

SENATE BILL NO. 179

BY SENATOR RISER

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AN ACT

To enact Chapter 21-C of Title 25 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 25:951 through 959, relative to the Louisiana Human Remains Protection and Control Act; to provide relative to the control and management of human remains; to provide relative to legislative intent; to provide definitions; to provide penalties; to provide exemptions; to provide relative to enforcement; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 21-C of Title 25 of the Louisiana Revised Statutes of 1950, comprised of R.S. 25:951 through 959, is hereby enacted to read as follows:

CHAPTER 21-C. LOUISIANA HUMAN REMAINS

PROTECTION AND CONTROL ACT

§951. Title

This Chapter shall be known as the "Louisiana Human Remains Protection and Control Act".

§952. Legislative findings and declaration of intent

The legislature hereby finds that Louisiana law has never permitted, recognized, or sanctioned ownership rights in human remains and that such

1 materials are explicitly exempted from property concepts under both common
2 and civil law. The legislature further finds that the trade in or commodification
3 of human remains fosters the looting and desecration of cemeteries and other
4 sacred sites. The legislature further finds that existing state laws do not
5 adequately protect against the illicit trade in human remains and that such
6 trade needs to be stemmed in order to minimize looting and desecration of
7 cemeteries. The legislature also finds and declares that there is a need for a
8 central state entity to manage the enforcement of human remains laws and that,
9 because the attorney general is already the statutory counsel to the Louisiana
10 Cemetery Board, as well as being charged with civil enforcement of the
11 Louisiana Unmarked Human Burial Sites Preservation Act and the Louisiana
12 Historic Cemetery Preservation Act, the attorney general is uniquely qualified
13 to enforce and police all illicit transactions in and commodification of human
14 remains contemplated by this Chapter.

15 §953. Definitions

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

18 (1) "Human remains" means the body or parts thereof of a deceased
19 person and includes the body or parts thereof in any stage of decomposition, as
20 well as cremated remains.

21 (2) "Trade" means to distribute, to offer for sale, to offer for acquisition,
22 to buy, to sell, to barter, to exchange, to give, to receive, to donate, or to bequest,
23 whether by physical delivery or by subterfuge.

24 (3) "Possession" means the exercise of control over human remains.

25 §954. Prohibited acts

26 Except as otherwise permitted by law:

27 (1) The possession of human remains is prohibited.

28 (2) It shall be unlawful to trade in, discard, or destroy human remains.

29 §955. Penalties

30 A.(1) A first offense violation of this Chapter shall be punishable upon

1 conviction by a fine of not more than five thousand dollars, or imprisonment,
2 with or without hard labor, for not more than one year, or both.

3 (2) Upon conviction of a second or subsequent offense, each violation
4 shall be punishable by imprisonment, with or without hard labor, for not more
5 than two years, or a fine of not more than ten thousand dollars, or both.

6 (3) Each item of human remains in possession or trade shall constitute
7 a separate offense.

8 B. The attorney general may institute civil proceedings seeking
9 injunctive relief to restrain and prevent violations of this Chapter.

10 C. The attorney general may institute civil proceedings seeking civil
11 damages from any person who knowingly violates any provision of this Chapter.

12 Civil damages shall include any or all of the following:

13 (1) Forfeiture of any and all equipment used in obtaining the human
14 remains.

15 (2) Any and all costs incurred in cleaning, restoring, analyzing,
16 accessioning, and curating the recovered human remains.

17 (3) Any and all costs associated with the reinterment of the human
18 remains.

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

23 D. The attorney general may bring actions for injunctive relief or civil
24 damages in either the district court for the parish of East Baton Rouge or in the
25 district court where the burial site, the human skeletal remains, or other body
26 parts, or the burial artifacts are located.

27 §956. Amnesty program

28 A. A natural or juridical person possessing human remains in violation
29 of this Chapter may voluntarily relinquish possession of such human remains
30 to the Louisiana Department of Justice without sanctions under this Chapter.

1 The attorney general shall be vested with the authority and discretion to waive
2 civil sanctions under this Chapter for any person who voluntarily relinquishes
3 human remains.

