

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-455
HOUSE BILL 1362**

AN ACT TO ESTABLISH A CENTRAL REGISTRY FOR ADVANCE HEALTH CARE DIRECTIVES AND TO AUTHORIZE THE NORTH CAROLINA RESPIRATORY CARE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 130A of the General Statutes is amended by adding a new Article to read:

"Article 21.

"Advance Health Care Directive Registry.

"§ 130A-465. Advance Health Care Directive Registry establishment.

The Secretary of State shall establish and maintain a statewide, on-line, central registry for advance health care directives. The registry shall be accessible over the Internet through a site maintained by the Secretary of State.

"§ 130A-466. Filing requirements.

(a) A person may submit any of the following documents and the revocations of these documents to the Secretary of State for filing in the Advance Health Care Directive Registry established pursuant to this Article:

- (1) A health care power of attorney under Article 3 of Chapter 32A of the General Statutes.
- (2) A declaration of a desire for a natural death under Article 23 of Chapter 90 of the General Statutes.
- (3) An advance instruction for mental health treatment under Part 2 of Article 3 of Chapter 122C of the General Statutes.
- (4) A declaration of an anatomical gift under Part 3 of Article 16 of Chapter 130A of the General Statutes.

(b) Any document and any revocation of a document submitted for filing in the registry shall be notarized regardless of whether notarization is required for its validity.

(c) The document may be submitted for filing only by the person who executed the document.

(d) The person who submits the document shall supply a return address.

(e) The document shall be accompanied by any fee required by this Article.

"§ 130A-467. Validity of unregistered documents.

Failure to register a document with the registry maintained by the Secretary of State pursuant to this Article shall not affect the document's validity. Failure to notify the Secretary of State of the revocation of a document filed with the registry shall not affect the validity of a revocation that meets the statutory requirements for the revocation to be valid.

"§ 130A-468. Filing of documents with the registry.

(a) When the Secretary of State receives a document that may be filed with the registry pursuant to this Article, the Secretary shall create a digital reproduction of that document and enter the reproduced document into the registry database. The Secretary is not required to review a document to ensure that it complies with the particular statutory requirements applicable to the document. Each document entered into the registry database shall be assigned a unique file number and password.

(b) Upon entering the reproduced document into the registry database, the Secretary shall return the original document and a wallet-size card containing the document's file number and password to the person who submitted the document.

(c) When the Secretary of State receives a revocation of a document that is filed with the registry and that document's file number and password, the Secretary shall delete that document from the registry database.

(d) The Secretary of State's entry of a document into the registry database does not do any of the following:

- (1) Affect the validity of the document in whole or in part.
- (2) Relate to the accuracy of information contained in the document.
- (3) Create a presumption regarding the validity of the document, regarding the accuracy of information contained in the document, or that the statutory requirements for the document have been met.

"§ 130A-469. Disclosure of information contained in the registry.

The registry shall be accessible only over the Internet. A document filed in the registry shall be accessible only if a person attempting to access the document enters both the file number and password of the document. Documents filed in the registry, file numbers, passwords, and any other information maintained by the Secretary of State under this Article shall not be subject to disclosure pursuant to Chapter 132 of the General Statutes.

"§ 130A-470. Fees for using the registry; other funds for the registry.

(a) The Secretary of State shall charge a fee of ten dollars (\$10.00) for filing a document, other than a revocation, with the registry. The Secretary of State shall not charge a fee for filing a revocation with the registry. The fee shall be applied to the cost of maintaining the registry and to promoting public education and awareness of the registry.

(b) The Secretary of State, on behalf of the State, may accept gifts, donations, bequests, and other forms of voluntary contributions; may apply for grants from public and private sources; and may expend funds received under this subsection for the purpose of promoting public education and awareness of the registry.

(c) All fees, funds, and gifts received pursuant to this section shall be subject to audit by the State Auditor and shall be expended in conformity with Article 1 of Chapter 143 of the General Statutes.

"§ 130A-471. Limitation of liability.

The State of North Carolina, the Secretary of State, and any agent or person employed by the Secretary of State shall not be liable for any claims or demands arising out of the administration or operation of the registry authorized by this Article, except for acts of gross negligence, willful misconduct, or intentional wrongdoing."

SECTION 2. G.S. 132-1.2 is amended by adding a new subdivision to read:

"(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes."

SECTION 3. G.S. 32A-24(a) reads as rewritten:

"(a) Any physician or other health care provider involved in the medical care of the principal may rely upon the authority of the health care agent contained in a signed and acknowledged health care power of attorney in the absence of actual knowledge of revocation of the health care power of attorney. The physician or health care provider may rely upon a copy of the health care power of attorney obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes to the same extent that the individual may rely upon the original document."

SECTION 4. G.S. 90-321(c) reads as rewritten:

"(c) The attending physician may rely upon a signed, witnessed, dated and proved ~~declaration~~ declaration, or a copy of that declaration obtained from the Advance Health

Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes:

- (1) Which expresses a desire of the declarant that extraordinary means or artificial nutrition or hydration not be used to prolong his life if his condition is determined to be terminal and incurable, or if the declarant is diagnosed as being in a persistent vegetative state; and
- (2) Which states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the extraordinary means or artificial nutrition or hydration; and
- (3) Which has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related within the third degree to the declarant or to the declarant's spouse, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon his death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provides, (iii) are not the attending physician, or an employee of the attending physician, or an employee of a health facility in which the declarant is a patient, or an employee of a nursing home or any group-care home in which the declarant resides, and (iv) do not have a claim against any portion of the estate of the declarant at the time of the declaration; and
- (4) Which has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d) below."

SECTION 5. G.S. 122C-74 reads as rewritten:

"(b) The attending physician or other mental health treatment provider may consider valid and rely upon an advance ~~instruction-instruction~~, or a copy of that advance instruction that is obtained from the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes, in the absence of actual knowledge of its revocation or invalidity."

SECTION 6. G.S. 130A-409(c) reads as rewritten:

"(c) A person who acts with due care in accord with the terms of this Part or the anatomical gift laws of another state is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for the act. A person may rely upon a document registered with the Advance Health Care Directive Registry maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes to the same extent as the person can rely upon the original of that document."

SECTION 7. G.S. 90-660(b) reads as rewritten:

"(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board shall establish fees in amounts to cover the cost of services rendered for the following purposes:

- (1) For an initial application, a fee not to exceed twenty-five dollars (\$25.00).
- (2) For examination or reexamination, a fee not to exceed ~~one~~ two hundred ~~fifty~~ dollars ~~(\$150.00)~~ (\$200.00).
- (3) For issuance of any license, a fee not to exceed one hundred dollars (\$100.00).
- (4) For the renewal of any license, a fee not to exceed fifty dollars (\$50.00).
- (5) For the late renewal of any license, an additional late fee not to exceed fifty dollars (\$50.00).
- (6) For a license with a provisional or temporary endorsement, a fee not to exceed thirty-five dollars (\$35.00).

(7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing."

SECTION 8. Sections 1 through 6 of this act become effective January 1, 2002. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of October, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:35 p.m. this 29th day of October, 2001