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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

Senators Bacon, Thomas

A BILL

To amend sections 1337.13, 1337.17, 2133.05, 1
2133.08, 2133.09, and 2133.12 of the Revised 2
Code to provide that an individual's statutory 3
priority to decide whether or not to withhold or 4
withdraw life-sustaining treatment for the 5
individual's relative is forfeited if the 6
individual is the subject of a temporary 7
protection order or civil protection order and 8
the relative is the alleged victim or if the 9
individual and the relative are married and the 10
parties to a divorce, dissolution, legal 11
separation, or annulment proceeding, to void any 12
objections to a living will made by a person 13
whose statutory priority would be so forfeited, 14
and to provide that an attorney in fact under a 15
durable power of attorney for health care is 16
competent to make decisions pertaining to life- 17
sustaining treatment, nutrition, or hydration, 18

only if the attorney in fact is not subject to a 19
temporary protection order or civil protection 20
order in which the principal is the alleged 21
victim. 22

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

Section 1. That sections 1337.13, 1337.17, 2133.05, 23
2133.08, 2133.09, and 2133.12 of the Revised Code be amended to 24
read as follows: 25

Sec. 1337.13. (A) (1) An attorney in fact under a durable 26
power of attorney for health care shall make health care 27
decisions for the principal only if the instrument substantially 28
complies with section 1337.12 of the Revised Code and 29
specifically authorizes the attorney in fact to make health care 30
decisions for the principal, and only if the attending physician 31
of the principal determines that the principal has lost the 32
capacity to make informed health care decisions for the 33
principal. If authorized in the instrument, the attorney in 34
fact, commencing immediately upon the execution of the 35
instrument or at any subsequent time specified in the instrument 36
and regardless of whether the principal has lost the capacity to 37
make informed health care decisions, may obtain information 38
concerning the principal's health, including protected health 39
information as defined in 45 C.F.R. 160.103. Except as otherwise 40
provided in divisions (B) to (F) of this section and subject to 41
any specific limitations in the instrument, the attorney in fact 42
may make health care decisions for the principal to the same 43
extent as the principal could make those decisions for the 44
principal if the principal had the capacity to do so. Except as 45

otherwise provided in divisions (B) to (F) of this section, in 46
exercising that authority, the attorney in fact shall act 47
consistently with the desires of the principal or, if the 48
desires of the principal are unknown, shall act in the best 49
interest of the principal. 50

(2) This section does not affect, and shall not be 51
construed as affecting, any right that the person designated as 52
attorney in fact in a durable power of attorney for health care 53
may have, apart from the instrument, to make or participate in 54
the making of health care decisions on behalf of the principal. 55

(3) Unless the right is limited in a durable power of 56
attorney for health care, when acting pursuant to the 57
instrument, the attorney in fact has the same right as the 58
principal to receive information about proposed health care, to 59
review health care records, and to consent to the disclosure of 60
health care records. 61

(B) (1) An attorney in fact under a durable power of 62
attorney for health care does not have authority, on behalf of 63
the principal, to refuse or withdraw informed consent to life- 64
sustaining treatment, unless the principal is in a terminal 65
condition or in a permanently unconscious state and unless the 66
applicable requirements of divisions (B) (2) and (3) of this 67
section are satisfied. 68

(2) In order for an attorney in fact to refuse or withdraw 69
informed consent to life-sustaining treatment for a principal 70
who is in a permanently unconscious state, the consulting 71
physician associated with the determination that the principal 72
is in the permanently unconscious state shall be a physician 73
who, by virtue of advanced education or training, of a practice 74
limited to particular diseases, illnesses, injuries, therapies, 75

or branches of medicine and surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine and surgery or osteopathic medicine and surgery, is qualified to determine whether the principal is in a permanently unconscious state.

(3) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a terminal condition or in a permanently unconscious state, the attending physician of the principal shall determine, in good faith, ~~to~~ both of the following:

(a) To a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal;

(b) That the attorney in fact is competent to make such a decision under division (H) of this section.

(C) Except as otherwise provided in this division, an attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to health care necessary to provide comfort care. This division does not preclude, and shall not be construed as precluding, an attorney in fact under a durable power of attorney for health care from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal if, under the circumstances described in division (E) of this section, the attorney in fact would not be prohibited from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal.

(D) An attorney in fact under a durable power of attorney 106
for health care does not have authority to refuse or withdraw 107
informed consent to health care for a principal who is pregnant 108
if the refusal or withdrawal of the health care would terminate 109
the pregnancy, unless the pregnancy or the health care would 110
pose a substantial risk to the life of the principal, or unless 111
the principal's attending physician and at least one other 112
physician who has examined the principal determine, to a 113
reasonable degree of medical certainty and in accordance with 114
reasonable medical standards, that the fetus would not be born 115
alive. 116

(E) An attorney in fact under a durable power of attorney 117
for health care does not have authority to refuse or withdraw 118
informed consent to the provision of nutrition or hydration to 119
the principal, unless the principal is in a terminal condition 120
or in a permanently unconscious state and unless the following 121
apply: 122

(1) The principal's attending physician and at least one 123
other physician who has examined the principal determine, to a 124
reasonable degree of medical certainty and in accordance with 125
reasonable medical standards, that nutrition or hydration will 126
not or no longer will serve to provide comfort to, or alleviate 127
pain of, the principal. 128

(2) If the principal is in a permanently unconscious 129
state, the principal has authorized the attorney in fact to 130
refuse or withdraw informed consent to the provision of 131
nutrition or hydration to the principal when the principal is in 132
a permanently unconscious state by doing both of the following 133
in the durable power of attorney for health care: 134

(a) Including a statement in capital letters or other 135

conspicuous type, including, but not limited to, a different 136
font, bigger type, or boldface type, that the attorney in fact 137
may refuse or withdraw informed consent to the provision of 138
nutrition or hydration to the principal if the principal is in a 139
permanently unconscious state and if the determination described 140
in division (E) (1) of this section is made, or checking or 141
otherwise marking a box or line that is adjacent to a similar 142
statement on a printed form of a durable power of attorney for 143
health care; 144

(b) Placing the principal's initials or signature 145
underneath or adjacent to the statement, check, or other mark 146
described in division (E) (2) (a) of this section. 147

(3) If the principal is in a permanently unconscious 148
state, the principal's attending physician determines, in good 149
faith, that the principal authorized the attorney in fact to 150
refuse or withdraw informed consent to the provision of 151
nutrition or hydration to the principal when the principal is in 152
a permanently unconscious state by complying with the 153
requirements of divisions (E) (2) (a) and (b) of this section. 154

(4) The principal's attending physician determines, in 155
good faith, that the attorney in fact is competent to make such 156
a decision under division (H) of this section. 157

(F) An attorney in fact under a durable power of attorney 158
for health care does not have authority to withdraw informed 159
consent to any health care to which the principal previously 160
consented, unless at least one of the following applies: 161

(1) A change in the physical condition of the principal 162
has significantly decreased the benefit of that health care to 163
the principal. 164

(2) The health care is not, or is no longer, significantly effective in achieving the purposes for which the principal consented to its use.

(G) An attorney in fact under a durable power of attorney for health care does not have authority to make decisions pertaining to the use or continuation of life-sustaining treatment or the provision of nutrition or hydration to the principal unless the attorney in fact is competent to make those decisions under division (H) of this section.

(H) An attorney in fact is competent to make decisions under division (B), (E), or (G) of this section unless the attorney in fact is subject to a temporary protection order, civil protection order, or any other protection order issued by a court in this state or another state in which the principal is the alleged victim.

