

APPENDIX B
DELAWARE UNMARKED HUMAN REMAINS ACT



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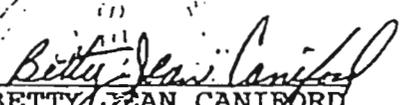
DEPARTMENT OF HISTORICAL AND CULTURAL AFFAIRS

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I, BETTY JEAN CANIFORD, SECRETARY OF THE SENATE, DO HEREBY CERTIFY THAT THE ATTACHED COPY IS THE SAME ACT THAT WAS PASSED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE 134TH GENERAL ASSEMBLY AND WAS SIGNED BY THE GOVERNOR OF THE STATE OF DELAWARE ON 6/09/87.


BETTY JEAN CANIFORD
SECRETARY OF THE SENATE



DELAWARE STATE SENATE
134TH GENERAL ASSEMBLY

SENATE BILL NO. 12

AS AMENDED BY

HOUSE AMENDMENT NO. 2

AN ACT TO AMEND CHAPTER 54, TITLE 7, DELAWARE CODE RELATING TO ARCHAEOLOGICAL EXCAVATIONS.

WHEREAS, the Nanticoke tribe has inhabited the Delmarva Peninsula for hundreds upon hundreds of years; and

WHEREAS, the Nanticoke Indian tribe is proud of its heritage and maintains great reverence for the honor and dignity of its ancestors and other Indians who once inhabited the lands now comprising the State of Delaware and the Delmarva Peninsula; and

WHEREAS, the reverence and respect owed these ancestors of the Nanticoke tribe and other Indians who once inhabited the lands now comprising the State of Delaware and the Delmarva Peninsula has been greatly compromised by the excavations and display of the skeletal remains of these ancestors at such places as the Island Field Site near South Bowers; and

WHEREAS, these noble ancestors of the Nanticoke and other former native inhabitants should be allowed to rest in peace and dignity without having their remains exposed and placed on public display; and

WHEREAS, the Nanticoke Indian tribe is the sole remaining Indian tribe in the State of Delaware and thus the sole remaining representative of all of the tribes that once inhabited what is now Delaware.

NOW THEREFORE:

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

Section 1. Amend Chapter 54, Title 7, Delaware Code by designating the existing Sections 5401 and 5402 under a new subchapter entitled 'Subchapter I. General Provisions' and adding thereto a new subchapter to read as follows:

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"Subchapter II. Archaeological Excavation

§5403. Archaeological Excavation; Purpose.

The purpose of this Act is:

(1) To help provide adequate protection for unmarked human burials and human skeletal remains found anywhere within the State except on Federal 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, or other ground disturbing activities;

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

(4) To provide for the dignified and respectful reinterment or other disposition of native American skeletal remains.

§5404. Definitions.

As used in this Chapter:

(1) 'Director' shall mean Director of the Division of Historical and Cultural Affairs/Department of State.

(2) 'Human skeletal remains' or 'remains' shall mean any part of the body of a deceased human being in any stage of decomposition.

(3) 'Professional archaeologist' shall mean a person having (i) a graduate degree in archaeology, anthropology, history, or another related field with a specialization in archaeology, (ii) a minimum of one year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains, and (iii) designed and executed an archaeological study and presented written results and interpretations of such study.

(4) 'Skeletal analyst' shall mean any person having (i) a graduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology or other relevant aspects of physical anthropology or medicine, (ii) a minimum of one 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 (iii) designed and executed as skeletal analysis, and presented the written results and interpretations of such analysis.

(5) 'Unmarked human burial' shall mean any interment of human skeletal remains for which there exists no grave marker or any other historical

documentation providing information as to the identify of the deceased.

(6) 'Medical Examiner' shall be as defined in Chapter 47, Title 29.

(7) 'Committee' shall mean a body consisting of the Chief of the Nanticoke Indian Tribe, two members appointed by the Chief, the Director of the Division of Historical and Cultural Affairs of the Department of State and two 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 of Delaware and shall serve one-year, renewable terms.

§5405. 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) Unmarked burials or human skeletal remains which are encountered as a result of construction or agricultural activities, shall cease immediately upon discovery and 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 approval is provided by the Director. The treatment, analysis and disposition of the remains shall conform to the provisions of this Chapter.

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

§5406. 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 his jurisdiction.

(b) If the Medical Examiner determines that the remains come under his jurisdiction, he 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.

§5407. 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 Chapter.

§5408. Consultation, Analysis and Disposition.

(a) The Committee shall be notified of all skeletal remains determined to be Native American within 5 days of discovery. Within 60 days of notification, the Director shall provide the Committee with a written plan for the treatment and ultimate disposition of the Native American skeletal remains.

(b) The Director shall publish notice of all excavations of human skeletal remains other than Native American, at least once per week for two 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 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 30 days of the last published notice. The Director shall provide next of kin with a written plan for treatment and ultimate disposition of human skeletal remains.

(c) All skeletal analysis conducted pursuant to this Chapter shall be undertaken only by a Skeletal Analyst as defined in Section 5404(4) of this Chapter.

(d) Any previously excavated skeletal remains of Native Americans of the State of Delaware which are on display or remain uncovered as of the effective date of this Section shall be reinterred within one 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. In any event, native American skeletal remains discovered after enactment, shall be reinterred within 90 days unless an extension 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.

§5409. Prohibited Acts.

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

(a) Knowingly acquire any human skeletal remains removed from unmarked burials in Delaware, except in accordance with the provisions of this Act.

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

(c) Knowingly exhibit human skeletal remains.

§5410. Exceptions.

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of this Act.

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

(c) Human skeletal remains acquired through archaeological excavations under the supervision of a professional archaeologist are not subject to the prohibitions as provided in Section 5409(a) of this Title.

§5411. Penalties.

Any person who violates Section 5409 of this Chapter shall upon conviction be sentenced to pay a fine 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."