

1 S.103

2 Introduced by Senators White, Snelling, Ashe, Ayer, Baruth, Fox, Lyons,

3 MacDonalD, McCormack, Miller and Pollina

4 Referred to Committee on

5 Date:

6 Subject: Health; end of life; patient-directed dying

7 Statement of purpose: This bill proposes to allow, subject to appropriate  
8 safeguards, a mentally competent person diagnosed as having less than six  
9 months to live to request a prescription which, if taken, would hasten the dying  
10 process.

11 An act relating to patient choice and control at end of life

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. FINDINGS

14 The general assembly finds:

15 (1) The state of Oregon has been implementing its Death with Dignity  
16 Act since 1998. In 12 years, Oregon has seen a total of 723 terminal patients  
17 formally request medication to hasten death and, of those, 460 patients took the  
18 medication and died pursuant to the act. Oregon's most recent annual report  
19 on the act shows that in 2009, 95 prescriptions were written, and 53 patients

1 died after ingesting the medication. An additional six patients died after taking  
2 medication pursuant to an earlier prescription, for a total of 59 deaths in 2009.

3 (2) Vermont has about one-sixth the population of Oregon. According  
4 to the 2010 census, Oregon has a population of 3,831,074 and Vermont a  
5 population of 625,741.

6 (3) In the past 17 years, Oregon has seen its hospice enrollment increase  
7 significantly. In 1993, only 20 percent of all dying patients were enrolled in  
8 hospice. By 2005, enrollment had increased to 54 percent. In 2009, 91.5  
9 percent of the patients who used medication under the Death with Dignity Act  
10 were in hospice care.

11 (4) According to a 2000 article in the New England Journal of Medicine,  
12 Oregon health care professionals report that Oregon physicians grant  
13 approximately one in six requests for lethal medication, and one in 10 requests  
14 actually results in hastened death.

15 (5) Despite continuing improvements in techniques for palliative care,  
16 most medical experts agree that not all pain can be relieved. Some terminal  
17 diseases, such as bone cancer, inflict untreatable agony at the end of life.  
18 Many cancer patients report that they would have greater comfort and courage  
19 in facing their future if they were assured they could use a Death with Dignity  
20 law if their suffering became unbearable.

1       Sec. 2. 18 V.S.A. chapter 113 is added to read:

2           CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS SUFFERING A

3                           TERMINAL CONDITION

4       § 5280. DEFINITIONS

5           For purposes of this chapter:

6           (1) “Attending physician” means the physician whom the patient has  
7 designated to have primary responsibility for the care of the patient and who is  
8 willing to participate in the provision to a qualified patient of medication to  
9 hasten his or her death in accordance with this chapter.

10          (2) “Capacity” shall have the same meaning as in subdivision  
11 9701(4)(B) of this title.

12          (3) “Consulting physician” means a physician who is qualified by  
13 specialty or experience to make a professional diagnosis and prognosis  
14 regarding the patient’s illness and who is willing to participate in the provision  
15 of medication to a qualified patient to hasten his or her death in accordance  
16 with this chapter.

17          (4) “Counseling” means a consultation between a psychiatrist,  
18 psychologist, or clinical social worker licensed in Vermont and a patient for  
19 the purpose of confirming that the patient:

20                (A) has capacity; and

1           (B) is not suffering from a mental disorder or disease, including  
2           depression that causes the patient to have impaired judgment.

3           (5) “Good faith” shall mean objective good faith.

4           (6) “Health care provider” shall have the same meaning as in  
5           subdivision 9432(8) of this title.

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

10           (A) The patient’s medical diagnosis.

11           (B) The patient’s prognosis.

12           (C) The range of possible results, including potential risks associated  
13           with taking the medication to be prescribed.

14           (D) The probable result of taking the medication to be prescribed.

15           (E) All feasible end-of-life services, including comfort care, hospice  
16           care, and pain control.

17           (8) “Palliative care” shall have the same meaning as in subdivision 2(6)  
18           of this title.

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

1           (10) “Physician” means a physician licensed pursuant to chapters 23 and  
2           33 of Title 26.

3           (11) “Qualified patient” means a patient with capacity who has satisfied  
4           the requirements of this chapter in order to obtain a prescription for medication  
5           to hasten his or her death. No individual shall qualify under the provisions of  
6           this chapter solely because of age or disability.

