

HCSCSB140 (Jud Am H)

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Referred: Health, Education and
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Judiciary

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1 IN THE SENATE

2 SENATE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights of the terminally
7 ill."

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

9 * Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 12. RIGHTS OF TERMINALLY ILL.

11 Sec. 18.12.010. DECLARATION RELATING TO USE OF LIFE-SUSTAINING
12 PROCEDURES. (a) Any competent adult may execute a declaration at any
13 time directing that life-sustaining procedures be withheld or with-
14 drawn from that adult; but the declaration is given operative effect
15 only if the declarant's condition is determined to be terminal and the
16 declarant is not able to make treatment decisions. The declaration
17 must be signed by the declarant, or another at the declarant's direc-
18 tion, and in either case must be witnessed by two persons. The wit-
19 nesses must be at least 18 years old and may not be related to the
20 declarant by blood or marriage. A physician or health care provider
21 may presume, in the absence of actual notice to the contrary, that the
22 declaration complies with this Act and is valid.

23 (b) It is the responsibility of the declarant to notify the
24 declarant's physician of the declaration. A physician or other health
25 care provider who is provided a copy of the declaration shall make it
26 a part of the declarant's medical records.

27 (c) A declaration may, but need not, be in the following form:

28 DECLARATION

29 If I should have an incurable or irreversible condition that will

1 cause my death within a relatively short time, it is my desire that my
2 life not be prolonged by administration of life-sustaining procedures.
3 If my condition is terminal and I am unable to participate in de-
4 cisions regarding my medical treatment, I direct my attending phy-
5 sician to withhold or withdraw procedures that merely prolong the
6 dying process and are not necessary to my comfort or to alleviate
7 pain.

8 Signed this _____ day of _____, _____.

9 Signature _____

10 City, County and State of Residence _____

11 The declarant is known to me and voluntarily signed this document
12 in my presence.

13 Witness _____

14 Address _____

15 Witness _____

16 Address _____

17 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration
18 may be revoked at any time and in any manner by which the declarant is
19 able to communicate an intent to revoke, without regard to mental or
20 physical condition. A revocation is only effective as to the attend-
21 ing physician or any health care provider acting under the guidance of
22 that physician upon communication to the physician or health care
23 provider by the declarant or by another to whom the revocation was
24 communicated.

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

27 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
28 AND CONTENTS OF DECLARATION. When an attending physician who has been
29 notified of the existence and contents of a declaration determines

1 that the declarant is in a terminal condition, the physician must
2 record that determination and the contents of the declaration in the
3 declarant's medical record.

4 Sec. 18.12.040. TREATMENT OF QUALIFIED PATIENTS. (a) A qual-
5 ified patient has the right to make decisions regarding use of life-
6 sustaining procedures as long as the patient is able to do so. If a
7 qualified patient is not able to make these decisions, the declaration
8 governs decisions regarding use of life-sustaining procedures.

9 (b) This chapter does not prohibit the application of any med-
10 ical procedure or intervention, including the provision of nutrition
11 and hydration, considered necessary to provide comfort, care, or
12 alleviation of pain.

13 (c) Unless the declaration provides otherwise, the declaration
14 of a qualified patient known to the attending physician to be pregnant
15 is given no effect as long as it is probable that the fetus could
16 develop to the point of live birth with continued application of
17 life-sustaining procedures.

18 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-
19 cian who is unwilling to comply with the requirements of AS 18.12.030
20 or who is unwilling to comply with the declaration of a qualified
21 patient under AS 18.12.040 shall take all reasonable steps to effect
22 the transfer of the declarant to another physician.

23 (b) If the policies of a health care facility preclude compli-
24 ance with the declaration of a qualified patient under this chapter,
25 that facility shall take all reasonable steps to effect the transfer
26 of the patient to a facility in which the provisions of this chapter
27 can be carried out.

