

SECOND REGULAR SESSION

HOUSE BILL NO. 1790

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGTON.

5352H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 191, RSMo, by adding thereto twenty-three new sections relating to the Missouri death with dignity act, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 191, RSMo, is amended by adding thereto twenty-three new sections, to be known as sections 191.1500, 191.1503, 191.1506, 191.1509, 191.1512, 191.1515, 191.1518, 191.1521, 191.1524, 191.1527, 191.1530, 191.1533, 191.1536, 191.1539, 191.1542, 191.1545, 191.1548, 191.1551, 191.1554, 191.1557, 191.1560, 191.1563, and 191.1565, to read as follows:

191.1500. 1. Sections 191.1500 to 191.1565 shall be known and cited as the "Missouri Death with Dignity Act".

2. As used in sections 191.1500 to 191.1565, the following terms shall mean:

(1) "Adult", any individual who is eighteen years of age or older;

(2) "Attending physician", the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease;

(3) "Capable", in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available;

(4) "Consulting physician", a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 **(5) "Counseling", one or more consultations as necessary between a state-licensed**
15 **psychiatrist or psychologist and a patient for the purpose of determining that the patient**
16 **is capable and not suffering from a psychiatric or psychological disorder or depression**
17 **causing impaired judgment;**

18 **(6) "Health care provider", a person licensed, certified, or otherwise authorized or**
19 **permitted by the laws of this state to administer health care or dispense medication in the**
20 **ordinary course of business or practice of a profession and includes a health care facility;**

21 **(7) "Informed decision", a decision by a qualified patient to request and obtain a**
22 **prescription for medication to end his or her life in a humane and dignified manner that**
23 **is based on an appreciation of the relevant facts and after being fully informed by the**
24 **attending physician of:**

25 **(a) His or her medical diagnosis;**

26 **(b) His or her prognosis;**

27 **(c) The potential risks associated with taking the medication to be prescribed;**

28 **(d) The probable result of taking the medication to be prescribed; and**

29 **(e) The feasible alternatives including, but not limited to, comfort care, hospice**
30 **care, and pain control;**

31 **(8) "Medically confirmed", the medical opinion of the attending physician has been**
32 **confirmed by a consulting physician who has examined the patient and the patient's**
33 **relevant medical records;**

34 **(9) "Patient", a person who is under the care of a physician;**

35 **(10) "Physician", a doctor of medicine or osteopathy licensed to practice medicine**
36 **in the state of Missouri;**

37 **(11) "Qualified patient", a capable adult who is a resident of this state and has**
38 **satisfied the requirements of sections 191.1500 to 191.1565 in order to obtain a prescription**
39 **for medication to end his or her life in a humane and dignified manner;**

40 **(12) "Terminal disease", an incurable and irreversible disease that has been**
41 **medically confirmed and shall, within reasonable medical judgment, produce death within**
42 **six months.**

191.1503. 1. An adult who:

2 **(1) Is capable;**

3 **(2) Is a resident of this state;**

4 **(3) Has been determined by the attending physician and consulting physician to be**
5 **suffering from a terminal disease; and**

6 **(4) Has voluntarily expressed his or her wish to die**

7

8 may make a written request for medication for the purpose of ending his or her life in a
9 humane and dignified manner in accordance with sections 191.1500 to 191.1565.

10 2. No person shall qualify under sections 191.1500 to 191.1565 solely because of age
11 or disability.

191.1506. 1. A valid request for medication under sections 191.1500 to 191.1565
2 shall be in substantially the form described in section 191.1560, signed and dated by the
3 patient, and witnessed by at least two individuals who, in the presence of the patient, attest
4 that to the best of their knowledge and belief the patient is capable, acting voluntarily, and
5 is not being coerced to sign the request.

6 2. One of the witnesses shall be a person who is not:

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

8 (2) A person, who at the time the request is signed, would be entitled to any portion
9 of the estate of the qualified patient upon death under any will or by operation of law; or

10 (3) An owner, operator, or employee of a health care facility where the qualified
11 patient is receiving medical treatment or is a resident.

12 3. The patient's attending physician at the time the request is signed shall not be
13 a witness.

