

By: Senator(s) Nunnelee, Clarke

To: Judiciary, Division B

SENATE BILL NO. 2193

1 AN ACT RELATING TO THE WITHHOLDING OR WITHDRAWAL OF NUTRITION
 2 OR HYDRATION FROM INCOMPETENT PERSONS; TO CODIFY SECTION
 3 41-41-301, MISSISSIPPI CODE OF 1972, TO BE CITED AS THE
 4 "STARVATION AND DEHYDRATION OF PERSONS WITH DISABILITIES
 5 PREVENTION ACT"; TO PROVIDE THAT AN INCOMPETENT PERSON IS PRESUMED
 6 TO HAVE DIRECTED HEALTH CARE PROVIDERS TO PROVIDE THE NECESSARY
 7 NUTRITION AND HYDRATION TO SUSTAIN LIFE; TO PROHIBIT A COURT,
 8 PROXY OR SURROGATE FROM WITHHOLDING OR WITHDRAWING NUTRITION OR
 9 HYDRATION EXCEPT UNDER SPECIFIED CIRCUMSTANCES; TO PROVIDE THAT
 10 SAID PRESUMPTION IS INAPPLICABLE UNDER CERTAIN CIRCUMSTANCES; TO
 11 AMEND SECTIONS 41-41-205, 41-41-209, 41-39-15, 41-41-3 AND
 12 41-41-7, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED
 13 PURPOSES.

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

15 **SECTION 1.** The following provision shall be codified as
 16 Section 41-41-301, Mississippi Code of 1972:

17 41-41-301. (1) This section shall be known and may be cited
 18 as the "Starvation and Dehydration of Persons with Disabilities
 19 Prevention Act."

20 (2) As used in this section, the term:

21 (a) "Express and informed consent" means consent
 22 voluntarily given with sufficient knowledge of the subject matter
 23 involved to enable the person giving consent to make a knowing and
 24 understanding decision without any element of force, fraud,
 25 deceit, duress, or other form of constraint or coercion.
 26 Sufficient knowledge of the subject matter involved includes a
 27 general understanding of:

28 (i) The proposed treatment or procedure for which
 29 consent is sought;

30 (ii) The medical condition of the person for whom
 31 consent for the proposed treatment or procedure is sought;

32 (iii) Any medically acceptable alternative
33 treatment or procedure; and

34 (iv) The substantial risks and hazards inherent if
35 the proposed treatment or procedure is carried out and if the
36 proposed treatment or procedure is not carried out.

37 (b) "Nutrition" means sustenance administered by way of
38 the gastrointestinal tract.

39 (c) "Reasonable medical judgment" means a medical
40 judgment that would be made by a reasonably prudent physician who
41 is knowledgeable about the case and the treatment possibilities
42 with respect to the medical conditions involved.

43 (3) Each incompetent person shall be presumed to have
44 directed his or her health care providers to supply him or her
45 with the nutrition and hydration necessary to sustain life.

46 (4) A family member, proxy, surrogate or court may not
47 decide on behalf of an incompetent person to withhold or withdraw
48 hydration or nutrition from that person except in the
49 circumstances and under the conditions specifically provided in
50 subsection (5).

51 (5) The presumption in subsection (4) does not apply if:

52 (a) In reasonable medical judgment:

53 (i) The provision of nutrition or hydration is not
54 medically possible;

55 (ii) The provision of nutrition or hydration would
56 hasten death; or

57 (iii) The medical condition of the incompetent
58 person is such that provision of nutrition or hydration would not
59 contribute to sustaining the incompetent person's life or provide
60 comfort to the incompetent person;

61 (b) The incompetent person has executed a written
62 living will or advance directive executed in this or another state
63 in accordance with Section 44-41-201 et seq., any of which

64 specifically authorizes the withholding or withdrawal of nutrition
65 or hydration, to the extent that the authorization applies; or

66 (c) There is clear and convincing evidence that the
67 incompetent person, when competent, gave express and informed
68 consent to withdrawing or withholding nutrition or hydration in
69 the applicable circumstances.

