

1 HB194  
2 188155-5  
3 By Representative Weaver  
4 RFD: Health  
5 First Read: 11-JAN-18

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8 SYNOPSIS: Under existing law, an adult or a health  
9 care proxy for an adult may execute an advance  
10 directive for health care or do not resuscitate  
11 order.

12 This bill would create the Alex Hoover Act.

13 This bill would require the Department of  
14 Public Health, by rule and in conjunction with a  
15 task force, to establish a form for an Order for  
16 Pediatric Palliative and End of Life (PPEL) Care to  
17 be used by medical professionals outlining medical  
18 care provided to a minor with a terminal illness.

19 This bill would provide immunity to health  
20 care providers who provide, withhold, or withdraw  
21 medical treatment pursuant to an Order for PPEL  
22 Care.

23 This bill would also establish a temporary  
24 task force to work in consultation with the  
25 Department of Public Health to establish an Order  
26 for Pediatric Palliative and End of Life (PPEL)  
27 Care form.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
5

6 Relating to terminally ill minors; to amend Sections  
7 22-8A-2, 22-8A-3, and 22-8A-7, Code of Alabama 1975; to add  
8 Sections 22-8A-15 to 22-8A-18, inclusive, to the Code of  
9 Alabama 1975; to create the Alex Hoover Act; to require the  
10 Department of Public Health, by rule and in conjunction with a  
11 task force, to establish a form for an Order for Pediatric  
12 Palliative and End of Life (PPEL) Care to be used by medical  
13 professionals outlining medical care provided to terminally  
14 ill minors in certain circumstances; to provide immunity to  
15 health care providers who provide, withhold, or withdraw  
16 medical treatment pursuant to an Order for PPEL Care; and to  
17 establish a temporary task force to work in consultation with  
18 the Department of Public Health to establish an Order for  
19 Pediatric Palliative and End of Life (PPEL) Care form.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. This act shall be known and may be cited  
22 as the Alex Hoover Act.

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

25 "§22-8A-2.

26 "(a) The Legislature finds that competent adult  
27 persons and qualified representatives of qualified minors have

1 the right to control the decisions relating to the rendering  
2 of ~~their own~~ medical care, including, without limitation, the  
3 decision to have medical procedures, life-sustaining  
4 treatment, and artificially provided nutrition and hydration  
5 provided, withheld, or withdrawn in instances of terminal  
6 conditions and permanent unconsciousness.

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

27           "§22-8A-3.

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

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

5           "(2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION.

6 A medical treatment consisting of the administration of food  
7 and water through a tube or intravenous line, where the  
8 recipient is not required to chew or swallow voluntarily.  
9 Artificially provided nutrition and hydration does not include  
10 assisted feeding, such as spoon or bottle feeding.

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

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

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

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

24           "(7) DO NOT ATTEMPT RESUSCITATION (DNAR) ORDER. A  
25 physician's order that resuscitative measures not be provided  
26 to a person under a physician's care in the event the person  
27 is found with cardiopulmonary cessation. A do not attempt

1 resuscitation order would include, without limitation,  
2 physician orders written as "do not resuscitate," "do not  
3 allow resuscitation," "do not allow resuscitative measures,"  
4 "DNAR," "DNR," "allow natural death," or "AND." A do not  
5 attempt resuscitation order must be entered with the consent  
6 of the person, if the person is competent; or in accordance  
7 with instructions in an advance directive if the person is not  
8 competent or is no longer able to understand, appreciate, and  
9 direct his or her medical treatment and has no hope of  
10 regaining that ability; or with the consent of a health care  
11 proxy or surrogate functioning under the provisions in this  
12 chapter; or instructions by an attorney in fact under a  
13 durable power of attorney that duly grants powers to the  
14 attorney in fact to make those decisions described in Section  
15 22-8A-4(b) (1).

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

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

23 "(10) LIFE-SUSTAINING TREATMENT. Any medical  
24 treatment, procedure, or intervention that, in the judgment of  
25 the attending physician, when applied to the patient, would  
26 serve only to prolong the dying process where the patient has  
27 a terminal illness or injury, or would serve only to maintain

1 the patient in a condition of permanent unconsciousness. These  
2 procedures shall include, but are not limited to, assisted  
3 ventilation, cardiopulmonary resuscitation, renal dialysis,  
4 surgical procedures, blood transfusions, and the  
5 administration of drugs and antibiotics. Life-sustaining  
6 treatment shall not include the administration of medication  
7 or the performance of any medical treatment where, in the  
8 opinion of the attending physician, the medication or  
9 treatment is necessary to provide comfort or to alleviate  
10 pain.

