

HOUSE BILL NO. 422  
INTRODUCED BY EUDAILY

IN THE HOUSE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 26, 1989	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 87; NOES, 6.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 15, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1989	SECOND READING, CONCURRED IN.
MARCH 18, 1989	THIRD READING, CONCURRED IN. AYES, 46; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *422*  
2 INTRODUCED BY *Endrey*  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LIVING  
5 WILL ACT TO ALLOW A DECLARANT TO DIRECT EMERGENCY MEDICAL  
6 SERVICES PERSONNEL TO WITHHOLD LIFE-SUSTAINING PROCEDURES;  
7 TO LIMIT THE EFFECT OF A REVOCATION OF A DECLARATION  
8 COMMUNICATED TO SOMEONE OTHER THAN A PHYSICIAN OR OTHER  
9 HEALTH CARE PROVIDER; AMENDING SECTIONS 50-9-102, 50-9-104,  
10 AND 50-9-204, MCA; AND PROVIDING AN APPLICABILITY DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 50-9-102, MCA, is amended to read:

14 **"50-9-102. Definitions.** As used in this chapter, the  
15 following definitions apply:

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

19 (2) "Declaration" means a document executed in  
20 accordance with the requirements of 50-9-103.

21 (3) "Emergency medical services personnel" means paid  
22 or volunteer firefighters, police, paramedics, emergency  
23 medical technicians, or other rescue squads acting within  
24 the ordinary course of their profession.

25 (4) "Health care provider" means a person who is

1 licensed or otherwise authorized by the law of this state to  
2 administer health care in the ordinary course of business or  
3 practice of a profession.

4 (5) "Life-sustaining procedure" means any medical  
5 procedure or intervention that, when administered to a  
6 qualified patient, will serve only to prolong the dying  
7 process and includes first response procedures administered  
8 by emergency medical services personnel.

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

11 (7) "Qualified patient" means a patient who has  
12 executed a declaration in accordance with this chapter and  
13 who has been determined by the attending physician to be in  
14 a terminal condition.

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

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

21 **"50-9-104. Revocation of declaration.** (1) A  
22 declaration may be revoked at any time and in any manner by  
23 which the declarant is able to communicate his intent to  
24 revoke, without regard to mental or physical condition. A  
25 revocation is effective only as to the attending physician

or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated. A revocation communicated to a person other than the attending physician or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining procedures.

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

**Section 3.** Section 50-9-204, MCA, is amended to read:

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

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

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

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of

life-sustaining procedures under the direction of or with the authorization of a physician;

~~te)(d)~~ the a health care facility in which the withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under this chapter that are in accord with reasonable medical standards."

**NEW SECTION. Section 4. Applicability.** [This act] applies to declarations made after [the effective date of this act].

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

## HOUSE BILL NO. 422

INTRODUCED BY EUDAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LIVING WILL ACT TO ALLOW A DECLARANT TO DIRECT EMERGENCY MEDICAL SERVICES PERSONNEL TO WITHHOLD LIFE-SUSTAINING PROCEDURES; TO LIMIT THE EFFECT OF A REVOCATION OF A DECLARATION COMMUNICATED TO SOMEONE OTHER THAN A PHYSICIAN OR OTHER HEALTH CARE PROVIDER; GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL; AMENDING SECTIONS 50-9-102, 50-9-104, AND 50-9-204, MCA; AND PROVIDING AN APPLICABILITY DATE."

## STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 4] grants the department of health and environmental sciences authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services.

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**Section 1.** Section 50-9-102, MCA, is amended to read:

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(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) "BOARD" MEANS THE MONTANA STATE BOARD OF MEDICAL EXAMINERS.

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

(4) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, ~~police~~--paramedics LAW ENFORCEMENT OFFICERS, FIRST RESPONDERS, emergency medical technicians, or other ~~rescue--squads~~ EMERGENCY SERVICES PERSONNEL acting within the ordinary course of their profession.

(6) "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.