7           (12) “Terminal condition” means an incurable and irreversible disease  
8           which would, within reasonable medical judgment, result in death within six  
9           months.

10           § 5281. REQUESTS FOR MEDICATION

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

12           (1) A patient with capacity who has been determined by the attending  
13           physician and consulting physician to be suffering from a terminal condition  
14           and who has voluntarily expressed a wish to hasten the dying process may  
15           request medication to be self-administered for the purpose of hastening his or  
16           her death in accordance with this chapter.

17           (2) A patient shall have made an oral request and a written request and  
18           shall have reaffirmed the oral request to his or her attending physician not less  
19           than 15 days after the initial oral request. At the time the patient makes the  
20           second oral request, the attending physician shall offer the patient an  
21           opportunity to rescind the request.

1       (b) Oral requests for medication by the patient under this chapter shall be  
2       made in the presence of the attending physician.

3       (c) A written request for medication shall be signed and dated by the  
4       patient and witnessed by at least two persons, at least 18 years of age, who, in  
5       the presence of the patient, sign and affirm that the principal appeared to  
6       understand the nature of the document and to be free from duress or undue  
7       influence at the time the request was signed. Neither witness shall be any of  
8       the following persons:

9           (1) The patient's attending physician, consulting physician, or any  
10          person who has provided counseling for the patient pursuant to section 5284 of  
11          this title.

12          (2) A person who knows that he or she is a relative of the patient by  
13          blood, marriage, civil union, or adoption.

14          (3) A person who at the time the request is signed knows that he or she  
15          would be entitled upon the patient's death to any portion of the estate or assets  
16          of the patient under any will or trust, by operation of law, or by contract.

17          (4) An owner, operator, or employee of a health care facility, nursing  
18          home, or residential care facility where the patient is receiving medical  
19          treatment or is a resident.

20          (d) A person who knowingly fails to comply with the requirements in  
21          subsection (c) of this section is subject to prosecution under 13 V.S.A. § 2004.

1       (e) The written request shall be completed after the patient has been  
2       examined by a consulting physician as required under section 5283 of this title.

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

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

7       § 5282. ATTENDING PHYSICIAN; DUTIES

8       The attending physician shall perform all the following:

9       (1) Make the initial determination of whether a patient:

10       (A) is suffering a terminal condition;

11       (B) has capacity; and

12       (C) has made a voluntary request for medication to hasten his or her  
13       death.

14       (2) Request proof of Vermont residency, which may be shown by:

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

16       (B) proof of Vermont voter's registration;

17       (C) evidence of property ownership or a lease of residential premises  
18       in Vermont; or

19       (D) a Vermont personal income tax return for the most recent tax  
20       year.

21       (3) Inform the patient in person and in writing of all the following:

1           (A) The patient's medical diagnosis.

2           (B) The patient's prognosis.

3           (C) The range of possible results, including potential risks associated  
4 with taking the medication to be prescribed.

5           (D) The probable result of taking the medication to be prescribed.

6           (E) All feasible end-of-life services, including comfort care, hospice  
7 care, and pain control.

8           (4) Refer the patient to a consulting physician for medical confirmation  
9 of the diagnosis, prognosis, and a determination that the patient has capacity  
10 and is acting voluntarily.

11           (5) Refer the patient for counseling under section 5284 of this chapter.

12           (6) Refer the patient for a palliative care consultation under section 5285  
13 of this chapter.

14           (7) Recommend that the patient notify the next of kin or someone with  
15 whom the patient has a significant relationship.

16           (8) Counsel the patient about the importance of ensuring that another  
17 individual is present when the patient takes the medication prescribed pursuant  
18 to this chapter and the importance of not taking the medication in a public  
19 place.

1           (9) Inform the patient that the patient has an opportunity to rescind the  
2           request at any time and in any manner and offer the patient an opportunity to  
3           rescind at the end of the 15-day waiting period.

4           (10) Verify, immediately prior to writing the prescription for medication  
5           under this chapter, that the patient is making an informed decision.

6           (11) Fulfill the medical record documentation requirements of section  
7           5290 of this title.

8           (12) Ensure that all required steps are carried out in accordance with this  
9           chapter prior to writing a prescription for medication to hasten death.

