

LAWS OF DELAWARE
VOLUME 83
CHAPTER 142
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 194

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO UNMARKED HUMAN BURIALS AND SKELETAL REMAINS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 54, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5401. Purpose.

The ~~purpose of this subchapter is:~~ purposes of this chapter are:

(1) To help provide adequate protection for unmarked human burials and human skeletal remains found anywhere within the State, including subaqueous lands, but excluding those found anywhere on federal ~~land;~~ land.

(2) To provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the Medical Examiner that are encountered during archaeological excavation, ~~construction~~ construction, or other ground disturbing ~~activities;~~ activities.

(3) To provide for adequate skeletal analysis of remains removed or excavated from unmarked human ~~burials;~~ burials.

(4) To provide for the dignified and respectful reinterment or other disposition of Native ~~American skeletal remains.~~ American, African American, and all other skeletal remains, including those of enslaved individuals and individuals of undetermined cultural affiliation.

§ 5402. Definitions.

As used in this ~~subchapter~~ chapter:

(1) "Committee" ~~shall mean~~ means a body of stakeholders that inform the treatment and disposition of unmarked human burials and skeletal remains; ~~consisting of the Chief of the Nanticoke Indian Tribe, 2 members appointed by the Chief, the Director of the Division of Historical and Cultural Affairs of the Department of State and 2 members appointed by the Director and a seventh member from the private sector appointed by the Governor. The Committee members shall be residents of the State and shall serve 1-year, renewable terms.~~

a. When burials or remains are determined to be Native American, the Committee shall be chaired by the Director or the Director's designee, and consist of the Chief of the Nanticoke Indian Tribe and the Chief of the Lenape Indian Tribe of Delaware, or the Chiefs' designees, 2 members appointed by each Chief, the Director of the Division of Historical and Cultural Affairs of the Department of State or the Director's designee, 1 member appointed by the Director, and a ninth member from the private sector appointed by the Governor. Governor's appointee shall serve 1-year, renewable terms. This is a standing committee.

b. When burials or remains are determined to be other than Native American, an ad hoc committee shall be formed. The committee shall include individuals well suited to ensure treatment and disposition of the human burial and skeletal remains furthers the goal of providing for the dignified and respectful reinterment or other disposition including recognition of the special consideration for African Americans, including enslaved persons, and for persons of undetermined cultural affiliation. The Committee shall be chaired by the Director or the Director's designee, and consist of 1 member of the private sector appointed by the Governor who shall serve 1-year renewable terms and 7 members appointed by the Director, representing interested parties, which may include any of the following:

1. Known or presumed lineal descendants.
2. Individuals or organizations with a likely cultural affiliation to the remains.
2. The landowner.
3. A professional archaeologist.
4. An historian or person of similar expertise.

(2) "Director" ~~shall mean~~ means The Director of the Division of Historical and Cultural Affairs, Department of State.

(3) “Human skeletal remains” or “remains” ~~shall mean~~ means any part of the body of a deceased human being in any stage of decomposition.

(4) “Lineal descendant” means any individual tracing their ancestry directly or by proven kinship.

(4) (5) “Medical Examiner” ~~shall be~~ means as defined in Chapter 47 of Title 29.

(5) (6) “Professional archaeologist” ~~shall mean~~ means a person having all of the following qualifications:

a. A graduate degree in archaeology, anthropology, ~~history~~ history, or another related field with a specialization in ~~archaeology;~~ archaeology.

b. A minimum of 1 year’s experience in conducting basic archaeological field research, including the excavation and removal of human skeletal ~~remains;~~ and remains.

c. ~~Designed~~ Has designed and executed an archaeological study and presented written results and interpretations of such study.

(7) “Person” means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer or employee, agent, department, or instrumentality of the United States or of any state or political subdivision thereof.

(8) “Proven kinship” means the relationship among individuals that exists because of genetic descent, which includes racial descent.

(6) (9) “Skeletal analyst” ~~shall mean~~ means any ~~person~~ individual having all of the following qualifications:

a. A graduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic ~~osteology~~ osteology, or other relevant aspects of physical anthropology or ~~medicine;~~ medicine.

b. A minimum of 1 year’s experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological ~~affinity;~~ and affinity.

c. ~~Designed~~ Has designed and executed a skeletal analysis and presented the written results and interpretations of such analysis.

(7) (10) “Unmarked human burial” ~~shall mean~~ means any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

§ 5403. Avoidance, protection, and preservation of remains.

All persons are encouraged to undertake due diligence to identify, demarcate, and preserve in situ, unmarked human burials to avoid encountering skeletal remains; and to share information with the Division of Historical and Cultural Affairs, including reports or studies undertaken for these purposes.

~~§ 5403.~~ § 5404. Discovery of remains and notification of authorities.

(a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being encountered shall notify immediately the Medical Examiner or the Director.

(b) When any person encounters unmarked burials or human skeletal remains ~~are encountered~~ as a result of ~~construction or agricultural~~ construction, agricultural, or any other ground-disturbing activities, said the person shall cease the ground-disturbing activity shall cease immediately upon discovery and notify the Medical Examiner or the Director ~~notified~~ of the discovery.

(c) Human burials or human skeletal remains which are encountered by a professional archaeologist as a result of survey or excavations must be reported to the Director. Excavation and other activities may resume after written approval is provided by the Director. The treatment, ~~analysis~~ analysis, and disposition of the remains shall conform to the provisions of this ~~subchapter.~~ chapter.

(d) The ~~director~~ Director shall notify the Chief Medical Examiner, ~~Department of Health and Social Services,~~ Examiner of any reported human skeletal remains discovered by a professional archaeologist.

