

FIRST REGULAR SESSION

# HOUSE BILL NO. 905

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DAVIS (Sponsor), NIEVES, MOORE, BEARDEN, DEEKEN, RUPP, COOPER (155), SANDER, SMITH (14), CUNNINGHAM (86), AVERY, KELLY, LEMBKE, PHILLIPS, EMERY, RECTOR, WRIGHT (159), MCGHEE, JONES, ROBB, FRANZ, ICET, DENISON, FISHER, CHINN, NOLTE, SATER, DIXON, SCHAAF AND JACKSON (Co-sponsors).

Read 1<sup>st</sup> time March 31, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2139L.011

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### AN ACT

To repeal sections 404.710 and 404.820, RSMo, and to enact in lieu thereof four new sections relating to health care directives, with a penalty provision.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 404.710 and 404.820, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 404.300, 404.710, 404.820, and 475.124, to read as follows:

**404.300. 1. No person legally authorized to make health care decisions for a patient shall direct a health care provider to withhold or withdraw artificially supplied nutrition and hydration unless the patient has executed a written health care directive specifically granting such authority. This limitation shall not be construed to require that artificially supplied nutrition and hydration be continued when, in the medical judgment of the attending physician, the patient cannot tolerate it.**

**2. Notwithstanding any other provision of law to the contrary, no person legally authorized to make health care decisions for a patient may, with the intent of causing the death of the patient, authorize the withdrawal of nutrition or hydration which the patient may ingest through natural means.**

**3. Persons legally authorized to make health care decisions for a patient shall consider appropriate measures in accord with current standards of medical practice to**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 provide comfort to the patient.

14 **4. Before such person or a physician may authorize the withdrawal of nutrition or**  
15 **hydration which the patient may ingest through artificial means, the physician must:**

16 **(1) Attempt to explain to the patient the intention to withdraw nutrition and**  
17 **hydration and the consequences for the patient and to provide the opportunity for the**  
18 **patient to refuse the withdrawal of nutrition and hydration; or**

19 **(2) Insert in the patient's file a certification that the patient is comatose or**  
20 **consistently in a condition which makes it impossible for the patient to understand the**  
21 **intention to withdraw nutrition and hydration and the consequences to the patient.**

22 **5. Any person who violates the provisions of this section is guilty of a class D felony.**  
23 **If death or serious physical injury results from a violation of this section, the person may**  
24 **be held civilly and criminally liable for such death or serious physical injury.**

404.710. 1. A principal may delegate to an attorney in fact in a power of attorney general  
2 powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects  
3 and purposes or with respect to one or more express subjects or purposes. A power of attorney  
4 with general powers may be durable or not durable.

5 2. If the power of attorney states that general powers are granted to the attorney in fact  
6 and further states in substance that it grants power to the attorney in fact to act with respect to  
7 all lawful subjects and purposes or that it grants general powers for general purposes or does not  
8 by its terms limit the power to the specific subject or purposes set out in the instrument, then the  
9 authority of the attorney in fact acting under the power of attorney shall extend to and include  
10 each and every action or power which an adult who is nondisabled and nonincapacitated may  
11 carry out through an agent specifically authorized in the premises, with respect to any and all  
12 matters whatsoever, except as provided in subsections 6 and 7 of this section. When a power of  
13 attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and  
14 purposes, the enumeration of one or more specific subjects or purposes does not limit the general  
15 authority granted by that power of attorney, unless otherwise provided in the power of attorney.

16 3. If the power of attorney states that general powers are granted to an attorney in fact  
17 with respect to one or more express subjects or purposes for which general powers are conferred,  
18 then the authority of the attorney in fact acting under the power of attorney shall extend to and  
19 include each and every action or power, but only with respect to the specific subjects or purposes  
20 expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may  
21 carry out through an agent specifically authorized in the premises, with respect to any and all  
22 matters whatsoever, except as provided in subsections 6 and 7 of this section.

23 4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with  
24 general powers has, with respect to the subjects or purposes for which the powers are conferred,