10           (13)(A) Dispense medication directly, including ancillary medication  
11           intended to facilitate the desired effect to minimize the patient's discomfort,  
12           provided the attending physician is licensed to dispense medication in  
13           Vermont, has a current Drug Enforcement Administration certificate, and  
14           complies with any applicable administrative rules; or

15           (B) With the patient's written consent:

16                   (i) contact a pharmacist and inform the pharmacist of the  
17           prescription; and

18                   (ii) deliver the written prescription to the pharmacist, who will  
19           dispense the medication to the patient, the attending physician, or an expressly  
20           identified agent of the patient.

1           (14) Notwithstanding any other provision of law, the attending  
2 physician may sign the patient's death certificate.

3 § 5283. MEDICAL CONSULTATION REQUIRED

4           Before a patient is qualified in accordance with this chapter, a consulting  
5 physician shall physically examine the patient, review the patient's relevant  
6 medical records, and confirm in writing the attending physician's diagnosis  
7 that the patient is suffering from a terminal condition and verification that the  
8 patient has capacity, is acting voluntarily, and has made an informed decision.

9 § 5284. COUNSELING REFERRAL

10           If, in the opinion of the attending physician or the consulting physician, a  
11 patient may be suffering from a mental disorder or disease, including  
12 depression, causing impaired judgment, either physician shall refer the patient  
13 for counseling. No medication to end the patient's life shall be prescribed until  
14 the person performing the counseling determines that the patient is not  
15 suffering from a mental disorder or disease, including depression, that causes  
16 the patient to have impaired judgment.

17 § 5285. PALLIATIVE CARE CONSULTATION

18           If a patient is not receiving hospice services at the time the written request  
19 for medication is made pursuant to this chapter, his or her attending physician  
20 shall refer the patient for a palliative care consultation and shall attest to its  
21 completion pursuant to subdivision 5290(a)(5) of this title.

1     § 5286. INFORMED DECISION

2         No person shall receive a prescription for medication to hasten his or her  
3     death unless the patient has made an informed decision. Immediately prior to  
4     writing a prescription for medication in accordance with this chapter, the  
5     attending physician shall verify that the patient is making an informed  
6     decision.

7     § 5287. RECOMMENDED NOTIFICATION

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

14    § 5288. RIGHT TO RESCIND

15         A patient may rescind the request for medication in accordance with this  
16    chapter at any time and in any manner regardless of the patient's mental state.  
17    No prescription for medication under this chapter may be written without the  
18    attending physician's offering the patient an opportunity to rescind the request.

19    § 5289. WAITING PERIOD

20         The attending physician shall write a prescription no less than 48 hours after  
21    the last to occur of the following events:

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

3           (2) the patient's second oral request; and

4           (3) the attending physician's offering the patient an opportunity to  
5 rescind the request.

6           § 5290. MEDICAL RECORD DOCUMENTATION

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

9           (1) The date, time, and wording of all oral requests of the patient for  
10 medication to hasten his or her death.

11           (2) All written requests by a patient for medication to hasten his or her  
12 death.

13           (3) The attending physician's diagnosis, prognosis, and basis for the  
14 determination that the patient has capacity, is acting voluntarily, and has made  
15 an informed decision.

16           (4) The consulting physician's diagnosis, prognosis, and verification,  
17 pursuant to section 5283 of this title, that the patient has capacity, is acting  
18 voluntarily, and has made an informed decision.

19           (5) If the patient was not receiving hospice services at the time of the  
20 written request for medication, the attending physician's attestation that the  
21 patient received a palliative care consultation.

1           (6) A report of the outcome and determinations made during any  
2           counseling which the patient may have received.

3           (7) The date, time, and wording of the attending physician's offer to the  
4           patient to rescind the request for medication at the time of the patient's second  
5           oral request.

6           (8) A note by the attending physician indicating that all requirements  
7           under this chapter have been satisfied and describing all of the steps taken to  
8           carry out the request, including a notation of the medication prescribed.

9           (b) Medical records compiled pursuant to this chapter shall be subject to  
10           discovery only if the court finds that the records are necessary to resolve issues  
11           of compliance with or immunity under this chapter.

12           § 5291. REPORTING REQUIREMENT

13           (a) The department of health shall require that any physician who writes a  
14           prescription pursuant to this chapter file a report with the department covering  
15           all the prerequisites for writing a prescription under this chapter. In addition,  
16           physicians shall report the number of written requests for medication that were  
17           received, regardless of whether a prescription was actually written in each  
18           instance.

