

1 Introduced by Committee on Health and Welfare

2 Date:

3 Subject: Health; end of life; patient-directed dying; death with dignity

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

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

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

10 Sec. 1. FINDINGS

11 The General Assembly finds:

12 (1) The State of Oregon has been implementing its Death with Dignity  
13 Act since 1998. As of February 2012, Oregon has seen a total of 935 terminal  
14 patients formally request medication to hasten death and, of those, 596 patients  
15 took the medication and died pursuant to the act. Oregon's most recent annual  
16 report on the act shows that in 2011, 114 prescriptions were written, and 63  
17 patients died after ingesting the medication. An additional eight patients died  
18 after taking medication pursuant to an earlier prescription, for a total of 71  
19 deaths in 2011.

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

4           (3) In the past 17 years, Oregon has seen its hospice enrollment increase  
5           significantly. In 1993, only 20 percent of all dying patients were enrolled in  
6           hospice. By 2005, enrollment had increased to 54 percent. In 2009,  
7           96.7 percent of the patients who used medication under the Death with Dignity  
8           Act were in hospice care.

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

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

16           CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS SUFFERING A  
17                           TERMINAL CONDITION

18           § 5281. DEFINITIONS

19           As used in this chapter:

20           (1) “Attending physician” means the physician whom the patient has  
21           designated to have primary responsibility for the care of the patient and who is

1 willing to participate in the provision to a qualified patient of medication to  
2 hasten his or her death in accordance with this chapter.

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

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

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

13 (A) has capacity; and

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

16 (5) “Good faith” means objective good faith.

17 (6) “Health care provider” means a person, partnership, corporation,  
18 facility, or institution, licensed or certified or authorized by law to administer  
19 health care or dispense medication in the ordinary course of business or  
20 practice of a profession.

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

5                   (A) The patient’s medical diagnosis.

6                   (B) The patient’s prognosis.

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

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

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

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

14           (9) “Physician” means a physician licensed pursuant to 26 V.S.A.  
15           chapters 23 and 33.

16           (10) “Qualified patient” means a patient with capacity who has satisfied  
17           the requirements of this chapter in order to obtain a prescription for medication  
18           to hasten his or her death. An individual shall not qualify under the provisions  
19           of this chapter solely because of age or disability.

1           (11) “Terminal condition” means an incurable and irreversible disease  
2 which would, within reasonable medical judgment, result in death within six  
3 months.

4 § 5282. REQUESTS FOR MEDICATION

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

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

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

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

18           (c) A written request for medication shall be signed and dated by the  
19 patient and witnessed by at least two persons, at least 18 years of age, who, in  
20 the presence of the patient, sign and affirm that the principal appeared to  
21 understand the nature of the document and to be free from duress or undue

1 influence at the time the request was signed. Neither witness shall be any of  
2 the following persons:

3 (1) the patient’s attending physician, consulting physician, or any person  
4 who has provided counseling for the patient pursuant to section 5285 of  
5 this title;

6 (2) a person who knows that he or she is a relative of the patient by  
7 blood, marriage, civil union, or adoption;

8 (3) a person who at the time the request is signed knows that he or she  
9 would be entitled upon the patient’s death to any portion of the estate or assets  
10 of the patient under any will or trust, by operation of law, or by contract; or

11 (4) an owner, operator, or employee of a health care facility, nursing  
12 home, or residential care facility where the patient is receiving medical  
13 treatment or is a resident.

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

16 (e) The written request shall be completed after the patient has been  
17 examined by a consulting physician as required under section 5284 of this title.

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

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

1        § 5283. ATTENDING PHYSICIAN; DUTIES

2            (a) The attending physician shall perform all the following:

3                    (1) make the initial determination of whether a patient:

4                            (A) is suffering a terminal condition;

5                            (B) has capacity; and

6                            (C) has made a voluntary request for medication to hasten his or her  
7        death;

8                    (2) request proof of Vermont residency, which may be shown by:

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

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

11                           (C) evidence of property ownership or a lease of residential premises  
12        in Vermont; or

13                           (D) a Vermont personal income tax return for the most recent  
14        tax year;

15                    (3) inform the patient in person and in writing of all the following:

16                            (A) the patient's medical diagnosis;

17                            (B) the patient's prognosis;

18                            (C) the range of possible results, including potential risks associated  
19        with taking the medication to be prescribed;

20                            (D) the probable result of taking the medication to be prescribed; and

