

1 **DISPOSITION OF FETAL REMAINS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Karianne Lisonbee

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ requires a health care facility having possession of an aborted fetus or miscarried
14 fetus to provide for the final disposition of the fetal remains;
- 15 ▶ requires a health care facility to provide certain information to a woman regarding
16 the disposition of an aborted fetus or miscarried fetus;
- 17 ▶ requires a health care provider to notify a woman regarding the right to determine
18 the final disposition of the remains of the aborted fetus before performing an
19 abortion;
- 20 ▶ amends the Funeral Services Licensing Act to allow for the disposition of certain
21 fetal remains; and
- 22 ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **26-2-2**, as last amended by Laws of Utah 2018, Chapters 49 and 153

30 **26-2-17**, as last amended by Laws of Utah 2007, Chapter 60

31 **26-2-18**, as last amended by Laws of Utah 2006, Chapter 56

32 **58-9-607**, as enacted by Laws of Utah 2008, Chapter 353

33 **76-7-305**, as last amended by Laws of Utah 2019, Chapters 124 and 189

34 ENACTS:

35 **26-21-33**, Utah Code Annotated 1953

36 **26-21-34**, Utah Code Annotated 1953

37 **58-9-619**, Utah Code Annotated 1953



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

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

41 **26-2-2. Definitions.**

42 As used in this chapter:

43 (1) "Adoption document" means an adoption-related document filed with the office, a
44 petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted
45 in support of a supplementary birth certificate.

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

47 (a) is employed by a licensed funeral establishment; and

48 (b) has custody of a dead body.

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

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

53 (a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual
54 period began to the date of delivery; and

55 (b) that was not born alive.

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

59 (6) "Dispositioner" means:

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

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

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

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

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

68 (7) "Fetal remains" means:

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

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

71 ~~[(7)]~~ (8) "File" means the submission of a completed certificate or other similar
72 document, record, or report as provided under this chapter for registration by the state registrar
73 or a local registrar.

74 ~~[(8)]~~ (9) "Funeral service director" means the same as that term is defined in Section
75 58-9-102.

76 ~~[(9)]~~ (10) "Health care facility" means the same as that term is defined in Section
77 26-21-2.

78 ~~[(10)]~~ (11) "Health care professional" means a physician, physician assistant, or nurse
79 practitioner.

80 ~~[(11)]~~ (12) "Licensed funeral establishment" means:

81 (a) if located in Utah, a funeral service establishment, as that term is defined in Section
82 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act; or

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

86 ~~[(12)]~~ (13) "Live birth" means the birth of a child who shows evidence of life after the
87 child is entirely outside of the mother.

88 ~~[(13)]~~ (14) "Local registrar" means a person appointed under Subsection 26-2-3(3)(b).

89 ~~[(14)]~~ (15) "Nurse practitioner" means an individual who:

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

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

95 ~~[(15)]~~ (16) "Office" means the Office of Vital Records and Statistics within the
96 Department of Health, operating under Title 26, Chapter 2, Utah Vital Statistics Act.

97 ~~[(16)]~~ (17) "Physician" means a person licensed to practice as a physician or osteopath
98 in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68,
99 Utah Osteopathic Medical Practice Act.

100 ~~[(17)]~~ (18) "Physician assistant" means an individual who:

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

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

106 ~~[(18)]~~ (19) "Presumed father" means the father of a child conceived or born during a
107 marriage as defined in Section [30-1-17.2](#).

108 ~~[(19)]~~ (20) "Registration" or "register" means acceptance by the local or state registrar
109 of a certificate and incorporation of the certificate into the permanent records of the state.

110 ~~[(20)]~~ (21) "State registrar" means the state registrar of vital records appointed under
111 Subsection [26-2-3\(2\)\(e\)](#).

112 ~~[(21)]~~ (22) "Vital records" means:

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

115 (b) amendments to any of the registered certificates or reports described in Subsection
116 ~~[(21)]~~ (22)(a);

117 (c) an adoption document; and

118 (d) other similar documents.

119 ~~[(22)]~~ (23) "Vital statistics" means the data derived from registered certificates and
120 reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce,

121 dissolution of marriage, or annulment.

122 Section 2. Section 26-2-17 is amended to read:

123 **26-2-17. Certificate of death -- Registration prerequisite to interment --**

124 **Burial-transit permits -- Procedure where body donated under anatomical gift law --**

125 **Permit for disinterment.**

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

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

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

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

134 ~~[(b)]~~ (ii) the disposition takes place with authorization of the next of kin and in:

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

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

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

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

142 (ii) the disposition takes place:

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

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

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

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

151 ~~[(b)]~~ (ii) when disposition of the dead body or dead fetus is made by a person other

152 than a funeral service director.

