional):
24 |
25 |
26 |

27 | (Signed)....
28 | Witness....
29 | Address....
30 | Phone....
31 | Witness....

1 Section 6. Section 765.3051, Florida Statutes, is
2 created to read:

3 765.3051 Execution of directive on behalf of patient
4 less than 18 years of age.--The following persons may execute
5 a health care advance directive on behalf of a patient who is
6 less than 18 years of age and has a terminal condition, a
7 medically futile condition, or an end-stage condition:

8 (1) The patient's spouse, if the spouse is an adult;

9 (2) The patient's parents; or

10 (3) The patient's legal guardian.

11 Section 7. Section 765.3052, Florida Statutes, is
12 created to read:

13 765.3052 Pregnant patients.--Regardless of whether a
14 patient has a health care advance directive, a person may not
15 withdraw or withhold life-sustaining treatment under this
16 chapter from a pregnant patient unless it is determined with
17 reasonable medical certainty that the fetus is no longer
18 viable.

19 Section 8. Section 765.306, Florida Statutes, is
20 amended to read:

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

1 Section 9. Section 765.3061, Florida Statutes, is
2 created to read:

3 765.3061 Health care advance directive notation as
4 part of driver's license or identification card process.--

5 (1) The Department of Highway Safety and Motor
6 Vehicles shall develop and implement a voluntary program
7 allowing an individual who has previously executed a health
8 care advance directive form to have, at the individual's
9 choice, included on his or her driver's license or
10 identification card upon issuance or renewal of the license or
11 card a notation on the front of the license or card clearly
12 indicating that the individual has executed a health care
13 advance directive which is in the individual's possession or
14 is in the possession of another person being held on the
15 individual's behalf. An individual is not required to produce
16 a copy of his or her health care advance directive as a
17 condition of having a notation on the individual's driver's
18 license or identification card. An individual must only
19 indicate to the employee of the department who is preparing
20 the issuance or renewal of the card the individual's desire to
21 have the notation on his or her driver's license or
22 identification card.

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

29 Section 10. Section 765.3064, Florida Statutes, is
30 created to read:

31 765.3064 Immunity from liability.--

1 (1) Unless provided with information or documentation
2 to the contrary, a health care facility, health care provider,
3 or any other person acting under the direction of a health
4 care facility or health care provider carrying out a health
5 care decision made in accordance with a health care advance
6 directive executed in accordance with the provisions of this
7 chapter is not subject to criminal prosecution or civil
8 liability and will not be deemed to have engaged in
9 unprofessional conduct.

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

15 Section 11. This act shall take effect September 1,
16 2005.