
DIGEST

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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.

Proposed law requires the Dept. of Justice to hold in a centralized database all records of qualified museums and research institutions, exempt as provided in proposed law, that have complied with the requirements of proposed law.

The provisions of proposed law are not intended to supplant the primary criminal jurisdiction of district attorneys under present law. Proposed law further provides that certain provisions of proposed law are not intended to restrict or limit, and are 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.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill:

1. Make technical changes.
2. Make technical modifications of language to improve clarity and readability.