

HOUSE BILL 358

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2000 Regular Session
(01r1142)

ENROLLED BILL
-- Judiciary/Judicial Proceedings --

Introduced by **Delegates Petzold and Bozman**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Human Remains ~~and Associated Funerary Objects~~ - Removal from Burial**
3 **Sites - Authorization and 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 ~~or associated funerary objects~~ by certain persons after certain
7 requirements are met; providing for the construction of this Act; requiring
8 certain notice for removal of human remains under certain circumstances;
9 requiring the notice to be published for a certain amount of time; giving certain
10 persons a certain amount of time to respond to the notice; requiring certain
11 persons to prove by certain means the location and boundaries of certain burial
12 sites; providing procedures for the reinterment of certain human remains;
13 requiring the location of certain human remains to be documented in certain
14 places under certain circumstances; ~~repealing certain provisions a certain~~
15 provision relating to the removal of dead bodies without authority; making
16 stylistic changes; altering certain penalties for certain offenses relating to
17 removing human remains from burial sites and graveyard desecration; defining

1 certain terms; and generally relating to the removal of human remains ~~or~~
 2 ~~associated funerary objects~~ from a burial site and graveyard desecration.

3 BY repealing

4 Article 27 - Crimes and Punishments
 5 Section 265 and the subheading "Graveyard Desecration"
 6 Annotated Code of Maryland
 7 (1996 Replacement Volume and 1999 Supplement)

8 BY adding to

9 Article 27 - Crimes and Punishments
 10 Section 265 to be under the new subheading "Removal of Human Remains from
 11 Burial Sites"
 12 Annotated Code of Maryland
 13 (1996 Replacement Volume and 1999 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article 27 - Crimes and Punishments
 16 Section 267 to be under the new subheading "Graveyard Desecration"
 17 Annotated Code of Maryland
 18 (1996 Replacement Volume and 1999 Supplement)

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

21 **Article 27 - Crimes and Punishments**

22 [Graveyard Desecration]

23 [265.

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

33 **REMOVAL OF HUMAN REMAINS FROM BURIAL SITES**

34 265.

35 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 36 INDICATED.

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

5 (II) "ASSOCIATED FUNERARY OBJECT" INCLUDES ANY
6 GRAVESTONE, MONUMENT, TOMB, OR OTHER STRUCTURE IN OR DIRECTLY
7 ASSOCIATED WITH A BURIAL SITE.

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

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

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

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

19 (II) A NONPROFIT ORGANIZATION; OR

20 (III) THE STATE.

21 (B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
22 PERSON MAY NOT REMOVE OR ATTEMPT TO REMOVE HUMAN REMAINS ~~OR~~
23 ~~ASSOCIATED FUNERARY OBJECTS~~ FROM ANY BURIAL SITE IN THE STATE.

24 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
25 MISDEMEANOR AND ~~SHALL BE SENTENCED TO THE PENITENTIARY FOR NOT LESS~~
26 ~~THAN 5 OR MORE THAN 15 YEARS ON CONVICTION IS SUBJECT TO A FINE OF NOT~~
27 ~~MORE THAN \$10,000 OR IMPRISONMENT IN THE PENITENTIARY FOR NOT MORE THAN~~
28 ~~5 YEARS OR BOTH.~~

29 (C) SUBJECT TO THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, THE
30 STATE'S ATTORNEY OF A COUNTY OR BALTIMORE CITY MAY AUTHORIZE IN WRITING
31 THE REMOVAL OF HUMAN REMAINS ~~OR ASSOCIATED FUNERARY OBJECTS~~ FROM ANY
32 BURIAL SITE IN THE STATE'S ATTORNEY'S JURISDICTION:

33 (1) FOR THE PURPOSE OF ASCERTAINING THE CAUSE OF DEATH OF THE
34 PERSON WHOSE REMAINS ARE TO BE REMOVED;

35 (2) FOR THE PURPOSE OF DETERMINING WHETHER THE HUMAN
36 REMAINS WERE INTERRED ERRONEOUSLY;

37 (3) FOR THE PURPOSE OF REBURIAL; OR

1 (4) FOR MEDICAL OR SCIENTIFIC EXAMINATION OR STUDY, AS
2 PERMITTED BY LAW.

