STAND. COM. REP. NO. 893

Honolulu, Hawaii

MAR 0 3 2017

RE: S.B. No. 1129
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 1129, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO HEALTH,"

begs leave to report as follows:

The purpose and intent of this measure is to enact a medical aid in dying act in Hawaii by establishing a regulatory process under which an adult resident of the State with a medically confirmed terminal disease may obtain a prescription for medication to be self-administered to end the patient's life.

Your Committee received testimony in support of this measure from the Hawaii State Center for Nursing; Women's Caucus of the Democratic Party of Hawaii; Hawaii Association of Professional Nurses; Democratic Party of Hawaii; Akamai Glass Company; American Civil Liberties Union of Hawai'i; Americans for Democratic Action Hawaii; Chamber of Commerce of Persons with Disabilities; Compassion and Choices; Death with Dignity National Center; Filipino-American Advocacy Network; First Unitarian Church of Honolulu; Hawaii Advocates for Consumer Rights; Hawaii Death with Dignity Society; Hawaii Friends of Civil Rights; Ho'omana Pono, LLC; International Longshore and Warehouse Union, Local 142; LGBT First Caucus of the Democratic Party of Hawaii; Straub Clinic and Hospital; and approximately two hundred thirty individuals. Your Committee received testimony in opposition to this measure from the Hawaii Republican Party, American Nurses Association,

Americans United for Life, Christian Counseling and Research Centers of America, Concerned Women for America of Hawaii, Hawaii Catholic Conference, Hawaii Family Forum, Hawaii Life Alliance, Hawaii's Partnership for Appropriate Compassion and Care, St. Francis Healthcare System of Hawaii, and seventy-five individuals. Your Committee received comments on this measure from the Department of the Attorney General, Department of Health, and eight individuals.

Your Committee finds that medical aid in dying is a medical practice in which a mentally capable, terminally ill adult with six months or less to live may request a prescription for a medication that the terminally ill adult can self-administer to achieve death in a peaceful, humane, and dignified manner. While hospice and palliative care are widely available and may be an excellent option for some, care provided through these methods is still within the control of a health care provider, not a terminally ill patient who may wish for the freedom to make the patient's own end-of-life decisions.

Your Committee further finds that this measure is modeled after Oregon's groundbreaking Death with Dignity Act, which has been in effect for over twenty years and was enacted during a time when no other state authorized the medical practice of aid in dying. Since that time, other states, including California, Colorado, Vermont, and Washington, have evaluated Oregon's experience and have enacted similar legislation. Your Committee also finds that medical aid in dying is a safe and trusted practice. In the states that have authorized the practice, there has not been a single documented instance of coercion or abuse. The laws in these other states are working as intended. Furthermore, rather than posing a risk to patients or the medical profession, Oregon's Death with Dignity Act has galvanized significant improvements in the care of the state's terminally ill and dying.

Your Committee additionally finds that the availability of the option of medical aid in dying gives a terminally ill individual autonomy, control, and choice. Your Committee notes that this choice is the overwhelming motivational factor behind the decision to request assistance in dying. A terminally ill individual who seeks medical aid in dying may ultimately not

choose to exercise this option; however, the mere availability of such a choice can bring comfort to people in their final days.

Your Committee further finds that any medical aid in dying legislation must include proper safeguards that prevent abuse and coercion. In order for any medical aid in dying option to truly be a choice, it must not be the only option. Accordingly, this measure includes numerous, strict safeguards that protect against abuse and coercion and promote choice. This measure also establishes strict eligibility criteria and guidelines that meet the highest standard of care for the medical practice of aid in dying, as described in clinical criteria published in the Journal of Palliative Medicine. Under this measure, to be eligible for aid-in-dying medication, adults must be terminally ill, with a prognosis of six months or less to live, and be mentally capable of making their own health care decisions. Importantly, this measure clearly states that no person shall qualify for medical aid in dying solely based on age or disability.

Your Committee notes that this measure includes advanced practice registered nurses in the role of attending providers and consulting providers for qualified patients. While an advanced practice registered nurse may be qualified to serve as an attending provider, your Committee is concerned that serving as a consulting provider may fall outside the practice scope of an advanced practice registered nurse.

