

By Senator Book

35-01037-23

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1 A bill to be entitled
2 An act relating to death with dignity; creating ch.
3 764, F.S., to be entitled "Personal Autonomy";
4 creating s. 764.101, F.S.; providing a short title;
5 creating s. 764.102, F.S.; defining terms; creating s.
6 764.103, F.S.; providing legislative findings and
7 intent; creating s. 764.104, F.S.; providing criteria
8 for individuals to request certain medication as
9 qualified patients; providing criteria to demonstrate
10 residency; requiring qualified patients to make both
11 verbal and written requests for medication; providing
12 requirements and waiting periods for such requests;
13 providing requirements for a form for written
14 requests; specifying requirements for the valid
15 execution of the form; authorizing a qualified patient
16 to rescind a request at any time and in any manner;
17 creating s. 764.105, F.S.; specifying requirements for
18 attending physicians; authorizing an attending
19 physician to sign a qualified patient's death
20 certificate; specifying requirements for consulting
21 physicians; specifying recordkeeping requirements;
22 requiring certain health care providers to report
23 certain information to the Department of Health;
24 requiring the department to annually review certain
25 records for compliance and publish a report on
26 activities and compliance; requiring the department to
27 adopt rules for a specified purpose; creating s.
28 764.106, F.S.; making certain provisions of certain
29 legal instruments void and unenforceable under certain

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30 circumstances; prohibiting an individual's decisions
31 or actions under certain provisions from affecting the
32 sale, procurement, or issuance of certain insurance
33 policies or the rates charged for such policies;
34 creating s. 764.107, F.S.; providing criminal
35 penalties, liabilities, and immunities; defining the
36 terms "notify" and "participation in this chapter";
37 authorizing employing health care providers to
38 prohibit health care providers from participating
39 under the act while on the premises of facilities that
40 they own or operate if they have provided prior notice
41 of their policy; authorizing employing health care
42 providers to impose specified sanctions against its
43 facilities, operators, and other employees for
44 violating such policies; providing construction;
45 requiring the sanctioning health care providers to use
46 due process procedures when imposing such sanctions;
47 providing that certain sanctions may not be the sole
48 basis for certain disciplinary action against a health
49 care provider's license; providing construction;
50 creating s. 764.108, F.S.; authorizing claims for
51 costs and attorney fees in certain circumstances;
52 creating s. 764.109, F.S.; providing construction and
53 severability; providing an effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Chapter 764, Florida Statutes, consisting of
58 sections 764.101-764.109, Florida Statutes, entitled "Personal

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59 Autonomy," is created.

60 Section 2. Section 764.101, Florida Statutes, is created to
61 read:

62 764.101 Short title.—Sections 764.101-764.109 may be cited
63 as the "Death with Dignity Act."

64 Section 3. Section 764.102, Florida Statutes, is created to
65 read:

66 764.102 Definitions.—As used in this chapter, the term:

67 (1) "Attending physician" means a physician who has primary
68 responsibility for the care and treatment of a patient with a
69 terminal condition.

70 (2) "Competent" means that in the opinion of a court or in
71 the opinion of a patient's attending physician, consulting
72 physician, psychiatrist, or psychologist, the patient has the
73 ability to make and communicate health care decisions to health
74 care providers, including communication through individuals
75 familiar with the patient's manner of communicating if such
76 individuals are available.

77 (3) "Consulting physician" means a physician who is
78 qualified by specialty or experience to make a professional
79 diagnosis and prognosis regarding the patient's medical
80 condition.

81 (4) "Counseling" means one or more consultations as
82 necessary between a psychiatrist or psychologist and a patient
83 for the purpose of determining whether the patient is competent
84 and whether the patient is suffering from a psychiatric or
85 psychological disorder or depression causing impaired judgment.

86 (5) "Department" means the Department of Health.

87 (6) "Health care provider" means a health care

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88 practitioner, a health care facility, or an entity licensed or
89 certified to provide health services in this state.

