

1 S.144

2 Introduced by Senators Lyons, Snelling, Ashe, Ayer, Bartlett, Choate,

3 Flanagan, MacDonald, McCormack, Miller, Racine, Shumlin

4 and White

5 Referred to Committee on

6 Date:

7 Subject: Health; end of life; patient-directed dying

8 Statement of purpose: This bill proposes, subject to appropriate safeguards, to
9 allow a mentally competent person diagnosed as having less than six months to
10 live to request a prescription which, if taken, would hasten the dying process.

11 An act relating to patient choice and control at end of life

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. FINDINGS

14 The general assembly finds:

15 (1) The state of Oregon has been implementing its Death with Dignity
16 Act since 1998. In ten years, Oregon has seen a total of 541 terminal patients
17 formally request medication to hasten death and, of those, 341 patients took the
18 medication and died pursuant to the act. Oregon's annual report on the act
19 shows that in 2007, 85 prescriptions were written, and 46 patients died after

1 ingesting the medication. An additional three patients died after taking
2 medication pursuant to an earlier prescription, for a total of 49 deaths in 2007.

3 (2) Vermont has about one-fifth the population of Oregon. In the 2000
4 census, Oregon had a population of 3,421,399 and Vermont a population of
5 608,827.

6 (3) In the past 15 years, Oregon has seen its hospice enrollment increase
7 significantly. In 1993, only 20 percent of dying patients were enrolled in
8 hospice. By 2005, enrollment increased to 54 percent. In 2007, 88 percent of
9 the patients who used medication under the Death with Dignity Act were in
10 hospice care.

11 (4) Oregon health care professionals report that Oregon physicians grant
12 approximately one in six requests for lethal medication, and one in 10 requests
13 actually results in hastened death.

14 (5) Despite continuing improvements in techniques for palliative care,
15 most medical experts agree that not all pain can be relieved. Some terminal
16 diseases, such as bone cancer, inflict untreatable agony at the end of life.
17 Many cancer patients report that they would have greater comfort and courage
18 in facing their future if they were assured they could use a Death with Dignity
19 law if their suffering became unbearable.

1 Sec. 2. 18 V.S.A. chapter 113 is added to read:

2 CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS SUFFERING A

3 TERMINAL CONDITION

4 § 5280. DEFINITIONS

5 For purposes of this chapter:

6 (1) “Attending physician” means the physician whom the patient has
7 designated to have primary responsibility for the care of the patient and who is
8 willing to participate in the provision to a qualified patient of medication to
9 hasten his or her death in accordance with this chapter.

10 (2) “Capacity” shall have the same meaning as in subdivision
11 9701(4)(B) of this title.

12 (3) “Consulting physician” means a physician who is qualified by
13 specialty or experience to make a professional diagnosis and prognosis
14 regarding the patient’s illness and who is willing to participate in the provision
15 of medication to a qualified patient to hasten his or her death in accordance
16 with this chapter.

17 (4) “Counseling” means a consultation between a psychiatrist,
18 psychologist, or clinical social worker licensed in Vermont and a patient for
19 the purpose of confirming that the patient:

20 (A) has capacity; and

21 (B) is not suffering from impaired judgment.

1 (5) “Good faith” shall mean objective good faith.

2 (6) “Health care provider” shall have the same meaning as in
3 subdivision 9432(8) of this title.

4 (7) “Informed decision” means a decision by a patient to request and
5 obtain a prescription to hasten his or her death based on the patient’s
6 understanding and appreciation of the relevant facts and that was made after
7 the patient was fully informed by the attending physician of all the following:

8 (A) The patient’s medical diagnosis.

9 (B) The patient’s prognosis.

10 (C) The range of possible results, including potential risks associated
11 with taking the medication to be prescribed.

12 (D) The probable result of taking the medication to be prescribed.

13 (E) All feasible end-of-life services, including comfort care, hospice
14 care, and pain control.

15 (8) “Patient” means a person who is 18 years of age or older, a resident
16 of Vermont, and under the care of a physician.

17 (9) “Physician” means a physician licensed pursuant to chapters 23 and
18 33 of Title 26.

19 (10) “Qualified patient” means a patient with capacity who has satisfied
20 the requirements of this chapter in order to obtain a prescription for medication

1 to hasten his or her death. No individual shall qualify under the provisions of
2 this chapter solely because of age or disability.

3 (11) "Terminal condition" means an incurable and irreversible disease
4 which would, within reasonable medical judgment, result in death within six
5 months.

