

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 525
Judiciary II Committee Substitute Adopted 4/27/93

Short Title: Revise Natural Death Act.

(Public)

Sponsors:

Referred to:

March 23, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE REVISIONS TO THE RIGHT TO A NATURAL DEATH ACT.
3 The General Assembly of North Carolina enacts:

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

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

6 (1) 'Declarant' means a person who has signed a declaration in accordance
7 with subsection (c);

8 (2) 'Extraordinary means' is defined as any medical procedure or
9 intervention which in the judgment of the attending physician would
10 serve only to postpone artificially the moment of death by sustaining,
11 restoring, or supplanting a vital function;

12 (2a) 'Health care' means any care, treatment, service, or procedure to
13 maintain, diagnose, treat, or provide for a person's physical or mental
14 health, including extraordinary means and artificial nutrition or
15 hydration;

16 (3) 'Physician' means any person licensed to practice medicine under
17 Article 1 of Chapter 90 of the laws of the State of North Carolina;

18 (4) 'Persistent vegetative state' is a medical condition whereby in the
19 judgment of the attending physician the patient suffers from a
20 sustained complete loss of self-aware cognition and, without the use of
21 extraordinary means or artificial nutrition or hydration, will succumb
22 to death within a short period of time."

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

1 "(b) If a person has declared, in accordance with subsection (c) below, a desire
2 that his life not be prolonged by extraordinary means or ~~by artificial nutrition or hydration,~~
3 any other health care except health care that provides comfort or alleviates pain, and the
4 declaration has not been revoked in accordance with subsection (e); and

5 (1) It is determined by the attending physician that the declarant's present
6 condition is

7 a. Terminal; and

8 b. Incurable; or

9 c. Diagnosed as a persistent vegetative state; and

10 (2) There is confirmation of the declarant's present condition as set out
11 above in subdivision (b)(1) by a physician other than the attending
12 physician;

13 then extraordinary means or artificial nutrition or hydration, as specified by the
14 declarant, may be withheld or discontinued upon the direction and under the supervision
15 of the attending physician."

16 Sec. 3. G.S. 90-321(c) reads as rewritten:

17 "(c) The attending physician may rely upon a signed, witnessed, dated and proved
18 declaration:

19 (1) Which expresses a desire of the declarant that extraordinary means or
20 ~~artificial nutrition or hydration~~any other health care except health care
21 that provides comfort or alleviates pain not be used to prolong his life
22 if his condition is determined to be terminal and incurable, or if the
23 declarant is diagnosed as being in a persistent vegetative state; and

24 (2) Which states that the declarant is aware that the declaration authorizes
25 a physician to withhold or discontinue the extraordinary means or
26 ~~artificial nutrition or hydration;~~any other health care except health care
27 that provides comfort or alleviates pain; and

28 (3) Which has been signed by the declarant in the presence of two
29 witnesses who believe the declarant to be of sound mind and who state
30 that they (i) are not related within the third degree to the declarant or to
31 the declarant's spouse, (ii) do not know or have a reasonable
32 expectation that they would be entitled to any portion of the estate of
33 the declarant upon his death under any will of the declarant or codicil
34 thereto then existing or under the Intestate Succession Act as it then
35 provides, (iii) are not the attending physician, or an employee of the
36 attending physician, or an employee of a health facility in which the
37 declarant is a patient, or an employee of a nursing home or any group-
38 care home in which the declarant resides, and (iv) do not have a claim
39 against any portion of the estate of the declarant at the time of the
40 declaration; and

41 (4) Which has been proved before a clerk or assistant clerk of superior
42 court, or a notary public who certifies substantially as set out in
43 subsection (d) below."

44 Sec. 4. G.S. 90-321(d) reads as rewritten:

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

3
4 **'DECLARATION OF A DESIRE FOR A NATURAL DEATH'**

5
6 'I,, being of sound mind, hereby make this declaration of my desire that my
7 life not be artificially prolonged in accordance with the lines I have initialed below:
8 ~~desire that, as specified below, my life not be prolonged by extraordinary means or by artificial~~
9 ~~nutrition or hydration if my condition is determined to be terminal and incurable or if I am~~
10 ~~diagnosed as being in a persistent vegetative state. I am aware and understand that this writing~~
11 ~~authorizes a physician to withhold or discontinue extraordinary means or artificial nutrition or~~
12 ~~hydration, in accordance with my specifications set forth below:~~

13 (Initial any of the following, as desired):

14
15 '.... 1. If my condition is determined to be terminal
16 and incurable, I authorize the following:

17
18 My physician may withhold or discontinue
19 extraordinary ~~means only.~~ means.

