

By: Perry

H.B. No. 1539

A BILL TO BE ENTITLED

AN ACT

relating to certain advance directives and health care and treatment decisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 166.045(c) and (d), Health and Safety Code, are amended to read as follows:

(c) If an attending physician refuses to comply with a directive or treatment decision for a reason not prohibited under Section 166.0455 and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.

(d) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has not violated Section 166.0455 and has complied with the procedures outlined in Section 166.046.

SECTION 2. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.0455 to read as follows:

Sec. 166.0455. LIMITATION ON REFUSAL TO EFFECTUATE CERTAIN ADVANCE DIRECTIVES OR TREATMENT DECISIONS. A physician, health

1 care facility, or health care professional may not refuse to honor a
2 patient's advance directive or a health care or treatment decision
3 made by or on behalf of a patient that directs the provision of
4 life-sustaining treatment and may not consider life-sustaining
5 treatment to be inappropriate treatment under Section 166.046 based
6 on:

7 (1) the lesser value the physician, facility, or
8 professional places on extending the life of an elderly, disabled,
9 or terminally ill patient compared to the value of extending the
10 life of a patient who is younger, not disabled, or not terminally
11 ill; or

12 (2) a disagreement between the physician, facility, or
13 professional and the patient, or the person authorized to make a
14 treatment decision for the patient under Section 166.039, over the
15 greater weight the patient or person places on extending the
16 patient's life above the risk of disability.

17 SECTION 3. Section 166.046, Health and Safety Code, is
18 amended by amending Subsections (a) and (g) and adding Subsection
19 (c-1) to read as follows:

20 (a) If an attending physician refuses to honor a patient's
21 advance directive or a health care or treatment decision made by or
22 on behalf of a patient for a reason not prohibited under Section
23 166.0455, the physician's refusal shall be reviewed by an ethics or
24 medical committee. The attending physician may not be a member of
25 that committee. The patient shall be given life-sustaining
26 treatment during the review.

27 (c-1) If, during the course of the committee review process,

1 the ethics or medical committee finds that the physician refused to
2 honor a patient's advanced directive or health care or treatment
3 decision made by or on behalf of the patient for a reason prohibited
4 under Section 166.0455, the committee may not approve withdrawal of
5 life-sustaining treatment to that patient on the basis of that
6 physician's evaluation.

7 (g) At the request of the patient or the person responsible
8 for the health care decisions of the patient, the appropriate
9 district or county court shall extend the time period provided
10 under Subsection (e) only if the court finds, by a preponderance of
11 the evidence, that:

12 (1) there is a reasonable expectation that a physician
13 or health care facility that will honor the patient's directive
14 will be found if the time extension is granted; or

15 (2) the decision to withdraw life-sustaining
16 treatment is for a reason prohibited under Section 166.0455.

17 SECTION 4. Section 166.051, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
20 This subchapter does not impair or supersede any legal right or
21 responsibility a person may have to effect the withholding or
22 withdrawal of life-sustaining treatment in a lawful manner,
23 provided that if an attending physician or health care facility is
24 unwilling to honor a patient's advance directive or a treatment
25 decision to provide life-sustaining treatment for a reason not
26 prohibited under Section 166.0455, life-sustaining treatment is
27 required to be provided the patient, but only until a reasonable

1 opportunity has been afforded for transfer of the patient to
2 another physician or health care facility willing to comply with
3 the advance directive or treatment decision.

4 SECTION 5. Section 166.158(c), Health and Safety Code, is
5 amended to read as follows:

6 (c) A principal's health or residential care provider who
7 finds it impossible to follow a directive by the agent because of a
8 conflict with this subchapter or the medical power of attorney
9 shall inform the agent as soon as is reasonably possible. The agent
10 may select another attending physician. The procedures established
11 under Sections 166.045 and 166.046 and the limitations provided
12 under Section 166.0455 apply if the agent's directive concerns
13 providing, withholding, or withdrawing life-sustaining treatment.

14 SECTION 6. Section 166.166, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 166.166. OTHER RIGHTS OR RESPONSIBILITIES NOT
17 AFFECTED. This subchapter does not limit or impair any legal right
18 or responsibility that any person, including a physician or health
19 or residential care provider, may have to make or implement health
20 care decisions on behalf of a person, provided that if an attending
21 physician or health care facility is unwilling to honor a patient's
22 advance directive or a treatment decision to provide
23 life-sustaining treatment for a reason not prohibited under Section
24 166.0455, life-sustaining treatment is required to be provided the
25 patient, but only until a reasonable opportunity has been afforded
26 for transfer of the patient to another physician or health care
27 facility willing to comply with the advance directive or treatment

1 decision.

2 SECTION 7. The changes in law made by this Act apply only to
3 a health care or treatment decision made on or after the effective
4 date of this Act.

5 SECTION 8. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2013.