

HOUSE BILL NO. 228

INTRODUCED BY WINSLOW, CHRISTIAENS, MANNING,
FRITZ, BERGENE, BRANDEWIE, SCHULTZ, COBB, HARP,
SCHYE, QUILICI, MENAHAN, HAGER, B. BROWN,
HART, NEUMAN, J. BROWN, MILES, D. BROWN,
REGAN, KEENAN, O'HARA, H. HAMMOND, JACK MOORE

IN THE HOUSE

January 17, 1985	Introduced and referred to Committee on Human Services and Aging.
January 30, 1985	Committee recommend bill do pass as amended. Report adopted.
January 31, 1985	Bill printed and placed on members' desks.
February 2, 1985	Second reading, do pass as amended. Correctly engrossed.
February 4, 1985	Third reading, passed. Ayes, 97; Noes, 3. Transmitted to Senate.

IN THE SENATE

February 7, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 23, 1985	Committee recommend bill be concurrent in. Report adopted.
March 27, 1985	Second reading, concurred in.
March 29, 1985	Third reading, concurred in. Ayes, 49; Noes, 0. Returned to House.

IN THE HOUSE

March 29, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

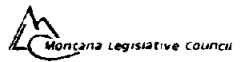
1 *Reagan*
 2 *Ed Han* *St. Klamm* **HOUSE** BILL NO. *228* *Moore*
 3 INTRODUCED BY *Winkler* *Christie* *Nichols* *Hanning* *Fitz*
 4 *Bergene* *Brunson* *Edulley* *Loeb* *HART* *Leitz* *Decker*
 5 *J. Brunson* *Miles* *Case* *Gran* *Keenan* *Menokan*
 6 *Newman* A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE *Hug*
 7 PREPARATION AND IMPLEMENTATION OF A DECLARATION INSTRUCTING *Bob Brown*
 8 AN ADULT'S PHYSICIAN TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING *M. Harris*
 9 PROCEDURES IF THE PERSON IS IN A TERMINAL CONDITION AND IS
 10 UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS;
 11 PROVIDING METHODS FOR REVOCATION OF THE DECLARATION;
 12 LIMITING THE LIABILITY OF PHYSICIANS AND HEALTH CARE
 13 PROVIDERS WHO IMPLEMENT THE DECLARATION; AND ESTABLISHING
 14 CRIMINAL PENALTIES FOR FAILING TO COMPLY WITH A DECLARATION
 15 AND FOR OTHER RELATED VIOLATIONS."

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

17 Section 1. Definitions. As used in [this act], the following definitions apply:

- 18 (1) "Attending physician" means the physician selected
- 19 by or assigned to the patient, who has primary
- 20 responsibility for the treatment and care of the patient.
- 21 (2) "Declaration" means a document executed in
- 22 accordance with the requirements of [section 2].
- 23 (3) "Health care provider" means a person who is
- 24 licensed or otherwise authorized by the law of this state to
- 25 administer health care in the ordinary course of business or

- 1 practice of a profession.
- 2 (4) "Life-sustaining procedure" means any medical
- 3 procedure or intervention that, when administered to a
- 4 qualified patient, will serve only to prolong the dying
- 5 process.
- 6 (5) "Physician" means a person licensed under Title
- 7 37, chapter 3, to practice medicine in this state.
- 8 (6) "Qualified patient" means a patient who has
- 9 executed a declaration in accordance with [this act] and who
- 10 has been determined by the attending physician to be in a
- 11 terminal condition.
- 12 (7) "Terminal condition" means an incurable or
- 13 irreversible condition that, without the administration of
- 14 life-sustaining procedures, will, in the opinion of the
- 15 attending physician, result in death within a relatively
- 16 short time.
- 17 Section 2. Declaration relating to use of
- 18 life-sustaining procedures. (1) Any competent adult may
- 19 execute a declaration at any time directing that
- 20 life-sustaining procedures be withheld or withdrawn.
- 21 However, the declaration is effective only if the
- 22 declarant's condition is determined to be terminal and the
- 23 declarant is not able to make treatment decisions. The
- 24 declaration must be signed by the declarant, or another at
- 25 the declarant's direction, in the presence of two witnesses.



