

SENATE BILL NO. 2311

Introduced by

Senators Luick, Larsen, Poolman

Representatives Kelsh, Muscha, Schreiber Beck

1 A BILL for an Act to amend and reenact section 23-06-27 of the North Dakota Century Code,
2 relating to protection of human burial sites; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 23-06-27 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **23-06-27. Protection of human burial sites, human remains, and burial goods -**
7 **Unlawful acts - Penalties - Exceptions.**

8 1. As used in this section:

- 9 a. "Burial goods" means any objects or items interred with human remains at the
10 time of burial.
- 11 b. "Disturb" means move, open, expose, dig up, disinter, excavate, remove, carry
12 away, damage, injure, deface, desecrate, loot, vandalize, mutilate, submerge,
13 flood, or destroy.
- 14 c. "Human burial site" means any place of interment, by any means, of human
15 remains or burial goods, which is designated by a grave marker or other burial
16 structure or which is not so designated, but is, in fact, discovered or believed to
17 exist on the basis of archaeological or historical evidence.
- 18 d. "Human remains" means any part of the body of a deceased human being in any
19 stage of decomposition.
- 20 e. "Land" means all lands, including submerged lands, located within the state of
21 North Dakota which are owned by the state or its political subdivisions, agencies,
22 or instrumentalities, or by any private person.
- 23 f. ~~"Person" means a natural person, corporation, unincorporated association,~~
24 ~~partnership, proprietorship, or governmental entity.~~

- 1 2. A person is guilty of a class C felony who, without authority of law, breaks open any
2 building wherein any body of a deceased human being is deposited while awaiting
3 burial, with the intent of either removing such human body, or any part thereof, or
4 stealing the coffin, or any part thereof, or anything attached thereto or connected
5 therewith, or the vestments or other articles intended to be buried with the human
6 body.
- 7 3. A person is guilty of a felony who, without authority of law, willfully, as defined in
8 section 12.1-02-02, disturbs a human burial site, human remains, or burial goods
9 found in or on any land, or attempts to do the same, or incites or procures the same to
10 be done.
 - 11 a. A person is guilty of a class B felony if the offense in this subsection was
12 committed for monetary gain, whether or not such monetary gain was related to
13 the use of the land in or on which the burial, remains, or goods were disturbed.
 - 14 b. A person is guilty of a class C felony if the offense in this subsection was not
15 committed for monetary gain.
- 16 4. Any person who knows or has reasonable grounds to believe that a human burial site,
17 human remains, or burial goods, found in or on any land, are being disturbed or may
18 be disturbed, by human activity without authority of law or by natural forces, shall
19 immediately notify the local law enforcement agency with jurisdiction in the area in
20 which the burial, remains, or goods are located. A person is guilty of a class B
21 misdemeanor who is required to provide such notification and willfully, as defined in
22 section 12.1-02-02, fails to provide the same.
- 23 5. Any person who knows or has reasonable grounds to believe that that person has
24 encountered or discovered a human burial site, human remains, or burial goods
25 associated with a human burial, in or on any land, shall refrain from any activity which
26 might disturb or immediately cease any continued activity which might cause further
27 disturbance of such burial, remains, or goods and shall, as soon as practicable, report
28 the presence or discovery of the burial, remains, or goods to the local law enforcement
29 agency with jurisdiction in the area in which the burial, remains, or goods are located.
30 A person is guilty of a class B misdemeanor who is required to make such report and
31 willfully, as defined in section 12.1-02-02, fails to make the same. The requirements

1 imposed in this subsection do not apply to any person engaged in the salvaging
2 excavation or other disinterment of a human burial under authority of law.

3 6. Any person having been found guilty or having pleaded guilty, as a result of having
4 been charged with an offense under subsection 2 or 3, must be ordered to forfeit to
5 the state any and all human remains and burial goods acquired in connection with the
6 commission of the offense and may be ordered to forfeit to the state any and all
7 equipment used in connection with the commission of the offense. In addition, any
8 such person having been charged with an offense under subsection 3 must be
9 ordered to pay all reasonable costs actually incurred in the reinterment of the human
10 remains and burial goods so forfeited. In conjunction with the prosecution of any
11 offense under this subsection, the remains in question in the prosecution may, as
12 deemed necessary, be subjected to nonintrusive, nondestructive professional study for
13 the exclusive purpose of determining whether the remains are human.

14 7. Subsection 3 does not apply to the inadvertent disturbance of a human burial site,
15 human remains, or burial goods when the state department of health and the state
16 historical society have been notified of the disturbance and the human remains and
17 burial goods must be studied and reinterred pursuant to rules adopted by the state
18 department of health and the state historical society. Subsection 3 also does not apply
19 to situations in which the state department of health and the state historical society are
20 notified of the need to disinter and move the contents of human burial sites that are
21 recorded with the state historical society to prevent the destruction of the human burial
22 sites by actions including the construction of highways, dams, reservoirs, coal mines,
23 power generation and transmission facilities, pipelines, farming practices, and other
24 developments. Where feasible, the developments should avoid disturbance of the
25 human burial sites. If the proposed construction of a highway, dam, reservoir, or other
26 project to be paid for with public funds is likely to impact a human burial site, the state
27 department of health and the state historical society shall schedule a public hearing to
28 allow public comment regarding the impacted burial site. Before the project may
29 commence, the governmental entity conducting the project shall implement a cultural
30 resource mitigation plan approved by the director of the state historical society. In
31 these situations the disinterred human remains and burial goods must be studied and

Sixty-fourth
Legislative Assembly

- 1 reinterred pursuant to rules adopted by the state department of health and the state
- 2 historical society.