6 § 5281. REQUESTS FOR MEDICATION

7 (a) In order to qualify under this chapter:

8 (1) A patient with capacity who has been determined by the attending
9 physician and consulting physician to be suffering from a terminal condition
10 and who has voluntarily expressed a wish to hasten the dying process may
11 request medication to be self-administered for the purpose of hastening his or
12 her death in accordance with this chapter.

13 (2) A patient shall have made an oral request and a written request and
14 shall have reaffirmed the oral request to his or her attending physician not less
15 than 15 days after the initial oral request. At the time the patient makes the
16 second oral request, the attending physician shall offer the patient an
17 opportunity to rescind the request.

18 (b) Oral requests for medication by the patient under this chapter shall be
19 made in the presence of the attending physician.

20 (c) A written request for medication shall be signed and dated by the
21 patient and witnessed by at least two persons, at least 18 years of age, who, in

1 the presence of the patient, sign and affirm that the principal appeared to
2 understand the nature of the document and to be free from duress or undue
3 influence at the time the request was signed. Neither witness shall be any of
4 the following persons:

5 (1) The patient's attending physician, consulting physician, or any
6 person who has provided counseling for the patient pursuant to section 5284 of
7 this title.

8 (2) A person who knows that he or she is a relative of the patient by
9 blood, marriage, civil union, or adoption.

10 (3) A person who at the time the request is signed knows that he or she
11 would be entitled upon the patient's death to any portion of the estate or assets
12 of the patient under any will or trust, by operation of law, or by contract.

13 (4) An owner, operator, or employee of a health care facility, nursing
14 home, or residential care facility where the patient is receiving medical
15 treatment or is a resident.

16 (d) A person who knowingly fails to comply with the requirements in
17 subsection (c) of this section is subject to prosecution under section 2004 of
18 Title 13.

19 (e) The written request shall be completed after the patient has been
20 examined by a consulting physician as required under section 5283 of this title.

1 (f)(1) Under no circumstances shall a guardian or conservator be permitted
2 to act on behalf of a ward for purposes of this chapter.

3 (2) Under no circumstances shall an agent under an advance directive be
4 permitted to act on behalf of a principal for purposes of this chapter.

5 § 5282. ATTENDING PHYSICIAN; DUTIES

6 The attending physician shall perform all the following:

7 (1) Make the initial determination of whether a patient:

8 (A) is suffering a terminal condition;

9 (B) has capacity; and

10 (C) has made a voluntary request for medication to hasten his or her
11 death.

12 (2) Request proof of Vermont residency, which may be shown by:

13 (A) a Vermont driver's license or photo identification card;

14 (B) proof of Vermont voter's registration;

15 (C) evidence of property ownership or a lease of residential premises
16 in Vermont; or

17 (D) a Vermont personal income tax return for the most recent tax
18 year.

19 (3) Inform the patient in person and in writing of all the following:

20 (A) The patient's medical diagnosis.

21 (B) The patient's prognosis.

1 (C) The range of possible results, including potential risks associated
2 with taking the medication to be prescribed.

3 (D) The probable result of taking the medication to be prescribed.

4 (E) All feasible end-of-life services, including comfort care, hospice
5 care, and pain control.

6 (4) Refer the patient to a consulting physician for medical confirmation
7 of the diagnosis, prognosis, and a determination that the patient has capacity
8 and is acting voluntarily.

9 (5) Refer the patient for counseling under section 5284 of this chapter.

10 (6) Recommend that the patient notify the next of kin or someone with
11 whom the patient has a significant relationship.

12 (7) Counsel the patient about the importance of ensuring that another
13 individual is present when the patient takes the medication prescribed pursuant
14 to this chapter and the importance of not taking the medication in a public
15 place.

16 (8) Inform the patient that the patient has an opportunity to rescind the
17 request at any time and in any manner, and offer the patient an opportunity to
18 rescind at the end of the 15-day waiting period.

19 (9) Verify, immediately prior to writing the prescription for medication
20 under this chapter, that the patient is making an informed decision.

1 (10) Fulfill the medical record documentation requirements of section
2 5289 of this title.

3 (11) Ensure that all required steps are carried out in accordance with this
4 chapter prior to writing a prescription for medication to hasten death.

5 (12)(A) Dispense medication directly, including ancillary medication
6 intended to facilitate the desired effect to minimize the patient's discomfort,
7 provided the attending physician is licensed to dispense medication in
8 Vermont, has a current Drug Enforcement Administration certificate, and
9 complies with any applicable administrative rules; or

10 (B) With the patient's written consent:

11 (i) contact a pharmacist and inform the pharmacist of the
12 prescription; and

13 (ii) deliver the written prescription to the pharmacist, who will
14 dispense the medication to the patient, the attending physician, or an expressly
15 identified agent of the patient.

