

## 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.