

HB0231S03 compared with HB0231S01

~~text~~ shows text that was in HB0231S01 but was deleted in HB0231S03.

text shows text that was not in HB0231S01 but was inserted into HB0231S03.

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Representative Cheryl K. Acton proposes the following substitute bill:

FETAL REMAINS RESTRICTIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses treatment of fetal remains.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it a class B misdemeanor to transport outside the state, or arrange for transport outside the state, fetal remains aborted or miscarried in the state, for any purpose other than individual burial, individual cremation, or ~~specialized pathology~~ medical testing, analysis, evaluation, or research under certain circumstances;
- ▶ prohibits use of aborted or miscarried fetal remains for experimentation; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-2-17, as last amended by Laws of Utah 2020, Chapter 251

26-28-102, as enacted by Laws of Utah 2007, Chapter 60

76-7-309, as last amended by Laws of Utah 2019, Chapter 124

76-7-310, as enacted by Laws of Utah 1974, Chapter 33

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

Section 1. Section **26-2-17** is amended to read:

26-2-17. Certificate of death -- Registration prerequisite to interment --

Burial-transit permits -- Procedure where body donated under anatomical gift law --

Permit for disinterment -- Unlawful transport of fetus.

(1) (a) A dead body or dead fetus may not be interred or otherwise disposed of or removed from the registration district in which death or fetal death occurred or the remains are found until a certificate of death is registered.

(b) Subsection (1)(a) does not apply to fetal remains for a fetus that is less than 20 weeks in gestational age.

(2) (a) For deaths or fetal deaths which occur in this state, no burial-transit permit is required for final disposition of the remains if:

(i) disposition occurs in the state and is performed by a funeral service director; or

(ii) the disposition takes place with authorization of the next of kin and in:

(A) a general acute hospital as that term is defined in Section 26-21-2, that is licensed by the department; or

(B) in a pathology laboratory operated under contract with a general acute hospital licensed by the department.

(b) For an abortion or miscarriage that occurs at a health care facility, no burial-transit permit is required for final disposition of the fetal remains if:

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(i) disposition occurs in the state and is performed by a funeral service director; or

(ii) the disposition takes place:

(A) with authorization of the parent of a miscarried fetus or the pregnant woman for an aborted fetus; and

(B) in a general acute hospital as that term is defined in Section 26-21-2, or a pathology laboratory operated under contract with a general acute hospital.

(3) (a) A burial-transit permit shall be issued by the local registrar of the district where the certificate of death or fetal death is registered:

(i) for a dead body or a dead fetus to be transported out of the state for final disposition; or

(ii) when disposition of the dead body or dead fetus is made by a person other than a funeral service director.

(b) For fetal remains that are less than 20 weeks in gestational age, a burial-transit permit shall be issued by the local registrar of the district where the health care facility that is in possession of the fetal remains is located:

(i) for the fetal remains to be transported out of the state for final disposition; or

(ii) when disposition of the fetal remains is made by a person other than a funeral service director.

(c) A local registrar issuing a burial-transit permit issued under Subsection (3)(b):

(i) may not require an individual to designate a name for the fetal remains; and

(ii) may leave the space for a name on the burial-transit permit blank; and

(d) shall redact from any public records maintained under this chapter any information:

(i) that is submitted under Subsection (3)(c); and

(ii) that may be used to identify the parent or pregnant woman.

(4) A burial-transit permit issued under the law of another state which accompanies a dead body, dead fetus, or fetal remains brought into this state is authority for final disposition of the dead body, dead fetus, or fetal remains in this state.

(5) [~~When~~] Subject to Subsection (7), if a dead body or dead fetus or any part of the dead body or dead fetus [~~has been~~] is donated under the Revised Uniform Anatomical Gift Act or similar laws of another state and the preservation of the gift requires the immediate transportation of the dead body, dead fetus, or any part of the body or fetus outside of the

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registration district in which death occurs or the remains are found, or into this state from another state, the dead body or dead fetus or any part of the body or fetus may be transported and the burial-transit permit required by this section obtained within a reasonable time after transportation.