1           (E) all feasible end-of-life services, including comfort care, hospice  
2 care, and pain control;

3           (4) refer the patient to a consulting physician for medical confirmation  
4 of the diagnosis, prognosis, and a determination that the patient has capacity  
5 and is acting voluntarily;

6           (5) refer the patient for counseling under section 5285 of this chapter;

7           (6) recommend that the patient notify the next of kin or someone with  
8 whom the patient has a significant relationship;

9           (7) counsel the patient about the importance of ensuring that another  
10 individual is present when the patient takes the medication prescribed pursuant  
11 to this chapter and the importance of not taking the medication in a  
12 public place;

13           (8) inform the patient that the patient has an opportunity to rescind the  
14 request at any time and in any manner and offer the patient an opportunity to  
15 rescind at the end of the 15-day waiting period;

16           (9) verify, immediately prior to writing the prescription for medication  
17 under this chapter, that the patient is making an informed decision;

18           (10) fulfill the medical record documentation requirements of section  
19 5290 of this title;

20           (11) ensure that all required steps are carried out in accordance with this  
21 chapter prior to writing a prescription for medication to hasten death; and



1           (12)(A) dispense medication directly, including ancillary medication  
2           intended to facilitate the desired effect to minimize the patient’s discomfort,  
3           provided the attending physician is licensed to dispense medication in  
4           Vermont, has a current Drug Enforcement Administration certificate, and  
5           complies with any applicable administrative rules; or

6           (B) with the patient’s written consent:

7                   (i) contact a pharmacist and inform the pharmacist of the  
8                   prescription; and

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

12           (b) Notwithstanding any other provision of law to the contrary, the  
13           attending physician may sign the patient’s death certificate, which shall list the  
14           underlying terminal disease as the cause of death.

15           § 5284. MEDICAL CONSULTATION REQUIRED

16           Before a patient is qualified in accordance with this chapter, a consulting  
17           physician shall physically examine the patient, review the patient’s relevant  
18           medical records, and confirm in writing the attending physician’s diagnosis  
19           that the patient is suffering from a terminal condition and verify that the patient  
20           has capacity, is acting voluntarily, and has made an informed decision.

1     § 5285. COUNSELING REFERRAL

2         If, in the opinion of the attending physician or the consulting physician, a  
3     patient may be suffering from a mental disorder or disease, including  
4     depression, causing impaired judgment, either physician shall refer the patient  
5     for counseling. A medication to end the patient’s life shall not be prescribed  
6     until the person performing the counseling determines that the patient is not  
7     suffering from a mental disorder or disease, including depression, that causes  
8     the patient to have impaired judgment.

9     § 5286. INFORMED DECISION

10        A person shall not receive a prescription for medication to hasten his or her  
11     death unless the patient has made an informed decision. Immediately prior to  
12     writing a prescription for medication in accordance with this chapter, the  
13     attending physician shall verify that the patient is making an informed  
14     decision.

15     § 5287. RECOMMENDED NOTIFICATION

16        The attending physician shall recommend that the patient notify the  
17     patient’s next of kin or someone with whom the patient has a significant  
18     relationship of the patient’s request for medication in accordance with this  
19     chapter. A patient who declines or is unable to notify the next of kin or the  
20     person with whom the patient has a significant relationship shall not be refused  
21     medication in accordance with this chapter.

1        § 5288. RIGHT TO RESCIND

2            A patient may rescind the request for medication in accordance with this  
3        chapter at any time and in any manner regardless of the patient’s mental state.

4        A prescription for medication under this chapter shall not be written without  
5        the attending physician’s offering the patient an opportunity to rescind the  
6        request.

7        § 5289. WAITING PERIOD

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

10           (1) the patient’s written request for medication to hasten his or her  
11        death;

12           (2) the patient’s second oral request; or

13           (3) the attending physician’s offering the patient an opportunity to  
14        rescind the request.

