

# SENATE BILL No. 135

February 14, 1989, Introduced by Senators FAXON, SCHWARZ, SEDERBURG,  
POLLACK and O'BRIEN and referred to the Committee on Judiciary.

A bill to provide for the execution of a declaration directing certain life-sustaining procedures be withdrawn or withheld under certain circumstances; to provide that certain actions be taken and not be taken with respect to a declaration; to provide for the revocation of a declaration; to exempt certain persons from penalties and liabilities; and to prescribe penalties and liabilities.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "living will act".

3       Sec. 2. As used in this act:

4       (a) "Attending physician" means a person licensed by the  
5 state to engage in the practice of medicine or the practice of  
6 osteopathic medicine and surgery under article 15 of the public  
7 health code, Act No. 368 of the Public Acts of 1978, being

1 sections 333.16101 to 333.18838 of the Michigan Compiled Laws,  
2 and who has been selected by or assigned to, and has primary  
3 responsibility for, the treatment and care of a declarant.

4 (b) "Declarant" means a person who has executed a  
5 declaration.

6 (c) "Declaration" means a document that is executed pursuant  
7 to section 3.

8 (d) "Life-sustaining procedure" means any medical procedure,  
9 treatment, or intervention which uses mechanical or other artifi-  
10 cial means to sustain, restore, or supplant a spontaneous vital  
11 function of a patient or is otherwise of such a nature as to  
12 afford a patient no reasonable expectation of recovery from a  
13 terminal condition.

14 (e) "Qualified patient" means a declarant diagnosed within a  
15 reasonable degree of medical certainty to be in a terminal condi-  
16 tion, as certified in writing by 2 physicians, both of whom have  
17 personally examined the declarant and at least 1 of whom is an  
18 attending physician of the declarant.

19 (f) "Terminal condition" means an incurable condition of a  
20 patient caused by injury, disease, or illness which to a reason-  
21 able degree of medical certainty makes death imminent and from  
22 which, despite the application of life-sustaining procedures,  
23 there can be no recovery.

24 Sec. 3. (1) A person qualified to execute a will pursuant  
25 to section 121 of the revised probate code, Act No. 642 of the  
26 Public Acts of 1978, being section 700.121 of the Michigan

1 Compiled Laws, may execute a declaration to withhold or withdraw  
2 life-sustaining procedures.

3 (2) A declaration shall be in writing, dated, and executed  
4 voluntarily. The declaration shall be signed by the declarant or  
5 if signed at the declarant's direction and in his or her pres-  
6 ence, by another individual in the declarant's name. The decla-  
7 ration shall be signed by 2 witnesses who are 18 years of age or  
8 older and who either witnessed the signing of the declaration or  
9 the declarant's acknowledgment of the signature on the  
10 declaration. The witnesses shall not be any of the following:

11 (a) A person who signed the declaration in the declarant's  
12 name and at the declarant's direction.

13 (b) A person who is within the fourth degree of consanguin-  
14 ity or affinity to the declarant.

15 (c) A person who is a creditor of the declarant.

16 (d) A person who is knowingly entitled to any portion of the  
17 declarant's estate under any existing testamentary instrument of  
18 the declarant.

19 (e) A person or an employee of a person who is financially  
20 or otherwise responsible for the declarant's medical care.

21 Sec. 4. The declaration shall be substantially in the fol-  
22 lowing form:

23 "DECLARATION

24 IF AT ANY TIME I SHOULD HAVE AN INCURABLE INJURY, DISEASE,  
25 OR ILLNESS CERTIFIED TO BE A TERMINAL CONDITION BY 2 PHYSICIANS  
26 WHO HAVE PERSONALLY EXAMINED ME, 1 OF WHOM SHALL BE MY ATTENDING  
27 PHYSICIAN, AND THE PHYSICIANS HAVE DETERMINED THAT MY DEATH IS

