To: Public Health and Welfare; Appropriations

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001
By: Senator(s) Walls, Dawkins

SENATE BILL NO. 2658

AN ACT TO AMEND SECTION 41-39-15, MISSISSIPPI CODE OF 1972, TO ESTABLISH A MISSISSIPPI ORGAN DONOR AND EDUCATION BOARD, TO EMPOWER THE BOARD TO IDENTIFY ALL POTENTIAL ORGAN AND TISSUE DONORS IN THE STATE, TO EMPOWER THE BOARD TO AUTHORIZE THE DONATION OF A PATIENT'S ORGANS OR TISSUE UNLESS THERE IS AN OBJECTION BY THE DONOR'S FAMILY OR NEXT OF KIN, TO PROVIDE THAT THE PROTOCOL FOR ORGAN OR TISSUE DONATION SHALL NOT REQUIRE A DONOR CARD, TO PROVIDE THAT NO PROTOCOL FOR POTENTIAL ORGAN DONORS SHALL SUPERCEDE A VALID ORGAN DONOR CARD, OR A GIFT OF AN ORGAN PURSUANT TO THE UNIFORM ANATOMICAL GIFT LAW OR THE UNIFORM HEALTH CARE DECISIONS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-39-15, Mississippi Code of 1972, is amended as follows:

41-39-15. (1) For the purposes of this section:

(a) "Potential organ donor" means a patient with a severe neurological insult who exhibits loss of cranial nerve response or who has a Glasgow Coma Scale score of five (5) or less.

(b) "Potential tissue donor" means any patient who dies due to cardiac arrest.

(c) "Organ procurement organization" means the federally designated agency charged with coordinating the procurement of human organs in the State of Mississippi for the purpose of transplantation and research.

(d) "Tissue bank" or "tissue procurement organization" means a not-for-profit agency certified by the Mississippi State Department of Health to procure tissues, other than solid organs, in the State of Mississippi.
(e) "Board" means the Mississippi Organ Donation and Education Board created under this section.

(2) There is hereby established a Mississippi Organ Donor and Education Board appointed by the Governor, with the advice and consent of the Senate, composed of the following members:

(a) One (1) representative from the Mississippi Organ Recovery Association;

(b) One (1) representative from the Mississippi Chapter of the American Red Cross involved with organ or tissue services;

(c) One (1) representative from the Mississippi Lions Eye Bank;

(d) Three (3) licensed physicians, one (1) to be appointed from each of the three (3) Mississippi Supreme Court Districts, one (1) of whom shall be a forensic pathologist; and

(e) One (1) at-large member who has demonstrated an interest in organ, tissue and eye donation, representing families of recipients and families of donors who are residents of Mississippi. Members shall serve terms of four (4) years and until successors are appointed and qualified. Vacancies shall be filled in the manner of the original appointment for the unexpired portion of the term. Board members shall not be compensated for their services but may be reimbursed for mileage and all necessary and reasonable expenses incurred in the performance of their duties as board members, as provided in Section 25-3-41, Mississippi Code of 1972, from any funds appropriated by the Legislature from the Health Care Expendable Trust Fund established in Section 43-13-405, Mississippi Code of 1972, or other public or private funds made available therefor. The board shall organize and elect a chairman from among its members and shall adopt rules for the governance of its operations. The board shall meet at least quarterly, or upon the call of the chair.

(3) In administering this section, the board is authorized, but not limited to, the following duties and responsibilities:
(a) Assess the needs of transplant recipients and establish priorities and develop goals and objectives to assist transplant recipients who are residents of Mississippi;

(b) Establish a protocol for the consent for organ or tissue donation by suitable patients in Mississippi pursuant to this Section, and to delegate any organ or tissue donation responsibilities to an organ procurement organization;

(c) Develop and implement educational programs and campaigns to increase organ donation in Mississippi;

(d) Utilize local resources including volunteers when appropriate to carry out the responsibilities of the board.

