94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB5373

Introduced 01/26/06, by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

New Act
720 ILCS 5/12-31 from Ch. 38, par. 12-31
755 ILCS 35/7 from Ch. 110 1/2, par. 707
755 ILCS 35/9 from Ch. 110 1/2, par. 709
755 ILCS 40/45 from Ch. 110 1/2, par. 851-45
755 ILCS 40/50 from Ch. 110 1/2, par. 851-50
755 ILCS 45/4-8 from Ch. 110 1/2, par. 804-8

Creates the Pain Control Immunity Act. Provides immunity for a health care provider who in good faith and pursuant to reasonable professional standards administers, prescribes, or dispenses medication or procedures to relieve a qualified patient's pain even though the medications or procedure could hasten or increase the risk of the patient's death, unless the mediations are intended to cause death. Provides that life insurance policies, annuities, or other types of contracts that are conditioned upon the life or death of the patient are not legally impaired or invalidated by the administering, prescribing, or dispensing of pain medications or procedures that hasten or increase the risk of the patient's death, unless the medications are intended to cause death. Amends the Criminal Code. Exempts providing pain medication under the Pain Control Immunity Act from the crime of assisting suicide or assisting an attempt to commit suicide. Amends the Illinois Living Will Act, the Powers of Attorney for Health Care Law, and the Health Care Surrogacy Act. Limits health care provider liability for providing pain medications or procedures under the Pain Control Immunity Act. Provides that life insurance policies, annuities or other contracts conditioned on life or death of the patient are not legally impaired or invalidated by the administering, prescribing, or dispensing of pain medication as provided in the Pain Control Immunity Act. Effective immediately.
AN ACT concerning health care.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Pain Control Immunity Act.

Section 5. Definitions. As used in this Act:

"Attending physician" means the physician selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

"Health care provider" or "provider" means the attending physician and any other person administering health care to the patient at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or the practice of a profession, including any person employed by or acting for any authorized person.

"Qualified patient" means a patient who has been diagnosed and verified in writing to be afflicted with a terminal condition by his or her attending physician who has personally examined the patient.

"Terminal condition" means an incurable and irreversible condition that, in the judgment of the attending physician to a reasonable degree of medical certainty, the patient is not expected to survive more than 12 months.

Section 10. General provisions. In accordance with reasonable professional standards, a health care provider authorized by Illinois law to administer, prescribe, or dispense medications or procedures may do so to relieve a qualified patient's pain or discomfort in accordance with the wishes of the patient and the provisions of this Act, even if the medication or procedure may hasten or increase the risk of
death. When a health care provider complies with the wishes of
the patient and the provisions of this Act, these actions shall
not constitute, for any purpose, assisting suicide or
committing murder, unless the medications or procedures are
intended to cause death. Nothing in this Act shall be construed
to condone, authorize, or approve mercy killing or assisted
suicide.

Section 15. Recording of a terminal condition. Upon
determining that the patient has a terminal condition, the
attending physician may record in the patient's medical record
that determination and the basis of the determination. The
attending physician who records in writing a terminal condition
under this Section is presumed to be acting in good faith.
Unless it is alleged and proved that his or her action violated
the standard of reasonable professional care and judgment under
the circumstance, the attending physician is immune from
criminal and civil liability and professional disciplinary
action that otherwise might be incurred.

Section 20. Immunities. No health care provider who in
good faith and pursuant to reasonable professional standards
administrs, prescribes, or dispenses medication or procedures
to relieve a qualified patient's pain or discomfort in
accordance with the wishes of the patient and the provisions of
this Act, even if the medication or procedure may hasten or
increase the risk of death, shall be subject to criminal or
civil liability or professional disciplinary action, unless
the medications or procedures are intended to cause death.

Section 25. Life insurance. No policy of life insurance,
or annuity or other type of contract that is conditioned on the
life or death of the patient, shall be legally impaired or
invalidated in any manner by the administering, prescribing, or
dispensing of medication or procedures to relieve a qualified
patient's pain or discomfort in accordance with the wishes of
the patient and the provisions of this Act, even if the medication or procedure may hasten or increase the risk of death, unless the medications or procedures are intended to cause death, notwithstanding any terms of the policy, annuity, or contract to the contrary.

