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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

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ENROLLED
Committee Substitute for
SENATE BILL NO. 62

(By Mr. *Carl F. Heck, Jr. (Chairman)*)

—•—
PASSED *March 6,* 1984
In Effect *twenty days from* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 62

(MR. COOK, MR. HECK, MS. CHACE AND MR. DAVIS, *original sponsors*)

[Passed March 6, 1984; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty, relating to the West Virginia natural death act; defining terms; providing for execution of a declaration; providing for revocation of the declaration; requiring physicians to confirm terminal condition; providing for chart identification; providing for determination of competency of and intent of declarant; granting immunity to physicians, licensed health care facilities and professionals, or employees for acts done in good faith in reliance upon the declaration; providing for transfer of the declarant; providing criminal penalties for violations; determining effect on insurance policies; and preserving existing rights.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty, to read as follows:

ARTICLE 30. WEST VIRGINIA NATURAL DEATH ACT.

§16-30-1. Short title.

1 This article shall be known as and may be cited as the
2 "West Virginia Natural Death Act."

§16-30-2. Definitions.

1 For the purposes of this article, the terms:

2 (1) "Attending physician" means the physician selected
3 by, or assigned to, the patient who has primary
4 responsibility for the treatment and care of the patient;

5 (2) "Declaration" means a witnessed document in
6 writing, voluntarily executed by the declarant in
7 accordance with the requirements of section three of this
8 article;

9 (3) "Life-sustaining procedure" means any medical
10 procedure or intervention, which, when applied to a
11 qualified patient, would serve only to artificially prolong
12 the dying process and where, in the judgment of the
13 attending physician and a second physician, death will
14 occur whether or not such procedure or intervention is
15 utilized. The term "life-sustaining procedure" does not
16 include the administration of medication or the
17 performance of any medical procedure deemed necessary to
18 provide comfort, care or to alleviate pain;

19 (4) "Physician" means a person authorized to practice
20 medicine in the state of West Virginia;

21 (5) "Qualified patient" means a patient who has
22 executed a declaration in accordance with this article and
23 who has been diagnosed and certified in writing to be
24 afflicted with a terminal condition by two physicians who
25 have personally examined the patient, one of whom is the
26 attending physician: *Provided*, That if there be more than
27 one attending physician, all such attending physicians must
28 certify in writing that the patient is afflicted with a
29 terminal condition; and

30 (6) "Terminal condition" means an incurable condition
31 caused by injury, disease or illness, which, regardless of the
32 application of life-sustaining procedures, would, within
33 reasonable medical judgment, cause natural death and
34 where the application of life-sustaining procedures serves
35 only to postpone the moment of death.

§16-30-3. Executing a declaration.

1 (a) Any person eighteen years of age or older may
2 execute a declaration directing the withholding or
3 withdrawal of life-sustaining procedures from themselves
4 should they be in a terminal condition. The declaration
5 made pursuant to this article shall be: (1) In writing; (2)
6 signed by the person making the declaration or by another
7 person in the declarant's presence at the declarant's express
8 direction; (3) dated; (4) signed in the presence of two or
9 more witnesses at least eighteen years of age; and (5) signed
10 and attested by such witnesses whose signatures and
11 attestations shall be notarized.

12 (b) In addition, a witness may not be:

13 (1) The person who signed the declaration on behalf of
14 and at the direction of the declarant;

15 (2) Related to the declarant by blood or marriage;

16 (3) Entitled to any portion of the estate of the declarant
17 according to the laws of intestate succession of the state of
18 West Virginia or under any will of the declarant or codicil
19 thereto: *Provided*, That the validity of the declaration shall
20 not be affected when a witness at the time of witnessing
21 such declaration was unaware that he was a named
22 beneficiary of the declarant's will;

23 (4) Directly financially responsible for declarant's
24 medical care; or

25 (5) The attending physician, an employee of the
26 attending physician or an employee of the health facility in
27 which the declarant is a patient.

