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HOUSE BILL NO. 2713

Offered January 15, 2019

A *BILL to amend and reenact § 8.01-622.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 29 of Title 54.1 an article numbered 11, consisting of sections numbered 54.1-2999 through 54.1-2999.8, relating to Death with Dignity Act; penalties.*

Patrons—Kory, Hope and Rasoul

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-622.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 29 of Title 54.1 an article numbered 11, consisting of sections numbered 54.1-2999 through 54.1-2999.8, as follows:

§ 8.01-622.1. Injunction against assisted suicide; damages; professional sanctions.

A. Any person who knowingly and intentionally, with the purpose of assisting another person to commit or attempt to commit suicide, (i) provides the physical means by which another person commits or attempts to commit suicide or (ii) participates in a physical act by which another person commits or attempts to commit suicide shall be liable for damages as provided in this section and may be enjoined from such acts.

B. A cause of action for injunctive relief against any person who is reasonably expected to assist or attempt to assist a suicide may be maintained by any person who is the spouse, parent, child, sibling or guardian of, or a current or former licensed health care provider of, the person who would commit suicide; by an attorney for the Commonwealth with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the person from assisting any suicide in the Commonwealth.

C. A spouse, parent, child or sibling of a person who commits or attempts to commit suicide may recover compensatory and punitive damages in a civil action from any person who provided the physical means for the suicide or attempted suicide or who participated in a physical act by which the other person committed or attempted to commit suicide.

D. A licensed health care provider who assists or attempts to assist a suicide shall be considered to have engaged in unprofessional conduct for which his certificate or license to provide health care services in the Commonwealth shall be suspended or revoked by the licensing authority.

E. Nothing in this section shall be construed to limit or conflict with § 54.1-2971.01 or, the Health Care Decisions Act (§ 54.1-2981 et seq.), or the *Death with Dignity Act* (§ 54.1-2999 et seq.). This section shall not apply to a licensed health care provider who (i) administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort and without intent to cause death, even if the medication or procedure may hasten or increase the risk of death, or (ii) withholds or withdraws life-prolonging procedures as defined in § 54.1-2982. This section shall not apply to any person who properly administers a legally prescribed medication without intent to cause death, even if the medication may hasten or increase the risk of death.

F. For purposes of this section:

"Licensed health care provider" means a physician, surgeon, podiatrist, osteopath, osteopathic physician and surgeon, physician assistant, nurse, dentist or pharmacist licensed under the laws of this Commonwealth.

"Suicide" means the act or instance of taking one's own life voluntarily and intentionally.

Article 11.

Death with Dignity Act.

§ 54.1-2999. Definitions.

As used in this article, unless the context requires a different meaning:

"Attending physician" means the primary physician who has responsibility for the health care of the patient and the treatment of the patient's disease.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Consulting physician" means a physician who is qualified by training or experience to make a professional diagnosis and prognosis regarding the patient's disease and to determine whether the patient is making an informed decision.

"Health care provider" means (i) a person, corporation, facility, or institution licensed by the Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse or person who holds a multistate privilege to

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59 practice such nursing under the Nurse Licensure Compact, nurse practitioner, optometrist, podiatrist,
60 physician assistant, chiropractor, physical therapist, physical therapy assistant, clinical psychologist,
61 clinical social worker, professional counselor, licensed marriage and family therapist, licensed dental
62 hygienist, health maintenance organization, or emergency medical care attendant or technician who
63 provides services on a fee basis; (ii) a professional corporation, all of whose shareholders or members
64 are so licensed; (iii) a partnership, all of whose partners are so licensed; (iv) a nursing home as
65 defined in § 54.1-3100, except those nursing institutions conducted by and for those who rely upon
66 treatment by spiritual means alone through prayer in accordance with a recognized church or religious
67 denomination; (v) a professional limited liability company composed of members as described in
68 subdivision 2 of the definition of professional services in subsection A of § 13.1-1102; (vi) a
69 corporation, partnership, limited liability company, or any other entity, except a state-operated facility,
70 that employs or engages a licensed health care provider and primarily renders health care services; or
71 (vii) a director, officer, employee, independent contractor, or agent of the persons or entities referenced
72 in this definition, acting within the course and scope of his employment or engagement as related to
73 health care or professional services.

