AN ACT TO AMEND SECTION 41-39-15, MISSISSIPPI CODE OF 1972, WHICH REGULATES THE PROTOCOL FOR ORGAN AND TISSUE DONORS; TO EXTEND THE DATE OF REPEAL ON THE SECTION THAT PROVIDES FOR SUITABLE DONORS AND REMOVING ORGANS; AND FOR RELATED PURPOSES.

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

SECTION 1. 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 hospital medical staff and the organ procurement organization, a protocol for identifying all potential organ and tissue donors. The protocol shall include a procedure for family consultation. This protocol shall not be applicable in cases where a declaration...
by the organ donor (a) by will, (b) under a Durable Power of
Attorney for Health Care declaration under Section 41-41-209, (c)
under a Withdrawal of Life-Saving Mechanism (Living Will)
declaration under former Section 41-41-107 (now repealed), or (d)
under the Anatomical Gift Law under Section 41-39-39, has been
provided to the attending physician.

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

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

To discourage multiple requests for donation consent, the
organ procurement organization representative shall make a request
for tissue donation during the organ donation consent process.
When the possibility of tissue donation alone exists, a tissue
bank representative or their designee may request the donation.
The option of organ and/or tissue donation shall be made to the deceased patient's family upon the occurrence of brain death and while mechanical ventilation of the patient is in progress.

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

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

(b) If the deceased patient is the subject of a medical-legal death investigation, the organ procurement organization shall immediately notify the appropriate medical examiner that the deceased patient is medically suitable to be an organ and/or tissue donor. If the medical examiner determines that examination, analysis or autopsy of the organs and/or tissue is necessary for the medical examiner's investigation, the medical examiner may be present while the organs and/or tissues are removed for the purpose of transplantation. The physician, surgeon or technician removing the organs and/or tissues shall file with the medical examiner a report detailing the donation, which shall become part of the medical examiner's report. When requested by the medical examiner, the report shall include a biopsy or medically approved sample, as specified by the medical examiner, from the donated organs and/or tissues.
(c) In a medical-legal death investigation, decisions about organ and/or tissue donation and transplantation shall be made in accordance with a protocol established and agreed upon by majority vote no later than July 1, 2005, by the organ procurement organization, a certified state pathologist who shall be appointed by the Mississippi Commissioner of Public Safety, a representative from the University of Mississippi Medical Center, a representative from the Mississippi Coroners Association, an organ recipient who shall be appointed by the Governor, the Director of the Mississippi Bureau of Investigation of the Mississippi Department of Public Safety, and a representative of the Mississippi Prosecutor's Association appointed by the Attorney General. The protocol shall be established so as to maximize the total number of organs and/or tissues available for donation and transplantation. Organs and/or tissues designated by virtue of this protocol shall be recovered. The protocol shall be reviewed and evaluated on an annual basis.

(d) This subsection (6) shall stand repealed on June 30, 2011.

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

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

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

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

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2007.