

1 A bill to be entitled

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

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20 WHEREAS, the Legislature fully recognizes, respects, and
21 preserves the right of a person to express his or her health
22 care decisions through means such as advance directives, living
23 wills, and designations of health care surrogates, and

24 WHEREAS, withholding or withdrawing artificially provided
25 sustenance or hydration necessary to sustain life represents an
26 action having the ultimate and profound consequence of death,
27 and

28 WHEREAS, a person in a persistent vegetative state is, at
 29 that time, unable to express his or her decision regarding
 30 withholding or withdrawing artificially provided sustenance or
 31 hydration, and

32 WHEREAS, there are medically ethical reasons to withhold or
 33 withdraw artificially provided sustenance or hydration necessary
 34 to sustain life, and

35 WHEREAS, the state has a compelling interest in providing
 36 standards and procedural safeguards relating to withholding or
 37 withdrawing artificially provided sustenance or hydration for a
 38 person who is in a persistent vegetative state and whose
 39 decisions are not expressed, NOW, THEREFORE,

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

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43 Section 1. Subsections (1), (2), and (3) of section
 44 765.401, Florida Statutes, are amended to read:

45 765.401 The proxy.--

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

56 (a) The judicially appointed guardian of the patient or
 57 the guardian advocate of the person having a developmental
 58 disability as defined in s. 393.063, who has been authorized to
 59 consent to medical treatment, if such guardian has previously
 60 been appointed; however, this paragraph shall not be construed
 61 to require such appointment before a treatment decision can be
 62 made under this subsection;

63 (b) The patient's spouse;

64 (c) An adult child of the patient, or if the patient has
 65 more than one adult child, a majority of the adult children who
 66 are reasonably available for consultation;

67 (d) A parent of the patient;

68 (e) The adult sibling of the patient or, if the patient
 69 has more than one sibling, a majority of the adult siblings who
 70 are reasonably available for consultation;

71 (f) An adult relative of the patient who has exhibited
 72 special care and concern for the patient and who has maintained
 73 regular contact with the patient and who is familiar with the
 74 patient's activities, health, and religious or moral beliefs; ~~or~~

75 (g) A close friend of the patient; or

76 (h) A clinical social worker licensed pursuant to chapter
 77 491, or who is a graduate of a court-approved guardianship
 78 program. Such a proxy must be selected by the provider's
 79 bioethics committee and must not be employed by the provider. If
 80 the provider does not have a bioethics committee, then such a
 81 proxy may be chosen through an arrangement with the bioethics
 82 committee of another provider. The proxy will be notified that,
 83 upon request, the provider shall make available a second

84 physician, not involved in the patient's care to assist the
85 proxy in evaluating treatment. Decisions to withhold or withdraw
86 life-prolonging procedures will be reviewed by the facility's
87 bioethics committee. Documentation of efforts to locate proxies
88 from prior classes must be recorded in the patient record.

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

98 (3) Before exercising the incapacitated patient's rights
99 to select or decline health care, the proxy must comply with the
100 provisions of ss. 765.205 and 765.305, except that a proxy's
101 decision to withhold or withdraw life-prolonging procedures,
102 other than artificially provided sustenance or hydration for a
103 person in a persistent vegetative state, must be supported by
104 clear and convincing evidence that the decision would have been
105 the one the patient would have chosen had the patient been
106 competent or, if there is no indication of what the patient
107 would have chosen, that the decision is in the patient's best
108 interest.

