



House of Representatives

General Assembly

File No. 401

February Session, 2006

Substitute House Bill No. 5788

House of Representatives, April 5, 2006

The Committee on Public Health reported through REP. SAYERS of the 60th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING HEALTH CARE DECISION-MAKING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1-55 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2006*):

3 In a statutory short form power of attorney, the language conferring
4 general authority with respect to all other matters shall be construed to
5 mean that the principal authorizes the agent to act as an alter ego of
6 the principal with respect to any matters and affairs not enumerated in
7 sections 1-44 to [1-54a] 1-54, inclusive, and which the principal can do
8 through an agent.

9 Sec. 2. Subsection (g) of section 17a-238 of the general statutes is
10 repealed and the following is substituted in lieu thereof (*Effective*
11 *October 1, 2006*):

12 (g) The commissioner's oversight and monitoring of the medical
13 care of persons placed or treated under the direction of the

14 commissioner does not include the authority to make treatment
15 decisions, except in limited circumstances in accordance with statutory
16 procedures. In the exercise of such oversight and monitoring
17 responsibilities, the commissioner shall not impede or seek to impede a
18 properly executed medical order to withhold cardiopulmonary
19 resuscitation. For purposes of this subsection, "properly executed
20 medical order to withhold cardiopulmonary resuscitation" means (1) a
21 written order by the attending physician; (2) in consultation and with
22 the consent of the patient or a person authorized by law; (3) when the
23 attending physician is of the opinion that the patient is in a terminal
24 condition, as defined in [subdivision (3) of] section 19a-570, as
25 amended by this act, which condition will result in death within days
26 or weeks; and (4) when such physician has requested and obtained a
27 second opinion from a Connecticut licensed physician in the
28 appropriate specialty that confirms the patient's terminal condition;
29 and includes the entry of such an order when the attending physician
30 is of the opinion that the patient is in the final stage of a terminal
31 condition but cannot state that the patient may be expected to expire
32 during the next several days or weeks, or, in consultation with a
33 physician qualified to make a neurological diagnosis, deems the
34 patient to be permanently unconscious, provided the commissioner
35 has reviewed the decision with the department's director of
36 community medical services, the family and guardian of the patient
37 and others who the commissioner deems appropriate, and determines
38 that the order is a medically acceptable decision.

39 Sec. 3. Subsection (b) of section 17a-543 of the general statutes is
40 repealed and the following is substituted in lieu thereof (*Effective*
41 *October 1, 2006*):

42 (b) No medical or surgical procedures may be performed without
43 the patient's written informed consent or the written consent of the
44 patient's health care representative or, if the patient has been declared
45 incapable of caring for himself or herself pursuant to sections 45a-644
46 to 45a-662, inclusive, as amended, and a conservator of the person has
47 been appointed pursuant to section 45a-650, the written consent of

48 such conservator. If the head of the hospital, in consultation with a
49 physician, determines that the condition of an involuntary patient not
50 declared incapable of caring for himself or herself pursuant to said
51 sections is of an extremely critical nature and such patient is incapable
52 of informed consent, medical or surgical procedures may be performed
53 with the written informed consent of: (1) The patient's health care
54 representative; (2) the patient's conservator or guardian, if he or she
55 has one; [(2)] (3) such person's next of kin; [(3)] (4) a person designated
56 by the patient pursuant to section 1-56r; or [(4)] (5) a qualified
57 physician appointed by a judge of the Probate Court. Notwithstanding
58 the provisions of this section, if obtaining the consent provided for in
59 this section would cause a medically harmful delay to a voluntary or
60 involuntary patient whose condition is of an extremely critical nature,
61 as determined by personal observation by a physician or the senior
62 clinician on duty, emergency treatment may be provided without
63 consent.

64 Sec. 4. Subsection (a) of section 19a-279c of the general statutes is
65 repealed and the following is substituted in lieu thereof (*Effective*
66 *October 1, 2006*):

67 (a) Any member of the following classes of persons, in the order of
68 priority listed, may make an anatomical gift of all or a part of the
69 decedent's body for an authorized purpose, unless the decedent, before
70 or at the time of death, has made an unrevoked refusal to make that
71 anatomical gift: (1) The spouse of the decedent; (2) a person designated
72 by the decedent pursuant to section 1-56r; (3) an adult son or daughter
73 of the decedent; (4) either parent of the decedent; (5) an adult brother
74 or sister of the decedent; (6) a grandparent of the decedent; (7) a
75 guardian of the person of the decedent at the time of death; (8) any
76 person legally authorized to make health care decisions for the
77 decedent prior to death, including, but not limited to, a health care
78 [agent] representative appointed under section 19a-576, as amended by
79 this act; and (9) a conservator of the person, as defined in section 45a-
80 644, as amended.

81 Sec. 5. Section 19a-570 of the general statutes is repealed and the
82 following is substituted in lieu thereof (*Effective October 1, 2006*):

83 For purposes of this section, [and] sections 19a-571 to 19a-580c,
84 inclusive, as amended by this act, and section 24 of this act:

85 [(1) "Life support system" means any medical procedure or
86 intervention which, when applied to an individual, would serve only
87 to postpone the moment of death or maintain the individual in a state
88 of permanent unconsciousness. In these circumstances, such
89 procedures shall include, but are not limited to, mechanical or
90 electronic devices including artificial means of providing nutrition or
91 hydration;

92 (2) "Beneficial medical treatment" includes the use of medically
93 appropriate treatment including surgery, treatment, medication and
94 the utilization of artificial technology to sustain life;

95 (3) "Terminal condition" means the final stage of an incurable or
96 irreversible medical condition which, without the administration of a
97 life support system, will result in death within a relatively short time,
98 in the opinion of the attending physician;

99 (4) "Permanently unconscious" includes permanent coma and
100 persistent vegetative state and means an irreversible condition in
101 which the individual is at no time aware of himself or the environment
102 and shows no behavioral response to the environment;

103 (5) "Health care agent" means an adult person to whom authority to
104 convey health care decisions is delegated in a written document by
105 another adult person, known as the principal;

106 (6) "Incapacitated" means being unable to understand and
107 appreciate the nature and consequences of health care decisions,
108 including the benefits and disadvantages of such treatment, and to
109 reach and communicate an informed decision regarding the treatment;

110 (7) "Living will" means a written statement in compliance with

111 section 19a-575a containing a declarant's wishes concerning any aspect
112 of his health care, including the withholding or withdrawal of life
113 support systems;

114 (8) "Next of kin" means any member of the following classes of
115 persons, in the order of priority listed: (A) The spouse of the patient;
116 (B) an adult son or daughter of the patient; (C) either parent of the
117 patient; (D) an adult brother or sister of the patient; and (E) a
118 grandparent of the patient;

119 (9) "Attending physician" means the physician selected by, or
120 assigned to, the patient and who has primary responsibility for the
121 treatment and care of the patient.]

