

House Bill 1064

By: Representatives Tumlin of the 38<sup>th</sup>, Lindsey of the 54<sup>th</sup>, and Lane of the 167<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to  
2 revise the statutory living will form; to provide for automatic revocation of a health care  
3 agency by the execution of a subsequent agency; to revise the statutory health care power of  
4 attorney form; to provide for related matters; to repeal conflicting laws; and for other  
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by striking  
9 subsection (b) of Code Section 31-32-3, relating to execution of living wills, witnesses, and  
10 forms; and inserting in its place the following:

11 "(b) The declaration shall be a document, separate and self-contained. Any declaration  
12 which constitutes an expression of the declarant's intent shall be honored, regardless of the  
13 form used or when executed. Declarations executed on or after March 28, 1986, shall be  
14 valid indefinitely unless revoked. A declaration similar to the following form or in  
15 substantially the form specified under prior law shall be presumed on its face to be valid  
16 and effective:

17 **'LIVING WILL**

18 Living will made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).

19 I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make  
20 known my desire that my life shall not be prolonged under the circumstances set forth  
21 below and do declare:

22 1. If at any time I should (~~check each option desired~~ my initials indicate each option  
23 desired):

24 (A-) Have ~~have~~ a terminal condition;

\_\_\_\_\_ (Initial)

(B-) Become ~~become~~ in a coma with no reasonable expectation of regaining consciousness;

\_\_\_\_\_ (Initial)

or

(C-) Become ~~become~~ in a persistent vegetative state with no reasonable expectation of regaining significant cognitive function,

\_\_\_\_\_ (Initial)

as defined in and established in accordance with the procedures set forth in paragraphs (2), (9), and (13) of Code Section 31-32-2 of the Official Code of Georgia Annotated, I direct that the application of life-sustaining procedures to my body (~~check the my~~ initials indicate the option desired):

(A-) Including ~~including~~ nourishment and hydration; **(I will receive no nourishment or fluids)**

\_\_\_\_\_ (Initial)

(B-) Including ~~including~~ nourishment but not hydration **(I will receive fluids, but not nourishment)**; or

\_\_\_\_\_ (Initial)

(C-) Including hydration but not nourishment **(I will receive nourishment, but not fluids)**

\_\_\_\_\_ (Initial)

or

(D-) Excluding ~~excluding~~ nourishment and hydration **(I will receive nourishment and fluids)**;

\_\_\_\_\_ (Initial)

be withheld or withdrawn and that I be permitted to die;

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this living will shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal;

3. I understand that I may revoke this living will at any time;

4. I understand the full import of this living will, and I am at least 18 years of age and am emotionally and mentally competent to make this living will; and

5. If I am a female and I have been diagnosed as pregnant, this living will shall have no force and effect unless the fetus is not viable and I indicate by initialing after this sentence that I want this living will to be carried out. \_\_\_\_\_(Initial)

Signed \_\_\_\_\_

\_\_\_\_\_(City), \_\_\_\_\_(County), and \_\_\_\_\_(State of Residence).

I hereby witness this living will and attest that:

(1) The declarant is personally known to me and I believe the declarant to be at least 18 years of age and of sound mind;

(2) I am at least 18 years of age;

(3) To the best of my knowledge, at the time of the execution of this living will, I:

(A) Am not related to the declarant by blood or marriage;

(B) Would not be entitled to any portion of the declarant’s estate by any will or by operation of law under the rules of descent and distribution of this state;

(C) Am not the attending physician of declarant or an employee of the attending physician or an employee of the hospital or skilled nursing facility in which declarant is a patient;

(D) Am not directly financially responsible for the declarant’s medical care; and

(E) Have no present claim against any portion of the estate of the declarant;

(4) Declarant has signed this document in my presence as above instructed, on the date above first shown.

Witness \_\_\_\_\_

Address \_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_

Additional witness required when living will is signed in a hospital or skilled nursing facility.

I hereby witness this living will and attest that I believe the declarant to be of sound mind and to have made this living will willingly and voluntarily.

Witness: \_\_\_\_\_

Medical director of skilled nursing facility or staff physician not participating in care of the patient or chief of the hospital medical staff or staff physician or hospital designee not participating

1 in care of the patient."

