WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED
Committee Substitute for
SENATE BILL NO. 416

(By Senator Burdette, Mr. President, et al.)

PASSED March 9, 1991
In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 416

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 9, in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight and nine, article thirty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections eleven, twelve and thirteen, all relating to the West Virginia natural death act; amending definitions; providing for the definition of life-prolonging intervention; procedures for executing a living will; providing additional circumstances for witnessing a living will and deleting the requirement that the witnesses must attest to the declarant's competency; providing for advising persons of the existence and availability of living will and medical power of attorney forms and giving assistance in completing such forms; providing for implementation of a living will when person is in a persistent vegetative state; revocation; physician's duty to communicate and document terminal condition or persistent vegetative state; capacity and intent of declarant; liability and inability of physician to comply with the living will; deleting
penalties for willful fraud in preparation, execution or concealment of a living will; insurance; preservation of existing rights; continuation of an existing living will; reciprocity; relation to existing law; and severability.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight and nine, article thirty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections eleven, twelve and thirteen, all to read as follows:

ARTICLE 30. 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 by, or assigned to, a person and who has primary responsibility for the treatment and care of the person;

3 (2) “Declarant” means a person who has executed a living will;

4 (3) “Health care provider” means a person, partnership, corporation, facility or institution licensed, certified or authorized by law to provide professional health care services in this state;

5 (4) “Health care representative” means a person eighteen years of age or older appointed by another person to make health care decisions pursuant to the provisions of article thirty-a of this chapter or similar act of another state and recognized as valid under the laws of this state;

6 (5) “Incapacity”, or words of like import, means the inability because of physical or mental impairment, to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner as determined by two
24 physicians or by one physician and one licensed
25 psychologist, both of whom are licensed to practice in
26 this state, and additionally, have examined the declar-
27 ant. The declarant's attending physician shall be one
28 of those who makes the determination required
29 herein;
30 (6) "Life-prolonging intervention" means any medi-
31 cal procedure or intervention which, when applied to
32 a person would serve solely to artificially prolong the
33 dying process or to maintain the person in a persistent
34 vegetative state. The term "life-prolonging interven-
35 tion" does not include the administration of medica-
36 tion or the performance of any other medical proce-
37 dure deemed necessary to provide comfort or to
38 alleviate pain;
39 (7) "Living will" means a written, witnessed
40 advance directive governing the withholding or with-
41 drawing of life-prolonging intervention, voluntarily
42 executed by a person in accordance with the require-
43 ments of section three of this article;
44 (8) "Persistent vegetative state" means a permanent
45 and irreversible state as diagnosed by the attending
46 physician and a second physician in which the person
47 has intact brain stem function but no higher cortical
48 function and has neither self-awareness or awareness
49 of the surroundings in a learned manner;
50 (9) "Physician" means a person licensed and autho-
51 rized to practice medicine; and
52 (10) "Terminal condition" means an incurable
53 condition caused by injury, disease or illness, which in
54 the judgment of the attending physician and a second
55 physician would result in death within a relatively
56 short time.
§16-30-3. Executing a living will.
1 (a) Any mentally competent person eighteen years
2 of age or older may execute at any time a living will
3 governing the withholding or withdrawal of life-
4 prolonging intervention from himself or herself. A
5 living will made pursuant to this article shall be: (1) In
writing; (2) executed by the declarant or by another
person in the declarant's presence at the declarant's
express direction if the declarant is physically unable
to do so; (3) dated; (4) signed in the presence of two or
more witnesses at least eighteen years of age; and (5)
signed and attested by such witnesses whose signa-
tures and attestations shall be acknowledged before a
notary public as provided in subsection (d) of this
section.

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

(1) The person who signed the living will on behalf
of and at the direction of the declarant;

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

(3) Entitled to any portion of the estate of the
declarant according to the laws of intestate succession
of the state of the declarant's domicile or under any
will of the declarant or codicil thereto: Provided, That
the validity of the living will shall not be affected
when a witness at the time of witnessing such living
will was unaware of being a named beneficiary of the
declarant's will;

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

(5) The attending physician; or

(6) The declarant's health care representative, proxy
or successor health care representative.

(c) It shall be the responsibility of the declarant to
provide for notification to his or her attending physi-
cian and other health care providers of the existence
of the living will. An attending physician, when
presented with the living will, shall make the living
will or a copy of the living will a part of the declar-
ant's medical records.

(d) At the time of admission to any hospital or
extended care facility, each person shall be advised of
the existence and availability of living will and
medical power of attorney forms and shall be given
assistance in completing such forms if the person
desires: Provided, That under no circumstances may
admission to a hospital or extended care facility be
predicated upon a person having completed either a
medical power of attorney or living will.

(e) The living will may, but need not, be in the
following form, and may include other specific direc-
tions not inconsistent with other provisions of this
article. Should any of the other specific directions be
held to be invalid, such invalidity shall not affect other
directions of the living will which can be given effect
without the invalid direction and to this end the
directions in the living will are severable.

"LIVING WILL"

"Living will made this __________________ day
of ____________________ (month, year).
I, ____________________, being of sound mind,
willfully and voluntarily declare that in the absence of
my ability to give directions regarding the use of life-
prolonging intervention, it is my desire that my dying
shall not be artificially prolonged under the following
circumstances:

"If at any time I should be certified by two physi-
cians who have personally examined me, one of whom
is my attending physician, to have a terminal condi-
tion or to be in a persistent vegetative state, I direct
that life-prolonging intervention that would serve
solely to artificially prolong the dying process or
maintain me in a persistent vegetative state be with-
held or withdrawn, and that I be permitted to die
naturally with only the administration of medication
or the performance of any other medical procedure
deemed necessary to keep me comfortable and allevi-
ate pain.

