

ALASKA LEGISLATURE COMMITTEE FILES, 1985-1986 8672

4425.1 CC/FCC SB 140

ESB

CONFERENCE

COMMITTEE

SB 140

(FILE 2)

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON



LABOR & COMMERCE COMMITTEE, VICE-CHAIRMAN
LEGISLATIVE COUNCIL, VICE-CHAIRMAN
FINANCE COMMITTEE
RESOURCES COMMITTEE

PO. BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

March 26, 1986

A N N O U N C E M E N T

The Conference Committee for S.B. 140, an act relating to the rights of the terminally ill, will meet Thursday, April 3, at 3:30 in the Butrovich Room, 205 Capitol Building.

For further information, please contact Senator Eliason's office at 465-4916.

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON



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JUNEAU, ALASKA 99811
(907) 465-4918

MEMORANDUM

TO: Senator Bill Ray, Conference Committee Member
Senator Bob Ziegler, Conference Committee Member

FROM: Senator Dick Eliason, Chair *Dick Eliason*
Conference Committee on S.B. 140 - Rights of the
Terminally Ill

RE: Propose Changes

DATE: March 20, 1986

After carefully reviewing both the Senate and House versions of S.B. 140 and weighing the merits of both proposals, I am recommending that the House passed version be adopted with the following two changes:

- 1) Adopt the Senate language for Sec. 18.12.010(a).

This change would require that two individuals witness the signing of a declaration. The witnesses must be at least 18 years old and may not be related to the declarant by blood or marriage.

- 2) Adopt the Senate language for Sec. 18.12.040(c).

This change would state "The declaration of a qualified patient known to the attending physician to be pregnant is given no effect as long as it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures".

I would appreciate your careful consideration regarding this recommendation. Thank you very much.

house. When the second house receives the message accompanying the engrossed bill and reporting its passage, the bill shall be read by the clerk or secretary for the first time and then referred by the presiding officer to one or more committees for subsequent action by that house.

AMENDMENTS IN OTHER HOUSE

RULE 41. AMENDMENTS IN OTHER HOUSE. (a) When a bill, resolution, or citation passed in one house is amended in the other house, the bill, resolution, or citation with certified amendments is returned to the house of origin requesting concurrence. The vote on concurrence in amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership in each house. If concurrence is had the clerk or secretary notes the concurrence in the journal, informs the other house of the concurrence, and proceeds to have the bill or resolution enrolled for certification and transmittal to the governor.

(b) An amendment to a bill introduced in the other house is not in order if the amendment requires a change of the bill title other than a clerical or technical change.

CONFERENCE AND FREE CONFERENCE COMMITTEES

RULE 42. CONFERENCE AND FREE CONFERENCE COMMITTEES.

(a) If one house refuses to concur in the amendments of the other it so notifies the amending house and requests that it recede from its amendments. The vote on receding from amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. A house recedes from its amendments only by a majority vote of the full membership of the house. If the house refuses to recede, the presiding officer of each house appoints three members to sit as a Conference Committee. The committee meets when mutually agreeable to its members. If the committee reaches agreement on previously adopted amendments to a bill adopted by either house, the committee then submits an identical report to each house. The report is not subject to amendment in either house. If the report is adopted by each house the bill is enrolled, signed, and transmitted to the governor. If the members of the Conference Committee cannot agree on amendments, or if one or both houses refuses to adopt the committee report, the Conference Committee submits an identical written report to each house listing the specific points of disagreement for which the committee requests powers of free conference. The presiding officer of each house may then give limited powers of free conference only on the specific points listed. If the members of a Conference Committee with limited powers of free conference cannot agree on amendments, or one or both houses refuses to adopt the committee report, it is then in order to appoint a Free Conference Committee. A member who served on a Conference Committee or a Conference Committee with limited powers of free conference may not be appointed to a subsequent Conference Committee or Free Conference Committee concerning the same measure. The vote on adoption of a conference committee report is taken by the calling of the

roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership of each house.

(b) A Free Conference Committee is appointed in the same manner as a Conference Committee and may suggest in its report any new amendments clearly germane to the question. When a majority of the membership of the committee from each house agrees on amendments, the amendments are attached to the bill and reported back to each house in an identical report. The report is not subject to amendment in either house. If the report is adopted in each house the bill is then ordered enrolled by its house of origin. If the members of a Free Conference Committee fail to agree on amendments or one or both houses refuses to adopt the free conference report, a second Free Conference Committee may be appointed, but no member of the first committee may be reappointed. A free conference report may not be voted on by the house until at least 24 hours after the report is duplicated and delivered to the chief clerk or secretary of the house for distribution to each member. The chief clerk or secretary shall certify the time of delivery of the report for recording in the journal. The vote on adoption of a free conference committee report is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership of each house.

