

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

# HOUSE BILL 2616

AN ACT

AMENDING SECTIONS 14-5303, 36-3203, 36-3205 AND 36-3206, ARIZONA REVISED STATUTES; RELATING TO LIVING WILLS AND HEALTH CARE DIRECTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-5303, Arizona Revised Statutes, is amended to  
3 read:

4 14-5303. Procedure for court appointment of a guardian of an  
5 alleged incapacitated person

6 A. The alleged incapacitated person or any person interested in that  
7 person's affairs or welfare may petition for the appointment of a guardian or  
8 for any other appropriate protective order.

9 B. The petition shall **CONTAIN A STATEMENT THAT THE AUTHORITY GRANTED**  
10 **TO THE GUARDIAN MAY INCLUDE THE AUTHORITY TO WITHHOLD OR WITHDRAW LIFE**  
11 **SUSTAINING TREATMENT, INCLUDING ARTIFICIAL FOOD AND FLUID, AND SHALL** state,  
12 to the extent known:

13 1. The interest of the petitioner.

14 2. The name, age, residence and address of the alleged incapacitated  
15 person.

16 3. The name, address and priority for appointment of the person whose  
17 appointment is sought.

18 4. The name and address of the conservator, if any, of the alleged  
19 incapacitated person.

20 5. The name and address of the nearest relative of the alleged  
21 incapacitated person known to the petitioner.

22 6. A general statement of the property of the alleged incapacitated  
23 person, with an estimate of its value and including any compensation,  
24 insurance, pension or allowance to which the person is entitled.

25 7. The reason why appointment of a guardian or any other protective  
26 order is necessary.

27 8. The type of guardianship requested. If a general guardianship is  
28 requested, the petition must state that other alternatives have been explored  
29 and why a limited guardianship is not appropriate. If a limited guardianship  
30 is requested, the petition also must state what specific powers are  
31 requested.

32 C. On the filing of a petition, the court shall set a hearing date on  
33 the issues of incapacity. Unless the alleged incapacitated person is  
34 represented by independent counsel, the court shall appoint an attorney to  
35 represent that person in the proceeding. The alleged incapacitated person  
36 shall be interviewed by an investigator appointed by the court and shall be  
37 examined by a physician, psychologist or registered nurse appointed by the  
38 court. The investigator and the person conducting the examination shall  
39 submit their reports in writing to the court. In addition to information  
40 required under subsection D ~~of this section~~, the court may direct that either  
41 report include other information the court deems appropriate. The  
42 investigator also shall interview the person seeking appointment as guardian,  
43 visit the present place of abode of the alleged incapacitated person and the  
44 place where it is proposed that the person will be detained or reside if the  
45 requested appointment is made and submit a report in writing to the

1 court. The alleged incapacitated person is entitled to be present at the  
2 hearing and to see or hear all evidence bearing on that person's  
3 condition. The alleged incapacitated person is entitled to be represented by  
4 counsel, to present evidence, to cross-examine witnesses, including the  
5 court-appointed examiner and investigator, and to trial by jury. The court  
6 may determine the issue at a closed hearing if the alleged incapacitated  
7 person or that person's counsel so requests.

8 D. A report filed pursuant to this section by a physician,  
9 psychologist or registered nurse acting within that person's scope of  
10 practice shall include the following information:

11 1. A specific description of the physical, psychiatric or  
12 psychological diagnosis of the person.

13 2. A comprehensive assessment listing any functional impairments of  
14 the alleged incapacitated person and an explanation of how and to what extent  
15 these functional impairments may prevent that person from receiving or  
16 evaluating information in making decisions or in communicating informed  
17 decisions regarding that person.

18 3. An analysis of the tasks of daily living the alleged incapacitated  
19 person is capable of performing without direction or with minimal direction.

20 4. A list of all medications the alleged incapacitated person is  
21 receiving, the dosage of the medications and a description of the effects  
22 each medication has on the person's behavior to the best of the declarant's  
23 knowledge.

24 5. A prognosis for improvement in the alleged incapacitated person's  
25 condition and a recommendation for the most appropriate rehabilitation plan  
26 or care plan.

27 6. Other information the physician, psychologist or registered nurse  
28 deems appropriate.

29 Sec. 2. Section 36-3203, Arizona Revised Statutes, is amended to read:  
30 36-3203. Surrogate; authority; responsibilities; immunity

31 A. A person authorized as a surrogate to make health care decisions  
32 under this chapter is not responsible for paying the patient's health care  
33 costs unless the person is otherwise required to do so.

34 B. This chapter does not authorize a surrogate to consent to any act  
35 or omission to which the patient could not lawfully consent.