"SPECIAL DIRECTIVES OR LIMITATIONS ON
THIS DECLARATION: (If none, write "none").

"It is my intention that this living will be honored
as the final expression of my legal right to refuse
medical or surgical treatment and accept the conse-
quences resulting from such refusal.
"I understand the full import of this living will.

"Signed ________________________________

"Address ________________________________

"I did not sign the declarant's signature above for or at the direction of the declarant. I am at least eighteen years of age and am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of the state of the declarant's domicile or to the best of my knowledge under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care. I am not the declarant's attending physician or the declarant's health care representative, proxy or successor health care representative under a medical power of attorney.

"Witness ________________________________

"Address ________________________________

"Witness ________________________________

"Address ________________________________

"STATE OF ________________________________

"COUNTY OF ________________________________

"The foregoing instrument was acknowledged before me this ____________ (date) by the declarant and by the two witnesses whose signatures appear above.

"My commission expires: ____________________

"______________________________

Signature of Notary Public."

§16-30-4. Revocation.

1 (a) A living will may be revoked at any time only by
the declarant or at the express direction of the declarant, without regard to the declarant’s mental state by any of the following methods:

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

(2) By a written revocation of the living will signed and dated by the declarant or person acting at the direction of the declarant. Such revocation shall become effective only upon delivery of the written revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the declarant’s medical record the time and date when he or she receives notification of the written revocation; or

(3) By a verbal expression of the intent to revoke the living will in the presence of a witness eighteen years of age or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record, in the declarant’s medical record, the time, date and place of when he or she receives notification of the revocation.

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

§16-30-5. Physician’s duty to confirm, communicate and document terminal condition or persistent vegetative state; medical record identification.

(a) An attending physician who has been notified of the existence of a living will executed under this article, without delay after the diagnosis of a terminal condition or persistent vegetative state of the declarant, shall take the necessary steps to provide for confirmation, written certification and documentation
of the declarant’s terminal condition or persistent vegetative state in the declarant’s medical record.

(b) Once confirmation, written certification and documentation of the declarant’s terminal condition is made, the attending physician shall verbally or in writing inform the declarant of his or her terminal condition or the declarant’s health care representative, next of kin or other responsible person, if the declarant lacks capacity to comprehend such information and shall document such communication in the declarant’s medical record.

(c) All inpatient health care facilities shall develop a system to visibly identify a person’s chart which contains a living will as set forth in this article.

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

(a) The desires of a capable declarant at all times supersede the effect of the living will.

(b) If a person is incapacitated at the time of the decision to withhold or withdraw life-prolonging intervention, the person’s living will executed in accordance with section three of this article is presumed to be valid. For the purposes of this article, a physician or health facility may presume in the absence of actual notice to the contrary that a person who executed a living will was of sound mind when it was executed. The fact that a person executed a living will is not an indication of the person’s mental incapacity.

§16-30-7. Liability and protection of living will; transfer.

(a) No health care provider or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-prolonging intervention from a person pursuant to a living will made in accordance with this article shall, as a result thereof, be subject to criminal or civil liability.

(b) An attending physician who cannot comply with the living will of a declarant pursuant to this article
shall, in conjunction with the health care representa-
tive, next of kin of the declarant or other responsible
person, effect the transfer of the declarant to another
physician who will honor the living will of the declar-
ant. Transfer under these circumstances does not
constitute abandonment.

§16-30-8. Insurance.

(a) The withholding or withdrawal of life-prolonging
intervention from a declarant in accordance with the
provisions of this article does not, for any purpose, constitute a suicide and does not constitute the crime
of assisting suicide.

(b) The making of a living will pursuant to section three of this article does not affect in any manner the
sale, procurement or issuance of any insurance policy
nor does it modify the terms of an existing policy. No insurance policy may be legally impaired or inval-
dated in any manner by the withholding or with-
drawal of life-prolonging intervention from an insured
person, notwithstanding any term of the policy to the
contrary.

(c) No health care provider or health care service
plan, health maintenance organization, insurer issuing
disability insurance, self-insured employee welfare
benefit plan, nonprofit medical service corporation or
mutual nonprofit hospital service corporation shall
require any person to execute a living will as a
condition for being insured for or receiving health
care services.

§16-30-9. Preservation of existing rights; no presumption;
living wills previously executed.

(a) Nothing in this article impairs or supersedes any
legal right or legal responsibility which any person
may have to effect the withholding or withdrawal of
life-prolonging intervention in any lawful manner. In
such respect the provisions of this article are
cumulative.

(b) This article creates no presumption concerning
the intention of a person who has not executed a living
will to consent to the use or withholding of life-
prolonging intervention in the event of a terminal
condition or persistent vegetative state.

(c) A living will executed prior to the effective date
of this article and which expressly provides for the
withholding or withdrawal of life-prolonging interven-
tion or for the termination of life-sustaining proce-
dures in substantial compliance with the provisions of
section three of this article is hereby recognized as a
valid living will, as though it were executed in
compliance with the provisions of this article.

§16-30-11. Reciprocity.

A living will executed in another state is validly
executed for the purposes of this article if it is
executed in compliance with the laws of this state or
with the laws of the state where executed and
expressly provides for the withholding or withdrawal
of life-prolonging intervention or for the termination
of life-sustaining procedure.

§16-30-12. Relation to existing law.

Nothing in this article shall be construed to abrogate
the common law doctrine of medical necessity.


The provisions of this article are severable and if
any provision, section or part thereof shall be invalid,
unconstitutional or inapplicable to any person or
circumstance, such invalidity, unconstitutionality or
inapplicability shall not affect or impair any other
remaining provisions contained herein.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ....... approved.. this the .... day of March ..., 1991.

Governor