

HOUSE BILL No. 2068

By Committee on Health and Human Services

1-23

1 AN ACT enacting the Kansas death with dignity act.

2

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. Sections 1 through 18, and amendments thereto, shall be
5 known and may be cited as the Kansas death with dignity act.

6 Sec. 2. As used in the Kansas death with dignity act:

7 (a) "Adult" means a person who is 18 years of age or older.

8 (b) "Adult care home" means the same as in K.S.A. 39-923, and
9 amendments thereto.

10 (c) "Attending physician" means the physician who has primary
11 responsibility for the care of the patient and treatment of the patient's
12 terminal disease.

13 (d) "Capable" means that in the opinion of a court or in the opinion of
14 the patient's attending physician, consulting physician or psychologist, a
15 patient has the ability to make and communicate any health care decision
16 to a health care provider, including communication through persons
17 familiar with the patient's manner of communicating if those persons are
18 available.

19 (e) "Consulting physician" means a physician who is qualified by
20 specialty or experience to make a professional diagnosis and prognosis
21 regarding the patient's disease.

22 (f) "Counseling" means one or more consultations as necessary
23 between a licensed psychologist and a patient for the purpose of
24 determining that the patient is capable and not suffering from a psychiatric
25 or psychological disorder or depression causing impaired judgment.

26 (g) "Health care facility" means any licensed medical care facility,
27 certified health maintenance organization, licensed mental health center or
28 mental health clinic, licensed psychiatric hospital or other facility or office
29 where services of a health care provider are provided directly to patients.

30 (h) "Health care provider" means any person licensed or otherwise
31 authorized by law to provide health care services in this state or a
32 professional corporation organized pursuant to the professional
33 corporation law of Kansas by persons who are authorized by law to form
34 such corporation and who are health care providers as defined by this
35 subsection, or an officer, employee or agent thereof, acting in the course
36 and scope of employment or agency.

1 (i) "Informed decision" means a decision by a qualified patient, to
2 request and obtain a prescription to such qualified patient's life in a
3 humane and dignified manner, that is based on an appreciation of the
4 relevant facts and after being fully informed by the attending physician of
5 the:

6 (1) Patient's medical diagnosis;

7 (2) patient's prognosis;

8 (3) potential risks associated with taking the medication to be
9 prescribed;

10 (4) probable result of taking the medication to be prescribed; and

11 (5) any feasible alternative, including, but not limited to, hospice care
12 and pain control.

13 (j) "Medically confirmed" means the medical opinion of the attending
14 physician has been confirmed by a consulting physician who has examined
15 the patient and the patient's relevant medical records.

16 (k) "Patient" means a person who is under the care of a physician.

17 (l) "Physician" means a person licensed to practice medicine and
18 surgery in the state.

19 (m) "Qualified patient" means a capable adult who is a resident of
20 Kansas and has satisfied the requirements of the Kansas death with dignity
21 act in order to obtain a prescription for medication to end such patient's life
22 in a humane and dignified manner.

23 (n) "Terminal disease" means an incurable and irreversible disease that
24 has been medically confirmed and will, within reasonable medical
25 judgment, produce death within six months.

26 Sec. 3. (a) An adult who is capable, is a resident of Kansas and has
27 been determined by such adult's attending physician and consulting
28 physician to be suffering from a terminal disease, and who has voluntarily
29 expressed such adult's wish to die, may make a written request for
30 medication for the purpose of ending such adult's life in a humane and
31 dignified manner in accordance with the provisions of the Kansas death
32 with dignity act.

33 (b) No person shall qualify under the provisions of the Kansas death
34 with dignity act solely because of age or disability.

35 Sec. 4. (a) A valid request for medication under the Kansas death with
36 dignity act shall be in substantially the form described in section 18, and
37 amendments thereto, signed and dated by the patient and witnessed by at
38 least two persons who, in the presence of the patient, attest that to the best
39 of their knowledge and belief such patient is capable, acting voluntarily
40 and is not being coerced to sign the request.

41 (b) One of the witnesses shall be a person who is not:

42 (1) A relative of the patient by blood, marriage or adoption;

43 (2) a person who, at the time the request is signed, would be entitled

1 to any portion of the estate of the qualified patient upon death under any
2 will or by operation of law; or

3 (3) an owner, operator or employee of any health care facility where
4 the qualified patient is receiving medical treatment or is a resident.

