

HOUSE BILL 482

E1

9lr1435

By: **Delegate Rosenberg**

Introduced and read first time: February 4, 2009

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2009

CHAPTER _____

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~~ of human remains or the
9 remains of a decedent after cremation from a burial site within a permanent
10 cemetery, and the reinterment of the remains in the same burial site or in
11 another burial site within the same permanent cemetery, without the need for
12 obtaining authorization from a State’s Attorney or providing a certain notice;
13 requiring a certain notice under certain circumstances; providing that the
14 location of a reinterment of human remains ~~within the boundary of a~~
15 ~~permanent cemetery containing the burial site~~ under this Act shall be entered
16 into the inventory of local burial sites or, if no inventory exists, into a record or
17 inventory deemed appropriate by the Maryland Historical Trust; and generally
18 relating to the removal and ~~relocation~~ reinterment of human remains.

19 BY repealing and reenacting, without amendments,
20 Article – Criminal Law
21 Section 10–401
22 Annotated Code of Maryland
23 (2002 Volume and 2008 Supplement)

24 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Criminal Law
2 Section 10–402
3 Annotated Code of Maryland
4 (2002 Volume and 2008 Supplement)

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

7 **Article – Criminal Law**

8 10–401.

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

10 (b) (1) “Associated funerary object” means an item of human manufacture
11 or use that is intentionally placed:

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

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

16 (2) “Associated funerary object” includes a gravestone, monument,
17 tomb, or other structure in or directly associated with a burial site.

18 (c) (1) “Burial site” means a natural or prepared physical location,
19 whether originally located below, on, or above the surface of the earth, into which
20 human remains or associated funerary objects are deposited as a part of a death
21 ceremony of a culture, religion, or group.

22 (2) “Burial site” includes the human remains and associated funerary
23 objects that result from a shipwreck or accident and are left intentionally to remain at
24 the site.

25 (d) “Permanent cemetery” means a cemetery that is owned by:

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

28 (2) a nonprofit organization; or

29 (3) the State.

30 10–402.

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

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

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

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

11 (3) for the purpose of reburial; or

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

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

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

19 (3) The notice shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (i) 1. a permanent cemetery that provides perpetual care;
18 or

19 2. a place other than a permanent cemetery with the
20 agreement of a person in interest as defined under § 14-121(a)(4) of the Real Property
21 Article; and

22 (ii) in the presence of:

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

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

26 3. a trained anthropologist or archaeologist.

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

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

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

4 (2) interfere with the normal operation and maintenance of a
5 cemetery, as long as the operation and maintenance of the cemetery are performed in
6 accordance with State law.

7 (F) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,
8 HUMAN REMAINS OR THE REMAINS OF A DECEDENT AFTER CREMATION, AS
9 DEFINED IN § 5-508 OF THE HEALTH – GENERAL ARTICLE, MAY BE REMOVED
10 FROM A BURIAL SITE WITHIN A PERMANENT CEMETERY AND REINTERRED IN:

11 (I) THE SAME BURIAL SITE; OR

12 (II) ANOTHER BURIAL SITE WITHIN THE BOUNDARY OF THE
13 SAME PERMANENT CEMETERY.

14 (2) THE FOLLOWING PERSONS, IN THE ORDER OF PRIORITY
15 STATED, MAY ARRANGE FOR THE REMOVAL AND RELOCATION OF THE REMAINS
16 OF A DECEDENT AFTER CREMATION, AS DEFINED IN § 5-508 OF THE
17 HEALTH – GENERAL ARTICLE, FROM A BURIAL SITE, INCLUDING RELOCATING
18 THE CREMATED REMAINS TO ANOTHER SITE OUTSIDE THE BOUNDARY OF A
19 PERMANENT CEMETERY OR ARRANGE FOR THE RELOCATION OF ANY HUMAN
20 REMAINS OF A DECEDENT WITHIN THE BOUNDARY OF A PERMANENT CEMETERY
21 CONTAINING THE BURIAL SITE OF THE REMAINS A REINTERMENT OF REMAINS
22 UNDER PARAGRAPH (1) OF THIS SECTION:

23 (I) THE SURVIVING SPOUSE OR DOMESTIC PARTNER OF
24 THE DECEDENT;

