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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3374

02/17/2020 Authored by Becker-Finn, Kunesh-Podein and Olson
The bill was read for the first time and referred to the Committee on Government Operations

1.1 A bill for an act
1.2 relating to state government; changing provisions governing human burials,
1.3 remains, and cemeteries; amending Minnesota Statutes 2018, section 307.08.

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

1.5 Section 1. Minnesota Statutes 2018, section 307.08, is amended to read:

1.6 307.08 DAMAGES; ILLEGAL MOLESTATION OF HUMAN REMAINS;
1.7 BURIALS; CEMETERIES; PENALTY; AUTHENTICATION ASSESSMENT.

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

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

1.16 (1) destroys, mutilates, or injures human burials or human-burial-grounds cemetery, or
1.17 associated grave goods; or

1.18 (2) without the consent of the appropriate authority, disturbs human-burial-grounds a
1.19 cemetery or removes human remains or associated grave goods.

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

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

2.3 (2) removes any fence, railing, or other work erected for protection or ornament, or any  
2.4 tree, shrub, or plant or grave goods and artifacts within the limits of a ~~public or private~~  
2.5 cemetery or ~~authenticated human burial ground~~; or

2.6 (3) discharges any firearms upon or over the grounds of any ~~public or private~~ cemetery  
2.7 or ~~authenticated burial ground~~.

2.8 Subd. 3. **Protective posting.** Upon the agreement of the appropriate authority and the  
2.9 landowner, ~~an authenticated or recorded human burial ground~~ a cemetery may be posted  
2.10 for protective purposes every 75 feet around its perimeter with signs listing the activities  
2.11 prohibited by subdivision 2 and the penalty for violation of it. Posting is at the discretion  
2.12 of the Indian affairs council in the case of American Indian burials cemeteries or at the  
2.13 discretion of the state archaeologist in the case of ~~non-Indian burials~~ non-American Indian  
2.14 cemeteries. This subdivision does not require posting of a ~~burial ground~~ cemetery. The size,  
2.15 description, location, and information on the signs used for protective posting must be  
2.16 approved by the appropriate authority and the landowner.

2.17 Subd. 3a. **Authentication Cemeteries; records and condition assessments.** ~~The state~~  
2.18 ~~archaeologist shall authenticate all burial grounds for purposes of this section. The state~~  
2.19 ~~archaeologist may retain the services of a qualified professional archaeologist, a qualified~~  
2.20 ~~physical anthropologist, or other appropriate experts for the purpose of gathering information~~  
2.21 ~~that the state archaeologist can use to authenticate or identify burial grounds. If probable~~  
2.22 ~~Indian burial grounds are to be disturbed or probable Indian remains analyzed, the Indian~~  
2.23 ~~Affairs Council must approve the professional archaeologist, qualified anthropologist, or~~  
2.24 ~~other appropriate expert. Authentication is at the discretion of the state archaeologist based~~  
2.25 ~~on the needs identified in this section or upon request by an agency, a landowner, or other~~  
2.26 ~~appropriate authority. (a) Cemeteries shall be assessed according to this subdivision.~~

2.27 (b) The state archaeologist shall implement and maintain a system of records identifying  
2.28 the location of known, recorded, or suspected cemeteries. The state archaeologist shall  
2.29 provide access to the records as provided in subdivision 11.

2.30 (c) The cemetery condition assessment of non-American Indian cemeteries is at the  
2.31 discretion of the state archaeologist based on the needs identified in this section or upon  
2.32 request by an agency, a landowner, or other appropriate authority.

3.1 (d) The cemetery condition assessment of American Indian cemeteries is at the discretion  
 3.2 of the Indian Affairs Council based on the needs identified in this section or upon request  
 3.3 by an agency, a landowner, or other appropriate authority.

3.4 (e) The cemetery condition assessment of cemeteries that include American Indian and  
 3.5 non-American Indian remains or include remains whose ancestry cannot be determined  
 3.6 shall be assessed at the discretion of the state archaeologist in collaboration with the Indian  
 3.7 Affairs Council based on the needs identified in this section or upon request by an agency,  
 3.8 a landowner, or other appropriate authority.

3.9 (f) The state archaeologist and the Indian Affairs Council shall have 90 days from the  
 3.10 date a request is received to conduct a cemetery condition assessment or provide notice to  
 3.11 the requester whether or not a condition assessment of a cemetery is needed.

3.12 (g) The state archaeologist and the Indian Affairs Council may retain the services of a  
 3.13 qualified professional archaeologist, a qualified forensic anthropologist, or other appropriate  
 3.14 experts for the purpose of gathering information that the state archaeologist or the Indian  
 3.15 Affairs Council can use to assess or identify cemeteries.

