

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~~~~disturb~~ a human burial site, the  
27 state department of health and the state historical society shall schedule a public  
28 hearing to allow public comment regarding the ~~impacted~~~~disturbed~~ burial site. Before  
29 the project may commence, the governmental entity conducting the project shall  
30 implement a cultural resource mitigation plan approved by the director of the state  
31 historical society. In these situations the disinterred human remains and burial goods

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