1 A physician or health care provider may presume, in the
2 absence of actual notice to the contrary, that the
3 declaration complies with [this act] and is valid.

4 (2) It is the responsibility of the declarant to
5 notify his physician of the declaration. A physician or
6 other health care provider who is provided a copy of the
7 declaration shall make it a part of the declarant's medical
8 records.

9 (3) A declaration may, but need not, be in the
10 following form:

11 DECLARATION

12 If I should have an incurable or irreversible condition
13 that will cause my death within a relatively short time, it
14 is my desire that my life not be prolonged by administration
15 of life-sustaining procedures. If my condition is terminal
16 and I am unable to participate in decisions regarding my
17 medical treatment, I direct my attending physician to
18 withhold or withdraw procedures that merely prolong the
19 dying process and are not necessary to my comfort or freedom
20 from pain.

21 Signed this _____ day of _____, ____.

22 Signature _____

23 City, County, and State of Residence _____

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

1 Witness _____

2 Address _____

3 Witness _____

4 Address _____

5 Section 3. Revocation of declaration. (1) A
6 declaration may be revoked at any time and in any manner by
7 which the declarant is able to communicate his intent to
8 revoke, without regard to mental or physical condition. A
9 revocation is effective only as to the attending physician
10 or any health care provider acting under the guidance of
11 that physician upon communication to the physician or health
12 care provider by the declarant or by another to whom the
13 revocation was communicated.

14 (2) The attending physician or health care provider
15 shall make the revocation a part of the declarant's medical
16 record.

17 Section 4. Recording determination of terminal
18 condition and content of declaration. When an attending
19 physician who has been notified of the existence and content
20 of a declaration determines that the declarant is in a
21 terminal condition, the physician shall record that
22 determination and the content of the declaration in the
23 declarant's medical record.

24 Section 5. Treatment of qualified patients. (1) A
25 qualified patient has the right to make decisions regarding

1 use of life-sustaining procedures if the patient is able to
2 do so. If a qualified patient is not able to make such
3 decisions, the declaration governs decisions regarding use
4 of life-sustaining procedures.

5 (2) [This act] does not prohibit the application of
6 any medical procedure or intervention, including the
7 provision of nutrition and hydration, considered necessary
8 to provide comfort care or to alleviate pain.

9 (3) The declaration of a qualified patient known to
10 the attending physician to be pregnant must be given no
11 effect if it is probable that the fetus could develop to the
12 point of live birth with continued application of
13 life-sustaining procedures.

14 Section 6. Transfer of patients. (1) An attending
15 physician who is unwilling to comply with the requirements
16 of [section 4] or who is unwilling to comply with the
17 declaration of a qualified patient in accordance with
18 [section 5] shall take all reasonable steps to transfer the
19 declarant to another physician.

20 (2) If the policies of a health care facility preclude
21 compliance with the declaration of a qualified patient under
22 [this act], that facility shall take all reasonable steps to
23 transfer the patient to a facility in which the provisions
24 of [this act] can be carried out.

25 Section 7. Immunities. (1) In the absence of actual

1 notice of the revocation of a declaration, the following,
2 while acting in accordance with the requirements of [this
3 act], are not subject to civil or criminal liability or
4 guilty of unprofessional conduct:

5 (a) a physician who causes the withholding or
6 withdrawal of life-sustaining procedures from a qualified
7 patient;

8 (b) a person who participates in the withholding or
9 withdrawal of life-sustaining procedures under the direction
10 or with the authorization of a physician;

11 (c) the health care facility in which the withholding
12 or withdrawal occurs.

13 (2) A physician is not subject to civil or criminal
14 liability for actions under [this act] that are in accord
15 with reasonable medical standards.

16 Section 8. Penalties. (1) A physician who willfully
17 fails to transfer in accordance with [section 6] is guilty
18 of a misdemeanor punishable by a fine not to exceed \$500 or
19 imprisonment in the county jail for a term not to exceed 1
20 year, or both.

