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**131st General Assembly**

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**Am. H. B. No. 451**

**Representative Boose**

**Cosponsors: Representatives 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, Johnson, G., Kuhns, Lepore-Hagan, McClain, O'Brien, M., O'Brien, S., Patterson, Perales, Ramos, Reece, Rezabek, Ryan, Scherer, Schuring, Sheehy, Slaby, Smith, K., Smith, R., Sweeney, Terhar, Thompson, Young**

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**A BILL**

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

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

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

**Sec. 2133.08.** (A) (1) If written consent to the withholding  
or withdrawal of life-sustaining treatment, witnessed by two

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	78
patient.	79
(2) The patient's spouse;	80
(3) An adult child of the patient or, if there is more	81
than one adult child, a majority of the patient's adult children	82
who are available within a reasonable period of time for	83
consultation with the patient's attending physician;	84
(4) The patient's parents;	85
(5) An adult sibling of the patient or, if there is more	86
than one adult sibling, a majority of the patient's adult	87
siblings who are available within a reasonable period of time	88
for that consultation;	89
(6) The nearest adult who is not described in divisions	90
(B) (1) to (5) of this section, who is related to the patient by	91
blood or adoption, and who is available within a reasonable	92
period of time for that consultation.	93
(C) <u>(1)</u> If an appropriate individual or class of	94
individuals entitled to decide under division (B) of this	95
section whether or not to consent to the withholding or	96
withdrawal of life-sustaining treatment for a patient is not	97
available within a reasonable period of time for the	98
consultation and competent to so decide, or declines to so	99
decide, then the next priority individual or class of	100
individuals specified in that division is authorized to make the	101
decision. However, an equal division in a priority class of	102
individuals under that division does not authorize the next	103
class of individuals specified in that division to make the	104

decision. If an equal division in a priority class of 105  
individuals under that division occurs, no written consent to 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 individual who is not competent to give consent under division (C) (2) of this section, who objects to the application of this section to the patient shall advise the attending physician of the grounds for the objection. If an objection is so communicated to the attending physician, then, within two business days after that communication, the objecting individual shall file a complaint against the priority individual or class of individuals, the patient's attending physician, and the consulting physician associated with the determination that the patient is in a terminal condition or that the patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state, in the probate court of the county in which the patient is located for the issuance of an order reversing the consent of the priority individual or class of individuals. If the objecting individual fails to so file a complaint, the individual's objections shall be considered to be void.

A probate court in which a complaint is filed in accordance with this division shall conduct a hearing on the complaint after a copy of the complaint and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after the service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether the decision of the priority individual or class of

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 230  
individuals was to consent to the use or continuation of life- 231  
sustaining treatment in connection with the patient, the court 232  
only may reverse that consent if the objecting individual 233  
establishes, by clear and convincing evidence and, if 234  
applicable, to a reasonable degree of medical certainty and in 235  
accordance with reasonable medical standards, one or more of the 236  
following: 237

(a) The patient is able to make informed decisions 238  
regarding the administration of life-sustaining treatment. 239

(b) The patient has a legally effective declaration that 240  
addresses the patient's intent should the patient be determined 241  
to be in a terminal condition or in a permanently unconscious 242  
state, whichever applies, or a legally effective durable power 243  
of attorney for health care. 244

(c) The decision to use or continue life-sustaining 245  
treatment is not consistent with the previously expressed 246  
intention of the patient as described in division (D) (2) of this 247  
section. 248

(d) The decision to use or continue life-sustaining 249  
treatment is not consistent with the type of informed consent 250  
decision that the patient would have made if the patient 251  
previously had expressed an intention with respect to the use or 252  
continuation, or the withholding or withdrawal, of life- 253  
sustaining treatment should the patient subsequently be in a 254  
terminal condition or in a permanently unconscious state, 255

whichever applies, and no longer able to make informed decisions 256  
regarding the administration of life-sustaining treatment as 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

