HOUSE . . . . . No. 3005

By Mr. Voke of Chelsea, petition of Richard A. Voke and other members of the General Court for legislation to provide for a living will. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT PROVIDING FOR A LIVING WILL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws is hereby
2 amended by inserting after section 70E the following section: —
3 *Section 70F.* (*a*) As used in this section, the following words
4 shall have the following meanings unless the context clearly re-
5 quires otherwise: —
6 "Attending physician", any person licensed to practice medicine
7 under chapter one hundred and twelve who has been selected by and
8 assigned to the treatment and care of the patient.
9 "Health care facility", any hospital or other facility licensed
10 under this chapter.
11 "Life-prolonging procedure", any medical procedure or interven-
12 tion which utilizes mechanical or other artificial means to sustain,
13 restore or supplant a vital function, which, when applied to a
14 qualified patient would serve only to artificially postpone the mo-
15 ment of death and where, in the judgment of the attending physi-
16 cian, death is imminent. Life-prolonging procedure shall not in-
17 clude the administration of medication or the performance of any
18 medical procedure deemed necessary to provide comfort care.
19 "Qualified patient", a patient who has executed a declaration and
20 who has been diagnosed to be afflicted with a terminal condition by
21 two physicians who have personally examined the patient, one of
22 whom shall be the attending physician and such diagnoses shall be
23 contained in a writing signed by such physicians.
24 "Terminal condition", an incurable condition caused by injury,

25 disease, or illness which, regardless of the application of life pro-
26 longing procedures, would, within reasonable medical judgement,
27 produce death, and where the application of life-prolonging proce-
28 dures serve to postpone the moment of death of the patient.
29 "Declaration", a witnessed document in writing, voluntarily exe-
30 cuted by the declarant in accordance with the requirements of
31 subsection (*b*).
32 (*b*) Any individual of sound mind, eighteen years of age or older,
33 may execute a declaration directing that no life-prolonging proce-
34 dures be utilized for the prolongation of his or her life by either
35 signing such a declaration or expressly directing a person to sign in
36 his or her presence.
37 Such declaration shall be signed in the presence of two subscrib-
38 ing witnesses who are not (1) related to the declarant by blood or
39 marriage, (2) entitled to any portion of the estate of the declarant
40 under any will of the declarant, by operation of law then existing,
41 (3) directly financially responsible for the declarant's medical care.
42 A declarant shall have the right to appoint in the declaration
43 a person authorized to order the administration, withholding, or
44 withdrawal of life prolonging procedures in the event that the
45 declarant becomes incompetent. A person so authorized shall
46 have the power to enforce the provisions of the declaration and
47 shall be bound to exercise this authority consistent with the
48 declaration. Physicians and health care providers caring for
49 incompetent declarants shall provide such authorized persons all
50 medical information which would be available to the declarant
51 if the declarant were competent.
52 The declarant, if he has an attending physician, may notify his
53 attending physician of the existence of the declaration. An attend-
54 ing physician who is so notified by the declarant or by any person
55 who has possession of said declaration, shall make the declaration,
56 or a copy of the declaration, a part of the declarant's medical
57 records or the declarant may file such declaration for custody and
58 production in the family court department under the provisions of
59 section ten of chapter one hundred and ninety-one.
60 Such declaration shall remain in effect for a period not to exceed
61 ten years from the date of execution. In the case of an individual
62 rendered incapable of re-execution, said declaration shall remain in
63 effect until such time as the individual's condition renders him or

her capable of communicating intent to reinstitute the declaration. Any individual may re-execute a declaration, in accordance with the provisions of this section.

DECLARATION

Declaration made this _____ day of _____ (month, year). I _____ , being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures would serve only to artificially prolong the moment of death, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and the physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

If I have been diagnosed as pregnant and that diagnosis is known by my physician, this declaration shall have no force or effect during the course of my pregnancy.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed _____

City, County and State of Residence _____

The declarant has been personally known to me and I believe him or her to be of sound mind.

Witness _____

Witness _____

Commonwealth of Massachusetts, county of _____, before me, the undersigned authority on this day personally appeared _____, _____ and _____ known

101 to me to be the declarant, the witnesses, _____
102 respectively whose names are signed to the attached or forego-
103 ing instrument, and, all of these persons being by me duly sworn
104 _____ the declarant declared to me, to the witness
105 _____ in my presence that the instrument is his/her
106 declaration and that he had willingly signed or directed another
107 to sign for him/her, and that he executed it as his/her free and
108 voluntary act of the purposes therein expressed: and each of the
109 witness _____ stated to me, under the pains and penalties
110 of perjury in the presence of the declarant, that he/she signed the
111 declaration as witness and that to the best of his/her knowledge
112 the declarant was eighteen years of age or over, of sound mind
113 and under no constraint or undue influence.