21 (2) A physician who willfully fails to record the
22 determination of terminal condition in accordance with
23 [section 4] is guilty of a misdemeanor punishable by a fine
24 not to exceed \$500 or imprisonment in the county jail for a
25 term not to exceed 1 year, or both.

1 (3) A person who purposely conceals, cancels, defaces,
 2 or obliterates the declaration of another without the
 3 declarant's consent or who falsifies or forges a revocation
 4 of the declaration of another is guilty of a misdemeanor
 5 punishable by a fine not to exceed \$500 or imprisonment in
 6 the county jail for a term not to exceed 1 year, or both.

7 (4) A person who falsifies or forges the declaration
 8 of another or purposely conceals or withholds personal
 9 knowledge of a revocation as provided in [section 3], with
 10 the intent to cause a withholding or withdrawal of
 11 life-sustaining procedures, is guilty of a misdemeanor
 12 punishable by a fine not to exceed \$500 or imprisonment in
 13 the county jail for a term not to exceed 1 year, or both.

14 Section 9. Reservations on effect of [act]. (1) Death
 15 resulting from the withholding or withdrawal of
 16 life-sustaining procedures pursuant to a declaration and in
 17 accordance with [this act] is not, for any purpose, a
 18 suicide or homicide.

19 (2) The making of a declaration pursuant to [section
 20 2] does not affect in any manner the sale, procurement, or
 21 issuance of any policy of life insurance, nor does it modify
 22 the terms of an existing policy of life insurance. No policy
 23 of life insurance is legally impaired or invalidated in any
 24 manner by the withholding or withdrawal of life-sustaining
 25 procedures from an insured qualified patient,

1 notwithstanding any term of the policy to the contrary.

2 (3) No physician, health care facility, or other
 3 health care provider and no health care service plan,
 4 insurer issuing disability insurance, self-insured employee
 5 welfare benefit plan, or nonprofit hospital plan may require
 6 any person to execute a declaration as a condition for being
 7 insured for or receiving health care services.

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

13 (5) Nothing in [this act] increases or decreases the
 14 right of a patient to make decisions regarding use of
 15 life-sustaining procedures if the patient is able to do so
 16 or impairs or supersedes any right or responsibility that
 17 any person has to effect the withholding or withdrawal of
 18 medical care in any lawful manner. In that respect, the
 19 provisions of [this act] are cumulative.

20 (6) [This act] does not authorize or approve mercy
 21 killing or euthanasia.

22 Section 10. Recognition of declarations executed in
 23 other states. A declaration executed in a manner
 24 substantially similar to [section 2] in another state and in
 25 compliance with the law of that state is effective for

1 purposes of [this act].

2 Section 11. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

-End-

APPROVED BY COMM. ON HUMAN SERVICES AND AGING

HOUSE BILL NO. 228

INTRODUCED BY WINSLOW, CHRISTIAENS, R. MANNING, FRITZ, BERGENE, BRANDEWIE, SCHULTZ, COBB, HARP, SCHYE, QUILICI, MENAHAN, HAGER, B. BROWN, HART, NEUMAN, J. BROWN, MILES, D. BROWN, REGAN, KEENAN, O'HARA, H. HAMMOND, JACK MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE PREPARATION AND IMPLEMENTATION OF A DECLARATION INSTRUCTING AN ADULT'S PHYSICIAN TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING PROCEDURES IF THE PERSON IS IN A TERMINAL CONDITION AND IS UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS; PROVIDING METHODS FOR REVOCATION OF THE DECLARATION; LIMITING THE LIABILITY OF PHYSICIANS AND HEALTH CARE PROVIDERS WHO IMPLEMENT THE DECLARATION; AND ESTABLISHING CRIMINAL PENALTIES FOR FAILING TO COMPLY WITH A DECLARATION AND FOR OTHER RELATED VIOLATIONS."

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

THERE IS A NEW MCA SECTION THAT READS:

Section 1. Short title. [Sections 1 through 11] may be cited as the "Montana Living Will Act".

Section 2. 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) "Declaration" means a document executed in accordance with the requirements of [section 2 3].

(3) "Health care provider" means a person who is licensed or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

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

(5) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

(6) "Qualified patient" means a patient who has executed a declaration in accordance with [this act] and who has been determined by the attending physician to be in a terminal condition.