109 Section 2. Section 765.404, Florida Statutes, is amended
110 to read:

111 765.404 Persistent vegetative state.--For persons in a
112 persistent vegetative state, as determined by the attending
113 physician in accordance with currently accepted medical
114 standards, who have no advance directive and for whom there is
115 no evidence indicating what the person would have wanted under
116 such conditions, and for whom, after a reasonably diligent
117 inquiry, no family or friends are available or willing to serve
118 as a proxy to make health care decisions for them, life-
119 prolonging procedures, other than artificially provided
120 sustenance or hydration, may be withheld or withdrawn under the
121 following conditions:

122 (1) The person has a judicially appointed guardian
123 representing his or her best interest with authority to consent
124 to medical treatment; and

125 (2) The guardian and the person's attending physician, in
126 consultation with the medical ethics committee of the facility
127 where the patient is located, conclude that the condition is
128 permanent and that there is no reasonable medical probability
129 for recovery and that withholding or withdrawing life-prolonging
130 procedures, other than artificially provided sustenance or
131 hydration, is in the best interest of the patient. If there is
132 no medical ethics committee at the facility, the facility must
133 have an arrangement with the medical ethics committee of another
134 facility or with a community-based ethics committee approved by
135 the Florida Bio-ethics Network. The ethics committee shall
136 review the case with the guardian, in consultation with the
137 person's attending physician, to determine whether the condition
138 is permanent and there is no reasonable medical probability for

139 recovery. The individual committee members and the facility
 140 associated with an ethics committee shall not be held liable in
 141 any civil action related to the performance of any duties
 142 required in this subsection.

143 Section 3. Section 765.405, Florida Statutes, is created
 144 to read:

145 765.405 Prohibition against withholding or withdrawing
 146 artificially provided sustenance or hydration in specific
 147 circumstances.--

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

151 (2) The prohibition in subsection (1) does not apply under
 152 the conditions prescribed in paragraph (a), paragraph (b),
 153 paragraph (c), or paragraph (d).

154 (a) A written advance directive, written living will, or
 155 written designation of a health care surrogate prepared in
 156 accordance with s. 765.202 authorizes withholding or withdrawing
 157 life-prolonging procedures, as defined in s. 765.101.

158 (b) Clear and convincing evidence exists that, while
 159 competent and prior to entering into a persistent vegetative
 160 state, the person, expressly and unequivocally, directed or
 161 instructed the withholding or withdrawing of artificially
 162 provided sustenance or hydration. For purposes of this section,
 163 this paragraph does not authorize the application of substituted
 164 judgment.

165 (c) In the reasonable medical judgment of the person's
 166 attending physician and a second consulting physician, and in

167 consultation with the medical ethics committee of the facility
168 where the person is located, maintenance of artificially
169 provided sustenance or hydration:

- 170 1. Is not medically possible;
- 171 2. Would hasten death;
- 172 3. Would cause severe, intractable, or significant long-
173 lasting pain to the person; or
- 174 4. Would not contribute to sustaining the person's life or
175 providing comfort to the person.

176 (d) In the reasonable medical judgment of the person's
177 attending physician and a second consulting physician, and in
178 consultation with the medical ethics committee of the facility
179 where the person is located:

- 180 1. Death is imminent;
- 181 2. Even with artificially provided sustenance or
182 hydration, the person will die within a reasonably short period
183 of time due to a terminal illness or injury; and
- 184 3. The purpose of withholding or withdrawing artificially
185 provided sustenance or hydration is not to cause death by
186 starvation or dehydration.

187 (3) For purposes of making the determination in paragraph
188 (2) (c) or paragraph (2) (d), if there is no medical ethics
189 committee at the facility, the facility must have an arrangement
190 with the medical ethics committee of another facility or with a
191 community-based ethics committee approved by the Florida Bio-
192 ethics Network. The individual committee members and the
193 facility associated with an ethics committee shall not be held

194 liable in any civil action related to the performance of any
195 duties required in paragraph (2) (c) or paragraph (2) (d).

196 (4) Any interested party who may reasonably be expected to
197 be directly affected by the decision to withhold or withdraw
198 artificially provided sustenance or hydration from a person in a
199 persistent vegetative state may petition for enforcement of this
200 section.

201 Section 4. The provisions of this act apply to every
202 living person on and after the effective date of this act.
203 Specifically, it is the intent of the Legislature and the policy
204 of this state to apply the provisions of this act to all
205 situations in which a person is in a persistent vegetative state
206 on or after the effective date of this act.

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