

1 **POSTMORTEM PROCEDURES AMENDMENTS**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Bradley M. Daw**

5 Senate Sponsor: Luz Robles

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Vital Statistics Act and the Division of
10 Occupational and Professional Licensing Act relating to the signing and filing of a
11 certificate of death, and the release, transportation, and disposition of a dead body or
12 dead fetus.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ provides that, if a funeral service director is not retained, a designated agent or the
17 next of kin of a decedent may sign and file the decedent's certificate of death;
- 18 ▶ describes other rights and responsibilities of a designated agent or the next of kin of
19 a decedent, when a funeral service director is not retained;
- 20 ▶ makes it a class B misdemeanor for a person to intentionally sign the portion of a
21 certificate of death that is required to be signed by a funeral service director or a
22 dispositioner, unless the person:
 - 23 • is a funeral service director, employed by a licensed funeral establishment; or
 - 24 • is a dispositioner, if a funeral service director is not retained;

24a **↔→** ▶ **provides that a dispositioner may not sign a certificate of death, unless the signature**
24b **is witnessed by the state registrar or a local registrar;** **←↔**

- 25 ▶ requires the state registrar to post information on the state registrar's website,
26 providing instructions to a dispositioner for complying with the requirements of law
27 relating to the dispositioner's responsibilities for:



- 28 • completing and filing a certificate of death; and
- 29 • possessing, transporting, and disposing of a dead body or dead fetus;

29a **Ĥ→ ▶ provides that it is unlawful for a disposer to charge for, or receive remuneration**
 29b **for, signing a certificate of death or performing other duties of a disposer; ←Ĥ**

30 ▶ provides that the Utah Vital Statistics Act shall be construed to avoid interference,
 31 to the fullest extent possible, with the ceremonies, customs, rites, or beliefs of the
 32 decedent and the decedent's next of kin for disposing of a dead body or dead fetus;

33 ▶ provides civil immunity to a person or institution who, in good faith, releases a dead
 34 body or dead fetus to a funeral service director or a disposer;

35 ▶ provides that, if an authorizing agent informs a funeral service establishment of the
 36 presence of a pacemaker or other battery-powered, potentially hazardous implant,
 37 and the funeral service establishment fails to have the pacemaker or implant
 38 removed prior to cremation, then the funeral service establishment is liable for
 39 resulting damages; and

40 ▶ makes technical changes.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 None

45 **Utah Code Sections Affected:**

46 AMENDS:

47 **26-2-2**, as last amended by Laws of Utah 2006, Chapter 56

48 **26-2-13**, as last amended by Laws of Utah 2007, Chapter 32

49 **26-2-16**, as last amended by Laws of Utah 2006, Chapter 56

50 **26-2-23**, as last amended by Laws of Utah 2000, Chapter 86

51 **58-9-610**, as enacted by Laws of Utah 2008, Chapter 353

53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **26-2-2** is amended to read:

55 **26-2-2. Definitions.**

56 As used in this chapter:

57 (1) "Custodial funeral service director" means a funeral service director who:

58 (a) is employed by a licensed funeral establishment; and

59 (b) has custody of a dead body.

60 (2) "Dead body" or "decedent" means a human body or parts of the human body from
61 the condition of which it reasonably may be concluded that death occurred.

62 (3) "Dead fetus" means a product of human conception:

63 (a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual
64 period began to the date of delivery; and

65 (b) that was not born alive.

66 (4) "Declarant father" means a male who claims to be the genetic father of a child, and,
67 along with the biological mother, signs a voluntary declaration of paternity to establish the
68 child's paternity.

69 (5) "Dispositioner" means:

70 (a) a person designated in a written instrument, under Subsection 58-9-602(1), as

71 having the right and duty to control the disposition of the decedent ~~H→~~, if the person voluntarily
71a acts as the dispositioner ~~←H~~ ; or

72 (b) the next of kin of the decedent, if:

73 (i) ~~H→~~ (A) ~~←H~~ a person has not been designated as described in Subsection (5)(a); or

74 ~~H→~~ [(iii)] (B) ~~←H~~ the person described in Subsection (5)(a) is unable or unwilling to
74a exercise the

75 right and duty described in Subsection (5)(a) ~~H→~~ ; and

75a (ii) the next of kin voluntarily acts as the dispositioner ~~←H~~ .

