

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 525

Short Title: Revise Natural Death Act.

(Public)

Sponsors: Senator Daniel.

Referred to: Judiciary II.

March 23, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE REVISIONS TO THE RIGHT TO A NATURAL DEATH ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-321(a) reads as rewritten:

"(a) As used in this Article the term:

- (1) 'Declarant' means a person who has signed a declaration in accordance with subsection (c);
- (2) 'Extraordinary means' is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;
- (2a) 'Health care' means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for a person's physical or mental health, including extraordinary means and artificial nutrition or hydration;
- (3) 'Physician' means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina;
- (4) 'Persistent vegetative state' is a medical condition whereby in the judgment of the attending physician the patient suffers from a sustained complete loss of self-aware cognition and, without the use of extraordinary means or artificial nutrition or hydration, will succumb to death within a short period of time."

Sec. 2. G.S. 90-321(d) reads as rewritten:

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"(d) The following form is specifically determined to meet the requirements above:

'DECLARATION OF A DESIRE FOR A NATURAL DEATH'

I, ....., being of sound mind, hereby make this declaration of my desire that my life not be artificially prolonged as specified below: desire that, as specified below, my life not be prolonged by extraordinary means or by artificial nutrition or hydration if my condition is determined to be terminal and incurable or if I am diagnosed as being in a persistent vegetative state. I am aware and understand that this writing authorizes a physician to withhold or discontinue extraordinary means or artificial nutrition or hydration, in accordance with my specifications set forth below:

(Initial any of the following, as desired):

'..... If my condition is determined to be terminal and incurable, I authorize the following:

..... My physician may withhold or discontinue extraordinary means only means.

..... In addition to withholding or discontinuing extraordinary means if such means are necessary, my physician may withhold or discontinue either artificial nutrition or hydration, or both. My physician may withhold or discontinue any health care including without limitation extraordinary means and artificial nutrition or hydration except health care that provides comfort or alleviates pain.

'..... If my physician determines that I am in my condition is diagnosed to be a persistent vegetative state, I authorize the following:

..... My physician may withhold or discontinue extraordinary means only means.

..... In addition to withholding or discontinuing extraordinary means if such means are necessary, my physician may withhold or discontinue either artificial nutrition or hydration, or both. My physician may withhold or discontinue any health care including without limitation extraordinary means and artificial nutrition or hydration except health care that provides comfort or alleviates pain.

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' I am aware that this declaration authorizes a physician to withhold or discontinue health care in accordance with the instructions provided above.

'This the .....day of.....

Signature.....

'I hereby state that the declarant,....., being of sound ~~mind~~mind, signed the ~~above foregoing~~ declaration in my ~~presence~~presence. ~~and that I am not related to the declarant by blood or marriage and that I am not related within the third degree to the declarant or to the declarant's spouse, and~~ I do not know or have a reasonable expectation that I would be entitled to any portion of the estate of the declarant upon the declarant's death under any existing will or codicil or of the declarant or as an heir under the Intestate Succession Act ~~Act~~. ~~if the declarant died on this date without a will. I also state that I am not the declarant's attending physician or physician, an employee of the declarant's attending physician, or an employee of a health facility care facility, nursing home, or group care home in which the declarant is a patient or resident. an employee of a nursing home or any group care home where the declarant resides. I further state that I do not now~~ have any claim against the declarant.

Witness .....

Witness' .....

The clerk or the assistant clerk, or a notary public may, upon proper proof, certify the declaration as follows:

**'CERTIFICATE'**

'I, ....., Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as appropriate) for .....County hereby certify that....., ~~the~~ declarant, appeared before me and swore to me and to the witnesses in my presence that this declaration is declarant's instrument is his Declaration Of A Desire For A Natural Death, and that ~~he~~ declarant had willingly and voluntarily made and executed it as his declarant's free act and deed for the purposes expressed in it.

'I further certify that ..... and ....., witnesses, appeared before me and swore that they witnessed ....., declarant, ~~sign the attached declaration, believing him to be of sound mind; and also swore that at the time they witnessed the declaration this~~ declaration, believing declarant to be of sound mind; and also swore that at the time they witnessed its execution that (i) they were not related within the third degree to the declarant or to the declarant's spouse, and (ii) they did not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant declarant's estate upon the declarant's death under any existing will or codicil of the declarant or codicil thereto then existing or under the Intestate Succession Act Act, as it provides at that time, and (iii) they were not a physician attending the declarant or declarant, an employee of an attending physician-physician, or an employee of a health care facility-facility, nursing home, or group care home in which the declarant was a

1 patient or resident, and ~~an employee of a nursing home or any group care home in which the~~  
2 ~~declarant resided, and~~ (iv) they did not have a claim against the declarant. I further certify  
3 that I am satisfied as to the genuineness and due execution of ~~the~~ this declaration.

4 'This the ..... day of ....., .....

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8 'Notary Public for \_\_\_\_\_ County OR Clerk of Superior Court for  
9 \_\_\_\_\_ County.

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11 My Commission Expires: \_\_\_\_\_ '.

12 ~~Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one as~~  
13 ~~appropriate) for the County of .....~~"

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15 The above declaration may be proved by the clerk or the assistant clerk, or a notary  
16 public in the following manner:

- 17 (1) Upon the testimony of the two witnesses; or
- 18 (2) If the testimony of only one witness is available, then
  - 19 a. Upon the testimony of such witness, and
  - 20 b. Upon proof of the handwriting of the witness who is dead or
  - 21 whose testimony is otherwise unavailable, and
  - 22 c. Upon proof of the handwriting of the declarant, unless he
  - 23 signed by his mark; or upon proof of such other circumstances
  - 24 as will satisfy the clerk or assistant clerk of the superior court,
  - 25 or a notary public as to the genuineness and due execution of
  - 26 the declaration.
- 27 (3) If the testimony of none of the witnesses is available, such declaration  
28 may be proved by the clerk or assistant clerk, or a notary public
  - 29 a. Upon proof of the handwriting of the two witnesses whose
  - 30 testimony is unavailable, and
  - 31 b. Upon compliance with paragraph c of subdivision (2) above.

32 Due execution may be established, where the evidence required above is  
33 unavoidably lacking or inadequate, by testimony of other competent witnesses as to the  
34 requisite facts.

35 The testimony of a witness is unavailable within the meaning of this subsection  
36 when the witness is dead, out of the State, not to be found within the State, insane or  
37 otherwise incompetent, physically unable to testify or refuses to testify.

38 If the testimony of one or both of the witnesses is not available the clerk or the  
39 assistant clerk, or a notary public or superior court may, upon proper proof, certify the  
40 declaration as follows:

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42 **'CERTIFICATE'**  
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