

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 451

Representative Boose

**Cosponsors: Representatives Pelanda, Grossman, Baker, Becker, Zeltwanger,
Rogers**

A BILL

To amend sections 2133.08, 2133.09, and 2133.12 of 1
the Revised Code to provide that an individual's 2
statutory priority to decide whether or not to 3
withhold or withdraw life-sustaining treatment 4
for the individual's relative is forfeited if 5
the individual is the subject of a temporary 6
protection order or civil protection order and 7
the relative is the alleged victim or if the 8
individual and the relative are married and the 9
parties to a divorce, dissolution, legal 10
separation, or annulment proceeding. 11

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2133.08, 2133.09, and 2133.12 of 12
the Revised Code be amended to read as follows: 13

Sec. 2133.08. (A) (1) If written consent to the withholding 14
or withdrawal of life-sustaining treatment, witnessed by two 15
individuals who satisfy the witness eligibility criteria set 16
forth in division (B) (1) of section 2133.02 of the Revised Code, 17
is given by the appropriate individual or individuals as 18

specified in division (B) of this section to the attending 19
physician of a patient who is an adult, and if all of the 20
following apply in connection with the patient, then, subject to 21
section 2133.09 of the Revised Code, the patient's attending 22
physician may withhold or withdraw the life-sustaining 23
treatment: 24

(a) The attending physician and one other physician who 25
examines the patient determine, in good faith, to a reasonable 26
degree of medical certainty, and in accordance with reasonable 27
medical standards, that the patient is in a terminal condition 28
or the patient currently is and for at least the immediately 29
preceding twelve months has been in a permanently unconscious 30
state, and the attending physician additionally determines, in 31
good faith, to a reasonable degree of medical certainty, and in 32
accordance with reasonable medical standards, that the patient 33
no longer is able to make informed decisions regarding the 34
administration of life-sustaining treatment and that there is no 35
reasonable possibility that the patient will regain the capacity 36
to make those informed decisions. 37

(b) The patient does not have a declaration that addresses 38
the patient's intent should the patient be determined to be in a 39
terminal condition or in a permanently unconscious state, 40
whichever applies, or a durable power of attorney for health 41
care, or has a document that purports to be such a declaration 42
or durable power of attorney for health care but that document 43
is not legally effective. 44

(c) The consent of the appropriate individual or 45
individuals is given after consultation with the patient's 46
attending physician and after receipt of information from the 47
patient's attending physician or a consulting physician that is 48

sufficient to satisfy the requirements of informed consent. 49

(d) The appropriate individual or individuals who give a 50
consent are of sound mind and voluntarily give the consent. 51

(e) If a consent would be given under division (B) (3) of 52
this section, the attending physician made a good faith effort, 53
and used reasonable diligence, to notify the patient's adult 54
children who are available within a reasonable period of time 55
for consultation as described in division (A) (1) (c) of this 56
section. 57

(2) The consulting physician under division (A) (1) (a) of 58
this section associated with a patient allegedly in a 59
permanently unconscious state shall be a physician who, by 60
virtue of advanced education or training, of a practice limited 61
to particular diseases, illnesses, injuries, therapies, or 62
branches of medicine or surgery or osteopathic medicine and 63
surgery, of certification as a specialist in a particular branch 64
of medicine or surgery or osteopathic medicine and surgery, or 65
of experience acquired in the practice of medicine or surgery or 66
osteopathic medicine and surgery, is qualified to determine 67
whether the patient currently is and for at least the 68
immediately preceding twelve months has been in a permanently 69
unconscious state. 70

(B) For purposes of division (A) of this section and 71
subject to division (C) of this section, a consent to withhold 72
or withdraw life-sustaining treatment may be given by the 73
appropriate individual or individuals, in accordance with the 74
following descending order of priority: 75