25 (II) AN ADULT CHILD OF THE DECEDENT;

26 (III) A PARENT OF THE DECEDENT;

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

28 (V) A PERSON ACTING AS A REPRESENTATIVE OF THE
29 DECEDENT UNDER A SIGNED AUTHORIZATION OF THE DECEDENT; OR

30 (VI) THE GUARDIAN OF THE PERSON OF THE DECEDENT AT
31 THE TIME OF THE DECEDENT'S DEATH, IF ONE HAS BEEN APPOINTED; OR

32 ~~(VII) IN THE ABSENCE OF ANY PERSON UNDER ITEMS (I)~~
33 ~~THROUGH (VI) OF THIS PARAGRAPH, ANY OTHER PERSON WILLING TO ASSUME~~

~~THE RESPONSIBILITY TO ACT AS THE AUTHORIZING AGENT FOR PURPOSES OF ARRANGING FOR THE REMOVAL AND RELOCATION OF THE DECEDENT'S CREMATED REMAINS, INCLUDING THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE, AFTER ATTESTING IN WRITING THAT A GOOD FAITH EFFORT HAS BEEN MADE TO NO AVAIL TO CONTACT THE INDIVIDUALS UNDER ITEMS (I) THROUGH (VI) OF THIS SUBPARAGRAPH.~~

~~(2)~~ (3) (I) ~~THE REMOVAL OR RELOCATION REINTERMENT~~ UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE DONE WITHOUT THE NEED FOR OBTAINING THE AUTHORIZATION OF THE STATE'S ATTORNEY UNDER SUBSECTION (B) OF THIS SECTION OR PROVIDING THE NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION.

(II) 1. A PERSON WHO ARRANGES FOR THE REINTERMENT OF REMAINS WITHIN A PERMANENT CEMETERY UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION, WITHIN 30 DAYS AFTER THE REINTERMENT, SHALL PUBLISH A NOTICE OF THE REINTERMENT IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE PERMANENT CEMETERY IS LOCATED.

2. THE NOTICE SHALL BE PUBLISHED IN THE NEWSPAPER ONE TIME.

3. THE NOTICE SHALL CONTAIN:

A. A STATEMENT THAT THE REINTERMENT TOOK PLACE;

B. THE REASON FOR THE REINTERMENT;

C. THE LOCATION OF THE BURIAL SITE FROM WHICH REMAINS HAVE BEEN REMOVED, INCLUDING THE TAX MAP AND PARCEL NUMBER OR LIBER AND FOLIO NUMBER;

D. THE LOCATION OF THE BURIAL SITE IN WHICH THE REMAINS HAVE BEEN REINTERRED, INCLUDING THE TAX MAP AND PARCEL NUMBER OR LIBER AND FOLIO NUMBER; AND

E. ALL KNOWN PERTINENT INFORMATION CONCERNING THE BURIAL SITES, INCLUDING THE NAMES OF THE PERSONS WHOSE CREMATED REMAINS OR HUMAN REMAINS ARE INTERRED IN THE BURIAL SITES, IF KNOWN.

(III) WITHIN 45 DAYS AFTER THE REINTERMENT, A PERSON WHO ARRANGES FOR A REINTERMENT OF REMAINS UNDER PARAGRAPH (1)(II)

1 OF THIS SUBSECTION SHALL PROVIDE A COPY OF THE NOTICE REQUIRED
2 UNDER THIS PARAGRAPH TO THE OFFICE OF CEMETERY OVERSIGHT.

3 ~~(3)~~ (4) THE LOCATION OF A REINTERMENT OF ~~HUMAN~~
4 REMAINS ~~WITHIN THE BOUNDARY OF THE PERMANENT CEMETERY CONTAINING~~
5 ~~THE ORIGINAL BURIAL SITE~~ UNDER PARAGRAPH (1) OF THIS SUBSECTION
6 SHALL BE ENTERED INTO THE INVENTORY OF THE LOCAL BURIAL SITES OR, IF
7 NO INVENTORY EXISTS, INTO A RECORD OR INVENTORY DEEMED APPROPRIATE
8 BY THE MARYLAND HISTORICAL TRUST.

9 [(f)] (G) A person who violates this section is guilty of a misdemeanor and
10 on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
11 \$10,000 or both.

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.