

## CHAPTER 10. HUMAN REMAINS

### § 651. Interring or cremating

Except in cases of lawful dissection or where a dead body shall rightfully be carried through or removed from the state for the purposes of interment or cremation elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently interred or cremated within a reasonable time after death.

*Acts 1974, No. 417, § 1.*

### § 652. Unlawful disposal of remains

A. Except in the case of cremated remains or as otherwise provided by law, it shall be unlawful for any person to dispose of any human remains, except fetal remains, without first obtaining certification of the cause of death by the treating physician, parish coroner, or the authorized representative of the parish coroner. Disposal of such remains shall not be in any place other than a cemetery or a building dedicated exclusively for such purposes, and the remains shall be decently interred within a reasonable time after death.

B. Whoever violates this Section shall be punished by imprisonment for not more than three years, with or without hard labor, or by a fine of not more than one thousand dollars, or both.

*Acts 1974, No. 417, § 1. Amended by Acts 1991, No. 195, § 1.*

### § 653. Opening graves; stealing body; receiving same

A. Every person who removes the dead body of a human being or any part thereof from a cemetery space where the same has been interred or is awaiting interment or cremation, without authority of law, with intent to sell the same, or for the purposes of securing a reward for its return, or for dissection, or from malice or wantonness, shall be punished by imprisonment for not more than five years, or by a fine of not more than one thousand dollars, or by both.

B. Whoever purchases or receives, except for interment or cremation, any such dead body or any part thereof, knowing that the same has been removed in violation of this section, shall be punished by imprisonment for not more than three years or by a fine of not more than one thousand dollars, or both.

C. Whoever opens a cemetery space, temporary or otherwise, or a building where a dead body is deposited while awaiting interment or cremation, with intent to remove said body or any part thereof, for the purpose of selling or demanding money or any other thing of value for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment or other article interred or intended to be interred with the body, shall be punishable by imprisonment for not more than three years or by a fine of not more than one thousand dollars, or both.

*Acts 1974, No. 417, § 1.*

#### **§ 654. Mutilating, disinterring human remains; penalty**

Whoever mutilates any human remains without authority of law shall be punished by imprisonment for not more than three years or by a fine of not more than one thousand dollars, or both.

*Acts 1974, No. 417, § 1.*

#### **§ 655. Right of disposing of remains; military personnel; limitation of liability**

A. Unless other specific directions have been given or the designation of a specific person to control disposition has been made by the decedent in the form of a notarial testament or a written and notarized declaration, the following persons, in the priority listed, have the right to control and authorize the interment of a deceased person, as defined in R.S. 8:1:

(1) The person designated to control disposition by the decedent in the form of a notarial testament or a written and notarized declaration.

(2) The surviving spouse, if there is no pending petition for divorce filed by either spouse prior to the death of the decedent spouse.

(3) A majority of the surviving adult children of the decedent.

(4) A majority of the surviving adult grandchildren of the decedent.

(5) The surviving parents of the decedent.

(6) A majority of the surviving adult siblings of the decedent.

(7) A majority of the surviving adult persons respectively in the next degrees of kindred as established in Civil Code Article 880 et seq.

B. (1) Notwithstanding the provisions of Subsection A of this Section, if the decedent died in a manner described by 10 U.S.C. §1481 (a)(1) through (8) while serving in any branch of the United States Armed Forces, the United States Reserve Forces, or National Guard, and the decedent executed a United States Department of Defense Record of Emergency Data, known as DD Form 93, or its successor form, the right to control interment for the decedent shall devolve upon the Person Authorized to Direct Disposition, also referred to as the PADD, as indicated on the DD Form 93 or its successor form.

(2) There shall be no liability for a cemetery authority, funeral establishment, funeral director, crematory authority, or the employees or agents of any of them to whom a copy of a DD Form 93 is presented, purportedly executed by the decedent for conduction of the interment or other disposition of the decedent's remains, pursuant to the instructions of the PADD as indicated on the DD Form 93, or for relying on the representation of the PADD that the decedent died in a manner described in Paragraph (1) of this Subsection.

C. (1) In the event that the decedent has made multiple notarial testaments or notarized declarations pursuant to Subsection A of this Section, the testament or declaration, whichever is dated last, shall control.

(2) In the event that the decedent has made one or more notarial testaments or notarized declarations pursuant to Subsection A of this Section, and the decedent executed a DD Form 93 and died in a manner described in Subsection B of this Section, the testament, declaration, or the DD Form 93, whichever is dated last, shall control interment of the decedent's remains.

D. Notwithstanding the provisions of Subsection A of this Section, in the event that the coroner releases the remains of the decedent to an interested person pursuant to R.S. 9:1551(A)(1), such person has the right to control the disposition of the remains of the decedent.

E. In the absence of specific directions given by the decedent, if the authorization of the person or persons with the right to control disposition cannot be obtained, a final judgment of a district court shall be required.