(c) A Conference Committee with limited powers of free conference or a Free Conference Committee may not include in its report on an appropriation bill an item which was not included in a version of that appropriation bill adopted in third reading by a house and the amount appropriated by an item may not exceed the higher amount appropriated by that item in a version of the bill adopted in third reading by a house. An item in an appropriation bill includes a line item, an allocation, and an appropriation.

(d) Notwithstanding the provisions of (c) of this rule, a Free Conference Committee may consider and include in its report on an appropriation bill appropriations as requested by attached fiscal notes on new legislation and resolutions that have been passed by both houses.

(e) A Conference Committee, a Conference Committee with limited powers of free conference, or a Free Conference Committee may not adopt a report that requires a change in the title of a bill other than a clerical or technical change.

ENROLLMENT

RULE 43. ENROLLMENT. (a) When a bill has passed both houses the presiding officer of the house of origin directs that it be enrolled. The clerk or secretary transmits the engrossed bill to the enrolling secretary of the legislature, who, with the revisor of statutes, checks the bill before placement in final form according to the legislative drafting manual. The enrolling secretary is authorized to correct form and manifest errors which are clerical, typographical, or errors in spelling or errors by way of additions or omissions. The enrolling secretary is required to

SJR 39

The Rules Committee considered SENATE JOINT RESOLUTION NO. 39 (Proposing an amendment to the Constitution of the State of Alaska relating to the right of a citizen to keep and bear arms) and a majority of the committee recommended calendar March 25. The report was signed by Senator Kelly, Chairman and concurred in by Senators Faiks, Josephson and Coghill.

SENATE JOINT RESOLUTION NO. 39 is on the calendar.

SB 457

The Rules Committee considered SENATE BILL NO. 457 (State Physical Therapy Board; efd) and a majority of the committee recommended calendar March 25. The report was signed by Senator Kelly, Chairman and concurred in by Senators Faiks, Josephson and Coghill.

SENATE BILL NO. 457 is on the calendar.

HCR 8

The Rules Committee considered CS FOR HOUSE CONCURRENT RESOLUTION NO. 8 (O&G) (natural gas pipeline) and a majority of the committee recommended calendar March 25. The report was signed by Senator Kelly, Chairman and concurred in by Senators Faiks, Bennett and Coghill.

CS FOR HOUSE CONCURRENT RESOLUTION NO. 8 (O&G) is on the calendar.

SPECIAL COMMITTEE REPORTS

SB 187

March 25, 1986

Dear Senator Bennett:

The Senate Conference Committee considering SENATE BILL NO. 187 and HOUSE CS FOR SENATE BILL NO. 187 (2d JUD) (adoption; efd) requests to amend the initial request for limited powers of free conference as follows:

1. Access to adoption information

March 25, 1986

2153

HB 31

The Resources Committee considered HOUSE BILL NO. 31 (obstruction or hindrance of lawful hunting, fishing, or trapping) and a majority of the committee recommended it be replaced with

SENATE CS FOR HOUSE BILL NO. 31 (RES)

and do pass. The report was signed by Senator Sturgulewski, Chairman and concurred in by Senators Halford, Fahrenkamp and Eliason.

HOUSE BILL NO. 31 was referred to the Judiciary Committee.

HB 208

The Finance Committee considered HOUSE BILL NO. 208 (authorizing salmon classics) and recommended it be replaced with

SENATE CS FOR HOUSE BILL NO. 208 (FIN)

Senator Faiks, Co-Chairman and Senators Halford and Paul Fischer signed "no recommendation". Senators Kerttula, Eliason and Sackett signed "do pass".

Fiscal note is zero.

HOUSE BILL NO. 208 was referred to the Rules Committee.

HB 281

The Resources Committee considered CS FOR HOUSE BILL NO. 281 (RES) am (trapping cabin permits) and recommended it be replaced with

SENATE CS FOR CS FOR HOUSE BILL NO. 281 (RES)

Senator Sturgulewski, Chairman and Senator Fahrenkamp signed "do pass". Senators Halford and Eliason signed "no recommendation".

Fiscal note is zero.

CS FOR HOUSE BILL NO. 281 (RES) am was referred to the Rules Committee.

SB 187 cont'd

The report was signed by Senator Rodey, Chairman and Senator Kelly, Senate conferees and Representative Gruenberg, Chairman and Representatives Szymanski and Pettyjohn, House conferees.

