

HOUSE BILL 482

E1

9lr1435

By: **Delegate Rosenberg**

Introduced and read first time: February 4, 2009

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Removing Human Remains from Burial Site - Exceptions**

3 FOR the purpose of providing certain exceptions to the prohibition against a person
4 removing or attempting to remove human remains from a burial site;
5 authorizing certain persons to arrange for the removal and relocation of the
6 cremated remains of a decedent from a burial site or permanent cemetery, or
7 the relocation of any human remains of a decedent within the boundary of a
8 permanent cemetery containing the original burial site, without the need for
9 obtaining authorization from a State's Attorney or providing a certain notice;
10 providing that the location of a reinterment of human remains within the
11 boundary of a permanent cemetery containing the burial site under this Act
12 shall be entered into the inventory of local burial sites or, if no inventory exists,
13 into a record or inventory deemed appropriate by the Maryland Historical
14 Trust; and generally relating to the removal and relocation of human remains.

15 BY repealing and reenacting, without amendments,
16 Article - Criminal Law
17 Section 10-401
18 Annotated Code of Maryland
19 (2002 Volume and 2008 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article - Criminal Law
22 Section 10-402
23 Annotated Code of Maryland
24 (2002 Volume and 2008 Supplement)

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

27 **Article - Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 10-401.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) (1) "Associated funerary object" means an item of human manufacture
4 or use that is intentionally placed:

5 (i) with human remains at the time of interment in a burial
6 site; or

7 (ii) after interment, as a part of a death ceremony of a culture,
8 religion, or group.

9 (2) "Associated funerary object" includes a gravestone, monument,
10 tomb, or other structure in or directly associated with a burial site.

11 (c) (1) "Burial site" means a natural or prepared physical location,
12 whether originally located below, on, or above the surface of the earth, into which
13 human remains or associated funerary objects are deposited as a part of a death
14 ceremony of a culture, religion, or group.

15 (2) "Burial site" includes the human remains and associated funerary
16 objects that result from a shipwreck or accident and are left intentionally to remain at
17 the site.

18 (d) "Permanent cemetery" means a cemetery that is owned by:

19 (1) a cemetery company regulated under Title 5 of the Business
20 Regulation Article;

21 (2) a nonprofit organization; or

22 (3) the State.

23 10-402.

24 (a) Except as provided in [subsection (b)] **SUBSECTIONS (B) AND (F)** of this
25 section, a person may not remove or attempt to remove human remains from a burial
26 site.

27 (b) Subject to subsection (c) of this section, the State's Attorney for a county
28 may authorize in writing the removal of human remains from a burial site in the
29 State's Attorney's jurisdiction:

30 (1) to ascertain the cause of death of the person whose remains are to
31 be removed;

1 (2) to determine whether the human remains were interred
2 erroneously;

3 (3) for the purpose of reburial; or

4 (4) for medical or scientific examination or study allowed by law.

5 (c) (1) Except as provided in paragraph (4) of this subsection, the State's
6 Attorney for a county shall require a person who requests authorization to relocate
7 permanently human remains from a burial site to publish a notice of the proposed
8 relocation in a newspaper of general circulation in the county where the burial site is
9 located.

10 (2) The notice shall be published in the newspaper one time.

11 (3) The notice shall contain:

12 (i) a statement that authorization from the State's Attorney is
13 being requested to remove human remains from a burial site;

14 (ii) the purpose for which the authorization is being requested;

15 (iii) the location of the burial site, including the tax map and
16 parcel number or liber and folio number; and

17 (iv) all known pertinent information concerning the burial site,
18 including the names of the persons whose human remains are interred in the burial
19 site, if known.

20 (4) (i) The State's Attorney may authorize the temporary
21 relocation of human remains from a burial site for good cause, notwithstanding the
22 notice requirements of this subsection.

23 (ii) If the person requesting the authorization subsequently
24 intends to relocate the remains permanently, the person promptly shall publish notice
25 as required under this subsection.

26 (5) The person requesting the authorization from the State's Attorney
27 shall pay the cost of publishing the notice.

28 (6) The State's Attorney may authorize the removal of the human
29 remains from the burial site after:

30 (i) receiving proof of the publication required under paragraph
31 (1) of this subsection; and

32 (ii) 15 days after the date of publication.

1 (7) This subsection may not be construed to delay, prohibit, or
2 otherwise limit the State's Attorney's authorization for the removal of human remains
3 from a burial site.

4 (8) For a known, but not necessarily documented, unmarked burial
5 site, the person requesting authorization for the removal of human remains from the
6 burial site has the burden of proving by archaeological excavation or another
7 acceptable method the precise location and boundaries of the burial site.

