

By: Senator(s) Bryan, Browning

To: Public Health and Welfare

SENATE BILL NO. 2806

1 AN ACT TO PROVIDE THAT AN ORGAN DONATION MADE BY WILL, BY A  
2 DURABLE POWER OF ATTORNEY, BY A LIVING WILL OR PURSUANT TO THE  
3 UNIFORM ANATOMICAL GIFT ACT SUPERCEDES ANY DECISION BY THE FAMILY  
4 OF THE ORGAN DONOR; TO AMEND SECTION 41-41-209, MISSISSIPPI CODE  
5 OF 1972, TO PROVIDE THE FORM FOR SUCH DECLARATION BY AN ORGAN  
6 DONOR; TO AMEND SECTION 41-39-15, MISSISSIPPI CODE OF 1972, TO  
7 PROVIDE THAT NO PROTOCOL FOR POTENTIAL ORGAN DONORS SHALL  
8 SUPERCEDE A VALID GIFT OF AN ORGAN; AND FOR RELATED PURPOSES.

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

10 SECTION 1. A gift of all or part of the body made (a) by  
11 will, (b) under a Durable Power of Attorney for Health Care  
12 declaration pursuant to Section 41-41-209, (c) under a Withdrawal  
13 of Life-saving Mechanism (Living Will) declaration pursuant to  
14 former Section 41-41-107, or (d) under a Uniform Anatomical Gift  
15 Act declaration pursuant to Section 41-39-39, will supercede and  
16 have precedence over any decision by the family of the individual  
17 making the organ donation.

18 SECTION 2. Section 41-41-209, Mississippi Code of 1972, is  
19 amended as follows:

20 41-41-209. The following form may be used to create an  
21 advance health-care directive. Sections 41-41-201 through  
22 41-41-207 and 41-41-211 through 41-41-229 govern the effect of  
23 this or any other writing used to create an advanced health-care  
24 directive. An individual may complete or modify all or any part  
25 of the following form:

26 ADVANCE HEALTH-CARE DIRECTIVE

27 **Explanation**

28 You have the right to give instructions about your own health  
29 care. You also have the right to name someone else to make

30 health-care decisions for you. This form lets you do either or  
31 both of these things. It also lets you express your wishes  
32 regarding the designation of your primary physician. If you use  
33 this form, you may complete or modify all or any part of it. You  
34 are free to use a different form.

35 Part 1 of this form is a power of attorney for health care.  
36 Part 1 lets you name another individual as agent to make  
37 health-care decisions for you if you become incapable of making  
38 your own decisions or if you want someone else to make those  
39 decisions for you now even though you are still capable. You may  
40 name an alternate agent to act for you if your first choice is not  
41 willing, able or reasonably available to make decisions for you.  
42 Unless related to you, your agent may not be an owner, operator,  
43 or employee of a residential long-term health-care institution at  
44 which you are receiving care.

45 Unless the form you sign limits the authority of your agent,  
46 your agent may make all health-care decisions for you. This form  
47 has a place for you to limit the authority of your agent. You  
48 need not limit the authority of your agent if you wish to rely on  
49 your agent for all health-care decisions that may have to be made.  
50 If you choose not to limit the authority of your agent, your agent  
51 will have the right to:

52 (a) Consent or refuse consent to any care, treatment,  
53 service, or procedure to maintain, diagnose, or otherwise affect a  
54 physical or mental condition;

55 (b) Select or discharge health-care providers and  
56 institutions;

57 (c) Approve or disapprove diagnostic tests, surgical  
58 procedures, programs of medication, and orders not to resuscitate;  
59 and

60 (d) Direct the provision, withholding, or withdrawal of  
61 artificial nutrition and hydration and all other forms of health  
62 care.

63 Part 2 of this form lets you give specific instructions about  
64 any aspect of your health care. Choices are provided for you to  
65 express your wishes regarding the provision, withholding, or  
66 withdrawal of treatment to keep you alive, including the provision  
67 of artificial nutrition and hydration, as well as the provision of  
68 pain relief. Space is provided for you to add to the choices you  
69 have made or for you to write out any additional wishes.

70 Part 3 of this form lets you designate a physician to have  
71 primary responsibility for your health care.

72 Part 4 of this form lets you authorize the donation of your  
73 organs at your death, and declares that this decision will  
74 supercede any decision by a member of your family.

75 After completing this form, sign and date the form at the end  
76 and have the form witnessed by one of the two alternative methods  
77 listed below. Give a copy of the signed and completed form to  
78 your physician, to any other health-care providers you may have,  
79 to any health-care institution at which you are receiving care,  
80 and to any health-care agents you have named. You should talk to  
81 the person you have named as agent to make sure that he or she  
82 understands your wishes and is willing to take the responsibility.

83 You have the right to revoke this advance health-care  
84 directive or replace this form at any time.

85 PART 1

86 POWER OF ATTORNEY FOR HEALTH CARE

87 (1) DESIGNATION OF AGENT: I designate the following  
88 individual as my agent to make health-care decisions for me:

89 \_\_\_\_\_

90 (name of individual you choose as agent)

91 \_\_\_\_\_

92 (address) (city) (state) (zip code)

93 \_\_\_\_\_

94 (home phone) (work phone)



127 authority to make health-care decisions for me takes effect  
128 immediately.

