

#### COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor

Eloy S. Inos
Lieutenant Governor

Macrh 23, 2011

The Honorable Paul A. Manglona Senate President Seventeenth Northern Marianas Commonwealth Legislature Saipan, MP 96950

Honorable Eliceo D. Cabrera Speaker, House of Representatives Seventeenth Northern Marianas Commonwealth Legislature Saipan, MP 96950

Dear Mr. President and Mr. Speaker:

This is to inform you that I have signed into law Senate Bill 17-11, SD1, entitled, "To enact a new Chapter 8 of Division 2 of Title 3 of the Commonwealth Code; and for other purposes," which was passed by the Seventeenth Northern Marianas Commonwealth Legislature.

This bill becomes **Public Law No. 17-35.** Copies bearing my signature are forwarded for your reference.

Sincerely,

BENIGNO R. FITIAL

CC:

Lt. Governor

Department of Public Health
Press Secretary, Office of the Governor
Special Assistant to the Administration
Special Assistant for Programs & Legislative Review
All Departments and Agencies

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200 /2300 Facsimile: (670) 664-2211/2311

# WORTHER LAND

## The Senate

#### NORTHERN MARIANAS COMMONWEALTH LEGISLATURE P.O. BOX 500129 SAIPAN, MP 96950

February 14, 2011

The Honorable Benigno R. Fitial Governor Commonwealth of the Northern Mariana Islands Capitol Hill Saipan, MP 96950

Dear Governor Fitial:

I have the honor of transmitting herewith Senate Bill No. 17-11, SD1, entitled, "To enact a new Chapter 8 of Division 2 of Title 3 of the Commonwealth Code; and for other purposes," which was passed by the Senate and the House of Representatives of the Seventeenth Northern Marianas Commonwealth Legislature.

Sincerely yours,

Dolores S. Bermudes

Senate Clerk

Attachment



#### THE SENATE

#### SEVENTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

SENATE BILL NO. 17-11, SD1

#### AN ACT

to enact a new chapter 8 of division 2 of title 3 of the commonwealth code; and for other purposes.

#### SENATE ACTION

Offered by Senator(s): Ralph Dlg. Torres

Date: February 12, 2010

Referred to: Committee on Health and Welfare Programs

Standing Committee Report No.: 17-11 Adopted on May 05, 2010

Final Reading: May 05, 2010

#### HOUSE ACTION

Referred to: Committee on Health and Welfare

Standing Committee Report No.: 17-56 Adopted on 01/10/11

First and Final Reading: January 28, 2011

SENATOR JOVITA M. TAIMANAO SENATE LEGISLATIVE SECRETARY

#### SEVENTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

Public Law No. 17-35

FIRST REGULAR SESSION, 2010

**SENATE BILL NO. <u>17-11, SD1</u>** 

#### AN ACT

TO ENACT A NEW CHAPTER 8 OF DIVISION 2 OF TITLE 3 OF THE COMMONWEALTH CODE; AND FOR OTHER PURPOSES.

## BE IT ENACTED BY THE SEVENTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

**Section 1.** Short Title. This Act shall be cited as the "Medical Consent Act of 2010."

#### Section 2. Findings and Purposes.

- (a) The Legislature finds that an adult person has the fundamental right to control the decisions to the rendering of his or her own medical care, including the decision to have life-sustaining treatment withheld or withdrawn in instances of a terminal condition or permanent unconscious condition. This right extends to parents and other adults who are legally responsible for the well-being of patients who are unmarried, unemancipated minors.
- (b) The Legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.
- (c) The Legislature further finds that, in the interest of protecting individual autonomy, such prolongation of the process of dying for a person with a terminal condition or permanent unconscious condition for whom continued medical treatment does not improve the prognosis for recovery may violate patient dignity and cause unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the person.
- (d) In recognition of the dignity and privacy that a person has a right to expect, the Legislature hereby declares that the laws of the Commonwealth of the Northern Mariana Islands shall recognize the right of any adult person to make a written Determination

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28 29 instructing his or her physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition, in the event that the person is unable to make those decisions for himself or herself.

