

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;
- 25 ▶ provides that a dispositioner may not sign a certificate of death, unless the
26 signature is witnessed by the state registrar or a local registrar;
- 27 ▶ requires the state registrar to post information on the state registrar's website,
28 providing instructions to a dispositioner for complying with the requirements of
29 law relating to the dispositioner's responsibilities for:

- 30 • completing and filing a certificate of death; and
- 31 • possessing, transporting, and disposing of a dead body or dead fetus;
- 32 ▶ provides that it is unlawful for a dispositioner to charge for, or receive
- 33 remuneration for, signing a certificate of death or performing other duties of a
- 34 dispositioner;
- 35 ▶ provides that the Utah Vital Statistics Act shall be construed to avoid interference,
- 36 to the fullest extent possible, with the ceremonies, customs, rites, or beliefs of the
- 37 decedent and the decedent's next of kin for disposing of a dead body or dead fetus;
- 38 ▶ provides civil immunity to a person or institution who, in good faith, releases a
- 39 dead body or dead fetus to a funeral service director or a dispositioner;
- 40 ▶ provides that, if an authorizing agent informs a funeral service establishment of the
- 41 presence of a pacemaker or other battery-powered, potentially hazardous implant,
- 42 and the funeral service establishment fails to have the pacemaker or implant
- 43 removed prior to cremation, then the funeral service establishment is liable for
- 44 resulting damages; and
- 45 ▶ makes technical changes.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

- 52 **26-2-2**, as last amended by Laws of Utah 2006, Chapter 56
- 53 **26-2-13**, as last amended by Laws of Utah 2007, Chapter 32
- 54 **26-2-16**, as last amended by Laws of Utah 2006, Chapter 56
- 55 **26-2-23**, as last amended by Laws of Utah 2000, Chapter 86
- 56 **58-9-610**, as enacted by Laws of Utah 2008, Chapter 353

57

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

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

60 **26-2-2. Definitions.**

61 As used in this chapter:

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

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

64 (b) has custody of a dead body.

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

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

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

70 (b) that was not born alive.

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

74 (5) "Dispositioner" means:

75 (a) a person designated in a written instrument, under Subsection 58-9-602(1), as
76 having the right and duty to control the disposition of the decedent, if the person voluntarily
77 acts as the dispositioner; or

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

79 (i) (A) a person has not been designated as described in Subsection (5)(a); or

80 (B) the person described in Subsection (5)(a) is unable or unwilling to exercise the
81 right and duty described in Subsection (5)(a); and

82 (ii) the next of kin voluntarily acts as the dispositioner.

83 [~~5~~] (6) "File" means the submission of a completed certificate or other similar
84 document, record, or report as provided under this chapter for registration by the state registrar
85 or a local registrar.

86 ~~[(6)]~~ (7) "Funeral service director" is as defined in Section 58-9-102.

87 ~~[(7)]~~ (8) "Health care facility" is as defined in Section 26-21-2.

88 ~~[(8)]~~ (9) "Licensed funeral establishment" means a funeral establishment, as defined in
89 Section 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act.

90 ~~[(9)]~~ (10) "Live birth" means the birth of a child who shows evidence of life after ~~[it]~~
91 the child is entirely outside of the mother.

92 ~~[(10)]~~ (11) "Local registrar" means a person appointed under Subsection 26-2-3(2)(b).

93 ~~[(11)]~~ (12) "Physician" means a person licensed to practice as a physician or osteopath
94 in this state under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah
95 Osteopathic Medical Practice Act.

96 ~~[(12)]~~ (13) "Presumed father" means the father of a child conceived or born during a
97 marriage as defined in Section 30-1-17.2.

98 ~~[(13)]~~ (14) "Registration" or "register" means acceptance by the local or state registrar
99 of a certificate and incorporation of ~~[it]~~ the certificate into the permanent records of the state.

100 ~~[(14)]~~ (15) "State registrar" means the state registrar of vital records appointed under
101 Subsection 26-2-3(1)(e).

102 ~~[(15)]~~ (16) "Vital records" means:

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

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

107 (c) other similar documents.

108 ~~[(16)]~~ (17) "Vital statistics" means the data derived from registered certificates and
109 reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce,
110 dissolution of marriage, or annulment.

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

112 **26-2-13. Certificate of death -- Execution and registration requirements.**

113 (1) (a) A certificate of death for each death ~~[which]~~ that occurs in this state shall be

114 filed with the local registrar of the district in which the death occurs, or as otherwise directed
115 by the state registrar, within five days after death and prior to the decedent's interment, any
116 other disposal, or removal from the registration district where the death occurred.

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

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

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

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

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

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

128 (i) the certificate of death shall be filed with:

129 (A) the local registrar of the district where the decedent is removed; or

130 (B) a person designated by the state registrar; and

131 (ii) the place where the decedent is removed shall be considered the place of death.

