

Calendar No. 607

105TH CONGRESS
2^D Session

S. 2151

A BILL

To clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

SEPTEMBER 24, 1998

Reported with an amendment and an amendment to the title

Calendar No. 607

105TH CONGRESS
2D SESSION

S. 2151

To clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1998

Mr. NICKLES (for himself, Mr. LOTT, Mr. COATS, Mr. INHOFE, Mr. HELMS, Mr. MURKOWSKI, Mr. GRAMS, Mr. FAIRCLOTH, Mr. BOND, Mr. ENZI, Mr. SESSIONS, Mr. HAGEL, Mr. COVERDELL, Mr. SMITH of New Hampshire, Mr. LIEBERMAN, Mr. BROWNBACK, Mr. CRAIG, Mr. ABRAHAM, Mr. SANTORUM, Mr. ALLARD, Mr. GRASSLEY, Mr. DEWINE, Mr. KYL, and Mr. HUTCHINSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 24, 1998

Reported by Mr. HATCH, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Lethal Drug Abuse
3 Prevention Act of 1998”.

4 **SEC. 2. FINDINGS; PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) the use of certain narcotics and other dan-
7 gerous drugs is generally prohibited under the Con-
8 trolled Substances Act;

9 (2) under the Controlled Substances Act and
10 implementing regulations, an exception to this gen-
11 eral prohibition permits the dispensing and distribu-
12 tion of certain controlled substances by properly reg-
13 istered physicians for legitimate medical purposes;

14 (3) the dispensing or distribution of controlled
15 substances to assist suicide is not a legitimate medi-
16 cal purpose and should not be construed to be per-
17 missible under the Controlled Substances Act;

18 (4) the dispensing or distribution of certain
19 controlled substances for the purpose of relieving
20 pain and discomfort is a legitimate medical purpose
21 under the Controlled Substances Act and physicians
22 should not hesitate to dispense or distribute them
23 for that purpose when medically indicated; and

24 (5) for the reasons set forth in section 101 of
25 the Controlled Substances Act (21 U.S.C. 801), the
26 dispensing and distribution of controlled substances

1 for any purpose, including that of assisting suicide;
 2 affects interstate commerce.

3 (b) PURPOSES.—The purposes of this Act are—

4 (1) to provide explicitly that Federal law is not
 5 intended to license the dispensing or distribution of
 6 a controlled substance with a purpose of causing, or
 7 assisting in causing, the suicide, euthanasia, or
 8 mercy killing of any individual; and

9 (2) to encourage physicians to prescribe con-
 10 trolled substances as medically appropriate in order
 11 to relieve pain and discomfort, by reducing unwar-
 12 ranted concerns that their registration to prescribe
 13 controlled substances will thereby be put at risk, if
 14 there is no intent to cause a patient's death.

15 **SEC. 3. LETHAL DRUG ABUSE PREVENTION.**

16 (a) DENIAL OF REGISTRATION.—Section 303 of the
 17 Controlled Substances Act (21 U.S.C. 823) is amended
 18 by adding at the end the following:

19 “(i) DENIAL OF REGISTRATION.—The Attorney Gen-
 20 eral shall determine that registration of an applicant
 21 under this section is inconsistent with the public interest
 22 if—

23 “(1) during the 5-year period immediately pre-
 24 ceeding the date on which the application is submit-
 25 ted under this section, the registration of the appli-

1 cant under this section was revoked under section
 2 304(a)(4); or

3 “(2) the Attorney General determines, based on
 4 clear and convincing evidence, that the applicant is
 5 applying for the registration with the intention of
 6 using the registration to take any action that would
 7 constitute a violation of section 304(a)(4).”

8 (b) SUSPENSION OR REVOCATION OF REGISTRA-
 9 TION.—

10 (1) IN GENERAL.—Section 304(a) of the Con-
 11 trolled Substances Act (21 U.S.C. 824(a)) is amend-
 12 ed—

13 (A) by redesignating paragraphs (4) and
 14 (5) as paragraphs (5) and (6), respectively; and

15 (B) by inserting after paragraph (3) the
 16 following:

17 “(4) has intentionally dispensed or distributed a
 18 controlled substance with a purpose of causing, or
 19 assisting in causing, the suicide, euthanasia, or
 20 mercy killing of any individual, except that this
 21 paragraph does not apply to the dispensing or dis-
 22 tribution of a controlled substance for the purpose of
 23 relieving pain or discomfort (even if the use of the
 24 controlled substance may increase the risk of death);
 25 so long as the controlled substance is not also dis-

1 pensed or distributed for the purpose of causing, or
 2 assisting in causing, the death of an individual for
 3 any reason.”.

