

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 43

6
7 H.P. 38

House of Representatives, January 5, 1983

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Soule of Westport.

Cosponsors: Senator Trafton of Androscoggin, Senator Collins of Knox
and Representative Manning of Portland.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Establish the Uniform
18 Determination of Death Act.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 22 MRSA c. 706 is enacted to read:

23 CHAPTER 706

24 UNIFORM DETERMINATION OF DEATH ACT

25 §2811. Determination of death

26 An individual who has sustained either (1)
27 irreversible cessation of circulatory and respiratory
28 functions, or (2) irreversible cessation of all func-
29 tions of the entire brain, including the brain stem,

1 is dead. A determination of death must be made in
2 accordance with accepted medical standards.

3 §2812. Uniformity of construction and application

4 This Act shall be applied and construed to effec-
5 tuate its general purpose to make uniform the law
6 with respect to the subject of this Act among states
7 enacting it.

8 §2813. Short title

9 This Act may be cited as the Uniform Determina-
10 tion of Death Act.

11 STATEMENT OF FACT

12 The purpose of this bill is to establish uniform
13 criteria for making a legal determination of when
14 death has occurred. In recent years, due to the
15 advances of biomedical science, a disparity has been
16 growing between current medical practice's and the
17 common law's determination of when death occurs.
18 This bill attempts to eliminate that disparity and
19 represents an approach accepted by the American Bar
20 Association, the American Medical Association and the
21 National Conference of Commissioners on Uniform State
22 Laws.

23 Section 2811 provides 2 methods for determining
24 death. The first method codifies the existing common
25 law basis for determining death-total failure of the
26 cardiorespiratory system. The 2nd method extends the
27 common law to include the new procedures for determi-
28 nation of death based upon irreversible loss of all
29 brain functions. The overwhelming majority of cases
30 will continue to be determined by the first method.
31 When artificial means of support (e.g. heart-lung
32 machines) preclude a determination of death under
33 this first method, this bill would permit the deter-
34 mination of death by alternative procedures.

35 This bill does not address the determination of
36 the "time" of death, which may affect the legal
37 rights of survivors, nor does it concern itself with
38 other related topics such as living wills, death with

1 dignity, euthanasia, rules on death certificates,
2 maintaining life support beyond brain death in the
3 cases of pregnant women and organ donors, or the pro-
4 tection of the dead bodies. Those subjects are left
5 to other laws.

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