



Sen. Laura Fine

**Filed: 3/11/2025**

10400SB1411sam001

LRB104 07373 JRC 23564 a

1 AMENDMENT TO SENATE BILL 1411

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1411 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Living Will Act is amended by  
5 changing Section 3 and by adding Section 3.5 as follows:

6 (755 ILCS 35/3) (from Ch. 110 1/2, par. 703)

7 Sec. 3. Execution of a Document.

8 (a) An individual of sound mind and having reached the age  
9 of majority or having obtained the status of an emancipated  
10 person pursuant to the Emancipation of Minors Act, as now or  
11 hereafter amended, may execute a document directing that if he  
12 is suffering from a terminal condition, then death delaying  
13 procedures shall not be utilized for the prolongation of his  
14 life.

15 (b) The declaration must be signed by the declarant, or  
16 another at the declarant's direction, and witnessed by 2

1 individuals 18 years of age or older.

2 (c) The declaration of a qualified patient diagnosed as  
3 pregnant by the attending physician shall be given no force  
4 and effect as long as in the opinion of the attending physician  
5 it is possible that the fetus could develop to the point of  
6 live birth with the continued application of death delaying  
7 procedures.

8 (d) If the patient is able, it shall be the responsibility  
9 of the patient to provide for notification to his or her  
10 attending physician of the existence of a declaration, to  
11 provide the declaration to the physician and to ask the  
12 attending physician whether he or she is willing to comply  
13 with its provisions. An attending physician who is so notified  
14 shall make the declaration, or copy of the declaration, a part  
15 of the patient's medical records. If the physician is at any  
16 time unwilling to comply with its provisions, the physician  
17 shall promptly so advise the declarant. If the physician is  
18 unwilling to comply with its provisions and the patient is  
19 able, it is the patient's responsibility to initiate the  
20 transfer to another physician of the patient's choosing. If  
21 the physician is unwilling to comply with its provisions and  
22 the patient is at any time not able to initiate the transfer,  
23 then the attending physician shall without delay notify the  
24 person with the highest priority, as set forth in this  
25 subsection, who is available, able, and willing to make  
26 arrangements for the transfer of the patient and the

1 appropriate medical records to another physician for the  
2 effectuation of the patient's declaration. The order of  
3 priority is as follows: (1) the patient's surrogate  
4 decision-maker under the Health Care Surrogate Act, (2) ~~(1)~~  
5 any person authorized by the patient to make such  
6 arrangements, ~~(2) a guardian of the person of the patient,~~  
7 ~~without the necessity of obtaining a court order to do so,~~ and  
8 (3) any member of the patient's family.

9 (e) The declaration may, but need not, be in the following  
10 form, and in addition may include other specific directions.  
11 Should any specific direction be determined to be invalid,  
12 such invalidity shall not affect other directions of the  
13 declaration which can be given effect without the invalid  
14 direction, and to this end the directions in the declaration  
15 are severable.

#### 16 DECLARATION

17 This declaration is made this ..... day of  
18 ..... (month, year). I, ....., being of  
19 sound mind, willfully and voluntarily make known my desires  
20 that my moment of death shall not be artificially postponed.

21 If at any time I should have an incurable and irreversible  
22 injury, disease, or illness judged to be a terminal condition  
23 by my attending physician who has personally examined me and  
24 has determined that my death is imminent except for death  
25 delaying procedures, I direct that such procedures which would  
26 only prolong the dying process be withheld or withdrawn, and

1 that I be permitted to die naturally with only the  
 2 administration of medication, sustenance, or the performance  
 3 of any medical procedure deemed necessary by my attending  
 4 physician to provide me with comfort care.

5 In the absence of my ability to give directions regarding  
 6 the use of such death delaying procedures, it is my intention  
 7 that this declaration shall be honored by my family and  
 8 physician as the final expression of my legal right to refuse  
 9 medical or surgical treatment and accept the consequences from  
 10 such refusal.

