

## RÉSUMÉ DIGEST

ACT 531 (SB 179)

2016 Regular Session

Riser

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

New law sets forth legislative findings and declaration of intent.

New law provides the following definitions:

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

New law prohibits the following except as otherwise specifically permitted by prior law:

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

New law provides the following penalties for a violations:

- (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.

New law provides that each item of human remains in possession or trade constitutes a separate offense.

New law authorizes the attorney general to institute civil proceedings seeking injunctive relief to restrain and prevent violations.

New law authorizes the attorney general institute civil proceedings seeking civil damages from any person who knowingly violates new law. Provides that civil damages includes 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.

New law authorizes the attorney general to 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.

Provides that a natural or juridical person possessing human remains in violation of new law may voluntarily relinquish possession of the human remains to the La. Dept. of Justice without sanctions being imposed. New law authorizes the attorney general to waive civil sanctions for any person who voluntarily relinquishes human remains.

New 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 law. New law further provides that these transmissions are to occur only with the concurrence of the designated qualified entity or entities. New law provides that without this concurrence or direction, then authorizes the attorney general to dispose of human remains relinquished or acquired by the Dept. of Justice.

Provides that the following entities are exempt from these restrictions and prohibitions imposed in new law:

- (1) Private and public institutions of primary, secondary, or higher education.
- (2) Federal, state, and local governments and any political subdivision thereof as well as federal, state, and local law enforcement officials acting within their statutory authority.
- (3) Qualified museums or research institutions.
  - (a) A "qualified museum or research institution" means an entity that is a juridical person pursuant to prior 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 shall submit a notification of retention of human remains in its possession to the Dept. of Justice within one year of the effective date of new law.
  - (c) A qualified museum or research institution, upon reasonable notice, shall submit to the attorney general for analysis of any human skeletal remains in its possession.
  - (d) A qualified museum or research institution shall notify the Dept. of Justice within six months of any acquisition of known human remains not included in any initial disclosure under new law.

New law requires the Dept. of Justice to hold in a centralized database of all records of qualified museums and research institutions, exempt as provided in new law, that have complied with the requirements of new law.

New law is not intended to supplant the current primary criminal jurisdiction of district attorneys nor is it intended to restrict or limit and is explicitly superceded by current provisions regarding anatomical gifts and donations; the rights of descendants and family members to control human remains; the licensed or authorized practice of funeral directing, cremation, and cemetery operation; and the authority of coroners.

New law is not intended to restrict or limit, and is explicitly superceded by, the Louisiana Unmarked Human Burial Sites Preservation Act, the Louisiana Historical Cemetery Preservation Act, and the Native American Graves Protection and Repatriation Act.

New law provides that the attorney general is to administer the provisions of new law and is charged with the investigation and enforcement of new law. New law further provides that the prosecution of the civil provisions of new law is concurrently within the prosecutorial discretion of the attorney general and the district attorney for the parish in which the violations occur. New law further provides that the prosecution of the criminal provisions of new 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 (June 17, 2016).

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