(1) If any, the guardian of the patient. This division 76
does not permit or require, and shall not be construed as 77

permitting or requiring, the appointment of a guardian for the patient.	78 79
(2) The patient's spouse;	80
(3) An adult child of the patient or, if there is more than one adult child, a majority of the patient's adult children who are available within a reasonable period of time for consultation with the patient's attending physician;	81 82 83 84
(4) The patient's parents;	85
(5) An adult sibling of the patient or, if there is more than one adult sibling, a majority of the patient's adult siblings who are available within a reasonable period of time for that consultation;	86 87 88 89
(6) The nearest adult who is not described in divisions (B) (1) to (5) of this section, who is related to the patient by blood or adoption, and who is available within a reasonable period of time for that consultation.	90 91 92 93
(C) <u>(1)</u> If an appropriate individual or class of individuals entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient is not available within a reasonable period of time for the consultation and competent to so decide, or declines to so decide, then the next priority individual or class of individuals specified in that division is authorized to make the decision. However, an equal division in a priority class of individuals under that division does not authorize the next class of individuals specified in that division to make the decision. If an equal division in a priority class of individuals under that division occurs, no written consent to	94 95 96 97 98 99 100 101 102 103 104 105 106

the withholding or withdrawal of life-sustaining treatment from 107
the patient can be given pursuant to this section. 108

(2) (a) If an appropriate individual entitled to decide 109
under division (B) of this section whether or not to consent to 110
the withholding or withdrawing of life-sustaining treatment for 111
a patient and that patient are married and are the parties to a 112
pending divorce, dissolution, legal separation, or annulment 113
proceeding, the individual is not competent to so decide, and 114
the next priority individual or class of individuals specified 115
in that division is authorized to make the decision. 116

(b) If an appropriate individual entitled to decide under 117
division (B) of this section whether or not to consent to the 118
withholding or withdrawing of life-sustaining treatment for a 119
patient is subject to a temporary protection order, civil 120
protection order, or any other protection order issued by a 121
court in this state or another state and the patient is the 122
alleged victim, the individual is not competent to so decide, 123
and the next priority individual or class of individuals 124
specified in that division is authorized to make that decision. 125

(c) If a member of a class of individuals entitled to 126
decide under division (B) of this section whether or not to 127
consent to the withholding or withdrawal of life-sustaining 128
treatment for a patient is subject to a temporary protection 129
order, civil protection order, or any other protection order 130
issued by a court in this state or another state and the patient 131
is the alleged victim, the member is not competent to so decide, 132
and the other members of the class of individuals are authorized 133
to make the decision. 134

(D) (1) A decision to consent pursuant to this section to 135
the use or continuation, or the withholding or withdrawal, of 136

life-sustaining treatment for a patient shall be made in good 137
faith. 138

(2) Except as provided in division (D)(4) of this section, 139
if the patient previously expressed an intention with respect to 140
the use or continuation, or the withholding or withdrawal, of 141
life-sustaining treatment should the patient subsequently be in 142
a terminal condition or in a permanently unconscious state, 143
whichever applies, and no longer able to make informed decisions 144
regarding the administration of life-sustaining treatment, a 145
consent given pursuant to this section shall be valid only if it 146
is consistent with that previously expressed intention. 147

(3) Except as provided in division (D)(4) of this section, 148
if the patient did not previously express an intention with 149
respect to the use or continuation, or the withholding or 150
withdrawal, of life-sustaining treatment should the patient 151
subsequently be in a terminal condition or in a permanently 152
unconscious state, whichever applies, and no longer able to make 153
informed decisions regarding the administration of life- 154
sustaining treatment, a consent given pursuant to this section 155
shall be valid only if it is consistent with the type of 156
informed consent decision that the patient would have made if 157
the patient previously had expressed an intention with respect 158
to the use or continuation, or the withholding or withdrawal, of 159
life-sustaining treatment should the patient subsequently be in 160
a terminal condition or in a permanently unconscious state, 161
whichever applies, and no longer able to make informed decisions 162
regarding the administration of life-sustaining treatment, as 163
inferred from the lifestyle and character of the patient, and 164
from any other evidence of the desires of the patient, prior to 165
the patient's becoming no longer able to make informed decisions 166
regarding the administration of life-sustaining treatment. The 167

