

HOUSE BILL NO. 635

INTRODUCED BY MEASURE, MAZUREK, L. NELSON,
STRIZICH, MESSMORE

IN THE HOUSE

FEBRUARY 6, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 13, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

ON MOTION, ADDITIONAL SPONSORS ADDED.

FEBRUARY 14, 1991 PRINTING REPORT.

FEBRUARY 16, 1991 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 18, 1991 ENGROSSING REPORT.

FEBRUARY 19, 1991 THIRD READING, PASSED.
AYES, 94; NOES, 6.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE, & SAFETY.

FIRST READING.

MARCH 26, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 28, 1991 SECOND READING, CONCURRED IN.

APRIL 1, 1991 THIRD READING, CONCURRED IN.
AYES, 40; NOES, 9.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 1, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 635
 2 INTRODUCED BY Messing Thompson
 3 McLellan McCasmore

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 MONTANA LIVING WILL ACT TO CONFORM TO THE UNIFORM RIGHTS OF
 6 THE TERMINALLY ILL ACT; PROVIDING THAT OTHER INDIVIDUALS MAY
 7 AUTHORIZE THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING
 8 TREATMENT; CLARIFYING WHEN A DECLARATION RELATING TO THE USE
 9 OF LIFE-SUSTAINING TREATMENT IS OPERATIVE; PROVIDING FOR THE
 10 PRESUMPTION OF THE VALIDITY OF DECLARATIONS RELATING TO THE
 11 USE OF LIFE-SUSTAINING TREATMENT; AMENDING SECTIONS
 12 50-9-101, 50-9-102, 50-9-103, 50-9-104, 50-9-201, 50-9-202,
 13 50-9-203, 50-9-204, 50-9-205, AND 50-9-206, MCA; AND
 14 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 50-9-101, MCA, is amended to read:
 18 "50-9-101. Short title. This chapter may be cited as
 19 the "Montana Living-Will Rights of the Terminally Ill Act"."

20 **Section 2.** Section 50-9-102, MCA, is amended to read:
 21 "50-9-102. Definitions. As used in this chapter, the
 22 following definitions apply:

23 (1) "Attending physician" means the physician selected
 24 by or assigned to the patient, who has primary
 25 responsibility for the treatment and care of the patient.

1 (2) "Board" means the Montana state board of medical
 2 examiners.

3 (3) "Declaration" means a document executed in
 4 accordance with the requirements of 50-9-103.

5 (4) "Department" means the department of health and
 6 environmental sciences.

7 (5) "Emergency medical services personnel" means paid
 8 or volunteer firefighters, law enforcement officers, first
 9 responders, emergency medical technicians, or other
 10 emergency services personnel acting within the ordinary
 11 course of their professions.

12 (6) "Health care provider" means a person who is
 13 licensed, certified, or otherwise authorized by the law of
 14 this state to administer health care in the ordinary course
 15 of business or practice of a profession.

16 (7) "Life-sustaining procedure treatment" means any
 17 medical procedure or intervention that, when administered to
 18 a qualified patient, will serve only to prolong the dying
 19 process.

20 (8) "Living will protocol" means a locally developed,
 21 community-wide method or a standardized, state-wide method
 22 developed by the department and approved by the board, of
 23 providing palliative care to and withholding life-sustaining
 24 procedures treatment from a qualified patient under
 25 50-9-202 by emergency medical service personnel.

1 (9) "Person" means an individual, corporation, business
 2 trust, estate, trust, partnership, association, joint
 3 venture, government, governmental subdivision or agency, or
 4 any other legal or commercial entity.

5 (10) "Physician" means ~~a~~ person an individual
 6 licensed under Title 37, chapter 3, to practice medicine in
 7 this state.

8 (11) "Qualified patient" means a patient 18 or more
 9 years of age who has executed a declaration in accordance
 10 with this chapter and who has been determined by the
 11 attending physician to be in a terminal condition.

12 (12) "Reliable documentation" means a standardized,
 13 state-wide identification card or form or a necklace or
 14 bracelet of uniform design, adopted by a written, formal
 15 understanding of the local community emergency medical
 16 services agencies and licensed hospice and home health
 17 agencies, that signifies and certifies that a valid and
 18 current declaration is on file and that the individual is a
 19 qualified patient.

20 (13) "State" means a state of the United States, the
 21 District of Columbia, the Commonwealth of Puerto Rico, or a
 22 territory or insular possession subject to the jurisdiction
 23 of the United States.

24 (14) "Terminal condition" means an incurable or
 25 irreversible condition that, without the administration of

1 life-sustaining procedures treatment, will, in the opinion
 2 of the attending physician, result in death within a
 3 relatively short time."

4 **Section 3.** Section 50-9-103, MCA, is amended to read:

5 "50-9-103. Declaration relating to use of
 6 life-sustaining procedures--treatment -- designee. (1) Any
 7 competent-adult An individual of sound mind and 18 or more
 8 years of age may execute at any time a declaration ~~at any~~
 9 ~~time directing that~~ governing the withholding or withdrawal
 10 of life-sustaining procedures--be--withheld--or--withdrawn
 11 treatment. The declarant may designate another individual of
 12 sound mind and 18 or more years of age to make decisions
 13 governing the withholding or withdrawal of life-sustaining
 14 treatment. However,--the-declaration-is-effective-only-if-the
 15 declarant's--condition--is-determined-to-be-terminal--and-the
 16 declarant-is-not--able--to--make--treatment--decisions. The
 17 declaration must be signed by the declarant, or another at
 18 the declarant's direction, ~~in the presence of~~ and witnessed
 19 by two witnesses individuals. A physician or health care
 20 provider may presume, in the absence of actual notice to the
 21 contrary, that the declaration complies with this chapter
 22 and is valid.

23 (2) ~~It is the responsibility of the declarant to notify~~
 24 ~~his--physician--of--the--declaration--A--physician--or--other~~
 25 ~~health--care--provider--who--is--provided--a--copy--of--the~~

1 ~~declaration--shall-make-it-a-part-of-the-declarant's-medical~~
2 ~~records-~~

3 {3} A declaration directing a physician to withhold or
4 withdraw life-sustaining treatment may, but need not, be in
5 the following form:

6 DECLARATION

7 If I should have an incurable or irreversible condition
8 that, without the administration of life-sustaining
9 treatment, will, in the opinion of my attending physician,
10 cause my death within a relatively short time--it-is-my
11 desire-that-my-life-not-be-prolonged--by--administration--of
12 life-sustaining--procedures--if-my-condition-is-terminal and
13 I am unable--to--participate--in no longer able to make
14 decisions regarding my medical treatment, I direct my
15 attending physician, pursuant to the Montana Rights of the
16 Terminally Ill Act, to withhold or withdraw procedures
17 treatment that merely--prolong only prolongs the dying
18 process of dying and are is not necessary to my comfort or
19 freedom-from to alleviate pain. it-is-my-intention-that-this
20 declaration-shall-be-valid-until-revoked-by-me-

21 Signed this day of,

22 Signature.....

23 City, County, and State of Residence.....

24 The declarant ~~is-known-to-me-and~~ voluntarily signed this
25 document in my presence.

1 Witness.....

2 Address.....

3 Witness.....

4 Address.....

5 (3) A declaration that designates another individual to
6 make decisions governing the withholding or withdrawal of
7 life-sustaining treatment may, but need not, be in the
8 following form:

9 DECLARATION

10 If I should have an incurable and irreversible condition
11 that, without the administration of life-sustaining
12 treatment, will, in the opinion of my attending physician,
13 cause my death within a relatively short time and I am no
14 longer able to make decisions regarding my medical
15 treatment, I appoint or, if he or she is not
16 reasonably available or is unwilling to serve,,
17 to make decisions on my behalf regarding withholding or
18 withdrawal of treatment that only prolongs the process of
19 dying and is not necessary for my comfort or to alleviate
20 pain, pursuant to the Montana Rights of the Terminally Ill
21 Act.

22 If the individual I have appointed is not reasonably
23 available or is unwilling to serve, I direct my attending
24 physician, pursuant to the Montana Rights of the Terminally
25 Ill Act, to withhold or withdraw treatment that only

1 prolongs the process of dying and is not necessary for my
2 comfort or to alleviate pain.

3 Signed this day of,

4 Signature.....

5 City, County, and State of Residence.....

6 The declarant voluntarily signed this document in my
7 presence.

8 Witness.....

9 Address.....

10 Witness.....

11 Address.....

12 Name and address of designee.

13 Name

14 Address

15 (4) The designation of an attorney-in-fact pursuant to
16 72-5-501 and 72-5-502, or the judicial appointment of an
17 individual, who is authorized to make decisions regarding
18 the withholding or withdrawal of life-sustaining treatment
19 constitutes for the purposes of this part a declaration
20 designating another individual to act for the declarant
21 pursuant to subsection (1).

22 (5) A physician or other health care provider who is
23 furnished a copy of the declaration shall make it a part of
24 the declarant's medical record and, if unwilling to comply
25 with the declaration, promptly so advise the declarant and

1 any individual designated to act for the declarant."

2 **Section 4.** Section 50-9-104, MCA, is amended to read:

3 **"50-9-104. Revocation of declaration.** (1) A declarant
4 may revoke a declaration may-be-revoked at any time and in
5 any manner ~~by which the declarant is able to communicate his~~
6 ~~intent--to--revoke~~, without regard to mental or physical
7 condition. A revocation is effective ~~only--as--to--the~~
8 ~~attending-physician-or-any-health-care-provider-acting-under~~
9 ~~the-guidance-of-that-physician~~ upon its communication to the
10 attending physician or other health care provider by the
11 declarant or ~~by another to whom a witness to the revocation~~
12 ~~was--communicated~~. A health care provider or emergency
13 medical services personnel witnessing a revocation shall act
14 upon the revocation and shall communicate the revocation to
15 the attending physician at the earliest opportunity. A
16 revocation communicated to a person other than the attending
17 physician, emergency medical services personnel, or a health
18 care provider is not effective unless the attending
19 physician is informed of it before the qualified patient is
20 in need of life-sustaining procedures treatment.

21 (2) The attending physician or other health care
22 provider shall make the revocation a part of the declarant's
23 medical record."

24 **Section 5.** Section 50-9-201, MCA, is amended to read:

25 **"50-9-201. Recording determination of terminal**

1 condition and content of declaration. ~~When--an--attending~~
 2 ~~physician-who-has-been-notified-of-the-existence-and-content~~
 3 ~~of-a-declaration-determines-that-the~~ Upon determining that a
 4 declarant is in a terminal condition, the attending
 5 physician who knows of a declaration shall record that
 6 determination and the content terms of the declaration in
 7 the declarant's medical record."

