

SB0067S04 compared with SB0067S03

~~text~~ shows text that was in SB0067S03 but was deleted in SB0067S04.

text shows text that was not in SB0067S03 but was inserted into SB0067S04.

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Representative Karianne Lisonbee proposes the following substitute bill:

DISPOSITION OF FETAL REMAINS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Karianne Lisonbee

LONG TITLE

General Description:

This bill enacts provisions relating to the disposition of fetal remains.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a health care facility having possession of an aborted fetus or miscarried fetus to provide for the final disposition of the fetal remains;
- ▶ requires a health care facility to provide certain information to a woman regarding the disposition of an aborted fetus or miscarried fetus;
- ▶ requires a health care provider to notify a woman regarding the right to determine the final disposition of the remains of the aborted fetus before performing an abortion;

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- ▶ requires a health care facility to allow a woman who has a medication-induced abortion to return the aborted fetus to the health care facility for disposition;
- ▶ requires a health care facility to maintain records that demonstrate compliance with the provisions of this bill;
- ▶ amends the Funeral Services Licensing Act to allow for the disposition of certain fetal remains;
- ▶ amends the information that must be included in the abortion information module and website; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-2-2, as last amended by Laws of Utah 2018, Chapters 49 and 153

26-2-17, as last amended by Laws of Utah 2007, Chapter 60

26-2-18, as last amended by Laws of Utah 2006, Chapter 56

58-9-607, as enacted by Laws of Utah 2008, Chapter 353

76-7-305, as last amended by Laws of Utah 2019, Chapters 124 and 189

76-7-305.5, as last amended by Laws of Utah 2018, Chapter 282

ENACTS:

26-21-33, Utah Code Annotated 1953

26-21-34, Utah Code Annotated 1953

58-9-619, Utah Code Annotated 1953

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

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

26-2-2. Definitions.

As used in this chapter:

- (1) "Adoption document" means an adoption-related document filed with the office, a

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petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

(2) "Custodial funeral service director" means a funeral service director who:

- (a) is employed by a licensed funeral establishment; and
- (b) has custody of a dead body.

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

(4) "Dead fetus" means a product of human conception, other than those circumstances described in Subsection 76-7-301(1):

- (a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual period began to the date of delivery; and
- (b) that was not born alive.

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

(6) "Dispositioner" means:

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

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

(i) (A) a person has not been designated as described in Subsection (6)(a); or

(B) the person described in Subsection (6)(a) is unable or unwilling to exercise the right and duty described in Subsection (6)(a); and

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

(7) "Fetal remains" means:

(a) an aborted fetus as that term is defined in Section 26-21-33; or

(b) a miscarried fetus as that term is defined in Section 26-21-34.

~~(7)~~ (8) "File" means the submission of a completed certificate or other similar document, record, or report as provided under this chapter for registration by the state registrar or a local registrar.

~~(8)~~ (9) "Funeral service director" means the same as that term is defined in Section

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58-9-102.

~~[(9)]~~ (10) "Health care facility" means the same as that term is defined in Section 26-21-2.

~~[(10)]~~ (11) "Health care professional" means a physician, physician assistant, or nurse practitioner.

~~[(11)]~~ (12) "Licensed funeral establishment" means:

(a) if located in Utah, a funeral service establishment, as that term is defined in Section 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act; or

(b) if located in a state, district, or territory of the United States other than Utah, a funeral service establishment that complies with the licensing laws of the jurisdiction where the establishment is located.

~~[(12)]~~ (13) "Live birth" means the birth of a child who shows evidence of life after the child is entirely outside of the mother.

~~[(13)]~~ (14) "Local registrar" means a person appointed under Subsection 26-2-3(3)(b).

~~[(14)]~~ (15) "Nurse practitioner" means an individual who:

(a) is licensed to practice as an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice Act; and

(b) has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(15)]~~ (16) "Office" means the Office of Vital Records and Statistics within the Department of Health, operating under Title 26, Chapter 2, Utah Vital Statistics Act.

~~[(16)]~~ (17) "Physician" means a person licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

~~[(17)]~~ (18) "Physician assistant" means an individual who:

(a) is licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act; and

(b) has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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~~[(18)]~~ (19) "Presumed father" means the father of a child conceived or born during a marriage as defined in Section 30-1-17.2.