Rules of Evidence shall not be binding for purposes of this 168
division. 169

(4) (a) The attending physician of the patient, and other 170
health care personnel acting under the direction of the 171
attending physician, who do not have actual knowledge of a 172
previously expressed intention as described in division (D) (2) 173
of this section or who do not have actual knowledge that the 174
patient would have made a different type of informed consent 175
decision under the circumstances described in division (D) (3) of 176
this section, may rely on a consent given in accordance with 177
this section unless a probate court decides differently under 178
division (E) of this section. 179

(b) The immunity conferred by division (C) (1) of section 180
2133.11 of the Revised Code is not forfeited by an individual 181
who gives a consent to the use or continuation, or the 182
withholding or withdrawal, of life-sustaining treatment for a 183
patient under division (B) of this section if the individual 184
gives the consent in good faith and without actual knowledge, at 185
the time of giving the consent, of either a contrary previously 186
expressed intention of the patient, or a previously expressed 187
intention of the patient, as described in division (D) (2) of 188
this section, that is revealed to the individual subsequent to 189
the time of giving the consent. 190

(E) (1) Within forty-eight hours after a priority 191
individual or class of individuals gives a consent pursuant to 192
this section to the use or continuation, or the withholding or 193
withdrawal, of life-sustaining treatment and communicates the 194
consent to the patient's attending physician, any individual 195
described in divisions (B) (1) to (5) of this section, except an 196
individual who is not competent to give consent under division 197

(C) (2) of this section, who objects to the application of this 198
section to the patient shall advise the attending physician of 199
the grounds for the objection. If an objection is so 200
communicated to the attending physician, then, within two 201
business days after that communication, the objecting individual 202
shall file a complaint against the priority individual or class 203
of individuals, the patient's attending physician, and the 204
consulting physician associated with the determination that the 205
patient is in a terminal condition or that the patient currently 206
is and for at least the immediately preceding twelve months has 207
been in a permanently unconscious state, in the probate court of 208
the county in which the patient is located for the issuance of 209
an order reversing the consent of the priority individual or 210
class of individuals. If the objecting individual fails to so 211
file a complaint, the individual's objections shall be 212
considered to be void. 213

A probate court in which a complaint is filed in 214
accordance with this division shall conduct a hearing on the 215
complaint after a copy of the complaint and a notice of the 216
hearing have been served upon the defendants. The clerk of the 217
probate court in which the complaint is filed shall cause the 218
complaint and the notice of the hearing to be so served in 219
accordance with the Rules of Civil Procedure, which service 220
shall be made, if possible, within three days after the filing 221
of the complaint. The hearing shall be conducted at the earliest 222
possible time, but no later than the third business day after 223
the service has been completed. Immediately following the 224
hearing, the court shall enter on its journal its determination 225
whether the decision of the priority individual or class of 226
individuals to consent to the use or continuation, or the 227
withholding or withdrawal, of life-sustaining treatment in 228

connection with the patient will be confirmed or reversed.	229
(2) If the decision of the priority individual or class of individuals was to consent to the use or continuation of life-sustaining treatment in connection with the patient, the court only may reverse that consent if the objecting individual establishes, by clear and convincing evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, one or more of the following:	230 231 232 233 234 235 236 237
(a) The patient is able to make informed decisions regarding the administration of life-sustaining treatment.	238 239
(b) The patient has a legally effective declaration that addresses the patient's intent should the patient be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a legally effective durable power of attorney for health care.	240 241 242 243 244
(c) The decision to use or continue life-sustaining treatment is not consistent with the previously expressed intention of the patient as described in division (D) (2) of this section.	245 246 247 248
(d) The decision to use or continue life-sustaining treatment is not consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment as	249 250 251 252 253 254 255 256 257

described in division (D) (3) of this section. 258

(e) The decision of the priority individual or class of 259
individuals was not made after consultation with the patient's 260
attending physician and after receipt of information from the 261
patient's attending physician or a consulting physician that is 262
sufficient to satisfy the requirements of informed consent. 263

(f) The priority individual, or any member of the priority 264
class of individuals, who made the decision to use or continue 265
life-sustaining treatment was not of sound mind or did not 266
voluntarily make the decision. 267

(g) If the decision of a priority class of individuals 268
under division (B) (3) of this section is involved, the patient's 269
attending physician did not make a good faith effort, and use 270
reasonable diligence, to notify the patient's adult children who 271
were available within a reasonable period of time for 272
consultation as described in division (A) (1) (c) of this section. 273