1 IMMINENT AND WILL OCCUR WHETHER OR NOT LIFE-SUSTAINING PROCEDURES  
 2 ARE UTILIZED, I DIRECT THAT LIFE-SUSTAINING PROCEDURES BE WITH-  
 3 HELD OR WITHDRAWN, AND THAT I BE PERMITTED TO DIE NATURALLY WITH  
 4 ONLY THE ADMINISTRATION OF MEDICATION, THE ADMINISTRATION OF FOOD  
 5 AND WATER, AND THE PERFORMANCE OF ANY MEDICAL PROCEDURE THAT IS  
 6 NECESSARY TO PROVIDE COMFORT OR ALLEVIATE PAIN. IN THE ABSENCE  
 7 OF MY ABILITY TO GIVE DIRECTIONS REGARDING THE USE OF  
 8 LIFE-SUSTAINING PROCEDURES, IT IS MY INTENTION THAT THIS DECLARA-  
 9 TION SHALL BE HONORED BY MY FAMILY AND PHYSICIAN AS THE FINAL  
 10 EXPRESSION OF MY RIGHT TO CONTROL MY MEDICAL CARE AND TREATMENT.

11 DECLARATION MADE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_.  
 12 (MONTH, YEAR)

13 I, \_\_\_\_\_, BEING OF SOUND MIND, WILLFULLY AND VOLUN-  
 14 TARILY DIRECT THAT MY DYING SHALL NOT BE ARTIFICIALLY PROLONGED  
 15 UNDER THE CIRCUMSTANCES SET FORTH IN THIS DECLARATION:

16 I AM LEGALLY COMPETENT TO MAKE THIS DECLARATION, AND I  
 17 UNDERSTAND ITS FULL IMPORT.

18 SIGNED \_\_\_\_\_  
 19 (DECLARANT)  
 20 ADDRESS \_\_\_\_\_  
 21 \_\_\_\_\_

22 WITNESSES

23 THIS DECLARATION WAS SIGNED BY \_\_\_\_\_ IN THE PRES-  
 24 ENCE OF THE UNDERSIGNED WHO, AT \_\_\_\_\_ REQUEST, IN \_\_\_\_\_  
 25 PRESENCE, AND IN THE PRESENCE OF EACH OTHER, HAVE SIGNED  
 26 OUR NAMES AND WITNESSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, AND  
 27 (MONTH, YEAR)  
 28 DECLARE: THE DECLARANT IS PERSONALLY KNOWN TO ME, AND I BELIEVE  
 29 THE DECLARANT TO BE OF SOUND MIND. I DID NOT SIGN THE  
 30 DECLARANT'S SIGNATURE TO THIS DECLARATION. UPON INFORMATION AND

1 BELIEF, I AM NOT RELATED TO THE DECLARANT BY BLOOD OR MARRIAGE, A  
 2 CREDITOR OF THE DECLARANT, ENTITLED TO ANY PORTION OF THE ESTATE  
 3 OF THE DECLARANT UNDER ANY EXISTING TESTAMENTARY INSTRUMENT OF  
 4 THE DECLARANT, FINANCIALLY OR OTHERWISE RESPONSIBLE FOR THE  
 5 DECLARANT'S MEDICAL CARE, OR AN EMPLOYEE OF ANY PERSON OR INSTI-  
 6 TUTION WHO IS FINANCIALLY OR OTHERWISE RESPONSIBLE FOR THE  
 7 DECLARANT'S MEDICAL CARE.

8 \_\_\_\_\_ ADDRESS \_\_\_\_\_  
 9 (WITNESS)

10 \_\_\_\_\_

11 \_\_\_\_\_ ADDRESS \_\_\_\_\_  
 12 (WITNESS)

13 \_\_\_\_\_ "

14 Sec. 5. If the additional provisions are not inconsistent  
 15 with this act, a declaration may include provisions in addition  
 16 to the provisions stated in section 4. If an additional provi-  
 17 sion in a declaration is declared invalid by a court, the inva-  
 18 lidity shall not affect the remaining portions of the declaration  
 19 which can be given effect without the invalid provision.

20 Sec. 6. (1) A declarant is responsible for notifying the  
 21 attending physician of the existence of the declaration.

22 (2) After receiving notification of the existence of the  
 23 declaration, the attending physician shall place the declaration  
 24 in the declarant's medical records.

25 Sec. 7. A declarant may revoke a declaration at any time  
 26 and in any manner by which he or she is able to communicate an  
 27 intent to revoke a declaration. If the revocation is not in  
 28 writing, a person who witnesses a revocation of a declaration

1 shall describe the circumstances of the revocation in writing and  
2 sign the writing.