90 (7) "Informed decision" means a decision voluntarily made
91 by a qualified patient to request and obtain a prescription to
92 end his or her life after a sufficient explanation and
93 disclosure of information on the subject has been given by his
94 or her attending physician to enable the qualified patient to
95 appreciate the relevant facts, including the qualified patient's
96 medical diagnosis and prognosis, the potential risks associated
97 with taking the medication to be prescribed, the probable
98 results of taking such medication, and any feasible alternatives
99 to taking the medication, and to make an informed health care
100 decision without coercion or undue influence.

101 (8) "Medically confirmed" means the medical opinion of an
102 attending physician has been confirmed by a consulting physician
103 who has examined the patient and the patient's relevant medical
104 records.

105 (9) "Medication" means a drug as defined in s. 465.003(15)
106 which an attending physician prescribes to a qualified patient
107 under this chapter to end his or her life in a humane and
108 dignified manner.

109 (10) "Physician" means a person licensed to practice
110 medicine under chapter 458 or osteopathic medicine under chapter
111 459.

112 (11) "Psychiatrist" means a physician who has primarily
113 diagnosed and treated nervous and mental disorders for a period
114 of at least 3 years, including a psychiatric residency.

115 (12) "Psychologist" means a person licensed to practice
116 psychology under chapter 490.

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117 (13) "Qualified patient" means an individual who has
118 satisfied the requirements of this chapter to obtain a
119 prescription for medication to end his or her life in a humane
120 and dignified manner.

121 (14) "Terminal condition" means a medically confirmed
122 condition caused by an injury, illness, or disease which is
123 incurable and irreversible and which will, within reasonable
124 medical judgment, cause the patient's death within 6 months.

125 Section 4. Section 764.103, Florida Statutes, is created to
126 read:

127 764.103 Legislative findings and intent.—The Legislature
128 finds that every competent adult has the fundamental right of
129 self-determination regarding decisions pertaining to his or her
130 own health and recognizes that for some faced with a terminal
131 condition, prolonging life may result in a painful or burdensome
132 existence. It is the intent of the Legislature to establish a
133 procedure to allow a competent individual who has a terminal
134 condition, and who makes a fully informed decision that he or
135 she no longer wants to live, to obtain medication to end his or
136 her life in a humane and dignified manner.

137 Section 5. Section 764.104, Florida Statutes, is created to
138 read:

139 764.104 Qualified patients; residency requirements; written
140 and verbal requests for medication; waiting periods; form
141 requirements; right to rescind requests.—

142 (1)(a) An individual may request medication as a qualified
143 patient under this chapter for the purpose of ending his or her
144 life in a humane and dignified manner if the individual:

145 1. Is 18 years of age or older;

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146 2. Is a resident of Florida;

147 3. Has been clinically diagnosed with a terminal condition
148 by his or her attending physician which has been medically
149 confirmed by a consulting physician;

150 4. Is competent;

151 5. Is making an informed decision; and

152 6. Has voluntarily expressed his or her wish to die.

153 (b) An individual may not qualify for medication under this
154 chapter solely because of age or disability.

155 (c) An individual imprisoned or incarcerated in this state
156 who otherwise meets the requirements of this section qualifies
157 for medication under this chapter.

158 (2) Criteria demonstrating an individual's Florida
159 residency include, but are not limited to:

160 (a) Possession of a valid Florida driver license or Florida
161 identification card issued by the Department of Highway Safety
162 and Motor Vehicles;

163 (b) Proof of registration to vote in Florida;

164 (c) Evidence that the individual owns or leases property in
165 Florida; or

166 (d) If an individual is unable to otherwise demonstrate
167 residency due to his or her imprisonment or incarceration,
168 evidence that the individual has been imprisoned or incarcerated
169 in this state for the 6 months immediately preceding the request
170 for medication under this chapter.

171 (3) To obtain medication under this chapter, a qualified
172 patient must first make two verbal requests and then one written
173 request for the medication to his or her attending physician.

174 (a) A qualified patient may not make the second verbal

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175 request to his or her attending physician for at least 15 days
176 after making the first verbal request. However, if the qualified
177 patient's attending physician has medically confirmed that the
178 qualified patient will, within reasonable medical judgment, die
179 within 15 days after making the first verbal request, the
180 qualified patient may make the second verbal request to his or
181 her attending physician at any time after making the first
182 verbal request.