(h) The decision of the priority individual or class of 274
individuals otherwise was made in a manner that does not comply 275
with this section. 276

(i) The decision was made by a priority individual, or the 277
class of individuals who made the decision included a person, 278
who was not competent to make that decision under division (C) 279
(2) of this section. 280

(3) If the decision of the priority individual or class of 281
individuals was to consent to the withholding or withdrawal of 282
life-sustaining treatment in connection with the patient, the 283
court only may reverse that consent if the objecting individual 284
establishes, by a preponderance of the evidence and, if 285
applicable, to a reasonable degree of medical certainty and in 286

accordance with reasonable medical standards, one or more of the	287
following:	288
(a) The patient is not in a terminal condition, the	289
patient is not in a permanently unconscious state, or the	290
patient has not been in a permanently unconscious state for at	291
least the immediately preceding twelve months.	292
(b) The patient is able to make informed decisions	293
regarding the administration of life-sustaining treatment.	294
(c) There is a reasonable possibility that the patient	295
will regain the capacity to make informed decisions regarding	296
the administration of life-sustaining treatment.	297
(d) The patient has a legally effective declaration that	298
addresses the patient's intent should the patient be determined	299
to be in a terminal condition or in a permanently unconscious	300
state, whichever applies, or a legally effective durable power	301
of attorney for health care.	302
(e) The decision to withhold or withdraw life-sustaining	303
treatment is not consistent with the previously expressed	304
intention of the patient as described in division (D) (2) of this	305
section.	306
(f) The decision to withhold or withdraw life-sustaining	307
treatment is not consistent with the type of informed consent	308
decision that the patient would have made if the patient	309
previously had expressed an intention with respect to the use or	310
continuation, or the withholding or withdrawal, of life-	311
sustaining treatment should the patient subsequently be in a	312
terminal condition or in a permanently unconscious state,	313
whichever applies, and no longer able to make informed decisions	314
regarding the administration of life-sustaining treatment as	315

described in division (D) (3) of this section. 316

(g) The decision of the priority individual or class of 317
individuals was not made after consultation with the patient's 318
attending physician and after receipt of information from the 319
patient's attending physician or a consulting physician that is 320
sufficient to satisfy the requirements of informed consent. 321

(h) The priority individual, or any member of the priority 322
class of individuals, who made the decision to withhold or 323
withdraw life-sustaining treatment was not of sound mind, was 324
not competent to make the decision under division (C) (2) of this 325
section, or did not voluntarily make the decision. 326

(i) If the decision of a priority class of individuals 327
under division (B) (3) of this section is involved, the patient's 328
attending physician did not make a good faith effort, and use 329
reasonable diligence, to notify the patient's adult children who 330
were available within a reasonable period of time for 331
consultation as described in division (A) (1) (c) of this section. 332

(j) The decision of the priority individual or class of 333
individuals otherwise was made in a manner that does not comply 334
with this section. 335

(4) Notwithstanding any contrary provision of the Revised 336
Code or of the Rules of Civil Procedure, the state and persons 337
other than individuals described in divisions (B) (1) to (5) of 338
this section are prohibited from filing a complaint under 339
division (E) of this section and from joining or being joined as 340
parties to a hearing conducted under division (E) of this 341
section, including joining by way of intervention. 342

(F) A valid consent given in accordance with this section 343
supersedes any general consent to treatment form signed by or on 344

behalf of the patient prior to, upon, or after the patient's 345
admission to a health care facility to the extent there is a 346
conflict between the consent and the form. 347

(G) Life-sustaining treatment shall not be withheld or 348
withdrawn from a patient pursuant to a consent given in 349
accordance with this section if the patient is pregnant and if 350
the withholding or withdrawal of the treatment would terminate 351
the pregnancy, unless the patient's attending physician and one 352
other physician who has examined the patient determine, to a 353
reasonable degree of medical certainty and in accordance with 354
reasonable medical standards, that the fetus would not be born 355
alive. 356

