

Act 753 of 1991

FOR AN ACT TO BE ENTITLED "AN ACT TO PROHIBIT THE DESECRATION OF HUMAN SKELETAL BURIAL REMAINS IN UNREGISTERED CEMETERIES; TO PROHIBIT TRADE OR COMMERCIAL DISPLAY OF HUMAN SKELETAL BURIAL REMAINS OR ASSOCIATED BURIAL FURNITURE; AND FOR OTHER PURPOSES."

Be it Enacted by the General Assembly of the State of Arkansas:

WHEREAS, the state and its citizens have an obligation to protect from desecration all human skeletal burial remains and associated burial furniture, including those from unmarked, unrecorded, abandoned, or unregistered graves, burial grounds, or cemeteries; and

WHEREAS, the skeletal burial remains and associated burial furniture of many Native Americans, Europeans, Blacks, American settlers, and others were placed in burial grounds not presently known, recorded, or registered;

NOW THEREFORE,

Be it Enacted by the General Assembly of the State of Arkansas:

SECTION 1. As used in this act:

- (1) "Artifacts" means arrowheads, other bone and stone tools, pottery, pottery fragments, china, metal objects or other material objects made by Native American settlers, or other residents of Arkansas, which were left or lost in or on the ground, except those items which were placed in direct association with human skeletal burial remains or burial furniture as defined in this act.
- (2) "Burial furniture" means any items which were placed with human remains at the time of burial or in apparent intentional association with the burial and would include burial markers, items of personal adornment, casket and casket hardware, stone and bone tools, pottery vessels, or other similar objects or materials.
- (3) "Burial Grounds" means any place where human skeletal remains are or have been buried.
- (4) "Desecration" means the intentional, willful, and/or knowing removal or disturbance of human skeletal burial remains or burial furniture which was placed with a buried human body and/or treating such human skeletal burial remains in an irreverent and contemptuous manner.
- (5) "Human skeletal burial remains" means the calcified portion of a human body which remains after the flesh has decomposed.

SECTION 2. The mere possession of items described in Section 1 of this act does not create a presumption of a violation of this act, but the duty shall remain upon the state to prove any violation of this act.

SECTION 3. Legislative Intent. It is a declaration and statement of legislative intent that all human burials and human skeletal burial remains shall be accorded equal treatment and respect for human dignity without reference to their ethnic origins, cultural backgrounds, religious affiliations, or date of burial. The provisions of this act shall apply to all human burials or human skeletal burial remains found on or in all public or private lands or waters of Arkansas.

SECTION 4. Anyone who knowingly buys, sells, or barter human skeletal burial remains or their associated burial furniture is committing a Class A misdemeanor for the first offense and a Class D felony on the second and subsequent offenses. Artifacts as defined in this act and private collections legally acquired prior to the effective date of this act are exempted from this section. Nothing in this act prohibits the collecting of such artifacts by landowners or others who do so with the landowner's permission.

SECTION 5. Anyone who knowingly displays human skeletal burial remains for profit or to aid and abet a commercial enterprise is committing a Class B misdemeanor with each day of display being a separate offense.

SECTION 6. Anyone who intentionally or knowingly desecrates or permits desecration of a burial ground and associated burial furniture is committing on the first offense a Class A misdemeanor and on the second or subsequent offenses a Class D felony. The presence in the ground of grave markers, caskets or casket hardware creates a rebuttable presumption that these are burial furniture and of the existence or presence of a human burial ground. Exempted from this section of the act is disturbance of human skeletal burial remains or burial furniture by landowners or agricultural tenants as a consequence of agricultural activity.

SECTION 7. The public has a right to the knowledge to be derived and gained from the scientific study of human skeletal burial remains and burial furniture. Therefore, when justified by "A State Plan for the Conservation of Archeological Resources in Arkansas" as promulgated by the State Archeologist and the State Historic Preservation Officer, the investigation, excavation, removal, and analysis of human skeletal burial remains and burial furniture is authorized and, if done, must be carried out with the consent of the landowner and consultation with the appropriate tribe, if identifiable, and under the direction of archeologists employed by the state or the U.S. government or by archeologists meeting the U.S. Department of Interior's professional qualifications standards found in the current Code of Federal Regulations.

SECTION 8. If, subsequent to the date of this act, human skeletal burial remains are exhumed for relocation, then at the request of a direct descendant or that of a specific church, or that of a Native American tribal group recognized by the U.S. government who can provide written or scientific documentation of such descent, or of direct church or tribal affiliation with the human skeletal burial remains, the human skeletal burial remains will be conveyed to such an

individual or entity. By consultation with the aforementioned groups, scientific studies may be undertaken.

SECTION 9. If human skeletal burial remains are not claimed as set forth in Section 8, the Arkansas Archeological Survey or a state supported museum or a museum accredited by the American Association of Museums may serve as a depository for such skeletal remains as are required for scientific purposes. If not otherwise claimed as provided herein, skeletal burial remains shall be disposed of in accordance with existing laws, rules, and regulations for disposing of human remains.

SECTION 10. All provisions of this act of a general permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared to be severable.

SECTION 12. All laws and parts of laws in conflict with this act are hereby repealed.