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Legislative Document

No. 1225

S.P. 398

In Senate, March 24, 2021

**An Act To Provide Dignity for Fetal Remains by Requiring Their
Interment or Cremation**

Received by the Secretary of the Senate on March 22, 2021. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CYRWAY of Kennebec.
Cosponsored by Representative ALLEY of Beals and
Senators: DAVIS of Piscataquis, POULIOT of Kennebec, Representatives: BRADSTREET of
Vassalboro, DRINKWATER of Milford, LANDRY of Farmington, McCREA of Fort Fairfield,
NADEAU of Winslow.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §1593-A** is enacted to read:

3 **§1593-A. Fetal remains**

4 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Fetal loss" means the expulsion of a fetus from a female body following the
7 premature death of the fetus due to abortion, as defined under section 1596, subsection
8 1, paragraph A; miscarriage, as defined under section 1596, subsection 1, paragraph B;
9 or fetal death, as described under section 2841, regardless of the gestational age of the
10 fetus.

11 B. "Fetal remains" means the biological material expelled from a female body after a
12 fetal loss.

13 C. "Health care entity" has the same meaning as in Title 24, section 2502, subsection
14 1-D.

15 D. "Health care practitioner" has the same meaning as in Title 24, section 2502,
16 subsection 1-A.

17 E. "Health care professional" has the same meaning as in section 1596, subsection 1,
18 paragraph C.

19 F. "Health care provider" has the same meaning as in Title 24, section 2502, subsection
20 2.

21 G. "Physician" has the same meaning as in Title 24, section 2502, subsection 3.

22 **2. Notification.** A woman who suffers a fetal loss must be informed, both orally and
23 in writing, of her right to choose the final disposition of the fetal remains and the options
24 of cremation and interment.

25 **3. Right to custody.** A parent has the right to custody of and control over fetal
26 remains.

27 **4. Collection.** Fetal remains must be collected to the best of the ability of a health
28 care professional, health care entity, health care practitioner, health care provider or
29 physician.

30 **5. Election.** A parent may elect to take custody of and control over fetal remains or
31 to release the fetal remains to the custody and control of the State. A parent, or a parent's
32 designated representative, shall sign a consent form making the election. A parent who
33 elects to take custody of and control over fetal remains must be given the fetal remains.

34 **6. Bereavement support.** In the event of a fetal loss, a parent must be provided with
35 information regarding bereavement support services.

36 **7. Final disposition.** Fetal remains must receive an individual disposition by
37 cremation or interment except that, in the case of a pregnancy with multiple offspring, the
38 combined disposition of fetal remains by cremation or interment is permitted.

1 **8. Fetal remains under the custody and control of the State.** Fetal remains under
2 the custody and control of the State must be cremated or interred in the nearest public
3 burying ground.

4 **9. Fetal losses outside medical care.** In the event of a fetal loss outside of the care of
5 a health care professional, health care entity, health care practitioner, health care provider
6 or physician, notwithstanding subsection 4, a parent or the parent's designated
7 representative may collect the fetal remains and take the fetal remains to a health care
8 professional, health care entity, health care practitioner, health care provider or physician
9 or a government facility designated to receive fetal remains for the purpose of final
10 disposition pursuant to subsection 7.

11 **10. Exemptions from permit and certification requirements.** Reporting, permit
12 and certification requirements required for disposition purposes in the State do not apply
13 to fetal remains with a gestational age of less than 20 weeks.

14 **11. Banned activities.** A person may conduct a visual pathological examination of
15 fetal remains but may not violate the integrity of the fetal remains. A person may not cut
16 or dismember fetal remains or otherwise violate the integrity of fetal remains. A person
17 may not use fetal remains for scientific experimentation. A person may not dispose of fetal
18 remains in a landfill. A person may not transport fetal remains into or out of the State for
19 any purpose other than disposition as described in subsection 7.

20 **12. Punishments and fines.** A person or entity who violates this section commits a
21 Class D crime. A person or entity who violates this section 3 or more times commits a
22 Class D crime for which fine of \$10,000 must be imposed. A health care professional,
23 health care entity, health care practitioner, health care provider or physician who violates
24 this section is subject to license revocation.

25 **Sec. 2. 38 MRSA §1303-C, sub-§1-A,** as enacted by PL 1989, c. 869, Pt. A, §3
26 and affected by §21, is amended to read:

27 **1-A. Biomedical waste.** "Biomedical waste" means waste that may contain human
28 pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a
29 susceptible human host could result in disease or that may contain cytotoxic chemicals used
30 in medical treatment. "Biomedical waste" does not include fetal remains, as defined under
31 Title 22, section 1593-A, subsection 1, paragraph B.

32 SUMMARY

33 This bill requires the final disposition of fetal remains resulting from abortion,
34 miscarriage or fetal death, regardless of gestational age, through cremation or interment.