4 (2) CONFORMING AMENDMENT.—Section
 5 304(a)(5) of the Controlled Substances Act (21
 6 U.S.C. 824(a)(5)) (as redesignated by paragraph (1)
 7 of this subsection) is amended by inserting “other”
 8 after “such”.

9 (c) PAIN RELIEF.—Section 304(c) of the Controlled
 10 Substances Act (21 U.S.C. 824(c)) is amended—

11 (1) by striking “(c) Before” and inserting the
 12 following:

13 “(c) PROCEDURES.—

14 “(1) ORDER TO SHOW CAUSE.—After any hear-
 15 ing under paragraph (2), and before”; and

16 (2) by adding at the end the following:

17 “(2) MEDICAL REVIEW BOARD ON PAIN RE-
 18 LIEF.—

19 “(A) IN GENERAL.—The Attorney General
 20 shall by regulation establish a board to be
 21 known as the Medical Review Board on Pain
 22 Relief (referred to in this subsection as the
 23 ‘Board’).

24 “(B) MEMBERSHIP.—The Attorney Gen-
 25 eral shall appoint the members of the Board—

1 “(i) from among individuals who, by
2 reason of specialized education or substan-
3 tial relevant experience in pain manage-
4 ment, are clinical experts with knowledge
5 regarding standards, practices, and guide-
6 lines concerning pain relief; and

7 “(ii) after consultation with the Amer-
8 ican Medical Association, the American
9 Academy of Hospice and Palliative Medi-
10 cine, the National Hospice Organization,
11 the American Geriatrics Society, and such
12 other entities with relevant expertise con-
13 cerning pain relief, as the Attorney Gen-
14 eral determines to be appropriate.

15 “(C) DUTIES OF BOARD.—

16 “(i) HEARING.—If an applicant or
17 registrant claims that any action (or, in
18 the case of a proposed denial under section
19 303(i)(2), any potential action) that is a
20 basis of a proposed denial under section
21 303(i), or a proposed revocation or suspen-
22 sion under subsection (a)(4) of this sec-
23 tion, is an appropriate means to relieve
24 pain that does not constitute a violation of
25 subsection (a)(4) of this section, the appli-

cant or registrant may seek a hearing before the Board on that issue.

“(ii) FINDINGS.—Based on a hearing under clause (i), the Board shall make findings regarding whether the action at issue is an appropriate means to relieve pain that does not constitute a violation of subsection (a)(4). The findings of the Board under this clause shall be admissible in any hearing pursuant to an order to show cause under paragraph (1).”.

SEC. 4. CONSTRUCTION.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act shall be construed to imply that the dispensing or distribution of a controlled substance before the date of enactment of this Act for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual is not a violation of the Controlled Substances Act (21 U.S.C. 801 et seq.).

(b) INCORPORATED DEFINITIONS.—In this section, the terms “controlled substance”, “dispense”, and “distribute” have the meanings given those terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Lethal Drug Abuse Pre-*
 3 *vention Act of 1998”.*

4 **SEC. 2. FINDINGS; PURPOSES.**

5 (a) *FINDINGS.*—*Congress finds that—*

6 (1) *the use of certain narcotics and other drugs*
 7 *or substances with a potential for abuse is strictly*
 8 *regulated under the Controlled Substances Act;*

9 (2) *the dispensing and distribution of certain*
 10 *controlled substances only by properly registered prac-*
 11 *titioners only for legitimate medical purposes are per-*
 12 *mitted under the Controlled Substances Act and im-*
 13 *plementing regulations;*

14 (3) *the dispensing or distribution of controlled*
 15 *substances to assist suicide or euthanasia are not le-*
 16 *gitimate medical purposes and are not permissible*
 17 *under the Controlled Substances Act;*

