

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 96

Short Title: Advance Directive/Health Care Decisions.

(Public)

Sponsors: Representatives Gamble; Gottovi and Green.

Referred to: Judiciary I.

February 19, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE AN ADVANCE DIRECTIVE FOR HEALTH CARE MATTERS  
AN OPTIONAL PART OF THE "RIGHT TO NATURAL DEATH" LAW.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 23 Of Chapter 90 reads as rewritten:  
"Right to Natural ~~Death;~~ Death; Right to Advance Directive: Brain Death."

Sec. 2. G.S. 90-320 reads as rewritten:

**"§ 90-320. General purpose of Article.**

(a) The General Assembly recognizes as a matter of public policy that an individual's rights include the right to a peaceful and natural death and that a patient or his representative has the fundamental right to control the decisions relating to the rendering of his own medical care, including the decision to have extraordinary means withheld or withdrawn in instances of a terminal condition. This Article is to establish an optional and nonexclusive procedure by which a patient or his representative may exercise these ~~rights.~~ rights and to establish an optional and nonexclusive procedure by which a patient may execute an Advance Directive designating several persons, one of whom shall act as the patient's agent to make health care decisions if and when the patient is unable to make or communicate his or her own.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. Nothing in this Article shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this Article are cumulative."

1 Sec. 3. G.S. 90-321 reads as rewritten:

2 **"§ 90-321. Right to a natural death; ~~death~~; right to Advance Directive.**

3 (a) As used in this Article the term:

4 (1) 'Advance Directive' means a document executed pursuant to  
5 subsection (c), that designates several persons of 18 years of age or  
6 more who are not actively engaged in providing health care to the  
7 declarant for remuneration, one of whom shall act as the declarant's  
8 agent to make health care decisions for the declarant if and when he or  
9 she is unable to make or communicate his or her own decisions. The  
10 designated agent has the power, as regulated by this Article, to consent  
11 to the giving, withholding, or stopping of any health care, treatment,  
12 service, or diagnostic procedure, including the withholding or  
13 discontinuing of extraordinary means, and to talk with health care  
14 personnel, get information, and sign forms necessary to carry out these  
15 decisions.

16 ~~(1.1)~~ (1.1) 'Declarant' means a person who has signed a declaration in  
17 accordance with subsection (c);

18 (2) 'Extraordinary means' is defined as any medical procedure or  
19 intervention which in the judgment of the attending physician would  
20 serve only to postpone artificially the moment of death by sustaining,  
21 restoring, or supplanting a vital ~~function~~; ~~function~~. 'Extraordinary  
22 means' do not include care necessary to provide comfort or to alleviate  
23 pain;

24 (3) 'Physician' means any person licensed to practice medicine under  
25 Article 1 of Chapter 90 of the laws of the State of North Carolina.

26 (b) If a person has declared, in accordance with subsection (c) below, a desire  
27 that his life not be prolonged by extraordinary means; and the declaration has not been  
28 revoked in accordance with subsection (e) and

29 (1) It is determined by the attending physician that the declarant's present  
30 condition is

- 31 a. Terminal; and  
32 b. Incurable; and

33 (2) There is confirmation of the declarant's present condition as set out  
34 above in subdivision (b)(1) by a physician other than the attending  
35 physician;

36 then extraordinary means may be withheld or discontinued upon the direction and under  
37 the supervision of the attending physician.

38 (b1) If a person has executed, in accordance with subsection (c), an Advance  
39 Directive designating several persons, one of whom shall act as agent to make health  
40 care decisions, if the designation has not been revoked in accordance with subsection  
41 (e), and if it is determined by the attending physician that the person is not able to make  
42 or communicate his or her own health care decisions, then the agent's decisions, other  
43 than those involving the withholding or discontinuing of extraordinary means, will be  
44 followed. If the determinations laid out in subsection (b) are made, then the agent's

1 decision to withhold or discontinue extraordinary means will be followed upon the  
2 direction and under the supervision of the attending physician.

