HOUSE DOCKET, NO. 2967 FILED ON: 1/21/2011

HOUSE . . . . . No. 2233

The Commonwealth of Massachusetts

PRESENTED BY:

Louis L. Kafka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to death with dignity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Louis L. Kafka	*8th Norfolk*
Cory Atkins	*14th Middlesex*
Anne M. Gobi	*5th Worcester*
Christine E. Canavan	*10th Plymouth*
Kathi-Anne Reinstein	*16th Suffolk*
William C. Galvin	*6th Norfolk*
Jay R. Kaufman	*15th Middlesex*

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HOUSE . . . . . No. 2233

By Mr. Kafka of Stoughton, a petition (accompanied by bill, House, No. 2233) of Louis L. Kafka and others for legislation to allow for physican assisted suicide for qualified patients to end their lives. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1468* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to death with dignity.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Definitions

As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings :

(1) "Adult" means an individual who is 18 years of age or older.

(2) (2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's termi nal disease.

(3) (3) "Capable" means that in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist or psychologist, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) (4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional di agnosis and prognosis regarding the patient's disease.

(5) (5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient

16 is capable and not suf fering from a psychiatric or psychological disorder or depression causing
17 impaired judgment.

18 (6) (6) "Health care provider" means a person licensed, certified or otherwise
19 authorized or permitted by the law of this state to administer health care or dispense medication
20 in the ordinary course of business or practice of a profession, and includes a health care facility.

21 (7) (7) "Informed decision" means a decision by a qualified patient, to request and
22 obtain a prescription to end his or her life in a humane and di gnified manner, that is based on an
23 appreciation of the relevant facts and after being fully informed by the attending physician of:

24 (8) (a) His or her medical diagnosis;

25 (b) His or her prognosis;

26 (c) The potential risks associated with taking the medica tion to be prescribed;

27 (d) The probable result of taking the medication to be prescribed; and

28 (e) The feasible alternatives, including, but not limited to, comfort care, hospice
29 care and pain control.

30 (8) "Medically confirmed" means the medical opinio n of the attending physician has
31 been confirmed by a consulting physician who has examined the patient and the patient's
32 relevant medical records.

33 (9) "Patient" means a person who is under the care of a physician.

34 (10) "Physician" means a doctor of medic ine or osteopathy licensed to practice medicine
35 by the Board of Medical Examiners for the Commonwealth of Massachusetts.

36 (11) "Qualified patient" means a capable adult who is a resident of Massachusetts.

37 (12) "Terminal disease" means an incurable and irr eversible disease that has been
38 medically confirmed and will, within reasonable medical judgment, produce death within six
39 months.

40 Section 2 . Who may initiate a written request for medication.

41 (1) An adult who is capable, is a resident of Massachusetts, and has been determined by
42 the attending physician and consulting physician to be suffering from a terminal disease, and
43 who has voluntarily expressed his or her wish to die, may make a written request for medication
44 for the purpose of ending his or her li fe in a humane and dignified manner.

45 (2) No person shall qualify under the provisions of this act solely because of age or
46 disability.

47 Section 3. Form of the written request.

48 (1) A valid request for medication under this act shall be in substantially th e form
49 described in Section 6, signed and dated by the patient and witnessed by at least two individuals
50 who, in the presence of the patient, attest that to the best of their knowledge and belief the patient
51 is capable, acting voluntarily, and is not being coerced to sign the request.

52 (2) (2) One of the witnesses shall be a person who is not:

53 (3) (a) A relative of the patient by blood, marriage or adoption;

54 (4) (b) A person who at the time the request is signed would be entitled to any portion
55 of the estate of the qualified patient upon death under any will or by operation of law; or

56 (5) (c) An owner, operator or employee of a health care facility where the qualified
57 patient is receiving medical treatment or is a resident.

58 (6) (3) The patient's attending physician at th e time the request is signed shall not be a
59 witness.

60 (4) If the patient is a patient in a long term care facility at the time the written request is
61 made, one of the witnesses shall be an individual designated by the facility.