(7) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time.

Section 3. Declaration relating to use of life-sustaining procedures. (1) Any competent adult may



1 execute a declaration at any time directing that
 2 life-sustaining procedures be withheld or withdrawn.
 3 However, the declaration is effective only if the
 4 declarant's condition is determined to be terminal and the
 5 declarant is not able to make treatment decisions. The
 6 declaration must be signed by the declarant, or another at
 7 the declarant's direction, in the presence of two witnesses.
 8 ONLY ONE OF THE TWO WITNESSES MAY BE RELATED TO THE
 9 DECLARANT. A physician or health care provider may presume,
 10 in the absence of actual notice to the contrary, that the
 11 declaration complies with [this act] and is valid.

12 (2) It is the responsibility of the declarant to
 13 notify his physician of the declaration. A physician or
 14 other health care provider who is provided a copy of the
 15 declaration shall make it a part of the declarant's medical
 16 records.

17 (3) A declaration may, but need not, be in the
 18 following form:

19 DECLARATION

20 If I should have an incurable or irreversible condition
 21 that will cause my death within a relatively short time, it
 22 is my desire that my life not be prolonged by administration
 23 of life-sustaining procedures. If my condition is terminal
 24 and I am unable to participate in decisions regarding my
 25 medical treatment, I direct my attending physician to

1 withhold or withdraw procedures that merely prolong the
 2 dying process and are not necessary to my comfort or freedom
 3 from pain. IT IS MY INTENTION THAT THIS DECLARATION SHALL BE
 4 VALID UNTIL REVOKED BY ME.

5 Signed this _____ day of _____, ____.

6 Signature _____

7 City, County, and State of Residence _____

8 The declarant is known to me and voluntarily signed
 9 this document in my presence.

10 Witness _____

11 Address _____

12 Witness _____

13 Address _____

14 Section 4. Revocation of declaration. (1) A
 15 declaration may be revoked at any time and in any manner by
 16 which the declarant is able to communicate his intent to
 17 revoke, without regard to mental or physical condition. A
 18 revocation is effective only as to the attending physician
 19 or any health care provider acting under the guidance of
 20 that physician upon communication to the physician or health
 21 care provider by the declarant or by another to whom the
 22 revocation was communicated.

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

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 2 condition and content of declaration. When an attending
 3 physician who has been notified of the existence and content
 4 of a declaration determines that the declarant is in a
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 6 determination and the content of the declaration in the
 7 declarant's medical record.

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 9 qualified patient has the right to make decisions regarding
 10 use of life-sustaining procedures if the patient is able to
 11 do so. If a qualified patient is not able to make such
 12 decisions, the declaration governs decisions regarding use
 13 of life-sustaining procedures.

14 (2) [This act] does not prohibit the application of
 15 any medical procedure or intervention, including the
 16 provision of nutrition and hydration, considered necessary
 17 to provide comfort care or to alleviate pain.

18 (3) The declaration of a qualified patient known to
 19 the attending physician to be pregnant must be given no
 20 effect if it is probable that the fetus could develop to the
 21 point of live birth with continued application of
 22 life-sustaining procedures.

23 Section 7. Transfer of patients. (1) An attending
 24 physician who is unwilling to comply with the requirements
 25 of [section 4 5] or who is unwilling to comply with the

1 declaration of a qualified patient in accordance with
 2 [section 5 6] shall take all reasonable steps to transfer
 3 the declarant to another physician.

4 (2) If the policies of a health care facility preclude
 5 compliance with the declaration of a qualified patient under
 6 [this act], that facility shall take all reasonable steps to
 7 transfer the patient to a facility in which the provisions
 8 of [this act] can be carried out.

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 10 notice of the revocation of a declaration, the following,
 11 while acting in accordance with the requirements of [this
 12 act], are not subject to civil or criminal liability or
 13 guilty of unprofessional conduct:

14 (a) a physician who causes the withholding or
 15 withdrawal of life-sustaining procedures from a qualified
 16 patient;

17 (b) a person who participates in the withholding or
 18 withdrawal of life-sustaining procedures under the direction
 19 or with the authorization of a physician;

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 21 or withdrawal occurs.