President Bennett granted the Senate conferees limited powers of free conference on the amended initial request.

The Secretary was requested to notify the House.

INTRODUCTION AND REFERENCE OF SENATE RESOLUTIONS

SCR 35

SPONSOR SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 35
by Senator Vic Fischer,

Relating to general liability and property
insurance,
(New title)

was read the first time and referred to the Labor and
Commerce Committee.

SJR 48

SENATE JOINT RESOLUTION NO. 48 by the Resources Committee,

Relating to the continued operation of the
Institute of Northern Forestry at Fairbanks
and the Forestry Survey Group in Anchorage,

was read the first time and referred to the Resources
Committee.

INTRODUCTION AND REFERENCE OF SENATE BILLS

SB 414

2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414 by Senator
Ferguson, entitled:

"An Act relating to general grant land
entitlements; and providing for an
effective date."
(New title)

was read the first time and referred to the Community and
Regional Affairs Committee, the Resources Committee and the
Finance Committee.

CONSIDERATION OF THE CALENDAR

SECOND READING OF SENATE BILLS

SB 457

SENATE BILL NO. 457 (State Physical Therapy Board; efd) was read the second time.

Senator Fahrenkamp moved and asked unanimous consent for the adoption of the Health, Education and Social Services Committee Substitute offered on page 2109. Without objection. CS FOR SENATE BILL NO. 457 (HESS) was adopted.

Senator Fahrenkamp moved and asked unanimous consent that the Health, Education and Social Services Committee Letter of Intent be adopted as a Senate Letter of Intent. Without objection, the Senate Letter of Intent was adopted.

CS FOR SENATE BILL NO. 457 (HESS) was read the second time.

Senator Halford moved and asked unanimous consent that CS FOR SENATE BILL NO. 457 (HESS) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 457 (HESS) was read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 457 (HESS) (State Physical Therapy Board; efd) pass the Senate?" The roll was taken with the following result:

CS SB 457 HESS 3RD

Yeas: 18 Abord, Bennett, Coghill, DeVries,
Eliason, Fahrenkamp, Faiks,
Fischer Paul, Fischer Vic,
Halford, Josephson, Kelly,
Kerttula, Ray, Rodey, Sackett,
Sturgulewski, Ziegler

Nays: 1 Ferguson

Excused: 1 Zharoff

and so, CS FOR SENATE BILL NO. 457 (HESS) passed the Senate with a Senate Letter of Intent.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 18, 1986

The Honorable Richard Eliason
Alaska State Senate
P. O. Box V
Juneau, AK 99811

Re: CSSB 140 (HESS) (am)

Dear Senator Eliason:

Your office has requested comments on the criminal penalties which were formerly a part of CSSB 140, "An Act relating to the rights of the terminally ill..."

The criminal penalties were found in proposed AS 18.12.070. 1/

1/ In AS 18.12.070 the penalties advanced were:

(a) A physician who wilfully fails to withdraw in accordance with AS 18.12.050 is guilty of a class A misdemeanor.

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

(c) A person who wilfully conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a class A misdemeanor.

(d) A person who falsifies or forges the declaration of another person or wilfully conceals or withholds personal knowledge of a revocation under AS 18.12.020, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the other person or declarant, and thereby directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened violates AS 11.41.100.

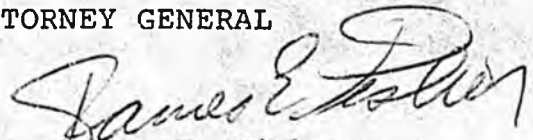
The Honorable Richard Eliason
Alaska State Senate

February 18, 1986
Page 2

The Department of Law has concerns about these proposed new crimes because such cases will inevitably be complicated by questions involving medical ethics or a physician's personal religious beliefs. It will be very difficult, in our view, to secure convictions "beyond a reasonable doubt" under such circumstances. As for the murder section, it seems to us that the common law of homicide is sufficiently well developed to take care of appropriate cases without specifically setting out those provisions in the statute.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL



By: James E. Fisher
Assistant Attorney General

JEF:ejf:22

Offered: 3/15/85
Referred: Judiciary

as passed by
the Senate

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-

HIM OR HIMSELF

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-

NO LONGER

17

OR IS WILLING TO ACCEPT FURTHER TREATMENT.

