

HOUSE BILL NO. 637

INTRODUCED BY T. RUNNINGWOLF

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OR OTHER COMMERCIAL TRANSACTION OF CULTURAL PATRIMONY AND SACRED OBJECTS; PROVIDING REQUIREMENTS TO ESTABLISH AN OBJECT AS CULTURAL PATRIMONY OR A SACRED OBJECT; PROVIDING A PENALTY; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 22-3-802, 22-3-803, 22-3-804, AND 22-3-808, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 22-3-802, MCA, is amended to read:

**"22-3-802. Legislative findings and intent.** (1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) the state and its citizens have an obligation to protect objects of cultural patrimony and sacred objects from being part of a commercial transaction for profit and to return these objects to the Indian tribe or group of origin;

~~(b)(c)~~ marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

~~(c)(d)~~ private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(e) private or commercial transaction for profit of objects of cultural patrimony and sacred objects results in the separation of these objects from the Indian tribe or group of origin and in the desecration of the nature of these objects of cultural patrimony and sacred objects;

~~(d)(f)~~ while some human skeletal remains and burial sites may be of interest to science, the needs of the



1 scientific community to gather information and material from burial sites must be balanced with the legal, moral,  
2 and religious rights and obligations of tribal groups, next of kin, or descendants;

3 ~~(e)~~(g) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial  
4 material; and

5 ~~(f)~~(h) notwithstanding any other provision of law, this part is the exclusive law governing the treatment  
6 of human skeletal remains, burial sites, and burial materials.

7 (2) It is the intent of the legislature to:

8 (a) ensure that all burials be accorded equal treatment and respect for human dignity without reference  
9 to ethnic origin, cultural background, or religious affiliation;

10 (b) provide adequate protection for all interests related to any burial site encountered during  
11 archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and  
12 private lands without causing avoidable or undue delay or hardship for any person who has an interest in using  
13 the land on which the burial site is located;

14 (c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or  
15 religious affiliation with the burial site and balance those interests against the interests of scientists, landowners,  
16 and developers;

17 (d) recognize the ongoing historical, traditional, and cultural importance of objects of cultural patrimony  
18 and sacred objects and to work to prevent the separation and promote the reunification of these objects with the  
19 Indian tribe or group of origin;

20 ~~(d)~~(e) provide to the board an exemption from the open meeting and public records laws when public  
21 disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

22 ~~(e)~~(f) recognize the need for forensic examination of human skeletal remains, burial sites, and burial  
23 material if the county coroner, county attorney, or state medical examiner determines an examination is  
24 necessary under state law."  
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26 **Section 2.** Section 22-3-803, MCA, is amended to read:

27 **"22-3-803. Definitions.** As used in this part, the following definitions apply:

28 (1) "Board" means the burial preservation board established in 22-3-804.

29 (2) "Burial material" means any item found at the burial site or with the human skeletal remains and  
30 directly associated with the burial or burial site.

1           (3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any  
2 natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which  
3 human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

4           (4) "Cultural patrimony" means an object:

5           (a) that has ongoing historical, traditional, or cultural importance central to an Indian tribe, group, or  
6 culture itself;

7           (b) that cannot be alienated, appropriated, or conveyed by an individual regardless of whether the  
8 individual is a member of the Indian tribe or group;

9           (c) that was considered inalienable by the Indian tribe or group at the time the object was separated from  
10 the Indian tribe or group; and

11           (d) for which the duties as a caretaker are transferred through a ceremonial transfer.

12           ~~(4)~~(5) "Human skeletal remains" means any part of the human body in any state of decomposition taken  
13 from a burial site.

14           ~~(5)~~(6) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any  
15 place, except a cemetery or graveyard protected under existing state law, where human skeletal remains are or  
16 have been interred.

17           (7) (a) "Sacred object" means a specific ceremonial object that is necessary to traditional Indian  
18 ceremonial leaders for the practice of traditional Indian ceremonies by their present-day adherents and requires  
19 a ceremonial transfer to be transferred from one person to another.

20           (b) The term does not include land, water, or any other geographical feature.

21           (c) The term does not include a fish or wildlife species or any portion of a fish or wildlife species legally  
22 taken pursuant to the laws of this state, any other state, the United States, or any federally recognized Indian  
23 tribe.

24           ~~(6)~~(8) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential  
25 to address specific research questions in the science of anthropology, history, or biology.

26           ~~(7)~~(9) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or  
27 recognized as a tribe by other Indian nations."  
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29           **Section 3.** Section 22-3-804, MCA, is amended to read:

30           **"22-3-804. Board -- composition -- rights -- responsibilities.** (1) There is a burial preservation board.

1 The board is composed of:

2 (a) one representative of each of the seven reservations, appointed by the governor from a list of up to  
3 three nominees provided by each of the respective tribal governments;

4 (b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell  
5 band of Chippewa Indians;

6 (c) one person appointed by the governor from a list of up to three nominees submitted by the Montana  
7 state historic preservation officer;

8 (d) one representative of the Montana archaeological association appointed by the governor from a list  
9 of up to three nominees submitted by the Montana archaeological association;

10 (e) one physical anthropologist appointed by the governor;

11 (f) one representative of the Montana coroners' association appointed by the governor from a list of up  
12 to three nominees submitted by the Montana coroners' association; and

13 (g) one representative of the public, appointed by the governor, who is not associated with tribal  
14 governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana  
15 coroners' association.