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

15 "(12) ORDER FOR PEDIATRIC PALLIATIVE AND END OF LIFE  
16 (PPEL) CARE. A form signed by the attending physician of a  
17 qualified minor in consultation with the qualified  
18 representative of a qualified minor, which when completed  
19 becomes the medical order for all health care providers with  
20 respect to the extent of use of emergency medical equipment  
21 and treatment, medication, and any other technological or  
22 medical interventions available to provide palliative and  
23 supportive care to the qualified minor.

24 "~~(12)~~ (13) PERMANENT UNCONSCIOUSNESS. A condition  
25 that, to a reasonable degree of medical certainty:

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

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

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

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

9            "~~(13)~~ (14) PERSON. An individual, corporation,  
10 business trust, estate, trust, partnership, association, joint  
11 venture, government, governmental subdivision or agency, or  
12 any other legal or commercial entity.

13            "~~(14)~~ (15) PHYSICIAN. A person licensed to practice  
14 medicine and osteopathy in the State of Alabama.

15            "~~(15)~~ (16) PORTABLE PHYSICIAN DNAR ORDER. A DNAR  
16 order entered in the medical record by a physician using the  
17 required form designated by the State Board of Health and  
18 substantiated by completion of all sections of the form.

19            "(17) QUALIFIED MINOR. An individual ranging in age  
20 from birth until the age of 19 who has been diagnosed as  
21 terminally ill or injured. For purposes of this chapter, a  
22 qualified minor shall be considered an adult when acting  
23 through a qualified representative under this chapter only as  
24 permitted and set forth in this chapter.

25            "(18) QUALIFIED REPRESENTATIVE. Any of the following  
26 with regard to a qualified minor:



1           "a. A parent of a qualified minor whose medical  
2 decision making rights have not been restricted.

3           "b. A legal guardian of a qualified minor, which may  
4 include situations where the Department of Human Resources has  
5 custody of a minor.

6           "c. An adult acting in loco parentis on behalf of a  
7 qualified minor.

8           "~~(16)~~ (19) RESUSCITATIVE MEASURES. Those measures  
9 used to restore or support cardiac or respiratory function in  
10 the event of cardiopulmonary cessation.

11           "~~(17)~~ (20) SURROGATE. Any person appointed to act on  
12 behalf of an individual pursuant to Section 22-8A-11.

13           "~~(18)~~ (21) TERMINALLY ILL OR INJURED PATIENT. A  
14 patient whose death is imminent or whose condition, to a  
15 reasonable degree of medical certainty, is hopeless unless he  
16 or she is artificially supported through the use of  
17 life-sustaining procedures and which condition is confirmed by  
18 a physician who is qualified and experienced in making such a  
19 diagnosis.

20           "§22-8A-7.

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

1 health care or an Order for Pediatric Palliative and End of  
2 Life Care.

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

18 "(c) No physician, licensed health care  
19 professional, medical care facility, other health care  
20 provider, or any employee thereof who in good faith and  
21 pursuant to reasonable medical standards issues or follows an  
22 Order for Pediatric Palliative and End of Life Care or a  
23 portable physician DNAR order entered in the medical record  
24 pursuant to this chapter, or causes or participates in the  
25 providing, withholding, or withdrawing of life-sustaining  
26 treatment or artificially provided nutrition and hydration  
27 from a patient pursuant to an Order for Pediatric Palliative

1 and End of Life Care, a living will, or designated proxy made  
2 in accordance with this chapter or pursuant to the directions  
3 of a duly designated surrogate appointed in accordance with  
4 this chapter, in the absence of actual knowledge of the  
5 revocation thereof, shall, as a result thereof, be subject to  
6 criminal or civil liability, or be found to have committed an  
7 act of unprofessional conduct."

8 Section 3. Sections 22-8A-15 to 22-8A-17, inclusive,  
9 are added to the Code of Alabama 1975, to read as follows:

10 §22-8A-15.

11 (a) For purposes of this chapter, a qualified  
12 representative may act on behalf of a qualified minor in the  
13 following circumstances:

14 (1) Executing an advance directive for health care  
15 under Section 22-8A-4.

16 (2) Consenting to a DNAR order under Section  
17 22-8A-4.1.

18 (3) Revoking an advanced directive for health care  
19 pursuant to Section 22-8A-5.

20 (4) Acting as a designated proxy under Section  
21 22-8A-6.

22 (5) Acting as a surrogate under Section 22-8A-11.

23 (b) A qualified representative shall have reasonable  
24 legal rights, duties, responsibilities, and obligations to act  
25 on behalf of a qualified minor.

26 §22-8A-16.

1 (a) The Department of Public Health, in consultation  
2 with the task force created pursuant to Section 22-8A-17,  
3 shall adopt rules not later than March 31, 2019, establishing  
4 the Order for Pediatric Palliative and End of Life (PPEL) Care  
5 form.