3       Sec. 8. (1) Subject to subsection (3) and sections 9 and  
4 10, the attending physician of a declarant in a terminal condi-  
5 tion shall promptly take the necessary action to provide for the  
6 certification required for the declarant to become a qualified  
7 patient.

8       (2) Subject to subsection (3) and sections 9 and 10, if a  
9 declarant is a qualified patient, the attending physician shall  
10 promptly implement the declaration.

11       (3) An attending physician who does not comply with subsec-  
12 tion (1) or (2) shall make every reasonable effort to transfer  
13 the care of the declarant to another physician.

14       Sec. 9. If an attending physician knows that a declaration  
15 has been revoked or has a reasonable basis for believing that a  
16 declaration has been revoked, section 8 shall not apply. The  
17 attending physician shall place in the declarant's medical  
18 records the evidentiary basis for his or her conclusion or rea-  
19 sonable belief that the declaration has been revoked.

20       Sec. 10. The declaration of a qualified patient shall not  
21 be implemented by the denial of food, water, or such medication  
22 and medical procedures as are necessary to provide comfort and to  
23 alleviate pain, or if the qualified patient is pregnant.

24       Sec. 11. (1) Except as otherwise provided in subsection (2),  
25 a person who has notice of a valid declaration and causes a fail-  
26 ure to comply with section 8 may be held civilly liable for the  
27 damages caused thereby.

1       (2) If the aid, care, or assistance was rendered in good  
2 faith and in accordance with the applicable professional standard  
3 of care, a paid or volunteer fire fighter or an ambulance atten-  
4 dant, emergency medical technician, emergency medical technician  
5 specialist, or advanced emergency medical technician licensed  
6 under article 17 of the public health code, Act No. 368 of the  
7 Public Acts of 1978, being sections 333.20101 to 333.21799e of  
8 the Michigan Compiled Laws, shall not be subject to criminal or  
9 civil liability for aid, care, or assistance given contrary to a  
10 qualified patient's declaration and in an emergency.

11       Sec. 12. A person who in good faith, pursuant to applicable  
12 professional standards of care and in accordance with this act,  
13 causes or participates in the withholding or withdrawing of  
14 life-sustaining procedures from a qualified patient shall not be  
15 subject to civil or criminal liability or professional misconduct  
16 charges.

17       Sec. 13. A person or other legal entity shall not require  
18 execution of a declaration as a condition for providing shelter,  
19 insurance coverage, health care benefits or services, or for any  
20 other reason.

21       Sec. 14. A life insurer shall not do any of the following  
22 because of the execution or implementation of a declaration under  
23 this act:

24       (a) Refuse to provide or continue coverage to the  
25 declarant.

26       (b) Consider the terms of an existing policy of life  
27 insurance to have been breached or modified.

1 (c) Invoke any suicide or intentional death exemption or  
2 exclusion in any policy covering the declarant.

3 Sec. 15. If a declaration that is executed outside of this  
4 state by a nonresident is in compliance with this act, the decla-  
5 ration shall be given effect in this state.

6 Sec. 16. In the absence of evidence to the contrary, a dec-  
7 laration which on its face satisfies the requirements of this act  
8 is presumed to be valid.

9 Sec. 17. (1) The provisions of this act are cumulative and  
10 shall not be construed to impair or supersede any legal right or  
11 responsibility that any person may have to effect the withholding  
12 or withdrawal of life-sustaining procedures.

13 (2) This act does not create a presumption concerning the  
14 intention of an individual who is in a terminal condition and who  
15 has not executed a declaration regarding the withholding or with-  
16 drawal of life-sustaining procedures.

17 (3) This act does not permit any affirmative or deliberate  
18 act or omission to end life other than to permit the withholding  
19 or withdrawal of life-sustaining procedures from a declarant in a  
20 terminal condition.

21 Sec. 18. A person shall not forge a declaration or a revo-  
22 cation of a declaration or willfully conceal or withhold personal  
23 knowledge of a revocation. A person who violates this section  
24 shall be guilty of a misdemeanor, punishable by a fine of not  
25 more than \$1,000.00.



1       Sec. 19. An act authorized by this act shall not for any  
2 purpose be considered to be a suicide or a violation of any  
3 criminal law or standard of professional conduct.