3.16 Subd. 5. **Cost; use of data.** The cost of ~~authentication~~ condition assessment, recording,  
 3.17 surveying, and marking ~~burial grounds~~ cemeteries and the cost of identification, analysis,  
 3.18 rescue, and reburial of human remains on public lands or waters shall be the responsibility  
 3.19 of the state or political subdivision controlling the lands or waters. On private lands or waters  
 3.20 these costs shall be borne by the state, but may be borne by the landowner upon mutual  
 3.21 agreement with the state. ~~The state archaeologist must make the data collected for this~~  
 3.22 ~~activity available using standards adopted by the Office of MN.IT Services and geospatial~~  
 3.23 ~~technology standards and guidelines published by the Minnesota Geospatial Information~~  
 3.24 ~~Office. Costs associated with this data delivery must be borne by the state.~~

3.25 Subd. 7. **Remains found outside of recorded cemeteries.** (a) All unidentified human  
 3.26 remains or burials found outside of ~~recorded~~ cemeteries or unplatted graves or burials found  
 3.27 within recorded cemeteries and in contexts which indicate antiquity greater than 50 years  
 3.28 shall be treated with utmost respect for all human dignity and dealt with according to the  
 3.29 provisions of this section.

3.30 (b) If deemed necessary for identification purposes by the Indian Affairs Council,  
 3.31 removed remains shall be studied in a timely and respectful manner by appropriate experts  
 3.32 designated by the Indian Affairs Council.

3.33 (c) If ~~such~~ the burials are not American Indian or their ethnic identity cannot be  
 3.34 ascertained, as determined by the state archaeologist, they shall be dealt with in accordance

4.1 with provisions established by the state archaeologist and other appropriate authority, as  
 4.2 specified in subdivision 3a, paragraph (e).

4.3 (d) If ~~such the~~ burials ~~are~~ include American Indian remains, as determined by the state  
 4.4 archaeologist, ~~efforts shall be made by~~ they must be dealt with as provided by the provisions  
 4.5 of subdivision 3a, paragraph (d). The state archaeologist and the Indian Affairs Council ~~to~~  
 4.6 shall ascertain their tribal identity. If their probable tribal identity can be determined and  
 4.7 the remains have been removed from their original context, such remains shall be turned  
 4.8 over to contemporary tribal leaders for disposition. of the remains in consultation with  
 4.9 appropriate experts designated by the Indian Affairs Council.

4.10 (e) If tribal identity of the remains cannot be determined, the American Indian remains  
 4.11 must be dealt with in accordance with provisions established by ~~the state archaeologist and~~  
 4.12 the Indian Affairs Council ~~if they are from public land. If removed Indian remains are from~~  
 4.13 private land they shall be dealt with in accordance with provisions established by the Indian  
 4.14 Affairs Council.

4.15 ~~If it is deemed desirable by the state archaeologist or the Indian Affairs Council, removed~~  
 4.16 ~~remains shall be studied in a timely and respectful manner by a qualified professional~~  
 4.17 ~~archaeologist or a qualified physical anthropologist before being delivered to tribal leaders~~  
 4.18 ~~or before being reburied.~~

4.19 Subd. 7a. **Landowner responsibilities.** (a) Application by a landowner for permission  
 4.20 to develop or disturb nonburial areas within ~~authenticated~~ an assessed or recorded burial  
 4.21 grounds cemetery shall be made to the:

4.22 (1) ~~to the~~ state archaeologist and other appropriate authority in the case of ~~non-Indian~~  
 4.23 non-American Indian burials; and

4.24 (2) ~~to the~~ Indian Affairs Council and other appropriate authority in the case of American  
 4.25 Indian burials.

4.26 (b) Landowners with ~~authenticated~~ known or suspected human burial grounds cemeteries  
 4.27 on their property are obligated to inform prospective buyers of the burial ground cemetery.

4.28 Subd. 8. **Burial ground Cemetery relocation.** No ~~non-Indian burial ground~~  
 4.29 non-American Indian cemetery may be relocated without the consent of the appropriate  
 4.30 authority. No American Indian burial ground cemetery may be relocated unless the request  
 4.31 to relocate is approved by the Indian Affairs Council. When a burial ground cemetery is  
 4.32 located on public lands or waters, any burial relocations must be duly licensed under section  
 4.33 138.36 and the cost of removal is the responsibility of and shall be paid by the state or

5.1 political subdivision controlling the lands or waters. If ~~burial grounds~~ cemeteries are  
 5.2 ~~authenticated~~ assessed on private lands, efforts may be made by the state to purchase and  
 5.3 protect them instead of removing them to another location.

