

By: Representative Lane

To: Appropriations

HOUSE BILL NO. 30

1 AN ACT TO CREATE THE POSITION OF STATE PATHOLOGIST IN THE
 2 DEPARTMENT OF PUBLIC SAFETY; TO PROVIDE THAT THE STATE PATHOLOGIST
 3 SHALL BE APPOINTED BY THE COMMISSIONER OF PUBLIC SAFETY AND SHALL
 4 BE UNDER THE SUPERVISION OF THE DIRECTOR OF THE MISSISSIPPI CRIME
 5 LABORATORY; TO PROVIDE THAT THE LEGISLATURE SHALL APPROPRIATE A
 6 SUFFICIENT AMOUNT EACH YEAR TO FULLY FUND THE OFFICE OF THE STATE
 7 PATHOLOGIST; TO AMEND SECTIONS 45-1-27, 41-39-15, 41-61-59,
 8 41-61-65, 41-61-75 AND 41-61-77, MISSISSIPPI CODE OF 1972, TO
 9 CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** (1) There is created in the Department of Public
 12 Safety the full time position of State Pathologist, who shall be
 13 appointed by the Commissioner of Public Safety and shall be under
 14 the supervision of the Director of the Mississippi Crime
 15 Laboratory. The State Pathologist shall be a physician licensed
 16 by the State Board of Medical Licensure who is a certified
 17 pathologist, and shall perform such duties as prescribed by law or
 18 assigned by the Director of the Crime Laboratory. The State
 19 Pathologist may employ additional qualified pathologists as are
 20 necessary to carry out the duties of his office.

21 (2) The Legislature shall appropriate a sufficient amount
 22 each year to fully fund the office of the State Pathologist, so
 23 that the State of Mississippi will have one or more full time
 24 pathologists who are able to complete all necessary autopsies
 25 within a reasonable time.

26 **SECTION 2.** Section 45-1-27, Mississippi Code of 1972, is
 27 amended as follows:

28 45-1-27. The director shall have responsibilities and duties
 29 including but not limited to the following:



30 (a) To plan and give general direction to activities or
31 programs for which he is responsible, through the issuance of
32 directives and orders.

33 (b) To review proposed changes in policies affecting
34 the operation of the division under his direction.

35 (c) To maintain liaison with other agencies, divisions
36 or departments of state and federal government.

37 (d) To approve and maintain uniform procedures and
38 standards of operation for the laboratory.

39 (e) To supervise and approve procedures and processing
40 of physical evidence.

41 (f) To present testimony in court in analysis of
42 physical evidence.

43 (g) To supervise the State Medical Examiner and the
44 State Pathologist.

45 (h) To attend scientific conferences and hold classes
46 for law enforcement officers.

47 (i) To present budget requests to the Legislative
48 Budget Office and to legislative committees.

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

51 41-39-15. (1) For the purposes of this section:

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

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

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



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

66 (2) Before November 1, 1998, each licensed acute care
67 hospital in the state shall develop, with the concurrence of the
68 hospital medical staff and the organ procurement organization, a
69 protocol for identifying all potential organ and tissue donors.
70 The protocol shall include a procedure for family consultation.
71 This protocol shall not be applicable in cases where a declaration
72 by the organ donor (a) by will, (b) under a Durable Power of
73 Attorney for Health Care declaration under Section 41-41-209, (c)
74 under a Withdrawal of Life-Saving Mechanism (Living Will)
75 declaration under former Section 41-41-107 (now repealed), or (d)
76 under the Anatomical Gift Law under Section 41-39-39, has been
77 provided to the attending physician.

78 (3) The protocol shall require each hospital to contact the
79 organ procurement organization by telephone when a patient in the
80 hospital becomes either a potential organ donor or potential
81 tissue donor as defined in this section. The organ procurement
82 organization shall determine the suitability of the patient for
83 organ or tissue donation after a review of the patient's medical
84 history and present condition. The organ procurement organization
85 representative shall notify the attending physician or designee of
86 its assessment. The hospital shall note in the patient's chart
87 the organ procurement organization's assessment of suitability for
88 donation. The organ procurement organization representative shall
89 provide information about donation options to the family or
90 persons specified in Section 41-39-35 when consent for donation is
91 requested.

