

By: Representative Moak

To: Public Health and Human Services

HOUSE BILL NO. 322

1 AN ACT TO DEFINE THE PERSONS WHO HAVE THE RIGHT OF DECISION  
2 OR CONSENT REGARDING DISINTERMENT OF A BURIED HUMAN BODY; TO AMEND  
3 SECTIONS 41-37-25 AND 41-39-35, MISSISSIPPI CODE OF 1972, IN  
4 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
5 PURPOSES.

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

7 **SECTION 1.** (1) After a human body has been buried, the  
8 following persons, in the order of priority stated, shall have the  
9 right of decision or consent regarding disinterment of the body  
10 for relocation to another burial site, for an autopsy not pursuant  
11 to a court order or for any other reason:

12 (a) A surviving spouse of the decedent, as long as the  
13 spouse has not remarried.

14 (b) Children of the decedent over the age of eighteen  
15 (18) years.

16 (c) Parents of the decedent.

17 (d) Brothers and sisters of the decedent over the age  
18 of eighteen (18) years.

19 (e) The guardian of the person of the decedent at the  
20 time of his death.

21 (f) Any other next of kin of the decedent.

22 (2) Whenever a buried human body is to be disinterred for  
23 any reason other than the performance of an autopsy, prior  
24 approval of the State Department of Health shall be required.

25 (3) Nothing in subsection (1) of this section shall give a  
26 right to any person to prevent an autopsy from being performed  
27 pursuant to court order.

28           **SECTION 2.** Section 41-37-25, Mississippi Code of 1972, is  
29 amended as follows:

30           41-37-25. An autopsy may be performed without court order by  
31 a qualified physician when authorized by (a) the decedent, during  
32 his lifetime, or (b) any of the following persons who shall have  
33 assumed custody of the body for the purpose of burial: a  
34 surviving spouse, either parent or any person in loco parentis, a  
35 descendant over the age of eighteen (18) years, a guardian, or the  
36 next of kin. In the absence of any of the foregoing persons any  
37 friend of the deceased who has assumed responsibility for burial,  
38 or any other person charged by law with responsibility for burial,  
39 may give such consent. If two (2) or more persons have assumed  
40 custody of the body of an adult for purposes of burial, the  
41 consent of one (1) such person shall be deemed sufficient.

42           In the case of a minor, however, the consent of either parent  
43 shall be deemed sufficient, unless the other parent gives written  
44 notice to the physician who is to perform the autopsy of such  
45 parent's objection thereto prior to the commencement of the  
46 autopsy. In the event that neither parent has legal custody of  
47 the minor, the guardian shall have the right to authorize an  
48 autopsy. The fees provided in this chapter for autopsies in  
49 criminal investigations shall not be applicable to this section.

50           No autopsy shall be held under this section over the  
51 objection of the surviving spouse, or if there be no surviving  
52 spouse, of any surviving parent, or if there be neither a  
53 surviving spouse nor parent, then of any surviving child.

54           If the body has already been buried, consent to disinterment  
55 of the body for an autopsy without a court order shall be governed  
56 by Section 1 of this act.

57           **SECTION 3.** Section 41-39-35, Mississippi Code of 1972, is  
58 amended as follows:

59           41-39-35. (a) Any individual who is eighteen (18) years of  
60 age or over and who is competent to execute a will may give all or

61 any part of his body for any one or more of the purposes specified  
62 in Sections 41-39-31 through 41-39-51, the gift to take effect  
63 after death.

64 (b) Unless he has knowledge that contrary directions have  
65 been given by the decedent, the following persons, in the order of  
66 priority stated, may give all or any part of a decedent's body for  
67 any one or more of the purposes specified in Sections 41-39-31  
68 through 41-39-51:

69 (1) The spouse, if one (1) survives.

70 (2) An adult son or daughter.

71 (3) Either parent.

72 (4) An adult brother or sister.

73 (5) The guardian of the person of the decedent at the  
74 time of his death.

75 (6) Any other person or agency authorized or under  
76 obligation to dispose of the body.

77 If there is no surviving spouse and an adult son or daughter  
78 is not immediately available at the time of death of a decedent,  
79 the gift may be made by either parent.

80 If a parent of decedent is not immediately available, the  
81 gift may be made by an adult brother or sister of decedent. If  
82 there is known to be a controversy within the class of persons  
83 first entitled to make the gift, the gift will not be accepted.  
84 The persons authorized herein to make the gift may execute the  
85 document of gift either after death or during a terminal illness.  
86 The decedent may be a minor or a stillborn infant.

87 If the gift is made by a person designated above, it shall be  
88 by written or telegraphic consent.

89 If the decedent's body has already been buried, consent to  
90 disinterment of the body for any one or more of the purposes  
91 specified in Sections 41-39-31 through 41-39-51 shall be governed  
92 by Section 1 of this act.

93           **SECTION 4.** This act shall take effect and be in force from  
94 and after July 1, 2004.