5 (c) The patient's attending physician at the time the request is signed
6 shall not be a witness.

7 (d) If the patient is a patient in an adult care home at the time the
8 written request is made, one of the witnesses shall be an individual
9 designated by such adult care home and having the qualifications
10 established by the Kansas department for aging and disability services
11 through rules and regulations.

12 Sec. 5. (a) The attending physician shall:

13 (1) Make the initial determination of whether a patient has a terminal
14 disease, is capable and has made the request voluntarily;

15 (2) request that the patient demonstrate Kansas residency pursuant to
16 section 9, and amendments thereto;

17 (3) inform the patient of the following information, to ensure that the
18 patient is making an informed decision:

19 (A) The patient's medical diagnosis;

20 (B) the patient's prognosis;

21 (C) any potential risks associated with taking the medication to be
22 prescribed;

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

24 (E) any feasible alternative, including, but not limited to, hospice care
25 and pain control;

26 (4) Refer the patient to a consulting physician for medical
27 confirmation of the diagnosis and for a determination that the patient is
28 capable and acting voluntarily;

29 (5) refer the patient for counseling, if appropriate, pursuant to section
30 6, and amendments thereto;

31 (6) recommend that the patient notify next of kin;

32 (7) counsel the patient about the importance of having another person
33 present when the patient takes the medication prescribed pursuant to the
34 Kansas death with dignity act and of not taking the medication in a public
35 place;

36 (8) inform the patient that such patient has an opportunity to rescind
37 the request at any time and in any manner, and offer the patient an
38 opportunity to rescind at the end of the 15-day waiting period pursuant to
39 section 7, and amendments thereto;

40 (9) verify, immediately prior to writing the prescription for
41 medication under the Kansas death with dignity act that the patient is
42 making an informed decision;

43 (10) fulfill the medical record documentation requirements of section

1 8, and amendments thereto;

2 (11) ensure that all appropriate steps are carried out in accordance
3 with the Kansas death with dignity act prior to writing a prescription for
4 medication to enable a qualified patient to end such qualified patient's life
5 in a humane and dignified manner; and

6 (12) with the patient's written consent:

7 (A) Contact a licensed pharmacist and inform such licensed pharmacist
8 of the prescription; and

9 (B) deliver the written prescription personally or by mail to the
10 licensed pharmacist, who will dispense the medications to either the
11 patient or an expressly identified agent of the patient.

12 (b) Notwithstanding any other provision of law, the attending
13 physician may sign the patient's death certificate.

14 Sec. 6. (a) Before a patient is qualified under the Kansas death with
15 dignity act a consulting physician shall examine the patient and such
16 patient's relevant medical records and confirm, in writing, the attending
17 physician's diagnosis that the patient is suffering from a terminal disease,
18 and verify that the patient is capable, is acting voluntarily and has made an
19 informed decision.

20 (b) If in the opinion of the attending physician or the consulting
21 physician a patient may be suffering from a psychiatric or psychological
22 disorder or depression causing impaired judgment, either physician shall
23 refer the patient for counseling. No medication to end a patient's life in a
24 humane and dignified manner shall be prescribed until the person
25 performing the counseling determines that the patient is not suffering from
26 a psychiatric or psychological disorder or depression causing impaired
27 judgment.

28 (c) No patient shall receive a prescription for medication to end such
29 patient's life in a humane and dignified manner unless such patient has
30 made an informed decision as defined in section 2, and amendments
31 thereto. Immediately prior to writing a prescription for medication under
32 the Kansas death with dignity act the attending physician shall verify that
33 the patient is making an informed decision.

34 (d) The attending physician shall recommend that the patient notify
35 the next of kin of such patient's request for medication pursuant to the
36 Kansas death with dignity act. A patient who declines or is unable to notify
37 next of kin shall not have such patient's request denied for that reason.