(3) If the decision of the priority individual or class of 277  
individuals was to consent to the withholding or withdrawal of 278  
life-sustaining treatment in connection with the patient, the 279  
court only may reverse that consent if the objecting individual 280  
establishes, by a preponderance of the evidence and, if 281  
applicable, to a reasonable degree of medical certainty and in 282  
accordance with reasonable medical standards, one or more of the 283  
following: 284

(a) The patient is not in a terminal condition, the	285
patient is not in a permanently unconscious state, or the	286
patient has not been in a permanently unconscious state for at	287
least the immediately preceding twelve months.	288
(b) The patient is able to make informed decisions	289
regarding the administration of life-sustaining treatment.	290
(c) There is a reasonable possibility that the patient	291
will regain the capacity to make informed decisions regarding	292
the administration of life-sustaining treatment.	293
(d) The patient has a legally effective declaration that	294
addresses the patient's intent should the patient be determined	295
to be in a terminal condition or in a permanently unconscious	296
state, whichever applies, or a legally effective durable power	297
of attorney for health care.	298
(e) The decision to withhold or withdraw life-sustaining	299
treatment is not consistent with the previously expressed	300
intention of the patient as described in division (D) (2) of this	301
section.	302
(f) The decision to withhold or withdraw life-sustaining	303
treatment is not consistent with the type of informed consent	304
decision that the patient would have made if the patient	305
previously had expressed an intention with respect to the use or	306
continuation, or the withholding or withdrawal, of life-	307
sustaining treatment should the patient subsequently be in a	308
terminal condition or in a permanently unconscious state,	309
whichever applies, and no longer able to make informed decisions	310
regarding the administration of life-sustaining treatment as	311
described in division (D) (3) of this section.	312
(g) The decision of the priority individual or class of	313

individuals was not made after consultation with the patient's 314  
attending physician and after receipt of information from the 315  
patient's attending physician or a consulting physician that is 316  
sufficient to satisfy the requirements of informed consent. 317

(h) The priority individual, or any member of the priority 318  
class of individuals, who made the decision to withhold or 319  
withdraw life-sustaining treatment was not of sound mind, was 320  
not competent to make the decision under division (C) (2) of this 321  
section, or did not voluntarily make the decision. 322

(i) If the decision of a priority class of individuals 323  
under division (B) (3) of this section is involved, the patient's 324  
attending physician did not make a good faith effort, and use 325  
reasonable diligence, to notify the patient's adult children who 326  
were available within a reasonable period of time for 327  
consultation as described in division (A) (1) (c) of this section. 328

(j) The decision of the priority individual or class of 329  
individuals otherwise was made in a manner that does not comply 330  
with this section. 331

(4) Notwithstanding any contrary provision of the Revised 332  
Code or of the Rules of Civil Procedure, the state and persons 333  
other than individuals described in divisions (B) (1) to (5) of 334  
this section are prohibited from filing a complaint under 335  
division (E) of this section and from joining or being joined as 336  
parties to a hearing conducted under division (E) of this 337  
section, including joining by way of intervention. 338

(F) A valid consent given in accordance with this section 339  
supersedes any general consent to treatment form signed by or on 340  
behalf of the patient prior to, upon, or after the patient's 341  
admission to a health care facility to the extent there is a 342

conflict between the consent and the form. 343

(G) Life-sustaining treatment shall not be withheld or 344  
withdrawn from a patient pursuant to a consent given in 345  
accordance with this section if the patient is pregnant and if 346  
the withholding or withdrawal of the treatment would terminate 347  
the pregnancy, unless the patient's attending physician and one 348  
other physician who has examined the patient determine, to a 349  
reasonable degree of medical certainty and in accordance with 350  
reasonable medical standards, that the fetus would not be born 351  
alive. 352

(H) As used in this section, "civil protection order" and 353  
"temporary protection order" have the same meanings as in 354  
section 2923.124 of the Revised Code. 355

**Sec. 2133.09.** (A) The attending physician of a patient who 356  
is an adult and who currently is and for at least the 357  
immediately preceding twelve months has been in a permanently 358  
unconscious state may withhold or withdraw nutrition and 359  
hydration in connection with the patient only if all of the 360  
following apply: 361