8 **Section 6.** Section 50-9-202, MCA, is amended to read:

9 "50-9-202. Treatment of qualified patients. (1) A
 10 qualified patient ~~has--the--right--to~~ may make decisions
 11 regarding ~~use-of~~ life-sustaining procedures treatment ~~if so~~
 12 long as the patient is able to do so. ~~if-a-qualified-patient~~
 13 ~~is--not-able-to-make-such-decisions,--the-declaration-governs~~
 14 ~~decisions-regarding-use-of-life-sustaining-procedures.~~

15 (2) This chapter does not ~~prohibit-the--application--of~~
 16 ~~any--medical--procedure--or--intervention~~ affect the
 17 responsibility of the attending physician or other health
 18 care provider to provide treatment, including ~~the--provision~~
 19 of nutrition and hydration, considered-necessary-to-provide
 20 for a patient's comfort care or to-alleviate alleviation of
 21 pain.

22 (3) ~~The---declaration---of---a---qualified---patient~~
 23 Life-sustaining treatment cannot be withheld or withdrawn
 24 pursuant to a declaration from an individual known to the
 25 attending physician to be pregnant ~~must-be-given--no--effect~~

1 if so long as it is probable that the fetus could will
 2 develop to the point of live birth with continued
 3 application of life-sustaining procedures treatment."

4 **Section 7.** Section 50-9-203, MCA, is amended to read:

5 "50-9-203. Transfer of patients. ~~{}~~ An attending
 6 physician or other health care provider who is unwilling to
 7 comply with ~~the-requirements-of-50-9-201-or-who-is-unwilling~~
 8 ~~to-comply--with--the--declaration-of-a-qualified-patient-in~~
 9 ~~accordance--with--50-9-202~~ this chapter shall take all
 10 reasonable steps as promptly as practicable to transfer care
 11 of the declarant to another physician or health care
 12 provider who is willing to do so.

13 ~~{}~~ If the policies of a health care facility preclude
 14 compliance with the declaration of a qualified patient under
 15 this chapter, that facility shall take all reasonable steps
 16 to transfer the patient to a facility in which the
 17 provisions of this chapter can be carried out."

18 **Section 8.** Section 50-9-204, MCA, is amended to read:

19 "50-9-204. Immunities. (1) In the absence of actual
 20 notice of the revocation of a declaration, the following,
 21 while acting in accordance with the requirements of this
 22 chapter, are not subject to civil or criminal liability or
 23 guilty of unprofessional conduct:

24 (a) a physician who causes the withholding or
 25 withdrawal of life-sustaining procedures treatment from a

1 qualified patient;

2 (b) a person who participates in the withholding or
3 withdrawal of life-sustaining procedures treatment under the
4 direction or with the authorization of a physician;

5 (c) emergency medical services personnel who cause or
6 participate in the withholding or withdrawal of
7 life-sustaining procedures treatment under the direction of
8 or with the authorization of a physician or who on receipt
9 of reliable documentation follow a living will protocol;

10 (d) emergency medical services personnel who proceed to
11 provide life-sustaining treatment to a qualified patient
12 pursuant to a revocation communicated to them; and

13 (e) a health care facility in which withholding or
14 withdrawal occurs.

15 (2) A physician or other health care provider whose
16 action under this chapter is in accord with reasonable
17 medical standards is not subject to civil or criminal
18 liability for actions under this chapter that are in accord
19 with reasonable medical standards or discipline for
20 unprofessional conduct with respect to that decision.

21 (3) A physician or other health care provider whose
22 decision about the validity of consent under [section 12] is
23 made in good faith is not subject to criminal or civil
24 liability or discipline for unprofessional conduct with
25 respect to that decision.

1 (4) An individual designated pursuant to 50-9-103(1) or
2 an individual authorized to consent pursuant to [section
3 12], whose decision is made or consent is given in good
4 faith pursuant to this chapter, is not subject to criminal
5 or civil liability or discipline for unprofessional conduct
6 with respect to that decision."

7 **Section 9.** Section 50-9-205, MCA, is amended to read:

8 "50-9-205. Effect on insurance -- patient's decision.
9 (1) Death resulting from the withholding or withdrawal of
10 life-sustaining procedures--pursuant--to--a--declaration--and
11 treatment in accordance with this chapter is does not
12 constitute, for any purpose, a suicide or homicide.

13 (2) The making of a declaration pursuant to 50-9-103
14 does not affect in-any--manner the sale, procurement, or
15 issuance of any policy of life insurance or annuity, nor
16 does it affect, impair, or modify the terms of an existing
17 policy of life insurance. No A policy of life insurance is
18 not legally impaired or invalidated in--any--manner by the
19 withholding or withdrawal of life-sustaining procedures
20 treatment from an insured qualified-patient, notwithstanding
21 any term of the policy to the contrary.

22 (3) No-physician, health-care-facility, or other health
23 care--provider--and--no--health--care--service-plan, insurer
24 issuing disability insurance, self-insured employee welfare
25 benefit--plan, or nonprofit hospital plan A person may not

1 prohibit or require any person to execute the execution of a
 2 declaration as a condition for being insured for or
 3 receiving health care services.

4 (4) This chapter creates no presumption concerning the
 5 intention of an individual who has revoked or has not
 6 executed a declaration with respect to the use, withholding,
 7 or withdrawal of life-sustaining procedures treatment in the
 8 event of a terminal condition.

9 (5) ~~Nothing in this~~ This chapter ~~increases or decreases~~
 10 does not affect the right of a patient to make decisions
 11 regarding use of life-sustaining ~~procedures if~~ treatment, so
 12 long as the patient is able to do so, or impairs ~~impair~~ or
 13 supersedes ~~supersede any a~~ right or responsibility that any
 14 person has to effect the withholding or withdrawal of
 15 medical care ~~in any lawful manner in that respect, the~~
 16 ~~provisions of this chapter are cumulative.~~

17 (6) This chapter does not require a physician or other
 18 health care provider to take action contrary to reasonable
 19 medical standards.

20 ~~(6)(7)~~ This chapter does not condone, authorize, or
 21 approve mercy killing or euthanasia."

22 **Section 10.** Section 50-9-206, MCA, is amended to read:

23 "50-9-206. Penalties. (1) A physician or other health
 24 care provider who willfully fails to transfer the care of a
 25 patient in accordance with 50-9-203 is guilty of a

1 misdemeanor punishable by a fine not to exceed \$500 or
 2 imprisonment in the county jail for a term not to exceed 1
 3 year, or both.

4 (2) A physician who willfully fails to record the
 5 determination of terminal condition or the terms of a
 6 declaration in accordance with 50-9-201 is guilty of a
 7 misdemeanor punishable by a fine not to exceed \$500 or
 8 imprisonment in the county jail for a term not to exceed 1
 9 year, or both.

10 (3) ~~A person~~ An individual who purposely conceals,
 11 cancels, defaces, or obliterates the declaration of another
 12 without the declarant's consent or who falsifies or forges a
 13 revocation of the declaration of another is guilty of a
 14 misdemeanor punishable by a fine not to exceed \$500 or
 15 imprisonment in the county jail for a term not to exceed 1
 16 year, or both.

17 (4) ~~A person~~ An individual who falsifies or forges the
 18 declaration of another individual or purposely conceals or
 19 withholds personal knowledge of a revocation as provided in
 20 50-9-104, ~~with the intent to cause a withholding or~~
 21 ~~withdrawal of life-sustaining procedures,~~ is guilty of a
 22 misdemeanor punishable by a fine not to exceed \$500 or
 23 imprisonment in the county jail for a term not to exceed 1
 24 year, or both.

25 (5) A person who requires or prohibits the execution of

1 a declaration as a condition for being insured for or
2 receiving health care service is guilty of a misdemeanor
3 punishable by a fine not to exceed \$500 or imprisonment in
4 the county jail for a term not to exceed 1 year, or both.

5 (6) A person who coerces or fraudulently induces an
6 individual to execute a declaration is guilty of a
7 misdemeanor punishable by a fine not to exceed \$500 or
8 imprisonment in the county jail for a term not to exceed 1
9 year, or both.

10 (7) The penalties provided in this section do not
11 displace any sanction applicable under other law."

12 NEW SECTION. Section 11. When declaration operative.

13 (1) A declaration becomes operative when:

- 14 (a) it is communicated to the attending physician; and
- 15 (b) the declarant is determined by the attending
- 16 physician to be in a terminal condition and no longer able
- 17 to make decisions regarding administration of
- 18 life-sustaining treatment.

19 (2) When the declaration becomes operative, the
20 attending physician and other health care providers shall
21 act in accordance with its provisions and with the
22 instructions of a designee under 50-9-103(1) or comply with
23 the transfer requirements of 50-9-203.

24 NEW SECTION. Section 12. Consent by others to
25 withholding or withdrawal of treatment. (1) If a written

1 consent to the withholding or withdrawal of the treatment,
2 witnessed by two individuals, is given to the attending
3 physician, the attending physician may withhold or withdraw
4 life-sustaining treatment from an individual who:

5 (a) has been determined by the attending physician to
6 be in a terminal condition and no longer able to make
7 decisions regarding administration of life-sustaining
8 treatment; and

9 (b) has no effective declaration.

10 (2) The authority to consent or to withhold consent
11 under subsection (1) may be exercised by the following
12 individuals, in order of priority:

- 13 (a) the spouse of the individual;
- 14 (b) an adult child of the individual or, if there is
- 15 more than one adult child, a majority of the adult children
- 16 who are reasonably available for consultation;
- 17 (c) the parents of the individual;
- 18 (d) an adult sibling of the individual or, if there is
- 19 more than one adult sibling, a majority of the adult
- 20 siblings who are reasonably available for consultation; or
- 21 (e) the nearest other adult relative of the individual
- 22 by blood or adoption who is reasonably available for
- 23 consultation.

24 (3) If a class entitled to decide whether to consent is
25 not reasonably available for consultation and competent to

1 decide or if it declines to decide, the next class is
2 authorized to decide. However, an equal division in a class
3 does not authorize the next class to decide.

4 (4) A decision to grant or withhold consent must be
5 made in good faith. A consent is not valid if it conflicts
6 with the expressed intention of the individual.

7 (5) A decision of the attending physician acting in
8 good faith that a consent is valid or invalid is conclusive.

