

By: Representative Holland

To: Public Health and Human Services; Judiciary B

HOUSE BILL NO. 1075
(As Sent to Governor)

1 AN ACT TO ENACT THE REVISED MISSISSIPPI UNIFORM ANATOMICAL
2 GIFT ACT (UAGA); TO CREATE A POWER IN CERTAIN INDIVIDUALS TO
3 AUTHORIZE AN ANATOMICAL GIFT ON BEHALF OF AN INCAPACITATED PERSON
4 BEFORE DEATH ACTUALLY OCCURS WHEN THE PERSON HAS NOT EXECUTED A
5 DOCUMENT OF GIFT; TO PROVIDE FOR THE USE OF DONOR REGISTRIES UPON
6 WHICH A POTENTIAL DONOR MAY PUT A DOCUMENT OF GIFT FOR NOTICE
7 PURPOSES; TO PROVIDE CRIMINAL PENALTIES FOR MISREPRESENTATION OF A
8 DOCUMENT OF GIFT FOR THE PURPOSES OF SELLING ORGANS OR TISSUE; TO
9 REPEAL SECTION 43-39-15 AND SECTIONS 41-39-31 THROUGH 41-39-53,
10 MISSISSIPPI CODE OF 1972, WHICH ARE THE FORMER MISSISSIPPI
11 ANATOMICAL GIFT LAW; AND FOR RELATED PURPOSES.

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

13 **SECTION 1. SHORT TITLE.** This law may be cited as the
14 Revised Mississippi Uniform Anatomical Gift Act (UAGA).

15 **SECTION 2. DEFINITIONS.** In this law:

16 (1) "Adult" means an individual who is at least
17 eighteen (18) years of age.

18 (2) "Agent" means an individual:

19 (A) Authorized to make health care decisions on
20 the principal's behalf by a power of attorney for health care; or

21 (B) Expressly authorized to make an anatomical
22 gift on the principal's behalf by any other record signed by the
23 principal.

24 (3) "Anatomical gift" means a donation of all or part
25 of a human body to take effect after the donor's death for the
26 purpose of transplantation, therapy, research, or education.

27 (4) "Decedent" means a deceased individual whose body
28 or part is or may be the source of an anatomical gift. The term
29 includes a stillborn infant and, subject to restrictions imposed
30 by law other than this law, a fetus.



31 (5) "Disinterested witness" means a witness other than
32 the spouse, child, parent, sibling, grandchild, grandparent, or
33 guardian of the individual who makes, amends, revokes, or refuses
34 to make an anatomical gift, or another adult who exhibited special
35 care and concern for the individual. The term does not include a
36 person to which an anatomical gift could pass under Section 11.

37 (6) "Document of gift" means a donor card or other
38 record used to make an anatomical gift. The term includes a
39 statement or symbol on a driver's license, identification card, or
40 donor registry.

41 (7) "Donor" means an individual whose body or part is
42 the subject of an anatomical gift.

43 (8) "Donor registry" means a database that contains
44 records of anatomical gifts and amendments to or revocations of
45 anatomical gifts.

46 (9) "Driver's license" means a license or permit issued
47 by the Mississippi Department of Public Safety to operate a
48 vehicle, whether or not conditions are attached to the license or
49 permit.

50 (10) "Eye bank" means a person that is licensed,
51 accredited, or regulated under federal or state law to engage in
52 the recovery, screening, testing, processing, storage, or
53 distribution of human eyes or portions of human eyes.

54 (11) "Guardian" means a person appointed by a court to
55 make decisions regarding the support, care, education, health, or
56 welfare of an individual. The term does not include a guardian ad
57 litem.

58 (12) "Hospital" means a facility licensed as a hospital
59 under the law of any state or a facility operated as a hospital by
60 the United States, a state, or a subdivision of a state.

61 (13) "Identification card" means an identification card
62 issued by the Mississippi Department of Public Safety.

63 (14) "Know" means to have actual knowledge.



64 (15) "Minor" means an individual who is under eighteen
65 (18) years of age.

66 (16) "Organ procurement organization" means a person
67 designated by the Secretary of the United States Department of
68 Health and Human Services as an organ procurement organization.

69 (17) "Parent" means a parent whose parental rights have
70 not been terminated.

71 (18) "Part" means an organ, an eye, or tissue of a
72 human being. The term does not include the whole body.

73 (19) "Person" means an individual, corporation,
74 business trust, estate, trust, partnership, limited liability
75 company, association, joint venture, public corporation,
76 government or governmental subdivision, agency, or
77 instrumentality, or any other legal or commercial entity.