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 24 with reasonable medical standards.

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4 year, or both.

5 (2) A physician who willfully fails to record the
6 determination of terminal condition in accordance with
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8 fine not to exceed \$500 or imprisonment in the county jail
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11 or obliterates the declaration of another without the
12 declarant's consent or who falsifies or forges a revocation
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15 the county jail for a term not to exceed 1 year, or both.

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17 of another or purposely conceals or withholds personal
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22 the county jail for a term not to exceed 1 year, or both.

23 Section 10. Reservations on effect of [act].

24 (1) Death resulting from the withholding or withdrawal of
25 life-sustaining procedures pursuant to a declaration and in

1 accordance with [this act] is not, for any purpose, a
2 suicide or homicide.

3 (2) The making of a declaration pursuant to [section 2
4 3] does not affect in any manner the sale, procurement, or
5 issuance of any policy of life insurance, nor does it modify
6 the terms of an existing policy of life insurance. No policy
7 of life insurance is legally impaired or invalidated in any
8 manner by the withholding or withdrawal of life-sustaining
9 procedures from an insured qualified patient,
10 notwithstanding any term of the policy to the contrary.

11 (3) No physician, health care facility, or other
12 health care provider and no health care service plan,
13 insurer issuing disability insurance, self-insured employee
14 welfare benefit plan, or nonprofit hospital plan may require
15 any person to execute a declaration as a condition for being
16 insured for or receiving health care services.

17 (4) [This act] creates no presumption concerning the
18 intention of an individual who has not executed a
19 declaration with respect to the use, withholding, or
20 withdrawal of life-sustaining procedures in the event of a
21 terminal condition.

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23 right of a patient to make decisions regarding use of
24 life-sustaining procedures if the patient is able to do so
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3 provisions of [this act] are cumulative.

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7 other states. A declaration executed in a manner
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10 purposes of [this act].

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12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
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16 invalid applications.

-End-

1 HOUSE BILL NO. 228

2 INTRODUCED BY WINSLOW, CHRISTIAENS, R. MANNING,

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4 accordance with the requirements of [section 2 3].5 (3) "Health care provider" means a person who is
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7 administer health care in the ordinary course of business or
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10 procedure or intervention that, when administered to a
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 4 declarant's condition is determined to be terminal and the
 5 declarant is not able to make treatment decisions. The
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 7 the declarant's direction, in the presence of two witnesses.
 8 ~~ONLY ONE OF THE TWO WITNESSES MAY BE RELATED TO THE~~
 9 ~~DECLARANT.~~ A physician or health care provider may presume,
 10 in the absence of actual notice to the contrary, that the
 11 declaration complies with [this act] and is valid.

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 13 notify his physician of the declaration. A physician or
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 24 and I am unable to participate in decisions regarding my
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5 Signed this _____ day of _____, ____.

6 Signature _____

7 City, County, and State of Residence _____

8 The declarant is known to me and voluntarily signed
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10 Witness _____

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20 (c) the health care facility in which the withholding
21 or withdrawal occurs.

22 (2) A physician is not subject to civil or criminal
23 liability for actions under [this act] that are in accord
24 with reasonable medical standards.

25 Section 9. Penalties. (1) A physician who willfully

1 fails to transfer in accordance with [section 6 7] is guilty
 2 of a misdemeanor punishable by a fine not to exceed \$500 or
 3 imprisonment in the county jail for a term not to exceed 1
 4 year, or both.

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

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

16 (4) A person who falsifies or forges the declaration
 17 of another or purposely conceals or withholds personal
 18 knowledge of a revocation as provided in [section 3 4], with
 19 the intent to cause a withholding or withdrawal of
 20 life-sustaining procedures, is guilty of a misdemeanor
 21 punishable by a fine not to exceed \$500 or imprisonment in
 22 the county jail for a term not to exceed 1 year, or both.

23 Section 10. Reservations on effect of (act).

24 (1) Death resulting from the withholding or withdrawal of
 25 life-sustaining procedures pursuant to a declaration and in

1 accordance with [this act] is not, for any purpose, a
 2 suicide or homicide.

