

1 S.74

2 Introduced by Senators McCormack, Clarkson, Lyons and Sirotkin

3 Referred to Committee on Health and Welfare

4 Date: February 9, 2021

5 Subject: Health; patient choice at end of life; immunity

6 Statement of purpose of bill as introduced: This bill proposes to eliminate a
7 requirement in Vermont's patient choice at end of life laws that both oral
8 requests required of the patient with a terminal condition for medication to be
9 self-administered to hasten the patient's death must have been made in the
10 physical presence of the physician to whom the patient made the request. It
11 would eliminate a requirement that the prescribing physician have conducted a
12 physical examination of the patient in order to determine that the patient was
13 suffering a terminal condition and a requirement that the physician must have
14 waited at least 48 hours after the occurrence of certain required events before
15 writing the prescription. The bill would also provide immunity for any person
16 who acts in good faith compliance with the provisions of Vermont's patient
17 choice at end of life laws.

18 An act relating to modifications to Vermont's patient choice at end of life
19 laws

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

2 ~~Sec. 1. 18 V.S.A. § 5283 is amended to read:~~

3 § 5283. REQUIREMENTS FOR PRESCRIPTION AND
4 DOCUMENTATION; IMMUNITY

5 (a) A physician shall not be subject to any civil or criminal liability or
6 professional disciplinary action if the physician prescribes to a patient with a
7 terminal condition medication to be self-administered for the purpose of
8 hastening the patient's death and the physician affirms by documenting in the
9 patient's medical record that all of the following occurred:

10 (1) The patient made an oral request to the physician ~~in the physician's~~
11 ~~physical presence~~ for medication to be self-administered for the purpose of
12 hastening the patient's death.

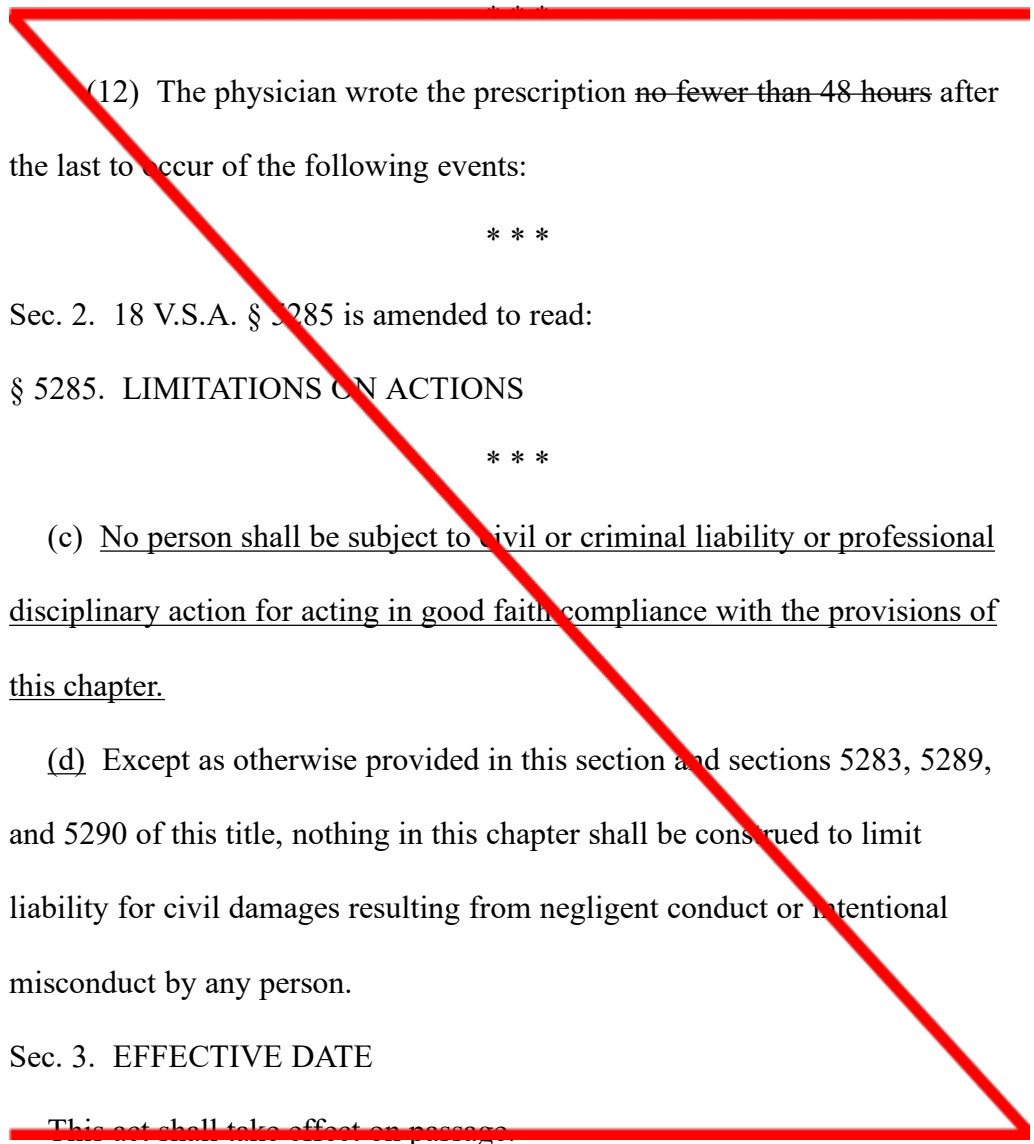
13 (2) ~~No~~ Not fewer than 15 days after the first oral request, the patient
14 made a second oral request to the physician ~~in the physician's physical~~
15 ~~presence~~ for medication to be self-administered for the purpose of hastening
16 the patient's death.

