

By: Representatives Aldridge, Holland

To: Public Health and Human  
ServicesHOUSE BILL NO. 687  
(As Passed the House)

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 PROVIDE THAT IN A MEDICAL-LEGAL  
 18 DEATH INVESTIGATION, DECISIONS ABOUT ORGAN AND/OR TISSUE DONATION  
 19 AND TRANSPLANTATION SHALL BE MADE IN ACCORDANCE WITH A PROTOCOL  
 20 ESTABLISHED AND MUTUALLY AGREED TO BY FIVE INDIVIDUALS  
 21 REPRESENTING SEVERAL DIFFERENT INTERESTS; TO PROVIDE THAT ANY  
 22 MEDICAL EXAMINER WHO FAILS TO FOLLOW THE PROTOCOL MAY BE  
 23 DECERTIFIED BY THE COMMISSIONER OF PUBLIC SAFETY; TO AMEND  
 24 SECTIONS 41-61-59 AND 41-61-65, MISSISSIPPI CODE OF 1972, TO  
 25 CONFORM TO THE PRECEDING SECTION; TO REPEAL SECTION 41-61-71,  
 26 MISSISSIPPI CODE OF 1972, WHICH SETS FORTH A PROCEDURE FOR  
 27 OBTAINING CORNEAL TISSUE AND OTHER TISSUES FROM A DECEDENT; AND  
 28 FOR RELATED PURPOSES.

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

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

32 41-39-15. (1) For the purposes of this section:

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

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

39 (c) "Organ procurement organization" means the  
 40 federally designated agency charged with coordinating the

41 procurement of human organs in the State of Mississippi for the  
42 purpose of transplantation and research.

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

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

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

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

74 To discourage multiple requests for donation consent, the  
75 organ procurement organization representative shall make a request  
76 for tissue donation during the organ donation consent process.  
77 When the possibility of tissue donation alone exists, a tissue  
78 bank representative or their designee may request the donation.

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

83 The protocol shall require that the decision to donate be  
84 noted in the patient's medical record. The organ procurement  
85 organization shall provide a form to the hospital for the  
86 documentation. The form shall be signed by the patient's family  
87 pursuant to Sections 41-39-31 through 41-39-51. The form shall be  
88 placed in each deceased patient's chart documenting the family's  
89 decision regarding donation of organs or tissues from the patient.

90 (6) (a) If the deceased patient is medically suitable to be  
91 an organ and/or tissue donor, as determined by the protocol in  
92 this section, and the donor and/or family has authorized the  
93 donation and transplantation, the donor's organs and/or tissues  
94 shall be removed for the purpose of donation and transplantation  
95 by the organ procurement organization, in accordance with  
96 paragraph (b) of this subsection.

97 (b) If the deceased patient is the subject of a  
98 medical-legal death investigation, the organ procurement  
99 organization shall immediately notify the appropriate medical  
100 examiner that the deceased patient is medically suitable to be an  
101 organ and/or tissue donor. If the medical examiner determines  
102 that examination, analysis or autopsy of the organs and/or tissue  
103 is necessary for the medical examiner's investigation, the medical  
104 examiner may be present while the organs and/or tissues are  
105 removed for the purpose of transplantation. The physician,  
106 surgeon or technician removing the organs and/or tissues shall

107 file with the medical examiner a report detailing the donation,  
108 which shall become part of the medical examiner's report. When  
109 requested by the medical examiner, the report shall include a  
110 biopsy or medically approved sample, as specified by the medical  
111 examiner, from the donated organs and/or tissues.

112 (c) In a medical-legal death investigation, decisions  
113 about organ and/or tissue donation and transplantation shall be  
114 made in accordance with a protocol established and mutually agreed  
115 to no later than July 1, 2005, by the organ procurement  
116 organization, a certified state pathologist who shall be appointed  
117 by the Mississippi Commissioner of Public Safety, a representative  
118 from the University of Mississippi Medical Center, a  
119 representative from the Mississippi Coroners Association and an  
120 organ recipient who shall be appointed by the Governor. The  
121 protocol shall be established so as to maximize the total number  
122 of organs and/or tissues available for donation and  
123 transplantation. The protocol shall be reviewed and evaluated on  
124 an annual basis. If the protocol is not established and mutually  
125 agreed upon by July 1, 2005, then the provisions of paragraph (a)  
126 of this subsection shall govern. If any medical examiner, medical  
127 examiner investigator or deputy medical examiner investigator  
128 fails to follow the established protocol, the Mississippi  
129 Commissioner of Public Safety shall have the authority, after a  
130 hearing complying with due process, to decertify the medical  
131 examiner, medical examiner investigator or deputy medical examiner  
132 investigator.