- (e) The Legislature further declares that, in the absence of controversy, a court normally is not the proper forum in which to make decisions regarding life-sustaining treatment.
- (f) To avoid treatment that is not desired by a person in a terminal condition or permanent unconscious condition, the Legislature declares that this chapter is in the interest of the public health and welfare.
- (g) The Legislature further finds that the family should be encouraged to openly express their opinion and concerns with the individual. It recognizes the importance family plays in supporting the decision of the individual.
- (h) The Legislature creates, recognizes and supports a patient's right to remove himself/herself from a hospital or other facility upon certification of his/her anticipated death by his/her attending physician.
- **Section 3.** <u>Amendment</u>. A new Chapter 8 of Division 2 of Title 3 of the Commonwealth Code is hereby enacted as follows:

#### "Chapter 8.

#### Article 1. Medical Consent Act.

§ 2801. Definitions.

§ 2802. Determinations Concerning Life Sustaining Treatment; Execution Requirements.

§ 2803. Operative Effect of Declaration.

§ 2804. Revocation of Declaration.

§ 2805. Terminal or Permanent Unconscious Condition; Records.

§ 2806. Self-Determination by a Patient; Pregnant Patients.

§ 2807. Physician or Health Care provider Unwilling to Comply with Chapter; Transfer of Patient.

§ 2808. Civil or Criminal Liability; Unprofessional Conduct.

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- § 2809. Willful Failure to Act; Fraudulent Conduct; Penalties.
- § 2810. Construction of a Chapter, Characterization of Death Resulting from Decisions Made in Accordance with Chapter; Effect of Declaration of Life Insurance or Annuities; Deliberate Acts or Omissions to End Life.
  - § 2811. Declaration Presumed in Compliance and Valid.
  - § 2812. Instruments Executed in Other States.
  - § 2813. Instruments to Be Given Effect Pursuant to Act.
  - § 2814. Uniform Law; Construction of Act.
- Article 2. Uniform Determination of Death.
  - § 2815. Declaration Determination of Death by a Licensed Physician.
- § 2816. Declaration Determination of Death by a Certified Physician Assistant; Certified Nurse Practitioner; and Certified Emergency Medical Technician.
  - § 2817. Declaration Determination of Death by a Registered Nurse.
- § 281<u>8</u>. No Liability for Physician, Registered Nurse <u>or Other Person</u> Authorized to Determine Death.
  - § 2819. Good Faith Reliance.
  - § 2820. Certificate of death, Time for Completion.

#### Article 1. Medical Consent Act.

#### § 2801. Definitions.

- (a) Anticipated Death means a death caused by a life-limiting illness, infirmity, or disease, as certified by the attending physician that he discussed a prognosis of terminal condition with the patient and the patient's family, and that the patient consented to a 'No Resuscitation' order or has executed a Declaration or an Advanced Directive to that effect.
- (b) *Attending physician* means the physician who has primary responsibility for the treatment and care of the patient.

- (c) *Declaration* means a writing executed in accordance with the requirements of subdivision (a) of § 2802.
- (d) *Health care provider* means a person who is licensed, certified or otherwise authorized by the laws of this Commonwealth to administer health care in the ordinary course of business or practice of a profession.
- (e) *Hospice* means a program of palliative and supportive care for terminally ill persons and their families and/or caregivers.
- (f) Life-sustaining treatment means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying or an irreversible coma or persistent vegetative state. Life-sustaining treatment shall not include hospice care or the administration of medication or the performance of any medical procedure deemed necessary to prevent or alleviate pain, reduce the severity of disease symptoms, improve quality of life, or provide or for nutrition or hydration.
- (g) *Permanent unconscious condition* means an incurable and irreversible condition that, within reasonable medical judgment, renders the patient in an irreversible coma or persistent vegetative state.
- (h) *Person* means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- (i) *Physician* means an individual licensed to practice medicine in the Commonwealth of the Northern Mariana Islands.
- (j) Qualified patient means a patient who has executed a declaration and who has been diagnosed and certified in writing by the attending physician and a second physician who has personally examined the patient to be in a terminal condition or permanent unconscious condition.
- $(\underline{k})$  State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

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(1) Terminal condition means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, within reasonable medical judgment, result in death within a relatively short time.

