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Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY CLOCKSIN AND ROGERS

2 HOUSE BILL NO. 855

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the right to a natural death.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. PURPOSE. The legislature finds that adult persons have the  
9 fundamental right to control the decisions relating to the rendering of their  
10 own medical care, including the decision to have life-sustaining procedures  
11 withheld or withdrawn in instances of a terminal condition. In order that  
12 the rights of patients may be respected even after they are no longer able to  
13 participate actively in decisions about themselves, the legislature declares  
14 that the laws of the state recognize the right of an adult person to make a  
15 written declaration instructing his physician to withhold or withdraw life-  
16 sustaining procedures in the event of a terminal condition.

17 \* Sec. 2. AS 18 is amended by adding a new chapter to read:

18 CHAPTER 12. RIGHT TO A NATURAL DEATH.

19 Sec. 18.12.010. EXECUTION OF DECLARATION. (a) An adult person  
20 may execute a declaration directing the withholding or withdrawal of  
21 life-sustaining procedures in the instance of a terminal condition. The  
22 declaration shall be signed by the declarant in the presence of two  
23 subscribing witnesses, no more than one of whom may be

24 (1) related to the declarant by blood or marriage;

25 (2) entitled to a portion of the estate of the declarant  
26 under a will or codicil of the declarant;

27 (3) a claimant against a portion of the estate of the declarant  
28 at the execution of the declaration; or

29 (4) directly financially responsible for the declarant's

1 medical care.

2 (b) It is the responsibility of the declarant to provide for  
3 notification to his attending physician of the existence of the declara-  
4 tion. The attending physician shall make the declaration or a copy of  
5 the declaration a part of the medical records of the declarant.

6 (c) The declaration shall be substantially in the following form  
7 but may include other specific directions. If a specific direction is  
8 held to be invalid, the invalidity does not affect other directions of  
9 the declaration that can be given effect without the invalid direction.

10 DECLARATION

11 Declaration made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).  
12 I, \_\_\_\_\_, being of sound mind, wilfully and volun-  
13 tarily make known my desire that my dying shall not be artificially  
14 prolonged in the following circumstances:

15 If at any time I should have an incurable injury, disease, or  
16 illness certified to be a terminal condition by two physicians who have  
17 personally examined me, one of whom shall be my attending physician, and  
18 the physicians have determined that my death will occur whether or not  
19 life-sustaining procedures are used and where the application of life-  
20 sustaining procedures would serve only to artificially prolong the dying  
21 process, I direct that such procedures be withheld or withdrawn, and  
22 that I be permitted to die naturally with only the administration of  
23 medication or the performance of any medical procedure considered neces-  
24 sary to provide for my comfort.

25 In the absence of my ability to give directions regarding the use  
26 of the life-sustaining procedures, it is my intention that this declara-  
27 tion shall be honored by my family and physician(s) as the final expres-  
28 sion of my legal right to refuse medical or surgical treatment and  
29 accept the consequences from such refusal.

1 In the absence of my ability to give directions regarding the use  
2 of life-sustaining procedures, I wilfully and voluntarily appoint  
3 \_\_\_\_\_ to accept or refuse medical treatment on my behalf and in  
4 my interest. I understand that if I have not filled in a name in this  
5 paragraph, this directive will be given effect if the stated circum-  
6 stances arise.

7 If I have been found to be pregnant and that fact is known to my  
8 physician, this declaration is void during the course of my pregnancy.

9 I understand the full import of this declaration and I am emotion-  
10 ally and mentally competent to make this declaration.

11 Signed \_\_\_\_\_

12 City and State of Residence \_\_\_\_\_

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

15 Witness \_\_\_\_\_

16 Witness \_\_\_\_\_

17 Sec. 18.12.020. REVOCATION. (a) A declaration may be revoked at  
18 any time by the declarant without regard to his mental state or compe-  
19 tency, by (1) being canceled, defaced, obliterated, burnt, torn, or  
20 otherwise destroyed by the declarant or by a person in his presence and  
21 by his direction; (2) a written revocation of the declarant, signed and  
22 dated, by him, expressing his intent to revoke the declaration and the  
23 attending physician shall record in the patient's medical record the  
24 time and date when notification of the written revocation was received;  
25 (3) a verbal expression by the declarant of his intent to revoke the  
26 declaration. The revocation becomes effective upon communication to the  
27 attending physician by the declarant or by a person who is reasonably  
28 believed to be acting on behalf of the declarant. The attending physi-  
29 cian shall record in the patient's medical record the time, date, and

1 place of the revocation and the time, date, and place, if different, of  
2 when notification of the revocation was received.

3 (b) The desires of a qualified patient who is competent shall at  
4 all times supercede the effect of the patient's declaration.

5 Sec. 18.20.030. PHYSICIAN'S RESPONSIBILITY: WRITTEN CERTIFICATION.

6 (a) An attending physician who has been notified of the existence of a  
7 declaration executed under AS 18.12.010 shall, on the diagnosis of a  
8 terminal condition of the declarant, take the necessary steps to provide  
9 for written certification and confirmation of the declarant's terminal  
10 condition, so that the declarant may be considered to be a qualified  
11 patient.

