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SENATE BILL NO. 677

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 10, 2000)

(Patron Prior to Substitute—Senator Forbes)

A BILL to amend and reenact §§ 54.1-2987, 54.1-2988, 54.1-2990, and 54.1-2992 of the Code of Virginia, relating to health care decisions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2987, 54.1-2988, 54.1-2990, and 54.1-2992 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2987. Transfer of patient by physician who refuses to comply with advance directive or treatment decision.

An attending physician who refuses to comply with (i) the advance directive of a qualified patient or (ii) the treatment decision of a person designated to make the decision (i) by the declarant in his advance directive pursuant to § 54.1-2984 or (ii)(iii) the treatment decision of an authorized person pursuant to § 54.1-2986 shall make a reasonable effort to transfer the patient to another physician and shall comply with § 54.1-2990.

This section shall apply even if the attending physician determines the treatment requested to be medically or ethically inappropriate.

§ 54.1-2988. Immunity from liability; burden of proof; presumption.

A health care facility, physician or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of issuing a Durable Do Not Resuscitate Order or the withholding or the withdrawal of life-prolonging procedures under authorization or consent obtained in accordance with this article or as the result of the provision, withholding or withdrawal of ongoing life-sustaining care in accordance with § 54.1-2990. No person or facility providing, withholding or withdrawing treatment or physician issuing a Durable Do Not Resuscitate Order under authorization or consent obtained pursuant to this article or otherwise in accordance with § 54.1-2990 shall incur liability arising out of a claim to the extent the claim is based on lack of authorization or consent for such action.

A person who authorizes or consents to the providing, withholding or withdrawal of ongoing life-sustaining care in accordance with § 54.1-2990 or of life-prolonging procedures in accordance with a qualified patient's advance directive or as provided in § 54.1-2986 or a Durable Do Not Resuscitate Order pursuant to § 54.1-2987.1 shall not be subject, solely on the basis of that authorization or consent, to (i) criminal prosecution or civil liability for such action or (ii) liability for the cost of treatment.

The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the withholding or withdrawal of life-prolonging procedures, or issuing, consenting to, making or following a Durable Do Not Resuscitate Order in accordance with § 54.1-2987.1 did not, in good faith, comply with the provisions of this article.

The distribution to patients of written advance directives in a form meeting the requirements of § 54.1-2984 and assistance to patients in the completion and execution of such forms by health care providers shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of this title.

An advance directive or Durable Do Not Resuscitate Order made, consented to or issued in accordance with this article shall be presumed to have been made, consented to, or issued voluntarily and in good faith by a competent adult, physician or person authorized to consent on the patient's behalf.

§ 54.1-2990. Medically treatment not required; procedure when physician refuses to comply with an advance directive or a designated person's treatment decision; mercy killing or euthanasia prohibited.

A. Nothing in this article shall be construed to require a physician to prescribe or render medical treatment to a patient that the physician determines to be medically or ethically inappropriate. However, in such a case, if the physician's determination is contrary to the terms of an advance directive of a qualified patient or the treatment decision of a person designated to make the decision under this article or a Durable Do Not Resuscitate Order, the physician shall make a reasonable effort to inform the patient or the patient's designated decision-maker of such determination and the reasons for the determination. If the conflict remains unresolved, the physician shall make a reasonable effort to transfer the patient to another physician who is willing to comply with the terms of the advance directive. The physician shall provide the patient or his authorized decision-maker a reasonable time of not less than fourteen days to effect such transfer. During this period, the physician shall continue to provide any life-sustaining care to the patient which is reasonably available to such physician, as requested by the

60 *patient or his designated decision-maker.*

61 *B. For purposes of this section, "life-sustaining care" means any ongoing medical procedure,*
62 *treatment or intervention that utilizes mechanical or other artificial means to sustain, restore or*
63 *supplant a spontaneous vital function, including hydration, nutrition, maintenance medication, and*
64 *cardiopulmonary resuscitation.*

65 *C. Nothing in this section shall require the provision of treatment that the physician is physically or*
66 *legally unable to provide or is physically or legally unable to provide without thereby denying the same*
67 *treatment to another patient.*

68 *D. Nothing in this article shall be construed to condone, authorize or approve mercy killing or*
69 *euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the*
70 *natural process of dying.*

71 *§ 54.1-2992. Preservation of existing rights.*

72 *The provisions of this article are cumulative with existing law regarding an individual's right to*
73 *consent or refuse to consent to medical treatment and shall not impair any existing rights or*
74 *responsibilities which a health care provider, a patient, including a minor or incapacitated patient, or a*
75 *patient's family may have in regard to the providing, withholding or withdrawal of life-prolonging*
76 *medical procedures under the common law or statutes of the Commonwealth; however, this section shall*
77 *not be construed to authorize violations of § 54.1-2990.*