11 Signed .....

12 City, County and State of Residence .....

13 The declarant is personally known to me and I believe him  
 14 or her to be of sound mind. I saw the declarant sign the  
 15 declaration in my presence (or the declarant acknowledged in  
 16 my presence that he or she had signed the declaration) and I  
 17 signed the declaration as a witness in the presence of the  
 18 declarant. I did not sign the declarant's signature above for  
 19 or at the direction of the declarant. At the date of this  
 20 instrument, I am not entitled to any portion of the estate of  
 21 the declarant according to the laws of intestate succession  
 22 or, to the best of my knowledge and belief, under any will of  
 23 declarant or other instrument taking effect at declarant's  
 24 death, or directly financially responsible for declarant's  
 25 medical care.

26 Witness .....

1 Witness .....

2 (Source: P.A. 95-331, eff. 8-21-07.)

3 (755 ILCS 35/3.5 new)

4 Sec. 3.5. Applicability. Section 4-11 of the Illinois  
5 Power of Attorney Act governs the applicability of this Act if  
6 a patient has a health care agency.

7 Section 10. The Health Care Surrogate Act is amended by  
8 changing Sections 15 and 20 as follows:

9 (755 ILCS 40/15) (from Ch. 110 1/2, par. 851-15)

10 Sec. 15. Applicability. This Act applies to patients who  
11 lack decisional capacity or who have a qualifying condition.  
12 This Act does not apply to instances in which the patient has  
13 ~~an operative and unrevoked living will under the Illinois~~  
14 ~~Living Will Act,~~ an operative and unrevoked declaration for  
15 mental health treatment under the Mental Health Treatment  
16 Preferences Declaration Act, or an authorized agent under a  
17 power of attorney for health care under the Illinois Power of  
18 Attorney Act and the patient's condition falls within the  
19 coverage of ~~the living will,~~ the declaration for mental health  
20 treatment, or the power of attorney for health care. In those  
21 instances, the ~~living will,~~ declaration for mental health  
22 treatment, or power of attorney for health care, as the case  
23 may be, shall be given effect according to its terms. This Act

1 does apply in circumstances in which a patient has a  
2 qualifying condition but the patient's condition does not fall  
3 within the coverage of ~~the living will~~, the declaration for  
4 mental health treatment, or the power of attorney for health  
5 care.

6 Each health care facility shall maintain any advance  
7 directives proffered by the patient or other authorized  
8 person, including a do not resuscitate order, a living will, a  
9 declaration for mental health treatment, a declaration of a  
10 potential surrogate or surrogates should the person become  
11 incapacitated or impaired, or a power of attorney for health  
12 care, in the patient's medical records. This Act does apply to  
13 patients without a qualifying condition. If a patient is an  
14 adult with decisional capacity, then the right to refuse  
15 medical treatment or life-sustaining treatment does not  
16 require the presence of a qualifying condition.

17 (Source: P.A. 96-448, eff. 1-1-10; 96-492, eff. 8-14-09;  
18 96-1000, eff. 7-2-10.)

19 (755 ILCS 40/20) (from Ch. 110 1/2, par. 851-20)

20 Sec. 20. Private decision making process.

21 (a) Decisions whether to forgo life-sustaining or any  
22 other form of medical treatment involving an adult patient  
23 with decisional capacity may be made by that adult patient.

