

1 SB138  
2 172716-9  
3 By Senator Waggoner  
4 RFD: Health and Human Services  
5 First Read: 03-FEB-16

1 SB138

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4 ENROLLED, An Act,

5 Relating to the Natural Death Act; to amend Sections  
6 22-8A-2, 22-8A-3, 22-8A-7, and 22-8A-8, Code of Alabama 1975;  
7 to add Section 22-8A-4.1 to the Code of Alabama 1975, to  
8 authorize health care providers under certain conditions to  
9 follow a physician's do not attempt resuscitation order duly  
10 entered in the medical record anywhere in the state, even if  
11 the person subject to the order has become incapacitated and  
12 is unable to direct his or her medical treatment.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 22-8A-2, 22-8A-3, 22-8A-7, and  
15 22-8A-8, Code of Alabama 1975, are amended to read as follows:

16 "§22-8A-2.

17 "The Legislature finds that competent adult persons  
18 have the right to control the decisions relating to the  
19 rendering of their own medical care, including, without  
20 limitation, the decision to have medical procedures,  
21 life-sustaining treatment, and artificially provided nutrition  
22 and hydration provided, withheld, or withdrawn in instances of  
23 terminal conditions and permanent unconsciousness.

24 "In order that the rights of individuals may be  
25 respected even after they are no longer able to participate

1 actively in decisions about themselves, the Legislature  
2 hereby declares that the laws of this state shall recognize  
3 the right of a competent adult person to make a written  
4 declaration instructing his or her physician to provide,  
5 withhold, or withdraw life-sustaining treatment and  
6 artificially provided nutrition and hydration or designate by  
7 lawful written form a health care proxy to make decisions on  
8 behalf of the adult person concerning the providing,  
9 withholding, or withdrawing of life-sustaining treatment and  
10 artificially provided nutrition and hydration in instances of  
11 terminal conditions and permanent unconsciousness. The  
12 Legislature further desires to provide for the appointment of  
13 surrogate decision-makers in instances where the individual  
14 has not made such a designation and to allow a health care  
15 provider to follow certain portable physician orders provided  
16 for in this chapter.

17 "§22-8A-3.

18 "As used in this chapter, the following terms shall  
19 have the following meanings, respectively, unless the context  
20 clearly indicates otherwise:

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

22 "(2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION.

23 A medical treatment consisting of the administration of food  
24 and water through a tube or intravenous line, where the  
25 recipient is not required to chew or swallow voluntarily.

1 Artificially provided nutrition and hydration does not include  
2 assisted feeding, such as spoon or bottle feeding.

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

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

10 "(5) CARDIOPULMONARY CESSATION. A lack of pulse or  
11 respiration.

12 "~~(5)~~ (6) COMPETENT ADULT. An adult who is alert,  
13 capable of understanding a lay description of medical  
14 procedures and able to appreciate the consequences of  
15 providing, withholding, or withdrawing medical procedures.

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

1 administration of drugs and antibiotics. Life-sustaining  
2 treatment shall not include the administration of medication  
3 or the performance of any medical treatment where, in the  
4 opinion of the attending physician, the medication or  
5 treatment is necessary to provide comfort or to alleviate  
6 pain.

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

11 "~~(10)~~ (12) PERMANENT UNCONSCIOUSNESS. A condition  
12 that, to a reasonable degree of medical certainty:

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

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

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

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

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

1           "~~(12)~~(14) PHYSICIAN. A person licensed to practice  
2 medicine and osteopathy in the State of Alabama.

3           "(15) PORTABLE PHYSICIAN DNAR ORDER. A DNAR order  
4 entered in the medical record by a physician using the  
5 required form designated by the State Board of Health and  
6 substantiated by completion of all sections of the form.

7           "(16) RESUSCITATIVE MEASURES. Those measures used to  
8 restore or support cardiac or respiratory function in the  
9 event of cardiopulmonary cessation.

10          "~~(13)~~(17) SURROGATE. Any person appointed to act on  
11 behalf of an individual pursuant to Section 22-8A-11.

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

19           "§22-8A-7.

