TO THE HOUSE OF REPRESENTATIVES:

The Committee on Human Services to which was referred Senate Bill No. 77 entitled “An act relating to patient choice and control at end of life” respectfully reports that it has considered the same and recommends that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS

SUFFERING A TERMINAL CONDITION

§ 5281. DEFINITIONS

As used in this chapter:

(1) “Capable” means that in the opinion of a court or in the opinion of the patient’s prescribing physician, consulting physician, psychiatrist, psychologist, or clinical social worker, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient’s manner of communicating if those persons are available.

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

(3) “Dispense” means to prepare and deliver pursuant to a lawful order
of a physician a prescription drug in a suitable container appropriately labeled
for subsequent use by a patient entitled to receive the prescription drug. The
term shall not include the actual administration of a prescription drug to the
patient.

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

(A) is capable; and

(B) does not have impaired judgment.

(5) “Good faith” means objective good faith.

(6) “Health care facility” shall have the same meaning as in section
9432 of this title.

(7) “Health care provider” means a person, partnership, corporation,
facility, or institution, licensed or certified or authorized by law to administer
health care or dispense medication in the ordinary course of business or
practice of a profession.

(8) “Hospice care” means a program of care and support provided by a
Medicare-certified hospice provider to help an individual with a terminal
condition to live comfortably by providing palliative care, including effective pain and symptom management. Hospice care may include services provided by an interdisciplinary team that are intended to address the physical, emotional, psychosocial, and spiritual needs of the individual and his or her family.

(9) “Informed decision” means a decision by a patient to request and obtain a prescription for medication to be self-administered to hasten his or her death based on the patient’s understanding and appreciation of the relevant facts that was made after the patient was fully informed by the prescribing physician of all the following:

(A) the patient’s medical diagnosis;

(B) the patient’s prognosis, including an acknowledgement that the physician’s prediction of the patient’s life expectancy is an estimate based on the physician’s best medical judgment and is not a guarantee of the actual time remaining in the patient’s life, and that the patient may live longer than the time predicted;

(C) the range of treatment options appropriate for the patient and the patient’s diagnosis;

(D) all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;
(E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

(F) the probable result of taking the medication to be prescribed.

(10) “Palliative care” shall have the same meaning as in section 2 of this title.

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

(12) “Physician” means a physician licensed pursuant to 26 V.S.A. chapter 23 or 33.

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

(14)(A) “Qualified patient” means a patient who:

(i) is capable;

(ii) is physically able to self-administer medication;

(iii) has executed an advance directive in accordance with chapter 231 of this title;

(iv) is enrolled in hospice care; and

(v) has satisfied the requirements of this chapter in order to obtain a prescription for medication to hasten his or her death.
An individual shall not qualify under the provisions of this chapter solely because of age or disability.

“(15) “Terminal condition” means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

§ 5282. REQUESTS FOR MEDICATION

(a) In order to qualify under this chapter:

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

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

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

(c) A written request for medication shall be signed and dated by the patient and witnessed by at least two persons, at least 18 years of age, who, in
the presence of the patient, sign and affirm that the patient appears to
understand the nature of the document and to be free from duress or undue
influence at the time the request was signed. Neither witness shall be any of
the following persons:

(1) the patient’s prescribing physician, consulting physician, or any
person who has conducted an evaluation of the patient pursuant to section 5285
of this title;

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

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

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

(d) A person who knowingly fails to comply with the requirements in
subsection (c) of this section is subject to prosecution under 13 V.S.A. § 2004.

(e) The written request shall be completed only after the patient has been
examined by a consulting physician as required under section 5284 of this title.

