

## LEGISLATIVE BILL 340

Approved by the Governor May 22, 1989

Introduced by Chambers, 11

AN ACT relating to burial sites and skeletal remains; to amend section 28-1301, Reissue Revised Statutes of Nebraska, 1943; to adopt the Unmarked Human Burial Sites and Skeletal Remains Protection Act; to provide a penalty; to change provisions relating to offenses involving dead human bodies; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 12 of this act shall be known and may be cited as the Unmarked Human Burial Sites and Skeletal Remains Protection Act.

Sec. 2. The Legislature hereby finds and declares that:

(1) Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction than well-tended and well-marked cemeteries;

(2) Although existing law prohibits removal, concealment, or abandonment of any dead human body and provides for the care and maintenance of abandoned and neglected Indian cemeteries and burial grounds and pioneer cemeteries, additional statutory guidelines and protections are in the public interest;

(3) Existing law on cemeteries reflects the value placed on preserving human burial sites but does not clearly provide equal and adequate protection or incentives to assure preservation of all human burial sites in this state;

(4) An unknown number of unmarked human burial sites containing the remains of pioneers, settlers, and Indians are scattered throughout the state;

(5) No adequate procedure regarding the treatment and disposition of human skeletal remains from unmarked graves exists to protect the interests of relatives or other interested persons; and

(6) There are scientific, educational, religious, and cultural interests in the remains of our ancestors and those interests, whenever possible, should be served.

Sec. 3. The purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act shall be to:

(1) Assure that all human burials are accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations by providing adequate protection for unmarked human burial sites and human skeletal remains located on all private and public lands within this state;

(2) Prohibit disturbance of unmarked human burial sites except as expressly permitted by the act;

(3) Establish procedures for the proper care and protection of unmarked human burial sites, human skeletal remains, and burial goods found in this state;

(4) Ensure that all unmarked human burial sites discovered in this state are to be left undisturbed to the maximum extent possible unless such sites are in reasonable danger of destruction, such sites need to be moved for a highway, road, or street construction project, or there is evidence of criminal wrongdoing and, when any unmarked human burial site must be disturbed for any of the reasons listed in this subdivision, ensure that the disposition of the contents of such site is carried out in accordance with the act; and

(5) Permit the scientific study and reinterment of human skeletal remains and burial goods.

Sec. 4. For purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act:

(1) Burial goods shall mean any item or items reasonably believed to have been intentionally placed with the human skeletal remains of an individual at the time of burial and which can be traced with a reasonable degree of certainty to the specific human skeletal remains with which it or they were buried;

(2) Human burial site shall mean the specific place where any human skeletal remains are buried and the immediately surrounding area;

(3) Human skeletal remains shall mean the body or any part of the body of a deceased human in any stage of decomposition;

(4) Indian tribe shall mean any federally recognized or state-recognized Indian tribe, band, or community;

(5) Professional archaeologist shall mean a person having a postgraduate degree in archaeology, anthropology, history, or a related field with a

specialization in archaeology and with demonstrated ability to design and execute an archaeological study and to present the written results and interpretations of such a study in a thorough, scientific, and timely manner:

(6) Reasonably identified and reasonably identifiable shall mean identifiable, by a preponderance of the evidence, as to familial or tribal origin based on any available archaeological, historical, ethnological, or other direct or circumstantial evidence or expert opinion;

(7) Society shall mean the Nebraska State Historical Society; and

(8) Unmarked human burial shall mean any interment by whatever means of human skeletal remains for which there exists no grave marker, including burials located in abandoned and neglected cemeteries.

Sec. 5. (1) Any person who encounters or discovers human skeletal remains or burial goods associated with an unmarked human burial in or on the ground shall immediately cease any activity which may cause further disturbance of the unmarked human burial and shall within forty-eight hours report the presence and location of such remains or goods to a local law enforcement officer in the county in which the remains or goods are found. Any person who knowingly fails to make such a report shall be guilty of a Class III misdemeanor.

(2) If human skeletal remains or burial goods associated with an unmarked human burial in or on the ground are discovered by any employee, contractor, or agent of the Department of Roads in conjunction with highway construction, any construction in the area immediately adjacent to such remains or goods shall cease. The department or any of its employees, contractors, or agents shall within forty-eight hours of the discovery of the remains or goods report the presence and location of the remains or goods to a local law enforcement officer in the county in which the remains or goods are found. Any remains or goods may then be removed from the site following an examination by the appropriate agency in accordance with section 39-1363 and any applicable federal requirements. Following removal, the remains or goods shall be disposed of in accordance with the Unmarked Human Burial Sites and Skeletal Remains Protection Act. The construction project may continue once the remains or goods have been removed.