36 C. The surrogate shall make health care decisions for the patient in  
37 accordance with the patient's wishes as expressed in the health care  
38 directive. If the health care directive does not provide sufficient  
39 information to know what the patient would want in a particular circumstance,  
40 the surrogate shall base these decisions on the surrogate's knowledge of the  
41 patient's values if those are known or can be determined to the surrogate's  
42 satisfaction. If neither the health care directive nor the surrogate's  
43 knowledge of the patient's values provides a sufficient basis for making a  
44 health care decision, the surrogate shall decide based on the surrogate's  
45 good faith belief as to what is in the patient's best interest.

1 D. A surrogate who makes good faith health care decisions for a  
2 patient is not subject to civil or criminal liability for those decisions.  
3 Acts and refusals to act made in reliance on the provisions of a health care  
4 directive are presumed to be made in good faith. A court shall base a  
5 finding of an absence of good faith on information known to the surrogate and  
6 shall enter its finding only after it has made a determination of bad faith  
7 in written findings of fact based on clear and convincing evidence of  
8 improper motive. For the purposes of this subsection, "good faith" includes  
9 all health care decisions, acts and refusals to act based on a surrogate's  
10 reasonable belief of a patient's desires or a patient's best interest if  
11 these decisions, acts or refusals to act are not contrary to the patient's  
12 express written directions in a valid health care directive.

13 E. A surrogate who is not the patient's agent or guardian shall not  
14 ~~make decisions to withdraw~~ CONSENT TO OR APPROVE THE PERMANENT WITHDRAWAL OF  
15 the artificial administration of food or fluid.

16 Sec. 3. Section 36-3205, Arizona Revised Statutes, is amended to read:  
17 36-3205. Health care providers; immunity from liability;  
18 conditions

19 A. A health care provider who makes good faith health care decisions  
20 in reliance on the provisions of an apparently genuine health care directive  
21 or the direction of a surrogate is immune from criminal and civil liability  
22 and is not subject to professional discipline for that reliance.

23 B. Health care provider acts and refusals to act made in reliance on  
24 the provisions of a health care directive or directions of a surrogate are  
25 presumed to be made in good faith. A court shall base a finding of an  
26 absence of good faith on information known to the provider and shall enter  
27 its finding only after it has made a determination of bad faith in written  
28 findings of fact based on clear and convincing evidence of improper motive.  
29 For the purposes of this subsection, "good faith" includes all health care  
30 decisions, acts and refusals to act based on a health care provider's  
31 reasonable belief of a patient's desires, a patient's best interest or the  
32 directives of a patient's surrogate if these decisions, acts or refusals to  
33 act are not contrary to the patient's express written directions in a valid  
34 health care directive.

35 C. A health care provider is not subject to criminal or civil  
36 liability or professional discipline for any of the following:

37 1. Failing to comply with a decision or a direction that violates the  
38 provider's conscience if the provider promptly makes known the provider's  
39 unwillingness and promptly transfers the responsibility for the patient's  
40 care to another provider who is willing to act in accordance with the agent's  
41 direction.

42 2. Failing to consult a disabled or incapacitated patient's surrogate  
43 if the surrogate cannot be contacted after the health care provider has made  
44 a reasonable effort to do so or if an emergency situation does not provide

1 the health care provider with sufficient time to locate and consult with the  
2 surrogate.

3 3. Relying on a court order concerning a patient.

4 4. A GUARDIAN'S FAILURE TO COMPLY WITH SECTION 14-5303, SUBSECTION B  
5 RELATING TO THE REQUIREMENT THAT THE PETITION INCLUDE A STATEMENT THAT THE  
6 AUTHORITY GRANTED TO THE GUARDIAN MAY INCLUDE THE AUTHORITY TO WITHHOLD OR  
7 WITHDRAW LIFE SUSTAINING TREATMENT, INCLUDING ARTIFICIAL FOOD AND FLUID.

8 D. This section does not relieve a health care provider from civil or  
9 criminal liability or prevent a provider from being subjected to professional  
10 disciplinary action for the provider's negligent treatment of a patient if  
11 the negligence is unrelated to the provider's reliance on a health care  
12 directive, directions from a surrogate or the recommendations of an  
13 institutional ethics committee pursuant to section 36-3231.

14 Sec. 4. Section 36-3206, Arizona Revised Statutes, is amended to read:  
15 36-3206. Enforcement or challenge of a directive or decision;  
16 judicial proceedings; automatic stays

17 A. An interested person may file a verified petition with the superior  
18 court to determine the validity or effect of a health care directive or the  
19 decision of a surrogate.

20 B. The petition shall include the following information:

21 1. The name and current location of the patient and any surrogate OR  
22 GUARDIAN authorized to make decisions for the patient.

23 2. The name and address of any health care provider known by the  
24 petitioner to be providing health care to the principal.