Sec. 1337.17. A printed form of durable power of attorney for health care may be sold or otherwise distributed in this state for use by adults who are not advised by an attorney. By use of such a printed form, a principal may authorize an attorney in fact to make health care decisions on the principal's behalf, but the printed form shall not be used as an instrument for granting authority for any other decisions. Any printed form that is sold or otherwise distributed in this state for the purpose described in this section shall include the following notice:

"Notice to Adult Executing This Document

This is an important legal document. Before executing this document, you should know these facts:

This document gives the person you designate (the attorney

in fact) the power to make most* health care decisions for you 194
if you lose the capacity to make informed health care decisions 195
for yourself. This power is effective only when your attending 196
physician determines that you have lost the capacity to make 197
informed health care decisions for yourself and, notwithstanding 198
this document, as long as you have the capacity to make informed 199
health care decisions for yourself, you retain the right to make 200
all medical and other health care decisions for yourself. 201

You may include specific limitations in this document on 202
the authority of the attorney in fact to make health care 203
decisions for you. 204

Subject to any specific limitations you include in this 205
document, if your attending physician determines that you have 206
lost the capacity to make an informed decision on a health care 207
matter, the attorney in fact generally* will be authorized by 208
this document to make health care decisions for you to the same 209
extent as you could make those decisions yourself, if you had 210
the capacity to do so. The authority of the attorney in fact to 211
make health care decisions for you generally* will include the 212
authority to give informed consent, to refuse to give informed 213
consent, or to withdraw informed consent to any care, treatment, 214
service, or procedure to maintain, diagnose, or treat a physical 215
or mental condition. 216

However*, even if the attorney in fact has general 217
authority to make health care decisions for you under this 218
document, the attorney in fact never* will be authorized to do 219
any of the following: 220

(1) Refuse or withdraw informed consent to life-sustaining 221
treatment (unless your attending physician and one other 222
physician who examines you determine, to a reasonable degree of 223

medical certainty and in accordance with reasonable medical 224
standards, that either of the following applies: 225

(a) You are suffering from an irreversible, incurable, and 226
untreatable condition caused by disease, illness, or injury from 227
which (i) there can be no recovery and (ii) your death is likely 228
to occur within a relatively short time if life-sustaining 229
treatment is not administered, and your attending physician 230
additionally determines, to a reasonable degree of medical 231
certainty and in accordance with reasonable medical standards, 232
that there is no reasonable possibility that you will regain the 233
capacity to make informed health care decisions for yourself. 234

(b) You are in a state of permanent unconsciousness that 235
is characterized by you being irreversibly unaware of yourself 236
and your environment and by a total loss of cerebral cortical 237
functioning, resulting in you having no capacity to experience 238
pain or suffering, and your attending physician additionally 239
determines, to a reasonable degree of medical certainty and in 240
accordance with reasonable medical standards, that there is no 241
reasonable possibility that you will regain the capacity to make 242
informed health care decisions for yourself); 243

(2) Refuse or withdraw informed consent to health care 244
necessary to provide you with comfort care (except that, if the 245
attorney in fact is not prohibited from doing so under (4) 246
below, the attorney in fact could refuse or withdraw informed 247
consent to the provision of nutrition or hydration to you as 248
described under (4) below). (You should understand that comfort 249
care is defined in Ohio law to mean artificially or 250
technologically administered sustenance (nutrition) or fluids 251
(hydration) when administered to diminish your pain or 252
discomfort, not to postpone your death, and any other medical or 253

nursing procedure, treatment, intervention, or other measure 254
that would be taken to diminish your pain or discomfort, not to 255
postpone your death. Consequently, if your attending physician 256
were to determine that a previously described medical or nursing 257
procedure, treatment, intervention, or other measure will not or 258
no longer will serve to provide comfort to you or alleviate your 259
pain, then, subject to (4) below, your attorney in fact would be 260
authorized to refuse or withdraw informed consent to the 261
procedure, treatment, intervention, or other measure.*); 262

(3) Refuse or withdraw informed consent to health care for 263
you if you are pregnant and if the refusal or withdrawal would 264
terminate the pregnancy (unless the pregnancy or health care 265
would pose a substantial risk to your life, or unless your 266
attending physician and at least one other physician who 267
examines you determine, to a reasonable degree of medical 268
certainty and in accordance with reasonable medical standards, 269
that the fetus would not be born alive); 270

(4) Refuse or withdraw informed consent to the provision 271
of artificially or technologically administered sustenance 272
(nutrition) or fluids (hydration) to you, unless: 273

(a) You are in a terminal condition or in a permanently 274
unconscious state. 275

(b) Your attending physician and at least one other 276
physician who has examined you determine, to a reasonable degree 277
of medical certainty and in accordance with reasonable medical 278
standards, that nutrition or hydration will not or no longer 279
will serve to provide comfort to you or alleviate your pain. 280

(c) If, but only if, you are in a permanently unconscious 281
state, you authorize the attorney in fact to refuse or withdraw 282

informed consent to the provision of nutrition or hydration to	283
you by doing both of the following in this document:	284
(i) Including a statement in capital letters or other	285
conspicuous type, including, but not limited to, a different	286
font, bigger type, or boldface type, that the attorney in fact	287
may refuse or withdraw informed consent to the provision of	288
nutrition or hydration to you if you are in a permanently	289
unconscious state and if the determination that nutrition or	290
hydration will not or no longer will serve to provide comfort to	291
you or alleviate your pain is made, or checking or otherwise	292
marking a box or line (if any) that is adjacent to a similar	293
statement on this document;	294
(ii) Placing your initials or signature underneath or	295
adjacent to the statement, check, or other mark previously	296
described.	297
(d) Your attending physician determines, in good faith,	298
that you authorized the attorney in fact to refuse or withdraw	299
informed consent to the provision of nutrition or hydration to	300
you if you are in a permanently unconscious state by complying	301
with the requirements of (4) (c) (i) and (ii) above.	302
(5) Withdraw informed consent to any health care to which	303
you previously consented, unless a change in your physical	304
condition has significantly decreased the benefit of that health	305
care to you, or unless the health care is not, or is no longer,	306
significantly effective in achieving the purposes for which you	307
consented to its use;	308
<u>(6) Provide, refuse, or withdraw informed consent to life-</u>	309
<u>sustaining treatment, or the provision of artificially or</u>	310
<u>technologically administered sustenance (nutrition) or fluids</u>	311

(hydration) to you, if the attorney in fact is subject to a 312
temporary protection order, civil protection order, or any other 313
protection order in this state or another state in which you are 314
the alleged victim. 315

Additionally, when exercising authority to make health 316
care decisions for you, the attorney in fact will have to act 317
consistently with your desires or, if your desires are unknown, 318
to act in your best interest. You may express your desires to 319
the attorney in fact by including them in this document or by 320
making them known to the attorney in fact in another manner. 321

When acting pursuant to this document, the attorney in 322
fact generally* will have the same rights that you have to 323
receive information about proposed health care, to review health 324
care records, and to consent to the disclosure of health care 325
records. You can limit that right in this document if you so 326
choose. 327

Generally, you may designate any competent adult as the 328
attorney in fact under this document. However, you cannot* 329
designate your attending physician or the administrator of any 330
nursing home in which you are receiving care as the attorney in 331
fact under this document. Additionally, you cannot* designate an 332
employee or agent of your attending physician, or an employee or 333
agent of a health care facility at which you are being treated, 334
as the attorney in fact under this document, unless either type 335
of employee or agent is a competent adult and related to you by 336
blood, marriage, or adoption, or unless either type of employee 337
or agent is a competent adult and you and the employee or agent 338
are members of the same religious order. 339

This document has no expiration date under Ohio law, but 340
you may choose to specify a date upon which your durable power 341

of attorney for health care generally will expire. However, if 342
you specify an expiration date and then lack the capacity to 343
make informed health care decisions for yourself on that date, 344
the document and the power it grants to your attorney in fact 345
will continue in effect until you regain the capacity to make 346
informed health care decisions for yourself. 347

