

## LEGISLATIVE BILL 104

Approved by the Governor April 04, 2018

Introduced by Bolz, 29.

A BILL FOR AN ACT relating to health care decisions; to amend sections 25-2728 and 30-1601, Reissue Revised Statutes of Nebraska, and section 71-4843, Revised Statutes Cumulative Supplement, 2016; to adopt the Health Care Surrogacy Act; to provide penalties; to provide for appeals; to change provisions relating to anatomical gifts; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 19 of this act shall be known and may be cited as the Health Care Surrogacy Act.

Sec. 2. (1) It is the intent of the Legislature to establish a process for the designation of a person to make a health care decision for an adult or an emancipated minor who becomes incapable of making such a decision in the absence of a guardian or an advance health care directive.

(2) The Legislature does not intend to encourage or discourage any particular health care decision or to create any new right or alter any existing right of competent adults or emancipated minors to make such decisions, but the Legislature does intend through the Health Care Surrogacy Act to allow an adult or an emancipated minor to exercise rights he or she already possesses by means of health care decisions made on his or her behalf by a qualified surrogate.

(3) The Health Care Surrogacy Act shall not confer any new rights regarding the provision or rejection of any specific medical treatment and shall not alter any existing law concerning homicide, suicide, or assisted suicide. Nothing in the Health Care Surrogacy Act shall be construed to condone, authorize, or approve purposefully causing, or assisting in causing, the death of any individual, such as by homicide, suicide, or assisted suicide.

Sec. 3. For purposes of the Health Care Surrogacy Act:

(1) Adult means an individual who is nineteen years of age or older;

(2) Advance health care directive means an individual instruction under the Health Care Surrogacy Act, a declaration executed in accordance with the Rights of the Terminally Ill Act, or a power of attorney for health care;

(3) Agent means a natural person designated in a power of attorney for health care to make a health care decision on behalf of the natural person granting the power;

(4) Capable means (a) able to understand and appreciate the nature and consequences of a proposed health care decision, including the benefits of, risks of, and alternatives to any proposed health care, and (b) able to communicate in any manner such health care decision;

(5) Emancipated minor means a minor who is emancipated pursuant to the law of this state or another state, including section 43-2101;

(6) Guardian means a judicially appointed guardian or conservator having authority to make a health care decision for a natural person;

(7) Health care means any care, treatment, service, procedure, or intervention to maintain, diagnose, cure, care for, treat, or otherwise affect an individual's physical or mental condition;

(8)(a) Health care decision means a decision made by an individual or the individual's agent, guardian, or surrogate regarding the individual's health care, including consent, refusal of consent, or withdrawal of consent to health care; and

(b) Health care decision includes:

(i) Selection and discharge of health care providers, health care facilities, and health care services;

(ii) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and

(iii) Directions to provide nutrition, hydration, and all other forms of health care;

(9) Health care facility means a facility licensed under the Health Care Facility Licensure Act or permitted by law to provide health care in the ordinary course of business;

(10) Health care provider means a natural person credentialed under the Uniform Credentialing Act or permitted by law to provide health care in the ordinary course of business or practice of a profession;

(11) Health care service means an adult day service, a home health agency, a hospice or hospice service, a respite care service, or a children's day health service licensed under the Health Care Facility Licensure Act or permitted by law to provide health care in the ordinary course of business. Health care service does not include an in-home personal services agency as defined in section 71-6501;

(12) Incapable means lacking the ability to understand and appreciate the nature and consequences of a proposed health care decision, including the benefits of, risks of, and alternatives to any proposed health care, or lacking the ability to communicate in any manner such health care decision;

(13) Individual means an adult or an emancipated minor for whom a health care decision is to be made;

(14) Individual instruction means an individual's direction concerning a health care decision for the individual;

(15) Life-sustaining procedure means any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person who is in a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure does not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(16) Persistent vegetative state means a medical condition that, to a reasonable degree of medical certainty as determined in accordance with then current accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(17) Physician means a natural person licensed to practice medicine and surgery or osteopathic medicine under the Uniform Credentialing Act;

(18) Power of attorney for health care means the designation of an agent under sections 30-3401 to 30-3432 or a similar law of another state to make health care decisions for the principal;

(19) Primary health care provider means (a) a physician designated by an individual or the individual's agent, guardian, or surrogate to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility or (b) if there is no such primary physician or such primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care;