2 **SECTION 2.**

3 Said title is further amended by striking subsection (a) of Code Section 31-36-6, relating to  
4 revocation or amendment of agency, and inserting in its place the following:

5 "(a) Every health care agency may be revoked by the principal at any time, without regard  
6 to the principal's mental or physical condition, by any of the following methods:

7 (1) By being obliterated, burned, torn, or otherwise destroyed or defaced in a manner  
8 indicating an intention to revoke;

9 (2) By a written revocation of the agency signed and dated by the principal or by a  
10 person acting at the direction of the principal; ~~or~~

11 (3) By the execution of a subsequent health care agency, unless such subsequent agency  
12 explicitly states that the previous health care agency is not revoked; or

13 ~~(3)~~(4) By an oral or any other expression of the intent to revoke the agency in the  
14 presence of a witness 18 years of age or older who, within 30 days of the expression of  
15 such intent, signs and dates a writing confirming that such expression of intent was  
16 made."

17 **SECTION 3.**

18 Said title is further amended by striking subsection (a) of Code Section 31-36-10, relating  
19 to form of power of attorney for health care and authorized powers, and inserting in its place  
20 the following:

21 "(a) The statutory health care power of attorney form contained in this subsection may be  
22 used to grant an agent powers with respect to the principal's own health care; but the  
23 statutory health care power is not intended to be exclusive or to cover delegation of a  
24 parent's power to control the health care of a minor child, and no provision of this chapter  
25 shall be construed to bar use by the principal of any other or different form of power of  
26 attorney for health care that complies with Code Section 31-36-5. If a different form of  
27 power of attorney for health care is used, it may contain any or all of the provisions set  
28 forth or referred to in the following form. When a power of attorney in substantially the  
29 following form is used, and notice substantially similar to that contained in the form below  
30 has been provided to the patient, it shall have the same meaning and effect as prescribed  
31 in this chapter. Substantially similar forms may include forms from other states. The  
32 statutory health care power may be included in or combined with any other form of power  
33 of attorney governing property or other matters:

## 1 'GEORGIA STATUTORY SHORT FORM

## 2 DURABLE POWER OF ATTORNEY FOR HEALTH CARE

3 NOTICE: THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE  
 4 PERSON YOU DESIGNATE (YOUR AGENT) BROAD POWERS TO MAKE  
 5 HEALTH CARE DECISIONS FOR YOU, INCLUDING POWER TO REQUIRE,  
 6 CONSENT TO, OR WITHDRAW ANY TYPE OF PERSONAL CARE OR MEDICAL  
 7 TREATMENT FOR ANY PHYSICAL OR MENTAL CONDITION AND TO ADMIT  
 8 YOU TO OR DISCHARGE YOU FROM ANY HOSPITAL, HOME, OR OTHER  
 9 INSTITUTION; BUT NOT INCLUDING PSYCHOSURGERY, STERILIZATION, OR  
 10 INVOLUNTARY HOSPITALIZATION OR TREATMENT COVERED BY TITLE 37  
 11 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED. THIS FORM DOES NOT  
 12 IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS; BUT,  
 13 WHEN A POWER IS EXERCISED, YOUR AGENT WILL HAVE TO USE DUE  
 14 CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS FORM.  
 15 A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS THE  
 16 AGENT IS NOT ACTING PROPERLY. YOU MAY NAME COAGENTS AND  
 17 SUCCESSOR AGENTS UNDER THIS FORM, BUT YOU MAY NOT NAME A  
 18 HEALTH CARE PROVIDER WHO MAY BE DIRECTLY OR INDIRECTLY  
 19 INVOLVED IN RENDERING HEALTH CARE TO YOU UNDER THIS POWER.  
 20 UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THIS POWER IN THE  
 21 MANNER PROVIDED BELOW OR UNTIL YOU REVOKE THIS POWER OR A  
 22 COURT ACTING ON YOUR BEHALF TERMINATES IT, YOUR AGENT MAY  
 23 EXERCISE THE POWERS GIVEN IN THIS POWER THROUGHOUT YOUR  
 24 LIFETIME, EVEN AFTER YOU BECOME DISABLED, INCAPACITATED, OR  
 25 INCOMPETENT. THE POWERS YOU GIVE YOUR AGENT, YOUR RIGHT TO  
 26 REVOKE THOSE POWERS, AND THE PENALTIES FOR VIOLATING THE LAW  
 27 ARE EXPLAINED MORE FULLY IN CODE SECTIONS 31-36-6, 31-36-9, AND  
 28 31-36-10 OF THE GEORGIA "DURABLE POWER OF ATTORNEY FOR HEALTH  
 29 CARE ACT" OF WHICH THIS FORM IS A PART (SEE THE BACK OF THIS  
 30 FORM). THAT ACT EXPRESSLY PERMITS THE USE OF ANY DIFFERENT  
 31 FORM OF POWER OF ATTORNEY YOU MAY DESIRE. IF THERE IS ANYTHING  
 32 ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK  
 33 A LAWYER TO EXPLAIN IT TO YOU.

