

FIRST REGULAR SESSION

SENATE BILL NO. 65

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Pre-filed December 1, 2002, and 1,000 copies ordered printed.

0162S.03I

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 194.400, 194.407, 194.408, 194.409, and 194.410, RSMo, relating to the disposition of dead bodies, and to enact in lieu thereof six new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 194.400, 194.407, 194.408, 194.409, and 194.410, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 194.400, 194.403, 194.407, 194.408, 194.409, and 194.410, to read as follows:

194.400. As used in sections 194.400 to 194.410 the following words and phrases mean:

(1) **"Cemetery", property restricted in use for the interment of human remains by formal dedication or reservation by deed but shall not include any cemetery held or operated by the state or federal government, or any political subdivision thereof, or any religious organization, cemetery association, or fraternal society holding a cemetery for sale solely to members and their immediate families as defined in subdivision (3) of section 214.270, RSMo;**

(2) "Committee", the unmarked human burial consultation committee;

[(2)] (3) "Cultural items", shall include:

(a) "Associated funerary objects", objects that are reasonably believed to have been placed with individual human remains either at the time of death, or during the death rite or ceremony, or later, and all other items exclusively made for burial purposes including items made to contain

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

human remains as determined by the state historic preservation officer in consultation with the unmarked human burial consultation committee and one or more of the following: a professional archaeologist, a direct descendant from the individual whose remains constitute the burial, or a tribe or group recognized by the state;

(b) "Unassociated funerary objects", objects that are reasonably believed to have been placed with individual human remains either at the time of death or during the death rite or ceremony, or later, which can be identified by a preponderance of the evidence as related to known human remains or an unmarked human burial site or can be identified as having been removed from a specific unmarked human burial site as determined by the state historic preservation officer in consultation with the unmarked human burial consultation committee and one or more of the following: a professional archaeologist, a direct descendant from the individual whose remains constitute the burial, or a tribe or group recognized by the state;

[3] (4) "Family burial ground", a cemetery in which no burial space is sold to the public and in which interments are restricted to persons related by blood or marriage, as defined in subdivision (15) of section 214.270, RSMo;

(5) "Funeral director", a person licensed as a funeral director pursuant to the provisions of chapter 333, RSMo, and who shall bear responsibility for disinterment and reinterment if an archaeologist is not required for excavation;

(6) "General archaeological investigation", refers to:

(a) Excavations performed by professional archaeologists usually consisting of a structured scientific undertaking comprised of three segments including field investigations, laboratory analysis, and preparation and submission of a report of investigation; and

(b) Identification of the presence of human remains in excavated materials considered to occur at the completion of the laboratory analysis segment of the studies as above;

[4] (7) "Professional archaeologist", a person who has a graduate degree in archaeology, anthropology, or closely related field, at least one year of full-time professional experience or equivalent specialized training in archaeological research, administration of management, [or] and at least four months of supervised field and analytic experience in general North American archaeology and demonstrated ability to carry archaeological research to completion, as evidenced by a master of arts or master of science thesis, or report equivalent in scope and quality;

[5] (8) "Religious cemetery", a cemetery owned, operated, controlled or managed by any church, convention of churches, religious order, or affiliated auxiliary thereof in which the sale of burial space is restricted solely to its members and their immediate families as defined in subdivision (29) of section 213.270, RSMo;

(9) "Second or subsequent violation", any violation, other than the first violation, of a criminal law related to the trafficking of human remains or cultural items located in the state of

Missouri, the United States, or any other state;

[(6)] (10) "Skeletal analyst", a person possessing a postgraduate degree representing specialized training in skeletal biology, forensic osteology, or other relevant aspects of physical anthropology. The skeletal analyst shall have a minimum experience of one year in conducting laboratory reconstruction and analysis, and shall have demonstrated the ability to design and execute a skeletal analysis, and to present the written results and interpretations of such analysis in a thorough, scientific, and timely manner;

[(7)] (11) "Specific scientific investigations", refers to detailed studies of human remains by professional archaeologists, anthropologists, osteologists, or professionals in related disciplines;

[(8)] (12) "State historic preservation officer", the director of the department of natural resources;

[(9)] (13) "Unmarked human burial", any instance where human skeletal remains are discovered or believed to exist, [but for which there exists no written historical documentation or grave markers] **and which do not fulfill the definitions of cemetery as defined in subdivisions (3), (15), and (25) of section 214.270, RSMo.**

194.403. The department of natural resources is authorized to promulgate appropriate regulations for the administration of sections 194.400 to 194.410. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

194.407. 1. In cases where an unmarked human burial or human skeletal remains are discovered as a result of construction or agricultural earth disturbing activities and where the state historic preservation officer has been determined to have jurisdiction, the state historic preservation officer shall determine whether removal of the human skeletal remains is necessary and appropriate for the purpose of scientific analysis. A general archaeological investigation of the site shall be conducted by a professional archaeologist and the professional archaeologist shall advise the state historic preservation officer of the physical location and the cultural and biological characteristics of the unmarked human burial or human skeletal remains within thirty days after the state historic preservation officer assumed jurisdiction over the burial or remains.

