WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED
Committee Substitute for
SENATE BILL NO. 376

(By Mr.)

PASSED March 7, 1980

In Effect thirty days from Passage
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten; and to amend section one, article nineteen of said chapter sixteen, all relating generally to the Uniform Brain Death Act; the definition of the term “death” as used in the code with respect thereto; providing that for legal and medical purposes in the state an individual who has sustained irreversible cessation of all functioning of the brain is dead; and civil and criminal immunity.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten; and that section one, article nineteen of said chapter, be amended and reenacted, all to read as follows:

ARTICLE 10. UNIFORM BRAIN DEATH ACT.

§16-10-1. Title.

1. This article shall be known and may be cited as the “Uniform Brain Death Act.”

§16-10-2. Brain death.

1. For legal and medical purposes, an individual who has sustained irreversible cessation of all functioning of the
brain is dead. A determination under this section must be made in accordance with reasonable medical standards.

§16-10-3. Civil and criminal immunity.

A physician or any other person authorized by law to determine death who makes such determination in accordance with section two of this article is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts or the acts of others based on that determination. Any person who acts in good faith in reliance on a determination of death is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for such act.

§16-19-1. Definitions.

(a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage or distribution of human bodies or parts thereof.

(b) "Certification of death" means a written pronouncement of death by the attending physician. Such certification shall be required before the attending physician shall allow removal of any bodily organs of the decedent for transplant purposes.

(c) "Death" means that a person will be considered dead if in the announced opinion of the attending physician, made in accordance with reasonable medical standards, the patient has sustained irreversible cessation of all functioning of the brain.

(d) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(e) "Donor" means an individual who makes a gift of all or part of his body.

(f) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(g) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.
(h) "Person" means an individual, corporation,
government or governmental subdivision or agency,
business trust, estate trust, partnership or association,
or any other legal entity.

(i) "Physician" or "surgeon" means a physician or
surgeon licensed or authorized to practice under the laws
of any state.

(j) "State includes any state, district, commonwealth,
territory, insular possession, and any other area subject
to the legislative authority of the United States of
America.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Claude E. Cheek  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Judd C. Wells  
Clerk of the Senate

(Blankenship)  
Clerk of the House of Delegates

J.R. Bordelon  
President of the Senate

Joyce L. Seay  
Speaker House of Delegates

The within ________ approved ________ this the ________ day of ________, 1980.

[Signature]  
Governor