78 (20) "Physician" means an individual authorized to
79 practice medicine or osteopathy under the law of any state.

80 (21) "Procurement organization" means an eye bank,
81 organ procurement organization, or tissue bank.

82 (22) "Prospective donor" means an individual who is
83 dead or near death, Glasgow Coma Scale of five (5) or less, and
84 has been determined by a procurement organization to have a part
85 that could be medically suitable for transplantation, therapy,
86 research, or education. The term does not include an individual
87 who has made a refusal.

88 (23) "Reasonably available" means able to be contacted
89 by a procurement organization without undue effort and willing and
90 able to act in a timely manner consistent with existing medical
91 criteria necessary for the making of an anatomical gift.

92 (24) "Recipient" means an individual into whose body a
93 decedent's part has been or is intended to be transplanted.

94 (25) "Record" means information that is inscribed on a
95 tangible medium or that is stored in an electronic or other medium
96 and is retrievable in perceivable form.



97 (26) "Refusal" means a record created under Section 7
98 that expressly states an intent to bar other persons from making
99 an anatomical gift of an individual's body or part.

100 (27) "Sign" means, with the present intent to
101 authenticate or adopt a record:

102 (A) To execute or adopt a tangible symbol; or

103 (B) To attach to or logically associate with the
104 record an electronic symbol, sound, or process.

105 (28) "State" means a state of the United States, the
106 District of Columbia, Puerto Rico, the United States Virgin
107 Islands, or any territory or insular possession subject to the
108 jurisdiction of the United States.

109 (29) "Technician" means an individual determined to be
110 qualified to remove or process parts by an appropriate
111 organization that is licensed, accredited, or regulated under
112 federal or state law. The term includes an enucleator.

113 (30) "Tissue" means a portion of the human body other
114 than an organ or an eye. The term does not include blood unless
115 the blood is donated for the purpose of research or education.

116 (31) "Tissue bank" means a person that is licensed,
117 accredited, or regulated under federal or state law to engage in
118 the recovery, screening, testing, processing, storage, or
119 distribution of tissue.

120 (32) "Transplant hospital" means a hospital that
121 furnishes organ transplants and other medical and surgical
122 specialty services required for the care of transplant patients.

123 **SECTION 3. APPLICABILITY.** This law applies to an anatomical
124 gift or amendment to, revocation of, or refusal to make an
125 anatomical gift, whenever made.

126 **SECTION 4. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR'S**
127 **DEATH.** Subject to Section 8, an anatomical gift of a donor's body
128 or part may be made during the life of the donor for the purpose



129 of transplantation, therapy, research, or education in the manner
130 provided in Section 5 by:

131 (1) The donor, if the donor is an adult or if the donor
132 is a minor and is:

133 (A) Emancipated; or

134 (B) Authorized under state law to apply for a
135 driver's license because the donor is at least eighteen (18) years
136 of age;

137 (2) An agent of the donor, unless the power of attorney
138 for health care or other record prohibits the agent from making an
139 anatomical gift;

140 (3) A parent of the donor, if the donor is an
141 unemancipated minor; or

142 (4) The donor's guardian.

143 **SECTION 5. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S**
144 **DEATH.** (a) A donor may make an anatomical gift:

145 (1) By authorizing a statement or symbol indicating
146 that the donor has made an anatomical gift to be imprinted on the
147 donor's driver's license or identification card;

148 (2) In a will;

149 (3) During a terminal illness or injury of the donor,
150 by any form of communication addressed to at least two (2) adults,
151 at least one (1) of whom is a disinterested witness; or

152 (4) As provided in subsection (b).

153 (b) A donor or other person authorized to make an anatomical
154 gift under Section 4 may make a gift by a donor card or other
155 record signed by the donor or other person making the gift or by
156 authorizing that a statement or symbol indicating that the donor
157 has made an anatomical gift be included on a donor registry. If
158 the donor or other person is physically unable to sign a record,
159 the record may be signed by another individual at the direction of
160 the donor or other person and must:



161 (1) Be witnessed by at least two (2) adults, at least
162 one (1) of whom is a disinterested witness, who have signed at the
163 request of the donor or the other person; and

164 (2) State that it has been signed and witnessed as
165 provided in paragraph (1).

166 (c) Revocation, suspension, expiration, or cancellation of a
167 driver's license or identification card upon which an anatomical
168 gift is indicated does not invalidate the gift.