92 (4) If the patient becomes brain dead and is still suitable
93 as a potential donor, the organ procurement organization
94 representative shall approach the deceased patient's legal next of



95 kin or persons specified in Section 41-39-35 for consent to donate
96 the patient's organs. The organ procurement organization
97 representative shall initiate the consent process with reasonable
98 discretion and sensitivity to the family's circumstances, values
99 and beliefs.

100 To discourage multiple requests for donation consent, the
101 organ procurement organization representative shall make a request
102 for tissue donation during the organ donation consent process.
103 When the possibility of tissue donation alone exists, a tissue
104 bank representative or their designee may request the donation.

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

109 The protocol shall require that the decision to donate be
110 noted in the patient's medical record. The organ procurement
111 organization shall provide a form to the hospital for the
112 documentation. The form shall be signed by the patient's family
113 pursuant to Sections 41-39-31 through 41-39-51. The form shall be
114 placed in each deceased patient's chart documenting the family's
115 decision regarding donation of organs or tissues from the patient.

116 (6) (a) If the deceased patient is medically suitable to be
117 an organ and/or tissue donor, as determined by the protocol in
118 this section, and the donor and/or family has authorized the
119 donation and transplantation, the donor's organs and/or tissues
120 shall be removed for the purpose of donation and transplantation
121 by the organ procurement organization, in accordance with
122 paragraph (b) of this subsection.

123 (b) If the deceased patient is the subject of a
124 medical-legal death investigation, the organ procurement
125 organization shall immediately notify the appropriate medical
126 examiner that the deceased patient is medically suitable to be an
127 organ and/or tissue donor. If the medical examiner determines



128 that examination, analysis or autopsy of the organs and/or tissue
129 is necessary for the medical examiner's investigation, the medical
130 examiner may be present while the organs and/or tissues are
131 removed for the purpose of transplantation. The physician,
132 surgeon or technician removing the organs and/or tissues shall
133 file with the medical examiner a report detailing the donation,
134 which shall become part of the medical examiner's report. When
135 requested by the medical examiner, the report shall include a
136 biopsy or medically approved sample, as specified by the medical
137 examiner, from the donated organs and/or tissues.

138 (c) In a medical-legal death investigation, decisions
139 about organ and/or tissue donation and transplantation shall be
140 made in accordance with a protocol established and agreed upon by
141 majority vote no later than July 1, 2005, by the organ procurement
142 organization, the State Pathologist * * *, a representative from
143 the University of Mississippi Medical Center, a representative
144 from the Mississippi Coroners Association, an organ recipient who
145 shall be appointed by the Governor, the Director of the
146 Mississippi Bureau of Investigation of the Mississippi Department
147 of Public Safety, and a representative of the Mississippi
148 Prosecutor's Association appointed by the Attorney General. The
149 protocol shall be established so as to maximize the total number
150 of organs and/or tissues available for donation and
151 transplantation. Organs and/or tissues designated by virtue of
152 this protocol shall be recovered. The protocol shall be reviewed
153 and evaluated on an annual basis.

154 (d) This subsection (6) shall stand repealed on June
155 30, 2007.

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



161 months of a calendar year for the previous calendar year. If the
162 organ procurement organization and hospital mutually agree, the
163 performance improvement record reviews may be performed more
164 frequently. Aggregate data concerning these reviews shall be
165 submitted by the organ procurement organization to the State
166 Department of Health by July 1 of each year for the preceding
167 year.

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

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

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

180 (11) A gift of all or part of the body made (a) by will, (b)
181 under a Durable Power of Attorney for Health Care declaration
182 under Section 41-41-209, (c) under a Withdrawal of Life-Saving
183 Mechanism (Living Will) declaration under former Section 41-41-107
184 (now repealed), or (d) under an Anatomical Gift Act declaration
185 under Section 41-39-39, shall supersede and have precedence over
186 any decision by the family of the individual making the organ
187 donation.

