

2016 Regular Session

SENATE BILL NO. 179

BY SENATOR RISER

CRIME/PUNISHMENT. Prohibits the trafficking in human remains. (gov sig)

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

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

11 **CHAPTER 21-B. LOUISIANA HUMAN REMAINS**

12 **PROTECTION AND CONTROL ACT**

13 **§951. Title**

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

16 **§952. Legislative findings and declaration of intent**

17 **The legislature hereby finds that Louisiana law has never permitted,**

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

16 §953. Definitions

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

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

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

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

26 §954. Prohibited acts

27 Except as otherwise permitted by law:

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

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

1 **§955. Penalties**

2 **A.(1) A first offense violation of this Chapter shall be punishable upon**
3 **conviction by a fine of not more than five thousand dollars, or imprisonment,**
4 **with or without hard labor, for not more than one year, or both.**

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

8 **(3) Each item of human remains in possession or trade shall constitute**
9 **a separate offense.**

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

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

14 **Civil damages shall include any or all of the following:**

15 **(1) Forfeiture of any and all equipment used in obtaining the human**
16 **remains.**

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

19 **(3) Any and all costs associated with the reinterment of the human**
20 **remains.**

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

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

29 **§956. Amnesty program**

1 A. A natural or juridical person possessing human remains in violation
2 of this Chapter may voluntarily relinquish possession of such human remains
3 to the Louisiana Department of Justice without sanctions under this Chapter.
4 The attorney general shall be vested with the authority and discretion to waive
5 civil sanctions under this Chapter for any person who voluntarily relinquishes
6 human remains.

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

15 §957. Exemptions

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

18 (1) Private and public institutions of primary, secondary, or higher
19 education.

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

23 (3) Qualified museums or research institutions.

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

28 (b) A qualified museum or research institution shall submit notification
29 of retention of human remains in its possession to the Louisiana Department of

1 Justice within one year of the effective date of this legislation.

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

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

8 (e) The Louisiana Department of Justice shall hold all records consisting
9 of a centralized database of museums and research institutions that have
10 complied with the requirements of this Chapter.

11 §958. Conflicts with existing laws

12 A. No provision of this Chapter is intended to supplant the primary
13 criminal jurisdiction of district attorneys under R.S. 14:101, R.S. 8:655, R.S.
14 8:659, R.S. 8:678, R.S. 17:2280, R.S. 17:2354.4, R.S. 17:2354.5, or R.S. 25:937.

15 B. No provision of this Chapter is intended to restrict or limit, and is
16 explicitly superseded by, the law relative to anatomical gifts and donations
17 authorized under R.S. 17:2271 et seq. or R.S. 17:2351 et seq.

18 C. No provision of this Chapter is intended to restrict or limit, and is
19 explicitly superseded by, the rights of descendants and family members to
20 control human remains under R.S. 8:651 et seq.

21 D. No provision of this Chapter is intended to restrict or limit, and is
22 explicitly superseded by, the licensed or otherwise authorized practice of
23 funeral directing, cremation, and cemetery operation as authorized in Titles 8
24 and 37 of the Louisiana Revised Statutes of 1950.

25 E. No provision of this Chapter is intended to restrict or limit, and is
26 explicitly superseded by, the authority of coroners as authorized by Title 13 of
27 the Louisiana Revised Statutes of 1950.

28 F. No provision of this Chapter is intended to restrict or limit, and is
29 explicitly superseded by, the Louisiana Unmarked Human Burial Sites

1 Preservation Act, pursuant to R.S. 8:671 et seq., the Louisiana Historical
 2 Cemetery Preservation Act, pursuant to R.S. 25:931 et seq., and the Native
 3 American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq.

4 §959. Enforcement

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

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

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

DIGEST

SB 179 Reengrossed

2016 Regular Session

Riser

Proposed law provides for the "Louisiana Human Remains Protection and Control Act".

Proposed law sets forth legislative findings and declaration of intent.

Proposed law provides the following definitions:

- (1) "Human remains" means the body or parts thereof of a deceased person and includes the body or parts thereof in any stage of decomposition, as well as cremated remains.
- (2) "Trade" means to distribute, to offer for sale, to offer for acquisition, to buy, to sell, to barter, to exchange, to give, to receive, to donate, or to bequest, whether by physical delivery or by subterfuge.
- (3) "Possession" means the exercise of control over human remains.

Proposed law prohibits the following except as otherwise permitted by present law:

- (1) The possession of human remains.
- (2) The trading in, discarding, or destruction of human remains.