169 (d) An anatomical gift made by will takes effect upon the
170 donor's death whether or not the will is probated. Invalidation
171 of the will after the donor's death does not invalidate the gift.

172 **SECTION 6. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE**

173 **DONOR'S DEATH.** (a) Subject to Section 8, a donor or other person
174 authorized to make an anatomical gift under Section 4 may amend or
175 revoke an anatomical gift by:

176 (1) A record signed by:

177 (A) The donor;

178 (B) The other person; or

179 (C) Subject to subsection (b), another individual
180 acting at the direction of the donor or the other person if the
181 donor or other person is physically unable to sign; or

182 (2) A later-executed document of gift that amends or
183 revokes a previous anatomical gift or portion of an anatomical
184 gift, either expressly or by inconsistency.

185 (b) A record signed pursuant to subsection (a)(1)(C) must:

186 (1) Be witnessed by at least two (2) adults, at least
187 one (1) of whom is a disinterested witness, who have signed at the
188 request of the donor or the other person; and

189 (2) State that it has been signed and witnessed as
190 provided in paragraph (1).

191 (c) Subject to Section 8, a donor or other person authorized
192 to make an anatomical gift under Section 4 may revoke an
193 anatomical gift by the destruction or cancellation of the document



194 of gift, or the portion of the document of gift used to make the
195 gift, with the intent to revoke the gift.

196 (d) A donor may amend or revoke an anatomical gift that was
197 not made in a will by any form of communication during a terminal
198 illness or injury addressed to at least two (2) adults, at least
199 one (1) of whom is a disinterested witness.

200 (e) A donor who makes an anatomical gift in a will may amend
201 or revoke the gift in the manner provided for amendment or
202 revocation of wills or as provided in subsection (a).

203 **SECTION 7. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF**

204 **REFUSAL.** (a) An individual may refuse to make an anatomical gift
205 of the individual's body or part by:

206 (1) A record signed by:

207 (A) The individual; or

208 (B) Subject to subsection (b), another individual
209 acting at the direction of the individual if the individual is
210 physically unable to sign;

211 (2) The individual's will, whether or not the will is
212 admitted to probate or invalidated after the individual's death;
213 or

214 (3) Any form of communication made by the individual
215 during the individual's terminal illness or injury addressed to at
216 least two (2) adults, at least one (1) of whom is a disinterested
217 witness.

218 (b) A record signed pursuant to subsection (a)(1)(B) must:

219 (1) Be witnessed by at least two (2) adults, at least
220 one (1) of whom is a disinterested witness, who have signed at the
221 request of the individual; and

222 (2) State that it has been signed and witnessed as
223 provided in paragraph (1).

224 (c) An individual who has made a refusal may amend or revoke
225 the refusal:



226 (1) In the manner provided in subsection (a) for making
227 a refusal;

228 (2) By subsequently making an anatomical gift pursuant
229 to Section 5 that is inconsistent with the refusal; or

230 (3) By destroying or canceling the record evidencing
231 the refusal, or the portion of the record used to make the
232 refusal, with the intent to revoke the refusal.

233 (d) Except as otherwise provided in Section 8(h), in the
234 absence of an express, contrary indication by the individual set
235 forth in the refusal, an individual's unrevoked refusal to make an
236 anatomical gift of the individual's body or part bars all other
237 persons from making an anatomical gift of the individual's body or
238 part.

239 **SECTION 8. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT,**

240 **OR REVOCATION.** (a) Except as otherwise provided in subsection
241 (g) and subject to subsection (f), in the absence of an express,
242 contrary indication by the donor, a person other than the donor is
243 barred from making, amending, or revoking an anatomical gift of a
244 donor's body or part if the donor made an anatomical gift of the
245 donor's body or part under Section 5 or an amendment to an
246 anatomical gift of the donor's body or part under Section 6.

247 (b) A donor's revocation of an anatomical gift of the
248 donor's body or part under Section 6 is not a refusal and does not
249 bar another person specified in Section 4 or 9 from making an
250 anatomical gift of the donor's body or part under Section 5 or 10.

251 (c) If a person other than the donor makes an unrevoked
252 anatomical gift of the donor's body or part under Section 5 or an
253 amendment to an anatomical gift of the donor's body or part under
254 Section 6, another person may not make, amend, or revoke the gift
255 of the donor's body or part under Section 10.

256 (d) A revocation of an anatomical gift of a donor's body or
257 part under Section 6 by a person other than the donor does not bar



258 another person from making an anatomical gift of the body or part
259 under Section 5 or 10.