18 (4) *the dispensing or distribution of certain con-*
 19 *trolled substances for the purpose of relieving pain*
 20 *and discomfort are legitimate medical purposes and*
 21 *are permissible under the Controlled Substances Act;*

22 (5) *inadequate treatment of pain, especially for*
 23 *chronic diseases, irreversible diseases such as cancer,*
 24 *and end-of-life care, is a serious public health problem*
 25 *affecting hundreds of thousands of patients every*
 26 *year; physicians should not hesitate to dispense or*

1 *distribute controlled substances when medically indi-*
2 *cated for those conditions; and*

3 *(6) for the reasons set forth in section 101 of the*
4 *Controlled Substances Act (21 U.S.C. 801), the dis-*
5 *persing and distribution of controlled substances for*
6 *any purpose, including that of assisting suicide or eu-*
7 *thanasia, affect interstate commerce.*

8 ***(b) PURPOSES.—The purposes of this Act are—***

9 *(1) to provide explicitly that Federal law is not*
10 *intended to allow the dispensing or distribution of*
11 *any controlled substance with the purpose of causing,*
12 *or assisting in causing, the suicide or euthanasia, of*
13 *any individual; and*

14 *(2) to encourage practitioners to prescribe, dis-*
15 *pense, distribute, and administer controlled sub-*
16 *stances as medically appropriate in order to relieve*
17 *pain and discomfort, by reducing unwarranted con-*
18 *cerns that their registration to prescribe controlled*
19 *substances will thereby be put at risk, if there is no*
20 *intent to assist in causing a patient's death.*

21 **SEC. 3. LETHAL DRUG ABUSE PREVENTION.**

22 ***(a) ADDITIONAL GROUND FOR DENIAL OF REGISTRA-***
23 ***TION.—Section 303 of the Controlled Substances Act (21***
24 ***U.S.C. 823) is amended by adding at the end the following:***

1 “(i) *The Attorney General shall determine that reg-*
 2 *istration of an applicant under this section is inconsistent*
 3 *with the public interest if—*

4 “(1) *during the 5-year period immediately pre-*
 5 *ceding the date on which the application is submitted*
 6 *under this section, the registration of the applicant*
 7 *under this section was suspended or revoked under*
 8 *section 304(a)(4); or*

9 “(2) *the Attorney General determines, based on*
 10 *clear and convincing evidence, that the applicant is*
 11 *applying for the registration with the intention of*
 12 *using the registration to take any action that would*
 13 *constitute a violation of section 304(a)(4).”.*

14 (b) *SUSPENSION OR REVOCATION OF REGISTRA-*
 15 *TION.—*

16 (1) *IN GENERAL.—Section 304(a) of the Con-*
 17 *trolled Substances Act (21 U.S.C. 824(a)) is amend-*
 18 *ed—*

19 (A) *by redesignating paragraphs (4) and*
 20 *(5) as paragraphs (5) and (6), respectively; and*

21 (B) *by inserting after paragraph (3) the fol-*
 22 *lowing:*

23 “(4) *has intentionally dispensed or distributed a*
 24 *controlled substance with the purpose of causing, or*
 25 *assisting in causing, the suicide or euthanasia of any*

1 *individual, except that this paragraph does not apply*
 2 *to the dispensing or distribution of a controlled sub-*
 3 *stance—*

4 “(A) *for the purpose of alleviating pain or*
 5 *discomfort (even if the use of the controlled sub-*
 6 *stance may increase the risk of death), so long*
 7 *as the controlled substance is not also dispensed*
 8 *or distributed for the purpose of causing, or as-*
 9 *sisting in causing, the death of an individual for*
 10 *any reason; or*

11 “(B) *for the purpose of carrying out a sen-*
 12 *tence of death under Federal or State law;”.*

13 (2) *CONFORMING AMENDMENT.—Section*
 14 *304(a)(5) of the Controlled Substances Act (21 U.S.C.*
 15 *824(a)(5)) (as redesignated by paragraph (1) of this*
 16 *subsection) is amended by inserting “other” after*
 17 *“such” the first place the term appears.*