~~[(19)]~~ (20) "Registration" or "register" means acceptance by the local or state registrar of a certificate and incorporation of the certificate into the permanent records of the state.

~~[(20)]~~ (21) "State registrar" means the state registrar of vital records appointed under Subsection 26-2-3(2)(e).

~~[(21)]~~ (22) "Vital records" means:

(a) registered certificates or reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment;

(b) amendments to any of the registered certificates or reports described in Subsection ~~[(21)]~~ (22)(a);

(c) an adoption document; and

(d) other similar documents.

~~[(22)]~~ (23) "Vital statistics" means the data derived from registered certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce, dissolution of marriage, or annulment.

Section 2. 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.

(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:

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

~~[(b)]~~ (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

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(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:

(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:

[(a)] (i) for [~~dead bodies or fetuses~~] a dead body or a dead fetus to be transported out of the state for final disposition; or

[(b)] (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 [~~or~~], dead fetus, or fetal remains brought into this state is authority for final disposition of the dead body [~~or~~], dead fetus, or fetal remains in this state.

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(5) When a dead body or dead fetus or any part of the dead body or dead fetus has been 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 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 [or], dead fetus, or fetal remains, except as otherwise provided by statute or department rule.

Section 3. Section **26-2-18** is amended to read:

26-2-18. Interments -- Duties of sexton or person in charge -- Record of interments -- Information filed with local registrar.

(1) (a) A sexton or person in charge of any premises in which interments are made may not inter or permit the interment of any dead body [or], dead fetus, or fetal remains unless the interment is made by a funeral service director or by a person holding a burial-transit permit.

(b) The right and duty to control the disposition of a deceased person shall be governed by Sections 58-9-601 through 58-9-604.

(2) (a) The sexton or the person in charge of any premises where interments are made shall keep a record of all interments made in the premises under [~~his~~] their charge, stating the name of the decedent, place of death, date of burial, and name and address of the funeral service director or other person making the interment.

(b) The record described in this Subsection (2) shall be open to public inspection.

(c) A city or county clerk may, at the clerk's option, maintain the interment records described in this Subsection (2) on behalf of the sexton or person in charge of any premises in which interments are made.

(3) (a) Not later than the tenth day of each month, the sexton, person in charge of the premises, or city or county clerk who maintains the interment records shall send to the local registrar and the department a list of all interments made in the premises during the preceding month.

(b) The list described in Subsection (3)(a) shall be in the form prescribed by the state

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registrar.

Section 4. Section **26-21-33** is enacted to read:

26-21-33. Treatment of aborted remains.

(1) As used in this section, "aborted fetus" means a product of human conception, regardless of gestational age, that has died from an abortion as that term is defined in Section 76-7-301.

(2) (a) A health care facility having possession of an aborted fetus shall provide for the final disposition of the aborted fetus through:

(i) cremation as that term is defined in Section 58-9-102; or

(ii) interment.

(b) A health care facility may not conduct the final disposition of an aborted fetus less than 72 hours after an abortion is performed unless:

(i) the pregnant woman authorizes the health care facility, in writing, to conduct the final disposition of the aborted fetus less than 72 hours after the abortion is performed; or

(ii) immediate disposition is required under state or federal law.

(c) A health care facility may serve as an authorizing agent as defined in Section 58-9-102 with respect to the final disposition of an aborted fetus if:

(i) the pregnant woman provides written authorization for the health care facility to act as the authorizing agent; or

(ii) (A) more than 72 hours have passed since the abortion was performed; and

(B) the pregnant woman did not exercise her right to control the final disposition of the aborted fetus under Subsection (4)(a).

(d) Within 120 business days after the day on which an abortion is performed, a health care facility possessing an aborted fetus shall:

(i) conduct the final disposition of the aborted fetus in accordance with this section; or

(ii) ensure that the aborted fetus is preserved until final disposition.

(e) A health care facility shall conduct the final disposition under this section in accordance with applicable state and federal law.