183 (b) After a qualified patient makes a second verbal
184 request, the attending physician must give the qualified patient
185 an opportunity to rescind the request.

186 (c) A qualified patient may make a written request for
187 medication under this chapter after he or she has made a second
188 verbal request for the medication and has been offered the
189 opportunity to rescind the request.

190 (d) An attending physician may not prescribe medication to
191 a qualified patient under this chapter for at least 48 hours
192 after the qualified patient makes a written request for the
193 medication.

194 (4) (a) A written request for medication under this chapter
195 must be made using a form substantially similar to the
196 following:

197
198 REQUEST FOR MEDICATION
199 TO END MY LIFE IN A HUMANE
200 AND DIGNIFIED MANNER

201 I, ...(name of qualified patient)..., am an adult of sound
202 mind.

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204 I have been diagnosed with ...(medical condition)..., which
205 my attending physician has determined is a terminal condition
206 and which has been medically confirmed by a consulting
207 physician.

209 I have been fully informed of my diagnosis, prognosis, the
210 nature of the medication to be prescribed pursuant to this
211 request and potential associated risks of taking such
212 medication, the expected result of taking such medication, and
213 any feasible alternatives, including comfort care, hospice care,
214 and pain control.

216 Pursuant to chapter 764, Florida Statutes, I request that
217 my attending physician prescribe medication that will end my
218 life in a humane and dignified manner.

220 INITIAL ONE:

221 [....] I have informed my family members of my decision and
222 taken their opinions into consideration.

223 [....] I have decided not to inform my family members of my
224 decision.

225 [....] I have no family members to inform of my decision.

227 PURSUANT TO SECTION 764.104, FLORIDA STATUTES, I UNDERSTAND
228 THAT I HAVE THE RIGHT TO RESCIND THIS REQUEST AT ANY TIME AND IN
229 ANY MANNER, REGARDLESS OF MY MENTAL STATE.

231 I understand the full import of this request, and I expect
232 to die when I take the medication to be prescribed. I further

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233 understand that although most deaths occur within 3 hours of
234 taking such medication, my death may take longer, and my
235 physician has counseled me about this possibility.

236
237 I make this request voluntarily and without reservation,
238 and I accept full moral responsibility for my actions.

239
240 Signed: ... (signature of qualified patient)...

241 Dated: ... (date)...

242

243 DECLARATION OF WITNESSES

244 We declare that the person signing this request:

245 1. Is personally known to us or has provided proof of
246 identity;

247 2. Signed this request in our presence;

248 3. Appears to be of sound mind and not under duress, fraud,
249 or undue influence; and

250 4. Is not a patient for whom either of us is the attending
251 physician.

252

253 First witness Second witness

254 ...(print name)... ...(print name)...

255 ...(signature)... ...(signature)...

256 ...(date)... ...(date)...

257

258 NOTE: At least one witness must not be a relative (by
259 blood, marriage, or adoption) of the person signing this
260 request, must not be entitled to any portion of the person's
261 estate upon death, and must not be an owner, operator, or

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262 employee of a health care facility where the person is a patient
263 or resident.

264 (b) To be valid, the written request must be signed by the
265 qualified patient and witnessed by at least two individuals who,
266 in the presence of the qualified patient, attest that, to the
267 best of their knowledge and belief, the qualified patient is
268 competent, is acting voluntarily, and is not being coerced to
269 sign the request. At least one of the witnesses must be a person
270 who is not:

271 1. A relative of the patient by blood, marriage, or
272 adoption;

273 2. Entitled, at the time the request is signed, to any
274 portion of the estate of the qualified patient upon death under
275 any will or by operation of law; or

276 3. An owner, operator, or employee of a health care
277 facility where the qualified patient is receiving medical
278 treatment or is a resident.

279 (c) The qualified patient's attending physician at the time
280 the request is signed may not serve as a witness.

281 (5) A qualified patient may rescind his or her request at
282 any time and in any manner without regard to his or her mental
283 state.

