

HOUSE BILL NO. 873

INTRODUCED BY L. SHELDON-GALLOWAY

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

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

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

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

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

- (i) the 10-business-day timeframe for determining the final disposition of fetal remains;
- (ii) the available options for disposition of the fetal remains;
- (iii) the right of the parent or parents to take the fetal remains and to determine the final disposition themselves; and

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

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

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

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

(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) 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:

- 1 (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or
- 2 (b) applies to the board to own or control cemetery lands or property and conduct the business of
- 3 a cemetery.
- 4 (8) "Closed container" means a container in which cremated remains can be placed and enclosed
- 5 in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.
- 6 (9) "Columbarium" means a room or space in a building or structure used or intended to be used
- 7 for the interment of cremated remains.
- 8 (10) "Cremated remains" means all human remains recovered after the completion of the cremation,
- 9 including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.
- 10 (11) "Cremation" means the technical process, using heat, that reduces human remains to bone
- 11 fragments. The reduction takes place through heat and evaporation.
- 12 (12) "Cremation chamber" means the enclosed space within which the cremation process takes
- 13 place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the
- 14 cremation of human remains.
- 15 (13) "Cremation container" means the container in which the human remains are placed in the
- 16 cremation chamber for a cremation. A cremation container must meet substantially all of the following
- 17 standards:
- 18 (a) be composed of readily combustible materials suitable for cremation;
- 19 (b) be able to be closed in order to provide a complete covering for the human remains;
- 20 (c) be resistant to leakage and spillage;
- 21 (d) be rigid enough for handling with ease; and
- 22 (e) be able to provide protection for the health, safety, and integrity of crematory personnel.
- 23 (14) "Crematory" means the building or portion of a building that houses the cremation chamber and
- 24 the holding facility.
- 25 (15) "Crematory operator" means the person in charge of the licensed crematory facility.
- 26 (16) "Crematory technician" means an employee of a crematory facility who is trained to perform
- 27 cremations and is licensed by the board.
- 28 (17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

1 (18) "Department" means the department of labor and industry provided for in Title 2, chapter 15,  
2 part 17.

3 (19) "Embalming" means:

4 (a) obtaining burial or removal permits or assuming other duties incidental to the practice of  
5 embalming;

6 (b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in  
7 parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the  
8 chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction  
9 into the organs or cavities; and

10 (c) restorative art.

11 (20) "Funeral directing" includes:

12 (a) supervising funerals;

13 (b) the making of preneed or at-need contractual arrangements for funerals;

14 (c) preparing dead bodies for burial, other than by embalming;

15 (d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

16 (e) representing to the public that one is a funeral director.

17 (21) "Holding facility" means an area within or adjacent to the crematory facility designated for the  
18 retention of human remains prior to cremation that must:

19 (a) comply with any applicable public health law;

20 (b) preserve the dignity of the human remains;

21 (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel;

22 and

23 (d) be secure from access by anyone other than authorized personnel.

24 (22) "Human remains" means fetal remains or the body of a deceased person or part of a body or  
25 limb that has been removed from a living person, including the body, part of a body, or limb in any stage of  
26 decomposition.

27 (23) "Interment" means any lawful disposition of cremated remains or human remains.

28 (24) (a) "Intern" means a person who has met the educational and testing requirements for a license

1 to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the  
2 practice of mortuary science under the supervision of a licensed mortician.

3 (b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a  
4 mortician believes an intern requires based on the training, experience, judgment, and professional  
5 development of the intern.

6 (25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

7 (26) "Mausoleum" means a community-type room or space in a building or structure used or  
8 intended to be used for the interment of human remains in crypts or niches.

9 (27) "Mortician" means a person licensed under this chapter to practice mortuary science.

10 (28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion  
11 of a building having a specific street address or location, containing but not limited to a suitable room for  
12 viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the  
13 preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

14 (b) The term includes conducting activities from the place of business referred to in subsection  
15 (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or  
16 the transportation, burial, cremation, or other disposition of dead human bodies in any area where those  
17 activities may be conducted.

18 (29) "Mortuary science" means the profession or practice of funeral directing and embalming.

19 (30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the  
20 interment of the cremated remains or human remains of one or more deceased persons.

21 (31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery  
22 buildings, grounds, and lots or grave spaces.

23 (32) "Preneed arrangements" means arrangements made with a licensed mortician by a person on  
24 the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

25 (33) "Temporary container" means a receptacle for cremated remains that is usually made of  
26 cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other  
27 permanent container is acquired.

28 (34) "Urn" means a receptacle designed to permanently encase the cremated remains."

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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 5. 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 6. Effective date.** [This act] is effective July 1, 2023.

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