129 (4) AGENT'S OBLIGATION: My agent shall make health-care  
130 decisions for me in accordance with this power of attorney for  
131 health care, any instructions I give in Part 2 of this form, and  
132 my other wishes to the extent known to my agent. To the extent my  
133 wishes are unknown, my agent shall make health-care decisions for  
134 me in accordance with what my agent determines to be in my best  
135 interest. In determining my best interest, my agent shall  
136 consider my personal values to the extent known to my agent.

137 (5) NOMINATION OF GUARDIAN: If a guardian of my person  
138 needs to be appointed for me by a court, I nominate the agent  
139 designated in this form. If that agent is not willing, able, or  
140 reasonably available to act as guardian, I nominate the alternate  
141 agents whom I have named, in the order designated.

142 PART 2

143 INSTRUCTIONS FOR HEALTH CARE

144 If you are satisfied to allow your agent to determine what is  
145 best for you in making end-of-life decisions, you need not fill  
146 out this part of the form. If you do fill out this part of the  
147 form, you may strike any wording you do not want.

148 (6) END-OF-LIFE DECISIONS: I direct that my health-care  
149 providers and others involved in my care provide, withhold or  
150 withdraw treatment in accordance with the choice I have marked  
151 below:

152  (a) Choice Not To Prolong Life

153 I do not want my life to be prolonged if (i) I have an  
154 incurable and irreversible condition that will result in my death  
155 within a relatively short time, (ii) I become unconscious and, to  
156 a reasonable degree of medical certainty, I will not regain  
157 consciousness, or (iii) the likely risks and burdens of treatment  
158 would outweigh the expected benefits, or

159  (b) Choice To Prolong Life

160 I want my life to be prolonged as long as possible  
161 within the limits of generally accepted health-care standards.

162 (7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial  
163 nutrition and hydration must be provided, withheld or withdrawn in  
164 accordance with the choice I have made in paragraph (6) unless I  
165 mark the following box. If I mark this box [ ], artificial  
166 nutrition and hydration must be provided regardless of my  
167 condition and regardless of the choice I have made in paragraph  
168 (6).

169 (8) RELIEF FROM PAIN: Except as I state in the following  
170 space, I direct that treatment for alleviation of pain or  
171 discomfort be provided at all times, even if it hastens my death:

172 \_\_\_\_\_  
173 \_\_\_\_\_

174 (9) OTHER WISHES: (If you do not agree with any of the  
175 optional choices above and wish to write your own, or if you wish  
176 to add to the instructions you have given above, you may do so  
177 here.) I direct that:

178 \_\_\_\_\_  
179 \_\_\_\_\_

180 (Add additional sheets if needed.)

181 PART 3  
182 PRIMARY PHYSICIAN  
183 (OPTIONAL)

184 (10) I designate the following physician as my primary  
185 physician:

186 \_\_\_\_\_  
187 (name of physician)

188 \_\_\_\_\_  
189 (address) (city) (state) (zip code)

190 \_\_\_\_\_  
191 (phone)



224 (c) Any person operating a bank or storage facility for  
225 blood, arteries, eyes, pituitaries, or other human parts, for use  
226 in medical education, research, therapy or transplantation to  
227 individuals;

228 (d) The donee specified below, for therapy or transplantation  
229 needed by him or her, do hereby donate my \_\_\_\_\_ for said  
230 purpose to \_\_\_\_\_(Name) at \_\_\_\_\_(Address).

231 I hereby authorize a licensed physician or surgeon to remove and  
232 preserve for use my \_\_\_\_\_for said purpose.

233 I specifically provide that this declaration shall supercede and  
234 take precedence over any decision by my family to the contrary.

235 Witnessed this \_\_\_\_\_day of \_\_\_\_\_, 20\_\_.

236 \_\_\_\_\_

237 DONOR

238 \_\_\_\_\_

239 ADDRESS

240 \_\_\_\_\_

241 TELEPHONE

242 \_\_\_\_\_

243 WITNESS

244 \_\_\_\_\_

245 WITNESS \_\_\_\_\_

246 (13) WITNESSES: This power of attorney will not be valid  
247 for making health-care decisions unless it is either (a) signed by  
248 two (2) qualified adult witnesses who are personally known to you  
249 and who are present when you sign or acknowledge your signature;  
250 or (b) acknowledged before a notary public in the state.

251 ALTERNATIVE NO. 1

252 Witness

253 I declare under penalty of perjury pursuant to Section  
254 97-9-61, Mississippi Code of 1972, that the principal is  
255 personally known to me, that the principal signed or acknowledged  
256 this power of attorney in my presence, that the principal appears



257 to be of sound mind and under no duress, fraud or undue influence,  
258 that I am not the person appointed as agent by this document, and  
259 that I am not a health-care provider, nor an employee of a  
260 health-care provider or facility. I am not related to the  
261 principal by blood, marriage or adoption, and to the best of my  
262 knowledge, I am not entitled to any part of the estate of the  
263 principal upon the death of the principal under a will now  
264 existing or by operation of law.