(1) Written consent to the withholding or withdrawal of 362  
life-sustaining treatment in connection with the patient has 363  
been given by an appropriate individual or individuals in 364  
accordance with section 2133.08 of the Revised Code, and 365  
divisions (A) (1) (a) to (e) and (2) of that section have been 366  
satisfied. 367

(2) A probate court has not reversed the consent to the 368  
withholding or withdrawal of life-sustaining treatment in 369  
connection with the patient pursuant to division (E) of section 370  
2133.08 of the Revised Code. 371

(3) The attending physician of the patient and one other 372  
physician as described in division (A) (2) of section 2133.08 of 373  
the Revised Code who examines the patient determine, in good 374  
faith, to a reasonable degree of medical certainty, and in 375  
accordance with reasonable medical standards, that nutrition and 376  
hydration will not or no longer will provide comfort or 377  
alleviate pain in connection with the patient. 378

(4) Written consent to the withholding or withdrawal of 379  
nutrition and hydration in connection with the patient, 380  
witnessed by two individuals who satisfy the witness eligibility 381  
criteria set forth in division (B) (1) of section 2133.02 of the 382  
Revised Code, is given to the attending physician of the patient 383  
by an appropriate individual or individuals as specified in 384  
division (B) of section 2133.08 of the Revised Code. 385

(5) The written consent to the withholding or withdrawal 386  
of the nutrition and hydration in connection with the patient is 387  
given in accordance with division (B) of this section. 388

(6) The probate court of the county in which the patient 389  
is located issues an order to withhold or withdraw the nutrition 390  
and hydration in connection with the patient pursuant to 391  
division (C) of this section. 392

(B) (1) A decision to consent pursuant to this section to 393  
the withholding or withdrawal of nutrition and hydration in 394  
connection with a patient shall be made in good faith. 395

(2) Except as provided in division (B) (4) of this section, 396  
if the patient previously expressed an intention with respect to 397  
the use or continuation, or the withholding or withdrawal, of 398  
nutrition and hydration should the patient subsequently be in a 399  
permanently unconscious state and no longer able to make 400

informed decisions regarding the administration of nutrition and 401  
hydration, a consent given pursuant to this section shall be 402  
valid only if it is consistent with that previously expressed 403  
intention. 404

(3) Except as provided in division (B)(4) of this section, 405  
if the patient did not previously express an intention with 406  
respect to the use or continuation, or the withholding or 407  
withdrawal, of nutrition and hydration should the patient 408  
subsequently be in a permanently unconscious state and no longer 409  
able to make informed decisions regarding the administration of 410  
nutrition and hydration, a consent given pursuant to this 411  
section shall be valid only if it is consistent with the type of 412  
informed consent decision that the patient would have made if 413  
the patient previously had expressed an intention with respect 414  
to the use or continuation, or the withholding or withdrawal, of 415  
nutrition and hydration should the patient subsequently be in a 416  
permanently unconscious state and no longer able to make 417  
informed decisions regarding the administration of nutrition and 418  
hydration, as inferred from the lifestyle and character of the 419  
patient, and from any other evidence of the desires of the 420  
patient, prior to the patient's becoming no longer able to make 421  
informed decisions regarding the administration of nutrition and 422  
hydration. The Rules of Evidence shall not be binding for 423  
purposes of this division. 424

(4) (a) The attending physician of the patient, and other 425  
health care personnel acting under the direction of the 426  
attending physician, who do not have actual knowledge of a 427  
previously expressed intention as described in division (B)(2) 428  
of this section or who do not have actual knowledge that the 429  
patient would have made a different type of informed consent 430  
decision under the circumstances described in division (B)(3) of 431

this section, may rely on a consent given in accordance with 432  
this section unless a probate court decides differently under 433  
division (C) of this section. 434

