

By: Representative Moak

To: Public Health and Human Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 86

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) If a human body has been buried for more than
23 seventy-five (75) years and there is no known next of kin of the
24 decedent, the Department of Archives and History may consent to
25 the disinterment of the body for relocation to another burial
26 site.

27 (3) Whenever a buried human body is to be disinterred for
28 any reason other than the performance of an autopsy, the State
29 Department of Health shall be notified.

30 (4) Nothing in subsection (1) of this section shall give a
31 right to any person to prevent an autopsy from being performed
32 pursuant to court order.

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

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

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

55 No autopsy shall be held under this section over the
56 objection of the surviving spouse, or if there be no surviving
57 spouse, of any surviving parent, or if there be neither a
58 surviving spouse nor parent, then of any surviving child.

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

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

64 41-39-35. (a) Any individual who is eighteen (18) years of
65 age or over and who is competent to execute a will may give all or
66 any part of his body for any one or more of the purposes specified
67 in Sections 41-39-31 through 41-39-51, the gift to take effect
68 after death.

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

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

75 (2) An adult son or daughter.

76 (3) Either parent.

77 (4) An adult brother or sister.

78 (5) The guardian of the person of the decedent at the
79 time of his death.

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

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

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

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

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

98 **SECTION 4.** This act shall take effect and be in force from
99 and after July 1, 2005.