*Acts 1974, No. 417, § 1. Amended by Acts 1990, No. 939, § 1; Acts 1991, No. 912, § 1. Amended by Acts 2001, No. 557, § 1. Amended by Acts 2014, No. 819, § 1. Amended by Acts 2015, No. 270, § 1. Amended by Acts 2016, No. 143, § 1.*

### **§ 656. Effect of authorization**

Any person signing any authorization for the interment of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred, and his authority to order the interment; and such person shall be personally liable for all damage occasioned by or resulting from breach of such warranty.

*Acts 1974, No. 417, § 1. Amended by Acts 2003, No. 1243, § 1.*

### **§ 657. Right to rely on such authorization**

The cemetery authority may inter any remains upon the receipt of a written authorization of a person representing himself to be the person who has the prior right to control the disposition of the remains in accordance with R.S. 8:655. A cemetery authority shall not be liable for interring pursuant to such authorization, unless it has actual notice that such representation is untrue.

*Acts 1974, No. 417, § 1. Amended by Acts 2003, No. 1243, § 1.*

### **§ 658. Liability for damages; limitation**

No action shall lie against any cemetery authority relating to the remains of any person which have been left in its possession for a period of sixty days, unless a written contract has been entered into with the cemetery authority for the care of such remains.

*Acts 1974, No. 417, § 1. Amended by Acts 2003, No. 1243, § 1.*

## § 659. Permission to move remains

A. The remains of a deceased person may be moved from a cemetery space to another cemetery space in the same cemetery or to another cemetery with the consent of the cemetery authority and the written consent of one of the following, in the order named, unless other specific directions, in the form of a notarial testament or a written and notarized declaration, have been given by the decedent:

(1) The surviving spouse, if there is no pending petition for divorce filed by either spouse prior to the death of the decedent spouse.

(2) A majority of the surviving adult children of the decedent.

(3) A majority of the surviving adult grandchildren of the decedent.

(4) The surviving parents of the decedent.

(5) A majority of the surviving adult siblings of the decedent.

B. If the required consent cannot be obtained, a final judgment of the district court of the parish where the cemetery is situated shall be required.

*Acts 1974, No. 417, § 1. Amended by Acts 1990, No. 939, § 1. Amended by Acts 1999, No. 1199, § 1. Amended by Acts 2006, No. 609, § 1. Amended by Acts 2018, No. 248, § 1.*

## § 660. Exceptions

The foregoing Sections shall not apply to or prohibit the following:

(1) The rearrangement of remains within the same cemetery space by or with the consent of the cemetery authority for the purpose of rearrangement or reuse in cemeteries which allow for rearrangement or reuse as defined in R.S. 8:1(36.1).

(2) The removal of remains by a cemetery authority from a cemetery space for which the purchase price or any other legitimate indebtedness to the cemetery authority is past due and unpaid, to some other suitable place.

(3) The disinterment of remains pursuant to an order of a court of competent jurisdiction or of a coroner of the parish in which the cemetery is located.

(4) The removal and transfer of remains to correct an error as provided in R.S. 8:813 provided that written notice shall be sent to the immediate family prior to the removal and transfer.

(5) The moving, identification, and reinterment of caskets, coffins, vaults, other outer burial containers, remains, and associated burial artifacts, displaced by a force majeure event and undertaken by the cemetery authority or its designee or any authorized government entity or its designee following a municipal, parish, or state declaration of emergency.

*Acts 1974, No. 417, § 1. Amended by Acts 1990, No. 939, § 1. Amended by Acts 1999, No. 1199, § 1. Pursuant to the statutory revision authority of the Louisiana State Law Institute, in this section as amended in 1999, "R.S. 8:1(36.1)" was substituted for "R.S. 8:1(42)" in par. (1). Amended by Acts 2018, No. 248, § 1.*

### **§661. Undisposed remains; rules and regulations**

Whenever any human remains have been in the lawful possession of any cemetery authority for a period of sixty days or more, and the relatives of or persons interested in the deceased person fail, neglect, or refuse for such periods of time, respectively, to direct the disposition to be made of the body, the body may be disposed of by the cemetery authority having lawful possession thereof, under and in accordance with such rules and regulations, if any, as may be made and promulgated by the governmental authority or authorities having jurisdiction over the matter.

*Acts 1974, No. 417, § 1. Amended by Acts 2003, No. 1243, § 1.*

### **§ 662. Record of remains to be kept**

The cemetery authority in charge of any premises on which interments are made shall keep a record of all remains interred on the premises under its charge, in each case stating the name of each deceased person, date of interment, location of interment, and name of the funeral director or funeral home.

*Acts 1974, No. 417, § 1. Amended by Acts 2001, No. 468, § 1. Amended by Acts 2003, No. 1243, § 1.*

### **§ 663. Collection, analysis, and reburial of exposed human skeletal remain**

A. The legislature hereby finds that exposed human skeletal remains in cemeteries, while harmless from a public health perspective, are nonetheless disrespectful to those interred in the cemetery and are susceptible to being looted. Accordingly, the legislature finds that the collection and reburial of these remains, in a controlled, scientific, and respectful manner, is in the best interest of the public.

B. This Section shall apply only to municipal cemeteries as defined in R.S. 8:1, and to cemeteries that do not currently hold a certificate of authority under this Title.