You have the right to revoke the designation of the 348
attorney in fact and the right to revoke this entire document at 349
any time and in any manner. Any such revocation generally will 350
be effective when you express your intention to make the 351
revocation. However, if you made your attending physician aware 352
of this document, any such revocation will be effective only 353
when you communicate it to your attending physician, or when a 354
witness to the revocation or other health care personnel to whom 355
the revocation is communicated by such a witness communicate it 356
to your attending physician. 357

If you execute this document and create a valid durable 358
power of attorney for health care with it, it will revoke any 359
prior, valid durable power of attorney for health care that you 360
created, unless you indicate otherwise in this document. 361

This document is not valid as a durable power of attorney 362
for health care unless it is acknowledged before a notary public 363
or is signed by at least two adult witnesses who are present 364
when you sign or acknowledge your signature. No person who is 365
related to you by blood, marriage, or adoption may be a witness. 366
The attorney in fact, your attending physician, and the 367
administrator of any nursing home in which you are receiving 368
care also are ineligible to be witnesses. 369

If there is anything in this document that you do not 370
understand, you should ask your lawyer to explain it to you." 371

In the preceding notice, the single words, and the two 372
sentences in the second set of parentheses in paragraph (2), 373
followed by an asterisk and all of paragraph (4) shall appear in 374
the printed form in capital letters or other conspicuous type, 375
including, but not limited to, a different font, bigger type, or 376
boldface type. 377

Sec. 2133.05. (A) If the attending physician of a 378
declarant and one other physician who examines the declarant 379
determine that the declarant is in a terminal condition or in a 380
permanently unconscious state, whichever is addressed in the 381
declaration, if the attending physician additionally determines 382
that the declarant no longer is able to make informed decisions 383
regarding the administration of life-sustaining treatment for 384
the declarant and that there is no reasonable possibility that 385
the declarant will regain the capacity to make those informed 386
decisions for the declarant, and if the attending physician is 387
aware of the existence of the declarant's declaration, then the 388
attending physician shall do all of the following: 389

(1) Record the determinations, together with the terms of 390
the declaration or any copy of the declaration acquired as 391
described in division (C) of section 2133.02 of the Revised 392
Code, in the declarant's medical record; 393

(2) (a) Make a good faith effort, and use reasonable 394
diligence, to notify either of the following of the 395
determinations: 396

(i) If the declarant designated in the declarant's 397
declaration one or more persons to be notified at any time that 398
life-sustaining treatment would be withheld or withdrawn 399
pursuant to the declaration, that person or those persons; 400

(ii) If division (A) (2) (a) (i) of this section is not 401
applicable, the appropriate individual or individuals, in 402
accordance with the following descending order of priority: if 403
any, the guardian of the declarant, but this division does not 404
permit or require, and shall not be construed as permitting or 405
requiring, the appointment of a guardian for the declarant; the 406
declarant's spouse; the declarant's adult children who are 407
available within a reasonable period of time for consultation 408
with the declarant's attending physician; the declarant's 409
parents; or an adult sibling of the declarant or, if there is 410
more than one adult sibling, a majority of the declarant's adult 411
siblings who are available within a reasonable period of time 412
for the consultation. 413

(b) The attending physician shall record in the 414
declarant's medical record the names of the individual or 415
individuals notified pursuant to division (A) (2) (a) of this 416
section and the manner of notification. 417

(c) If, despite making a good faith effort, and despite 418
using reasonable diligence, to notify the appropriate individual 419
or individuals described in division (A) (2) (a) of this section, 420
the attending physician cannot notify the individual or 421
individuals of the determinations because the individual or 422
individuals are deceased, cannot be located, or cannot be 423
notified for some other reason, then the requirements of 424
divisions (A) (2) (a) and (b) and (3) of this section and, except 425
as provided in division (B) (1) (b) of this section, the 426
provisions of division (B) of this section shall not apply in 427
connection with the declarant and the declarant's declaration. 428
However, the attending physician shall record in the declarant's 429
medical record information pertaining to the reason for the 430
failure to provide the requisite notices and information 431

pertaining to the nature of the good faith effort and reasonable 432
diligence used. 433

(3) Afford time for the individual or individuals notified 434
in accordance with division (A) (2) of this section to object in 435
the manner described in division (B) (1) (a) of this section. 436

(B) (1) (a) Within forty-eight hours after receipt of a 437
notice pursuant to division (A) (2) of this section, any 438
individual so notified shall advise the attending physician of 439
the declarant whether the individual objects on a basis 440
specified in division (B) (2) (c) of this section. If an objection 441
as described in that division is communicated to the attending 442
physician, then, within two business days after the 443
communication, the individual shall file a complaint as 444
described in division (B) (2) of this section in the probate 445
court of the county in which the declarant is located. If the 446
individual fails to so file a complaint or if the individual 447
would not be competent to decide whether or not to consent to 448
the withholding or withdrawing of life-sustaining treatment for 449
any of the reasons described in division (C) (2) of section 450
2133.08 of the Revised Code, the individual's objections as 451
described in division (B) (2) (c) of this section shall be 452
considered to be void. 453

(b) Within forty-eight hours after a person described in 454
division (A) (2) (a) (i) of this section or a priority individual 455
or any member of a priority class of individuals described in 456
division (A) (2) (a) (ii) of this section receives a notice 457
pursuant to division (A) (2) of this section or within forty- 458
eight hours after information pertaining to an unnotified person 459
described in division (A) (2) (a) (i) of this section or an 460
unnotified priority individual or unnotified priority class of 461

individuals described in division (A) (2) (a) (ii) of this section 462
is recorded in a declarant's medical record pursuant to division 463
(A) (2) (c) of this section, either of the following shall advise 464
the attending physician of the declarant whether there is an 465
objection on a basis specified in division (B) (2) (c) of this 466
section: 467

(i) If a person described in division (A) (2) (a) (i) of this 468
section was notified pursuant to division (A) (2) of this section 469
or was the subject of a recordation under division (A) (2) (c) of 470
this section, then the objection shall be communicated by the 471
individual or a majority of the individuals in either of the 472
first two classes of individuals that pertain to the declarant 473
in the descending order of priority set forth in division (A) (2) 474
(a) (ii) of this section. 475

(ii) If an individual or individuals in the descending 476
order of priority set forth in division (A) (2) (a) (ii) of this 477
section were notified pursuant to division (A) (2) of this 478
section or were the subject of a recordation under division (A) 479
(2) (c) of this section, then the objection shall be communicated 480
by the individual or a majority of the individuals in the next 481
class of individuals that pertains to the declarant in the 482
descending order of priority set forth in division (A) (2) (a) (ii) 483
of this section. 484

If an objection as described in division (B) (2) (c) of this 485
section is communicated to the attending physician in accordance 486
with division (B) (1) (b) (i) or (ii) of this section, then, within 487
two business days after the communication, the objecting 488
individual or majority shall file a complaint as described in 489
division (B) (2) of this section in the probate court of the 490
county in which the declarant is located. If the objecting 491

individual or majority fails to file a complaint or if the 492
individual or a member of the majority would not be competent to 493
decide whether or not to consent to the withholding or 494
withdrawing of life-sustaining treatment for any of the reasons 495
described in division (C) (2) of section 2133.08 of the Revised 496
Code, the objections as described in division (B) (2) (c) of this 497
section shall be considered to be void. 498

(2) A complaint of an individual that is filed in 499
accordance with division (B) (1) (a) of this section or of an 500
individual or majority of individuals that is filed in 501
accordance with division (B) (1) (b) of this section shall satisfy 502
all of the following: 503

(a) Name any health care facility in which the declarant 504
is confined; 505

(b) Name the declarant, the declarant's attending 506
physician, and the consulting physician associated with the 507
determination that the declarant is in a terminal condition or 508
in a permanently unconscious state, whichever is addressed in 509
the declaration; 510

(c) Indicate whether the plaintiff or plaintiffs object on 511
one or more of the following bases: 512