70 (6) The provisions of this section are cumulative to the
71 existing law regarding an individual's right to consent, or refuse
72 to consent, to medical treatment and do not impair any existing
73 rights or responsibilities which a health care provider, a
74 patient, including a minor, competent or incompetent person, or a
75 patient's family may have under the common law, federal
76 constitution, state constitution or statutes of this state;
77 however, this subsection (6) may not be construed to authorize a
78 violation of Section 41-41-301.

79 (7) This section shall not be construed to repeal by
80 implication any provision of the Mississippi Medical Consent Law,
81 Sections 41-41-3, 41-41-7 or the Uniform Health Care Decisions
82 Act, Section 41-41-201 et seq., and said provisions shall be
83 considered an alternative to provisions of this Section 41-41-301;
84 however, this section may not be construed to authorize a
85 violation of Section 41-41-301.

86 **SECTION 2.** Section 41-41-205, Mississippi Code of 1972, is
87 amended as follows:

88 41-41-205. (1) An adult or emancipated minor may give an
89 individual instruction. The instruction may be oral or written.
90 The instruction may be limited to take effect only if a specified
91 condition arises.

92 (2) An adult or emancipated minor may execute a power of
93 attorney for health care, which may authorize the agent to make
94 any health care decision the principal could have made while
95 having capacity. The power remains in effect notwithstanding the
96 principal's later incapacity and may include individual

97 instructions. Unless related to the principal by blood, marriage,
98 or adoption, an agent may not be an owner, operator, or employee
99 of a residential long-term health care institution at which the
100 principal is receiving care. The power must be in writing,
101 contain the date of its execution, be signed by the principal, and
102 be witnessed by one (1) of the following methods:

103 (a) Be signed by at least two (2) individuals each of
104 whom witnessed either the signing of the instrument by the
105 principal or the principal's acknowledgement of the signature or
106 of the instrument, each witness making the following declaration
107 in substance: "I declare under penalty of perjury pursuant to
108 Section 97-9-61, Mississippi Code of 1972, that the principal is
109 personally known to me, that the principal signed or acknowledged
110 this power of attorney in my presence, that the principal appears
111 to be of sound mind and under no duress, fraud or undue influence,
112 that I am not the person appointed as agent by this document, and
113 that I am not a health care provider, nor an employee of a health
114 care provider or facility." In addition, the declaration of at
115 least one (1) of the witnesses must include the following: "I am
116 not related to the principal by blood, marriage or adoption, and
117 to the best of my knowledge, I am not entitled to any part of the
118 estate of the principal upon the death of the principal under a
119 will now existing or by operation of law."

120 (b) Be acknowledged before a notary public at any place
121 within this state, the notary public certifying to the substance
122 of the following:

123 "State of _____

124 County of _____

125 On this _____ day of _____, in the year _____, before
126 me, _____ (insert name of notary public) appeared

127 _____, personally known to me (or proved to me on the
128 basis of satisfactory evidence) to be the person whose name is
129 subscribed to this instrument, and acknowledged that he or she

130 executed it. I declare under the penalty of perjury that the
131 person whose name is subscribed to this instrument appears to be
132 of sound mind and under no duress, fraud or undue influence.

133 Notary Seal

134 _____

135 (Signature of Notary Public)"

136 (3) None of the following may be used as witness for a power
137 of attorney for health care:

138 (a) A health care provider;

139 (b) An employee of a health care provider or facility;

140 or

141 (c) The agent.

142 (4) At least one (1) of the individuals used as a witness
143 for a power of attorney for health care shall be someone who is
144 neither:

145 (a) A relative of the principal by blood, marriage or
146 adoption; nor

147 (b) An individual who would be entitled to any portion
148 of the estate of the principal upon his or her death under any
149 will or codicil thereto of the principal existing at the time of
150 execution of the power of attorney for health care or by operation
151 of law then existing.