(H) As used in this section, "civil protection order" and 357
"temporary protection order" have the same meanings as in 358
section 2923.124 of the Revised Code. 359

Sec. 2133.09. (A) The attending physician of a patient who 360
is an adult and who currently is and for at least the 361
immediately preceding twelve months has been in a permanently 362
unconscious state may withhold or withdraw nutrition and 363
hydration in connection with the patient only if all of the 364
following apply: 365

(1) Written consent to the withholding or withdrawal of 366
life-sustaining treatment in connection with the patient has 367
been given by an appropriate individual or individuals in 368
accordance with section 2133.08 of the Revised Code, and 369
divisions (A) (1) (a) to (e) and (2) of that section have been 370
satisfied. 371

(2) A probate court has not reversed the consent to the 372
withholding or withdrawal of life-sustaining treatment in 373

connection with the patient pursuant to division (E) of section 374
2133.08 of the Revised Code. 375

(3) The attending physician of the patient and one other 376
physician as described in division (A) (2) of section 2133.08 of 377
the Revised Code who examines the patient determine, in good 378
faith, to a reasonable degree of medical certainty, and in 379
accordance with reasonable medical standards, that nutrition and 380
hydration will not or no longer will provide comfort or 381
alleviate pain in connection with the patient. 382

(4) Written consent to the withholding or withdrawal of 383
nutrition and hydration in connection with the patient, 384
witnessed by two individuals who satisfy the witness eligibility 385
criteria set forth in division (B) (1) of section 2133.02 of the 386
Revised Code, is given to the attending physician of the patient 387
by an appropriate individual or individuals as specified in 388
division (B) of section 2133.08 of the Revised Code. 389

(5) The written consent to the withholding or withdrawal 390
of the nutrition and hydration in connection with the patient is 391
given in accordance with division (B) of this section. 392

(6) The probate court of the county in which the patient 393
is located issues an order to withhold or withdraw the nutrition 394
and hydration in connection with the patient pursuant to 395
division (C) of this section. 396

(B) (1) A decision to consent pursuant to this section to 397
the withholding or withdrawal of nutrition and hydration in 398
connection with a patient shall be made in good faith. 399

(2) Except as provided in division (B) (4) of this section, 400
if the patient previously expressed an intention with respect to 401
the use or continuation, or the withholding or withdrawal, of 402

nutrition and hydration should the patient subsequently be in a 403
permanently unconscious state and no longer able to make 404
informed decisions regarding the administration of nutrition and 405
hydration, a consent given pursuant to this section shall be 406
valid only if it is consistent with that previously expressed 407
intention. 408

(3) Except as provided in division (B)(4) of this section, 409
if the patient did not previously express an intention with 410
respect to the use or continuation, or the withholding or 411
withdrawal, of nutrition and hydration should the patient 412
subsequently be in a permanently unconscious state and no longer 413
able to make informed decisions regarding the administration of 414
nutrition and hydration, a consent given pursuant to this 415
section shall be valid only if it is consistent with the type of 416
informed consent decision that the patient would have made if 417
the patient previously had expressed an intention with respect 418
to the use or continuation, or the withholding or withdrawal, of 419
nutrition and hydration should the patient subsequently be in a 420
permanently unconscious state and no longer able to make 421
informed decisions regarding the administration of nutrition and 422
hydration, as inferred from the lifestyle and character of the 423
patient, and from any other evidence of the desires of the 424
patient, prior to the patient's becoming no longer able to make 425
informed decisions regarding the administration of nutrition and 426
hydration. The Rules of Evidence shall not be binding for 427
purposes of this division. 428

(4) (a) The attending physician of the patient, and other 429
health care personnel acting under the direction of the 430
attending physician, who do not have actual knowledge of a 431
previously expressed intention as described in division (B)(2) 432
of this section or who do not have actual knowledge that the 433

patient would have made a different type of informed consent 434
decision under the circumstances described in division (B) (3) of 435
this section, may rely on a consent given in accordance with 436
this section unless a probate court decides differently under 437
division (C) of this section. 438

