

SENATE BILL 451

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1999 Regular Session
9r1885
CF 9r0924

By: **Senators McCabe and Hafer**

Introduced and read first time: February 5, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Human Remains - Removal from Burial Sites - Authorization and**
3 **Procedures**

4 FOR the purpose of allowing the Office of the State's Attorney in the jurisdiction
5 where certain burial sites are located to authorize the removal of human
6 remains by certain persons after certain requirements are met; providing for the
7 construction of this Act; requiring certain notice for removal of human remains
8 under certain circumstances; requiring the notice to be published for a certain
9 amount of time; giving certain persons a certain amount of time to respond to
10 the notice; requiring certain persons to prove by certain means the location and
11 boundaries of certain burial sites; providing procedures for the reinterment of
12 certain human remains; requiring the location of certain human remains to be
13 documented in certain places under certain circumstances; repealing certain
14 provisions relating to the removal of dead bodies without authority; defining
15 certain terms; and generally relating to the removal of human remains from a
16 burial site.

17 BY repealing
18 Article 27 - Crimes and Punishments
19 Section 265 and the subheading "Graveyard Desecration"
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 1998 Supplement)

22 BY adding to
23 Article 27 - Crimes and Punishments
24 Section 265 to be under the new subheading "Removal of Human Remains from
25 Burial Sites"
26 Annotated Code of Maryland
27 (1996 Replacement Volume and 1998 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article 27 - Crimes and Punishments
30 Section 267 to be under the new subheading "Graveyard Desecration"
31 Annotated Code of Maryland

1 (1996 Replacement Volume and 1998 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article 27 - Crimes and Punishments**

5 [Graveyard Desecration.]

6 [265.

7 Every person, his aiders, abettors and counsellors, who shall be convicted of
8 removing or attempting to remove from any graveyard, burial ground or vault in the
9 State of Maryland any dead body which shall have been buried in such graveyard,
10 burial ground or vault, shall be deemed guilty of a misdemeanor, and shall be
11 sentenced to the penitentiary for not less than five nor more than fifteen years,
12 unless such person or persons shall have been authorized by the State's Attorney for
13 Baltimore City or for the county in which such graveyard, burial ground or vault may
14 be situated to remove such dead body for the purpose of ascertaining the cause of the
15 death of the person whose body is so removed, or for the purpose of reburial.]

16 REMOVAL OF HUMAN REMAINS FROM BURIAL SITES.

17 265.

18 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (2) (I) "ASSOCIATED FUNERARY OBJECT" MEANS AN ITEM OF HUMAN
21 MANUFACTURE OR USE THAT IS INTENTIONALLY PLACED WITH HUMAN REMAINS AT
22 THE TIME OF INTERMENT IN A BURIAL SITE OR PLACED LATER AS A PART OF A
23 DEATH RITE OR CEREMONY OF A CULTURE, RELIGION, OR GROUP.

24 (II) "ASSOCIATED FUNERARY OBJECT" INCLUDES ANY
25 GRAVESTONE, MONUMENT, TOMB, OR OTHER STRUCTURE IN OR DIRECTLY
26 ASSOCIATED WITH A BURIAL SITE.

27 (3) (I) "BURIAL SITE" MEANS ANY NATURAL OR PREPARED PHYSICAL
28 LOCATION, WHETHER ORIGINALLY LOCATED BELOW, ON, OR ABOVE THE SURFACE
29 OF THE EARTH, INTO WHICH HUMAN REMAINS OR ASSOCIATED FUNERARY OBJECTS
30 ARE DEPOSITED AS A PART OF A DEATH RITE OR CEREMONY OF ANY CULTURE,
31 RELIGION, OR GROUP.

32 (II) "BURIAL SITE" INCLUDES THE HUMAN REMAINS AND
33 ASSOCIATED FUNERARY OBJECTS THAT RESULT FROM A SHIPWRECK OR ACCIDENT
34 AND ARE INTENTIONALLY LEFT TO REMAIN AT THE SITE.

35 (4) "PERMANENT CEMETERY" MEANS A CEMETERY THAT IS OWNED BY:

1 (I) A CEMETERY COMPANY REGULATED UNDER TITLE 5 OF THE
2 BUSINESS REGULATION ARTICLE;

3 (II) A NONPROFIT ORGANIZATION; OR

4 (III) THE STATE.