74 "Informed decision" means a decision by a qualified patient to request and obtain medication to end
75 his life in a humane and dignified manner after being fully informed by the attending physician of (i) his
76 medical diagnosis; (ii) his prognosis; (iii) the potential risks associated with taking the medication to be
77 prescribed; (iv) the probable result of taking the medication to be prescribed; and (v) any feasible
78 alternatives, including comfort care, hospice, and pain control. A patient is not capable of making an
79 informed decision if, because of mental illness, intellectual disability, or any other mental or physical
80 disorder that precludes communication or impairs judgment, he cannot make an informed decision about
81 providing, continuing, withholding, or withdrawing a specific health care treatment or course of
82 treatment because he is unable to understand the nature, extent, or probable consequences of the
83 proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives
84 to that decision. For purposes of this article, persons who are deaf, dysphasic, or have other
85 communication disorders, who are otherwise mentally competent and able to communicate by means
86 other than speech, shall not be considered incapable of making an informed decision.

87 "Medically confirmed" means the medical opinion of the attending physician has been confirmed by
88 a consulting physician who has examined the patient and the patient's relevant medical records.

89 "Oral request" means (i) a patient's verbal request or (ii) if the patient is deaf, dysphasic, or has any
90 other communication disorder that prevents him from making a verbal request but the patient is able to
91 communicate by means other than speech, a request made by the patient in whatever form of
92 communication that he is capable of and accustomed to using, which may include use of alternative or
93 augmentative communication devices, auxiliary aids, sign language, interpretation services, or other
94 communications supports.

95 "Patient" means a person who is under the care of a physician.

96 "Physician" means a person licensed to practice medicine in the Commonwealth of Virginia.

97 "Qualified patient" means an adult who is a Virginia resident and has satisfied the requirements of
98 this article in order to obtain a prescription for medication to end his life in a humane and dignified
99 manner.

100 "Terminal condition" means a medically confirmed condition caused by injury, disease, or illness
101 from which, to a reasonable degree of medical probability, a patient cannot recover and the patient's
102 death will occur within six months.

103 "Virginia resident" means any person who maintains his principal place of abode in Virginia with
104 the intent to make Virginia his domicile.

105 **§ 54.1-2999.1. Request for medication to end life; requirements; informed decision; right to**
106 **rescind; waiting period; form.**

107 A. A qualified patient who has been determined by the attending physician and consulting physician
108 to be suffering from a terminal condition and has voluntarily expressed his wish to die may request
109 medication for the purpose of ending his life in a humane and dignified manner in accordance with the
110 provisions of this article.

111 B. In order to receive a prescription for medication to end his life in a humane and dignified
112 manner, a qualified patient shall make an oral request and a written request to the attending physician,
113 and reiterate the oral request to his attending physician no less than 15 days after making the initial
114 oral request. At the time that the qualified patient makes his second oral request, the attending
115 physician shall offer the patient an opportunity to rescind the request. A patient may rescind his request
116 at any time and in any manner without regard to his mental state. No prescription for medication under
117 this article may be written (i) before the attending physician offers the qualified patient an opportunity
118 to rescind the request; (ii) until 15 days have lapsed since the patient's initial oral request; and (iii)
119 until 48 hours have lapsed since the patient's written request.

120 C. No person shall receive a prescription for medication to end his life in a humane and dignified

manner unless he has made an informed decision to receive such medication. Immediately prior to writing a prescription for medication under this article, the attending physician shall verify that the patient is making an informed decision.

D. Nothing in this article shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or euthanasia. Actions taken in accordance with this article shall not constitute suicide, assisted suicide, mercy killing, or homicide for any purpose under the law.

E. A patient's written request for medication for the purpose of ending his life in a humane and dignified manner shall be signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief, the patient is making an informed decision, is acting voluntarily, and is not being coerced to sign the request. At least one witness shall not be (i) a relative of the patient by blood, marriage, or adoption; (ii) entitled to any portion of the patient's estate upon his death by will or operation of law; or (iii) an owner, operator, or employee of a health care facility in which the patient is a resident or is receiving medical care. The patient's attending physician at the time that the request is signed may not serve as a witness. If the patient is a resident in a long-term care facility at the time that the request is made, one of the witnesses shall be an individual designated by the facility and having qualifications specified by regulation of the Board.

F. A patient's written request for medication for the purpose of ending his life in a humane and dignified manner in accordance with the provisions of this article shall be executed 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 condition and which has been medically confirmed by a consulting physician.

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

Name: _____

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

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

2. Signed this request in our presence;

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.

We also declare that our signatures comply with the following: One witness shall not be a relative by blood, marriage, or adoption of the person signing this request; shall not be entitled to any portion of the person's estate upon death; and shall not own, operate, or be employed at a long-term health care facility in which the person is a patient or resident. If the person is a resident at a long-term health care facility, one of the witnesses shall be an individual designated by the facility and having qualifications specified by regulation of the Board.

Witness Name: _____

Signature: _____

Date: _____

Witness Name: _____

Signature: _____

Date: _____

§ 54.1-2999.2. Duties of attending physician and consulting physician.