Sec. 6. A law enforcement officer who

receives notification pursuant to section 5 of this act shall promptly notify the landowner on whose property the human skeletal remains or burial goods were discovered, the county attorney, and the society.

Sec. 7. Upon notification pursuant to section 6 of this act, the county attorney shall determine whether the human skeletal remains are associated with or suspected of association with any crime and, if a determination of prosecutable criminal activity is made, shall retain custody of the remains in accordance with routine procedures until such time as the remains may be reburied in accordance with the Unmarked Human Burial Sites and Skeletal Remains Protection Act.

Sec. 8. (1) Upon notification pursuant to section 6 of this act, the society shall promptly assist in examining the discovered material to attempt to determine its origin and identity.

(2) If the society finds that the discovered human skeletal remains or burial goods are of non-American-Indian origin with a known or unknown identity, it shall notify the county attorney of the finding. Upon receipt of the finding, the county attorney shall cause the remains and associated burial goods to be interred in consultation with the county coroner. Reburial shall be in accordance with the wishes and at the expense of any known relatives in the order listed by section 71-1339 or, if no relatives are known, in an appropriate cemetery at the expense of the county in which the remains were discovered after a one-year scientific study period if such study period is considered necessary or desirable by the society. In no case shall any human skeletal remains that are reasonably identifiable as to familial or tribal origin be displayed by any entity which receives funding or official recognition from the state or any of its political subdivisions. In situations in which human skeletal remains or burial goods that are unidentifiable as to familial or tribal origin are clearly found to be of extremely important, irreplaceable, and intrinsic scientific value, the remains or goods may be curated by the society until the remains or goods may be reinterred as provided in this subsection without impairing their scientific value.

(3) If the society finds that the discovered human skeletal remains or burial goods are of American Indian origin, it shall promptly notify in writing the Commission on Indian Affairs and any known relatives in the order listed in section 71-1339 or, if no relatives are known, any Indian tribes reasonably identified as

tribally linked to such remains or goods in order to ascertain and follow the wishes of the relative or Indian tribe, if any, as to reburial or other disposition. Reburial by any such relative or Indian tribe shall be by and at the expense of such relative or Indian tribe. In cases in which reasonably identifiable American Indian human skeletal remains or burial goods are unclaimed by the appropriate relative or Indian tribe, any such remains or goods shall be reburied as provided in subsection (2) of this section.

Sec. 9. Notwithstanding any other provision of Nebraska law, any institution, agency, organization, or other entity in this state which receives funding or official recognition from the state or any of its political subdivisions and which has in its possession or control on the effective date of this act any disinterred human skeletal remains or burial goods of American Indian origin which are reasonably identifiable as to familial or tribal origin, regardless of their present location, shall return any such remains and goods to the relative or Indian tribe for reburial, upon request of such relative or Indian tribe, or otherwise cause such remains and goods to be reinterred pursuant to subsections (2) and (3) of section 8 of this act within one year of receiving such request, except that any such entity which has, prior to January 1, 1989, received a written request from any relative or Indian tribe for the return of such reasonably identifiable remains and goods shall return to such relative or Indian tribe for reburial all such remains and goods by September 10, 1990.

Sec. 10. Any institution, agency, organization, or other entity in this state which receives a request for the return of human skeletal remains or burial goods under the Unmarked Human Burial Sites and Skeletal Remains Protection Act shall, at least ninety days prior to the date for return established by statute or otherwise agreed upon pursuant to the act, provide the requesting relative or Indian tribe with an itemized inventory of any human skeletal remains and burial goods that are subject to return to the requesting relative or Indian tribe. At the time the entity transfers possession of such remains or goods to the requesting relative or Indian tribe, the transferor and the transferee shall each sign a transfer document which identifies by inventory number and description each human skeletal remain or burial good being transferred.

Sec. 11. Whenever a dispute arises with

regard to the disposition of human skeletal remains or burial goods pursuant to the Unmarked Human Burial Sites and Skeletal Remains Protection Act, the procedure set forth in this section shall be the exclusive remedy available to the aggrieved party under the act. No cause of action shall lie until the procedure set forth in this section is completed.

The aggrieved party shall submit to the adverse party documentation describing the nature of the grievance. The aggrieved party and the adverse party shall meet within sixty days of the mailing of the initial grievance and shall either concur or disagree after reviewing the appropriate documentation.

If after such meeting the parties disagree, they shall, within fifteen days following such meeting, designate a third party, agreed on by both original parties, to assist in the resolution of the dispute. If an agreement as to the designation of the third party is not reached within the fifteen-day period, the Public Counsel shall automatically be designated to serve in that capacity.

