

SENATE BILL NO. 2308

Introduced by

Senators J. Lee, Warner

Representatives Kreidt, Price

1 A BILL for an Act to amend and reenact sections 23-06.5-03 and 23-06.5-05.1 of the North
2 Dakota Century Code, relating to provisions of a health care directive.

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

4 **SECTION 1. AMENDMENT.** Section 23-06.5-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **23-06.5-03. Health care directive.**

- 7 1. A principal may execute a health care directive. A health care directive may
8 include one or more health care instructions to health care providers, others
9 assisting with health care, family members, and a health care agent. A health care
10 directive may include a power of attorney to appoint an agent to make health care
11 decisions for the principal when the principal lacks the capacity to make health
12 care decisions or when the principal retains the capacity to make health care
13 decisions. Subject to the provisions of this chapter and any express limitations set
14 forth by the principal in the health care directive, the agent has the authority to
15 make any and all health care decisions on the principal's behalf that the principal
16 could make.
- 17 2. After consultation with the attending physician and other health care providers, the
18 agent shall make health care decisions:
- 19 a. In accordance with the agent's knowledge of the principal's wishes and
20 religious or moral beliefs, as stated orally, or as contained in the principal's
21 health care directive; or
- 22 b. If the principal's wishes are unknown, in accordance with the agent's
23 assessment of the principal's best interests. In determining the principal's

1 best interests, the agent shall consider the principal's personal values to the
2 extent known to the agent.

3 3. A health care directive for a principal in the case of lack of capacity to make health
4 care decisions, including the agent's authority, is in effect only when the principal
5 lacks capacity to make health care decisions, as certified in writing by the
6 principal's attending physician and filed in the principal's medical record, and
7 ceases to be effective upon a determination that the principal has recovered
8 capacity.

9 4. The principal's attending physician shall make reasonable efforts to inform the
10 principal of any proposed treatment, or of any proposal to withdraw or withhold
11 treatment.

12 5. Nothing in this chapter permits an agent to consent to admission to a mental health
13 facility or state institution for a period of more than forty-five days without a mental
14 health proceeding or other court order, or to psychosurgery, abortion, or
15 sterilization, unless the procedure is first approved by court order.

16 **SECTION 2. AMENDMENT.** Section 23-06.5-05.1 of the North Dakota Century Code
17 is amended and reenacted as follows:

18 **23-06.5-05.1. Suggested health care directive form.** A health care directive may
19 include provisions consistent with this chapter, including:

20 1. The designation of one or more alternate agents to act if the named agent is not
21 reasonably available to serve;

22 2. Directions to joint agents regarding the process or standards by which the agents
23 are to reach a health care decision for the principal, and a statement whether joint
24 agents may act independently of one another;

25 3. Limitations, if any, on the right of the agent or any alternate agents to receive,
26 review, obtain copies of, and consent to the disclosure of the principal's medical
27 records;

28 4. Limitations, if any, on the nomination of the agent as guardian under chapter
29 30.1-28;

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- 1 5. A document of gift for the purpose of making an anatomical gift, as set forth in
- 2 chapter 23-06.2 or an amendment to, revocation of, or refusal to make an
- 3 anatomical gift;
- 4 6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on
- 5 the appointment of an agent; ~~and~~
- 6 7. Health care instructions regarding artificially administered nutrition or hydration;
- 7 and
- 8 8. The designation of an agent authorized to make health care decisions for the
- 9 principal even though the principal retains the capacity to make health care
- 10 decisions.