3 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE
4 STATE'S ATTORNEY FOR A COUNTY OR BALTIMORE CITY SHALL REQUIRE A PERSON
5 REQUESTING THE AUTHORIZATION TO PERMANENTLY RELOCATE HUMAN REMAINS
6 ~~OR ASSOCIATED FUNERARY OBJECTS~~ FROM A BURIAL SITE ~~TO ALLOW ANOTHER~~
7 ~~PERMITTED USE IN THE STATE'S ATTORNEY'S JURISDICTION~~ TO PUBLISH A NOTICE
8 OF THE PROPOSED RELOCATION IN A NEWSPAPER OF GENERAL CIRCULATION IN
9 BALTIMORE CITY OR IN THE COUNTY WHERE THE BURIAL SITE IS LOCATED.

10 (2) THE NOTICE SHALL BE PUBLISHED IN THE NEWSPAPER AT LEAST
11 ~~ONCE A WEEK FOR AT LEAST 3 CONSECUTIVE WEEKS~~ ONE TIME.

12 (3) THE NOTICE SHALL CONTAIN:

13 (I) A STATEMENT THAT AUTHORIZATION FROM THE STATE'S
14 ATTORNEY IS BEING REQUESTED TO REMOVE HUMAN REMAINS ~~OR ASSOCIATED~~
15 ~~FUNERARY OBJECTS~~ FROM A BURIAL SITE;

16 (II) THE PURPOSE FOR WHICH THE AUTHORIZATION IS BEING
17 REQUESTED;

18 (III) THE LOCATION OF THE BURIAL SITE, INCLUDING THE TAX MAP
19 AND PARCEL NUMBER OR ~~LIBER FOLIO~~ LIBER AND FOLIO NUMBER; AND

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

23 (4) FOR GOOD CAUSE THE STATE'S ATTORNEY MAY AUTHORIZE THE
24 TEMPORARY RELOCATION OF HUMAN REMAINS OR ASSOCIATED FUNERARY OBJECTS
25 FROM A BURIAL SITE NOTWITHSTANDING THE NOTICE REQUIREMENTS OF THIS
26 SUBSECTION. IF THE PERSON REQUESTING THE AUTHORIZATION THEREAFTER
27 INTENDS TO PERMANENTLY RELOCATE THE REMAINS, THE PERSON SHALL
28 PROMPTLY PUBLISH THE NOTICE AS REQUIRED UNDER THIS SUBSECTION.

29 ~~(4)~~ (5) THE PERSON REQUESTING THE AUTHORIZATION FROM THE
30 STATE'S ATTORNEY SHALL PAY THE COST OF PUBLISHING THE NOTICE.

31 ~~(5)~~ (6) AFTER RECEIVING PROOF OF THE PUBLICATION REQUIRED
32 UNDER PARAGRAPH (1) OF THIS SUBSECTION AND 15 DAYS HAVING EXPIRED
33 ~~BEGINNING WITH THE DATE OF THE THIRD SUCCESSIVE~~ AFTER THE DATE OF THE
34 PUBLICATION OF THE REQUIRED NOTICE, THE STATE'S ATTORNEY MAY AUTHORIZE
35 THE REMOVAL OF THE HUMAN REMAINS ~~OR ASSOCIATED FUNERARY OBJECTS~~ FROM
36 THE BURIAL SITE.

37 ~~(6)~~ (7) THIS SUBSECTION MAY NOT BE CONSTRUED TO DELAY,
38 PROHIBIT, OR OTHERWISE LIMIT THE STATE'S ATTORNEY'S AUTHORIZATION FOR THE

1 REMOVAL OF HUMAN REMAINS ~~OR ASSOCIATED FUNERARY OBJECTS~~ FROM A
2 BURIAL SITE.

3 ~~(7)~~ (8) FOR A KNOWN, BUT NOT NECESSARILY DOCUMENTED,
4 UNMARKED BURIAL SITE, THE PERSON REQUESTING AUTHORIZATION FOR THE
5 REMOVAL OF HUMAN REMAINS ~~OR ASSOCIATED FUNERARY OBJECTS~~ FROM THE
6 BURIAL SITE HAS THE BURDEN OF PROVING BY ARCHAEOLOGICAL EXCAVATION OR
7 OTHER ACCEPTABLE METHODS THE PRECISE LOCATION AND BOUNDARIES OF THE
8 BURIAL SITE.

