

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2410

1 AN ACT TO AMEND SECTIONS 41-39-15, 41-61-59 AND 41-61-65,
2 MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURES FOR
3 FACILITATING ORGAN, TISSUE AND EYE DONATION FROM INDIVIDUALS WHOSE
4 DEATH IS UNDER THE JURISDICTION OF THE MEDICAL EXAMINER; TO REPEAL
5 SECTION 41-61-71, MISSISSIPPI CODE OF 1972, WHICH PROVIDES A
6 PROCEDURE FOR THE MEDICAL EXAMINER TO REQUEST PERMISSION FOR
7 REMOVAL OF EYE OR OTHER TISSUES IN DEATH CASES; AND FOR RELATED
8 PURPOSES.

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

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

12 41-39-15. (1) For the purposes of this section:

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

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

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

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

27 (2) Before November 1, 1998, each licensed acute care
28 hospital in the state shall develop, with the concurrence of the
29 hospital medical staff and the organ procurement organization, a

30 protocol for identifying all potential organ and tissue donors.

31 The protocol shall include a procedure for family consultation.

32 (3) The protocol shall require each hospital to contact the
33 organ procurement organization by telephone when a patient in the
34 hospital becomes either a potential organ donor or potential
35 tissue donor as defined in this section. The organ procurement
36 organization shall determine the suitability of the patient for
37 organ or tissue donation after a review of the patient's medical
38 history and present condition. The organ procurement organization
39 representative shall notify the attending physician or designee of
40 its assessment. The hospital shall note in the patient's chart
41 the organ procurement organization's assessment of suitability for
42 donation. The organ procurement organization representative shall
43 provide information about donation options to the family or
44 persons specified in Section 41-39-35 when consent for donation is
45 requested.

46 (4) If the patient becomes brain dead and is still suitable
47 as a potential donor, the organ procurement organization
48 representative shall approach the deceased patient's legal next of
49 kin or persons specified in Section 41-39-35 for consent to donate
50 the patient's organs. The organ procurement organization
51 representative shall initiate the consent process with reasonable
52 discretion and sensitivity to the family's circumstances, values
53 and beliefs.

54 To discourage multiple requests for donation consent, the
55 organ procurement organization representative shall make a request
56 for tissue donation during the organ donation consent process.
57 When the possibility of tissue donation alone exists, a tissue
58 bank representative or their designee may request the donation.

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

63 The protocol shall require that the decision to donate be
64 noted in the patient's medical record. The organ procurement
65 organization shall provide a form to the hospital for the
66 documentation. The form shall be signed by the patient's family
67 pursuant to Sections 41-39-31 through 41-39-51. The form shall be
68 placed in each deceased patient's chart documenting the family's
69 decision regarding donation of organs or tissues from the patient.

70 (6) (a) If the deceased patient is medically suitable to be
71 an organ and/or tissue donor, as determined by the protocol in
72 this section, and the donor and/or family have authorized such
73 donation and transplantation, the donor's organs and/or tissues
74 shall be removed for the purpose of donation and transplantation
75 by the organ procurement organization, in accordance with
76 paragraph (b) of this subsection.

77 (b) The organ procurement organization shall
78 immediately notify the appropriate medical examiner that the
79 deceased patient is medically suitable to be an organ and/or
80 tissue donor. In the event that the medical examiner determines
81 that examination, analysis or autopsy of the organs and/or tissue
82 is necessary for the medical examiner's investigation, the medical
83 examiner may be present while the organs and/or tissues are
84 removed for the purpose of transplantation. The physician,
85 surgeon or technician removing such organs and/or tissues shall
86 file with the medical examiner a report detailing the donation,
87 which shall become part of the medical examiner's report. When
88 requested by the medical examiner, such report shall include a
89 biopsy or medically approved sample, as specified by the medical
90 examiner, from the donated organs and/or tissues.

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

96 months of a calendar year for the previous calendar year. If the
97 organ procurement organization and hospital mutually agree, the
98 performance improvement record reviews may be performed more
99 frequently. Aggregate data concerning these reviews shall be
100 submitted by the organ procurement organization to the State
101 Department of Health by July 1 of each year for the preceding
102 year.