Following the designation of a third party, the aggrieved party may submit a petition, together with supporting documentation, to the third party describing the nature of the grievance. The aggrieved party shall serve a copy of the petition and all supporting documents on the adverse party at the time of filing. The adverse party shall have thirty days to respond to the petition by filing a response and supporting documentation with the third party, copies of which shall be served on the aggrieved party by the adverse party at the time of filing the response.

The third party shall review the petition, the response, all supporting documentation submitted by the parties, and other relevant information. Following such review and within ninety days after the filing of the petition, the two original parties and the third party shall, by majority vote, render a decision with regard to the matter in dispute.

The decision may be appealed by either party, and such appeal shall be in accordance with section 25-1937.

When the disposition of any human skeletal remains or burial goods is disputed and subject to arbitration under this section, the party in possession of the remains or goods shall retain possession until the arbitration process and appeals provided for in this section are completed.

Sec. 12. (1) Any person, Indian tribe, or

Indian tribal member shall have a civil cause of action against any person alleged to have intentionally violated the Unmarked Human Burial Sites and Skeletal Remains Protection Act or section 28-1301. The action shall be brought within two years of discovery by the plaintiff of the alleged violation or within two years of the effective date of this act, whichever is later. The action shall be filed either in the district court of the county in which the unmarked human burial, human skeletal remains, or burial goods are located or in which the defendant resides.

(2) If the plaintiff prevails in an action brought pursuant to this section:

(a) The court may award reasonable attorney's fees to the plaintiff and may grant injunctive or other appropriate relief, including forfeiture of any human skeletal remains or burial goods acquired as a result of or equipment used in the violation. The court shall order the disposition of any items forfeited, including the reinterment of any human skeletal remains or burial goods pursuant to the act; and

(b) The plaintiff may recover actual damages for each violation.

(3) If the defendant prevails in an action brought pursuant to this section, the court may award reasonable attorney's fees to the defendant.

Sec. 13. That section 28-1301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1301. (1) The definitions found in section 4 of this act shall apply to this section.

(2) Except as provided in subsection (2) (3) of this section, a person commits the offense of removing, abandoning, or concealing a dead human skeletal remains or burial goods body if he or she:

(a) Shall dig up, disinter, remove, or carry knowingly digs up, disinters, removes, or carries away from its place of deposit or burial any dead human body or the such remains thereof or shall attempt or goods, attempts to do the same, or aids, incites, assists, encourages, or procures or shall assist, incite, or procure the same to be done;

(b) Throws knowingly throws away or abandons any dead human body, or any portion thereof, such remains or goods in any place other than a regular place for burial and under a proper death certificate issued under either section 71-182; or section 71-605; or

(c) Receives, conceals, purchases, sells, transports, trades, or disposes of any dead human body;

or the such remains thereof, knowing or having or goods if the person knows or has reason to know that the same had such remains or goods have been dug up, disinterred, or removed from its their place of deposit or burial or has have not been reported in a proper death certificate issued under either section 71-1827, or section 71-605, attempts to do the same, or aids, incites, assists, or encourages, or procures the same to be done.

(3) This section (2) The above-mentioned acts shall not apply to: (a) A body the bodies authorized to be surrendered for purposes of dissection as provided by law; nor shall they apply to (b) the body of any person directed to be delivered up, by competent authority for purposes of dissection; nor shall they apply to nor be construed to prevent (c) the officers of any lawfully constituted cemetery, while acting under the direction of its the board of trustees, from in removing any body or the remains thereof human skeletal remains or burial goods from one place of burial in said the cemetery to another place in the same cemetery when disinterment and reinterment permits are secured and return made thereof as prescribed in pursuant to section 71-605; nor shall they apply to nor be construed to prevent (d) any person or persons from removing the bodies or remains thereof human skeletal remains or burial goods of their relatives a relative or intimate friends, friend from one place of burial to another, PROVIDED, that in case such last-mentioned burial had been in any lawfully constituted cemetery; to another when consent for such removal shall be has been obtained from the lawfully constituted authority thereof; and permits for disinterment and reinterment are secured and return made thereof as prescribed in pursuant to section 71-605; (e) any professional archaeologist engaged in an otherwise lawful and scholarly excavation of a nonburial site who unintentionally encounters human skeletal remains or associated burial goods if the archaeologist complies with the notification requirements of the Unmarked Human Burial Sites and Skeletal Remains Protection Act; or (f) any archaeological excavation by the Nebraska State Historical Society or its designee in the course of execution of the duties of the society if any human skeletal remains or associated burial goods discovered during such excavation are disposed of pursuant to section 8 of this act.

(3) Removal, concealment, or abandonment of dead human bodies is (4) Violation of this section shall be a Class I misdemeanor.

Sec. 14. That original section 28-1301,



LB 340

LB 340

Reissue Revised Statutes of Nebraska, 1943, is repealed.