

Senate BILL NO. *75*

INTRODUCED BY *Gustav Thiesen, Martha Dunkel, Leslie Murby, Bergen*

A BILL FOR AN ACT ENTITLED: "THE MONTANA NATURAL DEATH ACT TO AUTHORIZE WITHHOLDING OF LIFE-SUPPORT SYSTEMS FROM ADULTS AFFLICTED WITH A TERMINAL CONDITION IF THE PERSON HAS SO DIRECTED."

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

Section 1. Short title. This act may be cited as "The Montana Natural Death Act".

Section 2. Legislative findings. (1) The legislature finds that:

(a) adult persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances of a terminal condition;

(b) modern medical technology has made possible the artificial prolongation of human life beyond natural limits;

(c) in the interest of protecting individual autonomy, such prolongation of life for persons with a terminal condition may cause loss of patient dignity and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient;

(d) there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use or application of life-sustaining procedures whenever the patient has voluntarily and in sound mind evidenced a desire that such procedures be withheld or withdrawn.

(2) In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of the state of Montana recognize the right of an adult person to make a written directive instructing his physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

Section 3. Definitions. As used in this act, the following definitions apply:

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

(2) "Directive" means a written document voluntarily executed by the declarant in accordance with the requirements of [section 3]. The directive or a copy of the directive shall be made part of the patient's medical records.

(3) "Life-sustaining procedure" means any medical procedure or intervention which utilizes mechanical or other

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1 artificial means to sustain, restore, or supplant a vital
 2 function, which, when applied to a qualified patient, would
 3 serve only to artificially prolong the moment of death and,
 4 in the judgment of the attending physician, death is
 5 imminent whether or not such procedures are utilized.
 6 "Life-sustaining procedure" does not include the
 7 administration of medication or the performance of any
 8 medical procedure considered necessary to alleviate pain.

9 (4) "Physician" means a physician and surgeon licensed
 10 by the board of medical examiners or the board of
 11 osteopathic physicians.

12 (5) "Qualified patient" means a patient diagnosed and
 13 certified in writing to be afflicted with a terminal
 14 condition by two physicians, one of whom is the attending
 15 physician, who have personally examined the patient.

16 (6) "Terminal condition" means an incurable condition
 17 caused by injury, disease, or illness, which, regardless of
 18 the application of life-sustaining procedures, would, within
 19 reasonable medical judgment, produce death, and the
 20 application of life-sustaining procedures serves only to
 21 postpone the moment of death of the patient.

22 Section 4. Directive. (1) Any adult person may execute
 23 a directive directing the withholding or withdrawal of
 24 life-sustaining procedures in a terminal condition. The
 25 directive must be signed by the declarant in the presence of

1 two witnesses not related to the declarant by blood or
 2 marriage and who would not be entitled to any portion of the
 3 estate of the declarant upon his death under any will of the
 4 declarant or codicil then existing or, at the time of the
 5 directive, by operation of law then existing. In addition, a
 6 witness to a directive may not be the attending physician,
 7 an employee of the attending physician or a health facility
 8 in which the declarant is a patient, or any person who has a
 9 claim against any portion of the estate of the declarant
 10 upon his decease at the time of the execution of the
 11 directive. The directive shall be substantially in the
 12 following form:

DIRECTIVE TO PHYSICIANS

14 Directive made this day of (month,
 15 year).

16 I, being of sound mind, willfully
 17 and voluntarily make known my desire that my life may not be
 18 artificially prolonged under the circumstances set forth
 19 below and hereby declare as follows:

20 1. If at any time I should have an incurable injury,
 21 disease, or illness certified to be a terminal condition by
 22 two physicians and the application of life-sustaining
 23 procedures would serve only to artificially prolong the
 24 moment of my death and my physician determines that my death
 25 is imminent whether or not life-sustaining procedures are

1 utilized, I direct that such procedures be withheld or
2 withdrawn and that I be permitted to die naturally.

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

9 3. If I have been diagnosed as pregnant and that
10 diagnosis is known to my physician, this directive is not
11 effective during the course of my pregnancy.

12 4. I have been diagnosed and notified at least 14 days
13 ago as having a terminal condition by,
14 M.D., whose address is, and whose
15 telephone number is I understand that if I have
16 not filled in the physician's name and address, it is
17 presumed that I did not have a terminal condition when I
18 made out this directive.

19 5. This directive has no force or effect 5 years from
20 the date filled in above.

21 6. I understand the full import of this directive and
22 I am emotionally and mentally competent to make this
23 directive.

24 Signed
25 City, County and State of Residence

1 The declarant has been personally known to me and I believe
2 him or her to be of sound mind.

3 Witness
4 Witness

5 (2) A directive is not effective if the declarant is a
6 patient in a skilled nursing facility as defined in 69-5201
7 at the time the directive is executed, unless one of the two
8 witnesses to the directive is a patient advocate or
9 ombudsman as may be designated by the aging services bureau,
10 department of social and rehabilitation services, for this
11 purpose pursuant to any other applicable provision of law.
12 The patient advocate or ombudsman must have the same
13 qualifications as a witness under this section. The intent
14 of this subsection is to recognize that some patients in
15 skilled nursing facilities may be so insulated from a
16 voluntary decision-making role, by virtue of the custodial
17 nature of their care, as to require special assurance that
18 they are capable of purposefully and voluntarily executing a
19 directive.

