

By: Representative Holland

To: Public Health and Human
Services

HOUSE BILL NO. 687

1 AN ACT TO AMEND SECTION 41-39-15, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT IF A DECEASED PATIENT IN A HOSPITAL IS MEDICALLY
3 SUITABLE TO BE AN ORGAN AND/OR TISSUE DONOR, AND AUTHORIZATION FOR
4 THE DONATION AND TRANSPLANTATION HAS BEEN OBTAINED, THE DONOR'S
5 ORGANS AND/OR TISSUES SHALL BE REMOVED FOR THE PURPOSE OF DONATION
6 AND TRANSPLANTATION BY THE ORGAN PROCUREMENT ORGANIZATION, WHICH
7 SHALL IMMEDIATELY NOTIFY THE APPROPRIATE MEDICAL EXAMINER THAT THE
8 DECEASED PATIENT IS MEDICALLY SUITABLE TO BE AN ORGAN AND/OR
9 TISSUE DONOR; TO PROVIDE THAT IF THE MEDICAL EXAMINER DETERMINES
10 THAT EXAMINATION, ANALYSIS OR AUTOPSY OF THE ORGANS AND/OR TISSUE
11 IS NECESSARY FOR HIS OR HER INVESTIGATION, THE MEDICAL EXAMINER
12 MAY BE PRESENT WHILE THE ORGANS AND/OR TISSUES ARE REMOVED; TO
13 REQUIRE THE PHYSICIAN REMOVING THE ORGANS AND/OR TISSUES TO FILE
14 WITH THE MEDICAL EXAMINER A REPORT DETAILING THE DONATION; TO
15 PROVIDE THAT WHEN REQUESTED BY THE MEDICAL EXAMINER, THE REPORT
16 SHALL INCLUDE A BIOPSY OR MEDICALLY APPROVED SAMPLE FROM THE
17 DONATED ORGANS AND/OR TISSUES; TO AMEND SECTIONS 41-61-59 AND
18 41-61-65, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
19 SECTION; TO REPEAL SECTION 41-61-71, MISSISSIPPI CODE OF 1972,
20 WHICH SETS FORTH A PROCEDURE FOR OBTAINING CORNEAL TISSUE AND
21 OTHER TISSUES FROM A DECEDENT; AND FOR RELATED PURPOSES.

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

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

25 41-39-15. (1) For the purposes of this section:

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

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

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

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

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

45 (3) The protocol shall require each hospital to contact the
46 organ procurement organization by telephone when a patient in the
47 hospital becomes either a potential organ donor or potential
48 tissue donor as defined in this section. The organ procurement
49 organization shall determine the suitability of the patient for
50 organ or tissue donation after a review of the patient's medical
51 history and present condition. The organ procurement organization
52 representative shall notify the attending physician or designee of
53 its assessment. The hospital shall note in the patient's chart
54 the organ procurement organization's assessment of suitability for
55 donation. The organ procurement organization representative shall
56 provide information about donation options to the family or
57 persons specified in Section 41-39-35 when consent for donation is
58 requested.

59 (4) If the patient becomes brain dead and is still suitable
60 as a potential donor, the organ procurement organization
61 representative shall approach the deceased patient's legal next of
62 kin or persons specified in Section 41-39-35 for consent to donate
63 the patient's organs. The organ procurement organization
64 representative shall initiate the consent process with reasonable
65 discretion and sensitivity to the family's circumstances, values
66 and beliefs.

67 To discourage multiple requests for donation consent, the
68 organ procurement organization representative shall make a request

69 for tissue donation during the organ donation consent process.
70 When the possibility of tissue donation alone exists, a tissue
71 bank representative or their designee may request the donation.

72 (5) The option of organ and/or tissue donation shall be made
73 to the deceased patient's family upon the occurrence of brain
74 death and while mechanical ventilation of the patient is in
75 progress.

76 The protocol shall require that the decision to donate be
77 noted in the patient's medical record. The organ procurement
78 organization shall provide a form to the hospital for the
79 documentation. The form shall be signed by the patient's family
80 pursuant to Sections 41-39-31 through 41-39-51. The form shall be
81 placed in each deceased patient's chart documenting the family's
82 decision regarding donation of organs or tissues from the patient.

83 (6) (a) If the deceased patient is medically suitable to be
84 an organ and/or tissue donor, as determined by the protocol in
85 this section, and the donor and/or family has authorized the
86 donation and transplantation, the donor's organs and/or tissues
87 shall be removed for the purpose of donation and transplantation
88 by the organ procurement organization, in accordance with
89 paragraph (b) of this subsection.

