

Offered: 3/15/85  
Referred: Judiciary

Original sponsors: Eliason, Ziegler  
and V.Fischer

1 IN THE SENATE BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 140 (HESS) am  
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 ill;  
7 and providing for an effective date."

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 person who is at least 18 years old  
13 may execute a declaration at any time directing that life-sustaining  
14 procedures be withheld or withdrawn from that person; but the declara-  
15 tion is given operative effect only if the declarant's condition is  
16 determined to be terminal and the declarant is not able to make treat-  
17 ment decisions. The declaration must be signed by the declarant, or  
18 another at the declarant's direction, and in either case must be  
19 witnessed by two persons. The witnesses must be at least 18 years old  
20 and may not be related to the declarant by blood or marriage. A  
21 physician or health care provider may presume, in the absence of  
22 actual notice to the contrary, that the declaration complies with this  
23 Act and is valid.

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

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

29 DECLARATION



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

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

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

14 (c) The declaration of a qualified patient known to the attend-  
15 ing physician to be pregnant is given no effect as long as it is  
16 probable that the fetus could develop to the point of live birth with  
17 continued application of 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 withdraw as attending physician but  
22 the withdrawal is effective only when the services of another attend-  
23 ing physician have been obtained.

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

29 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual

1 notice of the revocation of a declaration, the following, while acting  
2 in accordance with the requirements of this chapter, are not subject  
3 to civil or criminal liability or guilty of unprofessional conduct:

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

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

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

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

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

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

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

24 (d) A person who falsifies or forges the declaration of another  
25 person or wilfully conceals or withholds personal knowledge of a  
26 revocation under AS 18.12.020, with the intent to cause a withholding  
27 or withdrawal of life-sustaining procedures contrary to the wishes of  
28 the other person or declarant, and thereby directly causes  
29 life-sustaining procedures to be withheld or withdrawn and death to be

1 hastened violates AS 11.41.100.

2           Sec. 18.12.080. GENERAL PROVISIONS. (a) Except as provided in  
3 AS 18.12.070 (d) death resulting from the withholding or withdrawal of  
4 life-sustaining procedures under a declaration and in accordance with  
5 this chapter does not, for any purpose, constitute a suicide or homi-  
6 cide.

7           (b) The making of a declaration under AS 18.12.010 does not  
8 affect in any manner the sale, procurement, or issuance of a policy of  
9 life insurance, nor does it modify the terms of an existing policy of  
10 life insurance. A policy of life insurance is not legally impaired or  
11 invalidated in any manner by the withholding or withdrawal of life-  
12 sustaining procedures from an insured qualified patient, notwithstand-  
13 ing any term of the policy to the contrary.

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

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

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

29           (f) This chapter does not condone, authorize, or approve mercy

1 killing or euthanasia.

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

5 Sec. 18.12.100. DEFINITIONS. In this chapter

6 (1) "attending physician" means the physician selected by,  
7 or assigned to, the patient who has primary responsibility for the  
8 treatment and care of the patient;

9 (2) "declaration" means a document executed in accordance  
10 with the requirements of AS 18.12.010;

11 (3) "health care provider" means a person who is licensed,  
12 certified, or otherwise authorized by the law of this state to admin-  
13 ister health care in the ordinary course of business or practice of a  
14 profession;

15 (4) "life-sustaining procedure" means a medical procedure  
16 or intervention that, when administered to a qualified patient, will  
17 serve only to prolong the dying process;

18 (5) "physician" means a person licensed to practice medi-  
19 cine in this state or an officer in the regular medical service of the  
20 armed services of the United States or the United States Public Health  
21 Service while in the discharge of their official duties, or while  
22 volunteering services without pay or other remuneration to a hospital,  
23 clinic, medical office, or other medical facility in the state;

24 (6) "qualified patient" means a patient who has executed a  
25 declaration in accordance with this chapter and who has been deter-  
26 mined by the attending physician to be in a terminal condition;

27 (7) "terminal condition" means an incurable or irreversible  
28 condition that, without the administration of life-sustaining proce-  
29 dures, will, in the opinion of the attending physician, result in

1        death within a relatively short time.

2        \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-

3 10.070(c).