25 all rights, power and authority to act for the principal that the principal would have with respect  
26 to his or her own person or property, including property owned jointly or by the entireties with  
27 another or others, as a nondisabled and nonincapacitated adult; and without limiting the  
28 foregoing has with respect to the subjects or purposes of the power complete discretion to make  
29 a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent  
30 for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment,  
31 contract, note, security instrument, consent, receipt, release, proof of claim, petition or other  
32 pleading, tax document, notice, application, acknowledgment or other document necessary or  
33 convenient to implement or confirm any act, transaction or decision. An attorney in fact with  
34 general powers, whether power to act with respect to all lawful subjects and purposes, or only  
35 with respect to one or more express subjects or purposes, shall have the power, unless  
36 specifically denied by the terms of the power of attorney, to make, execute and deliver to or for  
37 the benefit of or at the request of a third person, who is requested to rely upon an action of the  
38 attorney in fact, an agreement indemnifying and holding harmless any third person or persons  
39 from any liability, claims or expenses, including legal expenses, incurred by any such third  
40 person by reason of acting or refraining from acting pursuant to the request of the attorney in  
41 fact, and such indemnity agreement shall be binding upon the principal who has executed such  
42 power of attorney and upon the principal's successor or successors in interest. No such  
43 indemnity agreement shall protect any third person from any liability, claims or expenses  
44 incurred by reason of the fact that, and to the extent that, the third person has honored the power  
45 of attorney for actions outside the scope of authority granted by the power of attorney. In  
46 addition, the attorney in fact has complete discretion to employ and compensate real estate  
47 agents, brokers, attorneys, accountants and subagents of all types to represent and act for the  
48 principal in any and all matters, including tax matters involving the United States government  
49 or any other government or taxing entity, including, but not limited to, the execution of  
50 supplemental or additional powers of attorney in the name of the principal in form that may be  
51 required or preferred by any such taxing entity or other third person, and to deal with any or all  
52 third persons in the name of the principal without limitation. No such supplemental or additional  
53 power of attorney shall broaden the scope of authority granted to the attorney in fact in the  
54 original power of attorney executed by the principal.

55         5. An attorney in fact, who is granted general powers for all subjects and purposes or  
56 with respect to any express subjects or purposes, shall exercise the powers conferred according  
57 to the principal's instructions, in the principal's best interest, in good faith, prudently and in  
58 accordance with sections 404.712 and 404.714.

59         6. Any power of attorney, whether durable or not durable, and whether or not it grants  
60 general powers for all subjects and purposes or with respect to express subjects or purposes, shall

61 be construed to grant power or authority to an attorney in fact to carry out any of the actions  
62 described in this subsection if the actions are expressly enumerated and authorized in the power  
63 of attorney. Any power of attorney may grant power of authority to an attorney in fact to carry  
64 out any of the following actions if the actions are expressly authorized in the power of attorney:

- 65 (1) To execute, amend or revoke any trust agreement;
- 66 (2) To fund with the principal's assets any trust not created by the principal;
- 67 (3) To make or revoke a gift of the principal's property in trust or otherwise;
- 68 (4) To disclaim a gift or devise of property to or for the benefit of the principal;
- 69 (5) To create or change survivorship interests in the principal's property or in property  
70 in which the principal may have an interest; provided, however, that the inclusion of the  
71 authority set out in this paragraph shall not be necessary in order to grant to an attorney in fact  
72 acting under a power of attorney granting general powers with respect to all lawful subjects and  
73 purposes the authority to withdraw funds or other property from any account, contract or other  
74 similar arrangement held in the names of the principal and one or more other persons with any  
75 financial institution, brokerage company or other depository to the same extent that the principal  
76 would be authorized to do if the principal were present, not disabled or incapacitated, and  
77 seeking to act in the principal's own behalf;
- 78 (6) To designate or change the designation of beneficiaries to receive any property,  
79 benefit or contract right on the principal's death;
- 80 (7) To give or withhold consent to an autopsy or postmortem examination;
- 81 (8) To make a gift of, or decline to make a gift of, the principal's body parts under the  
82 Uniform Anatomical Gift Act;
- 83 (9) To nominate a guardian or conservator for the principal; and if so stated in the power  
84 of attorney, the attorney in fact may nominate himself as such;
- 85 (10) To give consent to or prohibit any type of health care, medical care, treatment or  
86 procedure to the extent authorized by sections 404.800 to 404.865; **except that, if the principal**  
87 **wishes to confer on an attorney in fact the authority to direct a health care provider to**  
88 **withhold or withdraw artificially supplied nutrition and hydration, the principal shall**  
89 **execute a written health care directive specifically granting such authority in the power of**  
90 **attorney and the attorney in fact shall not direct the withholding or withdrawal of**  
91 **artificially supplied nutrition and hydration absent such specific written health care**  
92 **directive;** or

93 (11) To designate one or more substitute or successor or additional attorneys in fact.

94 7. No power of attorney, whether durable or not durable, and whether or not it delegates  
95 general powers, may delegate or grant power or authority to an attorney in fact to do or carry out  
96 any of the following actions for the principal:

- 97 (1) To make, publish, declare, amend or revoke a will for the principal;  
98 (2) To make, execute, modify or revoke a living will declaration for the principal;  
99 (3) To require the principal, against his or her will, to take any action or to refrain from  
100 taking any action; or  
101 (4) To carry out any actions specifically forbidden by the principal while not under any  
102 disability or incapacity.

