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HOUSE BILL 1362
Committee Substitute Favorable 5/30/01
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Short Title: Advance Health Care Directives Registry.

(Public)

Sponsors:

Referred to:

April 23, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CENTRAL REGISTRY FOR ADVANCE HEALTH
CARE DIRECTIVES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a
new Article to read:

"Article 21.

"Advance Health Care Directive Registry.

"§ 130A-465. Advance Health Care Directive Registry establishment.

The Secretary of State shall establish and maintain a statewide, on-line, central
registry for advance health care directives. The registry shall be accessible over the
Internet through a site maintained by the Secretary of State.

"§ 130A-466. Filing requirements.

(a) A person may submit any of the following documents and the revocations of
these documents to the Secretary of State for filing in the Advance Health Care
Directive Registry established pursuant to this Article:

(1) A health care power of attorney under Article 3 of Chapter 32A of the
General Statutes.

(2) A declaration of a desire for a natural death under Article 23 of
Chapter 90 of the General Statutes.

(3) An advance instruction for mental health treatment under Part 2 of
Article 3 of Chapter 122C of the General Statutes.

(4) A declaration of an anatomical gift under Part 3 of Article 16 of
Chapter 130A of the General Statutes.

(b) Any document and any revocation of a document submitted for filing in the
registry shall be notarized regardless of whether notarization is required for its validity.

(c) The document may be submitted for filing only by the person who executed
the document.

1 (d) The person who submits the document shall supply a return address.

2 (e) The document shall be accompanied by any fee required by this Article.

3 **"§ 130A-467. Validity of unregistered documents.**

4 Failure to register a document with the registry maintained by the Secretary of State
5 pursuant to this Article shall not affect the document's validity. Failure to notify the
6 Secretary of State of the revocation of a document filed with the registry shall not affect
7 the validity of a revocation that meets the statutory requirements for the revocation to be
8 valid.

9 **"§ 130A-468. Filing of documents with the registry.**

10 (a) When the Secretary of State receives a document that may be filed with the
11 registry pursuant to this Article, the Secretary shall create a digital reproduction of that
12 document and enter the reproduced document into the registry database. The Secretary
13 is not required to review a document to ensure that it complies with the particular
14 statutory requirements applicable to the document. Each document entered into the
15 registry database shall be assigned a unique file number and password.

16 (b) Upon entering the reproduced document into the registry database, the
17 Secretary shall return the original document and a wallet-size card containing the
18 document's file number and password to the person who submitted the document.

19 (c) When the Secretary of State receives a revocation of a document that is filed
20 with the registry and that document's file number and password, the Secretary shall
21 delete that document from the registry database.

22 (d) The Secretary of State's entry of a document into the registry database does
23 not do any of the following:

24 (1) Affect the validity of the document in whole or in part.

25 (2) Relate to the accuracy of information contained in the document.

26 (3) Create a presumption regarding the validity of the document, regarding
27 the accuracy of information contained in the document, or that the
28 statutory requirements for the document have been met.

29 **"§ 130A-469. Disclosure of information contained in the registry.**

30 The registry shall be accessible only over the Internet. A document filed in the
31 registry shall be accessible only if a person attempting to access the document enters
32 both the file number and password of the document. Documents filed in the registry, file
33 numbers, passwords, and any other information maintained by the Secretary of State
34 under this Article shall not be subject to disclosure pursuant to Chapter 132 of the
35 General Statutes.

36 **"§ 130A-470. Fees for using the registry; other funds for the registry.**

37 (a) The Secretary of State shall charge a fee of ten dollars (\$10.00) for filing a
38 document, other than a revocation, with the registry. The Secretary of State shall not
39 charge a fee for filing a revocation with the registry. The fee shall be applied to the cost
40 of maintaining the registry and to promoting public education and awareness of the
41 registry.

1 (b) The Secretary of State, on behalf of the State, may accept gifts, donations,
2 bequests, and other forms of voluntary contributions; may apply for grants from public
3 and private sources; and may expend funds received under this subsection for the
4 purpose of promoting public education and awareness of the registry.