284 Section 6. Section 764.105, Florida Statutes, is created to
285 read:

286 764.105 Attending physician responsibilities; consulting
287 physician responsibilities; reporting requirements.-

288 (1) An attending physician shall do all of the following:

289 (a) Make the initial determination of whether a patient has
290 a terminal condition, is competent, and has voluntarily made the

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291 request for medication to end his or her life.

292 (b) Refer the patient to a consulting physician for medical
293 confirmation of the diagnosis and for a determination that the
294 patient is competent and acting voluntarily.

295 (c) Ensure that the patient is making an informed decision
296 by fully informing the patient of the facts relevant to all of
297 the following:

298 1. The patient's medical diagnosis.

299 2. The patient's prognosis.

300 3. The potential risks associated with taking the requested
301 medication.

302 4. The probable result of taking the requested medication.

303 5. Any feasible alternatives, including, but not limited
304 to, comfort care, hospice care, and pain control.

305 (d) Verify the patient's Florida residency.

306 (e) Refer the patient to a psychiatrist or psychologist for
307 counseling if the physician believes the patient may be
308 suffering from a psychiatric or psychological disorder or
309 depression causing impaired judgment. A physician may not
310 prescribe medication under this chapter until the psychiatrist
311 or psychologist counseling the patient determines that the
312 patient is not suffering from a psychiatric or psychological
313 disorder or depression causing impaired judgment.

314 (f) Recommend that the qualified patient notify next of kin
315 of his or her decision. A physician may not refuse to prescribe
316 medication to a qualified patient because he or she declines or
317 is unable to notify next of kin.

318 (g) Inform the qualified patient that he or she has an
319 opportunity to rescind the request at any time and in any

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320 manner, and offer the qualified patient an opportunity to
321 rescind the request after his or her second verbal request at
322 the end of the 15-day waiting period pursuant to s. 764.104.

323 (h) Immediately before writing a prescription for
324 medication under this chapter, verify that the qualified patient
325 is making an informed decision.

326 (i) Counsel the qualified patient about the importance of
327 having another person present when taking the medication
328 prescribed under this chapter and of not taking the medication
329 in a public place.

330 (j) Comply with the medical record documentation
331 requirements of this section.

332 (k) Ensure that all appropriate steps are carried out in
333 accordance with this chapter before writing a prescription for
334 medication to enable a qualified patient to end his or her life
335 in a humane and dignified manner.

336 (l)1. Dispense medication directly, including ancillary
337 medications intended to minimize the qualified patient's
338 discomfort, provided the attending physician is registered as a
339 dispensing practitioner under s. 465.0276, has a current Drug
340 Enforcement Administration number, and complies with applicable
341 laws and rules; or

342 2. With the qualified patient's written consent:

343 a. Contact a pharmacist and inform the pharmacist of the
344 prescription; and

345 b. Deliver the written prescription personally or by mail
346 to the pharmacist, who will dispense the medication to either
347 the qualified patient, the attending physician, the qualified
348 patient's legal representative, or an individual whom the

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349 qualified patient designates in writing.

350 (2) Notwithstanding any other law, an attending physician
351 may sign a qualified patient's death certificate.

352 (3) A consulting physician shall examine the patient and
353 his or her relevant medical records to confirm, in writing,
354 whether the consulting physician agrees with the attending
355 physician's diagnosis of the patient's terminal condition, and
356 verify whether the patient is competent, is acting voluntarily,
357 and has made an informed decision. A consulting physician must
358 refer the patient to a psychiatrist or psychologist for
359 counseling if the physician believes the patient may be
360 suffering from a psychiatric or psychological disorder or
361 depression causing impaired judgment.

362 (4) An attending physician is responsible for ensuring that
363 all of the following are documented or filed in the patient's
364 medical record:

365 (a) All written and verbal requests by a patient for
366 medication under this chapter.

367 (b) The attending physician's diagnosis, prognosis, and
368 determination that the patient is competent, is acting
369 voluntarily, and has made an informed decision.

370 (c) The consulting physician's diagnosis, prognosis, and
371 verification that the patient is competent, is acting
372 voluntarily, and has made an informed decision.

373 (d) A report of the outcome and determinations made during
374 counseling, if applicable.