(7) "Life-sustaining procedure" means any

1 medical procedure or intervention that, when administered to  
 2 a qualified patient, will serve only to prolong the dying  
 3 process ~~and includes first response procedures administered~~  
 4 ~~by emergency medical services personnel.~~

5 (8) "LIVING WILL PROTOCOL" MEANS A LOCALLY DEVELOPED,  
 6 COMMUNITY-WIDE METHOD OR A STANDARDIZED, STATE-WIDE METHOD  
 7 DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE BOARD, OF  
 8 PROVIDING PALLIATIVE CARE TO AND WITHHOLDING LIFE-SUSTAINING  
 9 PROCEDURES FROM A QUALIFIED PATIENT UNDER 50-9-202 BY  
 10 EMERGENCY MEDICAL SERVICE PERSONNEL.

11 (5)(6)(9) "Physician" means a person licensed under  
 12 Title 37, chapter 3, to practice medicine in this state.

13 (6)(7)(10) "Qualified patient" means a patient who has  
 14 executed a declaration in accordance with this chapter and  
 15 who has been determined by the attending physician to be in  
 16 a terminal condition.

17 (11) "RELIABLE DOCUMENTATION" MEANS A STANDARDIZED,  
 18 STATE-WIDE IDENTIFICATION CARD OR FORM OR A NECKLACE OR  
 19 BRACELET OF UNIFORM DESIGN, ADOPTED BY A WRITTEN, FORMAL  
 20 UNDERSTANDING OF THE LOCAL COMMUNITY EMERGENCY MEDICAL  
 21 SERVICES AGENCIES AND LICENSED HOSPICE AND HOME HEALTH  
 22 AGENCIES, THAT SIGNIFIES AND CERTIFIES THAT A VALID AND  
 23 CURRENT DECLARATION IS ON FILE AND THAT THE INDIVIDUAL IS A  
 24 QUALIFIED PATIENT.

25 (7)(8)(12) "Terminal condition" means an incurable or

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

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

6 "50-9-104. Revocation of declaration. (1) A  
 7 declaration may be revoked at any time and in any manner by  
 8 which the declarant is able to communicate his intent to  
 9 revoke, without regard to mental or physical condition. A  
 10 revocation is effective only as to the attending physician  
 11 or any health care provider acting under the guidance of  
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 13 care provider by the declarant or by another to whom the  
 14 revocation was communicated. A HEALTH CARE PROVIDER OR  
 15 EMERGENCY MEDICAL SERVICES PERSONNEL WITNESSING A REVOCATION  
 16 MAY ACT UPON THE REVOCATION AND MUST COMMUNICATE THE  
 17 REVOCATION TO THE ATTENDING PHYSICIAN AT THE EARLIEST  
 18 OPPORTUNITY. A revocation communicated to a person other  
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 20 PERSONNEL, or a health care provider is not effective unless  
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23 (2) The attending physician or health care provider  
 24 shall make the revocation a part of the declarant's medical  
 25 record."

**Section 3.** Section 50-9-204, MCA, is amended to read:

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

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

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

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician OR WHO ON RECEIPT OF RELIABLE DOCUMENTATION FOLLOW A LIVING WILL PROTOCOL;

(D) EMERGENCY MEDICAL SERVICES PERSONNEL WHO AFTER A GOOD FAITH ATTEMPT TO DO SO ARE UNABLE TO FIND RELIABLE DOCUMENTATION OF A DECLARATION AND PROCEED TO PROVIDE LIFE-SUSTAINING TREATMENT TO A QUALIFIED PATIENT; AND

~~(e)~~(E) the a health care facility in which the withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under this chapter that are in accord

with reasonable medical standards."

NEW SECTION. SECTION 4. AUTHORITY TO ADOPT RULES. THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THIS CHAPTER.

NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION. [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER 9, AND THE PROVISIONS OF TITLE 50, CHAPTER 9, APPLY TO [SECTION 4].

NEW SECTION. Section 6. Applicability. [This act] applies to declarations made after [the effective date of this act].

-End-

## HOUSE BILL NO. 422

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A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LIVING WILL ACT TO ALLOW A DECLARANT TO DIRECT EMERGENCY MEDICAL SERVICES PERSONNEL TO WITHHOLD LIFE-SUSTAINING PROCEDURES; TO LIMIT THE EFFECT OF A REVOCATION OF A DECLARATION COMMUNICATED TO SOMEONE OTHER THAN A PHYSICIAN OR OTHER HEALTH CARE PROVIDER; GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL; AMENDING SECTIONS 50-9-102, 50-9-104, AND 50-9-204, MCA; AND PROVIDING AN APPLICABILITY DATE."

