MISSISSIPPI LEGISLATURE REGULAR SESSION 2012

By: Representative Formby

To: Public Health and Human Services

HOUSE BILL NO. 749

AN ACT TO REENACT SECTIONS 41-39-101 THROUGH 41-39-147, MISSISSIPPI CODE OF 1972, WHICH ARE THE REVISED MISSISSIPPI UNIFORM ANATOMICAL GIFT ACT; TO AMEND SECTION 41-39-149, MISSISSIPPI CODE OF 1972, TO DELETE THE REPEALER ON THE REVISED MISSISSIPPI UNIFORM ANATOMICAL GIFT ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-39-101, Mississippi Code of 1972, is reenacted as follows:

41-39-101. Short title. Sections 41-39-101 through 41-39-149 may be cited as the Revised Mississippi Uniform Anatomical Gift Act (UAGA).

SECTION 2. Section 41-39-103, Mississippi Code of 1972, is reenacted as follows:

41-39-103. Definitions. In Sections 41-39-101 through 41-39-149:

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

(2) "Agent" means an individual:

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

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

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

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term

includes a stillborn infant and, subject to restrictions imposed by law other than Sections 41-39-101 through 41-39-149, a fetus.

(5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 41-39-121.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(26) "Refusal" means a record created under Section 41-39-113 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

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

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

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

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

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

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

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

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

SECTION 3. Section 41-39-105, Mississippi Code of 1972, is reenacted as follows:

41-39-105. **Applicability.** Sections 41-39-101 through 41-39-149 apply to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

SECTION 4. Section 41-39-107, Mississippi Code of 1972, is reenacted as follows:

41-39-107. **Who may make anatomical gift before donor's death.** Subject to Section 41-39-115, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 41-39-109 by:

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

(A) Emancipated; or

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

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

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

(4) The donor's guardian.

SECTION 5. Section 41-39-109, Mississippi Code of 1972, is reenacted as follows:

41-39-109. **Manner of making anatomical gift before donor's death.** (a) A donor may make an anatomical gift:

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

(2) In a will;

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

(4) As provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under Section 41-39-107 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

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

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

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

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

SECTION 6. Section 41-39-111, Mississippi Code of 1972, is reenacted as follows:

41-39-111. **Amending or revoking anatomical gift before donor's death.** (a) Subject to Section 41-39-115, a donor or other person authorized to make an anatomical gift under Section 41-39-107 may amend or revoke an anatomical gift by:

(1) A record signed by:

(A) The donor;

(B) The other person; or

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

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

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

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

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

(c) Subject to Section 41-39-115, a donor or other person authorized to make an anatomical gift under Section 41-39-107 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

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

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

SECTION 7. Section 41-39-113, Mississippi Code of 1972, is reenacted as follows:

41-39-113. **Refusal to make anatomical gift; effect of refusal.** (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) A record signed by:

(A) The individual; or

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

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

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

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

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

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

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

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

(2) By subsequently making an anatomical gift pursuant to Section 41-39-109 that is inconsistent with the refusal; or

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

(d) Except as otherwise provided in Section 41-39-115(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

SECTION 8. Section 41-39-115, Mississippi Code of 1972, is reenacted as follows:

41-39-115. **Preclusive effect of anatomical gift, amendment, or revocation.** (a) Except as otherwise provided in subsection (g) and subject to subsection (f), in the absence of an express,

contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 41-39-109 or an amendment to an anatomical gift of the donor's body or part under Section 41-39-111.

(b) A donor's revocation of an anatomical gift of the donor's body or part under Section 41-39-111 is not a refusal and does not bar another person specified in Section 41-39-107 or 41-39-117 from making an anatomical gift of the donor's body or part under Section 41-39-109 or 41-39-119.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 41-39-109 or an amendment to an anatomical gift of the donor's body or part under Section 41-39-111, another person may not make, amend, or revoke the gift of the donor's body or part under Section 41-39-119.

(d) A revocation of an anatomical gift of a donor's body or part under Section 41-39-111 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 41-39-109 or 41-39-119.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 41-39-107, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 41-39-107, an anatomical gift of a part for one or more of the purposes set forth in Section 41-39-107 is not a limitation on the making of an anatomical gift of the part for any of the other

purposes by the donor or any other person under Section 41-39-109 or 41-39-119.

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

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

SECTION 9. Section 41-39-117, Mississippi Code of 1972, is reenacted as follows:

41-39-117. **Who may make anatomical gift of decedent's body or part.** (a) Subject to subsections (b) and (c) and unless barred by Section 41-39-113 or 41-39-115, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

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

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

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

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

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

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

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

SECTION 10. Section 41-39-119, Mississippi Code of 1972, is reenacted as follows:

41-39-119. **Manner of making, amending, or revoking anatomical gift of decedent's body or part.** (a) A person authorized to make an anatomical gift under Section 41-39-117 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c), an anatomical gift by a person authorized under Section 41-39-117 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one (1) member of the prior class is reasonably available, the gift made by a person authorized under Section 41-39-117 may be:

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

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

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

SECTION 11. Section 41-39-121, Mississippi Code of 1972, is reenacted as follows:

41-39-121. **Persons that may receive anatomical gift; purpose of anatomical gift.** (a) An anatomical gift may be made to the following persons named in the document of gift:

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

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

(3) An eye bank or tissue bank.

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

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

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

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

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the

appropriate organ procurement organization as custodian of the organ.

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

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

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

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

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

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

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

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

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a)(2),

passes to the organ procurement organization as custodian of the organ.

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

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 41-39-109 or 41-39-119 or if the person knows that the decedent made a refusal under Section 41-39-113 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subsection (a)(2), nothing in Sections 41-39-101 through 41-39-149 affects the allocation of organs for transplantation or therapy.