(i) To the attending physician's and consulting 513
physician's determinations that the declarant is in a terminal 514
condition or in a permanently unconscious state, whichever is 515
addressed in the declaration; 516

(ii) To the attending physician's determination that the 517
declarant no longer is able to make informed decisions regarding 518
the administration of life-sustaining treatment; 519

(iii) To the attending physician's determination that 520

there is no reasonable possibility that the declarant will 521
regain the capacity to make informed decisions regarding the 522
administration of life-sustaining treatment; 523

(iv) That the course of action proposed to be undertaken 524
by the attending physician is not authorized by the declarant's 525
declaration; 526

(v) That the declaration was executed when the declarant 527
was not of sound mind or was under or subject to duress, fraud, 528
or undue influence; 529

(vi) That the declaration otherwise does not substantially 530
comply with this chapter. 531

(d) Request the probate court to issue one of the 532
following types of orders: 533

(i) An order to the attending physician to reevaluate, in 534
light of the court proceedings, the determination that the 535
declarant is in a terminal condition or in a permanently 536
unconscious state, whichever is addressed in the declaration, 537
the determination that the declarant no longer is able to make 538
informed decisions regarding the administration of life- 539
sustaining treatment, the determination that there is no 540
reasonable possibility that the declarant will regain the 541
capacity to make those informed decisions, or the course of 542
action proposed to be undertaken; 543

(ii) An order invalidating the declaration because it was 544
executed when the declarant was not of sound mind or was under 545
or subject to duress, fraud, or undue influence, or because it 546
otherwise does not substantially comply with this chapter; 547

(e) Be accompanied by an affidavit of the plaintiff or 548
plaintiffs that includes averments relative to whether the 549

plaintiff is an individual or the plaintiffs are individuals as 550
described in division (A) (2) (a) (i) or (ii) of this section and 551
to the factual basis for the plaintiff's or the plaintiffs' 552
objections; 553

(f) Name any individuals who were notified by the 554
attending physician in accordance with division (A) (2) (a) of 555
this section and who are not joining in the complaint as 556
plaintiffs; 557

(g) Name, in the caption of the complaint, as defendants 558
the attending physician of the declarant, the consulting 559
physician associated with the determination that the declarant 560
is in a terminal condition or in a permanently unconscious 561
state, whichever is addressed in the declaration, any health 562
care facility in which the declarant is confined, and any 563
individuals who were notified by the attending physician in 564
accordance with division (A) (2) (a) of this section and who are 565
not joining in the complaint as plaintiffs. 566

(3) Notwithstanding any contrary provision of the Revised 567
Code or of the Rules of Civil Procedure, the state and persons 568
other than an objecting individual as described in division (B) 569
(1) (a) of this section, other than an objecting individual or 570
majority of individuals as described in division (B) (2) (b) (i) or 571
(ii) of this section, and other than persons described in 572
division (B) (2) (g) of this section are prohibited from 573
commencing a civil action under this section and from joining or 574
being joined as parties to an action commenced under this 575
section, including joining by way of intervention. 576

(4) (a) A probate court in which a complaint as described 577
in division (B) (2) of this section is filed within the period 578
specified in division (B) (1) (a) or (b) of this section shall 579

conduct a hearing on the complaint after a copy of the complaint 580
and a notice of the hearing have been served upon the 581
defendants. The clerk of the probate court in which the 582
complaint is filed shall cause the complaint and the notice of 583
the hearing to be so served in accordance with the Rules of 584
Civil Procedure, which service shall be made, if possible, 585
within three days after the filing of the complaint. The hearing 586
shall be conducted at the earliest possible time, but no later 587
than the third business day after the service has been 588
completed. Immediately following the hearing, the court shall 589
enter on its journal its determination whether a requested order 590
will be issued. 591

(b) If the declarant's declaration authorized the use or 592
continuation of life-sustaining treatment should the declarant 593
be in a terminal condition or in a permanently unconscious state 594
and if the plaintiff or plaintiffs requested a reevaluation 595
order to the attending physician of the declarant as described 596
in division (B) (2) (d) (i) of this section, the court shall issue 597
the reevaluation order only if it finds that the plaintiff or 598
plaintiffs have established a factual basis for the objection or 599
objections involved by clear and convincing evidence, to a 600
reasonable degree of medical certainty, and in accordance with 601
reasonable medical standards. 602

(c) If the declarant's declaration authorized the 603
withholding or withdrawal of life-sustaining treatment should 604
the declarant be in a terminal condition or in a permanently 605
unconscious state and if the plaintiff or plaintiffs requested a 606
reevaluation order to the attending physician of the declarant 607
as described in division (B) (2) (d) (i) of this section, the court 608
shall issue the reevaluation order only if it finds that the 609
plaintiff or plaintiffs have established a factual basis for the 610

objection or objections involved by a preponderance of the 611
evidence, to a reasonable degree of medical certainty, and in 612
accordance with reasonable medical standards. 613

(d) If the plaintiff or plaintiffs requested an 614
invalidation order as described in division (B) (2) (d) (ii) of 615
this section, the court shall issue the order only if it finds 616
that the plaintiff or plaintiffs have established a factual 617
basis for the objection or objections involved by clear and 618
convincing evidence. 619

(e) If the court issues a reevaluation order to the 620
declarant's attending physician pursuant to division (B) (4) (b) 621
or (c) of this section, then the attending physician shall make 622
the requisite reevaluation. If, after doing so, the attending 623
physician again determines that the declarant is in a terminal 624
condition or in a permanently unconscious state, that the 625
declarant no longer is able to make informed decisions regarding 626
the administration of life-sustaining treatment, that there is 627
no reasonable possibility that the declarant will regain the 628
capacity to make those informed decisions, or that the attending 629
physician would undertake the same proposed course of action, 630
then the attending physician shall notify the court in writing 631
of the determination and comply with the provisions of section 632
2133.10 of the Revised Code. 633

Sec. 2133.08. (A) (1) If written consent to the withholding 634
or withdrawal of life-sustaining treatment, witnessed by two 635
individuals who satisfy the witness eligibility criteria set 636
forth in division (B) (1) of section 2133.02 of the Revised Code, 637
is given by the appropriate individual or individuals as 638
specified in division (B) of this section to the attending 639
physician of a patient who is an adult, and if all of the 640

following apply in connection with the patient, then, subject to 641
section 2133.09 of the Revised Code, the patient's attending 642
physician may withhold or withdraw the life-sustaining 643
treatment: 644

(a) The attending physician and one other physician who 645
examines the patient determine, in good faith, to a reasonable 646
degree of medical certainty, and in accordance with reasonable 647
medical standards, that the patient is in a terminal condition 648
or the patient currently is and for at least the immediately 649
preceding twelve months has been in a permanently unconscious 650
state, and the attending physician additionally determines, in 651
good faith, to a reasonable degree of medical certainty, and in 652
accordance with reasonable medical standards, that the patient 653
no longer is able to make informed decisions regarding the 654
administration of life-sustaining treatment and that there is no 655
reasonable possibility that the patient will regain the capacity 656
to make those informed decisions. 657

(b) The patient does not have a declaration that addresses 658
the patient's intent should the patient be determined to be in a 659
terminal condition or in a permanently unconscious state, 660
whichever applies, or a durable power of attorney for health 661
care, or has a document that purports to be such a declaration 662
or durable power of attorney for health care but that document 663
is not legally effective. 664

(c) The consent of the appropriate individual or 665
individuals is given after consultation with the patient's 666
attending physician and after receipt of information from the 667
patient's attending physician or a consulting physician that is 668
sufficient to satisfy the requirements of informed consent. 669

(d) The appropriate individual or individuals who give a 670

consent are of sound mind and voluntarily give the consent. 671

(e) If a consent would be given under division (B) (3) of 672
this section, the attending physician made a good faith effort, 673
and used reasonable diligence, to notify the patient's adult 674
children who are available within a reasonable period of time 675
for consultation as described in division (A) (1) (c) of this 676
section. 677