Proposed law provides the following penalties for a violation of proposed law:

- (1) A first offense violation is punishable by a fine of up to \$5,000, or imprisonment with or without hard labor for up to one year, or both.
- (2) A second or subsequent violation is punishable by imprisonment with or without hard labor for up to two years, a fine of up to \$10,000, or both.

Proposed law provides that each item of human remains in possession or trade constitutes a separate offense.

Proposed law provides that the attorney general may institute civil proceedings seeking injunctive relief to restrain and prevent violations of proposed law.

Proposed law provides that the attorney general may institute civil proceedings seeking civil damages from any person who knowingly violates any provision of proposed law. Proposed law provides that civil damages include:

- (1) Forfeiture of any and all equipment used in obtaining the human remains.
- (2) Any and all costs incurred in cleaning, restoring, analyzing, accessioning, and curating the recovered human remains.
- (3) Any and all costs associated with the reinterment of the human remains.
- (4) Any and all costs associated with determining and collecting 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.

Proposed law provides that the attorney general 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 burial site, the human skeletal remains or other body parts, or the burial artifacts are located.

Proposed law provides that a natural or juridical person possessing human remains in violation of proposed law may voluntarily relinquish possession of such human remains to the La. Dept. of Justice without sanctions being imposed. Proposed law further provides that the attorney general is vested with the authority and discretion to waive civil sanctions for any person who voluntarily relinquishes human remains.

Proposed law provides that upon voluntarily relinquishing human remains, any person may designate which qualified entity or entities the human remains should be transmitted to for permanent curation following analysis for compliance with other present law. Proposed law further provides that such transmissions are to occur only with the concurrence of the designated qualified entity or entities. Proposed law provides that without such concurrence or direction, the disposition of human remains relinquished or acquired by the Dept. of Justice is within the discretion of the attorney general.

Proposed law provides that the following are exempt from the restrictions and prohibitions of proposed law:

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

- (2) Federal, state, and local governments and any political subdivision thereof as well as federal, state, and local law enforcement officials acting within their statutory authority.
- (3) Qualified museums or research institutions.
- (a) A "qualified museum or research institution" means an entity that is a juridical person pursuant to present law that has an explicitly stated educational or research purpose as part of their mission and juridical personage registration.
- (b) A qualified museum or research institution shall submit a notification of retention of human remains in its possession to the Dept. of Justice within one year of the effective date of proposed law.
- (c) A qualified museum or research institution, upon reasonable notice, shall submit to the attorney general for analysis of any human skeletal remains in its possession.
- (d) A qualified museum or research institution shall notify the Dept. of Justice within six months of any acquisition of known human remains not included in any initial disclosure under proposed law.
- (e) The Dept. of Justice is to hold all records consisting of a centralized database of museums and research institutions that have complied with the requirements of proposed law.

Proposed law provides that no provision of proposed law is intended to supplant the primary criminal jurisdiction of district attorneys under present law. Proposed law further provides that no provision of proposed law is intended to restrict or limit, and is explicitly superseded by present law relative to anatomical gifts and donations, the rights of descendants and family members to control human remains, the licensed or otherwise authorized practice of funeral directing, cremation, and cemetery operation, and the authority of coroners.

Proposed law is not intended to restrict or limit, and is explicitly superseded by, the Louisiana Unmarked Human Burial Sites Preservation Act, the Louisiana Historical Cemetery Preservation Act, and the Native American Graves Protection and Repatriation Act.

Proposed law provides that the attorney general is to administer the provisions of proposed law and is charged with the investigation and enforcement of proposed law. Proposed law further provides that the prosecution of the civil provisions of proposed law is concurrently within the prosecutorial discretion of the attorney general and the district attorney for the parish in which the violations occur. Proposed law further provides that the prosecution of the criminal provisions of proposed law is within the discretion of the district attorney for the parish in which the violations occur, subject to recusal to the attorney general within the appropriate district attorney's discretion.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 25:951-959)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Delete reference to "live" human remains.

2. Delete criminal sanctions from authority of attorney general.

Senate Floor Amendments to the engrossed bill

1. Adds provisions exempting federal, state, and local governments and any political subdivisions as well as federal, state, and local law enforcement officials from proposed law.
2. Adds provisions that proposed law is not intended to restrict or limit, and is explicitly superceded by the Louisiana Unmarked Human Burial Sites Preservation Act, the Louisiana Historical Cemetery Preservation Act, and the Native American Graves Protection and Repatriation Act.