

CHAMBER ACTION

1 The Judiciary Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to artificially provided sustenance and
7 hydration; amending ss. 765.401 and 765.404, F.S.;
8 excluding the withholding or withdrawing of artificially
9 provided sustenance or hydration from certain authority to
10 make health care decisions; creating s. 765.405, F.S.;
11 prohibiting the withholding or withdrawing of artificially
12 provided sustenance or hydration from a person in a
13 persistent vegetative state in specific circumstances;
14 providing conditions under which the prohibition does not
15 apply; requiring consultation with an in-house or outside
16 medical ethics committee under certain conditions;
17 providing that certain individuals and facilities are not
18 liable for decisions relating to the withholding or
19 withdrawing of artificially provided sustenance or
20 hydration; authorizing interested persons to petition the
21 court to prevent the withholding or withdrawing of
22 artificially provided sustenance or hydration based upon
23 the prohibition; specifying that the act is remedial;

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24 | providing for application of the act; providing an
25 | effective date.

26 |
27 | WHEREAS, the Legislature fully recognizes, respects, and
28 | preserves the right of a person to express his or her health
29 | care decisions through means such as advance directives, living
30 | wills, and designations of health care surrogates, and

31 | WHEREAS, withholding or withdrawing artificially provided
32 | sustenance or hydration necessary to sustain life represents an
33 | action having the ultimate and profound consequence of death,
34 | and

35 | WHEREAS, a person in a persistent vegetative state is, at
36 | that time, unable to express his or her decision regarding
37 | withholding or withdrawing artificially provided sustenance or
38 | hydration, and

39 | WHEREAS, there are medically ethical reasons to withhold or
40 | withdraw artificially provided sustenance or hydration necessary
41 | to sustain life, and

42 | WHEREAS, the state has a compelling interest in providing
43 | standards and procedural safeguards relating to withholding or
44 | withdrawing artificially provided sustenance or hydration for a
45 | person who is in a persistent vegetative state and whose
46 | decisions are not expressed, NOW, THEREFORE,

47 |
48 | Be It Enacted by the Legislature of the State of Florida:

49 |
50 | Section 1. Subsections (1), (2), and (3) of section
51 | 765.401, Florida Statutes, are amended to read:

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52 | 765.401 The proxy.--

53 | (1) If an incapacitated or developmentally disabled
54 | patient has not executed an advance directive, or designated a
55 | surrogate to execute an advance directive, or the designated or
56 | alternate surrogate is no longer available to make health care
57 | decisions, health care decisions, other than the decision to
58 | withhold or withdraw artificially provided sustenance or
59 | hydration for a person in a persistent vegetative state, may be
60 | made for the patient by any of the following individuals, in the
61 | following order of priority, if no individual in a prior class
62 | is reasonably available, willing, or competent to act:

63 | (a) The judicially appointed guardian of the patient or
64 | the guardian advocate of the person having a developmental
65 | disability as defined in s. 393.063, who has been authorized to
66 | consent to medical treatment, if such guardian has previously
67 | been appointed; however, this paragraph shall not be construed
68 | to require such appointment before a treatment decision can be
69 | made under this subsection;

70 | (b) The patient's spouse;

71 | (c) An adult child of the patient, or if the patient has
72 | more than one adult child, a majority of the adult children who
73 | are reasonably available for consultation;

74 | (d) A parent of the patient;

75 | (e) The adult sibling of the patient or, if the patient
76 | has more than one sibling, a majority of the adult siblings who
77 | are reasonably available for consultation;

78 | (f) An adult relative of the patient who has exhibited
79 | special care and concern for the patient and who has maintained

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80 regular contact with the patient and who is familiar with the
81 patient's activities, health, and religious or moral beliefs; ~~or~~

82 (g) A close friend of the patient; or—

83 (h) A clinical social worker licensed pursuant to chapter
84 491, or who is a graduate of a court-approved guardianship
85 program. Such a proxy must be selected by the provider's
86 bioethics committee and must not be employed by the provider. If
87 the provider does not have a bioethics committee, then such a
88 proxy may be chosen through an arrangement with the bioethics
89 committee of another provider. The proxy will be notified that,
90 upon request, the provider shall make available a second
91 physician, not involved in the patient's care to assist the
92 proxy in evaluating treatment. Decisions to withhold or withdraw
93 life-prolonging procedures will be reviewed by the facility's
94 bioethics committee. Documentation of efforts to locate proxies
95 from prior classes must be recorded in the patient record.

96 (2) Any health care decision made under this part must be
97 based on the proxy's informed consent and on the decision the
98 proxy reasonably believes the patient would have made under the
99 circumstances. If there is no indication of what the patient
100 would have chosen, the proxy may consider the patient's best
101 interest in deciding that proposed treatments, other than
102 artificially provided sustenance or hydration for a person in a
103 persistent vegetative state, are to be withheld or that
104 treatments currently in effect are to be withdrawn.