(b) The immunity conferred by division (C) (2) of section 435  
2133.11 of the Revised Code is not forfeited by an individual 436  
who gives a consent to the withholding or withdrawal of 437  
nutrition and hydration in connection with a patient under 438  
division (A) (4) of this section if the individual gives the 439  
consent in good faith and without actual knowledge, at the time 440  
of giving the consent, of either a contrary previously expressed 441  
intention of the patient, or a previously expressed intention of 442  
the patient, as described in division (B) (2) of this section, 443  
that is revealed to the individual subsequent to the time of 444  
giving the consent. 445

(C) (1) Prior to the withholding or withdrawal of nutrition 446  
and hydration in connection with a patient pursuant to this 447  
section, the priority individual or class of individuals that 448  
consented to the withholding or withdrawal of the nutrition and 449  
hydration shall apply to the probate court of the county in 450  
which the patient is located for the issuance of an order that 451  
authorizes the attending physician of the patient to commence 452  
the withholding or withdrawal of the nutrition and hydration in 453  
connection with the patient. Upon the filing of the application, 454  
the clerk of the probate court shall schedule a hearing on it 455  
and cause a copy of it and a notice of the hearing to be served 456  
in accordance with the Rules of Civil Procedure upon the 457  
applicant, the attending physician, the consulting physician 458  
associated with the determination that nutrition and hydration 459  
will not or no longer will provide comfort or alleviate pain in 460  
connection with the patient, and the individuals described in 461  
divisions (B) (1) to (5) of section 2133.08 of the Revised Code 462

who are not applicants, which service shall be made, if 463  
possible, within three days after the filing of the application. 464  
The hearing shall be conducted at the earliest possible time, 465  
but no sooner than the thirtieth business day, and no later than 466  
the sixtieth business day, after the service has been completed. 467

At the hearing, any individual described in divisions (B) 468  
(1) to (5) of section 2133.08 of the Revised Code who is not an 469  
applicant, except an individual who is not competent under 470  
division (C) (2) of section 2133.08 of the Revised Code, and who 471  
disagrees with the decision of the priority individual or class 472  
of individuals to consent to the withholding or withdrawal of 473  
nutrition and hydration in connection with the patient shall be 474  
permitted to testify and present evidence relative to the use or 475  
continuation of nutrition and hydration in connection with the 476  
patient. Immediately following the hearing, the court shall 477  
enter on its journal its determination whether the requested 478  
order will be issued. 479

(2) The court shall issue an order that authorizes the 480  
patient's attending physician to commence the withholding or 481  
withdrawal of nutrition and hydration in connection with the 482  
patient only if the applicants establish, by clear and 483  
convincing evidence, to a reasonable degree of medical 484  
certainty, and in accordance with reasonable medical standards, 485  
all of the following: 486

(a) The patient currently is and for at least the 487  
immediately preceding twelve months has been in a permanently 488  
unconscious state. 489

(b) The patient no longer is able to make informed 490  
decisions regarding the administration of life-sustaining 491  
treatment. 492

(c) There is no reasonable possibility that the patient 493  
will regain the capacity to make informed decisions regarding 494  
the administration of life-sustaining treatment. 495

(d) The conditions specified in divisions (A) (1) to (4) of 496  
this section have been satisfied. 497

(e) The decision to withhold or withdraw nutrition and 498  
hydration in connection with the patient is consistent with the 499  
previously expressed intention of the patient as described in 500  
division (B) (2) of this section or is consistent with the type 501  
of informed consent decision that the patient would have made if 502  
the patient previously had expressed an intention with respect 503  
to the use or continuation, or the withholding or withdrawal, of 504  
nutrition and hydration should the patient subsequently be in a 505  
permanently unconscious state and no longer able to make 506  
informed decisions regarding the administration of nutrition and 507  
hydration as described in division (B) (3) of this section. 508

(3) Notwithstanding any contrary provision of the Revised 509  
Code or of the Rules of Civil Procedure, the state and persons 510  
other than individuals described in division (A) (4) of this 511  
section or in divisions (B) (1) to (5) of section 2133.08 of the 512  
Revised Code and other than the attending physician and 513  
consulting physician associated with the determination that 514  
nutrition and hydration will not or no longer will provide 515  
comfort or alleviate pain in connection with the patient are 516  
prohibited from filing an application under this division and 517  
from joining or being joined as parties to a hearing conducted 518  
under this division, including joining by way of intervention. 519