260 (e) In the absence of an express, contrary indication by the
261 donor or other person authorized to make an anatomical gift under
262 Section 4, an anatomical gift of a part is neither a refusal to
263 give another part nor a limitation on the making of an anatomical
264 gift of another part at a later time by the donor or another
265 person.

266 (f) In the absence of an express, contrary indication by the
267 donor or other person authorized to make an anatomical gift under
268 Section 4, an anatomical gift of a part for one or more of the
269 purposes set forth in Section 4 is not a limitation on the making
270 of an anatomical gift of the part for any of the other purposes by
271 the donor or any other person under Section 5 or 10.

272 (g) If a donor who is an unemancipated minor dies, a parent
273 of the donor who is reasonably available may revoke or amend an
274 anatomical gift of the donor's body or part.

275 (h) If an unemancipated minor who signed a refusal dies, a
276 parent of the minor who is reasonably available may revoke the
277 minor's refusal.

278 **SECTION 9. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY**

279 **OR PART.** (a) Subject to subsections (b) and (c) and unless
280 barred by Section 7 or 8, an anatomical gift of a decedent's body
281 or part for purpose of transplantation, therapy, research, or
282 education may be made by any member of the following classes of
283 persons who is reasonably available, in the order of priority
284 listed:

285 (1) An agent of the decedent at the time of death who
286 could have made an anatomical gift under Section 4(2) immediately
287 before the decedent's death;

288 (2) The spouse of the decedent;

289 (3) Adult children of the decedent;

290 (4) Parents of the decedent;



- 291 (5) Adult siblings of the decedent;
292 (6) Adult grandchildren of the decedent;
293 (7) Grandparents of the decedent;
294 (8) An adult who exhibited special care and concern for
295 the decedent;
296 (9) The persons who were acting as the guardians of the
297 person of the decedent at the time of death; and
298 (10) Any other person having the authority to dispose
299 of the decedent's body.

300 (b) If there is more than one (1) member of a class listed
301 in subsection (a) (1), (3), (4), (5), (6), (7), or (9) entitled to
302 make an anatomical gift, an anatomical gift may be made by a
303 member of the class unless that member or a person to which the
304 gift may pass under Section 11 knows of an objection by another
305 member of the class. If an objection is known, the gift may be
306 made only by a majority of the members of the class who are
307 reasonably available.

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

312 **SECTION 10. MANNER OF MAKING, AMENDING, OR REVOKING**

313 **ANATOMICAL GIFT OF DECEDENT'S BODY OR PART.** (a) A person
314 authorized to make an anatomical gift under Section 9 may make an
315 anatomical gift by a document of gift signed by the person making
316 the gift or by that person's oral communication that is
317 electronically recorded or is contemporaneously reduced to a
318 record and signed by the individual receiving the oral
319 communication.

320 (b) Subject to subsection (c), an anatomical gift by a
321 person authorized under Section 9 may be amended or revoked orally
322 or in a record by any member of a prior class who is reasonably
323 available. If more than one (1) member of the prior class is



324 reasonably available, the gift made by a person authorized under
325 Section 9 may be:

326 (1) Amended only if a majority of the reasonably
327 available members agree to the amending of the gift; or

328 (2) Revoked only if a majority of the reasonably
329 available members agree to the revoking of the gift or if they are
330 equally divided as to whether to revoke the gift.

331 (c) A revocation under subsection (b) is effective only if,
332 before an incision has been made to remove a part from the donor's
333 body or before invasive procedures have begun to prepare the
334 recipient, the procurement organization, transplant hospital, or
335 physician or technician knows of the revocation.

336 **SECTION 11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT;**

337 **PURPOSE OF ANATOMICAL GIFT.** (a) An anatomical gift may be made
338 to the following persons named in the document of gift:

339 (1) A hospital; accredited medical school, dental
340 school, college, or university; organ procurement organization; or
341 other appropriate person, for research or education;

342 (2) Subject to subsection (b), an individual designated
343 by the person making the anatomical gift if the individual is the
344 recipient of the part;

345 (3) An eye bank or tissue bank.

346 (b) If an anatomical gift to an individual under subsection
347 (a) (2) cannot be transplanted into the individual, the part passes
348 in accordance with subsection (g) in the absence of an express,
349 contrary indication by the person making the anatomical gift.