SECTION 12. Section 41-39-123, Mississippi Code of 1972, is reenacted as follows:

41-39-123. **Search and notification.** (a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

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

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

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a)(1) and the individual or deceased individual to whom it relates is taken

to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

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

SECTION 13. Section 41-39-125, Mississippi Code of 1972, is reenacted as follows:

41-39-125. **Delivery of document of gift not required; right to examine.** (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 41-39-121.

SECTION 14. Section 41-39-127, Mississippi Code of 1972, is reenacted as follows:

41-39-127. **Rights and duties of procurement organization and others.** (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Mississippi Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

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

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability

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

(d) Unless prohibited by law other than Sections 41-39-101 through 41-39-149, at any time after a donor's death, the person to which a part passes under Section 41-39-121 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than Sections 41-39-101 through 41-39-149, an examination under subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

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

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in Section 41-39-117 having priority to make an anatomical gift on behalf of a prospective donor. If a

procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to Sections 41-39-121(i) and 41-39-143, the rights of the person to which a part passes under Section 41-39-121 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and Sections 41-39-101 through 41-39-149, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 41-39-121, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

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

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

SECTION 15. Section 41-39-129, Mississippi Code of 1972, is reenacted as follows:

41-39-129. **Coordination of procurement and use.** Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

SECTION 16. Section 41-39-131, Mississippi Code of 1972, is reenacted as follows:

41-39-131. **Sale or purchase of parts prohibited.** (a) Except as otherwise provided in subsection (b), a person that, for valuable consideration, knowingly purchases or sells a part for

transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a felony and upon conviction is subject to a fine not exceeding Fifty Thousand Dollars ($50,000.00) or imprisonment not exceeding five (5) years, or both.

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

SECTION 17. Section 41-39-133, Mississippi Code of 1972, is reenacted as follows:

41-39-133. **Other prohibited acts.** A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a felony and upon conviction is subject to a fine not exceeding Fifty Thousand Dollars ($50,000.00) or imprisonment not exceeding five (5) years, or both.

SECTION 18. Section 41-39-135, Mississippi Code of 1972, is reenacted as follows:

41-39-135. **Immunity.** (a) Any person who, in good faith and acting in reliance upon and authorization made under the provisions of Sections 41-39-101 through 41-39-149 and without notice of revocation thereof, takes possession of, performs surgical operations upon, removes tissue, substances or parts from the human body, or refuses such a gift, and any person who unknowingly fails to carry out the wishes of the donor according to the provisions of Sections 41-39-101 through 41-39-149 shall not be liable for damages in a civil action brought against him for that act.

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

(c) In determining whether an anatomical gift has been made, amended, or revoked under Sections 41-39-101 through 41-39-149, a person may rely upon representations of an individual listed in Section 41-39-117(a)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

SECTION 19. Section 41-39-137, Mississippi Code of 1972, is reenacted as follows:

41-39-137. **Law governing validity; choice of law as to execution of document of gift; presumption of validity.** (a) A document of gift is valid if executed in accordance with:

(1) Sections 41-39-101 through 41-39-149;

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

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

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

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

SECTION 20. Section 41-39-139, Mississippi Code of 1972, is reenacted as follows:

41-39-139. **Donor registry.** (a) The Mississippi Department of Public Safety may establish or contract for the establishment of a donor registry.

(b) The Mississippi Department of Public Safety shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant

information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(c) A donor registry must:

(1) Allow a donor or other person authorized under Section 41-39-107 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

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

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

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

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

(f) At the time that a person is renewing his or her driver's license, the Department of Public Safety shall ask the person if he or she would like to be a donor. If the answer is yes, the department shall inform the prospective donor that his or her decision to be a donor cannot be revoked, changed or contested after his or her death by the donor's next of kin or by any other person, and shall ask the person if he or she desires information

about the person's decision to be a donor to be sent to another person or persons. If the answer is yes, the department shall obtain the name and mailing address of the person or persons designated by the prospective donor, and the donor registry shall send the information about the prospective donor's decision to the designated person or persons as requested.

SECTION 21. Section 41-39-141, Mississippi Code of 1972, is reenacted as follows:

41-39-141. **Effect of anatomical gift on advance health care directive.** (a) In this section:

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

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

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

(b) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than Sections 41-39-101 through 41-39-149 to make health care decisions on behalf of the prospective donor, shall act for the donor to

resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 41-39-117. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

SECTION 22. Section 41-39-143, Mississippi Code of 1972, is reenacted as follows:

41-39-143. **Notification of medical examiner if deceased patient is subject to medical-legal death investigation.** (a) If the deceased patient is medically suitable to be an organ and/or tissue donor, as determined by the procurement organization, 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 subsection (b) of this section.

(b) If the deceased patient is the subject of a medical-legal death investigation, the 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 of 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.

SECTION 23. Section 41-39-145, Mississippi Code of 1972, is reenacted as follows:

41-39-145. **Uniformity of application and construction.** In applying and construing Sections 41-39-101 through 41-39-149, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 24. Section 41-39-147, Mississippi Code of 1972, is reenacted as follows:

41-39-147. **Relation to Electronic Signatures in Global and National Commerce Act.** Sections 41-39-101 through 41-39-149 modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001 et seq., but do not modify, limit or supersede Section 101(a) of that act, 15 USCS Section 7001, or authorize electronic delivery of any of the

notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SECTION 25. Section 41-39-149, Mississippi Code of 1972, which provides for a repealer on the revised Mississippi Uniform Anatomical Gift Set, is repealed.

SECTION 26. This act shall take effect and be in force from and after July 1, 2012.