(6) A permit for disinterment and reinterment is required prior to disinterment of a dead body, dead fetus, or fetal remains, except as otherwise provided by statute or department rule.

(7) (a) As used in this Subsection (7):

(i) "Aborted" means that a fetus has died from an abortion as that term is defined in Section 76-7-301.

(ii) "Fetus" means a product of human conception, regardless of gestational age.

(iii) "Individual burial" means burial in an individual grave.

(iv) "Individual cremation" means cremation that divides remains in a manner that allows for the separate collection of each individual's cremated remains.

(v) "Miscarried" means that a fetus has died from a spontaneous or accidental death before expulsion or extraction from the mother, regardless of the duration of the pregnancy.

(b) (i) It is unlawful to transport outside of the state, or arrange for transport outside of the state, fetal remains that are aborted or miscarried in the state, except for the sole purpose of:

~~(i) A~~ individual burial;

~~(ii) B~~ individual cremation;

~~(iii) if the fetus is miscarried, specialized pathology} or~~

~~(C) subject to Subsection (7)(b)(ii), medical testing, analysis, evaluation, or research to determine the cause of {the spontaneous or accidental death of the fetus; or~~

~~(iv) if the fetus is aborted under Section 76-7-302 for a severe brain abnormality; specialized pathology to determine the cause of the severe brain} a miscarriage or fetal abnormality.~~

~~(c) A violation of} ii) If a person transports outside of the state, or arranges for transport outside of the state, fetal remains that are aborted or miscarried in the state, for the purpose described in Subsection (7)(b){ is a class B misdemeanor} (i)(C), the person shall require by contract that the recipient of the fetal remains use the fetal remains for only the purpose described in Subsection (7)(b)(i)(C).~~

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Section 2. Section **26-28-102** is amended to read:

26-28-102. Definitions.

As used in this chapter:

- (1) "Adult" means an individual who is at least 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) a deceased individual whose body or part is or may be the source of an anatomical gift; and
 - (b) includes:
 - (i) a stillborn infant; and
 - (ii) subject to the restrictions in Subsection 26-2-17(7) and other restrictions imposed by law other than this chapter, a fetus.
- (5) (a) "Disinterested witness" means:
 - (i) 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
 - (ii) another adult who exhibited special care and concern for the individual.
- (b) "Disinterested witness" does not include a person to which an anatomical gift could pass under Section 26-28-111.
- (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 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

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amendments to or revocations of anatomical gifts.

(9) "Driver license" means a license or permit issued by the Driver License Division of the 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":

(a) means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual; and

(b) 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 Driver License Division of the Department of Public Safety.

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

(15) "Minor" means an individual who is under 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.

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(22) "Prospective donor":

(a) means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education; and

(b) 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 26-28-107 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":

(a) 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; and

(b) 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.

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(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 76-7-309 is amended to read:

76-7-309. Pathologist's report.

[Any] Subject to Subsection 26-2-17(7), any human tissue removed during an abortion shall be submitted to a pathologist who shall make a report, including whether:

- (1) the pregnancy was aborted by evacuating the uterus; and
- (2) a medical record indicates that, through a prenatal screening or other diagnostic test, the aborted fetus had or may have had Down syndrome.

Section ~~{3}~~4. Section 76-7-310 is amended to read:

76-7-310. Experimentation prohibited -- ~~{Testing}~~Medical testing for ~~{genetic defects}~~miscarriage or fetal abnormality.

(1) As used in this section:

(a) "Aborted fetus" means the same as that term is defined in Section 26-21-33.

(b) "Miscarried fetus" means the same as that term is defined in Section 26-21-34.

~~[Live unborn children]~~ (2) A live unborn child, aborted fetus, or miscarried fetus may not be used for experimentation~~], but when advisable, in the best medical judgment of the physician, may be tested for genetic defects~~].

(3) Subsection (2) does not prohibit medical testing, analysis, evaluation, or research to determine the cause of a miscarriage or fetal abnormality.