A BILL FOR AN ACT

To further amend title 41 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21, 6-9 and 6-38, by adding a new chapter 9 to establish a procedure for an adult to execute a directive providing that life-sustaining procedures should be withheld or withdrawn if that person becomes terminally ill and such procedures would serve only to prolong the moment of death, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Title 41 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 901 of chapter 9 to read as follows:

"Section 901. Short title. This act may be cited as the Natural Death Act."

Section 2. Title 41 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 902 of chapter 9 to read as follows:

"Section 902. Definitions. As used in this act:

(1) 'Attending physician' means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(2) 'Directive' means a written document voluntarily executed by the declarant in accordance with the requirements of section 903. The directive, or a copy of the directive, shall be made part of the patient's medical record.

(3) 'Life-sustaining procedure' means any medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, death is imminent whether or not such procedures are utilized.

'Life-sustaining procedure' shall not include the
administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(4) 'Physician' means a physician and surgeon licensed by the Board of Medical Quality Assurance or the Board of Osteopathic Examiners.

(5) 'Qualified patient' means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians, one of whom shall be the attending physician, who have personally examined the patient.

(6) 'Terminal condition' means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient."

Section 3. Title 41 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 903 of chapter 9 to read as follows:

"Section 903. Executing a directive. Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The directive shall be signed by the declarant in the presence of two witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of
the estate of the declarant upon his decease under any will of the declarant or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The directive shall be in the following form:

DIRECTIVE TO PHYSICIANS

Directive made this [__] day of [month, year]. I [__] being of sound mind, willfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

(1) If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sus-
taining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
(2) In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

(3) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

(4) I have been diagnosed and notified at least 14 days ago as having a terminal condition by [ ], M.D., whose address is [ ], and whose telephone number is [ ]. I understand that if I have not filled in the physician’s name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

(5) This directive shall have no force or effect 5 years from the date filled in above.

(6) I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed [ ]

Town and State of Residence [ ] The declarant has been personally known to me and I believe him or her to be of sound mind.
Section 4. Title 41 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 904 of chapter 9 to read as follows:

"Section 904. Restrictions.

(1) A directive shall have no force or effect if the declarant is a patient in a skilled nursing facility as may be defined by the appropriate State health authority at the time the directive is executed unless one of the two witnesses to the directive is a patient advocate or ombudsman as may be designated by the appropriate State health authority agency for this purpose pursuant to any other applicable provision of law. The patient advocate or ombudsman shall have the same qualifications as a witness under section 903.

(2) The intent of this section is to recognize that some patients in skilled nursing facilities may be so insulated from a voluntary decision-making role, by virtue of the custodial nature of their care, as to require special assurance that they are capable of willfully and voluntarily executing a directive."

Section 5. Title 41 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 905 of chapter 9 to read as follows:
Section 905. Revocation.

(1) A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

(a) By being canceled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction.

(b) By a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time and date when he received notification of the written revocation.

(c) By a verbal expression by the declarant of his intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when he received notification of the revocation.

(2) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation.
made pursuant to this section unless that person has actual
knowledge of the revocation."

Section 6. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 906 of
chapter 9 to read as follows:

"Section 906. Expiration of directive. A directive shall
be effective for 5 years from the date of execution
thereof unless sooner revoked in a manner prescribed in
section 905. Nothing in this act shall be construed to
prevent a declarant from reexecuting a directive at any
time in accordance with the formalities of section 903,
including reexecution subsequent to a diagnosis of a
terminal condition. If the declarant has executed more
than one directive, the time shall be determined from the
date of execution of the last directive known to the
attending physician. If the declarant becomes comatose or
is rendered incapable of communicating with the attending
physician, the directive shall remain in effect for the
duration of the comatose condition or until such time as
the declarant's condition renders him or her able to
communicate with the attending physician."

Section 7. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 907 of
chapter 9 to read as follows:

"Section 907. Liability. No physician or health facility
which, acting in accordance with the requirements of this
act, causes the withholding or withdrawal of life-sustaining
procedures from a qualified patient, shall be subject to
civil liability therefrom. No licensed health professional,
acting under the direction of a physician, who participates
in the withholding or withdrawal of life-sustaining
procedures in accordance with the provisions of this act
shall be subject to any civil liability. No physician, or
licensed health professional acting under the direction of a
physician, who participates in the withholding or
withdrawal of life-sustaining procedures in accordance
with the provisions of this act shall be guilty of any
criminal act or of unprofessional conduct."