28 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual
29 notice of the revocation of a declaration, the following, while acting

1 in accordance with the requirements of this chapter, are not subject
2 to civil or criminal liability or guilty of unprofessional conduct:

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

5 (2) a person who participates in the withholding or with-
6 drawal of life-sustaining procedures under the direction or with the
7 authorization of a physician;

8 (3) the health care facility in which the withholding or
9 withdrawal occurs.

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

13 Sec. 18.12.070. PENALTIES. (a) A physician who wilfully fails
14 to transfer in accordance with AS 18.12.050 is guilty of a class A
15 misdemeanor.

16 (b) A physician who wilfully fails to record the determination
17 of terminal condition in accordance with AS 18.12.030 is guilty of a
18 class A misdemeanor.

19 (c) A person who wilfully conceals, cancels, defaces, or oblit-
20 erates the declaration of another without the declarant's consent or
21 who falsifies or forges a revocation of the declaration of another is
22 guilty of a class A misdemeanor.

23 (d) A person who falsifies or forges the declaration of another,
24 or wilfully conceals or withholds personal knowledge of a revocation
25 as provided in AS 18.12.020, with the intent to cause a withholding or
26 withdrawal of life-sustaining procedures, is guilty of a class A
27 misdemeanor.

28 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from
29 the withholding or withdrawal of life-sustaining procedures under a

1 declaration and in accordance with this chapter does not, for any
2 purpose, constitute a suicide or homicide.

3 (b) The making of a declaration under AS 18.12.020 does not
4 affect in any manner the sale, procurement, or issuance of a policy of
5 life insurance, nor does it modify the terms of an existing policy of
6 life insurance. A policy of life insurance is not legally impaired or
7 invalidated in any manner by the withholding or withdrawal of life-
8 sustaining procedures from an insured qualified patient, notwithstand-
9 ing any term of the policy to the contrary.

10 (c) A physician, health care facility, or other health care
11 provider, and a health care service plan, insurer issuing disability
12 insurance, self-insured employee welfare benefit plan, or nonprofit
13 hospital plan, may not require a person to execute a declaration as a
14 condition for being insured for, or receiving, health care services.

15 (d) This chapter creates no presumption concerning the intention
16 of an individual who has not executed a declaration with respect to
17 the use, withholding, or withdrawal of life-sustaining procedures in
18 the event of a terminal condition.

19 (e) Nothing in this chapter increases or decreases the right of
20 a patient to make decisions regarding use of life-sustaining proce-
21 dures as long as the patient is able to do so, nor impairs or super-
22 cedes any right or responsibility that a person has to effect the
23 withholding or withdrawal of medical care in a lawful manner. In that
24 respect, the provisions of this chapter are cumulative.

25 (f) This chapter does not condone, authorize, or approve mercy
26 killing or euthanasia.

27 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
28 STATES. A declaration executed in another state in compliance with
29 the law of that state is effective for purposes of this chapter.

1 Sec. 18.12.100. DEFINITIONS. In this chapter
2 (1) "attending physician" means the physician selected by,
3 or assigned to, the patient who has primary responsibility for the
4 treatment and care of the patient;
5 (2) "declaration" means a document executed in accordance
6 with the requirements of AS 18.12.010;
7 (3) "health care provider" means a person who is licensed,
8 certified, or otherwise authorized by the law of this state to admin-
9 ister health care in the ordinary course of business or practice of a
10 profession;
11 (4) "life-sustaining procedure" means a medical procedure
12 or intervention that, when administered to a qualified patient, will
13 serve only to prolong the dying process;
14 (5) "physician" means a person licensed to practice medi-
15 cine in this state;
16 (6) "qualified patient" means a patient who has executed a
17 declaration in accordance with this chapter and who has been deter-
18 mined by the attending physician to be in a terminal condition;
19 (7) "terminal condition" means an incurable or irreversible
20 condition that, without the administration of life-sustaining proce-
21 dures, will, in the opinion of the attending physician, result in
22 death within a relatively short time.