16 (2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in  
17 the same manner as the original appointment and only for the unexpired portion of the term.

18 (3) The board shall:

19 (a) provide for the establishment and maintenance of a registry of burial sites located in the state;

20 (b) designate the appropriate member or members of the board or a representative or representatives  
21 of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site,  
22 or burial material;

23 (c) assist interested landowners in the development of agreements with the board for the treatment and  
24 disposition, with appropriate dignity, of human skeletal remains and burial material;

25 (d) mediate, upon application of either party, disputes that may arise between a landowner and known  
26 descendants that relate to the treatment and disposition of human skeletal remains and burial material;

27 (e) assume responsibility for final treatment and disposition of human skeletal remains and burial material  
28 if the field review recommendation is not accepted by the board's representatives and the landowner;

29 (f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of  
30 human skeletal remains or burial material from burial sites as provided by 22-3-806;

- 1 (g) issue permits authorizing scientific analysis;
- 2 (h) provide for a process to evaluate and establish an object as an object of cultural patrimony or a  
 3 sacred object pursuant to [section 5], including coordination and verification of the evidence presented regarding  
 4 the object's history and nature;
- 5 (i) develop a method to retain and store an object under review while the board establishes the object's  
 6 history and nature, determines if the object will be returned to an Indian tribe or group, and determines the  
 7 method to return an object that has been designated for return to an Indian tribe or group;
- 8 (j) provide for a process to accept and return an object of cultural patrimony or a sacred object from  
 9 someone who voluntarily turns over an object to be returned to an Indian tribe or group;
- 10 ~~(h)~~(k) accept grants or real or in-kind donations to carry out the purposes of this part;
- 11 ~~(i)~~(l) adopt rules necessary to administer and enforce the provisions of this part; and
- 12 ~~(j)~~(m) perform any other duties necessary to implement the provisions of this part.

13 (4) The board is allocated to the department of administration for administrative purposes only as  
 14 prescribed in 2-15-121.

15 (5) Each member of the board is entitled to be paid \$50 for each day in which the member is actually  
 16 and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel,  
 17 meals, and lodging pursuant to 2-18-501 through 2-18-503."

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19 **Section 4.** Section 22-3-808, MCA, is amended to read:

20 **"22-3-808. Prohibited acts -- penalties.** (1) After July 1, 1991, unless authorized under this part or by  
 21 the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the  
 22 human skeletal remains or burial materials under 22-3-805, a person may not:

23 (a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a  
 24 marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

25 (b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains  
 26 or burial material acquired in violation of this part; or

27 (c) purposely or knowingly disclose information knowing that it is highly probable that the disclosure will  
 28 lead to pilferage, disturbance, or destruction of a burial site.

29 (2) A person may not purposely or knowingly buy, sell, exchange, distribute, market, or otherwise  
 30 conduct a commercial transaction for profit that involves an object of cultural patrimony or a sacred object.

1           ~~(2)~~(3) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to  
2 exceed \$1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a  
3 subsequent violation of subsection (1)(a) may be fined an amount not to exceed \$20,000, be imprisoned for not  
4 more than 5 years, or both.

5           ~~(3)~~(4) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to  
6 exceed \$50,000, be imprisoned for not more than 20 years, or both.

7           ~~(4)~~(5) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to  
8 exceed \$500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation  
9 of subsection (1)(c) may be fined an amount not to exceed \$10,000, be imprisoned for not more than 5 years,  
10 or both.

11           (6) A person convicted under the provisions of subsection (2) may be fined an amount not to exceed  
12 \$10,000, be imprisoned in the county jail for not more than 6 months, or both.

13           ~~(5)~~(7) A person who knowingly fails to give notice as required by 22-3-805(1) may be fined an amount  
14 not less than \$100 or more than \$500.

15           ~~(6)~~(8) A person who violates a provision of this section or any term or condition of a permit issued under  
16 22-3-806 is subject to a civil penalty not to exceed \$2,000 for the first violation and not to exceed \$10,000 for a  
17 subsequent violation."  
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19           NEW SECTION. Section 5. Establishment of object as cultural patrimony or sacred object. An  
20 object may be established as an object of cultural patrimony or a sacred object by obtaining evidence of the  
21 history and nature of the object from:

22           (1) an Indian tribe or group that can show that the object of cultural patrimony was owned or controlled  
23 by the tribe or group;

24           (2) a direct lineal descendant of an individual who owned the sacred object;

25           (3) an Indian tribe or group that can show that the sacred object was owned or controlled by a member  
26 of that tribe or group; or

27           (4) an Indian tribe or group that can show that the object of cultural patrimony or the sacred object was  
28 transferred through a ceremonial transfer.  
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30           NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send a

1 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
2 Chippewa tribe.

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4 NEW SECTION. **Section 7. Codification instruction.** [Section 5] is intended to be codified as an  
5 integral part of Title 22, chapter 3, and the provisions of Title 22, chapter 3, apply to [section 5].

6 - END -