HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 701 CS Artificially Provided Sustenance or Hydration
SPONSOR(S): Baxley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	7 Y, 4 N, w/CS	Hamrick	Mitchell
2) Judiciary Committee	9 Y, 2 N, w/CS	Thomas	De La Paz
3) Health & Families Council	7 Y, 3 N	Hamrick	Moore
4)			
5)			

SUMMARY ANALYSIS

The bill prohibits the withdrawal or the withholding of artificially provided sustenance or hydration from a person in a persistent vegetative state. The prohibition would not apply to a person who has executed a written advance directive, a written living will, or a written designation of a health care surrogate that authorizes the withdrawal or withholding of life-prolonging procedures. The prohibition also would not apply when there is clear and convincing evidence that the person, prior to entering a persistent vegetative state, expressly directed or instructed the withdrawing or withholding artificially provided sustenance or hydration.

In addition to the above situations where the patient has provided direction, the prohibition would not apply if, in the reasonable medical judgment of the person's attending physician and a second consulting physician, and in consultation with the medical ethics committee of the facility where the person is located, maintenance of artificially provided sustenance or hydration:

- Is not medically possible;
- Would hasten death;
- Would cause severe, intractable or significant long-lasting pain;
- Would not contribute to sustaining life;
- Would not provide comfort ; or
- When, in the reasonable medical judgment of the person's attending physician and a second consulting physician, death is imminent; even with the artificial provision of sustenance or hydration, the person will die within a reasonably short period of time due to a terminal illness or injury; and the purpose of withdrawing or withholding artificially provided sustenance or hydration is not to cause death by starvation or dehydration.

The bill provides that any interested party may, at any time and based on the prohibition provided by the bill, petition a court of competent jurisdiction to prevent the withholding or withdrawal of artificially provided sustenance or hydration.

The bill provides that its provisions are remedial and apply to every person alive on the effective date of the bill. The bill expressly establishes that it is the intent of the Legislature and the policy of the state to apply the bill's provisions to all situations in which a person is in a persistent vegetative state on or after the effective date of the bill.

The bill has an indeterminate fiscal impact on government and the private sector.

The bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill places limitations on end-of-life decisions.

Safeguard individual liberty - The bill preserves life while eliminating substituted judgment in cases where incompetent persons have not expressly authorized a refusal of artificially provided sustenance or hydration. The bill preserves the authority of each individual to direct his or her own medical treatment by way of living will, advance directive, and appointment of a health care surrogate, or by express direction or instruction.

Promote personal responsibility - The bill may encourage individuals to complete advance directives and living wills that specify their wishes concerning the withholding or withdrawing of artificially provided sustenance or hydration.

Empower families - The bill reduces the instances where families will have responsibility or authority to refuse artificially provided sustenance or hydration on behalf of their loved ones.

B. EFFECT OF PROPOSED CHANGES:

PROPOSED CHANGES

The bill prohibits the withdrawal or the withholding of artificially provided sustenance or hydration from a person in a persistent vegetative state. The prohibition would not apply to a person who has executed a written advance directive, a written living will, or a written designation of a health care surrogate that authorizes the withdrawal or withholding of life-prolonging procedures. The prohibition also would not apply when there is clear and convincing evidence that the person, prior to entering a persistent vegetative state, expressly directed or instructed the withdrawing or withholding artificially provided sustenance or hydration.

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If, for purposes of making the above determinations requiring consultation with a medical ethics committee, the medical facility where the patient is located does not have a medical ethics committee, then the facility must have an arrangement with the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bioethics Network. Individual committee members and the facility associated with the medical ethics committee may not be held liable in any

civil action related to the performance any duties under this bill regarding the withholding or withdrawing of artificially provided sustenance or hydration.

The bill provides that any interested party may, at any time and based on the prohibition provided by the bill, petition a court of competent jurisdiction to prevent the withholding or withdrawal of artificially provided sustenance or hydration.

