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**SENATE BILL 5596**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senators C. Anderson, Kohl, Fairley, Prince and Pelz

Read first time 01/27/95. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to recognizing and regulating the right of mentally  
2 competent terminally ill adults voluntarily to request and receive  
3 physician aid in dying; amending RCW 70.122.100 and 9A.36.060; adding  
4 a new chapter to Title 70 RCW; creating a new section; and prescribing  
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be known and  
8 cited as the "terminally ill patient act of 1995."

9 NEW SECTION. **Sec. 2.** LEGISLATIVE FINDINGS. The legislature finds  
10 that the liberty interest protected by the Fourteenth Amendment of the  
11 United States Constitution and by Article III of the Constitution of  
12 the state of Washington includes the freedom to make choices according  
13 to one's individual conscience about those matters that are essential  
14 to personal autonomy and basic human dignity. There is no more  
15 profoundly personal decision, nor one that is closer to the heart of  
16 personal liberty, than the choice that a terminally ill person makes to  
17 end his or her suffering and to hasten an inevitable death.

1 The legislature further finds that the prolongation of suffering in  
2 the process of an inevitable death serves no state interest that  
3 outweighs a patient's personal right in seeking his or her physician's  
4 aid in dying, nor has the state of Washington an interest in preventing  
5 licensed physicians from offering such assistance.

6 The legislature further finds that physician aid in dying must be  
7 a completely voluntary act for any person receiving or providing aid in  
8 dying. Accordingly, no one is required to take advantage of this legal  
9 right or to provide or participate in aid in dying if he or she chooses  
10 not to.

11 The legislature hereby declares that a competent terminally ill  
12 adult has the right to make a voluntary, revocable, recorded request  
13 for his or her physician to prescribe medication that, if self-  
14 administered by the patient, will, in a painless, humane, and dignified  
15 manner, shorten the process of dying.

16 NEW SECTION. **Sec. 3.** DEFINITIONS. Unless the context clearly  
17 requires otherwise, the definitions in this section apply throughout  
18 this chapter.

19 (1) "Aid in dying" means assistance in the form of prescription for  
20 medication by a qualified patient's primary care physician that will,  
21 if self-administered by the patient, shorten, in a painless, humane,  
22 and dignified manner, the process of dying. Aid in dying must be  
23 voluntarily requested by the qualified patient.

24 (2) "Consulting physician" means a physician who is qualified by  
25 specialty or experience in making a professional diagnosis and  
26 prognosis of the patient's particular condition, and who:

27 (a) Is not related to the qualified patient by blood, marriage, or  
28 adoption;

29 (b) Is not entitled to any portion of the estate of the qualified  
30 patient upon his or her death by operation of then existing law or  
31 under any then existing will or codicil of the qualified patient;

32 (c) Has no creditor's claim against the qualified patient, outside  
33 of a claim for professional services rendered to the qualified patient,  
34 nor anticipates making such a claim against any portion of the estate  
35 of the qualified patient upon his or her death; and

36 (d) Is not a partner or shareholder in the same medical practice as  
37 the primary care physician, not including a health maintenance  
38 organization.

1 (3) "Health care facility" means a facility or agency licensed,  
2 certified, or otherwise authorized by the state of Washington to  
3 administer health care in the ordinary course of business.

4 (4) "Physician" means a person licensed under chapter 18.71 or  
5 18.57 RCW.

6 (5) "Primary care physician" means a physician who treats dying  
7 patients in the ordinary course of practice and is selected by, or  
8 assigned to, the qualified patient with primary responsibility for the  
9 treatment and care of the qualified patient, and:

10 (a) Is not related to the qualified patient by blood, marriage, or  
11 adoption;

12 (b) Is not entitled to any portion of the estate of the qualified  
13 patient upon his or her death by operation of then existing law or  
14 under any then existing will or codicil of the qualified patient;

15 (c) Has no creditor's claim against the qualified patient, outside  
16 of a claim for professional services rendered to the qualified patient,  
17 nor anticipates making such a claim against any portion of the estate  
18 of the qualified patient upon his or her death.

