

1 SB138
2 172716-6
3 By Senator Waggoner
4 RFD: Health and Human Services
5 First Read: 03-FEB-16

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the Natural Death Act; to amend Sections
12 22-8A-2, 22-8A-3, 22-8A-7, and 22-8A-8, Code of Alabama 1975;
13 to add Section 22-8A-4.1 to the Code of Alabama 1975, to
14 authorize health care providers under certain conditions to
15 follow a physician's do not attempt resuscitation order duly
16 entered in the medical record anywhere in the state, even if
17 the person subject to the order has become incapacitated and
18 is unable to direct his or her medical treatment.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 22-8A-2, 22-8A-3, 22-8A-7, and
21 22-8A-8, Code of Alabama 1975, are amended to read as follows:

22 "§22-8A-2.

23 "The Legislature finds that competent adult persons
24 have the right to control the decisions relating to the
25 rendering of their own medical care, including, without
26 limitation, the decision to have medical procedures,
27 life-sustaining treatment, and artificially provided nutrition

1 and hydration provided, withheld, or withdrawn in instances of
2 terminal conditions and permanent unconsciousness.

3 "In order that the rights of individuals may be
4 respected even after they are no longer able to participate
5 actively in decisions about themselves, the Legislature
6 hereby declares that the laws of this state shall recognize
7 the right of a competent adult person to make a written
8 declaration instructing his or her physician to provide,
9 withhold, or withdraw life-sustaining treatment and
10 artificially provided nutrition and hydration or designate by
11 lawful written form a health care proxy to make decisions on
12 behalf of the adult person concerning the providing,
13 withholding, or withdrawing of life-sustaining treatment and
14 artificially provided nutrition and hydration in instances of
15 terminal conditions and permanent unconsciousness. The
16 Legislature further desires to provide for the appointment of
17 surrogate decision-makers in instances where the individual
18 has not made such a designation and to allow a health care
19 provider to follow certain portable physician orders provided
20 for in this chapter.

21 "§22-8A-3.

22 "As used in this chapter, the following terms shall
23 have the following meanings, respectively, unless the context
24 clearly indicates otherwise:

25 "(1) ADULT. Any person 19 years of age or over.

26 "(2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION.

27 A medical treatment consisting of the administration of food

1 and water through a tube or intravenous line, where the
2 recipient is not required to chew or swallow voluntarily.
3 Artificially provided nutrition and hydration does not include
4 assisted feeding, such as spoon or bottle feeding.

5 "(3) ADVANCE DIRECTIVE FOR HEALTH CARE. A writing
6 executed in accordance with Section 22-8A-4 which may include
7 a living will, the appointment of a health care proxy, or both
8 such living will and appointment of a health care proxy.

9 "(4) ATTENDING PHYSICIAN. The physician selected by,
10 or assigned to, the patient who has primary responsibility for
11 the treatment and care of the patient.

12 "(5) CARDIOPULMONARY CESSATION. A lack of pulse or
13 respiration.

14 "~~(5)~~ (6) COMPETENT ADULT. An adult who is alert,
15 capable of understanding a lay description of medical
16 procedures and able to appreciate the consequences of
17 providing, withholding, or withdrawing medical procedures.

18 "(7) DO NOT ATTEMPT RESUSCITATION (DNAR) ORDER. A
19 physician's order that resuscitative measures not be provided
20 to a person under a physician's care in the event the person
21 is found with cardiopulmonary cessation. A do not attempt
22 resuscitation order would include, without limitation,
23 physician orders written as "do not resuscitate," "do not
24 allow resuscitation," "do not allow resuscitative measures,"
25 "DNAR," "DNR," "allow natural death," or "AND." A do not
26 attempt resuscitation order must be entered with the consent
27 of the person, if the person is competent; or in accordance

1 with instructions in an advance directive if the person is not
2 competent or is no longer able to understand, appreciate, and
3 direct his or her medical treatment and has no hope of
4 regaining that ability; or with the consent of a health care
5 proxy or surrogate functioning under the provisions in this
6 chapter; or instructions by an attorney in fact under a
7 durable power of attorney that duly grants powers to the
8 attorney in fact to make those decisions described in Section
9 22-8A-4(b) (1) .