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

9 Signed this _____ day of _____, _____.

10 Signature _____

11 City, County and State of Residence _____

12 The Declarant is known to me and voluntarily signed this document
13 in my presence.

14 Witness _____

15 Address _____

16 Witness _____

17 Address _____

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

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

28 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
29 AND CONTENTS OF DECLARATION. When an attending physician who has been

1 notified of the existence and contents of a declaration determines
2 that the declarant is in a terminal condition, the physician must
3 ^{AND NOTIFY THE DECLARANT} 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 2 (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- 2
26 cedes any right or responsibility that a person has to effect the 1
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).

Received 9:00 am
MAY 7, 1986

CONFERENCE COMMITTEE REPORT

May 6, 1986 Date

Mr. President:
Mr. Speaker:

The CONFERENCE COMMITTEE considered CS FOR SENATE BILL NO. 140 (HESS) amended (relating to the rights of the terminally ill; efd) and HOUSE CS FOR CS FOR SENATE BILL NO. 140 (JUD) amended House and recommends

Conference CS for Senate Bill No. 140

21

be adopted.

Eliason
Senator Eliason, Chairman

R. Clocksin
Rep. Clocksin, Chairman

Ray Do NOT PASS
Senator Ray

Koponen
Rep. Koponen

Ziegler
Senator Ziegler

Pignalberi DO NOT PASS
Rep. Pignalberi

PLEASE RETURN COMPLETED FORM TO SENATE SECRETARY'S OFFICE

Original sponsors: Eliason, Ziegler,
V.Fischer, et al

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND 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) A competent person who is at least 18 years old may
13 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 shall be signed by the declarant, or
18 another at the declarant's direction, and in either case shall be
19 witnessed by two persons or a person qualified to take acknowledge-
20 ments under AS 09.63.010. The witnesses must be at least 18 years old
21 and may not be related to the declarant by blood or marriage. A
22 person may not charge a fee for preparing a declaration.

23 (b) It is the responsibility of the declarant to provide a copy
24 of the declaration to the declarant's physician. A physician or other
25 health care provider who is provided a copy of the declaration shall
26 make it 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 I [] do [] do not desire that nutrition or hydration (food
9 and water) be provided by gastric tube or intravenously if
10 necessary.

11 Signed this _____ day of _____, _____.

12 Signature _____

13 Place _____

14 The declarant is known to me and voluntarily signed or
15 voluntarily directed another to sign this document in my presence.

16 Witness _____

17 Address _____

18 Witness _____

19 Address _____

20 State of _____

21 _____ Judicial District

22 The foregoing instrument was acknowledged before me this (date)
23 by (name of person who acknowledged).

24 _____
25 Signature of Person Taking
26 Acknowledgement

27 _____
28 Title or Rank
29 _____

1 Serial Number, if any

2 THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR
3 ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER
4 AS 09.63.010.

5 (d) A physician or health care provider may presume, in the
6 absence of actual notice to the contrary, that the declaration com-
7 plies with this chapter and is valid.

8 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration
9 may be revoked at any time and in any manner by which the declarant is
10 able to communicate an intent to revoke, without regard to mental or
11 physical condition. A revocation is only effective as to the attend-
12 ing physician or any health care provider acting under the guidance of
13 that physician upon communication to the physician or health care
14 provider by the declarant or by another to whom the revocation was
15 communicated.

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

18 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
19 AND CONTENTS OF DECLARATION. When an attending physician who has been
20 provided a copy of a declaration determines that the declarant is in a
21 terminal condition, the physician shall record that determination and
22 the contents of the declaration in the declarant's medical record.

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

28 (b) This chapter does not prohibit the application of any med-
29 ical procedure or intervention, including the provision of nutrition

1 and hydration, considered necessary to provide comfort care or alle-
2 viation of pain. The declaration may provide that the declarant does
3 not want nutrition or hydration administered intravenously or by
4 gastric tube.

5 (c) The declaration of a qualified patient known to the
6 attending physician to be pregnant is given no effect as long as it is
7 probable that the fetus could develop to the point of live birth with
8 continued application of life-sustaining procedures.

9 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-
10 cian who is unwilling to comply with the requirements of AS 18.12.030
11 or who is unwilling to comply with the declaration of a qualified
12 patient under AS 18.12.040 shall withdraw as attending physician but
13 the withdrawal is effective only when the services of another attend-
14 ing physician have been obtained.

15 (b) If the policies of a health care facility preclude compli-
16 ance with the declaration of a qualified patient under this chapter,
17 that facility shall take all reasonable steps to notify the patient
18 or, if the patient is not able to make treatment decisions, the
19 patient's guardian, of the facility's policy and shall take all
20 reasonable steps to effect the transfer of the patient to the
21 patient's home or to a facility where the provisions of this chapter
22 can be carried out.