The bill provides that its provisions are remedial and apply to every person alive on the effective date of the bill. The bill expressly establishes that it is the intent of the Legislature and the policy of the state to apply the bill's provisions to all situations in which a person is in a persistent vegetative state on or after the effective date of the bill.

The bill takes effect upon becoming law.

CURRENT SITUATION

Federal and state statutory and case laws provide that each legally competent adult person has the right to make decisions about the amount, duration, and type of medical treatment they wish to receive, including the right to refuse or to discontinue medical treatment.[1] The State Supreme Court has recognized four state interests that might, on a case by case basis, override this constitutional right with respect to health care decisions that would result in the person's death: 1) preservation of life; 2) the protection of innocent third parties; 3) the prevention of suicide; and 4) maintenance of the ethical integrity of the medical profession.[2]

In 1998, the Legislature established the Panel for the Study of End-of-Life Care consisting of a cross-section of experts and interested parties to conduct a study on end-of-life care. The panel endorsed the right to refuse medical treatment; the patient's right to make decisions about his or her care when he or she is no longer capable of decision making; and that these rights extend to competent and incompetent persons alike.

Health Care Advance Directives

An advance directive is a witnessed written document or oral statement in which instructions are given by a principal[3] or in which the principal's desires are expressed concerning any aspect of the principal's health care, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to the laws of Florida.[4] Such directives may be made in advance through oral statements made to others or through a living will or other written directive that expresses the person's wishes.[5] The decision is typically made in general terms because the precise kind of medical treatment cannot be specified without making the advance directive so specific that it runs the risk of failing to apply to various possible situations.

A patient has the right to refuse or accept medical treatment, but the advance directive must specifically state the patient's wishes. An advance directive only goes into effect when the patient is unable to make his or her own decisions.

[1] *Satz v. Perlmutter*, 379 So.2d 359 (Fla. 1980)(the right of a competent, but terminally ill person, to refuse medical treatment); *John F. Kennedy Memorial Hospital, Inc. v. Bludworth*, 452 So.2d 921 (Fla. 1984)(the right of an incapacitated ("incompetent") terminally ill person to refuse medical treatment); *Wons v. Public Health Trust of Dade County*, 541 So.2d 96 (Fla. 1989)(the right of a competent but not terminally ill person to refuse medical treatment); *In re Guardianship of Browning*, 568 So.2d 4 (Fla. 1990)(the right of an incapacitated but not terminally ill person to refuse medical treatment). See also, *Cruzan v. Director, Missouri Department Of Health*, 497 U.S. 261, 110 S.Ct. 2841 (1990).
[2] *In re Guardianship of Browning*, 568 So.2d 4, 14 (Fla. 1990).
[3] The *principal* is the person executing or creating the directive.
[4] See s. 765.101, F.S.
[5] See Part III, Ch. 765, F.S.

The American Medical Association lists the following examples of patient wishes that could be included in advance directives as treatment avoidance orders:

- Do Not Resuscitate (DNR);
- Full Comfort Care Only (FCCO);
- Do Not Intubate (DNI); Do Not Defibrillate (DND);
- Do Not Leave Home (DNLH); Do Not Transfer (DNT);
- No Feeding Tube (NFT); No Vital Signs (NVS);
- No Blood Draws (NBD); and
- Do Not Treat (DNT).

Living Will

A "living will" is a witnessed document in writing voluntarily executed by the principal in accordance with current law, or an oral statement that expresses the principal's instructions concerning life-prolonging procedures.[6] A competent adult may make a living will or written declaration and direct the withholding or withdrawal of life-prolonging procedures in the event that such a person is diagnosed as having one of the following conditions[7]:

- An end-stage condition, which is an irreversible condition that is caused by injury, disease, or illness that has resulted in progressively severe and permanent deterioration, and that, to a reasonable degree of medical probability, treatment of the condition would be ineffective.[8]

- A persistent vegetative state, which is a permanent and irreversible condition of unconsciousness in which there is an absence of voluntary action or cognitive behavior, and an inability to communicate or interact purposefully with the environment.[9]

- A terminal condition, which is a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.[10]

A living will must be signed by the principal in the presence of two witnesses where one cannot be a spouse or a blood relative. In the event that a principal is unable to sign the living will, a witness may sign on the principal's behalf in accordance with existing law.

