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HOUSE BILL 1362  
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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 AND TO AUTHORIZE THE NORTH CAROLINA RESPIRATORY CARE BOARD TO INCREASE FEES.

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.

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

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

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

5 **"§ 130A-467. Validity of unregistered documents.**

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

11 **"§ 130A-468. Filing of documents with the registry.**

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

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

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

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

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

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

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

31 **"§ 130A-469. Disclosure of information contained in the registry.**

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

38 **"§ 130A-470. Fees for using the registry; other funds for the registry.**

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

1 of maintaining the registry and to promoting public education and awareness of the  
2 registry.

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

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

10 **§ 130A-471. Limitation of liability.**

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

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

16 "(3) Reveals a document, file number, password, or any other information  
17 maintained by the Secretary of State pursuant to Article 21 of Chapter  
18 130A of the General Statutes."

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

20 "(a) Any physician or other health care provider involved in the medical care of  
21 the principal may rely upon the authority of the health care agent contained in a signed  
22 and acknowledged health care power of attorney in the absence of actual knowledge of  
23 revocation of the health care power of attorney. The physician or health care provider  
24 may rely upon a copy of the health care power of attorney obtained from the Advance  
25 Health Care Directive Registry maintained by the Secretary of State pursuant to Article  
26 21 of Chapter 130A of the General Statutes to the same extent that the individual may  
27 rely upon the original document."

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

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

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

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

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

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

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

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

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

27 **SECTION 7.** G.S. 90-660(b) reads as rewritten:

28 "(b) All monies received by the Board pursuant to this Article shall be deposited  
29 in an account for the Board and shall be used for the administration and implementation  
30 of this Article. The Board shall establish fees in amounts to cover the cost of services  
31 rendered for the following purposes:

- 32 (1) For an initial application, a fee not to exceed twenty-five dollars  
33 (\$25.00).  
34 (2) For examination or reexamination, a fee not to exceed ~~one~~two  
35 hundred fifty dollars~~(\$150.00)~~ (\$200.00).  
36 (3) For issuance of any license, a fee not to exceed one hundred dollars  
37 (\$100.00).  
38 (4) For the renewal of any license, a fee not to exceed fifty dollars  
39 (\$50.00).  
40 (5) For the late renewal of any license, an additional late fee not to exceed  
41 fifty dollars (\$50.00).

1           (6) For a license with a provisional or temporary endorsement, a fee not to  
2           exceed thirty-five dollars (\$35.00).

3           (7) For copies of rules adopted pursuant to this Article and licensure  
4           standards, charges not exceeding the actual cost of printing and  
5           mailing."

6           **SECTION 8.** Sections 1 through 6 of this act become effective January 1,  
7           2002. The remainder of this act is effective when it becomes law.