(D) A valid consent given in accordance with this section 520  
supersedes any general consent to treatment form signed by or on 521  
behalf of the patient prior to, upon, or after the patient's 522

admission to a health care facility to the extent there is a 523  
conflict between the consent and the form. 524

**Sec. 2133.12.** (A) The death of a qualified patient or 525  
other patient resulting from the withholding or withdrawal of 526  
life-sustaining treatment in accordance with sections 2133.01 to 527  
2133.15 of the Revised Code does not constitute for any purpose 528  
a suicide, aggravated murder, murder, or any other homicide 529  
offense. 530

(B) (1) The execution of a declaration shall not do either 531  
of the following: 532

(a) Affect the sale, procurement, issuance, or renewal of 533  
any policy of life insurance or annuity, notwithstanding any 534  
term of a policy or annuity to the contrary; 535

(b) Be deemed to modify or invalidate the terms of any 536  
policy of life insurance or annuity that is in effect on October 537  
10, 1991. 538

(2) Notwithstanding any term of a policy of life insurance 539  
or annuity to the contrary, the withholding or withdrawal of 540  
life-sustaining treatment from an insured, qualified patient or 541  
other patient in accordance with sections 2133.01 to 2133.15 of 542  
the Revised Code shall not impair or invalidate any policy of 543  
life insurance or annuity. 544

(3) Notwithstanding any term of a policy or plan to the 545  
contrary, the use or continuation, or the withholding or 546  
withdrawal, of life-sustaining treatment from an insured, 547  
qualified patient or other patient in accordance with sections 548  
2133.01 to 2133.15 of the Revised Code shall not impair or 549  
invalidate any policy of health insurance or any health care 550  
benefit plan. 551

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

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

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

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

(4) Sections 2133.01 to 2133.15 of the Revised Code and, if applicable, a declaration do not affect or limit the authority of a physician or a health care facility to provide or

not to provide life-sustaining treatment to a person in 582  
accordance with reasonable medical standards applicable in an 583  
emergency situation. 584

(D) Nothing in sections 2133.01 to 2133.15 of the Revised 585  
Code condones, authorizes, or approves of mercy killing, 586  
assisted suicide, or euthanasia. 587

(E) (1) Sections 2133.01 to 2133.15 of the Revised Code do 588  
not affect the responsibility of the attending physician of a 589  
qualified patient or other patient, or other health care 590  
personnel acting under the direction of the patient's attending 591  
physician, to provide comfort care to the patient. Nothing in 592  
sections 2133.01 to 2133.15 of the Revised Code precludes the 593  
attending physician of a qualified patient or other patient who 594  
carries out the responsibility to provide comfort care to the 595  
patient in good faith and while acting within the scope of the 596  
attending physician's authority from prescribing, dispensing, 597  
administering, or causing to be administered any particular 598  
medical procedure, treatment, intervention, or other measure to 599  
the patient, including, but not limited to, prescribing, 600  
personally furnishing, administering, or causing to be 601  
administered by judicious titration or in another manner any 602  
form of medication, for the purpose of diminishing the qualified 603  
patient's or other patient's pain or discomfort and not for the 604  
purpose of postponing or causing the qualified patient's or 605  
other patient's death, even though the medical procedure, 606  
treatment, intervention, or other measure may appear to hasten 607  
or increase the risk of the patient's death. Nothing in sections 608  
2133.01 to 2133.15 of the Revised Code precludes health care 609  
personnel acting under the direction of the patient's attending 610  
physician who carry out the responsibility to provide comfort 611  
care to the patient in good faith and while acting within the 612

scope of their authority from dispensing, administering, or 613  
causing to be administered any particular medical procedure, 614  
treatment, intervention, or other measure to the patient, 615  
including, but not limited to, personally furnishing, 616  
administering, or causing to be administered by judicious 617  
titration or in another manner any form of medication, for the 618  
purpose of diminishing the qualified patient's or other 619  
patient's pain or discomfort and not for the purpose of 620  
postponing or causing the qualified patient's or other patient's 621  
death, even though the medical procedure, treatment, 622  
intervention, or other measure may appear to hasten or increase 623  
the risk of the patient's death. 624