90 (b) The organ procurement organization shall
91 immediately notify the appropriate medical examiner that the
92 deceased patient is medically suitable to be an organ and/or
93 tissue donor. If the medical examiner determines that
94 examination, analysis or autopsy of the organs and/or tissue is
95 necessary for the medical examiner's investigation, the medical
96 examiner may be present while the organs and/or tissues are
97 removed for the purpose of transplantation. The physician,
98 surgeon or technician removing the organs and/or tissues shall
99 file with the medical examiner a report detailing the donation,
100 which shall become part of the medical examiner's report. When
101 requested by the medical examiner, the report shall include a

102 biopsy or medically approved sample, as specified by the medical
103 examiner, from the donated organs and/or tissues.

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

116 (8) No organ or tissue recovered in the State of Mississippi
117 may be shipped out of the state except through an approved organ
118 sharing network or, at the family's request, to an approved organ
119 transplant program.

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

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

128 **SECTION 2.** Section 41-61-59, Mississippi Code of 1972, is
129 amended as follows:

130 41-61-59. (1) A person's death that affects the public
131 interest as specified in subsection (2) of this section shall be
132 promptly reported to the medical examiner by the physician in
133 attendance, any hospital employee, any law enforcement officer
134 having knowledge of the death, the embalmer or other funeral home

135 employee, any emergency medical technician, any relative or any
136 other person present. The appropriate medical examiner shall
137 notify the municipal or state law enforcement agency or sheriff
138 and take charge of the body. When the medical examiner has
139 received notification under Section 41-39-15(6) that the deceased
140 is medically suitable to be an organ and/or tissue donor, the
141 medical examiner's authority over the body shall be subject to the
142 provisions of Section 41-39-15(6). The appropriate medical
143 examiner shall notify the Mississippi Bureau of Narcotics within
144 twenty-four (24) hours of receipt of the body in cases of death as
145 described in subsection (2)(m) or (n) of this section.

146 (2) A death affecting the public interest includes, but is
147 not limited to, any of the following:

148 (a) Violent death, including homicidal, suicidal or
149 accidental death.

150 (b) Death caused by thermal, chemical, electrical or
151 radiation injury.

152 (c) Death caused by criminal abortion, including
153 self-induced abortion, or abortion related to or by sexual abuse.

154 (d) Death related to disease thought to be virulent or
155 contagious that may constitute a public hazard.

156 (e) Death that has occurred unexpectedly or from an
157 unexplained cause.

158 (f) Death of a person confined in a prison, jail or
159 correctional institution.

160 (g) Death of a person where a physician was not in
161 attendance within thirty-six (36) hours preceding death, or in
162 prediagnosed terminal or bedfast cases, within thirty (30) days
163 preceding death.

164 (h) Death of a person where the body is not claimed by
165 a relative or a friend.

166 (i) Death of a person where the identity of the
167 deceased is unknown.

168 (j) Death of a child under the age of two (2) years
169 where death results from an unknown cause or where the
170 circumstances surrounding the death indicate that sudden infant
171 death syndrome may be the cause of death.

172 (k) Where a body is brought into this state for
173 disposal and there is reason to believe either that the death was
174 not investigated properly or that there is not an adequate
175 certificate of death.

176 (l) Where a person is presented to a hospital emergency
177 room unconscious and/or unresponsive, with cardiopulmonary
178 resuscitative measures being performed, and dies within
179 twenty-four (24) hours of admission without regaining
180 consciousness or responsiveness, unless a physician was in
181 attendance within thirty-six (36) hours preceding presentation to
182 the hospital, or in cases in which the decedent had a prediagnosed
183 terminal or bedfast condition, unless a physician was in
184 attendance within thirty (30) days preceding presentation to the
185 hospital.

186 (m) Death that is caused by drug overdose or which is
187 believed to be caused by drug overdose.

188 (n) When a stillborn fetus is delivered and the cause
189 of the demise is medically believed to be from the use by the
190 mother of any controlled substance as defined in Section
191 41-29-105.

192 (3) The State Medical Examiner is empowered to investigate
193 deaths, under the authority hereinafter conferred, in any and all
194 political subdivisions of the state. The county medical examiners
195 and county medical examiner investigators, while appointed for a
196 specific county, may serve other counties on a regular basis with
197 written authorization by the State Medical Examiner, or may serve
198 other counties on an as-needed basis upon the request of the
199 ranking officer of the investigating law enforcement agency. The
200 county medical examiner or county medical examiner investigator of

201 any county that has established a regional medical examiner
202 district under subsection (4) of Section 41-61-77 may serve other
203 counties that are parties to the agreement establishing the
204 district, in accordance with the terms of the agreement, and may
205 contract with counties that are not part of the district to
206 provide medical examiner services for those counties. If a death
207 affecting the public interest takes place in a county other than
208 the one where injuries or other substantial causal factors leading
209 to the death have occurred, jurisdiction for investigation of the
210 death may be transferred, by mutual agreement of the respective
211 medical examiners of the counties involved, to the county where
212 the injuries or other substantial causal factors occurred, and the
213 costs of autopsy or other studies necessary to the further
214 investigation of the death shall be borne by the county assuming
215 jurisdiction.