9 (6) Life-sustaining treatment cannot be withheld or
10 withdrawn pursuant to this section from an individual known
11 to the attending physician to be pregnant so long as it is
12 probable that the fetus will develop to the point of live
13 birth with continued application of life-sustaining
14 treatment.

15 NEW SECTION. Section 13. When health care provider may
16 presume validity of declaration. In the absence of knowledge
17 to the contrary, a physician or other health care provider
18 may assume that a declaration complies with this chapter and
19 is valid.

20 NEW SECTION. Section 14. Effect of previous
21 declaration. An instrument executed before October 1, 1991,
22 that substantially complies with 50-9-103(1) is effective
23 under this chapter.

24 NEW SECTION. Section 15. Codification instruction.
25 [Sections 11 through 14] are intended to be codified as an

1 integral part of Title 50, chapter 9, and the provisions of
2 Title 50, chapter 9, apply to [sections 11 through 14].

3 NEW SECTION. Section 16. Effective date. [This act] is
4 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 House BILL NO. 635
2 INTRODUCED BY Murray McGee
3 Johnson McConnell

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 MONTANA LIVING WILL ACT TO CONFORM TO THE UNIFORM RIGHTS OF
6 THE TERMINALLY ILL ACT; PROVIDING THAT OTHER INDIVIDUALS MAY
7 AUTHORIZE THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING
8 TREATMENT; CLARIFYING WHEN A DECLARATION RELATING TO THE USE
9 OF LIFE-SUSTAINING TREATMENT IS OPERATIVE; PROVIDING FOR THE
10 PRESUMPTION OF THE VALIDITY OF DECLARATIONS RELATING TO THE
11 USE OF LIFE-SUSTAINING TREATMENT; AMENDING SECTIONS
12 50-9-101, 50-9-102, 50-9-103, 50-9-104, 50-9-201, 50-9-202,
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22 following definitions apply:

23 (1) "Attending physician" means the physician selected
24 by or assigned to the patient, who has primary
25 responsibility for the treatment and care of the patient.

1 (2) "Board" means the Montana state board of medical
2 examiners.

3 (3) "Declaration" means a document executed in
4 accordance with the requirements of 50-9-103.

5 (4) "Department" means the department of health and
6 environmental sciences.

7 (5) "Emergency medical services personnel" means paid
8 or volunteer firefighters, law enforcement officers, first
9 responders, emergency medical technicians, or other
10 emergency services personnel acting within the ordinary
11 course of their professions.

12 (6) "Health care provider" means a person who is
13 licensed, certified, or otherwise authorized by the law of
14 this state to administer health care in the ordinary course
15 of business or practice of a profession.

16 (7) "Life-sustaining procedure treatment" means any
17 medical procedure or intervention that, when administered to
18 a qualified patient, will serve only to prolong the dying
19 process.

20 (8) "Living will protocol" means a locally developed,
21 community-wide method or a standardized, state-wide method
22 developed by the department and approved by the board, of
23 providing palliative care to and withholding life-sustaining
24 procedures treatment from a qualified patient under
25 50-9-202 by emergency medical service personnel.



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 2 trust, estate, trust, partnership, association, joint
 3 venture, government, governmental subdivision or agency, or
 4 any other legal or commercial entity.

5 ~~(9)~~(10) "Physician" means a person an individual
 6 licensed under Title 37, chapter 3, to practice medicine in
 7 this state.

8 ~~(10)~~(11) "Qualified patient" means a patient 18 or more
 9 years of age who has executed a declaration in accordance
 10 with this chapter and who has been determined by the
 11 attending physician to be in a terminal condition.

12 ~~(11)~~(12) "Reliable documentation" means a standardized,
 13 state-wide identification card or form or a necklace or
 14 bracelet of uniform design, adopted by a written, formal
 15 understanding of the local community emergency medical
 16 services agencies and licensed hospice and home health
 17 agencies, that signifies and certifies that a valid and
 18 current declaration is on file and that the individual is a
 19 qualified patient.

20 (13) "State" means a state of the United States, the
 21 District of Columbia, the Commonwealth of Puerto Rico, or a
 22 territory or insular possession subject to the jurisdiction
 23 of the United States.

24 ~~(13)~~(14) "Terminal condition" means an incurable or
 25 irreversible condition that, without the administration of

1 life-sustaining procedures treatment, will, in the opinion
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 9 time directing-that governing the withholding or withdrawal
 10 of life-sustaining procedures--be--withheid--or--withdrawn
 11 treatment. The declarant may designate another individual of
 12 sound mind and 18 or more years of age to make decisions
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 15 declarant's--condition--is-determined-to-be-terminal-and-the
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 17 declaration must be signed by the declarant, or another at
 18 the declarant's direction, in-the-presence-of and witnessed
 19 by two witnesses individuals. A physician or health care
 20 provider may presume, in the absence of actual notice to the
 21 contrary, that the declaration complies with this chapter
 22 and is valid.

23 (2) ~~It-is-the-responsibility-of-the-declarant-to-notify~~
 24 ~~his--physician--of--the--declaration.--A--physician-or-other~~
 25 ~~health--care--provider--who--is--provided--a--copy--of--the~~

1 ~~declaration--shall-make-it-a-part-of-the-declarant's-medical~~
2 ~~records-~~

3 (3) A declaration directing a physician to withhold or
4 withdraw life-sustaining treatment may, but need not, be in
5 the following form:

6 DECLARATION

7 If I should have an incurable or irreversible condition
8 that, without the administration of life-sustaining
9 treatment, will, in the opinion of my attending physician,
10 cause my death within a relatively short time;-it-is-my
11 desire-that-my-life-not-be-prolonged--by--administration--of
12 life-sustaining--procedures--if-my-condition-is-terminal and
13 I am unable--to--participate--in no longer able to make
14 decisions regarding my medical treatment, I direct my
15 attending physician, pursuant to the Montana Rights of the
16 Terminally Ill Act, to withhold or withdraw procedures
17 treatment that merely--prolong only prolongs the dying
18 process of dying and are is not necessary to my comfort or
19 freedom-from to alleviate pain. It-is-my-intention-that-this
20 declaration-shall-be-valid-until-revoked-by-me-

21 Signed this day of,

22 Signature.....

23 City, County, and State of Residence.....

24 The declarant ~~is-known-to-me-and~~ voluntarily signed this
25 document in my presence.

1 Witness.....

2 Address.....

3 Witness.....

4 Address.....

5 (3) A declaration that designates another individual to
6 make decisions governing the withholding or withdrawal of
7 life-sustaining treatment may, but need not, be in the
8 following form:

9 DECLARATION

10 If I should have an incurable and irreversible condition
11 that, without the administration of life-sustaining
12 treatment, will, in the opinion of my attending physician,
13 cause my death within a relatively short time and I am no
14 longer able to make decisions regarding my medical
15 treatment, I appoint or, if he or she is not
16 reasonably available or is unwilling to serve,,
17 to make decisions on my behalf regarding withholding or
18 withdrawal of treatment that only prolongs the process of
19 dying and is not necessary for my comfort or to alleviate
20 pain, pursuant to the Montana Rights of the Terminally Ill
21 Act,

22 If the individual I have appointed is not reasonably
23 available or is unwilling to serve, I direct my attending
24 physician, pursuant to the Montana Rights of the Terminally
25 Ill Act, to withhold or withdraw treatment that only

1 prolongs the process of dying and is not necessary for my
2 comfort or to alleviate pain.

3 Signed this day of,
4 Signature.....
5 City, County, and State of Residence.....

6 The declarant voluntarily signed this document in my
7 presence.

8 Witness.....
9 Address.....
10 Witness.....
11 Address.....

12 Name and address of designee.
13 Name
14 Address

15 (4) The designation of an attorney-in-fact pursuant to
16 72-5-501 and 72-5-502, or the judicial appointment of an
17 individual, who is authorized to make decisions regarding
18 the withholding or withdrawal of life-sustaining treatment
19 constitutes for the purposes of this part a declaration
20 designating another individual to act for the declarant
21 pursuant to subsection (1).

22 (5) A physician or other health care provider who is
23 furnished a copy of the declaration shall make it a part of
24 the declarant's medical record and, if unwilling to comply
25 with the declaration, promptly so advise the declarant and

1 any individual designated to act for the declarant."

2 **Section 4.** Section 50-9-104, MCA, is amended to read:

3 **"50-9-104. Revocation of declaration.** (1) A declarant
4 may revoke a declaration may-be-revoked at any time and in
5 any manner by-which-the-declarant-is-able-to-communicate-his
6 intent--to--revoke, without regard to mental or physical
7 condition. A revocation is effective only--as--to--the
8 attending-physician-or-any-health-care-provider-acting-under
9 the-guidance-of-that-physician upon its communication to the
10 attending physician or other health care provider by the
11 declarant or by-another-to-whom a witness to the revocation
12 was--communicated. A health care provider or emergency
13 medical services personnel witnessing a revocation shall act
14 upon the revocation and shall communicate the revocation to
15 the attending physician at the earliest opportunity. A
16 revocation communicated to a person other than the attending
17 physician, emergency medical services personnel, or a health
18 care provider is not effective unless the attending
19 physician is informed of it before the qualified patient is
20 in need of life-sustaining procedures treatment.

21 (2) The attending physician or other health care
22 provider shall make the revocation a part of the declarant's
23 medical record."

24 **Section 5.** Section 50-9-201, MCA, is amended to read:

25 **"50-9-201. Recording determination of terminal**

1 condition and content of declaration. When--an--attending
 2 physician--who--has--been--notified--of--the--existence--and--content
 3 of--a--declaration--determines--that--the Upon determining that a
 4 declarant is in a terminal condition, the attending
 5 physician who knows of a declaration shall record that
 6 determination and the content terms of the declaration in
 7 the declarant's medical record."

8 **Section 6.** Section 50-9-202, MCA, is amended to read:

9 "50-9-202. Treatment of qualified patients. (1) A
 10 qualified patient ~~has--the--right--to~~ may make decisions
 11 regarding ~~use--of~~ life-sustaining procedures treatment if so
 12 long as the patient is able to do so. ~~if--a--qualified--patient~~
 13 ~~is--not--able--to--make--such--decisions--the--declaration--governs~~
 14 ~~decisions--regarding--use--of--life--sustaining--procedures--~~

15 (2) This chapter does not prohibit ~~the--application--of~~
 16 ~~any--medical--procedure--or--intervention~~ affect the
 17 responsibility of the attending physician or other health
 18 care provider to provide treatment, including the ~~provision~~
 19 of nutrition and hydration, ~~considered--necessary--to--provide~~
 20 for a patient's comfort care or to alleviate alleviation of
 21 pain.