19           (b) The department of health shall review annually the medical records of  
20           qualified patients who have hastened their deaths in accordance with this  
21           chapter.

1       (c) The department of health shall adopt rules pursuant to chapter 25 of  
2       Title 3 to facilitate the collection of information regarding compliance with this  
3       chapter. Individual medical information collected and reports filed pursuant to  
4       subsection (a) of this section shall not be public record and shall not be made  
5       available for inspection by the public.

6       (d) The department of health shall generate and make available to the  
7       public an annual statistical report of information collected under subsections  
8       (a) and (b) of this section. The report shall include the number of instances in  
9       which medication was taken by a qualified patient to hasten death but failed to  
10       have the intended effect.

11       § 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

12       (a) The department of health shall adopt rules providing for the safe  
13       disposal of unused medications prescribed under this chapter.

14       (b) Expedited rulemaking. Notwithstanding the provisions of chapter 25 of  
15       Title 3, the department of health may adopt rules under this section pursuant to  
16       the following expedited rulemaking process:

17       (1) Within 90 days after the date this act is passed, the department shall  
18       file proposed rules with the secretary of state and the legislative committee on  
19       administrative rules under 3 V.S.A. § 841 after publication in three daily  
20       newspapers with the highest average circulation in the state of a notice that

1 lists the rules to be adopted pursuant to this process and a seven-day public  
2 comment period following publication.

3 (2) The department shall file final proposed rules with the legislative  
4 committee on administrative rules 14 days after the public comment period.

5 (3) The legislative committee on administrative rules shall review and  
6 may approve or object to the final proposed rules under 3 V.S.A. § 842, except  
7 that its action shall be completed no later than 14 days after the final proposed  
8 rules are filed with the committee.

9 (4) The department may adopt a properly filed final proposed rule after  
10 the passage of 14 days from the date of filing final proposed rules with the  
11 legislative committee on administrative rules or after receiving notice of  
12 approval from the committee, provided the department:

13 (A) has not received a notice of objection from the legislative  
14 committee on administrative rules; or

15 (B) after having received a notice of objection from the committee,  
16 has responded pursuant to 3 V.S.A. § 842.

17 (5) Rules adopted under this section shall be effective upon being filed  
18 with the secretary of state and shall have the full force and effect of rules  
19 adopted pursuant to chapter 25 of Title 3. Rules filed with the secretary of  
20 state pursuant to this section shall be deemed to be in full compliance with  
21 3 V.S.A. § 843 and shall be accepted by the secretary of state if filed with a

1 certification by the secretary of human services that a rule is required to meet  
2 the purposes of this section.

3 § 5293. PROHIBITIONS; CONTRACT CONSTRUCTION

4 (a) No provision in a contract, will, trust, or other agreement, whether  
5 written or oral, shall be valid to the extent the provision would affect whether a  
6 person may make or rescind a request for medication to hasten his or her death  
7 in accordance with this chapter.

8 (b) The sale, procurement, or issue of any life, health, or accident insurance  
9 or annuity policy or the rate charged for any policy shall not be conditioned  
10 upon or affected by the making or rescinding of a request by a person for  
11 medication to hasten his or her death in accordance with this chapter or the act  
12 by a qualified patient to hasten his or her death pursuant to this chapter.

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

16 § 5294. IMMUNITIES

17 (a) No person shall be subject to civil or criminal liability or professional  
18 disciplinary action for actions taken in good faith reliance on the provisions of  
19 this chapter. This includes being present when a qualified patient takes the  
20 prescribed medication to hasten his or her death in accordance with this  
21 chapter.

1       (b) No professional organization or association or health care provider shall  
2 subject a person to censure, discipline, suspension, loss of license, loss of  
3 privileges, loss of membership, or other penalty for actions taken in good faith  
4 reliance on the provisions of this chapter or refusals to act under this chapter.

5       (c) No provision by an attending physician of medication in good faith  
6 reliance on the provisions of this chapter shall constitute patient neglect for any  
7 purpose of law.

8       (d) No request by a patient for medication under this chapter shall provide  
9 the sole basis for the appointment of a guardian or conservator.

