SB138

172716-9

By Senator Waggoner

RFD: Health and Human Services

First Read: 03-FEB-16
ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§22-8A-2.

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medical procedures, life-sustaining treatment, and artificially provided nutrition and hydration provided, withheld, or withdrawn in instances of terminal conditions and permanent unconsciousness.

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

"§22-8A-3.

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

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

"(2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION. A medical treatment consisting of the administration of food and water through a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily.
Artificially provided nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.

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

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

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

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

"(7) DO NOT ATTEMPT RESUSCITATION (DNAR) ORDER. A physician's order that resuscitative measures not be provided to a person under a physician's care in the event the person is found with cardiopulmonary cessation. A do not attempt resuscitation order would include, without limitation, physician orders written as "do not resuscitate," "do not allow resuscitation," "do not allow resuscitative measures," "DNAR," "DNR," "allow natural death," or "AND." A do not attempt resuscitation order must be entered with the consent of the person, if the person is competent; or in accordance
with instructions in an advance directive if the person is not competent or is no longer able to understand, appreciate, and direct his or her medical treatment and has no hope of regaining that ability; or with the consent of a health care proxy or surrogate functioning under the provisions in this chapter; or instructions by an attorney in fact under a durable power of attorney that duly grants powers to the attorney in fact to make those decisions described in Section 22-8A-4(b)(1).

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

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

"(8)(10) LIFE-SUSTAINING TREATMENT. Any medical treatment, procedure, or intervention that, in the judgment of the attending physician, when applied to the patient, would serve only to prolong the dying process where the patient has a terminal illness or injury, or would serve only to maintain the patient in a condition of permanent unconsciousness. These procedures shall include, but are not limited to, assisted ventilation, cardiopulmonary resuscitation, renal dialysis, surgical procedures, blood transfusions, and the
administration of drugs and antibiotics. Life-sustaining treatment shall not include the administration of medication or the performance of any medical treatment where, in the opinion of the attending physician, the medication or treatment is necessary to provide comfort or to alleviate pain.

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

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

"a. Will last permanently, without improvement; and

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

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

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

"(11)(13) PERSON. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
"(12)(14) PHYSICIAN. A person licensed to practice medicine and osteopathy in the State of Alabama.

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

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

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

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

"§22-8A-7.

"(a) A competent adult may make decisions regarding life-sustaining treatment and artificially provided nutrition and hydration so long as that individual is able to do so. The desires of an individual shall at all times supersede the effect of an advance directive for health care.
"(b) If the individual is not competent at the time of the decision to provide, withhold, or withdraw life-sustaining treatment or artificially provided nutrition and hydration, a living will executed in accordance with Section 22-8A-4(a) or a proxy designation executed in accordance with Section 22-8A-4(b) is presumed to be valid. For the purpose of this chapter, a health care provider may presume in the absence of actual notice to the contrary that an individual who executed an advance directive for health care was competent when it was executed. The fact of an individual's having executed an advance directive for health care shall not be considered as an indication of a declarant's mental incompetency. Advanced age of itself shall not be a bar to a determination of competency.

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

"§22-8A-8.

"(a) A health care provider who refuses to comply
with a living will or the directions of a duly designated
proxy or a duly appointed surrogate or who refuses to honor a
portable physician DNAR order executed in compliance with the
directives of this chapter and using the form designed by
the State Board of Health pursuant to this chapter shall
promptly so advise the declarant and any individual designated
to act for the declarant, shall not be liable for such
refusal, but shall permit the patient to be transferred to
another health care provider. Such health care provider shall
reasonably cooperate to assist the declarant, or any
individual designated to act for the declarant, in the timely
transfer of the declarant to another health care provider
that will follow the directions of the portable physician DNAR
order, living will, health care proxy, or surrogate. During
the time for the transfer, all life-sustaining treatments,
including resuscitation efforts in the event of
cardiopulmonary cessation and artificially provided nutrition
and hydration, shall be properly maintained.
(b) No nurse, physician, or other health care provider may be required by law or contract in any circumstances to participate in the withholding or withdrawal of resuscitative measures or life-sustaining treatment if such person objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the withholding or withdrawal of resuscitative measures or life-sustaining treatment.

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

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

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

§22-8A-4.1.

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

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

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

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

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

House of Representatives
Amended and passed 08-MAR-16

Senate concurred in House amendment 10-MAR-16

By: Senator Waggoner