C. The words and phrases in this Section shall have the meanings given to them in Chapter 10-A of this Title unless the context clearly indicates otherwise.

D. (1) Upon the identification of human skeletal remains and burial items exposed to the surface in a cemetery subject to this Section, the Louisiana Cemetery Board or the attorney general shall make a reasonable attempt to contact the cemetery and demand that such human skeletal remains and burial items be secured and re-interred.

(2) Upon a failure or refusal of the cemetery authority to comply with a demand made under Paragraph (1) of this Subsection and with the express written permission of the cemetery authority, the attorney general or students and instructors of institutions of higher education from the disciplines of anthropology, archaeology, biology, and mortuary science may undertake the systematic collection of human skeletal remains and burial items that are exposed to the surface and are at risk of being looted from cemeteries within the state.

(3) If written permission of the relevant cemetery authority cannot be reasonably obtained and the exposed human skeletal remains are at risk of being looted, the attorney general may apply to the district court in which the cemetery is located for an order to safeguard the human skeletal remains. Upon the filing of such a petition, the district court shall set the matter for hearing in the manner provided in C.C.P. Art. 3601, et. seq.

(4) The attorney general may collect the exposed human skeletal remains or may delegate that authority to a qualified part under this Subsection.

E. The following procedures and protocols shall be followed in undertaking any collection program under this section:

(1) Prior to any collection activity notification, proof of compliance with this Section shall be provided to the Louisiana Cemetery Board, the Louisiana Division of Archaeology, and the attorney general, in writing.

(2) Any collection activities shall be conducted under the direction of the attorney general or a full-time faculty member from an accredited college or university in the state of Louisiana.

(3) Any collection activities undertaken pursuant to this Section shall be supervised by a person with a minimum education level of a master's degree in one of the enumerated fields of study in Paragraph (D)(2) of this Section.

(4) All human skeletal remains and burial items collected from the surface of a cemetery pursuant to this Section shall be collected in the following manner:

(a) A minimum of two digital photographs of the collected items shall be taken prior to its collection that will allow for visual demonstration of its original location.

(b) A handheld global positioning system (GPS) device shall be used to document, with as much specificity as the technology permits, the geographic location of the item prior to its collection.

(c) Each item collected shall be separately bagged.

(d) Each collection bag shall be labeled and shall contain a label noting at a minimum, the date of collection, the name of the cemetery, the GPS coordinates of the item, and the name of the collector.

(5) The following identification procedures shall be undertaken following collection of any human skeletal remains or burial items pursuant to this Section:

(a) There shall be affixed to the item a label sufficient to correlate the item to the documentation collected pursuant to Paragraph (4) of this Subsection.

(b) To the extent possible, all standard metric and non-metric measurements and observation of the human skeletal remains shall be documented pursuant to the Standards for Data Collection from Human Skeletal Remains or other comparable subsequent set of data collection standards.

(c) All human skeletal remains collected pursuant to this Section shall be stored in a secure location at the collecting institution until such time as the cemetery authority undertakes reburials pursuant to this Section.

(d) Copies of any and all documents and photographs generated from the collection activities permitted by this Section shall be lodged with the cemetery authority and the office of the attorney general at the time of re-interment of the human skeletal remains and burial item. These documents and photographs shall constitute public records, subject to the limitations set forth in R.S. 41:1609 and R.S. 44:4(44).

F. The following protocols shall be the responsibility of the cemetery authority:

(1) The cemetery authority shall re-inter, at its own cost, the human skeletal remains and burial items collected pursuant to this Section.

(2) If analysis leads to the positive identification of any human skeletal remains, such remains shall be re-interred by the cemetery authority, at its own cost, in the grave space associated with the identified individual.

(3) In the event that no cemetery authority is identifiable, such human skeletal remains shall be curated by the collecting entity in a manner that conforms to the Louisiana Division of Archaeology curation guidelines. Such human skeletal remains may be re-interred in an unused portion of the subject cemetery pursuant to an order of a court of competent jurisdiction.

G. There shall be no liability on the part of, and no action for damages against, any of the following:

(1) Any institution, or its agents, employees, or students, for any action undertaken or performed by such person pursuant to this Section when such person is acting without malice and in the reasonable belief that the action taken by him is warranted.

(2) Any cemetery owner, cemetery authority, or its agents or employees, for any action undertaken or performed by such person pursuant to this Section when such person is acting without malice and in the reasonable belief that the action taken by him is warranted.

(3) Any person, committee, association, organization, firm or corporation providing information to an institution, cemetery owner, or cemetery authority conducting or permitting collection activities pursuant to this Section, its agents, employees, or students when such a person, committee, association, organization, firm, or corporation providing such information without malice and in the reasonable belief that such information is accurate shall not be held, by reason of having provided such information, to be liable in damages under any law of the state or any political subdivision thereof.

(4) The Louisiana Cemetery Board, the Louisiana Division of Archaeology, and the attorney general, and their agents or employees, shall not be liable in damages under any law of the state or any political subdivision for their role in administering portions of this Section.

*Amended by Acts 2012, No. 631, § 1.*