28 (c) It shall be the responsibility of the declarant to
29 provide for notification to his or her attending physician of
30 the existence of the declaration. An attending physician,
31 when presented with the declaration, shall make the
32 declaration or a copy of the declaration a part of the
33 declarant's medical records.

34 (d) The declaration shall be substantially in the
35 following form, but in addition may include other specific
36 directions not inconsistent with other provisions of this
37 article. Should any of the other specific directions be held to
38 be invalid, such invalidity shall not affect other directions
39 of the declaration which can be given effect without the

40 invalid direction and to this end the directions in the
41 declaration are severable.

42 "DECLARATION

43 "Declaration made this day of
44 (month, year). I,, being of
45 sound mind, willfully and voluntarily make known my
46 desires that my dying shall not be artificially prolonged
47 under the circumstances set forth below, do declare:

48 "If at any time I should have an incurable injury, disease,
49 or illness certified to be a terminal condition by two
50 physicians who have personally examined me, one of whom
51 is my attending physician, and the physicians have
52 determined that my death will occur whether or not life-
53 sustaining procedures are utilized and where the
54 application of life-sustaining procedures would serve only
55 to artificially prolong the dying process, I direct that such
56 procedures be withheld or withdrawn, and that I be
57 permitted to die naturally with only the administration of
58 nutrition, medication or the performance of any medical
59 procedure deemed necessary to provide me with comfort,
60 care or to alleviate pain.

61 "In the absence of my ability to give directions regarding
62 the use of such life-sustaining procedures, it is my intention
63 that this declaration be honored by my family and
64 physician(s) as the final expression of my legal right to
65 refuse medical or surgical treatment and accept the
66 consequences resulting from such refusal.

67 "I understand the full import of this declaration and I am
68 emotionally and mentally competent to make this
69 declaration.

70 "Signed

71 "Address

72

73 "I did not sign the declarant's signature above for or at
74 the direction of the declarant. I am at least eighteen years of
75 age and am not related to the declarant by blood or
76 marriage, entitled to any portion of the estate of the
77 declarant according to the laws of intestate succession of
78 the state of West Virginia or to the best of my knowledge
79 under any will of declarant or codicil thereto, or directly
80 financially responsible for declarant's medical care. I am
81 not the declarant's attending physician, an employee of the

82 attending physician, nor an employee of the health facility
83 in which the declarant is a patient.

84 "Witness

85 "Witness

86 "STATE OF,

87 "COUNTY OF, To-wit:

88 "This day personally appeared before me, the

89 undersigned authority, a Notary Public in and for

90 County,(State),(witness) and

91(witness) who, being first duly sworn, say that

92 they are the subscribing witnesses to the declaration of

93(declarant), which declaration is dated the

94 day of, 19....;

95 and that on the said date the said(declarant),

96 the declarant, signed, sealed, published, and declared the

97 same as and for his declaration, in the presence of both these

98 affiants; and that these affiants, at the request of said

99 declarant, in the presence of each other, and in the presence

100 of said declarant, all present at the same time, signed their

101 names as attesting witnesses to said declaration.

102 "Affiants further say that this affidavit is made at the

103 request of(declarant), declarant, and in his

104 presence, and that(declarant), at the time the

105 declaration was executed, was in the opinion of affiants, of

106 sound mind and memory, and over the age of eighteen (18)

107 years.

108

109

110 "Taken, subscribed, and sworn to before me by

111(witness) and(witness) this

112 day of, 19....

113 "My commission expires:

114 ""

115 Notary Public

§16-30-4. Revocation.

