

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2206

1 AN ACT TO AMEND SECTION 41-39-15, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE AUTOMATIC REPEALER ON THE STATUTORY PROTOCOL FOR THE
3 IDENTIFICATION OF POTENTIAL ORGAN AND TISSUE DONORS IN THE EVENT
4 OF A MEDICAL-LEGAL DEATH INVESTIGATION; AND FOR RELATED PURPOSES.

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

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

8 41-39-15. (1) For the purposes of this section:

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

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

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

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

23 (2) Before November 1, 1998, each licensed acute care
24 hospital in the state shall develop, with the concurrence of the
25 hospital medical staff and the organ procurement organization, a
26 protocol for identifying all potential organ and tissue donors.
27 The protocol shall include a procedure for family consultation.
28 This protocol shall not be applicable in cases where a declaration

29 by the organ donor (a) by will, (b) under a Durable Power of
30 Attorney for Health Care declaration under Section 41-41-209, (c)
31 under a Withdrawal of Life-Saving Mechanism (Living Will)
32 declaration under former Section 41-41-107 (now repealed), or (d)
33 under the Anatomical Gift Law under Section 41-39-39, has been
34 provided to the attending physician.

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

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

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

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

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

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

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

95 (c) In a medical-legal death investigation, decisions
96 about organ and/or tissue donation and transplantation shall be
97 made in accordance with a protocol established and agreed upon by
98 majority vote no later than July 1, 2005, by the organ procurement
99 organization, a certified state pathologist who shall be appointed
100 by the Mississippi Commissioner of Public Safety, a representative
101 from the University of Mississippi Medical Center, a
102 representative from the Mississippi Coroners Association, an organ
103 recipient who shall be appointed by the Governor, the Director of
104 the Mississippi Bureau of Investigation of the Mississippi
105 Department of Public Safety, and a representative of the
106 Mississippi Prosecutor's Association appointed by the Attorney
107 General. The protocol shall be established so as to maximize the
108 total number of organs and/or tissues available for donation and
109 transplantation. Organs and/or tissues designated by virtue of
110 this protocol shall be recovered. The protocol shall be reviewed
111 and evaluated on an annual basis.

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

125 (8) No organ or tissue recovered in the State of Mississippi
126 may be shipped out of the state except through an approved organ

127 sharing network or, at the family's request, to an approved organ
128 transplant program.

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

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

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

145 **SECTION 2.** This act shall take effect and be in force from
146 and after June 30, 2007.