17 * * *

18 (5) The physician determined that the patient:

19 (A) was suffering a terminal condition, based on the physician's
20 ~~physical~~ examination of the patient and review of the patient's relevant
21 ~~medical records,~~

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(12) The physician wrote the prescription ~~no fewer than 48 hours~~ after the last to occur of the following events:

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Sec. 2. 18 V.S.A. § 5285 is amended to read:

§ 5285. LIMITATIONS ON ACTIONS

* * *

(c) No person shall be subject to civil or criminal liability or professional disciplinary action for acting in good faith compliance with the provisions of this chapter.

(d) Except as otherwise provided in this section and sections 5283, 5289, and 5290 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

Sec. 3. EFFECTIVE DATE

~~This act shall take effect on passage.~~

Sec. 1. 18 V.S.A. § 5281 is amended to read:

§ 5281. DEFINITIONS

As used in this chapter:

* * *

(11) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(12) "Telemedicine" means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

Sec. 2. 18 V.S.A. § 5283 is amended to read:

§ 5283. REQUIREMENTS FOR PRESCRIPTION AND DOCUMENTATION; IMMUNITY

(a) A physician shall not be subject to any civil or criminal liability or professional disciplinary action if the physician prescribes to a patient with a terminal condition medication to be self-administered for the purpose of hastening the patient's death and the physician affirms by documenting in the patient's medical record that all of the following occurred:

(1) The patient made an oral request to the physician in the physician's physical presence or by telemedicine, if the physician determines the use of telemedicine to be clinically appropriate, for medication to be self-administered for the purpose of hastening the patient's death.

(2) ~~Not~~ Not fewer than 15 days after the first oral request, the patient made a second oral request to the physician in the physician's physical presence or by telemedicine, if the physician determines the use of telemedicine to be clinically appropriate, for medication to be self-administered for the purpose of hastening the patient's death.

* * *

(5) The physician determined that the patient:

(A) ~~was suffering a terminal condition, based on the physician's physical examination of the patient and review of the patient's relevant medical records~~ and a physician's physical examination of the patient;

(B) was capable;

(C) was making an informed decision;

(D) ~~had made a voluntary request for medication to hasten his or her~~ the patient's own death; and

(E) was a Vermont resident.

(6) The physician informed the patient in person or by telemedicine, both verbally and in writing, of all the following:

* * *

(12) The physician wrote the prescription ~~no fewer than 48 hours~~ after the last to occur of the following events:

(A) the patient's written request for medication to hasten ~~his or her~~ the patient's own death;

(B) the patient's second oral request; ~~or~~ and

(C) the physician's offering the patient an opportunity to rescind the request.

(13) The physician either:

(A) dispensed the medication directly, provided that at the time the physician dispensed the medication, ~~he or she~~ the physician was licensed to dispense medication in Vermont, had a current Drug Enforcement Administration certificate, and complied with any applicable administrative rules; or

* * *

(14) The physician recorded and filed the following in the patient's medical record:

(A) the date, time, and wording of all oral requests of the patient for medication to hasten ~~his or her~~ the patient's own death;

(B) all written requests by the patient for medication to hasten ~~his or her~~ the patient's own death;

(C) the physician's diagnosis, prognosis, and basis for the determination that the patient was capable, was acting voluntarily, and had made an informed decision;

(D) the second physician's diagnosis, prognosis, and verification that the patient was capable, was acting voluntarily, and had made an informed decision;

(E) the physician's attestation that the patient was enrolled in hospice care at the time of the patient's oral and written requests for medication to hasten ~~his or her~~ the patient's own death or that the physician informed the patient of all feasible end-of-life services;

* * *

Sec. 3. 18 V.S.A. § 5285 is amended to read:

§ 5285. LIMITATIONS ON ACTIONS

* * *

(c) No physician, nurse, pharmacist, or other person licensed, certified, or otherwise authorized by law to deliver health care services in this State shall be subject to civil or criminal liability or professional disciplinary action for acting in good faith compliance with the provisions of this chapter.

(d) Except as otherwise provided in this section and sections 5283, 5289, and 5290 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.