122 (1) "Advance health care directive" or "advance directive" means a
123 writing executed in accordance with the provisions of this chapter,
124 including, but not limited to, a living will, or an appointment of health
125 care representative, or both;

126 (2) "Appointment of health care representative" means a document
127 executed in accordance with section 19a-575a, as amended by this act,
128 or section 19a-577, as amended by this act, that appoints a health care
129 representative to make health care decisions for the declarant in the
130 event the declarant becomes incapacitated;

131 (3) "Attending physician" means the physician selected by, or
132 assigned to, the patient, who has primary responsibility for the
133 treatment and care of the patient;

134 (4) "Beneficial medical treatment" includes the use of medically
135 appropriate treatment, including surgery, treatment, medication and
136 the utilization of artificial technology to sustain life;

137 (5) "Health care representative" means the individual appointed by
138 a declarant pursuant to an appointment of health care representative
139 for the purpose of making health care decisions on behalf of the
140 declarant;

141 (6) "Incapacitated" means being unable to understand and
142 appreciate the nature and consequences of health care decisions,
143 including the benefits and disadvantages of such treatment, and to
144 reach and communicate an informed decision regarding the treatment;

145 (7) "Life support system" means any medical procedure or
146 intervention which, when applied to an individual, would serve only
147 to postpone the moment of death or maintain the individual in a state
148 of permanent unconsciousness, including, but not limited to,
149 mechanical or electronic devices, including artificial means of
150 providing nutrition or hydration;

151 (8) "Living will" means a written statement in compliance with
152 section 19a-575a, as amended by this act, containing a declarant's
153 wishes concerning any aspect of his or her health care, including the
154 withholding or withdrawal of life support systems;

155 (9) "Next of kin" means any member of the following classes of
156 persons, in the order of priority listed: (A) The spouse of the patient;
157 (B) an adult son or daughter of the patient; (C) either parent of the
158 patient; (D) an adult brother or sister of the patient; and (E) a
159 grandparent of the patient;

160 (10) "Permanently unconscious" means an irreversible condition in
161 which the individual is at no time aware of himself or herself or the
162 environment and shows no behavioral response to the environment
163 and includes permanent coma and persistent vegetative state;

164 (11) "Terminal condition" means the final stage of an incurable or
165 irreversible medical condition which, without the administration of a
166 life support system, will result in death within a relatively short period
167 time, in the opinion of the attending physician.

168 Sec. 6. Subsection (a) of section 19a-571 of the general statutes is
169 repealed and the following is substituted in lieu thereof (*Effective*
170 *October 1, 2006*):

171 (a) Subject to the provisions of subsection (c) of this section, any

172 physician licensed under chapter 370 or any licensed medical facility
173 who or which withholds, removes or causes the removal of a life
174 support system of an incapacitated patient shall not be liable for
175 damages in any civil action or subject to prosecution in any criminal
176 proceeding for such withholding or removal, provided (1) the decision
177 to withhold or remove such life support system is based on the best
178 medical judgment of the attending physician in accordance with the
179 usual and customary standards of medical practice; (2) the attending
180 physician deems the patient to be in a terminal condition or, in
181 consultation with a physician qualified to make a neurological
182 diagnosis who has examined the patient, deems the patient to be
183 permanently unconscious; and (3) the attending physician has
184 considered the patient's wishes concerning the withholding or
185 withdrawal of life support systems. In the determination of the wishes
186 of the patient, the attending physician shall consider the wishes as
187 expressed by a document executed in accordance with sections 19a-575
188 and 19a-575a, if any such document is presented to, or in the
189 possession of, the attending physician at the time the decision to
190 withhold or terminate a life support system is made. If the wishes of
191 the patient have not been expressed in a living will the attending
192 physician shall determine the wishes of the patient by consulting any
193 statement made by the patient directly to the attending physician and,
194 if available, the patient's health care [agent] representative, the
195 patient's next of kin, the patient's legal guardian or conservator, if any,
196 any person designated by the patient in accordance with section 1-56r
197 and any other person to whom the patient has communicated his
198 wishes, if the attending physician has knowledge of such person. All
199 persons acting on behalf of the patient shall act in good faith. If the
200 attending physician does not deem the incapacitated patient to be in a
201 terminal condition or permanently unconscious, beneficial medical
202 treatment including nutrition and hydration must be provided.

203 Sec. 7. Section 19a-575 of the general statutes is repealed and the
204 following is substituted in lieu thereof (*Effective October 1, 2006*):

205 Any person eighteen years of age or older may execute a document

206 [which shall contain] that contains directions as to [specific life support
207 systems which such person chooses to have administered] any aspect
208 of health care, including the withholding or withdrawal of life support
209 systems. Such document shall be signed and dated by the maker with
210 at least two witnesses and may be in substantially the following form:

211 DOCUMENT CONCERNING HEALTH CARE AND
212 WITHHOLDING OR WITHDRAWAL OF LIFE SUPPORT SYSTEMS.

213 If the time comes when I am incapacitated to the point when I can
214 no longer actively take part in decisions for my own life, and am
215 unable to direct my physician as to my own medical care, I wish this
216 statement to stand as a testament of my wishes.

