

By: Senator(s) Bryan, Browning

To: Public Health and Welfare

SENATE BILL NO. 2420

1 AN ACT TO PROVIDE THAT AN ORGAN DONATION MADE BY WILL, BY A
2 DURABLE POWER OF ATTORNEY, BY A LIVING WILL OR PURSUANT TO THE
3 UNIFORM ANATOMICAL GIFT ACT SUPERSEDES ANY DECISION BY THE FAMILY
4 OF THE ORGAN DONOR; TO AMEND SECTION 41-41-209, MISSISSIPPI CODE
5 OF 1972, TO PROVIDE THE FORM FOR SUCH DECLARATION BY AN ORGAN
6 DONOR; TO AMEND SECTION 41-39-15, MISSISSIPPI CODE OF 1972, TO
7 PROVIDE THAT NO PROTOCOL FOR POTENTIAL ORGAN DONORS SHALL
8 SUPERSEDE A VALID GIFT OF AN ORGAN; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** A gift of all or part of the body made (a) by
11 will, (b) under a Durable Power of Attorney for Health Care
12 declaration pursuant to Section 41-41-209, (c) under a Withdrawal
13 of Life-Saving Mechanism (Living Will) declaration pursuant to
14 former Section 41-41-107 (now repealed), or (d) under a Uniform
15 Anatomical Gift Act declaration pursuant to Section 41-39-39, will
16 supersede and have precedence over any decision by the family of
17 the individual making the organ donation.

18 **SECTION 2.** Section 41-41-209, Mississippi Code of 1972, is
19 amended as follows:

20 41-41-209. The following form may be used to create an
21 advance health care directive. Sections 41-41-201 through
22 41-41-207 and 41-41-211 through 41-41-229 govern the effect of
23 this or any other writing used to create an advanced health care
24 directive. An individual may complete or modify all or any part
25 of the following form:

26 ADVANCE HEALTH CARE DIRECTIVE

27 **Explanation**

28 You have the right to give instructions about your own health
29 care. You also have the right to name someone else to make health
30 care decisions for you. This form lets you do either or both of

31 these things. It also lets you express your wishes regarding the
32 designation of your primary physician. If you use this form, you
33 may complete or modify all or any part of it. You are free to use
34 a different form.

35 Part 1 of this form is a power of attorney for health care.
36 Part 1 lets you name another individual as agent to make health
37 care decisions for you if you become incapable of making your own
38 decisions or if you want someone else to make those decisions for
39 you now even though you are still capable. You may name an
40 alternate agent to act for you if your first choice is not
41 willing, able or reasonably available to make decisions for you.
42 Unless related to you, your agent may not be an owner, operator,
43 or employee of a residential long-term health care institution at
44 which you are receiving care.

45 Unless the form you sign limits the authority of your agent,
46 your agent may make all health care decisions for you. This form
47 has a place for you to limit the authority of your agent. You
48 need not limit the authority of your agent if you wish to rely on
49 your agent for all health care decisions that may have to be made.
50 If you choose not to limit the authority of your agent, your agent
51 will have the right to:

52 (a) Consent or refuse consent to any care, treatment,
53 service, or procedure to maintain, diagnose, or otherwise affect a
54 physical or mental condition;

55 (b) Select or discharge health care providers and
56 institutions;

57 (c) Approve or disapprove diagnostic tests, surgical
58 procedures, programs of medication, and orders not to resuscitate;
59 and

60 (d) Direct the provision, withholding, or withdrawal of
61 artificial nutrition and hydration and all other forms of health
62 care.

63 Part 2 of this form lets you give specific instructions about
64 any aspect of your health care. Choices are provided for you to
65 express your wishes regarding the provision, withholding, or
66 withdrawal of treatment to keep you alive, including the provision
67 of artificial nutrition and hydration, as well as the provision of
68 pain relief. Space is provided for you to add to the choices you
69 have made or for you to write out any additional wishes.

70 Part 3 of this form lets you designate a physician to have
71 primary responsibility for your health care.

72 Part 4 of this form lets you authorize the donation of your
73 organs at your death, and declares that this decision will
74 supersede any decision by a member of your family.

75 After completing this form, sign and date the form at the end
76 and have the form witnessed by one of the two alternative methods
77 listed below. Give a copy of the signed and completed form to
78 your physician, to any other health care providers you may have,
79 to any health care institution at which you are receiving care,
80 and to any health care agents you have named. You should talk to
81 the person you have named as agent to make sure that he or she
82 understands your wishes and is willing to take the responsibility.