1 (a) A declaration may be revoked at any time only by the
2 declarant or at the express direction of the declarant,
3 without regard to the declarant's mental state by any of the
4 following methods:

5 (1) By being destroyed by the declarant or by some
6 person in the declarant's presence and at his direction;

7 (2) By a written revocation of the declaration signed and
8 dated by the declarant or person acting at the direction of
9 the declarant. Such revocation shall become effective only
10 upon communication of the revocation to the attending
11 physician by the declarant or by a person acting on behalf of
12 the declarant. The attending physician shall record in the
13 patient's medical record the time and date when he or she
14 receives notification of the written revocation; or

15 (3) By a verbal expression of the intent to revoke the
16 declaration in the presence of a witness eighteen years of
17 age or older who signs and dates a writing confirming that
18 such expression of intent was made. Any verbal revocation
19 shall become effective only upon communication of the
20 revocation to the attending physician by the declarant or by
21 a person acting on behalf of the declarant. The attending
22 physician shall record, in the patient's medical record, the
23 time, date and place of when he or she receives notification
24 of the revocation.

25 (b) There is no criminal or civil liability on the part of
26 any person for failure to act upon a revocation made
27 pursuant to this section unless that person has actual
28 knowledge of the revocation.

**§16-30-5. Physician's duty to confirm terminal condition,
chart identification.**

1 (a) An attending physician who has been notified of the
2 existence of a declaration executed under this article,
3 without delay after the diagnosis of a terminal condition of
4 the declarant, shall take the necessary steps to provide for
5 written certification and confirmation of the declarant's
6 terminal condition so that the declarant may be deemed to
7 be a qualified patient under this article.

8 (b) Once written certification and confirmation of the
9 declarant's terminal condition is made, a person becomes a
10 qualified patient under this article only if the attending
11 physician verbally or in writing informs the patient of his or
12 her terminal condition and documents such communication
13 in the patient's medical record. If the patient is diagnosed as
14 unable to comprehend verbal or written communications,
15 such patient becomes a qualified patient as defined in
16 section two of this article, immediately upon written

17 certification and confirmation of his terminal condition by
18 the attending physician.

19 (c) All inpatient health care facilities shall develop a
20 system to visibly identify a qualified patient's chart which
21 contains a declaration as set forth in this article.

§16-30-6. Competency and intent of declarant.

1 (a) The desires of a qualified patient at all times
2 supersede the effect of the declaration.

3 (b) If the qualified patient is incompetent at the time of
4 the decision to withhold or withdraw life-sustaining
5 procedures, a declaration executed in accordance with
6 section three of this article is presumed to be valid. For the
7 purposes of this article, a physician or health facility may
8 presume in the absence of actual notice to the contrary that
9 an individual who executed a declaration was of sound
10 mind when it was executed. The fact that an individual
11 executed a declaration is not an indication of a declarant's
12 mental incompetency.

§16-30-7. Liability and protection of declaration; penalties.

1 (a) No physician, licensed health care professional,
2 health facility or employee thereof who in good faith and
3 pursuant to reasonable medical standards causes or
4 participates in the withholding or withdrawing of life-
5 sustaining procedures from a qualified patient pursuant to
6 a declaration made in accordance with this article may, as a
7 result thereof, be subject to criminal or civil liability.

8 (b) An attending physician who cannot comply with the
9 declaration of a qualified patient pursuant to this article
10 shall, in conjunction with the next of kin of the patient or
11 other responsible individual, effect the transfer of the
12 qualified patient to another physician who will honor the
13 declaration of the qualified patient. Transfer under these
14 circumstances does not constitute abandonment.

15 (c) Any person who willfully conceals, cancels, defaces,
16 obliterates or damages the declaration of another without
17 the declarant's consent or who falsifies or forges a
18 revocation of the declaration of another is guilty of a felony,
19 and, upon conviction thereof, shall be fined an amount not
20 to exceed five thousand dollars or be imprisoned in the
21 penitentiary for a period not to exceed three years, or both
22 fined and imprisoned.