A. The attending physician of a patient who requests medication for the purpose of ending his life in a humane and dignified manner in accordance with the provisions of this article shall:

1. Determine whether the patient has a terminal condition and has made the request voluntarily;
2. Request that the patient demonstrate Virginia residency by presenting documents deemed acceptable to verify Virginia residency by regulation of the Board;
3. Ensure that the patient is making an informed decision;
4. Refer the patient to a consulting physician for medical confirmation of the terminal condition diagnosis, and for a determination that the patient is making an informed decision and acting voluntarily;
5. Refer the patient to a capacity reviewer if the attending physician is uncertain as to whether the patient is making an informed decision;
6. Recommend that the patient notify his next of kin of his request for medication to end his life in a humane and dignified manner. A patient's request for medication to end his life in a humane and dignified manner shall not be denied based on his unwillingness or inability to notify his next of kin of his request pursuant to this subdivision;
7. Counsel the patient about the importance of having another person present when the patient takes the medication prescribed pursuant to this article and of not taking the medication in a public place;
8. Inform the patient that he may rescind his request for medication to end his life at any time and in any manner and offer the patient an opportunity to rescind at the end of the 15-day waiting period pursuant to § 54.1-2999.1;
9. Verify, immediately prior to writing the prescription for medication to end the patient's life, that the patient is making an informed decision;
10. Confirm that all requirements under this article have been met prior to writing a prescription for medication to enable the qualified patient to end his life in a humane and dignified manner;
11. Document and file in the patient's medical record (i) all oral and written requests by the patient for medication to end his life in a humane and dignified manner; (ii) the attending physician's diagnosis and prognosis and his determination that the patient is acting voluntarily and has made an informed decision; (iii) the consulting physician's diagnosis and prognosis and his verification that the patient is acting voluntarily and has made an informed decision; (iv) a report of the determinations made by the capacity reviewer, if applicable; (v) the attending physician's offer to the patient to rescind his request at the time of the patient's second oral request pursuant to § 54.1-2999.1; and (vi) a note by the attending physician indicating that all requirements under this article have been met and detailing the steps taken to carry out the patient's request, including a description of the medication prescribed; and
12. Either (i) dispense the requested medications directly, including ancillary medications intended to facilitate the desired effect or minimize the patient's discomfort, provided that the attending physician is licensed by the Board of Pharmacy to dispense controlled substances, has a current U.S. Drug Enforcement Administration certificate, and complies with all other applicable statutory and regulatory requirements for the dispensing of controlled substances, or (ii) with the patient's written consent, inform a pharmacist of the prescription and deliver the written prescription personally or by mail to such pharmacist, who will dispense the medications to either the patient, the attending physician, or an expressly identified agent of the patient.

B. The consulting physician of a patient who has been referred to the consulting physician by the patient's attending physician due to the patient's request for medication for the purpose of ending his life in a humane and dignified manner shall (i) examine the patient and his relevant medical records and confirm or reject, in writing, the attending physician's diagnosis that the patient is suffering from a terminal condition; (ii) verify that the patient is acting voluntarily and has made an informed decision; and (iii) refer the patient to a capacity reviewer if the consulting physician is uncertain as to whether the patient is making an informed decision.

C. Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate.

§ 54.1-2999.3. Effect on wills and contracts.

Any provision of a contract, will, or other agreement, written or oral, shall be invalid to the extent that it would affect whether a person may make or rescind a request for medication to end his life in a humane and dignified manner.

§ 54.1-2999.4. Effect on insurance and annuity policies.

Notwithstanding subsection B of § 38.2-3106, the fact that a patient requests and ingests medication to end his life in a humane and dignified manner pursuant to the provisions of this article shall not be a defense in any action, motion, or other proceeding on a life, health, or accident insurance policy or annuity contract that (i) was issued to any person residing in the Commonwealth at the time of issuance or (ii) is otherwise subject to the laws of this Commonwealth to recover for the death of that person.

§ 54.1-2999.5. Reporting requirement.

The Board shall:

1. Annually review a sample of records maintained by attending physicians pursuant to subdivision A 11 of § 54.1-2999.2;

2. Require any health care provider, upon dispensing medication pursuant to this article, to file a copy of the dispensing record with the Board;

3. Adopt rules to facilitate the collection of information regarding compliance with the provisions of this article. Except as otherwise required by law, the information collected shall not be a public record or be made available for public inspection; and

4. Generate and make available to the public an annual statistical report of nonidentifying information collected pursuant to this section.

§ 54.1-2999.6. Claims by governmental entities for costs incurred.

