

26:6A-1 et seq.

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 26:6A-1 et seq.

("Declaration of
Death Act")

LAWS OF: 1991

CHAPTER: 90

Bill No: S1208

Sponsor(s): Ambrosio

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes

Amendments during passage
denoted by asterisks.

Date of Passage: Assembly: February 28, 1991

Senate: March 29, 1990

Date of Approval: April 8, 1991

Following statements are attached if available:

Sponsor statement: Yes

Also attached: floor amendments-
-Assembly

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: Yes

Hearings: Yes

(over)

Hearing during 1988-89 Legislature session:

- 974.90 New Jersey. Legislature. Senate. Judiciary Committee.
H434 Committee meeting on S2659 'Declaration of Death Act',
1989p held 6-8-89. Trenton, 1989.
- 974.90 New Jersey. Legislature. Assembly. Judiciary, Law Public Safety &
H434 Defense Committee
1990g Public hearing on... S1208,
held 11-15-90. Trenton, 1990
- 974.90 New Jersey. Commission on Legal and Ethical Problems in the
H434 Delivery of Health Care.
1989k Minority report...1989.
- 974.90 New Jersey. Commission on Legal and Ethical Problems in the
H434 of Health Care.
1990a Problems and approaches in health care...May, 1990.
Trenton, 1990.

P.L.1991, CHAPTER 90, *approved April 8, 1991*
1990 Senate No. 1208 (*Second Reprint*)

AN ACT concerning the determination of death, enacting the New Jersey Declaration of Death Act and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. a. This act shall be known and may be cited as the "New Jersey Declaration of Death Act."

b. The death of an individual shall be declared in accordance with the provisions of this act.

2. An individual who has sustained irreversible cessation of all circulatory and respiratory functions, as determined in accordance with currently accepted medical standards, shall be declared dead.

3. Subject to the standards¹[,] and¹ procedures ¹[and exemptions]¹ established in accordance with ¹[sections 4, 5, and 6 of]¹ this act, an individual whose circulatory and respiratory functions can be maintained solely by artificial means, and who has sustained irreversible cessation of all functions of the entire brain, including the brain stem, shall be declared dead.

4. a. A declaration of death upon the basis of neurological criteria pursuant to section 3 of this act shall be made by a licensed physician professionally qualified by specialty or expertise, in accordance with currently accepted medical standards and additional requirements, including appropriate confirmatory tests, as are provided pursuant to this act.

b. Subject to the provisions of this act, the Department of Health, jointly with the Board of Medical Examiners, shall adopt, and from time to time revise, regulations setting forth (1) requirements, by specialty or expertise, for physicians authorized to declare death upon the basis of neurological criteria; and (2) currently accepted medical standards, including criteria, tests and procedures, to govern declarations of death upon the basis of neurological criteria. The initial regulations shall be issued within 120 days of the enactment of this act.

c. If the individual to be declared dead upon the basis of neurological criteria is or may be an organ donor, the physician who makes the declaration that death has occurred shall not be

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted December 6, 1990.

² Assembly floor amendments adopted January 17, 1991.

the organ transplant surgeon, the attending physician of the organ recipient, nor otherwise an individual subject to a potentially significant conflict of interest relating to procedures for organ procurement.

d. If death is to be declared upon the basis of neurological criteria, the time of death shall be upon the conclusion of definitive clinical examinations and any confirmation necessary to determine the irreversible cessation of all functions of the entire brain, including the brain stem.

