

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1203

6
7 H.P. 924

House of Representatives, March 15, 1983

8 Referred to the Committee on Judiciary. Sent up for concurrence and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Mitchell of Freeport.

Cosponsors: Representative Soule of Westport, Representative Carroll of
11 Gray and Representative Murray of Bangor.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Establish the Maine
18 Natural Death Act.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 22 MRSA c. 710-A is enacted to read:

23 MAINE NATURAL DEATH ACT

24 §2921. Short title

25 This chapter may be cited as the "Maine Natural
26 Death Act."

27 §2922. Definitions

28 As used in this chapter, unless the context
29 otherwise indicates, the following terms have the
30 following meanings.

1 1. Attending physician. "Attending physician"
2 means the physician, selected by or assigned to the
3 patient, who has primary responsibility for the
4 treatment and care of the patient.

5 2. Directive. "Directive" means a written docu-
6 ment voluntarily executed by the declarant in accor-
7 dance with the requirements of section 2923. The
8 directive, or a copy of the directive, shall be made
9 part of the patient's medical records.

10 3. Life-sustaining procedure. "Life-sustaining
11 procedure" means any medical procedure or inter-
12 vention which utilizes mechanical or other artificial
13 means to sustain, restore or supplant a vital func-
14 tion, which, when applied to a qualified patient,
15 would serve only to artificially prolong the moment
16 of death and when, in the judgment of the attending
17 physician, death is imminent whether or not those
18 procedures are utilized. "Life-sustaining procedure"
19 does not include the administration of medication or
20 the performance of any medical procedure deemed
21 necessary to alleviate pain.

22 4. Physician. "Physician" means a physician and
23 surgeon licensed by the Board of Registration in Med-
24 icine or the Board of Osteopathic Examination and
25 Registration.

26 5. Qualified patient. "Qualified patient" means
27 a patient diagnosed and certified in writing to be
28 afflicted with a terminal condition by 2 physicians,
29 one of whom shall be the attending physician, who
30 have personally examined the patient.

31 6. Terminal condition. "Terminal condition"
32 means an incurable condition caused by injury, dis-
33 ease or illness, which, regardless of the application
34 of life-sustaining procedures, would, within reason-
35 able medical judgment, produce death, and where the
36 application of life-sustaining procedures serve only
37 to postpone the moment of death of the patient.

38 §2923. Executing a directive

39 Any adult person may execute a directive direct-
40 ing the withholding or withdrawal of life-sustaining

1 procedures in a terminal condition. The directive
2 shall be signed by the declarant in the presence of 2
3 witnesses not related to the declarant by blood or
4 marriage and who would not be entitled to any portion
5 of the estate of the declarant upon his decease under
6 any will of the declarant or codicil thereto then
7 existing or, at the time of the directive, by opera-
8 tion of law then existing. In addition, a witness to
9 a directive shall not be the attending physician, an
10 employee of the attending physician or a health
11 facility in which the declarant is a patient, or any
12 person who has a claim against any portion of the
13 estate of the declarant upon his decease at the time
14 of the execution of the directive. The directive
15 shall be in the following form:

16 DIRECTIVE TO PHYSICIANS

17 Directive made this () day of (month,
18 year).

19 I (), being of sound mind, willfully and
20 voluntarily make known my desire that my life shall
21 not be artificially prolonged under the circumstances
22 set forth below, do hereby declare:

23 1. If at any time I should have an incurable
24 injury, disease or illness certified to be a terminal
25 condition by 2 physicians, and when the application
26 of life-sustaining procedures would serve only to
27 artificially prolong the moment of my death and when
28 my physician determines that my death is imminent
29 whether or not life-sustaining procedures are util-
30 ized, I direct that such procedures be withheld or
31 withdrawn, and that I be permitted to die naturally.

32 2. In the absence of my ability to give direc-
33 tions regarding the use of such life-sustaining
34 procedures, it is my intention that this directive
35 shall be honored by my family and physician or physi-
36 cians as the final expression of my legal right to
37 refuse medical or surgical treatment and accept the
38 consequences from such refusal.

39 3. If I have been diagnosed as pregnant and that
40 diagnosis is known to my physician, this directive
41 shall have no force or effect during the course of my
42 pregnancy.

1 1. Method of revocation. A directive may be
2 revoked at any time by the declarant, without regard
3 to his mental state or competency, by any of the fol-
4 lowing methods:

5 A. By being canceled, defaced, obliterated, or
6 burned, torn or otherwise destroyed by the
7 declarant or by some person in his presence and
8 by his direction;

9 B. By a written revocation of the declarant
10 expressing his intent to revoke, signed and dated
11 by the declarant. That revocation shall become
12 effective only upon communication to the attend-
13 ing physician by the declarant or by a person
14 acting on behalf of the declarant. The attending
15 physician shall record in the patient's medical
16 record the time and date when he received noti-
17 fication of the written revocation; or

18 C. By a verbal expression by the declarant of
19 his intent to revoke the directive. That revoca-
20 tion shall become effective only upon communica-
21 tion to the attending physician by the declarant
22 or by a person acting on behalf of the declarant.
23 The attending physician shall record in the
24 patient's medical record the time, date and place
25 of the revocation and the time, date and place,
26 if different, of when he received notification of
27 the revocation.

28 2. Liability. There shall be no criminal or
29 civil liability on the part of any person for failure
30 to act upon a revocation made pursuant to this
31 section, unless that person has actual knowledge of
32 the revocation.

