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### § 3761. Unauthorized removal of human remains

A person who, not being authorized by law, intentionally excavates, disinters, removes or carries away a human body, or the remains thereof, interred or entombed in this state, or intentionally excavates, disinters, removes or carries away an object interred or entombed with a human body in this state, or knowingly aids in such excavation, disinterment, removal or carrying away, or is accessory thereto, shall be imprisoned not more than fifteen years or fined not more than fifteen years or fined not more than \$10,000.00, or both. (Amended 1989, No. 142 (Adj. Sess.), § 1.)

### § 3764. Cemeteries and monuments-Grave markers and historical tablets

A person shall not intentionally and without right or authority excavate, steal, remove, injure or destroy, or procure or cause to be excavated, stolen, removed, injured or destroyed, a gravestone or monument erected to the memory of a deceased person, or erected and intended for such use, or a grave, tomb or burial site, or portion thereof, in which the body or remains of a deceased person is interred, or which is intended for the interment of a deceased person, or a monument, tablet or marker erected for the commemoration of some historical event or place by a historical or patriotic association or society on land on which such association or society has a right to erect the same. (Amended 1989, No. 142 (Adj. Sess.), § 2.)

### § 3765. -Burial grounds

A person shall not intentionally and maliciously injure a fence or other erection, tree or shrubbery in or about a burial ground, or a road, path or avenue therein, or a lot therein designed for burial, steal or dig up, displace, take away or break off a root, plant, vine, flower, shrub or tree within a burial ground. (Amended 1989, No. 142 (Adj. Sess.), § 3.)

### § 3766. -Grave markers and ornaments

A person shall not intentionally and without authority steal, remove, break down, injure or destroy, or cause to be stolen, removed, broken down, injured or destroyed, an ornament, token or emblem used to decorate, mark or distinguish the grave or tomb of a deceased person. (Amended 1989, No. 142 (Adj. Sess.), § 4.)

### **§ 3767. -Penalties**

A person who violates a provision of sections 3764-3766 of this title shall be imprisoned not more than five years or fined not more than \$5,000.00, or both. (Amended 1971, No. 199 (Adj. Sess.), § 15; 1981, No. 223 (Adj. Sess.), § 23; 1989, No. 142 (Adj. Sess.), § 5.)

**§ 3768. Repealed. 1973, No. 249 (Adj. Sess.), § 111, eff. April 9, 1974.**

### **§ 3769. -Civil action**

A person who violates a provision of sections 3764-3766 of this title, shall be further liable in a civil action on this statute, in which the plaintiff may recover damages and reasonable attorney's fees. Such action may be brought in the name of the owner of the property so injured, or in the name of the town in which such burial ground is situated, or in the name of the commissioners, or in the name of the association or corporation which holds lawful possession of such burial ground at the time such damage is committed, or, if the property injured is a gravestone or monument erected to the memory of a deceased person or a grave, tomb or burial site in which the body or remains of a deceased person is interred, in the name of the surviving heirs or descendants of such deceased person, jointly, or in the name of one or more of them for the benefit of all, or in the name of the historical or patriotic association or society erecting such monument, tablet or marker. (Amended 1989, No. 142 (Adj. Sess.), § 6.)

### **§ 3770. -Use of damages recovered**

Such damages, when recovered by a town, association, society, corporation, or by commissioners, shall be expended under the direction of the party recovering the same for the benefit of the property injured. ore than \$10,000.00, or both. (Amended 1989, No. 142 (Adj. Sess.), § 1.)

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### **§ 5211. Unauthorized burial or removal; penalty**

A person who buries, entombs, transports or removes the dead body of a person without a burial-transit or removal permit so to do, or in any other manner or at any other time or place than as specified in such permit, shall be imprisoned not more than five years or fined not more than \$1,000.00, or both. (Amended 1969, No. 265 (Adj. Sess.), § 14.)

### **§ 5212. Permit to remove dead bodies**

(a) A person desirous of disinterring or removing the body of a human being from one cemetery to another cemetery or to another part of the same cemetery or from a tomb or receiving vault elsewhere shall apply to the town clerk of the town where such dead body is interred or entombed for a removal permit.

(b) An applicant for a removal permit shall publish notice of his or her intent to remove the remains. This notice shall be published for two successive weeks in a newspaper of general circulation in the town in which the body is interred or entombed. The notice shall include a statement that the spouse, child, parent or sibling of the deceased may object to the proposed removal by filing a complaint in the probate court of the district in which the body is located as provided in section 5212a of this title.

(c) The town clerk shall issue a removal permit 45 days after the date on which notice was last published pursuant to subsection (b) or, if an objection is made pursuant to section 5212a, upon order of the court.

(d) Notwithstanding the provisions of subsections (b) and (c), a removal permit shall be issued upon application:

(1) when removal is necessary because of temporary entombment; or

(2) to a federal, state, county or municipal official acting pursuant to official duties; or

(3) if the applicant has written permission to remove the remains from all persons entitled to object under section 5212a of this title. (Amended 1985, No. 206 (Adj. Sess.), § 1, eff. June 2, 1986.)

### **§ 5212a. Removal; objections**

(a) Unless removal is otherwise authorized by law, a spouse, child, parent or sibling of the deceased may, within 30 days after the date notice was last published under section 5212 of this title, object to the proposed removal by filing a complaint in the probate court of the district in which the body is interred or entombed. A copy of the complaint shall be filed with the clerk of the town where the body is interred or entombed.