10 "~~(6)~~(8) HEALTH CARE PROVIDER. A person who is
11 licensed, certified, registered, or otherwise authorized by
12 the law of this state to administer or provide health care in
13 the ordinary course of business or in the practice of a
14 profession.

15 "~~(7)~~(9) HEALTH CARE PROXY. Any person designated to
16 act on behalf of an individual pursuant to Section 22-8A-4.

17 "~~(8)~~(10) LIFE-SUSTAINING TREATMENT. Any medical
18 treatment, procedure, or intervention that, in the judgment of
19 the attending physician, when applied to the patient, would
20 serve only to prolong the dying process where the patient has
21 a terminal illness or injury, or would serve only to maintain
22 the patient in a condition of permanent unconsciousness. These
23 procedures shall include, but are not limited to, assisted
24 ventilation, cardiopulmonary resuscitation, renal dialysis,
25 surgical procedures, blood transfusions, and the
26 administration of drugs and antibiotics. Life-sustaining
27 treatment shall not include the administration of medication

1 or the performance of any medical treatment where, in the
2 opinion of the attending physician, the medication or
3 treatment is necessary to provide comfort or to alleviate
4 pain.

5 "~~(9)~~ (11) LIVING WILL. A witnessed document in
6 writing, voluntarily executed by the declarant, that gives
7 directions and may appoint a health care proxy, in accordance
8 with the requirements of Section 22-8A-4.

9 "~~(10)~~ (12) PERMANENT UNCONSCIOUSNESS. A condition
10 that, to a reasonable degree of medical certainty:

11 "a. Will last permanently, without improvement; and

12 "b. In which cognitive thought, sensation,
13 purposeful action, social interaction, and awareness of self
14 and environment are absent; and

15 "c. Which condition has existed for a period of time
16 sufficient, in accordance with applicable professional
17 standards, to make such a diagnosis; and

18 "d. Which condition is confirmed by a physician who
19 is qualified and experienced in making such a diagnosis.

20 "~~(11)~~ (13) PERSON. An individual, corporation,
21 business trust, estate, trust, partnership, association, joint
22 venture, government, governmental subdivision or agency, or
23 any other legal or commercial entity.

24 "~~(12)~~ (14) PHYSICIAN. A person licensed to practice
25 medicine and osteopathy in the State of Alabama.

26 "(15) PORTABLE PHYSICIAN DNAR ORDER. A DNAR order
27 entered in the medical record by a physician using the

1 required form designated by the State Board of Health and
2 substantiated by completion of all sections of the form.

3 "(16) RESUSCITATIVE MEASURES. Those measures used to
4 restore or support cardiac or respiratory function in the
5 event of cardiopulmonary cessation.

6 "~~(13)~~ (17) SURROGATE. Any person appointed to act on
7 behalf of an individual pursuant to Section 22-8A-11.

8 "~~(14)~~ (18) TERMINALLY ILL OR INJURED PATIENT. A
9 patient whose death is imminent or whose condition, to a
10 reasonable degree of medical certainty, is hopeless unless he
11 or she is artificially supported through the use of
12 life-sustaining procedures and which condition is confirmed by
13 a physician who is qualified and experienced in making such a
14 diagnosis.

15 "§22-8A-7.

16 "(a) A competent adult may make decisions regarding
17 life-sustaining treatment and artificially provided nutrition
18 and hydration so long as that individual is able to do so. The
19 desires of an individual shall at all times supersede the
20 effect of an advance directive for health care.

21 "(b) If the individual is not competent at the time
22 of the decision to provide, withhold, or withdraw
23 life-sustaining treatment or artificially provided nutrition
24 and hydration, a living will executed in accordance with
25 Section 22-8A-4(a) or a proxy designation executed in
26 accordance with Section 22-8A-4(b) is presumed to be valid.
27 For the purpose of this chapter, a health care provider may

1 presume in the absence of actual notice to the contrary that
2 an individual who executed an advance directive for health
3 care was competent when it was executed. The fact of an
4 individual's having executed an advance directive for health
5 care shall not be considered as an indication of a declarant's
6 mental incompetency. Advanced age of itself shall not be a bar
7 to a determination of competency.