(b) The immunity conferred by division (C) (2) of section 439
2133.11 of the Revised Code is not forfeited by an individual 440
who gives a consent to the withholding or withdrawal of 441
nutrition and hydration in connection with a patient under 442
division (A) (4) of this section if the individual gives the 443
consent in good faith and without actual knowledge, at the time 444
of giving the consent, of either a contrary previously expressed 445
intention of the patient, or a previously expressed intention of 446
the patient, as described in division (B) (2) of this section, 447
that is revealed to the individual subsequent to the time of 448
giving the consent. 449

(C) (1) Prior to the withholding or withdrawal of nutrition 450
and hydration in connection with a patient pursuant to this 451
section, the priority individual or class of individuals that 452
consented to the withholding or withdrawal of the nutrition and 453
hydration shall apply to the probate court of the county in 454
which the patient is located for the issuance of an order that 455
authorizes the attending physician of the patient to commence 456
the withholding or withdrawal of the nutrition and hydration in 457
connection with the patient. Upon the filing of the application, 458
the clerk of the probate court shall schedule a hearing on it 459
and cause a copy of it and a notice of the hearing to be served 460
in accordance with the Rules of Civil Procedure upon the 461
applicant, the attending physician, the consulting physician 462
associated with the determination that nutrition and hydration 463
will not or no longer will provide comfort or alleviate pain in 464

connection with the patient, and the individuals described in 465
divisions (B) (1) to (5) of section 2133.08 of the Revised Code 466
who are not applicants, which service shall be made, if 467
possible, within three days after the filing of the application. 468
The hearing shall be conducted at the earliest possible time, 469
but no sooner than the thirtieth business day, and no later than 470
the sixtieth business day, after the service has been completed. 471

At the hearing, any individual described in divisions (B) 472
(1) to (5) of section 2133.08 of the Revised Code who is not an 473
applicant, except an individual who is not competent under 474
division (C) (2) of section 2133.08 of the Revised Code, and who 475
disagrees with the decision of the priority individual or class 476
of individuals to consent to the withholding or withdrawal of 477
nutrition and hydration in connection with the patient shall be 478
permitted to testify and present evidence relative to the use or 479
continuation of nutrition and hydration in connection with the 480
patient. Immediately following the hearing, the court shall 481
enter on its journal its determination whether the requested 482
order will be issued. 483

(2) The court shall issue an order that authorizes the 484
patient's attending physician to commence the withholding or 485
withdrawal of nutrition and hydration in connection with the 486
patient only if the applicants establish, by clear and 487
convincing evidence, to a reasonable degree of medical 488
certainty, and in accordance with reasonable medical standards, 489
all of the following: 490

(a) The patient currently is and for at least the 491
immediately preceding twelve months has been in a permanently 492
unconscious state. 493

(b) The patient no longer is able to make informed 494

decisions regarding the administration of life-sustaining 495
treatment. 496

(c) There is no reasonable possibility that the patient 497
will regain the capacity to make informed decisions regarding 498
the administration of life-sustaining treatment. 499

(d) The conditions specified in divisions (A) (1) to (4) of 500
this section have been satisfied. 501

(e) The decision to withhold or withdraw nutrition and 502
hydration in connection with the patient is consistent with the 503
previously expressed intention of the patient as described in 504
division (B) (2) of this section or is consistent with the type 505
of informed consent decision that the patient would have made if 506
the patient previously had expressed an intention with respect 507
to the use or continuation, or the withholding or withdrawal, of 508
nutrition and hydration should the patient subsequently be in a 509
permanently unconscious state and no longer able to make 510
informed decisions regarding the administration of nutrition and 511
hydration as described in division (B) (3) of this section. 512

(3) Notwithstanding any contrary provision of the Revised 513
Code or of the Rules of Civil Procedure, the state and persons 514
other than individuals described in division (A) (4) of this 515
section or in divisions (B) (1) to (5) of section 2133.08 of the 516
Revised Code and other than the attending physician and 517
consulting physician associated with the determination that 518
nutrition and hydration will not or no longer will provide 519
comfort or alleviate pain in connection with the patient are 520
prohibited from filing an application under this division and 521
from joining or being joined as parties to a hearing conducted 522
under this division, including joining by way of intervention. 523