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

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

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

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

117 41-61-59. (1) A person's death which affects the public
118 interest as specified in subsection (2) of this section shall be
119 promptly reported to the medical examiner by the physician in
120 attendance, any hospital employee, any law enforcement officer
121 having knowledge of the death, the embalmer or other funeral home
122 employee, any emergency medical technician, any relative or any
123 other person present. The appropriate medical examiner shall
124 notify the municipal or state law enforcement agency or sheriff
125 and take charge of the body. The appropriate medical examiner
126 shall notify the Mississippi Bureau of Narcotics within
127 twenty-four (24) hours of receipt of the body in cases of death as
128 described in subsection (2)(m) or (n) of this section. When the

129 medical examiner has received notification under Section
130 41-39-15(6) that the deceased is medically suitable to be an organ
131 and/or tissue donor, the medical examiner's authority over the
132 body shall be subject to the provisions of Section 41-39-15(6).

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

135 (a) Violent death, including homicidal, suicidal or
136 accidental death.

137 (b) Death caused by thermal, chemical, electrical or
138 radiation injury.

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

141 (d) Death related to disease thought to be virulent or
142 contagious which may constitute a public hazard.

143 (e) Death that has occurred unexpectedly or from an
144 unexplained cause.

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

147 (g) Death of a person where a physician was not in
148 attendance within thirty-six (36) hours preceding death, or in
149 prediagnosed terminal or bedfast cases, within thirty (30) days
150 preceding death.

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

153 (i) Death of a person where the identity of the
154 deceased is unknown.

155 (j) Death of a child under the age of two (2) years
156 where death results from an unknown cause or where the
157 circumstances surrounding the death indicate that sudden infant
158 death syndrome may be the cause of death.

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

161 not investigated properly or that there is not an adequate
162 certificate of death.

163 (l) Where a person is presented to a hospital emergency
164 room unconscious and/or unresponsive, with cardiopulmonary
165 resuscitative measures being performed, and dies within
166 twenty-four (24) hours of admission without regaining
167 consciousness or responsiveness, unless a physician was in
168 attendance within thirty-six (36) hours preceding presentation to
169 the hospital, or in cases in which the decedent had a prediagnosed
170 terminal or bedfast condition, unless a physician was in
171 attendance within thirty (30) days preceding presentation to the
172 hospital.

173 (m) Death which is caused by drug overdose or which is
174 believed to be caused by drug overdose.

175 (n) When a stillborn fetus is delivered and the cause
176 of the demise is medically believed to be from the use by the
177 mother of any controlled substance as defined in Section
178 41-29-105.

179 (3) The State Medical Examiner is empowered to investigate
180 deaths, under the authority hereinafter conferred, in any and all
181 political subdivisions of the state. The county medical examiners
182 and county medical examiner investigators, while appointed for a
183 specific county, may serve other counties on a regular basis with
184 written authorization by the State Medical Examiner, or may serve
185 other counties on an as-needed basis upon the request of the
186 ranking officer of the investigating law enforcement agency. The
187 county medical examiner or county medical examiner investigator of
188 any county which has established a regional medical examiner
189 district under subsection (4) of Section 41-61-77 may serve other
190 counties which are parties to the agreement establishing the
191 district, in accordance with the terms of the agreement, and may
192 contract with counties which are not part of the district to
193 provide medical examiner services for such counties. If a death

194 affecting the public interest takes place in a county other than
195 the one where injuries or other substantial causal factors leading
196 to the death have occurred, jurisdiction for investigation of the
197 death may be transferred, by mutual agreement of the respective
198 medical examiners of the counties involved, to the county where
199 such injuries or other substantial causal factors occurred, and
200 the costs of autopsy or other studies necessary to the further
201 investigation of the death shall be borne by the county assuming
202 jurisdiction.