152 (5) Unless otherwise specified in a power of attorney for
153 health care, the authority of an agent becomes effective only upon
154 a determination that the principal lacks capacity, and ceases to
155 be effective upon a determination that the principal has recovered
156 capacity.

157 (6) Unless otherwise specified in a written advance health
158 care directive, a determination that an individual lacks or has
159 recovered capacity, or that another condition exists that affects
160 an individual instruction or the authority of an agent, must be
161 made by the primary physician.

162 (7) An agent shall make a health care decision in accordance
163 with the principal's individual instructions, if any, and other
164 wishes to the extent known to the agent. Otherwise, the agent
165 shall make the decision in accordance with the agent's
166 determination of the principal's best interest. In determining
167 the principal's best interest, the agent shall consider the
168 principal's personal values to the extent known to the agent.

169 (8) A health care decision made by an agent for a principal
170 is effective without judicial approval.

171 (9) A written advance health care directive may include the
172 individual's nomination of a guardian of the person.

173 (10) An advance health care directive is valid for purposes
174 of this chapter if it complies with Sections 41-41-201 through
175 41-41-229, regardless of when or where executed or communicated.

176 (11) Any decision under this section concerning the
177 withholding or withdrawal of nutrition or hydration shall comply
178 with Section 41-41-301, Mississippi Code of 1972.

179 **SECTION 3.** Section 41-41-209, Mississippi Code of 1972, is
180 amended as follows:

181 41-41-209. The following form may be used to create an
182 advance health care directive. Sections 41-41-201 through
183 41-41-207 and 41-41-211 through 41-41-229 govern the effect of
184 this or any other writing used to create an advanced health care
185 directive. An individual may complete or modify all or any part
186 of the following form:

187 ADVANCE HEALTH CARE DIRECTIVE

188 **Explanation**

189 You have the right to give instructions about your own health
190 care. You also have the right to name someone else to make health
191 care decisions for you. This form lets you do either or both of
192 these things. It also lets you express your wishes regarding the
193 designation of your primary physician. If you use this form, you

194 may complete or modify all or any part of it. You are free to use
195 a different form.

196 Part 1 of this form is a power of attorney for health care.
197 Part 1 lets you name another individual as agent to make health
198 care decisions for you if you become incapable of making your own
199 decisions or if you want someone else to make those decisions for
200 you now even though you are still capable. You may name an
201 alternate agent to act for you if your first choice is not
202 willing, able or reasonably available to make decisions for you.
203 Unless related to you, your agent may not be an owner, operator,
204 or employee of a residential long-term health care institution at
205 which you are receiving care.

206 Unless the form you sign limits the authority of your agent,
207 your agent may make all health care decisions for you. This form
208 has a place for you to limit the authority of your agent. You
209 need not limit the authority of your agent if you wish to rely on
210 your agent for all health care decisions that may have to be made.
211 If you choose not to limit the authority of your agent, your agent
212 will have the right to:

213 (a) Consent or refuse consent to any care, treatment,
214 service, or procedure to maintain, diagnose, or otherwise affect a
215 physical or mental condition;

216 (b) Select or discharge health care providers and
217 institutions;

218 (c) Approve or disapprove diagnostic tests, surgical
219 procedures, programs of medication, and orders not to resuscitate;
220 and

221 (d) Direct the provision, withholding, or withdrawal of
222 artificial nutrition and hydration and all other forms of health
223 care.

224 Part 2 of this form lets you give specific instructions about
225 any aspect of your health care. Choices are provided for you to
226 express your wishes regarding the provision, withholding, or

227 withdrawal of treatment to keep you alive, including the provision
228 of artificial nutrition and hydration, as well as the provision of
229 pain relief. Space is provided for you to add to the choices you
230 have made or for you to write out any additional wishes.