83 You have the right to revoke this advance health care
84 directive or replace this form at any time.

85 PART 1

86 POWER OF ATTORNEY FOR HEALTH CARE

87 (1) DESIGNATION OF AGENT: I designate the following
88 individual as my agent to make health care decisions for me:

89 _____

90 (name of individual you choose as agent)

91 _____

92 (address) (city) (state) (zip code)

93 _____

94 (home phone) (work phone)

95 OPTIONAL: If I revoke my agent's authority or if my agent is
96 not willing, able, or reasonably available to make a health care
97 decision for me, I designate as my first alternate agent:

98 _____

99 (name of individual you choose as first alternate agent)

100 _____

101 (address) (city) (state) (zip code)

102 _____

103 (home phone) (work phone)

104 OPTIONAL: If I revoke the authority of my agent and first
105 alternate agent or if neither is willing, able, or reasonably
106 available to make a health care decision for me, I designate as my
107 second alternate agent:

108 _____

109 (name of individual you choose as second alternate agent)

110 _____

111 (address) (city) (state) (zip code)

112 _____

113 (home phone) (work phone)

114 (2) AGENT'S AUTHORITY: My agent is authorized to make all
115 health care decisions for me, including decisions to provide,
116 withhold, or withdraw artificial nutrition and hydration, and all
117 other forms of health care to keep me alive, except as I state
118 here:

119 _____

120 _____

121 _____

122 (Add additional sheets if needed.)

123 (3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's
124 authority becomes effective when my primary physician determines
125 that I am unable to make my own health care decisions unless I
126 mark the following box. If I mark this box [], my agent's

127 authority to make health care decisions for me takes effect
128 immediately.

129 (4) AGENT'S OBLIGATION: My agent shall make health care
130 decisions for me in accordance with this power of attorney for
131 health care, any instructions I give in Part 2 of this form, and
132 my other wishes to the extent known to my agent. To the extent my
133 wishes are unknown, my agent shall make health care decisions for
134 me in accordance with what my agent determines to be in my best
135 interest. In determining my best interest, my agent shall
136 consider my personal values to the extent known to my agent.

137 (5) NOMINATION OF GUARDIAN: If a guardian of my person
138 needs to be appointed for me by a court, I nominate the agent
139 designated in this form. If that agent is not willing, able, or
140 reasonably available to act as guardian, I nominate the alternate
141 agents whom I have named, in the order designated.

142 PART 2

143 INSTRUCTIONS FOR HEALTH CARE

144 If you are satisfied to allow your agent to determine what is
145 best for you in making end-of-life decisions, you need not fill
146 out this part of the form. If you do fill out this part of the
147 form, you may strike any wording you do not want.

148 (6) END-OF-LIFE DECISIONS: I direct that my health care
149 providers and others involved in my care provide, withhold or
150 withdraw treatment in accordance with the choice I have marked
151 below:

152 [] (a) Choice Not To Prolong Life

153 I do not want my life to be prolonged if (i) I have an
154 incurable and irreversible condition that will result in my death
155 within a relatively short time, (ii) I become unconscious and, to
156 a reasonable degree of medical certainty, I will not regain
157 consciousness, or (iii) the likely risks and burdens of treatment
158 would outweigh the expected benefits, or

159 [] (b) Choice To Prolong Life

160 I want my life to be prolonged as long as possible
161 within the limits of generally accepted health care standards.

162 (7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial
163 nutrition and hydration must be provided, withheld or withdrawn in
164 accordance with the choice I have made in paragraph (6) unless I
165 mark the following box. If I mark this box [], artificial
166 nutrition and hydration must be provided regardless of my
167 condition and regardless of the choice I have made in paragraph
168 (6).

169 (8) RELIEF FROM PAIN: Except as I state in the following
170 space, I direct that treatment for alleviation of pain or
171 discomfort be provided at all times, even if it hastens my death:

172 _____
173 _____

174 (9) OTHER WISHES: (If you do not agree with any of the
175 optional choices above and wish to write your own, or if you wish
176 to add to the instructions you have given above, you may do so
177 here.) I direct that:

178 _____
179 _____

180 (Add additional sheets if needed.)

181 PART 3
182 PRIMARY PHYSICIAN
183 (OPTIONAL)

184 (10) I designate the following physician as my primary
185 physician:

186 _____
187 (name of physician)

188 _____
189 (address) (city) (state) (zip code)

190 _____
191 (phone)

224 (c) Any person operating a bank or storage facility for
 225 blood, arteries, eyes, pituitaries, or other human parts, for use
 226 in medical education, research, therapy or transplantation to
 227 individuals;

228 (d) The donee specified below, for therapy or
 229 transplantation needed by him or her, do hereby donate my
 230 _____ for said purpose to _____ (name) at
 231 _____ (address).

232 I hereby authorize a licensed physician or surgeon to remove
 233 and preserve for use my _____ for said
 234 purpose.

235 I specifically provide that this declaration shall supersede
 236 and take precedence over any decision by my family to the
 237 contrary.

238 Witnessed this _____ day of _____, 20__.
 239 _____

240 (donor)
 241 _____

242 (address)
 243 _____

244 (telephone)
 245 _____

246 (witness)
 247 _____

248 (witness)

249 (13) WITNESSES: This power of attorney will not be valid
 250 for making health care decisions unless it is either (a) signed by
 251 two (2) qualified adult witnesses who are personally known to you
 252 and who are present when you sign or acknowledge your signature;
 253 or (b) acknowledged before a notary public in the state.