25 3. IF A HEALTH CARE DIRECTIVE EXISTS, a description or a copy of the  
26 health care directive.

27 4. The judicial relief sought by the petitioner.

28 C. On the filing of the petition, the court shall enter a temporary  
29 order directing compliance with section 36-3203, subsection E. Notice of  
30 this order shall be provided by personal service on the surrogate, the  
31 patient, the health care providers immediately responsible for the patient's  
32 care and other persons the court requires to be notified.

33 D. The court shall review the petition, any other pleadings on file  
34 and any evidence offered by the petitioner to determine if it should order  
35 temporary orders without a further hearing. The court may enter a temporary  
36 order directing the provision or the withholding of specific medical  
37 treatment pending a further hearing if the court determines that there is  
38 reasonable cause to believe that health care decisions are being made by a  
39 surrogate or a health care provider that derogate the patient's wishes or, if  
40 the patient's wishes are not known, the patient's best interests.

41 E. The court shall schedule and conduct a hearing within five working  
42 days of the filing of a petition. Notice shall be provided by personal  
43 service on the surrogate, the patient, the health care providers immediately  
44 responsible for the patient's care, and other persons the court requires to  
45 be notified.

1 F. On the filing of the petition the court may:  
2 1. Appoint an attorney for the patient if it appears that this is in  
3 the patient's best interests.  
4 2. Appoint an investigator as provided under section 14-5308 or a  
5 physician, or both, to evaluate the patient and submit a written report to  
6 the court before the hearing.  
7 3. Enter other temporary orders that the court determines are  
8 necessary and appropriate to protect the wishes or the best interests of the  
9 patient, including an order exercising the power of a guardian or appointing  
10 a temporary guardian as provided under section 14-5310.  
11 G. A person filing a petition under this section is not required to  
12 post a bond unless the court determines that a bond is necessary to protect  
13 the interests of any party.  
14 H. IF A PETITION IS FILED TO CHALLENGE THE DECISION OF A GUARDIAN TO  
15 PERMANENTLY WITHDRAW THE ARTIFICIAL ADMINISTRATION OF FOOD AND FLUID FROM A  
16 PATIENT WHO IS IN AN IRREVERSIBLE COMA OR IS IN A PERSISTENT VEGETATIVE STATE  
17 THAT THE PATIENT'S DOCTOR BELIEVES IS IRREVERSIBLE OR INCURABLE, THERE IS A  
18 REBUTTABLE PRESUMPTION THAT A PATIENT WHO DOES NOT HAVE A VALID LIVING WILL,  
19 POWER OF ATTORNEY OR OTHER HEALTH CARE DIRECTIVE HAS DIRECTED THE PATIENT'S  
20 HEALTH CARE PROVIDERS TO PROVIDE THE PATIENT WITH FOOD AND FLUID TO A DEGREE  
21 THAT IS SUFFICIENT TO SUSTAIN LIFE, INCLUDING, IF NECESSARY, THROUGH A  
22 MEDICALLY INVASIVE PROCEDURE, BY WAY OF THE GASTROINTESTINAL TRACT OR  
23 INTRAVENOUSLY, AND THAT THAT PROVISION IS IN THE PATIENT'S BEST INTERESTS.  
24 I. THE PRESUMPTION PURSUANT TO SUBSECTION H OF THIS SECTION MAY BE  
25 REBUTTED ONLY IF EITHER OF THE FOLLOWING APPLIES:  
26 1. IN REASONABLE MEDICAL JUDGMENT ANY OF THE FOLLOWING APPLIES:  
27 (a) THE PROVISION OF FOOD OR FLUID IS NOT MEDICALLY POSSIBLE.  
28 (b) THE PROVISION OF FOOD OR FLUID WOULD HASTEN DEATH.  
29 (c) BECAUSE OF THE MEDICAL CONDITION OF THE PATIENT, THE PATIENT WOULD  
30 BE INCAPABLE OF DIGESTING OR ABSORBING THE FOOD OR FLUID SO THAT ITS  
31 PROVISION WOULD NOT CONTRIBUTE TO SUSTAINING THE PATIENT'S LIFE OR PROVIDE  
32 PHYSICAL COMFORT TO THE PATIENT.  
33 2. THE COURT FINDS BOTH OF THE FOLLOWING BY CLEAR AND CONVINCING  
34 EVIDENCE:  
35 (a) THE PATIENT IS IN AN IRREVERSIBLE COMA OR IS IN A PERSISTENT  
36 VEGETATIVE STATE THAT IS IRREVERSIBLE OR INCURABLE. EVIDENCE THAT THE  
37 PATIENT IS IN AN IRREVERSIBLE COMA OR IS IN A PERSISTENT VEGETATIVE STATE  
38 THAT IS IRREVERSIBLE OR INCURABLE MUST BE SUPPORTED BY EITHER OF THE  
39 FOLLOWING:  
40 (i) THE OPINION OF AN INDEPENDENT PHYSICIAN WHO IS LICENSED PURSUANT  
41 TO TITLE 32, CHAPTER 13 OR 17 AND WHO IS A SPECIALIST IN NEUROLOGY. THE  
42 PETITIONER, THE PATIENT OR THE PATIENT'S ATTORNEY MAY PRESENT ADDITIONAL  
43 EVIDENCE OF THE PATIENT'S MEDICAL CONDITION THAT IS SUPPORTED BY THE OPINION  
44 OF A PHYSICIAN SELECTED BY THAT PARTY.