If a health care provider does not wish to carry out the treatment decisions of a patient or otherwise comply with the patient's wishes regarding life-prolonging procedures, the patient may be transferred to another health care provider.[11]

Health Care Guardian, Surrogate, or Proxy

Health Care Guardian

The court appointment of guardians has long been the traditional arrangement for providing decision making authority for a person who has become incapacitated. A guardian may be authorized to make all decisions for a ward, including health care decisions, and may do so on the basis of the ward's best interests, however, the process is oftentimes cumbersome, time-consuming, and expensive. The use of a health care surrogate entails a simpler process.

[6] See s. 765.101, F.S.
[7] See s. 765.302, F.S.
[8] See s. 765.101, F.S.
[9] See s. 765.101, F.S.
[10] See s. 765.101, F.S.
[11] See s. 765.308, F.S.

Health Care Surrogate

A health care surrogate allows a person, prior to incapacity, to designate someone to act on his or her behalf after he or she becomes incapacitated. A health care surrogate is limited to making only health care decisions and to making decisions based on what he or she has been instructed to do or believes the principal would have done (substituted judgment).[12] The designation must be in writing and witnessed by two adults and signed by the principal, or alternatively, another person to sign on the principal's behalf if the principal is unable to sign the instrument.[13]

Where a living will provides a presumption of clear and convincing evidence of the patient's wishes, additional conditions must be met by the health care surrogate exercising an incompetent person's right to forgo treatment. They include:

1) A determination that the patient does not have a reasonable probability of recovering competency so that the right can be directly exercised by the patient; and
2) Any limitations or conditions expressed orally or in the living will, have been carefully considered and satisfied.

Health Care Proxy

Section 765.401, F.S., states that a proxy can be used if there is no advance directive designated or available health care surrogate. A proxy may be selected from a list of specified persons in the following order of priority:

- A judicially appointed guardian;
- Patient's spouse;
- Adult child or majority of adult children of parent;
- Parent of the patient;
- Adult sibling or majority of adult sibling of patient;
- Adult relative with knowledge and prior care and concern of patient;
- Close friend of the patient; or
- Social worker[14] or a graduate of a court-approved guardianship program that is approved by the providers Bioethics committee, which can't be employed by the provider.

A proxy must comply with the same provisions as a health care surrogate. However, the proxy's health care decisions must either be supported by a written declaration evidencing the patient's desire for such an action, or if there is no written declaration, determining what is in the best interest of the patient. Special provisions exist for persons in a persistent vegetative state or a developmentally disabled patient who has not executed an advance directive, or designated a surrogate. If the proxy is a judicially appointed guardian who is not a family or friend, the guardian and the attending physician in consultation with the medical ethics committee of the facility where the patient is located, must conclude the condition is permanent and that there is no reasonable medical probability of recovery.

Conflicts Concerning Health Care Decisions

Section 765.305, F.S., requires that in the event of a dispute or disagreement concerning the attending physician's decision to withhold or withdraw life-prolonging procedures, the attending physician shall not withhold or withdraw life-prolonging procedures until the case is reviewed.

[12] See s. 765.205, F.S.
[13] See s. 765.202, F.S.
[14] See s.765.401, F.S.

Currently, s. 765.105, F.S., provides that in the event that a conflict arises concerning the attending physician, health care facility, family, or other interested parties, a judicial intervention may be sought if a person believes:

- The surrogate or proxy's decision is not in accord with the patient's known desires or the provisions of this chapter;
- The advance directive is ambiguous, or the patient has changed his or her mind after execution of the advance directive;
- The surrogate or proxy was improperly designated or appointed, or the designation of the surrogate is no longer effective or has been revoked;
- The surrogate or proxy has failed to discharge their duties, or incapacity or illness renders the surrogate or proxy incapable of discharging their duties;
- The surrogate or proxy has abused powers; or
- The patient has sufficient capacity to make his or her own health care decisions.