19 (6) "Qualified patient" means a mentally competent adult eighteen  
20 years of age or older who:

21 (a) Has been diagnosed and certified in writing by a primary care  
22 physician and a consulting physician to be afflicted with a terminal  
23 condition; and

24 (b) Has voluntarily executed a revocable recorded request for aid  
25 in dying as defined in this section.

26 (7) "Recorded request" means a voluntary, revocable written or  
27 video tape recorded statement meeting the requirements of section 4 of  
28 this act, and in substantially the same form as set forth in section 22  
29 of this act if the recorded request is in writing.

30 (8) "Terminal condition" means an incurable and irreversible  
31 condition caused by injury, disease, or illness, that, within  
32 reasonable medical judgment, will cause death within a reasonable  
33 period of time in accordance with accepted medical standards, and where  
34 the application of life-sustaining treatment serves only to prolong the  
35 process of dying.

36 NEW SECTION. **Sec. 4.** WITNESSED RECORDED REQUEST FOR AID IN DYING.

37 (1) A mentally competent adult eighteen years of age or older may  
38 voluntarily execute a revocable recorded request for aid in dying.

1 (2) No person other than the qualified patient may request aid in  
2 dying for the qualified patient.

3 (3) The recorded request must be in writing or recorded on video  
4 tape. A written recorded request shall be signed and dated by the  
5 qualified patient, or by a person designated by the qualified patient  
6 to sign if the qualified patient is unable to sign.

7 (4) The signing or video tape recording of the request shall be  
8 witnessed by two other adults who, at the time of witnessing, meet the  
9 following requirements:

10 (a) Are not related to the qualified patient by blood, marriage, or  
11 adoption;

12 (b) Are not entitled to any portion of the estate of the qualified  
13 patient upon his or her death by operation of law in effect at the time  
14 of witnessing or under any will or codicil in effect at the time of  
15 witnessing of the qualified patient;

16 (c) Have no creditor's claim against the qualified patient, nor  
17 anticipate making such a claim against any portion of the estate of the  
18 qualified patient upon his or her death;

19 (d) Are not the primary care physician or an employee of the  
20 primary care physician.

21 (5) A completed and witnessed recorded request shall be delivered  
22 to the qualified patient's primary care physician, who shall file the  
23 recorded request in the qualified patient's medical records. If the  
24 qualified patient is an inpatient at a health care facility, a copy of  
25 the recorded request shall also be delivered to the health care  
26 facility, where it shall become a part of the qualified patient's  
27 permanent record.

28 (6) In the event of conflict between the qualified patient's  
29 recorded request and the qualified patient's lawful attorney-in-fact  
30 for health care or the qualified patient's lawful health care  
31 surrogate, the qualified patient's recorded request shall prevail.

32 NEW SECTION. **Sec. 5. EXAMINATION BY TWO PHYSICIANS.** (1) A  
33 primary care physician who receives a recorded request from a qualified  
34 patient shall make a personal examination of the qualified patient,  
35 including an evaluation of the patient's mental competence and a review  
36 of the qualified patient's medical records, and shall apply independent  
37 reasonable medical judgment as to whether the qualified patient has a  
38 terminal condition as defined in section 3 of this act.

1 (2) The primary care physician shall engage in a consultation with  
2 the qualified patient for the purpose of:

3 (a) Explaining the qualified patient's medical diagnosis and  
4 prognosis;

5 (b) Helping the qualified patient to understand the prognosis,  
6 including any reasonable possibility for improvement;

7 (c) Reviewing the feasible alternatives to aid in dying, including  
8 available methods of pain control and the possible effects of such  
9 alternatives on the qualified patient; and

10 (d) Describing the nature, risks, and probable result of aid in  
11 dying.

12 (3) After complying with section 5(1) and (2) of this act, the  
13 primary care physician shall arrange for an examination of the  
14 qualified patient by a consulting physician selected by the primary  
15 care physician or by the qualified patient.

16 (4) The consulting physician shall make a personal examination of  
17 the qualified patient, including an evaluation of the patient's mental  
18 competence and a review of the qualified patient's medical records, and  
19 shall apply independent reasonable medical judgment as to whether the  
20 qualified patient has a terminal condition as defined in section 3 of  
21 this act.