133 (d) This subsection (6) shall stand repealed on June  
134 30, 2007.

135 (7) Performance improvement record reviews of deceased  
136 patients' medical records shall be conducted by the organ  
137 procurement organization for each hospital having more than  
138 ninety-five (95) licensed acute care beds and general surgical  
139 capability. These reviews must be performed in the first four (4)

140 months of a calendar year for the previous calendar year. If the  
141 organ procurement organization and hospital mutually agree, the  
142 performance improvement record reviews may be performed more  
143 frequently. Aggregate data concerning these reviews shall be  
144 submitted by the organ procurement organization to the State  
145 Department of Health by July 1 of each year for the preceding  
146 year.

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

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

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

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

161       41-61-59. (1) A person's death that affects the public  
162 interest as specified in subsection (2) of this section shall be  
163 promptly reported to the medical examiner by the physician in  
164 attendance, any hospital employee, any law enforcement officer  
165 having knowledge of the death, the embalmer or other funeral home  
166 employee, any emergency medical technician, any relative or any  
167 other person present. The appropriate medical examiner shall  
168 notify the municipal or state law enforcement agency or sheriff  
169 and take charge of the body. When the medical examiner has  
170 received notification under Section 41-39-15(6) that the deceased  
171 is medically suitable to be an organ and/or tissue donor, the  
172 medical examiner's authority over the body shall be subject to the

173 provisions of Section 41-39-15(6). The appropriate medical  
174 examiner shall notify the Mississippi Bureau of Narcotics within  
175 twenty-four (24) hours of receipt of the body in cases of death as  
176 described in subsection (2)(m) or (n) of this section.

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

179 (a) Violent death, including homicidal, suicidal or  
180 accidental death.

181 (b) Death caused by thermal, chemical, electrical or  
182 radiation injury.

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

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

187 (e) Death that has occurred unexpectedly or from an  
188 unexplained cause.

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

191 (g) Death of a person where a physician was not in  
192 attendance within thirty-six (36) hours preceding death, or in  
193 prediagnosed terminal or bedfast cases, within thirty (30) days  
194 preceding death.

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

197 (i) Death of a person where the identity of the  
198 deceased is unknown.

199 (j) Death of a child under the age of two (2) years  
200 where death results from an unknown cause or where the  
201 circumstances surrounding the death indicate that sudden infant  
202 death syndrome may be the cause of death.

203 (k) Where a body is brought into this state for  
204 disposal and there is reason to believe either that the death was

205 not investigated properly or that there is not an adequate  
206 certificate of death.

207 (l) Where a person is presented to a hospital emergency  
208 room unconscious and/or unresponsive, with cardiopulmonary  
209 resuscitative measures being performed, and dies within  
210 twenty-four (24) hours of admission without regaining  
211 consciousness or responsiveness, unless a physician was in  
212 attendance within thirty-six (36) hours preceding presentation to  
213 the hospital, or in cases in which the decedent had a prediagnosed  
214 terminal or bedfast condition, unless a physician was in  
215 attendance within thirty (30) days preceding presentation to the  
216 hospital.

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

219 (n) When a stillborn fetus is delivered and the cause  
220 of the demise is medically believed to be from the use by the  
221 mother of any controlled substance as defined in Section  
222 41-29-105.

223 (3) The State Medical Examiner is empowered to investigate  
224 deaths, under the authority hereinafter conferred, in any and all  
225 political subdivisions of the state. The county medical examiners  
226 and county medical examiner investigators, while appointed for a  
227 specific county, may serve other counties on a regular basis with  
228 written authorization by the State Medical Examiner, or may serve  
229 other counties on an as-needed basis upon the request of the  
230 ranking officer of the investigating law enforcement agency. The  
231 county medical examiner or county medical examiner investigator of  
232 any county that has established a regional medical examiner  
233 district under subsection (4) of Section 41-61-77 may serve other  
234 counties that are parties to the agreement establishing the  
235 district, in accordance with the terms of the agreement, and may  
236 contract with counties that are not part of the district to  
237 provide medical examiner services for those counties. If a death

238 affecting the public interest takes place in a county other than  
239 the one where injuries or other substantial causal factors leading  
240 to the death have occurred, jurisdiction for investigation of the  
241 death may be transferred, by mutual agreement of the respective  
242 medical examiners of the counties involved, to the county where  
243 the injuries or other substantial causal factors occurred, and the  
244 costs of autopsy or other studies necessary to the further  
245 investigation of the death shall be borne by the county assuming  
246 jurisdiction.

