

By: Canales

H.B. No. 4329

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the determination of death when artificial means of
3 support preclude a determination that a person's spontaneous
4 respiratory and circulatory functions have ceased.

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

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

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

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

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

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

24 (1) A second physician professionally qualified by

1 specialty or expertise must confirm that, in accordance with the
2 criteria in Section 671.001(b), there is irreversible cessation of
3 all functions of the entire brain, including the brain stem.

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

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

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

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

27 (f) If the individual to be declared dead upon the basis of

1 neurological criteria is or may be an organ donor, the physician who
2 makes the declaration that death has occurred shall not be the organ
3 transplant surgeon, the attending physician of the organ recipient,
4 or otherwise an individual subject to a potentially significant
5 conflict of interest relating to procedures for organ procurement.

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

8 (g) The death of an individual shall not be declared upon
9 the basis of neurological criteria pursuant to this subchapter when
10 the licensed physician authorized to declare death, has reason to
11 believe, on the basis of information in the individual's available
12 medical records, or information provided by a member of the
13 individual's family or any other person knowledgeable about the
14 individual's personal religious beliefs that such a declaration
15 would violate the personal religious beliefs of the individual. In
16 these cases, death shall be declared, and the time of death fixed,
17 solely upon the basis of cardio-respiratory criteria pursuant to
18 Section 671.001(a).

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

21 (a) A physician who determines death in accordance with
22 Section 671.001(b) or a registered nurse, including an advanced
23 practice registered nurse, or physician assistant who determines
24 death in accordance with Section 671.001(d) is not liable for civil
25 damages or subject to criminal prosecution for the physician's,
26 registered nurse's, or physician assistant's actions or the actions
27 of others based on the determination of death, provided that the

1 individual who made the determination of death followed all
2 procedures required by Section 671.001.

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