76 ~~(5)~~ (6) "File" means the submission of a completed certificate or other similar
77 document, record, or report as provided under this chapter for registration by the state registrar
78 or a local registrar.

79 ~~(6)~~ (7) "Funeral service director" is as defined in Section 58-9-102.

80 ~~(7)~~ (8) "Health care facility" is as defined in Section 26-21-2.

81 ~~(8)~~ (9) "Licensed funeral establishment" means a funeral establishment, as defined in
82 Section 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act.

83 ~~(9)~~ (10) "Live birth" means the birth of a child who shows evidence of life after [it]
84 the child is entirely outside of the mother.

85 ~~(10)~~ (11) "Local registrar" means a person appointed under Subsection 26-2-3(2)(b).

86 ~~(11)~~ (12) "Physician" means a person licensed to practice as a physician or osteopath
87 in this state under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah
88 Osteopathic Medical Practice Act.

89 ~~(12)~~ (13) "Presumed father" means the father of a child conceived or born during a

90 marriage as defined in Section 30-1-17.2.

91 ~~[(13)]~~ (14) "Registration" or "register" means acceptance by the local or state registrar
92 of a certificate and incorporation of ~~[it]~~ the certificate into the permanent records of the state.

93 ~~[(14)]~~ (15) "State registrar" means the state registrar of vital records appointed under
94 Subsection 26-2-3(1)(e).

95 ~~[(15)]~~ (16) "Vital records" means:

96 (a) registered certificates or reports of birth, death, fetal death, marriage, divorce,
97 dissolution of marriage, or annulment~~[-];~~

98 (b) amendments to any of ~~[these]~~ the registered certificates or reports~~[-];~~ described in
99 Subsection (16)(a); and

100 (c) other similar documents.

101 ~~[(16)]~~ (17) "Vital statistics" means the data derived from registered certificates and
102 reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce,
103 dissolution of marriage, or annulment.

104 Section 2. Section **26-2-13** is amended to read:

105 **26-2-13. Certificate of death -- Execution and registration requirements.**

106 (1) (a) A certificate of death for each death ~~[which]~~ that occurs in this state shall be
107 filed with the local registrar of the district in which the death occurs, or as otherwise directed
108 by the state registrar, within five days after death and prior to the decedent's interment, any
109 other disposal, or removal from the registration district where the death occurred.

110 (b) A certificate of death shall be registered if ~~[it]~~ the certificate of death is completed
111 and filed in accordance with this chapter.

112 (2) (a) If the place of death is unknown but the dead body is found in this state~~[-];~~

113 (i) the certificate of death shall be completed and filed in accordance with this
114 section~~[-];~~ and

115 ~~[(b) The]~~ (ii) the place where the dead body is found shall be shown as the place of
116 death.

117 ~~[(c)]~~ (b) If the date of death is unknown, the date shall be determined by
118 approximation.

119 (3) (a) When death occurs in a moving conveyance in the United States and the
120 decedent is first removed from the conveyance in this state:

121 (i) the certificate of death shall be filed with:
 122 (A) the local registrar of the district where the decedent is removed; or
 123 (B) a person designated by the state registrar; and
 124 (ii) the place where the decedent is removed shall be considered the place of death.
 125 (b) When a death occurs on a moving conveyance outside the United States and the
 126 decedent is first removed from the conveyance in this state:

127 (i) the certificate of death shall be filed with:
 128 (A) the local registrar of the district where the decedent is removed; or
 129 (B) a person designated by the state registrar; and
 130 (ii) the certificate of death shall show the actual place of death to the extent it can be
 131 determined.

132 (4) (a) ~~H~~→ **[The] Subject to Subsections (4)(d) and (10), a** ~~←H~~ custodial funeral service
 132a director or, if a funeral service director is not
 133 retained, a dispositioner shall sign the certificate of death.

134 (b) The custodial funeral service director [~~or~~], an agent of the custodial funeral service
 135 director, or, if a funeral service director is not retained, a dispositioner shall:

136 (i) file the certificate of death prior to any disposition of a dead body or fetus; and
 137 (ii) obtain the decedent's personal data from the next of kin or the best qualified person
 138 or source available, including the decedent's Social Security number, if known[~~;-however, the~~].