Medical Procedures and the Decision Making Process on Withholding or Withdrawing Life Prolonging Procedures

Section 765.306, F.S., requires that in determining whether the patient has a terminal condition, has an end-stage condition, or is in a persistent vegetative state, may recover capacity or whether a medical condition or limitation referred to in an advance directive exists, the patient's attending or treating physician and at least one other consulting physician must separately examine the patient. The findings of each such examination must be documented in the patient's medical record and signed by each examining physician before life-prolonging procedures may be withheld or withdrawn.

Section 765.404, F.S., states that in the event that a patient in a persistent vegetative state does not have an advance directive or a person willing to act as a proxy, and there is no evidence as to what the patient would have wanted under such conditions, life-prolonging procedures may be withheld or withdrawn in the following circumstances:

- The person has a judicially appointed guardian representing his or her best interest with authority to consent to medical treatment; and

- The guardian and the person's attending physician, in consultation with the medical ethics committee of the facility where the patient is located, conclude that the condition is permanent and that there is no reasonable medical probability for recovery and that withholding or withdrawing life-prolonging procedures is in the best interest of the patient.

- In the event that a facility does not have a medical ethics committee[15], the facility must have an arrangement with the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bioethics Network.[16]

[15] Currently s. 765.404, F.S., states that decisions concerning life-prolonging procedures should be made in consultation with an ethics committee. Generally, an ethics process addresses the following 3 areas: education, policy creation and review, and consultation. Hospitals that are accredited by the Joint Commission on Accreditation for Healthcare Organizations are required to follow standards related to organizational ethics, which include ethical behavior in care, treatment, and services; the integrity of decisions based these behaviors; and compliance with patient rights. Members of a medical ethics committee for a hospital include physicians, allied professionals and laypersons.

[16] Members of the Florida Bioethics Network (FBN) are mostly health professionals, but also include clergy and attorneys. The Network's Executive Advisory Committee is made up of the directors of the state's medical school ethics programs. In practice, many end-of-life care discussions focus on patients' values and treatment goals rather than on predictions of precise medical conditions and treatment. FBN members have adopted a process very much like that of clinical case consulting in health care organizations:

- Collection of information (talking to principals, assessing key documents, etc.)
- Ethical analysis based on core principals and values relating to valid consent, privacy, justice, access, etc.
- Formulation of recommendations and alternatives.

According to members of the FBN, many incapacitated patients, especially those in a permanent vegetative state, cannot experience hunger, thirst or satiation. While withdrawal of nutrition and hydration is thought of as being uncomfortable or painful, research does not support this and finds that lack of nutrition and hydration may serve as an analgesic for dying patients.

- The ethics committee shall review the case with the guardian, in consultation with the person's attending physician, to determine whether the condition is permanent and there is no reasonable medical probability for recovery. The individual committee members and the facility associated with an ethics committee shall not be held liable in any civil action related to the performance of any duties required in this subsection.

Standards of Professional Conduct Relating to End-of-Life Decisions

There are many considerations involved in the decision to withhold or withdraw life sustaining treatment, including nutrition and hydration. On the one hand there is non-optional palliative care, including provision of nutrition and hydration, to relieve pain and discomfort. On the other hand there is optional medical treatment to prolong life, which a proxy or surrogate can refuse on the patients' behalf. There are different views as to whether nutrition and hydration should be considered ordinary feeding by mouth or an invasive procedure requiring medical protocols for the insertion of a percutaneous endoscopic gastrostomey through the stomach wall. An individual's beliefs and morals heavily impact their health care decisions in these matters. The medical profession has developed several policy statements that help address these issues.

The American Medical Association's Principles and Policy Statements

The principles of the American Medical Association (AMA) serve as standards of conduct which define the essentials of honorable behavior for a physician. The AMA recognizes that in making decisions regarding the treatment of persons who are severely disabled by injury or illness, the primary consideration should be what is best for the individual patient and not the avoidance of a burden to the family or to society. The AMA establishes that quality of life, as defined by the patients' interests and values, is a factor to be considered in determining what is best for the individual. It is permissible to consider quality of life when deciding about life-sustaining treatment.