9 (E) THIS SECTION MAY NOT BE CONSTRUED TO PREEMPT THE NEED FOR A
10 PERMIT REQUIRED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER
11 § 4-215 OF THE HEALTH - GENERAL ARTICLE TO REMOVE HUMAN REMAINS FROM A
12 BURIAL SITE.

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

15 (I) 1. IN A PERMANENT CEMETERY THAT PROVIDES PERPETUAL
16 CARE; OR

17 2. IN A PLACE OTHER THAN A PERMANENT CEMETERY WITH
18 THE AGREEMENT OF, OR AT THE REQUEST OF, A PERSON IN INTEREST AS DEFINED
19 IN § 14-121(A)(4) OF THE REAL PROPERTY ARTICLE; AND

20 (II) IN THE PRESENCE OF:

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

23 2. A MINISTER, PRIEST, OR OTHER RELIGIOUS LEADER; OR

24 3. A TRAINED ANTHROPOLOGIST OR ARCHAEOLOGIST.

25 (2) THE LOCATION OF THE FINAL DISPOSITION AND TREATMENT OF
26 HUMAN REMAINS THAT ARE REMOVED FROM A BURIAL SITE IN ACCORDANCE WITH
27 THE PROVISIONS OF THIS SECTION SHALL BE ENTERED INTO THE LOCAL BURIAL
28 SITES INVENTORY OR, IF NO LOCAL BURIAL SITES INVENTORY EXISTS, INTO
29 WHATEVER RECORD OR INVENTORY DEEMED APPROPRIATE BY THE STATE'S
30 ATTORNEY OR THE MARYLAND HISTORICAL TRUST.

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

GRAVEYARD DESECRATION

1
2 267.

3 (A) (1) IN THIS SECTION, "ASSOCIATED FUNERARY OBJECT" MEANS AN ITEM
4 OF HUMAN MANUFACTURE OR USE THAT IS INTENTIONALLY PLACED WITH HUMAN
5 REMAINS AT THE TIME OF INTERMENT IN A BURIAL SITE OR PLACED LATER AS PART
6 OF A DEATH RITE OR CEREMONY OF A CULTURE, RELIGION, OR GROUP.

7 (2) "ASSOCIATED FUNERARY OBJECT" INCLUDES ANY GRAVESTONE,
8 MONUMENT, TOMB, OR OTHER STRUCTURE IN OR DIRECTLY ASSOCIATED WITH A
9 BURIAL SITE.

10 (a) (B) Any person who wilfully destroys, mutilates, defaces, injures, or
11 removes ~~any tomb, monument, gravestone,~~ AN ASSOCIATED FUNERARY OBJECT or
12 other structure placed in any cemetery, or any building, wall, fence, railing, or other
13 work, for the use, protection, or ornamentation of any cemetery in this State is guilty
14 of a misdemeanor and shall be fined not more than ~~\$5,000~~ \$10,000, or imprisoned for
15 not more than ~~3~~ 5 years, or both.

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

20 (e) (D) Nothing in this section shall be construed to prohibit the removal of
21 the remains of any human body, or of any ~~monument, gravestone, or other marker~~
22 ASSOCIATED FUNERARY OBJECT from an abandoned cemetery, provided that the
23 prior consent in writing of the State's Attorney of the county or of Baltimore City shall
24 have been secured and provided further that such remains, ~~monuments, gravestone,~~
25 ~~or other marker is~~ OR ASSOCIATED FUNERARY OBJECTS ARE placed in an accessible
26 place in a permanent cemetery.}

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2000.