375 (e) The attending physician's offer to the patient to
376 rescind his or her request at the time of the patient's second
377 verbal request.

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378 (f) A note by the attending physician indicating that all
379 requirements under this chapter have been met and detailing the
380 steps taken to carry out the request, including a notation of
381 the medication prescribed.

382 (5) A health care provider who dispenses medication
383 prescribed under this chapter must file a copy of the dispensing
384 record with the department.

385 (6) The department shall annually review a sample of
386 records maintained under this chapter for compliance and
387 annually publish a statistical report on activities and
388 compliance pursuant to this chapter. The department shall adopt
389 rules to collect information for this purpose.

390 Section 7. Section 764.106, Florida Statutes, is created to
391 read:

392 764.106 Effect on construction of wills, contracts, and
393 statutes; insurance or annuity policies.—

394 (1) A provision in a contract, will, or other agreement,
395 whether written or verbal, to the extent the provision would
396 affect whether a person may make or rescind a request for
397 medication under this chapter, is void and unenforceable.

398 (2) An obligation owed under any existing contract may not
399 be conditioned or affected by a person making or rescinding a
400 request for medication under this chapter.

401 (3) The sale, procurement, or issuance of any life, health,
402 or accident insurance or annuity policy, or the rate charged for
403 any policy, may not be conditioned upon or affected by a person
404 making or rescinding a request for medication under this
405 chapter. A qualified patient's act of ingesting medication
406 prescribed under this chapter may not affect a life, health, or

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407 accident insurance or annuity policy.

408 Section 8. Section 764.107, Florida Statutes, is created to
409 read:

410 764.107 Penalties; liabilities; immunities; grounds for
411 prohibiting health care provider participation; notification;
412 permissible sanctions.—

413 (1) A person who:

414 (a) Without authorization of the patient, willfully alters
415 or forges a request for medication under this chapter or
416 conceals or destroys a rescission of that request with the
417 intent or effect of causing the patient's death commits a felony
418 of the first degree, punishable as provided in s. 775.082, s.
419 775.083, or s. 775.084.

420 (b) Coerces or exerts undue influence on a patient to
421 request medication under this chapter for the purpose of ending
422 the patient's life or to destroy a rescission of a medication
423 request commits a felony of the first degree, punishable as
424 provided in s. 775.082, s. 775.083, or s. 775.084.

425 (2) This chapter does not limit further liability for civil
426 damages resulting from other negligent conduct or intentional
427 misconduct by any person.

428 (3) The penalties in this chapter do not preclude criminal
429 penalties applicable under any other law for conduct that is
430 inconsistent with this chapter.

431 (4) Except as provided in subsections (1) and (5):

432 (a) A person is not subject to civil or criminal liability
433 or professional disciplinary action for participating in good
434 faith compliance with this chapter. This includes being present
435 when a qualified patient takes the medication prescribed under

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436 this chapter.

437 (b) A professional organization or association or a health
438 care provider may not subject a person to censure, discipline,
439 suspension, loss of license, loss of privileges, loss of
440 membership, or other penalty solely for refusing to participate
441 in this chapter or for participating in good faith compliance
442 with this chapter.

443 (c) A request by a patient for, or provision by an
444 attending physician of, medication in good faith compliance with
445 this chapter does not constitute neglect for any purpose of law
446 or provide the sole basis for the appointment of a guardian or
447 conservator.

448 (d) A health care provider is not under any duty, whether
449 by contract, by statute, or by any other legal requirement, to
450 participate in the provision of medication prescribed under this
451 chapter to a qualified patient. If a health care provider is
452 unable or unwilling to carry out a patient's request under this
453 chapter, and the patient transfers his or her care to a new
454 health care provider, the prior health care provider must
455 transfer, upon request, a copy of the patient's relevant medical
456 records to the new health care provider.

457 (5) (a) As used in this subsection, the term:

458 1. "Notify" means a written statement specifically
459 informing employees, before their participation in this chapter,
460 of the employing health care provider's policy prohibiting
461 participation in activities covered by this chapter.

462 2. "Participation in this chapter" means performing the
463 duties of an attending physician, the function of a consulting
464 physician, or the function of counseling pursuant to s. 764.105.