217 "I, (Name), request that, if my condition is deemed terminal or if
218 it is determined that I will be permanently unconscious, I be allowed to
219 die and not be kept alive through life support systems. By terminal
220 condition, I mean that I have an incurable or irreversible medical
221 condition which, without the administration of life support systems,
222 will, in the opinion of my attending physician, result in death within a
223 relatively short time. By permanently unconscious I mean that I am in
224 a permanent coma or persistent vegetative state which is an
225 irreversible condition in which I am at no time aware of myself or the
226 environment and show no behavioral response to the environment.
227 The life support systems which I do not want include, but are not
228 limited to:

229 Artificial respiration
230 Cardiopulmonary resuscitation
231 Artificial means of providing nutrition and hydration

232 (Cross out and initial life support systems you want administered)

233 I do not intend any direct taking of my life, but only that my dying
234 not be unreasonably prolonged."

235 Other specific requests:

236 "This request is made, after careful reflection, while I am of sound
237 mind."

238 (Signature)

239 (Date)

240 This document was signed in our presence, by the above-named
241 (Name) who appeared to be eighteen years of age or older, of sound
242 mind and able to understand the nature and consequences of health
243 care decisions at the time the document was signed.

244 (Witness)

245 (Address)

246 (Witness)

247 (Address)

248 Sec. 8. Section 19a-575a of the general statutes is repealed and the
249 following is substituted in lieu thereof (*Effective October 1, 2006*):

250 (a) Any person eighteen years of age or older may execute a
251 document [which] that contains health care instructions, the
252 appointment of a [health care agent, the appointment of an attorney-
253 in-fact for health care decisions] health care representative, the
254 designation of a conservator of the person for future incapacity and a
255 document of anatomical gift. Any such document shall be signed and
256 dated by the maker with at least two witnesses and may be in the
257 substantially following form:

258 THESE ARE MY HEALTH CARE INSTRUCTIONS.
259 MY APPOINTMENT OF A HEALTH CARE [AGENT,
260 MY APPOINTMENT OF AN ATTORNEY-IN-FACT
261 FOR HEALTH CARE DECISIONS] REPRESENTATIVE,
262 THE DESIGNATION OF MY CONSERVATOR OF THE PERSON
263 FOR MY FUTURE INCAPACITY
264 AND
265 MY DOCUMENT OF ANATOMICAL GIFT

266 To any physician who is treating me: These are my health care

267 instructions including those concerning the withholding or withdrawal
268 of life support systems, together with the appointment of my health
269 care [agent and my attorney-in-fact for health care decisions]
270 representative, the designation of my conservator of the person for
271 future incapacity and my document of anatomical gift. As my
272 physician, you may rely on these health care instructions and any
273 decision made by my health care [agent, attorney-in-fact for health care
274 decisions] representative or conservator of my person, if I am [unable
275 to make a decision for myself] incapacitated to the point when I can no
276 longer actively take part in decisions for my own life, and am unable to
277 direct my physician as to my own medical care.

278 I, ..., the author of this document, request that, if my condition is
279 deemed terminal or if I am determined to be permanently
280 unconscious, I be allowed to die and not be kept alive through life
281 support systems. By terminal condition, I mean that I have an
282 incurable or irreversible medical condition which, without the
283 administration of life support systems, will, in the opinion of my
284 attending physician, result in death within a relatively short time. By
285 permanently unconscious I mean that I am in a permanent coma or
286 persistent vegetative state which is an irreversible condition in which I
287 am at no time aware of myself or the environment and show no
288 behavioral response to the environment. The life support systems
289 which I do not want include, but are not limited to: Artificial
290 respiration, cardiopulmonary resuscitation and artificial means of
291 providing nutrition and hydration. I do want sufficient pain
292 medication to maintain my physical comfort. I do not intend any direct
293 taking of my life, but only that my dying not be unreasonably
294 prolonged.

295 I appoint to be my health care [agent and my attorney-in-fact for
296 health care decisions] representative. If my attending physician
297 determines that I am unable to understand and appreciate the nature
298 and consequences of health care decisions and unable to reach and
299 communicate an informed decision regarding treatment, my health
300 care [agent and attorney-in-fact for health care decisions]

301 representative is authorized to [:]

302 [(1) Convey to my physician my wishes concerning the withholding
303 or removal of life support systems;

304 (2) Take whatever actions are necessary to ensure that any wishes
305 are given effect;

306 (3) Consent, refuse or withdraw consent to any medical treatment as
307 long as such action is consistent with my wishes concerning the
308 withholding or removal of life support systems; and

309 (4) Consent to any medical treatment designed solely for the
310 purpose of maintaining physical comfort] make any and all health care
311 decisions for me, including the decision to accept or refuse any
312 treatment, service or procedure used to diagnose or treat my physical
313 or mental condition, except as otherwise provided by law, including,
314 but not limited to, psychosurgery or shock therapy, and the decision to
315 provide, withhold or withdraw life support systems. I direct my health
316 care representative to make decisions on my behalf in accordance with
317 my wishes, as stated in this document or as otherwise known to my
318 health care representative. In the event my wishes are not clear or a
319 situation arises that I did not anticipate, my health care representative
320 may make a decision in my best interests, based upon what is known
321 of my wishes.

322 If is unwilling or unable to serve as my health care [agent and my
323 attorney-in-fact for health care decisions] representative, I appoint
324 to be my alternative health care [agent and my attorney-in-fact for
325 health care decisions] representative.

326 If a conservator of my person should need to be appointed, I
327 designate be appointed my conservator. If is unwilling or unable
328 to serve as my conservator, I designate, No bond shall be required
329 of either of them in any jurisdiction.

330 I hereby make this anatomical gift, if medically acceptable, to take
331 effect upon my death.

- T1 I give: (check one)
- T2 (1) any needed organs or parts
- T3 (2) only the following organs or parts
- T4 to be donated for: (check one)
- T5 (1) any of the purposes stated in subsection (a) of
- T6 section 19a-279f of the general statutes
- T7 (2) these limited purposes

332 These requests, appointments, and designations are made after
 333 careful reflection, while I am of sound mind. Any party receiving a
 334 duly executed copy or facsimile of this document may rely upon it
 335 unless such party has received actual notice of my revocation of it.

T8 Date, 20..
 T9 L.S.