(2) The consulting physician under division (A) (1) (a) of 678
this section associated with a patient allegedly in a 679
permanently unconscious state shall be a physician who, by 680
virtue of advanced education or training, of a practice limited 681
to particular diseases, illnesses, injuries, therapies, or 682
branches of medicine or surgery or osteopathic medicine and 683
surgery, of certification as a specialist in a particular branch 684
of medicine or surgery or osteopathic medicine and surgery, or 685
of experience acquired in the practice of medicine or surgery or 686
osteopathic medicine and surgery, is qualified to determine 687
whether the patient currently is and for at least the 688
immediately preceding twelve months has been in a permanently 689
unconscious state. 690

(B) For purposes of division (A) of this section and 691
subject to division (C) of this section, a consent to withhold 692
or withdraw life-sustaining treatment may be given by the 693
appropriate individual or individuals, in accordance with the 694
following descending order of priority: 695

(1) If any, the guardian of the patient. This division 696
does not permit or require, and shall not be construed as 697
permitting or requiring, the appointment of a guardian for the 698
patient. 699

(2) The patient's spouse;	700
(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;	701 702 703 704
(4) The patient's parents;	705
(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;	706 707 708 709
(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.	710 711 712 713
(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 the withholding or withdrawal of life-sustaining treatment from the patient can be given pursuant to this section.	714 715 716 717 718 719 720 721 722 723 724 725 726 727 728

(2) (a) If an appropriate individual entitled to decide 729
under division (B) of this section whether or not to consent to 730
the withholding or withdrawing of life-sustaining treatment for 731
a patient and that patient are married and are the parties to a 732
pending divorce, dissolution, legal separation, or annulment 733
proceeding, the individual is not competent to so decide, and 734
the next priority individual or class of individuals specified 735
in that division is authorized to make the decision. 736

(b) If an appropriate individual entitled to decide under 737
division (B) of this section whether or not to consent to the 738
withholding or withdrawing of life-sustaining treatment for a 739
patient is subject to a temporary protection order, civil 740
protection order, or any other protection order issued by a 741
court in this state or another state and the patient is the 742
alleged victim, the individual is not competent to so decide, 743
and the next priority individual or class of individuals 744
specified in that division is authorized to make that decision. 745

(c) If a member of a class of individuals entitled to 746
decide under division (B) of this section whether or not to 747
consent to the withholding or withdrawal of life-sustaining 748
treatment for a patient is subject to a temporary protection 749
order, civil protection order, or any other protection order 750
issued by a court in this state or another state and the patient 751
is the alleged victim, the member is not competent to so decide, 752
and the other members of the class of individuals are authorized 753
to make the decision. 754

(d) If an appropriate individual entitled to decide under 755
division (B) of this section whether or not to consent to the 756
withholding or withdrawal of life-sustaining treatment for a 757
patient has been charged with the offense of felonious assault 758

under section 2903.11 of the Revised Code or the offense of 759
aggravated assault under section 2903.12 of the Revised Code 760
against the patient and the serious physical harm or physical 761
harm suffered by the patient as a result of the offense directly 762
caused the patient to be in a terminal condition, the individual 763
is not competent to so decide, and the next priority individual 764
or class of individuals specified in that division is authorized 765
to make the decision. 766

(e) If a member of a class of individuals entitled to 767
decide under division (B) of this section whether or not to 768
consent to the withholding or withdrawal of life-sustaining 769
treatment for a patient has been charged with the offense of 770
felonious assault under section 2903.11 of the Revised Code or 771
the offense of aggravated assault under section 2903.12 of the 772
Revised Code against the patient and the serious physical harm 773
or physical harm suffered by the patient as a result of the 774
offense directly caused the patient to be in a terminal 775
condition, that member is not competent to so decide, and the 776
other members of the class of individuals are authorized to make 777
the decision. 778

(D) (1) A decision to consent pursuant to this section to 779
the use or continuation, or the withholding or withdrawal, of 780
life-sustaining treatment for a patient shall be made in good 781
faith. 782

(2) Except as provided in division (D) (4) of this section, 783
if the patient previously expressed an intention with respect to 784
the use or continuation, or the withholding or withdrawal, of 785
life-sustaining treatment should the patient subsequently be in 786
a terminal condition or in a permanently unconscious state, 787
whichever applies, and no longer able to make informed decisions 788

regarding the administration of life-sustaining treatment, a 789
consent given pursuant to this section shall be valid only if it 790
is consistent with that previously expressed intention. 791

(3) Except as provided in division (D)(4) of this section, 792
if the patient did not previously express an intention with 793
respect to the use or continuation, or the withholding or 794
withdrawal, of life-sustaining treatment should the patient 795
subsequently be in a terminal condition or in a permanently 796
unconscious state, whichever applies, and no longer able to make 797
informed decisions regarding the administration of life- 798
sustaining treatment, a consent given pursuant to this section 799
shall be valid only if it is consistent with the type of 800
informed consent decision that the patient would have made if 801
the patient previously had expressed an intention with respect 802
to the use or continuation, or the withholding or withdrawal, of 803
life-sustaining treatment should the patient subsequently be in 804
a terminal condition or in a permanently unconscious state, 805
whichever applies, and no longer able to make informed decisions 806
regarding the administration of life-sustaining treatment, as 807
inferred from the lifestyle and character of the patient, and 808
from any other evidence of the desires of the patient, prior to 809
the patient's becoming no longer able to make informed decisions 810
regarding the administration of life-sustaining treatment. The 811
Rules of Evidence shall not be binding for purposes of this 812
division. 813

(4) (a) The attending physician of the patient, and other 814
health care personnel acting under the direction of the 815
attending physician, who do not have actual knowledge of a 816
previously expressed intention as described in division (D)(2) 817
of this section or who do not have actual knowledge that the 818
patient would have made a different type of informed consent 819

decision under the circumstances described in division (D) (3) of 820
this section, may rely on a consent given in accordance with 821
this section unless a probate court decides differently under 822
division (E) of this section. 823

(b) The immunity conferred by division (C) (1) of section 824
2133.11 of the Revised Code is not forfeited by an individual 825
who gives a consent to the use or continuation, or the 826
withholding or withdrawal, of life-sustaining treatment for a 827
patient under division (B) of this section if the individual 828
gives the consent in good faith and without actual knowledge, at 829
the time of giving the consent, of either a contrary previously 830
expressed intention of the patient, or a previously expressed 831
intention of the patient, as described in division (D) (2) of 832
this section, that is revealed to the individual subsequent to 833
the time of giving the consent. 834

(E) (1) Within forty-eight hours after a priority 835
individual or class of individuals gives a consent pursuant to 836
this section to the use or continuation, or the withholding or 837
withdrawal, of life-sustaining treatment and communicates the 838
consent to the patient's attending physician, any individual 839
described in divisions (B) (1) to (5) of this section, except an 840
individual who is not competent to give consent under division 841
(C) (2) of this section, who objects to the application of this 842
section to the patient shall advise the attending physician of 843
the grounds for the objection. If an objection is so 844
communicated to the attending physician, then, within two 845
business days after that communication, the objecting individual 846
shall file a complaint against the priority individual or class 847
of individuals, the patient's attending physician, and the 848
consulting physician associated with the determination that the 849
patient is in a terminal condition or that the patient currently 850

is and for at least the immediately preceding twelve months has 851
been in a permanently unconscious state, in the probate court of 852
the county in which the patient is located for the issuance of 853
an order reversing the consent of the priority individual or 854
class of individuals. If the objecting individual fails to so 855
file a complaint, the individual's objections shall be 856
considered to be void. 857