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465 The term does not include:

466 a. Making an initial determination that a patient has a
467 terminal disease and informing the patient of the medical
468 prognosis;

469 b. Providing information about the Death with Dignity Act
470 to a patient upon the request of the patient;

471 c. Providing a patient, upon the request of the patient,
472 with a referral to another physician; or

473 d. A patient contracting with his or her attending
474 physician and consulting physician to act outside of the course
475 and scope of the provider's capacity as an employee or
476 independent contractor of an employing health care provider that
477 prohibits participation in this chapter.

478 (b) Notwithstanding any other law, an employing health care
479 provider may prohibit participation in this chapter on the
480 premises of facilities that it owns or operates if it has
481 notified the health care providers practicing in its facilities
482 of its policy. This paragraph does not prevent a health care
483 provider from otherwise providing health care services to a
484 patient which do not constitute participation in this chapter.

485 (c) Notwithstanding subsection (4), if an employing health
486 care provider has a policy prohibiting its facilities,
487 operators, or employees from participation in this chapter and
488 has notified them of the policy, the employing health care
489 provider may subject its facilities, operators, or employees to
490 any of the following sanctions for participating in this chapter
491 in violation of that policy:

492 1. Loss of privileges, loss of membership, or other
493 sanctions provided under the medical staff bylaws, policies, and

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494 procedures of the employing health care provider if the
495 sanctioned health care provider is a member of the employing
496 health care provider's medical staff and participates in this
497 chapter while on the facility premises of the employing health
498 care provider, not including the private medical office of a
499 physician or other provider;

500 2. Termination of lease or other property contract or other
501 nonmonetary remedies provided by lease contract, not including
502 loss or restriction of medical staff privileges or exclusion
503 from a provider panel, if the sanctioned provider participates
504 in this chapter while on the premises of the sanctioning health
505 care provider or on property that is owned by or under the
506 direct control of the sanctioning health care provider; or

507 3. Termination of contract or other nonmonetary remedies
508 provided by contract if the sanctioned provider participates in
509 this chapter while acting in the course and scope of the
510 sanctioned health care provider's capacity as an employee or
511 independent contractor of the sanctioning health care provider.
512 This subparagraph may not be construed to prevent:

513 a. A health care provider from participating in carrying
514 out the provisions of this chapter while acting outside the
515 course and scope of the provider's capacity as an employee or
516 independent contractor; or

517 b. A patient from contracting with his or her attending
518 physician and consulting physician to act outside the course and
519 scope of the provider's capacity as an employee or independent
520 contractor of the sanctioning health care provider.

521 (d) A health care provider that imposes sanctions under
522 paragraph (c) must follow all due process and other procedures

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523 the sanctioning health care provider may have which are related
524 to the imposition of sanctions on another health care provider.

525 (6) Suspension or termination of staff membership or
526 privileges under subsection (5) may not be the sole basis for a
527 disciplinary complaint or investigation against a health care
528 provider's license.

529 (7) This chapter may not be construed to allow a lower
530 standard of care for patients.

531 Section 9. Section 764.108, Florida Statutes, is created to
532 read:

533 764.108 Claims by governmental entity for costs incurred.-
534 Any governmental entity that incurs costs resulting from a
535 person terminating his or her life pursuant to this chapter in a
536 public place shall have a claim against the estate of the person
537 to recover the costs and reasonable attorney fees related to
538 enforcing the claim.

539 Section 10. Section 764.109, Florida Statutes, is created
540 to read:

541 764.109 Construction; severability.-

542 (1) This chapter may not be construed to authorize a
543 physician or any other person to end a patient's life by lethal
544 injection, mercy killing, or active euthanasia. Actions taken in
545 accordance with this chapter do not constitute suicide, assisted
546 suicide, mercy killing, or homicide for any purpose under the
547 law.

548 (2) Any section of this chapter being held invalid as to
549 any person or circumstance does not affect the application of
550 any other section of this chapter which can be given full effect
551 without the invalid section or application, and to this end the

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552 provisions of this chapter are severable.

553 Section 11. This act shall take effect July 1, 2023.