22 (5) The consulting physician shall engage in a consultation with  
23 the qualified patient for the purpose of:

24 (a) Explaining the qualified patient's medical diagnosis and  
25 prognosis;

26 (b) Helping the qualified patient to understand the prognosis,  
27 including any reasonable possibility for improvement;

28 (c) Reviewing the feasible alternatives to aid in dying, including  
29 available methods of pain control and the effects of such methods on  
30 the qualified patient; and

31 (d) Describing the nature, risks, and probable result of aid in  
32 dying.

33 (6) A consulting physician shall certify in writing his or her  
34 findings to the primary care physician.

35 (7) If the primary care and consulting physicians both find that  
36 the qualified patient suffers from a terminal condition, the primary  
37 care physician may provide aid in dying to the qualified patient.

1 (8) All reasonable pain control techniques must have been offered  
2 to the qualified patient and the qualified patient must nevertheless  
3 have elected aid in dying before any aid in dying is provided.

4 NEW SECTION. Sec. 6. COMPLIANCE WITH RECORDED REQUEST--REBUTTABLE  
5 PRESUMPTION. (1) Before providing aid in dying to a qualified  
6 patient, the primary care physician shall:

7 (a) Review thoroughly the qualified patient's recorded request and  
8 medical record;

9 (b) Take reasonable steps to ensure that the requirements of this  
10 chapter have been met; and

11 (c) Determine that the recorded request is in accord with the  
12 consistently expressed desires of the patient, as personally expressed  
13 by the patient to the primary care physician.

14 (2) Absent knowledge to the contrary, there is a rebuttable  
15 presumption that the recorded request complies with this chapter and is  
16 valid.

17 NEW SECTION. Sec. 7. PROVISION OF AID IN DYING BY PHYSICIAN ONLY.  
18 Only a physician may provide aid in dying, which shall not be  
19 delegated.

20 NEW SECTION. Sec. 8. REVOCATION. (1) A recorded request may be  
21 revoked at any time by the qualified patient, without regard to his or  
22 her mental state or competency, by any of the following methods:

23 (a) By being canceled, defaced, obliterated, burned, torn, or  
24 otherwise destroyed by or at the direction of the qualified patient  
25 with the intent to revoke the recorded request.

26 (b) By a written revocation by the qualified patient expressing his  
27 or her intent to revoke the recorded request, signed and dated by the  
28 qualified patient. If the qualified patient is in a health care  
29 facility and under the care and management of a physician, the  
30 physician shall record in the patient's medical record the time and  
31 date when he or she received notification of the written revocation.

32 (c) By oral expression or assertive conduct by the qualified  
33 patient to the primary care physician of his or her intent to revoke  
34 the recorded request. The oral or assertive conduct revocation is  
35 effective only upon communication to the primary care physician by the  
36 qualified patient. The primary care physician shall confirm with the

1 patient that he or she wishes to revoke and shall record in the  
2 patient's medical record the time, date, and place of the revocation.

3 (2) No one but the qualified patient may revoke the qualified  
4 patient's recorded request for aid in dying.

5 (3) There shall be no criminal, civil, or administrative liability  
6 on the part of any person, firm, or organization for following a  
7 recorded request that has been revoked unless that person, firm, or  
8 organization had actual knowledge, or should reasonably have had  
9 knowledge, of the revocation.

10 NEW SECTION. **Sec. 9.** TERM OF RECORDED REQUEST. A recorded  
11 request is effective unless revoked in the manner prescribed in section  
12 8 of this act. This chapter shall not prevent a qualified patient from  
13 reexecuting a recorded request at any time in accordance with section  
14 4 of this act.

15 NEW SECTION. **Sec. 10.** NO COMPULSION. (1) A physician or health  
16 care professional is not required to provide or participate in aid in  
17 dying if he or she is opposed.

18 (2) A privately owned health care facility is not required to  
19 permit aid in dying in that facility.