¹[5. The death of an individual shall not be declared upon the basis of neurological criteria pursuant to sections 3 and 4 of this act when such a declaration would violate the personal religious beliefs or moral convictions of that individual and when that fact has been communicated to, or should, pursuant to the provisions of section 6, reasonably be known by, the licensed physician authorized to declare death. In these cases, death shall be declared, and the time of death fixed, solely upon the basis of traditional cardio-respiratory criteria pursuant to section 2 of this act.]¹

¹[6. a. Prior to declaring an individual dead upon the basis of neurological criteria pursuant to sections 3 and 4 of this act, the licensed physician authorized to declare death, or another responsible person designated for that purpose, shall make reasonable efforts, in good faith, to determine whether this declaration would violate the personal religious beliefs or moral convictions of that individual. These efforts shall include, as is appropriate under the circumstances, review of available medical records, including advance directives for health care, and reasonable efforts to contact a person or persons, such as a family member, personal physician, religious leader, or friend, who maintained a close association with the individual sufficient to render that person knowledgeable concerning the nature and content of the individual's personal religious beliefs or moral convictions.

b. If a claim of exemption is reasonably advanced on the individual's behalf under this act, a physician or other health care provider responsible for the treatment and care of that individual shall:

(1) refrain from declaring the individual dead upon the basis of neurological criteria; and

(2) refrain from discontinuing, solely upon the basis of the individual's neurological status, mechanical or other artificial means employed to maintain the individual's circulatory or respiratory functions.]¹

²5. The death of an individual shall not be declared upon the basis of neurological criteria pursuant to sections 3 and 4 of this act when the licensed physician authorized to declare death, has reason to believe, on the basis of information in the individual's available medical records, or information provided by a member

of the individual's family or any other person knowledgeable about the individual's personal religious beliefs that such a declaration would violate the personal religious beliefs of the individual. In these cases, death shall be declared, and the time of death fixed, solely upon the basis of cardio-respiratory criteria pursuant to section 2 of this act.²

¹[7.] ²[5.1] 6.2 A licensed health care practitioner, hospital, or the health care provider who acts in good faith and in accordance with currently accepted medical standards to execute the provisions of this act and any rules, regulations issued by the Department of Health or the Board of Medical Examiners pursuant to this act, shall not be subject to criminal or civil liability or to discipline for unprofessional conduct with respect to those actions. These immunities shall extend to conduct in conformity with the provisions of this act following enactment of this act but prior to its effective date.

¹[8.] ²[6.1] 7.2 Changes in pre-existing criteria for the declaration of death effectuated by the legal recognition of modern neurological criteria shall not in any manner affect, impair or modify the terms of, or rights or obligations created under, any existing policy of health insurance, life insurance or annuity, or governmental benefits program. ¹[No health care practitioner or other health care provider, and no health service plan, insurer, or governmental authority, shall deny coverage or exclude from the benefits of service any individual solely because of that individual's personal religious beliefs or moral convictions regarding the application of neurological criteria for declaring death.]¹ ²No health care practitioner or other health care provider, and no health service plan, insurer, or governmental authority, shall deny coverage or exclude from the benefits of service any individual solely because of that individual's personal religious beliefs regarding the application of neurological criteria for declaring death.²

¹[9.] ²[7.1] 8.2 a. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) the Department of Health shall establish rules, regulations, policies and practices as may be necessary to collect annual reports from health care institutions, to gather additional data as is reasonably necessary, to oversee and evaluate the implementation of this act¹[, including provisions relating to the exemption procedure established pursuant to sections 5 and 6 of this act]¹. The department shall seek to minimize the burdens of record-keeping imposed by these rules, regulations, policies and practices, and shall seek to assure the appropriate confidentiality of patient records.

b. The Department of Health, the Board of Medical Examiners, and the New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care shall jointly evaluate the implementation of this act and report to the Legislature,

including recommendations for any changes deemed necessary, within five years from the effective date of this act.

¹[10.] ²[8.1] 9.2 If any provision of this act or its application to any individual or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

¹[11.] ²[9.1] 10.2 This act shall take effect on the 180th day following the date of its enactment.

HEALTH

Enacts the "New Jersey Declaration of Death Act."

SPONSOR'S STATEMENT

STATEMENT

This bill, "the New Jersey Declaration of Death Act," sets forth the conditions under which an individual can be declared and the procedures to be followed in declaring a person dead. The provisions of the bill are based on the recommendations of the Commission on Legal and Ethical Problems in the Delivery of Health Care (The Bioethics Commission).