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

§ 5283. PRESCRIBING PHYSICIAN; DUTIES

The prescribing physician shall perform all the following:

(1) determine whether a patient:

(A) is suffering a terminal condition, based on the prescribing physician’s physical examination of the patient and review of the patient’s relevant medical records;

(B) is capable;

(C) has executed an advance directive in accordance with chapter 231 of this title;

(D) is enrolled in hospice care;

(E) is making an informed decision; and

(F) has made a voluntary request for medication to hasten his or her death;

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

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

(B) proof of Vermont voter’s registration; or

(C) a Vermont resident personal income tax return for the most recent tax year:
(3) inform the patient in person, both verbally and in writing, of all the following:

   (A) the patient’s medical diagnosis;

   (B) the patient’s prognosis, including an acknowledgement that the physician’s prediction of the patient’s life expectancy is an estimate based on the physician’s best medical judgment and is not a guarantee of the actual time remaining in the patient’s life, and that the patient may live longer than the time predicted;

   (C) the range of treatment options appropriate for the patient and the patient’s diagnosis;

   (D) all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

   (E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

   (F) the probable result of taking the medication to be prescribed;

(4) refer the patient to a consulting physician for medical confirmation of the diagnosis, prognosis, and a determination that the patient is capable and is acting voluntarily;

(5) verify that the patient does not have impaired judgment or refer the patient for an evaluation under section 5285 of this chapter;
(6) with the patient’s consent, consult with the patient’s primary care physician, if the patient has one;

(7) recommend that the patient notify the next of kin or someone with whom the patient has a significant relationship;

(8) counsel the patient about the importance of ensuring that another individual is present when the patient takes the medication prescribed pursuant to this chapter and the importance of not taking the medication in a public place;

(9)(A) inform the patient that the patient has an opportunity to rescind the request at any time and in any manner; and

(B) offer the patient an opportunity to rescind after the patient’s second oral request;

(10) verify, immediately prior to writing the prescription for medication under this chapter, that the patient is making an informed decision;

(11) fulfill the medical record documentation requirements of section 5290 of this title;

(12) ensure that all required steps are carried out in accordance with this chapter prior to writing a prescription for medication to hasten death; and

(13)(A) dispense medication directly, including ancillary medication intended to facilitate the desired effect while minimizing the patient’s discomfort, provided the prescribing physician is licensed to dispense
medication in Vermont, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rules; or

(B) with the patient’s written consent:

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

(ii) deliver the written prescription personally or by mail or facsimile to the pharmacist, who will dispense the medication to the patient, the prescribing physician, or an expressly identified agent of the patient.

§ 5284. MEDICAL CONSULTATION REQUIRED

Before a patient is qualified in accordance with this chapter, a consulting physician shall physically examine the patient, review the patient’s relevant medical records, and confirm in writing the prescribing physician’s diagnosis that the patient is suffering from a terminal condition and verify that the patient is capable, is acting voluntarily, and has made an informed decision. The consulting physician shall either verify that the patient does not have impaired judgment or refer the patient for an evaluation under section 5285 of this chapter.

§ 5285. REFERRAL FOR EVALUATION

If, in the opinion of the prescribing physician or the consulting physician, a patient may have impaired judgment, either physician shall refer the patient for an evaluation. A medication to end the patient’s life shall not be prescribed
until the person conducting the evaluation determines that the patient is

capable and does not have impaired judgment.

§ 5286. INFORMED DECISION

A person shall not receive a prescription for medication to hasten his or her
death unless the patient has made an informed decision. Immediately prior to
writing a prescription for medication in accordance with this chapter, the
prescribing physician shall verify that the patient is making an informed
decision.

§ 5287. RECOMMENDED NOTIFICATION

The prescribing physician shall recommend that the patient notify the
patient’s next of kin or someone with whom the patient has a significant
relationship of the patient’s request for medication in accordance with this
chapter. A patient who declines or is unable to notify the next of kin or the
person with whom the patient has a significant relationship shall not be refused
medication in accordance with this chapter.

§ 5288. RIGHT TO RESCIND

A patient may rescind the request for medication in accordance with this
chapter at any time and in any manner regardless of the patient’s mental state.
A prescription for medication under this chapter shall not be written without
the prescribing physician’s offering the patient an opportunity to rescind the
request.
§ 5289. WAITING PERIOD

The prescribing physician shall write a prescription no less than 48 hours after the last to occur of the following events:

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

(2) the patient’s second oral request; or

(3) the prescribing physician’s offering the patient an opportunity to rescind the request.

