

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 660

6
7 H.P. 458

House of Representatives, February 21, 1985

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

10 EDWIN H. PERT, Clerk

Presented by Representative Murray of Bangor.

11 Cosponsored by Representative Mitchell of Freeport, Senator Gill of
Cumberland and Representative Smith of Island Falls.

12 STATE OF MAINE
13

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

17 AN ACT to Establish a Living Will.
18

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

21 22 MRSA c. 710-A is enacted to read:

22 CHAPTER 710-A

23 LIVING WILL ACT

24 §2921. Legislative intent

25 It is the intent of the Legislature that adult
26 citizens of this State have the fundamental right to
27 control decisions regarding administration of
28 life-sustaining treatment by executing a declaration
29 instructing his physician to withhold or withdraw
30 life-sustaining procedures in the event the person is
31 in a terminal condition and is unable to participate
32 in medical treatment decisions.

1 §2922. Definitions

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

5 1. Attending physician. "Attending physician"
6 means the physician selected by or assigned to the
7 patient who has primary responsibility for the treat-
8 ment and care of the patient.

9 2. Declaration. "Declaration" means a document
10 executed in accordance with the requirements of sec-
11 tion 2923.

12 3. Health care provider. "Health care provider"
13 means a person who is licensed, certified or other-
14 wise authorized by the law of this State to adminis-
15 ter health care in the ordinary course of business or
16 practice of a profession.

17 4. Life-sustaining procedure. "Life-sustaining
18 procedure" means any medical procedure or interven-
19 tion that, when administered to a qualified patient,
20 will serve only to prolong the dying process and
21 shall not include food and hydration.

22 5. Physician. "Physician" means a person li-
23 icensed to practice medicine in this State.

24 6. Qualified patient. "Qualified patient" means
25 a patient who has executed a declaration in accord-
26 ance with this Act and who has been determined by the
27 attending physician to be in a terminal condition.

28 7. Terminal condition. "Terminal condition"
29 means an incurable or irreversible condition that,
30 without the administration of life-sustaining proce-
31 dures, will, in the opinion of the attending physi-
32 cian, result in death within a short time.

33 §2923. Declaration relating to use of
34 life-sustaining procedures

35 1. Declaration; execution. Any competent adult
36 may execute a declaration at any time directing that
37 life-sustaining procedures be withheld or withdrawn,

1 provided that the declaration is to be given opera-
2 tive effect only if the declarant's condition is de-
3 termined to be terminal and the declaration is not
4 able to make treatment decisions. The declaration
5 must be signed by the declarant or another at the
6 declarant's direction, in the presence of 2 wit-
7 nesses. A physician or health care provider may pre-
8 sume, in the absence of actual notice to the con-
9 trary, that the declaration complies with this Act
10 and is valid.

11 2. Notice to physician. It is the responsibili-
12 ty of the declarant to notify his physician of the
13 declaration. A physician or other health care
14 provider who is provided a copy of the declaration
15 shall make it a part of the declarant's medical
16 records.

17 3. Suggested form. A declaration may, but need
18 not, be in the following form:

19 DECLARATION

20 If I should have an incurable or irreversible
21 condition that will cause my death within a short
22 time, it is my desire that my life not be prolonged
23 by administration of life-sustaining procedures. If
24 my condition is terminal and I am unable to partici-
25 pate in decisions regarding my medical treatment, I
26 direct my attending physician to withhold or withdraw
27 procedures that merely prolong the dying process and
28 are not necessary to my comfort or freedom from pain.

29 Signed this _____ day of _____ .
30 date month year

31 Signature _____

32 City, County and

33 State of Residence _____
34 city county state

35 The declarant is known to me and voluntarily signed
36 this document in my presence.

37 Witness _____

1 Address _____

2 _____

3 Witness _____

4 Address _____

5 _____

6 §2924. Revocation of declaration

7 1. Revocation; communication. A declaration may
8 be revoked at any time and in any manner by which the
9 declarant is able to communicate his intent to re-
10 voke, without regard to mental or physical condition.
11 A revocation is only effective as to the attending
12 physician or any health care provider acting under
13 the guidance of that physician upon communication to
14 the physician or health care provider by the declar-
15 ant or by another to whom the revocation was communi-
16 cated.

17 2. Revocation part of medical record. The at-
18 tending physician or health care provider shall make
19 the revocation a part of the declarant's medical
20 record.

21 §2925. Recording determination of terminal condition
22 and contents of declaration

23 When an attending physician who has been notified
24 of the existence and contents of a declaration deter-
25 mines that the declarant is in a terminal condition,
26 the physician must record that determination and the
27 contents of the declaration in the declarant's medi-
28 cal record.

29 §2926. Treatment of qualified patients

30 1. Decisions regarding use of life-sustaining
31 procedures. A qualified patient has the right to
32 make decisions regarding use of life-sustaining pro-
33 cedures as long as the patient is able to do so. If
34 a qualified patient is not able to make those deci-
35 sions, the declaration shall govern decisions regard-
36 ing use of life-sustaining procedures.

37 2. Comfort care; alleviation of pain. This Act
38 does not prohibit the application of any medical pro-

1 cedure or intervention, including the provision of
2 nutrition and hydration, considered necessary to pro-
3 vide comfort care or to alleviate pain.

4 3. Pregnancy. The declaration of a qualified
5 patient known to the attending physician to be preg-
6 nant shall be given no force or effect as long as it
7 is probable that the fetus could develop to the point
8 of live birth with continued application of
9 life-sustaining procedures.

10 §2927. Transfer of patients

11 1. Physicians unwilling to comply with declara-
12 tion. An attending physician who is unwilling to
13 comply with the requirements of section 2925 or who
14 is unwilling to comply with the declaration of a
15 qualified patient in accordance with section 2926
16 shall take all reasonable steps to effect the trans-
17 fer of the declarant to another physician.

