



Ohio Legislative Service Commission

Bill Analysis

Nicholas A. Keller

Sub. H.B. 451*

131st General Assembly
(As Reported by S. Civil Justice)

Reps. Boose, Pelanda, Grossman, Baker, Becker, Zeltwanger, Rogers, Butler, Manning, Celebrezze, Hambley, Sykes, Amstutz, Antonio, Ashford, Barnes, Blessing, Boggs, Boyd, Brown, Buchy, Conditt, Craig, Dever, Driehaus, Fedor, Hall, Hayes, G. Johnson, Kuhns, Lepore-Hagan, McClain, M. O'Brien, S. O'Brien, Patterson, Perales, Ramos, Reece, Rezabek, Ryan, Scherer, Schuring, Sheehy, Slaby, K. Smith, R. Smith, Sweeney, Terhar, Thompson, Young

BILL SUMMARY

- Provides that an individual is not competent under the individual's statutory priority to make a decision whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient if any of the following applies:
 - The individual is married to the patient and they are parties to a pending divorce, dissolution, legal separation, or annulment proceeding;
 - The individual is subject to a protection order issued by a court in Ohio or another state and the patient is the alleged victim;
 - The individual is charged with felonious assault or aggravated assault against the patient directly resulting in the patient being in a terminal condition from the physical harm or serious physical harm suffered as a result of the offense.
- Provides that a member of a class of individuals is not competent under the statutory class priority to make a decision described above if the member is subject to a protection order issued by a court in Ohio or another state and the patient is the alleged victim.

* This analysis was prepared before the report of the Senate Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and legislative history may be incomplete.

- Specifies that in each of the preceding dot points, the next priority individual or class of individuals or other members of the class of individuals are authorized to make the appropriate decision.
- Provides that an individual who is not competent to make a decision whether or not to consent to the withholding or withdrawal of life-sustaining treatment cannot object to a consent given by a priority individual or class of individuals.
- Excludes an individual who is not competent to make a decision whether or not to consent to the withholding or withdrawal of life-sustaining treatment from doing either of the following:
 - Testifying and presenting evidence at a hearing relative to the use or continuation of nutrition and hydration for the patient;
 - Filing an action in the probate court as a priority individual or member of a priority class of individuals for the issuance of an order mandating the use or continuation of comfort care for the patient.
- Prevents an attorney in fact from making decisions pertaining to the use or continuation of life-sustaining treatment or the provision of nutrition or hydration to a principal if the attorney in fact is subject to a protection order issued in Ohio or another state and in which the principal is the alleged victim.
- Voids an objection made to a living will of a patient by a person who would not be competent under the person's individual statutory priority to decide whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient.

CONTENT AND OPERATION

Consent to withholding or withdrawal of life-sustaining treatment

Under the "Modified Uniform Rights of the Terminally Ill Act,"¹ if written consent to the withholding or withdrawal of "life-sustaining treatment" (see "**Definitions**"), witnessed by two individuals who satisfy the witness eligibility criteria set forth in the law, is given by the appropriate individual or individuals as specified below to the attending physician of a patient who is an adult, and if all of the conditions specified in the law apply in connection with the patient, then generally the patient's

¹ R.C. Chapter 2133.

attending physician may withhold or withdraw the life-sustaining treatment.² A consent to withhold or withdraw life-sustaining treatment may be given by the appropriate individual or individuals, in accordance with the following descending order of priority:³

(1) The guardian of the patient, if one has been appointed;

(2) The patient's spouse;

(3) An adult child of the patient or, if there is more than one adult child, a majority of the adult children who are available within a reasonable period of time for consultation with the patient's attending physician;

(4) The patient's parents;

(5) An adult sibling of the patient or, if there is more than one adult sibling, a majority of the adult siblings who are available within a reasonable period of time for that consultation;

(6) The nearest adult who is not described in (1) to (5), above, who is related to the patient by blood or adoption, and who is available within a reasonable period of time for that consultation.

Individuals not competent to consent to withholding or withdrawal of life-sustaining treatment

The bill creates the following exceptions to the above descending order of priority of individuals:⁴

- If an appropriate individual entitled to decide whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient and that patient are married and are the parties to a pending divorce, dissolution, legal separation, or annulment proceeding, the individual is not competent to so decide, and the next priority individual or class of individuals specified above is authorized to make the decision.
- If an appropriate individual entitled to decide whether or not to consent to the withholding or withdrawing of life-sustaining treatment for a patient

² R.C. 2133.08(A)(1).

³ R.C. 2133.08(B).

⁴ R.C. 2133.08(B) and (C)(2).

is subject to a "temporary protection order," "civil protection order" (see "**Definitions**"), or any other protection order issued by a court in Ohio or another state and the patient is the alleged victim, the individual is not competent to so decide, and the next priority individual or class of individuals is authorized to make that decision.