350 (c) If an anatomical gift of one or more specific parts or
351 of all parts is made in a document of gift that does not name a
352 person described in subsection (a) but identifies the purpose for
353 which an anatomical gift may be used, the following rules apply:

354 (1) If the part is an eye and the gift is for the
355 purpose of transplantation or therapy, the gift passes to the
356 appropriate eye bank.



357 (2) If the part is tissue and the gift is for the
358 purpose of transplantation or therapy, the gift passes to the
359 appropriate tissue bank.

360 (3) If the part is an organ and the gift is for the
361 purpose of transplantation or therapy, the gift passes to the
362 appropriate organ procurement organization as custodian of the
363 organ.

364 (4) If the part is an organ, an eye, or tissue and the
365 gift is for the purpose of research or education, the gift passes
366 to the appropriate procurement organization.

367 (d) For the purpose of subsection (c), if there is more than
368 one (1) purpose of an anatomical gift set forth in the document of
369 gift but the purposes are not set forth in any priority,
370 the gift must be used for transplantation or therapy, if suitable.
371 If the gift cannot be used for transplantation or therapy, the
372 gift may be used for research or education.

373 (e) If an anatomical gift of one or more specific parts is
374 made in a document of gift that does not name a person described
375 in subsection (a) and does not identify the purpose of the gift,
376 the gift may be used only for transplantation or therapy, and the
377 gift passes in accordance with subsection (g).

378 (f) If a document of gift specifies only a general intent to
379 make an anatomical gift by words such as "donor," "organ donor,"
380 or "body donor," or by a symbol or statement of similar import,
381 the gift may be used only for transplantation or therapy, and the
382 gift passes in accordance with subsection (g).

383 (g) For purposes of subsections (b), (e), and (f) the
384 following rules apply:

385 (1) If the part is an eye, the gift passes to the
386 appropriate eye bank.

387 (2) If the part is tissue, the gift passes to the
388 appropriate tissue bank.



389 (3) If the part is an organ, the gift passes to the
390 appropriate organ procurement organization as custodian of the
391 organ.

392 (h) An anatomical gift of an organ for transplantation or
393 therapy, other than an anatomical gift under subsection (a) (2),
394 passes to the organ procurement organization as custodian of the
395 organ.

396 (i) If an anatomical gift does not pass pursuant to
397 subsections (a) through (h) or the decedent's body or part is not
398 used for transplantation, therapy, research, or education, custody
399 of the body or part passes to the person under obligation to
400 dispose of the body or part.

401 (j) A person may not accept an anatomical gift if the person
402 knows that the gift was not effectively made under Section 5 or 10
403 or if the person knows that the decedent made a refusal under
404 Section 7 that was not revoked. For purposes of the subsection,
405 if a person knows that an anatomical gift was made on a document
406 of gift, the person is deemed to know of any amendment or
407 revocation of the gift or any refusal to make an anatomical gift
408 on the same document of gift.

409 (k) Except as otherwise provided in subsection (a) (2),
410 nothing in this law affects the allocation of organs for
411 transplantation or therapy.

412 **SECTION 12. SEARCH AND NOTIFICATION.** (a) The following
413 persons shall make a reasonable search of an individual who the
414 person reasonably believes is dead or near death for a document of
415 gift or other information identifying the individual as a donor or
416 as an individual who made a refusal:

417 (1) A law enforcement officer, fire fighter, paramedic,
418 or other emergency rescuer finding the individual; and

419 (2) If no other source of the information is
420 immediately available, a hospital, as soon as practical after the
421 individual's arrival at the hospital.



422 (b) If a document of gift or a refusal to make an anatomical
423 gift is located by the search required by subsection (a)(1) and
424 the individual or deceased individual to whom it relates is taken
425 to a hospital, the person responsible for conducting the search
426 shall send the document of gift or refusal to the hospital.

427 (c) A person is not subject to criminal or civil liability
428 for failing to discharge the duties imposed by this section but
429 may be subject to administrative sanctions.

430 **SECTION 13. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT**
431 **TO EXAMINE.** (a) A document of gift need not be delivered during
432 the donor's lifetime to be effective.

433 (b) Upon or after an individual's death, a person in
434 possession of a document of gift or a refusal to make an
435 anatomical gift with respect to the individual shall allow
436 examination and copying of the document of gift or refusal by a
437 person authorized to make or object to the making of an anatomical
438 gift with respect to the individual or by a person to which the
439 gift could pass under Section 11.

440 **SECTION 14. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION**
441 **AND OTHERS.** (a) When a hospital refers an individual at or near
442 death to a procurement organization, the organization shall make a
443 reasonable search of the records of the Mississippi Department of
444 Public Safety and any donor registry that it knows exists for the
445 geographical area in which the individual resides to ascertain
446 whether the individual has made an anatomical gift.