139 (c) The certificate of death may not include the decedent's Social Security number.

139a ~~H~~→ **(d) A dispositioner may not sign a certificate of death, unless the signature is witnessed**
 139b **by the state registrar or a local registrar.** ~~←H~~

140 (5) (a) The medical section of the certificate of death shall be completed, signed, and
 141 returned to the funeral service director, or, if a funeral service director is not retained, a
 142 dispositioner, within 72 hours after death by the physician who was in charge of the decedent's
 143 care for the illness or condition which resulted in death, except when inquiry is required by
 144 Title 26, Chapter 4, Utah Medical Examiner Act.

145 (b) In the absence of the physician or with the physician's approval, the certificate of
 146 death may be completed and signed by an associate physician, the chief medical officer of the
 147 institution in which death occurred, or a physician who performed an autopsy upon the
 148 decedent, [~~provided~~] if:

149 (i) the person has access to the medical history of the case[~~;~~];
 150 (ii) the person views the decedent at or after death[~~;~~]; and
 151 (iii) the death is not due to causes required to be investigated by the medical examiner.

152 (6) When death occurs more than 30 days after the decedent was last treated by a
153 physician, the case shall be referred to the medical examiner for investigation to determine and
154 certify the cause, date, and place of death.

155 (7) When inquiry is required by Title 26, Chapter 4, Utah Medical Examiner Act, the
156 medical examiner shall make an investigation and complete and sign the medical section of the
157 certificate of death within 72 hours after taking charge of the case.

158 (8) If the cause of death cannot be determined within 72 hours after death:

159 (a) the medical section of the certificate of death shall be completed as provided by
160 department rule;

161 (b) the attending physician or medical examiner shall give the funeral service director,
162 or, if a funeral service director is not retained, a dispositioner, notice of the reason for the
163 delay; and

164 (c) final disposition of the decedent may not be made until authorized by the attending
165 physician or medical examiner.

166 (9) (a) When a death is presumed to have occurred within this state but the dead body
167 cannot be located, a certificate of death may be prepared by the state registrar upon receipt of
168 an order of a Utah district court.

169 (b) The order described in Subsection (9)(a) shall include a finding of fact stating the
170 name of the decedent, the date of death, and the place of death.

171 (c) A certificate of death prepared under Subsection (9)(a) shall:

172 (i) show the date of registration; and

173 (ii) identify the court and the date of the order.

173a **H→ (10) It is unlawful for a dispositioner to charge for or accept any remuneration for:**

173b **(a) signing a certificate of death; or**

173c **(b) performing any other duty of a dispositioner, as described in this section. ←H**

174 Section 3. Section **26-2-16** is amended to read:

175 **26-2-16. Certificate of death -- Duties of a custodial funeral service director, an**
176 **agent of a funeral service director, or a dispositioner -- Medical certification -- Records of**
177 **funeral service director or dispositioner -- Information filed with local registrar --**
178 **Unlawful signing of certificate of death.**

179 (1) The custodial funeral service director or, if a funeral service director is not retained,
180 a dispositioner shall sign the certificate of death prior to any disposition of a dead body or dead
181 fetus.

182 (2) The custodial funeral service director [~~or~~], an agent of the custodial funeral service

183 director, or, if a funeral service director is not retained, a dispositioner shall:

184 (a) obtain personal and statistical information regarding the decedent from the
185 available persons best qualified to provide the information;

186 (b) present the certificate of death to the attending physician, if any, or to the medical
187 examiner who shall certify the cause of death and other information required on the certificate
188 of death;

189 (c) provide the address of the custodial funeral service director or, if a funeral service
190 director is not retained, a dispositioner;

191 (d) certify the date and place of burial; and

192 (e) file the certificate of death with the state or local registrar.

193 (3) A funeral service director, dispositioner, embalmer, or other person who removes a
194 dead body or dead fetus from the place of death or transports or is in charge of final disposal of
195 a dead body or dead fetus, shall keep a record identifying the dead body or dead fetus, and
196 containing information pertaining to receipt, removal, and delivery of the dead body or dead
197 fetus as prescribed by department rule.