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

1           "(b) If the individual is not competent at the time  
2 of the decision to provide, withhold, or withdraw  
3 life-sustaining treatment or artificially provided nutrition  
4 and hydration, a living will executed in accordance with  
5 Section 22-8A-4(a) or a proxy designation executed in  
6 accordance with Section 22-8A-4(b) is presumed to be valid.  
7 For the purpose of this chapter, a health care provider may  
8 presume in the absence of actual notice to the contrary that  
9 an individual who executed an advance directive for health  
10 care was competent when it was executed. The fact of an  
11 individual's having executed an advance directive for health  
12 care shall not be considered as an indication of a declarant's  
13 mental incompetency. Advanced age of itself shall not be a bar  
14 to a determination of competency.

15           "(c) No physician, licensed health care  
16 professional, medical care facility, other health care  
17 provider, or any employee thereof who in good faith and  
18 pursuant to reasonable medical standards issues or follows a  
19 portable physician DNAR order entered in the medical record  
20 pursuant to this chapter or causes or participates in the  
21 providing, withholding, or withdrawing of life-sustaining  
22 treatment or artificially provided nutrition and hydration  
23 from a patient pursuant to a living will or designated proxy  
24 made in accordance with this chapter or pursuant to the  
25 directions of a duly designated surrogate appointed in

1 accordance with this chapter, in the absence of actual  
2 knowledge of the revocation thereof, shall, as a result  
3 thereof, be subject to criminal or civil liability, or be  
4 found to have committed an act of unprofessional conduct.

5 "§22-8A-8.

6 "(a) A health care provider who refuses to comply  
7 with a living will or the directions of a duly designated  
8 proxy or a duly appointed surrogate or who refuses to honor a  
9 portable physician DNAR order executed in compliance with the  
10 directives of this chapter and using the form designated by  
11 the State Board of Health pursuant to this chapter shall  
12 promptly so advise the declarant and any individual designated  
13 to act for the declarant, shall not be liable for such  
14 refusal, but shall permit the patient to be transferred to  
15 another health care provider. Such health care provider shall  
16 reasonably cooperate to assist the declarant, or any  
17 individual designated to act for the declarant, in the timely  
18 transfer of the declarant to another health care provider  
19 that will follow the directions of the portable physician DNAR  
20 order, living will, health care proxy, or surrogate. During  
21 the time for the transfer, all life-sustaining treatments,  
22 including resuscitation efforts in the event of  
23 cardiopulmonary cessation and artificially provided nutrition  
24 and hydration, shall be properly maintained.

1           "(b) No nurse, physician, or other health care  
2 provider may be required by law or contract in any  
3 circumstances to participate in the withholding or withdrawal  
4 of resuscitative measures or life-sustaining treatment if such  
5 person objects to so doing. No person may be discriminated  
6 against in employment or professional privileges because of  
7 the person's participation or refusal to participate in the  
8 withholding or withdrawal of resuscitative measures or  
9 life-sustaining treatment.

10           "(c) Any person who willfully conceals, cancels,  
11 defaces, obliterates, or damages the portable physician DNAR  
12 order or advance directive for health care of another without  
13 the declarant's consent or who falsifies or forges a  
14 revocation of the advance directive for health care of another  
15 shall be guilty of a Class A misdemeanor.

16           "(d) Any person who falsifies or forges the portable  
17 physician DNAR order or advance directive for health care of  
18 another, or willfully conceals or withholds personal knowledge  
19 of the revocation of ~~an~~ a portable physician DNAR order or  
20 advance directive for health care, with the intent to cause a  
21 withholding or withdrawal of resuscitative measures or  
22 life-sustaining treatment or artificially provided nutrition  
23 and hydration contrary to the wishes of the declarant, and  
24 thereby, because of such act, directly causes life-sustaining  
25 treatment or artificially provided nutrition and hydration to

1 be withheld or withdrawn and death to be hastened, shall be  
2 guilty of a Class C felony."

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

5 §22-8A-4.1.

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

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

10 (2) The State Board of Health and the Board of  
11 Medical Examiners may adopt rules to implement this act.  
12 Notwithstanding the foregoing, the Board of Medical Examiners  
13 shall have exclusive authority to adopt rules relating to  
14 physicians in implementing this act.

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

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB138

Senate 17-FEB-16

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris  
Secretary

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House of Representatives  
Amended and passed 08-MAR-16

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Senate concurred in House amendment 10-MAR-16

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By: Senator Waggoner