



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Nicholas A. Keller

Sub. H.B. 451

131st General Assembly
(As Passed by the General Assembly)

- Reps.** Boose, Pelanda, Grossman, Baker, Becker, Zeltwanger, Rogers, Butler, Manning, Celebrezze, Hambley, Sykes, Amstutz, Antonio, Ashford, Barnes, Blessing, Boggs, Boyd, Brown, Buchy, Condit, 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
- Sens.** Bacon, Thomas, Balderson, Coley, Eklund, Faber, Hackett, Hughes, Manning, Oelslager, Peterson, Sawyer, Seitz, Tavares

Effective date: April 6, 2017

ACT SUMMARY

- Disqualifies an individual from exercising 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.
- Disqualifies a member of a class of individuals under the statutory class priority from making a decision described above if the member is subject to a protection order or has been charged with felonious assault or aggravated assault under the conditions described in the two preceding dot points.

- Authorizes, when an individual is disqualified, the next priority individual or class of individuals or other members of the class of individuals to make the appropriate decision.
- Prohibits 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 objecting 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 (witnessed by two individuals who satisfy certain criteria) to the withholding or withdrawal of life-sustaining treatment is given by the appropriate individual or individuals to the attending physician of an adult patient, and if all conditions specified in the law apply in connection with the patient, then generally the attending physician may withhold or withdraw the life-sustaining treatment. "Life sustaining treatment," as applied to the act, means any medical procedure, treatment, intervention, or other

¹ R.C. Chapter 2133.

measure that, when administered to a qualified patient or other patient, will serve principally to prolong the process of dying.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 patient's guardian, 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 withdrawing life-sustaining treatment

The act disqualifies the following individuals from making a decision under the above descending order of priority of individuals:⁴

(1) An individual who is married to the patient if the individual and the patient are parties to a pending divorce, dissolution, legal separation, or annulment proceeding;

(2) An individual who 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 if the patient is the alleged victim;

(3) An individual who has been charged with felonious assault or aggravated assault against the patient if 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.

² R.C. 2133.08(A)(1) and 2133.01(Q), not in the act.

³ R.C. 2133.08(B).

⁴ R.C. 2133.08(B) and (C)(2).

If an individual is disqualified from making a decision under the descending order of priority of individuals as described in (1), (2), or (3), above, the next priority individual or class of individuals is authorized to make that decision. If a member of a class of individuals is disqualified from making a decision because the member is subject to a protection order described in (2), above, or has been charged with felonious assault or aggravated assault against the patient as described in (3), above, the other members of the class of individuals are authorized to make the decision.

Objection to consent given

An individual who is disqualified from consenting 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 under the act.⁵ Continuing 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 is to consent to the withholding or withdrawal of life-sustaining treatment of the patient, the act expands the preexisting 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 disqualified from making that decision under the act.⁶

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 nutrition or hydration. Under the act, an individual who is disqualified from deciding 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 withdrawing comfort care

The act excludes an individual who is disqualified from deciding whether or not to consent to the withholding or withdrawal of life-sustaining treatment from filing an

⁵ R.C. 2133.08(E)(1).

⁶ R.C. 2133.08(E)(3)(h).

⁷ R.C. 2133.09(C)(1).



action in the probate court as a priority individual or member of a priority class of individuals for an order mandating the use or continuation of comfort care for the patient under specified circumstances.⁸

Power of attorney

The act 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 act 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 act voids any objection made to the living will of a patient by a person who would be disqualified from deciding 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

⁸ R.C. 2133.12(E)(2)(c).

⁹ R.C. 1337.13.

¹⁰ R.C. 1337.17.



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 act voids those objections if the individual would be disqualified as described above.¹¹

Definitions

The act 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).

HISTORY

ACTION	DATE
Introduced	02-09-16
Reported, H. Judiciary	05-11-16
Passed House (97-0)	05-25-16
Reported, S. Civil Justice	12-08-16
Passed Senate (31-0)	12-08-16
House concurred in Senate amendments (91-0)	12-08-16

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¹¹ R.C. 2133.05.

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

