AN ACT

To enact Chapter 21-B of Title 25 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 25:951 through 959, relative to the Louisiana Human Remains Protection and Control Act; to provide relative to the control and management of human remains; to provide relative to legislative intent; to provide definitions; to provide penalties; to provide exemptions; to provide relative to enforcement; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 21-B of Title 25 of the Louisiana Revised Statutes of 1950, comprised of R.S. 25:951 through 959, is hereby enacted to read as follows:

CHAPTER 21-B. LOUISIANA HUMAN REMAINS PROTECTION AND CONTROL ACT

§951. Title

This Chapter shall be known as the "Louisiana Human Remains Protection and Control Act".

§952. Legislative findings and declaration of intent

The legislature hereby finds that Louisiana law has never permitted,
recognized, or sanctioned ownership rights in human remains and that such
materials are explicitly exempted from property concepts under both common
and civil law. The legislature further finds that the trade in or commodification
of human remains fosters the looting and desecration of cemeteries and other
sacred sites. The legislature further finds that existing state laws do not
adequately protect against the illicit trade in human remains and that such
trade needs to be stemmed in order to minimize looting and desecration of
cemeteries. The legislature also finds and declares that there is a need for a
central state entity to manage the enforcement of human remains laws and that,
because the attorney general is already the statutory counsel to the Louisiana
Cemetery Board, as well as being charged with civil enforcement of the
Louisiana Unmarked Human Burial Sites Act and the Louisiana Historic
Cemetery Preservation Act, the attorney general is uniquely qualified to enforce
and police all illicit transactions in and commodification of human remains
contemplated by this Chapter.

§953. Definitions

As used in this Chapter, the following terms shall have the following
meanings unless the context clearly indicates otherwise:

(1) "Human remains" means the body or parts thereof of a live or
deceased person and includes the body or parts thereof in any stage of
decomposition, as well as cremated remains.

(2) "Trade" means to offer for sale, to offer for acquisition, to buy, to
sell, to barter, to exchange, to give, to receive, to donate, or to bequest, whether
by physical delivery or by subterfuge.

(3) "Possession" means the exercise of control over human remains.

§954. Prohibited acts

Except as otherwise permitted by law:

(1) The possession of human remains is prohibited.

(2) It shall be unlawful to trade in, discard, or destroy human remains.
§955. Penalties

A.(1) A first offense violation of this Chapter shall be punishable upon conviction by a fine of not more than five thousand dollars, or imprisonment, with or without hard labor, for not more than one year, or both.

(2) Upon conviction of a second or subsequent offense, each violation shall be punishable by imprisonment, with or without hard labor, for not more than two years, or a fine of not more than ten thousand dollars, or both.

(3) Each item of human remains in possession or trade shall constitute a separate offense.

B. The attorney general may institute civil proceedings seeking injunctive relief to restrain and prevent violations of this Chapter.

C. The attorney general may institute civil proceedings seeking civil damages from any person who knowingly violates any provision of this Chapter. Civil damages shall include any or all of the following:

(1) Forfeiture of any and all equipment used in obtaining the human remains.

(2) Any and all costs incurred in cleaning, restoring, analyzing, accessioning, and curating the recovered human remains.

(3) Any and all costs associated with the reinterment of the human remains.

(4) Any and all costs associated with determining and collecting civil damages, including but not limited to filing fees, attorney fees, court costs, fees associated with discovery and the testimony of expert witnesses, and collection costs.

D. The attorney general may bring actions for injunctive relief or civil damages in either the district court for the parish of East Baton Rouge or in the district court where the burial site, the human skeletal remains, or other body parts, or the burial artifacts are located.

§956. Amnesty program
A. A natural or juridical person possessing human remains in violation
of this Chapter may voluntarily relinquish possession of such human remains
to the Louisiana Department of Justice without sanctions under this Chapter.

The attorney general shall be vested with the authority and discretion to waive
civil and criminal sanctions under this Chapter for any person who voluntarily
relinquishes human remains.