16 (13) Notwithstanding any other provision of law, the attending
17 physician may sign the patient's death certificate.

18 § 5283. MEDICAL CONSULTATION REQUIRED

19 Before a patient is qualified in accordance with this chapter, a consulting
20 physician shall physically examine the patient, review the patient's relevant
21 medical records, and confirm in writing the attending physician's diagnosis

1 that the patient is suffering from a terminal condition and verification that the
2 patient has capacity, is acting voluntarily, and has made an informed decision.

3 § 5284. COUNSELING REFERRAL

4 No medication to end the patient's life shall be prescribed until:

5 (1) the patient receives counseling as defined in subdivision 5280(4) of
6 this title; and

7 (2) the person performing the counseling determines that the patient has
8 capacity and is not suffering from impaired judgment.

9 § 5285. INFORMED DECISION

10 No person shall receive a prescription for medication to hasten his or her
11 death unless the patient has made an informed decision. Immediately prior to
12 writing a prescription for medication in accordance with this chapter, the
13 attending physician shall verify that the patient is making an informed
14 decision.

15 § 5286. RECOMMENDED NOTIFICATION

16 The attending physician shall recommend that the patient notify the
17 patient's next of kin or someone with whom the patient has a significant
18 relationship of the patient's request for medication in accordance with this
19 chapter. A patient who declines or is unable to notify the next of kin or the
20 person with whom the patient has a significant relationship shall not be refused
21 medication in accordance with this chapter.

1 § 5287. RIGHT TO RESCIND

2 A patient may rescind the request at any time and in any manner regardless
3 of the patient's mental state. No prescription for medication under this chapter
4 may be written without the attending physician's offering the patient an
5 opportunity to rescind the request.

6 § 5288. WAITING PERIOD

7 The attending physician shall write a prescription no sooner than 48 hours
8 after all of the following events have occurred:

9 (1) the patient's written request for medication to hasten his or her
10 death;

11 (2) the patient's second oral request; and

12 (3) the attending physician's offering the patient an opportunity to
13 rescind the request.

14 § 5289. MEDICAL RECORD DOCUMENTATION

15 (a) The following shall be documented and filed in the patient's medical
16 record:

17 (1) The date, time, and wording of all oral requests of the patient for
18 medication to hasten his or her death.

19 (2) All written requests by a patient for medication to hasten his or her
20 death.

1 (3) The attending physician's diagnosis, prognosis, and basis for the
2 determination that the patient has capacity, is acting voluntarily, and has made
3 an informed decision.

4 (4) The consulting physician's diagnosis, prognosis, and verification
5 that the patient has capacity, is acting voluntarily, and has made an informed
6 decision.

7 (5) A report of the outcome and determinations made during any
8 counseling which the patient may have received.

9 (6) The date, time, and wording of the attending physician's offer to the
10 patient to rescind the request for medication at the time of the patient's second
11 oral request.

12 (7) A note by the attending physician indicating that all requirements
13 under this chapter have been satisfied and describing all the steps taken to
14 carry out the request, including a notation of the medication prescribed.

15 (b) Medical records compiled pursuant to this chapter shall be subject to
16 discovery only if the court finds that the records are necessary to resolve issues
17 of compliance with or immunity under this chapter.

18 § 5290. REPORTING REQUIREMENT

19 (a) The department of health shall require that any physician who writes a
20 prescription pursuant to this chapter file a report with the department covering
21 all the prerequisites for writing a prescription under this chapter. In addition,

1 physicians shall report the number of written requests for medication that were
2 received, regardless of whether or not a prescription was actually written in
3 each instance.

4 (b) The department of health shall review annually the medical records of
5 qualified patients who have hastened their deaths in accordance with this
6 chapter.

7 (c) The department of health shall adopt rules pursuant to chapter 25 of
8 Title 3 to facilitate the collection of information regarding compliance with this
9 chapter. Individual medical information collected and reports filed pursuant to
10 subsection (a) of this section shall not be public record and shall not be made
11 available for inspection by the public.

12 (d) The department of health shall generate and make available to the
13 public an annual statistical report of information collected under subsections
14 (a) and (b) of this section. The report shall include the number of instances in
15 which medication was taken by a qualified patient to hasten death but failed to
16 have the intended effect.