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

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

236 After completing this form, sign and date the form at the end
237 and have the form witnessed by one of the two alternative methods
238 listed below. Give a copy of the signed and completed form to
239 your physician, to any other health care providers you may have,
240 to any health care institution at which you are receiving care,
241 and to any health care agents you have named. You should talk to
242 the person you have named as agent to make sure that he or she
243 understands your wishes and is willing to take the responsibility.

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

246 PART 1

247 POWER OF ATTORNEY FOR HEALTH CARE

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

250 _____

251 (name of individual you choose as agent)

252 _____

253 (address) (city) (state) (zip code)

254 _____

255 (home phone) (work phone)

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

259 _____

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

261

262 (address) (city) (state) (zip code)

263

264 (home phone) (work phone)

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

269

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

271

272 (address) (city) (state) (zip code)

273

274 (home phone) (work phone)

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

280

281

282

283 (Add additional sheets if needed.)

284 (3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's
285 authority becomes effective when my primary physician determines
286 that I am unable to make my own health care decisions unless I
287 mark the following box. If I mark this box [], my agent's
288 authority to make health care decisions for me takes effect
289 immediately.

290 (4) AGENT'S OBLIGATION: My agent shall make health care
291 decisions for me in accordance with this power of attorney for
292 health care, any instructions I give in Part 2 of this form, and

293 my other wishes to the extent known to my agent. To the extent my
294 wishes are unknown, my agent shall make health care decisions for
295 me in accordance with what my agent determines to be in my best
296 interest. In determining my best interest, my agent shall
297 consider my personal values to the extent known to my agent.

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

303 PART 2

304 INSTRUCTIONS FOR HEALTH CARE

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

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

313 [] (a) Choice Not To Prolong Life

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

320 [] (b) Choice To Prolong Life

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

323 (7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial
324 nutrition and hydration must be provided, withheld or withdrawn in
325 accordance with the choice I have made in paragraph (6) unless I

326 mark the following box. If I mark this box [], artificial
327 nutrition and hydration must be provided regardless of my
328 condition and regardless of the choice I have made in paragraph
329 (6).

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

333 _____
334 _____

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

339 _____
340 _____

341 (Add additional sheets if needed.)

342 PART 3

343 PRIMARY PHYSICIAN

344 (OPTIONAL)

345 (10) I designate the following physician as my primary
346 physician:

347 _____
348 (name of physician)

349 _____
350 (address) (city) (state) (zip code)

351 _____
352 (phone)

353 OPTIONAL: If the physician I have designated above is not
354 willing, able, or reasonably available to act as my primary
355 physician, I designate the following physician as my primary
356 physician:

357 _____
358 (name of physician)

359 _____
360 (address) (city) (state) (zip code)
361 _____

362 (phone)

363 (11) EFFECT OF COPY: A copy of this form has the same
364 effect as the original.

365 (12) SIGNATURES: Sign and date the form here:

366 _____
367 (date) (sign your name)

368 _____
369 (address) (print your name)

370 _____
371 (city) (state)

372 PART 4

373 CERTIFICATE OF AUTHORIZATION FOR ORGAN DONATION
374 (OPTIONAL)

375 I, the undersigned, this _____ day of _____,
376 20__, desire that my _____ organ(s) be made available
377 after my demise for:

378 (a) Any licensed hospital, surgeon or physician, for
379 medical education, research, advancement of medical science,
380 therapy or transplantation to individuals;

381 (b) Any accredited medical school, college or
382 university engaged in medical education or research, for therapy,
383 educational research or medical science purposes or any accredited
384 school of mortuary science;

385 (c) Any person operating a bank or storage facility for
386 blood, arteries, eyes, pituitaries, or other human parts, for use
387 in medical education, research, therapy or transplantation to
388 individuals;

389 (d) The donee specified below, for therapy or
390 transplantation needed by him or her, do donate my _____ for
391 that purpose to _____ (name) at

392 _____ (address).