B. Upon voluntarily relinquishing human remains pursuant to this
Chapter, any person may designate which qualified entity or entities the human
remains should be transmitted to for permanent curation following analysis for
compliance with other laws. Such transmissions shall occur only with the
concurrence of the designated qualified entity or entities. Failing such
concurrence or direction, the disposition of human remains relinquished or
acquired by the Louisiana Department of Justice pursuant to this Chapter shall
be within the discretion of the attorney general.

§957. Exemptions

A. The following shall be exempt from the restrictions and prohibitions
of this Chapter:

(1) Private and public institutions of primary, secondary, or higher
education.

(2) Qualified museums or research institutions.

(a) A "qualified museum or research institution" means an entity that
is a juridical person pursuant to Louisiana law that has an explicitly stated
educational or research purpose as part of their mission and juridical personage
registration.

(b) A qualified museum or research institution must submit a catalog of
all human remains in its possession to the Louisiana Department of Justice
within one year of the effective date of this legislation.

(c) A qualified museum or research institution, upon reasonable notice,
must submit to the attorney general for analysis any human skeletal remains in
its possession.

(d) A qualified museum or research institution must notify the Louisiana Department of Justice within six months of any acquisition of known human remains not included in any initial disclosure under this Chapter.

(e) The Louisiana Department of Justice shall hold all records consisting of a centralized database of museums and research institutions that have complied with the requirements of this Chapter.

§958. Conflicts with existing laws

A. No provision of this Chapter is intended to supplant the primary criminal jurisdiction of district attorneys under R.S. 14:101, R.S. 8:655, R.S. 8:659, R.S. 8:678, R.S. 17:2280, R.S. 17:2354.4, R.S. 17:2354.5, or R.S. 25:937.

B. No provision of this Chapter is intended to restrict or limit, and is explicitly superseded by, the law relative to anatomical gifts and donations authorized under R.S. 17:2271 et seq. or R.S. 17:2351 et seq.

C. No provision of this Chapter is intended to restrict or limit, and is explicitly superseded by, the rights of descendants and family members to control human remains under R.S. 8:651 et seq.

D. No provision of this Chapter is intended to restrict or limit, and is explicitly superseded by, the licensed or otherwise authorized practice of funeral directing, cremation, and cemetery operation as authorized in Titles 8 and 37 of the Louisiana Revised Statutes of 1950.

E. No provision of this Chapter is intended to restrict or limit, and is explicitly superseded by, the authority of coroners as authorized by Title 13 of the Louisiana Revised Statutes of 1950.

§959. Enforcement

The attorney general shall administer the provisions of this Chapter and shall be charged with the investigation and enforcement of this Chapter. The prosecution of the civil provisions of this Chapter shall be concurrently within the prosecutorial discretion of the attorney general and the district attorney for...
the parish in which the violations occur. The prosecution of the criminal
provisions of this Chapter shall be within the discretion of the district attorney
for the parish in which the violations occur, subject to the district attorney's
recusal to the attorney general within the appropriate district attorney's
discretion.

Section 2. This Act shall become effective upon signature by the governor or, if not
signed by the governor, upon expiration of the time for bills to become law without signature
by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
vetoed by the governor and subsequently approved by the legislature, this Act shall become
effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST
SB 179 Original 2016 Regular Session Riser

Proposed law provides for the "Louisiana Human Remains Protection and Control Act".

Proposed law sets forth legislative findings and declaration of intent.

Proposed law provides the following definitions:

(1) "Human remains" means the body or parts thereof of a live or deceased person and
includes the body or parts thereof in any stage of decomposition, as well as cremated
remains.

(2) "Trade" means to offer for sale, to offer for acquisition, to buy, to sell, to barter, to
exchange, to give, to receive, to donate, or to bequest, whether by physical delivery
or by subterfuge.

(3) "Possession" means the exercise of control over human remains.

Proposed law prohibits the following except as otherwise permitted by present law:

(1) The possession of human remains.

