

Representative Cheryl K. Acton proposes the following substitute bill:

FETAL REMAINS RESTRICTIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses treatment of fetal remains.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



26 [26-28-102](#), as enacted by Laws of Utah 2007, Chapter 60

27 [76-7-310](#), as enacted by Laws of Utah 1974, Chapter 33



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

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

31 **26-2-17. Certificate of death -- Registration prerequisite to interment --**
32 **Burial-transit permits -- Procedure where body donated under anatomical gift law --**
33 **Permit for disinterment -- Unlawful transport of fetus.**

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

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

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

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

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

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

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

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

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

50 (ii) the disposition takes place:

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

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

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

- 57 (i) for a dead body or a dead fetus to be transported out of the state for final
58 disposition; or
- 59 (ii) when disposition of the dead body or dead fetus is made by a person other than a
60 funeral service director.
- 61 (b) For fetal remains that are less than 20 weeks in gestational age, a burial-transit
62 permit shall be issued by the local registrar of the district where the health care facility that is in
63 possession of the fetal remains is located:
- 64 (i) for the fetal remains to be transported out of the state for final disposition; or
65 (ii) when disposition of the fetal remains is made by a person other than a funeral
66 service director.
- 67 (c) A local registrar issuing a burial-transit permit issued under Subsection (3)(b):
68 (i) may not require an individual to designate a name for the fetal remains; and
69 (ii) may leave the space for a name on the burial-transit permit blank; and
- 70 (d) shall redact from any public records maintained under this chapter any information:
71 (i) that is submitted under Subsection (3)(c); and
72 (ii) that may be used to identify the parent or pregnant woman.
- 73 (4) A burial-transit permit issued under the law of another state which accompanies a
74 dead body, dead fetus, or fetal remains brought into this state is authority for final disposition
75 of the dead body, dead fetus, or fetal remains in this state.
- 76 (5) ~~When~~ Subject to Subsection (7), if a dead body or dead fetus or any part of the
77 dead body or dead fetus ~~has been~~ is donated under the Revised Uniform Anatomical Gift Act
78 or similar laws of another state and the preservation of the gift requires the immediate
79 transportation of the dead body, dead fetus, or any part of the body or fetus outside of the
80 registration district in which death occurs or the remains are found, or into this state from
81 another state, the dead body or dead fetus or any part of the body or fetus may be transported
82 and the burial-transit permit required by this section obtained within a reasonable time after
83 transportation.
- 84 (6) A permit for disinterment and reinterment is required prior to disinterment of a
85 dead body, dead fetus, or fetal remains, except as otherwise provided by statute or department
86 rule.
- 87 (7) (a) As used in this Subsection (7):

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

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

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

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

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

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

98 (i) individual burial;

99 (ii) individual cremation;

100 (iii) if the fetus is miscarried, specialized pathology to determine the cause of the
101 spontaneous or accidental death of the fetus; or

102 (iv) if the fetus is aborted under Section 76-7-302 for a severe brain abnormality,
103 specialized pathology to determine the cause of the severe brain abnormality.

104 (c) A violation of Subsection (7)(b) is a class B misdemeanor.

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

106 **26-28-102. Definitions.**

107 As used in this chapter:

108 (1) "Adult" means an individual who is at least 18 years of age.

109 (2) "Agent" means an individual:

110 (a) authorized to make health care decisions on the principal's behalf by a power of
111 attorney for health care; or

112 (b) expressly authorized to make an anatomical gift on the principal's behalf by any
113 other record signed by the principal.

114 (3) "Anatomical gift" means a donation of all or part of a human body to take effect
115 after the donor's death for the purpose of transplantation, therapy, research, or education.