8 "(c) No physician, licensed health care
9 professional, medical care facility, other health care
10 provider, or any employee thereof who in good faith and
11 pursuant to reasonable medical standards issues or follows a
12 portable physician DNAR order entered in the medical record
13 pursuant to this chapter or causes or participates in the
14 providing, withholding, or withdrawing of life-sustaining
15 treatment or artificially provided nutrition and hydration
16 from a patient pursuant to a living will or designated proxy
17 made in accordance with this chapter or pursuant to the
18 directions of a duly designated surrogate appointed in
19 accordance with this chapter, in the absence of actual
20 knowledge of the revocation thereof, shall, as a result
21 thereof, be subject to criminal or civil liability, or be
22 found to have committed an act of unprofessional conduct.

23 "§22-8A-8.

24 "(a) A health care provider who refuses to comply
25 with a living will or the directions of a duly designated
26 proxy or a duly appointed surrogate or who refuses to honor a
27 portable physician DNAR order executed in compliance with the

1 directives of this chapter and using the form designated by
2 the State Board of Health pursuant to this chapter shall
3 promptly so advise the declarant and any individual designated
4 to act for the declarant, shall not be liable for such
5 refusal, but shall permit the patient to be transferred to
6 another health care provider. Such health care provider shall
7 reasonably cooperate to assist the declarant, or any
8 individual designated to act for the declarant, in the timely
9 transfer of the declarant to another health care provider
10 that will follow the directions of the portable physician DNAR
11 order, living will, health care proxy, or surrogate. During
12 the time for the transfer, all life-sustaining treatments,
13 including resuscitation efforts in the event of
14 cardiopulmonary cessation and artificially provided nutrition
15 and hydration, shall be properly maintained.

16 "(b) No nurse, physician, or other health care
17 provider may be required by law or contract in any
18 circumstances to participate in the withholding or withdrawal
19 resuscitative measures or of life-sustaining treatment if such
20 person objects to so doing. No person may be discriminated
21 against in employment or professional privileges because of
22 the person's participation or refusal to participate in the
23 withholding or withdrawal of resuscitative measures or
24 life-sustaining treatment.

25 "(c) Any person who willfully conceals, cancels,
26 defaces, obliterates, or damages the portable physician DNAR
27 order or advance directive for health care of another without

1 the declarant's consent or who falsifies or forges a
2 revocation of the advance directive for health care of another
3 shall be guilty of a Class A misdemeanor.

4 "(d) Any person who falsifies or forges the portable
5 physician DNAR order or advance directive for health care of
6 another, or willfully conceals or withholds personal knowledge
7 of the revocation of ~~an~~ a portable physician DNAR order or
8 advance directive for health care, with the intent to cause a
9 withholding or withdrawal of resuscitative measures or
10 life-sustaining treatment or artificially provided nutrition
11 and hydration contrary to the wishes of the declarant, and
12 thereby, because of such act, directly causes life-sustaining
13 treatment or artificially provided nutrition and hydration to
14 be withheld or withdrawn and death to be hastened, shall be
15 guilty of a Class C felony."

16 Section 2. Section 22-8A-4.1 is added to the Code of
17 Alabama 1975, to read as follows:

18 §22-8A-4.1.

19 (a) A completed DNAR order that is properly entered
20 and received is deemed a valid order.

21 (b) (1) The State Board of Health shall adopt by
22 rule the form to be used for a portable DNAR order.

23 (2) The State Board of Health and the Board of
24 Medical Examiners may adopt rules to implement this act.
25 Notwithstanding the foregoing, the Board of Medical Examiners
26 shall have exclusive authority to adopt rules relating to
27 physicians in implementing this act.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Health and Human Services..... 03-FEB-16

Read for the second time and placed on the calen-
dar 1 amendment..... 11-FEB-16

Read for the third time and passed as amended 17-FEB-16

Yeas 30
Nays 0

Patrick Harris
Secretary