(3) Before performing an abortion, a health care facility shall:

(a) provide the pregnant woman with the information described in Subsection 76-7-305(2)(d)(ix) through:

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(i) a form approved by the department;

(ii) an in-person consultation with a physician; or

(iii) an in-person consultation with a mental health therapist as defined in Section 58-60-102; and

(b) if the pregnant woman makes a decision under Subsection (4)(b), document the pregnant woman's decision under Subsection (4)(b) in the pregnant woman's medical record.

(4) A pregnant woman who has an abortion:

(a) except as provided in Subsection (6), has the right to control the final disposition of the aborted fetus;

(b) if the pregnant woman has a preference for disposition of the aborted fetus, shall inform the health care facility of the pregnant woman's decision for final disposition of the aborted fetus;

(c) is responsible for the costs related to the final disposition of the aborted fetus at the chosen location if the pregnant woman chooses a method or location for the final disposition of the aborted fetus that is different from the method or location that is usual and customary for the health care facility; and

(d) for a medication-induced abortion, shall be permitted to return the aborted fetus to the health care facility in a sealed container for disposition by the health care facility in accordance with this section.

(5) The form described in Subsection (3)(a)(i) shall include the following information:

"You have the right to decide what you would like to do with the aborted fetus. You may decide for the provider to be responsible for disposition of the fetus. If you are having a medication-induced abortion, you also have the right to bring the aborted fetus back to this provider for disposition after the fetus is expelled. The provider may dispose of the aborted fetus by burial or cremation. You can ask the provider if you want to know the specific method for disposition."

(6) If the pregnant woman is a minor, the health care facility shall obtain parental consent for the disposition of the aborted fetus unless the minor is granted a court order under Subsection 76-7-304(1)(b).

(7) (a) A health care facility may not include fetal remains with other biological, infectious, or pathological waste.

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(b) Fetal tissue that is ~~sent for~~ permanently fixed ~~pathological specimen~~ pathology or used for genetic study is not subject to the requirements of this section.

(c) (i) A health care facility is responsible for maintaining a record to demonstrate to the department that the health care facility has complied with the provisions of this section.

(ii) The records described in Subsection (7)(c)(i) shall be:

(A) maintained for at least two years; and

(B) made available to the department for inspection upon request by the department.

Section 5. Section **26-21-34** is enacted to read:

26-21-34. Treatment of miscarried remains.

(1) As used in this section, "miscarried fetus" means a product of human conception, regardless of gestational age, that has died from a spontaneous or accidental death before expulsion or extraction from the mother, regardless of the duration of the pregnancy.

(2) (a) A health care facility having possession of a miscarried fetus shall provide for the final disposition of the miscarried fetus through:

(i) cremation as that term is defined in Section 58-9-102; or

(ii) interment.

(b) A health care facility may not conduct the final disposition of a miscarried fetus less than 72 hours after a woman has her miscarried fetus expelled or extracted in the health care facility unless:

(i) the parent authorizes the health care facility, in writing, to conduct the final disposition of the miscarried fetus less than 72 hours after the miscarriage occurs; or

(ii) immediate disposition is required under state or federal law.

(c) A health care facility may serve as an authorizing agent as defined in Section 58-9-102 with respect to the final disposition of a miscarried fetus if:

(i) the parent provides written authorization for the health care facility to act as the authorizing agent; or

(ii) (A) more than 72 hours have passed since the miscarriage occurs; and

(B) the parent did not exercise their right to control the final disposition of the miscarried fetus under Subsection (4)(a).

(c) Within 120 business days after the day on which a miscarriage occurs, a health care facility possessing miscarried remains shall:

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(i) conduct the final disposition of the miscarried remains in accordance with this section; or

(ii) ensure that the miscarried remains are preserved until final disposition.

(d) A health care facility shall conduct the final disposition under this section in accordance with applicable state and federal law.

(3) (a) No more than 24 hours after a woman has her miscarried fetus expelled or extracted in a health care facility, the health care facility shall provide information to the parent or parents of the miscarried fetus regarding:

(i) the parents' right to determine the final disposition of the miscarried fetus;

(ii) the available options for disposition of the miscarried fetus; and

(iii) counseling that may be available concerning the death of the miscarried fetus.

