

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 208

6  
7 H.P. 174

House of Representatives, January 29, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Foster of Ellsworth.

Cosponsored by Senator Maybury of Penobscot, Representative  
Armstrong of Wilton and Representative Macomber of So. Portland.

11  
12 STATE OF MAINE  
13

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

17 AN ACT to Provide for Living  
18 Wills.  
19

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

22 22 MRSA c. 712 is enacted to read:

23 CHAPTER 712

24 MAINE LIVING WILLS ACT

25 §3041. Short title

26 This chapter shall be known and may be cited as  
27 the "Maine Living Wills Act."

28 §3042. Definitions

1 As used in this chapter, unless the context oth-  
2 erwise indicates, the following terms have the fol-  
3 lowing meanings.

4 1. Attending physician. "Attending physician"  
5 means the physician who has primary responsibility  
6 for the treatment and care of the patient.

7 2. Declaration. "Declaration" means:

8 A. A written document voluntarily executed by  
9 the declarant in accordance with the requirements  
10 of section 3043; or

11 B. An oral statement made by the declarant in  
12 accordance with the provisions of section 3043.

13 3. Life-prolonging procedure. "Life-prolonging  
14 procedure" means any medical procedure, treatment or  
15 intervention which:

16 A. Utilizes mechanical or other artificial means  
17 to sustain, restore or supplant a spontaneous vi-  
18 tal function or is otherwise of such a nature as  
19 to afford a patient no reasonable expectation of  
20 recovery; and

21 B. When applied to a qualified patient in a ter-  
22 минаl condition, would serve only to prolong the  
23 dying process.

24 "Life-prolonging procedure" does not include the ad-  
25 ministration of medication or the performance of any  
26 medical procedure deemed necessary to provide comfort  
27 or to alleviate pain.

28 4. Physician. "Physician" means a physician or  
29 surgeon licensed by the Board of Registration in Med-  
30 icine or the Board of Osteopathic Examination and  
31 Registration.

32 5. Qualified patient. "Qualified patient" means  
33 a patient who has:

34 A. Made a declaration in accordance with this  
35 Act; and

1           B. Been diagnosed by the attending physician who  
2           has certified in writing that the patient is af-  
3           fllicted with a terminal condition.

4           When the patient is comatose, incompetent or oth-  
5           erwise physically or mentally incapable of commu-  
6           nication, the patient must be diagnosed by one  
7           other physician who must also certify in writing  
8           that the patient is afflicted with a terminal  
9           condition.

10           6. Terminal condition. "Terminal condition"  
11           means a condition caused by injury, disease or ill-  
12           ness from which, to a reasonable degree of medical  
13           certainty:

14           A. There can be no recovery; and

15           B. Death is imminent.

16           7. Witness. "Witness" means an individual who is  
17           not a spouse or blood relative of the patient.

18           §3043. Procedure for making a declaration; notice to  
19           physician

20           1. Written declaration. Any competent adult may,  
21           at any time, make a declaration directing the with-  
22           holding or withdrawal of life-prolonging procedures  
23           in the event that the adult should have a terminal  
24           condition. A written declaration must be signed by  
25           the declarant in the presence of 2 subscribing wit-  
26           nesses.

27           2. Oral declaration. A competent adult may make  
28           an oral declaration in the presence of a physician  
29           and 2 witnesses by any nonwritten means of communica-  
30           tion at any time subsequent to the diagnosis of a  
31           terminal condition.

32           3. Notice to physician. The declarant is re-  
33           sponsible for providing for notification to his at-  
34           tending physician that a declaration has been made.  
35           If the declarant is comatose, incompetent or other-  
36           wise mentally or physically incapable, any other per-  
37           son may notify the physician of the existence of a  
38           declaration. An attending physician who is so noti-

1 fied shall promptly make the declaration or a copy of  
2 the declaration, if written, a part of the  
3 declarant's medical records. If the declaration is  
4 oral, the physician shall promptly make the fact of  
5 the declaration a part of the declarant's medical  
6 record.