(20) Principal means a natural person who, when competent, confers upon another natural person a power of attorney for health care;

(21) Reasonably available means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of an individual's health care needs;

(22) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States;

(23) Surrogate means a natural person who is authorized under section 4 of this act to make a health care decision on behalf of an individual when a guardian or an agent under a power of attorney for health care has not been appointed or otherwise designated for such individual;

(24) Terminal condition means a medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death within six months regardless of the continued application of medical treatment, including life-sustaining procedures; and

(25) Usual and typical provision of nutrition and hydration means delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Sec. 4. (1) A surrogate may make a health care decision for an individual if the individual has been determined to be incapable by the primary health care provider and no agent or guardian has been appointed for the individual. A determination that an individual is incapable of making a health care decision shall not be construed as a finding that the individual is incapable for any other purpose.

(2)(a) An individual may designate a natural person to act as surrogate for the individual by personally informing the primary health care provider.

(b) If an individual has not designated a surrogate and there is no power of attorney for health care or court-appointed guardian for the individual, any member of the following classes of natural persons, in the following order of priority, may act as surrogate for the individual if such person is reasonably available at the time the health care decision is to be made on behalf of the individual and if such person has not been disqualified under the Health Care Surrogacy Act:

(i) The individual's spouse unless legally separated from the individual or unless proceedings are pending for divorce, annulment, or legal separation between the individual and his or her spouse;

(ii) A child of the individual who is an adult or an emancipated minor;

(iii) A parent of the individual; or

(iv) A brother or sister of the individual who is an adult or an emancipated minor.

(c) A person in a class with greater priority to serve as a surrogate may decline to serve as surrogate by informing the primary health care provider of that fact. Such fact shall be noted in the individual's medical record.

(d) The primary health care provider may use discretion to disqualify a person who would otherwise be eligible to act as a surrogate based on the priority listed in subdivision (b) of this subsection if the provider has documented or otherwise clear and convincing evidence of an abusive relationship or documented or otherwise clear and convincing evidence of another basis for finding that the potential surrogate is not acting on behalf of or in the best interests of the individual. Any evidence so used to disqualify a person from acting as a surrogate shall be documented in full in the individual's medical record.

(3) A person who has exhibited special care and concern for the

individual, who is familiar with the individual's personal values, and who is reasonably available to act as a surrogate is eligible to act as a surrogate under subsection (2) of this section.

(4) A surrogate shall communicate his or her assumption of authority as promptly as possible to the members of the individual's family specified in subsection (2) of this section who can be readily contacted.

(5)(a) If more than one member of a class having priority has authority to act as an individual's surrogate, such persons may act as the individual's surrogate and any of such persons may be identified as one of the individual's surrogates by the primary health care provider within the individual's medical record, so long as such persons are in agreement about the health care decision to be made on behalf of the individual and attest to such agreement in a writing signed and dated by all persons claiming the authority and provided to the primary health care provider for inclusion with the individual's medical record.

(b)(i) If two or more members of a class having the same priority claim authority to act as an individual's surrogate and such persons are not in agreement about one or more health care decisions to be made on the individual's behalf, the persons claiming authority shall confer with each other for purposes of arriving at consensus regarding the health care decision to be made in light of the individual's known desires about health care, the individual's personal values, the individual's religious or moral beliefs, and the individual's best interests. Each person claiming authority to act as an individual's surrogate shall inform the primary health care provider about his or her claim and priority under the Health Care Surrogacy Act, the claim of any other person within the same class, the nature of the disagreement regarding the health care decision, and the efforts made by such person to reach agreement between and among other persons claiming authority to act as the individual's surrogate.

(ii) To the extent possible, the primary health care provider shall seek a consensus of the persons claiming authority to act as the individual's surrogate. The primary health care provider may convene a meeting of such persons with the primary health care provider and, as available and appropriate, other health care personnel involved in the individual's care for purposes of reviewing and discussing the individual's condition, prognosis, and options for treatment, the risks, benefits, or burdens of such options, the individual's known desires about health care, the individual's personal values, the individual's religious or moral beliefs, and the individual's best interests. If reasonably available, the primary health care provider may include members of other classes of priority in such meeting to hear and participate in the discussion.

(iii) The primary health care provider, in his or her discretion or at the request of the persons claiming authority as the individual's surrogate, may also seek the assistance of other health care providers or the ethics committee or ethics consultation process of the health care facility or another health care entity to facilitate the meeting.