203 (4) The chief county medical examiner or chief county
204 medical examiner investigator may receive from the county in which
205 he serves a salary of Nine Hundred Dollars (\$900.00) per month, in
206 addition to the fees specified in Sections 41-61-69 and 41-61-75,
207 provided that no county shall pay the chief county medical
208 examiner or chief county medical examiner investigator less than
209 One Hundred Dollars (\$100.00) per month as a salary, in addition
210 to other compensation provided by law. In any county having one
211 or more deputy medical examiners or deputy medical examiner
212 investigators, each deputy may receive from the county in which he
213 serves, in the discretion of the board of supervisors, a salary of
214 not more than Nine Hundred Dollars (\$900.00) per month, in
215 addition to the fees specified in Sections 41-61-69 and 41-61-75.
216 For this salary the chief shall assure twenty-four-hour daily and
217 readily available death investigators for the county, and shall
218 maintain copies of all medical examiner death investigations for
219 the county for at least the previous five (5) years. He shall
220 coordinate his office and duties and cooperate with the State
221 Medical Examiner, and the State Medical Examiner shall cooperate
222 with him.

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

227 (or successor organization) or his designee, and a certified
228 pathologist appointed by the Mississippi State Medical Association
229 shall adopt, promulgate, amend and repeal rules and regulations as
230 may be deemed necessary by them from time to time for the proper
231 enforcement, interpretation and administration of Sections
232 41-61-51 through 41-61-79, in accordance with the provisions of
233 the Mississippi Administrative Procedures Law, being Section
234 25-43-1 et seq.

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

237 41-61-65. (1) If, in the opinion of the medical examiner
238 investigating the case, it is advisable and in the public interest
239 that an autopsy or other study be made for the purpose of
240 determining the primary and/or contributing cause of death, an
241 autopsy or other study shall be made by the State Medical Examiner
242 or by a competent pathologist designated by the State Medical
243 Examiner. The State Medical Examiner or designated pathologist
244 may retain any tissues as needed for further postmortem studies or
245 documentation. A complete autopsy report of findings and
246 interpretations, prepared on forms designated for this purpose,
247 shall be submitted promptly to the State Medical Examiner. Copies
248 of the report shall be furnished to the authorizing medical
249 examiner, district attorney and court clerk. A copy of the report
250 shall be furnished to one (1) adult member of the immediate family
251 of the deceased or the legal representative or legal guardian of
252 members of the immediate family of the deceased upon request. In
253 determining the need for an autopsy, the medical examiner may
254 consider the request from the district attorney or county
255 prosecuting attorney, law enforcement or other public officials or
256 private persons. However, if the death occurred in the manner
257 specified in subsection (2)(j) of Section 41-61-59, an autopsy
258 shall be performed by the State Medical Examiner or his designated
259 pathologist, and the report of findings shall be forwarded

260 promptly to the State Medical Examiner, investigating medical
261 examiner, the State Department of Health, the infant's attending
262 physician and the local sudden infant death syndrome coordinator.
263 When the medical examiner has received notification under Section
264 41-39-15(6) that the deceased is medically suitable to be an organ
265 and/or tissue donor, the State Medical Examiner or designated
266 pathologist, may retain any biopsy or medically approved sample of
267 such tissue in accordance with the provisions of Section
268 41-39-15(6).

269 (2) Any medical examiner or duly licensed physician
270 performing authorized investigations and/or autopsies as provided
271 in Sections 41-61-51 through 41-61-79 who, in good faith, complies
272 with the provisions of Sections 41-61-51 through 41-61-79 in the
273 determination of the cause and/or manner of death for the purpose
274 of certification of that death, shall not be liable for damages on
275 account thereof, and shall be immune from any civil liability that
276 might otherwise be incurred or imposed.

277 (3) Family members or others who disagree with the medical
278 examiner's determination shall be able to petition and present
279 written argument to the State Medical Examiner for further review.
280 If the petitioner still disagrees, he may petition the circuit
281 court, which may, in its discretion, hold a formal hearing. In
282 all those proceedings, the State Medical Examiner and the county
283 medical examiner or county medical examiner investigator who
284 certified the information shall be made defendants. All costs of
285 the petitioning and hearing shall be borne by the petitioner.

286 **SECTION 4.** Section 41-61-71, Mississippi Code of 1972, which
287 provides a procedure for the medical examiner to request
288 permission for removal of eye or other tissues in death cases, is
289 hereby repealed.

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