The following is a summary of the bill's major provisions:

1. The bill recognizes two conditions under which a person can be declared dead. A person is dead if the person has sustained irreversible cessation of all circulatory and respiratory functions. A person could also be declared dead if his circulatory and respiratory functions can only be maintained by artificial means and the person has sustained irreversible cessation of all functions of the entire brain including the brain's stem.

2. A person could be declared dead on the basis of neurological criteria only by a physician who meets certain professional requirements to be established by the Department of Health in conjunction with the Board of Medical Examiners. The Health Department together with the Board of Medical Examiners is also authorized to promulgate the tests and procedures governing declaration of death based upon neurological criteria.

3. If an individual is a potential organ donor, the physician making the determination of death may not be the surgeon for the organ transplant or the attending physician of the organ recipient.

4. The bill provides that a person may not be declared dead on the basis of neurological criteria if that determination violates his beliefs and convictions and that fact has been communicated or should be known to his physician. A physician is required to make reasonable efforts to determine what an individual's beliefs or convictions are by reviewing medical records and contacting another person who maintained such a relationship with the person as to know his beliefs or convictions.

5. Any health care provider acting in good faith in accordance with the bill would be immune from criminal or civil liability.

6. Enactment of the bill would not impair or modify any health or life insurance policy or governmental benefits program. Insurance coverage could not be denied solely on the basis of an individual's beliefs regarding the neurological criteria for determining death.

7. The Health Department, Board of Medical Examiners and Bioethics Commission is authorized to monitor and evaluate the bill after enactment and report to the Legislature within five years.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

SENATE, No. 1208

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1208.

This bill, the "New Jersey Declaration of Death Act," sets forth the conditions under which an individual can be declared "dead" and the procedures to be followed in making such a declaration. The provisions of the bill are based on the recommendations of the Commission on Legal and Ethical Problems in the Delivery of Health Care (known as the Bioethics Commission).

The following is a summary of the act's major provisions as amended by the committee:

1. The act recognizes two conditions under which a person can be declared dead. (1) A person is dead if the person has sustained irreversible cessation of all circulatory and respiratory functions. (Section 2 of the bill) (2) A person could also be declared dead if his circulatory and respiratory functions can only be maintained by artificial means and the person has sustained irreversible cessation of all functions of the entire brain including the brain stem. (Section 3 of the bill).

2. A person could be declared dead on the basis of neurological criteria (death as defined in section 3 of the bill) only by a physician who meets certain professional requirements to be established by the Department of Health in conjunction with the Board of Medical Examiners. The Health Department together with the Board of Medical Examiners is also authorized to promulgate the tests and procedures governing the declaration of death based upon neurological criteria.

3. If an individual is a potential organ donor, the physician making the determination of death may not be the surgeon for the organ transplant or the attending physician of the organ recipient.

4. Any health care provider acting in good faith in accordance with the act would be immune from criminal or civil liability.

5. Enactment of the act would not impair or modify any health or life insurance policy or governmental benefits program.

6. The Health Department, Board of Medical Examiners and Bioethics Commission are authorized to monitor and evaluate the act after enactment and report to the Legislature within five years.

7. The act authorizes the Department of Health and the Board of Medical Examiners to jointly adopt regulations dealing with declarations of death upon the basis of neurological criteria.

The bill prior to committee amendments provided that a person may not be declared dead on the basis of neurological criteria if that determination violated his beliefs and convictions and that fact had been communicated or should have been known to his physician (the so-called "religious exemption"). A physician was required to make reasonable efforts to determine what an individual's beliefs or convictions are by reviewing medical records and by contacting another person who maintained such a relationship with the person as to know his beliefs or convictions. The committee amendments remove this religious exemption.