23 (d) Any person who falsifies or forges the declaration of
24 another or willfully conceals or withholds personal
25 knowledge of the revocation of a declaration with the intent
26 to cause a withholding or withdrawal of life-sustaining
27 procedures, contrary to the wishes of the declarant and,
28 thereby, because of such act, directly causes life-sustaining
29 procedures to be withheld or withdrawn and death to be
30 hastened is guilty of a felony, and, upon conviction thereof,
31 shall be imprisoned in the penitentiary not less than one nor
32 more than five years.

§16-30-8. Insurance.

1 (a) The withholding or withdrawal of life-sustaining
2 procedures from a qualified patient in accordance with the
3 provisions of this article does not, for any purpose,
4 constitute a suicide and does not constitute the crime of
5 assisting suicide.

6 (b) The making of a declaration pursuant to section
7 three of this article does not affect in any manner the sale,
8 procurement or issuance of any policy of life insurance, nor
9 does it modify the terms of an existing policy of life
10 insurance. No policy of life insurance may be legally
11 impaired or invalidated in any manner by the withholding
12 or withdrawal of life-sustaining procedures from an
13 insured qualified patient, notwithstanding any term of the
14 policy to the contrary.

15 (c) No physician, health facility or other health care
16 provider and no health care service plan, health
17 maintenance organization, insurer issuing disability
18 insurance, self-insured employee welfare benefit plan,
19 nonprofit medical service corporation or mutual nonprofit
20 hospital service corporation may require any person to
21 execute a declaration as a condition for being insured for or
22 receiving health care services.

§16-30-9. Preservation of existing rights.

1 (a) Nothing in this article impairs or supersedes any
2 legal right or legal responsibility which any person may
3 have to effect the withholding or withdrawal of life-
4 sustaining procedures in any lawful manner. In such
5 respect the provisions of this article are cumulative.

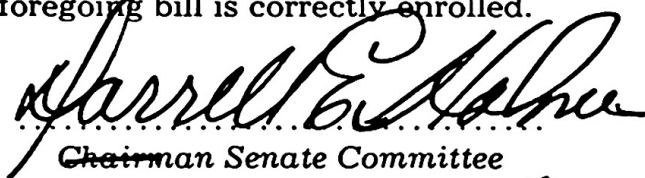
6 (b) This article creates no presumption concerning the

7 intention of an individual who has not executed a
8 declaration to consent to the use of withholding of life-
9 sustaining procedures in the event of a terminal condition.

§16-30-10. Prohibition.

1 Nothing in this article may be construed to condone,
2 authorize or approve mercy-killing or to permit any
3 affirmative or deliberate act or omission to end a human life
4 other than to permit the natural process of dying as
5 provided in this article.


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

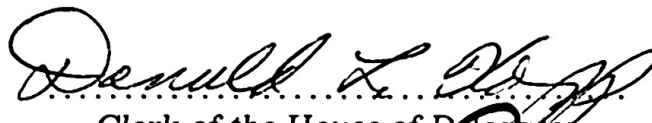

.....
Chairman Senate Committee

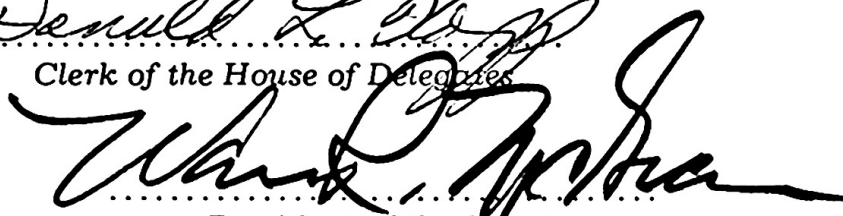

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

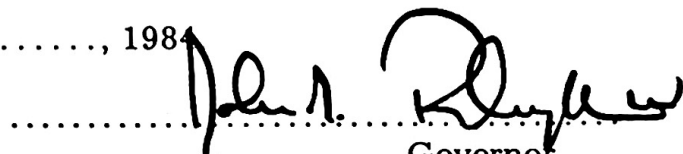

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *30*
day of *March*, 198*1*


.....
Governor

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