3 (c) The attending physician may rely upon a signed, witnessed, dated and proved  
4 declaration:

5 (1) Which expresses a desire of the declarant that no extraordinary means  
6 be used to prolong his life if his condition is determined to be terminal  
7 and incurable; and

8 (2) Which states that the declarant is aware that the declaration authorizes  
9 a physician to withhold or discontinue the extraordinary means; and

10 (3) Which has been signed by the declarant in the presence of two  
11 witnesses who believe the declarant to be of sound mind and who state  
12 that they (i) are not related within the third degree to the declarant or to  
13 the declarant's spouse, (ii) do not know or have a reasonable  
14 expectation that they would be entitled to any portion of the estate of  
15 the declarant upon his death under any will of the declarant or codicil  
16 thereto then existing or under the Intestate Succession Act as it then  
17 provides, (iii) are not the attending physician, or an employee of the  
18 attending physician, or an employee of a health facility in which the  
19 declarant is a patient, or an employee of a nursing home or any group-  
20 care home in which the declarant resides, and (iv) do not have a claim  
21 against any portion of the estate of the declarant at the time of the  
22 declaration; and

23 (4) Which has been proved before a clerk or assistant clerk of superior  
24 court, or a notary public who certifies substantially as set out in  
25 subsection (d) ~~below~~; below; or

26 (5) That is an Advance Directive designating a person to act as the  
27 declarant's agent in making health care decisions; and

28 (6) That has been proved before a clerk or assistant clerk of superior court,  
29 or a notary public who certifies substantially as set out in subsection  
30 (d) below.

31 (d) The following form is specifically determined to meet the requirements  
32 above:

33 **'DECLARATION OF A DESIRE FOR A NATURAL**  
34 **~~DEATH-DEATH; ADVANCE DIRECTIVE (OPTIONAL)~~'**

35 I, ....., being of sound mind, desire that my life not be prolonged by  
36 extraordinary means if my condition is determined to be terminal, and incurable. I am  
37 aware and understand that this writing authorizes a physician to withhold or discontinue  
38 extraordinary means.

39 (1) Statement of desires concerning health care, treatment, services, and  
40 procedures, including life-prolonging health care, treatment, services, and procedures:

41 .....

42 .....

43 .....

44 .....

1 .....  
2 .....  
3 .....  
4 .....  
5 (2) Special provisions and limitations:  
6 .....  
7 .....  
8 .....  
9 .....  
10 .....  
11 .....  
12 .....  
13 .....  
14 (Cross out the following if you do not wish to use 'Advance Directive' section and  
15 initial the crossing out.)  
16 'To effect my wishes, I, ....., being of sound mind, designate ....., residing  
17 at....., (Phone #) .....  
18 or if he or she shall for any reason fail to act,....., residing at ..... (Phone #).....;  
19 or if he or she shall for any reason fail to act,....., residing at ..... (Phone #).....;  
20 or if he or she shall for any reason fail to act,....., residing at ..... (Phone #).....;  
21 as my agent to make health care decisions for me if and when I am unable to make or  
22 communicate my own health care decisions. This designation gives my agent the power  
23 to consent to giving, withholding, or stopping any health care, treatment, service, or  
24 diagnostic procedure, including the withholding or discontinuing of extraordinary  
25 means. My agent also has the authority to talk with health care personnel, get  
26 information, and sign forms necessary to carry out those decisions.  
27 By this document I intend to create a power of attorney for health care decisions that  
28 shall take effect upon my incapacity to make my own health care decisions and shall  
29 continue during that incapacity. This power of attorney is intended to be supplemental  
30 to any power of attorney executed pursuant to G.S. 32A-2(9), except that, if the  
31 decisions of the attorney-in-fact appointed pursuant to G.S. 32A-2(9) regarding my  
32 health care contradict the decisions made by my agent designated in this form, the  
33 decisions of my agent designated in this form shall be followed.  
34 My agent shall make health care decisions as I direct below or as I otherwise make  
35 known in some other way.  
36 (1.1) Statement of desires concerning health care, treatment, services, and  
37 procedures, including life-prolonging health care, treatment, services, and procedures:  
38 .....  
39 .....  
40 .....  
41 .....  
42 .....  
43 .....

1 .....  
 2 .....  
 3 (2.1) Special provisions and limitations:  
 4 .....  
 5 .....  
 6 .....  
 7 .....  
 8 .....  
 9 .....  
 10 .....

11 .....  
 12 'This the ..... day of .....  
 13 Signature .....

14 'I hereby state that the declarant,....., being of sound mind signed the above  
 15 declaration in my presence and that I am not related to the declarant by blood or  
 16 marriage and that I do not know or have a reasonable expectation that I would be  
 17 entitled to any portion of the estate of the declarant under any existing will or codicil of  
 18 the declarant or as an heir under the Intestate Succession Act if the declarant died on  
 19 this date without a will. I also state that I am not the agent designated in the Advance  
 20 Directive. I also state that I am not the declarant's attending physician or an employee of  
 21 the declarant's attending physician, or an employee of a health facility in which the  
 22 declarant is a patient or an employee of a nursing home or any group-care home where  
 23 the declarant resides. I further state that I do not now have any claim against the  
 24 declarant.