7 §3044. Suggested form of written declaration

8 A declaration executed pursuant to this Act may,  
9 but need not be, in the following form and may in-  
10 clude other specific directions, including, but not  
11 limited to, a designation of another person to make  
12 the treatment decision for the declarant if he is di-  
13 agnosed as suffering from a terminal condition and  
14 comatose, incompetent or otherwise mentally or physi-  
15 cally incapable of communication. If any other spe-  
16 cific directions are held to be invalid, that inva-  
17 lidity shall not affect the declaration:

18 "DECLARATION

19 Declaration made this ( ) day of  
20 ( , ) (month, year).

21 I, ( ), willfully and voluntarily make known  
22 my desire that my dying shall not be artificially  
23 prolonged under the circumstances set forth below,  
24 and do hereby declare:

25 1. If at any time I should have a terminal con-  
26 dition and my attending physician has determined that  
27 there can be no recovery from that condition and my  
28 death is imminent, where the application of  
29 life-prolonging procedures would serve only to arti-  
30 ficially prolong the dying process, I direct that  
31 those procedures be withheld or withdrawn and that I  
32 be permitted to die naturally with only the adminis-  
33 tration of medication or the performance of any medi-  
34 cal procedure deemed necessary to provide me with  
35 comfort or to alleviate pain.

36 2. In the absence of my ability to give direc-  
37 tions regarding the use of life-prolonging proce-  
38 dures, it is my intention that this declaration be  
39 honored by my family and physician as the final ex-  
40 pression of my legal right to refuse medical or sur-

1 gical treatment and accept the consequences of that  
2 refusal.

3 3. I understand the full import of this declara-  
4 tion and I am emotionally and mentally competent to  
5 make this declaration.

6 Signed ( \_\_\_\_\_ )

7 City, County and State of Residence( \_\_\_\_\_ )  
8 The declarant is personally known to me and I believe  
9 him or her to be of sound mind.

10 Witness ( \_\_\_\_\_ )

11 Witness ( \_\_\_\_\_ )"

12 §3045. Revocation

13 A declaration may be revoked at any time by the  
14 declarant:

15 1. Subsequent writing. By a signed, dated writ-  
16 ing;

17 2. Physical destruction. By burning, tearing,  
18 obliteration, cancellation or destruction of the dec-  
19 laration by the declarant or by another in his pres-  
20 ence and at his direction; or

21 3. Oral revocation. By an oral expression of  
22 the intent to revoke.

23 Any such revocation shall be effective when com-  
24 municated to the attending physician.

25 No criminal or civil liability may be imposed  
26 upon any person for a failure to act upon a revoca-  
27 tion, unless that person has actual knowledge of the  
28 revocation.

29 §3046. Procedure in absence of declaration

30 1. Procedure. Nothing in this Act may be con-  
31 strued to prevent the withholding or withdrawal of  
32 life-prolonging measures from an adult patient with a

1 terminal condition who is comatose, incompetent or  
2 otherwise physically or mentally incapable of commu-  
3 nication and who has not made a declaration in ac-  
4 cordance with this Act. Prior to that withholding or  
5 withdrawal of life-prolonging procedures, there must  
6 be consultation and agreement for the withholding or  
7 withdrawal of those procedures between the attending  
8 physician and any of the following individuals, in  
9 the following order of priority, if no individual in  
10 a prior class is reasonably available, willing and  
11 competent to act:

12 A. The judicially appointed guardian of the pa-  
13 tient if one has been appointed. This paragraph  
14 does not require appointment of a guardian so  
15 that a treatment decision can be made under this  
16 section;

17 B. The individual or individuals designated by  
18 the patient in writing to make the treatment de-  
19 cision for him if the patient is diagnosed as  
20 suffering from a terminal condition;

21 C. The patient's spouse;

22 D. An adult child of the patient or, if the pa-  
23 tient has more than one adult child, a majority  
24 of the children who are reasonably available for  
25 consultation;

26 E. The parents of the patient; or

27 F. The patient's next of kin.

28 2. Witnesses. When the treatment decision is  
29 made by an individual specified in subsection 1, par-  
30 agraph C, D, E or F, there must be at least 2 wit-  
31 nesses present at the time of the consultation when  
32 the treatment decision is made. The absence of a  
33 declaration by an adult patient does not give rise to  
34 any presumption as to his intent to consent or refuse  
35 life-prolonging procedures.