(b) The probate court shall, after hearing, issue its order authorizing removal of the body unless:

(1) removal would be contrary to the expressed intent of the deceased; or

(2) removal is objected to by the surviving spouse of the deceased; or

(3) removal is objected to by an adult son or daughter of the deceased and there is no surviving spouse of the deceased;

(4) removal is objected to by a parent of the deceased and there is no surviving spouse or son or daughter of the deceased; or

(5) removal is objected to by an adult sibling of the deceased and there is no surviving spouse, son or daughter, or parent of the deceased. (Added 1985, No. 206 (Adj. Sess.), § 2, eff. June 2, 1986.)

**§ 5213. Removal; form and disposition of permit**

Such permit shall state specifically where such body is to be buried, cremated or entombed and the time and manner of its removal. A town clerk issuing such a permit shall make it in duplicate if the body is to be removed from the town, one copy of which shall be delivered to the person having charge of the cemetery or tomb from which the body is to be taken and the other shall be delivered to the person having charge of the cemetery or tomb wherein it is desired to place the body. (Amended 1979, No. 142 (Adj. Sess.), § 17.)

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**Sec. 57. 18 V.S.A. § 5212b** is added to read:

**§ 5212b. UNMARKED BURIAL SITES SPECIAL FUND**

(a) The unmarked burial sites special fund is established in the state treasury for the purpose of protecting, preserving, moving or reintering human remains discovered in unmarked burial sites.

(b) The fund shall be comprised of any monies appropriated to the fund by the general assembly or received from any other source, private or public. Interest earned on the fund, and any balance remaining in the fund at the end of a fiscal year, shall be retained in the fund. This fund shall be maintained by the state treasurer, and shall be managed in accordance with chapter 7, subchapter 5 of Title 32.

(c) The commissioner of housing and community affairs may authorize disbursements from the fund for use in any municipality in which human remains are discovered in unmarked burial sites in accordance with a process approved by the commissioner. The commissioner shall approve any process developed through consensus or agreement of the interested parties, including the municipality, the governor's advisory commission on Native American affairs, and private property owners of property on which there are known or likely to be unmarked burial sites, provided the commissioner determines that the process is likely to be effective, and includes all the following:

- (1) Methods for determining the presence of unmarked burial sites, including archaeological surveys and assessments and other nonintrusive techniques.
- (2) Methods for handling development and excavation on property on which it is known that there is or is likely to be one or more unmarked burial sites.
- (3) Options for owners of property on which human remains in unmarked burial sites are discovered or determined to be located.
- (4) Procedures for protecting, preserving or moving unmarked burial sites and human remains, subject, where applicable, to the permit requirement and penalties of this chapter.
- (5) Procedures for resolving disputes.

(d) If unmarked burial sites and human remains are removed, consistent with the process set forth in this section and any permit required by this chapter, there shall be no criminal liability under 13 V.S.A. § 3761.

(e) The funds shall be used for the following purposes relating to unmarked burial sites:

- (1) To monitor excavations.
- (2) To protect, preserve, move or reinter unmarked burial sites and human remains.
- (3) To perform archaeological assessments and archaeological site or field investigations, including radar scanning and any other nonintrusive technology or technique designed to determine the presence of human remains.
- (4) To provide mediation and other appropriate dispute resolution services.

(5) To acquire property or development rights, provided the commissioner of housing and community affairs determines that disbursements for this purpose will not unduly burden the fund.

(6) Any other appropriate purpose determined by the commissioner to be consistent with the purposes of this fund.

(f) The commissioner may adopt rules to carry out the intent and purpose of this section.

#### **Sec. 58. UNMARKED BURIAL SITE FUND REPORT; DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

The commissioner of housing and community affairs shall issue a written report to the Senate Committee on General Affairs and Housing, the House Committee on General, Housing and Military Affairs, and the Governor's Advisory Commission on Native American Affairs on or before January 15, 2003, regarding the implementation of this act and chapter 107 of Title 18.

The report shall include:

(1) The fund balance, including the sources of deposits.

(2) Disbursements that have been made from the fund, the municipality for which the disbursement was made, and a description of the process used or implemented by the municipality to protect unmarked burial sites or property owners, or both.

(3) Management processes implemented by municipalities that are designed to protect unmarked burial sites, preserve Native American human remains and protect the rights of owners of property on which unmarked burial sites exist or are suspected to exist and an evaluation of the effectiveness of these processes and a description of the actions taken by the Division of Historic Preservation to encourage and support appropriate municipalities to design such a process.

(4) Improvements made to facilitate access to and communications with the Governor's Advisory Commission on Native American Affairs, including assuring publication of telephone and fax numbers and postal and email addresses in local and state directories, message retrieval, state website presence and any other enhancement implemented to improve access to the Governor's Advisory Commission on Native American Affairs.

(5) The status of any rulemaking initiated or completed pursuant to this act.

#### **Sec. 4. COMMERCE AND COMMUNITY DEVELOPMENT**

(f) The sum of \$50,000 is appropriated to the agency of commerce and community development for the unmarked burial sites special fund established in Sec. 57 of this act.