25 Witness .....  
 26 Witness .....

27 The clerk or the assistant clerk, or a notary public may, upon proper proof, certify  
 28 the declaration as follows:  
 29

30 **'CERTIFICATE'**

31 'I, ....., Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one  
 32 as appropriate) for .....  
 33 County hereby certify that....., the declarant, appeared before me and swore to me  
 34 and to the witnesses in my presence that this instrument is his Declaration Of A Desire  
 35 For A Natural Death, including his Advance Directive (cross out and initial if not  
 36 applicable) and that he had willingly and voluntarily made and executed it as his free act  
 37 and deed for the purposes expressed in it.

38 'I further certify that ..... and....., witnesses, appeared before me and swore that  
 39 they witnessed ....., declarant, sign the attached declaration, believing him to be of  
 40 sound mind; and also swore that at the time they witnessed the declaration (i) they  
 41 were not related within the third degree to the declarant or to the declarant's spouse, and  
 42 (ii) they did not know or have a reasonable expectation that they would be entitled to  
 43 any portion of the estate of the declarant upon the declarant's death under any will of the  
 44 declarant or codicil thereto then existing or under the Intestate Succession Act as it

1 provides at that time, and (iii) they were not the agent designated in the Advance  
2 Directive, and (iv) they were not a physician attending the declarant or an employee of  
3 an attending physician or an employee of a health facility in which the declarant was a  
4 patient or an employee of a nursing home or any group-care home in which the  
5 declarant resided, and ~~(iv)~~ (v) they did not have a claim against the declarant. I further  
6 certify that I am satisfied as to the genuineness and due execution of the declaration.

7 'This the ..... day of .....

8 Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as  
9 appropriate) for the County of .....

10 The above declaration may be proved by the clerk or the assistant clerk, or a notary  
11 public in the following manner:

- 12 (1) Upon the testimony of the two witnesses; or
- 13 (2) If the testimony of only one witness is available, then
  - 14 a. Upon the testimony of such witness, and
  - 15 b. Upon proof of the handwriting of the witness who is dead or
  - 16 whose testimony is otherwise unavailable, and
  - 17 c. Upon proof of the handwriting of the declarant, unless he
  - 18 signed by his mark; or upon proof of such other circumstances
  - 19 as will satisfy the clerk or assistant clerk of the superior court,
  - 20 or a notary public as to the genuineness and due execution of
  - 21 the declaration.
- 22 (3) If the testimony of none of the witnesses is available, such declaration
- 23 may be proved by the clerk or assistant clerk, or a notary public
  - 24 a. Upon proof of the handwriting of the two witnesses whose
  - 25 testimony is unavailable, and
  - 26 b. Upon compliance with paragraph c of subdivision (2) above.

27 Due execution may be established, where the evidence required above is  
28 unavoidably lacking or inadequate, by testimony of other competent witnesses as to the  
29 requisite facts.

30 The testimony of a witness is unavailable within the meaning of this subsection  
31 when the witness is dead, out of the State, not to be found within the State, insane or  
32 otherwise incompetent, physically unable to testify or refuses to testify.

33 If the testimony of one or both of the witnesses is not available the clerk or the  
34 assistant clerk, or a notary public or superior court may, upon proper proof, certify the  
35 declaration as follows:

36 **'CERTIFICATE'**

37 'I ....., Clerk (Assistant Clerk) of Court for the Superior Court or Notary Public  
38 (circle one as appropriate) of..... County hereby certify that based upon the evidence  
39 before me I am satisfied as to the genuineness and due execution of the attached  
40 declaration by ....., declarant, and that the declarant's signature was witnessed by.....,  
41 and ....., who at the time of the declaration met the qualifications of G.S. 90-  
42 321(c)(3).

43 'This the .... day of ....., .....

44 .....

1 Clerk (Assistant Clerk) of Superior Court  
2 or Notary Public (circle one as  
3 appropriate) for ..... County.'

4 (e) The above declaration may be revoked by the declarant, in any manner by which  
5 he is able to communicate his intent to revoke, without regard to his mental or physical  
6 condition. Such revocation shall become effective only upon communication to the  
7 attending physician by the declarant or by an individual acting on behalf of the  
8 declarant.

9 (f) The execution and consummation of declarations made in accordance with  
10 subsection (c) shall not constitute suicide for any purpose.

11 (g) No person shall be required to sign a declaration in accordance with  
12 subsection (c) as a condition for becoming insured under any insurance contract or for  
13 receiving any medical treatment.

14 (h) The withholding or discontinuance of extraordinary means in accordance  
15 with this section shall not be considered the cause of death for any civil or criminal  
16 purposes nor shall it be considered unprofessional conduct. Any person, institution or  
17 facility against whom criminal or civil liability is asserted because of conduct in  
18 compliance with this section may interpose this section as a defense.