22 (3) ~~The--declaration--of--a--qualified--patient~~
 23 Life-sustaining treatment cannot be withheld or withdrawn
 24 pursuant to a declaration from an individual known to the
 25 attending physician to be pregnant ~~must--be--given--no--effect~~

1 if so long as it is probable that the fetus could will
 2 develop to the point of live birth with continued
 3 application of life-sustaining procedures treatment."

4 **Section 7.** Section 50-9-203, MCA, is amended to read:

5 "50-9-203. Transfer of patients. ~~{1}~~ An attending
 6 physician or other health care provider who is unwilling to
 7 comply with ~~the--requirements--of--50-9-201--or--who--is--unwilling~~
 8 ~~to--comply--with--the--declaration--of--a--qualified--patient--in~~
 9 ~~accordance--with--50-9-202~~ this chapter shall take all
 10 reasonable steps as promptly as practicable to transfer care
 11 of the declarant to another physician or health care
 12 provider who is willing to do so.

13 ~~{2}~~--If the policies of a health care facility preclude
 14 compliance with the declaration of a qualified patient under
 15 this chapter, that facility shall take all reasonable steps
 16 to transfer the patient to a facility in which the
 17 provisions of this chapter can be carried out."

18 **Section 8.** Section 50-9-204, MCA, is amended to read:

19 "50-9-204. Immunities. (1) In the absence of actual
 20 notice of the revocation of a declaration, the following,
 21 while acting in accordance with the requirements of this
 22 chapter, are not subject to civil or criminal liability or
 23 guilty of unprofessional conduct:

24 (a) a physician who causes the withholding or
 25 withdrawal of life-sustaining procedures treatment from a

1 qualified patient;

2 (b) a person who participates in the withholding or
3 withdrawal of life-sustaining procedures treatment under the
4 direction or with the authorization of a physician;

5 (c) emergency medical services personnel who cause or
6 participate in the withholding or withdrawal of
7 life-sustaining procedures treatment under the direction of
8 or with the authorization of a physician or who on receipt
9 of reliable documentation follow a living will protocol;

10 (d) emergency medical services personnel who proceed to
11 provide life-sustaining treatment to a qualified patient
12 pursuant to a revocation communicated to them; and

13 (e) a health care facility in which withholding or
14 withdrawal occurs.

15 (2) A physician or other health care provider whose
16 action under this chapter is in accord with reasonable
17 medical standards is not subject to civil or criminal
18 liability for actions under this chapter that are in accord
19 with reasonable medical standards or discipline for
20 unprofessional conduct with respect to that decision.

21 (3) A physician or other health care provider whose
22 decision about the validity of consent under [section 12] is
23 made in good faith is not subject to criminal or civil
24 liability or discipline for unprofessional conduct with
25 respect to that decision.

1 (4) An individual designated pursuant to 50-9-103(1) or
2 an individual authorized to consent pursuant to [section
3 12], whose decision is made or consent is given in good
4 faith pursuant to this chapter, is not subject to criminal
5 or civil liability or discipline for unprofessional conduct
6 with respect to that decision."

7 Section 9. Section 50-9-205, MCA, is amended to read:

8 "50-9-205. Effect on insurance -- patient's decision.

9 (1) Death resulting from the withholding or withdrawal of
10 life-sustaining procedures--pursuant--to--a--declaration--and
11 treatment in accordance with this chapter is does not
12 constitute, for any purpose, a suicide or homicide.

13 (2) The making of a declaration pursuant to 50-9-103
14 does not affect in any manner the sale, procurement, or
15 issuance of any policy of life insurance or annuity, nor
16 does it affect, impair, or modify the terms of an existing
17 policy of life insurance. No A policy of life insurance is
18 not legally impaired or invalidated in any manner by the
19 withholding or withdrawal of life-sustaining procedures
20 treatment from an insured qualified patient, notwithstanding
21 any term of the policy to the contrary.

22 (3) No physician, health care facility, or other health
23 care provider and no health care service plan, insurer
24 issuing disability insurance, self-insured employee welfare
25 benefit plan, or nonprofit hospital plan A person may not

1 ~~prohibit or require any person to execute the execution of a~~
 2 ~~declaration as a condition for being insured for or~~
 3 ~~receiving health care services.~~

4 (4) This chapter creates no presumption concerning the
 5 intention of an individual who has revoked or has not
 6 executed a declaration with respect to the use, withholding,
 7 or withdrawal of life-sustaining procedures treatment in the
 8 event of a terminal condition.

9 ~~(5) Nothing in this~~ This chapter ~~increases or decreases~~
 10 ~~does not affect~~ the right of a patient to make decisions
 11 regarding use of life-sustaining ~~procedures if treatment, so~~
 12 ~~long as~~ the patient is able to do so, ~~or impairs~~ impair or
 13 ~~supersedes~~ supersede any a right or responsibility that any
 14 person has to effect the withholding or withdrawal of
 15 medical care ~~in any lawful manner in that respect, the~~
 16 ~~provisions of this chapter are cumulative.~~

17 ~~(6) This chapter does not require a physician or other~~
 18 ~~health care provider to take action contrary to reasonable~~
 19 ~~medical standards.~~

20 ~~(6)(7) This chapter does not condone, authorize, or~~
 21 ~~approve mercy killing or euthanasia."~~

22 **Section 10.** Section 50-9-206, MCA, is amended to read:

23 ***50-9-206. Penalties.** (1) A physician or other health
 24 care provider who willfully fails to transfer the care of a
 25 patient in accordance with 50-9-203 is guilty of a

1 misdemeanor punishable by a fine not to exceed \$500 or
 2 imprisonment in the county jail for a term not to exceed 1
 3 year, or both.

4 (2) A physician who willfully fails to record the
 5 determination of terminal condition or the terms of a
 6 declaration in accordance with 50-9-201 is guilty of a
 7 misdemeanor punishable by a fine not to exceed \$500 or
 8 imprisonment in the county jail for a term not to exceed 1
 9 year, or both.

10 (3) ~~A person~~ An individual who purposely conceals,
 11 cancels, defaces, or obliterates the declaration of another
 12 without the declarant's consent or who falsifies or forges a
 13 revocation of the declaration of another is guilty of a
 14 misdemeanor punishable by a fine not to exceed \$500 or
 15 imprisonment in the county jail for a term not to exceed 1
 16 year, or both.

17 (4) ~~A person~~ An individual who falsifies or forges the
 18 declaration of another individual or purposely conceals or
 19 withholds personal knowledge of a revocation as provided in
 20 50-9-104, ~~with the intent to cause a withholding or~~
 21 ~~withdrawal of life-sustaining procedures,~~ is guilty of a
 22 misdemeanor punishable by a fine not to exceed \$500 or
 23 imprisonment in the county jail for a term not to exceed 1
 24 year, or both.

25 (5) A person who requires or prohibits the execution of

1 a declaration as a condition for being insured for or
 2 receiving health care service is guilty of a misdemeanor
 3 punishable by a fine not to exceed \$500 or imprisonment in
 4 the county jail for a term not to exceed 1 year, or both.

5 (6) A person who coerces or fraudulently induces an
 6 individual to execute a declaration is guilty of a
 7 misdemeanor punishable by a fine not to exceed \$500 or
 8 imprisonment in the county jail for a term not to exceed 1
 9 year, or both.

10 (7) The penalties provided in this section do not
 11 displace any sanction applicable under other law."

12 **NEW SECTION. Section 11. When declaration operative.**

13 (1) A declaration becomes operative when:

14 (a) it is communicated to the attending physician; and

15 (b) the declarant is determined by the attending
 16 physician to be in a terminal condition and no longer able
 17 to make decisions regarding administration of
 18 life-sustaining treatment.

19 (2) When the declaration becomes operative, the
 20 attending physician and other health care providers shall
 21 act in accordance with its provisions and with the
 22 instructions of a designee under 50-9-103(1) or comply with
 23 the transfer requirements of 50-9-203.

24 **NEW SECTION. Section 12. Consent by others to**
 25 **withholding or withdrawal of treatment. (1) If a written**

1 consent to the withholding or withdrawal of the treatment,
 2 witnessed by two individuals, is given to the attending
 3 physician, the attending physician may withhold or withdraw
 4 life-sustaining treatment from an individual who:

5 (a) has been determined by the attending physician to
 6 be in a terminal condition and no longer able to make
 7 decisions regarding administration of life-sustaining
 8 treatment; and

9 (b) has no effective declaration.

10 (2) The authority to consent or to withhold consent
 11 under subsection (1) may be exercised by the following
 12 individuals, in order of priority:

13 (a) the spouse of the individual;

14 (b) an adult child of the individual or, if there is
 15 more than one adult child, a majority of the adult children
 16 who are reasonably available for consultation;

17 (c) the parents of the individual;

18 (d) an adult sibling of the individual or, if there is
 19 more than one adult sibling, a majority of the adult
 20 siblings who are reasonably available for consultation; or

21 (e) the nearest other adult relative of the individual
 22 by blood or adoption who is reasonably available for
 23 consultation.

24 (3) If a class entitled to decide whether to consent is
 25 not reasonably available for consultation and competent to

1 decide or if it declines to decide, the next class is
 2 authorized to decide. However, an equal division in a class
 3 does not authorize the next class to decide.

4 (4) A decision to grant or withhold consent must be
 5 made in good faith. A consent is not valid if it conflicts
 6 with the expressed intention of the individual.

7 (5) A decision of the attending physician acting in
 8 good faith that a consent is valid or invalid is conclusive.

9 (6) Life-sustaining treatment cannot be withheld or
 10 withdrawn pursuant to this section from an individual known
 11 to the attending physician to be pregnant so long as it is
 12 probable that the fetus will develop to the point of live
 13 birth with continued application of life-sustaining
 14 treatment.

15 NEW SECTION. Section 13. When health care provider may
 16 presume validity of declaration. In the absence of knowledge
 17 to the contrary, a physician or other health care provider
 18 may assume that a declaration complies with this chapter and
 19 is valid.

20 NEW SECTION. Section 14. Effect of previous
 21 declaration. An instrument executed before October 1, 1991,
 22 that substantially complies with 50-9-103(1) is effective
 23 under this chapter.

24 NEW SECTION. Section 15. Codification instruction.
 25 [Sections 11 through 14] are intended to be codified as an

1 integral part of Title 50, chapter 9, and the provisions of
 2 Title 50, chapter 9, apply to [sections 11 through 14].

