

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 52

H. P. 35

House of Representatives, January 11, 1977

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. McMahon of Kennebunk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Define the Moment of Death.

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

22 MRSA § 2846 is enacted to read:

§ 2846. Determination of death

A person may be pronounced dead if it is determined by a physician that the person has suffered a total and irreversible cessation of brain function. In the event that death is determined on this basis, there shall be independent confirmation of death by another physician.

This section shall not be construed as prohibiting a physician from using other usual and customary procedures for determining death as the exclusive basis for pronouncing a person dead.

STATEMENT OF FACT

This bill grants to the physician the authority to determine death on the basis of irreversible cessation of brain function. However, it avoids the explicit enumeration of the various medical, technological and judgmental steps used at arriving at the diagnosis. It leaves to the physician and the family the option of waiting for the more traditional criteria, cardiopulmonary arrest, and in no way specifies that cerebral death must always be recognized. It does not "lock in" existing criteria, but leaves open the development of improved, more sophisticated methodology. It takes into account the wide variation in technology that may exist in different geographic locales.

Similar legislation was enacted in California in 1974. In 1975, the House of Delegates of the American Bar Association approved a definition of death that used essentially the same terminology set forth in this legislation.