WEST VIRGINIA CODE: §29-1-8a

§29-1-8a. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.

(a) Legislative findings and purpose. --

The Legislature finds that there is a real and growing threat to the safety and sanctity of unmarked human graves in West Virginia and the existing laws of the state do not provide equal or adequate protection for all such graves. As evident by the numerous incidents in West Virginia which have resulted in the desecration of human remains and vandalism to grave markers, there is an immediate need to protect the graves of earlier West Virginians from such desecration. Therefore, the purpose of this article is to assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations.

The Legislature also finds that those persons engaged in the scientific study or recovery of artifacts which have been acquired in accordance with the law are engaged in legitimate and worthy scientific and educational activities. Therefore, this legislation is intended to permit the appropriate pursuit of those lawful activities.

Finally, this legislation is not intended to interfere with the normal activities of private property owners, farmers, or those engaged in the development, mining or improvement of real property. (b) Definitions. --

For the purposes of this section:

(1) "Human skeletal remains" means the bones, teeth, hair or tissue of a deceased human body;

(2) "Unmarked grave" means any grave or location where a human body or bodies have been buried or deposited for at least fifty years and the grave or location is not in a publicly or privately maintained cemetery or in the care of a cemetery association, or is located within such cemetery or in such care and is not commonly marked;

(3) "Grave artifact" means any items of human manufacture or use that are associated with the human skeletal remains in a grave;

(4) "Grave marker" means any tomb, monument, stone, ornament, mound, or other item of human manufacture that is associated with a grave;

(5) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government;

WV Legislature

(6) "Disturb" means the excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way of human skeletal remains, unmarked graves, grave artifacts or grave markers;

(7) "Native American tribe" means any Indian tribe, band, nation, or organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(8) "Cultural affiliation" means the relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day group and an identifiable earlier group;

(9) "Lineal descendants" means any individuals tracing his or her ancestry directly or by proven kinship; and

(10) "Proven kinship" means the relationship among people that exists because of genetic descent, which includes racial descent.

(c) Acts prohibited; penalties; exceptions. --

(1) No person may excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance unless such person has a valid permit issued to him or her by the Director of the Historic Preservation Section: Provided, That the supervising archaeologist of an archaeological investigation being undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder is not required to obtain such permit, but shall notify the Director of the Historic Preservation Section that such investigation is being undertaken and file reports as are required of persons issued a permit under this section: Provided, however, That projects being undertaken in compliance with section 106 of the National Historic Preservation Act of 1966, as amended, or subsection (a), section five of this article is not required to obtain such permit for excavation, removal, destruction or disturbance of historic or prehistoric ruins or archaeological sites.

(2) A person who, either by himself or herself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs any historic or prehistoric ruins, burial grounds or archaeological site, or unmarked grave, grave artifact or grave marker of historical significance without first having been issued a valid permit by the Director of the Historic Preservation Section, or who fails to comply with the terms and conditions of such permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500, confined in jail for not more than six months, or both fined and confined.

(3) A person who, either by himself or herself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs human skeletal remains of historical significance without first having been issued a valid permit by the Director of the Historic Preservation

WV Legislature

Section, or who fails to comply with the terms and conditions relating to disinterment or displacement of human skeletal remains of such permit, is guilty of the felony of disinterment or displacement of a dead human body or parts thereof under section fourteen, article eight, chapter sixty-one of this code and, upon conviction thereof, shall be imprisoned in a state correctional facility not more than five years.

(4) A person who intentionally withholds information about the excavation, removal, destruction, or other disturbance of any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in jail not more than ten days, or both fined and confined.

(5) A person who, either by himself or herself or through an agent, offers for sale or exchange any human skeletal remains, grave artifact or grave marker obtained in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or confined in jail not more than one year, or both fined and confined.

(6) Each instance of excavation, removal, destruction, disturbance or offering for sale or exchange under subdivisions (1) through (5) of this subsection shall constitute a separate offense.