114 _____
Declarant

115 _____
Witness

116 _____
Witness

117 Subscribed and sworn before me by the said declarant, the said
118 witnesses _____ this _____ day of _____.

_____

119 NOTARY PUBLIC
120 My Commission expires: _____.

121 (*c*) A declaration may be revoked at any time by the declarant,
122 by any of the following methods:
123 (1) By being canceled, defaced, obliterated, or burnt, torn, or
124 otherwise destroyed by the declarant or by some person in his
125 presence and by his direction.
126 (2) By a written revocation of the declarant or by a person acting
127 under the direction of the declarant expressing his intent to revoke,
128 signed and dated by the declarant or by a person in the presence of
129 the declarant and acting under his direction. The attending physi-
130 cian shall record in the patient's medical record the time and date
131 when he received notification of the written revocation.
132 (3) By verbal expression by the declarant of his intent to revoke
133 the declaration made by the declarant directly to the attending

134 physician or by a verbal expression of intent to revoke made by the
135 declarant in the presence of a witness eighteen years of age or older
136 who signs and dates a writing confirming the verbal revocation. A
137 verbal revocation made by the declarant in the presence of a witness
138 and not directly to the attending physician shall not become effec-
139 tive until the written confirmation of the witness is received by the
140 attending physician. The attending physician shall record in the
141 patient's medical record the time, date and place of the revocation
142 and the time, date and place, if different, of when he received
143 notification of the revocation.

144 (*d*) An attending physician who has been notified of the exist-
145 ence of a declaration executed under this section shall without delay
146 after the diagnosis of a terminal condition of the declarant, take the
147 necessary steps to provide for written diagnosis and confirmation
148 of the declarant's terminal condition, so that declarant may be
149 deemed to be a qualified patient.

150 If the qualified patient is incompetent at the time of the decision
151 to withhold or withdraw life-prolonging procedures, a declaration
152 executed in accordance with subsection (*b*) shall be presumed to be
153 valid. For the purpose of this section, a physician or health care
154 facility may presume in the absence of actual notice to the contrary
155 that an individual who executed a declaration was of sound mind
156 when it was executed.

157 (*e*) In the absence of actual notice of the revocation of the
158 declaration, none of the following, when acting in accordance with
159 the requirements of this section, shall be subject to civil liability
160 therefrom, unless negligent, or shall be guilty of any criminal act or
161 of unprofessional conduct:

162 (1) A physician or health facility which causes the withholding
163 or withdrawal of life-prolonging procedures from a qualified
164 patient.

165 (2) A licensed health professional, acting under the direction of a
166 physician, who participates in the withholding or withdrawal of
167 life-prolonging procedures from a qualified patient.

168 (*f*) (1) An attending physician who refuses to comply with the
169 declaration of a qualified patient pursuant to this section shall
170 make the necessary arrangements to effect the transfer of the quali-
171 fied patient to another physician who will effectuate the declaration
172 of the qualified patient.

173 (2) Any person who falsifies or forges the declaration of another
174 or wilfully conceals or withholds personal knowledge of a revoca-
175 tion as provided in subsection (*c*), with the intent to cause a with-
176 holding or withdrawal of life-prolonging procedures contrary to
177 the wishes of the declarant, and thereby, because of such act,
178 directly causes life-prolonging procedures to be withheld or with-
179 drawn and death thereby hastened, shall be punished by impris-
180 onment in the state prison for not more than twenty years or by
181 a fine of not more than five thousand dollars and by imprison-
182 ment in a jail or house of correction for not more than two and
183 one-half years.
184 (*g*) (1) The withholding or withdrawal of life-prolonging proce-
185 dures from a qualified patient in accordance with the provisions of
186 this section shall not, for any purpose, constitute a suicide.
187 (2) The making of a declaration shall not affect the sale, pro-
188 curement, or issuance of any policy of life insurance, nor shall it be
189 deemed to modify the terms of an existing policy of life insurance.
190 No policy of life insurance shall be legally impaired or invalidated
191 in any manner by the withholding or withdrawal of life-prolonging
192 procedures from an insured qualified patient, notwithstanding any
193 term of the policy to the contrary.
194 (3) No physician, health facility, or other health provider, and
195 no health care service plan, insurer issuing disability insurance,
196 self-insured employee welfare benefit plan, or nonprofit hospital
197 plan, shall require any person to execute a declaration as a condi-
198 tion for being insured for, or receiving, health care services.
199 (4) Nothing in this section shall be construed to condone, author-
200 ize or approve mercy killing, or euthanasia, or to permit any
201 affirmative or deliberate act or omission to end life other than to
202 permit the natural process of dying.
203 (5) This section shall create no presumption concerning the
204 intention of an individual who has not executed a declaration to
205 consent to the use or withholding of life-prolonging procedures in
206 the event of a terminal condition.
207 (6) A judicial order shall not be required in order for a physician
208 or health care facility to act in reliance on a declaration executed
209 under this section.
210 (*h*) Any person who wilfully conceals, cancels, defaces, obliter-
211 ates, or damages the declaration of another person without the

212 consent of the declarant or forges a revocation of the declaration of
213 another person shall be punished by imprisonment in the state
214 prison for a term not to exceed five years or by a fine of not less than
215 ten thousand dollars, or both.

1 SECTION 2. If any provisions of this act or the application
2 thereof to any person or circumstances is held invalid, such invalidi-
3 ty shall not affect other provisions or applications of this act which
4 can be given effect without the invalid provision or application, and
5 to this end the provisions of this act are severable.