A probate court in which a complaint is filed in 858
accordance with this division shall conduct a hearing on the 859
complaint after a copy of the complaint and a notice of the 860
hearing have been served upon the defendants. The clerk of the 861
probate court in which the complaint is filed shall cause the 862
complaint and the notice of the hearing to be so served in 863
accordance with the Rules of Civil Procedure, which service 864
shall be made, if possible, within three days after the filing 865
of the complaint. The hearing shall be conducted at the earliest 866
possible time, but no later than the third business day after 867
the service has been completed. Immediately following the 868
hearing, the court shall enter on its journal its determination 869
whether the decision of the priority individual or class of 870
individuals to consent to the use or continuation, or the 871
withholding or withdrawal, of life-sustaining treatment in 872
connection with the patient will be confirmed or reversed. 873

(2) If the decision of the priority individual or class of 874
individuals was to consent to the use or continuation of life- 875
sustaining treatment in connection with the patient, the court 876
only may reverse that consent if the objecting individual 877
establishes, by clear and convincing evidence and, if 878
applicable, to a reasonable degree of medical certainty and in 879
accordance with reasonable medical standards, one or more of the 880
following: 881

(a) The patient is able to make informed decisions 882
regarding the administration of life-sustaining treatment. 883

(b) The patient has a legally effective declaration that 884
addresses the patient's intent should the patient be determined 885
to be in a terminal condition or in a permanently unconscious 886
state, whichever applies, or a legally effective durable power 887
of attorney for health care. 888

(c) The decision to use or continue life-sustaining 889
treatment is not consistent with the previously expressed 890
intention of the patient as described in division (D) (2) of this 891
section. 892

(d) The decision to use or continue life-sustaining 893
treatment is not consistent with the type of informed consent 894
decision that the patient would have made if the patient 895
previously had expressed an intention with respect to the use or 896
continuation, or the withholding or withdrawal, of life- 897
sustaining treatment should the patient subsequently be in a 898
terminal condition or in a permanently unconscious state, 899
whichever applies, and no longer able to make informed decisions 900
regarding the administration of life-sustaining treatment as 901
described in division (D) (3) of this section. 902

(e) The decision of the priority individual or class of 903
individuals was not made after consultation with the patient's 904
attending physician and after receipt of information from the 905
patient's attending physician or a consulting physician that is 906
sufficient to satisfy the requirements of informed consent. 907

(f) The priority individual, or any member of the priority 908
class of individuals, who made the decision to use or continue 909
life-sustaining treatment was not of sound mind or did not 910

voluntarily make the decision. 911

(g) If the decision of a priority class of individuals 912
under division (B) (3) of this section is involved, the patient's 913
attending physician did not make a good faith effort, and use 914
reasonable diligence, to notify the patient's adult children who 915
were available within a reasonable period of time for 916
consultation as described in division (A) (1) (c) of this section. 917

(h) The decision of the priority individual or class of 918
individuals otherwise was made in a manner that does not comply 919
with this section. 920

(3) If the decision of the priority individual or class of 921
individuals was to consent to the withholding or withdrawal of 922
life-sustaining treatment in connection with the patient, the 923
court only may reverse that consent if the objecting individual 924
establishes, by a preponderance of the evidence and, if 925
applicable, to a reasonable degree of medical certainty and in 926
accordance with reasonable medical standards, one or more of the 927
following: 928

(a) The patient is not in a terminal condition, the 929
patient is not in a permanently unconscious state, or the 930
patient has not been in a permanently unconscious state for at 931
least the immediately preceding twelve months. 932

(b) The patient is able to make informed decisions 933
regarding the administration of life-sustaining treatment. 934

(c) There is a reasonable possibility that the patient 935
will regain the capacity to make informed decisions regarding 936
the administration of life-sustaining treatment. 937

(d) The patient has a legally effective declaration that 938
addresses the patient's intent should the patient be determined 939

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. 940
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(e) The decision to withhold or withdraw life-sustaining treatment is not consistent with the previously expressed intention of the patient as described in division (D) (2) of this section. 943
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(f) The decision to withhold or withdraw 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 described in division (D) (3) of this section. 947
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(g) The decision of the priority individual or class of individuals was not made after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent. 957
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(h) The priority individual, or any member of the priority class of individuals, who made the decision to withhold or withdraw life-sustaining treatment was not of sound mind, was not competent to make the decision under division (C) (2) of this section, or did not voluntarily make the decision. 962
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(i) If the decision of a priority class of individuals under division (B) (3) of this section is involved, the patient's 967
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attending physician did not make a good faith effort, and use 969
reasonable diligence, to notify the patient's adult children who 970
were available within a reasonable period of time for 971
consultation as described in division (A)(1)(c) of this section. 972

(j) The decision of the priority individual or class of 973
individuals otherwise was made in a manner that does not comply 974
with this section. 975

(4) Notwithstanding any contrary provision of the Revised 976
Code or of the Rules of Civil Procedure, the state and persons 977
other than individuals described in divisions (B)(1) to (5) of 978
this section are prohibited from filing a complaint under 979
division (E) of this section and from joining or being joined as 980
parties to a hearing conducted under division (E) of this 981
section, including joining by way of intervention. 982

(F) A valid consent given in accordance with this section 983
supersedes any general consent to treatment form signed by or on 984
behalf of the patient prior to, upon, or after the patient's 985
admission to a health care facility to the extent there is a 986
conflict between the consent and the form. 987

(G) Life-sustaining treatment shall not be withheld or 988
withdrawn from a patient pursuant to a consent given in 989
accordance with this section if the patient is pregnant and if 990
the withholding or withdrawal of the treatment would terminate 991
the pregnancy, unless the patient's attending physician and one 992
other physician who has examined the patient determine, to a 993
reasonable degree of medical certainty and in accordance with 994
reasonable medical standards, that the fetus would not be born 995
alive. 996

(H) As used in this section, "civil protection order" and 997

"temporary protection order" have the same meanings as in 998
section 2923.124 of the Revised Code. 999

Sec. 2133.09. (A) The attending physician of a patient who 1000
is an adult and who currently is and for at least the 1001
immediately preceding twelve months has been in a permanently 1002
unconscious state may withhold or withdraw nutrition and 1003
hydration in connection with the patient only if all of the 1004
following apply: 1005

(1) Written consent to the withholding or withdrawal of 1006
life-sustaining treatment in connection with the patient has 1007
been given by an appropriate individual or individuals in 1008
accordance with section 2133.08 of the Revised Code, and 1009
divisions (A) (1) (a) to (e) and (2) of that section have been 1010
satisfied. 1011

(2) A probate court has not reversed the consent to the 1012
withholding or withdrawal of life-sustaining treatment in 1013
connection with the patient pursuant to division (E) of section 1014
2133.08 of the Revised Code. 1015

(3) The attending physician of the patient and one other 1016
physician as described in division (A) (2) of section 2133.08 of 1017
the Revised Code who examines the patient determine, in good 1018
faith, to a reasonable degree of medical certainty, and in 1019
accordance with reasonable medical standards, that nutrition and 1020
hydration will not or no longer will provide comfort or 1021
alleviate pain in connection with the patient. 1022

(4) Written consent to the withholding or withdrawal of 1023
nutrition and hydration in connection with the patient, 1024
witnessed by two individuals who satisfy the witness eligibility 1025
criteria set forth in division (B) (1) of section 2133.02 of the 1026

Revised Code, is given to the attending physician of the patient 1027
by an appropriate individual or individuals as specified in 1028
division (B) of section 2133.08 of the Revised Code. 1029

(5) The written consent to the withholding or withdrawal 1030
of the nutrition and hydration in connection with the patient is 1031
given in accordance with division (B) of this section. 1032

(6) The probate court of the county in which the patient 1033
is located issues an order to withhold or withdraw the nutrition 1034
and hydration in connection with the patient pursuant to 1035
division (C) of this section. 1036

(B)(1) A decision to consent pursuant to this section to 1037
the withholding or withdrawal of nutrition and hydration in 1038
connection with a patient shall be made in good faith. 1039