336 This document was signed in our presence by the author of this
 337 document, who appeared to be eighteen years of age or older, of sound
 338 mind and able to understand the nature and consequences of health
 339 care decisions at the time this document was signed. The author
 340 appeared to be under no improper influence. We have subscribed this
 341 document in the author's presence and at the author's request and in
 342 the presence of each other.

T10
 T11 (Witness) (Witness)
 T12
 T13 (Number and Street) (Number and Street)
 T14
 T15 (City, State and Zip Code) (City, State and Zip Code)

STATE OF CONNECTICUT }
 COUNTY OF } ss.

343 We, the subscribing witnesses, being duly sworn, say that we
 344 witnessed the execution of these health care instructions, the
 345 appointments of a health care [agent and an attorney-in-fact]
 346 representative, the designation of a conservator for future incapacity
 347 and a document of anatomical gift by the author of this document; that
 348 the author subscribed, published and declared the same to be the
 349 author's instructions, appointments and designation in our presence;
 350 that we thereafter subscribed the document as witnesses in the
 351 author's presence, at the author's request, and in the presence of each
 352 other; that at the time of the execution of said document the author
 353 appeared to us to be eighteen years of age or older, of sound mind,
 354 able to understand the nature and consequences of said document, and
 355 under no improper influence, and we make this affidavit at the
 356 author's request this day of 20...

T16
 T17 (Witness) (Witness)

357 Subscribed and sworn to before me this day of 20..

T18
 T19 Commissioner of the Superior Court
 T20 Notary Public
 T21 My commission expires:

358 (Print or type name of all persons signing under all signatures)

359 (b) Except as provided in section 19a-579b, as amended by this act,
 360 an appointment of health care representative may only be revoked by
 361 the declarant, in writing, and the writing shall be signed by the
 362 declarant and two witnesses.

363 (c) The attending physician or other health care provider shall make
 364 the revocation of an appointment of health care representative a part of
 365 the declarant's medical record.

366 (d) In the absence of knowledge of the revocation of an appointment
367 of health care representative, a person who carries out an advance
368 directive pursuant to the provisions of chapter 368w shall not be
369 subject to civil or criminal liability or discipline for unprofessional
370 conduct for carrying out such advance directive.

371 (e) The revocation of an appointment of health care representative
372 does not, of itself, revoke the living will of the declarant.

373 Sec. 9. Section 19a-576 of the general statutes is repealed and the
374 following is substituted in lieu thereof (*Effective October 1, 2006*):

375 (a) Any person eighteen years of age or older may appoint a health
376 care [agent] representative by executing a document in accordance
377 with section 19a-575a, as amended by this act, or section 19a-577, as
378 amended by this act, signed and dated by such person in the presence
379 of two adult witnesses who shall also sign the document. The person
380 appointed as [agent] representative shall not act as witness to the
381 execution of such document or sign such document.

382 (b) For persons who reside in facilities operated or licensed by the
383 Department of Mental Health and Addiction Services, at least one
384 witness shall be an individual who is not affiliated with the facility and
385 at least one witness shall be a physician or licensed clinical
386 psychologist with specialized training in treating mental illness.

387 (c) For persons who reside in facilities operated or licensed by the
388 Department of Mental Retardation, at least one witness shall be an
389 individual who is not affiliated with the facility and at least one
390 witness shall be a physician or licensed clinical psychologist with
391 specialized training in developmental disabilities.

392 (d) An operator, administrator [.] or employee of a hospital,
393 residential care home, rest home with nursing supervision [.] or
394 chronic and convalescent nursing home may not be appointed as a
395 health care [agent] representative by any person who, at the time of the
396 appointment, is a patient or a resident of, or has applied for admission

397 to, one of the foregoing facilities. An administrator or employee of a
398 government agency [which] that is financially responsible for a
399 person's medical care may not be appointed as a health care [agent]
400 representative for such person. This restriction shall not apply if such
401 operator, administrator or employee is related to the principal by
402 blood, marriage or adoption.

403 (e) A physician shall not act as both [agent] health care
404 representative for a principal and attending physician for the principal.

405 Sec. 10. Section 19a-577 of the general statutes is repealed and the
406 following is substituted in lieu thereof (*Effective October 1, 2006*):

407 [(a)] Any person eighteen years of age or older may execute a
408 document that may, but need not be in substantially the following
409 form:

410 DOCUMENT CONCERNING THE APPOINTMENT OF HEALTH
411 CARE [AGENT] REPRESENTATIVE

412 "I understand that, as a competent adult, I have the right to make
413 decisions about my health care. There may come a time when I am
414 unable, due to incapacity, to make my own health care decisions. In
415 these circumstances, those caring for me will need direction and will
416 turn to someone who knows my values and health care wishes. By
417 signing this appointment of health care representative, I appoint a
418 health care representative with legal authority to make health care
419 decisions on my behalf in such case or at such time.

420 I appoint (Name) to be my health care [agent] representative. If
421 my attending physician determines that I am unable to understand
422 and appreciate the nature and consequences of health care decisions
423 and to reach and communicate an informed decision regarding
424 treatment, my health care [agent] representative is authorized to [:]

425 [(1) Convey to my physician my wishes concerning the withholding
426 or removal of life support systems.

427 (2) Take whatever actions are necessary to ensure that my wishes
428 are given effect] accept or refuse any treatment, service or procedure
429 used to diagnose or treat my physical or mental condition, except as
430 otherwise provided by law, including, but not limited to,
431 psychosurgery or shock therapy, and the decision to provide, withhold
432 or withdraw life support systems. I direct my health care
433 representative to make decisions on my behalf in accordance with my
434 wishes as stated in a living will, or as otherwise known to my health
435 care representative. In the event my wishes are not clear or a situation
436 arises that I did not anticipate, my health care representative may
437 make a decision in my best interests, based upon what is known of my
438 wishes.

439 If this person is unwilling or unable to serve as my health care
440 [agent] representative, I appoint (Name) to be my alternative health
441 care [agent] representative."

442 "This request is made, after careful reflection, while I am of sound
443 mind."