17 § 5291. SAFE DISPOSAL OF UNUSED MEDICATIONS

18 (a) The department of health shall adopt rules providing for the safe
19 disposal of unused medications prescribed under this chapter.

1 (b) Expedited rulemaking. Notwithstanding the provisions of chapter 25 of
2 Title 3, the department of health may adopt rules under this section pursuant to
3 the following expedited rulemaking process:

4 (1) Within 90 days after the date this act is passed, the department shall
5 file proposed rules with the secretary of state and the legislative committee on
6 administrative rules under section 841 of Title 3 after publication in three daily
7 newspapers with the highest average circulation in the state of a notice that
8 lists the rules to be adopted pursuant to this process and a seven-day public
9 comment period following publication.

10 (2) The department shall file final proposed rules with the legislative
11 committee on administrative rules 14 days after the public comment period.

12 (3) The legislative committee on administrative rules shall review and
13 may approve or object to the final proposed rules under section 842 of Title 3,
14 except that its action shall be completed no later than 14 days after the final
15 proposed rules are filed with the committee.

16 (4) The department may adopt a properly filed final proposed rule after
17 the passage of 14 days from the date of filing final proposed rules with the
18 legislative committee on administrative rules or after receiving notice of
19 approval from the committee, provided the department:

20 (A) has not received a notice of objection from the legislative
21 committee on administrative rules; or

1 (B) after having received a notice of objection from the committee,
2 has responded pursuant to section 842 of Title 3.

3 (5) Rules adopted under this section shall be effective upon being filed
4 with the secretary of state and shall have the full force and effect of rules
5 adopted pursuant to chapter 25 of Title 3. Rules filed with the secretary of
6 state pursuant to this section shall be deemed to be in full compliance with
7 section 843 of Title 3 and shall be accepted by the secretary of state if filed
8 with a certification by the secretary of human services that a rule is required to
9 meet the purposes of this section.

10 § 5292. PROHIBITIONS; CONTRACT CONSTRUCTION

11 (a) No provision in a contract, will, trust, or other agreement, whether
12 written or oral, shall be valid, to the extent the provision would affect whether
13 a person may make or rescind a request for medication to hasten his or her
14 death in accordance with this chapter.

15 (b) The sale, procurement, or issue of any life, health, or accident insurance
16 or annuity policy or the rate charged for any policy shall not be conditioned
17 upon or affected by the making or rescinding of a request by a person for
18 medication to hasten his or her death in accordance with this chapter or the act
19 by a qualified patient to hasten his or her death pursuant to this chapter.

20 Neither shall a qualified patient's act of ingesting medication to hasten his or

1 her death have an effect on a life, health, or accident insurance or annuity
2 policy.

3 § 5293. IMMUNITIES

4 (a) No person shall be subject to civil or criminal liability or professional
5 disciplinary action for actions taken in good faith reliance on the provisions of
6 this chapter. This includes being present when a qualified patient takes the
7 prescribed medication to hasten his or her death in accordance with this
8 chapter.

9 (b) No professional organization or association or health care provider may
10 subject a person to censure, discipline, suspension, loss of license, loss of
11 privileges, loss of membership, or other penalty for actions taken in good faith
12 reliance on the provisions of this chapter or refusals to act under this chapter.

13 (c) No provision by an attending physician of medication in good faith
14 reliance on the provisions of this chapter shall constitute patient neglect for any
15 purpose of law.

16 (d) No request by a patient for medication under this chapter shall provide
17 the sole basis for the appointment of a guardian or conservator.

18 (e) No health care provider shall be under any duty, whether by contract, by
19 statute, or by any other legal requirement, to participate in the provision to a
20 qualified patient of medication to hasten his or her death in accordance with
21 this chapter. If a health care provider is unable or unwilling to carry out a

1 patient's request in accordance with this chapter and the patient transfers his or
2 her care to a new health care provider, the previous health care provider, upon
3 request, shall transfer a copy of the patient's relevant medical records to the
4 new health care provider. A decision by a health care provider not to
5 participate in the provision of medication to a qualified patient shall not
6 constitute the abandonment of the patient or unprofessional conduct under
7 section 1354 of Title 26.

8 § 5294. HEALTH CARE FACILITY EXCEPTION

9 Notwithstanding any other provision of law, a health care facility may
10 prohibit an attending physician from writing a prescription for medication
11 under this chapter for a patient who is a resident in its facility and intends to
12 use the medication on the facility's premises, provided the facility has notified
13 the attending physician in writing of its policy with regard to such
14 prescriptions. Notwithstanding subsection 5293(b) of this title, any health care
15 provider who violates a policy established by a health care facility under this
16 section may be subject to sanctions otherwise allowable under law or contract.