3 (2) The making of a declaration pursuant to [section 2
 4 3] does not affect in any manner the sale, procurement, or
 5 issuance of any policy of life insurance, nor does it modify
 6 the terms of an existing policy of life insurance. No policy
 7 of life insurance is legally impaired or invalidated in any
 8 manner by the withholding or withdrawal of life-sustaining
 9 procedures from an insured qualified patient,
 10 notwithstanding any term of the policy to the contrary.

11 (3) No physician, health care facility, or other
 12 health care provider and no health care service plan,
 13 insurer issuing disability insurance, self-insured employee
 14 welfare benefit plan, or nonprofit hospital plan may require
 15 any person to execute a declaration as a condition for being
 16 insured for or receiving health care services.

17 (4) [This act] creates no presumption concerning the
 18 intention of an individual who has not executed a
 19 declaration with respect to the use, withholding, or
 20 withdrawal of life-sustaining procedures in the event of a
 21 terminal condition.

22 (5) Nothing in [this act] increases or decreases the
 23 right of a patient to make decisions regarding use of
 24 life-sustaining procedures if the patient is able to do so
 25 or impairs or supersedes any right or responsibility that

1 any person has to effect the withholding or withdrawal of
2 medical care in any lawful manner. In that respect, the
3 provisions of [this act] are cumulative.

4 (6) [This act] does not authorize or approve mercy
5 killing or-euthanasia.

6 Section 11. Recognition of declarations executed in
7 other states. A declaration executed in a manner
8 substantially similar to [section 2 3] in another state and
9 in compliance with the law of that state is effective for
10 purposes of [this act].

11 Section 12. Severability. If a part of this act is
12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
15 in all valid applications that are severable from the
16 invalid applications.

-End-

HOUSE BILL NO. 228

INTRODUCED BY WINSLOW, CHRISTIAENS, R. MANNING,
FRITZ, BERGENE, BRANDEWIE, SCHULTZ, COBB, HARP,
SCHYE, QUILICI, MENAHAN, HAGER, B. BROWN,
HART, NEUMAN, J. BROWN, MILES, D. BROWN,
REGAN, KEENAN, O'HARA, H. HAMMOND, JACK MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
PREPARATION AND IMPLEMENTATION OF A DECLARATION INSTRUCTING
AN ADULT'S PHYSICIAN TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING
PROCEDURES IF THE PERSON IS IN A TERMINAL CONDITION AND IS
UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS;
PROVIDING METHODS FOR REVOCATION OF THE DECLARATION;
LIMITING THE LIABILITY OF PHYSICIANS AND HEALTH CARE
PROVIDERS WHO IMPLEMENT THE DECLARATION; AND ESTABLISHING
CRIMINAL PENALTIES FOR FAILING TO COMPLY WITH A DECLARATION
AND FOR OTHER RELATED VIOLATIONS."

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

THERE IS A NEW MCA SECTION THAT READS:

Section 1. Short title. [Sections 1 through 11] may be
cited as the "Montana Living Will Act".

Section 2. 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) "Declaration" means a document executed in
accordance with the requirements of [section 2 3].

(3) "Health care provider" means a person who is
licensed or otherwise authorized by the law of this state to
administer health care in the ordinary course of business or
practice of a profession.

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

(5) "Physician" means a person licensed under Title
37, chapter 3, to practice medicine in this state.

(6) "Qualified patient" means a patient who has
executed a declaration in accordance with [this act] and who
has been determined by the attending physician to be in a
terminal condition.

(7) "Terminal condition" means an incurable or
irreversible condition that, without the administration of
life-sustaining procedures, will, in the opinion of the
attending physician, result in death within a relatively
short time.

Section 3. Declaration relating to use of
life-sustaining procedures. (1) Any competent adult may



1 execute a declaration at any time directing that
 2 life-sustaining procedures be withheld or withdrawn.
 3 However, the declaration is effective only if the
 4 declarant's condition is determined to be terminal and the
 5 declarant is not able to make treatment decisions. The
 6 declaration must be signed by the declarant, or another at
 7 the declarant's direction, in the presence of two witnesses.
 8 ~~ONLY ONE OF THE TWO WITNESSES MAY BE RELATED TO THE~~
 9 ~~DECLARANT.~~ A physician or health care provider may presume,
 10 in the absence of actual notice to the contrary, that the
 11 declaration complies with [this act] and is valid.