444 (Signature)

445 (Date)

446 This document was signed in our presence, by the above-named
447 (Name) who appeared to be eighteen years of age or older, of sound
448 mind and able to understand the nature and consequences of health
449 care decisions at the time the document was signed.

450 (Witness)

451 (Address)

452 (Witness)

453 (Address)

454 Sec. 11. Section 19a-578 of the general statutes is repealed and the
455 following is substituted in lieu thereof (*Effective October 1, 2006*):

456 (a) Any or all of the attesting witnesses to any living will document
457 or any document appointing a health care [agent] representative may,

458 at the request of the declarant, make and sign an affidavit before any
459 officer authorized to administer oaths in or out of this state, stating
460 such facts as they would be required to testify to in court to prove such
461 living will. The affidavit shall be written on the living will document,
462 or if that is impracticable, on some paper attached thereto. The sworn
463 statement of any such witness so taken shall be accepted by [the Court
464 of Probate] a court of competent jurisdiction as if it had been taken
465 before such court.

466 (b) A physician or other health care provider who is furnished with
467 a copy of a written living will or appointment of health care [agent]
468 representative shall make it a part of the declarant's medical record. A
469 physician or other health care provider shall also record in the patient's
470 medical record any oral communication concerning any aspect of [his]
471 the patient's health care, including the withholding or withdrawal of
472 life support systems, made by the patient directly to the physician or
473 other health care provider or to the patient's health care [agent]
474 representative, legal guardian, conservator, next-of-kin or person
475 designated in accordance with section 1-56r.

476 Sec. 12. Section 19a-579 of the general statutes is repealed and the
477 following is substituted in lieu thereof (*Effective October 1, 2006*):

478 A living will or appointment of health care [agent] representative
479 becomes operative when (1) the document is furnished to the
480 attending physician, and (2) the declarant is determined by the
481 attending physician to be incapacitated. At any time after the
482 appointment of a health care representative, the attending physician
483 shall disclose such determination of incapacity, in writing, upon the
484 request of the person named as the health care representative.

485 Sec. 13. Section 19a-579a of the general statutes is repealed and the
486 following is substituted in lieu thereof (*Effective October 1, 2006*):

487 (a) A living will [or appointment of health care agent] may be
488 revoked at any time and in any manner by the declarant, without
489 regard to the declarant's mental or physical condition.

490 (b) The attending physician or other health care provider shall make
491 the revocation a part of the declarant's medical record.

492 (c) In the absence of knowledge of the revocation [either] of a living
493 will, [or an appointment of health care agent,] a person is not subject to
494 civil or criminal liability or discipline for unprofessional conduct for
495 carrying out the living will pursuant to the requirements of sections
496 19a-570, as amended by this act, 19a-571, as amended by this act, 19a-
497 573 and 19a-575 to 19a-580c, inclusive, as amended by this act.

498 Sec. 14. Section 19a-579b of the general statutes is repealed and the
499 following is substituted in lieu thereof (*Effective October 1, 2006*):

500 The appointment of the principal's spouse as health care [agent]
501 representative shall be revoked upon the divorce or legal separation of
502 the principal and spouse or upon the annulment or dissolution of their
503 marriage, unless the principal specifies otherwise.

504 Sec. 15. Section 19a-580 of the general statutes is repealed and the
505 following is substituted in lieu thereof (*Effective October 1, 2006*):

506 Within a reasonable time prior to withholding or causing the
507 removal of any life support system pursuant to sections 19a-570, as
508 amended by this act, 19a-571, as amended by this act, 19a-573 and 19a-
509 575 to 19a-580c, inclusive, as amended by this act, the attending
510 physician shall make reasonable efforts to notify the individual's
511 health care [agent] representative, next-of-kin, legal guardian,
512 conservator or person designated in accordance with section 1-56r, if
513 available.

514 Sec. 16. Section 19a-580b of the general statutes is repealed and the
515 following is substituted in lieu thereof (*Effective October 1, 2006*):

516 No physician, health care provider or health care insurer shall
517 require a person to execute a living will or appoint a health care
518 [agent] representative as a condition of treatment or receiving health
519 care benefits.

520 Sec. 17. Section 19a-580c of the general statutes is repealed and the
521 following is substituted in lieu thereof (*Effective October 1, 2006*):

522 (a) The probate court for the district in which the person is
523 domiciled or is located at the time of the dispute shall have jurisdiction
524 over any dispute concerning the meaning or application of any
525 provision of sections 19a-570, as amended by this act, 19a-571, as
526 amended by this act, 19a-573 and 19a-575 to 19a-580c, inclusive, as
527 amended by this act. With respect to any communication of a patient's
528 wishes other than by means of a document executed in accordance
529 with [section] sections 19a-575 and 19a-575a, as amended by this act,
530 the court shall consider whether there is clear and convincing evidence
531 of such communication.

532 (b) The probate court for the district in which the person is
533 domiciled or is located at the time of the dispute shall have jurisdiction
534 over any dispute concerning the capacity of the health care
535 representative or over any claim that the actions of the person named
536 as health care representative would interfere with the treatment of the
537 declarant or the person named as health care representative.

538 (c) A person whose appointment as a health care representative has
539 been revoked shall have standing to file a claim challenging the
540 validity of such revocation with the probate court for the district in
541 which the declarant is domiciled or is located at the time of the
542 dispute.

543 Sec. 18. Subsection (h) of section 45a-650 of the general statutes is
544 repealed and the following is substituted in lieu thereof (*Effective*
545 *October 1, 2006*):

546 (h) The court may limit the powers and duties of either the
547 conservator of the person or the conservator of the estate, to include
548 some, but not all, of the powers and duties set forth in subsections (a)
549 and (b) of section 45a-644, as amended, and sections 45a-655 and 45a-
550 656, as amended, and shall make specific findings to justify such a
551 limitation, in the best interests of the ward. In determining whether or

552 not any such limitations should be imposed, the court shall consider
553 the abilities of the ward, the prior appointment of any attorney-in-fact,
554 health care [agent] representative, trustee or other fiduciary acting on
555 behalf of the ward, any support services which are otherwise available
556 to the ward, and any other relevant evidence. The court may modify its
557 decree upon any change in circumstances.