- If an appropriate individual entitled to decide whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient has been charged with felonious assault or aggravated assault against the patient and the serious physical harm or physical harm suffered by the patient as a result of the offense directly caused the patient to be in a terminal condition, the individual is not competent to so decide, and the next priority individual or class of individuals is authorized to make the decision.
- If a member of a class of individuals entitled to decide whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient is subject to a protection order described above and the patient is the alleged victim, the member is not competent to so decide, and the other members of the class of individuals are authorized to make the decision.

Objection to consent given

The bill provides that any of the above individuals who are not competent to consent to the withholding or withdrawal of life-sustaining treatment cannot make an objection to a consent given by a priority individual or class of individuals.⁵ Current law provides a procedure for a priority individual or class of individuals to object to a consent given by another priority individual or class by advising the attending physician of the grounds for the objection and filing a complaint in court. If the decision of the priority individual or class was to consent to the withholding or withdrawal of life-sustaining treatment of the patient, the bill expands the current grounds for the court to reverse that consent if the objecting individual establishes, by a preponderance of the evidence, that the priority individual, or any member of the priority class of individuals, who made the decision to withhold or withdraw life-sustaining treatment was not competent to make that decision under the bill.⁶

⁵ R.C. 2133.08(E)(1).

⁶ R.C. 2133.08(E)(3)(h).



Withholding or withdrawing nutrition and hydration

Continuing law provides a court procedure in which a priority individual or class that consented to the withholding or withdrawal of nutrition and hydration of a patient must apply to the probate court for an order authorizing the attending physician to withhold or withdraw such nutrition or hydration. Under the bill, an individual who is not competent to make a decision whether or not to consent to the withholding or withdrawal of life-sustaining treatment is excluded from testifying and presenting evidence at the hearing relative to the use or continuation of nutrition and hydration.⁷

Withholding or withdrawal of comfort care

The bill excludes an individual who is not competent to make a decision whether or not to consent to the withholding or withdrawal of life-sustaining treatment from filing an action in the probate court as a priority individual or member of a priority class of individuals for the issuance of an order mandating the use or continuation of comfort care for the patient under specified circumstances.⁸

Power of attorney

The bill prevents an attorney in fact from making decisions pertaining to the use or continuation of life-sustaining treatment or the provision of nutrition or hydration to a principal if the attorney in fact is subject to a temporary protection order, civil protection order, or any other protection order issued in Ohio or another state and in which the principal is the alleged victim.⁹

Additionally, the bill requires a printed form of durable power of attorney for health care that is sold or otherwise distributed in Ohio for use by adults who are not advised by an attorney to include notice that an attorney in fact is prevented from making decisions pertaining to the use or continuation of life-sustaining treatment or the provision of nutrition or hydration to a principal under the conditions described in the preceding paragraph.¹⁰

Objections to a living will

The bill voids any objection made to the living will of a patient by a person who would not be competent under "**Individuals not competent to consent to**

⁷ R.C. 2133.09(C)(1).

⁸ R.C. 2133.12(E)(2)(c).

⁹ R.C. 1337.13.

¹⁰ R.C. 1337.17.

withholding or withdrawal of life-sustaining treatment," above, to decide whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient.

Under continuing law, if the attending physician of a patient determines that the patient is in a terminal condition or in a permanently unconscious state, that the patient is no longer able to make informed decisions regarding the administration of life-sustaining treatment and that there is no reasonable possibility that the patient will regain the capacity to make those informed decisions, and the attending physician is aware of the patient's living will which covers the terminal condition or permanent unconscious state, the attending physician must record the physician's findings and notify the individuals designated for notice in the living will that life-sustaining treatment is to be withheld or withdrawn pursuant to a declaration in the living will.

If no individuals are designated for notice in the living will, the physician must notify alternative persons as indicated in continuing law. Individuals who must be notified under continuing law may file a complaint in probate court of the county in which the patient is located with objections to withholding or withdrawing life-sustaining treatment according to the living will. The bill voids those objections if the individual is not competent as described above.¹¹

Definitions

The bill defines the following terms:¹²

"Civil protection order" means a protection order issued or consent agreement approved under R.C. 2903.214 (civil stalking protection order involving any person) or R.C. 3113.31 (civil domestic violence protection order or consent agreement involving a family or household member).

"Temporary protection order" means a protection order issued under R.C. 2903.213 (criminal stalking protection order involving a person other than a family or household member issued as a pre-trial condition of release) or R.C. 2919.26 (criminal domestic violence temporary protection order involving a family or household member).

The current definition of **"life-sustaining treatment,"** applicable to the bill, means any medical procedure, treatment, intervention, or other measure that, when

¹¹ R.C. 2133.05.

¹² R.C. 2133.08(H), by reference to R.C. 2923.124.



administered to a qualified patient or other patient, will serve principally to prolong the process of dying.¹³

HISTORY

| ACTION | DATE |
|----------------------------|----------|
| Introduced | 02-09-16 |
| Reported, H. Judiciary | 05-11-16 |
| Passed House (97-0) | 05-25-16 |
| Reported, S. Civil Justice | --- |

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¹³ R.C. 2133.01(Q), which is not in the bill.