~~§ 5404.~~ § 5405. Jurisdiction over remains.

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the Medical Examiner shall certify in writing to the Director, as soon as possible, whether the remains come under the Medical Examiner’s jurisdiction.

(b) If the Medical Examiner determines that the remains come under the Medical Examiner’s jurisdiction, the Medical Examiner will immediately proceed with an investigation pursuant to Chapter 47 of Title 29.

(c) All those remains determined to be not within the jurisdiction of the Medical Examiner shall be within the jurisdiction of the Director.

~~§ 5405.~~ § 5406. Archaeological investigation of human skeletal remains.

All excavations not under the jurisdiction of the Medical Examiner shall be either conducted by, or under the supervision of, a professional archaeologist and shall be subject to permission from the landowner. All permissible excavations shall be conducted in accordance with the regulations promulgated for this ~~subchapter.~~ chapter.

~~§ 5406.~~ § 5407. Consultation, ~~analysis~~ analysis, and disposition.

(a) ~~The Committee shall be notified of all skeletal remains determined to be Native American within 5 days of the discover.~~ The Director shall notify the Committee of all skeletal remains determined to be Native American within 5 days of learning of the discovery of human burials or skeletal remains pursuant to § 5404 of this chapter. ~~Within 60 days of notification, the~~ The Director shall provide the Committee with a written plan for the proposed treatment and ultimate disposition of the Native American skeletal remains. ~~remains within 60 days of making the notification.~~

(b) For all non-Native American burials or skeletal remains, the director shall begin forming the Committee within 5 days of learning of the discovery pursuant to § 5404 of this chapter. The Director shall publish notice of all ~~excavations~~ discoveries of human skeletal remains other than Native American, American on the Division's website, and at least once per week for 2 successive weeks in a newspaper of general circulation in the county where the burials or skeletal remains were situated, in an effort to determine the identity or next-of-kin lineal descendants or both of the deceased. ~~Treatment and ultimate disposition of the skeletal remains shall be subject to the written permission of the next-of-kin who notify the Director within~~ Lineal descendants shall have 30 days of after the last published notice to notify the Director of their ancestry or proven kinship to the skeletal remains. ~~The Director shall provide next-of-kin with~~ Within 60 days of the end of the notification period the ~~Director shall convene the Committee to develop a written plan for treatment and ultimate disposition of human skeletal remains.~~ Treatment and ultimate disposition of the skeletal remains shall be subject to the written permission of the lineal descendants or shall be determined by the Director if no lineal descendant is identified.

(c) All skeletal analysis conducted pursuant to this ~~subchapter~~ chapter shall be undertaken only by a skeletal analyst. ~~analyst as defined in § 5402(6)) of this title.~~

(d) Any previously excavated skeletal remains of Native Americans of the State which are on display or remain uncovered as of June 5, 1987, shall be reinterred within 1 year. Treatment and disposition of all Native American remains discovered after enactment shall be determined by the Committee or, if direct descent can be determined, by ~~the next-of-kin.~~ a lineal descendant. In any event, Native American skeletal remains discovered after enactment shall be reinterred within 90 days unless an extension or other disposition is granted by the Committee. ~~Ultimate disposition of all non-Native American remains shall be determined by the next-of-kin, if known. If next-of-kin are unknown, disposition shall be determined by the Director. All costs associated with reinterment of human skeletal remains must be borne by the next-of-kin, if known.~~

(e) All reasonable efforts shall be made to maintain burials and skeletal remains in situ if that is the consensus of the Committee. Any ~~state agency~~ person which is responsible, either directly or indirectly, for the unearthing of human remains deemed to be ~~the responsibility~~ under the jurisdiction of the Division of Historical and Cultural Affairs shall be responsible for the cost of ~~reinterment of those remains.~~ research to determine the identity, delineation of the burial ground, excavation, and reinterment, and providing a suitable marker for those remains.

~~§ 5407.~~ § 5408. Prohibited acts.

No person, unless acting pursuant to Chapter 47 of Title 29, shall:

(1) Knowingly acquire any human skeletal remains removed from unmarked burials in Delaware, except in accordance with this ~~subchapter.~~ chapter.

(2) Knowingly sell any human skeletal remains acquired from unmarked burials in Delaware.

(3) Knowingly exhibit human skeletal remains.

(4) Knowingly fail to notify the Medical Examiner or the Director of a discovery of unmarked human burials or skeletal remains pursuant to § 5404 of this chapter.

~~§ 5408.~~ § 5409. Exceptions.

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to this ~~subchapter.~~ chapter.

(b) Human skeletal remains determined to be within the jurisdiction of the Medical Examiner are not subject to the prohibitions contained in this ~~subchapter.~~ chapter.

(c) Human skeletal remains acquired through archaeological excavations under the supervision of a professional archaeologist are not subject to the prohibitions as provided in ~~§ 5407(1)~~ § 5408(1) of this title.

(d) Remains discovered within the known boundaries of a marked cemetery under the purview of the Department of Health and Social Services pursuant to Chapter 79A of Title 29 are not subject to this chapter.

~~§ 5409.~~ § 5410. Criminal penalties.

Any person who violates ~~§ 5407~~ § 5408 of this title shall upon conviction be sentenced to pay a fine of not less than \$1,000 nor more than \$10,000 or be imprisoned not more than 2 years or both. The Superior Court shall have jurisdiction of offenses under this chapter.

~~§ 5410.~~ § 5411. Rules, regulations, standards, and guidelines.

The Division of Historical and Cultural Affairs may, with the approval of the Department of State, formulate and adopt such rules, regulations, ~~standards~~ standards, and guidelines as it considers necessary for the effective execution of its purposes under this chapter.

Approved September 10, 2021