12 (2) It is the responsibility of the declarant to
 13 notify his physician of the declaration. A physician or
 14 other health care provider who is provided a copy of the
 15 declaration shall make it a part of the declarant's medical
 16 records.

17 (3) A declaration may, but need not, be in the
 18 following form:

19 DECLARATION

20 If I should have an incurable or irreversible condition
 21 that will cause my death within a relatively short time, it
 22 is my desire that my life not be prolonged by administration
 23 of life-sustaining procedures. If my condition is terminal
 24 and I am unable to participate in decisions regarding my
 25 medical treatment, I direct my attending physician to

1 withhold or withdraw procedures that merely prolong the
 2 dying process and are not necessary to my comfort or freedom
 3 from pain. IT IS MY INTENTION THAT THIS DECLARATION SHALL BE
 4 VALID UNTIL REVOKED BY ME.

5 Signed this _____ day of _____, ____.
 6 Signature _____
 7 City, County, and State of Residence _____

8 The declarant is known to me and voluntarily signed
 9 this document in my presence.

10 Witness _____
 11 Address _____
 12 Witness _____
 13 Address _____

14 Section 4. Revocation of declaration. (1) A
 15 declaration may be revoked at any time and in any manner by
 16 which the declarant is able to communicate his intent to
 17 revoke, without regard to mental or physical condition. A
 18 revocation is effective only as to the attending physician
 19 or any health care provider acting under the guidance of
 20 that physician upon communication to the physician or health
 21 care provider by the declarant or by another to whom the
 22 revocation was communicated.

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

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

8 Section 6. Treatment of qualified patients. (1) A
9 qualified patient has the right to make decisions regarding
10 use of life-sustaining procedures if the patient is able to
11 do so. If a qualified patient is not able to make such
12 decisions, the declaration governs decisions regarding use
13 of life-sustaining procedures.

14 (2) [This act] does not prohibit the application of
15 any medical procedure or intervention, including the
16 provision of nutrition and hydration, considered necessary
17 to provide comfort care or to alleviate pain.

18 (3) The declaration of a qualified patient known to
19 the attending physician to be pregnant must be given no
20 effect if it is probable that the fetus could develop to the
21 point of live birth with continued application of
22 life-sustaining procedures.

23 Section 7. Transfer of patients. (1) An attending
24 physician who is unwilling to comply with the requirements
25 of [section 4 5] or who is unwilling to comply with the

1 declaration of a qualified patient in accordance with
2 [section 5 6] shall take all reasonable steps to transfer
3 the declarant to another physician.

4 (2) If the policies of a health care facility preclude
5 compliance with the declaration of a qualified patient under
6 [this act], that facility shall take all reasonable steps to
7 transfer the patient to a facility in which the provisions
8 of [this act] can be carried out.

9 Section 8. Immunities. (1) In the absence of actual
10 notice of the revocation of a declaration, the following,
11 while acting in accordance with the requirements of [this
12 act], are not subject to civil or criminal liability or
13 guilty of unprofessional conduct:

14 (a) a physician who causes the withholding or
15 withdrawal of life-sustaining procedures from a qualified
16 patient;

17 (b) a person who participates in the withholding or
18 withdrawal of life-sustaining procedures under the direction
19 or with the authorization of a physician;

20 (c) the health care facility in which the withholding
21 or withdrawal occurs.

22 (2) A physician is not subject to civil or criminal
23 liability for actions under [this act] that are in accord
24 with reasonable medical standards.

25 Section 9. Penalties. (1) A physician who willfully

1 fails to transfer in accordance with [section 6 7] is guilty
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 6 the terms of an existing policy of life insurance. No policy
 7 of life insurance is legally impaired or invalidated in any
 8 manner by the withholding or withdrawal of life-sustaining
 9 procedures from an insured qualified patient,
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16 invalid applications.

-End-