3 NEW SECTION. Section 16. Effective date. [This act] is
 4 effective on passage and approval.

-End-

1 HOUSE BILL NO. 635

2 INTRODUCED BY MEASURE, MAZUREK, L. NELSON,

3 STRIZICH, MESSMORE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 MONTANA LIVING WILL ACT TO CONFORM TO THE UNIFORM RIGHTS OF
7 THE TERMINALLY ILL ACT; PROVIDING THAT OTHER INDIVIDUALS MAY
8 AUTHORIZE THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING
9 TREATMENT; CLARIFYING WHEN A DECLARATION RELATING TO THE USE
10 OF LIFE-SUSTAINING TREATMENT IS OPERATIVE; PROVIDING FOR THE
11 PRESUMPTION OF THE VALIDITY OF DECLARATIONS RELATING TO THE
12 USE OF LIFE-SUSTAINING TREATMENT; AMENDING SECTIONS
13 50-9-101, 50-9-102, 50-9-103, 50-9-104, 50-9-201, 50-9-202,
14 50-9-203, 50-9-204, 50-9-205, AND 50-9-206, MCA; AND
15 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 50-9-101, MCA, is amended to read:

19 "50-9-101. Short title. This chapter may be cited as
20 the "Montana Living-Will Rights of the Terminally Ill Act"."

21 **Section 2.** Section 50-9-102, MCA, is amended to read:

22 "50-9-102. Definitions. As used in this chapter, the
23 following definitions apply:

24 (1) "Attending physician" means the physician selected
25 by or assigned to the patient, who has primary

1 responsibility for the treatment and care of the patient.

2 (2) "Board" means the Montana state board of medical
3 examiners.

4 (3) "Declaration" means a document executed in
5 accordance with the requirements of 50-9-103.

6 (4) "Department" means the department of health and
7 environmental sciences.

8 (5) "Emergency medical services personnel" means paid
9 or volunteer firefighters, law enforcement officers, first
10 responders, emergency medical technicians, or other
11 emergency services personnel acting within the ordinary
12 course of their professions.

13 (6) "Health care provider" means a person who is
14 licensed, certified, or otherwise authorized by the law of
15 this state to administer health care in the ordinary course
16 of business or practice of a profession.

17 (7) "Life-sustaining procedure treatment" means any
18 medical procedure or intervention that, when administered to
19 a qualified patient, will serve only to prolong the dying
20 process.

21 (8) "Living will protocol" means a locally developed,
22 community-wide method or a standardized, state-wide method
23 developed by the department and approved by the board, of
24 providing palliative care to and withholding life-sustaining
25 procedures treatment from a qualified patient under

THIRD READING

HB 635

-2-

AS AMENDED



1 50-9-202 by emergency medical service personnel.

2 (9) "Person" means an individual, corporation, business
3 trust, estate, trust, partnership, association, joint
4 venture, government, governmental subdivision or agency, or
5 any other legal or commercial entity.

6 ~~(9)~~(10) "Physician" means ~~a~~an individual
7 licensed under Title 37, chapter 3, to practice medicine in
8 this state.

9 ~~(10)~~(11) "Qualified patient" means a patient 18 or more
10 years of age who has executed a declaration in accordance
11 with this chapter and who has been determined by the
12 attending physician to be in a terminal condition.

13 ~~(11)~~(12) "Reliable documentation" means a standardized,
14 state-wide identification card or form or a necklace or
15 bracelet of uniform design, adopted by a written, formal
16 understanding of the local community emergency medical
17 services agencies and licensed hospice and home health
18 agencies, that signifies and certifies that a valid and
19 current declaration is on file and that the individual is a
20 qualified patient.

21 (13) "State" means a state of the United States, the
22 District of Columbia, the Commonwealth of Puerto Rico, or a
23 territory or insular possession subject to the jurisdiction
24 of the United States.

25 ~~(12)~~(14) "Terminal condition" means an incurable or

1 irreversible condition that, without the administration of
2 life-sustaining procedures treatment, will, in the opinion
3 of the attending physician, result in death within a
4 relatively short time."

5 **Section 3.** Section 50-9-103, MCA, is amended to read:

6 "50-9-103. Declaration relating to use of
7 life-sustaining procedures--treatment -- designee. (1) Any
8 competent-adult An individual of sound mind and 18 or more
9 years of age may execute at any time a declaration at-any
10 time directing-that governing the withholding or withdrawal
11 of life-sustaining procedures--be--withheld--or--withdrawn
12 treatment. The declarant may designate another individual of
13 sound mind and 18 or more years of age to make decisions
14 governing the withholding or withdrawal of life-sustaining
15 treatment. However, the declaration is effective only if the
16 declarant's--condition--is-determined-to-be-terminal-and-the
17 declarant-is-not--able--to--make--treatment--decisions. The
18 declaration must be signed by the declarant, or another at
19 the declarant's direction, ~~in the presence of~~ and witnessed
20 by two witnesses individuals. A physician or health care
21 provider may presume, in the absence of actual notice to the
22 contrary, that the declaration complies with this chapter
23 and is valid.

24 ~~(2) It is the responsibility of the declarant to notify~~
25 ~~his--physician--of--the--declaration.--A--physician--or--other~~

1 health--care--provider--who--is--provided--a--copy--of--the
2 declaration--shall--make--it--a--part--of--the--declarant's--medical
3 records-

4 (3) A declaration directing a physician to withhold or
5 withdraw life-sustaining treatment may, but need not, be in
6 the following form:

7 DECLARATION

8 If I should have an incurable or irreversible condition
9 that, without the administration of life-sustaining
10 treatment, will, in the opinion of my attending physician,
11 cause my death within a relatively short time; it is my
12 desire that my life not be prolonged by administration of
13 life-sustaining procedures; if my condition is terminal and
14 I am unable to participate in no longer able to make
15 decisions regarding my medical treatment, I direct my
16 attending physician, pursuant to the Montana Rights of the
17 Terminally Ill Act, to withhold or withdraw procedures
18 treatment that merely--prolong only prolongs the dying
19 process of dying and are is not necessary to my comfort or
20 freedom from to alleviate pain. It is my intention that this
21 declaration shall be valid until revoked by me.

22 Signed this day of, ..
23 Signature.....
24 City, County, and State of Residence.....
25 The declarant is known to me and voluntarily signed this

1 document in my presence.

2 Witness.....

3 Address.....

4 Witness.....

5 Address.....

6 (3) A declaration that designates another individual to
7 make decisions governing the withholding or withdrawal of
8 life-sustaining treatment may, but need not, be in the
9 following form:

10 DECLARATION

11 If I should have an incurable and irreversible condition
12 that, without the administration of life-sustaining
13 treatment, will, in the opinion of my attending physician,
14 cause my death within a relatively short time and I am no
15 longer able to make decisions regarding my medical
16 treatment, I appoint or, if he or she is not
17 reasonably available or is unwilling to serve,,
18 to make decisions on my behalf regarding withholding or
19 withdrawal of treatment that only prolongs the process of
20 dying and is not necessary for my comfort or to alleviate
21 pain, pursuant to the Montana Rights of the Terminally Ill
22 Act.

23 If the individual I have appointed is not reasonably
24 available or is unwilling to serve, I direct my attending
25 physician, pursuant to the Montana Rights of the Terminally

1 Ill Act, to withhold or withdraw treatment that only
2 prolongs the process of dying and is not necessary for my
3 comfort or to alleviate pain.

4 Signed this day of,
5 Signature.....
6 City, County, and State of Residence.....

7 The declarant voluntarily signed this document in my
8 presence.

9 Witness.....
10 Address.....

11 Witness.....
12 Address.....

13 Name and address of designee.
14 Name
15 Address

16 (4) The IF THE designation of an attorney-in-fact
17 pursuant to 72-5-501 and 72-5-502, or the judicial
18 appointment of an individual, ~~who-is-authorized~~ CONTAINS
19 WRITTEN AUTHORIZATION to make decisions regarding the
20 withholding or withdrawal of life-sustaining treatment,
21 constitutes THAT DESIGNATION OR APPOINTMENT CONSTITUTES, for
22 the purposes of this part, a declaration designating another
23 individual to act for the declarant pursuant to subsection
24 (1).

25 (5) A physician or other health care provider who is

1 furnished a copy of the declaration shall make it a part of
2 the declarant's medical record and, if unwilling to comply
3 with the declaration, promptly so advise the declarant and
4 any individual designated to act for the declarant."

5 **Section 4.** Section 50-9-104, MCA, is amended to read:

6 **"50-9-104. Revocation of declaration.** (1) A declarant
7 may revoke a declaration may-be-revoked at any time and in
8 any manner by-which-the-declarant-is-able-to-communicate-his
9 intent--to--revoke, without regard to mental or physical
10 condition. A revocation is effective only--as--to--the
11 attending-physician-or-any-health-care-provider-acting-under
12 the-guidance-of-that-physician upon its communication to the
13 attending physician or other health care provider by the
14 declarant or by-another-to-whom a witness to the revocation
15 was--communicated. A health care provider or emergency
16 medical services personnel witnessing a revocation shall act
17 upon the revocation and shall communicate the revocation to
18 the attending physician at the earliest opportunity. A
19 revocation communicated to a person other than the attending
20 physician, emergency medical services personnel, or a health
21 care provider is not effective unless the attending
22 physician is informed of it before the qualified patient is
23 in need of life-sustaining procedures treatment.

24 (2) The attending physician or other health care
25 provider shall make the revocation a part of the declarant's

1 medical record."

2 **Section 5.** Section 50-9-201, MCA, is amended to read:

3 "50-9-201. Recording determination of terminal
4 condition and content of declaration. ~~When--an--attending~~
5 ~~physician--who--has--been--notified--of--the--existence--and--content~~
6 ~~of--a--declaration--determines--that--the~~ Upon determining that a
7 declarant is in a terminal condition, the attending
8 physician who knows of a declaration shall record that
9 determination and the content terms of the declaration in
10 the declarant's medical record."

11 **Section 6.** Section 50-9-202, MCA, is amended to read:

12 "50-9-202. Treatment of qualified patients. (1) A
13 qualified patient ~~has--the--right--to~~ may make decisions
14 regarding ~~use-of~~ life-sustaining procedures treatment if so
15 long as the patient is able to do so. ~~If--a--qualified--patient~~
16 ~~is--not--able--to--make--such--decisions--the--declaration--governs~~
17 ~~decisions--regarding--use--of--life--sustaining--procedures--~~

18 (2) This chapter does not ~~prohibit--the--application--of~~
19 ~~any--medical--procedure--or--intervention~~ affect the
20 responsibility of the attending physician or other health
21 care provider to provide treatment, including the--provision
22 of nutrition and hydration, considered-necessary-to-provide
23 for a patient's comfort care or to-alleviate alleviation of
24 pain.