103 8. A third person may freely rely on, contract and deal with an attorney in fact delegated  
104 general powers with respect to the subjects and purposes encompassed or expressed in the power  
105 of attorney without regard to whether the power of attorney expressly identifies the specific  
106 property, account, security, storage facility or matter as being within the scope of a subject or  
107 purpose contained in the power of attorney, and without regard to whether the power of attorney  
108 expressly authorizes the specific act, transaction or decision by the attorney in fact.

109 9. It is the policy of this state that an attorney in fact acting pursuant to the provisions  
110 of a power of attorney granting general powers shall be accorded the same rights and privileges  
111 with respect to the personal welfare, property and business interests of the principal, and if the  
112 power of attorney enumerates some express subjects or purposes, with respect to those subjects  
113 or purposes, as if the principal himself or herself were personally present and acting or seeking  
114 to act; and any provision of law and any purported waiver, consent or agreement executed or  
115 granted by the principal to the contrary shall be void and unenforceable.

116 10. Sections 404.700 to 404.735 shall not be construed to preclude any person or  
117 business enterprise from providing in a contract with the principal as to the procedure that  
118 thereafter must be followed by the principal or the principal's attorney in fact in order to give a  
119 valid notice to the person or business enterprise of any modification or termination of the  
120 appointment of an attorney in fact by the principal; and any such contractual provision for notice  
121 shall be valid and binding on the principal and the principal's successors so long as such  
122 provision is reasonably capable of being carried out.

404.820. 1. If a patient wishes to confer on an attorney in fact the authority to direct a  
2 health care provider to withhold or withdraw artificially supplied nutrition and hydration, the  
3 patient shall specifically grant **in writing** such authority in the power of attorney **and the**  
4 **attorney in fact shall not direct the withholding or withdrawal of artificially supplied**  
5 **nutrition and hydration absent a specific written authorization or directive.** This limitation  
6 shall not be construed to require that artificially supplied nutrition and hydration be continued  
7 when, in the medical judgment of the attending physician, the patient cannot tolerate it.

8 2. Notwithstanding any other provision of sections 404.800 to 404.865 to the contrary,  
9 no attorney in fact may, with the intent of causing the death of the patient, authorize the  
10 withdrawal of nutrition or hydration which the patient may ingest through natural means.

11           3. Attorneys in fact shall consider appropriate measures in accord with current standards  
12 of medical practice to provide comfort to the patient.

13           4. Before an attorney in fact or physician may authorize the withdrawal of nutrition or  
14 hydration which the patient may ingest through artificial means, the physician must:

15           (1) Attempt to explain to the patient the intention to withdraw nutrition and hydration  
16 and the consequences for the patient and to provide the opportunity for the patient to refuse the  
17 withdrawal of nutrition and hydration; or

18           (2) Insert in the patient's file a certification that the patient is comatose or consistently  
19 in a condition which makes it impossible for the patient to understand the intention to withdraw  
20 nutrition and hydration and the consequences to the patient.

**475.124. 1. No guardian shall have the authority to direct a health care provider  
2 to withhold or withdraw artificially supplied nutrition and hydration from a patient who  
3 is a ward of the guardian unless the patient has executed a written health care directive  
4 specifically authorizing the withholding or withdrawal of nutrition and hydration. This  
5 limitation shall not be construed to require that artificially supplied nutrition and  
6 hydration be continued when, in the medical judgment of the attending physician, the  
7 patient cannot tolerate it.**

8           2. Notwithstanding any other provision of sections 475.010 to 475.340 to the  
9 contrary, no guardian may, with the intent of causing the death of the patient, authorize  
10 the withdrawal of nutrition or hydration which the patient may ingest through natural  
11 means.

12           3. Guardians shall consider appropriate measures in accord with current standards  
13 of medical practice to provide comfort to the patient.

14           4. Before a guardian or physician may authorize the withdrawal of nutrition or  
15 hydration which the patient may ingest through artificial means, the physician must:

16           (1) Attempt to explain to the patient the intention to withdraw nutrition and  
17 hydration and the consequences for the patient and to provide the opportunity for the  
18 patient to refuse the withdrawal of nutrition and hydration; or

19           (2) Insert in the patient's file a certification that the patient is comatose or  
20 consistently in a condition which makes it impossible for the patient to understand the  
21 intention to withdraw nutrition and hydration and the consequences to the patient.