34 DURABLE POWER OF ATTORNEY made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

35 1. I, \_\_\_\_\_

36 \_\_\_\_\_  
 (insert name and address of principal)

1 hereby appoint \_\_\_\_\_ (insert name and address of agent)  
 2 as my attorney in fact (my agent) to act for me and in my name in any way I could act in  
 3 person to make any and all decisions for me concerning my personal care, medical  
 4 treatment, hospitalization, and health care and to require, withhold, or withdraw any type  
 5 of medical treatment or procedure, even though my death may ensue. My agent shall  
 6 have the same access to my medical records that I have, including the right to disclose  
 7 the contents to others. This shall include the authority to serve as my personal  
 8 representative for all purposes of the federal Health Insurance Portability and  
 9 Accountability Act of 1996 ("HIPAA"), P.L. 104-191, and its implementing regulations,  
 10 during any time that my agent is exercising authority under this document. This authority  
 11 shall include, but not be limited to, all rights that I have under HIPAA regarding the use  
 12 and disclosure of my individually identifiable health information and other medical  
 13 records. My agent shall also have full power to make a disposition of any part or all of  
 14 my body for medical purposes, authorize an autopsy of my body, and direct the  
 15 disposition of my remains.

16 THE ABOVE GRANT OF POWER IS INTENDED TO BE AS BROAD AS POSSIBLE  
 17 SO THAT YOUR AGENT WILL HAVE AUTHORITY TO MAKE ANY DECISION  
 18 YOU COULD MAKE TO OBTAIN OR TERMINATE ANY TYPE OF HEALTH  
 19 CARE, INCLUDING WITHDRAWAL OF NOURISHMENT AND FLUIDS AND  
 20 OTHER LIFE-SUSTAINING OR DEATH-DELAYING MEASURES, IF YOUR  
 21 AGENT BELIEVES SUCH ACTION WOULD BE CONSISTENT WITH YOUR  
 22 INTENT AND DESIRES. IF YOU WISH TO LIMIT THE SCOPE OF YOUR  
 23 AGENT'S POWERS OR PRESCRIBE SPECIAL RULES TO LIMIT THE POWER TO  
 24 MAKE AN ANATOMICAL GIFT, AUTHORIZE AUTOPSY, OR DISPOSE OF  
 25 REMAINS, YOU MAY DO SO IN THE FOLLOWING PARAGRAPHS.

26 2. The powers granted above shall not include the following powers or shall be subject  
 27 to the following rules or limitations (here you may include any specific limitations you  
 28 deem appropriate, such as your own definition of when life-sustaining or death-delaying  
 29 measures should be withheld; a direction to continue nourishment and fluids or other  
 30 life-sustaining or death-delaying treatment in all events; or instructions to refuse any  
 31 specific types of treatment that are inconsistent with your religious beliefs or  
 32 unacceptable to you for any other reason, such as blood transfusion, electroconvulsive  
 33 therapy, or amputation):

34 \_\_\_\_\_  
 35 \_\_\_\_\_  
 36 \_\_\_\_\_

1 THE SUBJECT OF LIFE-SUSTAINING OR DEATH-DELAYING TREATMENT IS  
 2 OF PARTICULAR IMPORTANCE. FOR YOUR CONVENIENCE IN DEALING  
 3 WITH THAT SUBJECT, SOME GENERAL STATEMENTS CONCERNING THE  
 4 WITHHOLDING OR REMOVAL OF LIFE-SUSTAINING OR DEATH-DELAYING  
 5 TREATMENT ARE SET FORTH BELOW. IF YOU AGREE WITH ONE OF THESE  
 6 STATEMENTS, YOU MAY INITIAL THAT STATEMENT, BUT DO NOT INITIAL  
 7 MORE THAN ONE:

8 I do not want my life to be prolonged nor do I want life-sustaining or death-delaying  
 9 treatment to be provided or continued if my agent believes the burdens of the treatment  
 10 outweigh the expected benefits. I want my agent to consider the relief of suffering, the  
 11 expense involved, and the quality as well as the possible extension of my life in making  
 12 decisions concerning life-sustaining or death-delaying treatment.

