

CHAPTER 115—S.F.No. 2226

An act relating to state government; clarifying private cemeteries; amending Minnesota Statutes 2006, section 307.08.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 307.08, is amended to read:

307.08 DAMAGES; ILLEGAL MOLESTATION OF HUMAN REMAINS; BURIALS; CEMETERIES; PENALTY; AUTHENTICATION.

Subdivision 1. **Legislative intent; scope.** It is a declaration and statement of legislative intent that all human burials ~~and~~ human skeletal remains, and human burial grounds shall be accorded equal treatment and respect for human dignity without reference to their ethnic origins, cultural backgrounds, or religious affiliations. The provisions of this section shall apply to all human burials ~~or~~ human skeletal remains, or human burial grounds found on or in all public or private lands or waters in Minnesota.

Subd. 2. **Felony; gross misdemeanor.** (a) A person who intentionally, willfully, and knowingly does any of the following is guilty of a felony:

(1) destroys, mutilates, or injures human burials or human burial grounds; or

(2) without the consent of the appropriate authority, disturbs, human burial grounds or removes human skeletal remains or human burial grounds, is guilty of a felony.

(b) A person who, without the consent of the appropriate authority and the landowner, intentionally, willfully, or and knowingly does any of the following is guilty of a gross misdemeanor:

(1) removes any tombstone, monument, or structure placed in any public or private cemetery or unmarked authenticated human burial ground; or

(2) removes any fence, railing, or other work erected for protection or ornament, or any tree, shrub, or plant or grave goods and artifacts within the limits of ~~the~~ a public or private cemetery or authenticated human burial ground; and a person who, without authority from the trustees, state archaeologist, or Indian affairs council; or

(3) discharges any firearms upon or over the grounds of any public or private cemetery or authenticated and identified Indian burial ground, is guilty of a gross misdemeanor.

Subd. 3. **Protective posting.** Every Upon the agreement of the appropriate authority and the landowner, an authenticated and identified or recorded human burial ground may be posted for protective purposes every 75 feet around its perimeter with signs listing the activities prohibited by subdivision 2 and the penalty for violation of it. Posting is at the discretion of the Indian affairs council in the case of Indian burials or at the discretion of the state archaeologist in the case of non-Indian burials. This subdivision does not require posting of a burial ground. The size, description, location, and information on

the signs used for protective posting must be approved by the appropriate authority and the landowner.

Subd. 3a. **Authentication.** ~~The state archaeologist shall authenticate all burial sites grounds for purposes of this section and may enter on property for the purpose of authenticating burial sites. Only after obtaining written permission from the property owner or lessee, descendants of persons buried in burial sites covered by this section may enter the burial sites for the purpose of conducting religious ceremonies. This right of entry must not unreasonably burden property owners or unnecessarily restrict their use of the property. The state archaeologist may retain the services of a qualified professional archaeologist, a qualified physical anthropologist, or other appropriate experts for the purpose of gathering information that the state archaeologist can use to authenticate or identify burial grounds. If probable Indian burial grounds are to be disturbed or probable Indian remains analyzed, the Indian Affairs Council must approve the professional archaeologist, qualified anthropologist, or other appropriate expert. Authentication is at the discretion of the state archaeologist based on the needs identified in this section or upon request by an agency, a landowner, or other appropriate authority.~~

Subd. 4. **State archaeologist.** ~~The state shall retain the services of a qualified professional archaeologist, approved by the state archaeologist and the Indian Affairs Council, for the purpose of gathering information to authenticate or identify Indian burial grounds when requested by a concerned scientific or contemporary Indian ethnic group, when Indian burials are known or suspected to exist on public lands or waters controlled by the state or political subdivision.~~

Subd. 5. **Cost; use of data.** ~~The cost of authentication, recording, surveying, and marking burial grounds and the cost of identification, marking, and analysis, rescue of unmarked or unidentified burial grounds or burials, and reburial of human remains on public lands or waters shall be the responsibility of the state or political subdivision controlling the lands or waters. On private lands or waters these costs shall be borne by the state, but may be borne by the landowner upon mutual agreement with the state. The data collected by this activity that has common value for natural resource planning must be provided and integrated into the Minnesota land management information system's geographic and summary databases according to published data compatibility guidelines. Costs associated with this data delivery must be borne by the state.~~

Subd. 6. **Approval of signs.** ~~The size, description and information on the signs must be approved by the Minnesota State Historical Society.~~

Subd. 7. **Remains found outside of recorded cemeteries.** ~~All unidentified human remains or burials found outside of platted, recorded, or identified cemeteries or unplatted graves or burials found within recorded cemeteries and in contexts which indicate antiquity greater than 50 years shall be dealt with according to the provisions of this section. If such burials are not Indian or their ethnic identity cannot be ascertained, as determined by the state archaeologist, they shall be dealt with in accordance with provisions established by the state archaeologist and other appropriate authority. If such burials are Indian, as determined by the state archaeologist, efforts shall be made by the state archaeologist and the Indian Affairs Council to ascertain their tribal identity. If their probable tribal identity can be determined and the remains have been removed from their original context, such remains shall at the discretion of the state archaeologist and Indian Affairs Council, be turned over to contemporary tribal leaders for disposition. If it is deemed desirable by the state archaeologist or the Indian Affairs Council, such remains~~

~~shall be studied by a qualified professional archaeologist before being delivered to the tribal leaders.~~ If tribal identity cannot be determined, the Indian remains must be dealt with in accordance with provisions established by the state archaeologist and the Indian Affairs Council if they are from public land. If removed Indian remains are from private land they shall be dealt with in accordance with provisions established by the Indian Affairs Council. If it is deemed desirable by the state archaeologist or the Indian Affairs Council, removed remains shall be studied in a timely and respectful manner by a qualified professional archaeologist or a qualified physical anthropologist before being delivered to tribal leaders or before being reburied. Application by a landowner for permission to develop or disturb nonburial areas within authenticated or recorded burial grounds shall be made to the state archaeologist and other appropriate authority in the case of non-Indian burials and to the Indian Affairs Council and other appropriate authority in the case of Indian burials. Landowners with authenticated or suspected human burial grounds on their property are obligated to inform prospective buyers of the burial ground.