(b) A health care facility shall:

(i) provide the information described in Subsection (3)(a) through:

(A) a form approved by the department;

(B) an in-person consultation with a physician; or

(C) an in-person consultation with a mental health therapist as defined in Section 58-60-102; and

(ii) if the parent or parents make a decision under Subsection (4)(b), document the parent's decision under Subsection (4)(b) in the parent's medical record.

(4) The parents of a miscarried fetus:

(a) have the right to control the final disposition of the miscarried fetus;

(b) if the parents have a preference for disposition of the miscarried fetus, shall inform the health care facility of the parents' decision for final disposition of the miscarried fetus; and

(c) are responsible for the costs related to the final disposition of the miscarried fetus at the chosen location if the parents choose a method or location for the final disposition of the miscarried fetus that is different from the method or location that is usual and customary for the health care facility.

(5) The form described in Subsection (3)(b)(i) shall include the following information:

"You have the right to decide what you would like to do with the miscarried fetus. You may decide for the provider to be responsible for disposition of the fetus. The provider may dispose of the miscarried fetus by burial or cremation. You can ask the provider if you want to

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know the specific method for disposition."

(6) (a) A health care facility may not include miscarried fetus with other biological, infectious, or pathological waste.

(b) Fetal tissue that is ~~is~~ sent for permanently fixed ~~pathological specimen~~ pathology or used for genetic study is not subject to the requirements of this section.

(c) (i) A health care facility is responsible for maintaining a record to demonstrate to the department that the health care facility has complied with the provisions of this section.

(ii) The records described in Subsection (6)(c)(i) shall be:

(A) maintained for at least two years; and

(B) made available to the department for inspection upon request by the department.

Section 6. Section **58-9-607** is amended to read:

58-9-607. Authorization to cremate -- Penalties for removal of items from human remains.

(1) Except as otherwise provided in this section and Section 58-9-619, a funeral service establishment may not cremate human remains until it has received:

(a) a cremation authorization form signed by an authorizing agent;

(b) a completed and executed burial transit permit or similar document, as provided by state law, indicating that human remains are to be cremated; and

(c) any other documentation required by the state, county, or municipality.

(2) (a) The cremation authorization form shall contain, at a minimum, the following information:

(i) the identity of the human remains and the time and date of death, including a signed declaration of visual identification of the deceased or refusal to visually identify the deceased;

(ii) the name of the funeral director and funeral service establishment that obtained the cremation authorization;

(iii) notification as to whether the death occurred from a disease declared by the department of health to be infectious, contagious, communicable, or dangerous to the public health;

(iv) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;

(v) a representation that the authorizing agent has the right to authorize the cremation

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of the decedent and that the authorizing agent is not aware of any living person with a superior or equal priority right to that of the authorizing agent, except that if there is another living person with a superior or equal priority right, the form shall contain a representation that the authorizing agent has:

- (A) made reasonable efforts to contact that person;
 - (B) been unable to do so; and
 - (C) no reason to believe that the person would object to the cremation of the decedent;
 - (vi) authorization for the funeral service establishment to cremate the human remains;
 - (vii) a representation that the human remains do not contain a pacemaker or other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation;
 - (viii) the name of the person authorized to receive the cremated remains from the funeral service establishment;
 - (ix) the manner in which the final disposition of the cremated remains is to take place, if known;
 - (x) a listing of each item of value to be delivered to the funeral service establishment along with the human remains, and instructions as to how each item should be handled;
 - (xi) the signature of the authorizing agent, attesting to the accuracy of all representations contained on the authorization form;
 - (xii) if the cremation authorization form is being executed on a preneed basis, the form shall contain the disclosure required for preneed programs under this chapter; and
 - (xiii) except for a preneed cremation authorization, the signature of the funeral director of the funeral service establishment that obtained the cremation authorization.
- (b) (i) The individual [~~referred to~~] described in Subsection (2)(a)(xiii) shall execute the funeral authorization form as a witness and is not responsible for any of the representations made by the authorizing agent.
- (ii) The funeral director or the funeral service establishment shall warrant to the crematory that the human remains delivered to the funeral service establishment have been positively identified as the decedent listed on the cremation authorization form by the authorizing agent or a designated representative of the authorizing agent.
 - (iii) The authorizing agent or the agent's designee may make the identification referred

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to in Subsection (2)(b)(ii) in person or by photograph.