254 ALTERNATIVE NO. 1
 255 Witness

256 I declare under penalty of perjury pursuant to Section
257 97-9-61, Mississippi Code of 1972, that the principal is
258 personally known to me, that the principal signed or acknowledged
259 this power of attorney in my presence, that the principal appears
260 to be of sound mind and under no duress, fraud or undue influence,
261 that I am not the person appointed as agent by this document, and
262 that I am not a health care provider, nor an employee of a health
263 care provider or facility. I am not related to the principal by
264 blood, marriage or adoption, and to the best of my knowledge, I am
265 not entitled to any part of the estate of the principal upon the
266 death of the principal under a will now existing or by operation
267 of law.

268 _____
269 (date) (signature of witness)

270 _____
271 (address) (printed name of witness)

272 _____
273 (city) (state)

274 Witness

275 I declare under penalty of perjury pursuant to Section
276 97-9-61, Mississippi Code of 1972, that the principal is
277 personally known to me, that the principal signed or acknowledged
278 this power of attorney in my presence, that the principal appears
279 to be of sound mind and under no duress, fraud or undue influence,
280 that I am not the person appointed as agent by this document, and
281 that I am not a health care provider, nor an employee of a health
282 care provider or facility.

283 _____
284 (date) (signature of witness)

285 _____
286 (address) (printed name of witness)

287 _____
288 (city) (state)

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ALTERNATIVE NO. 2

State of _____

County of _____

On this _____ day of _____, in the year ____, before me, _____ (insert name of notary public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

Notary Seal

(Signature of Notary Public)

SECTION 3. Section 41-39-15, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

(2) Before November 1, 1998, each licensed acute care hospital in the state shall develop, with the concurrence of the

322 hospital medical staff and the organ procurement organization, a
323 protocol for identifying all potential organ and tissue donors.
324 The protocol shall include a procedure for family consultation.
325 This protocol shall not be applicable in cases where a declaration
326 by the organ donor (a) by will, (b) under a Durable Power of
327 Attorney for Health Care declaration pursuant to Section
328 41-41-209, (c) under a Withdrawal of Life-Saving Mechanism (Living
329 Will) declaration pursuant to former Section 41-41-107 (now
330 repealed), or (d) under the Uniform Anatomical Gift Law pursuant
331 to Section 41-39-39, has been provided to the attending physician.

332 (3) The protocol shall require each hospital to contact the
333 organ procurement organization by telephone when a patient in the
334 hospital becomes either a potential organ donor or potential
335 tissue donor as defined in this section. The organ procurement
336 organization shall determine the suitability of the patient for
337 organ or tissue donation after a review of the patient's medical
338 history and present condition. The organ procurement organization
339 representative shall notify the attending physician or designee of
340 its assessment. The hospital shall note in the patient's chart
341 the organ procurement organization's assessment of suitability for
342 donation. The organ procurement organization representative shall
343 provide information about donation options to the family or
344 persons specified in Section 41-39-35 when consent for donation is
345 requested.

346 (4) If the patient becomes brain dead and is still suitable
347 as a potential donor, the organ procurement organization
348 representative shall approach the deceased patient's legal next of
349 kin or persons specified in Section 41-39-35 for consent to donate
350 the patient's organs. The organ procurement organization
351 representative shall initiate the consent process with reasonable
352 discretion and sensitivity to the family's circumstances, values
353 and beliefs.

354 To discourage multiple requests for donation consent, the
355 organ procurement organization representative shall make a request
356 for tissue donation during the organ donation consent process.
357 When the possibility of tissue donation alone exists, a tissue
358 bank representative or their designee may request the donation.

359 (5) The option of organ donation shall be made to the
360 deceased patient's family upon the occurrence of brain death and
361 while mechanical ventilation of the patient is in progress.

362 The protocol shall require that the decision to donate be
363 noted in the patient's medical record. The organ procurement
364 organization shall provide a form to the hospital for the
365 documentation. The form shall be signed by the patient's family
366 pursuant to Sections 41-39-31 through 41-39-51. The form shall be
367 placed in each deceased patient's chart documenting the family's
368 decision regarding donation of organs or tissues from the patient.

369 (6) Performance improvement record reviews of deceased
370 patients' medical records shall be conducted by the organ
371 procurement organization for each hospital having more than
372 ninety-five (95) licensed acute care beds and general surgical
373 capability. These reviews must be performed in the first four (4)
374 months of a calendar year for the previous calendar year. If the
375 organ procurement organization and hospital mutually agree, the
376 performance improvement record reviews may be performed more
377 frequently. Aggregate data concerning these reviews shall be
378 submitted by the organ procurement organization to the State
379 Department of Health by July 1 of each year for the preceding
380 year.

381 (7) No organ or tissue recovered in the State of Mississippi
382 may be shipped out of the state except through an approved organ
383 sharing network or, at the family's request, to an approved organ
384 transplant program.

385 (8) Any hospital, administrator, physician, surgeon, nurse,
386 technician, organ procurement organization, tissue procurement

387 organization or donee who acts in good faith to comply with this
388 section shall not be liable in any civil action to a claimant who
389 alleges that his consent for the donation was required.

390 (9) Nothing in this section shall be construed to supersede
391 or revoke, by implication or otherwise, any valid gift of the
392 entire body to a medical school.

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