

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 815
SENATE BILL 504

AN ACT TO PROVIDE A PROCEDURE FOR THE EXERCISE OF A PERSON'S RIGHT TO A NATURAL DEATH; AND TO ADD EXPRESSLY THE CRITERION OF IRREVERSIBLE CESSATION OF BRAIN FUNCTION TO THE OTHER CRITERIA FOR ESTABLISHING A PERSON'S DEATH.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is hereby amended by adding a new Article thereto to read as follows:

"ARTICLE 23.

"Right to Natural Death; Brain Death.

"§ 90-320. General purpose of Article. — (a) The General Assembly hereby recognizes that an individual's rights as a citizen of this State include the right to a peaceful and natural death. This Article is to establish a procedure for the exercise of that right and to state expressly the extent of a physician's obligation to preserve the life of his patient in situations where artificial means may be used to sustain the circulatory and respiratory functions for an indefinite period.

(b) Nothing in this Article shall be construed to authorize any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

"§ 90-321. Right to a natural death. — (a) As used in this Article the term:

- (1) 'Declarant' means a person who has signed a declaration in accordance with subsection (c);
- (2) 'Extraordinary means' is defined as any medical procedure or intervention which in the judgment of the attending physician would serve only to postpone artificially the moment of death by sustaining, restoring, or supplanting a vital function;
- (3) 'Physician' means any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina.

(b) If a person has declared, in accordance with subsection (c) below, a desire that his life not be prolonged by extraordinary means; and the declaration has not been revoked in accordance with subsection (e); and

- (1) It is determined by the attending physician that the declarant's present condition is
 - a. terminal; and
 - b. incurable; and
- (2) There is confirmation of the declarant's present condition as set out above in subdivision (b)(1) by a physician other than the attending physician;

then extraordinary means may be withheld or discontinued upon the direction and under the supervision of the attending physician.

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

- (1) which expresses a desire of the declarant that no extraordinary means be used to prolong his life if his condition is determined to be terminal and incurable; and

- (2) which states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the extraordinary means; and
- (3) which has been signed by the declarant in the presence of two witnesses who state that they (i) are not related within the third degree to the declarant or to the declarant's spouse and (ii) would not be entitled to any portion of the estate of the declarant upon his death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it then provided, and (iii) are not the attending physician, an employee of the attending physician or of a health facility in which the declarant is a patient, or of a nursing home or any group care home in which the declarant resides and (iv) is not a person who has a claim against any portion of the estate of the declarant at the time of the declaration; and
- (4) which has been proved before a clerk or assistant clerk of superior court who certifies substantially as set out in subsection (d) below.
- (d) The following form is specifically determined to meet the requirements above:

'Declaration of A Desire For A Natural Death

I _____, being of sound mind, desire that my life not be prolonged by extraordinary means if my condition is determined to be terminal and incurable. I am aware and understand that this writing authorizes a physician to withhold or discontinue extraordinary means.

'This the _____ day of _____, _____.
Signature _____

I hereby state that the declarant, _____, signed the above declaration in my presence and that I am not related to the declarant by blood or marriage and I would not be entitled to any portion of the estate of the declarant under any existing will or codicil of the declarant, or as an heir under the Intestate Succession Act if the declarant died on this date without a will. I also state that I am not the declarant's attending physician or an employee of the declarant's attending physician, or an employee of a health facility in which the declarant is a patient or an employee of a nursing home or any group care home where the declarant resides. I further state that I do not now have any claim against the declarant.

Witness _____,
Witness _____.

The clerk or the assistant clerk may, upon proper proof, certify the declaration as follows:
'Certificate

I, _____, Clerk (Assistant Clerk) of Superior Court for _____ County hereby certify that _____ and _____, witnesses, appeared before me and swore that they witnessed _____, declarant, sign the attached declaration; and also swore that at the time they witnessed the declaration (i) they were not related within the third degree to the declarant or to the declarant's spouse, and (ii) they would not be entitled to any portion of the estate of the declarant upon the declarant's death under any will of the declarant or codicil thereto then existing or under the Intestate Succession Act as it provided at that time, and (iii) they were not a physician attending the declarant or an employee of an attending physician or of a health facility in which the declarant was a patient or of a nursing home or any group care home in which the declarant resided, and (iv) they did not have a claim against the declarant. I further certify that I am satisfied as to the genuineness and due execution of the declaration.