132 (b) When a death occurs on a moving conveyance outside the United States and the
133 decedent is first removed from the conveyance in this state:

134 (i) the certificate of death shall be filed with:

135 (A) the local registrar of the district where the decedent is removed; or

136 (B) a person designated by the state registrar; and

137 (ii) the certificate of death shall show the actual place of death to the extent it can be
138 determined.

139 (4) (a) ~~[The]~~ Subject to Subsections (4)(d) and (10), a custodial funeral service
140 director or, if a funeral service director is not retained, a disposer shall sign the certificate
141 of death.

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

144 (i) file the certificate of death prior to any disposition of a dead body or fetus; and

145 (ii) obtain the decedent's personal data from the next of kin or the best qualified
146 person or source available, including the decedent's Social Security number, if known[;]
147 ~~however, the~~].

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

149 (d) A dispositioner may not sign a certificate of death, unless the signature is
150 witnessed by the state registrar or a local registrar.

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

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

160 (i) the person has access to the medical history of the case[;];

161 (ii) the person views the decedent at or after death[;]; and

162 (iii) the death is not due to causes required to be investigated by the medical examiner.

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

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

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

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

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

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

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

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

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

183 (i) show the date of registration; and

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

185 (10) It is unlawful for a dispositioner to charge for or accept any remuneration for:

186 (a) signing a certificate of death; or

187 (b) performing any other duty of a dispositioner, as described in this section.

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

189 **26-2-16. Certificate of death -- Duties of a custodial funeral service director, an**
190 **agent of a funeral service director, or a dispositioner -- Medical certification -- Records**
191 **of funeral service director or dispositioner -- Information filed with local registrar --**
192 **Unlawful signing of certificate of death.**

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

196 (2) The custodial funeral service director [or], an agent of the custodial funeral service
197 director, or, if a funeral service director is not retained, a dispositioner shall:

- 198 (a) obtain personal and statistical information regarding the decedent from the
199 available persons best qualified to provide the information;
- 200 (b) present the certificate of death to the attending physician, if any, or to the medical
201 examiner who shall certify the cause of death and other information required on the certificate
202 of death;
- 203 (c) provide the address of the custodial funeral service director or, if a funeral service
204 director is not retained, a dispositioner;
- 205 (d) certify the date and place of burial; and
- 206 (e) file the certificate of death with the state or local registrar.
- 207 (3) A funeral service director, dispositioner, embalmer, or other person who removes a
208 dead body or dead fetus from the place of death or transports or is in charge of final disposal
209 of a dead body or dead fetus, shall keep a record identifying the dead body or dead fetus, and
210 containing information pertaining to receipt, removal, and delivery of the dead body or dead
211 fetus as prescribed by department rule.
- 212 (4) (a) Not later than the tenth day of each month, every licensed funeral service
213 establishment shall send to the local registrar and the department a list of the information
214 required in Subsection (3) for each casket furnished and for funerals performed when no
215 casket was furnished, during the preceding month.
- 216 (b) The list described in Subsection (4)(a) shall be in the form prescribed by the state
217 registrar.
- 218 (5) Any person who intentionally signs the portion of a certificate of death that is
219 required to be signed by a funeral service director or a dispositioner under Subsection (1) is
220 guilty of a class B misdemeanor, unless the person:
- 221 (a) (i) is a funeral service director; and
222 [~~(b)~~] (ii) is employed by a licensed funeral establishment[-]; or
223 (b) is a dispositioner, if a funeral service director is not retained.
- 224 (6) The state registrar shall post information on the state registrar's website, providing
225 instructions to a dispositioner for complying with the requirements of law relating to the

226 dispositioner's responsibilities for:

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

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

229 (7) The provisions of this chapter shall be construed to avoid interference, to the

230 fullest extent possible, with the ceremonies, customs, rites, or beliefs of the decedent and the

231 decedent's next of kin for disposing of a dead body or dead fetus.

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

233 **26-2-23. Records required to be kept by health care institutions -- Information**
234 **filed with local registrar and department.**

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

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

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

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

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

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

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

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

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

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

253 (b) If final disposal is by the institution, the date, place, manner of disposition, and the

254 name of the person authorizing disposition shall be recorded by the person in charge of the
255 institution.

256 (3) Not later than the tenth day of each month, the administrator of each institution
257 shall cause to be sent to the local registrar and the department a list of all births, deaths, fetal
258 deaths, and induced abortions occurring in ~~[his]~~ the institution during the preceding month.
259 The ~~[lists]~~ list shall be in the form prescribed by the state registrar.

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

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

264 **58-9-610. Cremation procedures.**

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

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

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

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

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

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

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

289 (b) The written authorization, described in Subsection (4)(a), exempts the funeral
290 license establishment from liability for co-mingling of the cremated remains during the
291 cremation process.

292 (5) A funeral service establishment shall:

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

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

296 ~~(b)~~ ~~(c)~~ remove the identification tag from the cremation container; and

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

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

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

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

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

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

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

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

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

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

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

322 (b) The funeral service establishment shall have the remains shipped only by a method
323 that:

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

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