558 Sec. 19. Subsection (a) of section 45a-654 of the 2006 supplement to
559 the general statutes is repealed and the following is substituted in lieu
560 thereof (*Effective October 1, 2006*):

561 (a) Upon written application for appointment of a temporary
562 conservator brought by any person deemed by the court to have
563 sufficient interest in the welfare of the respondent, including, but not
564 limited to, the spouse or any relative of the respondent, the first
565 selectman, chief executive officer or head of the department of welfare
566 of the town of residence or domicile of any respondent, the
567 Commissioner of Social Services, the board of directors of any
568 charitable organization, as defined in section 21a-190a, or the chief
569 administrative officer of any nonprofit hospital or such officer's
570 designee, the Court of Probate may appoint a temporary conservator if
571 the court finds that: (1) The respondent is incapable of managing his or
572 her affairs or incapable of caring for himself or herself, and (2)
573 immediate and irreparable injury to the mental or physical health or
574 financial or legal affairs of the respondent will result if a temporary
575 conservator is not appointed pursuant to this section. The court may,
576 in its discretion, require the temporary conservator to give a probate
577 bond. The court shall limit the duties, responsibilities and powers of
578 the temporary conservator to the circumstances that gave rise to the
579 application and shall make specific findings to justify such limitation.
580 In making such findings, the court shall consider the present and
581 previously expressed wishes of the respondent, the abilities of the
582 respondent, any prior appointment of an attorney-in-fact, health care
583 [agent] representative, trustee or other fiduciary acting on behalf of the
584 respondent, any support service otherwise available to the respondent
585 and any other relevant evidence. The temporary conservator shall have

586 charge of the property or of the person of the respondent or both for
587 such period of time or for such specific occasion as the court finds to be
588 necessary, provided a temporary appointment shall not be valid for
589 more than thirty days, unless at any time while the appointment of a
590 temporary conservator is in effect, an application is filed for
591 appointment of a conservator of the person or estate under section 45a-
592 650. The court may (A) extend the appointment of the temporary
593 conservator until the disposition of such application under section 45a-
594 650, or for an additional thirty days, whichever occurs first, or (B)
595 terminate the appointment of a temporary conservator upon a
596 showing that the circumstances that gave rise to the application for
597 appointment of a temporary conservator no longer exist.

598 Sec. 20. Subdivision (3) of subsection (a) of section 52-184d of the
599 2006 supplement to the general statutes is repealed and the following
600 is substituted in lieu thereof (*Effective October 1, 2006*):

601 (3) "Representative" means a legal guardian, attorney, health care
602 [agent] representative or any person recognized in law or custom as a
603 patient's agent.

604 Sec. 21. (NEW) (*Effective October 1, 2006*) (a) Except as authorized by
605 a court of competent jurisdiction, a conservator shall comply with a
606 ward's individual health care instructions and other wishes, if any,
607 expressed while the ward had capacity and to the extent known to the
608 conservator, and the conservator may not revoke the ward's advance
609 health care directive unless the appointing court expressly so
610 authorizes.

611 (b) Absent a court order to the contrary, a health care decision of a
612 health care representative takes precedence over that of a conservator,
613 except under the following circumstances: (1) When the health care
614 decision concerns a person who is subject to the provisions of section
615 17a-566, 17a-587, 17a-588 of the general statutes or section 54-56d of the
616 2006 supplement to the general statutes; (2) when a conservator has
617 been appointed to a ward who is subject to an order authorized under
618 subsection (e) of section 17a-543 of the general statutes, for the

619 duration of the ward's hospitalization; or (3) when a conservator has
620 been appointed to a ward subject to an order authorized under section
621 17a-543a of the general statutes.

622 Sec. 22. (NEW) (*Effective October 1, 2006*) An advance directive
623 properly executed prior to October 1, 2006, shall have the same legal
624 force and effect as if it had been executed in accordance with the
625 provisions of chapter 368w of the general statutes.

626 Sec. 23. (NEW) (*Effective October 1, 2006*) Health care instructions or
627 appointment of a health care proxy executed under the laws of another
628 state in compliance with the laws of that state or the state of
629 Connecticut, and which are not contrary to the public policy of this
630 state, are deemed validly executed for purposes of chapter 368w of the
631 general statutes. Health care instructions or appointment of a health
632 care proxy executed in a foreign country in compliance with the laws
633 of the country or the state of Connecticut, and which are not contrary
634 to the public policy of this state, are deemed validly executed for the
635 purposes of chapter 368w of the general statutes. A healthcare
636 provider may rely on such health care instructions or recognize such
637 appointment of a health care proxy based upon any of the following:
638 (1) An order or decision by a court of competent jurisdiction; (2)
639 presentation of a notarized statement from the patient or person
640 offering the health care proxy that the proxy (A) is valid under the
641 laws of the state or country in which it was made, and (B) is not
642 contrary to the public policy of this state; or (3) the healthcare
643 provider's own good faith legal analysis.

644 Sec. 24. (NEW) (*Effective from passage*) (a) The Secretary of the State
645 shall establish and maintain a central registry for advance health care
646 directives.

647 (b) A person may submit a copy of any of the following documents
648 or revocations of such documents to the Secretary of the State for
649 inclusion in the advance health care directive registry established
650 pursuant to subsection (a) of this section:

651 (1) Documents containing directions about administration,
652 withholding or withdrawal of specific life support systems, as defined
653 in section 19a-570 of the general statutes, as amended by this act, or
654 any other document created in accordance with chapter 368w of the
655 general statutes;

656 (2) Documents containing health care instructions, the appointment
657 of a health care representative, the designation of a conservator of the
658 person for future incapacity and a document of anatomical gift; and

659 (3) Statutory short form powers of attorney created in accordance
660 with section 1-43 of the general statutes.

661 (c) Documents submitted to the advance health care directive
662 registry established pursuant to subsection (a) of this section shall only
663 be deemed submitted when accompanied by the necessary registration
664 form prescribed by the Secretary of the State.