This the _____ of _____, _____.

Clerk (Assistant Clerk) of Superior
Court for the County of _____.'

The above declaration may be proved by the clerk or the assistant clerk in the following manner:

- (1) upon the testimony of the two witnesses; or
- (2) if the testimony of only one witness is available, then
 - a. upon the testimony of such witness, and
 - b. upon proof of the handwriting of the witness who is dead or whose testimony is otherwise unavailable, and
 - c. upon proof of the handwriting of the declarant, unless he signed by his mark; or upon proof of such other circumstances as will satisfy the clerk or assistant clerk of the superior court as to the genuineness and due execution of the declaration.
- (3) If the testimony of none of the witnesses is available, such declaration may be proved by the clerk or assistant clerk
 - a. upon proof of the handwriting of the two witnesses whose testimony is unavailable, and
 - b. upon compliance with paragraph c. of subdivision (2) above.

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

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

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

'Certificate

I _____, Clerk (Assistant Clerk) of Court for the Superior Court of County hereby certify that based upon the evidence before me I am satisfied as to the genuineness and due execution of the attached declaration by _____, declarant, and that the declarant's signature was witnessed by _____, and _____, who at the time of the declaration met the qualifications of G.S. 90-321(c)(3).

'This the _____ day of _____, _____.

Clerk (Assistant Clerk) of Superior Court for _____ County.'

(e) The above declaration may be revoked by the declarant, in any manner by which he is able to communicate his intent to revoke, without regard to his mental or physical condition. Such revocation shall become effective only upon communication to the attending physician by the declarant or by an individual acting on behalf of the declarant.

(f) The execution and consummation of declarations made in accordance with subsection (c) shall not constitute suicide for any purpose.

(g) No person shall be required to sign a declaration in accordance with subsection (c) as a condition for becoming insured under any insurance contract or for receiving any medical treatment.

(h) The withholding or discontinuance of extraordinary means in accordance with this section shall not be considered the cause of death for any civil or criminal purposes nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense.

"§ 90-322. Brain death. — (a) If a person is comatose and there is no reasonable possibility that he will return to a cognitive sapient state, and:

- (1) it is determined by the attending physician that the person's present condition is:

- a. terminal; and
 - b. incurable; and
 - c. there has been an irreversible cessation of brain function; and
- (2) there is confirmation of the person's present condition as set out above in this subsection, by a majority of a committee of three physicians other than the attending physician; and
- (3) a vital function of the person is being sustained by extraordinary means; then, in addition to any other medically recognized criteria for determining death, the person may be pronounced dead.

(b) If a person has been pronounced dead in accordance with subsection (a) the extraordinary means to prolong life may be discontinued upon the direction and under the supervision of the attending physician at the request (i) of the person's spouse, or (ii) of a guardian of the person, or (iii) of a majority of the relatives of the first degree, in that order. If none of the above are available then at the discretion of the attending physician the extraordinary means may be discontinued upon the direction and under the supervision of the attending physician.

(c) If a person has been determined to be dead in accordance with subsection (a) and the person is a donor within the meaning of G.S. 90-220.1(3), or a gift of all or any part of the person's body has been made under the provisions of G.S. 90-220.2(b), the extraordinary means may be continued in order to facilitate the purposes of the Uniform Anatomical Gift Act.

(d) The discontinuance of such extraordinary means shall not be considered the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct. Any person, institution or facility against whom criminal or civil liability is asserted because of conduct in compliance with this section may interpose this section as a defense."

Sec. 2. This act shall become effective July 1, 1977.

In the General Assembly read three times and ratified, this the 29th day of June, 1977.