18 (c) *PAIN RELIEF.—Section 304(c) of the Controlled*
 19 *Substances Act (21 U.S.C. 824(c)) is amended—*

20 (1) *by striking “(c) Before” and inserting the fol-*
 21 *lowing:*

22 “(c) *PROCEDURES.—*

23 “(1) *ORDER TO SHOW CAUSE.—Before*; and

24 (2) *by adding at the end the following:*

25 “(2) *ASSISTED SUICIDE.—*

1 “(A) *FINDINGS.*—

2 “(i) *IN GENERAL.*—Prior to any pro-
3 ceeding under paragraph (1), where an
4 order to show cause may be based on sub-
5 section (a)(4) for denial, revocation, or sus-
6 pension of registration, the Attorney Gen-
7 eral shall make a finding that the applicant
8 or registrant—

9 “(I) has dispensed or distributed
10 a specific controlled substance that was
11 directly responsible for the death of an
12 individual; and

13 “(II) did not dispense or distrib-
14 ute the specific controlled substance as
15 medically indicated.

16 “(ii) *CONSULTATION.*—In making any
17 finding under clause (i)(II), the Attorney
18 General may consult with the Secretary of
19 Health and Human Services, as the Attor-
20 ney General, in consultation with the Sec-
21 retary, determines to be appropriate.

22 “(B) *BURDEN OF PROOF.*—At any proceed-
23 ing under paragraph (1), where the order to
24 show cause is based on subsection (a)(4) for de-
25 nial, revocation, or suspension of registration,

1 *the Attorney General shall have the burden of*
 2 *proving, by clear and convincing evidence, that*
 3 *the practitioner's intent was to dispense or dis-*
 4 *tribute a controlled substance with a purpose of*
 5 *causing, or assisting in causing, the suicide or*
 6 *euthanasia of any individual. In meeting such*
 7 *burden, it shall not be sufficient to prove that the*
 8 *registrant knew that the use of controlled sub-*
 9 *stance may increase the risk of death.*

10 *“(C) REQUEST FOR REVIEW BY MEDICAL*
 11 *ADVISORY BOARD ON PAIN RELIEF.—At any pro-*
 12 *ceeding under paragraph (1), where the order to*
 13 *show cause is based on subsection (a)(4) for de-*
 14 *nial, revocation, or suspension of registration,*
 15 *the practitioner may request, within 30 days*
 16 *after the receipt of the order to show cause, that*
 17 *the Medical Advisory Board on Pain Relief re-*
 18 *view, in accordance with paragraph (3), the ad-*
 19 *ministrative record of such proceeding as it re-*
 20 *lates to subsection (a)(4).*

21 *“(3) MEDICAL ADVISORY BOARD ON PAIN RE-*
 22 *LIEF.—*

23 *“(A) IN GENERAL.—The Secretary of*
 24 *Health and Human Services, in consultation*
 25 *with the Attorney General, shall by regulation*

1 *establish a board to be known as the Medical Ad-*
 2 *visory Board on Pain Relief (referred to in this*
 3 *subsection as the ‘Board’).*

4 “(B) *MEMBERSHIP.*—

5 “(i) *IN GENERAL.*—*Subject to clause*
 6 *(ii), the Secretary of Health and Human*
 7 *Services, in consultation with the Attorney*
 8 *General, shall appoint the members of the*
 9 *Board—*

10 “(I) *from among individuals who*
 11 *by reason of specialized education or*
 12 *substantial relevant experience in pain*
 13 *management, are clinical experts with*
 14 *knowledge regarding standards, prac-*
 15 *tices, and guidelines concerning pain*
 16 *relief; and*

17 “(II) *after consultation with the*
 18 *American Medical Association, the*
 19 *American Academy of Pain Medicine,*
 20 *the American Pain Society, the Amer-*
 21 *ican Academy of Hospice and Pallia-*
 22 *tive Medicine, the National Hospice*
 23 *Organization, the American Geriatrics*
 24 *Society, and such other entities with*
 25 *relevant expertise concerning pain re-*

1 *lief, as the Attorney General deter-*
2 *mines to be appropriate.*

3 “(ii) *PROHIBITION.*—*No member of the*
4 *Board may be an officer or employee of the*
5 *Federal Government.*