(2) Except as provided in division (B)(4) of this section, 1040
if the patient previously expressed an intention with respect to 1041
the use or continuation, or the withholding or withdrawal, of 1042
nutrition and hydration should the patient subsequently be in a 1043
permanently unconscious state and no longer able to make 1044
informed decisions regarding the administration of nutrition and 1045
hydration, a consent given pursuant to this section shall be 1046
valid only if it is consistent with that previously expressed 1047
intention. 1048

(3) Except as provided in division (B)(4) of this section, 1049
if the patient did not previously express an intention with 1050
respect to the use or continuation, or the withholding or 1051
withdrawal, of nutrition and hydration should the patient 1052
subsequently be in a permanently unconscious state and no longer 1053
able to make informed decisions regarding the administration of 1054
nutrition and hydration, a consent given pursuant to this 1055

section shall be valid only if it is consistent with the type of 1056
informed consent decision that the patient would have made if 1057
the patient previously had expressed an intention with respect 1058
to the use or continuation, or the withholding or withdrawal, of 1059
nutrition and hydration should the patient subsequently be in a 1060
permanently unconscious state and no longer able to make 1061
informed decisions regarding the administration of nutrition and 1062
hydration, as inferred from the lifestyle and character of the 1063
patient, and from any other evidence of the desires of the 1064
patient, prior to the patient's becoming no longer able to make 1065
informed decisions regarding the administration of nutrition and 1066
hydration. The Rules of Evidence shall not be binding for 1067
purposes of this division. 1068

(4) (a) The attending physician of the patient, and other 1069
health care personnel acting under the direction of the 1070
attending physician, who do not have actual knowledge of a 1071
previously expressed intention as described in division (B) (2) 1072
of this section or who do not have actual knowledge that the 1073
patient would have made a different type of informed consent 1074
decision under the circumstances described in division (B) (3) of 1075
this section, may rely on a consent given in accordance with 1076
this section unless a probate court decides differently under 1077
division (C) of this section. 1078

(b) The immunity conferred by division (C) (2) of section 1079
2133.11 of the Revised Code is not forfeited by an individual 1080
who gives a consent to the withholding or withdrawal of 1081
nutrition and hydration in connection with a patient under 1082
division (A) (4) of this section if the individual gives the 1083
consent in good faith and without actual knowledge, at the time 1084
of giving the consent, of either a contrary previously expressed 1085
intention of the patient, or a previously expressed intention of 1086

the patient, as described in division (B) (2) of this section, 1087
that is revealed to the individual subsequent to the time of 1088
giving the consent. 1089

(C) (1) Prior to the withholding or withdrawal of nutrition 1090
and hydration in connection with a patient pursuant to this 1091
section, the priority individual or class of individuals that 1092
consented to the withholding or withdrawal of the nutrition and 1093
hydration shall apply to the probate court of the county in 1094
which the patient is located for the issuance of an order that 1095
authorizes the attending physician of the patient to commence 1096
the withholding or withdrawal of the nutrition and hydration in 1097
connection with the patient. Upon the filing of the application, 1098
the clerk of the probate court shall schedule a hearing on it 1099
and cause a copy of it and a notice of the hearing to be served 1100
in accordance with the Rules of Civil Procedure upon the 1101
applicant, the attending physician, the consulting physician 1102
associated with the determination that nutrition and hydration 1103
will not or no longer will provide comfort or alleviate pain in 1104
connection with the patient, and the individuals described in 1105
divisions (B) (1) to (5) of section 2133.08 of the Revised Code 1106
who are not applicants, which service shall be made, if 1107
possible, within three days after the filing of the application. 1108
The hearing shall be conducted at the earliest possible time, 1109
but no sooner than the thirtieth business day, and no later than 1110
the sixtieth business day, after the service has been completed. 1111

At the hearing, any individual described in divisions (B) 1112
(1) to (5) of section 2133.08 of the Revised Code who is not an 1113
applicant, except an individual who is not competent under 1114
division (C) (2) of section 2133.08 of the Revised Code, and who 1115
disagrees with the decision of the priority individual or class 1116
of individuals to consent to the withholding or withdrawal of 1117

nutrition and hydration in connection with the patient shall be 1118
permitted to testify and present evidence relative to the use or 1119
continuation of nutrition and hydration in connection with the 1120
patient. Immediately following the hearing, the court shall 1121
enter on its journal its determination whether the requested 1122
order will be issued. 1123

(2) The court shall issue an order that authorizes the 1124
patient's attending physician to commence the withholding or 1125
withdrawal of nutrition and hydration in connection with the 1126
patient only if the applicants establish, by clear and 1127
convincing evidence, to a reasonable degree of medical 1128
certainty, and in accordance with reasonable medical standards, 1129
all of the following: 1130

(a) The patient currently is and for at least the 1131
immediately preceding twelve months has been in a permanently 1132
unconscious state. 1133

(b) The patient no longer is able to make informed 1134
decisions regarding the administration of life-sustaining 1135
treatment. 1136

(c) There is no reasonable possibility that the patient 1137
will regain the capacity to make informed decisions regarding 1138
the administration of life-sustaining treatment. 1139

(d) The conditions specified in divisions (A) (1) to (4) of 1140
this section have been satisfied. 1141

(e) The decision to withhold or withdraw nutrition and 1142
hydration in connection with the patient is consistent with the 1143
previously expressed intention of the patient as described in 1144
division (B) (2) of this section or is consistent with the type 1145
of informed consent decision that the patient would have made if 1146

the patient previously had expressed an intention with respect 1147
to the use or continuation, or the withholding or withdrawal, of 1148
nutrition and hydration should the patient subsequently be in a 1149
permanently unconscious state and no longer able to make 1150
informed decisions regarding the administration of nutrition and 1151
hydration as described in division (B) (3) of this section. 1152

(3) Notwithstanding any contrary provision of the Revised 1153
Code or of the Rules of Civil Procedure, the state and persons 1154
other than individuals described in division (A) (4) of this 1155
section or in divisions (B) (1) to (5) of section 2133.08 of the 1156
Revised Code and other than the attending physician and 1157
consulting physician associated with the determination that 1158
nutrition and hydration will not or no longer will provide 1159
comfort or alleviate pain in connection with the patient are 1160
prohibited from filing an application under this division and 1161
from joining or being joined as parties to a hearing conducted 1162
under this division, including joining by way of intervention. 1163

(D) A valid consent given in accordance with this section 1164
supersedes any general consent to treatment form signed by or on 1165
behalf of the patient prior to, upon, or after the patient's 1166
admission to a health care facility to the extent there is a 1167
conflict between the consent and the form. 1168

Sec. 2133.12. (A) The death of a qualified patient or 1169
other patient resulting from the withholding or withdrawal of 1170
life-sustaining treatment in accordance with sections 2133.01 to 1171
2133.15 of the Revised Code does not constitute for any purpose 1172
a suicide, aggravated murder, murder, or any other homicide 1173
offense. 1174

(B) (1) The execution of a declaration shall not do either 1175
of the following: 1176

(a) Affect the sale, procurement, issuance, or renewal of 1177
any policy of life insurance or annuity, notwithstanding any 1178
term of a policy or annuity to the contrary; 1179

(b) Be deemed to modify or invalidate the terms of any 1180
policy of life insurance or annuity that is in effect on October 1181
10, 1991. 1182

(2) Notwithstanding any term of a policy of life insurance 1183
or annuity to the contrary, the withholding or withdrawal of 1184
life-sustaining treatment from an insured, qualified patient or 1185
other patient in accordance with sections 2133.01 to 2133.15 of 1186
the Revised Code shall not impair or invalidate any policy of 1187
life insurance or annuity. 1188

