

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 medical testing, analysis, evaluation, or research 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 76-7-309, as last amended by Laws of Utah 2019, Chapter 124

28 76-7-310, as enacted by Laws of Utah 1974, Chapter 33

29

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

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

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

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

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

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

- 42 (i) disposition occurs in the state and is performed by a funeral service director; or
- 43 (ii) the disposition takes place with authorization of the next of kin and in:

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

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

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

- 50 (i) disposition occurs in the state and is performed by a funeral service director; or
- 51 (ii) the disposition takes place:

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

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

56 (3) (a) A burial-transit permit shall be issued by the local registrar of the district where

57 the certificate of death or fetal death is registered:

58 (i) for a dead body or a dead fetus to be transported out of the state for final
59 disposition; or

60 (ii) when disposition of the dead body or dead fetus is made by a person other than a
61 funeral service director.

62 (b) For fetal remains that are less than 20 weeks in gestational age, a burial-transit
63 permit shall be issued by the local registrar of the district where the health care facility that is in
64 possession of the fetal remains is located:

65 (i) for the fetal remains to be transported out of the state for final disposition; or

66 (ii) when disposition of the fetal remains is made by a person other than a funeral
67 service director.

68 (c) A local registrar issuing a burial-transit permit issued under Subsection (3)(b):

69 (i) may not require an individual to designate a name for the fetal remains; and

70 (ii) may leave the space for a name on the burial-transit permit blank; and

71 (d) shall redact from any public records maintained under this chapter any information:

72 (i) that is submitted under Subsection (3)(c); and

73 (ii) that may be used to identify the parent or pregnant woman.

74 (4) A burial-transit permit issued under the law of another state which accompanies a
75 dead body, dead fetus, or fetal remains brought into this state is authority for final disposition
76 of the dead body, dead fetus, or fetal remains in this state.

77 (5) [~~When~~] Subject to Subsection (7), if a dead body or dead fetus or any part of the
78 dead body or dead fetus [~~has been~~] is donated under the Revised Uniform Anatomical Gift Act
79 or similar laws of another state and the preservation of the gift requires the immediate
80 transportation of the dead body, dead fetus, or any part of the body or fetus outside of the
81 registration district in which death occurs or the remains are found, or into this state from
82 another state, the dead body or dead fetus or any part of the body or fetus may be transported
83 and the burial-transit permit required by this section obtained within a reasonable time after
84 transportation.

85 (6) A permit for disinterment and reinterment is required prior to disinterment of a
86 dead body, dead fetus, or fetal remains, except as otherwise provided by statute or department
87 rule.

88 (7) (a) As used in this Subsection (7):

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

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

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

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

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

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

99 (A) individual burial;

100 (B) individual cremation; or

101 (C) subject to Subsection (7)(b)(ii), medical testing, analysis, evaluation, or research to
102 determine the cause of a miscarriage or fetal abnormality.

103 (ii) If a person transports outside of the state, or arranges for transport outside of the
104 state, fetal remains that are aborted or miscarried in the state, for the purpose described in
105 Subsection (7)(b)(i)(C), the person shall require by contract that the recipient of the fetal
106 remains use the fetal remains for only the purpose described in Subsection (7)(b)(i)(C).

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

108 **26-28-102. Definitions.**

109 As used in this chapter:

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

111 (2) "Agent" means an individual:

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

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

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

118 (4) "Decedent" means:

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

121 (b) includes:

122 (i) a stillborn infant; and

123 (ii) subject to the restrictions in Subsection 26-2-17(7) and other restrictions imposed
124 by law other than this chapter, a fetus.

125 (5) (a) "Disinterested witness" means:

126 (i) a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or
127 guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift;
128 or

129 (ii) another adult who exhibited special care and concern for the individual.

130 (b) "Disinterested witness" does not include a person to which an anatomical gift could
131 pass under Section 26-28-111.

132 (6) "Document of gift" means a donor card or other record used to make an anatomical
133 gift. The term includes a statement or symbol on a driver license, identification card, or donor
134 registry.

135 (7) "Donor" means an individual whose body or part is the subject of an anatomical
136 gift.

137 (8) "Donor registry" means a database that contains records of anatomical gifts and
138 amendments to or revocations of anatomical gifts.

139 (9) "Driver license" means a license or permit issued by the Driver License Division of
140 the Department of Public Safety, to operate a vehicle, whether or not conditions are attached to
141 the license or permit.

142 (10) "Eye bank" means a person that is licensed, accredited, or regulated under federal
143 or state law to engage in the recovery, screening, testing, processing, storage, or distribution of
144 human eyes or portions of human eyes.

145 (11) "Guardian":

146 (a) means a person appointed by a court to make decisions regarding the support, care,
147 education, health, or welfare of an individual; and

148 (b) does not include a guardian ad litem.

149 (12) "Hospital" means a facility licensed as a hospital under the law of any state or a

150 facility operated as a hospital by the United States, a state, or a subdivision of a state.

151 (13) "Identification card" means an identification card issued by the Driver License
152 Division of the Department of Public Safety.

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

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

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

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

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

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

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

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

169 (22) "Prospective donor":

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

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

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

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

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

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

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

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

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

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

190 (29) "Technician":

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

193 (b) includes an enucleator.

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

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

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

202 Section 3. Section 76-7-309 is amended to read:

203 **76-7-309. Pathologist's report.**

204 ~~[Any]~~ Subject to Subsection 26-2-17(7), any human tissue removed during an abortion
205 shall be submitted to a pathologist who shall make a report, including whether:

206 (1) the pregnancy was aborted by evacuating the uterus; and

207 (2) a medical record indicates that, through a prenatal screening or other diagnostic
208 test, the aborted fetus had or may have had Down syndrome.

209 Section 4. Section 76-7-310 is amended to read:

210 **76-7-310. Experimentation prohibited -- Medical testing for miscarriage or fetal**
211 **abnormality.**

212 (1) As used in this section:

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

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

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

218 (3) Subsection (2) does not prohibit medical testing, analysis, evaluation, or research to
219 determine the cause of a miscarriage or fetal abnormality.