18 2. Health care facility policies precluding com-
19 pliance with declaration. If the policies of a
20 health care facility preclude compliance with the
21 declaration of a qualified patient under this chap-
22 ter, that facility shall take all reasonable steps to
23 effect the transfer of the patient to a facility in
24 which the provisions of this chapter may be carried
25 out.

26 §2928. Immunities

27 1. Actions in the absence of actual notice of
28 revocation of declaration. In the absence of actual
29 notice of the revocation of a declaration, the fol-
30 lowing, while acting in accordance with the require-
31 ments of this chapter, are not subject to civil or
32 criminal liability or guilty of unprofessional con-
33 duct:

34 A. A physician who causes the withholding or
35 withdrawal of life-sustaining procedures from a
36 qualified patient;

37 B. A person who participates in the withholding
38 or withdrawal of life-sustaining procedures under
39 the direction or with the authorization of a phy-
40 sician; and

1 C. The health care facility in which the with-
2 holding or withdrawal occurs.

3 2. Actions in accord with reasonable medical
4 standards. A physician is not subject to civil or
5 criminal liability for actions under this chapter
6 which are in accord with reasonable medical stan-
7 dards.

8 §2929. Penalties

9 1. Willful failure to transfer. A physician who
10 willfully fails to transfer in accordance with sec-
11 tion 2927 is guilty of a Class E crime.

12 2. Failure to record determination of terminal
13 condition. A physician who willfully fails to record
14 the determination of terminal condition in accordance
15 with section 2925 is guilty of a Class E crime.

16 3. Concealing, canceling, defacing or obliterat-
17 ing declaration. Any person who willfully conceals,
18 cancel, defaces or obliterates the declaration of
19 another without the declarant's consent or who falsi-
20 fies or forges a revocation of the declaration of an-
21 other is guilty of a Class E crime.

22 4. Falsification or forgery of declaration. Any
23 person who falsifies or forges the declaration of an-
24 other or willfully conceals or withholds personal
25 knowledge of a revocation as provided in section
26 2924, with the intent to cause a withholding or with-
27 drawal of life-sustaining procedures, is guilty of a
28 Class E crime.

29 §2930. General provisions

30 1. Death not suicide or homicide. Death result-
31 ing from the withholding or withdrawal of
32 life-sustaining procedures pursuant to a declaration
33 and in accordance with this chapter does not, for any
34 purpose, constitute a suicide or homicide.

35 2. Declaration not to affect insurance. The
36 making of a declaration pursuant to section 2924 does
37 not affect in any manner the sale, procurement or is-
38 suance of any policy of life insurance, nor is it

1 deemed to modify the terms of an existing policy of
2 life insurance. No policy of life insurance is le-
3 gally impaired or invalidated in any manner by the
4 withholding or withdrawal of life-sustaining proce-
5 dures from an insured qualified patient, notwith-
6 standing any term of the policy to the contrary.

7 3. Requirement of declaration as condition for
8 insurance or health care services. No physician,
9 health care facility or other health care provider,
10 insurer issuing disability insurance, self-insured
11 employee welfare benefit plan or nonprofit hospital
12 plan may require any person to execute a declaration
13 as a condition for being insured for or receiving
14 health care services.

15 4. Presumption concerning life-sustaining proce-
16 dures. This chapter creates no presumption concerning
17 the intention of an individual who has not executed a
18 declaration with respect to the use, withholding or
19 withdrawal of life-sustaining procedures in the event
20 of a terminal condition.

21 5. Patient's right concerning withholding or
22 withdrawal of medical care. Nothing in this chapter
23 may be interpreted to increase or decrease the right
24 of a patient to make decisions regarding use of
25 life-sustaining procedures as long as the patient is
26 able to do so, nor impairs or supersedes any right or
27 responsibility that any person has to effect the
28 withholding or withdrawal of medical care in any law-
29 ful manner. In that respect, the provisions of this
30 chapter are cumulative.

31 6. Mercy killing or euthanasia. This chapter
32 does not condone, authorize or approve mercy killing
33 or euthanasia.

34 §2931. Recognition of declarations executed in other
35 states

36 A declaration executed in another state in com-
37 pliance with the laws of that state shall be effec-
38 tive for the purposes of this chapter.

1 STATEMENT OF FACT

2 As of October 1984, 22 states had enacted legis-
3 lation creating some sort of "living will."

4 This bill is modeled after a draft prepared by
5 the National Conference of Commissioners on Uniform
6 State Laws and will do the following:

7 1. Authorize an adult person to control deci-
8 sions regarding administration of life-sustaining
9 treatment by executing a declaration instructing his
10 physician to withhold or withdraw life-sustaining
11 procedures in the event that the person is in a ter-
12 minal condition and is unable to participate in medi-
13 cal treatment decisions;

14 2. Present a form which is simple, effective and
15 acceptable to persons desiring to execute a declara-
16 tion regarding the use of life-sustaining measures in
17 the event of a terminal illness and acceptable to
18 physicians and health care facilities who will be re-
19 quired to comply with such a declaration; and

20 3. Encourage a declaration consistent in scope
21 and procedure with that executed in other states.

22 It does not address treatment of persons who have
23 not executed such a declaration; it does not cover
24 treatment of minors; and it does not cover treatment
25 decisions by proxy.

26 There is nothing in this bill which prohibits
27 life-sustaining measures should the individual elect
28 to have them.

29 This bill emanated from a resolution from the
30 1984 Blaine House Conference on Aging and is a prior-
31 ity of the Maine Committee on Aging.

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