15        § 5290. MEDICAL RECORD DOCUMENTATION

16           (a) The following shall be documented and filed in the patient’s medical  
17        record:

18           (1) the date, time, and wording of all oral requests of the patient for  
19        medication to hasten his or her death;

20           (2) all written requests by a patient for medication to hasten his or her  
21        death;

1           (3) the attending physician’s diagnosis, prognosis, and basis for the  
2           determination that the patient has capacity, is acting voluntarily, and has made  
3           an informed decision;

4           (4) the consulting physician’s diagnosis, prognosis, and verification,  
5           pursuant to section 5284 of this title, that the patient has capacity, is acting  
6           voluntarily, and has made an informed decision;

7           (5) a report of the outcome and determinations made during any  
8           counseling which the patient may have received;

9           (6) the date, time, and wording of the attending physician’s offer to the  
10           patient to rescind the request for medication at the time of the patient’s second  
11           oral request; and

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

15           (b) Medical records compiled pursuant to this chapter shall be subject to  
16           discovery only if the court finds that the records are necessary to resolve issues  
17           of compliance with or limitations on actions under this chapter.

18           § 5291. REPORTING REQUIREMENT

19           (a) The Department of Health shall require that any physician who writes a  
20           prescription pursuant to this chapter file a report with the Department covering  
21           all the prerequisites for writing a prescription under this chapter. In addition,

1 physicians shall report the number of written requests for medication that were  
2 received, regardless of whether a prescription was actually written in each  
3 instance.

4 (b) The Department shall review annually the medical records of qualified  
5 patients who have hastened their deaths in accordance with this chapter.

6 (c) The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 to  
7 facilitate the collection of information regarding compliance with this chapter.  
8 Individual medical information collected and reports filed pursuant to  
9 subsection (a) of this section are confidential and are exempt from public  
10 inspection and copying under the Public Records Act.

11 (d) The Department shall generate and make available to the public an  
12 annual statistical report of information collected under subsections (a) and (b)  
13 of this section. The report shall include the number of instances in which  
14 medication was taken by a qualified patient to hasten death but failed to have  
15 the intended effect.

16 § 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

17 (a) The Department of Health shall adopt rules providing for the safe  
18 disposal of unused medications prescribed under this chapter.

19 (b) Expedited rulemaking. Notwithstanding any contrary provision of  
20 3 V.S.A. chapter 25 and 2010 Acts and Resolves No. 146, Sec. F4, the

1 Department may adopt expedited rules to implement subsection (a) of this  
2 section pursuant to the following expedited rulemaking process:

3 (1) Within 90 days after the date this act is passed, the Department shall  
4 file proposed rules with the Secretary of State and the Legislative Committee  
5 on Administrative Rules under 3 V.S.A. § 841 after publication in three daily  
6 newspapers with the highest average circulation in the State of a notice that  
7 lists the rules to be adopted pursuant to this process and a 15-day public  
8 comment period following publication.

9 (2) The Department shall file final proposed rules with the Legislative  
10 Committee on Administrative Rules no later than 14 days after the public  
11 comment period.

12 (3) The Legislative Committee on Administrative Rules shall review  
13 and may approve or object to the final proposed rules under 3 V.S.A. § 842,  
14 except that its action shall be completed no later than 14 days after the final  
15 proposed rules are filed with the Committee.

16 (4) The Department may adopt a properly filed final proposed rule after  
17 the passage of 14 days from the date of filing final proposed rules with the  
18 Legislative Committee on Administrative Rules or after receiving notice of  
19 approval from the Committee, provided the Department:

20 (A) has not received a notice of objection from the Legislative  
21 Committee on Administrative Rules; or

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

3           (5) Rules adopted under this section shall be effective upon being filed  
4 with the Secretary of State and shall have the full force and effect of rules  
5 adopted pursuant to 3 V.S.A. chapter 25. Rules filed with the Secretary of  
6 State pursuant to this section shall be deemed to be in full compliance with  
7 3 V.S.A. § 843 and shall be accepted by the Secretary of State if filed with a  
8 certification by the Secretary of Human Services that a rule is required to meet  
9 the purposes of this section.

10 § 5293. PROHIBITIONS; CONTRACT CONSTRUCTION

11           (a) A provision in a contract, will, trust, or other agreement, whether  
12 written or oral, shall not be valid to the extent the provision would affect  
13 whether a person may make or rescind a request for medication to hasten his or  
14 her death in accordance with this chapter.

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

20 Neither shall a qualified patient's act of ingesting medication to hasten his or

1 her death have an effect on a life, health, or accident insurance or annuity  
2 policy.

3 § 5294. LIMITATIONS ON ACTIONS

4 (a) A person shall not be subject to civil or criminal liability or professional  
5 disciplinary action for actions taken in good faith reliance on the provisions of  
6 this chapter. This includes being present when a qualified patient takes the  
7 prescribed medication to hasten his or her death in accordance with this  
8 chapter.