24 (b) Decisions whether to forgo life-sustaining treatment  
25 on behalf of a patient without decisional capacity are lawful,

1 without resort to the courts or legal process, if the patient  
2 has a qualifying condition and if the decisions are made in  
3 accordance with one of the following paragraphs in this  
4 subsection and otherwise meet the requirements of this Act:

5 (1) Decisions whether to forgo life-sustaining  
6 treatment on behalf of a minor or an adult patient who  
7 lacks decisional capacity may be made by a surrogate  
8 decision maker or makers in consultation with the  
9 attending physician, in the order or priority provided in  
10 Section 25. A surrogate decision maker shall make  
11 decisions for the adult patient conforming as closely as  
12 possible to what the patient would have done or intended  
13 under the circumstances, taking into account evidence that  
14 includes, but is not limited to, any operative and  
15 unrevoked living will, the patient's personal,  
16 philosophical, religious and moral beliefs and ethical  
17 values relative to the purpose of life, sickness, medical  
18 procedures, suffering, and death. A surrogate's decision  
19 whether to forgo life-sustaining treatment shall be  
20 consistent with the patient's directions in any operative  
21 and unrevoked living will. Where possible, the surrogate  
22 shall determine how the patient would have weighed the  
23 burdens and benefits of initiating or continuing  
24 life-sustaining treatment against the burdens and benefits  
25 of that treatment. In the event an unrevoked advance  
26 directive, such as a living will, a declaration for mental

1 health treatment, or a power of attorney for health care,  
2 is no longer valid due to a technical deficiency or is not  
3 applicable to the patient's condition, that document may  
4 be used as evidence of a patient's wishes. The absence of a  
5 living will, declaration for mental health treatment, or  
6 power of attorney for health care shall not give rise to  
7 any presumption as to the patient's preferences regarding  
8 the initiation or continuation of life-sustaining  
9 procedures. If the adult patient's wishes are unknown and  
10 remain unknown after reasonable efforts to discern them or  
11 if the patient is a minor, the decision shall be made on  
12 the basis of the patient's best interests as determined by  
13 the surrogate decision maker. In determining the patient's  
14 best interests, the surrogate shall weigh the burdens on  
15 and benefits to the patient of initiating or continuing  
16 life-sustaining treatment against the burdens and benefits  
17 of that treatment and shall take into account any other  
18 information, including the views of family and friends,  
19 that the surrogate decision maker believes the patient  
20 would have considered if able to act for herself or  
21 himself.

22 (2) Decisions whether to forgo life-sustaining  
23 treatment on behalf of a minor or an adult patient who  
24 lacks decisional capacity, but without any surrogate  
25 decision maker or guardian being available determined  
26 after reasonable inquiry by the health care provider, may

1 be made by a court appointed guardian. A court appointed  
2 guardian shall be treated as a surrogate for the purposes  
3 of this Act.

4 (b-5) Decisions concerning medical treatment on behalf of  
5 a patient without decisional capacity are lawful, without  
6 resort to the courts or legal process, if the patient does not  
7 have a qualifying condition and if decisions are made in  
8 accordance with one of the following paragraphs in this  
9 subsection and otherwise meet the requirements of this Act:

10 (1) Decisions concerning medical treatment on behalf  
11 of a minor or adult patient who lacks decisional capacity  
12 may be made by a surrogate decision maker or makers in  
13 consultation with the attending physician, in the order of  
14 priority provided in Section 25 with the exception that  
15 decisions to forgo life-sustaining treatment may be made  
16 only when a patient has a qualifying condition. A  
17 surrogate decision maker shall make decisions for the  
18 patient conforming as closely as possible to what the  
19 patient would have done or intended under the  
20 circumstances, taking into account evidence that includes,  
21 but is not limited to, any operative and unrevoked living  
22 will, the patient's personal, philosophical, religious,  
23 and moral beliefs and ethical values relative to the  
24 purpose of life, sickness, medical procedures, suffering,  
25 and death. In the event an unrevoked advance directive,  
26 such as a living will, a declaration for mental health

1 treatment, or a power of attorney for health care, is no  
2 longer valid due to a technical deficiency or is not  
3 applicable to the patient's condition, that document may  
4 be used as evidence of a patient's wishes. The absence of a  
5 living will, declaration for mental health treatment, or  
6 power of attorney for health care shall not give rise to  
7 any presumption as to the patient's preferences regarding  
8 any process. If the adult patient's wishes are unknown and  
9 remain unknown after reasonable efforts to discern them or  
10 if the patient is a minor, the decision shall be made on  
11 the basis of the patient's best interests as determined by  
12 the surrogate decision maker. In determining the patient's  
13 best interests, the surrogate shall weigh the burdens on  
14 and benefits to the patient of the treatment against the  
15 burdens and benefits of that treatment and shall take into  
16 account any other information, including the views of  
17 family and friends, that the surrogate decision maker  
18 believes the patient would have considered if able to act  
19 for herself or himself.