5 (5) "PERSON IN INTEREST" MEANS A PERSON WHO:

6 (I) IS RELATED BY BLOOD OR MARRIAGE TO THE PERSON
7 INTERRED IN A BURIAL SITE;

8 (II) HAS A CULTURAL AFFILIATION WITH THE PERSON INTERRED
9 IN A BURIAL SITE; OR

10 (III) HAS AN INTEREST IN A BURIAL SITE THAT IS RECOGNIZED AS
11 BEING IN THE PUBLIC INTEREST AFTER CONSULTATION WITH A LOCAL BURIAL
12 SITES ADVISORY BOARD OR, IF SUCH A BOARD DOES NOT EXIST, THE MARYLAND
13 HISTORICAL TRUST.

14 (B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
15 PERSON MAY NOT REMOVE OR ATTEMPT TO REMOVE HUMAN REMAINS FROM ANY
16 BURIAL SITE IN THE STATE.

17 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
18 MISDEMEANOR AND SHALL BE SENTENCED TO THE PENITENTIARY FOR NOT LESS
19 THAN 5 OR MORE THAN 15 YEARS.

20 (C) SUBJECT TO THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, THE
21 STATE'S ATTORNEY OF A COUNTY OR BALTIMORE CITY MAY AUTHORIZE IN WRITING
22 THE REMOVAL OF HUMAN REMAINS FROM ANY BURIAL SITE IN THE STATE'S
23 ATTORNEY'S JURISDICTION:

24 (1) FOR THE PURPOSE OF ASCERTAINING THE CAUSE OF DEATH OF THE
25 PERSON WHOSE REMAINS ARE REMOVED;

26 (2) FOR THE PURPOSE OF DETERMINING WHETHER THE HUMAN
27 REMAINS WERE INTERRED ERRONEOUSLY;

28 (3) FOR THE PURPOSE OF REBURIAL AT THE REQUEST OF A PERSON IN
29 INTEREST; OR

30 (4) FOR MEDICAL OR SCIENTIFIC EXAMINATION OR STUDY, AS
31 PERMITTED BY LAW.

32 (D) (1) THE STATE'S ATTORNEY FOR A COUNTY OR BALTIMORE CITY SHALL
33 REQUIRE A PERSON REQUESTING THE AUTHORIZATION TO RELOCATE HUMAN
34 REMAINS WHEN A BURIAL SITE HAS BEEN SOLD IN THE STATE'S ATTORNEY'S
35 JURISDICTION TO PUBLISH A NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION
36 IN BALTIMORE CITY OR IN THE COUNTY WHERE THE BURIAL SITE IS LOCATED.

1 (2) THE NOTICE SHALL BE PUBLISHED IN THE NEWSPAPER AT LEAST
2 ONCE A WEEK FOR AT LEAST 3 CONSECUTIVE WEEKS.

3 (3) THE NOTICE SHALL CONTAIN:

4 (I) A STATEMENT THAT AUTHORIZATION FROM THE STATE'S
5 ATTORNEY IS BEING REQUESTED TO REMOVE HUMAN REMAINS FROM A BURIAL
6 SITE;

7 (II) THE PURPOSE FOR WHICH THE AUTHORIZATION IS BEING
8 REQUESTED;

9 (III) THE LOCATION OF THE BURIAL SITE, INCLUDING THE TAX MAP
10 AND PARCEL NUMBER OR LIBER-FOLIO NUMBER; AND

11 (IV) ALL KNOWN PERTINENT INFORMATION CONCERNING THE
12 BURIAL SITE, INCLUDING THE NAMES OF THE PERSONS WHOSE HUMAN REMAINS
13 ARE INTERRED IN THE BURIAL SITE, IF KNOWN.

14 (4) THE PERSON REQUESTING THE AUTHORIZATION FROM THE STATE'S
15 ATTORNEY SHALL PAY THE COST OF PUBLISHING THE NOTICE.

16 (5) A PERSON IN INTEREST SHALL HAVE 15 DAYS TO RESPOND TO THE
17 NOTICE, BEGINNING WITH THE DATE OF THE THIRD SUCCESSIVE PUBLICATION OF
18 THE NOTICE.

19 (6) AFTER RECEIVING PROOF OF THE PUBLICATION REQUIRED UNDER
20 PARAGRAPH (1) OF THIS SUBSECTION AND THE EXPIRATION OF THE TIME PERIOD
21 SPECIFIED IN PARAGRAPH (5) OF THIS SUBSECTION, THE STATE'S ATTORNEY MAY
22 AUTHORIZE THE REMOVAL OF THE HUMAN REMAINS FROM THE BURIAL SITE AFTER
23 CONSIDERATION HAS BEEN GIVEN TO:

24 (I) THE CONCERNS AND WISHES OF ANY PERSON IN INTEREST; OR

25 (II) ALTERNATIVES TO THE REMOVAL OF THE HUMAN REMAINS.