Your Committee believes that a qualified patient should be afforded an opportunity to seek the assistance of a consulting provider who has not previously assumed responsibility for the care of the patient with the attending provider. This provides an additional safeguard to limit the possibility of collusion between providers during a patient's decision making process regarding the patient's end-of-life choices.

Your Committee notes that concerns may persist with respect to safeguards in this measure to ensure that a qualified patient's family is notified regarding the patient's decision to actually self-administer the medication as well as to dissuade the patient from taking the medication in a public place. Your Committee notes that these safeguards may be difficult to enforce, but that recommending notification to next of kin and counseling a patient not to self-administer the medication in a public place are both

explicitly included in the attending provider's statutory responsibilities.

Lastly, your Committee believes that the Department of Health should retain and maintain the records of patients qualifying for and using medical aid in dying and that such records should not be disposed or destroyed. Furthermore, in addition to generating an annual statistical report to be made available to the public, your Committee believes that an annual report to the Legislature is necessary for the Legislature to track the implementation of the medical aid in dying act and address any problem areas legislatively, when appropriate.

Accordingly, your Committee has amended this measure by:

(1) Deleting references to advanced practice registered nurses under the definitions of "consulting provider" and "counseling";

(2) Amending the definition of "consulting provider" to clarify that a consulting provider shall not have previously assumed responsibility of the care of the patient with the attending provider;

(3) Clarifying that a patient is a "qualified patient", when appropriate;

(4) Clarifying that the two individuals who witness a qualified patient signing a request for medication shall attest to the best of their knowledge and belief that the qualified patient is of sound mind;

(5) Clarifying that a person is disqualified from being a witness of a request for medication if that person would be entitled to any portion of the estate of the qualified patient upon death under any will, trust, or other legal instrument;

(6) Clarifying that the death certificate of the qualified patient shall list the terminal disease as the immediate cause of death;

(7) Clarifying that the minimum waiting periods shall be fifteen days between a qualified patient's initial oral request and the taking of steps to make available a prescription for medication, rather than the writing of a prescription; and forty-eight hours between the qualified patient's written request and the taking of steps to make available a prescription for medication, rather than the writing of a prescription;

(8) Requiring the Department of Health to retain and exercise reasonable care in maintaining compliance information collected and that the information shall not be subject to any disposal or destruction of records requirements;

(9) Inserting language that requires a person who has custody or control of any unused medication dispensed for the purposes of medical aid in dying after the death of the qualified patient to personally deliver the unused medication for disposal to the nearest qualified facility or lawfully dispose of the unused medication;

(10) Adding the offenses of murder, manslaughter, negligent homicide, and any other criminal conduct under the law to clarify that any actions taken in accordance with the medical aid in dying act do not constitute these offenses;

(11) Adding that good faith compliance with the medical aid in dying act shall not constitute harm, self-neglect, or abuse for any purpose of law or provide the sole basis for an appointment of a guardian or conservator;

(12) Clarifying that for civil or criminal immunity, a person shall be participating or acting in good faith while a health care provider shall be acting, rather than participating, in good faith;

(13) Clarifying that no health care facility shall be subject to civil or criminal liability for acting in good faith compliance with the medical aid in dying act including but not limited to the designation of a witness who has qualifications specified by the Department of Health

when a qualified patient makes a written request when residing in a long-term care facility;

(14) Replacing the mens rea element of willfully committing certain acts with intentionally committing those acts, under the criminal penalties section;

(15) Adding language that requires the Department of Health to submit a report to the Legislature prior to each Regular Session that includes information about the implementation of the medical aid in dying act; and

(16) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1129, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1129, S.D. 2.

Respectfully submitted on behalf of the members of the Committee on Judiciary and Labor,

GILBERT S.C. KEITH-AGARAN, Chair

The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:*	Committee Referral:	Date:
SB 1129, SD1	CPH, JDL	2/28/17

☐ The Committee is reconsidering its previous decision on this measure.

If so, then the previous decision was to: _____

The Recommendation is:

☐ Pass, unamended 2312 ☒ Pass, with amendments 2311 ☐ Hold 2310 ☐ Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike				✓
KIM, Donna Mercado		✓		
THIELEN, Laura H.	✓			
TOTAL	3	1	0	1

Recommendation: ☒ Adopted ☐ Not Adopted

Chair's or Designee's Signature: Karl Rhoads

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*Only one measure per Record of Votes

Revised: 12/2/16