

Regular Session, 2014

SENATE BILL NO. 302

BY SENATOR MILLS

CIVIL PROCEDURE. Provides relative to medical consent and certain immunities. (8/1/14)

1 AN ACT

2 To amend and reenact R.S. 40:1299.53, relative to persons who may consent to surgical or  
3 medical treatment; to provide relative to circumstances where no person is  
4 reasonably available to consent for the patient; to provide relative to physician  
5 discretion; to provide for certain terms, conditions, and procedures; to provide for  
6 certain immunity; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1299.53 is hereby amended and reenacted to read as follows:

9 §1299.53. Persons who may consent to surgical or medical treatment

10 A. In addition to such other persons as may be authorized and empowered,  
11 any one of the following persons in the following order of priority, if there is no  
12 person in a prior class who is reasonably available, willing, and competent to act, is  
13 authorized and empowered to consent, either orally or otherwise, to any surgical or  
14 medical treatment or procedures including autopsy not prohibited by law which may  
15 be suggested, recommended, prescribed, or directed by a duly licensed physician:

16 (1) Any adult, for himself.

17 (2) The judicially appointed tutor or curator of the patient, if one has been

1 appointed.

2 (3) An agent acting pursuant to a valid mandate, specifically authorizing the  
3 agent to make health care decisions.

4 (4) The patient's spouse not judicially separated.

5 (5) An adult child of the patient.

6 (6) Any parent, whether adult or minor, for his child.

7 (7) The patient's sibling.

8 (8) The patient's other ascendants or descendants.

9 (9) Any person temporarily standing in loco parentis, whether formally  
10 serving or not, for the minor under his care and any guardian for his ward.

11 (10) A person chosen by the interdisciplinary team, as defined in R.S.  
12 28:451.2, to make recommendations on behalf of an individual with a developmental  
13 disability, as defined in R.S. 28:451.2. The interdisciplinary team shall exercise  
14 discretion in choosing, by majority vote, the family member, friend, or other person  
15 most familiar with the individual or most capable of making the decision at issue.

16 (11) A person chosen by an ad hoc team assembled by any interested person  
17 for the purpose of addressing the medical decision at issue for an individual with a  
18 developmental disability.

19 (a) This team shall consist of at least three persons familiar with the  
20 circumstances and needs of the individual, and shall contain representatives from at  
21 least two different services, educational or advocacy agencies serving individuals  
22 with developmental disabilities.

23 (b) The team shall make decisions by majority vote, and no one agency shall  
24 provide a majority of the members.

25 (c) The team shall exercise discretion in choosing the family member, friend,  
26 or other person most familiar with the individual or most capable of making the  
27 decision at issue.

28 B. If there is more than one person within the above named class in  
29 Paragraphs (A)(1) through (9), the consent for surgical or medical treatment shall be

1 given by a majority of those members of the class available for consultation.

2 **C. If none of the persons listed under Subsection (A)(1) through (9) are**  
3 **reasonably available, then the patient's attending physician shall have the**  
4 **discretion to provide or perform any surgical or medical treatment or**  
5 **procedures, including but not limited to an autopsy, and may also make**  
6 **decisions regarding continued services needed by the patient, including but not**  
7 **limited to approving the placement or transfer of the patient to another facility,**  
8 **without the consent of the patient or other person authorized to consent for the**  
9 **patient. Prior to taking such action, the attending physician shall obtain**  
10 **confirmation from another physician of the patient's condition and the medical**  
11 **necessity for such action as is appropriate and consistent with the patient's**  
12 **condition and which cannot be omitted without adversely affecting the patient's**  
13 **condition or the quality of medical care rendered. This Subsection shall not**  
14 **apply to an emergency governed by the provisions of R.S. 40:1299.54.**

15 **D.** For an individual with a developmental disability, competency to act for  
16 the purpose of this Section shall be determined in accordance with principles set  
17 forth in R.S. 28:454.3, including capacity to consent and legally adequate consent.

18 ~~D.~~ **E.** Consent to surgical or medical treatment for an individual with a  
19 developmental disability will be implied where an emergency, as defined in R.S.  
20 40:1299.54, exists.