14 4. If the patient is in a long-term care facility at the time the written request is
15 made, one of the witnesses shall be an individual designated by the facility and having the
16 qualifications specified by the department of health and senior services by rule.

191.1509. 1. The attending physician shall:

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

4 (2) Request that the patient demonstrate Missouri state residency under section
5 191.1536;

6 (3) To ensure that the patient is making an informed decision, inform the patient
7 of:

8 (a) His or her medical diagnosis;

9 (b) His or her prognosis;

10 (c) The potential risks associated with taking the medication to be prescribed;

11 (d) The probable result of taking the medication to be prescribed; and

12 (e) The feasible alternatives including, but not limited to, comfort care, hospice
13 care, and pain control;

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

16 (5) Refer the patient for counseling if appropriate under section 191.1515;

- 17 **(6) Recommend that the patient notify next of kin;**
18 **(7) Counsel the patient about the importance of having another person present**
19 **when the patient takes the medication prescribed under sections 191.1500 to 191.1565 and**
20 **of not taking the medication in a public place;**
21 **(8) Inform the patient that he or she has an opportunity to rescind the request at**
22 **any time and in any manner and offer the patient an opportunity to rescind at the end of**
23 **the fifteen-day waiting period under section 191.1524;**
24 **(9) Verify, immediately before writing the prescription for medication under**
25 **sections 191.1500 to 191.1565, that the patient is making an informed decision;**
26 **(10) Fulfill the medical record documentation requirements of section 191.1533;**
27 **(11) Ensure that all appropriate steps are carried out in accordance with sections**
28 **191.1500 to 191.1565 prior to writing a prescription for medication to enable a qualified**
29 **patient to end his or her life in a humane and dignified manner; and**
30 **(12) (a) Dispense medications directly, including ancillary medications intended**
31 **to facilitate the desired effect to minimize the patient's discomfort; provided that, the**
32 **attending physician is authorized under state law and rule to dispense, has a current Drug**
33 **Enforcement Administration certificate, and complies with any applicable administrative**
34 **rule; or**
35 **(b) With the patient's written consent:**
36 **a. Contact a pharmacist and inform the pharmacist of the prescription; and**
37 **b. Deliver the written prescription personally, by mail, or facsimile to the**
38 **pharmacist, who shall dispense the medications to either the patient, the attending**
39 **physician, or an expressly identified agent of the patient.**
40 **2. Notwithstanding any other provision of law, the attending physician may sign**
41 **the patient's death certificate.**

191.1512. Before a patient is qualified under sections 191.1500 to 191.1565, a
2 **consulting physician shall examine the patient and his or her relevant medical records,**
3 **confirm in writing the attending physician's diagnosis that the patient is suffering from a**
4 **terminal disease, and verify that the patient is capable, is acting voluntarily, and has made**
5 **an informed decision.**

191.1515. If, in the opinion of the attending physician or the consulting physician,
2 **a patient may be suffering from a psychiatric or psychological disorder or depression**
3 **causing impaired judgment, such physician shall refer the patient for counseling. No**
4 **medication to end a patient's life in a humane and dignified manner shall be prescribed**
5 **until the person performing the counseling determines that the patient is not suffering from**
6 **a psychiatric or psychological disorder or depression causing impaired judgment.**

191.1518. No person shall receive a prescription for medication to end his or her
2 life in a humane and dignified manner unless he or she has made an informed decision, as
3 defined in section 191.1500. Immediately prior to writing a prescription for medication
4 under sections 191.1500 to 191.1565, the attending physician shall verify that the qualified
5 patient is making an informed decision.

191.1521. The attending physician shall recommend that the patient notify the next
2 of kin of his or her request for medication under sections 191.1500 to 191.1565. A patient
3 who declines or is unable to notify next of kin shall not have his or her request denied for
4 that reason.

191.1524. In order to receive a prescription for medication to end his or her life in
2 a humane and dignified manner, a qualified patient shall have made an oral request and
3 a written request and reiterate the oral request to his or her attending physician at least
4 fifteen days after making the initial oral request. At the time the qualified patient makes
5 his or her second oral request, the attending physician shall offer the qualified patient an
6 opportunity to rescind the request.

