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COMMITTEE REPORT

SENATE

FURTHER:

07/13/83

Date: 7/13/83

Mr. President:

The Committee on COMMERCE has had CS 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

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§ 09.65.120

CODE OF CIVIL PROCEDURE

§ 09.65.130

sec. 1 of this Act, is in addition to liability in a civil action under Rule 52 of the Rules for an award of reasonable attorneys' fees of Civil Procedure, which may be made to the prevailing party

Sec. 09.65.120. Definition of death. A person is considered medically and legally dead if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64.010 — 08.64.380, based on ordinary standards of medical practice, there is no spontaneous respiratory or cardiac function and there is no expectation of recovery of spontaneous respiratory or cardiac function or, in the case when respiratory and cardiac functions are maintained by artificial means, a person is considered medically and legally dead, if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64.010 — 08.64.380, based on ordinary standards of medical practice, there is no spontaneous brain function. Death may be pronounced in this circumstance before artificial means of maintaining respiratory and cardiac function are terminated. (§ 1 ch 3 SLA 1974)

Sec. 09.65.130. Representation of child. (a) The court may, upon the motion of either party or upon its own motion, appoint an attorney to represent the minor with respect to his custody, support, and visitation or in any other legal proceeding involving his welfare. When custody, support, or visitation are at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that those matters are at issue. Upon notification, the court shall determine whether the child should have legal representation or other services and shall make a finding on the record before trial. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney and may further order that other services be provided for the protection of the child.

(b) If custody, support, or visitation is an issue, the order for costs, fees, and disbursements shall be made against either or both parents, except that, if one of the parties responsible for the costs is indigent, the costs, fees, and disbursements for that party shall be borne by the state. If either or both parents are only temporarily without funds, as determined by the court, the court may advance payment for legal representation or other services rendered to the child; however, no repayment may be required for those who are receiving legal services for the indigent. The attorney general is responsible for enforcing collections owed the court, and repayment shall be made directly to the court under the provisions of rules governing the administration of the courts. The court shall, if possible, avoid assigning costs to only one party by ordering that costs of the child's legal representation or other services be paid from proceeds derived from a sale of property belonging to both parties, before a division of property is made.

(c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, upon the motion of either party or upon

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/ 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

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 or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (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 L. Smith, M.D. Date: 4/18/83
 Department: Health and Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

COMMITTEE REPORT

HOUSE

JUDICIARY

FURTHER:

(7)

4/12/83

Date: 4/22/83

Mr. Speaker: HEALTH, EDUCATION AND SOCIAL SERVICES

The Committee on _____ 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 HB 352 (repeal) 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

MEMBERS HAVING OTHER RECOMMENDATIONS:

Milo H. Fritz

Mike Davis

CO - Milo H. Fritz
CHAIRMAN

FILE WITH HB 352
Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While In Juneau

POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

June 14, 1983

Senator Bill Ray,
Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: CSHB 352(HESS)

Dear Mr. Chairman:

This bill relates to the definition of death; it is not a House priority and I feel it could very well be held over until next year.

Attached you will find copies of the original bill, the committee substitute, the current statutory definition (A.S. 09.65.120), together with a position paper on the bill from Dr. Rabeau.

If I had my druthers, I would prefer that we put out a committee substitute in which we incorporate the Uniform Definition of Death. It is set forth in its entirety at the top of page one of the position paper and it appears to me to say the same thing as the committee substitute, only more concisely. Apparently 19 other states have adopted this definition, and, as the position paper states, that is up from two states in 1981.

On the other hand, if you're beholdng to Dr. Fritz and his requestor, there isn't anything indirectly wrong with the committee substitute, according to what I have been able to ascertain and according to the position paper.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

Attachment

09.65.110

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POSITION PAPER

HOUSE BILL NO. 352

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

BACKGROUND

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^{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.

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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: _____

I. REQUEST
 Bill/Resolution No.: HR 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 Subprograms, Affected: _____

EXPENDITURES/REVENUES: (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						
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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
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 Louder Smith, M.D. Date: 4/18/83
 Department: Health and Social Services

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3/8/83

COMMITTEE REPORT
HOUSE

JUDICIARY

FURTHER:

(7)

4/12/83

Date: 4/22/83

Mr. Speaker: HEALTH, EDUCATION AND
The Committee on SOCIAL SERVICES 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
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- and recommends _____
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- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

MILO H. FRITZ

[Signature]

Mike Davis

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

cc - [Signature]
CHAIRMAN
cc - MILO H. FRITZ

09.65.110

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WILLIAM KRAFT/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."

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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.

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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

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/REVENUES: (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						
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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: Dea. Tirador Phone: 465-2113
 Division: Public Health Date: 4-14-83
 Approved by Commissioner: Robert Landon Smith, M.D. Date: 4/19/83
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COMMITTEE REPORT

HOUSE

JUDICIARY

FURTHER:

(7)

4/12/33

Date:

4/22/33

Mr. Speaker:

HEALTH, EDUCATION AND
SOCIAL SERVICES

The Committee on

has had

HB 352

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

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[] do pass with attached amendments(s)

[X] replace with CS for HE 352 [X] same title [] new title
and recommends _____

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

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

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Milo H. Fritz
Milo Davis

CO - Milo H. Fritz
CHAIRMAN
CO - Milo H. Fritz