Subd. 8. **Burial ground relocation.** No non-Indian burial ground may be relocated without the consent of the appropriate authority. No ~~authenticated and identified~~ Indian burial ground may be relocated unless the request to relocate is approved by the Indian Affairs Council. When ~~the Indian~~ a burial ground is located on public lands or waters, any burial relocations must be duly licensed under section 138.36 and the cost of removal is the responsibility of and shall be paid by the state or political subdivision controlling the lands or waters. If ~~large Indian~~ burial grounds are ~~involved~~ authenticated on private lands, efforts ~~shall~~ may be made by the state to purchase and protect them instead of removing them to another location.

Subd. 9. **Interagency cooperation.** The Department of Natural Resources, the Department of Transportation, and all other state agencies and local governmental units whose activities may be affected, shall cooperate with the state archaeologist and the Indian Affairs Council to carry out the provisions of this section.

Subd. 10. **Construction and development plan review.** When ~~Indian~~ human burials are known or suspected to exist, on public lands or waters, the state or political subdivision controlling the lands or waters or, in the case of private lands, the landowner or developer, shall submit construction and development plans to the state archaeologist ~~and the Indian Affairs Council~~ for review prior to the time bids are advertised and prior to any disturbance within the burial area. If the known or suspected burials are thought to be Indian, plans shall also be submitted to the Indian Affairs Council. The state archaeologist and the Indian Affairs Council shall ~~promptly~~ review the plans within 30 days of receipt and make recommendations for the preservation in place or removal of the human burials or remains, which may be endangered by construction or development activities.

Subd. 11. **Burial sites data.** Burial sites locational and related data maintained by the Office of the State Archaeologist and accessible through the office's "Unplatted Burial Sites and Earthworks in Minnesota" Web site are security information for purposes of section 13.37. Persons who gain access to the data maintained on the site are subject to liability under section 13.08 and the penalty established by section 13.09 if they improperly use or further disseminate the data.

Subd. 12. **Right of entry.** The state archaeologist may enter on property for the purpose of authenticating burial sites. Only after obtaining permission from the property owner or lessee, descendants of persons buried in burial grounds covered by this section may enter the burial grounds for the purpose of conducting religious or commemorative

ceremonies. This right of entry must not unreasonably burden property owners or unnecessarily restrict their use of the property.

Subd. 13. **Definitions.** As used in this section, the following terms have the meanings given.

(a) "Abandoned cemetery" means a cemetery where the cemetery association has disbanded or the cemetery is neglected and contains marked graves older than 50 years.

(b) "Appropriate authority" means:

(1) the trustees when the trustees have been legally defined to administer burial grounds;

(2) the Indian Affairs Council in the case of Indian burial grounds lacking trustees;

(3) the county board in the case of abandoned cemeteries under section 306.243; and

(4) the state archaeologist in the case of non-Indian burial grounds lacking trustees or not officially defined as abandoned.

(c) "Artifacts" means natural or artificial articles, objects, implements, or other items of archaeological interest.

(d) "Authenticate" means to establish the presence of or high potential of human burials or human skeletal remains being located in a discrete area, delimit the boundaries of human burial grounds or graves, and attempt to determine the ethnic, cultural, or religious affiliation of individuals interred.

(e) "Burial" means the organic remnants of the human body that were intentionally interred as part of a mortuary process.

(f) "Burial ground" means a discrete location that is known to contain or has high potential to contain human remains based on physical evidence, historical records, or reliable informant accounts.

(g) "Cemetery" means a discrete location that is known to contain or intended to be used for the interment of human remains.

(h) "Disturb" means any activity that significantly harms the physical integrity or setting of a human burial or human burial ground.

(i) "Grave goods" means objects or artifacts directly associated with human burials or human burial grounds that were placed as part of a mortuary ritual at the time of interment.

(j) "Human remains" means the calcified portion of the human body, not including isolated teeth, or cremated remains deposited in a container or discrete feature.

(k) "Identification" means to analyze organic materials to attempt to determine if they represent human remains and to attempt to establish the ethnic, cultural, or religious affiliations of such remains.

(l) "Marked" means a burial that has a recognizable tombstone or obvious grave marker in place or a legible sign identifying an area as a burial ground or cemetery.

(m) "Qualified physical anthropologist" means a specialist in identifying human remains who holds an advanced degree in anthropology or a closely related field.

(n) "Qualified professional archaeologist" means an archaeologist who meets the United States Secretary of the Interior's professional qualification standards in Code of Federal Regulations, title 36, part 61, appendix A, or subsequent revisions.

(o) "Recorded cemetery" means a cemetery that has a surveyed plat filed in a county recorder's office.

(p) "State" or "the state" means the state of Minnesota or an agency or official of the state acting in an official capacity.

(q) "Trustees" means the recognized representatives of the original incorporators, board of directors, or cemetery association.

Presented to the governor May 21, 2007

Signed by the governor May 23, 2007, 3:04 p.m.