188 **SECTION 4.** Section 41-61-59, Mississippi Code of 1972, is
189 amended as follows:

190 41-61-59. (1) A person's death that affects the public
191 interest as specified in subsection (2) of this section shall be
192 promptly reported to the medical examiner by the physician in
193 attendance, any hospital employee, any law enforcement officer



194 having knowledge of the death, the embalmer or other funeral home
195 employee, any emergency medical technician, any relative or any
196 other person present. The appropriate medical examiner shall
197 notify the municipal or state law enforcement agency or sheriff
198 and take charge of the body. When the medical examiner has
199 received notification under Section 41-39-15(6) that the deceased
200 is medically suitable to be an organ and/or tissue donor, the
201 medical examiner's authority over the body shall be subject to the
202 provisions of Section 41-39-15(6). The appropriate medical
203 examiner shall notify the Mississippi Bureau of Narcotics within
204 twenty-four (24) hours of receipt of the body in cases of death as
205 described in subsection (2)(m) or (n) of this section.

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

208 (a) Violent death, including homicidal, suicidal or
209 accidental death.

210 (b) Death caused by thermal, chemical, electrical or
211 radiation injury.

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

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

216 (e) Death that has occurred unexpectedly or from an
217 unexplained cause.

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

220 (g) Death of a person where a physician was not in
221 attendance within thirty-six (36) hours preceding death, or in
222 prediagnosed terminal or bedfast cases, within thirty (30) days
223 preceding death.

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



226 (i) Death of a person where the identity of the
227 deceased is unknown.

228 (j) Death of a child under the age of two (2) years
229 where death results from an unknown cause or where the
230 circumstances surrounding the death indicate that sudden infant
231 death syndrome may be the cause of death.

232 (k) Where a body is brought into this state for
233 disposal and there is reason to believe either that the death was
234 not investigated properly or that there is not an adequate
235 certificate of death.

236 (l) Where a person is presented to a hospital emergency
237 room unconscious and/or unresponsive, with cardiopulmonary
238 resuscitative measures being performed, and dies within
239 twenty-four (24) hours of admission without regaining
240 consciousness or responsiveness, unless a physician was in
241 attendance within thirty-six (36) hours preceding presentation to
242 the hospital, or in cases in which the decedent had a prediagnosed
243 terminal or bedfast condition, unless a physician was in
244 attendance within thirty (30) days preceding presentation to the
245 hospital.

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

248 (n) When a stillborn fetus is delivered and the cause
249 of the demise is medically believed to be from the use by the
250 mother of any controlled substance as defined in Section
251 41-29-105.

252 (3) The State Medical Examiner is empowered to investigate
253 deaths, under the authority hereinafter conferred, in any and all
254 political subdivisions of the state. The county medical examiners
255 and county medical examiner investigators, while appointed for a
256 specific county, may serve other counties on a regular basis with
257 written authorization by the State Medical Examiner, or may serve
258 other counties on an as-needed basis upon the request of the



259 ranking officer of the investigating law enforcement agency. The
260 county medical examiner or county medical examiner investigator of
261 any county that has established a regional medical examiner
262 district under subsection (4) of Section 41-61-77 may serve other
263 counties that are parties to the agreement establishing the
264 district, in accordance with the terms of the agreement, and may
265 contract with counties that are not part of the district to
266 provide medical examiner services for those counties. If a death
267 affecting the public interest takes place in a county other than
268 the one where injuries or other substantial causal factors leading
269 to the death have occurred, jurisdiction for investigation of the
270 death may be transferred, by mutual agreement of the respective
271 medical examiners of the counties involved, to the county where
272 the injuries or other substantial causal factors occurred, and the
273 costs of autopsy or other studies necessary to the further
274 investigation of the death shall be borne by the county assuming
275 jurisdiction.

276 (4) The chief county medical examiner or chief county
277 medical examiner investigator may receive from the county in which
278 he serves a salary of Nine Hundred Dollars (\$900.00) per month, in
279 addition to the fees specified in Sections 41-61-69 and 41-61-75,
280 provided that no county shall pay the chief county medical
281 examiner or chief county medical examiner investigator less than
282 One Hundred Dollars (\$100.00) per month as a salary, in addition
283 to other compensation provided by law. In any county having one
284 or more deputy medical examiners or deputy medical examiner
285 investigators, each deputy may receive from the county in which he
286 serves, in the discretion of the board of supervisors, a salary of
287 not more than Nine Hundred Dollars (\$900.00) per month, in
288 addition to the fees specified in Sections 41-61-69 and 41-61-75.
289 For this salary the chief shall assure twenty-four-hour daily and
290 readily available death investigators for the county, and shall
291 maintain copies of all medical examiner death investigations for



292 the county for at least the previous five (5) years. He shall
293 coordinate his office and duties and cooperate with the State
294 Medical Examiner, and the State Medical Examiner shall cooperate
295 with him.