62 (7) Section 3. Attending physi cian responsibilities.

63 (1) The attending physician shall:

64 (2) (a) Make the initial determination of whether a patient has a terminal
65 disease, is capable, and has made the request voluntarily;

66 (3) (b) Request that the patient demonstrate Massachusetts residenc y;

67 (c) To ensure that the patient is making an informed decision, inform the patient
68 of:

69 (A) His or her medical diagnosis;

70 (B) His or her prognosis;

71 (C) The potential risks associated with taking the medication to be
72 prescribed;

73 (D) The probab le result of taking the medication to be prescribed; and

74 (E) The feasible alternatives, including, but not limited to, comfort care,
75 hospice care and pain control;

76 (d) Refer the patient to a consulting physician for medical confirmation of the
77 diagno sis, and for a determination that the patient is capable and acting voluntarily;

78 (e) Refer the patient for counseling if appropriate pursuant to Section 3B;

79 (f) Recommend that the patient notify next of kin;

80 (g) Counsel the patient about the importan ce of having another person present
81 when the patient takes the medication prescribed pursuant to this act and of not taking the
82 medication in a public place;

83 (h) Inform the patient that he or she has an opportunity to rescind the request at
84 any time and in any manner, and offer the patient an opportunity to rescind at the end of the 15
85 day waiting period pursuant to Section 3E;

86 (i) Verify, immediately prior to writing the prescription for medication under this
87 act, that the patient is making an informed decision;

88 (j) Fulfill the medical record documentation requirements of Section 3H;

89 (k) Ensure that all appropriate steps are carried out in accordance with this act prior to
90 writing a prescription for medication to enable a qualified patient to end his or her life in a
91 humane and dignified manner; and

92 (l)(A) Dispense medications directly, including ancillary medications intended to
93 facilitate the desired effect to minimize the patient's discomfort, provided the attending physician
94 is registered as a d ispensing physician with the Board of Medical Examiners, has a current Drug
95 Enforcement Administration certificate and complies with any applicable administrative rule; or

96 (B) With the patient's written consent:

97 (i) Contact a pharmacist and inform t he pharmacist of the
98 prescription; and

99 (ii) Deliver the written prescription personally or by mail to the
100 pharmacist, who will dispense the medications to either the patient, the attending physician or an
101 expressly identified agent of the patient.

102 (2) Notwithstanding any other provision of law, the attending physician may sign the
103 patient's death certificate.

104 Section 3A. Consulting physician confirmation.

105 Before a patient is qualified under this act, a consulting physician shall examine the
106 patient a nd his or her relevant medical records and confirm, in writing, the attending physician's

107 diagnosis that the patient is suffering from a terminal disease, and verify that the patient is
108 capable, is acting voluntarily and has made an informed decision.

109 Sec tion 3B. Counseling referral.

110 If in the opinion of the attending physician or the consulting physician a patient may be
111 suffering from a psychiatric or psychological disorder or depression causing impaired judgment,
112 either physician shall refer the patien t for counseling. No medication to end a patient's life in a
113 humane and dignified manner shall be prescribed until the person performing the counseling
114 determines that the patient is not suffering from a psychiatric or psychological disorder or
115 depression causing impaired judgment.

116 Section 3C. Informed decision.

117 No person shall receive a prescription for medication to end his or her life in a humane
118 and dignified manner unless he or she has made an informed decision as defined in Section 1 (7).
119 Immediately prior to writing a prescription for medication under this act, the attending physician
120 shall verify that the patient is making an informed decision.

121 Section 3D. Family notification.

122 The attending physician shall recommend that the patient not ify the next of kin of his or
123 her request for medication pursuant to this act. A patient who declines or is unable to notify next
124 of kin shall not have his or her request denied for that reason.

125 Section 3E. Written and oral requests.

126 In order to receive a prescription for medication to end his or her life in a humane and
127 dignified manner, a qualified patient shall have made an oral request and a written request, and
128 reiterate the oral request to his or her attending physician no less than fifteen (15) day s after
129 making the initial oral request. At the time the qualified patient makes his or her second oral
130 request, the attending physician shall offer the patient an opportunity to rescind the request.

