

CHAPTER 10-A. LOUISIANA UNMARKED HUMAN BURIAL SITES PRESERVATION ACT

§ 671. Short title

This Chapter shall be known as the "Louisiana Unmarked Human Burial Sites Preservation Act".

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 672. Legislative declaration of intent

The legislature finds that existing state laws do not provide for the adequate protection of unmarked burial sites and of human skeletal remains and burial artifacts in such sites. As a result, there is a real and growing threat to the safety and sanctity of unmarked burial sites, both from economic development of the land and from persons engaged for personal or financial gain in the mining of prehistoric and historic Indian, pioneer, and Civil War and other soldiers' burial sites. Therefore, there is an immediate need for legislation to protect the burial sites of these earlier residents of Louisiana from desecration and to enable the proper archaeological investigation and study when disturbance of a burial site is necessary or desirable. The legislature intends that this Chapter shall assure that all human burial sites shall be accorded equal treatment, protection, and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 673. Definitions

As used in this Chapter, unless the context clearly indicates otherwise, the following terms shall have the meanings indicated:

(1) "Board" means the Unmarked Burial Sites Board.

(2) "Burial artifact" means any item of human manufacture or use that is in an unmarked burial site.

(3) "Disturb" includes excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way any unmarked burial sites or any human skeletal remains, burial artifacts, or burial markers on or in an unmarked burial site without a permit.

(4) "Human skeletal remains" means any part of the body of a deceased human being in any stage of decomposition.

(5) "Unmarked burial site" means the immediate area where one or more human skeletal remains are found in the ground that is not in a recognized and maintained municipal, fraternal, religious, or family cemetery, or a cemetery authorized by the Louisiana Cemetery Board.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 674. Exclusions

This Chapter shall not apply to the following:

(1) A cemetery operated under the authority and regulation of the Louisiana Cemetery Board, or any recognized and maintained municipal, fraternal, religious, or family cemetery.

(2) The use of land for purposes of farming, cattle raising, timber growing, and other similar surface uses that will not result in the disturbance of human skeletal remains through excavation or other activities.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 675. The Louisiana Unmarked Burial Sites Board

A. The Louisiana Unmarked Burial Sites Board is hereby created within the Department of Culture, Recreation and Tourism, office of cultural development, division of archaeology. The board shall be domiciled in Baton Rouge. All budgeting, purchasing, and related management functions shall be administered under the direction of the director of the division of archaeology and in accordance with the Executive Reorganization Act.

B. The board shall consist of seven members, including members appointed by the governor in accordance with the following schedule:

(1) One member appointed from a list of three persons nominated by the Louisiana Archaeological Survey and Antiquities Commission. The person appointed must be a physical anthropologist who holds at least a master's degree representing specialized training in skeletal biology or forensic osteology. The individual must also have demonstrated an ability to design and execute a human skeletal analysis and to present the written results and interpretation of the analysis in a thorough, scientific, and timely manner.

(2) One member appointed from a list of three persons nominated by the Louisiana Archaeological Survey and Antiquities Commission. The person appointed must be either a professional archaeologist or a professional cultural anthropologist.

(3) One member appointed from a list of three persons nominated by the Louisiana Intertribal Council. The person appointed must belong to a tribe recognized by Louisiana but not by the federal government.

(4) One member appointed from a list of three persons nominated by the Louisiana Intertribal Council. The person appointed must belong to a federally recognized tribe of Louisiana.

(5) One member who is a non-Indian minority appointed from a list of three persons nominated by the Louisiana Legislative Black Caucus.

C. The director of the division of archaeology and the director of the Governor's Commission on Indian Affairs shall serve on the board as ex officio members with the same rights, powers, duties, responsibilities, and privileges as members appointed by the governor.

D. The terms of the appointed members shall end at the same time as the term of the governor making the appointment. Members shall serve until their successors in office are appointed and have taken office. Each member shall take and subscribe to the oath of office prescribed for state officers.