36 §3047. Transfer of patient

37 An attending physician who refuses to comply with  
38 the declaration of a qualified patient or the treat-

1 ment decision of a person designated to make the deci-  
2 sion by the declarant in his declaration or pursu-  
3 ant to section 3046 shall make a reasonable effort to  
4 transfer the patient to another physician.

5 §3048. Immunity from liability; burden of proof;  
6 presumption

7 A health care facility, physician or other person  
8 acting under the direction of a physician, who  
9 withholds or withdraws life-prolonging procedures  
10 from a patient with a terminal condition in accord-  
11 ance with this Act, is not subject to criminal prose-  
12 cution or civil liability and may not be held to have  
13 engaged in unprofessional conduct as a result of that  
14 action. An individual who authorizes the withholding  
15 or withdrawal of life-prolonging procedures from a  
16 patient with a terminal condition in accordance with  
17 a qualified patient's declaration or pursuant to sec-  
18 tion 3046 is not subject to criminal prosecution or  
19 civil liability for that action.

20 This section applies unless it is shown by a  
21 preponderance of the evidence that the individual au-  
22 thorizing or effectuating the withholding or with-  
23 drawal of life-prolonging procedures did not, in good  
24 faith, comply with this Act. A declaration made pur-  
25 suant to this Act is presumed to have been made vol-  
26 untarily.

27 §3049. Protection of declaration

28 Any person who willfully conceals, cancels, de-  
29 faces, obliterates or damages the declaration of an-  
30 other without the declarant's consent or who falsi-  
31 fies or forges a revocation of the declaration of an-  
32 other thereby causing life-prolonging procedures to  
33 be utilized in contravention of the previously ex-  
34 pressed intent of the patient is guilty of a Class D  
35 crime.

36 Any person who falsifies or forges the declara-  
37 tion of another, or willfully conceals or withholds  
38 personal knowledge of the revocation of a declara-  
39 tion, with the intent to cause a withholding or with-  
40 drawal of life-prolonging procedures, contrary to the  
41 wishes of the declarant and thereby, because of any

1 such act, directly causes life-prolonging procedures  
2 to be withheld or withdrawn and death to be hastened,  
3 shall be subject to prosecution for murder.

4 §3049-A. Mercy killing or euthanasia prohibited

5 Nothing in this Act may be construed to condone,  
6 authorize or approve mercy killing or euthanasia, or  
7 to permit any affirmative or deliberate act or omis-  
8 sion to end life other than to permit the natural  
9 process of dying.

10 §3050. Insurance

11 1. Suicide. The withholding or withdrawal of  
12 life-prolonging procedures from a qualified patient,  
13 in accordance with the provisions of this Act, shall  
14 not, for any purpose, constitute a suicide.

15 2. Impairment of insurance. The making of a  
16 declaration pursuant to this Act shall not affect in  
17 any manner the sale, procurement or issuance of any  
18 policy of life insurance; nor shall it be deemed to  
19 modify the terms of an existing policy of life insur-  
20 ance. No policy of life insurance may be legally im-  
21 paired or invalidated in any manner by the withhold-  
22 ing or withdrawal of life-prolonging procedures from  
23 an insured qualified patient, notwithstanding any  
24 term of the policy to the contrary.

25 3. Declarations as conditions for insurance. An  
26 individual may not be required to make a declaration  
27 as a condition for being insured for, or receiving,  
28 health care services.

29 §3050-A. Provisions cumulative

30 The provisions of this Act are cumulative with  
31 existing law regarding an individual's right to con-  
32 sent or refuse to consent to medical treatment and  
33 shall not impair any existing rights or responsibili-  
34 ties which a health care provider, a patient, includ-  
35 ing a minor or incompetent patient, or a patient's  
36 family may have in regard to the withholding or with-  
37 drawal of life-prolonging medical procedures.

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STATEMENT OF FACT

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The purpose of this bill is to enact the Maine Natural Death Act which permits an adult to make a declaration providing that life-prolonging procedures should be withheld or withdrawn if that person becomes terminally ill and those procedures would serve only to prolong the moment of death.

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