#### § 2802. Declarations Concerning Life Sustaining Treatment; Execution Requirements.

- (a) An individual of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration shall be a separate document and not a part of any other document nor contained on a piece of paper containing some other document, shall be signed by the declarant, or another at the declarant's direction and in the declarant's presence, and witnessed by two individuals neither of whom may be a person who is entitled to any portion of the estate of the qualified patient upon his or her death under any will or codicil thereto of the qualified patient existing in at the time of execution of the declaration or by operation of law. In addition, a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, or an employee of an operator of a residential care facility for the elderly may not be a witness.
  - (b) A declaration shall substantially contain the following provisions:

#### **DECLARATION**

If I should have an incurable or irreversible condition that has been diagnosed by two physicians that will result in my death within a relatively short time without the administration of life-sustaining treatment or has produced an irreversible coma or persistent vegetative state, and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Medical Consent Act of the Commonwealth of the Northern Mariana Islands, to withhold or withdraw life-sustaining treatment that only prolongs the process of dying or the irreversible coma or persistent vegetative state and is not necessary for my comfort, nutrition, hydration or to alleviate pain.

Signed	this	day	of	,	
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The declarant voluntarily signed this writing in my presence. I am not entitled to any portion of the estate of the declarant upon his or her death under any will or codicil thereto of the declarant now existing or by operation of law. I am not a health care provider, an employee of a healthcare provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, or an employee of an operator of a residential care facility for the elderly.

Witness	Witness
Address	Address

- (c) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if willing to comply with the declaration, promptly so advise the declarant.
- (d) A declaration may be made by parents or other adults who are legally responsible for a minor patient who is neither married nor emancipated.

#### § 2803. Operative Effect of Declaration.

A declaration becomes operative when (a) it is communicated to the attending physician and (b) the declarant is diagnosed and certified in writing by the attending physician and a second physician who has personally examined the declarant to be in a terminal condition or permanent unconscious condition and no longer able to make decisions regarding administration of life-sustaining treatment. When the declaration becomes operative, the attending physician and other health care providers including certified emergency medical technicians shall act in accordance with its provisions or comply with the transfer of requirements in §2807. Such declaration shall be operative both in and out of a hospital setting.

#### § 2804. Revocation of Declaration.

(a) A declarant may revoke a declaration at any time and in any manner, without regard to the declarant's mental or physical condition. A revocation is

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effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation.

(b) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

#### § 2805. Terminal or Permanent Unconscious Condition; Records.

Upon determining that the declarant is in a terminal condition or permanent unconscious condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record and file a copy of the declaration in the record.

#### § 2806. Self-Determination by a Patient.

- (a) A qualified patient may make decisions regarding life sustaining treatment, including whether to stay in the hospital or healthcare facility, as long as the patient is able to do so.
- (b) This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort, care or alleviation of pain.

# § 2807. Physician or Health Care provider Unwilling to Comply with Chapter; Transfer of Patient.

An attending physician or other health care provider including an emergency medical technician who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so.

#### § 2808. Civil or Criminal Liability; Unprofessional Conduct.

- (a) A physician or other health care provider is not subject to civil or criminal liability, or discipline for unprofessional conduct, for giving effect to a declaration in the absence of knowledge of the revocation of a declaration.
- (b) A physician or other health care provider, whose action under this chapter is in accord with reasonable medical standards, is not subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any

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other sanction if the physician or health care provider believes in good faith that the action is consistent with this chapter and the desires of the declarant expressed in the declaration.

#### § 2809. Willful Failure to Act; Fraudulent Conduct; Penalties.

- (a) A physician or other health care provider who willfully fails to transfer the care of a patient in accordance with section 2807 is guilty of a felony of the third degree.
- (b) A physician who willfully fails to record a determination of terminal condition or permanent unconscious condition or the terms of a declaration in accordance with Section 2805 is guilty of a felony of the third degree.
- (c) An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another individual without the declarant's consent or who falsifies or forges a revocation of the declaration of another individual is guilty of a felony of the third degree.
- (d) An individual who falsifies or forges the declaration of another individual, or willfully conceals or withholds personal knowledge of a revocation is guilty of a felony of the third degree.
- (e) A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services is guilty of a felony of the third degree.
- (f) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a felony of the third degree.
- (g) The sanctions provided in this section do not displace any sanction applicable under law.
- § 2810. Construction of a Chapter, Characterization of Death Resulting from Decisions Made in Accordance with Chapter; Effect of Declaration of Life Insurance or Annuities; Deliberate Acts or Omissions to End Life.

