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HOUSE BILL NO. 805

Offered January 9, 2008

Prefiled January 8, 2008

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 54.1-2999, relating to an Advance Health Care Directive Registry.

Patrons—Englin, Albo, Ebbin, Eisenberg, Iaquinto, Moran, O'Bannon, Plum, Rust, Toscano and Ward

Referred to Committee on Health, Welfare and Institutions

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 54.1-2999, 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 username and password required 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. 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 establish and maintain a secure online central registry for advance health care directives. The registry shall be accessible to health care providers licensed by the Board, through a site maintained by the Department of Health.

§ 54.1-2995. Filing of documents with the registry.

A. A person may submit any of the following documents and the revocations of these documents to

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59 the Department of Health for filing in the Advance Health Care Directive Registry established pursuant
60 to this article:

61 1. A health care power of attorney.

62 2. An advance directive created pursuant to Article 8 (§ 54.1-2981 et seq.) of this chapter.

63 3. A declaration of an anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act
64 (§ 32.1-291.1 et seq.).

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

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

71 D. The Board of Health shall promulgate regulations to carry out the provisions of this article.

72 § 54.1-2996. Validity of unregistered documents.

73 Failure to register a document with the registry maintained by the Department of Health pursuant to
74 this article shall not affect the document's validity. Failure to notify the Department of Health of the
75 revocation of a document filed with the registry shall not affect the validity of a revocation that meets
76 the statutory requirements for the revocation to be valid.

77 § 54.1-2997. Access to the registry.

78 The registry shall be accessible only by practitioners licensed by the Board pursuant to this chapter,
79 on a secure site maintained by the Department of Health.

80 § 54.1-2998. Fees for using the registry.

81 The Department of Health shall charge a fee of \$10 for filing a document, other than a revocation,
82 with the registry. The Department shall not charge a fee for filing a revocation with the registry. The
83 fee shall be applied to the cost of maintaining the registry and to promoting public education and
84 awareness of the registry.

85 § 54.1-2999. Civil immunity.

86 The Commonwealth and its officers, agents, and employees shall be immune from civil liability for
87 actions arising from the administration or operation of the registry authorized by this article, in the
88 absence of bad faith or malicious intent.