191.1527. A patient may rescind his or her request at any time and in any manner
2 without regard to his or her mental state. No prescription for medication under sections
3 191.1500 to 191.1565 shall be written without the attending physician offering the qualified
4 patient an opportunity to rescind the request.

191.1530. No less than fifteen days shall elapse between the patient's initial oral
2 request and the writing of a prescription under sections 191.1500 to 191.1565. No less than
3 forty-eight hours shall elapse between the date of the patient's written request and the
4 writing of a prescription under sections 191.1500 to 191.1565.

191.1533. The following shall be documented or filed in the patient's medical
2 record:

- 3 (1) All oral requests made by the patient for medication to end his or her life in a
4 humane and dignified manner;
- 5 (2) All written requests made by the patient for medication to end his or her life in
6 a humane and dignified manner;
- 7 (3) The attending physician's diagnosis and prognosis and determination that the
8 patient is capable, is acting voluntarily, and has made an informed decision;
- 9 (4) The consulting physician's diagnosis and prognosis and verification that the
10 patient is capable, is acting voluntarily, and has made an informed decision;
- 11 (5) A report of the outcome and determinations made during counseling, if
12 performed;

13 **(6) The attending physician's offer to the patient to rescind his or her request at the**
14 **time of the patient's second oral request under section 191.1524; and**

15 **(7) A note by the attending physician indicating that all requirements under**
16 **sections 191.1500 to 191.1565 have been met and indicating the steps taken to carry out the**
17 **request, including a notation of the medication prescribed.**

191.1536. Only requests made by Missouri residents under sections 191.1500 to
2 **191.1565 shall be granted. Factors demonstrating Missouri residency include, but are not**
3 **limited to:**

4 **(1) Possession of a Missouri driver's license;**

5 **(2) Registration to vote in Missouri;**

6 **(3) Evidence that the person owns or leases property in Missouri; or**

7 **(4) Filing of a Missouri tax return for the most recent tax year.**

191.1539. 1. (1) The department of health and senior services shall annually review
2 **all records maintained under sections 191.1500 to 191.1565.**

3 **(2) The department of health and senior services shall require any health care**
4 **provider upon dispensing medication under sections 191.1500 to 191.1565 to file a copy of**
5 **the dispensing record with the department.**

6 **2. The department of health and senior services shall adopt rules to facilitate the**
7 **collection of information regarding compliance with sections 191.1500 to 191.1565. Except**
8 **as otherwise required by law, the information collected shall not be a public record and**
9 **shall not be made available for inspection by the public.**

10 **3. The department of health and senior services shall generate and make available**
11 **to the public an annual statistical report of information collected under subsection 2 of this**
12 **section.**

191.1542. 1. No provision in a contract, will, or other agreement, whether written
2 **or oral, to the extent the provision would affect whether a person may make or rescind a**
3 **request for medication to end his or her life in a humane and dignified manner, shall be**
4 **valid.**

5 **2. No obligation owing under any currently existing contract shall be conditioned**
6 **or affected by the making or rescinding of a request by a person for medication to end his**
7 **or her life in a humane and dignified manner.**

191.1545. The sale, procurement, or issuance of any life, health, or accident
2 **insurance or annuity policy or the rate charged for any policy shall not be conditioned**
3 **upon or affected by the making or rescinding of a request by a person for medication to**
4 **end his or her life in a humane and dignified manner. A qualified patient's act of ingesting**

5 medication to end his or her life in a humane and dignified manner shall not have an effect
6 upon a life, health, or accident insurance or annuity policy.

7 **191.1548.** Nothing in sections 191.1500 to 191.1565 shall be construed to authorize
8 a physician or any other person to end a patient's life by lethal injection, mercy killing, or
9 active euthanasia. Actions taken in accordance with sections 191.1500 to 191.1565 shall not
10 for any purpose constitute suicide, assisted suicide, mercy killing, or homicide under the
11 law.