(D) A valid consent given in accordance with this section 524
supersedes any general consent to treatment form signed by or on 525
behalf of the patient prior to, upon, or after the patient's 526
admission to a health care facility to the extent there is a 527
conflict between the consent and the form. 528

Sec. 2133.12. (A) The death of a qualified patient or 529
other patient resulting from the withholding or withdrawal of 530
life-sustaining treatment in accordance with sections 2133.01 to 531
2133.15 of the Revised Code does not constitute for any purpose 532
a suicide, aggravated murder, murder, or any other homicide 533
offense. 534

(B) (1) The execution of a declaration shall not do either 535
of the following: 536

(a) Affect the sale, procurement, issuance, or renewal of 537
any policy of life insurance or annuity, notwithstanding any 538
term of a policy or annuity to the contrary; 539

(b) Be deemed to modify or invalidate the terms of any 540
policy of life insurance or annuity that is in effect on October 541
10, 1991. 542

(2) Notwithstanding any term of a policy of life insurance 543
or annuity to the contrary, the withholding or withdrawal of 544
life-sustaining treatment from an insured, qualified patient or 545
other patient in accordance with sections 2133.01 to 2133.15 of 546
the Revised Code shall not impair or invalidate any policy of 547
life insurance or annuity. 548

(3) Notwithstanding any term of a policy or plan to the 549
contrary, the use or continuation, or the withholding or 550
withdrawal, of life-sustaining treatment from an insured, 551
qualified patient or other patient in accordance with sections 552

2133.01 to 2133.15 of the Revised Code shall not impair or 553
invalidate any policy of health insurance or any health care 554
benefit plan. 555

(4) No physician, health care facility, other health care 556
provider, person authorized to engage in the business of 557
insurance in this state under Title XXXIX of the Revised Code, 558
health insuring corporation, other health care plan, legal 559
entity that is self-insured and provides benefits to its 560
employees or members, or other person shall require any 561
individual to execute or refrain from executing a declaration, 562
or shall require an individual to revoke or refrain from 563
revoking a declaration, as a condition of being insured or of 564
receiving health care benefits or services. 565

(C) (1) Sections 2133.01 to 2133.15 of the Revised Code do 566
not create any presumption concerning the intention of an 567
individual who has revoked or has not executed a declaration 568
with respect to the use or continuation, or the withholding or 569
withdrawal, of life-sustaining treatment if the individual 570
should be in a terminal condition or in a permanently 571
unconscious state at any time. 572

(2) Sections 2133.01 to 2133.15 of the Revised Code do not 573
affect the right of a qualified patient or other patient to make 574
informed decisions regarding the use or continuation, or the 575
withholding or withdrawal, of life-sustaining treatment as long 576
as the qualified patient or other patient is able to make those 577
decisions. 578

(3) Sections 2133.01 to 2133.15 of the Revised Code do not 579
require a physician, other health care personnel, or a health 580
care facility to take action that is contrary to reasonable 581
medical standards. 582

(4) Sections 2133.01 to 2133.15 of the Revised Code and, 583
if applicable, a declaration do not affect or limit the 584
authority of a physician or a health care facility to provide or 585
not to provide life-sustaining treatment to a person in 586
accordance with reasonable medical standards applicable in an 587
emergency situation. 588

(D) Nothing in sections 2133.01 to 2133.15 of the Revised 589
Code condones, authorizes, or approves of mercy killing, 590
assisted suicide, or euthanasia. 591

(E) (1) Sections 2133.01 to 2133.15 of the Revised Code do 592
not affect the responsibility of the attending physician of a 593
qualified patient or other patient, or other health care 594
personnel acting under the direction of the patient's attending 595
physician, to provide comfort care to the patient. Nothing in 596
sections 2133.01 to 2133.15 of the Revised Code precludes the 597
attending physician of a qualified patient or other patient who 598
carries out the responsibility to provide comfort care to the 599
patient in good faith and while acting within the scope of the 600
attending physician's authority from prescribing, dispensing, 601
administering, or causing to be administered any particular 602
medical procedure, treatment, intervention, or other measure to 603
the patient, including, but not limited to, prescribing, 604
personally furnishing, administering, or causing to be 605
administered by judicious titration or in another manner any 606
form of medication, for the purpose of diminishing the qualified 607
patient's or other patient's pain or discomfort and not for the 608
purpose of postponing or causing the qualified patient's or 609
other patient's death, even though the medical procedure, 610
treatment, intervention, or other measure may appear to hasten 611
or increase the risk of the patient's death. Nothing in sections 612
2133.01 to 2133.15 of the Revised Code precludes health care 613