2. In cases where an unmarked human burial or skeletal remains are discovered by a professional archaeologist in the course of an investigation, and where the state historic preservation officer has been determined to have jurisdiction, the professional archaeologist shall

advise the state historic preservation officer of the physical location and the cultural and biological characteristics of the unmarked human burial or human skeletal remains within thirty days after the state historic officer assumed jurisdiction.

3. Notwithstanding anything to the contrary herein contained no construction shall be suspended or delayed more than thirty days **unless the scope of work for the removal of the remains and cultural items requires a longer period of time. If the state historic preservation officer determines that a longer period of time is necessary, the department shall notify in writing all parties directly affected by the delay and give reasons for the delay. Such delay shall not exceed an additional thirty days. If the state historic preservation officer determines that any subsequent delays are necessary, then the department shall notify in writing all parties directly affected by the delay and give reasons for the additional delays. Any additional delay shall not exceed thirty days.**

194.408. Whenever an unmarked human burial or human skeletal remains are reported to the state historic preservation officer, the state historic preservation officer shall proceed as follows:

(1) Insofar as possible, the state historic preservation officer shall make reasonable efforts to identify and locate persons who can establish direct kinship with or descent from the individual whose remains constitute the burial. The state historic preservation officer, in consultation with the most closely related family member, shall determine the proper disposition of the remains;

(2) When no direct kin or descendants can be identified or located, but the burial or remains can be shown to have ethnic affinity with living peoples, the state historic preservation officer in consultation with the [leaders] **leader** of the ethnic [groups] **group** having a relation to the burial or remains shall determine the proper disposition of the remains. But, if the state historic preservation officer determines the burial or remains are scientifically significant, no reinterment shall occur until the burial or remains have been examined by a skeletal analyst designated by the state historic preservation officer. In no event shall reinterment be delayed more than one year **unless otherwise and to the extent determined by the committee;**

(3) When the burial or remains cannot be related to any living peoples, the state historic preservation officer, in consultation with the unmarked human burial consultation committee, shall determine the proper disposition of the burial or remains. But, if the state historic preservation officer determines the burial or remains are scientifically significant, no reinterment shall occur until the burial or remains have been examined by a skeletal analyst designated by the state historic preservation officer. In no event shall reinterment be delayed more than one year unless otherwise and to the extent determined by the committee;

(4) Notwithstanding subdivisions (2) and (3) of this section the state historical preservation officer [may] **shall** seek approval from the unmarked human burial consultation

committee to delay reinterment of the remains for an additional scientific study in a facility chosen by the state historic preservation officer. If the study is approved by the committee reinterment shall be delayed for a period as specified by the committee;

(5) After an initial discovery of human remains or a burial site, any person who intends to further alter, disturb, or remove human remains or a burial site shall follow the procedure set forth in sections 194.400 to 194.410 and shall be responsible for the cost of same.

194.409. 1. There is hereby created in the department of natural resources, an "Unmarked Human Burial Consultation Committee", which shall be composed of seven members to be appointed by the governor with the advice and consent of the senate. The members of the committee shall be appointed as follows: the state historic preservation officer, two members who are archaeologists or skeletal analysts, two native Americans who are members of an Indian tribe recognized by the United States of America, one member who is a non-Indian minority, and one non-Indian, non-minority member who is neither a professional archaeologist nor a skeletal analyst. Members of the committee shall be residents of the state of Missouri.

2. The state historic preservation officer shall be chairman of the committee and shall serve a term which is contemporaneous with his employment as director of the department of natural resources. The terms of all other members of the committee shall be three years.

3. The committee shall meet at least [once] **twice** each calendar year, but may meet more often at the request of the state historic preservation officer.

4. The members of the committee shall serve voluntarily and shall not receive compensation for membership on the committee, except that they shall be eligible to receive reimbursement for transportation expenses as provided for through the budget approved for the office of the state historic preservation officer.

5. All actions and decisions of the state historic preservation officer and the unmarked human burial consultation committee shall be in conformity with the provisions of the federal National Historic Preservation Act of 1966, as amended.

194.410. 1. Any person, corporation, partnership, proprietorship, or organization who knowingly disturbs, destroys, vandalizes, or damages a marked or unmarked human burial site commits a class D felony.

2. Any person who knowingly appropriates for profit, uses for profit, sells, purchases or transports for sale or profit any human remains without the right of possession to those remains as provided in sections 194.400 to 194.410 commits a class A misdemeanor and, in the case of a second or subsequent violation, commits a class D felony.

3. Any person who knowingly appropriates for profit, uses for profit, sells, purchases or transports for sale or profit any cultural items obtained in violation of sections 194.400 to 194.410 commits a class A misdemeanor and, in the case of a second or subsequent violation, commits a

class D felony.

4. Any natural person who violates any provision of sections 194.400 to 194.410 shall be subject to a civil penalty of one thousand dollars per violation. Any corporation, general or limited partnership, trust, or limited liability company that violates any provision of sections 194.400 to 194.410 shall be subject to a civil penalty of ten thousand dollars per violation. The penalty imposed by this section shall be cumulative and more than one penalty shall be recoverable in the same action in any court of competent jurisdiction. All moneys collected pursuant to this subsection shall be placed in the natural resources protection fund created pursuant to section 640.220, RSMo, and subject to appropriation, shall be used by the state historic preservation office to carry out its duties pursuant to sections 194.400 to 194.410.

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