247 (4) The chief county medical examiner or chief county  
248 medical examiner investigator may receive from the county in which  
249 he serves a salary of Nine Hundred Dollars (\$900.00) per month, in  
250 addition to the fees specified in Sections 41-61-69 and 41-61-75,  
251 provided that no county shall pay the chief county medical  
252 examiner or chief county medical examiner investigator less than  
253 One Hundred Dollars (\$100.00) per month as a salary, in addition  
254 to other compensation provided by law. In any county having one  
255 or more deputy medical examiners or deputy medical examiner  
256 investigators, each deputy may receive from the county in which he  
257 serves, in the discretion of the board of supervisors, a salary of  
258 not more than Nine Hundred Dollars (\$900.00) per month, in  
259 addition to the fees specified in Sections 41-61-69 and 41-61-75.  
260 For this salary the chief shall assure twenty-four-hour daily and  
261 readily available death investigators for the county, and shall  
262 maintain copies of all medical examiner death investigations for  
263 the county for at least the previous five (5) years. He shall  
264 coordinate his office and duties and cooperate with the State  
265 Medical Examiner, and the State Medical Examiner shall cooperate  
266 with him.

267 (5) A body composed of the State Medical Examiner, whether  
268 appointed on a permanent or interim basis, the Director of the  
269 State Board of Health or his designee, the Attorney General or his  
270 designee, the President of the Mississippi Coroners' Association



271 (or successor organization) or his designee, and a certified  
272 pathologist appointed by the Mississippi State Medical Association  
273 shall adopt, promulgate, amend and repeal rules and regulations as  
274 may be deemed necessary by them from time to time for the proper  
275 enforcement, interpretation and administration of Sections  
276 41-61-51 through 41-61-79, in accordance with the provisions of  
277 the Mississippi Administrative Procedures Law, being Section  
278 25-43-1 et seq.

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

281 41-61-65. (1) If, in the opinion of the medical examiner  
282 investigating the case, it is advisable and in the public interest  
283 that an autopsy or other study be made for the purpose of  
284 determining the primary and/or contributing cause of death, an  
285 autopsy or other study shall be made by the State Medical Examiner  
286 or by a competent pathologist designated by the State Medical  
287 Examiner. The State Medical Examiner or designated pathologist  
288 may retain any tissues as needed for further postmortem studies or  
289 documentation. When the medical examiner has received  
290 notification under Section 41-39-15(6) that the deceased is  
291 medically suitable to be an organ and/or tissue donor, the State  
292 Medical Examiner or designated pathologist may retain any biopsy  
293 or medically approved sample of the organ and/or tissue in  
294 accordance with the provisions of Section 41-39-15(6). A complete  
295 autopsy report of findings and interpretations, prepared on forms  
296 designated for this purpose, shall be submitted promptly to the  
297 State Medical Examiner. Copies of the report shall be furnished  
298 to the authorizing medical examiner, district attorney and court  
299 clerk. A copy of the report shall be furnished to one (1) adult  
300 member of the immediate family of the deceased or the legal  
301 representative or legal guardian of members of the immediate  
302 family of the deceased upon request. In determining the need for  
303 an autopsy, the medical examiner may consider the request from the

304 district attorney or county prosecuting attorney, law enforcement  
305 or other public officials or private persons. However, if the  
306 death occurred in the manner specified in subsection (2)(j) of  
307 Section 41-61-59, an autopsy shall be performed by the State  
308 Medical Examiner or his designated pathologist, and the report of  
309 findings shall be forwarded promptly to the State Medical  
310 Examiner, investigating medical examiner, the State Department of  
311 Health, the infant's attending physician and the local sudden  
312 infant death syndrome coordinator.

313 (2) Any medical examiner or duly licensed physician  
314 performing authorized investigations and/or autopsies as provided  
315 in Sections 41-61-51 through 41-61-79 who, in good faith, complies  
316 with the provisions of Sections 41-61-51 through 41-61-79 in the  
317 determination of the cause and/or manner of death for the purpose  
318 of certification of that death, shall not be liable for damages on  
319 account thereof, and shall be immune from any civil liability that  
320 might otherwise be incurred or imposed.

321 (3) Family members or others who disagree with the medical  
322 examiner's determination shall be able to petition and present  
323 written argument to the State Medical Examiner for further review.  
324 If the petitioner still disagrees, he may petition the circuit  
325 court, which may, in its discretion, hold a formal hearing. In  
326 all those proceedings, the State Medical Examiner and the county  
327 medical examiner or county medical examiner investigator who  
328 certified the information shall be made defendants. All costs of  
329 the petitioning and hearing shall be borne by the petitioner.

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

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