



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 medications 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.

LRB094 16804 AJO 52080 b

1 AN ACT concerning health care.

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

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

6 Section 5. Definitions. As used in this Act:

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

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

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

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

25 Section 10. General provisions. In accordance with
26 reasonable professional standards, a health care provider
27 authorized by Illinois law to administer, prescribe, or
28 dispense medications or procedures may do so to relieve a
29 qualified patient's pain or discomfort in accordance with the
30 wishes of the patient and the provisions of this Act, even if
31 the medication or procedure may hasten or increase the risk of

1 death. When a health care provider complies with the wishes of
2 the patient and the provisions of this Act, these actions shall
3 not constitute, for any purpose, assisting suicide or
4 committing murder, unless the medications or procedures are
5 intended to cause death. Nothing in this Act shall be construed
6 to condone, authorize, or approve mercy killing or assisted
7 suicide.

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

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

28 Section 25. Life insurance. No policy of life insurance,
29 or annuity or other type of contract that is conditioned on the
30 life or death of the patient, shall be legally impaired or
31 invalidated in any manner by the administering, prescribing, or
32 dispensing of medication or procedures to relieve a qualified
33 patient's pain or discomfort in accordance with the wishes of

1 the patient and the provisions of this Act, even if the
2 medication or procedure may hasten or increase the risk of
3 death, unless the medications or procedures are intended to
4 cause death, notwithstanding any terms of the policy, annuity,
5 or contract to the contrary.

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

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

21 (720 ILCS 5/12-31) (from Ch. 38, par. 12-31)

22 Sec. 12-31. Inducement to Commit Suicide.

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

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

33 (2) With knowledge that another person intends to

1 commit or attempt to commit suicide, intentionally (i)
2 offers and provides the physical means by which another
3 person commits or attempts to commit suicide, or (ii)
4 participates in a physical act by which another person
5 commits or attempts to commit suicide.

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

10 (b) Sentence. Inducement to commit suicide under paragraph
11 (a) (1) when the other person commits suicide as a direct result
12 of the coercion is a Class 2 felony. Inducement to commit
13 suicide under paragraph (a) (2) when the other person commits
14 suicide as a direct result of the assistance provided is a
15 Class 4 felony. Inducement to commit suicide under paragraph
16 (a) (1) when the other person attempts to commit suicide as a
17 direct result of the coercion is a Class 3 felony. Inducement
18 to commit suicide under paragraph (a) (2) when the other person
19 attempts to commit suicide as a direct result of the assistance
20 provided is a Class A misdemeanor.

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

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

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

35 Section 305. The Illinois Living Will Act is amended by

1 changing Sections 7 and 9 as follows:

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

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

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

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

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

19 (755 ILCS 35/9) (from Ch. 110 1/2, par. 709)

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

29 (b) The making of a declaration pursuant to Section 3 shall
30 not affect in any manner the sale, procurement, or issuance of
31 any policy of life insurance, nor shall it be deemed to modify
32 the terms of an existing policy of life insurance. No policy of
33 life insurance shall be legally impaired or invalidated in any
34 manner by the withholding or withdrawal of death delaying

1 procedures from, or the administering, prescribing, or
2 dispensing of medication or procedures for pain control in
3 accordance with the Pain Control Immunity Act to, an insured
4 qualified patient, notwithstanding any term of the policy to
5 the contrary.

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

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

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

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

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

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

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

1 Section 310. The Health Care Surrogate Act is amended by
2 changing Sections 45 and 50 as follows:

3 (755 ILCS 40/45) (from Ch. 110 1/2, par. 851-45)

4 Sec. 45. Life insurance. No policy of life insurance, or
5 annuity or other type of contract that is conditioned on the
6 life or death of the patient, shall be legally impaired or
7 invalidated in any manner by the withholding or withdrawal of
8 life-sustaining treatment from, or by administering,
9 prescribing, or dispensing of medication or procedures for pain
10 control in accordance with the Pain Control Immunity Act, even
11 if the medication or procedure may hasten or increase the risk
12 of death, unless the medications or procedures are intended to
13 cause death, to a patient in accordance with the provisions of
14 this Act, notwithstanding any terms of the policy to the
15 contrary.

16 (Source: P.A. 87-749.)

17 (755 ILCS 40/50) (from Ch. 110 1/2, par. 851-50)

18 Sec. 50. Not suicide or murder.

19 (a) The withholding or withdrawal of life-sustaining
20 treatment from a patient in accordance with the provisions of
21 this Act does not, for any purpose, constitute suicide or
22 murder.

23 (b) Administering, prescribing, or dispensing medications
24 or procedures to relieve a person's pain or discomfort in
25 accordance with the provisions of this Act and the Pain Control
26 Immunity Act, even if the medication or procedure may hasten or
27 increase the risk of death, is not, for any purpose, suicide,
28 assisting suicide, or committing murder, unless the
29 medications or procedures are intended to cause death.

30 (c) The withholding or withdrawal of life-sustaining
31 treatment from a patient in accordance with the provisions of
32 this Act, or the administering, prescribing, or dispensing
33 medications or procedures to relieve a person's pain or
34 discomfort in accordance with the Pain Control Immunity Act,

1 however, shall not relieve any individual of responsibility for
2 any criminal acts that may have caused the existence of the
3 qualifying condition in the patient. Nothing in this Act shall
4 be construed to condone, authorize, or approve mercy killing or
5 assisted suicide.

6 (Source: P.A. 87-749.)

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

9 (755 ILCS 45/4-8) (from Ch. 110 1/2, par. 804-8)

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

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

25 (b) No reliant shall be subject to any type of civil or
26 criminal liability or discipline for unprofessional conduct
27 for failure to comply with any direction or decision by the
28 agent that violates the reliant's conscience rights, as long as
29 the reliant promptly informs the agent of reliant's refusal or
30 failure to comply with such direction or decision by the agent.
31 The agent shall then be responsible to make the necessary
32 arrangements for the transfer of the patient to another
33 provider. It is understood that a provider who is unwilling to
34 comply with the agent's decision will continue to afford

1 reasonably necessary consultation and care in connection with
2 the transfer.

3 (c) If the actions of a health care provider who fails to
4 comply with any direction or decision by the agent are
5 substantially in accord with reasonable medical standards at
6 the time of reference and the provider cooperates in the
7 transfer of the patient pursuant to subsection (b) of Section
8 4-7 of this Act, the provider shall not be subject to any type
9 of civil or criminal liability or discipline for unprofessional
10 conduct for failure to comply with the agent.

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

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

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

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