

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred Senate Bill No. 77
3 entitled “An act relating to patient choice and control at end of life”

4 respectfully reports that it has considered the same and recommends that the
5 House propose to the Senate that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

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

8 CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS

9 SUFFERING A TERMINAL CONDITION

10 § 5281. DEFINITIONS

11 As used in this chapter:

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

18 (2) “Consulting physician” means a physician who is qualified by
19 specialty or experience to make a professional diagnosis and prognosis
20 regarding the patient’s illness and who is willing to participate in the provision

1 to a qualified patient of medication to hasten his or her death in accordance
2 with this chapter.

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

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

11 (A) is capable; and

12 (B) does not have impaired judgment.

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

14 (6) “Health care facility” shall have the same meaning as in section
15 9432 of this title.

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

20 (8) “Hospice care” means a program of care and support provided by a
21 Medicare-certified hospice provider to help an individual with a terminal

1 condition to live comfortably by providing palliative care, including effective
2 pain and symptom management. Hospice care may include services provided
3 by an interdisciplinary team that are intended to address the physical,
4 emotional, psychosocial, and spiritual needs of the individual and his or her
5 family.

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

11 (A) the patient’s medical diagnosis;

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

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

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

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

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

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

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

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

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

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

15 (i) is capable;

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

17 (iii) has executed an advance directive in accordance with chapter
18 231 of this title;

19 (iv) is enrolled in hospice care; and

20 (v) has satisfied the requirements of this chapter in order to obtain
21 a prescription for medication to hasten his or her death.

1 (B) An individual shall not qualify under the provisions of this
2 chapter solely because of age or disability.

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

6 § 5282. REQUESTS FOR MEDICATION

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

8 (1) A patient who is capable, who has been determined by the
9 prescribing physician and consulting physician to be suffering from a terminal
10 condition, and who has voluntarily expressed a wish to hasten the dying
11 process may request medication to be self-administered for the purpose of
12 hastening his or 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 prescribing physician not
15 less than 15 days after the initial oral request. At the time the patient makes
16 the second oral request, the prescribing 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 physical presence of the prescribing 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 patient appears 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 prescribing physician, consulting physician, or any
6 person who has conducted an evaluation of the patient pursuant to section 5285
7 of this title;

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

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 13 V.S.A. § 2004.

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

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

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

3 § 5283. PRESCRIBING PHYSICIAN; DUTIES

4 The prescribing physician shall perform all the following:

5 (1) determine whether a patient:

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

9 (B) is capable;

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

12 (D) is enrolled in hospice care;

13 (E) is making an informed decision; and

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

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

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

18 (B) proof of Vermont voter's registration; or

19 (C) a Vermont resident personal income tax return for the most
20 recent tax year;

1 (3) inform the patient in person, both verbally and in writing, of all the
2 following:

3 (A) the patient’s medical diagnosis;

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

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

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

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

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

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

19 (5) verify that the patient does not have impaired judgment or refer the
20 patient for an evaluation under section 5285 of this chapter;

1 (6) with the patient’s consent, consult with the patient’s primary care
2 physician, if the patient has one;

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

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

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

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

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

15 (11) fulfill the medical record documentation requirements of section
16 5290 of this title;

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

19 (13)(A) dispense medication directly, including ancillary medication
20 intended to facilitate the desired effect while minimizing the patient’s
21 discomfort, provided the prescribing physician is licensed to dispense

1 medication in Vermont, has a current Drug Enforcement Administration
2 certificate, and complies with any applicable administrative rules; or

3 (B) with the patient's written consent:

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

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

9 § 5284. MEDICAL CONSULTATION REQUIRED

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

18 § 5285. REFERRAL FOR EVALUATION

19 If, in the opinion of the prescribing physician or the consulting physician, a
20 patient may have impaired judgment, either physician shall refer the patient for
21 an evaluation. A medication to end the patient's life shall not be prescribed

1 until the person conducting the evaluation determines that the patient is
2 capable and does not have impaired judgment.

3 § 5286. INFORMED DECISION

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

9 § 5287. RECOMMENDED NOTIFICATION

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

16 § 5288. RIGHT TO RESCIND

17 A patient may rescind the request for medication in accordance with this
18 chapter at any time and in any manner regardless of the patient's mental state.
19 A prescription for medication under this chapter shall not be written without
20 the prescribing physician's offering the patient an opportunity to rescind the
21 request.

1 § 5289. WAITING PERIOD

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

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

6 (2) the patient's second oral request; or

7 (3) the prescribing physician's offering the patient an opportunity to
8 rescind the request.

9 § 5290. MEDICAL RECORD DOCUMENTATION

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

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

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

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

19 (4) the consulting physician's diagnosis, prognosis, and verification,
20 pursuant to section 5284 of this title, that the patient is capable, is acting
21 voluntarily, and has made an informed decision;

1 (5) a copy of the patient’s advance directive;

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

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

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

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

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

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

20 (1) necessary to resolve issues of compliance with or limitations on
21 actions under this chapter; or

1 (2) essential to proving individual cases of civil or criminal liability and
2 are otherwise unavailable.

3 § 5291. REPORTING REQUIREMENT

4 (a) The Department of Health shall require:

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

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

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

14 (c) The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 to
15 facilitate the collection of information regarding compliance with this chapter
16 and to enable the Department to report information as required by subsection
17 (d) of this section. Individually identifiable health information collected under
18 this chapter, as well as reports filed pursuant to subdivision (a)(1) of this
19 section, are confidential and are exempt from public inspection and copying
20 under the Public Records Act.