1 (ii) IF A SPECIALIST IN NEUROLOGY IS NOT AVAILABLE, THE OPINION OF AN  
2 INDEPENDENT PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17  
3 AND WHO HAS EXAMINED THE PATIENT SPECIFICALLY TO ASSESS WHETHER THE PATIENT  
4 IS IN AN IRREVERSIBLE COMA OR A PERSISTENT VEGETATIVE STATE THAT IS  
5 IRREVERSIBLE OR INCURABLE SUPPORTED BY A RECOMMENDATION OF THE INSTITUTIONAL  
6 BIOETHICS COMMITTEE OF THE HEALTH CARE FACILITY.

7 (b) WHILE COMPETENT THE PATIENT MANIFESTED THE PATIENT'S INTENT THAT  
8 MEDICALLY INVASIVE LIFE PROLONGING TREATMENT, INCLUDING THE ARTIFICIAL  
9 ADMINISTRATION OF FOOD OR FLUID, NOT BE ADMINISTERED IN THE CASE OF AN  
10 IRREVERSIBLE COMA OR A PERSISTENT VEGETATIVE STATE THAT IS IRREVERSIBLE OR  
11 INCURABLE.

12 ~~H.~~ J. On notice and a hearing, the court may enter appropriate orders  
13 to safeguard the wishes of the patient. If the court is unable to determine  
14 those wishes, the court may enter appropriate orders to safeguard the  
15 patient's best interest. These orders may include:

16 1. Appointing a surrogate if the procedural requirements of title 14,  
17 chapter 5, article 3 have been met.

18 2. Removing an agent or any other surrogate and appointing a  
19 successor.

20 3. Directing compliance with the terms of the patient's health care  
21 directive, including the provisional removal or withholding of treatment if  
22 the court finds that this conforms with the patient's wishes or, if the  
23 patient's wishes are not known, is in the patient's best interest.

24 4. Directing the transfer of the patient to a suitable facility or to  
25 the care of a health care provider who is willing to comply with the  
26 patient's wishes.

27 5. Assessing court costs and attorney fees against a party found to  
28 have proceeded in bad faith.

29 ~~I.~~ K. Notwithstanding a person's incapacity, the court may deny a  
30 petition to appoint a guardian for that person based on the existence of a  
31 valid and unrevoked health care directive.

32 ~~J.~~ L. A guardian appointed pursuant to this section is immune from  
33 civil and criminal liability to the same extent as any other surrogate  
34 pursuant to section 36-3203, subsection D.

35 M. A SUPERIOR COURT ORDER THAT AUTHORIZES A GUARDIAN TO PERMANENTLY  
36 WITHDRAW FOOD OR FLUID FROM A PATIENT WHO IS IN AN IRREVERSIBLE COMA OR IN A  
37 PERSISTENT VEGETATIVE STATE THAT IS IRREVERSIBLE OR INCURABLE IS  
38 AUTOMATICALLY STAYED FOR FIVE BUSINESS DAYS TO ALLOW A PARTY, OR THAT PARTY'S  
39 SUCCESSOR IN INTEREST IN THE EVENT OF THE ORIGINAL PARTY'S DEATH, TO SEEK AN  
40 EXPEDITED APPEAL WITH THE COURT OF APPEALS. A DECISION FROM THE COURT OF  
41 APPEALS IS AUTOMATICALLY STAYED FOR FIVE BUSINESS DAYS TO ALLOW A PARTY, OR  
42 THAT PARTY'S SUCCESSOR IN INTEREST IN THE EVENT OF THE ORIGINAL PARTY'S  
43 DEATH, TO SEEK REVIEW BY THE SUPREME COURT. FOOD OR FLUID SHALL NOT BE  
44 PERMANENTLY WITHDRAWN PENDING A DECISION ON THE MERITS OF THE CASE BY THE  
45 COURT OF APPEALS OR A DECISION ON A PETITION BY THE SUPREME COURT.