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HOUSE BILL NO. 541**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Health, Welfare and Institutions
on January 23, 2014)

(Patron Prior to Substitute—Delegate O'Bannon)

*A BILL to amend and reenact § 54.1-2972 of the Code of Virginia, relating to determination of death.***Be it enacted by the General Assembly of Virginia:****1. That § 54.1-2972 of the Code of Virginia is amended and reenacted as follows:****§ 54.1-2972. When person deemed medically and legally dead; determination of death; nurses' or physician assistants' authority to pronounce death under certain circumstances.**

A. A person shall be medically and legally dead if:

1. In the opinion of a physician duly authorized to practice medicine in this Commonwealth, based on the ordinary standards of medical practice, there is the absence of spontaneous respiratory and spontaneous cardiac functions and, because of the disease or condition which directly or indirectly caused these functions to cease, or because of the passage of time since these functions ceased, attempts at resuscitation would not, in the opinion of such physician, be successful in restoring spontaneous life-sustaining functions, and, in such event, death shall be deemed to have occurred at the time these functions ceased; or

2. In the opinion of a physician, who shall be duly licensed and a specialist in the field of neurology, neurosurgery, electroencephalography, or critical care medicine, when based on the ordinary standards of medical practice, there is the absence of brain stem reflexes, spontaneous brain functions and spontaneous respiratory functions and, in the opinion of another physician and such specialist, based on the ordinary standards of medical practice and considering the absence of brain stem reflexes, spontaneous brain functions and spontaneous respiratory functions and the patient's medical record, further attempts at resuscitation or continued supportive maintenance would not be successful in restoring such reflexes or spontaneous functions, and, in such event, death shall be deemed to have occurred at the time when these conditions first coincide.

B. A registered nurse or a physician assistant who practices under the supervision of a physician may pronounce death if the following criteria are satisfied: (i) the nurse is employed by or the physician assistant works at (a) a home health organization as defined in § 32.1-162.7, (b) a hospice as defined in § 32.1-162.1, (c) a hospital or nursing home as defined in § 32.1-123, including state-operated hospitals for the purposes of this section, (d) the Department of Corrections, or (e) a continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2; (ii) the nurse or physician assistant is directly involved in the care of the patient; (iii) the patient's death has occurred; (iv) the patient is under the care of a physician when his death occurs; (v) the patient's death has been anticipated; (vi) the physician is unable to be present within a reasonable period of time to determine death; and (vii) there is a valid Do Not Resuscitate Order pursuant to § 54.1-2987.1 for the patient who has died. The nurse or physician assistant shall inform the patient's attending and consulting physicians of his death as soon as practicable.

The nurse or physician assistant shall have the authority to pronounce death in accordance with such procedural regulations, if any, as may be promulgated by the Board of Medicine; however, if the circumstances of the death are not anticipated or the death requires an investigation by a medical examiner, the nurse or physician assistant shall notify the chief medical examiner of the death and the body shall not be released to the funeral director.

This subsection shall not authorize a nurse or physician assistant to determine the cause of death. Determination of cause of death shall continue to be the responsibility of the attending physician, except as provided in § 32.1-263. Further, this subsection shall not be construed to impose any obligation to carry out the functions of this subsection.

This subsection shall not relieve any registered nurse or physician assistant from any civil or criminal liability that might otherwise be incurred for failure to follow statutes or Board of Nursing or Board of Medicine regulations.

C. Death, as defined in subdivision A 2, shall be determined by ~~one of the two physicians a specialist in the field of neurology, neurosurgery, electroencephalography, or critical care medicine and recorded in the patient's medical record and attested by the other physician. One of the two physicians determining or attesting to brain death may be the attending physician regardless of his specialty so long as at least one of the physicians is a specialist, as set out in subdivision A 2.~~

D. The alternative definitions of death provided in subdivisions A 1 and A 2 may be utilized for all purposes in the Commonwealth, including the trial of civil and criminal cases.