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

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

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

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

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

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

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

163 (i) that is submitted under Subsection (3)(b); and

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

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

168 (5) When a dead body or dead fetus or any part of the dead body or dead fetus has been
169 donated under the Revised Uniform Anatomical Gift Act or similar laws of another state and
170 the preservation of the gift requires the immediate transportation of the dead body, dead fetus,
171 or any part of the body or fetus outside of the registration district in which death occurs or the
172 remains are found, or into this state from another state, the dead body or dead fetus or any part
173 of the body or fetus may be transported and the burial-transit permit required by this section
174 obtained within a reasonable time after transportation.

175 (6) A permit for disinterment and reinterment is required prior to disinterment of a
176 dead body [or], dead fetus, or fetal remains, except as otherwise provided by statute or
177 department rule.

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

179 **26-2-18. Interments -- Duties of sexton or person in charge -- Record of**
180 **interments -- Information filed with local registrar.**

181 (1) (a) A sexton or person in charge of any premises in which interments are made may
182 not inter or permit the interment of any dead body [or], dead fetus, or fetal remains unless the

183 interment is made by a funeral service director or by a person holding a burial-transit permit.

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

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

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

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

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

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

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

201 **26-21-33. Treatment of aborted remains.**

202 (1) As used in this section, "aborted fetus" means a product of human conception,
203 regardless of gestational age, that has died from an abortion as that term is defined in Section
204 [76-7-301](#).

205 (2) (a) A health care facility having possession of an aborted fetus shall provide for the
206 final disposition of the aborted fetus in accordance with this section.

207 (b) Within 10 business days after the day on which an abortion is performed, a health
208 care facility possessing an aborted fetus shall:

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

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

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

212 (a) provide the pregnant woman with the information described in Subsection

213 [76-7-305\(2\)\(d\)\(ix\)](#); and

214 (b) document the pregnant woman's decision under Subsection (4)(b) in the pregnant
215 woman's medical record.

216 (4) A pregnant woman who has an abortion:

217 (a) except as provided in Subsection (5), has the right to control the final disposition of
218 the aborted fetus;

219 (b) shall inform the health care facility of the pregnant woman's decision for final
220 disposition of the aborted fetus:

221 (i) in writing; and

222 (ii) on a form approved by the department; and

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

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

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

232 (b) The final disposition of an aborted fetus must be performed through:

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

234 (ii) interment.

235 (c) Notwithstanding Subsection [58-9-610](#)(4), an aborted fetus may be cremated by
236 simultaneous cremation.

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

238 **26-21-34. Treatment of miscarried remains.**

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

242 (2) (a) A health care facility having possession of a miscarried fetus shall provide for
243 the final disposition of the miscarried fetus in accordance with this section.

244 (b) Within 10 business days after the day on which a miscarriage occurs, a health care

245 facility possessing miscarried remains shall:

246 (i) conduct the final disposition of the miscarried remains in accordance with this

247 section; or

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

249 (3) No more than 24 hours after a woman has her miscarried fetus expelled or extracted

250 in a health care facility, the health care facility shall provide information to the parent or

251 parents of the miscarried fetus, both orally and in writing, regarding:

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

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

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

255 (4) The parents of a miscarried fetus:

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

257 (b) shall inform the health care facility of the parents' decision for final disposition of

258 the miscarried fetus:

259 (i) in writing; and

260 (ii) on a form approved by the department; and

261 (c) are responsible for the costs related to the final disposition of the miscarried fetus at

262 the chosen location if the parents choose a location for the final disposition of the miscarried

263 fetus that is different from the location that is usual and customary for the health care facility.

264 (5) (a) A health care facility may not include miscarried fetus with other biological,

265 infectious, or pathological waste.

266 (b) The final disposition of a miscarried fetus must be performed through:

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

268 (ii) interment.

269 (c) Notwithstanding Subsection [58-9-610](#)(4), a miscarried fetus may be cremated by

270 simultaneous cremation.