§ 5290. MEDICAL RECORD DOCUMENTATION

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

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

(2) all written requests by a patient for medication to hasten his or her death;

(3) the prescribing physician’s diagnosis, prognosis, and basis for the determination that the patient is capable, is acting voluntarily, and has made an informed decision;

(4) the consulting physician’s diagnosis, prognosis, and verification, pursuant to section 5284 of this title, that the patient is capable, is acting voluntarily, and has made an informed decision:
(5) a copy of the patient’s advance directive;

(6) the prescribing physician’s attestation that the patient was enrolled in hospice care at the time of the patient’s oral and written requests for medication to hasten his or her death;

(7) the prescribing physician’s and consulting physician’s verifications that the patient either does not have impaired judgment or that the prescribing or consulting physician, or both, referred the patient for an evaluation pursuant to section 5285 of this title and the person conducting the evaluation has determined that the patient does not have impaired judgment;

(8) a report of the outcome and determinations made during any evaluation which the patient may have received;

(9) the date, time, and wording of the prescribing physician’s offer to the patient to rescind the request for medication at the time of the patient’s second oral request; and

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

(b) Medical records compiled pursuant to this chapter shall be subject to discovery only if the court finds that the records are:

(1) necessary to resolve issues of compliance with or limitations on actions under this chapter; or
(2) essential to proving individual cases of civil or criminal liability and
are otherwise unavailable.

§ 5291. REPORTING REQUIREMENT

(a) The Department of Health shall require:

(1) that any physician who writes a prescription pursuant to this chapter
promptly file a report with the Department covering all the prerequisites for
writing a prescription under this chapter; and

(2) physicians to report on an annual basis the number of written
requests for medication received pursuant to this chapter, regardless of whether
a prescription was actually written in each instance.

(b) The Department shall review annually the medical records of qualified
patients who hastened their deaths in accordance with this chapter during the
previous year.

(c) The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 to
facilitate the collection of information regarding compliance with this chapter
and to enable the Department to report information as required by subsection
(d) of this section. Individually identifiable health information collected under
this chapter, as well as reports filed pursuant to subdivision (a)(1) of this
section, are confidential and are exempt from public inspection and copying
under the Public Records Act.
(d) The Department shall generate and make available to the public an annual statistical report of information collected under subsections (a) and (b) of this section, including:

1. demographic information regarding patients who hastened their deaths in accordance with this chapter, including the underlying illness and the type of health insurance or other health coverage, if any;
2. reasons given by patients for their use of medication to hasten their deaths in accordance with this chapter, including whether patients expressed concerns about:
   A. being a burden to family or caregivers;
   B. the financial implications of treatment; and
   C. inadequate pain control;
3. information regarding physicians prescribing medication in accordance with this chapter, including physicians’ compliance with the requirements of this chapter;
4. the number of patients who did not take the medication prescribed pursuant to this chapter and died of other causes; and
5. the length of time between when a patient ingested the medication and when death occurred and the number of instances in which medication was taken by a qualified patient to hasten death but failed to have the intended effect.
§ 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

The Department of Health shall adopt rules providing for the safe disposal of unused medications prescribed under this chapter.

(1) The Department initially shall adopt rules under this section as emergency rules pursuant to 3 V.S.A. § 844. The General Assembly determines that adoption of emergency rules pursuant to this subdivision is necessary to address an imminent peril to public health and safety.

(2) Contemporaneously with the initial adoption of emergency rules under subdivision (1) of this section, the Department shall propose permanent rules under this section for adoption pursuant to 3 V.S.A. §§ 836–843. The Department subsequently may revise these rules in accordance with the Vermont Administrative Procedure Act.

§ 5293. PROHIBITIONS; CONTRACT CONSTRUCTION; INSURANCE POLICIES

(a) A provision in a contract, will, trust, or other agreement, whether written or oral, shall not be valid to the extent the provision would affect whether a person may make or rescind a request for medication to hasten his or her death in accordance with this chapter.

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

Neither shall a qualified patient’s act of ingesting medication to hasten his or her death have an effect on a life, health, or accident insurance or annuity policy.

(c) The sale, procurement, or issue of any medical malpractice insurance policy or the rate charged for the policy shall not be conditioned upon or affected by whether the physician is willing or unwilling to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

§ 5294. LIMITATIONS ON ACTIONS

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for actions taken in good faith reliance on the provisions of this chapter. This includes being present when a qualified patient takes the prescribed medication to hasten his or her death in accordance with this chapter.