(iv) If a consensus about the health care decisions to be made on behalf of the individual cannot be attained between the persons of the same class of priority claiming authority to act as the individual's surrogate to enable a timely decision to be made on behalf of the individual, then such persons shall be deemed disqualified to make health care decisions on behalf of the individual. The primary health care provider may then confer with other persons in the same class or within the other classes of lower priority consistent with subsection (2) of this section who may be reasonably available to make health care decisions on behalf of the individual.

(v) If no other person is reasonably available to act as a surrogate on behalf of the individual, then the primary health care provider may, consistent with the Health Care Surrogacy Act, take actions or decline to take actions determined by the primary health care provider to be appropriate, to be in accordance with the individual's personal values, if known, and moral and religious beliefs, if known, and to be in the best interests of the individual.

(6) A surrogate's authority shall continue in effect until the earlier of any of the following:

(a) A guardian is appointed for the individual;

(b) The primary health care provider determines that the individual is capable of making his or her own health care decision;

(c) A person with higher priority to act as a surrogate under subsection (2) of this section becomes reasonably available;

(d) The individual is transferred to another health care facility; or

(e) The death of the individual.

(7)(a) An individual, if able to communicate the same, may disqualify another person from serving as the individual's surrogate, including a member of the individual's family, by a signed and dated writing or by personally informing the primary health care provider and a witness of the disqualification. In order to be a witness under this subdivision, a person shall be an adult or emancipated minor who is not among the persons who may serve as a surrogate under subsection (2) of this section.

(b) When the existence of a disqualification under this subsection becomes known, it shall be made a part of the individual's medical record at the health care facility in which the individual is a patient or resides. The disqualification of a person to serve as a surrogate shall not revoke or terminate the authority as to a surrogate who acts in good faith under the surrogacy and without actual knowledge of the disqualification. An action taken

in good faith and without actual knowledge of the disqualification of a person to serve as the individual's surrogate under this subsection, unless the action is otherwise invalid or unenforceable, shall bind the individual and his or her heirs, devisees, and personal representatives.

(8) A primary health care provider may require a person claiming the right to act as surrogate for an individual to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish that person's claimed authority.

(9) The authority of a surrogate shall not supersede any other advance health care directive.

Sec. 5. Unless related to the individual by blood, marriage, or adoption, a surrogate may not be an owner, operator, or employee of a health care facility at which the individual is residing or receiving health care or a facility or an institution of the Department of Correctional Services or the Department of Health and Human Services to which the individual has been committed.

Sec. 6. (1) A determination that an individual is incapable of making a health care decision shall be made in writing by the primary health care provider and any physician consulted with respect to such determination, and the physician or physicians shall document the cause and nature of the individual's incapability. The determination shall be included in the individual's medical record with the primary health care provider and, when applicable, with the consulting physician and the health care facility in which the individual is a patient or resides. When a surrogate has been designated or determined pursuant to section 4 of this act, the surrogate shall be included in the individual's medical record.

(2) A physician who has been designated an individual's surrogate shall not make the determination that the individual is incapable of making health care decisions.

Sec. 7. Notice of a determination that an individual is incapable of making health care decisions shall be given by the primary health care provider (1) to the individual when there is any indication of the individual's ability to comprehend such notice, (2) to the surrogate, and (3) to the health care facility.

Sec. 8. If a dispute arises as to whether the individual is incapable, a petition may be filed with the county court in the county in which the individual resides or is located requesting the court's determination as to whether the individual is incapable of making health care decisions. If such a petition is filed, the court shall appoint a guardian ad litem to represent the individual. The court shall conduct a hearing on the petition within seven days after the court's receipt of the petition. Within seven days after the hearing, the court shall issue its determination. If the court determines that the individual is incapable, the authority, rights, and responsibilities of the individual's surrogate shall become effective. If the court determines that the individual is capable, the authority, rights, and responsibilities of the surrogate shall not become effective.

Sec. 9. (1) When the authority conferred on a surrogate under the Health Care Surrogacy Act has commenced, the surrogate, subject to any individual instructions, shall make health care decisions on the individual's behalf, except that the surrogate shall not have authority (a) to consent to any act or omission to which the individual could not consent under law, (b) to make any decision when the individual is known to be pregnant that will result in the death of the individual's unborn child if it is probable that the unborn child will develop to the point of live birth with continued application of health care, or (c) to make decisions regarding withholding or withdrawing a life-sustaining procedure or withholding or withdrawing artificially administered nutrition or hydration except as provided under section 10 of this act.