Section 8. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 908 of
chapter 9 to read as follows:

"Section 908. Physician restrictions.

(1) Prior to effecting a withholding or withdrawal of
life-sustaining procedures from a qualified patient
pursuant to the directive, the attending physician shall
determine that the directive complies with section 903, and,
if the patient is mentally competent, that the directive
and all steps proposed by the attending physician to be
undertaken are in accord with the desires of the qualified
patient."
(2) If the declarant was a qualified patient at least 14 days prior to executing or reexecuting the directive, the directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no licensed health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection. A failure by a physician to effectuate the directive of a qualified patient pursuant to this act shall constitute unprofessional conduct if the physician refuses to make the necessary arrangements, or fails to take the necessary steps, to effect the transfer of the qualified patient to another physician who will effectuate the directive of the qualified patient.

(3) If the declarant becomes a qualified patient subsequent to executing the directive, and has not subsequently reexecuted the directive, the attending physician may give weight to the directive as evidence of the patient's directions regarding the withholding or withdrawal of life-sustaining procedures and may consider other factors, such as information from the affected family or the nature of the patient's illness, injury, or disease, in determining whether the totality of circumstances known
to the attending physician justifies effectuating the
directive. No physician, and no licensed health
professional acting under the direction of a physician,
shall be criminally or civilly liable for failing to
effectuate the directive of the qualified patient pursuant
to this subsection."

Section 9. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 909 of
chapter 9 to read as follows:

"Section 909. Insurance.

(1) The withholding or withdrawal of life-sustaining
procedures from a qualified patient in accordance with the
provisions of this act shall not, for any purpose,
constitute a suicide.

(2) The making of a directive pursuant to section 903
shall not restrict, inhibit, or impair in any manner the
sale, procurement, or issuance of any policy of life
insurance; neither shall it be deemed to modify the terms
of an existing policy of life insurance. No policy of life
insurance shall be legally impaired or invalidated in any
manner by the withholding or withdrawal of life-sustaining
procedures from an insured qualified patient,
notwithstanding any term of the policy to the contrary.

(3) No physician, health facility, or other health
provider, and no health care service plan, insurer issuing
disability insurance, self-insured employee welfare benefit
plan, or nonprofit hospital service plan, shall require any
person to execute a directive as a condition for being
insured for, or receiving, health care services."

Section 10. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 910 of
chapter 9 to read as follows:

"Section 910. Provisions cumulative. Nothing in this act
shall impair or supersede any legal right or legal
responsibility which any person may have to effect the
withholding or withdrawal of life-sustaining procedures in
any lawful manner. In such respect the provisions of this
act are cumulative."

Section 11. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 911 of
chapter 9 to read as follows:

"Section 911. Protection of the directive. Any person who
willfully conceals, cancels, defaces, obliterates, or
damages the directive of another without the declant's
consent shall be guilty of a misdemeanor. Any person who,
except where justified or excused by law, falsifies or
forges the directive of another, or willfully conceals or
withholds personal knowledge of a revocation as provided
in section 905, with the intent to cause a withholding or
withdrawal of life-sustaining procedures contrary to the
wishes of the declarant and, thereby, because of any such
act, directly causes life-sustaining procedures to be
withheld or withdrawn and death to thereby be hastened,
shall be subject to prosecution for unlawful homicide as
provided by law."

Section 12. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 912 of
chapter 9 to read as follows:

"Section 912. Restrictions. Nothing in this act shall be
construed to condone, authorize, or approve mercy killing,
or to permit any affirmative or deliberate act or omission
to end life other than to permit the natural process of
dying as provided in this chapter."

Section 13. Title 41 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 913 of
chapter 9 to read as follows:

"Section 913. Severability. If any provision of this act
or application thereof to any individual or circumstance is
held invalid, the invalidity does not affect other
provisions or applications of the act which can be given
effect without the invalid provision or application; and to
this end the provisions of this act are severable."
Section 14. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 11-05-90

Introduced by: Tony Ott