

Bill No. SB 804

Barcode 393562

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Webster) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

765.401 The proxy.--

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

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1           (a) The judicially appointed guardian of the patient  
 2 or the guardian advocate of the person having a developmental  
 3 disability as defined in s. 393.063, who has been authorized  
 4 to consent to medical treatment, if such guardian has  
 5 previously been appointed; however, this paragraph shall not  
 6 be construed to require such appointment before a treatment  
 7 decision can be made under this subsection;

8           (b) The patient's spouse;

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

12           (d) A parent of the patient;

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

16           (f) An adult relative of the patient who has exhibited  
 17 special care and concern for the patient and who has  
 18 maintained regular contact with the patient and who is  
 19 familiar with the patient's activities, health, and religious  
 20 or moral beliefs; or

21           (g) A close friend of the patient.

22           (h) A clinical social worker licensed pursuant to  
 23 chapter 491, or who is a graduate of a court-approved  
 24 guardianship program. Such a proxy must be selected by the  
 25 provider's bioethics committee and must not be employed by the  
 26 provider. If the provider does not have a bioethics committee,  
 27 then such a proxy may be chosen through an arrangement with  
 28 the bioethics committee of another provider. The proxy will be  
 29 notified that, upon request, the provider shall make available  
 30 a second physician, not involved in the patient's care to  
 31 assist the proxy in evaluating treatment. Decisions to

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1 withhold or withdraw life-prolonging procedures will be  
2 reviewed by the facility's bioethics committee. Documentation  
3 of efforts to locate proxies from prior classes must be  
4 recorded in the patient record.

5 (2) Any health care decision made under this part must  
6 be based on the proxy's informed consent and on the decision  
7 the proxy reasonably believes the patient would have made  
8 under the circumstances. If there is no indication of what the  
9 patient would have chosen, the proxy may consider the  
10 patient's best interest in deciding that proposed treatments,  
11 other than artificially provided sustenance or hydration for a  
12 person in a persistent vegetative state, are to be withheld or  
13 that treatments currently in effect are to be withdrawn.

14 (3) Before exercising the incapacitated patient's  
15 rights to select or decline health care, the proxy must comply  
16 with the provisions of ss. 765.205 and 765.305, except that a  
17 proxy's decision to withhold or withdraw life-prolonging  
18 procedures, other than artificially provided sustenance or  
19 hydration for a person in a persistent vegetative state, must  
20 be supported by clear and convincing evidence that the  
21 decision would have been the one the patient would have chosen  
22 had the patient been competent or, if there is no indication  
23 of what the patient would have chosen, that the decision is in  
24 the patient's best interest.

25 Section 2. Section 765.404, Florida Statutes, is  
26 amended to read:

27 765.404 Persistent vegetative state.--For persons in a  
28 persistent vegetative state, as determined by the attending  
29 physician in accordance with currently accepted medical  
30 standards, who have no advance directive and for whom there is  
31 no evidence indicating what the person would have wanted under

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1 such conditions, and for whom, after a reasonably diligent  
 2 inquiry, no family or friends are available or willing to  
 3 serve as a proxy to make health care decisions for them,  
 4 life-prolonging procedures, other than artificially provided  
 5 sustenance or hydration, may be withheld or withdrawn under  
 6 the following conditions:

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

10           (2) The guardian and the person's attending physician,  
 11 in consultation with the medical ethics committee of the  
 12 facility where the patient is located, conclude that the  
 13 condition is permanent and that there is no reasonable medical  
 14 probability for recovery and that withholding or withdrawing  
 15 life-prolonging procedures, other than artificially provided  
 16 sustenance or hydration, is in the best interest of the  
 17 patient. If there is no medical ethics committee at the  
 18 facility, the facility must have an arrangement with the  
 19 medical ethics committee of another facility or with a  
 20 community-based ethics committee approved by the Florida  
 21 Bio-ethics Network. The ethics committee shall review the case  
 22 with the guardian, in consultation with the person's attending  
 23 physician, to determine whether the condition is permanent and  
 24 there is no reasonable medical probability for recovery. The  
 25 individual committee members and the facility associated with  
 26 an ethics committee shall not be held liable in any civil  
 27 action related to the performance of any duties required in  
 28 this subsection.

29           Section 3. Section 765.405, Florida Statutes, is  
 30 created to read:

31           765.405 Prohibition against withholding or withdrawing

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1 artificially provided sustenance or hydration in specific  
2 circumstances.--

3 (1) Artificially provided sustenance or hydration  
4 shall not be withheld or withdrawn from a person in a  
5 persistent vegetative state, except as provided in subsection  
6 (2).