447 (b) A procurement organization must be allowed reasonable
448 access to information in the records of the Mississippi Department
449 of Public Safety to ascertain whether an individual at or near
450 death is a donor.

451 (c) When a hospital refers an individual at or near death to
452 a procurement organization, the organization may conduct any
453 reasonable examination necessary to ensure the medical suitability
454 of a part that is or could be the subject of an anatomical gift



455 for transplantation, therapy, research, or education from a donor
456 or a prospective donor. The organ procurement organizations,
457 tissue bank, or eye bank, or hospital medical professionals under
458 the direction thereof, may perform any and all tests to evaluate
459 the deceased as a potential donor and any invasive procedures on
460 the deceased body in order to preserve the potential donor's
461 organs. During the examination period, measures necessary to
462 ensure the medical suitability of the part may not be withdrawn
463 unless the hospital or procurement organization knows that the
464 individual expressed a contrary intent. The procurement
465 organization representative shall initiate the consent process
466 with reasonable discretion and sensitivity to the family's
467 circumstances, values and beliefs.

468 (d) Unless prohibited by law other than this law, at any
469 time after a donor's death, the person to which a part passes
470 under Section 11 may conduct any reasonable examination necessary
471 to ensure the medical suitability of the body or part for its
472 intended purpose.

473 (e) Unless prohibited by law other than this law, an
474 examination under subsection (c) or (d) may include an examination
475 of all medical and dental records of the donor or prospective
476 donor.

477 (f) Upon the death of a minor who was a donor or had signed
478 a refusal, unless a procurement organization knows the minor is
479 emancipated, the procurement organization shall conduct a
480 reasonable search for the parents of the minor and provide the
481 parents with an opportunity to revoke or amend the anatomical gift
482 or revoke the refusal.

483 (g) Upon referral by a hospital under subsection (a), a
484 procurement organization shall make a reasonable search for any
485 person listed in Section 9 having priority to make an anatomical
486 gift on behalf of a prospective donor. If a procurement
487 organization receives information that an anatomical gift to any



488 other person was made, amended, or revoked, it shall promptly
489 advise the other person of all relevant information.

490 (h) Subject to Sections 11(i) and 22, the rights of the
491 person to which a part passes under Section 11 are superior to the
492 rights of all others with respect to the part. The person may
493 accept or reject an anatomical gift in whole or in part. Subject
494 to the terms of the document of gift and this law, a person that
495 accepts an anatomical gift of an entire body may allow embalming,
496 burial or cremation, and use of remains in a funeral service. If
497 the gift is of a part, the person to which the part passes under
498 Section 11, upon the death of the donor and before embalming,
499 burial, or cremation, shall cause the part to be removed without
500 unnecessary mutilation.

501 (i) Neither the physician who attends the decedent at death
502 nor the physician who determines the time of the decedent's death
503 may participate in the procedures for removing or transplanting a
504 part from the decedent.

505 (j) A physician or technician may remove a donated part from
506 the body of a donor that the physician or technician is qualified
507 to remove.

508 **SECTION 15. COORDINATION OF PROCUREMENT AND USE.** Each
509 hospital in this state shall enter into agreements or affiliations
510 with procurement organizations for coordination of procurement and
511 use of anatomical gifts.

512 **SECTION 16. SALE OR PURCHASE OF PARTS PROHIBITED.** (a)
513 Except as otherwise provided in subsection (b), a person that for
514 valuable consideration, knowingly purchases or sells a part for
515 transplantation or therapy if removal of a part from an individual
516 is intended to occur after the individual's death commits a felony
517 and upon conviction is subject to a fine not exceeding Fifty
518 Thousand Dollars (\$50,000.00) or imprisonment not exceeding five
519 (5) years, or both.



520 (b) A person may charge a reasonable amount for the removal,
521 processing, preservation, quality control, storage,
522 transportation, implantation, or disposal of a part.

523 **SECTION 17. OTHER PROHIBITED ACTS.** A person that, in order
524 to obtain a financial gain, intentionally falsifies, forges,
525 conceals, defaces, or obliterates a document of gift, an amendment
526 or revocation of a document of gift, or a refusal commits a felony
527 and upon conviction is subject to a fine not exceeding Fifty
528 Thousand Dollars (\$50,000.00) or imprisonment not exceeding five
529 (5) years, or both.