26 (7) THIS SUBSECTION MAY NOT CONSTRUED TO DELAY, PROHIBIT, OR
27 OTHERWISE LIMIT THE STATE'S ATTORNEY'S AUTHORIZATION FOR THE REMOVAL OF
28 HUMAN REMAINS FROM A BURIAL SITE IN ACCORDANCE WITH THIS SECTION IF
29 THERE IS NO PERSON IN INTEREST.

30 (8) FOR A KNOWN, BUT NOT NECESSARILY DOCUMENTED, UNMARKED
31 BURIAL SITE, THE PERSON REQUESTING AUTHORIZATION FOR THE REMOVAL OF
32 HUMAN REMAINS FROM THE BURIAL SITE HAS THE BURDEN OF PROVING BY
33 ARCHAEOLOGICAL OR OTHER COMPARABLE MEANS THE PRECISE LOCATION AND
34 BOUNDARIES OF THE BURIAL SITE.

35 (E) THIS SECTION MAY NOT BE CONSTRUED TO PREEMPT THE NEED FOR A
36 PERMIT BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 4-215 OF

1 THE HEALTH - GENERAL ARTICLE TO REMOVE HUMAN REMAINS FROM A BURIAL
2 SITE.

3 (F) (1) ANY HUMAN REMAINS THAT ARE REMOVED FROM A BURIAL SITE IN
4 ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE REINTERRED:

5 (I) 1. IN A PERMANENT CEMETERY THAT PROVIDES PERPETUAL
6 CARE; OR

7 2. IN A PLACE OTHER THAN A PERMANENT CEMETERY WITH
8 THE AGREEMENT OF, OR AT THE REQUEST OF, A PERSON IN INTEREST; AND

9 (II) IN THE PRESENCE OF:

10 1. A MORTICIAN, PROFESSIONAL CEMETERIAN, OR OTHER
11 INDIVIDUAL QUALIFIED IN THE INTERMENT OF HUMAN REMAINS;

12 2. A MINISTER, PRIEST, OR OTHER RELIGIOUS LEADER
13 QUALIFIED IN THE FUNERARY RITES APPROPRIATE TO THE CULTURAL AFFILIATION
14 OF THE HUMAN REMAINS; OR

15 3. A TRAINED ANTHROPOLOGIST OR ARCHAEOLOGIST.

16 (2) THE LOCATION OF THE FINAL DISPOSITION AND TREATMENT OF
17 HUMAN REMAINS THAT ARE REMOVED FROM A BURIAL SITE IN ACCORDANCE WITH
18 THE PROVISIONS OF THIS SECTION SHALL BE ENTERED INTO THE LOCAL BURIAL
19 SITES INVENTORY OR, IF NO LOCAL BURIAL SITES INVENTORY EXISTS, INTO
20 WHATEVER INVENTORY OR LISTING THE MARYLAND HISTORICAL TRUST
21 DETERMINES IS APPROPRIATE.

22 (G) THIS SECTION MAY NOT BE CONSTRUED TO INTERFERE WITH THE
23 NORMAL OPERATION AND MAINTENANCE OF A PUBLIC OR PRIVATE CEMETERY AS
24 LONG AS THE OPERATION AND MAINTENANCE OF THE CEMETERY ARE PERFORMED
25 IN ACCORDANCE WITH STATE LAW.

26 GRAVEYARD DESECRATION.

27 267.

28 (a) Any person who wilfully destroys, mutilates, defaces, injures, or removes
29 any tomb, monument, gravestone, or other structure placed in any cemetery, or any
30 building, wall, fence, railing, or other work, for the use, protection, or ornamentation
31 of any cemetery in this State is guilty of a misdemeanor and shall be fined not more
32 than \$5,000, or imprisoned for not more than 3 years, or both.

33 (b) Any person who wilfully destroys, cuts, breaks, or removes any tree, plant,
34 or shrub in any cemetery in this State, or who is found guilty of indecent or disorderly
35 conduct within said limits, shall be guilty of a misdemeanor, and shall be fined not
36 more than \$500, or imprisoned for not more than 2 years, or both.

1 [(c) Nothing in this section shall be construed to prohibit the removal of the
2 remains of any human body, or of any monument, gravestone, or other marker from
3 an abandoned cemetery, provided that the prior consent in writing of the State's
4 Attorney of the county or of Baltimore City shall have been secured and provided
5 further that such remains, monuments, gravestone, or other marker is placed in an
6 accessible place in a permanent cemetery.]

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 1999.