4 B. Upon voluntarily relinquishing human remains pursuant to this
5 Chapter, any person may designate which qualified entity or entities the human
6 remains should be transmitted to for permanent curation following analysis for
7 compliance with other laws. Such transmissions shall occur only with the
8 concurrence of the designated qualified entity or entities. Failing such
9 concurrence or direction, the disposition of human remains relinquished or
10 acquired by the Louisiana Department of Justice pursuant to this Chapter shall
11 be within the discretion of the attorney general.

12 §957. Exemptions

13 A. The following shall be exempt from the restrictions and prohibitions
14 of this Chapter:

15 (1) Private and public institutions of primary, secondary, or higher
16 education.

17 (2) Federal, state, and local governments and any political subdivisions
18 thereof as well as federal, state, and local law enforcement officials acting within
19 their statutory authority.

20 (3) Qualified museums or research institutions.

21 (a) A "qualified museum or research institution" means an entity that
22 is a juridical person pursuant to Louisiana law that has an explicitly stated
23 educational or research purpose as part of their mission and juridical personage
24 registration.

25 (b) A qualified museum or research institution shall submit notification
26 of retention of human remains in its possession to the Louisiana Department of
27 Justice within one year of the effective date of this legislation.

28 (c) A qualified museum or research institution, upon reasonable notice,
29 shall submit to the attorney general for analysis any human skeletal remains in
30 its possession.

1 (d) A qualified museum or research institution shall notify the Louisiana
2 Department of Justice within six months of any acquisition of known human
3 remains not included in any initial disclosure under this Chapter.

4 B. The Louisiana Department of Justice shall hold in a centralized
5 database all records of qualified museums and research institutions, exempt as
6 provided in this Section, that have complied with the requirements of this
7 Chapter.

8 §958. Conflicts with existing laws

9 A. The provisions of this Chapter are not intended to supplant the
10 primary criminal jurisdiction of district attorneys under R.S. 14:101, R.S.
11 8:655, R.S. 8:659, R.S. 8:678, R.S. 17:2280, R.S. 17:2354.4, R.S. 17:2354.5, or
12 R.S. 25:937.

13 B. The provisions of this Chapter are not intended to restrict or limit,
14 and are explicitly superseded by, the law relative to anatomical gifts and
15 donations authorized under R.S. 17:2271 et seq. or R.S. 17:2351 et seq.

16 C. The provisions of this Chapter are not intended to restrict or limit,
17 and are explicitly superseded by, the rights of descendants and family members
18 to control human remains under R.S. 8:651 et seq.

19 D. The provisions of this Chapter are not intended to restrict or limit,
20 and are explicitly superseded by, the licensed or otherwise authorized practice
21 of funeral directing, cremation, and cemetery operation as authorized in Titles
22 8 and 37 of the Louisiana Revised Statutes of 1950.

23 E. The provisions of this Chapter are not intended to restrict or limit,
24 and are explicitly superseded by, the authority of coroners as authorized by
25 Title 13 of the Louisiana Revised Statutes of 1950.

26 F. The provisions of this Chapter are not intended to restrict or limit,
27 and are explicitly superceded by, the Louisiana Unmarked Human Burial Sites
28 Preservation Act, pursuant to R.S. 8:671 et seq., the Louisiana Historical
29 Cemetery Preservation Act, pursuant to R.S. 25:931 et seq., and the Native
30 American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq.

1 **§959. Enforcement**

2 **The attorney general shall administer the provisions of this Chapter and**
3 **shall be charged with the investigation and enforcement of this Chapter. The**
4 **prosecution of the civil provisions of this Chapter shall be concurrently within**
5 **the prosecutorial discretion of the attorney general and the district attorney for**
6 **the parish in which the violations occur. The prosecution of the criminal**
7 **provisions of this Chapter shall be within the discretion of the district attorney**
8 **for the parish in which the violations occur, subject to the district attorney's**
9 **recusal to the attorney general within the appropriate district attorney's**
10 **discretion.**

11 Section 2. This Act shall become effective upon signature by the governor or, if not
12 signed by the governor, upon expiration of the time for bills to become law without signature
13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
15 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____