ASSISTED SUICIDE BAN ACT

Model Legislation & Policy Guide
For the 2013 Legislative Year

AMERICANS UNITED FOR LIFE
Changing Law to Protect Human Life, State by State
INTRODUCTION

If the law does not say what you want it to say, simply argue that it does until others believe you.

This was the strategy employed by assisted suicide and euthanasia advocates in an effort to force their agenda on the State of Idaho in 2011. Compassion & Choices, formerly the Hemlock Society, argued that “aid in dying”—a euphemism for physician-assisted suicide—was permitted under Idaho law. The people of Idaho widely disagreed, and enacted a law explicitly prohibiting the practice. Idaho’s response was a major victory for life after nearly two decades of advances by suicide advocates:

November 1994 – Oregon became the first state to legalize physician-assisted suicide.
March 2009 – New Washington law authorizing assisted suicide takes effect.
December 2009 – Montana Supreme Court finds “nothing in Montana Supreme Court precedent or Montana statutes indicating that physician ‘aid in dying’ is against public policy,” and concludes physicians (and perhaps non-physicians) may use the consent defense against a charge of homicide when aiding a suicide.

Federal courts entered the debate over physician-assisted suicide in 1996 when two appellate courts struck down state laws in New York and Washington prohibiting assisted suicide. The U.S. Supreme Court, however, reversed those decisions in June 1997, holding that assisted suicide is not a fundamental right under the U.S. Constitution. In doing so, the Court also affirmed the states’ authority to legislate or regulate in this area.

To date, assisted suicide advocates have challenged ten states’ prohibitions on assisted suicide: Alaska, California, Colorado, Connecticut, Florida, Georgia, Michigan, Montana, New York, and Washington. For the most part, these lawsuits have asserted federal or state constitutional rights to assisted suicide and have largely failed. For example, the Montana Supreme Court refused to address the constitutional question of assisted suicide. However, the court did construe the public policy underlying Montana law as permitting physicians to use a “consent” defense when providing “aid in dying.” The court distinguished “aid in dying” (as the preferred term to “physician-assisted suicide”) from “mercy killing” and euthanasia and, in doing so,
effectively sanctioned an individual’s decision to commit suicide.\textsuperscript{4} It further found “aid in
dying” indistinguishable from withholding or withdrawing of life-sustaining treatment,\textsuperscript{5} contradicting the distinction long-recognized by the medical community and the courts.

Assisted suicide advocates will not be easily deterred by opposition to their agenda. In 2012,
they introduced legislation to legalize assisted suicide in at least five states: Hawaii,
Massachusetts, New York, Pennsylvania, and Vermont. Undoubtedly, they will continue their
assault in 2013.

In light of the Montana Supreme Court decision, it is more important now than ever to take
affirmative action to prohibit assisted suicide by any name. States that have left the legal status
of assisted suicide undetermined, as well as states that prohibit assisted suicide under common
law or judicial interpretation of homicide states, should enact an explicit ban on physician-
assisted suicide to counter and turn back the “slippery slope” toward “aid in dying” and
euthanasia. Assisted suicide advocates will continue to target these states, just as they targeted
Idaho.

Suicide is neither a “compassionate” nor appropriate solution for those who suffer. America’s
most vulnerable citizens—the elderly, terminally ill, disabled, and depressed—are worthy of life
and equal protection under the law.

To assist in combating the drive toward legalizing assisted suicide (or any form of active
euthanasia), Americans United for Life (AUL) has developed the “Assisted Suicide Ban Act.”
For more information and drafting assistance, please contact AUL’s Legislative Coordinator at
(202) 741-4907 or Legislation@AUL.org.

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\textsuperscript{4} Baxter v. State, 224 at 1219.
\textsuperscript{5} Id. at 1218-19.
ASSISTED SUICIDE BAN ACT

HOUSE/SENATE BILL No. ______
BY REPRESENTATIVES/SENATORS _________

Section 1. Title.

This Act may be known and cited as the “Assisted Suicide Ban Act.”

Section 2. Legislative Findings and Purposes.

(a) The [Legislature] of the State of [Insert name of State] finds that:

1. “In almost every State—indeed, in almost every western democracy—it is a crime to assist a suicide. The States’ assisted-suicide bans are not innovations. Rather they are longstanding expressions of the States’ commitment to the protection and preservation of all human life.” Washington v. Glucksberg, 521 U.S. 702, 710 (1997).

2. “Indeed, opposition to and condemnation of suicide—and, therefore, of assisting suicide—are consistent and enduring themes of our philosophical, legal and cultural heritages.” This almost universal tradition has long rejected a right to assisted suicide and the State of [Insert name of State] “continues to explicitly reject it today, even for terminally ill, mentally competent adults.” Washington v. Glucksberg, 521 U.S. 702, 711 & 723 (1997).


4. The State of [Insert name of State] “has an interest in protecting vulnerable groups—including the poor, the elderly, and disabled persons—from abuse, neglect, [coercion,] and mistakes.” A ban on assisted suicide reflects and reinforces our well-supported policy “that the lives of the terminally ill, disabled and elderly people must be no less valued than the lives for the young and healthy, and that a seriously disabled [terminally ill or elderly] person’s suicidal impulses should be interpreted and treated the same way as anyone else’s.” Washington v. Glucksberg, 521 U.S. 702, 731-32 (1997).
The State of [Insert name of State] has an interest in protecting the integrity and ethics of the medical profession, including its obligation to serve its patients as healers, as well as to the principles articulated in the Hippocratic Oath to:

a. Keep the sick from harm and injustice.
b. Refrain from giving anybody a deadly drug if asked for it, nor make a suggestion to this effect.

