

H. 3/3/99 Judiciary
H. 3/31/99 Amend/Do Pass
FILED FEB 24 1999 W/H 1345

SENATE FILE 209
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 12)

Passed Senate, ^(p.452) Date 3/2/99 Passed House, Date _____
Vote: Ayes 49 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing a uniform standard for determination of
2 death.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 209

1 Section 1. NEW SECTION. 144D.1 SHORT TITLE.

2 This chapter may be cited as the "Uniform Determination of
3 Death Act".

4 Sec. 2. NEW SECTION. 144D.2 DEFINITIONS.

5 For purposes of this chapter, except as otherwise provided:

6 1. "Accepted medical standards" means the standard of care
7 for medical practice.

8 2. "Attending physician" means the physician selected by
9 or assigned to the individual whose death is at issue, and who
10 has primary responsibility for the treatment and care of that
11 individual.

12 3. "Physician" means a physician, surgeon, or osteopathic
13 physician or surgeon, licensed or authorized to practice under
14 the laws of any state.

15 Sec. 3. NEW SECTION. 144D.3 LEGAL CRITERIA FOR
16 DETERMINING DEATH.

17 1. Death occurs when an individual has sustained at least
18 one of the following conditions:

19 a. Irreversible cessation of circulatory and respiratory
20 functions.

21 b. Irreversible cessation of all functions of the entire
22 brain, including the brain stem.

23 2. Use of the criteria specified in subsection 1 above
24 shall not prohibit the use of other medically recognized
25 criteria for determining death, as long as such a
26 determination is made in accordance with accepted medical
27 standards.

28 3. Time of death shall be calculated at the moment of
29 cessation of the body functions that were used in determining
30 death.

31 Sec. 4. NEW SECTION. 144D.4 RESPONSIBILITY AND
32 IMMUNITIES.

33 1. A determination of death made under this chapter must
34 be made in accordance with accepted medical standards by the
35 attending physician, or, if none, the physician who certifies

1 the death.

2 2. A physician who makes a good faith determination of
3 death according to this chapter shall not be liable for
4 damages in any civil action or subject to prosecution in any
5 criminal proceeding for making such a determination. Any
6 person, institution, or facility that relies in good faith on
7 such a determination of death shall not be liable for damages
8 in any civil action or subject to prosecution in any criminal
9 proceeding for any action taken in reliance upon such a
10 determination.

11 Sec. 5. NEW SECTION. 144D.5 APPLICATION AND
12 CONSTRUCTION.

13 1. Section 144D.3 shall be utilized for all legal purposes
14 where determination of death is an issue.

15 2. This chapter shall be applied and construed to
16 effectuate its general purpose to make uniform the law with
17 respect to the subject of this chapter among the states
18 enacting the uniform determination of death Act.

19 Sec. 6. Section 702.8, Code 1999, is amended by striking
20 the section and inserting in lieu thereof the following:

21 702.8 DEATH.

22 "Death" means the condition determined according to the
23 provisions of chapter 144D. Time of death is calculated
24 according to the provisions of chapter 144D.

25 EXPLANATION

26 This bill adopts the criteria for determining death that
27 are set forth in the "Uniform Declaration of Death Act"
28 (Uniform Act), drafted by the national conference of
29 commissioners on uniform state laws. In addition, the bill
30 contains other provisions to make the content and structure of
31 the Uniform Act consistent with sections of the Iowa Code that
32 will rely upon this chapter.

33 The Uniform Act codifies the traditional common law concept
34 of death, which includes cessation of heart and lung
35 functions. In addition, the Uniform Act provides for an

1 alternative means of determining death, according to the
2 cessation of all brain activity, including activity in the
3 brain stem.

4 Iowa has utilized such alternative criteria for determining
5 death under its criminal statutes, but has not addressed the
6 legal criteria for determining when death has occurred beyond
7 circumstances with criminal implications. This bill strikes
8 that criminal law definition and, in an expansion of the
9 Uniform Act provisions, expressly makes the legal criteria for
10 determining death set forth in Code section 144D.3 applicable
11 to all situations where determination of death is at issue.
12 This bill also utilizes such criteria in determining the time
13 of death, thereby continuing to address this issue as provided
14 in the criminal law definition of death in Code section 702.8.

15 The bill also provides that these criteria are not
16 exclusive in determining death, allowing for the exercise of
17 medical discretion, in recognition of the fact that other
18 medical criteria may be appropriately used now, or also in the
19 future as medical knowledge and technology continue to
20 advance. This provision goes beyond the Uniform Act, but
21 recognizes medical standards of care which set forth
22 additional criteria for consideration in determining death.
23 Subsection 2 of Code section 144D.3 also is similar to the law
24 of other states that utilize the brain death criteria of the
25 Uniform Act.

26 Further, this bill defines certain terms, provides who may
27 make a determination of death under this statute, and
28 furnishes immunities for those persons acting in reliance upon
29 this statute. These provisions are not within the Uniform
30 Act, but are similar to provisions which have been added to
31 the Uniform Act by other states, and are similar to provisions
32 in other Iowa statutes, such as the Uniform Anatomical Gift
33 Act for organ donation and the Life-sustaining Procedures Act.

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SENATE FILE 209

H-1345

1 Amend Senate File 209, as passed by the Senate, as
2 follows:

- 3 1. Page 1, by striking lines 23 through 27.
- 4 2. Page 1, line 28, by striking the word
5 "calculated" and inserting the following:
6 "established".
- 7 3. Page 2, line 2, by striking the words "good
8 faith".
- 9 4. Page 2, line 5, by inserting after the word
10 "determination" the following: ", unless the
11 physician was negligent".
- 12 5. Page 2, line 6, by striking the words "in good
13 faith".
- 14 6. Page 2, line 10, by inserting after the word
15 "determination" the following: "unless the person,
16 institution, or facility was negligent".
- 17 7. By renumbering as necessary.

By COMMITTEE ON JUDICIARY
LARSON of Linn, Chairperson

H-1345 FILED MARCH 31, 1999

SENATE FILE 209

H-1501

1 Amend Senate File 209, as passed by the Senate, as
2 follows:

- 3 1. Page 2, by inserting after line 10 the
4 following:
5 "Good faith under this section shall not include
6 negligence in the determination of death by a
7 physician or negligence in reliance on a physician's
8 determination of death by a person, institution, or
9 facility."

By SCHRADER of Marion

H-1501 FILED APRIL 7, 1999

SENATE FILE 209

H-1594

1 Amend Senate File 209, as passed by the Senate, as
2 follows:

- 3 1. By striking page 1, line 4, through page 2,
4 line 10, and inserting the following:
5 "Sec. ____ . NEW SECTION. 144D.3 LEGAL CRITERIA
6 FOR DETERMINING DEATH.
7 1. Death occurs when an individual has sustained
8 at least one of the following conditions:
9 a. Irreversible cessation of circulatory and
10 respiratory functions.
11 b. Irreversible cessation of all functions of the
12 entire brain, including the brain stem.
13 2. A determination of death shall be made in
14 accordance with accepted medical standards."
15 2. By renumbering as necessary.

By JAGER of Black Hawk

H-1594 FILED APRIL 13, 1999