8 (d) (1) Any human remains that are removed from a burial site under this
9 section shall be reinterred in:

10 (i) 1. a permanent cemetery that provides perpetual care;
11 or

12 2. a place other than a permanent cemetery with the
13 agreement of a person in interest as defined under § 14-21(a)(4) of the Real Property
14 Article; and

15 (ii) in the presence of:

16 1. a mortician, professional cemeterian, or other
17 individual qualified in the interment of human remains;

18 2. a minister, priest, or other religious leader; or

19 3. a trained anthropologist or archaeologist.

20 (2) The location of the final disposition and treatment of human
21 remains that are removed from a burial site under this section shall be entered into
22 the local burial sites inventory or, if no local burial sites inventory exists, into a record
23 or inventory deemed appropriate by the State's Attorney or the Maryland Historical
24 Trust.

25 (e) This section may not be construed to:

26 (1) preempt the need for a permit required by the Department of
27 Health and Mental Hygiene under § 4-215 of the Health – General Article to remove
28 human remains from a burial site; or

29 (2) interfere with the normal operation and maintenance of a
30 cemetery, as long as the operation and maintenance of the cemetery are performed in
31 accordance with State law.

32 **(F) (1) THE FOLLOWING PERSONS, IN THE ORDER OF PRIORITY**
33 **STATED, MAY ARRANGE FOR THE REMOVAL AND RELOCATION OF THE REMAINS**
34 **OF A DECEDENT AFTER CREMATION, AS DEFINED IN § 5-508 OF THE**

1 **HEALTH – GENERAL ARTICLE, FROM A BURIAL SITE, INCLUDING RELOCATING**
2 **THE CREMATED REMAINS TO ANOTHER SITE OUTSIDE THE BOUNDARY OF A**
3 **PERMANENT CEMETERY OR ARRANGE FOR THE RELOCATION OF ANY HUMAN**
4 **REMAINS OF A DECEDENT WITHIN THE BOUNDARY OF A PERMANENT CEMETERY**
5 **CONTAINING THE BURIAL SITE OF THE REMAINS:**

6 (I) THE SURVIVING SPOUSE OR DOMESTIC PARTNER OF
7 THE DECEDENT;

8 (II) AN ADULT CHILD OF THE DECEDENT;

9 (III) A PARENT OF THE DECEDENT;

10 (IV) AN ADULT BROTHER OR SISTER OF THE DECEDENT;

11 (V) A PERSON ACTING AS A REPRESENTATIVE OF THE
12 DECEDENT UNDER A SIGNED AUTHORIZATION OF THE DECEDENT;

13 (VI) THE GUARDIAN OF THE PERSON OF THE DECEDENT AT
14 THE TIME OF THE DECEDENT’S DEATH, IF ONE HAS BEEN APPOINTED; OR

15 (VII) IN THE ABSENCE OF ANY PERSON UNDER ITEMS (I)
16 THROUGH (VI) OF THIS PARAGRAPH, ANY OTHER PERSON WILLING TO ASSUME
17 THE RESPONSIBILITY TO ACT AS THE AUTHORIZING AGENT FOR PURPOSES OF
18 ARRANGING FOR THE REMOVAL AND RELOCATION OF THE DECEDENT’S
19 CREMATED REMAINS, INCLUDING THE PERSONAL REPRESENTATIVE OF THE
20 DECEDENT’S ESTATE, AFTER ATTESTING IN WRITING THAT A GOOD FAITH
21 EFFORT HAS BEEN MADE TO NO AVAIL TO CONTACT THE INDIVIDUALS UNDER
22 ITEMS (I) THROUGH (VI) OF THIS SUBPARAGRAPH.

23 (2) THE REMOVAL OR RELOCATION UNDER PARAGRAPH (1) OF
24 THIS SUBSECTION MAY BE DONE WITHOUT THE NEED FOR OBTAINING THE
25 AUTHORIZATION OF THE STATE’S ATTORNEY UNDER SUBSECTION (B) OF THIS
26 SECTION OR PROVIDING THE NOTICE REQUIRED UNDER SUBSECTION (C) OF
27 THIS SECTION.

28 (3) THE LOCATION OF A REINTERMENT OF HUMAN REMAINS
29 WITHIN THE BOUNDARY OF THE PERMANENT CEMETERY CONTAINING THE
30 ORIGINAL BURIAL SITE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE
31 ENTERED INTO THE INVENTORY OF THE LOCAL BURIAL SITES OR, IF NO
32 INVENTORY EXISTS, INTO A RECORD OR INVENTORY DEEMED APPROPRIATE BY
33 THE MARYLAND HISTORICAL TRUST.

1 [(f)] (G) A person who violates this section is guilty of a misdemeanor and
2 on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
3 \$10,000 or both.

4 [(g)] (H) A person who violates this section is subject to § 5–106(b) of the
5 Courts Article.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2009.