530 **SECTION 18. IMMUNITY.** (a) Any person who, in good faith
531 and acting in reliance upon and authorization made under the
532 provisions of this law and without notice of revocation thereof,
533 takes possession of, performs surgical operations upon, removes
534 tissue, substances or parts from the human body, or refuses such a
535 gift, and any person who unknowingly fails to carry out the wishes
536 of the donor according to the provisions of this law shall not be
537 liable for damages in a civil action brought against him for that
538 act.

539 (b) Neither the person making an anatomical gift nor the
540 donor's estate is liable for any injury or damage that results
541 from the making or use of the gift.

542 (c) In determining whether an anatomical gift has been made,
543 amended, or revoked under this law, a person may rely upon
544 representations of an individual listed in Section 9(a)(2), (3),
545 (4), (5), (6), (7), or (8) relating to the individual's
546 relationship to the donor or prospective donor unless the person
547 knows that the representation is untrue.

548 **SECTION 19. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO**
549 **EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY.** (a) A
550 document of gift is valid if executed in accordance with:

551 (1) This law;



552 (2) The laws of the state or country where it was
553 executed; or

554 (3) The laws of the state or country where the person
555 making the anatomical gift was domiciled, has a place of
556 residence, or was a national at the time the document of gift was
557 executed.

558 (b) If a document of gift is valid under this section, the
559 law of this state governs the interpretation of the document of
560 gift.

561 (c) A person may presume that a document of gift or
562 amendment of an anatomical gift is valid unless that person knows
563 that it was not validly executed or was revoked.

564 **SECTION 20. DONOR REGISTRY.** (a) The Mississippi Department
565 of Public Safety may establish or contract for the establishment
566 of a donor registry.

567 (b) The Mississippi Department of Public Safety shall
568 cooperate with a person that administers any donor registry that
569 this state establishes, contracts for, or recognizes for the
570 purpose of transferring to the donor registry all relevant
571 information regarding a donor's making, amendment to, or
572 revocation of an anatomical gift.

573 (c) A donor registry must:

574 (1) Allow a donor or other person authorized under
575 Section 4 to include on the donor registry a statement or symbol
576 that the donor has made, amended, or revoked an anatomical gift;

577 (2) Be accessible to a procurement organization to
578 allow it to obtain relevant information on the donor registry to
579 determine, at or near death of the donor or a prospective donor,
580 whether the donor or prospective donor has made, amended, or
581 revoked an anatomical gift; and

582 (3) Be accessible for purposes of paragraphs (1) and
583 (2) seven (7) days a week on a twenty-four-hour basis.



584 (d) Except as otherwise provided in subsection (f),
585 personally identifiable information on a donor registry about a
586 donor or prospective donor may not be used or disclosed without
587 the express consent of the donor, prospective donor, or person
588 that made the anatomical gift for any purpose other than to
589 determine, at or near death of the donor or prospective donor,
590 whether the donor or prospective donor has made, amended, or
591 revoked an anatomical gift.

592 (e) This section does not prohibit any person from creating
593 or maintaining a donor registry that is not established by or
594 under contract with the state. Any such registry must comply with
595 subsections (c) and (d).

596 (f) At the time that a person is renewing his or her
597 driver's license, the Department of Public Safety shall ask the
598 person if he or she would like to be a donor. If the answer is
599 yes, the department shall inform the prospective donor that his or
600 her decision to be a donor cannot be revoked, changed or contested
601 after his or her death by the donor's next of kin or by any other
602 person, and shall ask the person if he or she desires information
603 about the person's decision to be a donor to be sent to another
604 person or persons. If the answer is yes, the department shall
605 obtain the name and mailing address of the person or persons
606 designated by the prospective donor, and the donor registry shall
607 send the information about the prospective donor's decision to the
608 designated person or persons as requested.

609 **SECTION 21. EFFECT OF ANATOMICAL GIFT ON ADVANCE HEALTH CARE**

610 **DIRECTIVE.** (a) In this section:

611 (1) "Advance health care directive" means a power of
612 attorney for health care or a record signed or authorized by a
613 prospective donor containing the prospective donor's direction
614 concerning a health care decision for the prospective donor.

615 (2) "Declaration" means a record signed by a
616 prospective donor specifying the circumstances under which a life



617 support system may be withheld or withdrawn from the prospective
618 donor.

619 (3) "Health care decision" means any decision regarding
620 the health care of the prospective donor.