(3) (a) [~~A~~] Except as provided in Section 58-9-619, a funeral service establishment may not accept unidentified human remains for cremation.

(b) If a funeral service establishment takes custody of a cremation container subsequent to the human remains being placed within the container, it can rely on the identification made before the remains were placed in the container.

(c) The funeral service establishment shall place appropriate identification on the exterior of the cremation container based on the prior identification.

(4) (a) A person who removes or possesses dental gold or silver, jewelry, or mementos from human remains:

(i) with purpose to deprive another over control of the property is guilty of an offense and subject to the punishments provided in Section 76-6-412;

(ii) with purpose to exercise unauthorized control and with intent to temporarily deprive another of control over the property is guilty of an offense and subject to the punishments provided in Section 76-6-404.5; and

(iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and without specific written permission of the individual who has the right to control those remains is guilty of a class B misdemeanor.

(b) The fact that residue or any unavoidable dental gold or dental silver or other precious metals remain in a cremation chamber or other equipment or a container used in a prior cremation is not a violation of Subsection (4)(a).

Section 7. Section **58-9-619** is enacted to read:

58-9-619. Exception for disposition of fetal remains.

(1) As used in this section, "fetal remains" means the same as that term is defined in Section 26-2-2.

(2) Notwithstanding any other provision in this part, a funeral service establishment:

(a) is exempt from any requirement to name the miscarried fetus or the aborted fetus:

(i) for the purpose of identifying the fetal remains; or

(ii) for any record keeping requirements under this chapter; and

(b) is not required to obtain a death certificate or fetal death certificate for the cremation or disposition of fetal remains that are less than 20 weeks in gestational age.

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Section 8. Section **76-7-305** is amended to read:

76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory -- Exceptions.

(1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains from the woman on whom the abortion is to be performed a voluntary and informed written consent that is consistent with:

(a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and

(b) the provisions of this section.

(2) Except as provided in Subsection (8), consent to an abortion is voluntary and informed only if, at least 72 hours before the abortion:

(a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant presents the information module to the pregnant woman;

(b) the pregnant woman views the entire information module and presents evidence to the individual described in Subsection (2)(a) that the pregnant woman viewed the entire information module;

(c) after receiving the evidence described in Subsection (2)(b), the individual described in Subsection (2)(a):

(i) documents that the pregnant woman viewed the entire information module;

(ii) gives the pregnant woman, upon her request, a copy of the documentation described in Subsection (2)(c)(i); and

(iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician who is to perform the abortion, upon request of that physician or the pregnant woman;

(d) after the pregnant woman views the entire information module, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman of:

(i) the nature of the proposed abortion procedure;

(ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the

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fetus;

(iii) the risks and alternatives to the abortion procedure or treatment;

(iv) the options and consequences of aborting a medication-induced abortion, if the proposed abortion procedure is a medication-induced abortion;

(v) the probable gestational age and a description of the development of the unborn child at the time the abortion would be performed;

(vi) the medical risks associated with carrying her child to term;

(vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant woman, upon her request; and

(viii) when the result of a prenatal screening or diagnostic test indicates that the unborn child has or may have Down syndrome, the Department of Health website containing the information described in Section 26-10-14, including the information on the informational support sheet; and

(e) after the pregnant woman views the entire information module, a staff member of the abortion clinic or hospital provides to the pregnant woman:

(i) on a document that the pregnant woman may take home:

(A) the address for the department's website described in Section 76-7-305.5; and

(B) a statement that the woman may request, from a staff member of the abortion clinic or hospital where the woman viewed the information module, a printed copy of the material on the department's website; [~~and~~]

(ii) a printed copy of the material on the department's website described in Section 76-7-305.5, if requested by the pregnant woman[-]; and

(iii) a copy of the form described in Subsection 26-21-33(3)(a)(i) regarding the disposition of the aborted fetus.