393 I authorize a licensed physician or surgeon to remove and
394 preserve for use my _____ for that purpose.

395 I specifically provide that this declaration shall supersede
396 and take precedence over any decision by my family to the
397 contrary.

398 Witnessed this _____ day of _____, 20__.

399 _____
400 (donor)

401 _____
402 (address)

403 _____
404 (telephone)

405 _____
406 (witness)

407 _____
408 (witness)

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

414 ALTERNATIVE NO. 1

415 Witness

416 I declare under penalty of perjury pursuant to Section
417 97-9-61, Mississippi Code of 1972, that the principal is
418 personally known to me, that the principal signed or acknowledged
419 this power of attorney in my presence, that the principal appears
420 to be of sound mind and under no duress, fraud or undue influence,
421 that I am not the person appointed as agent by this document, and
422 that I am not a health care provider, nor an employee of a health
423 care provider or facility. I am not related to the principal by
424 blood, marriage or adoption, and to the best of my knowledge, I am

425 not entitled to any part of the estate of the principal upon the
426 death of the principal under a will now existing or by operation
427 of law.

428 _____

429 (date) (signature of witness)

430 _____

431 (address) (printed name of witness)

432 _____

433 (city) (state)

434 Witness

435 I declare under penalty of perjury pursuant to Section
436 97-9-61, Mississippi Code of 1972, that the principal is
437 personally known to me, that the principal signed or acknowledged
438 this power of attorney in my presence, that the principal appears
439 to be of sound mind and under no duress, fraud or undue influence,
440 that I am not the person appointed as agent by this document, and
441 that I am not a health care provider, nor an employee of a health
442 care provider or facility.

443 _____

444 (date) (signature of witness)

445 _____

446 (address) (printed name of witness)

447 _____

448 (city) (state)

449 ALTERNATIVE NO. 2

450 State of _____

451 County of _____

452 On this _____ day of _____, in the year _____, before
453 me, _____ (insert name of notary public) appeared
454 _____, personally known to me (or proved to me on the
455 basis of satisfactory evidence) to be the person whose name is
456 subscribed to this instrument, and acknowledged that he or she
457 executed it. I declare under the penalty of perjury that the

458 person whose name is subscribed to this instrument appears to be
459 of sound mind and under no duress, fraud or undue influence.

460 Notary Seal

461 _____

462 (Signature of Notary Public)

463 Any decision under this section concerning the withholding or
464 withdrawal of nutrition or hydration shall comply with Section
465 41-41-301, Mississippi Code of 1972.

466 **SECTION 4.** Section 41-39-15, Mississippi Code of 1972, is
467 amended as follows:

468 41-39-15. (1) For the purposes of this section:

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

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

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

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

483 (2) Before November 1, 1998, each licensed acute care
484 hospital in the state shall develop, with the concurrence of the
485 hospital medical staff and the organ procurement organization, a
486 protocol for identifying all potential organ and tissue donors.
487 The protocol shall include a procedure for family consultation.
488 This protocol shall not be applicable in cases where a declaration
489 by the organ donor (a) by will, (b) under a Durable Power of
490 Attorney for Health Care declaration under Section 41-41-209, (c)

491 under a Withdrawal of Life-Saving Mechanism (Living Will)
492 declaration under former Section 41-41-107 (now repealed), or (d)
493 under the Anatomical Gift Law under Section 41-39-39, has been
494 provided to the attending physician.

495 (3) The protocol shall require each hospital to contact the
496 organ procurement organization by telephone when a patient in the
497 hospital becomes either a potential organ donor or potential
498 tissue donor as defined in this section. The organ procurement
499 organization shall determine the suitability of the patient for
500 organ or tissue donation after a review of the patient's medical
501 history and present condition. The organ procurement organization
502 representative shall notify the attending physician or designee of
503 its assessment. The hospital shall note in the patient's chart
504 the organ procurement organization's assessment of suitability for
505 donation. The organ procurement organization representative shall
506 provide information about donation options to the family or
507 persons specified in Section 41-39-35 when consent for donation is
508 requested.