The AMA's Council on Ethical and Judicial Affairs defines life-sustaining treatment as any treatment that serves to prolong life without reversing the underlying medical condition. Life-sustaining treatment may include, but is not limited to, mechanical ventilation, renal dialysis, chemotherapy, antibiotics, and artificial nutrition and hydration. The AMA suggests that physicians should provide all relevant medical information and explain to surrogate decision makers that decisions regarding withholding or withdrawing life-sustaining treatment should be based on substituted judgment (what the patient would have decided) when there is evidence of the patient's preferences and values. In making a substituted judgment, decision makers may consider:

- The patient's advance directive (if any);
- The patient's values about life and the way it should be lived; and
- The patient's attitudes towards sickness, suffering, medical procedures, and death.

If there is not adequate evidence of an incompetent patient's preferences and values, the decision should be based on the best interests of the patient (what outcome would most likely promote the patient's well-being). Even if the patient is not terminally ill or permanently unconscious, it is not unethical to discontinue all means of life-sustaining medical treatment in accordance with a proper substituted judgment or best interest analysis.

American Academy of Hospice and Palliative Medicine Policies on Nutrition and Hydration and End-of-Life Care

The American Academy of Hospice and Palliative Medicine (AAHPM) recognizes that dying is an expected natural process in the human life cycle. Hydration and nutrition are traditionally considered useful and necessary components of good medical care. Their intent is to benefit the patient.

However, when a person is approaching death, the provision of artificial hydration and nutrition is potentially harmful and may provide little or no benefit to the patient and at times may make the period of dying more uncomfortable for both the patient and family. For this reason, the AAHPM believes that the withholding of artificial hydration and nutrition near the end of life may be appropriate and beneficial medical care. Clinical judgment and skill in assessment of individual clinical situations is necessary to determine when artificial hydration and nutrition are appropriate measures.

C. SECTION DIRECTORY:

The bill's preamble provides numerous whereas clauses that contain statements regarding the State's significant interests, findings, and intent relating to the policy area affected by this bill.

Section 1. Amends s. 765.401, F.S., relating to the proxy.

Section 2. Amends s. 765.404, F.S., relating to persistent vegetative state.

Section 3. Creates s. 765.405, F.S., relating to a prohibition against withholding or withdrawing artificially provided sustenance or hydration.

Section 4. Provides statements regarding the remedial and prospective application of the bill.

Section 5. Provides that the bill shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate; see "D. Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate; see "D. Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate; see "D. Fiscal Comments."

D. FISCAL COMMENTS:

The cost of increased reliance on artificially provided hydration and nutrition may increase overall health care expenditures. Patients that have not made an advance directive that specifically authorizes the withholding or withdrawal of nutrition and hydration may live longer and incur increased health care expenditures paid for by citizens and third party payers such as insurance companies, charities, and government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

The bill represents an exercise of governmental authority in a subject matter area limited by current precedents interpreting the 14th Amendment of the United States Constitution, and the Privacy Amendment, Article I, Section 17, of the Florida Constitution. There are no known state laws regulating end-of-life decisions that have been overturned by any court.[17] The case law tends to uphold statutory enactments, or to find statutory voids in which an exercise of constitutional or common law rights is permitted under judicial regulation.[18] In addition to its substantive provisions, the bill provides legislative intent and public policy findings that evidence compelling government interests sufficient to authorize some infringement on the right to self-determination in end-of-life decision making. The claims in the bill's preamble, evoke principles acknowledged in significant case law.[19]

Article II, Section 3, of Florida's Constitution provides, "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Legislation which interferes with the exercise of judicial authority is unconstitutional.[20] It is unclear whether the court's will use the provisions of this bill to disturb any existing final orders issued by the court prior to the effective date of this bill.