665 (d) Any person desiring to submit a document for inclusion in the
666 advance health care directive registry established pursuant to
667 subsection (a) of this section shall submit such document along with a
668 form prescribed by the Secretary of the State that contains (1) the
669 registrant's full name and mailing address, and (2) an indication of the
670 advance health care directives that the registrant is submitting
671 pursuant to this section. The Secretary of the State may prescribe such
672 other forms as the Secretary deems necessary for operating the
673 registry.

674 (e) Upon receipt of a document that may be included in the advance
675 health care directive registry, the Secretary of the State may create a
676 reproduction of the document and index the reproduced document.
677 Each indexed document shall be assigned a unique identifying number
678 and password. Upon indexing the reproduced document into the
679 registry, the document shall be returned to the person who submitted
680 the document, with a form prescribed by the Secretary that contains
681 the document's file number and password.

682 (f) The Secretary of the State shall not review or provide any advice
683 concerning any documents submitted for inclusion in the advance
684 health care directive registry, including but not limited to, advice
685 concerning whether the documents are in compliance with applicable
686 statutory requirements.

687 (g) The provisions of this section shall not be construed to invalidate
688 (1) documents containing advance health care directives that are not
689 submitted for inclusion in the registry, or (2) otherwise valid
690 revocations of such documents in cases where the Secretary of the State
691 has not been notified of the revocation.

692 (h) The entry of a document into the index does not (1) affect the
693 validity of the document in whole or in part, (2) relate to the accuracy
694 of information contained in the document, or (3) create a presumption
695 regarding the validity of the document, the accuracy of information
696 contained in the document, or that the statutory requirements for the
697 document have been satisfied.

698 (i) The Secretary of the State shall only disclose information in the
699 advance health care directive registry or index to individuals who
700 possess the valid file number and password for a document.

701 (j) Any document or record included in the advance health care
702 directive registry, including file numbers, passwords and any other
703 information maintained by the Secretary of the State pursuant to this
704 section, shall not be deemed a public record and shall not be subject to
705 disclosure under the provisions of section 1-210 of the 2006
706 supplement to the general statutes.

707 (k) The state of Connecticut, the Secretary of the State and any agent
708 or person employed by the Secretary of the State shall be held harmless
709 from any liability or causes of action arising out of the administration
710 or operation of the advance health care directive registry authorized by
711 subsection (a) of this section.

712 Sec. 25. Section 1-54a of the general statutes is repealed. (*Effective*

713 October 1, 2006)

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	1-55
Sec. 2	October 1, 2006	17a-238(g)
Sec. 3	October 1, 2006	17a-543(b)
Sec. 4	October 1, 2006	19a-279c(a)
Sec. 5	October 1, 2006	19a-570
Sec. 6	October 1, 2006	19a-571(a)
Sec. 7	October 1, 2006	19a-575
Sec. 8	October 1, 2006	19a-575a
Sec. 9	October 1, 2006	19a-576
Sec. 10	October 1, 2006	19a-577
Sec. 11	October 1, 2006	19a-578
Sec. 12	October 1, 2006	19a-579
Sec. 13	October 1, 2006	19a-579a
Sec. 14	October 1, 2006	19a-579b
Sec. 15	October 1, 2006	19a-580
Sec. 16	October 1, 2006	19a-580b
Sec. 17	October 1, 2006	19a-580c
Sec. 18	October 1, 2006	45a-650(h)
Sec. 19	October 1, 2006	45a-654(a)
Sec. 20	October 1, 2006	52-184d(a)(3)
Sec. 21	October 1, 2006	New section
Sec. 22	October 1, 2006	New section
Sec. 23	October 1, 2006	New section
Sec. 24	from passage	New section
Sec. 25	October 1, 2006	Repealer section

PH Joint Favorable Subst.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Secretary of the State	GF - Cost	30,000	20,000

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill requires the Secretary of the State (SOTS) to establish and maintain a central registry for advance health care directives. The registry would be an online repository where critical health care instructions are accessible to health care providers and family members in a medical crisis.

It is estimated that the online registry would have a one-time cost of \$10,000 to set up and an ongoing \$1,500 a month to maintain the website, including entering the documents into the registry. The SOTS would also incur minimal postage costs to mail back the original documents after they are assigned a unique identifying number and password and entered into the registry.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis
sHB 5788**

AN ACT CONCERNING HEALTH CARE DECISION-MAKING.

SUMMARY:

This bill amends and updates Connecticut law on health care decision making by:

1. combining the authority of the health care agent and attorney-in-fact for health care decisions into a unified proxy known as the "health care representative;"
2. expanding the scope of a living will from covering only decisions concerning life support to include any aspect of health care;
3. conferring on the health care representative the authority to make any and all health care decisions for a person incapable of expressing those wishes himself;
4. clarifying that (a) a conservator must comply with the previously executed advance directives of a ward and (b) a decision of a health care representative takes precedence over that of a conservator;
5. providing for recognition of advance directives validly executed elsewhere that are not contrary to Connecticut policy; and
6. specifying that advance directives properly executed before October 1, 2006 remain valid.

The bill requires the secretary of the state to establish an advance health care directive central registry. Individuals could store various documents addressing health care decision making and instructions in

this registry. Under the bill, the secretary of the state and any agent or person employed by her is not liable or subject to causes of action arising out of administration or operation of the registry

EFFECTIVE DATE: October 1, 2006, except that the provision requiring the Secretary of the State to establish the advance health care directive registry takes effect upon passage.

DEFINITIONS

The bill defines “advance health care directive” as a writing executed according to law including a living will, an appointment of a health care representative, or both. “Appointment of a health care representative” is a document that complies with the law that someone executes appointing a health care representative to make health care decisions for him in the case his incapacity. A “health care representative” is the representative a person appoints to make health care decisions on his behalf.

APPOINTMENT OF A HEALTH CARE REPRESENTATIVE

The law allows anyone at least 18 years old to execute a document containing health care instructions, the appointment of a health care agent, the appointment of an attorney-in-fact for health care decisions, the designation of a conservator of the person for future incapacity, and a document of anatomical gift (CGS § 19a-575a). The maker must sign the document in the presence of at least two witnesses whose signatures also must be included. (This statute provides a sample document.) Another statute (CGS § 19a-576) authorizes a person 18 or older to execute a document appointing a health care agent under the preceding statute or under CGS § 19a-577. The latter statute states that the document may, but need not be, in substantially the same form contained in the statute. A living will or appointment of a health care agent becomes operative when the document is furnished to the attending physician and he determines that the patient is incapacitated.

