By:  Canales H.B. No. 4329

A BILL TO BE ENTITLED

AN ACT

relating to the determination of death when artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  This Act may be cited as the Brain-Injured Patients Protection Act.

SECTION 2.  Section 671.001(b), Health and Safety Code, is amended to read as follows:

(b)  If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician professionally qualified by specialty or expertise, according to ordinary standards of medical practice, there is irreversible cessation of all functions of the entire brain, including the brain stem [~~spontaneous brain function~~]. Death occurs when the relevant functions cease.

SECTION 3.  Section 671.001, Health and Safety Code, is amended by adding subsection (e) to read as follows:

(e)  When artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, before death may be pronounced, the following procedures must be observed:

(1)  A second physician professionally qualified by specialty or expertise must confirm that, in accordance with the criteria in Section 671.001(b), there is irreversible cessation of all functions of the entire brain, including the brain stem.

(2)  After the second physician confirms the diagnosis, the patient's medical records shall be provided in full to the person responsible for the health care decisions of the patient, who shall be allowed reasonable time to review the records and seek a second opinion. At the time that medical records are provided, the person responsible for the healthcare decisions of the patient shall be informed that they have the right to seek a second opinion from physicians at other facilities.

(3)  The person responsible for the healthcare decisions of the patient must receive written notice that all requirements for determining death under this subchapter have been met. The medical tests performed in accordance with ordinary standards of medical practice showing irreversible cessation of all functions of the entire brain, including the brain stem, must be attached to this notice.

(4)  After receiving the written notice, the person responsible for the healthcare decisions of the patient shall be informed that they have the option to delay the removal of artificial means of supporting the patient's respiratory and circulatory functions for no less than 28 days from the receipt of the written notice.

SECTION 4.  Section 671.001, Health and Safety Code, is amended by adding subsection (f) to read as follows:

(f)  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 the organ transplant surgeon, the attending physician of the organ recipient, or otherwise an individual subject to a potentially significant conflict of interest relating to procedures for organ procurement.

SECTION 5.  Section 671.001 is amended by adding subsection (g) to read as follows:

(g)  The death of an individual shall not be declared upon the basis of neurological criteria pursuant to this subchapter 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 671.001(a).

SECTION 6.  Section 671.002(a) is amended to read as follows:

(a)  A physician who determines death in accordance with Section 671.001(b) or a registered nurse, including an advanced practice registered nurse, or physician assistant who determines death in accordance with Section 671.001(d) is not liable for civil damages or subject to criminal prosecution for the physician's, registered nurse's, or physician assistant's actions or the actions of others based on the determination of death, provided that the individual who made the determination of death followed all procedures required by Section 671.001.

SECTION 7.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.