

By: Senator(s) Walls

To: Public Health and  
Welfare; Appropriations

SENATE BILL NO. 2391

1 AN ACT TO AMEND SECTION 41-39-15, MISSISSIPPI CODE OF 1972,  
2 TO ESTABLISH A MISSISSIPPI ORGAN DONOR AND EDUCATION BOARD, TO  
3 EMPOWER THE BOARD TO IDENTIFY ALL POTENTIAL ORGAN AND TISSUE  
4 DONORS IN THE STATE, TO EMPOWER THE BOARD TO AUTHORIZE THE  
5 DONATION OF A PATIENT'S ORGANS OR TISSUE UNLESS THERE IS AN  
6 OBJECTION BY THE DONOR'S FAMILY OR NEXT OF KIN, TO PROVIDE THAT  
7 THE PROTOCOL FOR ORGAN OR TISSUE DONATION SHALL NOT REQUIRE A  
8 DONOR CARD, TO PROVIDE THAT NO PROTOCOL FOR POTENTIAL ORGAN DONORS  
9 SHALL SUPERCEDE A VALID ORGAN DONOR CARD, OR A GIFT OF AN ORGAN  
10 PURSUANT TO THE UNIFORM ANATOMICAL GIFT LAW OR THE UNIFORM HEALTH  
11 CARE DECISIONS ACT; AND FOR RELATED PURPOSES.

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

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

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

16 (a) "Potential organ donor" means a patient with a  
17 severe neurological insult who exhibits loss of cranial nerve  
18 response or who has a Glasgow Coma Scale score of five (5) or  
19 less.

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

22 (c) "Organ procurement organization" means the  
23 federally designated agency charged with coordinating the  
24 procurement of human organs in the State of Mississippi for the  
25 purpose of transplantation and research.

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

30 (e) "Board" means the Mississippi Organ Donor and  
31 Education Board created under this section.

32           (2) There is hereby established a Mississippi Organ Donor  
33 and Education Board appointed by the Governor, with the advice and  
34 consent of the Senate, composed of the following members:

35           (a) One (1) representative from the Mississippi Organ  
36 Recovery Association;

37           (b) One (1) representative from the Mississippi Chapter  
38 of the American Red Cross involved with organ or tissue services;

39           (c) One (1) representative from the Mississippi Lions  
40 Eye Bank;

41           (d) Three (3) licensed physicians, one (1) to be  
42 appointed from each of the three (3) Mississippi Supreme Court  
43 Districts, one (1) of whom shall be a forensic pathologist; and

44           (e) One (1) at-large member who has demonstrated an  
45 interest in organ, tissue and eye donation, representing families  
46 of recipients and families of donors who are residents of  
47 Mississippi. Members shall serve terms of four (4) years and  
48 until successors are appointed and qualified. Vacancies shall be  
49 filled in the manner of the original appointment for the unexpired  
50 portion of the term. Board members shall not be compensated for  
51 their services but may be reimbursed for mileage and all necessary  
52 and reasonable expenses incurred in the performance of their  
53 duties as board members, as provided in Section 25-3-41,  
54 Mississippi Code of 1972, from any funds appropriated by the  
55 Legislature from the Health Care Expendable Trust Fund established  
56 in Section 43-13-405, Mississippi Code of 1972, or other public or  
57 private funds made available therefor. The board shall organize  
58 and elect a chairman from among its members and shall adopt rules  
59 for the governance of its operations. The board shall meet at  
60 least quarterly, or upon the call of the chair.

61           (3) In administering this section, the board is authorized,  
62 but not limited to, the following duties and responsibilities:

63           (a) Assess the needs of transplant recipients and  
64 establish priorities and develop goals and objectives to assist  
65 transplant recipients who are residents of Mississippi;

66           (b) Establish a protocol for the consent for organ or  
67 tissue donation by suitable patients in Mississippi pursuant to  
68 this section, and to delegate any organ or tissue donation  
69 responsibilities to an organ procurement organization;

70           (c) Develop and implement educational programs and  
71 campaigns to increase organ donation in Mississippi;

72           (d) Utilize local resources including volunteers when  
73 appropriate to carry out the responsibilities of the board.

74           (4) Before November 1, 2004, the Mississippi Organ Donor and  
75 Education Board shall develop and promulgate to the appropriate  
76 medical staff of each licensed acute care hospital in the  
77 state \* \* \*, a protocol for identifying all potential organ and  
78 tissue donors. The protocol shall include a procedure for family  
79 consultation.