6 (b) No physician, licensed health care professional,  
7 medical care facility, other health care provider, or any  
8 employee thereof who in good faith and pursuant to reasonable  
9 medical practice issues or follows an Order for Pediatric  
10 Palliative and End of Life (PPEL) Care entered in the medical  
11 record pursuant to this chapter, or causes or participates in  
12 the providing, withholding, or withdrawing of life-sustaining  
13 treatment or artificially provided nutrition and hydration  
14 from a patient pursuant to the Order for PPEL Care, in the  
15 absence of actual knowledge of the revocation thereof, shall,  
16 as a result thereof, be subject to criminal or civil  
17 liability, or be found to have committed an act of  
18 unprofessional conduct.

19 §22-8A-17.

20 (a) A task force is created to serve under the  
21 supervision of the Alabama Department of Public Health, to  
22 establish the Order for PPEL Care form. The task force shall  
23 include all of the following representatives:

24 (1) One representative of urban emergency medical  
25 services, appointed by the Governor.

26 (2) One representative of rural emergency medical  
27 services, appointed by the Governor.

1           (3) One pediatrician caring for medically complex  
2 children in an urban area, appointed by the Governor.

3           (4) One pediatrician caring for medically complex  
4 children in a rural area, appointed by the Governor.

5           (5) Two pediatric specialists from any of the  
6 following disciplines, appointed by the Governor: Oncology,  
7 cardiology, neurology, or pulmonology.

8           (6) One pediatric ethicist, appointed by the  
9 Governor.

10          (7) One nurse, appointed by the Alabama Board of  
11 Nursing. (8) The Director for School Nurses of the State  
12 Department of Education, or his or her designee.

13          (9) The Director Child Care Facilities of the  
14 Department of Human Resources, or his or her designee.

15          (10) The State Health Officer, or his or her  
16 designee.

17          (11) One pediatric certified registered nurse  
18 practitioner, appointed by the Governor.

19          (12) Two social workers, appointed by the Governor.

20          (13) One representative of the Alabama Hospital  
21 Association, appointed by the association.

22          (14) One representative of Children's Hospital of  
23 Alabama, appointed by the hospital.

24          (15) One representative of Children's and Women's  
25 Hospital at the University of South Alabama, appointed by the  
26 hospital.

1           (16) One representative of the Alabama State  
2 Advisory Council on Palliative Care and Quality of Life,  
3 appointed by the organization.

4           (17) One representative of the Medical Association  
5 of the State of Alabama, appointed by the association.

6           (18) One representative of the Alabama Association  
7 of School Nurses, appointed by the association.

8           (19) Two hospital chaplains, appointed by the  
9 Governor.

10          (20) One pediatric palliative care physician,  
11 appointed by the Governor.

12          (21) One physician who practices hospital emergency  
13 medicine, appointed by the Governor.

14          (22) One emergency medicine physician who practices  
15 at one of the Alabama licensed pediatric specialty hospitals,  
16 appointed by the Governor.

17          (23) Two parents with minor children, appointed by  
18 the President Pro Tempore of the Senate.

19          (24) Two parents with minor children, appointed by  
20 the Speaker of the House of Representatives.

21          (b) The appointing authorities shall coordinate  
22 their appointments to assure the task force membership is  
23 inclusive and reflects the racial, gender, geographic, urban,  
24 rural, and economic diversity of the state.

25          (c) The State Health Officer, or his or her  
26 designee, shall serve as chair of the task force.

1 (d) The first meeting of the task force shall be  
2 held not later than June 1, 2018, at which time the task force  
3 may appoint or elect a vice chair.

4 (e) The task force shall automatically terminate on  
5 the date the rules establishing the Order for PPEL Care form  
6 are adopted.

7 Section 4. Section 22-8A-18 is added to the Code of  
8 Alabama 1975, to read as follows:

9 §22-8A-18.

10 An Order for Pediatric Palliative and End of Life  
11 (PPEL) Care shall only apply in the school setting if the  
12 order is included as part of a Palliative and End of Life  
13 Individual Health Plan executed pursuant to Chapter 30B of  
14 Title 16.

15 Section 5. Section 22-8A-18 is added to the Code of  
16 Alabama 1975, to read as follows:

17 §22-8A-18.

18 An Order for Pediatric Palliative and End of Life  
19 Care shall not apply in the school setting.

20 Section 6. This act shall become effective  
21 immediately following its passage and approval by the  
22 Governor, or its otherwise becoming law, except Section 4 only  
23 becomes effective upon the passage of HB202 of the 2018  
24 Regular Session, relating to Palliative and End of Life  
25 Individual Health Plans, and Section 5 only becomes effective  
26 if HB202 of the 2018 Regular Session is not enacted into law.