Section 30. Conscience of health care provider. A health care provider who because of personal views, beliefs, or conscience is unwilling to administer, prescribe, or dispense medication or procedures to relieve a qualified patient's pain or discomfort in accordance with the wishes of the patient and the provisions of this Act shall promptly notify the patient or the person charged with making health care decisions for the patient, who then shall be responsible to make the necessary arrangements for his or her transfer to the care of another provider. A provider who is unwilling to comply with the patient's decision will continue to afford reasonably necessary consultation and care in connection with the transfer.

Section 300. The Criminal Code of 1961 is amended by changing Section 5/12-31 as follows:

(720 ILCS 5/12-31) (from Ch. 38, par. 12-31)

Sec. 12-31. Inducement to Commit Suicide.

(a) A person commits the offense of inducement to commit suicide when he or she does either of the following:

(1) Coerces another to commit suicide and the other person commits or attempts to commit suicide as a direct result of the coercion, and he or she exercises substantial control over the other person through (i) control of the other person's physical location or circumstances; (ii) use of psychological pressure; or (iii) use of actual or ostensible religious, political, social, philosophical or other principles.

(2) With knowledge that another person intends to
commit or attempt to commit suicide, intentionally (i) offers and provides the physical means by which another person commits or attempts to commit suicide, or (ii) participates in a physical act by which another person commits or attempts to commit suicide.

For the purposes of this Section, "attempts to commit suicide" means any act done with the intent to commit suicide and which constitutes a substantial step toward commission of suicide.

(b) Sentence. Inducement to commit suicide under paragraph (a)(1) when the other person commits suicide as a direct result of the coercion is a Class 2 felony. Inducement to commit suicide under paragraph (a)(2) when the other person commits suicide as a direct result of the assistance provided is a Class 4 felony. Inducement to commit suicide under paragraph (a)(1) when the other person attempts to commit suicide as a direct result of the coercion is a Class 3 felony. Inducement to commit suicide under paragraph (a)(2) when the other person attempts to commit suicide as a direct result of the assistance provided is a Class A misdemeanor.

(c) The lawful compliance or a good-faith attempt at lawful compliance with the Illinois Living Will Act, the Health Care Surrogate Act, or the Powers of Attorney for Health Care Law is not inducement to commit suicide under paragraph (a)(2) of this Section.

(d) It is not considered assisting suicide or assisting an attempt to commit suicide if a health care provider (as defined in the Pain Control Immunity Act) administers, prescribes, or dispenses medications or procedures to relieve a person's pain or discomfort in accordance with the provisions of this Code and the Pain Control Immunity Act, even if the medication or procedure may hasten or increase the risk of death, unless the medications or procedures are intended to cause death.

(Source: P.A. 87-1167; 88-392.)

Section 305. The Illinois Living Will Act is amended by
changing Sections 7 and 9 as follows:

(755 ILCS 35/7) (from Ch. 110 1/2, par. 707)

Sec. 7. Immunity. The desires of a qualified patient shall at all times supersede the effect of the declaration.

A physician or other health-care provider may presume, in the absence of knowledge to the contrary, that a declaration complies with this Act and is valid.

No physician, health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of death delaying procedures from, or the administering, prescribing, or dispensing of medication or procedures for pain control in accordance with the Pain Control Immunity Act to a qualified patient pursuant to a declaration which purports to have been made in accordance with this Act shall as a result thereof, be subject to criminal or civil liability, or be found to have committed an act of unprofessional conduct.

(Source: P.A. 85-860.)

(755 ILCS 35/9) (from Ch. 110 1/2, par. 709)

Sec. 9. General provisions. (a) The withholding or withdrawal of death delaying procedures from, or administering, prescribing, or dispensing of medication or procedures for pain control in accordance with the Pain Control Immunity Act even if doing so hastens death, unless the medications or procedures are intended to cause death, to a qualified patient in accordance with the provisions of this Act shall not, for any purpose, constitute a suicide, assisting suicide, or murder.

(b) The making of a declaration pursuant to Section 3 shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of death delaying
procedures from, or the administering, prescribing, or dispensing of medication or procedures for pain control in accordance with the Pain Control Immunity Act to, an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health care facility, or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employe welfare benefit plan, nonprofit medical service corporation or mutual nonprofit hospital service corporation shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

(d) Nothing in this Act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of death delaying procedures in any lawful manner. In such respect the provisions of this Act are cumulative.

(e) This Act shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of death delaying procedures in the event of a terminal condition.

(f) Nothing in this Act shall be construed to condone, authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this Act.

(g) An instrument executed before the effective date of this Act that substantially complies with paragraph (e) of Section 3 shall be given effect pursuant to the provisions of this Act.