621 (b) If a prospective donor has a declaration or advance
622 health care directive and the terms of the declaration or
623 directive and the express or implied terms of a potential
624 anatomical gift are in conflict with regard to the administration
625 of measures necessary to ensure the medical suitability of a part
626 for transplantation or therapy, the prospective donor's attending
627 physician and prospective donor shall confer to resolve the
628 conflict. If the prospective donor is incapable of resolving the
629 conflict, an agent acting under the prospective donor's
630 declaration or directive, or, if none or the agent is not
631 reasonably available, another person authorized by law other than
632 this law to make health care decisions on behalf of the
633 prospective donor, shall act for the donor to resolve the
634 conflict. The conflict must be resolved as expeditiously as
635 possible. Information relevant to the resolution of the conflict
636 may be obtained from the appropriate procurement organization and
637 any other person authorized to make an anatomical gift for the
638 prospective donor under Section 9. Before resolution of the
639 conflict, measures necessary to ensure the medical suitability of
640 the part may not be withheld or withdrawn from the prospective
641 donor if withholding or withdrawing the measures is not
642 contraindicated by appropriate end-of-life care.

643 **SECTION 22. NOTIFICATION OF MEDICAL EXAMINER IF DECEASED**

644 **PATIENT IS SUBJECT OF MEDICAL-LEGAL DEATH INVESTIGATION.** (a) If
645 the deceased patient is medically suitable to be an organ and/or
646 tissue donor, as determined by the procurement organization, and
647 the donor and/or family has authorized the donation and
648 transplantation, the donor's organs and/or tissues shall be
649 removed for the purpose of donation and transplantation by the



650 organ procurement organization, in accordance with subsection (b)
651 of this section.

652 (b) If the deceased patient is the subject of a
653 medical-legal death investigation, the procurement organization
654 shall immediately notify the appropriate medical examiner that the
655 deceased patient is medically suitable to be an organ and/or
656 tissue donor. If the medical examiner determines that
657 examination, analysis or autopsy of the organs and/or tissue is
658 necessary for the medical examiner's investigation, the medical
659 examiner may be present while the organs and/or tissues are
660 removed for the purpose of transplantation. The physician,
661 surgeon or technician removing the organs and/or tissues shall
662 file with the medical examiner a report detailing the donation,
663 which shall become part of the medical examiner's report. When
664 requested by the medical examiner, the report shall include a
665 biopsy or medically approved sample, as specified by the medical
666 examiner, from the donated organs and/or tissues.

667 (c) In a medical-legal death investigation, decisions about
668 organ and/or tissue donation and transplantation shall be made in
669 accordance with a protocol established and agreed upon by majority
670 vote of procurement organization, a certified state pathologist
671 who shall be appointed by the Mississippi Commissioner of Public
672 Safety, a representative from the University of Mississippi
673 Medical Center, a representative from the Mississippi Coroners
674 Association, an organ recipient who shall be appointed by the
675 Governor, the Director of the Mississippi Bureau of Investigation
676 of the Mississippi Department of Public Safety, and a
677 representative of the Mississippi Prosecutor's Association
678 appointed by the Attorney General. The protocol shall be
679 established so as to maximize the total number of organs and/or
680 tissues available for donation and transplantation. Organs and/or
681 tissues designated by virtue of this protocol shall be recovered.
682 The protocol shall be reviewed and evaluated on an annual basis.



683 **SECTION 23.** **UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
684 applying and construing this uniform act, consideration must be
685 given to the need to promote uniformity of the law with respect to
686 its subject matter among states that enact it.

687 **SECTION 24.** **RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
688 **NATIONAL COMMERCE ACT.** This law modifies, limits, and supersedes
689 the Electronic Signatures in Global and National Commerce Act, 15
690 USCS Section 7001 et seq., but does not modify, limit or supersede
691 Section 101(a) of that act, 15 USCS Section 7001, or authorize
692 electronic delivery of any of the notices described in Section
693 103(b) of that act, 15 USCS Section 7003(b).

694 **SECTION 25.** **REPEALER.** Sections 1 through 24 of this act
695 shall stand repealed on July 1, 2012.

696 **SECTION 26.** Sections 41-39-15, 41-39-31, 41-39-33, 41-39-35,
697 41-39-37, 41-39-39, 41-39-41, 41-39-43, 41-39-45, 41-39-47,
698 41-39-49, 41-39-51 and 41-39-53, Mississippi Code of 1972, which
699 is the Uniform Anatomical Gift Act of 1970, are repealed.

700 **SECTION 27.** This act shall take effect and be in force from
701 and after July 1, 2008.