509 (4) If the patient becomes brain dead and is still suitable
510 as a potential donor, the organ procurement organization
511 representative shall approach the deceased patient's legal next of
512 kin or persons specified in Section 41-39-35 for consent to donate
513 the patient's organs. The organ procurement organization
514 representative shall initiate the consent process with reasonable
515 discretion and sensitivity to the family's circumstances, values
516 and beliefs.

517 To discourage multiple requests for donation consent, the
518 organ procurement organization representative shall make a request
519 for tissue donation during the organ donation consent process.
520 When the possibility of tissue donation alone exists, a tissue
521 bank representative or their designee may request the donation.

522 (5) The option of organ and/or tissue donation shall be made
523 to the deceased patient's family upon the occurrence of brain

524 death and while mechanical ventilation of the patient is in
525 progress.

526 The protocol shall require that the decision to donate be
527 noted in the patient's medical record. The organ procurement
528 organization shall provide a form to the hospital for the
529 documentation. The form shall be signed by the patient's family
530 pursuant to Sections 41-39-31 through 41-39-51. The form shall be
531 placed in each deceased patient's chart documenting the family's
532 decision regarding donation of organs or tissues from the patient.

533 (6) (a) If the deceased patient is medically suitable to be
534 an organ and/or tissue donor, as determined by the protocol in
535 this section, and the donor and/or family has authorized the
536 donation and transplantation, the donor's organs and/or tissues
537 shall be removed for the purpose of donation and transplantation
538 by the organ procurement organization, in accordance with
539 paragraph (b) of this subsection.

540 (b) If the deceased patient is the subject of a
541 medical-legal death investigation, the organ procurement
542 organization shall immediately notify the appropriate medical
543 examiner that the deceased patient is medically suitable to be an
544 organ and/or tissue donor. If the medical examiner determines
545 that examination, analysis or autopsy of the organs and/or tissue
546 is necessary for the medical examiner's investigation, the medical
547 examiner may be present while the organs and/or tissues are
548 removed for the purpose of transplantation. The physician,
549 surgeon or technician removing the organs and/or tissues shall
550 file with the medical examiner a report detailing the donation,
551 which shall become part of the medical examiner's report. When
552 requested by the medical examiner, the report shall include a
553 biopsy or medically approved sample, as specified by the medical
554 examiner, from the donated organs and/or tissues.

555 (c) In a medical-legal death investigation, decisions
556 about organ and/or tissue donation and transplantation shall be

557 made in accordance with a protocol established and agreed upon by
558 majority vote no later than July 1, 2005, by the organ procurement
559 organization, a certified state pathologist who shall be appointed
560 by the Mississippi Commissioner of Public Safety, a representative
561 from the University of Mississippi Medical Center, a
562 representative from the Mississippi Coroners Association, an organ
563 recipient who shall be appointed by the Governor, the Director of
564 the Mississippi Bureau of Investigation of the Mississippi
565 Department of Public Safety, and a representative of the
566 Mississippi Prosecutor's Association appointed by the Attorney
567 General. The protocol shall be established so as to maximize the
568 total number of organs and/or tissues available for donation and
569 transplantation. Organs and/or tissues designated by virtue of
570 this protocol shall be recovered. The protocol shall be reviewed
571 and evaluated on an annual basis.

572 (d) This subsection (6) shall stand repealed on June
573 30, 2007.