20
21 ~~In addition to withholding or discontinuing~~
22 ~~extraordinary means if such means are necessary, my~~
23 ~~physician may withhold or discontinue either artificial~~
24 ~~nutrition or hydration, or both. My physician may~~
25 ~~withhold or discontinue any health care including,~~
26 ~~without limitation, extraordinary means and artificial~~
27 ~~nutrition or hydration except health care that provides~~
28 ~~comfort or alleviates pain.~~

29
30 '.... 2. If ~~my physician determines that I am in~~ my condition is diagnosed to be
31 a persistent vegetative state, I authorize the following:

32
33 My physician may withhold or discontinue
34 extraordinary ~~means only.~~ means.

35
36 ~~In addition to withholding or discontinuing~~
37 ~~extraordinary means if such means are necessary, my~~
38 ~~physician may withhold or discontinue either artificial~~
39 ~~nutrition or hydration, or both. My physician may~~
40 ~~withhold or discontinue any health care including,~~
41 ~~without limitation, extraordinary means and artificial~~
42 ~~nutrition or hydration except health care that provides~~
43 ~~comfort or alleviates pain.~~

44

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

3 'This theday of.....

4 Signature.....

5
6 'I hereby state that the declarant,....., being of sound ~~mind~~mind, signed the
7 ~~above foregoing~~ declaration in my ~~presence~~presence. ~~and that~~ I am not related to the
8 declarant by blood or marriage and ~~that~~ I do not know or have a reasonable expectation
9 that I would be entitled to any portion of the estate of the declarant upon the declarant's
10 death under any existing will or codicil or of the declarant or as an heir under the Intestate
11 Succession Act Act. ~~if the declarant died on this date without a will.~~ I also state that I am not
12 the declarant's attending ~~physieian or~~physician, an employee of the declarant's attending
13 physician, or an employee of a health ~~facility~~care facility, nursing home, or group care
14 home in which the declarant is a patient or resident. ~~an employee of a nursing home or any~~
15 ~~group care home where the declarant resides.~~ I further state that I do not ~~now~~ have any claim
16 against the declarant.

17 Witness

18 Witness

19
20 The clerk or the assistant clerk, or a notary public may, upon proper proof, certify
21 the declaration as follows:

22
23 **'CERTIFICATE'**

24
25 'I,, Clerk (Assistant Clerk) of Superior Court or Notary Public (circle one
26 as appropriate) forCounty hereby certify
27 that....., ~~the~~ declarant, appeared before me and swore to me and to the
28 witnesses in my presence that this declaration is declarant's instrument is his Declaration
29 Of A Desire For A Natural Death, and that ~~he~~ declarant had willingly and voluntarily
30 made and executed it as his declarant's free act and deed for the purposes expressed in it.

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

1 ~~declarant resided, and~~(iv) they did not have a claim against the declarant. I further certify
2 that I am satisfied as to the genuineness and due execution of ~~the~~this declaration.

3 'This the day of,

7 'Notary Public for _____ County OR Clerk of Superior Court for
8 _____ County.

10 My Commission Expires: _____'.

11 ~~Clerk (Assistant Clerk) of Superior Court or Notary Public (eirele one as~~
12 ~~appropriate) for the County of"~~

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

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

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

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

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

41 **'CERTIFICATE'**

43 'I, Clerk (Assistant Clerk) of Court for the Superior Court or Notary Public
44 (circle one as appropriate) of..... County hereby certify that based upon the evidence

1 before me I am satisfied as to the genuineness and due execution of the attached
2 declaration by, declarant, and that the declarant's signature was witnessed
3 by....., and, who at the time of the declaration met the qualifications of
4 G.S. 90-321(c)(3).

5 'This the day of,

6

7

Clerk (Assistant Clerk) of Superior Court or

8

Notary Public (circle one as appropriate) for

9

..... County."

10

Sec. 5. G.S. 90-321(i) reads as rewritten:

11

"(i) Any certificate in the form provided by this section prior to ~~July 1, 1979,~~

12

January 1, 1994, shall continue to be valid."

13

Sec. 6. This act becomes effective October 1, 1993, and applies to
14 declarations executed on or after that date. This act does not affect the validity of any

15

"Declaration Of A Desire For A Natural Death" executed prior to the effective date of

16

this act.