25 (3) ~~The---declaration---of---a---qualified---patient~~

1 Life-sustaining treatment cannot be withheld or withdrawn
2 pursuant to a declaration from an individual known to the
3 attending physician to be pregnant ~~must-be-given--no--effect~~
4 ~~if so long as~~ it is probable that the fetus ~~could will~~
5 develop to the point of live birth with continued
6 application of life-sustaining procedures treatment."

7 **Section 7.** Section 50-9-203, MCA, is amended to read:

8 "50-9-203. Transfer of patients. (1) An attending
9 physician or other health care provider who is unwilling to
10 comply with ~~the-requirements-of-50-9-201-or-who-is-unwilling~~
11 ~~to--comply--with--the--declaration--of--a--qualified--patient--in~~
12 ~~accordance--with--50-9-202~~ this chapter shall take all
13 reasonable steps as promptly as practicable to transfer care
14 of the declarant to another physician or health care
15 provider who is willing to do so.

16 (2) ~~If~~ the policies of a health care facility preclude
17 compliance with the declaration of a qualified patient under
18 this chapter, that facility shall take all reasonable steps
19 to transfer the patient to a facility in which the
20 provisions of this chapter can be carried out."

21 **Section 8.** Section 50-9-204, MCA, is amended to read:

22 "50-9-204. Immunities. (1) In the absence of actual
23 notice of the revocation of a declaration, the following,
24 while acting in accordance with the requirements of this
25 chapter, are not subject to civil or criminal liability or

1 guilty of unprofessional conduct:

2 (a) a physician who causes the withholding or
3 withdrawal of life-sustaining procedures treatment from a
4 qualified patient;

5 (b) a person who participates in the withholding or
6 withdrawal of life-sustaining procedures treatment under the
7 direction or with the authorization of a physician;

8 (c) emergency medical services personnel who cause or
9 participate in the withholding or withdrawal of
10 life-sustaining procedures treatment under the direction of
11 or with the authorization of a physician or who on receipt
12 of reliable documentation follow a living will protocol;

13 (d) emergency medical services personnel who proceed to
14 provide life-sustaining treatment to a qualified patient
15 pursuant to a revocation communicated to them; and

16 (e) a health care facility in which withholding or
17 withdrawal occurs.

18 (2) A physician or other health care provider whose
19 action under this chapter is in accord with reasonable
20 medical standards is not subject to civil or criminal
21 liability for actions under this chapter that are in accord
22 with reasonable medical standards or discipline for
23 unprofessional conduct with respect to that decision.

24 (3) A physician or other health care provider whose
25 decision about the validity of consent under [section 12] is

1 made in good faith is not subject to criminal or civil
2 liability or discipline for unprofessional conduct with
3 respect to that decision.

4 (4) An individual designated pursuant to 50-9-103(1) or
5 an individual authorized to consent pursuant to [section
6 12], whose decision is made or consent is given in good
7 faith pursuant to this chapter, is not subject to criminal
8 or civil liability or discipline for unprofessional conduct
9 with respect to that decision."

10 **Section 9.** Section 50-9-205, MCA, is amended to read:

11 **"50-9-205. Effect on insurance -- patient's decision.**
12 (1) Death resulting from the withholding or withdrawal of
13 life-sustaining procedures--pursuant--to--a-declaration-and
14 treatment in accordance with this chapter is does not
15 constitute, for any purpose, a suicide or homicide.

16 (2) The making of a declaration pursuant to 50-9-103
17 does not affect in-any-manner the sale, procurement, or
18 issuance of any policy of life insurance or annuity, nor
19 does it affect, impair, or modify the terms of an existing
20 policy of life insurance. No A policy of life insurance is
21 not legally impaired or invalidated in-any-manner by the
22 withholding or withdrawal of life-sustaining procedures
23 treatment from an insured qualified-patient, notwithstanding
24 any term of the policy to the contrary.

25 (3) No-physician, health-care-facility, or other health

1 ~~care--provider--and--no--health--care--service-plan,--insurer~~
 2 ~~issuing-disability-insurance,--self-insured-employee--welfare~~
 3 ~~benefit--plan,--or--nonprofit-hospital-plan~~ A person may not
 4 prohibit or require any-person-to-execute the execution of a
 5 declaration as a condition for being insured for or
 6 receiving health care services.

7 (4) This chapter creates no presumption concerning the
 8 intention of an individual who has revoked or has not
 9 executed a declaration with respect to the use, withholding,
 10 or withdrawal of life-sustaining procedures treatment in the
 11 event of a terminal condition.

12 (5) ~~Nothing-in-this~~ This chapter ~~increases-or-decreases~~
 13 does not affect the right of a patient to make decisions
 14 regarding use of life-sustaining ~~procedures-if treatment, so~~
 15 long as the patient is able to do so, or ~~impairs~~ impair or
 16 ~~supersedes~~ supersede any a right or responsibility that any
 17 person has to effect the withholding or withdrawal of
 18 medical care ~~in--any--lawful--manner,--in-that-respect,--the~~
 19 ~~provisions-of-this-chapter-are-cumulative.~~

20 (6) This chapter does not require a physician or other
 21 health care provider to take action contrary to reasonable
 22 medical standards.

23 (6)(7) This chapter does not condone, authorize, or
 24 approve mercy killing or euthanasia."

25 **Section 10.** Section 50-9-206, MCA, is amended to read:

1 **"50-9-206. Penalties.** (1) A physician or other health
 2 care provider who willfully fails to transfer the care of a
 3 patient in accordance with 50-9-203 is guilty of a
 4 misdemeanor punishable by a fine not to exceed \$500 or
 5 imprisonment in the county jail for a term not to exceed 1
 6 year, or both.

7 (2) A physician who willfully fails to record the
 8 determination of terminal condition or the terms of a
 9 declaration in accordance with 50-9-201 is guilty of a
 10 misdemeanor punishable by a fine not to exceed \$500 or
 11 imprisonment in the county jail for a term not to exceed 1
 12 year, or both.

13 (3) ~~A--person~~ An individual who purposely conceals,
 14 cancels, defaces, or obliterates the declaration of another
 15 without the declarant's consent or who falsifies or forges a
 16 revocation of the declaration of another is guilty of a
 17 misdemeanor punishable by a fine not to exceed \$500 or
 18 imprisonment in the county jail for a term not to exceed 1
 19 year, or both.

20 (4) ~~A--person~~ An individual who falsifies or forges the
 21 declaration of another individual or purposely conceals or
 22 withholds personal knowledge of a revocation as provided in
 23 50-9-104, ~~---with--the--intent--to--cause--a--withholding--or~~
 24 ~~withdrawal-of-life-sustaining-procedures,~~ is guilty of a
 25 misdemeanor punishable by a fine not to exceed \$500 or

1 imprisonment in the county jail for a term not to exceed 1
2 year, or both.

3 (5) A person who requires or prohibits the execution of
4 a declaration as a condition for being insured for or
5 receiving health care service is guilty of a misdemeanor
6 punishable by a fine not to exceed \$500 or imprisonment in
7 the county jail for a term not to exceed 1 year, or both.

8 (6) A person who coerces or fraudulently induces an
9 individual to execute a declaration is guilty of a
10 misdemeanor punishable by a fine not to exceed \$500 or
11 imprisonment in the county jail for a term not to exceed 1
12 year, or both.

13 (7) The penalties provided in this section do not
14 displace any sanction applicable under other law."

15 **NEW SECTION. Section 11. When declaration operative.**

16 (1) A declaration becomes operative when:
17 (a) it is communicated to the attending physician; and
18 (b) the declarant is determined by the attending
19 physician to be in a terminal condition and no longer able
20 to make decisions regarding administration of
21 life-sustaining treatment.

22 (2) When the declaration becomes operative, the
23 attending physician and other health care providers shall
24 act in accordance with its provisions and with the
25 instructions of a designee under 50-9-103(1) or comply with

1 the transfer requirements of 50-9-203.

2 **NEW SECTION. Section 12. Consent by others to**
3 **withholding or withdrawal of treatment.** (1) If a written
4 consent to the withholding or withdrawal of the treatment,
5 witnessed by two individuals, is given to the attending
6 physician, the attending physician may withhold or withdraw
7 life-sustaining treatment from an individual who:

8 (a) has been determined by the attending physician to
9 be in a terminal condition and no longer able to make
10 decisions regarding administration of life-sustaining
11 treatment; and

12 (b) has no effective declaration.

13 (2) The authority to consent or to withhold consent
14 under subsection (1) may be exercised by the following
15 individuals, in order of priority:

16 (a) the spouse of the individual;

17 (b) an adult child of the individual or, if there is
18 more than one adult child, a majority of the adult children
19 who are reasonably available for consultation;

20 (c) the parents of the individual;

21 (d) an adult sibling of the individual or, if there is
22 more than one adult sibling, a majority of the adult
23 siblings who are reasonably available for consultation; or

24 (e) the nearest other adult relative of the individual
25 by blood or adoption who is reasonably available for

1 consultation.

2 (3) If a class entitled to decide whether to consent is
3 not reasonably available for consultation and competent to
4 decide or if it declines to decide, the next class is
5 authorized to decide. However, an equal division in a class
6 does not authorize the next class to decide.

7 (4) A decision to grant or withhold consent must be
8 made in good faith. A consent is not valid if it conflicts
9 with the expressed intention of the individual.

10 (5) A decision of the attending physician acting in
11 good faith that a consent is valid or invalid is conclusive.

12 (6) Life-sustaining treatment cannot be withheld or
13 withdrawn pursuant to this section from an individual known
14 to the attending physician to be pregnant so long as it is
15 probable that the fetus will develop to the point of live
16 birth with continued application of life-sustaining
17 treatment.

18 NEW SECTION. **Section 13.** When health care provider may
19 presume validity of declaration. In the absence of knowledge
20 to the contrary, a physician or other health care provider
21 may assume that a declaration complies with this chapter and
22 is valid.

23 NEW SECTION. **Section 14.** Effect of previous
24 declaration. An instrument executed before October 1, 1991,
25 that substantially complies with 50-9-103(1) is effective

1 under this chapter.

2 NEW SECTION. **Section 15.** Codification instruction.
3 [Sections 11 through 14] are intended to be codified as an
4 integral part of Title 50, chapter 9, and the provisions of
5 Title 50, chapter 9, apply to [sections 11 through 14].