17 § 5295. LIABILITIES AND PENALTIES

18 (a) With the exception of the immunities established by section 5293 of this
19 title and with the exception of the provisions of section 5297 of this title,
20 nothing in this chapter shall be construed to limit liability for civil damages
21 resulting from negligent conduct or intentional misconduct by any person.

1 (b) With the exception of the immunities established by section 5293 of
2 this title and with the exception of the provisions of section 5297 of this title,
3 nothing in this chapter or in section 2312 of Title 13 shall be construed to limit
4 criminal prosecution under any other provision of law.

5 (c) A health care provider is subject to review and disciplinary action by
6 the appropriate licensing entity for failing to act in accordance with this
7 chapter, provided such failure is not in good faith.

8 § 5296. FORM OF THE WRITTEN REQUEST

9 A written request for medication as authorized by this chapter shall be
10 substantially in the following form:

11 REQUEST FOR MEDICATION TO HASTEN MY DEATH

12 I, _____, am an adult of sound mind.

13 I am suffering from _____, which my attending physician has
14 determined is a terminal disease and which has been confirmed by a consulting
15 physician.

16 I have been fully informed of my diagnosis, prognosis, the nature of
17 medication to be prescribed and potential associated risks, the expected result,
18 and the feasible end-of-life services, including comfort care, hospice care, and
19 pain control.

20 I request that my attending physician prescribe medication that will hasten
21 my death.

1 INITIAL ONE:

2 _____ I have informed my family or others with whom I have a significant
3 relationship of my decision and taken their opinions into consideration.

4 _____ I have decided not to inform my family or others with whom I have a
5 significant relationship of my decision.

6 _____ I have no family or others with whom I have a significant relationship to
7 inform of my decision.

8 I understand that I have the right to change my mind at any time.

9 I understand the full import of this request, and I expect to die when I take
10 the medication to be prescribed. I further understand that although most deaths
11 occur within three hours, my death may take longer, and my physician has
12 counseled me about this possibility.

13 I make this request voluntarily and without reservation, and I accept full
14 moral responsibility for my actions.

15 Signed: _____ Dated: _____

16 AFFIRMATION OF WITNESSES

17 We affirm that, to the best of our knowledge and belief:

18 (1) the person signing this request:

19 (A) is personally known to us or has provided proof of identity;

20 (B) signed this request in our presence;

1 (C) appears to understand the nature of the document and to be free
2 from duress or undue influence at the time the request was signed; and

3 (2) that neither of us:

4 (A) is under 18 years of age;

5 (B) is a relative (by blood, marriage, civil union, or adoption) of the
6 person signing this request;

7 (C) is the patient's attending physician, consulting physician, or a
8 person who has provided counseling for the patient pursuant to section 5284 of
9 this title;

10 (D) is entitled to any portion of the person's assets or estate upon
11 death; or

12 (E) owns, operates, or is employed at a health care facility where the
13 person is a patient or resident.

14 Witness 1/Date _____

15 Witness 2/Date _____

16 NOTE: A knowingly false affirmation by a witness may result in criminal
17 penalties.

18 § 5297. STATUTORY CONSTRUCTION

19 Nothing in this chapter shall be construed to authorize a physician or any
20 other person to end a patient's life by lethal injection, mercy killing, or active
21 euthanasia. Action taken in accordance with this chapter shall not be

1 considered tortious under law, and shall not be construed for any purpose to
2 constitute suicide, assisted suicide, mercy killing, or homicide under the law.

3 Sec. 3. 13 V.S.A. § 2312 is added to read:

4 § 2312. VIOLATION OF PATIENT CHOICE AND CONTROL AT END OF
5 LIFE ACT

6 A person who violates chapter 113 of Title 18 with the intent to cause the
7 death of a patient as defined in subdivision 5280(8) of that title shall be
8 prosecuted under chapter 53 of this title (homicide).

9 Sec. 4. 13 V.S.A. § 2004 is added to read:

10 § 2004. FALSE WITNESSING

11 A person who knowingly violates the requirements of subsection 5281(c) of
12 Title 18 shall be imprisoned for not more than 10 years or fined not more than
13 \$2,000.00 or both.

14 Sec. 5. EFFECTIVE DATE

15 This act shall take effect on September 1, 2009.