131 Section 3F. Right to rescind request.

132 A patient may re scind his or her request at any time and in any manner without regard to
133 his or her mental state. No prescription for medication under this act may be written without the
134 attending physician offering the qualified patient an opportunity to rescind the requ est.

135 Section 3G. Waiting periods.

136 No less than fifteen (15) days shall elapse between the patient's initial oral request and the
137 writing of a prescription under this act. No less than 48 hours shall elapse between the patient's
138 written request and the wr iting of a prescription under this act.

139 Section 3H. Medical record documentation requirements.

140 The following shall be documented or filed in the patient's medical record:

141 (1) All oral requests by a patient for medication to end his or her life in a huma ne and
142 dignified manner;

143 (2) All written requests by a patient for medication to end his or her life in a humane and
144 dignified manner;

145 (3) The attending physician's diagnosis and prognosis, determination that the patient is
146 capable, acting voluntarily an d has made an informed decision;

147 (4) The consulting physician's diagnosis and prognosis, and verification that the patient is
148 capable, acting voluntarily and has made an informed decision;

149 (5) A report of the outcome and determinations made during counse ling, if performed;

150 (6) The attending physician's offer to the patient to rescind his or her request at the time
151 of the patient's second oral request pursuant to Section 3E; and

152 (7) A note by the attending physician indicating that all requirements under this act have
153 been met and indicating the steps taken to carry out the request, including a notation of the
154 medication prescribed.

155 Section 3I. Residency requirement.

156 Only requests made by Massachusetts residents under this act shall be granted. Factors
157 demonstrating Massachusetts residency include but are not limited to :

158 (1) Possession of a Massachusetts driver license;

159 (2) Registration to vote in Massachusetts;

160 (3) Evidence that the person owns or leases property in Massachusetts; or

161 (4) Filing of an Massachusetts tax return for the most recent tax year.

162 Section 3J. Reporting requirements.

163 (1)(a) The Department of Public Health shall annually review a sample of records
164 maintained pursuant to this act.

165 (b) The department shall require any health care provider upon dispensing
166 medication pursuant to this act to file a copy of the dispensing record with the division.

167 (2) The department shall make rules to facilitate the collection of information regarding
168 compliance with this act. Except as otherwis e required by law, the information collected shall
169 not be a public record and may not be made available for inspection by the public.

170 (3) The department shall generate and make available to the public an annual statistical
171 report of information collected under subsection (2) of this section.

172 Section 3K. Effect on construction of wills, contracts and statutes.

173 (1) No provision in a contract, will or other agreement, whether written or oral, to the
174 extent the provision would affect whether a person may mak e or rescind a request for
175 medication to end his or her life in a humane and dignified manner, shall be valid.

176 (2) No obligation owing under any currently existing contract shall be conditioned or
177 affected by the making or rescinding of a request, by a pe rson, for medication to end his or her
178 life in a humane and dignified manner.

179 Section 3L. Insurance or annuity policies.

180 The sale, procurement, or issuance of any life, health, or accident insurance or annuity
181 policy or the rate charged for any policy sh all not be conditioned upon or affected by the making
182 or rescinding of a request, by a person, for medication to end his or her life in a humane and
183 dignified manner. Neither shall a qualified patient's act of ingesting medication to end his or her
184 life in a humane and dignified manner have an effect upon a life, health, or accident insurance or
185 annuity policy.

186 Section 3M. Construction of Act.

187 Nothing in this act shall be construed to authorize a physician or any other person to end
188 a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance
189 with this act shall not, for any purpose, constitute suicide, assisted suicide, mercy killing or
190 homicide, under the law.

191 Section 4. Immunities; basis for prohibiting health care provider from participation;
192 notification; permissible sanctions.

193 Except as provided in Section 4B :

194 (1) No person shall be subject to civil or criminal liability or professional disciplinary
195 action for participating in good faith compliance with th is act. This includes being present when
196 a qualified patient takes the prescribed medication to end his or her life in a humane and
197 dignified manner.