21 **F. No hospital or other health care facility, physician, health care**  
22 **provider, or other person or entity shall be subject to criminal prosecution or**  
23 **civil liability or be deemed to have engaged in unprofessional conduct based**  
24 **upon the reliance in good faith on any direction or decision by any person**  
25 **reasonably believed to be authorized and empowered to consent under**  
26 **Subsection (A)(1) through (9) even if death or injury to the patient ensues. Each**  
27 **hospital or other health care facility, physician, health care provider, or other**  
28 **person or entity, who acts in good faith reliance on any such direction or**  
29 **decision shall be protected and released to the same extent as though such**

1 person had interacted directly with the patient as a fully competent person.

2 G. Any physician attending or confirming, who, in accordance with  
 3 Subsection C above, provides or performs any surgical or medical treatment or  
 4 procedure, including but not limited to an autopsy, or who makes decisions  
 5 regarding continued services, including but not limited to approving the  
 6 transfer or placement of the patient, without the consent of the patient or other  
 7 person authorized to consent for the patient, shall not be subject to criminal  
 8 prosecution or civil liability or be deemed to have engaged in unprofessional  
 9 conduct as a result of the decision to perform, or the actual performance of,  
 10 such treatment or procedure, or with regard to any decisions pertaining to  
 11 continued services, including but not limited to decisions regarding the transfer  
 12 or placement of the patient, even if death or injury to the patient ensues.  
 13 Furthermore, no hospital or other health care facility, health care provider or  
 14 other person or entity acting under the direction of a physician shall be subject  
 15 to criminal prosecution or civil liability, or be deemed to have engaged in  
 16 unprofessional conduct as a result of any treatment, procedures, continued  
 17 services, transfer, or placements that were performed in accordance with  
 18 Subsection C above, even if death or injury to the patient ensues.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

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#### DIGEST

Mills (SB 302)

Present law provides for the designation of certain persons who may consent to surgical or medical treatment.

Proposed law provides that if none of those persons designated under present law are reasonably available, then the patient's attending physician shall have the discretion to provide or perform any surgical or medical treatment or procedures, including but not limited to an autopsy, and may also make decisions regarding continued services needed by the patient, including but not limited to approving the placement or transfer of the patient to another facility, without the consent of the patient or other person authorized to consent for the patient.

Proposed law further provides that prior to such action the attending physician shall obtain confirmation from another physician of the patient's condition and the medical necessity for such action as is appropriate and consistent with the patient's condition and which cannot be omitted without adversely affecting the patient's condition or the quality of medical care

rendered.

Proposed law provides that proposed law shall not apply to an emergency governed by present law.

Proposed law provides that no hospital or other health care facility, physician, health care provider, or other person or entity shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct based upon the reliance in good faith on any direction or decision by any person reasonably believed to be authorized and empowered to consent under present law even if death or injury to the patient ensues.

Proposed law further provides that each hospital or other health care facility, physician, health care provider, or other person or entity, who acts in good faith reliance on any such direction or decision shall be protected and released to the same extent as though such person had interacted directly with the patient as a fully competent person.

Proposed law provides that any physician attending or confirming, who, in accordance with proposed law above, provides or performs any surgical or medical treatment or procedure, including but not limited to an autopsy, or who makes decisions regarding continued services, including but not limited to approving the transfer or placement of the patient, without the consent of the patient or other person authorized to consent for the patient, shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the decision to perform, or the actual performance of, such treatment or procedure, or with regard to any decisions pertaining to continued services, including but not limited to decisions regarding the transfer or placement of the patient, even if death or injury to the patient ensues.

Proposed law further provides that no hospital or other health care facility, health care provider or other person or entity acting under the direction of a physician shall be subject to criminal prosecution or civil liability, or be deemed to have engaged in unprofessional conduct as a result of any treatment, procedures, continued services, transfer, or placements that were performed in accordance with proposed law above, even if death or injury to the patient ensues.

Effective August 1, 2014.

(Amends R.S. 40:1299.53)