(3) Before performing an abortion, the physician who is to perform the abortion shall:

(a) in a face-to-face consultation, provide the information described in Subsection (2)(d), unless the attending physician or referring physician is the individual who provided the information required under Subsection (2)(d); and

(b) (i) obtain from the pregnant woman a written certification that the information required to be provided under Subsection (2) and this Subsection (3) was provided in accordance with the requirements of Subsection (2) and this Subsection (3); [~~and~~]

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(ii) obtain a copy of the statement described in Subsection (2)(c)(i)[~~7~~]; and

(iii) ensure that:

(A) described in Subsections 26-21-33(3) and (4), the woman has received the information; and

(B) if the woman has a preference for the disposition of the aborted fetus, the woman has informed the health care facility of the woman's decision regarding the disposition of the aborted fetus.

(4) When a serious medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary.

(5) If an ultrasound is performed on a woman before an abortion is performed, the individual who performs the ultrasound, or another qualified individual, shall:

(a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(b) simultaneously display the ultrasound images in order to permit the woman to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(c) inform the woman that, if she desires, the person performing the ultrasound, or another qualified person shall provide a detailed description of the ultrasound images, including:

(i) the dimensions of the unborn child;

(ii) the presence of cardiac activity in the unborn child, if present and viewable; and

(iii) the presence of external body parts or internal organs, if present and viewable; and

(d) provide the detailed description described in Subsection (5)(c), if the woman requests it.

(6) The information described in Subsections (2), (3), and (5) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:

(a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician

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concur, in writing, that the abortion is necessary to avert:

- (i) the death of the woman on whom the abortion is performed; or
- (ii) a serious risk of substantial and irreversible impairment of a major bodily function

of the woman on whom the abortion is performed; or

- (b) Subsection 76-7-302(3)(b)(ii).

(7) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:

- (a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102;

and

- (b) shall be subject to:

(i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and

- (ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

(8) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

(a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;

- (b) in the physician's professional judgment, the abortion was necessary to avert:

- (i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(c) the pregnancy was the result of rape or rape of a child, as defined in Sections 76-5-402 and 76-5-402.1;

(d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(2)(j) and Section 76-7-102; or

- (e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

(9) A physician who complies with the provisions of this section and Section 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain informed consent under Section 78B-3-406.

- (10) (a) The department shall provide an ultrasound, in accordance with the provisions

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of Subsection (5)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a pregnant woman who requests an ultrasound described in Subsection (10)(a) to the department.

(11) A physician is not guilty of violating this section if:

(a) the information described in Subsection (2) is provided less than 72 hours before the physician performs the abortion; and

(b) in the physician's professional judgment, the abortion was necessary in a case where:

(i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Section 9. Section **76-7-305.5** is amended to read:

76-7-305.5. Requirements for information module and website.

(1) In order to ensure that a woman's consent to an abortion is truly an informed consent, the department shall, in accordance with the requirements of this section, develop an information module and maintain a public website.

(2) The information module and public website described in Subsection (1) shall:

(a) be scientifically accurate, comprehensible, and presented in a truthful, nonmisleading manner;

(b) present adoption as a preferred and positive choice and alternative to abortion;

(c) be produced in a manner that conveys the state's preference for childbirth over abortion;

(d) state that the state prefers childbirth over abortion;

(e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

(f) state that any physician who performs an abortion without obtaining the woman's informed consent or without providing her a private medical consultation in accordance with the requirements of this section, may be liable to her for damages in a civil action at law;

(g) provide a geographically indexed list of resources and public and private services available to assist, financially or otherwise, a pregnant woman during pregnancy, at childbirth, and while the child is dependent, including:

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- (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;
 - (ii) services and supports available under Section 35A-3-308;
 - (iii) other financial aid that may be available during an adoption;
 - (iv) services available from public adoption agencies, private adoption agencies, and private attorneys whose practice includes adoption; and
 - (v) the names, addresses, and telephone numbers of each person listed under this Subsection (2)(g);
 - (h) describe the adoption-related expenses that may be paid under Section 76-7-203;
 - (i) describe the persons who may pay the adoption related expenses described in Subsection (2)(h);
 - (j) except as provided in Subsection (4), describe the legal responsibility of the father of a child to assist in child support, even if the father has agreed to pay for an abortion;
 - (k) except as provided in Subsection (4), describe the services available through the Office of Recovery Services, within the Department of Human Services, to establish and collect the support described in Subsection (2)(j);
 - (l) state that private adoption is legal;
 - (m) describe and depict, with pictures or video segments, the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments from fertilization to full term, including:
 - (i) brain and heart function;
 - (ii) the presence and development of external members and internal organs; and
 - (iii) the dimensions of the fetus;
 - (n) show an ultrasound of the heartbeat of an unborn child at:
 - (i) four weeks from conception;
 - (ii) six to eight weeks from conception; and
 - (iii) each month after 10 weeks gestational age, up to 14 weeks gestational age;
 - (o) describe abortion procedures used in current medical practice at the various stages of growth of the unborn child, including:
 - (i) the medical risks associated with each procedure;
 - (ii) the risk related to subsequent childbearing that are associated with each procedure;
- and