6 NEW SECTION. **Section 16.** Effective date. [This act] is
7 effective on passage and approval.

-End-

1 HOUSE BILL NO. 635

2 INTRODUCED BY MEASURE, MAZUREK, L. NELSON,

3 STRIZICH, MESSMORE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 MONTANA LIVING WILL ACT TO CONFORM TO THE UNIFORM RIGHTS OF
7 THE TERMINALLY ILL ACT; PROVIDING THAT OTHER INDIVIDUALS MAY
8 AUTHORIZE THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING
9 TREATMENT; CLARIFYING WHEN A DECLARATION RELATING TO THE USE
10 OF LIFE-SUSTAINING TREATMENT IS OPERATIVE; PROVIDING FOR THE
11 PRESUMPTION OF THE VALIDITY OF DECLARATIONS RELATING TO THE
12 USE OF LIFE-SUSTAINING TREATMENT; AMENDING SECTIONS
13 50-9-101, 50-9-102, 50-9-103, 50-9-104, 50-9-201, 50-9-202,
14 50-9-203, 50-9-204, 50-9-205, AND 50-9-206, MCA; AND
15 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 50-9-101, MCA, is amended to read:

19 "50-9-101. Short title. This chapter may be cited as
20 the "Montana Living-Will Rights of the Terminally Ill Act"."

21 **Section 2.** Section 50-9-102, MCA, is amended to read:

22 "50-9-102. Definitions. As used in this chapter, the
23 following definitions apply:

24 (1) "Attending physician" means the physician selected
25 by or assigned to the patient, who has primary

1 responsibility for the treatment and care of the patient.

2 (2) "Board" means the Montana state board of medical
3 examiners.

4 (3) "Declaration" means a document executed in
5 accordance with the requirements of 50-9-103.

6 (4) "Department" means the department of health and
7 environmental sciences.

8 (5) "Emergency medical services personnel" means paid
9 or volunteer firefighters, law enforcement officers, first
10 responders, emergency medical technicians, or other
11 emergency services personnel acting within the ordinary
12 course of their professions.

13 (6) "Health care provider" means a person who is
14 licensed, certified, or otherwise authorized by the law of
15 this state to administer health care in the ordinary course
16 of business or practice of a profession.

17 (7) "Life-sustaining procedure treatment" means any
18 medical procedure or intervention that, when administered to
19 a qualified patient, will serve only to prolong the dying
20 process.

21 (8) "Living will protocol" means a locally developed,
22 community-wide method or a standardized, state-wide method
23 developed by the department and approved by the board, of
24 providing palliative care to and withholding life-sustaining
25 procedures treatment from a qualified patient under

REFERENCE BILL

HB 635

1 50-9-202 by emergency medical service personnel.

2 (9) "Person" means an individual, corporation, business
3 trust, estate, trust, partnership, association, joint
4 venture, government, governmental subdivision or agency, or
5 any other legal or commercial entity.

6 †9†(10) "Physician" means a person an individual
7 licensed under Title 37, chapter 3, to practice medicine in
8 this state.

9 †10†(11) "Qualified patient" means a patient 18 or more
10 years of age who has executed a declaration in accordance
11 with this chapter and who has been determined by the
12 attending physician to be in a terminal condition.

13 †††(12) "Reliable documentation" means a standardized,
14 state-wide identification card or form or a necklace or
15 bracelet of uniform design, adopted by a written, formal
16 understanding of the local community emergency medical
17 services agencies and licensed hospice and home health
18 agencies, that signifies and certifies that a valid and
19 current declaration is on file and that the individual is a
20 qualified patient.

21 (13) "State" means a state of the United States, the
22 District of Columbia, the Commonwealth of Puerto Rico, or a
23 territory or insular possession subject to the jurisdiction
24 of the United States.

25 †††(14) "Terminal condition" means an incurable or

1 irreversible condition that, without the administration of
2 life-sustaining procedures treatment, will, in the opinion
3 of the attending physician, result in death within a
4 relatively short time."

5 **Section 3.** Section 50-9-103, MCA, is amended to read:

6 "50-9-103. Declaration relating to use of
7 life-sustaining procedures--treatment -- designee. (1) Any
8 competent-adult An individual of sound mind and 18 or more
9 years of age may execute at any time a declaration at-any
10 time directing-that governing the withholding or withdrawal
11 of life-sustaining procedures--be--withheld--or--withdrawn
12 treatment. The declarant may designate another individual of
13 sound mind and 18 or more years of age to make decisions
14 governing the withholding or withdrawal of life-sustaining
15 treatment. However,--the-declaration-is-effective-only-if-the
16 declarant's--condition--is-determined-to-be-terminal-and-the
17 declarant-is-not--able--to--make--treatment--decisions: The
18 declaration must be signed by the declarant, or another at
19 the declarant's direction, in-the-presence-of and witnessed
20 by two witnesses individuals. A physician or health care
21 provider may presume, in the absence of actual notice to the
22 contrary, that the declaration complies with this chapter
23 and is valid.

24 (2) It-is-the-responsibility-of-the-declarant-to-notify
25 his--physician--of--the--declaration:--A--physician-or-other

1 Ill Act, to withhold or withdraw treatment that only
2 prolongs the process of dying and is not necessary for my
3 comfort or to alleviate pain.

4 Signed this day of,
5 Signature.....
6 City, County, and State of Residence.....

7 The declarant voluntarily signed this document in my
8 presence.

9 Witness.....

10 Address.....

11 Witness.....

12 Address.....

13 Name and address of designee.

14 Name

15 Address

16 (4) The IF THE designation of an attorney-in-fact
17 pursuant to 72-5-501 and 72-5-502, or the judicial
18 appointment of an individual, who--is--authorized CONTAINS
19 WRITTEN AUTHORIZATION to make decisions regarding the
20 withholding or withdrawal of life-sustaining treatment,
21 constitutes THAT DESIGNATION OR APPOINTMENT CONSTITUTES, for
22 the purposes of this part, a declaration designating another
23 individual to act for the declarant pursuant to subsection
24 (1).

25 (5) A physician or other health care provider who is

1 furnished a copy of the declaration shall make it a part of
2 the declarant's medical record and, if unwilling to comply
3 with the declaration, promptly so advise the declarant and
4 any individual designated to act for the declarant."

5 **Section 4.** Section 50-9-104, MCA, is amended to read:

6 **"50-9-104. Revocation of declaration.** (1) A declarant
7 may revoke a declaration may-be-revoked at any time and in
8 any manner by-which-the-declarant-is-able-to-communicate-his
9 intent--to--revoke, without regard to mental or physical
10 condition. A revocation is effective only--as--to--the
11 attending-physician-or-any-health-care-provider-acting-under
12 the-guidance-of-that-physician upon its communication to the
13 attending physician or other health care provider by the
14 declarant or by-another-to-whom a witness to the revocation
15 was--communicated. A health care provider or emergency
16 medical services personnel witnessing a revocation shall act
17 upon the revocation and shall communicate the revocation to
18 the attending physician at the earliest opportunity. A
19 revocation communicated to a person other than the attending
20 physician, emergency medical services personnel, or a health
21 care provider is not effective unless the attending
22 physician is informed of it before the qualified patient is
23 in need of life-sustaining procedures treatment.

24 (2) The attending physician or other health care
25 provider shall make the revocation a part of the declarant's

1 health--care--provider--who--is--provided--a--copy--of---the
2 declaration--shall--make--it--a--part--of--the--declarant's--medical
3 records:

4 {3} A declaration directing a physician to withhold or
5 withdraw life-sustaining treatment may, but need not, be in
6 the following form:

7 DECLARATION

8 If I should have an incurable or irreversible condition
9 that, without the administration of life-sustaining
10 treatment, will, in the opinion of my attending physician,
11 cause my death within a relatively short time, it is my
12 desire that my life not be prolonged--by--administration--of
13 life-sustaining--procedures,--if--my--condition--is--terminal and
14 I am unable--to--participate--in no longer able to make
15 decisions regarding my medical treatment, I direct my
16 attending physician, pursuant to the Montana Rights of the
17 Terminally Ill Act, to withhold or withdraw procedures
18 treatment that merely--prolong only prolongs the dying
19 process of dying and are is not necessary to my comfort or
20 freedom-from to alleviate pain. It is my intention that this
21 declaration shall be valid until revoked by me.

22 Signed this day of,

23 Signature.....

24 City, County, and State of Residence.....

25 The declarant is known to me and voluntarily signed this

1 document in my presence.

2 Witness.....

3 Address.....

4 Witness.....

5 Address.....

6 (3) A declaration that designates another individual to
7 make decisions governing the withholding or withdrawal of
8 life-sustaining treatment may, but need not, be in the
9 following form:

10 DECLARATION

11 If I should have an incurable and irreversible condition
12 that, without the administration of life-sustaining
13 treatment, will, in the opinion of my attending physician,
14 cause my death within a relatively short time and I am no
15 longer able to make decisions regarding my medical
16 treatment, I appoint or, if he or she is not
17 reasonably available or is unwilling to serve,,
18 to make decisions on my behalf regarding withholding or
19 withdrawal of treatment that only prolongs the process of
20 dying and is not necessary for my comfort or to alleviate
21 pain, pursuant to the Montana Rights of the Terminally Ill
22 Act.

23 If the individual I have appointed is not reasonably
24 available or is unwilling to serve, I direct my attending
25 physician, pursuant to the Montana Rights of the Terminally

1 guilty of unprofessional conduct:

2 (a) a physician who causes the withholding or
3 withdrawal of life-sustaining procedures treatment from a
4 qualified patient;

5 (b) a person who participates in the withholding or
6 withdrawal of life-sustaining procedures treatment under the
7 direction or with the authorization of a physician;

8 (c) emergency medical services personnel who cause or
9 participate in the withholding or withdrawal of
10 life-sustaining procedures treatment under the direction of
11 or with the authorization of a physician or who on receipt
12 of reliable documentation follow a living will protocol;

13 (d) emergency medical services personnel who proceed to
14 provide life-sustaining treatment to a qualified patient
15 pursuant to a revocation communicated to them; and

16 (e) a health care facility in which withholding or
17 withdrawal occurs.

18 (2) A physician or other health care provider whose
19 action under this chapter is in accord with reasonable
20 medical standards is not subject to civil or criminal
21 liability for actions under this chapter that are in accord
22 with reasonable medical standards or discipline for
23 unprofessional conduct with respect to that decision.