23 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual
24 notice of the revocation of a declaration, the following, while acting
25 in accordance with the requirements of this chapter, are not subject
26 to civil or criminal liability or guilty of unprofessional conduct:

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

29 (2) a person who participates in the withholding or with-

1 drawal of life-sustaining procedures under the direction or with the
2 authorization of a physician;

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

5 (b) A physician, a health care professional, or a health care
6 facility is not subject to civil or criminal liability for actions
7 under this chapter that are in accord with reasonable medical stan-
8 dards.

9 Sec. 18.12.070. PENALTIES. (a) An attending physician who
10 fails to comply with the declaration of a qualified patient or to make
11 the necessary arrangements to effect a transfer under AS 18.12.050 has
12 no right to compensation for medical services provided to a qualified
13 patient after withdrawal should have been effective or after transfer
14 should have occurred and may be liable to the qualified patient and to
15 the heirs of the qualified patient for a civil penalty not to exceed
16 \$1000.00 plus the actual costs associated with the failure to comply
17 with the declaration, and this shall be the exclusive remedy at law
18 for damages.

19 (b) A person who wilfully conceals, cancels, defaces, obliterated,
20 or damages the declaration of another without the declarant's
21 consent or who falsifies or forges a revocation of the declaration of
22 another may be civilly liable to the qualified patient and to the
23 heirs of the qualified patient.

24 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from
25 the withholding or withdrawal of life-sustaining procedures under a
26 declaration and in accordance with this chapter does not, for any
27 purpose, constitute a suicide or homicide.

28 (b) The making of a declaration under AS 18.12.010 does not
29 affect in any manner the sale, procurement, or issuance of a policy of

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

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

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

15 (e) Nothing in this chapter increases or decreases the right of
16 a patient to make decisions regarding use of life-sustaining proce-
17 dures as long as the patient is able to do so, or impairs or super-
18 cedes any right or responsibility that a person has to effect the
19 withholding or withdrawal of medical care in a lawful manner. In that
20 respect, the provisions of this chapter are cumulative.

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

23 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
24 STATES. A declaration executed in another state or a territory or
25 possession of the United States in compliance with the law of that
26 jurisdiction is effective for purposes of this chapter.

27 Sec. 18.12.100. DEFINITIONS. In this chapter

28 (1) "attending physician" means the physician selected by,
29 or assigned to, the patient who has primary responsibility for the

1 treatment and care of the patient;

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

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

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

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

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

20 (7) "terminal condition" means a progressive incurable or
21 irreversible condition that, without the administration of life-sus-
22 taining procedures, will, in the opinion of two physicians, when
23 available, who have personally examined the patient, one of whom must
24 be the attending physician, result in death within a relatively short
25 time.

26 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).

House Adopted Version
with 2 changes as

Utermohle
4/25/86

Original sponsors: Eliason, Ziegler,
V.Fischer, et al

high lighted

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND 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) A competent person who is at least 18 years old may
13 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 shall be signed by the declarant, or
18 another at the declarant's direction, and in either case shall be
19 witnessed by two persons or a person qualified to take acknowledge-
20 ments under AS 09.63.010. *Senate language* The witnesses must be at least 18 years old
21 and may not be related to the declarant by blood or marriage. A
22 person may not charge a fee for preparing a declaration.

23 (b) It is the responsibility of the declarant to provide a copy
24 of the declaration to the declarant's physician. A physician or other
25 health care provider who is provided a copy of the declaration shall
26 make it 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 I [] do [] do not desire that nutrition or hydration (food
 9 and water) be provided by gastric tube or intravenously if
 10 necessary.

11 Signed this _____ day of _____, _____
 12 Signature _____
 13 Place _____

14 The declarant is known to me and voluntarily signed or
 15 voluntarily directed another to sign this document in my presence.

16 Witness _____
 17 Address _____
 18 Witness _____
 19 Address _____
 20 State of _____
 21 _____ Judicial District

22 The foregoing instrument was acknowledged before me this (date)
 23 by (name of person who acknowledged).

24 _____
 25 Signature of Person Taking
 26 Acknowledgement
 27 _____
 28 Title or Rank
 29 _____

1 Serial Number, if any

2 THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR
3 ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER
4 AS 09.63.010.

5 (d) A physician or health care provider may presume, in the
6 absence of actual notice to the contrary, that the declaration com-
7 plies with this chapter and is valid.

8 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration
9 may be revoked at any time and in any manner by which the declarant is
10 able to communicate an intent to revoke, without regard to mental or
11 physical condition. A revocation is only effective as to the attend-
12 ing physician or any health care provider acting under the guidance of
13 that physician upon communication to the physician or health care
14 provider by the declarant or by another to whom the revocation was
15 communicated.