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(iii) the consequences of each procedure to the unborn child at various stages of fetal development;

(p) describe the possible detrimental psychological effects of abortion;

(q) describe the medical risks associated with carrying a child to term;

(r) include relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (2)(m);

(s) except as provided in Subsection (5), include:

(i) information regarding substantial medical evidence from studies concluding that an unborn child who is at least 20 weeks gestational age may be capable of experiencing pain during an abortion procedure; and

(ii) the measures that will be taken in accordance with Section 76-7-308.5;

(t) explain the options and consequences of aborting a medication-induced abortion;

(u) include the following statement regarding a medication-induced abortion,

"Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but have not yet taken the second drug and have questions regarding the health of your fetus or are questioning your decision to terminate your pregnancy, you should consult a physician immediately.";

(v) inform a pregnant woman that she has the right to view an ultrasound of the unborn child, at no expense to her, upon her request; ~~and~~

(w) inform a pregnant woman that she has the right to:

(i) determine the final disposition of the remains of the aborted fetus;

(ii) unless the woman waives this right in writing, wait up to 72 hours after the abortion procedure is performed to make a determination regarding the disposition of the aborted fetus before the health care facility may dispose of the fetal remains;

(iii) receive information about options for disposition of the aborted fetus, including the method of disposition that is usual and customary for a health care facility; and

(iv) for a medication-induced abortion, return the aborted fetus to the health care facility for disposition; and

(x) provide a digital copy of the form described in Section 26-21-33(3)(a)(i); and

~~(w)~~ (y) be in a typeface large enough to be clearly legible.

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(3) The information module and website described in Subsection (1) may include a toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and description of services, agencies, and adoption attorneys in the locality of the caller.

(4) The department may develop a version of the information module and website that omits the information in Subsections (2)(j) and (k) for a viewer who is pregnant as the result of rape.

(5) The department may develop a version of the information module and website that omits the information described in Subsection (2)(s) for a viewer who will have an abortion performed:

(a) on an unborn child who is less than 20 weeks gestational age at the time of the abortion; or

(b) on an unborn child who is at least 20 weeks gestational age at the time of the abortion, if:

(i) the abortion is being performed for a reason described in Subsection 76-7-302(3)(b)(i) or (ii); and

(ii) due to a serious medical emergency, time does not permit compliance with the requirement to provide the information described in Subsection (2)(s).

(6) The department and each local health department shall make the information module and the website described in Subsection (1) available at no cost to any person.

(7) The department shall make the website described in Subsection (1) available for viewing on the department's website by clicking on a conspicuous link on the home page of the website.

(8) The department shall ensure that the information module is:

(a) available to be viewed at all facilities where an abortion may be performed;

(b) interactive for the individual viewing the module, including the provision of opportunities to answer questions and manually engage with the module before the module transitions from one substantive section to the next;

(c) produced in English and may include subtitles in Spanish or another language; and

(d) capable of being viewed on a tablet or other portable device.

~~[(9) The department shall present the information module to the Health and Human Services Interim Committee for the committee's review and recommendation before November~~

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~~1, 2018:]~~

~~[(10) The department shall release the information module, for the use described in Section 76-7-305, before January 1, 2019.]~~

[(11)] (9) After the department releases the initial version of the information module, for the use described in Section 76-7-305, the department shall:

- (a) update the information module, as required by law; and
- (b) present an updated version of the information module to the Health and Human Services Interim Committee for the committee's review and recommendation before releasing the updated version for the use described in Section 76-7-305.