24 (3) A physician or other health care provider whose
25 decision about the validity of consent under [section 12] is

1 made in good faith is not subject to criminal or civil
2 liability or discipline for unprofessional conduct with
3 respect to that decision.

4 (4) An individual designated pursuant to 50-9-103(1) or
5 an individual authorized to consent pursuant to [section
6 12], whose decision is made or consent is given in good
7 faith pursuant to this chapter, is not subject to criminal
8 or civil liability or discipline for unprofessional conduct
9 with respect to that decision."

10 **Section 9.** Section 50-9-205, MCA, is amended to read:

11 **"50-9-205. Effect on insurance -- patient's decision.**
12 (1) Death resulting from the withholding or withdrawal of
13 life-sustaining procedures--pursuant--to--a--declaration--and
14 treatment in accordance with this chapter ~~is~~ does not
15 constitute, for any purpose, a suicide or homicide.

16 (2) The making of a declaration pursuant to 50-9-103
17 does not affect ~~in any manner~~ the sale, procurement, or
18 issuance of any policy of life insurance or annuity, nor
19 does it affect, impair, or modify the terms of an existing
20 policy of life insurance. No A policy of life insurance is
21 not legally impaired or invalidated ~~in any manner~~ by the
22 withholding or withdrawal of life-sustaining procedures
23 treatment from an insured qualified patient, notwithstanding
24 any term of the policy to the contrary.

25 (3) ~~No physician, health care facility, or other health~~

1 medical record."

2 **Section 5.** Section 50-9-201, MCA, is amended to read:

3 **"50-9-201. Recording determination of terminal**
4 **condition and content of declaration.** ~~When--an--attending~~
5 ~~physician--who--has--been--notified--of--the--existence--and--content~~
6 ~~of--a--declaration--determines--that--the~~ Upon determining that a
7 declarant is in a terminal condition, the attending
8 physician who knows of a declaration shall record that
9 determination and the content terms of the declaration in
10 the declarant's medical record."

11 **Section 6.** Section 50-9-202, MCA, is amended to read:

12 **"50-9-202. Treatment of qualified patients.** (1) A
13 qualified patient has--the--right--to may make decisions
14 regarding use-of life-sustaining procedures treatment if so
15 long as the patient is able to do so. ~~if-a-qualified-patient~~
16 ~~is--not--able--to--make--such--decisions,~~ the-declaration-governs
17 decisions-regarding-use-of-life-sustaining-procedures:

18 (2) This chapter does not ~~prohibit-the--application--of~~
19 ~~any---medical---procedure---or---intervention~~ affect the
20 responsibility of the attending physician or other health
21 care provider to provide treatment, including the--provision
22 of nutrition and hydration, considered-necessary-to-provide
23 for a patient's comfort care or to-alleviate alleviation of
24 pain.

25 (3) ~~The---declaration---of---a---qualified---patient~~

1 Life-sustaining treatment cannot be withheld or withdrawn
2 pursuant to a declaration from an individual known to the
3 attending physician to be pregnant ~~must-be-given--no--effect~~
4 if so long as it is probable that the fetus ~~could~~ will
5 develop to the point of live birth with continued
6 application of life-sustaining procedures treatment."

7 **Section 7.** Section 50-9-203, MCA, is amended to read:

8 **"50-9-203. Transfer of patients.** ~~{1}~~ An attending
9 physician or other health care provider who is unwilling to
10 comply with the-requirements-of-50-9-201-or-who-is-unwilling
11 to--comply--with--the--declaration-of-a-qualified-patient-in
12 accordance--with--50-9-202 this chapter shall take all
13 reasonable steps as promptly as practicable to transfer care
14 of the declarant to another physician or health care
15 provider who is willing to do so.

16 ~~{2}~~--If the policies of a health care facility preclude
17 compliance with the declaration of a qualified patient under
18 this chapter, that facility shall take all reasonable steps
19 to transfer the patient to a facility in which the
20 provisions of this chapter can be carried out."

21 **Section 8.** Section 50-9-204, MCA, is amended to read:

22 **"50-9-204. Immunities.** (1) In the absence of actual
23 notice of the revocation of a declaration, the following,
24 while acting in accordance with the requirements of this
25 chapter, are not subject to civil or criminal liability or

1 imprisonment in the county jail for a term not to exceed 1
2 year, or both.

3 (5) A person who requires or prohibits the execution of
4 a declaration as a condition for being insured for or
5 receiving health care service is guilty of a misdemeanor
6 punishable by a fine not to exceed \$500 or imprisonment in
7 the county jail for a term not to exceed 1 year, or both.

8 (6) A person who coerces or fraudulently induces an
9 individual to execute a declaration is guilty of a
10 misdemeanor punishable by a fine not to exceed \$500 or
11 imprisonment in the county jail for a term not to exceed 1
12 year, or both.

13 (7) The penalties provided in this section do not
14 displace any sanction applicable under other law."

15 **NEW SECTION. Section 11. When declaration operative.**

16 (1) A declaration becomes operative when:

17 (a) it is communicated to the attending physician; and

18 (b) the declarant is determined by the attending
19 physician to be in a terminal condition and no longer able
20 to make decisions regarding administration of
21 life-sustaining treatment.

22 (2) When the declaration becomes operative, the
23 attending physician and other health care providers shall
24 act in accordance with its provisions and with the
25 instructions of a designee under 50-9-103(1) or comply with

1 the transfer requirements of 50-9-203.

2 **NEW SECTION. Section 12. Consent by others to**
3 **withholding or withdrawal of treatment.** (1) If a written
4 consent to the withholding or withdrawal of the treatment,
5 witnessed by two individuals, is given to the attending
6 physician, the attending physician may withhold or withdraw
7 life-sustaining treatment from an individual who:

8 (a) has been determined by the attending physician to
9 be in a terminal condition and no longer able to make
10 decisions regarding administration of life-sustaining
11 treatment; and

12 (b) has no effective declaration.

13 (2) The authority to consent or to withhold consent
14 under subsection (1) may be exercised by the following
15 individuals, in order of priority:

16 (a) the spouse of the individual;

17 (b) an adult child of the individual or, if there is
18 more than one adult child, a majority of the adult children
19 who are reasonably available for consultation;

20 (c) the parents of the individual;

21 (d) an adult sibling of the individual or, if there is
22 more than one adult sibling, a majority of the adult
23 siblings who are reasonably available for consultation; or

24 (e) the nearest other adult relative of the individual
25 by blood or adoption who is reasonably available for

1 ~~care--provider--and--no--health--care--service-plan, insurer~~
 2 ~~issuing disability insurance, self-insured employee welfare~~
 3 ~~benefit plan, or nonprofit hospital plan~~ A person may not
 4 prohibit or require any person to execute the execution of a
 5 declaration as a condition for being insured for or
 6 receiving health care services.

7 (4) This chapter creates no presumption concerning the
 8 intention of an individual who has revoked or has not
 9 executed a declaration with respect to the use, withholding,
 10 or withdrawal of life-sustaining procedures treatment in the
 11 event of a terminal condition.

12 (5) ~~Nothing in this~~ This chapter ~~increases or decreases~~
 13 does not affect the right of a patient to make decisions
 14 regarding use of life-sustaining ~~procedures if~~ treatment, so
 15 long as the patient is able to do so, or impairs impair or
 16 supersedes supersede any a right or responsibility that any
 17 person has to effect the withholding or withdrawal of
 18 medical care ~~in any lawful manner, in that respect, the~~
 19 ~~provisions of this chapter are cumulative.~~

20 (6) This chapter does not require a physician or other
 21 health care provider to take action contrary to reasonable
 22 medical standards.

23 ~~(7)~~ This chapter does not condone, authorize, or
 24 approve mercy killing or euthanasia."

25 **Section 10.** Section 50-9-206, MCA, is amended to read:

1 **"50-9-206. Penalties.** (1) A physician or other health
 2 care provider who willfully fails to transfer the care of a
 3 patient in accordance with 50-9-203 is guilty of a
 4 misdemeanor punishable by a fine not to exceed \$500 or
 5 imprisonment in the county jail for a term not to exceed 1
 6 year, or both.

7 (2) A physician who willfully fails to record the
 8 determination of terminal condition or the terms of a
 9 declaration in accordance with 50-9-201 is guilty of a
 10 misdemeanor punishable by a fine not to exceed \$500 or
 11 imprisonment in the county jail for a term not to exceed 1
 12 year, or both.

13 (3) ~~A person~~ An individual who purposely conceals,
 14 cancels, defaces, or obliterates the declaration of another
 15 without the declarant's consent or who falsifies or forges a
 16 revocation of the declaration of another is guilty of a
 17 misdemeanor punishable by a fine not to exceed \$500 or
 18 imprisonment in the county jail for a term not to exceed 1
 19 year, or both.

20 (4) ~~A person~~ An individual who falsifies or forges the
 21 declaration of another individual or purposely conceals or
 22 withholds personal knowledge of a revocation as provided in
 23 50-9-104, ~~with the intent to cause a withholding or~~
 24 ~~withdrawal of life-sustaining procedures,~~ is guilty of a
 25 misdemeanor punishable by a fine not to exceed \$500 or

1 consultation.

2 (3) If a class entitled to decide whether to consent is
3 not reasonably available for consultation and competent to
4 decide or if it declines to decide, the next class is
5 authorized to decide. However, an equal division in a class
6 does not authorize the next class to decide.

7 (4) A decision to grant or withhold consent must be
8 made in good faith. A consent is not valid if it conflicts
9 with the expressed intention of the individual.

10 (5) A decision of the attending physician acting in
11 good faith that a consent is valid or invalid is conclusive.

12 (6) Life-sustaining treatment cannot be withheld or
13 withdrawn pursuant to this section from an individual known
14 to the attending physician to be pregnant so long as it is
15 probable that the fetus will develop to the point of live
16 birth with continued application of life-sustaining
17 treatment.

18 NEW SECTION. **Section 13.** When health care provider may
19 presume validity of declaration. In the absence of knowledge
20 to the contrary, a physician or other health care provider
21 may assume that a declaration complies with this chapter and
22 is valid.

23 NEW SECTION. **Section 14.** Effect of previous
24 declaration. An instrument executed before October 1, 1991,
25 that substantially complies with 50-9-103(1) is effective

1 under this chapter.

2 NEW SECTION. **Section 15.** Codification instruction.
3 [Sections 11 through 14] are intended to be codified as an
4 integral part of Title 50, chapter 9, and the provisions of
5 Title 50, chapter 9, apply to [sections 11 through 14].

6 NEW SECTION. **Section 16.** Effective date. [This act] is
7 effective on passage and approval.

-End-