12 **191.1551. 1.** Except as provided in subsection 2 of this section and section 191.1557:

13 (1) No person shall be subject to civil or criminal liability or professional
14 disciplinary action for participating in good-faith compliance with sections 191.1500 to
15 191.1565, including being present when a qualified patient takes the prescribed medication
16 to end his or her life in a humane and dignified manner;

17 (2) No professional organization, association, or health care provider shall subject
18 a person to censure, discipline, suspension, loss of license, loss of privileges, loss of
19 membership, or other penalty for participating or refusing to participate in good-faith
20 compliance with sections 191.1500 to 191.1565;

21 (3) No request by a patient for or provision by an attending physician of medication
22 in good-faith compliance with sections 191.1500 to 191.1565 shall constitute neglect for any
23 purpose of law or provide the sole basis for the appointment of a guardian or conservator;
24 and

25 (4) No health care provider shall be under any duty, whether by contract, statute,
26 or any other legal requirement to participate in the provision to a qualified patient of
27 medication to end his or her life in a humane and dignified manner. If a health care
28 provider is unable or unwilling to carry out a patient's request under sections 191.1500 to
29 191.1565 and the patient transfers his or her care to a new health care provider, the prior
health care provider shall, upon request, transfer a copy of the patient's relevant medical
records to the new health care provider.

30 **2. (1)** Notwithstanding any other provision of law, a health care provider may
31 prohibit another health care provider from participating under the Missouri death with
32 dignity act on the premises of the prohibiting provider if the prohibiting provider has
33 notified the health care provider of the prohibiting provider's policy regarding
34 participation in the Missouri death with dignity act. Nothing in this subdivision shall
35 prevent a health care provider from providing health care services to a patient that do not
36 constitute participation in the Missouri death with dignity act.

37 (2) Notwithstanding the provisions of subsection 1 of this section, a health care
38 provider may subject another health care provider to the following sanctions if the
39

30 **sanctioning health care provider has notified the sanctioned provider prior to participation**
31 **under sections 191.1500 to 191.1565 that it prohibits participation in the Missouri death**
32 **with dignity act:**

33 **(a) Loss of privileges, loss of membership, or other sanctions provided under the**
34 **medical staff bylaws, policies, and procedures of the sanctioning health care provider if the**
35 **sanctioned provider is a member of the sanctioning provider's medical staff and**
36 **participates under the Missouri death with dignity act while on the health care facility**
37 **premises of the sanctioning health care provider, but not including the private medical**
38 **office of a physician or other provider;**

39 **(b) Termination of a lease or other property contract or other nonmonetary**
40 **remedies provided by a lease contract, not including loss or restriction of medical staff**
41 **privileges or exclusion from a provider panel, if the sanctioned provider participates under**
42 **the Missouri death with dignity act while on the premises of the sanctioning health care**
43 **provider or on property that is owned by or under the direct control of the sanctioning**
44 **health care provider; or**

45 **(c) Termination of a contract or other nonmonetary remedies provided by contract**
46 **if the sanctioned provider participates under the Missouri death with dignity act while**
47 **acting in the course and scope of the sanctioned provider's capacity as an employee or**
48 **independent contractor of the sanctioning health care provider. Nothing in this paragraph**
49 **shall be construed to prevent:**

50 **a. A health care provider from participating under the Missouri death with dignity**
51 **act while acting outside the course and scope of the provider's capacity as an employee or**
52 **independent contractor; or**

53 **b. A patient from contracting with his or her attending physician and consulting**
54 **physician to act outside the course and scope of the provider's capacity as an employee or**
55 **independent contractor of the sanctioning health care provider.**

56 **(3) A health care provider that imposes sanctions under subdivision (2) of this**
57 **subsection shall follow all due process and other procedures the sanctioning health care**
58 **provider may have that are related to the imposition of sanctions on another health care**
59 **provider.**

60 **(4) For the purposes of this subsection, the following terms shall mean:**

61 **(a) "Notify", a separate statement in writing to the health care provider specifically**
62 **informing the health care provider before the provider's participation under the Missouri**
63 **death with dignity act of the sanctioning health care provider's policy about participation**
64 **in activities covered by the Missouri death with dignity act;**

65 (b) "Participate under the Missouri death with dignity act", to perform the duties
66 of an attending physician under section 191.1512, the consulting physician function under
67 section 191.1512, or the counseling function under section 191.1515. "Participate under
68 the Missouri death with dignity act" shall not include:

69 a. Making an initial determination that a patient has a terminal disease and
70 informing the patient of the medical prognosis;

71 b. Providing information about the Missouri death with dignity act to a patient
72 upon the request of the patient;

73 c. Providing a patient, upon the request of the patient, with a referral to another
74 physician; or

75 d. A patient contracting with his or her attending physician and consulting
76 physician to act outside of the course and scope of the provider's capacity as an employee
77 or independent contractor of the sanctioning health care provider.