198 (2) No professional organization or association, or health care provider, may subject a
199 person to censure , discipline, suspension, loss of license, loss of privileges, loss of membership
200 or other penalty for participating or refusing to participate in good faith compliance with this act.

201 (3) No request by a patient for or provision by an attending physician of medication in
202 good faith compliance with the provisions of this act shall constitute neglect for any purpose of
203 law or provide the sole basis for the appointment of a guardian or conservator.

204 (4) No health care provider shall be under any duty, whether by contract, by statute or by
205 any other legal requirement to participate in the provision to a qualified patient of medication to
206 end his or her life in a humane and dignified manner. If a health care provider is unable or
207 unwilling to carry out a patient 's request under this act, and the patient transfers his or her care
208 to a new health care provider, the prior health care provider shall transfer, upon request, a copy
209 of the patient's relevant medical records to the new health care provider.

210 (5)(a) Notwi thstanding any other provision of law, a health care provider may prohibit
211 another health care provider from participating in this act on the premises of the prohibiting
212 provider if the prohibiting provider has notified the health care provider of the proh ibiting
213 provider's policy regarding participating in this act. Nothing in this paragraph prevents a health
214 care provider from providing health care services to a patient that do not constitute participation
215 in this act.

216 (b) Notwithstanding the provisions of subsections (1) to (4) of this section, a
217 health care provider may subject another health care provider to the sanctions stated in this
218 paragraph if the sanctioning health care provider has notified the sanctioned provider prior to
219 participation in thi s act that it prohibits participation in this act:

220 (A) Loss of privileges, loss of membership or other sanction provided
221 pursuant to the medical staff bylaws, policies and procedures of the sanctioning health care
222 provider if the sanctioned provider is a member of the sanctioning provider's medical staff and
223 participates in this act while on the health care facility premises, as defined in M.G.L. Ch. 111,
224 S.25B, of the sanctioning health care provider, but not including the private medical office of a
225 ph ysician or other provider;

226 (B) Termination of lease or other property contract or other
227 nonmonetary remedies provided by lease contract, not including loss or restriction of medical
228 staff privileges or exclusion from a provider panel, if the sanctioned provider participates in this
229 act while on the premises of the sanctioning health care provider or on property that is owned by
230 or under the direct control of the sanctioning health care provider; or

231 (C) Termination of contract or other nonmonetary reme dies provided
232 by contract if the sanctioned provider participates in this act while acting in the course and scope

233 of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning
234 health care provider. Nothing in this subpa ragraph shall be construed to prevent:

235 (i) A health care provider from participating in this act while
236 acting outside the course and scope of the provider's capacity as an employee or independent
237 contractor; or

238 (ii) A patient from contracting with his or her attending
239 physician and consulting physician to act outside the course and scope of the provider's capacity
240 as an employee or independent contractor of the sanctioning health care provider.

241 (c) A health care provider that imposes sanctions pur suant to paragraph (b) of
242 this subsection must follow all due process and other procedures the sanctioning health care
243 provider may have that are related to the imposition of sanctions on another health care provider.

244 (d) For purposes of this subsection:

245 (A) "Notify" means a separate statement in writing to the health care
246 provider specifically informing the health care provider prior to the provider's participation in
247 this act of the sanctioning health care provider's policy about participation in act ivities covered
248 by this act.

249 (B) "Participate in this act" means to perform the duties of an attending
250 physician pursuant to Section 3, the consulting physician function pursuant to Section 3A or the
251 counseling function pursuant to Section 3B. "Particip ate in this act " does not include:

252 (i) Making an initial determination that a patient has a terminal
253 disease and informing the patient of the medical prognosis;

254 (ii) Providing information about the Massachusetts Death with
255 Dignity Act to a patient upon the request of the patient;

256 (iii) Providing a patient, upon the request of the patient, with a
257 referral to another physician; or

258 (iv) A patient contracting with his or her attending physician
259 and consulting physician to act outside of the cou rse and scope of the provider's capacity as an
260 employee or independent contractor of the sanctioning health care provider.