38 Sec. 7. (a) In order for a qualified patient to receive a prescription for
39 medication to end such qualified patient's life in a humane and dignified
40 manner, the qualified patient shall have made both an oral and written
41 request, and reiterate the oral request to such qualified patient's attending
42 physician no less than 15 days after making the initial oral request. At the
43 time the qualified patient makes such qualified patient's second oral

1 request, the attending physician shall offer the qualified patient an
2 opportunity to rescind the request.

3 (b) A qualified patient may rescind such qualified patient's request at
4 any time and in any manner without regard to such qualified patient's
5 mental state. No prescription for medication under the Kansas death with
6 dignity act may be written without the attending physician offering the
7 qualified patient an opportunity to rescind the request.

8 (c) No less than 15 days shall elapse between the qualified patient's
9 initial oral request and the writing of a prescription under the Kansas death
10 with dignity act. No less than 48 hours shall elapse between the qualified
11 patient's written request and the writing of a prescription under the Kansas
12 death with dignity act.

13 Sec. 8. The following shall be documented or filed in the patient's
14 medical record:

15 (a) All oral requests by a patient for medication to end such patient's
16 life in a humane and dignified manner;

17 (b) all written requests by a patient for medication to end such
18 patient's life in a humane and dignified manner;

19 (c) the attending physician's diagnosis and prognosis, determination
20 that the patient is capable, acting voluntarily and has made an informed
21 decision;

22 (d) the consulting physician's diagnosis and prognosis, and
23 verification that the patient is capable, acting voluntarily and has made an
24 informed decision;

25 (e) a report of the outcome and determinations made during
26 counseling, if performed;

27 (f) the attending physician's offer to the patient to rescind such
28 patient's request at the time of the patient's second oral request pursuant to
29 section 7, and amendments thereto; and

30 (g) a note by the attending physician indicating that all requirements
31 under the Kansas death with dignity act have been met and indicating the
32 steps taken to carry out the request, including a notation of the medication
33 prescribed.

34 Sec. 9. Only requests made by Kansas residents under the Kansas
35 death with dignity act shall be granted. Factors demonstrating Kansas
36 residency include, but are not limited to:

37 (a) Possession of a current Kansas driver's license or identification
38 card;

39 (b) registration to vote in Kansas;

40 (c) evidence that the person owns or leases property in Kansas; or

41 (d) filing of a Kansas tax return for the most recent tax year.

42 Sec. 10. (a) (1) The Kansas department for health and environment
43 shall annually review a sample of records maintained pursuant to the

1 Kansas death with dignity act.

2 (2) The department shall require any health care provider upon
3 dispensing medication pursuant to the Kansas death with dignity act to file
4 a copy of the dispensing record with the department.

5 (b) The department shall adopt rules and regulations to facilitate the
6 collection of information regarding compliance with the Kansas death with
7 dignity act. Except as otherwise required by law, the information collected
8 shall not be a public record and may not be made available for inspection
9 by the public.

10 (c) The department shall generate and make available to the public an
11 annual statistical report of information collected under subsection (b).

12 Sec. 11. (a) No provision in a contract, will or other agreement,
13 whether written or oral, to the extent the provision would affect whether a
14 person may make or rescind a request for medication to end such person's
15 life in a humane and dignified manner, shall be valid.

16 (b) No obligation owing under any currently existing contract shall be
17 conditioned or affected by the making or rescinding of a request, by a
18 person, for medication to end such person's life in a humane and dignified
19 manner.

20 Sec. 12. The sale, procurement, or issuance of any life, health, or
21 accident insurance or annuity policy or the rate charged for any policy
22 shall not be conditioned upon or affected by the making or rescinding of a
23 request, by a person, for medication to end such person's life in a humane
24 and dignified manner.

25 Sec. 13. Nothing in the Kansas death with dignity act shall be
26 construed to authorize a physician or any other person to end a patient's
27 life by lethal injection, mercy killing or active euthanasia. Actions taken in
28 accordance with the Kansas death with dignity act shall not constitute the
29 commission of a crime under the Kansas criminal code, K.S.A. 2012 Supp.
30 21-5101 et seq., and amendments thereto.

31 Sec. 14. Except as provided in section 15, and amendments thereto:

32 (a) (1) No person shall be subject to civil or criminal liability or
33 professional disciplinary action for participating in good faith compliance
34 with the provisions of the Kansas death with dignity act, which includes
35 being present when a qualified patient takes the prescribed medication to
36 end such patient's life in a humane and dignified manner.