20 (2) Decisions concerning medical treatment on behalf  
21 of a minor or adult patient who lacks decisional capacity,  
22 but without any surrogate decision maker or guardian being  
23 available as determined after reasonable inquiry by the  
24 health care provider, may be made by a court appointed  
25 guardian. A court appointed guardian shall be treated as a  
26 surrogate for the purposes of this Act.

1 (c) For the purposes of this Act, a patient or surrogate  
2 decision maker is presumed to have decisional capacity in the  
3 absence of actual notice to the contrary without regard to  
4 advanced age. With respect to a patient, a diagnosis of mental  
5 illness or an intellectual disability, of itself, is not a bar  
6 to a determination of decisional capacity. A determination  
7 that an adult patient lacks decisional capacity shall be made  
8 by the attending physician to a reasonable degree of medical  
9 certainty. The determination shall be in writing in the  
10 patient's medical record and shall set forth the attending  
11 physician's opinion regarding the cause, nature, and duration  
12 of the patient's lack of decisional capacity. Before  
13 implementation of a decision by a surrogate decision maker to  
14 forgo life-sustaining treatment, at least one other qualified  
15 health care practitioner must concur in the determination that  
16 an adult patient lacks decisional capacity. The concurring  
17 determination shall be made in writing in the patient's  
18 medical record after personal examination of the patient. The  
19 attending physician shall inform the patient that it has been  
20 determined that the patient lacks decisional capacity and that  
21 a surrogate decision maker will be making life-sustaining  
22 treatment decisions on behalf of the patient. Moreover, the  
23 patient shall be informed of the identity of the surrogate  
24 decision maker and any decisions made by that surrogate. If  
25 the person identified as the surrogate decision maker is not a  
26 court appointed guardian and the patient objects to the

1 statutory surrogate decision maker or any decision made by  
2 that surrogate decision maker, then the provisions of this Act  
3 shall not apply.

4 (d) A surrogate decision maker acting on behalf of the  
5 patient shall express decisions to forgo life-sustaining  
6 treatment to the attending physician and one adult witness who  
7 is at least 18 years of age. This decision and the substance of  
8 any known discussion before making the decision shall be  
9 documented by the attending physician in the patient's medical  
10 record and signed by the witness.

11 (e) The existence of a qualifying condition shall be  
12 documented in writing in the patient's medical record by the  
13 attending physician and shall include its cause and nature, if  
14 known. The written concurrence of another qualified health  
15 care practitioner is also required.

16 (f) Once the provisions of this Act are complied with, the  
17 attending physician shall thereafter promptly implement the  
18 decision to forgo life-sustaining treatment on behalf of the  
19 patient unless he or she believes that the surrogate decision  
20 maker is not acting in accordance with his or her  
21 responsibilities under this Act, or is unable to do so for  
22 reasons of conscience or other personal views or beliefs.

23 (g) In the event of a patient's death as determined by a  
24 physician, all life-sustaining treatment and other medical  
25 care is to be terminated, unless the patient is an organ donor,  
26 in which case appropriate organ donation treatment may be

1 applied or continued temporarily.

2 (h) A surrogate decision maker may execute a POLST  
3 portable medical orders form to forgo life-sustaining  
4 treatment consistent with this Section.

5 (Source: P.A. 102-140, eff. 1-1-22.)".