12 (b) An attending physician who fails to comply with this section  
13 is considered to have refused to comply with the declaration and is  
14 liable under AS 18.12.050(a).

15 Sec. 18.20.040. RESPONSIBILITY AND IMMUNITY. (a) If a qualified  
16 patient is incompetent at the time of a decision to withhold or withdraw  
17 life-sustaining procedures, a declaration executed in accordance with  
18 AS 18.12.010 is valid.

19 (b) An attending physician who refuses to comply with the declara-  
20 tion of a qualified patient under this chapter shall arrange to transfer  
21 the qualified patient to another physician who will carry out the  
22 declaration of the qualified patient.

23 (c) For the purpose of this chapter, a physician or health care  
24 facility may assume in the absence of actual notice to the contrary that  
25 a person who executed a declaration was of sound mind when it was exe-  
26 cuted. The declaration may not be considered an indication of a declar-  
27 ant's mental incompetency. Age of itself is not a bar to a determina-  
28 tion of competency.

29 (d) In the absence of actual notice of the revocation of the

1 declaration, the following, when acting in accordance with the require-  
2 ments of this chapter, are not subject to civil liability, unless negli-  
3 gent, and are not guilty of a criminal act of unprofessional conduct:

4 (1) a physician who or a health facility that withholds or  
5 withdraws life-sustaining procedures from a qualified patient;

6 (2) a licensed health professional, acting under the direc-  
7 tion of a physician, who participates in the withholding or withdrawal  
8 of life-sustaining procedures.

9 Sec. 18.12.050. PENALTIES. (a) An attending physician who fails  
10 to comply with the declaration of a qualified patient or to make the  
11 necessary arrangements to effect the transfer is civilly liable to the  
12 qualified patient and to the heirs of the qualified patient.

13 (b) A person who wilfully conceals, cancels, defaces, obliterates,  
14 or damages the declaration of another without the declarant's consent or  
15 who falsifies or forges a revocation of the declaration of another is  
16 civilly liable to the qualified patient and to the heirs of the quali-  
17 fied patient.

18 (c) A person who falsifies or forges the declaration of another  
19 person or wilfully conceals or withholds personal knowledge of a revoca-  
20 tion under AS 18.12.020, with the intent to cause a withholding or  
21 withdrawal of life-sustaining procedures contrary to the wishes of the  
22 person or declarant and thereby directly causes life-sustaining proce-  
23 dures to be withheld or withdrawn and death to be hastened commits the  
24 crime of murder in the first degree.

25 Sec. 18.12.060. ACTS UNDER THIS CHAPTER NOT SUICIDE. (a) The  
26 withholding or withdrawal of life-sustaining procedures from a qualified  
27 patient in accordance with the provisions of this chapter does not, for  
28 any purpose, constitute a suicide.

29 Sec. 18.12.070. EFFECTS ON LIFE INSURANCE. The making of a

1 declaration under AS 18.12.010 does not affect in any manner a life  
2 insurance policy, nor does it modify the terms of an existing life  
3 insurance policy. A life insurance policy is not legally impaired or  
4 invalidated in any manner by the withholding or withdrawal of life-  
5 sustaining procedures from an insured qualified patient, notwithstanding  
6 a term of the policy to the contrary.

7 Sec. 18.12.080. DECLARATION MAY NOT BE MADE A CONDITION FOR  
8 INSURANCE OR HEALTH CARE SERVICES. A physician, health facility, or  
9 other health provider, and health care service plan, insurer issuing  
10 disability insurance, self-insured employee welfare benefit plan, or  
11 non-profit hospital plan may not require a person to execute a declara-  
12 tion as a condition for being insured for or receiving health care  
13 services.

14 Sec. 18.12.090. EXISTING RIGHTS OR RESPONSIBILITIES. This chapter  
15 does not impair or supercede a legal right or legal responsibility that  
16 a person may have to withhold or withdraw life-sustaining procedures in  
17 a lawful manner.

18 Sec. 18.12.100. PRESUMPTION FROM FAILURE TO EXECUTE A DECLARATION.  
19 This chapter does not create a presumption concerning the intention of  
20 an individual who has not executed a declaration to consent to the use  
21 or withholding of life-sustaining procedures in the event of a terminal  
22 condition.

23 Sec. 18.12.110. SEVERABILITY. If a provision of this chapter or  
24 its application to an individual or circumstances is held invalid, the  
25 invalidity does not affect other provisions or applications of this  
26 chapter that can be given effect without the invalid provision or  
27 application.

28 Sec. 18.12.120. DEFINITIONS. In this chapter  
29 (1) "attending physician" means the physician selected by or

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assigned to the patient and who has primary responsibility for the treatment and care of the patient;

(2) "declaration" means a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of AS 18.12.010;

(3) "life-sustaining procedure"

(A) means a medical procedure or intervention that, when applied to a qualified patient, would serve only to prolong the dying process and where, in the judgment of the attending physician, death will occur whether or not these procedures are used;

(B) does not include the administration of medication or the performance of a medical procedure considered necessary to provide comfort care;

(4) "qualified patient" means a patient who has executed a declaration under AS 18.12.010 and who has been diagnosed and certified in writing to be afflicted with a terminal condition by two physicians who have personally examined the patient, one of whom is the attending physician.