More specifically, the State of [Insert name of State] recognizes the close link between physician-assisted suicide and euthanasia where a “right to die” easily becomes a “duty to die.” A prohibition of assisted suicide is the only reasonable means to protect against foreseeable abuses. Washington v. Glucksberg, 521 U.S. 702, 734-35 (1997); Vacco v. Quill, 521 U.S. 793, 808-09 (1997).

The State of [Insert name of State] also recognizes the distinction between a patient refusing life-sustaining medical treatment (not to include the withdrawal of artificial nutrition and hydration), where he or she dies from the underlying fatal disease or pathology; and a patient ingesting or administering a lethal medication prescribed by a physician, where the medication is the cause of death. Vacco v. Quill, 521 U.S. 793, 801 (1997).

The State of [Insert name of State] further recognizes the importance of palliative care and pain management and emphasizes the distinction in the “legal principles of causation and intent” between pain management intended to alleviate pain and assisted suicide intended to cause death. Vacco v. Quill, 521 U.S. 793, 801-03 (1997).

Based on the findings in subsection (a), the purposes of this Act are to:

1. Provide protection for our most vulnerable citizens by explicitly prohibiting assisted suicide within the State of [Insert name of State]’s criminal code.

2. Reinforce and reflect the intended purpose of our medical professions to preserve life and act as healers.
Section 3. Definitions.
As used in this Act only:

(a) “Deliberately” means to consider carefully; done on purpose; intentional.

(b) “Healthcare provider” means any individual who may be asked to participate in any way in a healthcare service, including, but not limited to, the following: a physician; physician’s assistant; nurse; nurses’ aide; medical assistant; hospital employee; clinic employee; nursing home employee; pharmacist; pharmacy employee; researcher; medical or nursing school faculty member, student or employee; counselor; social worker; or any professional, paraprofessional, or any other person who furnishes, or assists in the furnishing of, healthcare services.

(c) “Person” means any natural person; and when appropriate, an “organization” to include:

(1) A public or private corporation, company, association, firm, partnership, or joint-stock company;

(2) Government or a governmental instrumentality; or

(3) A foundation, institution, society, union, club, or church.

(d) “Physician” means a person licensed to practice medicine in the State of [Insert name of State]. This term includes medical doctors and doctors of osteopathy.

(e) “Suicide” means the act or instance of taking one's own life voluntarily and intentionally.

(f) “Aid in dying” means the act or instance of a person providing the means or manner for another to be able to commit suicide.

Section 4. Criminal Penalties.

(a) Any person who deliberately advises, assists, or encourages another to commit suicide or provides aid in dying, is guilty of [Insert appropriate degree of felony].

(b) Any physician or healthcare provider who:

(1) Prescribes any drug, compound, or substance to a patient with the intended purpose to assist in ending the patient's life; or
(2) Assists or performs any medical procedure for the intended purpose to assist in ending the patient's life is guilty of [Insert appropriate degree of felony].

Section 5. Civil Penalties and Fines.
(a) Any person, physician, or healthcare provider who intentionally or knowingly violates this Act shall be liable for damages.

(b) If any person assists a suicide resulting in death, any surviving family member, other beneficiary, executor, or administrator of the decedent’s estate may bring an appropriate action under [Insert reference to State’s wrongful death statute(s)].

(c) Any physician or other healthcare provider who assists a suicide in violation of this Act shall be considered to have engaged in unprofessional conduct for which his or her [certificate or] license to provide healthcare services in the State of [Insert name of State] shall be suspended or revoked by [Insert name of State Medical Board or other appropriate entity].

Section 6. Construction.

Nothing in this Act shall be construed to prohibit a physician or healthcare provider from:

(a) Participating in the execution of a person sentenced by a court to death by lethal injection.

(b) Following a patient’s clear, expressed, and documented wishes to withhold or withdraw life-sustaining treatment [not necessarily inclusive of withdrawing artificial nutrition and hydration].

(c) Prescribing and administering palliative care or pain medication treatment options intended to relieve pain while the patient’s illness or condition follows its natural course.
Section 7. Right of Intervention.

The [Legislature], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this Act or any portion thereof is challenged.

Section 8. Severability.
If any provision, word, phrase, or clause of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses, or applications of this Act which can be given effect without the invalid provision, word, phrase, clause, or application and to this end, the provisions, words, phrases, and clauses of this Act are declared severable.

Section 9. Effective Date.

This Act takes effect on [Insert date].
STATE OF THE STATES: WHERE ARE WE NOW? LAWS AGAINST ASSISTED SUICIDE

Thirty-eight states criminalize assisted suicide: AK, AR, AZ, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, NE, NH, NJ, NM, NY, ND, OK, PA, RI, SC, SD, TN, TX, VA, and WI.

Six states prohibit assisted suicide under common law of crimes or judicial interpretation of homicide statutes: AL, MA, NC, OH, VT, and WV.

Three states and District of Columbia have left the legal status of assisted suicide undetermined: DC, NV, UT, and WY.

Two states permit physician-assisted suicide: OR and WA.

One state permits physician-assisted suicide by recognizing a statutory “consent” defense for those “aiding” a suicide: MT.
More information about the importance of laws banning assisted suicide can be found in *Defending Life 2012: Building a Culture of Life, Deconstructing the Abortion Industry.*

*Defending Life 2012* is available online at AUL.org.

For further information regarding this or other AUL policy guides, please contact:

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