10       (e) No health care provider shall be under any duty, whether by contract, by  
11 statute, or by any other legal requirement, to participate in the provision to a  
12 qualified patient of medication to hasten his or her death in accordance with  
13 this chapter. If a health care provider is unable or unwilling to carry out a  
14 patient's request in accordance with this chapter and the patient transfers his or  
15 her care to a new health care provider, the previous health care provider, upon  
16 request, shall transfer a copy of the patient's relevant medical records to the  
17 new health care provider. A decision by a health care provider not to  
18 participate in the provision of medication to a qualified patient shall not  
19 constitute the abandonment of the patient or unprofessional conduct under  
20 26 V.S.A. § 1354.

1        § 5295. HEALTH CARE FACILITY EXCEPTION

2            Notwithstanding any other provision of law, a health care facility may  
3        prohibit an attending physician from writing a prescription for medication  
4        under this chapter for a patient who is a resident in its facility and intends to  
5        use the medication on the facility's premises, provided the facility has notified  
6        the attending physician in writing of its policy with regard to such  
7        prescriptions. Notwithstanding subsection 5294(b) of this title, any health care  
8        provider who violates a policy established by a health care facility under this  
9        section may be subject to sanctions otherwise allowable under law or contract.

10       § 5296. LIABILITIES AND PENALTIES

11           (a) With the exception of the immunities established by section 5294 of this  
12        title and with the exception of the provisions of section 5298 of this title,  
13        nothing in this chapter shall be construed to limit liability for civil damages  
14        resulting from negligent conduct or intentional misconduct by any person.

15           (b) With the exception of the immunities established by section 5294 of  
16        this title and with the exception of the provisions of section 5298 of this title,  
17        nothing in this chapter or in 13 V.S.A. § 2312 shall be construed to limit  
18        criminal prosecution under any other provision of law.

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

1     § 5297. FORM OF THE WRITTEN REQUEST

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

4     REQUEST FOR MEDICATION TO HASTEN MY DEATH

5             I, \_\_\_\_\_, am an adult of sound mind.

6             I am suffering from \_\_\_\_\_, which my attending physician has  
7     determined is a terminal disease and which has been confirmed by a consulting  
8     physician.

9             I have been fully informed of my diagnosis, prognosis, the nature of  
10     medication to be prescribed and potential associated risks, the expected result,  
11     and the feasible end-of-life services, including comfort care, hospice care, and  
12     pain control.

13             I request that my attending physician prescribe medication that will hasten  
14     my death.

15     INITIAL ONE:

16     \_\_\_\_\_ I have informed my family or others with whom I have a significant  
17     relationship of my decision and taken their opinions into consideration.

18     \_\_\_\_\_ I have decided not to inform my family or others with whom I have a  
19     significant relationship of my decision.

20     \_\_\_\_\_ I have no family or others with whom I have a significant relationship to  
21     inform of my decision.

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

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

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

8       Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

9       AFFIRMATION OF WITNESSES

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

11               (1) the person signing this request:

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

13                       (B) signed this request in our presence;

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

16               (2) that neither of us:

17                       (A) is under 18 years of age;

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

1           (C) is the patient's attending physician, consulting physician, or a  
2 person who has provided counseling for the patient pursuant to section 5284 of  
3 this title;

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

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

8 Witness 1/Date \_\_\_\_\_

9 Witness 2/Date \_\_\_\_\_

10 NOTE: A knowingly false affirmation by a witness may result in criminal  
11 penalties.

12 § 5298. STATUTORY CONSTRUCTION

13 Nothing in this chapter shall be construed to authorize a physician or any  
14 other person to end a patient's life by lethal injection, mercy killing, or active  
15 euthanasia. Action taken in accordance with this chapter shall not be  
16 considered tortious under law and shall not be construed for any purpose to  
17 constitute suicide, assisted suicide, mercy killing, or homicide under the law.

1       Sec. 3. 13 V.S.A. § 2312 is added to read:

2       § 2312. VIOLATION OF PATIENT CHOICE AND CONTROL AT END OF  
3               LIFE ACT

4               A person who violates chapter 113 of Title 18 with the intent to cause the  
5       death of a patient as defined in subdivision 5280(8) of that title shall be  
6       prosecuted under chapter 53 of this title (homicide).

7       Sec. 4. 13 V.S.A. § 2004 is added to read:

8       § 2004. FALSE WITNESSING

9               A person who knowingly violates the requirements of 18 V.S.A. § 5281(c)  
10       shall be imprisoned for not more than 10 years or fined not more than  
11       \$2,000.00 or both.

12       Sec. 5. EFFECTIVE DATE

13               This act shall take effect on September 1, 2011.