80           (5) The protocol shall require each hospital to contact the  
81 Mississippi Organ Donor and Education Board by telephone when a  
82 patient in the hospital becomes either a potential organ donor or  
83 potential tissue donor as defined in this section. The board  
84 shall determine the suitability of the patient for organ or tissue  
85 donation after a review of the patient's medical history and  
86 present condition. The board representative shall notify the  
87 attending physician or designee of its assessment. The hospital  
88 shall note in the patient's chart the board's assessment of  
89 suitability for donation. The board representative shall provide  
90 information about donation options to the family or persons  
91 specified in Section 41-39-35 when consent for donation is  
92 requested. Provided, however, that this protocol shall not be  
93 applicable in cases where a declaration by the organ donor affixed  
94 to the driver's license of such person, or a declaration has been  
95 made by the organ donor under the Uniform Anatomical Gift Law or

96 the Uniform Health-Care Decisions Act has been provided to the  
97 attending physician.

98       (6) If the patient becomes brain dead and is still suitable  
99 as a potential donor, the board representative shall approach the  
100 deceased patient's legal next of kin or persons specified in  
101 Section 41-39-35 for consent to donate the patient's organs. The  
102 board representative shall initiate the consent process with  
103 reasonable discretion and sensitivity to the family's  
104 circumstances, values and beliefs. Provided, however, that this  
105 protocol shall not be applicable in cases where a declaration by  
106 the organ patient affixed to the driver's license of the person,  
107 or a declaration by the patient under the Uniform Anatomical Gift  
108 Law or the Uniform Health-Care Decisions Act has been provided to  
109 the attending physician.

110       To discourage multiple requests for donation consent, the  
111 board representative shall make a request for tissue donation  
112 during the organ donation consent process. When the possibility  
113 of tissue donation alone exists, a tissue bank representative or  
114 their designee may request the donation.

115       (7) The option of organ donation shall be made to the  
116 deceased patient's family upon the occurrence of brain death and  
117 while mechanical ventilation of the patient is in progress.

118       The protocol shall require that the decision to donate be  
119 noted in the patient's medical record. The board shall provide a  
120 form to the hospital for the documentation. The form shall be  
121 signed by the patient's family pursuant to Sections 41-39-31  
122 through 41-39-51. The form shall be placed in each deceased  
123 patient's chart documenting the family's decision regarding  
124 donation of organs or tissues from the patient.

125       (8) Performance improvement record reviews of deceased  
126 patients' medical records shall be conducted by the board for each  
127 hospital having more than ninety-five (95) licensed acute care  
128 beds and general surgical capability. These reviews must be

129 performed in the first four (4) months of a calendar year for the  
130 previous calendar year. If the organ procurement organization and  
131 hospital mutually agree, the performance improvement record  
132 reviews may be performed more frequently. Aggregate data  
133 concerning these reviews shall be submitted by the board to the  
134 State Department of Health by July 1 of each year for the  
135 preceding year.

136 (9) The Mississippi Organ Donor and Education Board shall  
137 establish a protocol giving priority to Mississippi residents for  
138 transplant of an organ or tissue donated under authority of this  
139 section. No organ or tissue recovered in the State of Mississippi  
140 may be shipped out of the state except through an approved  
141 organ-sharing network or, at the family's request, to an approved  
142 organ transplant program.

143 (10) Any board member, hospital, administrator, physician,  
144 surgeon, nurse, technician, organ procurement organization, tissue  
145 procurement organization or donee who acts in good faith to comply  
146 with this section shall not be liable in any civil action to a  
147 claimant who alleges that his consent for the donation was  
148 required.

149 (11) Any person knowingly violating any rule, regulation or  
150 protocol promulgated by the Mississippi Organ Donor and Education  
151 Board under the authority of this section shall be deemed guilty  
152 of a felony and upon conviction shall be punished by a fine not  
153 exceeding Ten Thousand Dollars (\$10,000.00) or imprisonment for  
154 not more than five (5) years, or both.

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

158 (13) Nothing in this section shall be construed to supersede  
159 or revoke, by implication or otherwise, any valid gift of an organ  
160 made pursuant to the Uniform Anatomical Gift Law, Section 41-39-31

161 et seq., or the Uniform Health-Care Decisions Act, Section  
162 41-41-201 et seq.

163           **SECTION 2.** This act shall take effect and be in force from  
164 and after July 1, 2005.