Any governmental entity that incurs costs resulting from a person terminating his life pursuant to the provisions of this article in a public place shall have a claim against the estate of the person to recover such costs and reasonable attorney fees related to enforcing the claim.

§ 54.1-2999.7. Criminal liabilities and penalties.

A. A person who without authorization of the patient willfully and deliberately alters, forges, conceals, or destroys a patient's request, or rescission of request, for medication to end his life with the intent and effect of causing the patient's death is guilty of a Class 2 felony.

B. A person who coerces, intimidates, or exerts undue influence on a patient to request medication for the purpose of ending the patient's life or to destroy the patient's rescission of such request with the intent and effect of causing the patient's death is guilty of a Class 2 felony.

C. Nothing in this article limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

D. The penalties in this article do not preclude criminal penalties under other applicable law for conduct that is inconsistent with the provisions of this article.

§ 54.1-2999.8. Immunity; prohibiting health care provider from participation; notice; sanctions.

Except as provided in § 54.1-2999.7:

1. No person shall be subject to civil or criminal liability or professional disciplinary action for complying in good faith with a patient's request for medication to end his life in a humane and dignified manner in accordance with the provisions of this article, or for assisting a patient in voluntarily ingesting such medicine.

2. No professional organization or association, or health care provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for complying in good faith or refusing to comply with a patient's request for medication to end his life in a humane and dignified manner in accordance with the provisions of this article.

3. No request by a patient for medication to end his life in a humane and dignified manner or an attending physician's good faith compliance with such request in accordance with the provisions of this article shall provide the sole basis for the appointment of a guardian or conservator for the patient.

4. No health care provider shall be required by contract, statute, or any other legal requirement to participate in the provision to a qualified patient of medication to end his life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this article, and the patient transfers his care to a new health care provider, the prior health care provider shall transfer, upon the patient's request, a copy of the patient's relevant medical records to the new health care provider.

5. Notwithstanding the provisions of subdivision 2, a health care provider may (i) prohibit the performance of acts pursuant to this article on its premises by another health care provider, provided that the prohibiting health care provider has given written notice to the provider to be prohibited, and (ii) impose any of the following sanctions against health care providers that, despite notice of the prohibition, perform such acts on its premises: (a) loss of privileges, loss of membership, or another sanction pursuant to the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff; (b) termination of lease or other property contract or other nonmonetary remedies provided by such lease or other property contract; or (c) termination of contract or other nonmonetary remedies provided by such contract if the sanctioned provider was acting within the course and scope of his capacity as an employee or independent contractor of the sanctioning provider. A health care provider that imposes sanctions pursuant to this subdivision must follow all due process and other procedures that are required or given to other sanctioned providers. Nothing in this subdivision shall be construed to prevent (1) a health care provider from performing acts pursuant to this article on property not located on the premises of the prohibiting provider and while acting outside the course and scope of his capacity as an employee or independent contractor of the prohibiting provider or (2) a patient from contracting with his attending physician or consulting physician to perform acts pursuant to this article

305 *on property not located on the premises of the prohibiting provider and while acting outside the course*
306 *and scope of the physician's capacity as an employee or independent contractor of the prohibiting*
307 *health care provider. For purposes of this subdivision, the following acts shall not be considered to be*
308 *acts performed pursuant to this article: (A) making an initial determination that a patient has a terminal*
309 *condition and informing the patient of his medical prognosis; (B) providing information about the*
310 *provisions of this article to a patient upon the patient's request; (C) referring a patient to another*
311 *physician upon the patient's request; or (D) a patient contracting with his attending physician or*
312 *consulting physician to perform acts pursuant to this article on property not located on the premises of*
313 *the prohibiting provider and while acting outside the course and scope of the physician's capacity as an*
314 *employee or independent contractor of the prohibiting health care provider. Acts performed pursuant to*
315 *this article shall not constitute unprofessional conduct for purposes of § 54.1-2915, regardless of*
316 *whether such acts were performed in violation of a health care provider's policy.*
317 **2. That the Board of Medicine shall adopt regulations that establish (i) qualifications for a witness**
318 **designated by a long-term care facility to sign a resident patient's request for medication for the**
319 **purpose of ending his life in a humane and dignified manner pursuant to subsection E of §**
320 **54.1-2999.1 of the Code of Virginia, as created by this act, and (ii) a list of acceptable documents**
321 **that physicians shall use to verify a patient's Virginia residency pursuant to subdivision A 2 of**
322 **§ 54.1-2999.2 of the Code of Virginia, as created by this act.**
323 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
324 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
325 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
326 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I,**
327 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
328 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
329 **appropriation cannot be determined for periods of commitment to the custody of the Department**
330 **of Juvenile Justice.**