

HOUSE BILL No. 2089

By Representative Gartner

1-28

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 defined in K.S.A. 39-923,
9 and 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 the patient's
14 attending physician, consulting physician or psychologist, a patient has the
15 ability to make and communicate any healthcare decision to a healthcare
16 provider, including communication through persons familiar with the
17 patient's manner of communicating, if those persons are available.

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

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

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

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

36 (i) "Informed decision" means a decision by a qualified patient, to

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

5 (1) Patient's medical diagnosis;

6 (2) patient's prognosis;

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (2) a person who, at the time the request is signed, would be entitled
43 to any portion of the estate of the qualified patient upon death under any

1 will or by operation of law; or

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

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

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

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

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

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

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

18 (A) The patient's medical diagnosis;

19 (B) the patient's prognosis;

20 (C) any potential risk associated with taking the medication to be
21 prescribed;

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

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

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

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

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

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

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

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

42 (10) fulfill the medical record documentation requirements of section
43 8, and amendments thereto;

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

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

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

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

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

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

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

27 (c) No patient shall receive a prescription for medication to end such
28 patient's life in a humane and dignified manner unless such patient has
29 made an informed decision as defined in section 2, and amendments
30 thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (a) Possession of a current Kansas driver's license or identification
36 card;

37 (b) registration to vote in Kansas;

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

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

40 Sec. 10. (a) (1) The department of health and environment shall
41 annually review a sample of records maintained pursuant to the Kansas
42 death with dignity act.

43 (2) The department shall require any healthcare provider upon writing

1 a prescription or dispensing medication pursuant to the Kansas death with
2 dignity act to file a copy of the dispensing record with the department.

3 (b) The department shall adopt rules and regulations to facilitate the
4 collection of information regarding compliance with the Kansas death with
5 dignity act. Except as otherwise required by law, the information collected
6 shall not be a public record and may not be made available for inspection
7 by the public. The provisions of this subsection providing for
8 confidentiality of records shall expire on July 1, 2024, unless the
9 legislature reenacts such provisions pursuant to K.S.A. 45-229, and
10 amendments thereto. The legislature shall review this subsection prior to
11 July 1, 2024.

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

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

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

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

27 Sec. 13. Nothing in the Kansas death with dignity act shall be
28 construed to authorize a physician or any other person to end a patient's
29 life by lethal injection, mercy killing or active euthanasia. Actions taken in
30 accordance with the Kansas death with dignity act shall not constitute the
31 commission of a crime under the Kansas criminal code, K.S.A. 2018 Supp.
32 21-5101 et seq., and amendments thereto.

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

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

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

1 (3) No request by a patient for medication from an attending
2 physician in good faith compliance with the provisions of the Kansas death
3 with dignity act shall constitute neglect for any purpose of law or provide
4 the sole basis for the appointment of a guardian or conservator.

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

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

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

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

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

43 (3) termination of contract or other non-monetary remedies provided

1 by contract if the sanctioned provider participates under the provisions of
2 the Kansas death with dignity act while acting in the course and scope of
3 the sanctioned provider's capacity as an employee or independent
4 contractor of the sanctioning healthcare provider. Nothing in this section
5 shall be construed to prevent:

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

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

14 (d) A healthcare provider that imposes sanctions pursuant to
15 subsection (b) shall follow all due process and other procedures the
16 sanctioning healthcare provider may have that are related to the imposition
17 of sanctions on another healthcare provider.

18 (e) For purposes of this section:

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

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

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

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

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

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

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

1 to end such patient's life pursuant to the Kansas death with dignity act.

2 Sec. 15. (a) Any person who, without authorization of the patient,
3 knowingly alters or forges a request for medication or conceals or destroys
4 a rescission of such request with the intent or effect of causing the patient's
5 death shall be guilty of a severity level 3, person felony.

6 (b) A person who knowingly coerces or exerts undue influence on a
7 patient to request medication for the purpose of ending the patient's life, or
8 to destroy a rescission of such a request, shall be guilty of a severity level
9 3, person felony.

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

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

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

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

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

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

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

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

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

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

39 INITIAL ONE:

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

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

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

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

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

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

8 Signed: _____

9 Dated: _____

10 DECLARATION OF WITNESSES

11 We declare that the person signing this request:

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

13 (b) Signed this request in our presence;

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

16 (d) Is not a patient for whom either of us is attending physician.

17 _____ Witness 1/Date

18 _____ Witness 2/Date

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

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