

058926528

HOUSE BILL NO. 2078

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact §§ 10.1-2300, 10.1-2301, and 10.1-2305 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 23 of Title 10.1 sections numbered 10.1-2307 and 10.1-2308, relating to excavations at archeological sites and the removal and sale of antiquities; penalties.

Patrons—Van Landingham and Plum

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-2300, 10.1-2301, and 10.1-2305 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 23 of Title 10.1, sections numbered 10.1-2307 and 10.1-2308, as follows:

§ 10.1-2300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Field investigation" means the study of the traces of human culture at any site by means of surveying, sampling, excavating, or removing surface or subsurface material, or going on a site with that intent.

"Object of antiquity" means any relic, artifact, remain, including human skeletal remains, specimen, or other archaeological article that may be found on, in or below the surface of the earth which has historic, scientific, archaeologic or educational value.

"Person" means any natural individual, partnership, association, corporation or other legal entity.

"Site" means a geographical area on dry land that contains any evidence of human activity which is or may be the source of important historic, scientific, archaeologic or educational data or objects.

"State archaeological site" means an area designated by the Department in which it is reasonable to expect to find objects of antiquity.

"State archaeological zone" means an interrelated grouping of state archaeological sites.

"State archaeologist" means the individual designated pursuant to § 10.1-2301.

"State-controlled land" means any land owned by the Commonwealth or under the primary administrative jurisdiction of any state agency. State agency shall not mean any county, city or town, or any board or authority organized under state law to perform local or regional functions. Such land includes but is not limited to state parks, state wildlife areas, state recreation areas, highway rights-of-way and state-owned easements.

§ 10.1-2301. Duties of Director.

The Director shall:

1. Coordinate all archaeological research on state-controlled land and in state archaeological sites and zones;

2. Coordinate a survey of significant archaeological sites located on state-controlled land, and upon request, survey and officially recognize significant archaeological sites on privately owned property;

3. Identify, evaluate, preserve and protect sites and objects of antiquity which have historic, scientific, archaeologic or educational value and are located on state-controlled land or on state archaeological sites or zones;

4. Protect archaeological sites and objects located on state-controlled land or on state archaeological sites or zones from neglect, desecration, damage and destruction;

5. Ensure that archaeological sites and objects located on state-controlled land or on state archaeological sites or zones are identified, evaluated and properly explored so that adequate records may be made;

6. Encourage private owners of designated state archaeological sites to cooperate with the Commonwealth to preserve the site; and

7. Encourage a statewide archaeological education program to inform the general public of the importance of its irreplaceable archaeological heritage; ; and

8. Designate the State Archaeologist to (i) assist the Director by coordinating, overseeing, or otherwise carrying out the provisions of this chapter and (ii) perform such other duties as required by the Director. The State Archaeologist shall be a technically trained archaeologist and shall have both a practical and theoretical knowledge of archaeology.

§ 10.1-2305. Permit required for the archaeological excavation of human remains.

INTRODUCED

HB2078

59 A. It shall be unlawful for any person to conduct any type of archaeological field investigation
60 involving the removal of human skeletal remains or associated artifacts from any unmarked human
61 burial regardless of age of an archaeological site and regardless of ownership without first receiving a
62 permit from the Director.

63 B. Where unmarked burials are not part of a legally chartered cemetery, archaeological excavation of
64 such burials pursuant to a permit from the Director shall be exempt from the requirements of §§ 57-38.1
65 and 57-39. However, such exemption shall not apply in the case of human burials within formally
66 chartered cemeteries that have been abandoned.

67 C. The Department shall be considered an interested party in court proceedings considering the
68 abandonment of legally constituted cemeteries or family graveyards with historic significance. A permit
69 from the Director is required if archaeological investigations are undertaken as a part of a
70 court-approved removal of a cemetery.

71 D. The Board shall promulgate regulations implementing this section that provide for appropriate
72 public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the
73 scientific quality of the research conducted on the remains, and the appropriate disposition of the
74 remains upon completion of the research. The Department may carry out such excavations and research
75 without a permit, provided that it has complied with the substantive requirements of the regulations
76 promulgated pursuant to this section.

77 E. Any interested party may appeal the Director's decision to issue a permit or to act directly to
78 excavate human remains to the local circuit court. Such appeal must be filed within ~~fourteen~~ 14 days of
79 the Director's decision.

80 F. Any person who, without the authorization pursuant to a permit issued by the Department or a
81 court order issued pursuant to § 33.1-134, 57-38, 57-38.1, 57-39, or 32.1-286, (i) removes any object
82 associated with a Native American burial or other historic burial is guilty of a violation of § 18.2-127
83 or (ii) removes or disturbs any human remains in a Native American burial site or other historic burial
84 site is guilty of a violation of § 18.2-126.

85 § 10.1-2307. Explorations or excavations without consent of owner prohibited; penalty.

86 A. It shall be unlawful to explore or excavate on any archaeological site without the prior written
87 consent of the owner of the land. Such work shall not damage crops, houses, or improvements on the
88 land adjacent to the sites and excavations. No explorations or excavations shall be conducted that will
89 destroy, deface, or permanently damage an archaeological site. After such explorations or excavations
90 are completed, the land shall be restored to the same or like condition as before such explorations or
91 excavations were made.

92 B. Any person who violates any provision of this section is guilty of a Class 1 misdemeanor.

93 § 10.1-2308. Selling or offering for sale; penalties.

94 A. It is unlawful for any person to offer for sale, sell, offer to purchase, or purchase any object of
95 antiquity removed from state-controlled land or archaeological sites, except as provided by law, or
96 removed from private lands without the prior written permission of the landowner.

97 B. Any person who violates this section is guilty of a Class 1 misdemeanor. When the aggregate of
98 such sales or purchases or combination thereof totals \$200 or more during any 90-day period, the
99 person shall be guilty of a Class 6 felony.

100 2. That the provisions of this act may result in a net increase in periods of imprisonment or
101 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
102 be determined for periods of imprisonment in state adult correctional facilities and is \$0 for
103 periods of commitment to the custody of the Department of Juvenile Justice.