MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representatives Bain, Oliver, Williams-Barnes

To: Judiciary B

HOUSE BILL NO. 286

AN ACT TO AUTHORIZE CEMETERY OWNERS TO DISINTER DEAD HUMAN REMAINS FOR REINTERMENT OR FOR TRANSPORTATION FROM THE CEMETERY PURSUANT TO WRITTEN INSTRUCTIONS OF THE NEXT OF KIN, OR PURSUANT TO A FINAL ORDER OF THE CHANCERY COURT IN THE COUNTY IN WHICH THE CEMETERY IS LOCATED, OR IN ORDER TO CORRECT AN ERROR MADE IN THE ORIGINAL INTERMENT OF THE REMAINS UPON NOTICE; TO PROVIDE IMMUNITY FROM LIABILITY FOR OWNERS OF CEMETERIES AND FUNERAL ESTABLISHMENTS AND THEIR EMPLOYEES, OFFICERS AND DIRECTORS FOR CLAIMS ARISING FROM THE DISINTERMENT AND REINTERMENT OR DELIVERY OF DEAD HUMAN REMAINS MADE IN ACCORDANCE WITH THIS ACT; TO AMEND SECTIONS 41-37-25 AND 41-39-117, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS.

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

SECTION 1. (1) A person or entity that owns a cemetery in which dead human remains are buried or otherwise interred is authorized to disinter individual remains and either reinter the remains at another location within the cemetery or deliver the remains to a carrier for transportation out of the cemetery, all pursuant to written instructions signed and acknowledged by the next of kin of the deceased person as defined in subsection (2) of this section. The costs of the disinterment and reinterment or delivery shall be paid by the next of kin.

(2) For purposes of this section, the term "next of kin"

means the following persons in the priority listed if the person is eighteen (18) years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(a) The decedent's spouse, if the spouse has not remarried.

(b) The decedent's children.

(c) The decedent's parents.

(d) The decedent's siblings.

(3) If the person or entity that owns the cemetery has received contrary written instructions from members of the same class with the highest priority under subsection (2) of this section regarding the disinterment and reinterment of the individual remains at another location within the cemetery or delivery of the individual remains for transportation out of the cemetery, the person or entity that owns the cemetery shall act in accordance with the written instructions received from the greatest number of members of the class. If that number is equal, the person or entity that owns the cemetery shall act in accordance with the earlier written instructions unless the person(s) providing the later written instructions is granted an order from the chancery court for the county in which the cemetery is located.

(4) A person or entity that owns a cemetery in which dead human remains are buried or otherwise interred is authorized to disinter individual remains and either reinter the remains at

another location within the cemetery or deliver the remains to a carrier for transportation out of the cemetery, all pursuant to a final order issued by the chancery court for the county in which the cemetery is located. The court may issue the order, in the court's discretion and upon such notice and hearing as the court deems appropriate, for good cause shown. The costs of the disinterment and reinterment or delivery, and the related court proceedings, shall be paid by the persons or entities so ordered by the court.

(5) A person or entity that owns a cemetery in which dead human remains are buried or otherwise interred is authorized, at the cemetery owner's expense, to disinter individual remains and reinter the remains at another location within the cemetery in order to correct an error made in the original burial or interment of the remains. The cemetery owner shall provide written notice of the disinterment and reinterment to the last known address of the known next of kin of the deceased person as defined in subsection (2) of this section, in the priority listed, by certified mail not later than the fifth day after the date the remains are disinterred and reinterred. The notice shall indicate that the remains were disinterred, the reason for the disinterment and reinterment of the remains, and the location of the reinterred remains.

(6) A person or entity that owns a cemetery or funeral establishment, and its employees, officers and directors, shall

not be liable to any person or entity for any claims, causes of action, or damages arising out of or resulting from the original interment and the disinterment and reinterment or delivery of dead human remains made in accordance with this section, except in cases of intentional misconduct or malice.

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

41-37-25. An autopsy may be performed without court order by a qualified physician when authorized by (a) the decedent, during his lifetime, or (b) any of the following persons who *** * *** have assumed custody of the body for the purpose of burial: a surviving spouse, either parent or any person in loco parentis, a descendant over the age of eighteen (18) years, a guardian, or the next of kin. In the absence of any of the foregoing persons any friend of the deceased who has assumed responsibility for burial, or any other person charged by law with responsibility for burial, may give such consent. If two (2) or more persons have assumed custody of the body of an adult for purposes of burial, the consent of one (1) such person shall be deemed sufficient.

In the case of a minor, however, the consent of either parent shall be deemed sufficient, unless the other parent gives written notice to the physician who is to perform the autopsy of such parent's objection thereto *** * *** before the beginning of the autopsy. *** * *** If neither parent has legal custody of the minor, the guardian shall have the right to authorize an autopsy. The

fees provided in this chapter for autopsies in criminal investigations shall not be applicable to this section.

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

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

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

41-39-117. (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.

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

SECTION 4. This act shall take effect and be in force from and after July 1, 2021.