7 (2) The prohibition in subsection (1) does not apply  
8 under the conditions prescribed in paragraph (a), paragraph  
9 (b), paragraph (c), or paragraph (d).

10 (a) A written advance directive, written living will,  
11 or written designation of a health care surrogate prepared in  
12 accordance with s. 765.202 authorizes withholding or  
13 withdrawing life-prolonging procedures, as defined in s.  
14 765.101.

15 (b) Clear and convincing evidence exists that the  
16 person, while competent and prior to entering into a  
17 persistent vegetative state, expressly directed or instructed  
18 the withholding or withdrawing of artificially provided  
19 sustenance or hydration. For purposes of this section, this  
20 paragraph does not authorize the application of substituted  
21 judgment.

22 (c) In the reasonable medical judgment of the person's  
23 attending physician and a second consulting physician, and in  
24 consultation with the medical ethics committee of the facility  
25 where the person is located, maintenance of artificially  
26 provided sustenance or hydration:

- 27 1. Is not medically possible;
- 28 2. Would hasten death;
- 29 3. Would cause severe, intractable, or significant
- 30 long-lasting pain to the person; or
- 31 4. Would not contribute to sustaining the person's

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1 life or providing comfort to the person.

2 (d) In the reasonable medical judgment of the person's  
3 attending physician and a second consulting physician, and in  
4 consultation with the medical ethics committee of the facility  
5 where the person is located:

6 1. Death is imminent;

7 2. Even with artificially provided sustenance or  
8 hydration, the person will die within a reasonably short  
9 period of time due to a terminal illness or injury; and

10 3. The purpose of withholding or withdrawing  
11 artificially provided sustenance or hydration is not to cause  
12 death by starvation or dehydration.

13 (3) For purposes of making the determination in  
14 paragraph (2)(c) or paragraph (2)(d), if there is no medical  
15 ethics committee at the facility, the facility must have an  
16 arrangement with the medical ethics committee of another  
17 facility or with a community-based ethics committee approved  
18 by the Florida Bio-ethics Network. The individual committee  
19 members and the facility associated with an ethics committee  
20 shall not be held liable in any civil action related to the  
21 performance of any duties required in paragraph (2)(c) or  
22 paragraph (2)(d).

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

27 Section 4. The provisions of this act are remedial and  
28 apply to every living person on the effective date of this  
29 act. Specifically, it is the intent of the Legislature and the  
30 policy of this state to apply the provisions of this act to  
31 all situations in which a person is in a persistent vegetative

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1 state on or after the effective date of this act.

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

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete everything before the enacting clause

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10 and insert:

11 A bill to be entitled  
12 An act relating to artificially provided  
13 sustenance and hydration; amending ss. 765.401  
14 and 765.404, F.S.; excluding the withholding or  
15 withdrawing of artificially provided sustenance  
16 or hydration from certain authority to make  
17 health care decisions; creating s. 765.405,  
18 F.S.; prohibiting the withholding or  
19 withdrawing of artificially provided sustenance  
20 or hydration from a person in a persistent  
21 vegetative state in specific circumstances;  
22 providing conditions under which the  
23 prohibition does not apply; requiring  
24 consultation with an in-house or outside  
25 medical ethics committee under certain  
26 conditions; providing that certain individuals  
27 and facilities are not liable for decisions  
28 relating to the withholding or withdrawing of  
29 artificially provided sustenance or hydration;  
30 authorizing interested persons to petition the  
31 court to prevent the withholding or withdrawing

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1 of artificially provided sustenance or  
 2 hydration based upon the prohibition;  
 3 specifying that the act is remedial; providing  
 4 for application of the act; providing an  
 5 effective date.

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 7 WHEREAS, the Legislature fully recognizes, respects,  
 8 and preserves the right of a person to express his or her  
 9 health care decisions through means such as advance  
 10 directives, living wills, and designations of health care  
 11 surrogates, and

12 WHEREAS, withholding or withdrawing artificially  
 13 provided sustenance or hydration necessary to sustain life  
 14 represents an action having the ultimate and profound  
 15 consequence of death, and

16 WHEREAS, a person in a persistent vegetative state is,  
 17 at that time, unable to express his or her decision regarding  
 18 withholding or withdrawing artificially provided sustenance or  
 19 hydration, and

20 WHEREAS, there are medically ethical reasons to  
 21 withhold or withdraw artificially provided sustenance or  
 22 hydration necessary to sustain life, and

23 WHEREAS, the state has a compelling interest in  
 24 providing standards and procedural safeguards relating to  
 25 withholding or withdrawing artificially provided sustenance or  
 26 hydration for a person who is in a persistent vegetative state  
 27 and whose decisions are not expressed, NOW, THEREFORE,

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