198 (4) (a) Not later than the tenth day of each month, every licensed funeral service
199 establishment shall send to the local registrar and the department a list of the information
200 required in Subsection (3) for each casket furnished and for funerals performed when no casket
201 was furnished, during the preceding month.

202 (b) The list described in Subsection (4)(a) shall be in the form prescribed by the state
203 registrar.

204 (5) Any person who intentionally signs the portion of a certificate of death that is
205 required to be signed by a funeral service director or a dispositioner under Subsection (1) is
206 guilty of a class B misdemeanor, unless the person:

207 (a) (i) is a funeral service director; and

208 [~~(b)~~] (ii) is employed by a licensed funeral establishment[-:]; or

209 (b) is a dispositioner, if a funeral service director is not retained.

210 (6) The state registrar shall post information on the state registrar's website, providing
211 instructions to a dispositioner for complying with the requirements of law relating to the
212 dispositioner's responsibilities for:

213 (a) completing and filing a certificate of death; and

214 (b) possessing, transporting, and disposing of a dead body or dead fetus.

215 (7) The provisions of this chapter shall be construed to avoid interference, to the fullest
216 extent possible, with the ceremonies, customs, rites, or beliefs of the decedent and the
217 decedent's next of kin for disposing of a dead body or dead fetus.

218 Section 4. Section **26-2-23** is amended to read:

219 **26-2-23. Records required to be kept by health care institutions -- Information**
220 **filed with local registrar and department.**

221 (1) (a) All administrators or other persons in charge of hospitals, nursing homes, or
222 other institutions, public or private, to which persons resort for treatment of diseases,
223 confinements, or are committed by law, shall record all the personal and statistical information
224 about patients of their institutions as required in certificates prescribed by this chapter.

225 (b) ~~[This]~~ The information described in Subsection (1)(a) shall:

226 (i) be recorded for collection at the time of admission of ~~[the patients and shall]~~ a
227 patient;

228 (ii) be obtained from the patient, if possible[;]; and

229 (iii) if ~~[not]~~ the information cannot be obtained from the patient, the information shall
230 be secured in as complete a manner as possible from other persons acquainted with the facts.

231 (2) (a) When a dead body or dead fetus is released or disposed of by an institution, the
232 person in charge of the institution shall keep a record showing:

233 (i) the name of the deceased[;];

234 (ii) the date of death[;] of the deceased;

235 (iii) the name and address of the person to whom the dead body or dead fetus is
236 released[;]; and

237 (iv) the date ~~[of removal]~~ that the dead body or dead fetus is removed from the
238 institution.

239 (b) If final disposal is by the institution, the date, place, manner of disposition, and the
240 name of the person authorizing disposition shall be recorded by the person in charge of the
241 institution.

242 (3) Not later than the tenth day of each month, the administrator of each institution
243 shall cause to be sent to the local registrar and the department a list of all births, deaths, fetal
244 deaths, and induced abortions occurring in ~~[his]~~ the institution during the preceding month. The

245 ~~[lists]~~ list shall be in the form prescribed by the state registrar.

246 (4) A person or institution who, in good faith, releases a dead body or dead fetus, under
247 this section, to a funeral service director or a disposer, is immune from civil liability
248 connected, directly or indirectly, with release of the dead body or dead fetus.

249 Section 5. Section **58-9-610** is amended to read:

250 **58-9-610. Cremation procedures.**

251 (1) A funeral service establishment may not cremate human remains until a death
252 certificate is completed and filed with the office of vital statistics and the county health
253 department as indicated on the regular medical certificate of death or the coroner's certificate.

254 (2) (a) A funeral service establishment may not cremate human remains with a
255 pacemaker or other battery-powered potentially hazardous implant in place.

256 (b) (i) An authorizing agent for the cremation of human remains is responsible for
257 informing the funeral service establishment in writing on the cremation authorization form
258 about the presence of a pacemaker or other battery-powered, potentially hazardous implant in
259 the human remains to be cremated.

260 (ii) (A) ~~[The]~~ Except as provided in Subsection (2)(b)(ii)(B), the authorizing agent is
261 [ultimately] responsible to ensure that a pacemaker or other battery-powered, potentially
262 hazardous implant is removed prior to cremation.