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- (a) Death resulting from the withholding or withdrawal of a life-sustaining treatment in accordance with this Act does not constitute, for any purpose, a suicide or homicide.
- (b) The making of a declaration pursuant to §2802 does not affect in any manner of the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated by the withholding or withdrawal of life sustaining treatment from an insured, notwithstanding any term to the contrary.
- (c) A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving, health care services.
- (d) This act creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition or permanent conscious condition.
- (e) This Act does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that a person has to effect the withholding or withdrawal of medical treatment.
- (f) This Act does not require any physician or other health care provider to take any action contrary to reasonable medical standards.
- (g) This Act does not condone, authorize, or approve mercy killing or assisted suicide or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.
- (h) The rights granted by this Act are in addition to, and not in derogation of, rights under any statutory or case law.
- (i) A person shall be considered dead if, in the opinion of a physician, based on ordinary standards of current medical practice, the person has experienced irreversible cessation of spontaneous respiratory and circulatory function. Death

SENATE BILL NO. 17-11, SD1

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occurs when the irreversible cessation of said functions first occurs. A registered nurse may pronounce death if the patient's anticipated death has been certified pursuant to Section 2816.

(j) In the event that artificial means of support preclude a determination that respiratory and circulatory functions have ceased, a person shall be considered dead if, in the opinion of the attending physician and one other physician, based on ordinary standards of medical practice, the persona has experienced irreversible cessation of all function of the brain, including brain stem. The options of the physicians shall be evidenced by signed statements. Death will have occurred at the time when the irreversible cessation of all functions of the entire brain, including the brain stem, first occurred. Death shall be pronounced before artificial means of support are withdrawn and before any vital organ is removed for purposes of transplantation.

#### § 2811. Declaration Presumed in Compliance and Valid.

In the absence of knowledge to the contrary, a physician or other health care provider may presume that a declaration complies with this Act and is valid.

#### § 2812. Instruments Executed in Other States.

An instrument governing the withholding or withdrawal of life-sustaining treatment executed in another state in compliance with the laws of that state or the Commonwealth of the Northern Mariana Islands, is valid for purposes of this Act.

#### § 2813. Instruments to Be Given Effect Pursuant to Act.

The following instruments can be given effect pursuant to the provisions of this Act:

- (a) An instrument executed before the effective date of this Act that substantially complies with subdivision (a) of Section 2802.
- (b) An instrument governing the withholding or withdrawal of life-sustaining treatment executed in another state that does not comply with the laws of that state, but substantially complies with the laws of the Commonwealth of the Northern Mariana Islands.

#### § 2814. Uniform Law; Construction of Act.

To the extent that a provision of this Act conforms to the Uniform Rights of the Terminally Ill Act, that provision shall be applied and construed to the effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

#### Article 2. Uniform Determination of Death

- § 2815. Declaration <u>Determination</u> of Death by a Licensed Physician. The declaration determination of death shall be of the following:
  - (a) A person shall be considered legally dead if there is irreversible cessation of spontaneous respiratory and circulatory functions; or
  - (b) If artificial means of support preclude a determination that spontaneous respiratory and circulatory functions have ceased, a person will be considered legally dead if announced in opinion of a licensed physician, based on accepted medical standards, there is irreversible cessation of all spontaneous brain function. Death will have occurred at the time when the relevant functions ceased. Death is to be pronounced before artificial means of supporting respiratory and circulatory functions are terminated.

### § 2816. <u>Declaration Determination</u> of Death by a Certified Physician Assistant; Certified Nurse Practitioner; and Certified Emergency Medical Technician.

