

DISPOSITION OF A DEAD BODY

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Allen M. Christensen

House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill amends provisions of the Utah Vital Statistics Act and the Utah Medical Examiner Act to prohibit a person from rendering a dead body unavailable for postmortem investigation or autopsy, unless the person first obtains a permit from the medical examiner.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it a class B misdemeanor to engage in any conduct that makes a dead body unavailable for postmortem investigation, unless, before engaging in that conduct, the person obtains a permit from the medical examiner;
- ▶ states that the provisions and penalties for the crime of "abuse or desecration of a dead human body" supercede the provisions and penalties for the crime described in this bill;
- ▶ enacts provisions relating to the application, granting, and denial of an application for a permit to render a dead body unavailable for postmortem investigation;
- ▶ provides that the medical examiner may charge a fee to recover the costs of fulfilling the duties described in this bill; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-4-2**, as last amended by Laws of Utah 2002, Chapter 102

34 **58-9-610**, as enacted by Laws of Utah 2008, Chapter 353

35 ENACTS:

36 **26-2-18.5**, Utah Code Annotated 1953

37 **26-4-29**, Utah Code Annotated 1953

38

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

40 Section 1. Section **26-2-18.5** is enacted to read:

41 **26-2-18.5. Rendering a dead body unavailable for postmortem investigation.**

42 (1) As used in this section:

43 (a) "Medical examiner" is as defined in Section 26-4-2.

44 (b) "Unavailable for postmortem investigation" is as defined in Section 26-4-2.

45 (2) It is unlawful for a person to engage in any conduct that makes a dead body
46 unavailable for postmortem investigation, unless, before engaging in that conduct, the person
47 obtains a permit from the medical examiner to render the dead body unavailable for
48 postmortem investigation, under Section 26-4-29.

49 (3) A person who violates Subsection (2) is guilty of a class B misdemeanor.

50 (4) If a person engages in conduct that constitutes both a violation of this section and a
51 violation of Section 76-9-704, the provisions and penalties of Section 76-9-704 supercede the
52 provisions and penalties of this section.

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

54 **26-4-2. Definitions.**

55 As used in this chapter:

56 (1) "Dead body" is as defined in Section 26-2-2.

57 [+](2) "Death by violence" means death that resulted by the decedent's exposure to

58 physical, mechanical, or chemical forces, and includes death which appears to have been due
59 to homicide, death which occurred during or in an attempt to commit rape, mayhem,
60 kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats
61 of violence, assault with a dangerous weapon, assault with intent to commit any offense
62 punishable by imprisonment for more than one year, arson punishable by imprisonment for
63 more than one year, or any attempt to commit any of the foregoing offenses.

64 ~~[(2)]~~ (3) "Medical examiner" means the state medical examiner appointed pursuant to
65 Section 26-4-4 or a deputy appointed by the medical examiner.

66 ~~[(3)]~~ (4) "Regional pathologist" means a trained pathologist licensed to practice
67 medicine and surgery in the state, appointed by the medical examiner pursuant to Subsection
68 26-4-4~~[(2)]~~(3).

69 ~~[(4)]~~ (5) "Sudden death while in apparent good health" means apparently
70 instantaneous death without obvious natural cause, death during or following an unexplained
71 syncope or coma, or death during an acute or unexplained rapidly fatal illness.

72 ~~[(5)]~~ (6) "Sudden infant death syndrome" means the death of a child who was thought
73 to be in good health or whose terminal illness appeared to be so mild that the possibility of a
74 fatal outcome was not anticipated.

75 ~~[(6)]~~ (7) "Suicide" means death caused by an intentional and voluntary act of a person
76 who understands the physical nature of the act and intends by such act to accomplish
77 self-destruction.

78 ~~[(7)]~~ (8) "Unattended death" means the death of a person who has not been seen by a
79 physician within the scope of the physician's professional capacity within 30 days immediately
80 prior to the date of death. This definition shall not require an investigation, autopsy, or
81 inquest in any case where death occurred without medical attendance solely because the
82 deceased was under treatment by prayer or spiritual means alone in accordance with the tenets
83 and practices of a well-recognized church or religious denomination.

84 (9) (a) "Unavailable for postmortem investigation" means that a dead body is:

85 (i) transported out of state;

86 (ii) buried at sea;
87 (iii) cremated; or
88 (iv) otherwise made unavailable to the medical examiner for postmortem investigation
89 or autopsy.

90 (b) "Unavailable for postmortem investigation" does not include embalming or burial
91 of a dead body pursuant to the requirements of law.

92 [(8)] (10) "Within the scope of the decedent's employment" means all acts reasonably
93 necessary or incident to the performance of work, including matters of personal convenience
94 and comfort not in conflict with specific instructions.

95 Section 3. Section **26-4-29** is enacted to read:

96 **26-4-29. Application for permit to render a dead body unavailable for**
97 **postmortem examination -- Fees -- Rulemaking authority.**

98 (1) Upon receiving an application by a person for a permit to render a dead body
99 unavailable for postmortem investigation, the medical examiner shall review the application to
100 determine whether:

101 (a) the person is authorized by law to render the dead body unavailable for postmortem
102 investigation in the manner specified in the application; and

103 (b) there is a need to delay any action that will render the dead body unavailable for
104 postmortem investigation until a postmortem investigation or an autopsy of the dead body is
105 performed by the medical examiner.

106 (2) Except as provided in Subsection (4), within three days after receiving an
107 application described in Subsection (1), the medical examiner shall:

108 (a) make the determinations described in Subsection (1); and

109 (b) (i) issue a permit to render the dead body unavailable for postmortem investigation
110 in the manner specified in the application; or

111 (ii) deny the permit.

112 (3) The medical examiner may only deny a permit to render a dead body unavailable
113 for postmortem investigation if:

114 (a) the applicant is not authorized by law to render the dead body unavailable for
115 postmortem investigation in the manner specified in the application;

116 (b) the medical examiner determines that there is a need to delay any action that will
117 render the dead body unavailable for postmortem investigation; or

118 (c) the applicant fails to pay the fee described in Subsection (5).

119 (4) If the medical examiner cannot in good faith make the determinations described in
120 Subsection (1) within three days after receiving an application described in Subsection (1), the
121 medical examiner shall notify the applicant:

122 (a) that more time is needed to make the determinations described in Subsection (1);
123 and

124 (b) of the estimated amount of time needed before the determinations described in
125 Subsection (1) can be made.

126 (5) The medical examiner may charge a fee, pursuant to Section 63J-1-303, to recover
127 the costs of fulfilling the duties of the medical examiner described in this section.

128 Section 4. Section **58-9-610** is amended to read:

129 **58-9-610. Cremation procedures.**

130 (1) A funeral service establishment may not cremate human remains until the funeral
131 service establishment:

132 (a) completes and files a death certificate [is completed and filed] with the office of
133 vital statistics and the county health department as indicated on the regular medical certificate
134 of death or the coroner's certificate[-]; and

135 (b) complies with the provisions of Section 26-4-29.

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

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

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

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

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

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

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

160 (5) A funeral service establishment shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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