

1 HOUSE BILL NO. 873
2 INTRODUCED BY L. SHELDON-GALLOWAY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE DIGNIFIED TREATMENT OF AND
5 DISPOSITION OF FETAL REMAINS FOLLOWING A SPONTANEOUS MISCARRIAGE OR ABORTION;
6 ~~PROVIDING RULEMAKING AUTHORITY;~~ PROVIDING DEFINITIONS; ~~PROVIDING AN APPROPRIATION;~~
7 AMENDING SECTIONS 37-19-101 AND 50-20-105, MCA; AND PROVIDING AN EFFECTIVE DATE."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 NEW SECTION. Section 1. Disposition of fetal remains. (1) Immediately after a spontaneous
12 miscarriage or an abortion, a health care provider shall:

13 (a) disclose to the parent or parents of the fetus, both orally and in writing, the right of the parent or
14 parents to determine the final disposition of the fetal remains; and

15 (b) provide the parent or parents of the fetus with written information concerning but not limited to:

16 (i) the 10-business-day timeframe for determining the final disposition of fetal remains;

17 (ii) the available options for disposition of the fetal remains;

18 (iii) the right of the parent or parents to take the fetal remains and to determine the final disposition
19 themselves; and

20 (iv) the health care provider's procedure for the final disposition of fetal remains in accordance with
21 subsection (4)(b)(ii).

22 (2) (a) Within 10 business days after a spontaneous miscarriage or an abortion, the parent or
23 parents of a miscarried or aborted fetus shall inform the health care provider of the parent's or parents' decision
24 for the final disposition of the fetus after receiving the information required under subsection (1).

25 (b) The health care provider shall document the parent's or parents' decision in the medical record.

26 (c) If the parent or parents are under 18 years of age and have not been emancipated by court
27 order, the documentation must include consent of their parent or parents.

28 (3) If the parent or parents of the miscarried or aborted fetus choose a method of disposition other

1 than the method of final disposition utilized by the health care provider under subsection (4)(b)(ii), the parent or
2 parents are responsible for the costs related to the final disposition of the fetus.

3 (4) Following a spontaneous miscarriage or abortion, the health care provider shall:

4 (a) ensure that the fetal remains are retained until final disposition is arranged. If the remains are
5 stored by the health care provider, the remains must be stored:

6 (i) in the same manner as human remains and not as pathological waste; and

7 (ii) at no cost to the parent or parents; and

8 (b) provide for the final disposition of the fetal remains by:

9 (i) releasing fetal remains to the parent or parents immediately on request; or

10 (ii) cremating or interring the fetal remains within 10 business days after the parent or parents

11 decline to take responsibility for the remains or after no determination has been made by the parent or parents
12 within the initial 10-business-day timeframe described in subsection (2)(a).

13 ~~(5) — The department shall design and adopt in administrative rule a form that a health care provider~~
14 ~~shall complete for each spontaneous miscarriage or abortion. The form may not include information that could~~
15 ~~be used to personally identify the parent or parents of the fetus, but must document:~~

16 ~~(a) — the age of the parent or parents of the fetal remains;~~

17 ~~(b) — a designation of the final disposition of the fetal remains; and~~

18 ~~(c) — any other information required by the department, including but not limited to:~~

19 ~~(i) — the gestational age of the fetus;~~

20 ~~(ii) — the sex of the fetus;~~

21 ~~(iii) — whether the fetus was part of a multiple birth or multiple fetus pregnancy; and~~

22 ~~(iv) — any other information that could aid in developing an understanding of the causes of~~

23 ~~spontaneous miscarriage.~~

24 ~~(6)(5)~~ For the purposes of this section, the following terms apply:

25 (a) "Cremating" has the same meaning as "cremation" provided in 37-19-101.

26 (b) "Interring" has the same meaning as "interment" provided in 37-19-101.

27 (c) "Pathological waste" means human tissues, organs, and blood or body fluids in liquid or

28 semiliquid form that are removed from a person for medical purposes. The term does not include amputations

1 or fetal remains.

2 (d) "Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the
3 expulsion of the fetus, typically caused by genetic defects in the fetus or physical abnormalities in the pregnant
4 woman.

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6 **Section 2.** Section 37-19-101, MCA, is amended to read:

7 **"37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following
8 definitions apply:

9 (1) "Arrangements" includes:

10 (a) planning the details of funeral service, including time of service, type of service, and, if
11 requested, acquiring the services of clergy;

12 (b) obtaining the necessary information for filing death certificates;

13 (c) comparing or discussing prices, including merchandise prices and financial arrangements; and

14 (d) providing for onsite direction and coordination of participants and onsite direction, coordination,
15 and facilitation at funeral, graveside, or memorial services or rites.

16 (2) "At-need arrangements" means arrangements made by an authorized person on behalf of a
17 deceased.

18 (3) "Authorizing agent" means a person legally entitled to order the final disposition of human
19 remains, including burial, cremation, entombment, donation to medical science, or other means. The order of
20 preference for an authorizing agent is subject to the priority of rights of disposition established in 37-19-904.

21 (4) "Board" means the board of funeral service provided for in 2-15-1743.

22 (5) "Branch establishment" means a separate facility that may or may not have a suitable visitation
23 room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or
24 controlled by a licensed mortuary.

25 (6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be
26 used for interment of cremated remains or human remains. It may be any one or a combination of a burial park
27 for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

28 (7) "Cemetery company" means an individual, partnership, corporation, or association that:

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Section 3. Section 50-20-105, MCA, is amended to read:

"50-20-105. Duties of department. ~~(1) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.~~

~~(2)(1)~~ The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state resulting directly or indirectly from abortion, subject to the provisions of 50-20-110(5).

~~(3)(2)~~ The department shall report to the attorney general any apparent violation of this chapter.

~~(4)(3)~~ The department shall develop a certification form for use in accordance with 50-20-113."

~~**NEW SECTION. Section 4. Appropriation.** (1) There is appropriated \$1,000 from the general fund to the department of public health and human services for the biennium beginning July 1, 2023.~~

~~(2) — The appropriation must be used to pay for the costs associated with designing and distributing the form described in [section 1(5)].~~

~~(3) — The legislature intends that the appropriation provided for in this section is a one-time-only appropriation.~~

NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 20, part 1, and the provisions of Title 50, chapter 20, part 1, apply to [section 1].

NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2023.

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