The declaration determination of death shall be of the following:

- (a) A person shall be considered legally dead if there is irreversible cessation of spontaneous respiratory and circulatory functions; or
- (b) If artificial means of support preclude a determination that spontaneous respiratory and circulatory functions have ceased, a person will be considered legally dead if announced in opinion of a certified physician assistant, certified nurse practitioner, or certified emergency medical technician based on accepted medical standards, there is irreversible cessation of all spontaneous brain function; provided, however, that said certified physician assistant, certified nurse practitioner, or certified emergency medical technician first makes a reasonable effort to contact

27 28 the attending physician before making such determination or pronouncement; provided further that such determination or pronouncement be made in writing on a form approved by the Secretary of Public Health and subscribed under the penalties of perjury; and provided further, that the medical examiner be notified forthwith of the exact location to which the decedent has been removed.

Death will have occurred at the time when the relevant functions ceased. Death is to be pronounced before artificial means of supporting respiratory and circulatory functions are terminated.

#### § 2817. Declaration Determination of Death by a Registered Nurse.

- (a) A pronouncement of death may be made by a registered nurse on a person with an 'anticipated death' who is in a healthcare facility, or a private home served by a licensed home healthcare provider or government/private healthcare agency.
- (b) Prior to any pronouncement of death pursuant to this Section, there shall be certification of an anticipated death by an attending physician. The certification shall be documented in the person's medical or clinical record, and shall be valid for purposes of this Section for no more than one hundred eighty (180) days from the documentation and must be recertified every one hundred eighty (180) days to remain valid.
- (c) A registered nurse who has determined and pronounced death, under this Section, after diagnosing the absence of human responses, shall document the clinical criteria for the determination and pronouncement in the person's medical or clinical record and notify the certifying physician. The registered nurse shall communicate pertinent information to appropriate persons, sign the death certificate, and record the:
  - Name of the deceased; 1.
  - 2. Presence of a contagious disease, if known; and
  - 3. Date and time of death.
- (d) The registered nurse, upon completion of the death certificate, shall contact the funeral home identified by the family. The funeral home shall be responsible for transporting the deceased person to the funeral home.

- (e) The healthcare facility or licensed home healthcare provider shall have adopted written policies and procedures that provide for the determination and pronouncement of death by a registered nurse under this Section. A registered nurse employed by any healthcare facility may not make a determination or pronouncement of death under this Section unless the facility has written policies and procedures implementing and ensuring compliance with this Act.
- (f) The Police Department and the Chief Examiner shall immediately be notified of any deaths which are of a different nature than anticipated or are suspicious in nature.
  - (g) In this Section,
    - 1. **'Determination of Death'** means diagnosis of death based on observation and assessment of absence of human response.
    - 2. **'Healthcare Facility'** means a private, municipal, state, federal or military hospital, mental health and substance abuse hospital, public health, skilled nursing facility, kidney disease and cancer treatment center (excluding freestanding units), intermediate care facility, long-term care facility, nursing home, hospice facility or home health agency.
    - 3. 'Anticipated Death' means a death caused by life-limiting illness, infirmity, or disease, following certification by the attending physician that the prognosis was discussed with the patient and the patient's family, and that the patient consented to a 'No Resuscitation' order or has executed an Advanced Directive indicating the same.

# § 2818. No Liability for Physician, Registered Nurse <u>or Other Person</u> <u>Authorized to Determine Death.</u>

A licensed physician, registered nurse or other authorized person who determines death in accordance with the provisions of 2815 or \$-2816 of this Act is not liable to damages in any civil action or subject in any criminal proceeding for his or her acts, or the actions of others based on that determination.

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#### § 2819. Good Faith Reliance.

A person who acts in good faith in reliance on a determination of death by a licensed physician or a registered nurse under this Act is not liable for damages in any civil action or subject to the prosecution in any criminal procedures for his or her actions.

#### § 2820. Certificate of Death, Time for Completion.

The medical certification shall be completed and signed within twenty-four (24) hours after death by a registered nurse; or by the physician in charge of the patient's care for the illness or condition which resulted in death licensed physician or other person authorized to determine death pursuant to this Act, except when the patient has received no medical attention within seventy-two (72) hours prior to death, or when inquiry is required in accordance with the Post-Mortem Examination Act."

Section 4. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 6. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:** 

PRESIDENT OF THE SENATE

ATTESTED BY:

SENATE LEGISLATIVE SECRETARY

APPROVED this 33rd day of MARCH, 2011

BENIGNO R. FITIAL

Commonwealth of the Northern Mariana Islands