20 NEW SECTION. **Sec. 11.** TRANSFER OF PATIENT. (1) If a physician or  
21 a health care facility declines to provide aid in dying to a qualified  
22 patient, the physician or health care facility shall assist the patient  
23 in transferring his or her care, as soon as reasonably possible, to  
24 another physician or health care facility to enable the patient to  
25 receive aid in dying. A copy of the patient's relevant medical records  
26 shall be transferred to the new physician or health care facility.

27 (2) A physician or health care facility that does not comply with  
28 a valid recorded request is not subject to civil or criminal liability  
29 unless the physician or health care facility unreasonably delays or  
30 willfully obstructs the transfer of a patient upon the patient's  
31 request for such a transfer.

32 NEW SECTION. **Sec. 12.** FEES. Fees set by physicians or health  
33 care facilities for providing aid in dying must be fair and reasonable.

1        NEW SECTION.    **Sec. 13.**    FAMILY NOTIFICATION.    A patient requesting  
2 aid in dying is encouraged to notify next of kin of the request.    A  
3 patient who declines or cannot supply family details may not, for that  
4 reason, be denied rights under this chapter.

5        NEW SECTION.    **Sec. 14.**    PROTECTION OF HEALTH CARE PROFESSIONALS.

6    (1)(a) A physician, health care professional, health care facility,  
7 employee of a health care facility, or licensed pharmacist, who, acting  
8 in good-faith compliance with the requirements of this chapter,  
9 participates in, or is present at, aid in dying at the voluntary  
10 recorded request of a qualified patient is not subject to civil,  
11 criminal, or administrative liability for participating in or being  
12 present at aid in dying.

13        (b) A health care facility is not barred under this section from  
14 disciplining an employee who acted contrary to the written policy of  
15 the health care facility and in furtherance of a patient's voluntary  
16 request.

17        (2) No physician, or licensed health care professional acting under  
18 the direction of a physician, who acts in good-faith compliance with  
19 the requirements of this chapter, shall be liable for professional  
20 misconduct or disciplinary action solely because of his or her  
21 participation in aid in dying.

22        NEW SECTION.    **Sec. 15.**    INSURANCE.    (1) No insurer doing business  
23 in the state of Washington shall refuse to insure, cancel, refuse to  
24 renew, reassess the risk of an insured, or raise premiums on the basis  
25 of whether or not the insured has considered or completed a recorded  
26 request.    No insurer may require or request the insured to disclose  
27 whether he or she has executed a recorded request.

28        (2) The making of a recorded request pursuant to section 4 of this  
29 act does not restrict, inhibit, or impair in any manner the sale,  
30 procurement, issuance or rates of any policy of life, health, or  
31 disability insurance, nor shall it affect in any way the terms of an  
32 existing policy of life, health, or disability insurance.    No policy of  
33 life, health, or disability insurance may be legally impaired or  
34 invalidated in any manner by the provision of aid in dying to an  
35 insured qualified patient.

36        (3) A physician, health care facility, insurer, self-insured  
37 employee benefit plan, or nonprofit hospital service plan may not



1 require any person to execute or prohibit any person from executing a  
2 recorded request as a condition for receiving insurance coverage or  
3 health care services. Violation of this subsection is a misdemeanor.

4 (4) No life insurer doing business in the state of Washington may  
5 refuse to pay sums due upon the death of an insured because the insured  
6 received aid in dying in accordance with this chapter.

7 (5) No insurer doing business in the state of Washington may  
8 exclude from coverage any fair and reasonable fees charged for aid in  
9 dying.

10 (6) Nothing in this section may be construed to change existing law  
11 regarding the availability of insurance coverage to a person deemed to  
12 have a preexisting condition.

13 NEW SECTION. **Sec. 16.** UNLAWFUL ACTS. (1) Any person who unduly  
14 influences another to execute a recorded request, including through  
15 persuasion that the patient is a financial, emotional or other burden  
16 to his or her family, other persons, or the state, is guilty of a  
17 misdemeanor; or, if death occurs as a result of such undue influence,  
18 is guilty of a felony punishable according to the laws of this state.

19 (2) Any person who fraudulently induces another to execute a  
20 recorded request is guilty of a misdemeanor; or, if death occurs as a  
21 result of such fraud, is guilty of a felony punishable according to the  
22 laws of this state.