6 “(C) *DUTIES OF BOARD.*—*If, in accordance*
7 *with paragraph (2)(B), an applicant or reg-*
8 *istrant requests a review by the Board of the*
9 *record of a proceeding under paragraph (1), the*
10 *Board shall review the administrative record of*
11 *such proceeding as it relates to subsection (a)(4)*
12 *and issue to the Secretary of Health and Human*
13 *Services and the Attorney General an advisory*
14 *opinion as to whether the dispensing or distribu-*
15 *tion of the controlled substance at issue in the*
16 *proceeding was for the purpose of alleviating*
17 *pain or discomfort in a manner that does not*
18 *constitute a violation of subsection (a)(4). The*
19 *opinion of the Board under this subparagraph*
20 *shall be part of the administrative record and*
21 *shall be considered by the Attorney General in*
22 *determining whether to deny, revoke, or suspend*
23 *the registration involved.*

24 “(D) *COMPENSATION OF MEMBERS.*—*Each*
25 *member of the Board shall be compensated at a*

1 *rate equal to the daily equivalent of the annual*
 2 *rate of basic pay prescribed for level IV of the*
 3 *Executive Schedule under section 5315 of title 5,*
 4 *United States Code, for each day (including*
 5 *travel time) during which such member is en-*
 6 *gaged in the performance of the duties of the*
 7 *Board.*

8 “(4) NO ADDITIONAL INVESTIGATIVE AUTHOR-
 9 ITY.—Nothing in section 303(i), subsection (a)(4) of
 10 *this section, or this subsection may be construed to*
 11 *provide the Attorney General with any additional in-*
 12 *vestigative authority in any State, to the extent that*
 13 *the law of the State prohibits assisted suicide or eu-*
 14 *thanasia.”.*

15 **SEC. 4. DESIGNATION OF LIAISON.**

16 *Not later than 30 days after the date of enactment of*
 17 *this Act, the Secretary of Health and Human Services shall*
 18 *designate an officer of the Department of Health and*
 19 *Human Services to serve as a liaison between the Secretary*
 20 *of Health and Human Services and the Attorney General*
 21 *in carrying out this Act and the amendments made by this*
 22 *Act.*

23 **SEC. 5. DIVERSION CONTROL FEE ACCOUNT.**

24 *Notwithstanding any other provision of law, for pur-*
 25 *poses of section 111(b) of the Departments of Commerce,*

1 *Justice, and State, the Judiciary, and Related Agencies Ap-*
 2 *propriations, Act, 1993 (21 U.S.C. 886a), the operation of*
 3 *the diversion control program of the Drug Enforcement Ad-*
 4 *ministration shall be construed to include carrying out sec-*
 5 *tion 303(i) of the Controlled Substances Act (21 U.S.C.*
 6 *823(i)), as added by this Act, and subsections (a)(4), (c)(2),*
 7 *and (c)(3) of section 304 of the Controlled Substances Act*
 8 *(21 U.S.C. 824), as amended by this Act.*

9 **SEC. 6 APPLICABILITY; CONSTRUCTION.**

10 (a) *APPLICABILITY.*—*The amendments made by this*
 11 *Act shall apply with respect to any controlled substance dis-*
 12 *pensed or distributed on or after the date of enactment of*
 13 *this Act.*

14 (b) *CONSTRUCTION.*—*Nothing in this Act or amend-*
 15 *ments made by this Act shall be construed to imply that*
 16 *the dispensing or distribution of a controlled substance be-*
 17 *fore the date of enactment of this Act for the purpose of*
 18 *causing, or assisting in causing, the suicide or euthanasia*
 19 *of any individual is or is not a violation of the Controlled*
 20 *Substances Act (21 U.S.C. 801 et seq.).*

21 (c) *INCORPORATED DEFINITIONS.*—*In this section, the*
 22 *terms “controlled substance”, “dispense”, and “distribute”*
 23 *have the meanings given those terms in section 102 of the*
 24 *Controlled Substances Act (21 U.S.C. 802).*

Amend the title so as to read: “To clarify Federal law to prohibit the dispensing or distribution of a con-

trolled substance for the purpose of causing, or assisting in causing, the suicide or euthanasia of any individual.”.