9 (b) A professional organization or association or health care provider shall  
10 not subject a person to censure, discipline, suspension, loss of license, loss of  
11 privileges, loss of membership, or other penalty for actions taken in good faith  
12 reliance on the provisions of this chapter or refusals to act under this chapter.

13 (c) A provision by an attending physician of medication in good faith  
14 reliance on the provisions of this chapter shall not constitute patient neglect for  
15 any purpose of law.

16 (d) A request by a patient for medication under this chapter shall not  
17 provide the sole basis for the appointment of a guardian or conservator.

18 (e) A health care provider shall not be under any duty, whether by contract,  
19 by statute, or by any other legal requirement, to participate in the provision to a  
20 qualified patient of medication to hasten his or her death in accordance with  
21 this chapter. If a health care provider is unable or unwilling to carry out a



1 patient's request in accordance with this chapter and the patient transfers his or  
2 her care to a new health care provider, the previous health care provider, upon  
3 request, shall transfer a copy of the patient's relevant medical records to the  
4 new health care provider. A decision by a health care provider not to  
5 participate in the provision of medication to a qualified patient shall not  
6 constitute the abandonment of the patient or unprofessional conduct under  
7 26 V.S.A. § 1354.

8 § 5295. HEALTH CARE FACILITY EXCEPTION

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

17 § 5296. LIABILITIES AND PENALTIES

18 (a) With the exception of the limitations on actions established by section  
19 5294 of this title and with the exception of the provisions of section 5298 of  
20 this title, nothing in this chapter shall be construed to limit liability for civil

1 damages resulting from negligent conduct or intentional misconduct by any  
2 person.

3 (b) With the exception of the limitations on actions established by section  
4 5294 of this title and with the exception of the provisions of section 5298 of  
5 this title, nothing in this chapter or in 13 V.S.A. § 2312 shall be construed to  
6 limit criminal prosecution under any other provision of law.

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

10 § 5297. FORM OF THE WRITTEN REQUEST

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

13 REQUEST FOR MEDICATION TO HASTEN MY DEATH

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

15 I am suffering from \_\_\_\_\_, which my attending physician has  
16 determined is a terminal disease and which has been confirmed by a consulting  
17 physician.

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

1        I request that my attending physician prescribe medication that will hasten  
2 my death.

3        INITIAL ONE:

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

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

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

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

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

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

17        Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

18        AFFIRMATION OF WITNESSES

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

20                (1) the person signing this request:

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

1           (B) signed this request in our presence;

2           (C) appears to understand the nature of the document and to be free

3 from duress or undue influence at the time the request was signed; and

4           (2) that neither of us:

5           (A) is under 18 years of age;

6           (B) is a relative (by blood, marriage, civil union, or adoption) of the

7 person signing this request;

8           (C) is the patient’s attending physician, consulting physician, or a

9 person who has provided counseling for the patient pursuant to 18 V.S.A.

10 § 5285;

11           (D) is entitled to any portion of the person’s assets or estate upon

12 death; or

13           (E) owns, operates, or is employed at a health care facility where the

14 person is a patient or resident.

15 Witness 1/Date \_\_\_\_\_

16 Witness 2/Date \_\_\_\_\_

17 NOTE: A knowingly false affirmation by a witness may result in criminal

18 penalties.

19 § 5298. STATUTORY CONSTRUCTION

20           Nothing in this chapter shall be construed to authorize a physician or any

21 other person to end a patient’s life by lethal injection, mercy killing, or active

1 ethanasia. Action taken in accordance with this chapter shall not be  
2 considered tortious under law and shall not be construed for any purpose to  
3 constitute suicide, assisted suicide, mercy killing, or homicide under the law.

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

5 § 2312. VIOLATION OF PATIENT CHOICE AND CONTROL AT END OF  
6 LIFE ACT

7 A person who violates 18 V.S.A. chapter 113 with the intent to cause the  
8 death of a patient as defined in subdivision 5281(8) of that title shall be  
9 prosecuted under chapter 53 of this title (homicide).

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

11 § 2004. FALSE WITNESSING

12 A person who knowingly violates the requirements of 18 V.S.A. § 5282(c)  
13 shall be imprisoned for not more than 10 years or fined not more than  
14 \$2,000.00, or both.

15 Sec. 5. EFFECTIVE DATE

16 This act shall take effect on September 1, 2013.