(4) Before November 1, 2001, the Mississippi Organ Donor and Education Board shall develop and promulgate to the appropriate medical staff of each licensed acute care hospital in the state, a protocol for identifying all potential organ and tissue donors. The protocol shall include a procedure for family consultation.

(5) The protocol shall require each hospital to contact the Mississippi Organ Donor and Education Board by telephone when a patient in the hospital becomes either a potential organ donor or potential tissue donor as defined in this section. The board shall determine the suitability of the patient for organ or tissue donation after a review of the patient's medical history and present condition. The board shall notify the attending physician or designee of its assessment. The hospital shall note in the patient's chart the board's assessment of suitability for donation. The board representative shall provide information about donation options to the family or persons specified in Section 41-39-35 when consent for donation is requested. Provided, however, that this protocol shall not be applicable in cases where a declaration by the organ donor affixed to the driver's license of such person, or a declaration has been made by the organ donor under the Uniform Anatomical Gift Law or the
Uniform Health-Care Decisions Act has been provided to the attending physician.

(6) If the patient becomes brain dead and is still suitable as a potential donor, the board representative shall approach the deceased patient's legal next of kin or persons specified in Section 41-39-35 for consent to donate the patient's organs. The board representative shall initiate the consent process with reasonable discretion and sensitivity to the family's circumstances, values and beliefs. Provided, however, that this protocol shall not be applicable in cases where a declaration by the organ patient affixed to the driver's license of the person, or a declaration by the patient under the Uniform Anatomical Gift Law or the Uniform Health-Care Decisions Act has been provided to the attending physician.

To discourage multiple requests for donation consent, the board representative shall make a request for tissue donation during the organ donation consent process. When the possibility of tissue donation alone exists, a tissue bank representative or their designee may request the donation.

(7) The option of organ donation shall be made to the deceased patient's family upon the occurrence of brain death and while mechanical ventilation of the patient is in progress. The protocol shall require that the decision to donate be noted in the patient's medical record. The board shall provide a form to the hospital for the documentation. The form shall be signed by the patient's family pursuant to Sections 41-39-31 through 41-39-51. The form shall be placed in each deceased patient's chart documenting the family's decision regarding donation of organs or tissues from the patient.

(8) Performance improvement record reviews of deceased patients' medical records shall be conducted by the board for each hospital having more than ninety-five (95) licensed acute care beds and general surgical capability. These reviews must be
performed in the first four (4) months of a calendar year for the
previous calendar year. If the organ procurement organization and
hospital mutually agree, the performance improvement record
reviews may be performed more frequently. Aggregate data
concerning these reviews shall be submitted by the board to the
State Department of Health by July 1 of each year for the
preceding year.

(9) The Mississippi Organ Donor and Education Board shall
establish a protocol giving priority to Mississippi residents for
transplant of an organ or tissue donated under authority of this
section. No organ or tissue recovered in the State of Mississippi
may be shipped out of the state except through an approved
organ-sharing network or, at the family's request, to an approved
organ transplant program.

(10) Any board member, hospital, administrator, physician,
surgeon, nurse, technician, organ procurement organization, tissue
procurement organization or donee who acts in good faith to comply
with this section shall not be liable in any civil action to a
claimant who alleges that his consent for the donation was
required.

(11) Any person knowingly violating any rule, regulation or
protocol promulgated by the Mississippi Organ Donor and Education
Board under the authority of this section, shall be deemed guilty
of a felony and upon conviction, shall be punished by fine not
exceeding Ten Thousand Dollars ($10,000.00) or imprisonment for
not more than five (5) years, or both.

(12) Nothing in this section shall be construed to supersede
or revoke, by implication or otherwise, any valid gift of the
entire body to a medical school.

(13) Nothing in this section shall be construed to supersede
or revoke, by implication or otherwise, any valid gift of an organ
made pursuant to the Uniform Anatomical Gift Law, Section 41-39-31
et seq., or the Uniform Health-Care Decisions Act, Section 41-41-201 et seq.

SECTION 2. This act shall take effect and be in force from and after July 1, 2001.