261 (6) Action taken pursuant to Sections 3, 3A, 3B, and 3C shall not be the sole basis for a
262 report of unprofessional or dishonorable c onduct under M.G.L. Ch. 112, S. 5.

263 (7) No provision of this act shall be construed to allow a lower standard of care for
264 patients in the community where the patient is treated or a similar community.

265 Section 4B. Liabilities.

266 (1) A person who without aut horization of the patient willfully alters or forges a request
267 for medication or conceals or destroys a rescission of that request with the intent or effect of
268 causing the patient's death shall be guilty of a felony.

269 (2) A person who coerces or exerts und ue influence on a patient to request medication
270 for the purpose of ending the patient's life, or to destroy a rescission of such a request, shall be
271 guilty of a felony.

272 (3) Nothing in this act limits further liability for civil damages resulting from othe r
273 negligent conduct or intentional misconduct by any person.

274 (4) The penalties in this act do not preclude criminal penalties applicable under other law
275 for conduct which is inconsistent with the provisions of this act.

276 Section 4C. Claims by governmenta l entity for costs incurred.

277 Any governmental entity that incurs costs resulting from a person terminating his or her
278 life pursuant to the provisions of this act in a public place shall have a claim against the estate of
279 the person to recover such costs a nd reasonable attorney fees related to enforcing the claim.

280 Section 5. Severability.

281 Any section of this act being held invalid as to any person or circumstance shall not affect
282 the application of any other section of this act which can be given full effect without the invalid
283 section or application.

284 Section 6. Form of the request.

285 A request for a medication as authorized by this act shall be in substantially the following
286 form:

287 REQUEST FOR MEDICATION

288 TO END MY LIFE IN A HUMANE

289 AND DIGNIFIED MANNER

290 I, _____, am an adult of sound mind.

291 I am suffering from _____, which my attending physician has determined is a terminal
292 disease and which has been medically confirmed by a consulting physician.

293 I have been fully informed of my diagnosis, prognosis, the nature of medication to be
294 prescribed and potential associated risks, the expected result, and the feasible alternatives,
295 including comfort care, hospice care and pain control.

296 I request that my attending physician prescribe medication th at will end my life in a
297 humane and dignified manner.

298 INITIAL ONE :

299 _____ I have informed my family of my decision and taken their opinions into
300 consideration.

301 _____ I have decided not to inform my family of my decision.

302 _____ I have no family to in form of my decision.

303 I understand that I have the right to rescind this request at any time.

304 I understand the full import of this request and I expect to die when I take the medication
305 to be prescribed. I further understand that although most deaths oc cur within three hours, my
306 death may take longer and my physician has counseled me about this possibility.

307 I make this request voluntarily and without reservation, and I accept full moral
308 responsibility for my actions.

309 Signed: _____

310 Dated: ____ _____

311 DECLARATION OF WITNESSES

312 We declare that the person signing this request:

313 (a) Is personally known to us or has provided proof of identity;

314 (b) Signed this request in our presence;

315 (c) Appears to be of sound mind and not under duress, fraud o r undue influence;

316 (d) Is not a patient for whom either of us is attending physician.

317 _____ Witness 1/Date

318 _____ Witness 2/Date

319 NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person
320 signing this request, shall not be entitled to any portion of the person's estate upon death and

321 shall not own, operate or be employed at a health care facility where the person is a patient or
322 resident. If the patient is an inpatient at a health care facility, one of the witn esses shall be an
323 individual designated by the facility.

324 Section 7. Penalties.

325 (1) It shall be considered a felony for a person without authorization of the principal to
326 willfully alter, forge, conceal or destroy an instrument, the reinstatement or revoc ation of an
327 instrument or any other evidence or document reflecting the principal's desires and interests, with
328 the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of
329 artificially administered nutrition and hydrati on which hastens the death of the principal.

330 (2) Except as provided in subsection (1) of this section, it shall be considered
331 misdemeanor for a person without authorization of the principal to willfully alter, forge, conceal
332 or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence
333 or document reflecting the principal's desires and interests with the intent or effect of affecting a
334 health care decision.

335