(7) It is a complete defense in a prosecution under this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

(8) This subsection does not apply to actions taken in the performance of official law-enforcement duties.

(d) Notification of discovery of human skeletal remains in unmarked locations. --

Upon the discovery of human skeletal remains, grave artifact or grave marker in an unmarked grave on any publicly or privately owned property, the person making such discovery shall immediately cease any activity which may cause further disturbance, make a reasonable effort to protect the area from further disturbance and notify the county sheriff within forty-eight hours of the discovery and its location. If the human remains, grave artifact or grave marker appear to be from an unmarked grave, the sheriff shall promptly, and prior to any further disturbance or removal of the remains, notify the Director of the Historic Preservation Section. The director shall cause an on-site inspection of the disturbance to be made to determine the potential for archaeological significance of the site: Provided, That when the discovery is made by an archaeological investigation permitted under state or federal law, the supervising archaeologist shall notify the Director of the Historic Preservation Section directly.

WV Legislature

If the Director of the Historic Preservation Section determines that the site has no archaeological significance, the removal, transfer and disposition of the remains shall be subject to the provisions of article thirteen, chapter thirty-seven of this code, and the director shall notify the circuit court of the county wherein the site is located.

If the Director of the Historic Preservation Section determines that the site has a potential for archaeological significance, the director shall take such action as is reasonable, necessary and prudent, including consultation with appropriate private or public organizations, to preserve and advance the culture of the state in accordance with the powers and duties granted to the director, including the issuance of a permit for the archaeological excavation or removal of the remains. If the director determines that the issuance of a permit for the archaeological excavation or removal of the remains is not reasonable, necessary or prudent, the director shall provide written reasons to the applicant for not issuing the permit.

(e) Issuance of permits. --

Prior to the issuance of a permit for the disturbance of human skeletal remains, grave artifacts, or grave markers, the director of historic preservation shall convene and chair an ad hoc committee to develop permit conditions. The committee shall be comprised of the chair and six or eight members representing known or presumed lineal descendants, private and public organizations which have cultural affiliation to the presumed contents of the site, the Council for West Virginia Archaeology and the West Virginia Archaeological Society. In the case of Native American sites, the membership of the committee shall be comprised of the chair and six or eight members representing the Council for West Virginia Archaeology, the West Virginia Archaeological Society, and known or presumed lineal descendants, preferably with cultural affiliation to tribes that existed in the geographic area that is now West Virginia.

In the case of a site of less then five acres, which is owned by an individual or partnership, the ad hoc committee must be formed within thirty days of application for same by the property owner, must meet within sixty days of such application, and must render a decision within ninety days of such application.

All such permits shall at a minimum address the following conditions: (1) The methods by which lineal descendants of the deceased are notified prior to the disturbance; (2) the respectful manner in which the remains, artifacts or markers are to be removed and handled; (3) scientific analysis of the remains, artifacts or markers and the duration of those studies; (4) the way in which the remains may be reburied in consultation with any lineal descendants, when available; (5) methods for the respectful curation of recovered items; and (6) such other conditions as the director may deem necessary. Expenses accrued in meeting the permit conditions shall be borne by the permit applicant, except in cases where the deceased descendants or sponsors are willing to share or assume the costs. A permit to disturb human skeletal remains, grave artifacts or grave markers will be issued only after alternatives to disturbance and other mitigative measures have been considered.

WV Legislature

In addition, a person applying for a permit to excavate or remove human skeletal remains, grave artifacts, grave markers, or any historic or prehistoric features of archaeological significance may provide to the ad hoc committee information he or she deems appropriate and shall:

(1) Provide a detailed statement to the Director of the Historic Preservation Section giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work;

(2) Provide data and results of any excavation, study or collection in annual reports to the Director of the Historic Preservation Section and submit a final report to the director upon completion of the excavation;

(3) Obtain the prior written permission of the owner if the site of such proposed excavation is on privately owned land; and

(4) Provide any additional information the ad hoc committee deems necessary in developing the permit conditions.