Comments have been made before the Health Care Regulation Committee and have been received by committee staff that the act of forced nutrition and hydration through invasive means, such as through the gastrointestinal tract, could be allowed by this bill, and therefore, might violate the religious tenets and practices of Christian Scientists. On the other hand, denial of nutrition and hydration could be contrary to the religious tenets and practices of other faiths. It does not appear that there is presently any statutory provision for implied or presumed consent to health care having a religious exception based upon membership in a religious order or group.

The general rule of statutory construction is that a substantive statute will not operate retrospectively absent clear legislative intent to the contrary, but a procedural or remedial statute can.[21] Substantive law either creates or imposes a new right, obligation, or duty, or expands, impairs, or destroys existing rights. The bill amends various provisions that may affect the duties or rights of individuals that may implicate some constitutional considerations.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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[17] See, Cruzan, 497 U.S. 261, 110 S.Ct. 2841.
[18] See, e.g., *In re Guardianship of Browning*, 568 So.2d 4.
[19] See *Cruzan*, *Sats,* 379 So.2d 359, and *Krischer v. McIver*, 697 So.2d 97 (Fla. 1997)
[20] *Simmons v. State*, 36 So.2d 207 (Fla. 1948). "This Court ... has traditionally applied a strict separation of powers doctrine," *State v. Cotton*, 769 So.2d 345, 353 (Fla.2000), and has explained that this doctrine "encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power." Chiles v. Children A, B, C, D, E, & F, 589 So.2d 260, 264 (Fla.1991).
[21] *See Alamo Renta-A-Car v. Mancusi*, 632 So.2d 1352, 1358 (Fla. 1994); *Life Care Centers v. Sawgrass Care Center*, 683 So.2d 609, 613 (Fla. 1st DCA 1996), citing State Farm Mutual Automobile Insurance Co. v. Laforest, 658 So.2d 55, 61 (Fla. 1995).

The relationship between “incompetent” and “incapacitated” is not apparent from the text of the bill. However, according to s. 765.101, F.S., for purposes of chapter 765, F.S., “incapacity” and “incompetent” both mean the patient is physically or mentally unable to communicate a willful and knowing health care decision.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2005, the Health Care Regulation Committee adopted nine amendments to the original bill as filed. These amendments were incorporated into the first Committee Substitute to this bill. The Committee Substitute by the Health Care Regulation Committee differed from the original bill as filed in that its Committee Substitute:

- Renamed the act to the “Starvation and Dehydration of Incompetent Persons Prevention Act”;
- Guaranteed the protections of the Act to all living persons;
- Provided for more situations in which nutrition and hydration may be withheld or withdrawn when death is imminent or provision of sustenance is harmful;
- Removed the term “specifically” when authorizing the withholding or withdrawal of nutrition and hydration by written directive or surrogate appointment so the provision preserves present living wills;
- Replaced the phrase “gave express and informed consent” with “expressly authorized” so that a person does not have to know all relevant facts at the time they authorize removal of nutrition and hydration;
- Added the requirement that a guardian or proxy must be present with the incompetent person for a period of time prior to withdrawing or withholding nutrition or hydration;
- Placed limitations on judicial authority and makes chapter 765, F.S., the exclusive authority for end-of-life decisions;
- Changed the current retroactive clause, to clarify the bill only applies to past health care decisions which have not been executed prior to the bill becomes law; and
- Added legislative findings and intent.

On March 14, 2005, the Judiciary Committee adopted a strike-all amendment. This amendment is incorporated into the second Committee Substitute to this bill. This analysis is drawn to the second Committee Substitute to the bill as passed by the Judiciary Committee. The Committee Substitute as passed by the Judiciary Committee differs from the Committee Substitute as passed by the Health Care Regulation Committee in that the Committee Substitute passed by the Judiciary Committee:

- Prohibits the withdrawal or the withholding of artificially provided sustenance or hydration from a person in a persistent vegetative state. Eliminates the presumptions in the earlier version of the bill in favor of the prohibition.
- Rewrites the whereas clauses in the bill.
- Revises the remedial and prospective application clause.
- Eliminates the definitions.