116 (4) "Decedent" means:

117 (a) a deceased individual whose body or part is or may be the source of an anatomical
118 gift; and

- 119 (b) includes:
- 120 (i) a stillborn infant; and
- 121 (ii) subject to the restrictions in Subsection 26-2-17(7) and other restrictions imposed
- 122 by law other than this chapter, a fetus.
- 123 (5) (a) "Disinterested witness" means:
- 124 (i) a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or
- 125 guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift;
- 126 or
- 127 (ii) another adult who exhibited special care and concern for the individual.
- 128 (b) "Disinterested witness" does not include a person to which an anatomical gift could
- 129 pass under Section 26-28-111.
- 130 (6) "Document of gift" means a donor card or other record used to make an anatomical
- 131 gift. The term includes a statement or symbol on a driver license, identification card, or donor
- 132 registry.
- 133 (7) "Donor" means an individual whose body or part is the subject of an anatomical
- 134 gift.
- 135 (8) "Donor registry" means a database that contains records of anatomical gifts and
- 136 amendments to or revocations of anatomical gifts.
- 137 (9) "Driver license" means a license or permit issued by the Driver License Division of
- 138 the Department of Public Safety, to operate a vehicle, whether or not conditions are attached to
- 139 the license or permit.
- 140 (10) "Eye bank" means a person that is licensed, accredited, or regulated under federal
- 141 or state law to engage in the recovery, screening, testing, processing, storage, or distribution of
- 142 human eyes or portions of human eyes.
- 143 (11) "Guardian":
- 144 (a) means a person appointed by a court to make decisions regarding the support, care,
- 145 education, health, or welfare of an individual; and
- 146 (b) does not include a guardian ad litem.
- 147 (12) "Hospital" means a facility licensed as a hospital under the law of any state or a
- 148 facility operated as a hospital by the United States, a state, or a subdivision of a state.
- 149 (13) "Identification card" means an identification card issued by the Driver License

150 Division of the Department of Public Safety.

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

152 (15) "Minor" means an individual who is under 18 years of age.

153 (16) "Organ procurement organization" means a person designated by the Secretary of
154 the United States Department of Health and Human Services as an organ procurement
155 organization.

156 (17) "Parent" means a parent whose parental rights have not been terminated.

157 (18) "Part" means an organ, an eye, or tissue of a human being. The term does not
158 include the whole body.

159 (19) "Person" means an individual, corporation, business trust, estate, trust,
160 partnership, limited liability company, association, joint venture, public corporation,
161 government or governmental subdivision, agency, or instrumentality, or any other legal or
162 commercial entity.

163 (20) "Physician" means an individual authorized to practice medicine or osteopathy
164 under the law of any state.

165 (21) "Procurement organization" means an eye bank, organ procurement organization,
166 or tissue bank.

167 (22) "Prospective donor":

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

171 (b) does not include an individual who has made a refusal.

172 (23) "Reasonably available" means able to be contacted by a procurement organization
173 without undue effort and willing and able to act in a timely manner consistent with existing
174 medical criteria necessary for the making of an anatomical gift.

175 (24) "Recipient" means an individual into whose body a decedent's part has been or is
176 intended to be transplanted.

177 (25) "Record" means information that is inscribed on a tangible medium or that is
178 stored in an electronic or other medium and is retrievable in perceivable form.

179 (26) "Refusal" means a record created under Section [26-28-107](#) that expressly states an
180 intent to bar other persons from making an anatomical gift of an individual's body or part.

181 (27) "Sign" means, with the present intent to authenticate or adopt a record:

182 (a) to execute or adopt a tangible symbol; or

183 (b) to attach to or logically associate with the record an electronic symbol, sound, or
184 process.

185 (28) "State" means a state of the United States, the District of Columbia, Puerto Rico,
186 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
187 of the United States.

188 (29) "Technician":

189 (a) means an individual determined to be qualified to remove or process parts by an
190 appropriate organization that is licensed, accredited, or regulated under federal or state law; and

191 (b) includes an enucleator.

192 (30) "Tissue" means a portion of the human body other than an organ or an eye. The
193 term does not include blood unless the blood is donated for the purpose of research or
194 education.

195 (31) "Tissue bank" means a person that is licensed, accredited, or regulated under
196 federal or state law to engage in the recovery, screening, testing, processing, storage, or
197 distribution of tissue.

198 (32) "Transplant hospital" means a hospital that furnishes organ transplants and other
199 medical and surgical specialty services required for the care of transplant patients.

200 Section 3. Section **76-7-310** is amended to read:

201 **76-7-310. Experimentation prohibited -- Testing for genetic defects.**

202 (1) As used in this section:

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

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

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