296 (5) A body composed of the State Medical Examiner, whether
297 appointed on a permanent or interim basis, the Director of the
298 State Board of Health or his designee, the Attorney General or his
299 designee, the President of the Mississippi Coroners' Association
300 (or successor organization) or his designee, and the State
301 Pathologist * * * shall adopt, promulgate, amend and repeal rules
302 and regulations as may be deemed necessary by them from time to
303 time for the proper enforcement, interpretation and administration
304 of Sections 41-61-51 through 41-61-79, in accordance with the
305 provisions of the Mississippi Administrative Procedures Law, being
306 Section 25-43-1 et seq.

307 **SECTION 5.** Section 41-61-65, Mississippi Code of 1972, is
308 amended as follows:

309 41-61-65. (1) If, in the opinion of the medical examiner
310 investigating the case, it is advisable and in the public interest
311 that an autopsy or other study be made for the purpose of
312 determining the primary and/or contributing cause of death, an
313 autopsy or other study shall be made by the State Medical
314 Examiner, by the State Pathologist or by another competent
315 pathologist designated by the State Medical Examiner. The State
316 Medical Examiner, State Pathologist or designated pathologist may
317 retain any tissues as needed for further postmortem studies or
318 documentation. When the medical examiner has received
319 notification under Section 41-39-15(6) that the deceased is
320 medically suitable to be an organ and/or tissue donor, the State
321 Medical Examiner, State Pathologist or designated pathologist may
322 retain any biopsy or medically approved sample of the organ and/or
323 tissue in accordance with the provisions of Section 41-39-15(6).
324 A complete autopsy report of findings and interpretations,



325 prepared on forms designated for this purpose, shall be submitted
326 promptly to the State Medical Examiner. Copies of the report
327 shall be furnished to the authorizing medical examiner, district
328 attorney and court clerk. A copy of the report shall be furnished
329 to one (1) adult member of the immediate family of the deceased or
330 the legal representative or legal guardian of members of the
331 immediate family of the deceased upon request. In determining the
332 need for an autopsy, the medical examiner may consider the request
333 from the district attorney or county prosecuting attorney, law
334 enforcement or other public officials or private persons.
335 However, if the death occurred in the manner specified in
336 subsection (2)(j) of Section 41-61-59, an autopsy shall be
337 performed by the State Medical Examiner, the State Pathologist
338 or * * * designated pathologist, and the report of findings shall
339 be forwarded promptly to the State Medical Examiner, investigating
340 medical examiner, the State Department of Health, the infant's
341 attending physician and the local sudden infant death syndrome
342 coordinator.

343 (2) Any medical examiner or duly licensed physician
344 performing authorized investigations and/or autopsies as provided
345 in Sections 41-61-51 through 41-61-79 who, in good faith, complies
346 with the provisions of Sections 41-61-51 through 41-61-79 in the
347 determination of the cause and/or manner of death for the purpose
348 of certification of that death, shall not be liable for damages on
349 account thereof, and shall be immune from any civil liability that
350 might otherwise be incurred or imposed.

351 (3) Family members or others who disagree with the medical
352 examiner's determination shall be able to petition and present
353 written argument to the State Medical Examiner for further review.
354 If the petitioner still disagrees, he may petition the circuit
355 court, which may, in its discretion, hold a formal hearing. In
356 all those proceedings, the State Medical Examiner and the county
357 medical examiner or county medical examiner investigator who



358 certified the information shall be made defendants. All costs of
359 the petitioning and hearing shall be borne by the petitioner.

360 **SECTION 6.** Section 41-61-75, Mississippi Code of 1972, is
361 amended as follows:

362 41-61-75. (1) For each investigation with the preparation
363 and submission of the required reports, the following fees shall
364 be billed to and paid by the county for which the service is
365 provided:

366 (a) A medical examiner or his deputy shall receive
367 Eighty-five Dollars (\$85.00) for each completed report of
368 investigation of death, plus the examiner's actual expenses.