(2) If no agent or guardian has been appointed for the individual, the surrogate shall have priority over any person other than the individual to act for the individual in all health care decisions, except that the surrogate shall not have the authority to make any health care decision unless and until the individual has been determined to be incapable of making health care decisions pursuant to section 6 of this act.

(3) A person who would not otherwise be personally responsible for the cost of health care provided to the individual shall not become personally responsible for such cost because he or she has acted as the individual's surrogate.

(4) Except to the extent that the right is limited by the individual, a surrogate shall have the same right as the individual to receive information regarding the proposed health care, to receive and review medical and clinical records, and to consent to the disclosures of such records, except that the right to access such records shall not be a waiver of any evidentiary privilege.

(5) Notwithstanding a determination pursuant to section 6 of this act that the individual is incapable of making health care decisions, when the individual objects to the determination or to a health care decision made by a surrogate, the individual's objection or decision shall prevail unless the individual is determined by a county court to be incapable of making health care decisions.

Sec. 10. (1) In exercising authority under the Health Care Surrogacy Act, a surrogate shall have a duty to consult with medical personnel, including the primary health care provider, and thereupon to make health care decisions (a) in accordance with the individual instructions or the individual's wishes as

otherwise made known to the surrogate or (b) if the individual's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the individual's best interests, with due regard for the individual's religious and moral beliefs if known.

(2) Notwithstanding subdivision (1)(b) of this section, the surrogate shall not have the authority to consent to the withholding or withdrawing of a life-sustaining procedure or artificially administered nutrition or hydration unless (a) the individual is suffering from a terminal condition or is in a persistent vegetative state and such procedure or care would be an extraordinary or disproportionate means of medical treatment to the individual and (b) the individual explicitly grants such authority to the surrogate and the intent of the individual to have life-sustaining procedures or artificially administered nutrition or hydration withheld or withdrawn under such circumstances is established by clear and convincing evidence.

(3) In exercising any decision, the surrogate shall have no authority to withhold or withdraw consent to routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration.

Sec. 11. Before acting upon a health care decision made by a surrogate, other than those decisions made at or about the time of the initial determination of incapacity, the primary health care provider shall confirm that the individual continues to be incapable. The confirmation shall be stated in writing and shall be included in the individual's medical records. The notice requirements set forth in section 7 of this act shall not apply to the confirmation required by this section.

Sec. 12. (1) A petition may be filed for any one or more of the following purposes:

(a) To determine whether the authority of a surrogate under the Health Care Surrogacy Act is in effect or has been revoked or terminated;

(b) To determine whether the acts or proposed acts of a surrogate are consistent with the individual instruction or the individual's wishes as expressed or otherwise established by clear and convincing evidence or, when the wishes of the individual are unknown, whether the acts or proposed acts of the surrogate are clearly contrary to the best interests of the individual;

(c) To declare that the authority of a surrogate is revoked upon a determination by the court that the surrogate made or proposed to make a health care decision for the individual that authorized an illegal act or omission; or

(d) To declare that the authority of a surrogate is revoked upon a determination by the court of both of the following: (i) That the surrogate has violated, failed to perform, or is unable to perform the duty to act in a manner consistent with the individual instruction or the wishes of the individual or, when the desires of the individual are unknown, to act in a manner that is in the best interests of the individual; and (ii) that at the time of the determination by the court, the individual is unable to disqualify the surrogate as provided in subsection (7) of section 4 of this act.

(2) A petition under this section shall be filed with the county court of the county in which the individual resides or is located.

Sec. 13. A petition under section 8 or 12 of this act may be filed by any of the following:

(1) The individual;

(2) The surrogate;

(3) The spouse, parent, sibling, or child of the individual who is an adult or an emancipated minor;

(4) A close friend of the individual who is an adult or an emancipated minor;

(5) The primary health care provider or another health care provider; or

(6) Any other interested party.

Sec. 14. (1) A surrogate shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to the Health Care Surrogacy Act.

(2) No primary health care provider, other health care provider, or health care facility shall be subject to criminal prosecution, civil liability, or professional disciplinary action for acting or declining to act in reliance upon the decision made by a person whom the primary health care provider or other health care provider in good faith believes is the surrogate. This subsection does not limit the liability of a primary health care provider, other health care provider, or health care facility for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the individual.