The permits shall be issued for a period of two years and may be renewed at expiration. The permits are not transferable but other persons who have not been issued a permit may work under the direct supervision of the person holding the permit. The person or persons to whom a permit was issued must carry the permit while exercising the privileges granted and must be present at the site whenever work is being done.

Notwithstanding any other penalties to which a person may be subject under this section for failing to comply with the terms and conditions of a permit, the permit of a person who violates any of the provisions of this subsection shall be revoked.

As permits are issued, the Director of the Historic Preservation Section shall maintain a catalogue of unmarked grave locations throughout the state.

(f) Property tax exemption for unmarked grave sites. --

To serve as an incentive for the protection of unmarked graves, the owner, having evidence of the presence of unmarked graves on his or her property, may apply to the Director of the Historic Preservation Section for a determination as to whether such is the case. Upon making such a determination in the affirmative, the Director of the Historic Preservation Section shall provide written certification to the landowner that the site containing the graves is a cemetery and as such is exempt from property taxation upon presentation of the certification to the county assessor. The area of the site to receive property tax exempt status shall be determined by the Director of the Historic Preservation Section. Additionally, a property owner may establish protective easements for the location of unmarked graves.

(g) Additional provisions for enforcement; civil penalties; rewards for information. --

WV Legislature

(1) The prosecuting attorney of the county in which a violation of any provision of this section is alleged to have occurred may be requested by the Director of the Historic Preservation Section to initiate criminal prosecutions or to seek civil damages, injunctive relief and any other appropriate relief. The Director of the Historic Preservation Section shall cooperate with the prosecuting attorney in resolving such allegations.

(2) Persons convicted of any prohibited act involving the excavation, removal, destruction, disturbance or offering for sale or exchange of historic or prehistoric ruins, burial grounds, archaeological site, human skeletal remains, unmarked grave, grave artifact or grave marker under the provisions of subdivisions (1) and (2), subsection (c) of this section shall also be liable for civil damages to be assessed by the prosecuting attorney in consultation with the Director of the Historic Preservation Section.

Civil damages may include:

(i) Forfeiture of any and all equipment used in disturbing the protected unmarked graves or grave markers;

(ii) Any and all costs incurred in cleaning, restoring, analyzing, accessioning and curating the recovered material;

(iii) Any and all costs associated with recovery of data, and analyzing, publishing, accessioning and curating materials when the prohibited activity is so extensive as to preclude the restoration of the unmarked burials or grave markers;

(iv) Any and all costs associated with restoring the land to its original contour or the grave marker to its original condition;

(v) Any and all costs associated with reinterment of the human skeletal remains; and

(vi) Any and all costs associated with the determination and collection of the civil damages.

When civil damages are recovered, the proceeds, less the costs of the prosecuting attorney associated with the determination and collection of such damages, shall be deposited into the Endangered Historic Properties Fund and may be expended by the Commissioner of Culture and History for archaeological programs at the state level, including the payment of rewards for information leading to the arrest and conviction of persons violating the provisions of subdivisions (1) and (2), subsection (c) of this section.

(3) The Commissioner of Culture and History is authorized to offer and pay rewards of up to $1,000 from funds on deposit in the Endangered Historic Properties Fund for information leading to the arrest and conviction of persons who violate the provisions of subdivisions (1) and (2), subsection (c) of this section.

(h) Disposition of remains and artifacts not subject to reburial. --

WV Legislature

All human skeletal remains and grave artifacts found in unmarked graves on public or private land, and not subject to reburial, under the provisions of subsection (e) of this section, are held in trust for the people of West Virginia by the state and are under the jurisdiction of the Director of Historic Preservation. All materials collected and not reburied through this section shall be maintained with dignity and respect for the people of the state under the care of the West Virginia State Museum.

WV Legislature