78 3. Suspension or termination of staff membership or privileges under subsection
79 2 of this section is not reportable to the department or state board of registration for the
80 healing arts. Action taken under sections 191.1506 to 191.1515 shall not be the sole basis
81 for a report of unprofessional conduct.

82 4. No provision of sections 191.1500 to 191.1565 shall be construed to allow a lower
83 standard of care for patients in the community where the patient is treated or a similar
84 community.

191.1554. 1. A person, who without authorization of the patient, willfully alters
2 or forges a request for medication or conceals or destroys a rescission of that request with
3 the intent or effect of causing the patient's death is guilty of a class A felony.

4 2. A person who coerces or exerts undue influence on a patient to request
5 medication to end the patient's life or to destroy a rescission of a request is guilty of a class
6 A felony.

7 3. Nothing in sections 191.1500 to 191.1565 shall limit further liability for civil
8 damages resulting from other negligent conduct or intentional misconduct by any person.

9 4. The penalties in sections 191.1500 to 191.1565 do not preclude criminal penalties
10 applicable under other law for conduct that is inconsistent with sections 191.1500 to
11 191.1565.

191.1557. Any governmental entity that incurs costs resulting from a person
2 terminating his or her life under sections 191.1500 to 191.1565 in a public place has a claim
3 against the estate of the person to recover such costs and reasonable attorneys' fees related
4 to enforcing the claim.

191.1560. A request for medication as authorized by sections 191.1500 to 191.1565 shall be in substantially the following form:

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

I, , am an adult of sound mind.

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

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

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

INITIAL ONE:

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

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

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

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

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

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

Signed:

Dated:

DECLARATION OF WITNESSES

We declare that the person making and signing the above request:

(1) Is personally known to us or has provided proof of identity;

(2) Signed this request in our presence on the date of the person's signature;

(3) Appears to be of sound mind and not under duress, fraud, or undue influence; and

(4) Is not a patient for whom either of us is the attending physician.

..... Witness 1/Date

..... Witness 2/Date

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

191.1563. 1. Any person who, without authorization of the principal, willfully
2 **alters, forges, conceals, or destroys an instrument, the reinstatement or revocation of an**
3 **instrument, or any other evidence or document reflecting the principal's desires and**
4 **interests with the intent and effect of causing a withholding or withdrawal of life-sustaining**
5 **procedures or of artificially administered nutrition and hydration which hastens the death**
6 **of the principal is guilty of a class A felony.**

7 **2. Except as provided in subsection 1 of this section, any person who, without**
8 **authorization of the principal, willfully alters, forges, conceals, or destroys an instrument,**
9 **the reinstatement or revocation of an instrument, or any other evidence or document**
10 **reflecting the principal's desires and interests with the intent and effect of affecting a**
11 **health care decision is guilty of a class A misdemeanor.**

191.1565. The department of health and senior services may promulgate rules to
2 **implement the provisions of sections 191.1500 to 191.1565. Any rule or portion of a rule,**
3 **as that term is defined in section 536.010, that is created under the authority delegated in**
4 **sections 191.1500 to 191.1565 shall become effective only if it complies with and is subject**
5 **to all of the provisions of chapter 536 and, if applicable, section 536.028. Sections 191.1500**
6 **to 191.1565 and chapter 536 are nonseverable, and if any of the powers vested with the**
7 **general assembly pursuant to chapter 536 to review, to delay the effective date, or to**
8 **disapprove and annul a rule are subsequently held unconstitutional, then the grant of**
9 **rulemaking authority and any rule proposed or adopted after August 28, 2018, shall be**
10 **invalid and void.**

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