5.4 Subd. 9. **Interagency cooperation.** (a) The state archaeologist and the Indian Affairs  
 5.5 Council shall enter into a memorandum of understanding to coordinate their responsibilities  
 5.6 under this section.

5.7 (b) The Department of Natural Resources, the Department of Transportation, and all  
 5.8 other state agencies and local governmental units whose activities may be affected, shall  
 5.9 cooperate with the state archaeologist and the Indian Affairs Council to carry out the  
 5.10 provisions of this section.

5.11 Subd. 10. **Construction and development plan review.** When ~~human burials are known~~  
 5.12 ~~or suspected to~~ cemeteries exist, on public lands or waters, the state or political subdivision  
 5.13 controlling the lands or waters or, in the case of private lands, the landowner or developer,  
 5.14 shall submit construction and development plans to the state archaeologist for review prior  
 5.15 to the time bids are advertised and prior to any disturbance within the ~~burial area~~ cemetery.  
 5.16 ~~If the known or suspected burials are~~ the cemetery is thought to be Indian American Indian,  
 5.17 or the project is within 300 feet of American Indian cemeteries, American Indian burial  
 5.18 features, historic American Indian villages, or historic American Indian cultural features,  
 5.19 plans shall also be submitted to the Indian Affairs Council. The state archaeologist and the  
 5.20 Indian Affairs Council shall review the plans within ~~30~~ 45 days of receipt and make  
 5.21 recommendations for the preservation in place or removal of the ~~human burials~~ cemetery  
 5.22 or remains, which may be endangered by construction or development activities.

5.23 Subd. 11. **Burial sites data.** (a) Burial sites ~~locational and related data maintained by~~  
 5.24 data under the authority of the Office of the State Archaeologist and accessible through the  
 5.25 ~~office's "Unplatted Burial Sites and Earthworks in Minnesota" website or Indian Affairs~~  
 5.26 Council are security information for purposes of section 13.37. Persons who gain access to  
 5.27 ~~the data maintained on the site~~ this data are subject to liability under section 13.08 and the  
 5.28 penalty established by section 13.09 if they improperly use or further disseminate the data.

5.29 (b) The Indian Affairs Council or state archaeologist may bring legal action to prosecute  
 5.30 any violation of this subdivision. A violation may be prosecuted by the city or county  
 5.31 attorney or by the attorney general.

5.32 Subd. 12. **Right of entry.** The state archaeologist or designee may enter on property for  
 5.33 the purpose of ~~authenticating burial sites.~~ identifying or assessing cemetery sites. A  
 5.34 designated representative of the Indian Affairs Council may enter on property, in

6.1 collaboration with the state archaeologist, for the purpose of identifying or assessing  
 6.2 American Indian cemeteries. Only after obtaining permission from the property owner or  
 6.3 lessee, descendants of persons buried in ~~burial grounds~~ cemeteries covered by this section  
 6.4 may enter the ~~burial grounds~~ cemetery for the purpose of conducting religious or  
 6.5 commemorative ceremonies. This right of entry must not unreasonably burden property  
 6.6 owners or unnecessarily restrict their use of the property. The right of entry cannot be denied  
 6.7 unless an unreasonable burden can be shown by the property owners.

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

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

6.12 (b) "Appropriate authority" means:

6.13 (1) the trustees when the trustees have been legally defined to administer ~~burial grounds~~  
 6.14 cemetery sites;

6.15 (2) the Indian Affairs Council in the case of American Indian ~~burial grounds~~ cemetery  
 6.16 sites lacking trustees;

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

6.18 (4) the state archaeologist in the case of ~~non-Indian burial grounds~~ non-American Indian  
 6.19 cemetery sites lacking trustees or not officially defined as abandoned.

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

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

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

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

7.1 ~~(g)~~ (f) "Cemetery" means a discrete location that is known to contain or intended to be  
7.2 used for the interment of human remains, or has high potential to contain human remains  
7.3 based on physical evidence, historical records, or reliable informant accounts.

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

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

7.9 ~~(j)~~ (i) "Human remains" means ~~the calcified portion of the human body~~ the body of a  
7.10 deceased person in whole or in parts, regardless of the state of decomposition, not including  
7.11 isolated teeth, ~~or cremated remains deposited in a container or discrete feature.~~

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

7.15 (k) "American Indian cemetery" means a discrete location that is known to contain or  
7.16 has a high potential to contain American Indian human remains based on physical evidence,  
7.17 historical records, or reliable informant accounts.

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

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

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

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

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

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