23 (3) Any person who willfully thwarts, conceals, cancels, defaces,  
24 obliterates, or damages the recorded request of another without that  
25 qualified patient's express consent is guilty of a misdemeanor.

26 (4) Any person who falsifies or forges the recorded request of  
27 another, or willfully conceals or withholds personal knowledge of a  
28 revocation as provided in section 8 of this act, with the intent to  
29 hasten death contrary to the wishes of the qualified patient, and  
30 thereby directly causes hastening of death, is guilty of the crime of  
31 murder and shall be punished according to the laws of this state.

32 (5) Nothing in this chapter may be construed to condone, authorize,  
33 or approve the deliberate ending of a life without a qualified  
34 patient's documented and witnessed request.

35 NEW SECTION. **Sec. 17.** OTHER RIGHTS. (1) Nothing in this chapter  
36 may impair or supersede any right that any person may have to seek  
37 judicial redress for any violations of this chapter.

1 (2) Nothing in this chapter may impair or supersede any right or  
2 legal responsibility that any person may have regarding the withholding  
3 or withdrawal of life-sustaining procedures in any lawful manner.

4 (3) Nothing in this chapter may impair or supersede any right or  
5 legal responsibility that any person may have as a result of a validly  
6 executed durable power of attorney.

7 NEW SECTION. **Sec. 18.** REPORTING AND REGULATION. (1) The state  
8 department of health shall adopt rules to govern the provision of aid  
9 in dying in accordance with this chapter, including rules specifying  
10 detailed recordkeeping and reporting requirements for physicians,  
11 health care professionals, and health care facilities that participate  
12 in aid in dying.

13 (2) The state department of health shall compile and publish an  
14 annual report of aid in dying statistics for the state of Washington.  
15 In all cases, the identity of qualified patients and any participating  
16 physicians, health care professionals, or facilities may not be  
17 publicly reported and are exempt from the public disclosure  
18 requirements of chapter 42.17 RCW.

19 (3) Advertising of aid in dying services is subject to regulation  
20 by the state of Washington.

21 NEW SECTION. **Sec. 19.** AID IN DYING CLINICS. Medical facilities  
22 for the sole purpose of aid in dying are not permitted in this state.

23 NEW SECTION. **Sec. 20.** RECOGNITION OF REQUEST EXECUTED IN ANOTHER  
24 STATE. A recorded request that has been executed in another state in  
25 compliance with the law of that state and that substantially complies  
26 with section 4 of this act is deemed valid for the purpose of this  
27 chapter.

28 NEW SECTION. **Sec. 21.** FORM OF RECORDED REQUEST. A written  
29 recorded request under this chapter must be in substantially the  
30 following form:

31 Voluntary Request For A Prescription For Self-Administered  
32 Medication That Will Enable Me To Shorten, In A Painless,  
33 Humane, And Dignified Manner, The Process Of My Dying.

1 This recorded request is made on . . . . . 19. . . I,  
2 . . . . . , being a mentally competent adult eighteen  
3 years of age or older, do voluntarily make known my desire that the  
4 process of my dying be shortened in a painless, humane, and dignified  
5 manner with the aid of prescribed medication that I will self-  
6 administer. I understand that I have a condition that qualifies me for  
7 assistance under the Terminal Patient Act, as certified by two  
8 physicians, and I ask my primary care physician to prescribe medication  
9 appropriate for this purpose. I trust and hope that he or she will  
10 comply. If he or she declines, which is his or her right, then I urge  
11 that he or she assist in locating a colleague who will comply.

12 Determining the time and place of my death shall be at my sole  
13 discretion. The manner of my death shall be determined jointly by my  
14 primary care physician and myself.

15 This recorded request shall remain valid until revoked by me and  
16 only me. I may revoke this recorded request at any time.

17 I recognize that a physician's judgment is not always certain, and  
18 that medical science continues to make progress in extending life, but  
19 in spite of these facts, I nevertheless wish aid in dying rather than  
20 letting my condition take its natural course.

21 It is solely my option, and not my physician's, to inform my family  
22 of my intentions.

23 I have given full consideration to and understand the full import  
24 of this recorded request. I accept the moral and legal responsibility  
25 for receiving aid in dying.