(h) A declaration executed in another state in compliance with the law of that state or this State is validly executed for purposes of this Act, and such declaration shall be applied in accordance with the provisions of this Act.

(Source: P.A. 85-860.)
Section 310. The Health Care Surrogate Act is amended by changing Sections 45 and 50 as follows:

(755 ILCS 40/45) (from Ch. 110 1/2, par. 851-45)
Sec. 45. Life insurance. No policy of life insurance, or annuity or other type of contract that is conditioned on the life or death of the patient, shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from, or by administering, prescribing, or dispensing of medication or procedures for pain control in accordance with the Pain Control Immunity Act, even if the medication or procedure may hasten or increase the risk of death, unless the medications or procedures are intended to cause death, to a patient in accordance with the provisions of this Act, notwithstanding any terms of the policy to the contrary.
(Source: P.A. 87-749.)

(755 ILCS 40/50) (from Ch. 110 1/2, par. 851-50)
Sec. 50. Not suicide or murder.
(a) The withholding or withdrawal of life-sustaining treatment from a patient in accordance with the provisions of this Act does not, for any purpose, constitute suicide or murder.
(b) Administering, prescribing, or dispensing medications or procedures to relieve a person's pain or discomfort in accordance with the provisions of this Act and the Pain Control Immunity Act, even if the medication or procedure may hasten or increase the risk of death, is not, for any purpose, suicide, assisting suicide, or committing murder, unless the medications or procedures are intended to cause death.
(c) The withholding or withdrawal of life-sustaining treatment from a patient in accordance with the provisions of this Act, or the administering, prescribing, or dispensing medications or procedures to relieve a person's pain or discomfort in accordance with the Pain Control Immunity Act,
however, shall not relieve any individual of responsibility for
any criminal acts that may have caused the existence of the
qualifying condition in the patient. Nothing in this Act shall
be construed to condone, authorize, or approve mercy killing or
assisted suicide.
(Source: P.A. 87-749.)

Section 315. The Illinois Power of Attorney Act is amended
by changing Section 4-8 as follows:

(755 ILCS 45/4-8) (from Ch. 110 1/2, par. 804-8)

Sec. 4-8. Immunities of health care providers, agents and
others in relation to health care agencies. Each health care
provider and each other person who acts in good faith reliance
on any direction or decision by the agent that is not clearly
contrary to the terms of a health care agency (a "reliant")
will be protected and released to the same extent as though the
reliant had dealt directly with the principal as a
fully-competent person. Without limiting the generality of the
foregoing, the following specific principles shall also
govern, protect and validate the acts of the agent and each
reliant:

(a) No reliant shall be subject to any type of civil or
criminal liability or discipline for unprofessional conduct
for complying with any direction or decision by the agent, even
if death or injury to the patient ensues.

(b) No reliant shall be subject to any type of civil or
criminal liability or discipline for unprofessional conduct
for failure to comply with any direction or decision by the
agent that violates the reliant's conscience rights, as long as
the reliant promptly informs the agent of reliant's refusal or
failure to comply with such direction or decision by the agent.
The agent shall then be responsible to make the necessary
arrangements for the transfer of the patient to another
provider. It is understood that a provider who is unwilling to
comply with the agent's decision will continue to afford
reasonably necessary consultation and care in connection with
the transfer.

(c) If the actions of a health care provider who fails to
comply with any direction or decision by the agent are
substantially in accord with reasonable medical standards at
the time of reference and the provider cooperates in the
transfer of the patient pursuant to subsection (b) of Section
4-7 of this Act, the provider shall not be subject to any type
of civil or criminal liability or discipline for unprofessional
conduct for failure to comply with the agent.

(d) No agent who in good faith acts with due care for the
benefit of the patient and in accordance with the terms of a
health care agency, or who fails to act, shall be subject to
any type of civil or criminal liability for such action or
inaction.

(e) If the patient's death results from withholding or
withdrawing life-sustaining treatment, or administering,
prescribing, or dispensing medication or procedures for pain
control as provided for the in Pain Control Immunity Act, in
accordance with the terms of a health care agency, the death
shall not constitute a suicide, assisting a suicide, or
homicide for any purpose under any statute or other rule of law
and shall not impair or invalidate any insurance, annuity or
other type of contract that is conditioned on the life or death
of the patient, any term of the contract to the contrary
notwithstanding.

(Source: P.A. 85-1395.)

Section 999. Effective date. This Act takes effect upon
becoming law.