personnel acting under the direction of the patient's attending 614
physician who carry out the responsibility to provide comfort 615
care to the patient in good faith and while acting within the 616
scope of their authority from dispensing, administering, or 617
causing to be administered any particular medical procedure, 618
treatment, intervention, or other measure to the patient, 619
including, but not limited to, personally furnishing, 620
administering, or causing to be administered by judicious 621
titration or in another manner any form of medication, for the 622
purpose of diminishing the qualified patient's or other 623
patient's pain or discomfort and not for the purpose of 624
postponing or causing the qualified patient's or other patient's 625
death, even though the medical procedure, treatment, 626
intervention, or other measure may appear to hasten or increase 627
the risk of the patient's death. 628

(2) (a) If, at any time, a person described in division (A) 629
(2) (a) (i) of section 2133.05 of the Revised Code or the 630
individual or a majority of the individuals in either of the 631
first two classes of individuals that pertain to a declarant in 632
the descending order of priority set forth in division (A) (2) (a) 633
(ii) of section 2133.05 of the Revised Code believes in good 634
faith that both of the following circumstances apply, the person 635
or the individual or majority of individuals in either of the 636
first two classes of individuals may commence an action in the 637
probate court of the county in which a declarant who is in a 638
terminal condition or permanently unconscious state is located 639
for the issuance of an order mandating the use or continuation 640
of comfort care in connection with the declarant in a manner 641
that is consistent with division (E) (1) of this section: 642

(i) Comfort care is not being used or continued in 643
connection with the declarant. 644

(ii) The withholding or withdrawal of the comfort care is 645
contrary to division (E) (1) of this section. 646

(b) If a declarant did not designate in the declarant's 647
declaration a person as described in division (A) (2) (a) (i) of 648
section 2133.05 of the Revised Code and if, at any time, a 649
priority individual or any member of a priority class of 650
individuals under division (A) (2) (a) (ii) of section 2133.05 of 651
the Revised Code or, at any time, the individual or a majority 652
of the individuals in the next class of individuals that 653
pertains to the declarant in the descending order of priority 654
set forth in that division believes in good faith that both of 655
the following circumstances apply, the priority individual, the 656
member of the priority class of individuals, or the individual 657
or majority of individuals in the next class of individuals that 658
pertains to the declarant may commence an action in the probate 659
court of the county in which a declarant who is in a terminal 660
condition or permanently unconscious state is located for the 661
issuance of an order mandating the use or continuation of 662
comfort care in connection with the declarant in a manner that 663
is consistent with division (E) (1) of this section: 664

(i) Comfort care is not being used or continued in 665
connection with the declarant. 666

(ii) The withholding or withdrawal of the comfort care is 667
contrary to division (E) (1) of this section. 668

(c) If, at any time, a priority individual or any member 669
of a priority class of individuals under division (B) of section 670
2133.08 of the Revised Code or, at any time, the individual or a 671
majority of the individuals in the next class of individuals 672
that pertains to the patient in the descending order of priority 673
set forth in that division believes in good faith that both of 674

the following circumstances apply, the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the patient may commence an action in the probate court of the county in which a patient as described in division (A) of section 2133.08 of the Revised Code is located for the issuance of an order mandating the use or continuation of comfort care in connection with the patient in a manner that is consistent with division (E) (1) of this section, unless the individual is not competent under division (C) (2) of section 2133.08 of the Revised Code:

(i) Comfort care is not being used or continued in connection with the patient.

(ii) The withholding or withdrawal of the comfort care is contrary to division (E) (1) of this section.

Section 2. That existing sections 2133.08, 2133.09, and 2133.12 of the Revised Code are hereby repealed.

Section 3. Section 2133.12 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 354 and Am. Sub. S.B. 66 of the 122nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.