E. Initial members shall be appointed no later than the sixtieth day after January 1, 1992, or the sixtieth day after the nominations are received by the governor, whichever is later. Thereafter, members shall be appointed no later than the sixtieth day after the governor takes office, or the sixtieth day after a vacancy occurs, or the sixtieth day after the nominations are received by the governor, whichever is later.

F. Each appointment by the governor shall be submitted to the Senate for confirmation.

G. Vacancies in the office of the members shall be filled in the same manner as the original appointments for the unexpired portion of the term of the office vacated.

H. A majority of the members of the board shall constitute a quorum for the transaction of business. All official actions of the board shall require the affirmative vote of a majority of the members of the board who are present unless otherwise provided by law.

I. Members may designate representatives to attend meetings of the board. Members who appoint representatives shall provide notice to the board of such action. Representatives shall present written authorization, signed by a member, to the board prior to attending a meeting. Representatives shall not have voting rights.

J. The board, by vote of two-thirds of the members, may remove from office any member who has accumulated three consecutive absences from board meetings.

K. A member of the board may receive a per diem of fifty dollars for each meeting he attends, but he shall not be paid for more than twelve meetings in each year. Such per diem shall be paid out of the funds of the board.

L. Members may receive a mileage allowance for mileage traveled in attending meetings. The mileage allowance shall be fixed by the board in an amount not to exceed the mileage rate for state employees.

M. The board shall meet quarterly. It also may meet on the call of the chairman or upon the request of any three members. The board shall not meet more than twelve times in any calendar year unless the meeting is called pursuant to an emergency situation involving an immediate threat of desecration or disturbance of an unmarked human burial site, human skeletal remains, or burial artifacts.

§ 676. Powers and duties of the board

A. The Louisiana Unmarked Burial Sites Board shall have the following powers and duties:

(1) To implement and to enforce this Chapter and the powers and duties assigned to the board by law.

(2) To adopt such rules and regulations as are necessary to implement and to enforce this Chapter and the powers and duties assigned to the board by law. All rules and regulations shall be adopted in accordance with the Administrative Procedure Act.¹

(3) To consult with all interested parties on occasions of disturbance of unmarked burial sites to determine a proper course of action.

(4) To institute civil proceedings seeking injunctive or other relief to restrain and to prevent violations of this Chapter or the laws or administrative rules administered or enforced by the board.

(5) To institute civil proceedings seeking restitution, payment of costs, or other monetary relief necessary to prevent, restore, or repair damage to unmarked burial sites, human skeletal remains, or burial artifacts from unmarked burial sites, or to retrieve human skeletal remains or burial artifacts removed in violation of this Chapter.

(6) To issue permits for the disinterment and/or for the scientific study of human skeletal remains and burial artifacts found in unmarked burial sites. The board may adopt rules and regulations to provide for the issuance of emergency permits by the state archaeologist.

(7) To charge a permit fee not to exceed one hundred dollars for each such permit. The monies collected from the issuance of permits, subject to applicable provisions of law, shall be used as provided for funds from civil damages in Subsection B of this Section.

(8) To issue permits for the special exhibition of human skeletal remains from unmarked burial sites if the board determines that the remains are of exceptional scientific or cultural significance.

(9) To issue permits for the use of human skeletal remains which have been legally obtained from unmarked burial sites and are intended strictly for teaching purposes at accredited institutions of higher learning, including but not limited to nonpublic display of human skeletal remains.

B. Civil damages, except for attorney fees, recovered by the board, subject to applicable provisions of law, shall be used by the board to implement and enforce this Chapter and to fund activities of the division of archaeology in regard to restoration and protection of burial sites, in

¹ R.S. 49:950 et seq.

accordance with regulations adopted by the board and other applicable laws. Attorney fees shall be paid to the Louisiana Department of Justice.