20 Section 5. Revocation of directive. (1) A directive
21 may be revoked at any time by the declarant, without regard
22 to his mental state or competency, by any of the following
23 methods:

24 (a) being canceled, defaced, obliterated, burnt, torn,
25 or otherwise destroyed by the declarant or by some person in

1 his presence and by his direction;

2 (b) a written revocation of the declarant expressing
3 his intent to revoke, signed and dated by the declarant.
4 Such revocation becomes effective only upon communication to
5 the attending physician by the declarant or by a person
6 acting on behalf of the declarant. The attending physician
7 must record in the patient's medical record the time and
8 date when he received notification of the written
9 revocation.

10 (c) a verbal expression by the declarant of his intent
11 to revoke the directive. Such revocation becomes effective
12 only upon communication to the attending physician by the
13 declarant or by a person acting on behalf of the declarant.
14 The attending physician must record in the patient's medical
15 record the time, date, and place of the revocation and the
16 time, date, and place, if different, of when he received
17 notification of the revocation.

18 (2) There is no criminal or civil liability on the
19 part of a person for failure to act upon a revocation made
20 pursuant to this section unless that person has actual
21 knowledge of the revocation.

22 Section 6. Limitation on time of effect. A directive
23 is effective for 5 years from the date of execution unless
24 sooner revoked in a manner prescribed in [section 4]. A
25 declarant may reexecute a directive at any time in

1 accordance with [section 3] including reexecution subsequent
2 to a diagnosis of a terminal condition. If the declarant has
3 executed more than one directive, time is determined from
4 the date of execution of the last directive known to the
5 attending physician. If the declarant becomes comatose or is
6 rendered incapable of communicating with the attending
7 physician, the directive remains in effect for the duration
8 of the comatose condition or until such time as the
9 declarant's condition renders him or her able to communicate
10 with the attending physician.

11 Section 7. Nonliability — health care providers. No
12 physician or health care facility which, acting in
13 accordance with the requirements of this act, causes the
14 withholding or withdrawal of life-sustaining procedures from
15 a qualified patient is subject to civil liability therefrom.
16 No licensed health professional, acting under the direction
17 of a physician, who participates in the withholding or
18 withdrawal of life-sustaining procedures in accordance with
19 the provisions of this act is subject to civil liability.
20 No physician, or licensed health professional acting under
21 the direction of a physician, who participates in the
22 withholding or withdrawal of life-sustaining procedures in
23 accordance with the provisions of this act may be guilty of
24 any criminal act or of unprofessional conduct for so doing.

25 Section 8. Executing the directive. (1) Prior to

1 effecting a withholding or withdrawal of life-sustaining
 2 procedures from a qualified patient pursuant to the
 3 directive, the attending physician must determine that the
 4 directive substantially complies with [section 3] and, if
 5 the patient is mentally competent, that the directive and
 6 all steps proposed by the attending physician to be
 7 undertaken are in accord with the desires of the qualified
 8 patient.

9 (2) If the declarant was a qualified patient at least
 10 14 days prior to executing or reexecuting the directive, the
 11 directive is conclusively presumed, unless revoked, to be
 12 the directions of the patient regarding the withholding or
 13 withdrawal of life-sustaining procedures. No physician and
 14 no licensed health professional acting under the direction
 15 of a physician is criminally or civilly liable for failing
 16 to effectuate the directive of the qualified patient
 17 pursuant to this subsection. A failure by a physician to
 18 effectuate the directive of a qualified patient pursuant to
 19 this section constitutes unprofessional conduct if the
 20 physician refuses to make the necessary arrangements or
 21 fails to take the necessary steps to effect the transfer of
 22 the qualified patient to another physician who will
 23 effectuate the directive of the qualified patient.

24 (3) If the declarant becomes a qualified patient
 25 subsequent to executing the directive and has not

1 subsequently reexecuted the directive, the attending
 2 physician may give weight to the directive as evidence of
 3 the patient's directions regarding the withholding or
 4 withdrawal of life-sustaining procedures and may consider
 5 other factors, such as information from the affected family
 6 or the nature of the patient's illness, injury, or disease,
 7 in determining whether the totality of circumstances known
 8 to the attending physician justify effectuating the
 9 directive. No physician, and no licensed health professional
 10 acting under the direction of a physician, is criminally or
 11 civilly liable for failing to effectuate the directive of
 12 the qualified patient pursuant to this subsection.

13 Section 9. Life insurance not affected. (1) The
 14 withholding or withdrawal of life-sustaining procedures from
 15 a qualified patient in accordance with the provisions of
 16 this act does not for any purpose constitute a suicide.

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

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

1 health care provider and no health care service plan,
 2 insurer issuing disability insurance, self-insured employee
 3 welfare benefit plan, or nonprofit hospital service plan may
 4 require any person to execute a directive as a condition for
 5 being insured for or receiving health care services.

6 Section 10. Penalties. A person who purposefully
 7 conceals, cancels, defaces, obliterates, or damages the
 8 directive of another without that declarant's consent is
 9 guilty of a misdemeanor. A person who falsifies or forges
 10 the directive of another or purposefully conceals or
 11 withholds personal knowledge of a revocation with the intent
 12 to cause a withholding or withdrawal of life-sustaining
 13 procedures contrary to the wishes of the declarant and
 14 directly causes life-sustaining procedures to be withheld or
 15 withdrawn and death to thereby be hastened is subject to
 16 prosecution for criminal homicide.

17 Section 11. Mercy killing prohibited. Nothing in this
 18 act authorizes or approves mercy killing or permits any
 19 affirmative or deliberate act or omission to end life other
 20 than to permit the natural process of dying as provided in
 21 this act.

22 Section 12. Severability. If a part of this act is
 23 invalid, all valid parts that are severable from the invalid
 24 part remain in effect. If a part of this act is invalid in
 25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from invalid
 2 applications.

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