This bill, as amended, is identical to the Assembly Committee Substitute for Assembly Bills Nos. 1413, 1341 and 2957.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1208

STATE OF NEW JERSEY

DATED: JANUARY 25, 1990

The Senate Judiciary Committee reports favorably Senate Bill No. 1208.

S1208, the "New Jersey Declaration of Death Act," sets forth the conditions under which an individual can be declared "dead" and the procedures to be followed in making such a declaration. The provisions of the bill are based on the recommendations of the Commission on Legal and Ethical Problems in the Delivery of Health Care (known as the Bioethics Commission).

The following is a summary of the act's major provisions:

1. The act recognizes two conditions under which a person can be declared dead. A person is dead if the person has sustained irreversible cessation of all circulatory and respiratory functions. A person could also be declared dead if his circulatory and respiratory functions can only be maintained by artificial means and the person has sustained irreversible cessation of all functions of the entire brain including the brain stem.

2. A person could be declared on the basis of neurological criteria only by a physician who meets certain professional requirements to be established by the Department of Health in conjunction with the Board of Medical Examiners. The Health Department together with the Board of Medical Examiners is also authorized to promulgate the tests and procedures governing the declaration of death based upon neurological criteria.

3. If an individual is a potential organ donor, the physician making the determination of death may not be the surgeon for the organ transplant or the attending physician of the organ recipient.

4. The act provides that a person may not be declared dead on the basis of neurological criteria if that determination violates his beliefs and convictions and that fact has been communicated or should be known to his physician (this is so-called "religious exception"). A physician is required to make reasonable efforts to determine what an individual's beliefs or convictions are by reviewing medical records and by contacting another person who maintained such a relationship with the person as to know his beliefs or convictions.

5. Any health care provider acting in good faith in accordance with the act would be immune from criminal or civil liability.

6. Enactment of the act would not impair or modify any health or life insurance policy or governmental benefits program. Insurance coverage could not be denied solely on the basis of an individual's beliefs regarding the neurological criteria for determining death.

7. The Health Department, Board of Medical Examiners and Bioethics Commission are authorized to monitor and evaluate the act after enactment and report to the Legislature within five years.

8. The act authorizes the Department of Health and the Board of Medical Examiners to jointly adopt regulations dealing with declarations of death upon the basis of neurological criteria.

This bill was prefiled for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

STATEMENT TO ASSEMBLY FLOOR AMENDMENTS

STATEMENT

These floor amendments provide for a religious exemption to the definition of death based on an individual's personal religious beliefs. The amendments provide that death of an individual shall not be declared upon the basis of neurological criteria when the licensed physician authorized to declare death has reason to believe that such a declaration would violate the personal religious beliefs of the individual. In these cases, death shall be declared, and the time of death fixed, solely upon the basis of cardio-respiratory criteria pursuant to section 2 of this bill. The amendments also provide that no health care practitioner, provider, plan or insurer shall deny health insurance coverage or benefits solely because of the individual's personal religious beliefs regarding the application of neurological criteria.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
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TRENTON, N.J. 08625
Release:

Monday
April 8, 1991

ADVISORY

Governor Jim Florio today signed a bill which provides a definition of death, joining 46 other states which have enacted declaration of death laws.

"This law is long overdue. It will resolve some of the dilemma physicians face on a daily basis in hospitals when they have to make a determination as to whether someone is truly dead," said Governor Florio. "It will also provide families with the ability to deal with critical decisions involving the dignity of their loved one."

New Jersey previously had no statutory law recognizing brain death. Under the new law, a person may be declared dead:

- if the person has sustained irreversible cessation of all circulatory and respiratory functions, as determined in accordance with currently-accepted medical standards; or
- if the person's circulatory and respiratory functions can be maintained solely by artificial means, and the person has sustained irreversible cessation of all brain functions, including the brain stem.

The bill also includes a religious exemption whereby a physician may not declare a person "brain dead" if the physician has reason to believe, from information in a patient's file or provided by the patient's family, that it would violate the patient's personal religious beliefs. New Jersey is the first state to include such an exemption in its law.

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