26 Signed: (Name) . . . . .

27 City and State of Residence . . . . .

28 NOTICE - This recorded request is not valid unless it is signed by two  
29 qualified witnesses who are present when you sign or acknowledge your  
30 signature. The witnesses must not be related to you by blood,  
31 marriage, or adoption; they must not be entitled to any part of your  
32 estate, or, at the time of execution of the recorded request, have any  
33 claim against any portion of your estate; and they must not include:  
34 Your primary care physician or an employee of your primary care  
35 physician.

36 If you have attached any additional pages to this form, you must  
37 sign and date each of the additional pages at the same time you date  
38 and sign this recorded request.

STATEMENT OF WITNESSES

TO VOLUNTARY RECORDED REQUEST TO PHYSICIANS

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I declare under penalty of perjury under the laws of the state of Washington that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of satisfactory evidence to be the qualified patient of this recorded request); that he or she signed or acknowledged this recorded request in my presence; that he or she appears to be of sound mind and under no duress, fraud, or undue influence; that I am not the primary care physician or an employee of the primary care physician.

I further declare under penalty of perjury under the laws of the state of Washington that I am not related to the qualified patient by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the qualified patient upon the death of the qualified patient under a will now existing or by operation of law, and have no claim nor anticipate making a claim against any portion of the estate of the qualified patient upon his or her death.

Dated: . . . . .  
Witness's Signature: . . . . .  
Print Name: . . . . .  
Residence Address: . . . . .  
  
Dated: . . . . .  
Witness's Signature: . . . . .  
Print Name: . . . . .  
Residence Address: . . . . .

NEW SECTION. **Sec. 22.** ASSISTANCE TO SUICIDE OUTSIDE OF PROVISIONS OF THIS ACT. (1) A person who has knowledge that another person intends to commit or attempt to commit suicide and who intentionally does either of the following without acting in good-faith compliance with the provisions of this chapter is guilty of promoting a suicide attempt, a class C felony under RCW 9A.36.060:

- (a) Provides the physical means by which the other person attempts or commits suicide;
- (b) Participates in a physical act by which the other person attempts or commits suicide.

1 (2) This section does not apply to withholding or withdrawing  
2 medical treatment.

3 (3) This section does not apply to prescribing, dispensing, or  
4 administering medications or procedures if the intent is to relieve  
5 pain or discomfort and not to cause death, even if the medication or  
6 procedure may hasten or increase the risk of death.

7 **Sec. 23.** RCW 70.122.100 and 1992 c 98 s 10 are each amended to  
8 read as follows:

9 MERCY KILLING OR ASSISTED SUICIDE NOT AUTHORIZED. Nothing in this  
10 chapter shall be construed to condone, authorize, or approve mercy  
11 killing or (~~(physician--)~~) assisted suicide as defined in RCW 9A.36.060,  
12 or to permit any affirmative or deliberate act or omission to end life  
13 other than to permit the natural process of dying, or to permit  
14 physician aid in dying other than under the conditions specified in  
15 sections 1 through 22 of this act.

16 **Sec. 24.** RCW 9A.36.060 and 1975 1st ex.s. c 260 s 9A.36.060 are  
17 each amended to read as follows:

18 PROMOTING A SUICIDE ATTEMPT. (1) A person is guilty of promoting  
19 a suicide attempt when he knowingly causes or aids another person to  
20 attempt suicide, except that a licensed physician providing aid in  
21 dying at the voluntary, revocable, recorded request of an adult patient  
22 with a terminal condition and in compliance with sections 1 through 22  
23 of this act is not liable under this section for promoting suicide.

24 (2) Promoting a suicide attempt is a class C felony.

25 NEW SECTION. **Sec. 25.** CODIFICATION. Sections 1 through 22 of  
26 this act constitute a new chapter in Title 70 RCW.

27 NEW SECTION. **Sec. 26.** CAPTIONS NOT LAW. Captions as used in this  
28 act constitute no part of the law.

29 NEW SECTION. **Sec. 27.** SEVERABILITY. If any provision of this act  
30 or its application to any person or circumstance is held invalid, the  
31 remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

--- END ---