

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO.

Introduced by

Senator Mathern

1 A BILL for an Act to create and enact chapter 23-06.7 of the North Dakota Century Code,
2 relating to a health care directives registry; and to provide a continuing appropriation.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 23-06.7 of the North Dakota Century Code is
5 created and enacted as follows:

6 **23-06.7-01. Health care directive registry - Web site - Funding - Continuing**
7 **appropriation - Budget section approval.**

8 1. The secretary of state shall establish and maintain a health care directives registry
9 through which an individual or the individual's representative may file the
10 individual's durable power of attorney for health care, health care directive, living
11 will, or durable power of attorney for an incapacitated person. The registry must be
12 accessible through an internet web site maintained by the secretary of state.
13 2. The secretary of state may accept gifts, grants, donations, bequests and other
14 forms of voluntary contributions to support, promote, and maintain the registry.
15 The secretary of state shall set registration fees at a rate sufficient to cover all
16 reasonable expenses associated with the establishment and maintenance of the
17 registry. The secretary of state shall deposit in the secretary of state's operating
18 fund any moneys received by the secretary of state as fees or other revenue from
19 the internet web site. Moneys deposited in the operating fund under this
20 subsection of up to one hundred thirty thousand dollars per biennium are
21 appropriated to the secretary of state on a continuing basis for payment of
22 expenses related to administration of the registry. Any additional amounts
23 deposited in the operating fund during a biennium under this section may be spent
24 pursuant to legislative appropriations or with budget section approval.

23-06.7-02. Registration requirements.

1. An individual or an individual's representative may submit for registration to the secretary of state, in a form prescribed by the secretary of state, the following documents related to that individual and any revocations of these documents:

- a. A durable power of attorney for health care.
- b. A living will.
- c. A durable power of attorney for an incapacitated person.
- d. A health care directive.

2. The person that submits a document for registration under this section shall provide a return address.

3. The secretary of state may require that documents submitted under this section must be notarized or witnessed.

23-06.7-03. Effect of nonregistration or revocation. Failure to register a document with the secretary of state under this chapter does not affect the validity of a document. Failure to notify the secretary of state of the revocation of a document registered under this chapter does not affect the validity of a revocation of that document.

23-06.7-04. Registration - Purge of registered documents.

1. Upon receipt of a completed registration form, the secretary of state shall create a digital reproduction of the form, enter the reproduced form into the health care directives registry database, and assign each registration a unique file number and password. The secretary of state is not required to review a document to ensure the document complies with the particular statutory requirements applicable to the document.

2. After entering the reproduced document into the registry database, the secretary of state shall return the original document to the person that submitted the document.

3. The person that submitted the document shall review the printed record. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the secretary of state's office.

4. If the person that submitted the document determines the printed record is inaccurate, the person shall correct the information and sign and return the corrected printed record to the secretary of state. Upon receipt of a corrected

1 printed record, the secretary of state shall make the proper corrections and send a
2 corrected printed record to the person that submitted the document. If the
3 information is accurate, the person shall check the box marked "no corrections
4 required" and sign and return the printed record to the secretary of state's office.

5 5. Upon receipt of a printed record marked "no corrections required", the
6 secretary of state shall activate the entry into the health care directives
7 registry database and shall provide that person with a printed record of the
8 information entered into the database under the file number and a wallet size
9 card containing the document's file number and a password.

10 6. The secretary of state shall delete a document filed with the registry under to this
11 chapter if the secretary of state receives a revocation of a document along with that
12 document's file number and password.

13 7. The entry of a document under this chapter does not:

14 a. Affect the validity of the document.

15 b. Relate to the accuracy of information contained in the document; or

16 c. Create a presumption regarding the validity of the document or the accuracy
17 of information contained in the document.

18 8. The secretary of state shall purge a document filed with the registry upon
19 verification by the state department of health division of statistical services of the
20 death of an individual to whom a document registered under this chapter applies.
21 The secretary of state shall purge the registry of documents under this subsection
22 at least once every five years. The division of statistical services shall share its
23 registry of death certificates with the secretary of state in order to conduct the
24 document purge required by this subsection.

25 **23-06.7-05. Registry information - Confidentiality - Transfer of information.**

26 1. The registry established under this chapter is accessible to the public by entering
27 the file number and password on the internet web site.

28 2. Registrations, file numbers, passwords, and any other information maintained by
29 the secretary of state under this chapter are confidential and may not be disclosed
30 to any person other than the individual who submitted the document or the
31 individual's personal representative.

- 1 3. The secretary of state may not use information contained in the registry except as
2 provided for under this chapter.
- 3 4. At the request of a person that submitted a document under this chapter, the
4 secretary of state may transmit the information received regarding the document to
5 the registry system of another jurisdiction as identified by the requestor.

6 **23-06.7-06. Liability - Limitation.**

- 7 1. Except for acts of gross negligence or wanton misconduct, the state is not subject
8 to civil liability for any claim or demand arising out of the administration or
9 operation of the registry established under this chapter. This subsection does not
10 lessen limitations on liability provided under chapter 32-12.2.
- 11 2. This chapter does not require a health care provider or a long-term care services
12 provider, or any person acting for the provider or under the provider's control, to
13 seek to access registry information about whether a patient has executed a
14 document that may be registered under this chapter.
- 15 3. A person that makes health care decisions in reliance on the provisions of an
16 apparently genuine document received from the registry is immune from criminal
17 and civil liability to the same extent and under the same conditions as provided for
18 under section 23-06.5-12.
- 19 4. This chapter does not affect the duty of a health care provider to provide
20 information to a patient regarding health care directives as may be required under
21 federal law.