(b) A health care provider shall not subject a person to discipline, suspension, loss of license, loss of privileges, or other penalty for actions taken in good faith reliance on the provisions of this chapter or refusals to act under this chapter.
(c) The provision by a prescribing physician of medication in good faith reliance on the provisions of this chapter shall not constitute patient neglect for any purpose of law.

(d) A request by a patient for medication under this chapter shall not provide the sole basis for the appointment of a guardian or conservator.

(e) A health care provider shall not be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter. If a health care provider is unable or unwilling to carry out a patient’s request in accordance with this chapter and the patient transfers his or her care to a new health care provider, the previous health care provider, upon request, shall transfer a copy of the patient’s relevant medical records to the new health care provider. A decision by a health care provider not to participate in the provision of medication to a qualified patient shall not constitute the abandonment of the patient or unprofessional conduct under 26 V.S.A. § 1354.

§ 5295. HEALTH CARE FACILITY EXCEPTION

Notwithstanding any other provision of law to the contrary, a health care facility may prohibit a prescribing physician from writing a prescription for medication under this chapter for a patient who is a resident in its facility and intends to use the medication on the facility’s premises, provided the facility
has notified the prescribing physician in writing of its policy with regard to the
prescriptions. Notwithstanding subsection 5294(b) of this title, any health care
provider who violates a policy established by a health care facility under this
section may be subject to sanctions otherwise allowable under law or contract.

§ 5296. LIABILITIES AND PENALTIES

(a) With the exception of the limitations on actions established by section
5294 of this title and with the exception of the provisions of section 5298 of
this title, nothing in this chapter shall be construed to limit liability for civil
damages resulting from negligent conduct or intentional misconduct by any
person.

(b) With the exception of the limitations on actions established by section
5294 of this title and with the exception of the provisions of section 5298 of
this title, nothing in this chapter or in 13 V.S.A. § 2312 shall be construed to
limit criminal prosecution under any other provision of law.

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

§ 5297. FORM OF THE WRITTEN REQUEST

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

REQUEST FOR MEDICATION TO HASTEN MY DEATH
I, ___________________ , am an adult of sound mind.

I am suffering from _______________, which my prescribing physician has determined is a terminal disease and which has been confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, and the expected result. I am enrolled in hospice care and have completed an advance directive.

I request that my prescribing physician prescribe medication that will hasten my death.

INITIAL ONE:

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

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

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

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

I understand the full import of this request, and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer, and my physician has counseled me about this possibility.
I make this request voluntarily and without reservation, and I accept full
moral responsibility for my actions.

Signed: _________________________ Dated: ____________

AFFIRMATION OF WITNESSES

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

(1) the person signing this request:

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

(B) signed this request in our presence;

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

(2) that neither of us:

(A) is under 18 years of age;

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

(C) is the patient’s prescribing physician, consulting physician, or a
person who has conducted an evaluation of the patient pursuant to 18 V.S.A.
§ 5285;

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

(E) owns, operates, or is employed at a health care facility where the
person is a patient or resident.
Witness 1/Date ______________________________________
Witness 2/Date ______________________________________

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

§ 5298. STATUTORY CONSTRUCTION

Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient’s life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law.

Sec. 2. 13 V.S.A. § 2312 is added to read:

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

A person who violates 18 V.S.A. chapter 113 with the intent to cause the death of a patient as defined in subdivision 5281(11) of that title may be prosecuted under chapter 53 of this title (homicide).

Sec. 3. 13 V.S.A. § 2004 is added to read:

§ 2004. FALSE WITNESSING

A person who knowingly violates the requirements of 18 V.S.A. § 5282(c) shall be imprisoned for not more than 10 years or fined not more than $2,000.00, or both.
Sec. 4. EFFECTIVE DATES

This act shall take effect on September 1, 2013, except that 18 V.S.A. § 5292 (rules for safe disposal of unused medications) in Sec. 1 of this act shall take effect on passage. The Department of Health shall ensure that emergency rules adopted under Sec. 1 of this act, 18 V.S.A. § 5292, are in effect on or before September 1, 2013.

(Committee vote: 7–4–0)

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Representative Haas

FOR THE COMMITTEE