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

272 **58-9-607. Authorization to cremate -- Penalties for removal of items from human**
273 **remains.**

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

- 276 (a) a cremation authorization form signed by an authorizing agent;
- 277 (b) a completed and executed burial transit permit or similar document, as provided by
- 278 state law, indicating that human remains are to be cremated; and
- 279 (c) any other documentation required by the state, county, or municipality.
- 280 (2) (a) The cremation authorization form shall contain, at a minimum, the following
- 281 information:
- 282 (i) the identity of the human remains and the time and date of death, including a signed
- 283 declaration of visual identification of the deceased or refusal to visually identify the deceased;
- 284 (ii) the name of the funeral director and funeral service establishment that obtained the
- 285 cremation authorization;
- 286 (iii) notification as to whether the death occurred from a disease declared by the
- 287 department of health to be infectious, contagious, communicable, or dangerous to the public
- 288 health;
- 289 (iv) the name of the authorizing agent and the relationship between the authorizing
- 290 agent and the decedent;
- 291 (v) a representation that the authorizing agent has the right to authorize the cremation
- 292 of the decedent and that the authorizing agent is not aware of any living person with a superior
- 293 or equal priority right to that of the authorizing agent, except that if there is another living
- 294 person with a superior or equal priority right, the form shall contain a representation that the
- 295 authorizing agent has:
 - 296 (A) made reasonable efforts to contact that person;
 - 297 (B) been unable to do so; and
 - 298 (C) no reason to believe that the person would object to the cremation of the decedent;
- 299 (vi) authorization for the funeral service establishment to cremate the human remains;
- 300 (vii) a representation that the human remains do not contain a pacemaker or other
- 301 material or implant that may be potentially hazardous or cause damage to the cremation
- 302 chamber or the person performing the cremation;
- 303 (viii) the name of the person authorized to receive the cremated remains from the
- 304 funeral service establishment;
- 305 (ix) the manner in which the final disposition of the cremated remains is to take place,
- 306 if known;

307 (x) a listing of each item of value to be delivered to the funeral service establishment
308 along with the human remains, and instructions as to how each item should be handled;

309 (xi) the signature of the authorizing agent, attesting to the accuracy of all
310 representations contained on the authorization form;

311 (xii) if the cremation authorization form is being executed on a preneed basis, the form
312 shall contain the disclosure required for preneed programs under this chapter; and

313 (xiii) except for a preneed cremation authorization, the signature of the funeral director
314 of the funeral service establishment that obtained the cremation authorization.

315 (b) (i) The individual [~~referred to~~] described in Subsection (2)(a)(xiii) shall execute the
316 funeral authorization form as a witness and is not responsible for any of the representations
317 made by the authorizing agent.

318 (ii) The funeral director or the funeral service establishment shall warrant to the
319 crematory that the human remains delivered to the funeral service establishment have been
320 positively identified as the decedent listed on the cremation authorization form by the
321 authorizing agent or a designated representative of the authorizing agent.

322 (iii) The authorizing agent or the agent's designee may make the identification referred
323 to in Subsection (2)(b)(ii) in person or by photograph.

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

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

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

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

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

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

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

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

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

345 **58-9-619. Exception for disposition of fetal remains.**

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

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

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

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

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

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

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

355 **76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory**
356 **-- Exceptions.**

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

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

362 (b) the provisions of this section.

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

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

368 (b) the pregnant woman views the entire information module and presents evidence to

369 the individual described in Subsection (2)(a) that the pregnant woman viewed the entire
370 information module;

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

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

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

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

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

383 (i) the nature of the proposed abortion procedure;

384 (ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the
385 fetus;

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

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

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

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

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

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

398 (ix) the woman's right to determine the final disposition of the remains of the aborted
399 fetus and available options for disposition of the aborted fetus; and

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

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

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

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

407 (ii) a printed copy of the material on the department's website described in Section
408 76-7-305.5, if requested by the pregnant woman.

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

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

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

416 (ii) obtain a copy of the statement described in Subsection (2)(c)(i).

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

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

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

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

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

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

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

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

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

431 including:

- 432 (i) the dimensions of the unborn child;
- 433 (ii) the presence of cardiac activity in the unborn child, if present and viewable; and
- 434 (iii) the presence of external body parts or internal organs, if present and viewable; and
- 435 (d) provide the detailed description described in Subsection (5)(c), if the woman
- 436 requests it.

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

440 (a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician
441 concur, in writing, that the abortion is necessary to avert:

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

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

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

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

449 and

450 (b) shall be subject to:

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

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

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

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

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

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

461 (ii) a serious risk of substantial and irreversible impairment of a major bodily function

462 of the woman on whom the abortion is performed;

463 (c) the pregnancy was the result of rape or rape of a child, as defined in Sections
464 76-5-402 and 76-5-402.1;

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

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

468 (9) A physician who complies with the provisions of this section and Section
469 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain
470 informed consent under Section 78B-3-406.

471 (10) (a) The department shall provide an ultrasound, in accordance with the provisions
472 of Subsection (5)(b), at no expense to the pregnant woman.

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

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

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

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

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

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