

H B

352

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

4/25/83

Date: 5-4-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 352

"An Act relating to the definition of death; and providing for an effective date."

under consideration and reports it back as follows:

do pass [] do not pass

[] do pass with attached amendments(s)

replace with CS for HR 272 (HESS) same title new title

and recommends _____

[] AND attaches a "Letter of Intent" [] New Fiscal Note

[] reports it back without recommendation [] Zero Fiscal Note Attached

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature] N. REC

[Signature] NO REC

[Signature]

CHAIRMAN

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 352
 Title: Definition of death
 Sponsor: Rep. Fritz by request
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Health
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUE: (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LANDS & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|------------------------|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER (Specify Source) | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dean Tirador Phone: 465-2113
 Division: Public Health Date: 4-14-83
 Approved by Commissioner: Robert Landon Smith, Ph.D. Date: 4/18/83
 Department: Health and Social Services

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- Original to Legislative Finance
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- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

POSITION PAPER/Department of Health and Social Services

POSITION PAPER

HOUSE BILL NO. 352

"An Act relating to the definition of death; and providing for an effective date."

BACKGROUND

A Uniform Definition of Death has been endorsed by the National Conference of Commissioners on Uniform State Laws, the American Medical Association, the American Bar Association, the President's Commission for the Study of Ethical Problems in Medical and Biomedical and Behavioral Research as well as by the American Academy of Neurology and the American Electroencephalographic Society. The Uniform Definition is as follows:

"An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards."

According to information received from the Commissioners on Uniform State Laws, 19 states have now adopted this definition, up from two states in 1981.

DISCUSSION

The definition proposed in this Bill, differs from the Uniform Definition in several respects:

1. In the Bill, "person" is substituted for "individual". The Uniform Definition purposely included the term "individual" to conform to the standard designation of a human being. The term "person" was not used because it is sometimes used by the law to include a corporation. Although that particular confusion would be unlikely to arise, the narrower term "individual" is more precise and thus avoids possibility of confusion.
2. In the Bill, the phrase "medically and legally dead" is used. The Uniform Definition prefers the phrase "is dead" since the broader provisions were considered to be misleading. The President's Commission stated, "A law setting a general standard without explicit limitations would be assumed to apply for all legal purposes; to say so in the statute, however, only raises needless questions (e.g., what does 'all legal purposes' leave out? For example, proceedings in equity?)"¹

¹/Defining Death. Medical, Legal and Ethical Issues in the Determination of Death. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. Pg. 79. Government Printing Office, Washington, D.C., 1981.

3. The Bill sets the standard for establishing death as "ordinary standards of medical practice", while the Uniform Definition adopts "accepted medical standards". This difference is probably not important.
4. The Bill adds a provision that death may be pronounced "before artificial means of maintaining respiratory and cardiac function are terminated." The Uniform Definition avoids the necessity for such a provision by simply stating that an individual "is dead" when either "irreversible cessation of circulatory and respiratory function or irreversible cessation of all functions of the entire brain, including the brain stem" has occurred. When either of these circumstances prevails, the appropriateness of stopping medical intervention is apparent.

POSITION

While the Department considers the definition proposed in the Bill to be better than the current statutory definition, it would prefer that the Uniform Definition of Death be adopted.

Recommended by:

E. S. Rabeau
E.S. Rabeau, M.D.
Director
Division of Public Health

Date:

April 15, 1983

Approved by:

Robert London Smith
Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

Date:

4/18/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

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| 600 LANDS & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|------------------------|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
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| OTHER (Specify Source) | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

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IV. ANALYSIS: Attach a separate page for any Analysis

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