105 (3) Before exercising the incapacitated patient's rights
106 to select or decline health care, the proxy must comply with the
107 provisions of ss. 765.205 and 765.305, except that a proxy's

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108 | decision to withhold or withdraw life-prolonging procedures,
109 | other than artificially provided sustenance or hydration for a
110 | person in a persistent vegetative state, must be supported by
111 | clear and convincing evidence that the decision would have been
112 | the one the patient would have chosen had the patient been
113 | competent or, if there is no indication of what the patient
114 | would have chosen, that the decision is in the patient's best
115 | interest.

116 | Section 2. Section 765.404, Florida Statutes, is amended
117 | to read:

118 | 765.404 Persistent vegetative state.--For persons in a
119 | persistent vegetative state, as determined by the attending
120 | physician in accordance with currently accepted medical
121 | standards, who have no advance directive and for whom there is
122 | no evidence indicating what the person would have wanted under
123 | such conditions, and for whom, after a reasonably diligent
124 | inquiry, no family or friends are available or willing to serve
125 | as a proxy to make health care decisions for them, life-
126 | prolonging procedures, other than artificially provided
127 | sustenance or hydration, may be withheld or withdrawn under the
128 | following conditions:

129 | (1) The person has a judicially appointed guardian
130 | representing his or her best interest with authority to consent
131 | to medical treatment; and

132 | (2) The guardian and the person's attending physician, in
133 | consultation with the medical ethics committee of the facility
134 | where the patient is located, conclude that the condition is
135 | permanent and that there is no reasonable medical probability

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136 for recovery and that withholding or withdrawing life-prolonging
137 procedures, other than artificially provided sustenance or
138 hydration, is in the best interest of the patient. If there is
139 no medical ethics committee at the facility, the facility must
140 have an arrangement with the medical ethics committee of another
141 facility or with a community-based ethics committee approved by
142 the Florida Bio-ethics Network. The ethics committee shall
143 review the case with the guardian, in consultation with the
144 person's attending physician, to determine whether the condition
145 is permanent and there is no reasonable medical probability for
146 recovery. The individual committee members and the facility
147 associated with an ethics committee shall not be held liable in
148 any civil action related to the performance of any duties
149 required in this subsection.

150 Section 3. Section 765.405, Florida Statutes, is created
151 to read:

152 765.405 Prohibition against withholding or withdrawing
153 artificially provided sustenance or hydration in specific
154 circumstances.--

155 (1) Artificially provided sustenance or hydration shall
156 not be withheld or withdrawn from a person in a persistent
157 vegetative state, except as provided in subsection (2).

158 (2) The prohibition in subsection (1) does not apply under
159 the conditions prescribed in paragraph (a), paragraph (b),
160 paragraph (c), or paragraph (d).

161 (a) A written advance directive, written living will, or
162 written designation of a health care surrogate prepared in

163 accordance with s. 765.202 authorizes withholding or withdrawing
 164 life-prolonging procedures, as defined in s. 765.101.

165 (b) Clear and convincing evidence exists that the person,
 166 while competent and prior to entering into a persistent
 167 vegetative state, expressly directed or instructed the
 168 withholding or withdrawing of artificially provided sustenance
 169 or hydration. For purposes of this section, this paragraph does
 170 not authorize the application of substituted judgment.

171 (c) In the reasonable medical judgment of the person's
 172 attending physician and a second consulting physician, and in
 173 consultation with the medical ethics committee of the facility
 174 where the person is located, maintenance of artificially
 175 provided sustenance or hydration:

- 176 1. Is not medically possible;
- 177 2. Would hasten death;
- 178 3. Would cause severe, intractable, or significant long-
 179 lasting pain to the person; or
- 180 4. Would not contribute to sustaining the person's life or
 181 providing comfort to the person.

182 (d) In the reasonable medical judgment of the person's
 183 attending physician and a second consulting physician, and in
 184 consultation with the medical ethics committee of the facility
 185 where the person is located:

- 186 1. Death is imminent;
- 187 2. Even with artificially provided sustenance or
 188 hydration, the person will die within a reasonably short period
 189 of time due to a terminal illness or injury; and

190 3. The purpose of withholding or withdrawing artificially
 191 provided sustenance or hydration is not to cause death by
 192 starvation or dehydration.

193 (3) For purposes of making the determination in paragraph
 194 (2)(c) or paragraph (2)(d), if there is no medical ethics
 195 committee at the facility, the facility must have an arrangement
 196 with the medical ethics committee of another facility or with a
 197 community-based ethics committee approved by the Florida Bio-
 198 ethics Network. The individual committee members and the
 199 facility associated with an ethics committee shall not be held
 200 liable in any civil action related to the performance of any
 201 duties required in paragraph (2)(c) or paragraph (2)(d).

202 (4) Any interested person may petition a court of
 203 competent jurisdiction at any time, based upon the prohibition
 204 in subsection (1), to prevent the withholding or withdrawing of
 205 artificially provided sustenance or hydration.

206 Section 4. The provisions of this act are remedial and
 207 apply to every living person on the effective date of this act.
 208 Specifically, it is the intent of the Legislature and the policy
 209 of this state to apply the provisions of this act to all
 210 situations in which a person is in a persistent vegetative state
 211 on or after the effective date of this act.

212 Section 5. This act shall take effect upon becoming a law.