

1 SENATE BILL NO. 116

2 INTRODUCED BY G. HINKLE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING AID IN DYING; AMENDING SECTIONS 45-2-211
5 AND 50-9-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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7 WHEREAS, the phrase "aid in dying" is commonly used to describe assisted suicide and euthanasia; and

8 WHEREAS, the vast majority of states to consider legalizing such practices have rejected them; and

9 WHEREAS, in the context of assisted suicide, *Baxter v. State*, 354 Mont. 234, 224 P.3d 1211 (2009),10 holds that a patient's consent to aid in dying constitutes a statutory defense to a charge of homicide against the
11 aiding physician;12 WHEREAS, *Baxter* overlooked elder abuse, which is often difficult to detect because of the unwillingness
13 of victims to report the abuse; and14 WHEREAS, with the difficulty of detecting and proving homicide generally and the difficulties in preventing
15 and detecting abuse specifically, it is against public policy to allow a victim to consent to the victim's own
16 homicide; and

17 WHEREAS, aid in dying is otherwise against Montana public policy.

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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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21 **Section 1.** Section 45-2-211, MCA, is amended to read:22 **"45-2-211. Consent as a defense.** (1) The consent of the victim to conduct charged to constitute an
23 offense or to the result thereof is a defense.

24 (2) Consent is ineffective if:

25 (a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the
26 offense;27 (b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to
28 make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

29 (c) it is induced by force, duress, or deception; or

30 (d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

1 (3) It is against public policy for a victim to consent to the victim's own homicide, and consent is
 2 ineffective if a victim consents to the victim's own homicide in the context of being provided with aid in dying. This
 3 consent includes the victim's agreement to being provided with an agent capable of causing death by any means
 4 for the intended purpose of causing the victim's death or for mercy killing, euthanasia, or assisted suicide."

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6 **Section 2.** Section 50-9-205, MCA, is amended to read:

7 **"50-9-205. Effect on insurance -- patient's decision.** (1) Death resulting from the withholding or
 8 withdrawal of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a
 9 suicide or homicide.

10 (2) The making of a declaration pursuant to 50-9-103 does not affect the sale, procurement, or issuance
 11 of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life
 12 insurance. A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of
 13 life-sustaining treatment from an insured, notwithstanding any term of the policy to the contrary.

14 (3) A person may not prohibit or require the execution of a declaration as a condition for being insured
 15 for or receiving health care services.

16 (4) This chapter does not create a presumption concerning the intention of an individual who has revoked
 17 or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment
 18 in the event of a terminal condition.

19 (5) This chapter does not affect the right of a patient to make decisions regarding use of life-sustaining
 20 treatment, ~~so~~ as long as the patient is able to do so, or impair or supersede a right or responsibility that any
 21 person has to effect the withholding or withdrawal of medical care.

22 (6) This chapter does not require a health care provider to take action contrary to reasonable medical
 23 standards.

24 (7) This chapter does not condone, authorize, or approve mercy killing, ~~or~~ euthanasia, assisted suicide,
 25 or aid in dying as provided in 45-2-211(3). These practices are against public policy and are prohibited."

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27 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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