13 Initialed \_\_\_\_\_

14 I want my life to be prolonged and I want life-sustaining or death-delaying treatment  
 15 to be provided or continued unless I am in a coma, including a persistent vegetative  
 16 state, which my attending physician believes to be irreversible, in accordance with  
 17 reasonable medical standards at the time of reference. If and when I have suffered such  
 18 an irreversible coma, I want life-sustaining or death-delaying treatment to be withheld  
 19 or discontinued.

20 Initialed \_\_\_\_\_

21 I want my life to be prolonged to the greatest extent possible without regard to my  
 22 condition, the chances I have for recovery, or the cost of the procedures.

23 Initialed \_\_\_\_\_

24 THIS POWER OF ATTORNEY MAY BE AMENDED OR REVOKED BY YOU AT  
 25 ANY TIME AND IN ANY MANNER WHILE YOU ARE ABLE TO DO SO. IN THE  
 26 ABSENCE OF AN AMENDMENT OR REVOCATION, THE AUTHORITY  
 27 GRANTED IN THIS POWER OF ATTORNEY WILL BECOME EFFECTIVE AT THE  
 28 TIME THIS POWER IS SIGNED AND WILL CONTINUE UNTIL YOUR DEATH  
 29 AND WILL CONTINUE BEYOND YOUR DEATH IF ANATOMICAL GIFT,  
 30 AUTOPSY, OR DISPOSITION OF REMAINS IS AUTHORIZED, UNLESS A  
 31 LIMITATION ON THE BEGINNING DATE OR DURATION IS MADE BY  
 32 INITIALING AND COMPLETING EITHER OR BOTH OF THE FOLLOWING:

1        3. ( ) This power of attorney shall become effective on \_\_\_\_\_  
 2 (insert a future date or event during your lifetime, such as court determination of your  
 3 disability, incapacity, or incompetency, when you want this power to first take effect).

4        4. ( ) This power of attorney shall terminate on \_\_\_\_\_ (insert  
 5 a future date or event, such as court determination of your disability, incapacity, or  
 6 incompetency, when you want this power to terminate prior to your death).

7 IF YOU WISH TO NAME SUCCESSOR AGENTS, INSERT THE NAMES AND  
 8 ADDRESSES OF SUCH SUCCESSORS IN THE FOLLOWING PARAGRAPH:

9        5. If any agent named by me shall die, become legally disabled, incapacitated, or  
 10 incompetent, or resign, refuse to act, or be unavailable, I name the following (each to act  
 11 successively in the order named) as successors to such agent:

12 \_\_\_\_\_  
 13 \_\_\_\_\_

14 IF YOU WISH TO NAME A GUARDIAN OF YOUR PERSON IN THE EVENT A  
 15 COURT DECIDES THAT ONE SHOULD BE APPOINTED, YOU MAY, BUT ARE  
 16 NOT REQUIRED TO, DO SO BY INSERTING THE NAME OF SUCH GUARDIAN  
 17 IN THE FOLLOWING PARAGRAPH. THE COURT WILL APPOINT THE PERSON  
 18 NOMINATED BY YOU IF THE COURT FINDS THAT SUCH APPOINTMENT  
 19 WILL SERVE YOUR BEST INTERESTS AND WELFARE. YOU MAY, BUT ARE  
 20 NOT REQUIRED TO, NOMINATE AS YOUR GUARDIAN THE SAME PERSON  
 21 NAMED IN THIS FORM AS YOUR AGENT.

22        6. If a guardian of my person is to be appointed, I nominate the following to serve as  
 23 such guardian:

24                    (insert name and address of nominated guardian of the person)  
 25 \_\_\_\_\_

26 7. INITIAL ONE:

27 I have previously signed a durable power of attorney for health care. I want it to remain  
 28 in effect in addition to this document, except in instances where the previous power of  
 29 attorney and this document conflict. In such a conflict, this document shall prevail.

30 Initialed \_\_\_\_\_

31 I have previously signed a durable power of attorney for health care, and I HEREBY  
 32 REVOKE IT.

33 Initialed \_\_\_\_\_

34 I DO NOT have a previously signed durable power of attorney for health care.

Initialed \_\_\_\_\_



1 \_\_\_\_\_  
2 (Successor agent)

\_\_\_\_\_  
(Principal)''

3 **SECTION 4.**  
4 All laws and parts of laws in conflict with this Act are repealed.