369 (b) The pathologist designated by the State Medical
370 Examiner to perform autopsies as provided in Section 41-61-65
371 shall receive Five Hundred Fifty Dollars (\$550.00) per completed
372 autopsy, plus mileage expenses to and from the site of the
373 autopsy.

374 (2) Any medical examiner, physician or pathologist who is
375 subpoenaed for appearance and testimony before a grand jury,
376 courtroom trial or deposition shall be entitled to an expert
377 witness hourly fee to be set by the court and mileage expenses to
378 and from the site of the testimony, and such amount shall be paid
379 by the jurisdiction or party issuing the subpoena.

380 **SECTION 7.** Section 41-61-77, Mississippi Code of 1972, is
381 amended as follows:

382 41-61-77. (1) The Department of Public Safety shall
383 establish and maintain a central office for the Mississippi Crime
384 Laboratory, the State Medical Examiner and the State Pathologist
385 with appropriate facilities and personnel for postmortem
386 medicolegal examinations. District offices, with appropriate
387 facilities and personnel, may also be established and maintained
388 if considered necessary by the department for the proper
389 management of postmortem examinations.



390 The facilities of the central and district offices and their
391 staff services may be available to the medical examiners, State
392 Pathologist and designated pathologists in their investigations.

393 (2) In order to provide proper facilities for investigating
394 deaths as authorized in Sections 41-61-51 through 41-61-79, the
395 State Medical Examiner may arrange for the use of existing public
396 or private laboratory facilities. The State Medical Examiner may
397 contract with qualified persons to perform or to provide support
398 services for autopsies, studies and investigations not
399 inconsistent with other applicable laws. Such laboratory
400 facilities may be located at the University of Mississippi Medical
401 Center or any other suitable location. The State Medical Examiner
402 may also serve as a member of the faculty at the University of
403 Mississippi Medical Center and other institutions of higher
404 learning. He shall be authorized to employ, with the approval of
405 the Commissioner of Public Safety, such additional scientific,
406 technical, administrative and clerical assistants as are necessary
407 for performance of his duties. Such employees in the office of
408 the State Medical Examiner shall be subject to the rules,
409 regulations and policies of the state personnel system in their
410 employment.

411 (3) The State Medical Examiner shall be authorized to
412 appoint and/or employ qualified pathologists as additional
413 associate and assistant state medical examiners as are necessary
414 to carry out the duties of his office. The associate and
415 assistant state medical examiners shall be licensed to practice
416 medicine in Mississippi and, insofar as practicable, shall be
417 trained in the field of forensic pathology. The State Medical
418 Examiner may delegate specific duties to competent and qualified
419 medical examiners within the scope of the express authority
420 granted to him by law or regulation. Employees of the office of
421 the State Medical Examiner shall have the authority to enter any



422 political subdivisions of this state for the purpose of carrying
423 out medical investigations.

424 (4) The board of supervisors of any two (2) or more adjacent
425 counties may enter into written agreements with one another, in
426 accordance with Section 17-13-1 et seq., to establish regional
427 medical examiner districts for the purposes of providing and
428 coordinating medical examiner services on a regional basis,
429 establishing central forensic facilities for the counties
430 involved, and employing or contracting with one or more
431 pathologists to serve as medical examiners of the district, who
432 will perform postmortem examinations and autopsies for the
433 counties involved. Any powers which may be exercised under this
434 chapter by an individual county, county medical examiner or county
435 medical examiner investigator may be exercised jointly with any
436 other county or with the county medical examiner or county medical
437 examiner investigator of such other county, in accordance with the
438 terms of the agreement between the counties involved. Any county
439 entering into such an agreement shall be authorized to expend any
440 funds necessary to carry out the purposes of such agreement. Any
441 municipality located within any such district is * * * authorized
442 and empowered to contribute funds to such district. For any such
443 district established, the counties involved shall attempt to
444 coordinate the operation of the district and any district
445 facilities with the operation of any district office or offices
446 established by the State Medical Examiner under subsection (1) of
447 this section which include such counties. The medical examiners
448 authorized in this subsection shall have the same authority within
449 a medical examiner district and the counties served by such
450 district as does the State Medical Examiner.

451 **SECTION 8.** This act shall take effect and be in force from
452 and after July 1, 2007.

