

**DISPOSITION OF A DEAD BODY**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Allen M. Christensen**

House Sponsor: Bradley M. Daw

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**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:**



28 None

29 **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



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 to

59 homicide, death which occurred during or in an attempt to commit rape, mayhem, kidnapping,  
60 robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence,  
61 assault with a dangerous weapon, assault with intent to commit any offense punishable by  
62 imprisonment for more than one year, arson punishable by imprisonment for more than one  
63 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 instantaneous  
70 death without obvious natural cause, death during or following an unexplained syncope or  
71 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 inquest  
81 in any case where death occurred without medical attendance solely because the deceased was  
82 under treatment by prayer or spiritual means alone in accordance with the tenets and practices  
83 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 of  
 146 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 in  
 151 the crematory area awaiting cremation, being cremated, or being removed from the cremation

152 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 of  
156 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 urn,  
181 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.

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**Legislative Review Note**  
as of 1-29-09 12:12 PM

**Office of Legislative Research and General Counsel**

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**S.B. 142 - Disposition of a Dead Body**

**Fiscal Note**

2009 General Session  
State of Utah

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**State Impact**

The legislation has a net \$0 fiscal impact. The legislation requires an appropriation of \$87,000 ongoing Dedicated Credits to the Department of Health. The \$87,000 comes through a new fee for additional services provided in the legislation.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Dedicated Credits	\$0	\$87,000	\$87,000	\$0	\$87,000	\$87,000
<b>Total</b>	<b>\$0</b>	<b>\$87,000</b>	<b>\$87,000</b>	<b>\$0</b>	<b>\$87,000</b>	<b>\$87,000</b>

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**Individual, Business and/or Local Impact**

The new fee comes as a charge to funeral home businesses, which may be passed on to individuals. Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.