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

18 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
19 AND CONTENTS OF DECLARATION. When an attending physician who has been
20 provided a copy of a declaration determines that the declarant is in a
21 terminal condition, the physician shall record that determination and
22 the contents of the declaration in the declarant's medical record.

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

28 (b) This chapter does not prohibit the application of any med-
29 ical procedure or intervention, including the provision of nutrition

1 and hydration, considered necessary to provide comfort care or alle-
2 viation of pain. The declaration may provide that the declarant does
3 not want nutrition or hydration administered intravenously or by
4 gastric tube.

5 *Senate language*
6 (c) The declaration of a qualified patient known to the
7 attending physician to be pregnant is given no effect as long as it is
8 probable that the fetus could develop to the point of live birth with
9 continued application of life-sustaining procedures.

10 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-
11 cian who is unwilling to comply with the requirements of AS 18.12.030
12 or who is unwilling to comply with the declaration of a qualified
13 patient under AS 18.12.040 shall withdraw as attending physician but
14 the withdrawal is effective only when the services of another attend-
15 ing physician have been obtained.

16 (b) If the policies of a health care facility preclude compli-
17 ance with the declaration of a qualified patient under this chapter,
18 that facility shall take all reasonable steps to notify the patient
19 or, if the patient is not able to make treatment decisions, the
20 patient's guardian, of the facility's policy and shall take all
21 reasonable steps to effect the transfer of the patient to the
22 patient's home or to a facility where the provisions of this chapter
23 can be carried out.

24 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual
25 notice of the revocation of a declaration, the following, while acting
26 in accordance with the requirements of this chapter, are not subject
27 to civil or criminal liability or guilty of unprofessional conduct:

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

(2) a person who participates in the withholding or with-

1 drawal of life-sustaining procedures under the direction or with the
2 authorization of a physician;

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

5 (b) A physician, a health care professional, or a health care
6 facility is not subject to civil or criminal liability for actions
7 under this chapter that are in accord with reasonable medical stan-
8 dards.

9 Sec. 18.12.070. PENALTIES. (a) An attending physician who
10 fails to comply with the declaration of a qualified patient or to make
11 the necessary arrangements to effect a transfer under AS 18.12.050 has
12 no right to compensation for medical services provided to a qualified
13 patient after withdrawal should have been effective or after transfer
14 should have occurred and may be liable to the qualified patient and to
15 the heirs of the qualified patient for a civil penalty not to exceed
16 \$1000.00 plus the actual costs associated with the failure to comply
17 with the declaration, and this shall be the exclusive remedy at law
18 for damages.

19 (b) A person who wilfully conceals, cancels, defaces, obliterated,
20 or damages the declaration of another without the declarant's
21 consent or who falsifies or forges a revocation of the declaration of
22 another may be civilly liable to the qualified patient and to the
23 heirs of the qualified patient.

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25 the withholding or withdrawal of life-sustaining procedures under a
26 declaration and in accordance with this chapter does not, for any
27 purpose, constitute a suicide or homicide.

28 (b) The making of a declaration under AS 18.12.010 does not
29 affect in any manner the sale, procurement, or issuance of a policy of

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

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

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

15 (e) Nothing in this chapter increases or decreases the right of
16 a patient to make decisions regarding use of life-sustaining proce-
17 dures as long as the patient is able to do so, or impairs or super-
18 cedes any right or responsibility that a person has to effect the
19 withholding or withdrawal of medical care in a lawful manner. In that
20 respect, the provisions of this chapter are cumulative.

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

23 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
24 STATES. A declaration executed in another state or a territory or
25 possession of the United States in compliance with the law of that
26 jurisdiction is effective for purposes of this chapter.

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29 or assigned to, the patient who has primary responsibility for the

1 treatment and care of the patient;

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3 with the requirements of AS 18.12.010;

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

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

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

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

20 (7) "terminal condition" means a progressive incurable or
21 irreversible condition that, without the administration of life-sus-
22 taining procedures, will, in the opinion of two physicians, when
23 available, who have personally examined the patient, one of whom must
24 be the attending physician, result in death within a relatively short
25 time.