C. Provisional permits may be used by the division of archaeology until such time as the board is appointed and has adopted rules and regulations governing permitting.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 677. Revocation or suspension of permits

A. The board may revoke or suspend any permit issued under the provisions of this Chapter upon a determination by the board that the holder of the permit has violated the provisions of this Chapter or the rules and regulations of the board, or has failed to meet the professional or occupational standards determined by the board, or has failed to insure that the personnel employed by the holder of the permit meet the professional or occupational standards determined by the board.

B. Permits may be revoked or suspended only by a ruling of the board based on an adjudicatory hearing held in accordance with the provisions of the Louisiana Administrative Procedure Act.

C. The board shall notify each person whose permit has been revoked or suspended, by certified mail, return receipt requested.

D. Each person whose permit has been revoked or suspended shall return the permit to the board within fifteen days of the date on which the notice of the revocation or suspension was received.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 678. Unlawful acts

A. It is unlawful for any person, entity, or group, to whom the board has not issued a permit, to knowingly:

(1) Disturb an unmarked burial site or any human skeletal remains or burial artifacts in an unmarked burial site.

(2) Buy, sell, barter, exchange, give, receive, possess, display, discard, or destroy human skeletal remains from an unmarked burial site or burial artifacts. However, any human skeletal remains or burial artifacts from an unmarked burial site which come into Louisiana from any foreign country or any other state or territory of the United States and are documented to have been obtained lawfully under the laws of the respective country, state, or territory may be given, received, studied, or displayed without violating this Chapter.

(a) Any human remains which were lawfully acquired prior to January 1, 1992, may remain in the possession of the current holder.

(b) Any burial artifacts which were lawfully acquired prior to January 1, 1992, may remain in the possession of and be displayed by the current holder.

(3) Allow any person, entity, or group access to an unmarked burial site, human skeletal remains, or burial artifacts for the purpose of disturbing them.

(4) Provide funds to or for any person, entity, or group for the purpose of disturbing any unmarked burial site, human skeletal remains, or burial artifacts.

B. Each violation of this Section shall be punishable upon conviction of a first offense by a fine of not more than five thousand dollars or imprisonment for not more than one year, or both. Upon conviction of a second or subsequent offense each violation shall be punishable by imprisonment for not more than two years or a fine of not more than ten thousand dollars, or both. Each disturbance of an unmarked burial site, human skeletal remains, or burial artifacts constitutes a separate offense.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 679. Civil remedies

A. The board may institute civil proceedings seeking injunctive relief to restrain and prevent violations of this Chapter or the laws or administrative rules administered or enforced by the board.

B. The board may also institute civil proceedings seeking civil damages from any person who knowingly violates any provision of R.S. 8:678. Civil damages shall include any or all of the following:

(1) Forfeiture of any and all equipment used in disturbing the unmarked burial site, human skeletal remains, or burial artifacts.

(2) Any and all costs incurred in cleaning, restoring, analyzing, accessioning, and curating the recovered human skeletal remains or burial artifacts.

(3) Any and all costs associated with protecting the unmarked burial site from further damage or in restoring the unmarked burial site to its original condition.

(4) Any and all costs associated with recovery of data, and analyzing, publishing, accessioning, and curating materials when the prohibited activity is so extensive as to preclude the restoration of the unmarked burial site.

(5) Any and all costs associated with the reinterment of the human skeletal remains.

(6) Any and all costs associated with determining and collecting the civil damages, including but not limited to filing fees, attorney fees, court costs, fees associated with discovery and the testimony of expert witnesses, and collection costs.

C. The board may bring actions for injunctive relief or civil damages in either the district court for the parish of East Baton Rouge or in the district court where the unmarked burial site, the human skeletal remains, or the burial artifacts are located.