33 §2926. Expiration of directive

34 A directive shall be effective for 5 years from
35 the date of execution thereof, unless sooner revoked
36 in a manner prescribed in section 2925. Nothing in
37 this Act may be construed to prevent a declarant from
38 reexecuting a directive at any time in accordance
39 with the formalities of section 2923, including
40 reexecution subsequent to a diagnosis of a terminal

1 condition. If the declarant has executed more than
2 one directive, the time shall be determined from the
3 date of execution of the last directive known to the
4 attending physician. If the declarant becomes
5 comatose or is rendered incapable of communicating
6 with the attending physician, the directive shall
7 remain in effect for the duration of the comatose
8 condition or until such time as the declarant's con-
9 dition renders him or her able to communicate with
10 the attending physician.

11 §2927. Liability

12 No physician or health facility which, acting in
13 accordance with the requirements of this Act, causes
14 the withholding or withdrawal of life-sustaining
15 procedures from a qualified patient, may be subject
16 to civil liability therefrom. No licensed health
17 professional, acting under the direction of a physi-
18 cian, who participates in the withholding or with-
19 drawal of life-sustaining procedures in accordance
20 with the provisions of this Act may be subject to any
21 civil liability. No physician, or licensed health
22 professional acting under the direction of a physi-
23 cian, who participates in the withholding or with-
24 drawal of life-sustaining procedures in accordance
25 with the provisions of this Act may be guilty of any
26 criminal act or of unprofessional conduct.

27 §2928. Physician restrictions

28 1. Compliance. Prior to effecting a withholding
29 or withdrawal of life-sustaining procedures from a
30 qualified patient pursuant to the directive, the
31 attending physician shall determine that the direc-
32 tive complies with section 2923 and, if the patient
33 is mentally competent, that the directive and all
34 steps proposed by the attending physician to be
35 undertaken are in accord with the desires of the
36 qualified patient.

37 2. Directives by persons who were patients 14
38 days prior to executing directives. If the declarant
39 was a qualified patient at least 14 days prior to
40 executing or reexecuting the directive, the directive
41 shall be conclusively presumed, unless revoked, to be
42 the directions of the patient regarding the withhold-

1 ing or withdrawal of life-sustaining procedures. No
2 physician, and no licensed health professional acting
3 under the direction of a physician, may be criminally
4 or civilly liable for failing to effectuate the
5 directive of the qualified patient pursuant to this
6 subsection. A failure by a physician to effectuate
7 the directive of a qualified patient pursuant to this
8 Act shall constitute unprofessional conduct if the
9 physician refuses to make the necessary arrangements,
10 or fails to take the necessary steps, to effect the
11 transfer of the qualified patient to another physi-
12 cian who will effectuate the directive of the quali-
13 fied patient.

14 3. Directives executed prior to persons becoming
15 patients. If the declarant becomes a qualified
16 patient subsequent to executing the directive, and
17 has not subsequently reexecuted the directive, the
18 attending physician may give weight to the directive
19 as evidence of the patient's directions regarding the
20 withholding or withdrawal of life-sustaining proce-
21 dures and may consider other factors, such as infor-
22 mation from the affected family or the nature of the
23 patient's illness, injury or disease, in determining
24 whether the totality of circumstances known to the
25 attending physician justifies effectuating the direc-
26 tive. No physician, and no licensed health profes-
27 sional acting under the direction of a physician, may
28 be criminally or civilly liable for failing to effec-
29 tuate the directive of the qualified patient pursuant
30 to this subsection.

31 §2929. Insurance

32 1. Suicide. The withholding or withdrawal of
33 life-sustaining procedures from a qualified patient,
34 in accordance with the provisions of this Act, shall
35 not, for any purpose, constitute a suicide.

36 2. Impairment of insurance. The making of a
37 directive pursuant to section 2923 shall not re-
38 strict, inhibit or impair in any manner the sale,
39 procurement or issuance of any policy of life insur-
40 ance; nor shall it be deemed to modify the terms of
41 an existing policy of life insurance. No policy of
42 life insurance may be legally impaired or invalidated

1 in any manner by the withholding or withdrawal of
2 life-sustaining procedures from an insured qualified
3 patient, notwithstanding any term of the policy to
4 the contrary.

5 3. Directives as conditions for insurance. No
6 physician, health facility or other health provider,
7 and no health care service plan, insurer issuing dis-
8 ability insurance, self-insured employee welfare ben-
9 efit plan or nonprofit hospital service plan may re-
10 quire any person to execute a directive as a condi-
11 tion for being insured for or receiving health care
12 services.

13 §2930. Provisions cumulative

14 Nothing in this Act may impair or supersede any
15 legal right or legal responsibility which any person
16 may have to effect the withholding or withdrawal of
17 life-sustaining procedures in any lawful manner. In
18 such respect, the provisions of this Act are cumula-
19 tive.

20 §2931. Protection of directive

21 Any person who willfully conceals, cancels,
22 defaces, obliterates or damages the directive of
23 another without the declarant's consent is guilty of
24 a misdemeanor. Any person who, except when justified
25 or excused by law, falsifies or forges the directive
26 of another, or willfully conceals or withholds per-
27 sonal knowledge of a revocation as provided in
28 section 2925, with the intent to cause a withholding
29 or withdrawal of life-sustaining procedures contrary
30 to the wishes of the declarant and, thereby, because
31 of any such act, directly causes life-sustaining
32 procedures to be withheld or withdrawn and death to
33 thereby be hastened, shall be subject to prosecution
34 for unlawful homicide.

35 §2932. Restrictions

36 Nothing in this Act may be construed to condone,
37 authorize or approve mercy killing, or to permit any
38 affirmative or deliberate act or omission to end life
39 other than to permit the natural process of dying as
40 provided in this chapter.

1 STATEMENT OF FACT

2 The purpose of this bill is to enact a natural
3 death act which would permit an adult to execute a
4 directive providing that life-sustaining procedures
5 should be withheld or withdrawn if that person
6 becomes terminally ill and those procedures would
7 serve only to prolong the moment of death.

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