

HOUSE BILL NO. 296

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES DAVIDSON, Lincoln, Grussendorf, Gruenberg, MacLean, Koponen, Ivan, Gonzales,
G.Phillips, Parnell, Kubina**

Introduced: 4/22/91

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to human remains and funerary objects."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 12.65 is amended by adding new sections to read:

4 **ARTICLE 2. HUMAN REMAINS.**

5 **Sec. 12.65.150. REPORTS OF HUMAN REMAINS.** (a) Except as provided in (b) of
6 this section, a person who encounters human remains in or on land or water in the state shall

7 (1) immediately cease any activity that may cause further disturbance of the area;

8 and

9 (2) report the presence and location of the remains to the nearest law enforcement
10 agency as soon as possible considering the location of the discovery and the availability of
11 communication alternatives.

12 (b) The requirements of (a) of this section do not apply to a person who encounters
13 human remains while operating under a permit issued under AS 41.35.080.

14 (c) If the law enforcement agency determines that remains reported to it under (a) of this

1 section are unrelated to a prosecutable offense and may be human remains with historic or
2 prehistoric significance, the agency shall notify the Department of Natural Resources.

3 (d) A person who knowingly fails to comply with (a) of this section is guilty of a class A
4 misdemeanor.

5 Sec. 12.65.160. UNLAWFUL ACTS. A person may not sell, buy, or barter human
6 remains. A person who violates this section is guilty of a class A misdemeanor.

7 Sec. 12.65.170. DEFINITION. In AS 12.65.150 - 12.65.170, "human remains" means
8 a dead human body or part of a dead body in any stage of decomposition, excluding nonskeletal
9 body parts that are normally shed during life, such as hair, nails, and isolated teeth.

10 * Sec. 2. AS 41.35.040 is amended to read:

11 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS
12 AND HISTORIC SITES. State-owned monuments, sites, and other historic, prehistoric, or
13 archeological properties owned or purchased by the state are under the control of the department,
14 and their maintenance shall be covered in the appropriations made to the department. Privately
15 owned state monuments or historic sites are eligible to receive state support for their
16 maintenance, restoration, and rehabilitation if they are kept accessible to the general public, they
17 are in compliance with state laws pertaining to human remains and funerary objects, and
18 application for support is made in conformity with regulations adopted by the commissioner.

19 * Sec. 3. AS 41.35.060(a) is amended to read:

20 (a) The department, with the recommendation of the committee, may acquire real and
21 personal properties that have statewide historic, prehistoric, or archeological significance by gift,
22 purchase, devise, or bequest. If the department acquires disinterred human remains or
23 funerary objects under this subsection, it shall comply with AS 41.35.410. The department
24 shall preserve and administer property so acquired. The department may acquire property
25 adjacent to the property having historic, prehistoric, or archeological significance when it is
26 determined to be necessary for the proper use and administration of the significant property.

27 * Sec. 4. AS 41.35.070 is amended by adding a new subsection to read:

28 (h) If the department discovers human remains or funerary objects during a survey under
29 (d) of this section, the department shall comply with AS 12.65.150 and AS 41.35.410.

30 * Sec. 5. AS 41.35.080 is amended to read:

31 Sec. 41.35.080. PERMITS. The commissioner may issue a permit for the investigation,

1 excavation, gathering, or removal from the natural state [,] of any historic, prehistoric, or
2 archeological resources of the state or human remains or funerary objects reported under
3 AS 12.65.150 or AS 41.35.410. A permit may be issued only to persons or organizations
4 qualified to make the investigations, excavations, gatherings, or removals and, except as
5 otherwise provided in the permit issued under of this section, only if the results of these
6 authorized activities will be made available to the general public through institutions and
7 museums interested in disseminating knowledge on the subjects involved. If the historic,
8 prehistoric, or archeological resource involved is one that [WHICH] is, or is located on a site
9 that [WHICH] is, sacred, holy, or of religious significance to a cultural group, the consent of that
10 cultural group must be obtained before a permit may be issued under this section.

11 * Sec. 6. AS 41.35.090 is amended to read:

12 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
13 construction, alteration, or improvement of any nature is undertaken on a privately owned,
14 officially designated state monument or historic site by any person, the person shall give the
15 department three months' [MONTHS] notice of intention to construct on, alter, or improve it.
16 If the construction, alteration, or improvement involves known reasonably identifiable
17 human remains or funerary objects, the person shall also give three months' notice of
18 intention to construct, alter, or improve to the descendants or tribe of the decedent whose
19 remains are involved. Before the expiration of the three-month notification period, the
20 department shall either begin eminent domain proceedings under AS 41.35.060(b) or undertake
21 or permit the recording and salvaging of any historic, prehistoric, or archeological information
22 considered necessary.