26 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).
28
29

SENATE VERSION	HOUSE VERSION <i>Conference Cmte Adopted House Version</i>
<p><u>Witnessing Requirement (Sec. 18.12.010(a))</u></p> <p>-- The declaration is witnessed by two persons not related to the declarant by blood or marriage.</p>	<p><u>Witnessing Requirement (Sec. 18.12.010(a))</u> <i>with 2 changes</i></p> <p>-- The declaration is witnessed by two persons generally competent OR a judge, justice, magistrate, clerk of a court, notary public, United States postmaster, or a commissioned officer under AS 09.63.050(4). No fee may be charged for preparing a declaration.</p>
<p><u>Recording of a Declaration (Sec. 18.12.010(b))</u></p> <p>-- Declarant notifies physician of a declaration.</p>	<p><u>Recording of a Declaration (Sec. 18.12.010(b))</u></p> <p>-- Declarant provides a copy of the declaration to the physician.</p>
<p><u>Sample Declaration (Sec. 18.12.010(c))</u></p> <p>-- Does not address the nutrition and hydration issue</p>	<p><u>Sample Declaration (Sec. 18.12.010(c))</u></p> <p>-- Provides the following language:</p> <p>I () do () do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.</p>
<p><u>Nutrition and Hydration (Sec. 18.12.040(b))</u></p> <p>-- Nothing prohibits the use of any medical procedure, including provisions for nutrition and hydration, to provide comfort care or to relieve pain.</p>	<p><u>Nutrition and Hydration (Sec. 18.12.040(b))</u></p> <p>-- Nothing prohibits the use of any medical procedure, including provisions for nutrition and hydration, to provide comfort care or to relieve pain. The declaration can state that the patient does not wish nutrition and hydration to be administered by tubes.</p>
<p><u>Declaration of a Pregnant Woman (Sec. 18.12.040(c))</u></p> <p>-- The declaration has no effect as long as it is probable that the fetus could develop to the point of live birth.</p>	<p><u>Declaration of a Pregnant Woman (Sec. 18.12.040(c))</u></p> <p>-- Suspends the declaration as long as the fetus is alive.</p>
<p><u>Transfer of Patients (Sec. 18.12.050(b))</u></p> <p>-- If a health care facility won't honor a declaration, a transfer to another facility must be made.</p>	<p><u>Transfer of Patients (Sec. 18.12.050(b))</u></p> <p>-- If a health care facility won't honor a declaration, a transfer to the patient's home or to another facility must be made.</p>

combined House language

deleted House language

SENATE VERSION

Penalties - Attending Physician (Sec. 18.12.070(a))

- A physician who fails to withdraw is guilty of a class A misdemeanor.
- A physician who fails to record a declaration is guilty of a class A misdemeanor. (Sec. 18.12.070(b))

Penalties (Sec. 18.12.070(c))

- Any person who alters a declaration is guilty of a class A misdemeanor.
- Any person who hastens an individual's death by withholding knowledge of a declarant's revocation is guilty of first degree murder. (Sec. 18.12.070(d))

Recognition of Declaration (Sec. 18.12.090)

- Another state's declaration is valid.

Definition (Sec. 18.12.100(7))

- One physician determines if a patient is terminally ill.
- Terminal condition means an incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered.

HOUSE VERSION

Penalties - Attending Physician (Sec. 18.12.070(a))

- An attending physician who fails to comply with the declaration or to make a transfer won't receive payment for service after withdrawal should have occurred is liable for \$1000 penalty, and must pay any costs associated with failure to comply.

Penalties (Sec. 18.12.070(b))

- Any person who alters a declaration is civilly liable to the patient and his/her heirs.

Recognition of Declaration (Sec. 18.12.090)

- Another state's, or a territory or possession of the United States, declaration is valid.

Definition (Sec. 18.12.100(7))

- Two physicians, when available, determines if a patient is terminally ill.
- Terminal condition means a progressive incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered.

See page 2

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 3, 1986

SUBJECT: Powers of Conference Committees
(SB 140)

TO: Senator Richard Eliason

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum supplements a conversation with Sheila Peterson of your staff. The question was whether a conference committee could draft a substitute bill for SB 140 using sentences from the House version and Senate version. As long as the conference committee adopts language adopted by either house, the conference committee could formulate a substitute bill by combining sentences from either version. The paramount consideration is whether the language adopted by the conference committee encompasses a complete unit of subject matter.

For example, in 18.12.010(a) of SB 140 there are at least four different subjects addressed in either or both of the versions of the bill. Those subjects are eligibility for and legal effect of a declaration, the manner for executing a declaration, the presumptions of validity of a declaration, and the fee for preparation of a declaration. On each of these four subjects the committee must adopt either the Senate or House language.

The conference committee must adopt the language on the eligibility for and legal effect of a declaration because the same language is in both versions of the bill.