D. The attorney general shall represent the board in all matters pertaining to the administration or enforcement of this Chapter, or both, except in those matters in which the board has employed special counsel. The board may employ and shall fix the compensation of such special counsel with the concurrence of the attorney general and in accordance with the laws and regulations regarding employment of special counsel.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 680. Discovery of unmarked burial sites, human skeletal remains, and burial artifacts

A. Any person who has reason to believe he or she has discovered an unmarked burial site or received human skeletal remains from an unmarked burial site shall notify the law enforcement agency of the jurisdiction where the site or remains are located within twenty-four hours of discovery. Any person who has reason to believe he or she has discovered or received burial artifacts shall notify the board through the division of archaeology within seventy-two hours of the discovery. Failure to give notice as required is a misdemeanor punishable by a fine of not less than one hundred dollars nor more than one thousand dollars.

B. Any activity that may disturb the unmarked burial site, human skeletal remains, or burial artifacts associated with the site shall immediately cease on discovery. No activity which will disturb the unmarked burial site shall resume until the board has issued a permit governing the disposition of the unmarked burial site, the human skeletal remains, or the burial artifacts. In no event shall the board take longer than thirty days to decide on issuance of a permit without the written agreement of all parties.

C. Each law enforcement agency that receives notice of an unmarked burial site or human skeletal remains shall immediately notify the coroner of the parish where the site or remains are found. The law enforcement agency shall also notify the board through the division of archaeology within two business days of any discovery unless circumstances indicate that the death or burial is less than fifty years old or that there is need for a criminal investigation or legal inquiry by the coroner.

D. If the coroner finds that the unmarked burial site is over fifty years old and that there is no need for a legal inquiry by his office or for a criminal investigation, the board shall have jurisdiction of the site, human skeletal remains, and the burial artifacts.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.

§ 681. Disposition of unmarked burial sites, human skeletal remains, and burial artifacts

A. Whenever an unmarked burial site, human skeletal remains from an unmarked burial site, or burial artifacts are reported to the board, the disposition of unmarked burial sites, human skeletal remains, or burial artifacts shall proceed as follows:

(1) Every reasonable effort is to be made to restore the unmarked burial site and to avoid disturbing the human skeletal remains or burial artifacts:

(a) If the board determines that the burial site has significant scientific value, the board may issue a permit for scientific study.

(b) Any agreement by the owner of the property to leave the unmarked burial site undisturbed shall not constitute consent on the owner's part to allow relatives of the deceased or any other interested parties free access to the site without the owner's permission.

(2) The board shall make reasonable efforts to identify and locate persons who can establish direct kinship with or descent from the individual whose remains have been found.

(3) If the unmarked burial site or the human skeletal remains can be shown to have ethnic affinity with a living Native American tribe, the board shall notify the tribe of the discovery.

(4) If the human skeletal remains must be removed, then control of the disposition of these remains shall be in the following order:

(a) If any direct relations or descendants are found, such person or persons shall have the right to control the disposition of the human skeletal remains in accordance with R.S. 8:659.

(b) If the human skeletal remains can be shown to have ethnic affinity to any living tribe of Native Americans, then the tribe shall have control of the disposition of the human skeletal remains.

(c) If no direct relation or descendant is found or if no ethnic affinity of the human skeletal remains to any living Native American tribe can be shown or if no direct relation or descendant or Native American tribe takes responsibility for the reinterment of the human remains, then the board shall determine the proper disposition of the human remains.

B. If a permit has been issued pursuant to R.S. 8:676(A)(6), the cost of disinterment, reinterment, or study of the human skeletal remains shall be paid by the persons or parties requesting the permit. In the event the board must reinter the remains, the burial shall be paid in the same manner as an indigent or pauper burial.

C. All burial artifacts found in an unmarked burial site shall become the property of the state and the board shall be the custodian thereof. The disposition of the burial artifacts shall be made by the board in accordance with its regulations. The board may donate the burial artifacts to an educational institution, a public museum, or a Native American tribe for display and study purposes. In no event, however, shall the board or any recipient sell the burial artifacts.

Added by Acts 1991, No. 704, § 1, eff. Jan. 1, 1992.