5 (c) All fees, funds, and gifts received pursuant to this section shall be subject to
6 audit by the State Auditor and shall be expended in conformity with Article 1 of
7 Chapter 143 of the General Statutes.

8 **"§ 130A-471. Limitation of liability.**

9 The State of North Carolina, the Secretary of State, and any agent or person
10 employed by the Secretary of State shall not be liable for any claims or demands arising
11 out of the administration or operation of the registry authorized by this Article, except
12 for acts of gross negligence, willful misconduct, or intentional wrongdoing."

13 **SECTION 2.** G.S. 132-1.2 is amended by adding a new subdivision to read:

14 "(3) Reveals a document, file number, password, or any other information
15 maintained by the Secretary of State pursuant to Article 21 of Chapter
16 130A of the General Statutes."

17 **SECTION 3.** G.S. 32A-24(a) reads as rewritten:

18 "(a) Any physician or other health care provider involved in the medical care of
19 the principal may rely upon the authority of the health care agent contained in a signed
20 and acknowledged health care power of attorney in the absence of actual knowledge of
21 revocation of the health care power of attorney. The physician or health care provider
22 may rely upon a copy of the health care power of attorney obtained from the Advance
23 Health Care Directive Registry maintained by the Secretary of State pursuant to Article
24 21 of Chapter 130A of the General Statutes to the same extent that the individual may
25 rely upon the original document."

26 **SECTION 4.** G.S. 90-321(c) reads as rewritten:

27 "(c) The attending physician may rely upon a signed, witnessed, dated and proved
28 ~~declaration;~~ declaration, or a copy of that declaration obtained from the Advance Health
29 Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of
30 Chapter 130A of the General Statutes:

- 31 (1) Which expresses a desire of the declarant that extraordinary means or
32 artificial nutrition or hydration not be used to prolong his life if his
33 condition is determined to be terminal and incurable, or if the declarant
34 is diagnosed as being in a persistent vegetative state; and
35 (2) Which states that the declarant is aware that the declaration authorizes
36 a physician to withhold or discontinue the extraordinary means or
37 artificial nutrition or hydration; and
38 (3) Which has been signed by the declarant in the presence of two
39 witnesses who believe the declarant to be of sound mind and who state
40 that they (i) are not related within the third degree to the declarant or to
41 the declarant's spouse, (ii) do not know or have a reasonable
42 expectation that they would be entitled to any portion of the estate of

1 the declarant upon his death under any will of the declarant or codicil
2 thereto then existing or under the Intestate Succession Act as it then
3 provides, (iii) are not the attending physician, or an employee of the
4 attending physician, or an employee of a health facility in which the
5 declarant is a patient, or an employee of a nursing home or any
6 group-care home in which the declarant resides, and (iv) do not have a
7 claim against any portion of the estate of the declarant at the time of
8 the declaration; and

- 9 (4) Which has been proved before a clerk or assistant clerk of superior
10 court, or a notary public who certifies substantially as set out in
11 subsection (d) below."

12 **SECTION 5.** G.S. 122C-74 reads as rewritten:

13 "(b) The attending physician or other mental health treatment provider may
14 consider valid and rely upon an advance ~~instruction~~-instruction, or a copy of that
15 advance instruction that is obtained from the Advance Health Care Directive Registry
16 maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the
17 General Statutes, in the absence of actual knowledge of its revocation or invalidity."

18 **SECTION 6.** G.S. 130A-409(c) reads as rewritten:

19 "(c) A person who acts with due care in accord with the terms of this Part or the
20 anatomical gift laws of another state is not liable for damages in any civil action or
21 subject to prosecution in any criminal proceeding for the act. A person may rely upon a
22 document registered with the Advance Health Care Directive Registry maintained by
23 the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes to
24 the same extent as the person can rely upon the original of that document."

25 **SECTION 7.** This act becomes effective January 1, 2002.