This bill replaces references to health care agent and attorney-in-fact

with “health care representative” throughout the applicable statutes and in the related document forms.

EXPANDING THE SCOPE OF A LIVING WILL AND GIVING THE HEALTH CARE REPRESENTATIVE CERTAIN AUTHORITY

The bill expands the scope of a “living will” from covering only decisions involving life support to include any aspect of health care, including the withholding or withdrawal of life support systems. It gives the health care representative the authority to make any and all health care decisions for a person who is incapacitated to the point where he can no longer actively take part in decision-making and cannot direct his physician as to his medical care. The health care representative can decide to accept or refuse any treatment, service, or procedure used to diagnose or treat a physical or mental condition, including psychosurgery or shock therapy. The person can direct his health care representative to make decisions on his behalf according to his wishes, as stated in the executed document, or as otherwise known by the representative. In the event that the person’s wishes are not clear or an unanticipated situation arises, the health care representative can make a decision in the person’s best interests, based upon the representative’s knowledge of the person.

REVOCAION OF THE APPOINTMENT OF A HEALTH CARE REPRESENTATIVE

Under the bill, an appointment of a health care representative can only be revoked by the declarant in writing, which must be signed by the declarant and two witnesses. Current law, unchanged by the bill, provides for the revocation of the appointment of a spouse as a health care agent upon the divorce or legal separation of the couple, unless the person specifies otherwise.

The bill requires the attending physician or other health care provider to make the revocation a part of the person’s medical record. A person who carries out an advance directive is not subject to civil or criminal liability for unprofessional conduct if he does not have knowledge of the revocation of a health care representative

appointment. The bill specifies that the revocation of the health care representative appointment does not, of itself, revoke the person's living will.

Under the bill, the probate court for the district in which the person is domiciled or located at the time of a dispute over a person's health care has jurisdiction over any dispute concerning the capacity of the health care representative, any claim that the actions of the named representative would interfere with the person's treatment, or the person named as health care representative.

Under the bill, a person whose appointment as a health care representative has been revoked has standing to file a claim challenging the validity of the revocation. He must file this with the probate court for the district in which the declarant is domiciled or located at the time of the dispute.

CONSERVATORS

The bill requires a conservator to comply with a ward's individual health care instructions and other wishes expressed while the ward had the capacity to do so and to the extent known to the conservator, except as authorized by a court of competent jurisdiction. The conservator cannot revoke the ward's advance health care directive unless the appointing court expressly authorizes it.

Unless there is a court order to the contrary, the bill gives a health care decision of a health care representative precedence over that of a conservator's, except when (1) the health care decision concerns persons subject to the laws on examination of certain persons for psychiatric disabilities, temporary leaves or conditional release of acquitees in hospitals for psychiatric disabilities, or competency to stand trial; (2) a conservator has been appointed for a ward who is subject to an order concerning administration of medication for treatment of psychiatric disabilities, for the duration of the ward's hospitalization; or (3) a conservator has been appointed to a ward subject to an order concerning medication administration to a criminal

defendant placed in the custody of the commissioner of mental health and addiction services.

RECOGNIZING ADVANCE DIRECTIVES FROM OTHER STATES AND COUNTRIES

Under the bill, health care instructions, or the appointment of a health care proxy executed under and in compliance with another state's or Connecticut's laws and not contrary to Connecticut's public policy of this state, are deemed validly executed for purposes of Connecticut law. Similarly, health care instructions or appointments executed in a foreign country and meeting the conditions above are deemed validly executed for Connecticut purposes.

A health care provider can rely on such instructions, or recognize the health care proxy appointment, based on any of the following: (1) an order or decision by a court of competent jurisdiction, (2) the health care provider's own good faith legal analysis, or (3) presentation of a notarized statement from the patient or person offering the proxy that it (a) is valid under the laws of the state or country where it was made and (b) is not contrary to Connecticut public policy.

ADVANCE HEALTH CARE DIRECTIVE CENTRAL REGISTRY

Establishing the Registry; Eligible Documents

The bill requires the secretary of the state to establish and maintain an advance health care directive central registry. Individuals can submit a copy of any of the following for inclusion in the registry:

1. documents with directions about administering, withholding, or withdrawing specific life support systems or any other document created according to the law on removal of life support;
2. documents with health care instructions, the appointment of a health care representative, the designation of a conservator of the person for future incapacity, and a document of anatomical gift; and

3. statutory short form powers of attorney created according to law.

Required Forms

A document submitted to the registry must be accompanied by a form prescribed by the secretary of the state that contains (1) the registrant's full name and mailing address and (2) an indication of the advance health care directives that the registrant is submitting. The secretary can prescribe other forms as deemed necessary. Documents are deemed submitted to the registry only when accompanied by the necessary forms.

Following receipt of a document, the secretary can reproduce and index it. Each indexed document must be assigned a unique identifying number and password. Following indexing, the document must be returned to the person who submitted it along with a form from the secretary containing the document's file number and password.

The secretary must not review or provide any advice on the documents, including whether the documents are in compliance with applicable statutes.

Document Validity

The bill specifies that its provisions should not be construed as invalidating (1) documents containing advance health care directives not submitted to the registry or (2) otherwise valid revocations of such documents where the secretary has been notified of the revocation.

The bill provides that entering the document in the index does not (1) affect its validity in whole or on part; (2) relate to the accuracy of information in the document; or (3) create a presumption regarding its validity, the accuracy of information in it, or that the statutory requirements for the document have been met.

Disclosure

Under the bill, the secretary can only disclose information in the

registry or index to those with a valid document file number and password.

The bill specifies that any document or record included in the registry, including file numbers, passwords, and any other information maintained by the secretary, is not a public record and should not be disclosed under the Freedom of Information Act.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/20/2006)