Sec. 15. The existence of a surrogate for an individual under the Health Care Surrogacy Act does not waive the right of the individual to routine hygiene, nursing, and comfort care and the usual and typical provision of nutrition and hydration.

Sec. 16. In following the decision of a surrogate, a health care provider shall exercise the same independent medical judgment that the health care provider would exercise in following the decision of the individual if the individual were not incapable.

Sec. 17. (1) Nothing in the Health Care Surrogacy Act obligates a health care facility to honor a health care decision by a surrogate that the health care facility would not honor if the decision had been made by the individual because the decision is contrary to a formally adopted policy of the health care facility that is expressly based on religious beliefs or sincerely held ethical or moral convictions central to the operating principles of the health

care facility. The health care facility may refuse to honor the decision whether made by the individual or by the surrogate if the health care facility has informed the individual or the surrogate of such policy, if reasonably possible. If the surrogate is unable or unwilling to arrange a transfer to another health care facility, the health care facility refusing to honor the decision may intervene to facilitate such a transfer.

(2) Nothing in the Health Care Surrogacy Act obligates a health care provider to honor or cooperate with a health care decision by a surrogate that the health care provider would not honor or cooperate with if the decision had been made by the individual because the decision is contrary to the health care provider's religious beliefs or sincerely held moral or ethical convictions. The health care provider shall promptly inform the surrogate and the health care facility of his or her refusal to honor or cooperate with the decision of the surrogate. In such event, the health care facility shall promptly assist in the transfer of the individual to a health care provider selected by the individual or the surrogate.

Sec. 18. For purposes of making health care decisions, an attempted suicide by an individual shall not be construed as any indication of his or her wishes with regard to health care.

Sec. 19. (1) It shall be a Class II felony for a person to willfully conceal or destroy evidence of any person's disqualification as a surrogate under the Health Care Surrogacy Act with the intent and effect of causing the withholding or withdrawing of life-sustaining procedures or artificially administered nutrition or hydration which hastens the death of the individual.

(2) It shall be a Class I misdemeanor for a person without the authorization of the individual to willfully alter, forge, conceal, or destroy evidence of an advance health care directive, appointment of a guardian, appointment of an agent for the individual under a power of attorney for health care, or evidence of disqualification of any person as a surrogate under the Health Care Surrogacy Act.

(3) A physician or other health care provider who willfully prevents the transfer of an individual in accordance with section 17 of this act with the intention of avoiding the provisions of the Health Care Surrogacy Act shall be guilty of a Class I misdemeanor.

Sec. 20. Section 25-2728, Reissue Revised Statutes of Nebraska, is amended to read:

25-2728 (1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) Sections 25-2728 to 25-2738 shall not apply to:

(a) Appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) Appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-2,106 and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in matters arising under the Nebraska Uniform Trust Code;

(e) Appeals in matters arising under the Health Care Surrogacy Act as provided in section 30-1601;

(f) ~~(e)~~ Appeals in adoption proceedings as provided in section 43-112;

(g) ~~(f)~~ Appeals in inheritance tax proceedings as provided in section 77-2023; and

(h) ~~(g)~~ Appeals in domestic relations matters as provided in section 25-2739.

Sec. 21. Section 30-1601, Reissue Revised Statutes of Nebraska, is amended to read:

30-1601 (1) In all matters arising under the Nebraska Probate Code, and in all matters in county court arising under the Nebraska Uniform Trust Code, and in all matters in county court arising under the Health Care Surrogacy Act, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, or guardian ad litem, or surrogate pursuant to the Health Care Surrogacy Act the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in

an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested person or upon the court's own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs.

Sec. 22. Section 71-4843, Revised Statutes Cumulative Supplement, 2016, is amended to read:

71-4843 (a) For purposes of this section:

(1) Advance health care directive means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor;

(2) Declaration means a record signed by a prospective donor specifying the circumstances under which life-sustaining treatment may be withheld or withdrawn from the prospective donor; and

(3) Health care decision means any decision regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, a surrogate acting under the Health Care Surrogacy Act or another person authorized by law other than the Revised Uniform Anatomical Gift Act to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 71-4832. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology. If the conflict is not resolved expeditiously, the direction of the declaration or advanced directive controls.

Sec. 23. Original sections 25-2728 and 30-1601, Reissue Revised Statutes of Nebraska, and section 71-4843, Revised Statutes Cumulative Supplement, 2016, are repealed.