216 (4) The chief county medical examiner or chief county
217 medical examiner investigator may receive from the county in which
218 he serves a salary of Nine Hundred Dollars (\$900.00) per month, in
219 addition to the fees specified in Sections 41-61-69 and 41-61-75,
220 provided that no county shall pay the chief county medical
221 examiner or chief county medical examiner investigator less than
222 One Hundred Dollars (\$100.00) per month as a salary, in addition
223 to other compensation provided by law. In any county having one
224 or more deputy medical examiners or deputy medical examiner
225 investigators, each deputy may receive from the county in which he
226 serves, in the discretion of the board of supervisors, a salary of
227 not more than Nine Hundred Dollars (\$900.00) per month, in
228 addition to the fees specified in Sections 41-61-69 and 41-61-75.
229 For this salary the chief shall assure twenty-four-hour daily and
230 readily available death investigators for the county, and shall
231 maintain copies of all medical examiner death investigations for
232 the county for at least the previous five (5) years. He shall
233 coordinate his office and duties and cooperate with the State

234 Medical Examiner, and the State Medical Examiner shall cooperate
235 with him.

236 (5) A body composed of the State Medical Examiner, whether
237 appointed on a permanent or interim basis, the Director of the
238 State Board of Health or his designee, the Attorney General or his
239 designee, the President of the Mississippi Coroners' Association
240 (or successor organization) or his designee, and a certified
241 pathologist appointed by the Mississippi State Medical Association
242 shall adopt, promulgate, amend and repeal rules and regulations as
243 may be deemed necessary by them from time to time for the proper
244 enforcement, interpretation and administration of Sections
245 41-61-51 through 41-61-79, in accordance with the provisions of
246 the Mississippi Administrative Procedures Law, being Section
247 25-43-1 et seq.

248 **SECTION 3.** Section 41-61-65, Mississippi Code of 1972, is
249 amended as follows:

250 41-61-65. (1) If, in the opinion of the medical examiner
251 investigating the case, it is advisable and in the public interest
252 that an autopsy or other study be made for the purpose of
253 determining the primary and/or contributing cause of death, an
254 autopsy or other study shall be made by the State Medical Examiner
255 or by a competent pathologist designated by the State Medical
256 Examiner. The State Medical Examiner or designated pathologist
257 may retain any tissues as needed for further postmortem studies or
258 documentation. When the medical examiner has received
259 notification under section 41-39-15(6) that the deceased is
260 medically suitable to be an organ and/or tissue donor, the State
261 Medical Examiner or designated pathologist may retain any biopsy
262 or medically approved sample of the organ and/or tissue in
263 accordance with the provisions of section 41-39-15(6). A complete
264 autopsy report of findings and interpretations, prepared on forms
265 designated for this purpose, shall be submitted promptly to the
266 State Medical Examiner. Copies of the report shall be furnished

267 to the authorizing medical examiner, district attorney and court
268 clerk. A copy of the report shall be furnished to one (1) adult
269 member of the immediate family of the deceased or the legal
270 representative or legal guardian of members of the immediate
271 family of the deceased upon request. In determining the need for
272 an autopsy, the medical examiner may consider the request from the
273 district attorney or county prosecuting attorney, law enforcement
274 or other public officials or private persons. However, if the
275 death occurred in the manner specified in subsection (2)(j) of
276 Section 41-61-59, an autopsy shall be performed by the State
277 Medical Examiner or his designated pathologist, and the report of
278 findings shall be forwarded promptly to the State Medical
279 Examiner, investigating medical examiner, the State Department of
280 Health, the infant's attending physician and the local sudden
281 infant death syndrome coordinator.

282 (2) Any medical examiner or duly licensed physician
283 performing authorized investigations and/or autopsies as provided
284 in Sections 41-61-51 through 41-61-79 who, in good faith, complies
285 with the provisions of Sections 41-61-51 through 41-61-79 in the
286 determination of the cause and/or manner of death for the purpose
287 of certification of that death, shall not be liable for damages on
288 account thereof, and shall be immune from any civil liability that
289 might otherwise be incurred or imposed.

290 (3) Family members or others who disagree with the medical
291 examiner's determination shall be able to petition and present
292 written argument to the State Medical Examiner for further review.
293 If the petitioner still disagrees, he may petition the circuit
294 court, which may, in its discretion, hold a formal hearing. In
295 all those proceedings, the State Medical Examiner and the county
296 medical examiner or county medical examiner investigator who
297 certified the information shall be made defendants. All costs of
298 the petitioning and hearing shall be borne by the petitioner.

299 **SECTION 4.** Section 41-61-71, Mississippi Code of 1972, which
300 sets forth a procedure for obtaining corneal tissue and other
301 tissues from a decedent, is repealed.

302 **SECTION 5.** This act shall take effect and be in force from
303 and after July 1, 2005.