263 (B) If the authorizing agent informs the funeral service establishment of the presence of
264 a pacemaker or other battery-powered, potentially hazardous implant under Subsection
265 (2)(b)(i), and the funeral service establishment fails to have ~~[it]~~ the pacemaker or other
266 battery-powered, potentially hazardous implant removed prior to cremation, then the funeral
267 service establishment ~~[and the authorizing agent are jointly]~~ is liable for all resulting damages.

268 (3) Only authorized persons are permitted in the crematory while human remains are in
269 the crematory area awaiting cremation, being cremated, or being removed from the cremation
270 chamber.

271 (4) (a) Simultaneous cremation of the human remains of more than one person within
272 the same cremation chamber or processor is not allowed, unless the funeral service
273 establishment has received specific written authorization to do so from the authorizing agent of
274 each person to be cremated.

275 (b) The written authorization, described in Subsection (4)(a), exempts the funeral

276 license establishment from liability for co-mingling of the cremated remains during the
277 cremation process.

278 (5) A funeral service establishment shall:

279 (a) verify the identification of human remains as indicated on a cremation container
280 immediately before placing ~~[them]~~ the human remains in the cremation chamber ~~[and]~~;

281 (b) attach a metal identification tag to the cremation container; ~~[and]~~

282 ~~[(b)]~~ (c) remove the identification tag from the cremation container; and

283 (d) place the identification tag near the cremation chamber control where ~~[it]~~ the
284 identification tag shall remain until the cremation process is complete.

285 (6) Upon completion of a cremation, the funeral service establishment shall:

286 (a) in so far as is possible, remove all of the recoverable residue of the cremation
287 process from the cremation chamber;

288 (b) separate all other residue from the cremation process from remaining bone
289 fragments, in so far as possible, and process the bone fragments so as to reduce them to
290 unidentifiable particles; and

291 (c) remove anything other than the unidentifiable bone particles from the cremated
292 residuals, as far as is possible, and dispose of that material.

293 (7) (a) A funeral service establishment shall pack cremated remains, including the
294 identification tag ~~[referred to]~~ described in Subsection (5)~~[(a)]~~, in a temporary container or urn
295 ordered by the authorizing agent.

296 (b) The container or urn shall be packed in clean packing materials and not be
297 contaminated with any other object, unless otherwise directed by the authorizing agent.

298 (c) If the cremated remains cannot fit within the designated temporary container or urn,
299 the funeral service establishment shall:

300 (i) return the excess to the authorizing agent or the agent's representative in a separate
301 container; and

302 (ii) mark both containers or urns on the outside with the name of the deceased person
303 and an indication that the cremated remains of the named decedent are in both containers or
304 urns.

305 (8) (a) If the cremated remains are to be shipped, then the funeral services
306 establishment shall pack the designated temporary container or urn in a suitable, sturdy

307 container.

308 (b) The funeral service establishment shall have the remains shipped only by a method

309 that:

310 (i) has an available internal tracing system; and

311 (ii) provides a receipt signed by the person accepting delivery.

Legislative Review Note

as of 1-23-09 4:23 PM

Office of Legislative Research and General Counsel

H.B. 265 - Postmortem Procedures Amendments

**Revised
Fiscal Note**

2009 General Session
State of Utah

State Impact

Enactment of this legislation requires a \$4,200 one-time General Fund appropriation in FY 2009 for programming costs to the Department of Health.

	<u>2009 Approp.</u>	<u>2010 Approp.</u>	<u>2011 Approp.</u>	<u>2009 Revenue</u>	<u>2010 Revenue</u>	<u>2011 Revenue</u>
General Fund, One-Time	\$4,200	\$0	\$0	\$0	\$0	\$0
Total	\$4,200	\$0	\$0	\$0	\$0	\$0

Individual, Business and/or Local Impact

Some individuals may be required to file a death certificate within 5 days of a death. These same individuals would save an average of \$1,711 through less payments to funeral directors. Some funeral businesses may be more liable for damages while some individuals may be less liable for damages. Local health departments may see an increase in responsibility for entering information for death certificates.