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SENATE BILL NO. 290

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 21, 2008)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact §§ 54.1-2983 and 54.1-2985 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 29 of Title 54.1 an article numbered 9, consisting of sections numbered 54.1-2994 through 54.1-2996, relating to an Advance Health Care Directive Registry.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2983 and 54.1-2985 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 29 of Title 54.1 an article numbered 9, consisting of sections numbered 54.1-2994 through 54.1-2996, as follows:

§ 54.1-2983. Procedure for making advance directive; notice to physician.

Any competent adult may, at any time, make a written advance directive authorizing the providing, withholding or withdrawal of life-prolonging procedures in the event such person should have a terminal condition. A written advance directive may also appoint an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. A written advance directive shall be signed by the declarant in the presence of two subscribing witnesses. *A written advance directive may be submitted to the Advance Health Care Directive Registry, pursuant to Article 9 (§ 54.1-2994 et seq.) of this chapter. Such directive shall be notarized before being submitted to the registry.*

Further, any competent adult who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance directive to authorize the providing, withholding or withdrawing of life-prolonging procedures or to appoint an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. An oral advance directive shall be made in the presence of the attending physician and two witnesses.

It shall be the responsibility of the declarant to provide for notification to his attending physician that an advance directive has been made. *If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 of this chapter, it shall be the responsibility of the declarant to provide his attending physician, legal representative, or other person with the information necessary to access the advance directive.* In the event the declarant is comatose, incapacitated or otherwise mentally or physically incapable of communication, any other person may notify the physician of the existence of an advance directive *and, if applicable, the fact that it has been submitted to the Advance Health Care Directive Registry.* An attending physician who is so notified shall promptly make the advance directive or a copy of the advance directive, if written, or the fact of the advance directive, if oral, a part of the declarant's medical records.

§ 54.1-2985. Revocation of an advance directive.

A. An advance directive may be revoked at any time by the declarant (i) by a signed, dated writing; (ii) by physical cancellation or destruction of the advance directive by the declarant or another in his presence and at his direction; or (iii) by oral expression of intent to revoke. Any such revocation shall be effective when communicated to the attending physician. No civil or criminal liability shall be imposed upon any person for a failure to act upon a revocation unless that person has actual knowledge of such revocation.

B. *If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.) of this chapter, any revocation of such directive shall also be notarized before being submitted to the Department of Health for removal from the registry. However, failure to notify the Department of Health of the revocation of a document filed with the registry shall not affect the validity of the revocation, as long as it meets the requirements of subsection A.*

Article 9.

Advance Health Care Directive Registry.

§ 54.1-2994. Advance Health Care Directive Registry established.

The Department of Health shall make available a secure online central registry for advance health care directives.

§ 54.1-2995. Filing of documents with the registry; regulations; fees.

A. A person may submit any of the following documents and the revocations of these documents to the Department of Health for filing in the Advance Health Care Directive Registry established pursuant to this article:

1. A health care power of attorney.

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60 2. *An advance directive created pursuant to Article 8 (§ 54.1-2981 et seq.) of this chapter or a*
61 *subsequent act of the General Assembly.*

62 3. *A declaration of an anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act*
63 *(§ 32.1-291.1 et seq.).*

64 B. *Any document and any revocation of a document submitted for filing in the registry shall be*
65 *notarized regardless of whether notarization is required for its validity. The document may be submitted*
66 *for filing only by the person who executed the document, and shall be accompanied by any fee required*
67 *by the Department of Health.*

68 C. *All data and information contained in the registry shall remain confidential and shall be exempt*
69 *from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

70 D. *The Board of Health shall promulgate regulations to carry out the provisions of this article,*
71 *which shall include, but not be limited to (i) a determination of who may access the registry, including*
72 *physicians, other licensed health care providers, the declarant, and his legal representative or designee;*
73 *(ii) a means of annually reminding registry users of which documents they have registered, and (iii) fees*
74 *for filing a document with the registry. Such fees shall not exceed the direct costs associated with*
75 *development and maintenance of the registry and with the education of the public about the availability*
76 *of the registry, and shall be exempt from statewide indirect costs charged and collected by the*
77 *Department of Accounts. No fee shall be charged for the filing of a document revoking any document*
78 *previously filed with the registry.*

79 § 54.1-2996. *Validity of unregistered documents.*

80 *Failure to register a document with the registry maintained by the Department of Health pursuant to*
81 *this article shall not affect the document's validity. Failure to notify the Department of Health of the*
82 *revocation of a document filed with the registry shall not affect the validity of a revocation that meets*
83 *the statutory requirements for the revocation to be valid.*

84 **2. That the provisions of this act shall become effective upon the promulgation of final regulations**
85 **implementing the provisions of this act.**

86 **3. That the Board shall promulgate regulations to implement the provisions of this act to be**
87 **effective within 280 days of its enactment.**

88 **4. That the Department of Health shall have the authority to accept, hold, administer, and solicit**
89 **grants, gifts, bequests, contributions or other assistance entirely from federal, local, or other**
90 **private sources for the purpose of making the registry available. When sufficient federal, local, or**
91 **private funds are available, the Department shall make the registry available to the public by**
92 **contracting with an appropriate vendor, directing the public to an existing registry maintained by**
93 **another entity, or by entering into a public-private partnership.**