The conference committee has two versions of language to choose from on the subject of the manner of executing a declaration. The conference committee may adopt either the House or Senate version.


The conference committee has only one version of language to choose from on the subject of the presumptions of validity


I've extra copies, but cmte members don't have memo -

Senator Richard Eliason


Page 2

April 3, 1986

of a declaration. The House and Senate bills contain identical language on this subject. The conference committee must include this language in a conference committee substitute because it is included in both versions. The only issue before the committee is whether to include this language in 18.12.010(a) or 18.12.010(d). 

The conference committee has two versions of the language relating to the fee for preparation of a declaration. The House version says no fee may be charged while the Senate version is silent on this subject. The conference committee may then adopt the House language or the Senate language on this subject. 
(which is no reference)

The action which the conference committee takes on each of these subjects is distinct and independent from that taken on the others. The only limit on the power of the committee to mix and match between House and Senate language on each subject is that the committee cannot change the effect of the bill as to that subject to arrive at a result that differs from both the House and Senate versions. Admittedly, it is difficult to determine when this has occurred. However, without this limit on the power of a conference committee to mix and match Senate and House language, form would prevail over substance and a conference committee could conceivably completely rewrite legislation without powers of free conference.

Though I have treated the manner of executing a declaration as a single subject for consideration by the committee, this subject could be further divided into distinct subjects. For example in executing a declaration, the declaration may be witnessed by two persons or in the alternative by two persons or a person who can take acknowledgments. The second distinct subject addressed by the House and Senate versions of the bill is the competence of persons to serve as witnesses. In the Senate version witnesses may not be related by blood or marriage to the declarant and must be at least 18 years old and in the House version witnesses must be generally competent to serve as witnesses. The conference committee could then accept the House language on who can witness (two persons or a person qualified to take acknowledgments) and the Senate's language on the competence of persons to witness a declaration (18 year of age and not related by blood or marriage). The limit on the power of the conference committee to mix and match language from the House and Senate versions of the bill would be exceeded if 

Says
it is
OK to
join witness
requirements

Senator Richard Eliason

Page 3

April 3, 1986

the committee attempted to combine the House provision that any person generally competent to be witness may witness a declaration with the Senate provision that a witness cannot be related by blood or marriage to the declarant. In this case the conference committee would not be adopting the House or Senate amendment on the issue but would be formulating compromise language which is beyond the power of a conference committee.

GU:mkr
m4/066

STA

This letter is in response to the concern brought DEPA up in conf smte re: \$1,000 cap OFFICE for a doctor who fails to comply with a declaration.

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
P.O. Box K
465-3603

Honorable Richard I. Eliason
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: HCSCSSB 140(Jud) am H

Dear Senator Eliason:

At the request of Sheila Peterson I have reviewed the above identified bill, specifically, that portion of the bill providing for a civil penalty and actual costs against a physician who fails to comply with the declaration of a qualified patient. The penalty provisions are not unconstitutional.

Discussion: Equal Protection - There is a constitutional equal protection issue involved in "caps" on damages; Assume a law providing damages of not more than \$100,000 for pain and suffering and two injured plaintiffs, one who suffered a minor degree of discomfort attendant to a sprained ankle and the other who is a paraplegic suffering continual life long pain. The plaintiff with the minor injury can obtain full compensation but the paraplegic is limited in his pain and suffering claim by the \$100,000 cap. This can be considered discrimination against the seriously ill and therefore could result in a ruling that the statute denies equal protection of the law. The courts are divided but the trend nationwide appears to be to not find laws setting caps on damages to be unconstitutional.

Due Process - It is arguable that a personal injury claim is a "property right" recognized at the common law which cannot be diminished by the legislature. Consequently, there is a possibility that a "cap" on damages in personal injury cases would be found to deny substantive due process rights. A due process ruling of unconstitutionality is not likely in Alaska.

HCSCSSB 140 (JUD) am H - The penalty provision of HCSCSSB 140(JUD) am H provides for a penalty for a "wrong" not previously recognized by the law. Courts have traditionally

Honorable Richard I. Eliason
Alaska State Senate

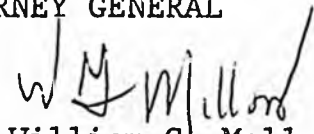
April 10, 1986
Page 2

stated that where the legislature creates a new cause of action, it is free to limit the recovery available for violations of the law. Thus, even conceding where "caps" on damages may be a constitutional issue, it is not probable that the penalty provision of HCSCSSB 140(JUD) am H would be struck as unconstitutional.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By:


William G. Mellow
Assistant Attorney General

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cc: Arthur H. Peterson