19 (i) Any certificate in the form provided by this section prior to July 1, 1979, shall  
20 continue to be valid."

21 Sec. 4. G.S. 32A-9 reads as rewritten:

22 **"§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set**  
23 **out in G.S. 32A-1.**

24 The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the  
25 following powers on the attorney-in-fact named therein:

26 (1) Real Property Transactions. – To lease, purchase, exchange,  
27 and acquire, and to agree, bargain, and contract for the lease,  
28 purchase, exchange, and acquisition of, and to accept, take, receive,  
29 and possess any interest in real property whatsoever, on such terms  
30 and conditions, and under such covenants, as said attorney-in-fact  
31 shall deem proper; and to maintain, repair, improve, manage, insure,  
32 rent, lease, sell, convey, subject to liens, mortgage, subject to deeds  
33 of trust, and in any way or manner deal with all or any part of any  
34 interest in real property whatsoever, that the principal owns at the  
35 time of execution or may thereafter acquire, for under such terms  
36 and conditions, and under such covenants, as said attorney-in-fact  
37 shall deem proper.

38 (2) Personal Property Transactions. – To lease, purchase, exchange, and  
39 acquire, and to agree, bargain, and contract for the lease, purchase,  
40 exchange, and acquisition of, and to accept, take, receive, and possess  
41 any personal property whatsoever, tangible or intangible, or interest  
42 thereto, on such terms and conditions, and under such covenants, as  
43 said attorney-in-fact shall deem proper; and to maintain, repair,  
44 improve, manage, insure, rent, lease, sell, convey, subject to liens, and

1 mortgages, and hypothecate, and in any way or manner deal with all or  
2 any part of any personal property whatsoever, tangible or intangible, or  
3 any interest therein, that the principal owns at the time of execution or  
4 may thereafter acquire, under such terms and conditions, and under  
5 such covenants, as said attorney-in-fact shall deem proper.

6 (3) Bond, Share and Commodity Transactions. – To request,  
7 ask, demand, sue for, recover, collect, receive, and hold and possess  
8 any bond, share, instrument of similar character, commodity interest  
9 or any instrument with respect thereto together with the interest,  
10 dividends, proceeds, or other distributions connected therewith, as  
11 now are, or shall hereafter become, owned by, or due, owing  
12 payable, or belonging to, the principal at the time of execution or in  
13 which the principal may thereafter acquire interest, to have, use, and  
14 take all lawful means and equitable and legal remedies, procedures,  
15 and writs in the name of the principal for the collection and recovery  
16 thereof, and to adjust, sell, compromise, and agree for the same, and  
17 to make, execute, and deliver for the principal, all indorsements,  
18 acquittances, releases, receipts, or other sufficient discharges for the  
19 same.

20 (4) Banking Transaction. – To make, receive, sign, indorse,  
21 execute, acknowledge, deliver, and possess checks, drafts, bills of  
22 exchange, letters of credit, notes, stock certificates, withdrawal  
23 receipts and deposit instruments relating to accounts or deposits in,  
24 or certificates of deposit of, banks, savings and loan or other  
25 institutions or associations for the principal.

26 (5) Safe Deposits. – To have free access at any time or times to  
27 any safe deposit box or vault to which the principal might have  
28 access as lessee or owner.

29 (6) Business Operating Transactions. – To conduct, engage in,  
30 and transact any and all lawful business of whatever nature or kind  
31 for the principal.

32 (7) Insurance Transactions. – To exercise or perform any act,  
33 power, duty, right or obligation whatsoever in regard to any contract  
34 of life, accident, health, disability or liability insurance or any  
35 combination of such insurance procured by or on behalf of the  
36 principal prior to execution; and to procure new, different or  
37 additional contracts of insurance for the principal and to designate  
38 the beneficiary of any such contract of insurance, provided,  
39 however, that the agent himself cannot be such beneficiary unless  
40 the agent is spouse, child, grandchild, parent, brother or sister of the  
41 principal.

42 (8) Estate Transactions. – To request, ask, demand, sue for,  
43 recover, collect, receive, and hold and possess all legacies, bequests,  
44 devises, as are, owned by, or due, owing, payable, or belonging to,



1 the principal at the time of execution or in which the principal may  
2 thereafter acquire interest, to have, use, and take all lawful means  
3 and equitable and legal remedies, procedures, and writs in the name  
4 of the principal for the collection and recovery thereof, and to adjust,  
5 sell, compromise, and agree for the same, and to make, execute, and  
6 deliver for the principal, all indorsements, acquittances, releases,  
7 receipts, or other sufficient discharges for the same.