(2) (a) If, at any time, a person described in division (A) 625  
(2) (a) (i) of section 2133.05 of the Revised Code or the 626  
individual or a majority of the individuals in either of the 627  
first two classes of individuals that pertain to a declarant in 628  
the descending order of priority set forth in division (A) (2) (a) 629  
(ii) of section 2133.05 of the Revised Code believes in good 630  
faith that both of the following circumstances apply, the person 631  
or the individual or majority of individuals in either of the 632  
first two classes of individuals may commence an action in the 633  
probate court of the county in which a declarant who is in a 634  
terminal condition or permanently unconscious state is located 635  
for the issuance of an order mandating the use or continuation 636  
of comfort care in connection with the declarant in a manner 637  
that is consistent with division (E) (1) of this section: 638

(i) Comfort care is not being used or continued in 639  
connection with the declarant. 640

(ii) The withholding or withdrawal of the comfort care is 641  
contrary to division (E) (1) of this section. 642

(b) If a declarant did not designate in the declarant's 643  
declaration a person as described in division (A) (2) (a) (i) of 644  
section 2133.05 of the Revised Code and if, at any time, a 645  
priority individual or any member of a priority class of 646  
individuals under division (A) (2) (a) (ii) of section 2133.05 of 647  
the Revised Code or, at any time, the individual or a majority 648  
of the individuals in the next class of individuals that 649  
pertains to the declarant in the descending order of priority 650  
set forth in that division believes in good faith that both of 651  
the following circumstances apply, the priority individual, the 652  
member of the priority class of individuals, or the individual 653  
or majority of individuals in the next class of individuals that 654  
pertains to the declarant may commence an action in the probate 655  
court of the county in which a declarant who is in a terminal 656  
condition or permanently unconscious state is located for the 657  
issuance of an order mandating the use or continuation of 658  
comfort care in connection with the declarant in a manner that 659  
is consistent with division (E) (1) of this section: 660

(i) Comfort care is not being used or continued in 661  
connection with the declarant. 662

(ii) The withholding or withdrawal of the comfort care is 663  
contrary to division (E) (1) of this section. 664

(c) If, at any time, a priority individual or any member 665  
of a priority class of individuals under division (B) of section 666  
2133.08 of the Revised Code or, at any time, the individual or a 667  
majority of the individuals in the next class of individuals 668  
that pertains to the patient in the descending order of priority 669  
set forth in that division believes in good faith that both of 670  
the following circumstances apply, the priority individual, the 671  
member of the priority class of individuals, or the individual 672

or majority of individuals in the next class of individuals that 673  
pertains to the patient may commence an action in the probate 674  
court of the county in which a patient as described in division 675  
(A) of section 2133.08 of the Revised Code is located for the 676  
issuance of an order mandating the use or continuation of 677  
comfort care in connection with the patient in a manner that is 678  
consistent with division (E) (1) of this section, unless the 679  
individual is not competent under division (C) (2) of section 680  
2133.08 of the Revised Code: 681

(i) Comfort care is not being used or continued in 682  
connection with the patient. 683

(ii) The withholding or withdrawal of the comfort care is 684  
contrary to division (E) (1) of this section. 685

**Section 2.** That existing sections 2133.08, 2133.09, and 686  
2133.12 of the Revised Code are hereby repealed. 687

**Section 3.** Section 2133.12 of the Revised Code is 688  
presented in this act as a composite of the section as amended 689  
by both Sub. H.B. 354 and Am. Sub. S.B. 66 of the 122nd General 690  
Assembly. The General Assembly, applying the principle stated in 691  
division (B) of section 1.52 of the Revised Code that amendments 692  
are to be harmonized if reasonably capable of simultaneous 693  
operation, finds that the composite is the resulting version of 694  
the section in effect prior to the effective date of the section 695  
as presented in this act. 696