

By: Representative Holland

To: Public Health and Human Services

HOUSE BILL NO. 46

1 AN ACT TO DEFINE THE PERSONS WHO HAVE THE RIGHT OF DECISION  
2 OR CONSENT REGARDING DISINTERMENT OF A BURIED HUMAN BODY; TO AMEND  
3 SECTIONS 41-37-25 AND 41-39-117, MISSISSIPPI CODE OF 1972, IN  
4 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
5 PURPOSES.

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

7 **SECTION 1.** (1) After a human body has been buried, the  
8 following persons, in the order of priority stated, shall have the  
9 right of decision or consent regarding disinterment of the body  
10 for relocation to another burial site, for an autopsy not pursuant  
11 to a court order or for any other reason:

12 (a) The surviving spouse.

13 (b) A surviving child who is at least eighteen (18)  
14 years of age.

15 (c) A grandchild who is at least eighteen (18) years of  
16 age.

17 (d) Either surviving parent.

18 (e) A surviving sibling who is at least eighteen (18)  
19 years of age.



20 (f) A person acting as a representative of the decedent  
21 under a signed authorization of the decedent.

22 (g) The guardian of the person of the decedent at the  
23 time of the decedent's death, if a guardian has been appointed.

24 (h) A person in the class of the next degree of  
25 kinship, in descending order, who, under state law, would inherit  
26 the decedent's estate if the decedent died intestate and who is at  
27 least eighteen (18) years of age.

28 (2) Whenever a buried human body is to be disinterred for  
29 any reason other than the performance of an autopsy, prior  
30 approval of the State Department of Health shall be required.

31 (3) Nothing in subsection (1) of this section shall give a  
32 right to any person to prevent an autopsy from being performed  
33 pursuant to court order.

34 **SECTION 2.** Section 41-37-25, Mississippi Code of 1972, is  
35 amended as follows:

36 41-37-25. An autopsy may be performed without court order by  
37 a qualified physician when authorized by (a) the decedent, during  
38 his lifetime, or (b) any of the following persons who \* \* \* have  
39 assumed custody of the body for the purpose of burial: a  
40 surviving spouse, either parent or any person in loco parentis, a  
41 descendant over the age of eighteen (18) years, a guardian, or the  
42 next of kin. In the absence of any of the foregoing persons, any  
43 friend of the deceased who has assumed responsibility for burial,  
44 or any other person charged by law with responsibility for burial,



45 may give such consent. If two (2) or more persons have assumed  
46 custody of the body of an adult for purposes of burial, the  
47 consent of one (1) such person shall be deemed sufficient.

48 In the case of a minor, however, the consent of either parent  
49 shall be deemed sufficient, unless the other parent gives written  
50 notice to the physician who is to perform the autopsy of such  
51 parent's objection thereto \* \* \* before the beginning of the  
52 autopsy. \* \* \* If neither parent has legal custody of the minor,  
53 the guardian shall have the right to authorize an autopsy. The  
54 fees provided in this chapter for autopsies in criminal  
55 investigations shall not be applicable to this section.

56 No autopsy shall be held under this section over the  
57 objection of the surviving spouse, or if there be no surviving  
58 spouse, of any surviving parent, or if there be neither a  
59 surviving spouse nor parent, then of any surviving child.

60 If the body has already been buried, consent to disinterment  
61 of the body for an autopsy without a court order shall be governed  
62 by Section 1 of this act.

63 **SECTION 3.** Section 41-39-117, Mississippi Code of 1972, is  
64 amended as follows:

65 41-39-117. (a) Subject to subsections (b) and (c) and  
66 unless barred by Section 41-39-113 or 41-39-115, an anatomical  
67 gift of a decedent's body or part for purpose of transplantation,  
68 therapy, research, or education may be made by any member of the



69 following classes of persons who is reasonably available, in the  
70 order of priority listed:

71 (1) An agent of the decedent at the time of death who  
72 could have made an anatomical gift under Section 41-39-107(2)  
73 immediately before the decedent's death;

74 (2) The spouse of the decedent;

75 (3) Adult children of the decedent;

76 (4) Parents of the decedent;

77 (5) Adult siblings of the decedent;

78 (6) Adult grandchildren of the decedent;

79 (7) Grandparents of the decedent;

80 (8) An adult who exhibited special care and concern for  
81 the decedent;

82 (9) The persons who were acting as the guardians of the  
83 person of the decedent at the time of death; and

84 (10) Any other person having the authority to dispose  
85 of the decedent's body.

86 (b) If there is more than one (1) member of a class listed  
87 in subsection (a) (1), (3), (4), (5), (6), (7), or (9) entitled to  
88 make an anatomical gift, an anatomical gift may be made by a  
89 member of the class unless that member or a person to which the  
90 gift may pass under Section 41-39-121 knows of an objection by  
91 another member of the class. If an objection is known, the gift  
92 may be made only by a majority of the members of the class who are  
93 reasonably available.



94 (c) A person may not make an anatomical gift if, at the time  
95 of the decedent's death, a person in a prior class under  
96 subsection (a) is reasonably available to make or to object to the  
97 making of an anatomical gift.

98 (d) If the decedent's body has already been buried, consent  
99 to disinterment of the body for any one or more of the purposes  
100 specified in subsection (a) of this section shall be governed by  
101 Section 1 of this act.

102 **SECTION 4.** This act shall take effect and be in force from  
103 and after July 1, 2018.