8 (9) Personal Relationships and Affairs. – To do all acts  
9 necessary for maintaining the customary standard of living of the  
10 principal, the spouse and children, and other dependents of the  
11 principal; to provide medical, dental and surgical care,  
12 hospitalization and custodial care for the principal, the spouse, and  
13 children, and other dependents of the principal; to continue whatever  
14 provision has been made by the principal, for the principal, the  
15 spouse, and children, and other dependents of the principal, with  
16 respect to automobiles, or other means of transportation; to continue  
17 whatever charge accounts have been operated by the principal, for  
18 the convenience of the principal, the spouse, and children, and other  
19 dependents of the principal, to open such new accounts as the  
20 attorney-in-fact shall think to be desirable for the accomplishment of  
21 any of the purposes enumerated in this section, and to pay the items  
22 charged on such accounts by any person authorized or permitted by  
23 the principal or the attorney-in-fact to make such charges; to  
24 continue the discharge of any services or duties assumed by the  
25 principal, to any parent, relative or friend of the principal; to  
26 continue payments incidental to the membership or affiliation of the  
27 principal in any church, club, society, order or other organization, or  
28 to continue contributions thereto. In the event the attorney-in-fact  
29 named pursuant to G.S. 32A-1 makes a decision regarding the  
30 hospitalization for the principal that is contradictory to a decision  
31 made by an agent designated in an Advance Directive executed  
32 pursuant to Article 23 of Chapter 90 of the General Statutes, the  
33 decision of the agent shall overrule the decision of the attorney-in-  
34 fact.

35 (10) Social Security and Unemployment. – To prepare, execute  
36 and file all social security, unemployment insurance and information  
37 returns required by the laws of the United States, or of any state or  
38 subdivision thereof, or of any foreign government.

39 (11) Benefits from Military Service. – To execute vouchers in the  
40 name of the principal for any and all allowances and reimbursements  
41 payable by the United States, or subdivision thereof, to the principal,  
42 arising from or based upon military service and to receive, to indorse  
43 and to collect the proceeds of any check payable to the order of the  
44 principal drawn on the treasurer or other fiscal officer or depository

1 of the United States or subdivision thereof; to take possession and to  
2 order the removal and shipment, of any property of the principal  
3 from any post, warehouse, depot, dock or other place of storage or  
4 safekeeping, either governmental or private, to execute and to  
5 deliver any release, voucher, receipt, bill of lading, shipping ticket,  
6 certificate or other instrument which the agent shall think to be  
7 desirable or necessary for such purpose; to prepare, to file and to  
8 prosecute the claim of the principal to any benefit or assistance,  
9 financial or otherwise, to which the principal is, or claims to be,  
10 entitled, under the provisions of any statute or regulation existing at  
11 the creation of the agency or thereafter enacted by the United States  
12 or by any state or by any subdivision thereof, or by any foreign  
13 government, which benefit or assistance arises from or is based upon  
14 military service performed prior to or after execution.

15 (12) Tax. – To prepare, execute, verify and file in the name of the  
16 principal and on behalf of the principal any and all types of tax  
17 returns, amended returns, declaration of estimated tax, report,  
18 protest, application for correction of assessed valuation of real or  
19 other property, appeal, brief, claim for refund, or petition, including  
20 petition to the Tax Court of the United States, in connection with any  
21 tax imposed or proposed to be imposed by any government, or  
22 claimed, levied or assessed by any government, and to pay any such  
23 tax and to obtain any extension of time for any of the foregoing; to  
24 execute waivers or consents agreeing to a later determination and  
25 assessment of taxes than is provided by any statute of limitations; to  
26 execute waivers of restriction on the assessment and collection of  
27 deficiency in any tax; to execute closing agreements and all other  
28 documents, instruments and papers relating to any tax liability of any  
29 sort; to institute and carry on through counsel any proceeding in  
30 connection with determining or contesting any such tax or to recover  
31 any tax paid or to resist any claim for additional tax on any proposed  
32 assessment or levy thereof; and to enter into any agreements or  
33 stipulations for compromise or other adjustments or disposition of  
34 any tax.

35 (13) Employment of Agents. – To employ agents such as legal  
36 counsel, accountants or other professional representation as may be  
37 appropriate and to grant such agents such powers of attorney or other  
38 appropriate authorization as may be required in connection with such  
39 representation or by the Internal Revenue Service or other  
40 governmental authority."

41 Sec. 5. This act becomes effective October 1, 1991, and applies to documents  
42 executed on and after that date.