37 (2) No professional organization or association, or health care
38 provider may subject a person to censure, discipline, suspension, loss of
39 license, loss of privileges, loss of membership or other penalty for
40 participating or refusing to participate in good faith compliance with the
41 provisions of the Kansas death with dignity act.

42 (3) No request by a patient for medication from an attending
43 physician in good faith compliance with the provisions of the Kansas death

1 with dignity act shall constitute neglect for any purpose of law or provide
2 the sole basis for the appointment of a guardian or conservator.

3 (4) No health care provider shall be under any duty, whether by
4 contract, by statute or by any other legal requirement to participate in the
5 provision to a qualified patient of medication to end such qualified
6 patient's life in a humane and dignified manner. If a health care provider is
7 unable or unwilling to carry out a patient's request under the Kansas death
8 with dignity act and the patient transfers such patient's care to a new health
9 care provider, the prior health care provider shall transfer, upon request, a
10 copy of the patient's relevant medical records to the new health care
11 provider.

12 (b) Notwithstanding any other provision of law, a health care provider
13 may prohibit another health care provider from participating under the
14 provisions of the Kansas death with dignity act on the premises of the
15 prohibiting provider if the prohibiting provider has notified the health care
16 provider of the prohibiting provider's policy regarding participating under
17 the Kansas death with dignity act. Nothing in this section prevents a health
18 care provider from providing health care services to a patient that does not
19 constitute participation under the provisions of the Kansas death with
20 dignity act.

21 (c) Notwithstanding the provisions of subsection (a), a health care
22 provider may subject another health care provider to the sanctions stated in
23 this section if the sanctioning health care provider has notified the
24 sanctioned provider prior to participation under the Kansas death with
25 dignity act that it prohibits participation under the Kansas death with
26 dignity act:

27 (1) Loss of privileges, loss of membership or other sanction provided
28 pursuant to the medical staff bylaws, policies and procedures of the
29 sanctioning health care provider if the sanctioned provider is a member of
30 the sanctioning provider's medical staff and participates under the
31 provisions of the Kansas death with dignity act while on the premises of
32 the sanctioning health care provider, but not including the private medical
33 office of a physician or other health care provider;

34 (2) termination of lease or other property contract or other non-
35 monetary remedies provided by lease contract, not including loss or
36 restriction of medical staff privileges or exclusion from a provider panel, if
37 the sanctioned provider participates under the provisions of the Kansas
38 death with dignity act while on the premises of the sanctioning health care
39 provider or on property that is owned by or under the direct control of the
40 sanctioning health care provider; or

41 (3) termination of contract or other non-monetary remedies provided
42 by contract if the sanctioned provider participates under the provisions of
43 the Kansas death with dignity act while acting in the course and scope of

1 the sanctioned provider's capacity as an employee or independent
2 contractor of the sanctioning health care provider. Nothing in this section
3 shall be construed to prevent:

4 (A) A health care provider from participating under the provisions of
5 the Kansas death with dignity act while acting outside the course and
6 scope of the provider's capacity as an employee or independent contractor;
7 or

8 (B) a patient from contracting with such patient's attending physician
9 and consulting physician to act outside the course and scope of the
10 provider's capacity as an employee or independent contractor of the
11 sanctioning health care provider.

12 (d) A health care provider that imposes sanctions pursuant to
13 subsection (b) must follow all due process and other procedures the
14 sanctioning health care provider may have that are related to the
15 imposition of sanctions on another health care provider.

16 (e) For purposes of this section:

17 (1) "Notify" means a separate statement in writing to the health care
18 provider specifically informing the health care provider prior to the
19 provider's participation under the Kansas death with dignity act of the
20 sanctioning health care provider's policy about participation in activities
21 covered by the Kansas death with dignity act.