23 * Sec. 7. AS 41.35.230 is amended to read:

24 Sec. 41.35.230. DEFINITIONS. In this chapter [AS 41.35.010 - 41.35.240], unless the
25 context otherwise requires,

26 (1) [REPEALED

27 (2)] "committee" means the Historic Sites Advisory Committee;

28 (2) "funerary objects" means items for which there is direct circumstantial
29 evidence, expert opinion, or documentation that the items were directly associated with
30 human remains or were intentionally placed with human remains either at the time of
31 burial or interment or at some subsequent time, as a part of the death rites or ceremonies

1 **of a culture:**

2 (3) [REPEALED

3 (4)] "historic, prehistoric and archeological resources" includes deposits,
4 structures, ruins, sites, buildings, grave sites [GRAVES], artifacts, fossils, or other objects of
5 antiquity that [WHICH] provide information pertaining to the historical or prehistorical culture
6 of people in the state as well as to the natural history of the state, except that the term does not
7 include human remains or funerary objects;

8 (4) "human remains" means a dead human body or part of a dead body in
9 any stage of decomposition, excluding nonskeletal body parts shed during life, such as hair,
10 nails, and isolated teeth;

11 (5) "Native" means a person who is a descendant or ancestor of the
12 aboriginal races inhabiting the state when it was annexed to the United States or a
13 descendant or ancestor of an Indian or Eskimo who, after the year 1867, migrated into the
14 state from Canada;

15 (6) "reasonably identifiable" means identifiable, by a preponderance of the
16 evidence, as to individual, familial, or tribal origin based on available archeological,
17 historical, ethnological, or other direct circumstantial evidence or expert opinion;

18 (7) "tribe" means a group recognized as a tribe by the United States
19 Secretary of Interior, or a Native village or regional corporation or other Native group
20 defined in or established under 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement
21 Act).

22 * Sec. 8. AS 41.35 is amended by adding new sections to read:

23 ARTICLE 3. DISCOVERY OF HUMAN REMAINS AND FUNERARY OBJECTS.

24 Sec. 41.35.400. POLICY. It is the policy of the state that a person may not lawfully
25 assert title to human remains. The right of disposition of human remains lies with the state
26 except as provided in AS 41.35.410.

27 Sec. 41.35.410. HUMAN REMAINS AND FUNERARY OBJECTS. (a) When human
28 remains are discovered by or reported to the department, the department shall notify the nearest
29 law enforcement agency unless a report has already been made under AS 12.65.150. After law
30 enforcement activities related to the remains have ceased, the department shall comply with (c)
31 of this section.

1 (b) A person who discovers funerary objects shall promptly report the discovery to the
2 department. Unless the department determines upon further investigation that the objects are
3 probably not funerary objects, the department shall comply with (c) of this section.

4 (c) If human remains or funerary objects described in (a) and (b) of this section are not
5 disinterred, the department shall leave them in the place where they are interred, when possible.
6 If the human remains or funerary objects are disinterred and the decedent's living descendants
7 are reasonably identifiable, the department shall, by certified mail, notify the decedent's relative
8 with the closest kinship ties that the remains and funerary objects are available for disposition.
9 If the remains and funerary objects include Native human remains or funerary objects and the
10 department is unable to ascertain the existence and address of living descendants of the
11 descendant, the department shall determine with as much specificity as possible their tribe of
12 origin and notify the governing body of the tribe of their discovery and location. If a specific
13 tribe of origin is not reasonably identifiable, the department shall, by certified mail, give the
14 notice of the discovery and its location to the governing body of the tribe whose members
15 predominate in the vicinity of the discovery.

16 (d) At the request of a descendant or the governing body of a tribe notified under (c) of
17 this section, the department shall provide for access to the remains or funerary objects so that the
18 descendant or the tribe may dispose of them. A tribe may not be allowed to have access until
19 the tribe's plan for disposition of the remains or objects has been submitted to the department.
20 If, within 120 days after notification by the department by certified mail, neither a descendant
21 nor a tribe seeks the right to dispose of the remains or funerary objects, the department shall treat
22 them in the same manner as it treats other unclaimed human remains or historic, prehistoric, and
23 archeological resources under this chapter, as applicable.

24 (e) A person may request a tribe or descendant to grant to the person an opportunity to
25 study human remains or funerary objects for which the tribe or descendant is granted disposition
26 rights under (c) of this section.

27 Sec. 41.35.420. DISPUTE RESOLUTION COMMITTEE. When needed, the governor
28 shall establish a committee to advise the department concerning conflicting claims of tribes and
29 descendants with respect to disposition rights for human remains and funerary objects. A
30 committee consists of the state liaison officer appointed under 16 U.S.C. 470 - 470n (National
31 Historic Preservation Act) and the following persons, who shall be appointed by the governor as

1 the need arises:

2 (1) a physical anthropologist;

3 (2) three descendants of the person whose remains or funerary objects are in
4 dispute or a person from each tribe that has a colorable claim to the human remains or funerary
5 objects that are the subject of the dispute, whichever is appropriate; and

6 (3) a resident of the area from which the remains and objects originated who does
7 not meet the requirement of (2) of this section.