265 \_\_\_\_\_  
266 (date) (signature of witness)  
267 \_\_\_\_\_  
268 (address) (printed name of witness)  
269 \_\_\_\_\_  
270 (city) (state)

271 Witness

272 I declare under penalty of perjury pursuant to Section  
273 97-9-61, Mississippi Code of 1972, that the principal is  
274 personally known to me, that the principal signed or acknowledged  
275 this power of attorney in my presence, that the principal appears  
276 to be of sound mind and under no duress, fraud or undue influence,  
277 that I am not the person appointed as agent by this document, and  
278 that I am not a health-care provider, nor an employee of a  
279 health-care provider or facility.

280 \_\_\_\_\_  
281 (date) (signature of witness)  
282 \_\_\_\_\_  
283 (address) (printed name of witness)  
284 \_\_\_\_\_  
285 (city) (state)

286 ALTERNATIVE NO. 2

287 State of \_\_\_\_\_

288 County of \_\_\_\_\_

289 On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before  
290 me, \_\_\_\_\_ (insert name of notary public) appeared  
291 \_\_\_\_\_, personally known to me (or proved to me on the  
292 basis of satisfactory evidence) to be the person whose name is  
293 subscribed to this instrument, and acknowledged that he or she  
294 executed it. I declare under the penalty of perjury that the  
295 person whose name is subscribed to this instrument appears to be  
296 of sound mind and under no duress, fraud or undue influence.

297 Notary Seal

298 \_\_\_\_\_

299 (Signature of Notary Public)

300 SECTION 3. Section 41-39-15, Mississippi Code of 1972, is  
301 amended as follows:

302 41-39-15. (1) For the purposes of this section:

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

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

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

313 (d) "Tissue bank" or "tissue procurement organization"  
314 means a not-for-profit agency certified by the Mississippi State  
315 Department of Health to procure tissues, other than solid organs,  
316 in the State of Mississippi.

317 (2) Before November 1, 1998, each licensed acute care  
318 hospital in the state shall develop, with the concurrence of the  
319 hospital medical staff and the organ procurement organization, a  
320 protocol for identifying all potential organ and tissue donors.  
321 The protocol shall include a procedure for family consultation.

322 This protocol shall not be applicable in cases where a declaration  
323 by the organ donor (a) by will, (b) under a Durable Power of  
324 Attorney for Health Care declaration pursuant to Section  
325 41-41-209, (c) under a Withdrawal of Life-saving Mechanism (Living  
326 Will) declaration pursuant to former Section 41-41-107 (now  
327 repealed), or (d) under the Uniform Anatomical Gift Law pursuant  
328 to Section 41-39-39, has been provided to the attending physician.

329 (3) The protocol shall require each hospital to contact the  
330 organ procurement organization by telephone when a patient in the  
331 hospital becomes either a potential organ donor or potential  
332 tissue donor as defined in this section. The organ procurement  
333 organization shall determine the suitability of the patient for  
334 organ or tissue donation after a review of the patient's medical  
335 history and present condition. The organ procurement organization  
336 representative shall notify the attending physician or designee of  
337 its assessment. The hospital shall note in the patient's chart  
338 the organ procurement organization's assessment of suitability for  
339 donation. The organ procurement organization representative shall  
340 provide information about donation options to the family or  
341 persons specified in Section 41-39-35 when consent for donation is  
342 requested.

343 (4) If the patient becomes brain dead and is still suitable  
344 as a potential donor, the organ procurement organization  
345 representative shall approach the deceased patient's legal next of  
346 kin or persons specified in Section 41-39-35 for consent to donate  
347 the patient's organs. The organ procurement organization  
348 representative shall initiate the consent process with reasonable  
349 discretion and sensitivity to the family's circumstances, values  
350 and beliefs.

351 To discourage multiple requests for donation consent, the  
352 organ procurement organization representative shall make a request  
353 for tissue donation during the organ donation consent process.

354 When the possibility of tissue donation alone exists, a tissue  
355 bank representative or their designee may request the donation.

356 (5) The option of organ donation shall be made to the  
357 deceased patient's family upon the occurrence of brain death and  
358 while mechanical ventilation of the patient is in progress.

359 The protocol shall require that the decision to donate be  
360 noted in the patient's medical record. The organ procurement  
361 organization shall provide a form to the hospital for the  
362 documentation. The form shall be signed by the patient's family  
363 pursuant to Sections 41-39-31 through 41-39-51. The form shall be  
364 placed in each deceased patient's chart documenting the family's  
365 decision regarding donation of organs or tissues from the patient.

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

378 (7) No organ or tissue recovered in the State of Mississippi  
379 may be shipped out of the state except through an approved organ  
380 sharing network or, at the family's request, to an approved organ  
381 transplant program.

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

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

390           SECTION 4. This act shall take effect and be in force from  
391 and after July 1, 2001.