22 (2) "Participate under the provisions of the Kansas death with dignity
23 act" means to perform the duties of an attending physician pursuant to
24 section 5, and amendments thereto, and the counseling or consulting
25 physician functions pursuant to section 6, and amendments thereto.
26 "Participate under the provisions of the Kansas death with dignity act"
27 does not include:

28 (A) Making an initial determination that a patient has a terminal
29 disease and informing the patient of the medical prognosis;

30 (B) providing information about the Kansas death with dignity act to
31 a patient upon the request of the patient;

32 (C) providing a patient, upon the request of the patient, with a referral
33 to another physician; or

34 (D) a patient contracting with such patient's attending physician and
35 consulting physician to act outside of the course and scope of the
36 provider's capacity as an employee or independent contractor of the
37 sanctioning health care provider.

38 (f) Any action taken by a health care provider pursuant to the Kansas
39 death with dignity act shall not be the sole basis for a report of
40 unprofessional conduct. No provision of the Kansas death with dignity act
41 shall be construed to allow a lower standard of care for any patient seeking
42 to end such patient's life pursuant to the Kansas death with dignity act.

43 Sec. 15. (a) Any person who, without authorization of the patient,

1 knowingly alters or forges a request for medication or conceals or destroys
 2 a rescission of such request with the intent or effect of causing the patient's
 3 death shall be guilty of a severity level 3, person felony.

4 (b) A person who knowingly coerces or exerts undue influence on a
 5 patient to request medication for the purpose of ending the patient's life, or
 6 to destroy a rescission of such a request, shall be guilty of a severity level
 7 3, person felony.

8 (c) Nothing in the Kansas death with dignity act limits further
 9 liability for civil damages resulting from other negligent conduct or
 10 intentional misconduct by any person.

11 (d) The penalties in the Kansas death with dignity act do not preclude
 12 criminal penalties applicable under other law for conduct which is
 13 inconsistent with the provisions of the Kansas death with dignity act.

14 Sec. 16. Any governmental entity that incurs costs resulting from a
 15 person terminating such person's life pursuant to the provisions of the
 16 Kansas death with dignity act in a public place shall have a claim against
 17 the estate of such person to recover such costs and reasonable attorney fees
 18 related to enforcing the claim.

19 Sec. 17. Any section of the Kansas death with dignity act being held
 20 invalid as to any person or circumstance shall not affect the application of
 21 any other section of the Kansas death with dignity act which can be given
 22 full effect without the invalid section or application.

23 Sec. 18. A request for medication as authorized by the Kansas death
 24 with dignity act shall be in substantially the following form:

25 REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE
 26 AND DIGNIFIED MANNER

27 I, _____, am an adult of sound mind.

28 I am suffering from _____,
 29 which my attending physician has determined is a terminal disease and
 30 which has been medically confirmed by a consulting physician.

31 I have been fully informed of my diagnosis, prognosis, the nature of
 32 medication to be prescribed and potential associated risks, the expected
 33 result, and the feasible alternatives, including comfort care, hospice care
 34 and pain control.

35 I request that my attending physician prescribe medication that will end
 36 my life in a humane and dignified manner.

37 INITIAL ONE:

38 _____ I have informed my family of my decision and taken their
 39 opinions into consideration.

40 _____ I have decided not to inform my family of my decision.

41 _____ I have no family to inform of my decision.

42 I understand that I have the right to rescind this request at any time.

43 I understand the full import of this request and I expect to die when I

1 take the medication to be prescribed. I further understand that although
2 most deaths occur within three hours, my death may take longer and my
3 physician has counseled me about this possibility.

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

6 Signed: _____

7 Dated: _____

8 DECLARATION OF WITNESSES

9 We declare that the person signing this request:

- 10 (a) Is personally known to us or has provided proof of identity;
- 11 (b) Signed this request in our presence;
- 12 (c) Appears to be of sound mind and not under duress, fraud or undue
13 influence;
- 14 (d) Is not a patient for whom either of us is attending physician.

15 _____ Witness 1/Date

16 _____ Witness 2/Date

17 NOTE: One witness shall not be a relative (by blood, marriage or
18 adoption) of the person signing this request, shall not be entitled to any
19 portion of the person's estate upon death and shall not own, operate or be
20 employed at a health care facility where the person is a patient or resident.
21 If the patient is an inpatient at a health care facility, one of the witnesses
22 shall be an individual designated by the facility.

23 Sec. 19. This act shall take effect and be in force from and after its
24 publication in the statute book.