

**As Passed by the Senate**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Sub. 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**

**Senators Bacon, Thomas, Balderson, Coley, Eklund, Faber, Hackett, Hughes, Manning, Oelslager, Peterson, Sawyer, Seitz, Tavares**

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**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 165  
effective in achieving the purposes for which the principal 166  
consented to its use. 167

(G) An attorney in fact under a durable power of attorney 168  
for health care does not have authority to make decisions 169  
pertaining to the use or continuation of life-sustaining 170  
treatment or the provision of nutrition or hydration to the 171  
principal unless the attorney in fact is competent to make those 172  
decisions under division (H) of this section. 173

(H) An attorney in fact is competent to make decisions 174  
under division (B), (E), or (G) of this section unless the 175  
attorney in fact is subject to a temporary protection order, 176  
civil protection order, or any other protection order issued by 177  
a court in this state or another state in which the principal is 178  
the alleged victim. 179

**Sec. 1337.17.** A printed form of durable power of attorney 180  
for health care may be sold or otherwise distributed in this 181  
state for use by adults who are not advised by an attorney. By 182  
use of such a printed form, a principal may authorize an 183  
attorney in fact to make health care decisions on the 184  
principal's behalf, but the printed form shall not be used as an 185  
instrument for granting authority for any other decisions. Any 186  
printed form that is sold or otherwise distributed in this state 187  
for the purpose described in this section shall include the 188  
following notice: 189

"Notice to Adult Executing This Document 190

This is an important legal document. Before executing this 191  
document, you should know these facts: 192

This document gives the person you designate (the attorney 193

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 didnot 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