(2) The trading in, discarding, or destruction of human remains.

Proposed law provides the following penalties for a violation of proposed law:

(1) A first offense violation is punishable by a fine of up to $5,000, or imprisonment
with or without hard labor for up to one year, or both.

(2) A second or subsequent violation is punishable by imprisonment with or without
hard labor for up to two years, a fine of up to $10,000, or both.

Proposed law provides that each item of human remains in possession or trade constitutes

Coding: Words which are struck through are deletions from existing law; words in boldface type and underscored are additions.
a separate offense.

Proposed law provides that the attorney general may institute civil proceedings seeking injunctive relief to restrain and prevent violations of proposed law.

Proposed law provides that the attorney general may institute civil proceedings seeking civil damages from any person who knowingly violates any provision of proposed law. Proposed law provides that civil damages include:

1. Forfeiture of any and all equipment used in obtaining the human remains.
2. Any and all costs incurred in cleaning, restoring, analyzing, accessioning, and curating the recovered human remains.
3. Any and all costs associated with the reinterment of the human remains.
4. Any and all costs associated with determining and collecting civil damages, including but not limited to filing fees, attorney fees, court costs, fees associated with discovery and the testimony of expert witnesses, and collection costs.

Proposed law provides that the attorney general may bring actions for injunctive relief or civil damages in either the district court for the parish of East Baton Rouge or in the district court where the burial site, the human skeletal remains or other body parts, or the burial artifacts are located.

Proposed law provides that a natural or juridical person possessing human remains in violation of proposed law may voluntarily relinquish possession of such human remains to the La. Dept. of Justice without sanctions being imposed. Proposed law further provides that the attorney general is vested with the authority and discretion to waive civil and criminal sanctions for any person who voluntarily relinquishes human remains.

Proposed law provides that upon voluntarily relinquishing human remains, any person may designate which qualified entity or entities the human remains should be transmitted to for permanent curation following analysis for compliance with other present law. Proposed law further provides that such transmissions are to occur only with the concurrence of the designated qualified entity or entities. Proposed law provides that without such concurrence or direction, the disposition of human remains relinquished or acquired by the Dept. of Justice is within the discretion of the attorney general.

Proposed law provides that the following are exempt from the restrictions and prohibitions of proposed law:

1. Private and public institutions of primary, secondary, or higher education.
2. Qualified museums or research institutions.
   
   (a) A "qualified museum or research institution" means an entity that is a juridical person pursuant to present law that has an explicitly stated educational or research purpose as part of their mission and juridical personage registration.
   
   (b) A qualified museum or research institution must submit a catalog of all human remains in its possession to the Dept. of Justice within one year of the effective date of proposed law.
   
   (c) A qualified museum or research institution, upon reasonable notice, must submit to the attorney general for analysis of any human skeletal remains in its possession.
(d) A qualified museum or research institution must notify the Dept. of Justice within six months of any acquisition of known human remains not included in any initial disclosure under proposed law.

(e) The Dept. of Justice is to hold all records consisting of a centralized database of museums and research institutions that have complied with the requirements of proposed law.

Proposed law provides that no provision of proposed law is intended to supplant the primary criminal jurisdiction of district attorneys under present law. Proposed law further provides that no provision of proposed law is intended to restrict or limit, and is explicitly superseded by, present law relative to anatomical gifts and donations, the rights of descendants and family members to control human remains, the licensed or otherwise authorized practice of funeral directing, cremation, and cemetery operation, and the authority of coroners.

Proposed law provides that the attorney general is to administer the provisions of proposed law and is charged with the investigation and enforcement of proposed law. Proposed law further provides that the prosecution of the civil provisions of proposed law is concurrently within the prosecutorial discretion of the attorney general and the district attorney for the parish in which the violations occur. Proposed law further provides that the prosecution of the criminal provisions of proposed law is within the discretion of the district attorney for the parish in which the violations occur, subject to recusal to the attorney general within the appropriate district attorney's discretion.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 25:951-959)