1 (d) The Department shall generate and make available to the public an
2 annual statistical report of information collected under subsections (a) and (b)
3 of this section, including:

4 (1) demographic information regarding patients who hastened their
5 deaths in accordance with this chapter, including the underlying illness and the
6 type of health insurance or other health coverage, if any;

7 (2) reasons given by patients for their use of medication to hasten their
8 deaths in accordance with this chapter, including whether patients expressed
9 concerns about:

10 (A) being a burden to family or caregivers;

11 (B) the financial implications of treatment; and

12 (C) inadequate pain control;

13 (3) information regarding physicians prescribing medication in
14 accordance with this chapter, including physicians' compliance with the
15 requirements of this chapter;

16 (4) the number of patients who did not take the medication prescribed
17 pursuant to this chapter and died of other causes; and

18 (5) the length of time between when a patient ingested the medication
19 and when death occurred and the number of instances in which medication was
20 taken by a qualified patient to hasten death but failed to have the intended
21 effect.

1 § 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

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

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

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

13 § 5293. PROHIBITIONS; CONTRACT CONSTRUCTION; INSURANCE

14 POLICIES

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

19 (b) The sale, procurement, or issue of any life, health, or accident insurance
20 or annuity policy or the rate charged for any policy shall not be conditioned
21 upon or affected by the making or rescinding of a request by a person for

1 medication to hasten his or her death in accordance with this chapter or the act
2 by a qualified patient to hasten his or her death pursuant to this chapter.

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

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

11 § 5294. LIMITATIONS ON ACTIONS

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

17 (b) A health care provider shall not subject a person to discipline,
18 suspension, loss of license, loss of privileges, or other penalty for actions taken
19 in good faith reliance on the provisions of this chapter or refusals to act under
20 this chapter.

1 (c) The provision by a prescribing physician of medication in good faith
2 reliance on the provisions of this chapter shall not constitute patient neglect for
3 any purpose of law.

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

6 (e) A health care provider shall not be under any duty, whether by contract,
7 by statute, or by any other legal requirement, to participate in the provision to a
8 qualified patient of medication to hasten his or her death in accordance with
9 this chapter. If a health care provider is unable or unwilling to carry out a
10 patient's request in accordance with this chapter and the patient transfers his or
11 her care to a new health care provider, the previous health care provider, upon
12 request, shall transfer a copy of the patient's relevant medical records to the
13 new health care provider. A decision by a health care provider not to
14 participate in the provision of medication to a qualified patient shall not
15 constitute the abandonment of the patient or unprofessional conduct under
16 26 V.S.A. § 1354.

17 § 5295. HEALTH CARE FACILITY EXCEPTION

18 Notwithstanding any other provision of law to the contrary, a health care
19 facility may prohibit a prescribing physician from writing a prescription for
20 medication under this chapter for a patient who is a resident in its facility and
21 intends to use the medication on the facility's premises, provided the facility

1 has notified the prescribing physician in writing of its policy with regard to the
2 prescriptions. Notwithstanding subsection 5294(b) of this title, any health care
3 provider who violates a policy established by a health care facility under this
4 section may be subject to sanctions otherwise allowable under law or contract.

5 § 5296. LIABILITIES AND PENALTIES

6 (a) With the exception of the limitations on actions established by section
7 5294 of this title and with the exception of the provisions of section 5298 of
8 this title, nothing in this chapter shall be construed to limit liability for civil
9 damages resulting from negligent conduct or intentional misconduct by any
10 person.

11 (b) With the exception of the limitations on actions established by section
12 5294 of this title and with the exception of the provisions of section 5298 of
13 this title, nothing in this chapter or in 13 V.S.A. § 2312 shall be construed to
14 limit criminal prosecution under any other provision of law.

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

18 § 5297. FORM OF THE WRITTEN REQUEST

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

21 REQUEST FOR MEDICATION TO HASTEN MY DEATH

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

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

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

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

10 INITIAL ONE:

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

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

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

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

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

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

3 Signed: _____ Dated: _____

4 AFFIRMATION OF WITNESSES

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

6 (1) the person signing this request:

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

8 (B) signed this request in our presence;

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

11 (2) that neither of us:

12 (A) is under 18 years of age;

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

15 (C) is the patient's prescribing physician, consulting physician, or a
16 person who has conducted an evaluation of the patient pursuant to 18 V.S.A.
17 § 5285;

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

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

1 Witness 1/Date _____

2 Witness 2/Date _____

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

5 § 5298. STATUTORY CONSTRUCTION

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

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

12 § 2312. VIOLATION OF PATIENT CHOICE AND CONTROL AT END OF
13 LIFE ACT

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

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

18 § 2004. FALSE WITNESSING

19 A person who knowingly violates the requirements of 18 V.S.A. § 5282(c)
20 shall be imprisoned for not more than 10 years or fined not more than
21 \$2,000.00, or both.

1 Sec. 4. EFFECTIVE DATES

2 This act shall take effect on September 1, 2013, except that 18 V.S.A.
3 § 5292 (rules for safe disposal of unused medications) in Sec. 1 of this act shall
4 take effect on passage. The Department of Health shall ensure that emergency
5 rules adopted under Sec. 1 of this act, 18 V.S.A. § 5292, are in effect on or
6 before September 1, 2013.

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16 (Committee vote: 7-4-0)

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Representative Haas

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FOR THE COMMITTEE