(3) Notwithstanding any term of a policy or plan to the 1189
contrary, the use or continuation, or the withholding or 1190
withdrawal, of life-sustaining treatment from an insured, 1191
qualified patient or other patient in accordance with sections 1192
2133.01 to 2133.15 of the Revised Code shall not impair or 1193
invalidate any policy of health insurance or any health care 1194
benefit plan. 1195

(4) No physician, health care facility, other health care 1196
provider, person authorized to engage in the business of 1197
insurance in this state under Title XXXIX of the Revised Code, 1198
health insuring corporation, other health care plan, legal 1199
entity that is self-insured and provides benefits to its 1200
employees or members, or other person shall require any 1201
individual to execute or refrain from executing a declaration, 1202
or shall require an individual to revoke or refrain from 1203
revoking a declaration, as a condition of being insured or of 1204
receiving health care benefits or services. 1205

(C) (1) Sections 2133.01 to 2133.15 of the Revised Code do 1206
not create any presumption concerning the intention of an 1207
individual who has revoked or has not executed a declaration 1208
with respect to the use or continuation, or the withholding or 1209
withdrawal, of life-sustaining treatment if the individual 1210
should be in a terminal condition or in a permanently 1211
unconscious state at any time. 1212

(2) Sections 2133.01 to 2133.15 of the Revised Code do not 1213
affect the right of a qualified patient or other patient to make 1214
informed decisions regarding the use or continuation, or the 1215
withholding or withdrawal, of life-sustaining treatment as long 1216
as the qualified patient or other patient is able to make those 1217
decisions. 1218

(3) Sections 2133.01 to 2133.15 of the Revised Code do not 1219
require a physician, other health care personnel, or a health 1220
care facility to take action that is contrary to reasonable 1221
medical standards. 1222

(4) Sections 2133.01 to 2133.15 of the Revised Code and, 1223
if applicable, a declaration do not affect or limit the 1224
authority of a physician or a health care facility to provide or 1225
not to provide life-sustaining treatment to a person in 1226
accordance with reasonable medical standards applicable in an 1227
emergency situation. 1228

(D) Nothing in sections 2133.01 to 2133.15 of the Revised 1229
Code condones, authorizes, or approves of mercy killing, 1230
assisted suicide, or euthanasia. 1231

(E) (1) Sections 2133.01 to 2133.15 of the Revised Code do 1232
not affect the responsibility of the attending physician of a 1233
qualified patient or other patient, or other health care 1234

personnel acting under the direction of the patient's attending 1235
physician, to provide comfort care to the patient. Nothing in 1236
sections 2133.01 to 2133.15 of the Revised Code precludes the 1237
attending physician of a qualified patient or other patient who 1238
carries out the responsibility to provide comfort care to the 1239
patient in good faith and while acting within the scope of the 1240
attending physician's authority from prescribing, dispensing, 1241
administering, or causing to be administered any particular 1242
medical procedure, treatment, intervention, or other measure to 1243
the patient, including, but not limited to, prescribing, 1244
personally furnishing, administering, or causing to be 1245
administered by judicious titration or in another manner any 1246
form of medication, for the purpose of diminishing the qualified 1247
patient's or other patient's pain or discomfort and not for the 1248
purpose of postponing or causing the qualified patient's or 1249
other patient's death, even though the medical procedure, 1250
treatment, intervention, or other measure may appear to hasten 1251
or increase the risk of the patient's death. Nothing in sections 1252
2133.01 to 2133.15 of the Revised Code precludes health care 1253
personnel acting under the direction of the patient's attending 1254
physician who carry out the responsibility to provide comfort 1255
care to the patient in good faith and while acting within the 1256
scope of their authority from dispensing, administering, or 1257
causing to be administered any particular medical procedure, 1258
treatment, intervention, or other measure to the patient, 1259
including, but not limited to, personally furnishing, 1260
administering, or causing to be administered by judicious 1261
titration or in another manner any form of medication, for the 1262
purpose of diminishing the qualified patient's or other 1263
patient's pain or discomfort and not for the purpose of 1264
postponing or causing the qualified patient's or other patient's 1265
death, even though the medical procedure, treatment, 1266

intervention, or other measure may appear to hasten or increase 1267
the risk of the patient's death. 1268

(2) (a) If, at any time, a person described in division (A) 1269
(2) (a) (i) of section 2133.05 of the Revised Code or the 1270
individual or a majority of the individuals in either of the 1271
first two classes of individuals that pertain to a declarant in 1272
the descending order of priority set forth in division (A) (2) (a) 1273
(ii) of section 2133.05 of the Revised Code believes in good 1274
faith that both of the following circumstances apply, the person 1275
or the individual or majority of individuals in either of the 1276
first two classes of individuals may commence an action in the 1277
probate court of the county in which a declarant who is in a 1278
terminal condition or permanently unconscious state is located 1279
for the issuance of an order mandating the use or continuation 1280
of comfort care in connection with the declarant in a manner 1281
that is consistent with division (E) (1) of this section: 1282

(i) Comfort care is not being used or continued in 1283
connection with the declarant. 1284

(ii) The withholding or withdrawal of the comfort care is 1285
contrary to division (E) (1) of this section. 1286

(b) If a declarant did not designate in the declarant's 1287
declaration a person as described in division (A) (2) (a) (i) of 1288
section 2133.05 of the Revised Code and if, at any time, a 1289
priority individual or any member of a priority class of 1290
individuals under division (A) (2) (a) (ii) of section 2133.05 of 1291
the Revised Code or, at any time, the individual or a majority 1292
of the individuals in the next class of individuals that 1293
pertains to the declarant in the descending order of priority 1294
set forth in that division believes in good faith that both of 1295
the following circumstances apply, the priority individual, the 1296

member of the priority class of individuals, or the individual 1297
or majority of individuals in the next class of individuals that 1298
pertains to the declarant may commence an action in the probate 1299
court of the county in which a declarant who is in a terminal 1300
condition or permanently unconscious state is located for the 1301
issuance of an order mandating the use or continuation of 1302
comfort care in connection with the declarant in a manner that 1303
is consistent with division (E) (1) of this section: 1304

(i) Comfort care is not being used or continued in 1305
connection with the declarant. 1306

(ii) The withholding or withdrawal of the comfort care is 1307
contrary to division (E) (1) of this section. 1308

(c) If, at any time, a priority individual or any member 1309
of a priority class of individuals under division (B) of section 1310
2133.08 of the Revised Code or, at any time, the individual or a 1311
majority of the individuals in the next class of individuals 1312
that pertains to the patient in the descending order of priority 1313
set forth in that division believes in good faith that both of 1314
the following circumstances apply, the priority individual, the 1315
member of the priority class of individuals, or the individual 1316
or majority of individuals in the next class of individuals that 1317
pertains to the patient may commence an action in the probate 1318
court of the county in which a patient as described in division 1319
(A) of section 2133.08 of the Revised Code is located for the 1320
issuance of an order mandating the use or continuation of 1321
comfort care in connection with the patient in a manner that is 1322
consistent with division (E) (1) of this section, unless the 1323
individual is not competent under division (C) (2) of section 1324
2133.08 of the Revised Code: 1325

(i) Comfort care is not being used or continued in 1326

connection with the patient. 1327

(ii) The withholding or withdrawal of the comfort care is 1328
contrary to division (E)(1) of this section. 1329

Section 2. That existing sections 1337.13, 1337.17, 1330
2133.05, 2133.08, 2133.09, and 2133.12 of the Revised Code are 1331
hereby repealed. 1332

Section 3. Section 2133.12 of the Revised Code is 1333
presented in this act as a composite of the section as amended 1334
by both Sub. H.B. 354 and Am. Sub. S.B. 66 of the 122nd General 1335
Assembly. The General Assembly, applying the principle stated in 1336
division (B) of section 1.52 of the Revised Code that amendments 1337
are to be harmonized if reasonably capable of simultaneous 1338
operation, finds that the composite is the resulting version of 1339
the section in effect prior to the effective date of the section 1340
as presented in this act. 1341