574 (7) Performance improvement record reviews of deceased
575 patients' medical records shall be conducted by the organ
576 procurement organization for each hospital having more than
577 ninety-five (95) licensed acute care beds and general surgical
578 capability. These reviews must be performed in the first four (4)
579 months of a calendar year for the previous calendar year. If the
580 organ procurement organization and hospital mutually agree, the
581 performance improvement record reviews may be performed more
582 frequently. Aggregate data concerning these reviews shall be
583 submitted by the organ procurement organization to the State
584 Department of Health by July 1 of each year for the preceding
585 year.

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

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

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

598 (11) A gift of all or part of the body made (a) by will, (b)
599 under a Durable Power of Attorney for Health Care declaration
600 under Section 41-41-209, (c) under a Withdrawal of Life-Saving
601 Mechanism (Living Will) declaration under former Section 41-41-107
602 (now repealed), or (d) under an Anatomical Gift Act declaration
603 under Section 41-39-39, shall supersede and have precedence over
604 any decision by the family of the individual making the organ
605 donation.

606 (12) Any decision under this section concerning the
607 withholding or withdrawal of nutrition or hydration shall comply
608 with Section 41-41-301, Mississippi Code of 1972.

609 **SECTION 5.** Section 41-41-3, Mississippi Code of 1972, is
610 amended as follows:

611 41-41-3. (1) It is hereby recognized and established that,
612 in addition to such other persons as may be so authorized and
613 empowered, any one (1) of the following persons who is reasonably
614 available, in descending order of priority, is authorized and
615 empowered to consent on behalf of an unemancipated minor, either
616 orally or otherwise, to any surgical or medical treatment or
617 procedures not prohibited by law which may be suggested,
618 recommended, prescribed or directed by a duly licensed physician:

- 619 (a) The minor's guardian or custodian.
620 (b) The minor's parent.
621 (c) An adult brother or sister of the minor.
622 (d) The minor's grandparent.

623 (2) If none of the individuals eligible to act under
624 subsection (1) is reasonably available, an adult who has exhibited
625 special care and concern for the minor and who is reasonably
626 available may act; the adult shall communicate the assumption of
627 authority as promptly as practicable to the individuals specified
628 in subsection (1) who can be readily contacted.

629 (3) Any female, regardless of age or marital status, is
630 empowered to give consent for herself in connection with pregnancy
631 or childbirth.

632 (4) Any decision under this section concerning the
633 withholding or withdrawal of nutrition or hydration shall comply
634 with Section 41-41-301, Mississippi Code of 1972.

635 **SECTION 6.** Section 41-41-7, Mississippi Code of 1972, is
636 amended as follows:

637 41-41-7. In addition to any other instances in which a
638 consent is excused or implied at law, a consent to surgical or
639 medical treatment or procedures, suggested, recommended,
640 prescribed or directed by a duly licensed physician, will be
641 implied where an emergency exists if there has been no protest or
642 refusal of consent by a person authorized and empowered to consent
643 or, if so, there has been a subsequent change in the condition of
644 the person affected that is material and morbid, and there is no
645 one immediately available who is authorized, empowered, willing
646 and capacitated to consent. For the purposes hereof, an emergency
647 is defined as a situation wherein, in competent medical judgment,
648 the proposed surgical or medical treatment or procedures are
649 immediately or imminently necessary and any delay occasioned by an
650 attempt to obtain a consent would reasonably jeopardize the life,
651 health or limb of the person affected, or would reasonably result
652 in disfigurement or impairment of faculties.

653 Any decision under this section concerning the withholding or
654 withdrawal of nutrition or hydration shall comply with Section
655 41-41-301, Mississippi Code of 1972.

656 **SECTION 7.** This act shall apply prospectively in litigation
657 pending on the effective date of this act and shall supersede any
658 court order issued under the law in effect before the effective
659 date of this act to the extent that the court order conflicts with
660 this act and would otherwise be applied on or after the effective
661 date of this act. This act shall apply with respect to every
662 person living on or after the effective date of this act.

663 **SECTION 8.** This act shall take effect and be in force from
664 and after its passage.