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A statement of intent is needed for this bill because [section 4] grants the department of health and environmental sciences authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services.



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(4) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, police, paramedics, LAW ENFORCEMENT OFFICERS, FIRST RESPONDERS, emergency medical technicians, or other rescue squads EMERGENCY SERVICES PERSONNEL acting within the ordinary course of their profession.

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1 medical procedure or intervention that, when administered to  
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5 **Section 2.** Section 50-9-104, MCA, is amended to read:

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 7 declaration may be revoked at any time and in any manner by  
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NEW SECTION. Section 6. Applicability. [This act] applies to declarations made after [the effective date of this act].

-End-

SENATE STANDING COMMITTEE REPORT

March 15, 1989

MR. PRESIDENT:

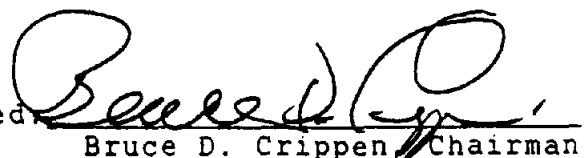
We, your committee on Judiciary, having had under consideration HB 422 (third reading copy -- blue), respectfully report that HB 422 be amended and as so amended be concurred in:

Sponsor: Eudaily (Van Valkenburg)

1. Title, line 11.  
Strike: "APPLICABILITY"  
Insert: "IMMEDIATE EFFECTIVE"
2. Page 4, line 16.  
Strike: "MAY"  
Insert: "shall"  
Strike: "MUST"  
Insert: "shall"
3. Page 5, lines 18 through 20.  
Following: "WHO" on line 18  
Strike: remainder of line 18 through "AND" on line 20
4. Page 5, line 21.  
Following: "PATIENT"  
Insert: "pursuant to a revocation communicated to them"
5. Page 6, lines 8 through 10.  
Strike: section 6 in its entirety  
Insert: "NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval."

AND AS AMENDED BE CONCURRED IN

Signed

  
Bruce D. Crippen, Chairman

SENATE

SCRHB422.315

HB 422

## 1 HOUSE BILL NO. 422

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11 AND 50-9-204, MCA; AND PROVIDING AN APPLICABILITY IMMEDIATE  
12 EFFECTIVE DATE."

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 9       PROVIDING PALLIATIVE CARE TO AND WITHHOLDING LIFE-SUSTAINING  
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12       ~~(5)(6)(9)~~ "Physician" means a person licensed under  
 13       Title 37, chapter 3, to practice medicine in this state.

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 15       executed a declaration in accordance with this chapter and  
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 8       declaration may be revoked at any time and in any manner by  
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 18       THE REVOCATION TO THE ATTENDING PHYSICIAN AT THE EARLIEST  
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 21       PERSONNEL, or a health care provider is not effective unless  
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14 (c) emergency medical services personnel who cause or  
15 participate in the withholding or withdrawal of  
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18 RELIABLE DOCUMENTATION FOLLOW A LIVING WILL PROTOCOL;

19 (D) EMERGENCY MEDICAL SERVICES PERSONNEL WHO AFTER-A  
20 GOOD-FAITH-ATTEMPT-TO-DO-SO--ARE--UNABLE--TO--FIND--RELIABLE  
21 DOCUMENTATION--OF--A--DECLARATION--AND PROCEED TO PROVIDE  
22 LIFE-SUSTAINING TREATMENT TO A QUALIFIED PATIENT PURSUANT TO  
23 A REVOCATION COMMUNICATED TO THEM; AND

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25 withholding or withdrawal occurs.

1 (2) A physician is not subject to civil or criminal  
2 liability for actions under this chapter that are in accord  
3 with reasonable medical standards."

4 NEW SECTION. SECTION 4. AUTHORITY TO ADOPT RULES.  
5 THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THIS CHAPTER.

6 NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION.  
7 [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART  
8 OF TITLE 50, CHAPTER 9, AND THE PROVISIONS OF TITLE 50,  
9 CHAPTER 9, APPLY TO [SECTION 4].

10 ~~NEW SECTION. Section 6. Applicability.---[This---act]~~  
11 ~~applies-to-declarations-made-after-[the--effective--date--of~~  
12 ~~this-act]--~~

13 NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT]  
14 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-